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# New York State Constitutional Law Trends and Developments: Introduction

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# LAW REVIEW

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## SYMPOSIUM

### NEW YORK STATE CONSTITUTIONAL LAW TRENDS AND DEVELOPMENTS

#### INTRODUCTION

*Dean Howard A. Glickstein:*

I would like to welcome you to this conference on the New York State Constitution. An important issue which will be considered here today is the application of state constitutional law. As I thought about it, I thought of different instances in my own career where I had occasion to think about state constitutional law.

Early in the 1960's, I was working for the United States Department of Justice. A great deal of the work we did took place in the southern states. At that time, the last thing in the world we ever wanted to look at was state constitutional law. Nobody ever thought that one way to vindicate rights was to look at the constitution in the State of Mississippi or the State of Alabama.

On another occasion, I was working on the case of *Baker v. Carr*,<sup>1</sup> which had come from the Supreme Court of Tennessee. The Supreme Court of Tennessee did not even think of looking at its own constitution, it just looked at the United States Constitution and the Supreme Court precedents, and decided that there was no case or controversy.<sup>2</sup>

Early in the nineteen seventies, I was a consultant on the United States Commission of Civil Rights on the issue of school finance, and the inequalities in school finance. The great hope at that time was the case of *Rodriguez v. San Antonio School District*<sup>3</sup> that was on its way to the Supreme Court.<sup>4</sup> Everybody hoped that that case would decide that education was a fundamental right, and thus there would be an opportunity to reform state educational finance systems. The *Rodriguez* case turned out the other way.<sup>5</sup>

After *Rodriguez*, many people started to look at state constitutions to see if they provided an opportunity to litigate the issue of inequalities in school financing. As many of you know, and as you will find out later today, there were many successful suits under state constitutions in situations that were not possible under the federal constitution. The program today looks very interesting.

The program today is extremely exciting with many interesting issues and a wonderful panel. The moderator is Barry Latzer,<sup>6</sup> who is a professor at John Jay College. We are really very indebted to Barry, who is pinch - hitting at the last minute. He was very gracious and willing to take on this assignment. As you can see from his biography, which appears in your program, Barry has a great deal of experience in this field and is an

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<sup>1</sup> 369 U.S. 186 (1962).

<sup>2</sup> *Id.* at 196.

<sup>3</sup> 337 F. Supp. 280 (W.D. Texas 1971).

<sup>4</sup> 406 U.S. 966 (1972).

<sup>5</sup> *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973) (holding that there is no fundamental right to education).

<sup>6</sup> Barry Latzer is Professor of Government at John Jay College of Criminal Justice, City University of New York.

authority on the issues we are considering today. So it is my pleasure to introduce to you Barry Latzer.

*Professor Barry Latzer:*

Thank you, Dean Glickstein. Welcome to Touro Law School. I feel a little funny saying that, since this is my first time at Touro Law School; but if good things come from small packages, I think you can be quite proud of what you are doing here at Touro. There is some excellent work going on here. I have had the good fortune to be published in your Law Review on state constitutional law.<sup>7</sup> I think there is some outstanding scholarship here, and hopefully today's presentations will show you some of the fine quality work that is being done. I do not want to delay any further, except to let you know that this is being broadcast live on the Internet, and that you can obtain immediate access to Touro's web site at <http://tourolaw.edu>. I am told that you will be able to watch and listen to the program on the Internet by pressing or accessing the button for on line events.

We have a number of panels today on the New York Constitution. The first one involves freedom of speech. This presentation is entitled, "How does the New York Constitution compare to the United States Constitution?" The presenters will be analyzing a number of significant issues, including defamation claims, use of zoning power to regulate adult entertainment, and speech rights in shopping centers. We are fortunate to have two very able experts on the subject.

First we have Vice Dean and Professor of Law, Eileen R. Kaufman,<sup>8</sup> a professor here at Touro Law Center. Vice Dean Kaufman received her law degree and her L.L.M. from New York University. She practiced in the federal courts in New

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<sup>7</sup> See Carl Swidorski, James Gardner, Barry Latzer, Peter Galie, *The Court and the Changing Constitution: A Discussion*, 13 TOURO L. REV. 135 (1996).

<sup>8</sup> Vice Dean and Professor of Law, Touro College Jacob D. Fuchsberg Law Center. B.A., Skidmore College, 1970; J.D., New York University, 1975; L.L.M., New York University, 1992.

York and in the Second Circuit as well as before the United States Supreme Court. She serves on the New York State Bar Association President's Committee on Access to Justice. She is Vice Chairman of the Westchester Chapter of the New York Civil Liberties Union. She is a reporter for the New York Pattern Jury Instructions. She is published primarily in the area of civil rights law. So please join me in welcoming Dean Eileen Kaufman.

Our other speakers on the First Amendment issue is the Joseph Kushner Distinguished Professor at Hofstra Law School, Professor Leon Friedman. Professor Friedman is a former director of the Committee for Public Justice and a staff attorney for the American Civil Liberties Union. He has argued or written briefs for a number of Supreme Court cases dealing with the First Amendment, the abuse of government power, and criminal procedure. He served as the Associate Director of the Committee on Courtroom Conduct of the Association of the Bar of the City of New York. He co-authored *Disorder in the Courts*<sup>9</sup> with Professor Norman Dorsen of New York University, a book that is considered the leading work on this subject. Professor Friedman is currently a leading copyright lawyer, the author of numerous law journals and newspaper articles, as well as the author of several books. One of his books received the Scribes Award as the outstanding book on a legal subject during 1969.<sup>10</sup> This award was for *The Justices of the United States Supreme Court*.

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<sup>9</sup> LEON FRIEDMAN & NORMAN DORSEN, *DISORDER IN THE COURTS* (1974).

<sup>10</sup> *THE JUSTICES OF THE UNITED STATES SUPREME COURT, 1789-1995; THEIR LIVES & MAJOR OPINIONS* (Leon Friedman & Fred Israel eds., Chelsea House rev'd ed. 1995).