

Chief Justice Lobbies Against Bill

By Jack Anderson

The Supreme Court is supposed to rule on laws after they're passed, not meddle with them while they're still before Congress. Yet, Chief Justice Warren Burger sent an envoy a few weeks ago to urge Speaker Carl Albert to water down the products safety bill.

This would protect consumers from dangerous products. Burger fears it would also overload the federal courts with new cases.

The Chief Justice, therefore, dispatched Rowland Kirks, the stuffy chief administrator of the federal courts, up to Capitol Hill to talk to Albert. Kirks was accompanied, astonishingly, by one of Washington's most engaging special pleaders, Tom (Tommy the Cork) Corcoran, who has clients opposed to the products safety bill.

For months, Burger has been grumbling about all the new laws that are being passed. He complained in 1970 to the American Bar Association: "Not a week passes without speeches in Congress and elsewhere and editorials demanding new laws—to control pollution, for example, and new laws allowing class actions by consumers to protect the public from greedy and

unscrupulous producers and sellers." This was clogging the courts, he grumped.

Same Theme

He hammered on the same theme again a few weeks ago during a return engagement before the bar association. He expressed an urgent need "to have Congress carefully scrutinize all legislation that will create more cases."

Putting his words into action, he sent Kirks four days later to lobby with Speaker Albert against the products safety bill. Tommy the Cork, as charming an Irishman as ever practiced the art of political persuasion, volunteered to serve as Kirk's guide.

When my associate Les Whitten called Kirks to ask about his lobbying mission, Kirks snapped: "I have nothing to say on this matter."

"Does this mean you are denying it?" asked Whitten.

"I am not going to say anything about this," Kirks repeated.

"But you are a public servant," pressed Whitten, "and the public has a right to know about this intervention."

"I don't want to be impolite, Mr. Whitten," said Kirks firmly, "but the conversation is at an end." And he hung up the phone.

Corcoran was more candid. He acknowledged that he had taken Kirks in to see Speaker Albert. "Kirks, acting for the Chief Justice, asked me to take him to see the Speaker," said Corcoran.

Although the drug interests have been leading the fight against the products safety bill and Corcoran has drug clients, he said he had not represented any client during the visit with Albert. Corcoran explained he had accompanied Kirks as a friend. "I have known Kirks for years," he said.

As Albert recalled the visit, Corcoran had done most of the talking. "Corcoran argued that the products safety bill would clutter the courts, and Kirks would say 'yes,'" the Speaker told us. He said he had not intervened, as they had requested, to weaken the bill.

Important Instrument

While the Chief Justice has been lobbying to keep public interest cases out of the federal courts, a confidential memo from Associate Justice Lewis Powell calls upon the U.S. Chamber of Commerce to hire a staff of lawyers to bring special interest cases before the courts.

"The judiciary," he wrote shortly before his appointment to the Supreme Court last year, "may be the most important instrument for social, economic and political change. . . Labor unions, civil rights groups and now the public interest law firms are extremely active in the judicial arena.

"Their success, often at business' expense, has not been inconsequential. This is a vast area of opportunity for the Chamber, if it is willing to undertake the role of spokesman for American business and if, in turn, business is willing to provide the funds."

It looks as if the Warren Burger court may be more interested in encouraging special interest than public interest cases.

Footnote: The Chief Justice flew out to San Francisco for the American Bar Association convention, incidentally, under the assumed name of W. Burke. He is nagged by fears that radicals might try to harm him. Intimates say he greeted a caller at his door several months ago with a drawn pistol. Burger failed to respond to our numerous requests for comment.