

Bar Study Notes Little Court Disorder Despite Burger Views on Unruliness

By ROBERT REINHOLD

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BOSTON, Aug. 8—A major survey of hundreds of the nation's general trial judges has produced little evidence of any widespread courtroom disruption by unruly lawyers.

Preliminary results from 1,600 judges responding to the survey, sponsored by the Association of the Bar for the City of New York, turned up six cases in which contempt citations had been issued against lawyers for courtroom behavior.

The general impression that courtroom misbehavior by lawyers is not a serious or growing problem was supported by an independent

check by The New York Times of court officials in 13 major cities and interviews with legal authorities around the country.

The question of unruly trial lawyers has been raised repeatedly in recent months by Chief Justice Warren E. Burger and other leaders of the legal profession.

Mr. Burger has complained that "all too often overzealous advocates seem to think the zeal and effectiveness of a lawyer depends on how thoroughly he can disrupt the proceedings" and that a decline in civility was menacing justice.

Many lawyers agree that the starchy and flowery

formalism that once governed courtroom exchanges between lawyers and judges has gone the way of the white dress shirt and the crew cut, but they say the incidence of outright disruptions by lawyers is quite low.

But some lawyers feel there is nevertheless cause for alarm because public confidence in the administration of justice has been damaged by a few celebrated incidents.

The Bar Association survey was undertaken last year because of the public and legal concerns prompted by the Chicago Seven conspiracy

Continued on Page 12, Column 3

trial, according to Burke Marshall, chairman of the association's Special Committee on Courtroom Conduct, who is deputy dean of the Yale Law School.

With a \$125,000 grant from the Ford Foundation, the committee sent questionnaires to the nation's 4,400 general trial judges asking details of courtroom disruptions.

Six Cases Reported

The statistics are still incomplete, but in preliminary data, the 1,600 judges who responded reported 99 cases of courtroom misconduct, in which they issued 37 contempt citations. Of these, six were against lawyers for in-court behavior.

The committee, which consists of 10 leading lawyers and legal scholars, is expected to issue a detailed report in about five months interpreting the statistics and discussing the behavior expected of prosecutors, defense lawyers and judges in criminal trials.

Reports from major cities by New York Times correspondents showed that disruptions, when they occurred, were usually in highly publicized criminal trials of black militants and white radicals, in which lawyers attempted to introduce political issues into the defense. Notable examples were the Chicago Seven case last year and the recent Black Panther trial in New York.

'No Problem at All'

"I've really had no problem at all. I know of none that the other judges have had," said William O. Mehrrens, United States District Judge in Miami. His comment was typical of those of judges and bailiffs in almost all regions of the country.

Justice Burger, traveling in Europe, could not be reached for comment. But court observers suggest that he is concerned that the system of justice, which he is said to view as inherently brittle because of its contentious nature, is losing public respect because of the few widely publicized incidents of disorder.

Some activist lawyers believe Chief Justice is exaggerating the problem in an attempt to curb aggressive young lawyers.

Courtroom incivility has become a major topic of debate in local bar groups and at major legal gatherings, including the American Bar Association convention last month; the meeting of the National Lawyers Guild, a growing left-wing group, which met recently in

Boulder, Colo., and the American Trial Lawyers Association meeting last week in Portland,

The American judicial system is in a period of unusual stress. Not only have Americans become increasingly litigious in recent years, but the poor, the blacks and other disenfranchised groups have also been demanding their day in court with the help of an aggressive and abrasive new corps of public interest lawyers who see the courts as instruments of social change.

This phenomenon, in the view of many observers, underlies the complaints of conservative judges.

According to Prof. Arthur Sutherland of the Harvard Law School, who is completing a book on the history of the American legal profession, there has been no recent increase in disruptions by lawyers in comparison with previous years.

"But you've got a new selection of lawyers inspired by Ralph Nader," he said in an interview, "and they are getting in there and ruffling the hair of a lot of people because they are insisting on poor people getting rights. I don't believe in being rude to judges,

but I do believe in insisting on people's rights."

Simon H. Rifkind, a former Federal judge who is a partner in a prestigious Wall Street law firm, is not alarmed by the court situation. He said in an interview that the courts he visited were "as serene as a brook in the mountains long after the storm."

He attributed any incivility in courts to a general decline in amenities in American life and the abrasiveness of urban life.

Justice Burger has complained about courtroom manners and decorum at least five times in speeches and news interviews since last August. In his May 18 speech before the American Law Institute, he acknowledged that "only a tiny fragment of reckless, irresponsible lawyers are guilty."

He mentioned no names, but it is widely assumed in the legal fraternity that he was alluding chiefly to William M. Kunstler, the defense attorney in the Chicago Seven case. Because of his conduct, Mr. Kunstler was sentenced to four years and 13 days for contempt by Judge Julius J. Hoffman.

Mr. Marshall, commenting on the results of the Bar Association survey said in an inter-

view: "In general, this says it isn't so much of a problem statistically, but from the point of view of the bar and the courts, it is not only the fact of the matter but the appearance of the matter that is important. A great many judges and lawyers feel that what went on in Chicago cast the bar and the courts publicly into disrepute."

"So it may be a problem even if it is not a statistical problem," Mr. Marshall went on, adding that "there is some danger of panic and overreaction" among lawyers and judges.

'A Witch Hunt'

In an interview at the National Lawyers Guild convention, Mr. Kunstler, who is appealing the sentence, denounced the talk of unruly lawyers as "a witch hunt of left lawyers."

"There is not an uncivil lawyer. It's a myth he [Justice Burger] is deliberately creating to control the bar," said Mr. Kunstler. "They are afraid of this new breed of lawyer coming out of law school."

Asked if there were any circumstances under which defiance of judges was warranted, he said that when a judge denied a defendant his constitu-



Drawing by Franklin McMahon

William M. Kunstler, center, sketched during the trial of the Chicago Seven. Because of his conduct, he was criticized by the judge and sentenced on contempt-of-court charges.

tional rights, there were sometimes "moments to say things that might jeopardize your liberty and professional standing."

The man who is handling Mr. Kunstler's appeal, Prof. Arthur Kinoy of Rutgers Law School, argued: "A lawyer has the obligation to defend his client to the best of his ability and to stand up to a judge when he believes he is violating the client's rights."

Civil rights lawyers say that defiance of judges has historically played an important role in the establishment of some basic American rights.

Zenger Case

In 1735, Andrew Hamilton, the leading Colonial lawyer, defended a printer, John Peter Zenger, accused of seditious libel for printing articles critical of the Government. Despite warnings by the judge, Hamilton asked the jury to acquit Zenger because the articles were true. The jury agreed, thus establishing freedom of the press.

In the centuries since, lawyers have occasionally disrupted trials in a variety of cases. The recent controversy has prompted a spate of studies by bar associations and other legal groups.

The A.B.A., at its July meeting in New York, adopted a set of courtroom guidelines and urged judges to set the tone by behaving well themselves. For unruly lawyers, it suggested various punishments, including censure, contempt, removal from court and temporary suspension from the court.

Misconduct Undefined

Complicating the situation is the fact that there is no generally accepted definition of misconduct.

In a critique issued last year, the board of governors of the American Trial Lawyers Asso-

ciation observed that "what may be a disruption to one judge may well be no more than comic relief to another."

Last March, the Appellate divisions of the New York State Supreme Court adopted rules of court decorum to supplement the canons of the New York State Bar Association. These rules defined disruptive conduct as "any intentional conduct by any person in the courtroom that substantially interferes with the dignity, order and decorum of judicial proceedings."

Arthur Meehan, director of the Morrisania legal clinic in the Bronx, said that what was occurring was not disruption but the same kind of aggressive practice of the law on behalf of the poor that corporations and the rich were accustomed to.

"The poor have never seen justice work for them," he said. "Now legal service attorneys are saying, 'We're going to make whatever law exists work for you.'"

Chief Judge John J. Sirica, of the Federal District Court for the District of Columbia, says he has had no disruptions in his court in several years. He attributed difficulties elsewhere to the inexperience of young lawyers.

"A young lawyer might get sassy or unruly as a result of inexperience," he said.

But many younger lawyers believe there is more to it than that. In the view of Edward Garland, a trial lawyer in Atlanta, "We will continue to see more protests of the conduct of trial judges because judicial matters are related to the social structure of our community, and when the social order begins to change, much of the feedback can be found in our courtrooms."