

It's Not the Way to Police Lawyers

By Leon Friedman

Last September, the Judicial Conference of the United States, headed by Chief Justice Warren E. Burger and composed of the chief Federal judges of the country, offered a new plan for ferreting out misconduct by lawyers throughout the country. The Conference proposed that Congress enact a law that would permit a Federal judge to call in the F.B.I. to investigate lawyers who have been accused of "unethical conduct" or "other conduct unbecoming a member of the bar." The judges defended the proposal as a means of "standardizing disciplinary procedures in all Federal courts" since it would supply needed manpower to aid state bar grievance committees who "normally lack adequate funding or personnel to make proper inquiry." The plan was introduced into Congress last October.

The proposal may be one of the worst suggestions ever submitted to Congress. Inspired either directly or indirectly by the Chief Justice's continued campaign against "uncivility" in the courts, the plan contains the potential for enormous abuse. We should all be concerned with the professional responsibilities of lawyers, and state bar associations who have traditionally handled the problem should receive additional funds for their work. But asking the F.B.I. to enter the picture is simply not the answer.

The standard suggested is far too vague. "Unethical conduct" or "conduct unbecoming a lawyer" could cover everything from charging very high fees to arguing too long with a judge or showing up five minutes late

in court. Are these actions enough to warrant the F.B.I. investigating a lawyer's personal and professional life?

Many lawyers often find themselves on the opposite side of the Federal Government in a wide variety of cases: handling antitrust, securities or tax cases or environmental suits, challenging illegal wiretaps by governmental officials or simply defending a criminal action. If the F.B.I. can investigate these lawyers because a judge thinks they may be engaged in "unethical conduct," Government law-

yers may be able to discover all they want about their opponents' cases.

In addition, public interest lawyers and legal-services attorneys often present novel constitutional arguments to a court on behalf of their clients. Some judges are quick to consider such novel arguments, vigorously pursued, as undesirable, time-consuming and perhaps unethical. The door would then be open for harassment of the lawyers by F.B.I. questioning of their friends and clients.

The accuracy of F.B.I. investigations also leaves much to be desired. Agents collect unsubstantiated data, dangerous rumors and misinformation about many people who are the targets of their inquiries. L. Patrick Gray 3d, said during his confirmation hearings, that he was surprised by the amount of "rot" in F.B.I. files. Why should the Bureau be encouraged to open such files on the 300,000 lawyers practicing in the nation?

The potential for harassment and intimidation in the plan is too great to warrant this expansion of F.B.I. power. Watergate events indicate that the great danger to our society comes from lawyers inside the Government rather than those outside the Government challenging its policies and actions. If the judges of the Judicial Conference are really concerned about the ethics of the profession, they should offer a plan to discipline the lawyers who, not very long ago, were controlling the Bureau. Sending out the F.B.I. to investigate those who may have opposed governmental policy in the courts is hardly an appropriate response to the problem of professional misconduct.



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