

# Judiciary Under Fire

## 2 Reports and Countercharges Agree Court-Monitoring System Is Needed

By TOM GOLDSTEIN

It was a bad week for the city's judges—and for those who tried to criticize them. But after the release of two reports critical of judicial conduct and a series of angry countercharges, the bottom line remained where it stood before the week began. Both the critics and their targets generally agreed that the present procedures of monitoring and disciplining judges are inadequate.

While the week's events did not change many minds, they certainly intensified the urgency of such reforms. From all the statements and reports, only two uncontroverted charges against individual judges emerged, and those charges involved the murky area of judicial temperament, rather than the more clearly defined—and much more difficult to prove—issues of corruption or illegal activities by judges.

The cloak of confidentiality that normally surrounds matters of judicial discipline was first stripped by a report by a committee of the Association of the Bar of the City of New York, an organization that has built a nationwide reputation for the quality of its reports.

### Report Criticized

But this particular report, which dealt solely with charges made against judges by Jack Newfield in an article in New York magazine in 1972, was, according to bar association sources, "not a very good one." The association's president, Orville H. Schell Jr., indicated that attempts by nongovernment bodies to look at judicial conduct were "bound to be ineffective" because such groups lack subpoena powers and sufficient staffing.

The report attacked Mr. Newfield, the messenger of bad tidings, for "irresponsible journalism," but supported some of his charges relating to the general behavior of some judges on the bench. Its publication immediately aroused the ire of Owen McGivern, presiding justice of the First Department of the Appellate Division, who called it "cheap vilification."

Then a group of Supreme Court justices, prefacing their remarks with the statement that "ordinarily members of the judiciary do not deign to reply to attacks leveled upon them in the press," joined in the chorus of dissent and dismissed the bar report as "scurrilous kitchen gossip."

since he took office Jan. 1, to defend the judiciary's "capacity" and "will" to discipline itself. But in legislation introduced last month in Albany with the support of Judge Breitel, the majority of a proposed 11-member disciplinary commission would not be judges.

### Bizarre Attack

Then, in the most bizarre attack of the week, an opponent of Judge Breitel's in last fall's race for chief judge — Supreme Court Justice James Leff — told the Daily News that his fellow judges ranged from "outright thieves" to "guys who are like old ballplayers." Within 24 hours, Justice Leff recanted his "generalized" remarks and admitted he had disregarded "the spirit and perhaps the letter" of the time-honored canons controlling the public behavior of judges.

From all this emerged two substantiated charges—neither of which has been acted upon fully. The bar association recommends, as did Mr. Newfield, that Supreme Court Justice Gerald P. Culkin remove himself from cases being argued by Joseph Aronstein, his long-time friend. But apparently his superiors have yet to communicate this admonition directly to Justice Culkin.

And Justice McGivern acknowledged yesterday that Supreme Court Justice Wilfred A. Walmade was under investigation. He had been accused by the bar association of screaming at people and abusing lawyers and witnesses in his courtroom.

### Common Denominator

The common denominator expressed by all the principal actors in the week's controversy was that the rules governing the conduct of judges needed to be changed and that some type of independent commission to investigate judicial behavior had to be established.

In the meantime, Judge Breitel has created an interim committee on judicial conduct to investigate complaints against individual judges. It can recommend courses of action to the existing disciplinary bodies but cannot remove or censure judges on its own. It will also keep figures on the number of complaints against judges across the state.

"For the first time we'll be able to keep score," Judge Breitel said. He promised an accounting by the end of the year.

### Charges Rehashed

In the midst of all this, the State Commission of Investigation, in only its second report on the judiciary in the last 19 months, rehashed charges that have been made against judges during the last five years and scolded the judicial authorities for not policing errant judges.

But the state commission did not delve into the larger issue of who among the sitting judges was guilty of improprieties. For this task, it recommended the establishment of a commission on judicial conduct that would not be controlled by the judiciary.

This proposal led the state's chief judge, Charles D. Breitel, who has become an activist