

Thursday, November 29, 2007

Judge unlawfully detains dozens over cellphone ringer, and then faces the music.

Â Bill of Rights.Â (From the public domain.)Â In such Virginia counties as Arlington and Fairfax, ringing cellphones are confiscated in the courtroom and returned only the next business day. In the federal courthouse in Alexandria, cellphones, blackberries, PDAs and the like are banned. In Robert Restaino's courtroom oneÂ day, however,Â he ordered dozens of people in his courtroom locked up as collective punishment for the ringing of an unknown person's cellphone. Â Two weeks ago, New York's Commission on Judicial Conduct put its foot down, and voted to strip Mr. Restaino of his black robe. Let us count the ways in which Mr. Restaino urinated on the Constitution: He ordered a five-minute recess for courthouse personnel to search for the phone, during which time all courtroom visitors were unlawfully detained by having been barred from leaving. He interrogated courtroom visitors about the cellphone without telling them their right to remain silent, and which put him in the role of prosecutor, judge and jury (granted, a jury trial right may not have been available).Â He overruled the pleas of phone-ringer suspects to avoid lockup to enable a medical visit for possible surgery, and to be home for school for a young child.Â He locked up dozens of people over the cellphone incident without having probable cause to do so (and for what crime? Contempt of court?), and without sufficient grounds to set bail (apparently setting the same bail for everyone, rather than bail individually tailored to assure each person's return to court for a hearing on the matter) rather than permitting the suspects (over a dozen of whom could not afford the bail amount) to be permitted to promise to return to court. Ultimately -- but too late -- he reversed his position after learning that the news media was hot on this story. Â The New York Commission on Judicial Conduct determined thatÂ "Throughout all the proceedings that morning, [Judge Restaino] did not raise his voice; he appeared calm and in control." Too bad he did not have the restraint, then, not to commit the blunder that he committed by detaining, interrogating, and locking up dozens of people obliged to be in his courtroom that day. Â In sum, judges are humans, and, therefore,Â can make mistakes, and even blunders. Collectively, they should not be cloaked in anything more glowing than that.Â Jon Katz.Â ADDENDUM: Articles on this scandal are here, here, here, and here.

Posted by Jon Katz in Constitutional Law at 00:05

Ah, ha ha ha!! Hilarious..I can see Hon. Restaino struttin' around his court like a manic peacock: " O. K. you people, wanna bug me--yer all goin to jail!"....I'm glad for the commission on judicial conduct, hope he learns his lesson!
Anonymous on Dec 5 2007, 19:24

Hi, John- Your comments always liven up this blog with your insights and humor. I hope all is well. Jon
Anonymous on Dec 13 2007, 18:21