

Monday, January 28, 2008

Of hats and cleavage in courtrooms.

Â Bill of Rights.Â (From the public domain.)Â This month, two judges went overboard to enforce decorum in court so as to be counterproductive in their apparent attempts to protect the way the public perceives the courts .Â In Washington state in mid-January 2008, District Court JudgeÂ Holly Hollenbeck told a cancer patient to remove her hat in court, even though she explained the hat was to cover her hair loss from cancer treatment. Fortunately, the judge did anÂ about-face and eliminated the no-hat rule in his courtrooms, but only after experiencing a backlash of public opinion against the improvident refusal for the cancer patient to wear a hat in the courtroom. Â Next, on the East Coast last week, Rowan County District Court Judge Kevin Eddinger found a lawyer in contempt for having read Maxim in his courtroom, saying:Â "The contemnor's (Paris) conduct interrupted the proceedings of the court and impaired the respect due its authority. In addition, the contemnor's actions were grossly inappropriate, patently offensive, and violative of Rule 12 of the General Rules of Practice. Courtroom staff, law enforcement, members of the Bar and the general public shall be able to conduct courtroom business in an atmosphere free of the display of offensive material as demonstrated by the contemnor, thus necessitating this action."Â Aside from any First Amendment concerns here -- for instance, the judge's reference to "patently offensive" seems misplaced, especially since that phrase applies to the Miller definition of obscenity, which definition clearly does not cover Maxim -- particularly disturbing is that Judge Eddinger apparently gave no warning for the Maxim-reading lawyer to cease and desist, nor any guidelines about what reading material is permitted in the judge's courtroom. Maxim isÂ a male-targeted magazine that shows neither full nudity nor fully-bared breasts, and which has plenty of non-sexual articles and photos. Whether orÂ not MaximÂ is as sexist as Hooters restaurants in intent and effect does not justify such discipline against the lawyer. Â Where will Judge Eddinger draw the line in his courtroom on contumacious images? Will he find parties in contempt who show up in court showing as much cleavage as some of the Maxim models? Will he sanction non-lawyer (and lawyer) visitors perusing the Sports Illustrated swimsuit issue? Will he find parties in contempt for wearing shorts to court?Â I hope that Judge Eddinger follows the path of Washington state's Judge Hollenbeck, by reversing his improvident MaximÂ contempt order.Â Jon Katz. Â ADDENDUM:Â Â Thanks to Paul Luvera for blogging on the hats off story. Thanks to WSJ for blogging on the MaximÂ contempt order.

Posted by Jon Katz in Constitutional Law at 00:00