Mayberry v. Pennsylvania

Some Questions for Social Scientists

The Supreme Court ruled in January of this year that a defendant in a criminal proceeding who repeatedly insulted and vilified a state trial court judge was entitled under the due process clause of the Fourteenth Amendment to public trial before a different judge on contempt charges.

On trial in a state court for prison breach and holding hostages in a penal institution, the defendant Mayberry was found guilty by the jury after three weeks of testimony and argument. Before imposing sentence based on that verdict, the judge pronounced Mayberry guilty of criminal contempt and sentenced him to not less than one nor more than two years for each of eleven contempts. The Pennsylvania Supreme Court affirmed the sentence of 11 to 22 years for contempt.

Mayberry had represented himself at the trial, though court-appointed counsel served as an adviser to him. In the course of the trial, such colloquies as these occurred between Mayberry and the judge:

MR. MAYBERRY: I would like to have a fair trial of this case and like to be granted a fair trial under the Sixth Amendment.

THE COURT: You will get a fair trial.

MR. MAYBERRY: It doesn't appear that I am going to get one the way you are overruling all our motions and that, and being like a hatchet man for the State.

THE COURT: This side bar is over.

MR. MAYBERRY: Wait a minute, Your Honor.

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THE COURT: It is over.

MR. MAYBERRY: You dirty sonofabitch.

THE COURT: . . . This is a court of justice. You don't know how to ask questions.

MR. MAYBERRY: Possibly Your Honor doesn't know how to rule on them.

THE COURT: You keep quiet.

MR. MAYBERRY: You ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions.

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MR. MAYBERRY: . . . I have asked questions, numerous questions and every one you said is improper. I have asked questions that my adviser has given me, and I have repeated these questions verbatim as they came out of my adviser's mouth, and you said they are improper. Now just what do you consider proper?

THE COURT: I am not here to educate you, Mr. Mayberry.

MR. MAYBERRY: No. I know you are not. But you're not here to railroad me into no life bit, either.

THE COURT: Do you have any other questions to ask this witness?

MR. MAYBERRY: You need to have some kind of psychiatric treatment, I think. You're some kind of a nut. I know you're trying to do a good job, for that Warden Maroney back there, but let's keep it looking decent anyway, you know. Don't make it so obvious, Your Honor.

As the court prepared to charge the jury, Mr. Mayberry said:

> Before Your Honor begins the charge to the jury defendant Mayberry wishes to place his objection on the record to the charge and to the whole proceedings from now on, and he wishes to make it known to the Court now that he has no intention of remaining silent while the Court charges the jury, and that he is going to continually object to the charge of the Court to the jury throughout the entire charge, and he is not going to remain silent. He is going to disrupt the proceedings verbally throughout the entire charge of the Court, and also he is going to be objecting to being forced to terminate his defense before he was finished.

Writing for the Supreme Court, Justice Douglas said:

> These brazen efforts to denounce, insult, and slander the Court and to paralyze the trial are at war with the concept of justice under law. . . . We have here downright insults of a trial judge and tactics taken from street brawls and transported to the courtroom.

The trial judge could have acted instantly to find the defendant in contempt. Not having acted instantly, however, "It is generally wise where the marks of the unseemly conduct have left personal stings to ask a fellow judge to take his place." According to Justice Douglas, "no one so cruelly slandered is likely to maintain that calm detachment necessary for fair adjudication."

Chief Justice Burger, in a separate concurring opinion, added the observation that summary removal of a contemptuous defendant is the really effective remedy. He continued:

> Indeed it is one, as this case shows, where removal could well be a benefit to the accused in the sense that one episode of contemptuous conduct would be less likely to turn a jury against him than eleven episodes.

If the Chief Justice was validating the assumption lawyers and social scientists have often made that juries reach decisions on the basis of the conduct of the defendant in the courtroom rather than on the basis of the evidence presented about the criminal behavior in which he allegedly engaged, our present system of justice can scarcely claim superiority to trial by combat or ordeal. But is it clear that juries are unwilling to distinguish or incapable of differentiating between the defendant's demeanor in the courtroom and his guilt or innocence of the charge that brought him to the courtroom in the first instance?

If the jury would be more inclined to turn against a defendant as his episodes of contemptuous courtroom conduct increased, and if the presiding judge under those circumstances would be unable to retain "the impersonal authority of the law," what certainty is there that a judicial colleague of the same court would

be able to restore that impersonal authority? Social scientists' skills would be helpful in answering these questions. It might not be implausible to suggest that personality variables among judges and members of juries may be more significant than the factor of who bears the sting of the slanderous remarks. Intensive research on the mores, personalities, and self-perceptions of judges, drawing on and integrating earlier work by Gofman, Bem, Nagel, and the late Jerome Frank, might help the judicial system to reach the level of dispassionateness and objectivity to which it aspires.

—**Victor G. Rosenblum**
President

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