

Lawyer's 'Yesssss!' was OK, appeals court says

Randy Berman wasn't in contempt, the court said, but he still denies making the comment.

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WEST PALM BEACH — It was a first-degree murder case that took a week to try. So when jurors came back with a not-guilty verdict, Assistant Public Defender Randy Berman couldn't hold himself back, pounding his fist against the defense table and yelling, "Yesssss!"

At least that's the way Circuit Judge John L. Phillips saw it. (Berman denies shouting.) Phillips, a notorious stickler for protocol, promptly found Berman in contempt of court, fining him \$500 for the misdemeanor.

On Wednesday, though, it was Phillips who was found out of order. The 4th District Court of Appeal threw out the contempt charge, saying the judge broke the rules by not allowing the attorney a hearing.

Criminal contempt power "should be used cautiously and sparingly," DCA Judge Carole Taylor wrote, "and reserved for those instances in which conduct is calculated to hinder, embarrass, delay or obstruct justice."

The 4th DCA found that Berman's exuberance did not constitute such behavior, but was nevertheless inappropriate and unprofessional. Still, Taylor went on to say a "passionate advocacy inherent in the



Phillips

defense of a client accused of first-degree murder cannot be overstated."

Berman's fist-slaming proclamation on Aug. 28, 1998, could be characterized as "a raucous 'sigh of relief' at the end of the battle for acquittal" in a case that

Please see **CONTEMPT, 2B**

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CONTEMPT

From 1B

took years to get to trial, she said. Berman's client, Chris Jones, was acquitted of killing Girish Dubal during a 1996 robbery at a West Palm Beach convenience store.

"The fear and sense of foreboding felt by counsel during the interminable period before the verdict is announced can become

unbearable and even exceed the anxiety levels of the accused," Taylor wrote.

Phillips didn't return calls for comment Wednesday. But a record of his comments at Jones' trial show how distressed he was over the actions he attributed to Berman, an attorney for 19 years.

"I find it not only unprofessional, but, I believe unethical," Phillips told Berman. "And I will not tolerate that kind of behavior

in my courtroom by anybody... I don't think any judge on the face of the earth would tolerate it either."

Berman said he's not through, saying the shouted "Yesssss" came from the gallery, not him. He said the DCA assumed he made the comment.

"I'm getting bad publicity," Berman said. "I'm going to ask for a rehearing to clarify."

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