

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

MICHAEL J. BRENNAN,

DETERMINATION

a Judge of the Civil Court of the City of New York,
Richmond County.

THE COMMISSION:

Honorable Eugene W. Salisbury, Chair
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Behrins & Behrins, P.C. (By Bruce G. Behrins) for Respondent

The respondent, Michael J. Brennan, a judge of the Civil Court of the City of New York, Richmond County, was served with a Formal Written Complaint dated September 27, 2000, containing one charge, alleging that respondent made improper,

inflammatory remarks to and about a defendant while presiding at an arraignment.

Respondent filed an answer dated October 20, 2000.

On November 15, 2000, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 14, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Civil Court of the City of New York since 1997. In July 2000, respondent was sitting in the Criminal Court of the City of New York, Richmond County.

2. In July 2000, respondent was a candidate for nomination to Supreme Court.

3. On or about July 19, 2000, respondent, while presiding over the arraignment of the defendant in People v. Guido Tritto in Part AR-1 of the Criminal Court, made the following highly improper, inflammatory comments to and about the defendant:

THE COURT: I just have a couple of things to say particular to you Mr. Tritto.

About 1974 I started as a legal aid attorney in this court and you started your criminal career about the same time. About that time Officer John Kelly was five years old. We're all judged by the decisions we make.

Over the course of your life you have made decisions that have placed you in trouble with the law over 10 or 12 times, including two felony convictions which makes you a three-time loser. If you're convicted of this charge you would be a persistent felony offender and facing life imprisonment.

You sir, are a sociopath. You have no concern for the values and norms of this society. You place your interests above those of anybody else. If somebody were to lay a gun on that table right now you would shoot me and walk out of this court room.

MR. TRITTO: No, I would not.

THE COURT: This community is outraged by this. A simple decision to drive away from a police officer, a prince of the city who was doing his duty, to take a traffic ticket or get arrested for stealing a motorcycle, which you would have faced six months in jail for at worse, you chose to speed away.

And Officer Kelly, because he was a good cop, about the only recompense of this whole business, you're a career criminal and are now off the streets, he is dead. It's not a fair trade, sir.

MR. TRITTO: I would gladly trade places with the gentleman. My life isn't worth much.

THE COURT: If this had been the old west, there would have been a lynch mob waiting at the door for you. Because of police officers like Officer Kelly, who insist on the laws being enforced and due process being obeyed, you will get your day in court.

We'll have to assign an attorney from off of Staten Island for you to make sure you get a fair trial.

He's remanded until tomorrow. Take this loser away from me.

4. Respondent's comments at the arraignment assumed the defendant's guilt, conveyed the appearance that respondent had concluded that the defendant was guilty, elicited incriminating responses from the defendant and distorted the arraignment process.

5. Respondent's comments at the arraignment conveyed the further appearance that respondent, a candidate for nomination to Supreme Court, was pandering to public sentiment against the defendant.

6. By stating to the defendant that the defendant would shoot respondent if given the opportunity, respondent attributed to the defendant the motives and conduct of a murderer.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(B)(1) and 100.3(B)(3) of the Rules Governing Judicial Conduct and Sections 700.5(a) and 700.5(e) of the Special Rules Concerning Court Decorum of the Appellate Division, Second Department. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

In presiding at an arraignment of a defendant charged with a crime that had resulted in the death of a police officer, respondent used the opportunity to make an inflammatory speech, which conveyed the appearance that he was pandering to public

sentiment against the defendant. At a time when the defendant was entitled to a presumption of innocence, respondent made statements which assumed the defendant's guilt, called him a "sociopath" and a "loser," chastised him for "hav[ing] no concern for the values and norms of this society," and even stated that the defendant would shoot respondent if given the opportunity. Respondent's taunting, provocative comments elicited from the defendant an incriminating response, expressing remorse. Respondent's conduct was antithetical to the proper role of a judge at an arraignment, which is to be an impartial arbiter, and was inconsistent with the fair and proper administration of justice.

The fact that, at the time he made these statements, respondent was a candidate for nomination to Supreme Court also conveyed the impression that respondent was using the judicial proceeding as a political forum in order to demonstrate his harshness toward a defendant charged with a crime which, as respondent commented, had "outraged" the community. This was unseemly and totally inappropriate. Respondent undoubtedly knew, or should have known, that his disparaging remarks about the defendant would likely be widely publicized.

The ethical standards require a judge to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity..." (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]). A judge must be "the exemplar of dignity and impartiality[,]...suppress his personal predilections, control his temper and emotions, and otherwise avoid conduct on his part which tends to

demean the proceedings or to undermine his authority in the courtroom” (Rules Concerning Court Decorum of the Appellate Division, Second Department, 11 NYCRR 700.5[e]). By his intemperate diatribe, respondent clearly violated these standards.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

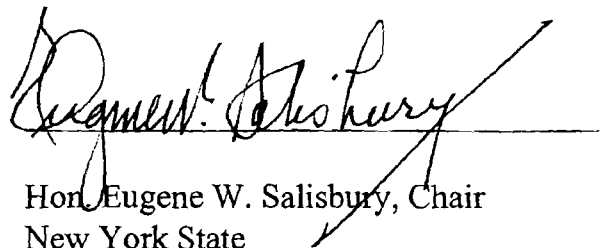
Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: February 8, 2001

A handwritten signature in black ink, appearing to read "Eugene W. Salisbury", is written over a horizontal line. The signature is stylized and cursive.

Hon. Eugene W. Salisbury, Chair
New York State
Commission on Judicial Conduct