

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

VINCENT T. CERBONE,

Determination

a Justice of the Mount Kisco Town Court,
Westchester County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

Morosco & Cunard (By B. Anthony Morosco)
for Respondent

The respondent, Vincent T. Cerbone, a justice of the
Mount Kisco Town Court, Westchester County, was served with a
Formal Written Complaint dated July 23, 1982, alleging that he
addressed patrons of a bar in a degrading, racist, threatening,

profane and abusive manner. Respondent filed an answer dated August 13, 1982.

By order dated October 18, 1982, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on November 15, 16, 18 and 22, 1982, and the referee filed his report with the Commission on March 31, 1983.

By motion dated April 8, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on May 6, 1983. The Commission heard oral argument on the motion on June 17, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent, an attorney, is a justice of the Mount Kisco Town Court. He has been a judge in that community since 1962.

2. On October 25, 1981, respondent went to Finn's Tavern in Mount Kisco to meet the bar owners, who were clients of respondent.

3. Upon entering the bar, respondent announced to several patrons that he had seen men engaging in a drug transaction outside the bar.

4. Respondent then went to a telephone and called the police. He did not tell the police on the telephone or when they arrived at the bar that he had witnessed a drug transaction.

5. Four men, Clifton Mosley, James Ferguson, Earl Bynum and Gary Barker, entered the bar after respondent. Mr. Bynum left moments later.

6. Respondent addressed Mr. Ferguson as a "drug pusher" and told him, "If you are going to sell that stuff, do it outside of my presence," notwithstanding that he had seen no drug sale take place and had no reason to believe that Mr. Ferguson was engaged in the sale of narcotics.

7. An argument ensued between respondent and Mr. Ferguson, Mr. Mosley and Mr. Barker, who are black. Respondent, in a loud voice, addressed them in a degrading, racist, and profane manner that was heard by others in the bar. Respondent referred to the men as "niggers" and "black bastards." He asked them what they were doing in "a white man's bar."

8. Respondent identified himself as a judge and used his judicial position to threaten the black men by stating that he would incarcerate them for a specific number of years and would "railroad" and "hang" them if they ever appeared in his court.

9. Respondent also became involved in a heated argument with a white patron of the bar, Dennis Moroney, during which

respondent referred to Mr. Moroney by such terms as "son of a bitch," "bastard" and "dumb fuck."

10. Respondent discussed leaving the bar to fight Mr. Moroney and at one point raised his forearm and made contact with Mr. Moroney's face or neck.

11. Respondent was in the bar for about an hour, and during this time he had two drinks. He was not intoxicated.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Judges are held to a higher standard of conduct on and off the bench than are members of the public at large. Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465 (1980). Respondent was no ordinary bar patron. At Finn's Tavern, he "remained cloaked figuratively, with his black robe of office...." Matter of Kuehnel, supra, at 469. Yet, respondent's actions were grossly inappropriate even for one not charged with upholding the integrity of and public confidence in the judiciary.

Respondent walked into a bar and announced to the patrons that there were men outside "doing drugs" and that he would call the police. He allowed himself to be drawn into a heated argument, during which he loudly used degrading, racist and profane language. By the account of ten witnesses, he struck one of the patrons and, by his own admission, discussed fighting the patron outside the bar.

That respondent identified himself as a judge and threatened to use his judicial office against his antagonists exacerbates his misconduct.

These confrontations took place over a sustained period of time. The misconduct is not based on a single remark uttered in the heat of passion or in response to a personal attack. Even respondent's claim of a trap contrived by all of the many other patrons of the bar (a claim not sustained by the evidence), would not justify his remaining at the scene for nearly an hour engaging in such conduct.

The law of New York is now clear that racist conduct by a member of the judiciary will not be tolerated. Matter of Kuehnel, supra; Matter of Aldrich v. State Commission on Judicial Conduct, 58 NY2d 279 (1983). No citizen should be required to appear before a judge who publicly uses terms such as "niggers" and "black bastards," and who questions the right of black patrons to visit "a white man's bar."

Even where a judge's use of profane and racist language has been influenced by alcohol, he has been held to have irretrievably lost public confidence so as to be unfit to hold judicial office. Matter of Aldrich, supra. Here, respondent's actions were not influenced by alcohol.

Such conduct would be outrageous from a private citizen. Coming from one who brandishes his judicial office, it becomes especially intolerable. Despite his 20 years of service on the bench, respondent's conduct at Finn's Tavern effectively terminated public confidence in his ability to fairly and impartially adjudicate matters without bias.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

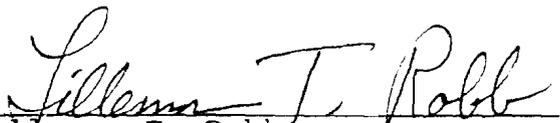
Judge Alexander and Mr. Cleary were not present.

Mr. Sheehy was not a member of the Commission at the time the vote in this proceeding was taken.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: August 5, 1983


Lillemor T. Robb
Chairwoman
New York State
Commission on Judicial Conduct