

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

PATRICK J. CUNNINGHAM,

Determination

a Judge of the County Court,
Onondaga County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Langan Grossman Kinney Dwyer & Reitz, P.C.
(By Richard D. Grossman) for Respondent

The respondent, Patrick J. Cunningham, a judge of the County Court, Onondaga County, was served with a Formal Written Complaint dated March 15, 1993, alleging that he made a derogatory statement which created the appearance of bias. Respondent did not answer the Formal Written Complaint.

On December 29, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5),

waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On March 10, 1994, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Onondaga County Court since January 1976.

2. On August 1, 1989, respondent presided over People v Nelson Adamez, in which the defendant was charged with Criminal Possession of a Controlled Substance, Second Degree; Criminal Possession of a Controlled Substance, Third Degree; and, Criminal Possession of a Weapon, Fourth Degree.

3. After the jury rendered a guilty verdict, respondent told the jury:

Ladies and gentlemen, I'm very happy that you reached that disposition because the Dominican people are just killing us in the courts. They got to try their cases. We got to provide them interpreters, provide them attorneys and there are 54 pending felony cases against them up here. Obviously the drugs are brought up out of New York City and they are brought into here and selling them in here, and they are just killing us, so I am delighted. They are almost insulated as far as prosecution, and you just happened to get lucky to do it, and I appreciate very much the verdict in this case and you're discharged with the thanks of the court. That was a large scale operation.

4. Respondent acknowledges that his comments created the impression that he is biased against defendants of Dominican heritage and could reasonably be interpreted as meaning that Dominican defendants are guilty of drug crimes and are an unnecessary burden on the criminal justice system. He also acknowledges that he improperly praised the jury's verdict.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.3(a)(1), and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

In his praise of the Adamez jury, respondent generalized the defendant's guilt to all Dominican defendants, conveying the impression that he was biased against all Dominicans who might come before him. By making such remarks in open court, he also failed to maintain the impartiality of the judiciary and impeded the proper administration of justice by encouraging potential jurors to adopt such a prejudice.

A judge may thank jurors for their service but should neither praise nor criticize their verdict. (ABA STANDARDS, The Function of the Trial Judge, §5.13).

A judge must be impartial and maintain the appearance of impartiality at all times so that "the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290-91). Such remarks as respondent's are undesirable, inappropriate and inexcusable. (Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51, 53; Matter of Sweetland, 1989 Ann Report of NY Commn on Jud Conduct, at 127, 130).

Respondent has twice before been sanctioned for unethical conduct as a judge. (Matter of Cunningham v State Commission on Judicial Conduct, 57 NY2d 270; Matter of Cunningham, 2 Commission Determinations 116). We have also taken into account that he has been cooperative in this proceeding and has conceded that his conduct was wrong. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152).

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

Mr. Berger, Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Judge Newton, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Goldman was not present.

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: March 18, 1994

Henry T. Berger
Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct