

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

Determination

WAYDE F. EARL,

a Justice of the Lake George Village
Court, Warren County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel)
for the Commission

Thomas J. McDonough for Respondent

The respondent, Wayde F. Earl, a justice of the Lake George Village Court, Warren County, was served with a Formal Written Complaint dated January 12, 1987, alleging misconduct with respect to 39 cases from 1984 to 1986. Respondent filed an answer dated February 2, 1987.

By order dated March 25, 1988, the Commission designated Peter Preiser, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 21, 22 and 23, 1988, and the referee filed his report with Commission on October 24, 1988.

By motion dated December 19, 1988, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a finding that respondent be removed from office. Respondent opposed the motion on January 30, 1989.

On February 16, 1989, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Lake George Village Court for approximately 15 years.

2. At all times relevant to the allegations in the complaint, respondent was familiar with the provisions of the Criminal Procedure Law relating to arraignment of the defendants.

3. During a period dating from May 1984 through September 1986, in the cases set forth in Schedule A annexed hereto, respondent violated the provisions of the Criminal

Procedure Law governing the manner in which arraignments are to be conducted, and thus the rights of defendants arraigned before him by:

(a) Customarily disregarding the fact that defendants were too intoxicated to understand the proceedings and then failing in such cases to promptly rearraign those he committed to jail;

(b) using procedures that failed to include affirmative action reasonably calculated to assure that defendants had the aid of counsel at arraignment or to determine whether defendants were eligible for assigned counsel;

(c) using procedures that failed to include affirmative action reasonably calculated to assure that defendants would have the aid of counsel at subsequent stages of the proceedings;

(d) accepting waivers of arraignment and of the right to counsel from defendants whom he had failed to advise of the right to assigned counsel for indigents; and,

(e) actively discouraging defendants from electing to be represented by counsel.

4. For example, in People v. Mark Jarvis, when the defendant requested an adjournment to obtain an attorney, respondent told the defendant that he was in a lot of trouble, that an attorney would not do him any good, that he was going to be heavily fined and that he would lose his license.

Respondent never informed the defendant, who was unemployed, of his right to assigned counsel or how to apply for assigned counsel. When the defendant appeared a week later without counsel, respondent accepted a guilty plea, imposed a fine and suspended the defendant's license.

5. In People v. Jarvis Griffin, although the unemployed defendant was intoxicated at arraignment, respondent committed the defendant to jail in lieu of bail and failed to schedule a rearraignment, leaving the defendant to return from jail unrepresented a week later. At the second appearance, respondent asked for assigned counsel (though not alerted by respondent), and respondent informed the defendant that he would have to apply at the Municipal Center and return to court in a few weeks. Since defendant lived three hours away, he agreed to proceed without counsel, pled guilty to a misdemeanor and was ordered to pay restitution.

6. In People v. Randy Tubbs, an intoxicated 18-year-old defendant was arraigned by respondent and committed to jail in lieu of bail for two nights. Respondent had provided no application form for assigned counsel and had taken no steps to contact assigned counsel. When the defendant returned a week later, still unrepresented, and requested an attorney, respondent merely offered a plea bargain to which the defendant agreed.

7. In People v. Mark Beudet, the unemployed defendant, intoxicated at arraignment, was committed to jail in lieu of bail, and respondent set a return date eleven days later. After the police chief intervened to persuade respondent to release the defendant after four days, the defendant appeared on the return date, still unrepresented. Respondent informed him that he had pled guilty, sentenced him to time served, but never conducted a rearraignment and never appointed counsel.

8. Respondent testified in this proceeding that he does not feel that in cases in which defendants are charged with violations the "cost to the taxpayers" of assigning counsel is warranted.

9. In addition, during a period from May 1985 to September 1986, respondent engaged in a cooperative venture with the police that circumvented the requirements of the Criminal Procedure Law for appearance and plea by defendants in person or by attorney in noncriminal violation cases. Under this procedure, respondent convicted defendants on the basis of a form signed at the police station and imposed a fine and surcharge equal to the amount of the prearraignment bail fixed by the police.

10. Except as set forth above, the allegations of Charge I are not sustained and are, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

11. The charge is not sustained and is, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

12. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1), 100.3(a)(3), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established. Charges II and III are dismissed.

At the times in question, respondent had served as a judge for more than eleven years and was familiar with the provisions of the Criminal Procedure Law concerning arraignments. Nevertheless, respondent disregarded the requirements of law and followed his own procedures.

Respondent took no steps to promptly rearraign defendants he knew were too intoxicated to understand their rights when he committed them to jail. He deliberately

distorted the clear statutory procedure for advising defendants of their right to counsel. Indeed, as is shown by his statement in the Mark Jarvis case, the misconduct appears to be part of a pattern to discourage defendants from electing to be represented by counsel. See Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105, 109-110 (1984); Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870, 871 (1983). In addition, respondent's authorization of use of police station forms, requiring defendants to waive their rights, was a blatant disregard of the requirements of the Criminal Procedure Law. In effect, respondent permitted the police to adjudicate their own arrests.

The Commission notes that respondent has announced his retirement effective April 1, 1989, and that respondent was cooperative throughout this proceeding. See Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153, 155 (1986).

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

Judge Altman, Mr. Berger, Judge Ciparick, Mr. Cleary, Mr. Kovner and Judge Ostrowski concur.

Mrs. Robb dissents and votes that Charges I through III be sustained in toto and dissents as to sanction and votes that respondent be censured.

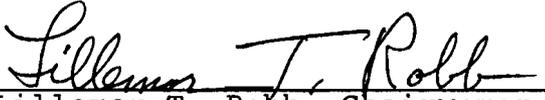
Mrs. Del Bello dissents as to sanction only and votes that respondent be censured.

Mr. Bower, Judge Rubin and Mr. Sheehy were 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 31, 1989


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

Schedule A

| <u>Defendant</u> | <u>Charge</u> | <u>Date of Arrest</u> |
|------------------------|---------------------------------------------------|-----------------------|
| Abbott, Carl C. | Disorderly Conduct | 8/31/86 |
| Ammerman, Jennifer | Open Container | 7/20/85 |
| Andujar, Orlando | Open Container | 8/05/86 |
| Barszcz, William | Reckless Driving | 10/21/84 |
| | Unlicensed Operator | 10/21/84 |
| | Failure To Comply | 10/21/84 |
| | Uninsured Motor Vehicle | 10/21/84 |
| | Switched Plates | 10/21/84 |
| | Unregistered Motorcycle | 10/21/84 |
| | Speeding | 10/21/84 |
| Beaudet, Mark | Disorderly Conduct | 1/13/85 |
| Bowler, Daniel K. | Possession of Fireworks | 7/10/85 |
| Brooks, Scott | Theft of Services | 8/11/85 |
| | Possession of Marijuana | 8/11/85 |
| Bubenheimer, Brian D. | Disorderly Conduct | 8/09/86 |
| Burkins, Keith | Driving While Intoxicated | 7/16/84 |
| | Possession of Marijuana | 7/16/84 |
| | Criminal Possession Of A Weapon, Fourth Degree | 7/16/84 |
| Burkins, Wayne | Resisting Arrest | 7/16/84 |
| | Criminal Possession Of A Weapon, Fourth Degree | 7/16/84 |
| Clough, David | Open Container | 7/20/85 |
| Donahue, Tricia E. | Open Container | 7/19/85 |
| Erickson, Carl B., Jr. | Disorderly Conduct | 7/06/85 |
| Ford, Brian M. | Harassment | 9/01/86 |
| Freemire, Douglas | Driving While Intoxicated | 8/16/86 |
| | Drove Left Of Pavement Markers | 8/16/86 |
| Gagne, Richard J. | Harassment | 9/01/86 |

| <u>Defendant</u> | <u>Charge</u> | <u>Date of Arrest</u> |
|-----------------------|-------------------------------------|-----------------------|
| Gallagher, Matthew | Disorderly Conduct | 6/16/85 |
| Gengo, Michael G. | Possession of Marijuana | 8/04/86 |
| Gordon, Timothy | Open Container | 5/26/85 |
| Goss, Kevin | Theft of Services | 8/11/85 |
| Granger, Thomas | Open Container | 7/20/85 |
| Griffin, Jarvis | Criminal Mischief, Fourth Degree | 8/16/86 |
| | Harassment | 8/16/86 |
| | Disorderly Conduct | 8/16/86 |
| Higgins, Mark | Disorderly Conduct | 5/28/84 |
| Hotte, Gary A. | Unlawful Possession of Marijuana | 6/04/86 |
| Jarvis, Mark | Driving While Intoxicated | 8/01/86 |
| Maddaloni, Michael D. | Open Container | 7/07/85 |
| Malmburg, Kevin A. | Disorderly Conduct | 7/06/85 |
| Newman, Linda M. | Open Container | 9/01/86 |
| Olander, Karen | Disorderly Conduct | 5/28/84 |
| Pazmino, Carlo R. | Disorderly Conduct | 5/18/86 |
| Place, Stephen L. | Possession of Marijuana | 7/10/85 |
| Pond, Samuel D. | Open Container | 7/07/85 |
| Potter, Kevin P. | Open Container | 7/20/85 |
| Toney, Jeffrey T. | Open Container | 7/20/85 |
| Tubbs, Randy | Resisting Arrest | 7/08/85 |
| | Disorderly Conduct | 7/08/85 |
| Yager, Mark A. | Possession of Marijuana | 7/07/85 |
| Yager, Michael | Possession of Marijuana | 7/07/85 |
| Zadok, Don | Open Container | 9/01/86 |