

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

ANTHONY ELLIS,

a Justice of the Town Court of
Altamont and the Village Court of
Tupper Lake, Franklin County. — — —

BEFORE: 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
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of
Counsel) for the Commission

Cade, Armstrong & Persons (By
William J. Cade and Robert J.
Armstrong) for Respondent

The respondent, Anthony Ellis, a justice of the Town
Court of Altamont and the Village Court of Tupper Lake, was served
with a Formal Written Complaint dated April 20, 1981, alleging
inter alia that he intentionally incarcerated certain defendants
for lengthy periods contrary to law. Respondent filed an answer

dated July 8, 1981.

The Commission designated the Honorable James A. O'Connor referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 20 and 21 and August 19 and 20, 1981, and the referee filed his report to the Commission on January 26, 1982.

By motion dated March 24, 1982, 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. Oral argument was scheduled before the Commission on April 21, 1982, and was adjourned at the request of respondent's counsel to May 21, 1982. A request by respondent's counsel on May 20, 1982, for a second adjournment of oral argument was denied. Oral argument was held as scheduled on May 21, 1982. Neither respondent nor his counsel appeared.

The Commission considered the record of the proceeding on May 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From December 1976 to March 1981, in the 23 cases set forth in Schedule A appended to the Formal Written Complaint, respondent (i) exhibited prejudice toward the defendants who appeared before him, (ii) denied the defendants certain basic legal rights, including the presumption of innocence and the right to a speedy trial before an impartial judge, (iii) abused the bail process by deliberately incarcerating certain defendants for indefinite periods

of time for the purpose of coercing them to plead guilty, after which they would be sentenced to the time already served, and (iv) failed to appoint counsel for indigent defendants and refused to cooperate with the public defender's office, with the purpose of increasing the period of pre-trial incarceration for such defendants.

As to Charge II of the Formal Written Complaint:

2. On July 2, 1977, respondent arraigned Timothy Demers on charges of disorderly conduct and resisting arrest. Mr. Demers is 19 years old, retarded and alcoholic. Respondent failed to assign counsel to the defendant, whom he should have known was financially unable to retain counsel. Respondent accepted a plea of guilty from the defendant, in the absence of counsel, and committed him to jail to await sentence. Respondent states that he sent the defendant to jail so he might be treated for his alcoholism. Respondent did not order such treatment, however, and he knew none was available at the jail.

3. On July 28, 1977, respondent sentenced the defendant to a conditional discharge and time already served.

4. Sometime between July 28 and September 27, 1977, respondent observed the defendant violating the terms of the conditional discharge. On September 27, 1977, respondent had the defendant brought before him, charging such violation.

5. On September 27, 1977, respondent presided over a hearing on the violation of the conditional discharge, despite

having personal knowledge of disputed evidentiary facts.

Respondent did not advise the assistant public defender, whom he then knew to be representing the defendant, that such proceeding was being held. Respondent ordered the defendant incarcerated without a specific sentence and subsequently ignored communications from the public defender's office concerning the case.

6. On October 21, 1977, the defendant was released from jail on a writ of habeas corpus.

As to Charge III of the Formal Written Complaint:

7. Prior to March 15, 1978, Patrick Brophy, an attorney, had represented a client in a proceeding before respondent, who accused Mr. Brophy of demeaning him in the presence of Mr. Brophy's client. Respondent disliked Mr. Brophy.

8. On March 15, 1978, James Crockford was issued a ticket for speeding, a violation, returnable before respondent. Mr. Crockford was represented by Mr. Brophy. Mr. Brophy appeared on behalf of his client before respondent and offered to plead his client guilty to a reduced charge of an equipment violation. Respondent, however, knowingly entered a misdemeanor conviction on the defendant's record for defective brakes. Respondent knew a misdemeanor conviction for defective brakes was more serious than the original speeding violation charge. In entering the misdemeanor conviction, respondent was motivated not by the merits of the case but by his personal dislike of Mr. Brophy. Respondent acted without regard for the consequences to the defendant.

9. On December 14, 1978, Mr. Brophy advised respondent that the defendant had not intended to plead to a misdemeanor. Mr. Brophy asked respondent to advise the Department of Motor Vehicles of the proper charge. Respondent did not so notify the Department.

10. Prior to January 25, 1979, Mr. Brophy again advised respondent of the mistaken misdemeanor entry and again asked respondent to rectify the matter. Respondent did not notify the Department of Motor Vehicles until after January 25, 1979.

As to Charge IV of the Formal Written Complaint:

11. On October 20, 1978, Geraldine Beaudette, age 16, was arraigned before respondent on felony charges of burglary and grand larceny. On that same date, Robert Beaudette, age 17, was arraigned before respondent on a felony charge of burglary and a misdemeanor charge of petit larceny. Neither defendant was represented by counsel, and neither was assigned counsel by respondent. Both defendants pleaded not guilty and were committed by respondent to jail. Respondent did not set bail or a return appearance date for either defendant. Because of their ages, both defendants were eligible for, but were not granted, Youthful Offender status.

12. On October 24, 1978, Wyngar Dugan, the assistant public defender, was notified by an investigator in his office that the defendants requested to be represented by the public defender's office.

13. On October 25, 1978, Mr. Dugan went to the jail and was informed that both defendants had been released.

14. On October 25, 1978, respondent, without notifying the public defender's office, negotiated with the district attorney's office for pleas of guilty to misdemeanor charges and sentenced both defendants to the time served and conditional discharges.

As to Charge V of the Formal Written Complaint:

15. On February 13, 1977, Vincent Ormsby, age 17, was arraigned before respondent on a violation for harassment and a misdemeanor charge of resisting arrest. Respondent failed to assign counsel when he should have known the defendant was financially unable to obtain counsel. Respondent failed to set bail and committed the defendant to jail without setting a date for a return appearance.

16. By notation on the order committing the defendant to jail, respondent requested that George J. Fast, M.D., director of the Franklin County Community Mental Health Service, conduct a psychiatric evaluation of the defendant. Respondent received Dr. Fast's report on February 16, 1977.

17. By letter dated March 7, 1977, Wyngar Dugan, the assistant public defender, requested that respondent take immediate action in the Ormsby case. Respondent did not reply.

18. On March 28, 1977, without notifying Mr. Dugan, respondent had the defendant returned before him. At that proceeding respondent accepted the defendant's guilty plea and sentenced him to the time already served plus three years of probation.

As to subdivision(a) of Charge VI of the Formal Written Complaint:

19. On January 13, 1977, Thomas Boucher was arraigned before respondent on a misdemeanor charge of possession of stolen property. Respondent knew the defendant was indigent, but he failed to assign counsel and failed to set bail. Respondent committed the defendant to jail without setting a date for a return appearance.

20. On February 1, 1977, the defendant was brought before respondent, pled guilty to the charge and was sentenced to a conditional discharge.

As to subdivision (b) of Charge VI of the Formal Written Complaint:

21. On September 2, 1978, Daniel Guiney was arraigned before respondent on a charge of criminal mischief. Respondent knew the defendant to be a known drug and alcohol abuser who had been committed previously to psychiatric institutions. Respondent knew the defendant was unable to obtain counsel, but he failed to assign counsel. Respondent set bail at \$500 and committed the defendant to jail without setting a date for a return appearance. Respondent also advised the defendant's mother to contact a physician and attempt to have the defendant committed civilly to an institution.

22. On September 27, 1978, the defendant was released from jail and the charge against him was adjourned in contemplation of dismissal.

As to subdivision (c) of Charge VI of the Formal Written Complaint:

23. On September 19, 1978, George St. Louis was arraigned before respondent on a charge of possession of a weapon. Respondent

knew the defendant to be an alcoholic. Respondent knew the defendant was unable to retain counsel, but he failed to assign counsel. Respondent set bail at \$500, committed the defendant to jail and adjourned the matter to October 26, 1978.

24. Respondent stated that the adjourned date was arbitrary and was intended to keep the defendant in jail so that he could be "psychiatrically evaluated". However, respondent did not order any psychiatric evaluation of the defendant.

25. On September 27, 1978, the assistant public defender wrote to advise respondent that he was now representing the defendant.

26. On October 5, 1978, the defendant was returned to court where, in the absence of his attorney, he pled guilty to the charge and was conditionally discharged by respondent.

As to Charge VII of the Formal Written Complaint:

27. On September 23, 1978, Joseph Gadway was arraigned before respondent on a vehicle-related misdemeanor charge of permitting operation without insurance. The defendant requested assigned counsel, and respondent advised him to contact the public defender's office. Respondent did not assign counsel or notify the public defender's office of the defendant's request. At the arraignment, without the presence or advice of counsel, the defendant pled guilty to the charge and was sentenced by respondent to 89 days imprisonment.

28. After being sentenced, the defendant requested legal representation from assistant public defender Wyngar Dugan. By letter dated September 27, 1978, Mr. Dugan (i) informed respondent that an appeal was being taken in the Gadway case and (ii) requested from respondent the papers in the case.

29. On October 4, 1978, respondent was served by Mr. Dugan with an affidavit of errors as part of the appeal, to which respondent never responded.

30. On October 25, 1978, respondent, without notifying Mr. Dugan, ordered the defendant brought before him and, in the absence of counsel, reduced the defendant's sentence to time already served (32 days) and imposed a \$200 fine.

As to Charge VIII of the Formal Written Complaint:

31. On September 19, 1978, Richard Liberty was arraigned before respondent on a misdemeanor charge of unlawfully dealing with a child, for having served beer to a minor. Respondent should have known the defendant was unable to afford counsel, but he failed to assign counsel. Respondent set bail at \$250 and committed the defendant to jail without setting a date for a return appearance.

32. On September 26, 1978, the defendant requested legal representation from assistant public defender Wyngar Dugan.

33. On September 27 and 28 and October 4 and 11, 1978, Mr. Dugan wrote to respondent, requesting in each letter that respondent make available to him the court papers in the Liberty case. Respondent failed to respond to these communications.

34. On October 16, 1978, the defendant and Mr. Dugan appeared before respondent. The defendant was arraigned on an additional charge of petit larceny. The defendant pled guilty to both outstanding charges and was recommitted by respondent to jail, pending a pre-sentence report. However, respondent deliberately did not order a pre-sentence report, stating later that he intended to extend respondent's incarceration to await a possible extradition proceeding from New Jersey. Respondent had no reasonable basis to conclude that such extradition was pending.

35. On November 2, 1978, respondent sentenced the defendant to time already served (44 days) on the charge of unlawfully dealing with a child, and 89 days on the charge of petit larceny.

As to Charge IX of the Formal Written Complaint:

36. On March 17, 1978, Richard Pickering, age 17, was arraigned before respondent on charges of criminal trespass and petit larceny. The defendant pled not guilty and was committed by respondent to jail in lieu of \$1,000 bail. On April 4, 1978, the defendant was returned to court, pled guilty to both charges and was recommitted by respondent to jail, ostensibly to await a pre-sentence investigation. In fact, the defendant was recommitted to jail for an indeterminate period of time. On April 10, 1978, the probation department received the order of pre-sentence investigation. On April 24, 1978, the defendant was released from custody and sentenced by respondent to time already served (38 days).

37. On December 5, 1978, Harold Maddox, age 16, was arraigned before respondent on a charge of petit larceny. The defendant, with his father present, waived counsel and pled guilty. Respondent committed the defendant to jail on December 16, to await a pre-sentence investigation. However, respondent did not order a pre-sentence investigation until January 12, 1979, and the order was not received by the probation department until January 19, 1979.

38. On June 13, 1980, Anthony Pecararo, age 17, was arraigned before respondent on a charge of unauthorized use of a motor vehicle. The defendant pled not guilty and was committed by respondent to jail in lieu of \$500 bail. A return date was set for August 26, 1980, at which time the defendant appeared without counsel, pled guilty and was recommitted by respondent to jail, ostensibly to await a pre-sentence investigation. By September 18, 1980, respondent had not yet issued an order for such investigation. On September 18, the assistant public defender communicated with respondent and requested such an order. On September 22, 1980, respondent's pre-sentence investigation order was delivered to the probation department by the assistant public defender.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3 (a)(1), 33.3(a)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[a][1])

100.3[a][4] and 100.3[c][1]), and Canons 1, 2, 3A and 3C(1) of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained, except for that portion of Charge IX which refers to People v. Maddox, which was withdrawn. Respondent's misconduct is established.

Respondent has engaged in a course of misconduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought discredit to the judiciary and has irredeemably damaged public confidence in the integrity of his court.

In the cases reported herein, respondent abused the bail process by deliberately incarcerating certain defendants for indefinite periods of time in order to coerce them to plead guilty. He deliberately failed to appoint counsel for indigent defendants. He deliberately penalized one defendant because of a personal dislike for that defendant's attorney. Respondent's treatment of the defendants was based not on the merits of their cases but on his own prejudices. Many of these defendants were inexperienced or otherwise incapable of protecting their rights; some were 16 or 17 years old, two were alcoholics, and one was retarded.

Respondent's explanations for his actions do not excuse his gross misconduct. In one case, for example, respondent claims to have incarcerated the defendant on the wrong charge because he was "confused" (Charge II of the Formal Written Complaint). In another case

he failed to set bail because he was too "[b]usy with work" (Charge IV). In a third case he failed for nearly a month to send the defendant's attorney the papers before the court, because he "got carried away somewhere, probably selling a rug, probably doing a little carpenter work" (Charge VIII). In a fourth case he failed to order a pre-sentence investigation because he purportedly lost the order in a pile of papers (Charge IX). Respondent did not rectify his conduct, even when his improprieties were called to his attention by the assistant public defender.

No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who thus disregards law. Respondent's conduct has revealed his total misunderstanding of the role of a judicial officer. He is not fit to serve as a judge.

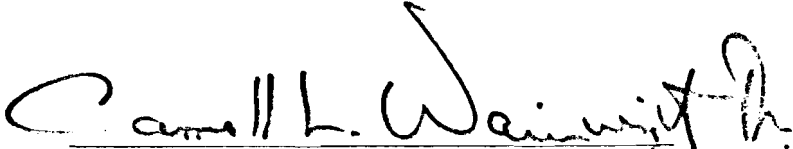
By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

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: July 14, 1982


Carroll L. Wainwright, Jr., Esq.
Acting Chairman
New York State Commission on
Judicial Conduct