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

LOUIS GROSSMAN,

a Judge of the Civil Court of the City of New York and Acting Justice of the Supreme Court, First Judicial District.

Determination

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 for the Commission

Shea & Gould (By Milton S. Gould, Herbert B. Evans and Peter C. Neger) for Respondent

The respondent, Louis Grossman, a judge of the New York City Civil Court, New York County, and Acting Justice of the Supreme Court, First Judicial District, was served with a Formal Written Complaint dated December 2, 1983, alleging that he mistreated a child he was interviewing in connection with a

matrimonial proceeding. Respondent filed an answer dated January 10, 1984.

On January 17, 1984, the Commission designated the Honorable James D. Hopkins as referee to hear and report proposed findings of fact and conclusions of law.

On January 26, 1984, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion on February 1, 1984. Respondent replied on February 6, 1984. The administrator filed a sur-reply on February 8, 1984. By determination and order dated February 10, 1984, the Commission denied the motion to dismiss.

A hearing was held on March 28 and April 2, 3 and 4, 1984, and the referee filed his report with the Commission on August 1, 1984.

By motion dated August 15, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on September 8, 1984. The administrator filed a reply on September 18, 1984.

On September 21, 1984, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charges I through VI of the Formal Written Complaint:

1. Respondent is a judge of the New York City Civil Court and has been since January 1, 1969. He also serves by designation as an Acting Justice of the Supreme Court, First Judicial District, and has since January 1, 1977.

2. From January to July 1982, respondent presided over a matrimonial action, _____ v. _____.*

3. Several unusual incidents occurred during the trial. A fire cracker or some sort of loud explosion took place outside the courtroom on June 1, 1982. The attorneys for the parties received threatening telephone calls at their homes on June 14, 1982. A bomb threat directed to the trial courtroom was received by the administrative judge on July 6, 1982. There were rumors of outside interference in the case which came to the attention of the administrative judge.

4. The case was bitterly contested. Custody of the child of the marriage and visitation rights were prime issues in the case. There were claims by the plaintiff-wife of sexual abuse of the child by the defendant-husband. The plaintiff also

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*The names of the parties are omitted in accordance with the confidentiality requirements of Section 235 of the Domestic Relations Law.

testified that the child had reported that his father had said that he had the power to "fix" the judge.

5. The child was four years old at the time of the trial. There had been psychiatric testimony during the trial that he was emotionally disturbed as a result of his parents' difficult marriage and divorce.

6. By agreement of the parties, respondent interviewed the child in a robing room adjacent to the courtroom, outside the presence of the parties and their attorneys. The purpose of the interview was to determine whether the father should be given visitation rights in light of the claim of sexual abuse of the child and whether the child's statements of sexual abuse should be credited.

7. Respondent interviewed the child on June 7, 10, 17 and 21, 1982. A court reporter recorded the minutes of the four sessions.

8. Each interview lasted an hour or more. The transcripts of the four interviews total 221 pages.

9. During the first session, respondent commenced questioning the child regarding the allegations of sexual abuse and, after the child raised it, the "fixing" remark. Respondent had intended to raise the "fixing" question with the child and the child gave him the opening. During the second, third and fourth interviews, respondent questioned the child almost exclusively on the issue of the "fixing" remark.

10. During the four interviews, respondent:

(a) Called the child a liar or stated that he was not telling the truth more than 200 times;

(b) told the child approximately 40 times that he had given contradictory testimony;

(c) admonished the child to tell the truth more than 200 times;

(d) asked the child approximately 150 times who had told the child to testify as he had;

(e) told the child more than ten times that he had "better remember" or "must remember" after the child had indicated that he did not know the answer to a question;

(f) inaccurately indicated to the child on four occasions that he might go to jail if he did not tell the truth;

(g) inaccurately pointed out to the child that handcuffs worn by the court officer were used for people who did not tell the truth; and,

(h) told the child more than 50 times that there would be "serious trouble" or "serious consequences" if he did not tell the truth, including that the child would be punished by God, that he could not leave the court, that he would have to repeatedly return to court, that lies would "hurt" the child's mother, that the child might be handcuffed by a court officer, that the child would have to live with his father against his

expressed wishes, that respondent would "call the man in and that's the end," and that "it will be the end of you, anyway."

11. The transcripts of the four interviews indicate that the child cried on three occasions, protested that he was tired or needed to rest 14 times, said that he wanted to leave nine times, and said several times that he wanted his father and did not want to talk. Respondent did not suspend or terminate his questioning of the child on any of those occasions.

12. Respondent's questioning was done roughly and in rapid-fire fashion. Respondent himself acknowledged in colloquy with the attorneys after the interviews that he had been "rough" with the child and that he had "fired" questions at him.

13. None of the actions set forth in paragraphs 10, 11 and 12 above was justified by the exigencies of the case or the unusual circumstances which accompanied the trial.

14. Respondent repeatedly stated that the allegation that someone had told the child that he could "fix" the judge was the most important aspect of the case and that he would not proceed with the trial until he ascertained from the child who had made the remark.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(2), 100.3(a)(3) and 100.3(a)(4) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct, and Sections 604.1(b),

604.1(e)(1) and 604.1(e)(5) of the Rules of the Appellate Division, First Department. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The purpose of interviewing the four-year-old child was to inquire into matters that might shed light on the twin issues of custody and visitation in an atmosphere in which the child could be protected from the intimidation of his parents and the adversarial examination of their attorneys. Respondent would have had the obligation to protect any witness from harassing or intimidating questions. Special considerations apply to children who are witnesses; and especial solicitude must be shown a four-year old child caught in the midst of bitter and contentious matrimonial proceedings. In such circumstances, a judge has the duty to be understanding, sympathetic and protective in dealing with a child.

Instead, respondent ignored his obligation to the child. He lost the sense of detachment required of him, vented his displeasure on the child and engaged in what the referee correctly termed a "relentless and tenacious interrogation of the child" concerning the "judge fixing" remark.

Respondent turned the sessions with the child into a series of grueling cross-examinations in which he became preoccupied and obsessed in pursuing the source of the "fixing"

remark and all but abandoned the serious allegations of child abuse that bore directly on the issues he was to determine.

To prolong the questioning of the child over four sessions and several hours on an issue collateral to the case can only be perceived as unnecessary and unwarranted. As the referee found, respondent not only overstepped the bounds of his discretion but misused and harassed the child.

The referee further stated:

> The child was barely at the age where his statements might be considered for any purpose; and he was questioned in the absence of anyone known intimately to him or representing his interests. Because of his age, the reliability of his answers on any count was suspect....In this milieu, the child was closeted with the respondent and subjected to his queries without the benefit of assistance from any one on his behalf. The respondent, obsessed with the objective of discovering who had impugned his reputation for impartiality and honesty, allowed himself to interrogate the child in a manner and over a period of time which it is doubtful he would have allowed to attorneys in the courtroom.
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> (Referee's Report, p. 61)

However swept away by the "fixing" issue in the case, respondent was not intentionally cruel or sadistically inclined toward the child. There was also testimony at the hearing in this matter that respondent has enjoyed an excellent reputation in a long and heretofore unblemished career on the bench.

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

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

Mr. Kovner and Mr. Sheehy dissent as to sanction only and vote that respondent be admonished.

Judge Alexander, Mr. Bower and Mr. Cleary dissent as to sanction only and vote that respondent be issued a confidential letter of dismissal and caution.

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: November 20, 1984

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

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DISSENTING OPINION
BY MR. KOVNER

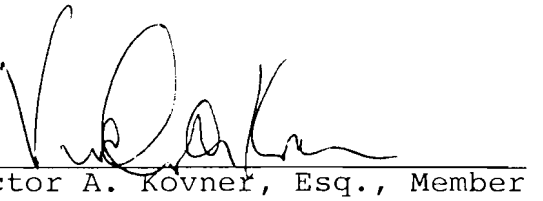
I dissent as to sanction only. I view the unusual circumstances surrounding the trial as mitigating, but not excusing, the misconduct. At the request of the administrative judge, respondent accepted responsibility for this unusually bitter trial only after other judges had declined to accept this trial. As an assignment judge, respondent would not ordinarily have borne this responsibility. Indeed, after the explosion, the subsequent bomb threats, and at least one of the plainly improper efforts by persons associated with the court system to influence the court, respondent seriously considered declaring a mistrial, only to yield to a further request by his administrative judge to complete the trial.

The shocking attempts to influence the disposition of the case by persons associated with the court system are the context in which the excessive attention devoted to the child's statement that he was told the judge could be "fixed" must be considered.

I reject the inference that the overbearing nature of the examination was "selfish". Given the baselessness of the charge that the judge could be "fixed", the origin of the child's remark was clearly related to the central question of the validity of the allegation of sexual abuse made against the father. My rejection of that inference, however, should not be viewed as condoning an examination clearly improper in volume and tone.

I believe a lesser sanction would have been appropriate.

Dated: November 20, 1984



Victor A. Kovner, Esq., Member
New York State Commission on
Judicial Conduct

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DISSENTING OPINION BY JUDGE ALEXANDER IN WHICH MR. BOWER, MR. CLEARY AND MR. SHEEHY JOIN

I concur in the dissenting views of Mr. Kovner. I would only add that in my view, the majority focuses unduly upon the excessiveness of respondent's misconduct, to the exclusion of due consideration being given to respondent's exemplary record as a judge, heretofore unblemished. Without intending to condone in any sense the "relentless and tenacious interrogation of the child" or to suggest that respondent's conduct was not clearly improper, it would appear that this is a single aberrational circumstance, unlikely ever to be repeated. Having due regard for all the circumstances here present, I would impose a less severe sanction.

Dated: November 20, 1984

Honorable Fritz W. Alexander, II
Member, New York State
Commission on Judicial Conduct