

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

ROBERT J. HANOPHY,

Determination

a Judge of the Court of Claims and Acting Justice of the
Supreme Court, 11th Judicial District, Queens County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Scheyer & Jellenik (By Stephen R. Jellenik) for Respondent

The respondent, Robert J. Hanophy, a judge of the Court of Claims and acting justice of the Supreme Court, 11th Judicial District, was served with a Formal Written Complaint dated June 26, 1996, alleging that he made undignified, discourteous and disparaging remarks

during the sentencing of a criminal defendant. Respondent filed an answer dated October 1, 1996.

On January 17, 1997, 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 agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On January 30, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the unified court system during the time herein noted.
2. On March 7, 1996, respondent sentenced Caroline Beale, a citizen of Great Britain who had pleaded guilty to Manslaughter, Second Degree, in connection with the death of her infant child.
3. During the sentencing, respondent read a statement in which he said:

It is my understanding that Ms. Beale's family has frequently criticized our justice system and the prosecution in this case for being – and I quote – “barbaric and uncivilized in our treatment of the defendant, and our laws which allow the prosecution in the first place.”

As to their criticism of our laws, I will say this: With our laws, that mandate the prosecution of

people who kill their children, protecting the children rather than excusing the killer, is our primary focus in this country.

I can't fathom characterizing such a goal as either barbaric or uncivilized. Indeed, I believe that any law that grants a blanket exemption from prosecution or punishment to those people who kill their children, when their children are under the age of one, is a law which is primitive and uncivilized.

In other words, granting parents a license to kill their infants harkens to truly uncivilized times. I am proud that our law considers these cases on an individual basis, and both condemns the killing of children, yet attempts to fashion a remedy that meets the ends of justice, as I believe it did in this case.

Baby Doe, once born, became a citizen of the United States of America. Entitled to all the protections that go with citizenship, including life, liberty, and the pursuit of happiness. And I will say to our friends in Britain, God bless America.

4. Respondent also engaged in the following colloquy in open court:

THE COURT: How do you feel about our system of justice?

THE DEFENDANT: It's been fair to me.

THE COURT: "Been fair to me." I think we leaned over backwards. I am going to give you the conditions of probation. I am going to sentence you to your time served, plus five years probation.

That probation is going to be served in Great Britain. That great country that has convicted a great many people on the perjured testimony of their police, allowed them to spend 15 or 17 years in prison. Did everything to see that they remained in

prison, even though they knew, or should have known they didn't belong there.

Anyway, I won't let that interfere. You are going to be permitted to go to England. You are to report to the New York City Department of Probation by questionnaire to be received by the Department of Probation the second week of each month.

* * *

Further, I am not exonerating the bail. Those two houses that your folks--Ralph Kramden, the guy with the big mouth--has put up for you, they will be held as bail until you successfully complete your probation.

So, Caroline Beale, for the crime of manslaughter in the second degree, you are sentenced to a period of time served, five years probation, with the conditions of the probation I just gave you.

I don't mean to jump on you, Ms. Beale. Okay. I don't mean anything I said to you. Just got under my skin what your mother and father were saying here. And I think they owe an apology to Richard Brown, the DA.

* * *

THE DEFENDANT: My mom and dad said to say sorry to you.

THE COURT: They said "to say sorry to you." Well, they don't need to say sorry to me. I guess Dick Brown can talk for himself, the Queens District Attorney, that they owe him an apology. They owe his assistants an apology. They owe the Probation Department the thanks for moving this thing along as quickly.

Normally, on a case like this, it's 19 days to get a probation report. Yours is done in three days. Your father and your mother owe an apology to 38,000 people in blue who investigated.

To say that they acted in the way they did in the papers is inexcusable. Look it, I wish you the best of luck, I really do.

* * *

Oh, there is another big deal here, \$155 surcharge.

MR. DOWD [defense counsel]: Can we have time to pay it, judge?

THE COURT: Pay in pence.

5. Respondent knew that the court proceedings were being videotaped by the British Broadcasting Corporation and other foreign and domestic news media. The sentencing was broadcast on television in Great Britain and, at least in part, on U.S. television. When he made the comments, respondent believed that the proceedings “were being publicized all over the world,” and he knew that a representative of the British government was in the courtroom.

6. Because Ms. Beale’s family had criticized her prosecution, respondent called British law “primitive and uncivilized” and implied that it “grants a blanket exemption from prosecution or punishment to those people who kill their children, when their children are under the age of one....” Respondent knew that this statement was not accurate. His only source of knowledge on the subject was defense counsel, who had told respondent that, under British law, such crimes were prosecuted as Manslaughter and that no British judge had sentenced such a defendant to prison in 50 years.

7. Respondent’s tone was angry, gruff and vituperative.

8. His remarks about certain defendants who had been incarcerated in Great Britain for many years based on perjured testimony, as depicted in the film “In the Name of the

Father”, had no relevance to the crime for which Ms. Beale had been convicted.

9. On April 3, 1996, staff counsel wrote to respondent in connection with the investigation of this matter. In a response dated April 18, 1996, respondent acknowledged that his statements during the Beale sentencing had been inappropriate and imprudent.

10. In subsequent statements to the Commission, respondent said: a) that he did not believe that his statements were inappropriate and imprudent; b) that he did not regret what he had said; c) that, at the time that he signed his letter of April 18, 1996, he did not think that the remarks were inappropriate and imprudent; and, d) that he had said that they were only because he believed at the time, based on advice that he had received from other judges, that such an acknowledgment would result in a confidential letter of dismissal and caution from the Commission.

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 and 100.3(B)(3)*; Canons 1, 2 and 3A(3) of the Code of Judicial Conduct, and the Rules Concerning Court Decorum of the Appellate Division, Second Department, 22 NYCRR 700.5(e). Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

In sentencing, a judge has great latitude to consider and comment upon the defendant’s conduct and character. However, respondent’s remarks in Beale concerning the

* The Formal Written Complaint charges a violation of a non-existent Section 100.3(A)(3). This is apparently a typographical error. The complaint is hereby amended to reflect the appropriate section.

British legal system and the defendant's parents were discourteous, inappropriate and exaggerated.

A judge is required to be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]). A judge must "be the exemplar of dignity and impartiality...suppress his personal predilections, control his temper and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom." (Rules Concerning Court Decorum of the Appellate Division, Second Department, 22 NYCRR 700.5[e]). In disposing of cases, a judge's remarks can constitute misconduct if they are intemperate, undignified or discourteous. (See Matter of Richter, 42 NY2d [aa], at [dd] [Ct on the Judiciary] [judge angrily challenged a defendant at sentencing to a physical confrontation]; Matter of Evens, 1986 Ann Report of NY Commn on Jud Conduct, at 103, 106-07 [judge mentioned jail time and graphically depicted with racial overtones the brutal treatment that a defendant might receive there if he did not pay a fine that the judge had imposed for a minor violation]; Matter of Bayger, 1984 Ann Report of NY Commn on Jud Conduct, at 62, 63 [in announcing his disqualification from a case in which the judge had had a personal dispute with the defendant, the judge dispatched the press to the courtroom, then disparaged the defendant]).

Out of pique over critical remarks that Ms. Beale's parents had made to the news media, respondent retaliated with angry and vituperative comments, referring to the family's homeland as "primitive and uncivilized" and calling the defendant's father "Ralph Kramden--the guy with the big mouth...." In open court, respondent engaged in hyperbole about the British

legal system in ways which he knew misrepresented the law there, even though he was aware that his remarks would be broadcast abroad.

His gratuitous and irrelevant reference to defendants from Northern Ireland who had been sentenced in British courts was mean-spirited and political in nature. By these comments and his insistence that the Beales apologize to the prosecutor and the police, respondent failed to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A]).

Compounding this misconduct was respondent’s behavior during staff’s investigation of this matter. In deciding appropriate sanction, the Commission may consider a judge’s failure to recognize the impropriety of the conduct alleged. (See Matter of Sims v State Commission on Judicial Conduct, 61 NY2d 349, at 356, 357; Matter of Shilling v State Commission on Judicial Conduct, 51 NY2d 397, at 404).

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

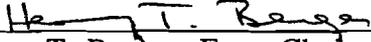
Mr. Berger, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.

Ms. Crotty, Mr. Pope and Mr. Sample 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: April 2, 1997


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