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

ANTHONY T. JORDAN, JR.,

a Justice of the Supreme Court, Second Judicial District (Kings County).

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
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Nathan R. Sobel for Respondent

The respondent, Anthony T. Jordan, Jr., a justice of the Supreme Court, Second Judicial District (Kings County), was served with a Formal Written Complaint dated February 2, 1982, alleging that he addressed an attorney in an improper manner in a 1981 proceeding. Respondent filed an answer dated February 10, 1982.

By order dated March 3, 1982, the Commission designated Gerald Harris, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 17, 1982, and the referee filed his report with the Commission on July 14, 1982.

By motion dated August 18, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be admonished. By papers and motion dated October 5, 1982, respondent opposed the administrator's motion and moved to disaffirm the referee's report and for dismissal of the Formal Written Complaint. The administrator filed a reply to respondent's opposing papers on November 17, 1982.

The Commission heard oral argument in this matter on December 20, 1982, at which respondent appeared with counsel, and thereafter made the following findings of fact.

1. Martha Copleman is an attorney who was admitted to the New Jersey bar in 1974, the Texas bar in 1977 and the New York bar in 1979. She has been an attorney with East Brooklyn Legal Services since 1979 and, prior to December 7, 1981, had appeared before respondent on more than one occasion.

2. On December 7, 1981, Ms. Copleman appeared before respondent in Special Term, Part I, of Supreme Court in Kings County, representing the petitioner in Matter of Troy v. Krauskopf.

Assistant New York City Corporation Counsel John Jokl was her opposing counsel. Between 30 and 50 people, mostly attorneys, were present in the courtroom at that time.

3. When the Troy case was called, respondent heard argument on a requested adjournment. (Mr. Jokl requested a two-week adjournment and Ms. Copleman argued for a shorter one.) In the ensuing dialogue, respondent asked Ms. Copleman several questions, including the length of time she had been practicing law. At one point during his questioning, respondent addressed Ms. Copleman as "little girl." Ms. Copleman objected to being called "little girl" and requested that respondent address her as "counselor." Respondent apologized.

4. As the argument on the requested adjournment was concluded, respondent told Ms. Copleman: "I will tell you what, little girl, you lose." Respondent's voice was raised and he conveyed the impression of insulting and demeaning Ms. Copleman. Ms. Copleman was upset by the incident, felt humiliated and was close to tears as she left the courtroom. Respondent did not apologize because he did not believe he had said anything wrong.

5. Respondent has foresworn future use in his court of the expression "little girl."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section

100.3(a)(3) of the Rules Governing Judicial Conduct and Canon 3A(3) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained, except as to those portions of paragraph 7 of the Formal Written Complaint which alleges violations of Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(2) of the Rules and Canons 1, 2A, 3A(1) and 3A(2) of the Code, which are dismissed. Respondent's misconduct is established.

A judge is obliged to treat those who appear in his or her court with courtesy and respect, and to maintain the decorum and dignity of the court.

As the referee observed, when respondent first addressed a lawyer in his court as "little girl," it may well have been an inadvertent expression of unconscious prejudice or the result of an ingrained pattern of speech. That phrase is objectionable no matter what its origin. We note here that we do not share the dissenter's view that the term "little girl" is comparable to "young lady." Notwithstanding our respect for the dissenter's extensive experience in court, the former term was never an accepted or acceptable manner of addressing an attorney, even in the "bruising give-and-take" of the courtroom.

When respondent, with his voice raised, repeated the phrase "little girl" after the attorney had objected, it was clearly an epithet calculated to demean the lawyer. It was intentional and not, as the dissent suggests, inadvertent. As such it constituted misconduct. Yet even if respondent's second use of the phrase was unintentional, his contention that "little girl"

is analogous to "sweetheart" or "darling," and his suggestion that these are terms of endearment, are neither persuasive nor mitigating. Expressions such as these are insulting, belittling and inappropriate in an exchange between judge and lawyer. They diminish the dignity of the court.

By reason of the foregoing, the Commission determines that respondent should be admonished.

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

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

Mr. Bower dissents and votes that respondent's misconduct was not established and that the Formal Written Complaint be dismissed.

Judge Alexander and Judge Rubin 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: January 26, 1983

Lillemor T. Robb

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

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DISSENTING OPINION BY MR. BOWER

I dissent from the finding of misconduct.

Patterns of speech as well as inflexions of voice are parts of one's personality. They are no more amenable to rapid change than one visit to a psychiatrist is likely to change the patient's insight. As social patterns change rapidly, there is a gap between what was acceptable a decade ago and what is unacceptable today. In the fifties or sixties, judicial sternness was seen as an asset. Courtroom decorum was desirable and in order to have it, bench and bar perceived a direct relationship between the stern mien of the court and the respect by all who appeared before it. Judges of today who grew up professionally in the atmosphere of those days didn't think anything of being referred to as "young fellow", "young lady" and the like. They may not have liked it but did not feel that it was insulting. In fact, smart lawyers turned such remarks to their advantage.

Without drawing invidious parallels between courtroom behavior then and now (including the behavior, intelligence, mode

of dress of the court personnel, jurors and lawyers), it is easy to see how one raised professionally in those antediluvian days may have erred inadvertently and in the heat of a debate, the innocuous remark "little girl" slipped out in addressing a lawyer. When this inadvertent error was committed, the respondent apologized and properly so, when the attorney indicated her preference not to be called "little girl." I cannot think of conduct more proper than the apology. Even the referee found no misconduct in this first instance. As the argument wore on, however, once again respondent lapsed from modern ways and once again, in the heat of argument, alluded to the attorney as "little girl."

It is unthinkable to me that this trivial matter evoked the oversensitive response from the attorney in that she made the complaint in the first place. Law is an adversarial process and its practitioners are not swathed in cotton. A certain amount of give-and-take and bruising is expected. There would have been nothing wrong, in my opinion, in the attorney engaging in a bit of give-and-take in the courtroom on this point. I am sure that respondent would have apologized again and the matter would have been simply forgotten. Instead, the awesome machinery of this Commission geared up to prosecute with ability and zeal the respondent, a capable judge with a previously unblemished record, in order to hold him up to public opprobrium. I find this more shocking than the trivial incident which gave rise to the complaint.

Neither the Constitution (Article VI, Section 22) nor the statute (Judiciary Law, Chapter 5) defines "judicial misconduct." The Constitution provides that justices of the Supreme Court may be removed or otherwise punished by the Commission "for cause." This may include, among other things, "misconduct in office." This solemn language relates to an act significant to the administration of justice or other proper performance of the judicial function and to me, it is obvious that every trivial deviation from a formally spelled out rule, either procedural or behavioral, does not reach the level of significance to sustain a sanction against a judge, either for "cause" or "judicial misconduct." The act complained of must be significant enough to reflect adversely either on the office or the public perception of its performance. Unimportant or trivial violations of any rule by a judge cannot be "judicial misconduct." One instance of lateness on the bench in violation of a provision as to the hours of court, for example, would be "misconduct" if we apply the majority's reasoning. This is somewhat silly. To prosecute a judge for anything trivial was aptly described by Horace some 2,000 years ago: "The mountains will be in labor, and a ridiculous mouse will be brought forth."

Throughout history, more excesses have been committed against decency in the name of moral or political good, than in the name of evil. To impose public punishment on the respondent

so that "male chauvinists" are put on notice, demeans the purpose for which this Commission was created.

I am not persuaded that we must make a public example of respondent so that no judge in the state will insult sensitive female lawyers by calling even one, in an inadvertent manner, "little girl." Certainly, insofar as respondent is concerned, a mere letter of caution, without a formal complaint, would have achieved that result. To impose public sanction under these circumstances, in my opinion, is far worse than the trivial incident upon which it is based.

Dated: January 26, 1983

John J. Bower