

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

JOSEPH JUTKOFISKY, JR.,

a Justice of the Taghkanic Town Court,
Columbia County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
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 (Stephen F. Downs and Cathleen S.
Cenci, Of Counsel) for the Commission

Cade & Saunders, P.C. (By William J. Cade and
James T. Curry) for Respondent

The respondent, Joseph Jutkofsky, Jr., a justice of
the Taghkanic Town Court, Columbia County, was served with a
Formal Written Complaint dated April 4, 1985, alleging that he
engaged in a course of conduct prejudicial to the administration
of justice. Respondent filed an answer dated May 29, 1985.

By order dated April 30, 1985, the Commission designated Michael M. Kirsch, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 19, 20 and 21, July 22 and 23, August 19 and 20 and September 5 and 6, 1985, and the referee filed his report with the Commission on November 4, 1985.

By motion dated November 15, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent did not file any papers in response thereto and waived oral argument.

On December 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a part-time justice of the Taghkanic Town Court and has been since 1977.
2. Respondent is not a lawyer. He is a crop farmer.

As to Paragraph 4(a) of Charge I of the Formal Written Complaint:

3. On April 28, 1983, and May 12, 1983, respondent committed Jeffrey B. Whiteing to jail for a total of 28 days

awaiting trial on a charge of Pedestrian On Parkway, a traffic infraction.

4. The maximum period Mr. Whiteing could lawfully have been incarcerated awaiting trial was five days, in accordance with Section 30.30(2)(d) of the Criminal Procedure Law.

5. The maximum lawful sentence of imprisonment that Mr. Whiteing could have received upon conviction was 15 days, in accordance with 17 NYCRR 184.2 and Section 1800(b) of the Vehicle and Traffic Law.

6. On May 5, 1983, respondent committed Aldo Maestri and Gloria Zook to jail for 13 days awaiting trial on charges of Harassment, a violation. Respondent knew that the defendants had already been in jail for three days pursuant to another judge's commitment.

7. The maximum period Mr. Maestri and Ms. Zook could lawfully have been incarcerated awaiting trial was five days, in accordance with Section 30.30(2)(d) of the Criminal Procedure Law.

8. The maximum sentence Mr. Maestri and Ms. Zook could have lawfully received upon conviction was 15 days, in accordance with Section 70.15(4) of the Penal Law.

As to Paragraph 4(b) of Charge I of the Formal Written Complaint:

9. On March 20, 1984, respondent committed Barbara Moore Dearing to jail without bail, purportedly for the purpose of a psychiatric examination, on a charge of Torturing Animals.

10. On September 22, 1983, respondent committed James W. Barbour to jail without bail, purportedly for a psychiatric examination, on a charge of Resisting Arrest.

11. On October 18, 1981, respondent committed Wyman F. Heath, IV, to jail without bail, purportedly for the purpose of a psychiatric examination, on a charge of Assault.

12. Respondent never ordered examinations of Ms. Dearing, Mr. Barbour and Mr. Heath, as required by Sections 730.10 and 730.30 of the Criminal Procedure Law.

As to Paragraph 4(c) of Charge I of the Formal Written Complaint:

13. In the following cases, respondent unlawfully sentenced defendants to jail in lieu of fine for terms longer than the maximum, in violation of Section 420.10(3) of the Criminal Procedure Law:

<u>Defendant</u>	<u>Date Committed</u>
Gerard D. Altman	7/12/81
George W. Anast	10/24/82
Nicola J. Basile	10/22/83
Douglas W. Blume	6/30/83
Christopher Carlotta	4/24/83
Alan R. Degling	9/22/83
Donna Diaz	4/17/82
Paul H. Dreesen	9/02/83
Jose E. Feliciano	9/02/83
Morgan J. Frazier	3/24/84
Rino Giuliani, Jr.	8/14/83
Kurt J. Hansen	8/14/83
Joseph C. Haviland	10/30/84
Harvey G. Hveem	9/18/82
John J. Innominato, III	8/14/83
Philip J. Kania, Jr.	5/02/81
Timothy Koppas	7/12/81
Vincent J. Leggio, Jr.	7/25/82
Donald S. Lovell	10/30/84
Arthur M. Lull	10/31/82
John McCormack	7/12/81
Joseph W. Merola	5/14/83
Joseph J. Muscato	7/15/82
Michael R. O'Connor	1/09/82
Robert A. Pagniello	8/14/83
Kenneth C. Peterson	8/07/83
Lawrence T. Sherrer	11/07/82
Oliver W. Smith, Jr.	10/02/81
Richard B. Smith, III	8/05/82
Thomas N. Toland	12/16/82
Lawrence E. Turner	9/18/82
Otto J. Vnek	1/14/83

As to Paragraph 4(d) of Charge I of the Formal Written Complaint:

14. On October 30, 1984, respondent fined Joseph C. Haviland and Donald S. Lovell \$250 each on charges of Discharging A Firearm Across A Public Highway, notwithstanding that the maximum fine is \$200, as set forth in Section 71-0921(3) of the Environmental Conservation Law.

15. On January 9, 1982, respondent fined Michael R. O'Connor \$200 on a charge of Unlawful Possession of Marijuana, the defendant's first such offense, notwithstanding that the maximum fine for a first offense is \$100, as set forth in Section 221.05 of the Penal Law.

16. On December 17, 1982, respondent fined Kenneth E. Warner \$200 on a charge of Driving Without a License, the defendant's first such offense, notwithstanding that the maximum fine for a first offense is \$50, as set forth in Section 1800(b) of the Vehicle and Traffic Law.

17. Before imposing the fine, respondent had told Mr. Warner's attorney that he intended to fine the defendant "double the maximum."

18. The attorney, Andrea Moran, prepared a memorandum of law in which she argued that the maximum fine for the offense was \$50. She also argued orally before respondent on the day of sentencing that the maximum fine was \$50.

As to Paragraph 4(e) of Charge I of the Formal Written Complaint:

19. Respondent accepted guilty pleas from unrepresented, intoxicated defendants Jacqueline P. Kobler on June 26, 1983, Edwin R. Thompson on March 7, 1981, and Roderick J. Niesen, Jr., on March 7, 1981, notwithstanding that respondent

knew that the proper practice is to take no plea and re-arraign intoxicated defendants at a later time.

As to Paragraph 4(f) of Charge I of the Formal Written Complaint:

20. Respondent failed to file returns, as required by Section 460.10(3)(d) of the Criminal Procedure Law, to affidavits of errors served on him in connection with appeals in People v. Joseph A. Bailey, People v. Albert Fair, People v. Joseph R. Guenette, People v. Gerald R. Moore, People v. Yvette C. Neier, People v. Ethel R. Silverberg and People v. Kenneth E. Warner.

21. In People v. Adamo DeBartolo, the defendant filed a notice of appeal and an affidavit of errors on December 1, 1981. Respondent filed a return 10 months later, on September 27, 1982, notwithstanding that Section 460.10(3)(d) of the Criminal Procedure Law requires that he do so within 10 days, and only after the defendant had moved to compel a return and to reverse respondent's decision on the ground that he had failed to file a return.

22. Respondent knew or should have known how to file a return and that the appeals could not proceed without his returns.

As to Paragraph 4(g) of Charge I of the Formal Written Complaint:

23. On August 14, 1983, respondent arraigned Rino Giuliani, Jr., on charges of Unlawfully Dealing With Fireworks and Criminal Mischief, Fourth Degree, accepted guilty pleas to both charges and committed the defendant to jail for failure to pay fines totalling \$350. Mr. Guiliani was 16 years old, had no prior criminal record and was not represented by counsel.

24. On October 11, 1981, respondent arraigned Keith T. Pritchett on charges of Possession of a Hypodermic Needle and Open Container, accepted guilty pleas to both charges and fined the defendant a total of \$150. Mr. Pritchett was 18 years old at the time, had no prior criminal record and was not represented by counsel.

25. On June 27, 1981, respondent arraigned Larry L. Woods on charges of Obstructing Governmental Administration and Harassment, accepted guilty pleas to both charges and sentenced the defendant to 30 days in jail. Mr. Woods was 18 years old at the time, had no prior criminal record and was not represented by counsel.

26. Respondent did not adjudicate Mr. Giuliani, Mr. Pritchett and Mr. Woods as youthful offenders, notwithstanding that he was required to do so because of their ages and clean records, in accordance with Sections 720.10 and 720.20(1)(b) of the Criminal Procedure Law.

As to Paragraph 4(h) of Charge I of the Formal Written Complaint:

27. After conducting arraignments in the cases of Joseph A. Bailey on October 18, 1980, Sandra Dianda on May 29, 1983, and Harry A. Payton on October 11, 1981, respondent failed to transfer case records to the courts with trial jurisdiction as required by Section 170.15(1) of the Criminal Procedure Law, notwithstanding that he did not have jurisdiction to dispose of the cases.

28. On April 21, 1983, respondent arraigned James W. Barbour on charges lodged in the Town of Clermont, Columbia County. Respondent twice adjourned the case to his own court and did not transfer it to the Clermont Town Court until June 2, 1983, notwithstanding that respondent had no jurisdiction to arraign the defendant or dispose of the matter.

29. On September 20, 1980, respondent arraigned Ronald Hines on charges lodged in the Village of Philmont. Respondent did not transfer the case to the Philmont Village Court until March 1981, notwithstanding that he did not have jurisdiction to dispose of it.

30. On March 7, 1981, respondent arraigned Roderick J. Niesen, Jr., on charges lodged in the Village of Philmont. Respondent did not transfer the case to the Philmont Village Court until July 1981, notwithstanding that he did not have jurisdiction to dispose of it.

As to Paragraph 4(i) of Charge I of the Formal Written Complaint:

31. At their initial arraignments, respondent induced guilty pleas and unlawfully sentenced the following unrepresented defendants to periods of incarceration, in violation of Section 170.10 of the Criminal Procedure Law, the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 6, of the New York State Constitution:

<u>Defendant</u>	<u>Date</u>
Gerard D. Altman	7/12/81
George W. Anast	10/24/82
Donna Diaz	4/17/82
Paul H. Dreesen	9/02/83
Mitchell J. Edley	10/18/83
Jose E. Feliciano	9/02/83
Morgan J. Frazier	3/24/84
Mark P. Frey	4/02/82
Andrew M. Gilman	1/08/82
Rino Giuliani, Jr.	8/14/83
Joseph M. Guarino	9/25/83
John J. Guzinski	2/14/82
Kurt J. Hansen	8/14/83
Joseph C. Haviland	10/30/84
William E. Hester	5/01/83
Harvey G. Hveem	9/18/82
John J. Innominato, III	8/14/83
Philip J. Kania, Jr.	5/02/81
Lawrence R. Kaufman	5/04/84
Brian G. King	8/27/83
Jacqueline P. Kobler	6/26/83
Timothy Koppas	7/12/81
Vincent J. Leggio, Jr.	7/25/82
James J. Leone	5/31/81
Donald S. Lovell	10/30/84
Arthur M. Lull	10/31/82
John McCormack	7/12/81
Robert F. McGuinness, Jr.	2/14/82
Robert T. McKee	5/31/81
Kenneth E. Manosh	10/18/83
Joseph J. Muscato	7/15/82

Peter J. Northrup	10/05/81
Michael R. O'Connor	1/09/82
Robert A. Pagniello	8/14/83
Catherine M. Reilly	9/04/83
Robert W. Robinson	11/11/82
Lawrence T. Sherrer	11/07/82
Jerry Shook	10/02/83
Oliver W. Smith, Jr.	10/02/81
Otto J. Vnek	1/14/83
Jeri Whitaker	8/20/83
Sandra L. Williams	7/03/81
James L. Wolcott	2/25/83
Larry L. Woods	6/27/81

As to Paragraph 4(j) of Charge I of the Formal Written Complaint:

32. On February 25, 1983, respondent sentenced James L. Wolcott to three consecutive 30-day sentences and three consecutive 90-day sentences for failure to pay fines, without ordering or reviewing a presentence report as required for jail terms in excess of 90 days by Section 390.20(2)(b) of the Criminal Procedure Law.

33. On October 28, 1982, respondent sentenced Kenneth Thomas to six months in jail, without ordering or reviewing a presentence report as required by law.

As to Paragraph 4(k) of Charge I of the Formal Written Complaint:

34. On April 24, 1983, respondent issued warrants for the arrest of Aldo Maestri and Gloria Zook, notwithstanding that he was without jurisdiction to do so under Section 120.30(2) of the Criminal Procedure Law, in that they were charged with

offenses that occurred in the Town of Germantown, which does not adjoin the Town of Taghkanic.

35. On December 10, 1981, and December 29, 1981, respondent issued warrants for the arrest of James R. Atkinson and on December 11, 1981, and January 15, 1982, respondent arraigned Mr. Atkinson, notwithstanding that he was without jurisdiction to issue warrants under Section 120.30(2) of the Criminal Procedure Law or to arraign the defendant under Section 140.20(1)(a) of the Criminal Procedure Law, in that the offenses charged occurred in the non-adjoining City of Hudson.

36. Respondent arraigned the following defendants, notwithstanding that he was without jurisdiction to do so in that the offenses charged occurred in non-adjoining municipalities:

<u>Defendant</u>	<u>Date</u>
Joseph A. Bailey	10/18/80
Barry Benghiat	11/20/82
Sandra Dianda	5/29/83
Morgan J. Frazier	3/24/84
Wyman F. Heath, IV	10/18/81
Lawrence R. Kaufman	5/04/84
Robert W. Robinson	11/11/82

37. Respondent issued arrest warrants and arraigned Gerald R. Moore on April 16, 1983, and Sandra L. Williams on July 3, 1981, notwithstanding that he was without jurisdiction to do so in that the offenses charged occurred in the non-adjoining Town of Greenport.

As to Paragraph 6(a) of Charge II of the Formal
Written Complaint:

38. Respondent failed to maintain complete, accurate
and suitable dockets and records of the following criminal
cases:

<u>Defendant</u>	<u>Arrest Date</u>
Joseph A. Bailey	10/18/80
Adamo De Bartolo	5/10/81
Louie C. Grzyb	10/29/82
John J. Guzinski	2/14/82
Lawrence J. Kovarovic	9/06/82
Ralph E. Mazal	12/20/81
Roderick J. Niesen, Jr.	3/07/81
Peter J. Northrup	3/28/81
Miguel Pumarejo	10/23/82
William B. Scraper	1/01/83
Jerry Shook	10/02/83
Scott B. Singletary	10/29/82
Sebastiano Verrelli	11/25/82
Jeffrey B. Whiteing	4/28/83

As to Paragraph 6(b) of Charge II of the Formal
Written Complaint:

39. Respondent failed to remit funds received in
connection with the following cases to the Department of Audit
and Control for more than six months from the date of receipt:

<u>Defendant</u>	<u>Date Received</u>	<u>Date Remitted</u>
Howard Britton	11/13/82	7/10/84
Adamo De Bartolo	11/05/82	7/10/84
Michael J. Dirkes	10/31/82	7/10/84
Geoffrey Harrington	11/27/82	7/10/84
Marianne Holling	7/19/81	8/06/82

Martin Keaney	11/04/82	7/10/84
Mark A. Kosta	7/12/81	7/10/84
Lawrence J. Kovarovic	2/15/83	--
Ralph E. Mazal	11/04/81	--
Stephen Mrozko	11/11/82	7/10/84
Fridoon M. Shirf	9/06/83	7/10/84
Sebastiano Verrelli	11/29/82	7/10/84

40. As a result, respondent accumulated a surplus of \$4,000 in his official court account which was not promptly remitted to the Department of Audit and Control.

As to Paragraph 6(c) of Charge II of the Formal Written Complaint:

41. Since 1977, respondent has failed to properly record the receipt of bail in his cashbook.

As to Paragraph 6(d) of Charge II of the Formal Written Complaint:

42. Since 1977, respondent has failed to reconcile his official bank account or to account for liabilities on a monthly basis.

As to Paragraph 6(e) of Charge II of the Formal Written Complaint:

43. Respondent failed to respond to letters from attorneys, defendants and public officials requesting court action in People v. Adamo De Bartolo, People v. Sandra Dianda,

People v. Lawrence J. Kovarovic, People v. Ethel R. Silverberg
and People v. Kenneth E. Warner.

As to Paragraph 6(f) of Charge II of the Formal
Written Complaint:

44. Respondent failed to properly supervise his court
clerks in connection with People v. Albert Fair, People v.
Lawrence J. Kovarovic, People v. Sandra Dianda and People v.
Joseph A. Bailey.

As to Charge III of the Formal Written Complaint:

45. On April 28, 1983, Jeffrey B. Whiteing was
charged with Pedestrian On Parkway, a traffic infraction,
requested counsel, pled not guilty, and was committed by respon-
dent to jail for two weeks in lieu of \$150 bail, although
respondent knew that the defendant was financially unable to
post bail.

46. On May 12, 1983, the defendant was brought before
respondent, again pled not guilty, and was recommitted to jail
by respondent for another two weeks, without a trial date ever
having been set by respondent.

47. The defendant was not released by respondent
until May 26, 1983, having spent 28 days in jail. The maximum
sentence of imprisonment the defendant could have lawfully
received on this charge had he been convicted was 15 days, in

accordance with 17 NYCRR 184.2(b) and Section 1800 of the Vehicle and Traffic Law. Also, pursuant to Section 30.30(2)(d) of the Criminal Procedure Law, the defendant could properly be held awaiting trial for only five days.

48. Respondent recorded in his docket that the charge against the defendant had been dismissed in the interest of justice on April 28, 1983, and reported to the Department of Audit and Control that the defendant had served 30 days in jail.

49. Respondent testified before the Commission that he unlawfully committed Mr. Whiteing to jail because he was penniless and wearing only a shirt and respondent wanted to protect him from "the cold winter."

50. The weather report for the day of Mr. Whiteing's arrest shows that the temperature ranged from 43 to 85 degrees and there was no rain, and the jail inventory of the defendant's property showed that he was carrying three jackets.

As to Charge IV of the Formal Written Complaint:

51. On April 24, 1983, respondent issued warrants for the arrest of Gloria Zook and Aldo Maestri on charges of Harassment, a violation.

52. Respondent indicated a "recommended bail" of \$1,000 on each warrant.

53. The conduct for which the defendants were charged occurred on April 17, 1983, in the non-adjoining Town of

Germantown. Therefore, respondent did not have jurisdiction to issue the warrants under Section 120.30(2) of the Criminal Procedure Law.

54. On May 2, 1983, Ms. Zook and Mr. Maestri were arrested on respondent's warrants and were arraigned in the Livingston Town Court, where bail was set at \$500 each and the defendants were jailed in lieu of bail. The cases were made returnable on May 5, 1983, before respondent.

55. On May 5, 1983, the defendants appeared before respondent. Respondent knew the defendants had already spent three days in jail and that they had not been able to post bail.

56. Respondent continued the defendants' bail at \$500 each and remanded them to jail without proper inquiry into the factors and criteria set forth in Section 510.30(2) of the Criminal Procedure Law. Respondent set a return date of May 18, 1983. Neither defendant was represented by counsel, and respondent did not assign them counsel.

57. Ms. Zook and Mr. Maestri were released on May 18, 1983, by order of another judge, after spending 16 days in jail.

58. Respondent knew that the maximum term of imprisonment upon conviction of a violation is 15 days, under Section 70.15 of the Penal Law.

59. The maximum period that the defendants could lawfully be held awaiting trial was five days, under Section 30.30(2)(d) of the Criminal Procedure Law.

As to Charge V of the Formal Written Complaint:

60. On May 29, 1983, Sandra Dianda was arrested in the Town of Greenport on charges of Resisting Arrest, a misdemeanor, and Disorderly Conduct and Harassment, both violations.

61. The Town of Greenport does not adjoin the Town of Taghkanic.

62. Ms. Dianda was transferred by the police to the Columbia County Jail in the City of Hudson, where she was also charged with Obstruction Of Governmental Administration, a misdemeanor.

63. Respondent arraigned the defendant on all four charges shortly after her arrest, notwithstanding that he did not have jurisdiction to do so under Section 140.20(1)(a) of the Criminal Procedure Law.

64. Respondent set Ms. Dianda's bail at \$2,000 and remanded her to jail in lieu of bail. The defendant was unrepresented at her arraignment.

65. On May 30, 1983, Ms. Dianda posted bail and was released.

66. On June 8, July 8 and August 9, 1983, the defendant's attorney, Carl G. Whitbeck, Jr., wrote to respondent requesting that the case records be transferred to the Greenport Town Court.

67. Respondent did not respond to Mr. Whitbeck's letters.

68. On July 19, 1983, the Greenport Town Court Clerk, Harry Carhart, wrote a note to respondent requesting the Dianda case papers.

69. Respondent did not respond to Mr. Carhart's request.

70. On November 1, 1983, Mr. Whitbeck obtained from the Supreme Court an Order to Show Cause why an order should not be made dismissing the charges or removing the matter to the Town of Greenport.

71. Respondent failed to submit any papers in response to the Order to Show Cause or to transfer the case papers to the Greenport Town Court.

72. On November 29, 1983, an order was made by the Supreme Court, dismissing the charges against Ms. Dianda.

As to Charge VI of the Formal Written Complaint:

73. On April 14, 1983, respondent held a trial in the case of People v. Albert Fair, in which the defendant was charged with Passing In A No Passing Zone.

74. On May 3, 1983, respondent's court clerk, Doreen Kraft, wrote a letter to Mr. Fair stating, in part:

In reviewing the tapes and talking with the other party involved; about the accident in question occurring on the 11th day of November, 1982, the court has come to the conclusion you were the one at fault.

Therefore, the court finds you guilty of section 1126A--no passing in a no passing zone. The court also, finds you guilty of perjury [sic] on the witness stand, but the court will reserve decision.

75. The letter of May 3, 1983, was respondent's opinion in the case.

76. Respondent directed his court clerk to write the opinion and send it to Mr. Fair.

77. Mr. Fair had not been charged with or tried for perjury.

78. A notice of appeal was served and filed, and an affidavit of errors was served upon respondent by Mr. Fair's attorney.

79. Respondent did not file a return to the affidavit of errors, and on August 23, 1983, Mr. Fair's convictions for Passing In A No Passing Zone and perjury were vacated by the Columbia County Court.

As to Charge VII of the Formal Written Complaint:

80. On August 14, 1983, respondent arraigned Rino Giuliani, Jr., John J. Innominato, III, and Robert A. Pagniello on charges of Unlawfully Dealing With Fireworks and Criminal Mischief, Fourth Degree.

81. Respondent would not allow the defendants to explain the circumstances of the alleged offenses.

82. Respondent induced the defendants to plead guilty by telling them that they would have to wait in jail if they wanted a lawyer.

83. Respondent sentenced each defendant to a \$100 fine or 15 days in jail in lieu of fine on the charge of Unlawfully Dealing With Fireworks and a \$250 fine or six months in jail in lieu of fine on the charge of Criminal Mischief, Fourth Degree. The latter jail sentence is two months in excess of the maximum jail sentence in lieu of a fine, as set forth in Section 420.10(3)(b) of the Criminal Procedure Law.

84. None of the defendants was represented by counsel.

85. Respondent failed to advise the defendants of their right to a telephone call and did not notify their parents.

86. Respondent knew that Mr. Giuliani was 16 years old and that Mr. Innominato was 18 years old at the time.

87. Respondent failed to advise the defendants of their right to apply to be resentenced if they could not pay the fines, and he gave the defendants no opportunity to raise the fine money before committing them to jail in lieu of fine.

88. Mr. Giuliani had no prior arrests and was therefore required by Section 720.20(1)(b) of the Criminal Procedure Law to be treated as a youthful offender.

89. Mr. Innominato had no prior criminal convictions and was eligible for youthful offender status.

90. Respondent did not order a presentence report on Mr. Innominato or Mr. Giuliani, as required by Section 720.20(1) of the Criminal Procedure Law.

91. Respondent failed to consider youthful offender status for Mr. Innominato and failed to grant youthful offender status to Mr. Giuliani.

92. Respondent was aware of and familiar with the criteria governing youthful offender treatment.

93. Respondent failed to seal the case records pertaining to the Criminal Mischief charge against Mr. Giuliani, as required by Section 720.35(2) of the Criminal Procedure Law.

As to Charge VIII of the Formal Written Complaint:

94. On October 8, 1982, Lawrence J. Kovarovic pled guilty by mail in respondent's court to Speeding and paid a \$50 fine.

95. Thereafter, Mr. Kovarovic, a Connecticut resident, was informed that his privilege to drive in New York had been revoked, pursuant to law, because the speeding violation was his third within 18 months.

96. Mr. Kovarovic telephoned respondent for help, explaining that he needed his car for business.

97. Respondent offered to vacate the speeding conviction and substitute for it a conviction on a reduced charge, thus reinstating Mr. Kovarovic's driving privilege, on the condition that Mr. Kovarovic pay an additional \$300 fine and attend a safe driving course. Respondent later waived the latter requirement.

98. On or about January 26, 1983, Mr. Kovarovic mailed respondent a check for \$300.

99. Respondent deposited the check in his court account on or about February 15, 1983.

100. Mr. Kovarovic was never sent a receipt for his \$300 fine.

101. Respondent failed to reply to correspondence from Mr. Kovarovic and the Department of Motor Vehicles regarding the proposed reduction of Mr. Kovarovic's speeding conviction.

102. Respondent never took the necessary steps to vacate Mr. Kovarovic's speeding conviction.

103. After the six-month period of revocation of Mr. Kovarovic's driving privilege had elapsed, Mr. Kovarovic requested the return of his \$300 fine from respondent.

104. Respondent did not respond to Mr. Kovarovic.

105. Mr. Kovarovic's driving privilege was reinstated by the Department of Motor Vehicles in August 1983.

106. Respondent did not return Mr. Kovarovic's \$300 fine money until July 6, 1984, after respondent had appeared before a member of the Commission.

107. Respondent maintained no record of the reduced charge or of receipt of the \$300 fine.

108. Respondent did not report or remit the \$300 fine to the Department of Audit and Control.

109. Respondent reported to the town attorney and respondent's administrative judge that he had lost the file in this case.

As to Charge IX of the Formal Written Complaint:

110. On October 30, 1981, Ralph E. Mazal was charged with Driving While License Suspended and Broken Windshield.

111. Mr. Mazal was arraigned in the Livingston Town Court, where he posted \$20 bail and was directed to appear before respondent.

112. On December 10, 1981, Mr. Mazal pled guilty to the charges in respondent's court.

113. Respondent fined Mr. Mazal \$100 on the charge of Driving While License Suspended and \$25 on the charge of Broken Windshield and allowed the defendant until December 17, 1981, to pay the fines.

114. Respondent made no effort to determine whether Mr. Mazal could pay the fines.

115. On December 19, 1981, respondent issued a warrant for the arrest of Mr. Mazal for the crime of Criminal Contempt, Second Degree, because Mr. Mazal had failed to pay the fines.

116. On Sunday, December 20, 1981, Mr. Mazal was arrested on respondent's warrant and brought before respondent.

117. Respondent did not ask Mr. Mazal how he pled to the charge of Criminal Contempt and did not conduct a hearing.

118. Mr. Mazal's attorney was not present, and respondent knew that Mr. Mazal was represented by counsel.

119. Respondent summarily convicted the defendant and sentenced him to 15 days in jail, in violation of Section 170.10 of the Criminal Procedure Law; Article I, Section 6, of the New York State Constitution, and the Sixth and Fourteenth Amendments to the United States Constitution.

120. Respondent maintained no records of the Criminal Contempt charge against Mr. Mazal, other than the warrant of arrest.

121. Respondent received Mr. Mazal's \$20 bail from the Livingston Town Court but did not refund it to the defendant or report it to the Department of Audit and Control. He did not report the disposition of the Criminal Contempt charge to the Department of Audit and Control.

As to Charge X of the Formal Written Complaint:

122. On April 9, 1982, Kenneth E. Warner was arrested for Speeding, Unregistered Motor Vehicle and Driving While License Suspended.

123. Mr. Warner was arraigned before respondent and pled guilty to Speeding and not guilty to Unregistered Motor Vehicle and Driving While License Suspended.

124. Respondent released Mr. Warner on \$150 bail.

125. Mr. Warner, an attorney, retained Andrea Moran to represent him.

126. Ms. Moran spoke with respondent by telephone prior to the return date. Respondent told Ms. Moran that he would reduce the charge of Driving While License Suspended to a lesser charge of Driving Without A License, but they could not agree on the amount of the fine. Respondent told Ms. Moran that he intended to fine Mr. Warner "double the maximum."

127. On December 9, 1982, Ms. Moran and Mr. Warner appeared before respondent for sentencing. Ms. Moran prepared and submitted to respondent a memorandum of law, and Ms. Moran argued that the maximum fine for the reduced charge was \$50.

128. Respondent contended that a new 1983 law authorized a maximum fine of \$200 and that it could be applied to this 1982 case.

129. Respondent sentenced Mr. Warner to a fine of \$200 on the reduced charge of Unlicensed Driver.

130. Ms. Moran served an affidavit of errors on respondent on January 7, 1983, appealing the sentence, but respondent failed to file a return, as required by Section 460.10(3)(d) of the Criminal Procedure Law.

131. On January 19, 1983, Ms. Moran wrote to respondent, asking him to file a return to the affidavit of errors, but no return was filed. She then wrote to the district attorney for his assistance in the matter.

132. District Attorney Charles Inman wrote to respondent on April 20, 1983, notifying him that the Warner case was in jeopardy of being dismissed for lack of respondent's return.

133. On May 18, 1983, respondent was ordered by the Columbia County Court to file his return by June 3, 1983.

134. On July 19, 1983, the county court ordered respondent to return Mr. Warner's excess fine money (\$150) within ten days or be held in contempt of court.

135. Respondent did not comply with that order.

136. Respondent did not return the defendant's excess fine money until January 26, 1984, after the county court judge's law secretary intervened.

As to Charge XI of the Formal Written Complaint:

137. On February 25, 1984, James L. Wolcott was charged with three counts of Issuing A Bad Check, a misdemeanor.

138. The defendant was arraigned before respondent and pled guilty to all three counts.

139. Mr. Wolcott was unrepresented, and respondent did not assign him counsel.

140. On each count, respondent sentenced the defendant to 30 days' imprisonment, plus a fine of \$200 or 90 days in jail in lieu of fine, with all terms to run consecutively.

141. Respondent did not order a presentence report on Mr. Wolcott, notwithstanding that a presentence report was required for any sentence in excess of 90 days by Section 390.20(2) of the Criminal Procedure Law.

142. Mr. Wolcott spent approximately 120 days in jail on respondent's commitment orders and oral instructions to the chief jailer.

As to Charge XII of the Formal Written Complaint:

143. On March 20, 1984, respondent issued an arrest warrant for Barbara Moore Dearing, based on a misdemeanor charge of Overdriving, Injuring Or Torturing Animals.

144. Respondent wrote on the arrest warrant his recommendation that no bail be set on Ms. Dearing, in the event

that he was not available to arraign the defendant after arrest. At the time he signed the warrant, respondent determined that Ms. Dearing should be jailed without bail for psychiatric examination.

145. Respondent based this decision solely on the police officers' description of the animals, without having seen or spoken with Ms. Dearing.

146. Ms. Dearing did not understand the charge against her, and respondent did not explain the charge or allow her to plead.

147. Ms. Dearing was not represented by counsel. She requested counsel, but none was assigned and no adjournment was granted for the purpose of obtaining counsel.

148. Respondent committed Ms. Dearing to jail without bail.

149. Respondent told Ms. Dearing he was committing her to jail for psychiatric examination.

150. Respondent never ordered the Columbia County Mental Health Director to perform a psychiatric examination of Ms. Dearing, as required by Sections 730.10(2) and 730.20 of the Criminal Procedure Law.

151. Ms. Dearing did not receive a psychiatric examination while she was in jail.

152. Respondent never took any steps to determine whether Ms. Dearing had received a psychiatric examination.

153. Ms. Dearing was released from jail on March 23, 1984, only after she obtained an attorney, who persuaded respondent to set bail.

As to Charge XIII of the Formal Written Complaint:

154. On October 10, 1980, Eustace Gibbs was arrested and arraigned before respondent on charges of Speeding and Operating While License Suspended. Mr. Gibbs' license suspension was in error.

155. Mr. Gibbs pled not guilty at the arraignment, and respondent set bail at \$150. Respondent released Mr. Gibbs in the custody of his employer, Jeffrey Franklin.

156. On October 16, 1980, respondent was informed by an FBI agent that there was a warrant for Mr. Franklin's arrest. Respondent informed the FBI agent that Mr. Franklin would be in court on October 30, 1980, the adjourned date in the Gibbs case.

157. On October 30, 1980, respondent knew that federal officers were present in court and assumed that they were there to arrest Mr. Franklin.

158. Mr. Gibbs appeared without Mr. Franklin.

159. Respondent discussed the Gibbs matter ex parte with Assistant District Attorney Russell Baller and the arresting officer.

160. Respondent set Mr. Gibbs' bail at \$2,000 and told him to call Mr. Franklin to have him come to court. Mr.

Gibbs refused to call Mr. Franklin and was remanded to jail in lieu of \$2,000 bail.

161. Respondent used his judicial office and the threat of jail in an effort to compel the appearance and arrest of Mr. Franklin, notwithstanding that no matter concerning Mr. Franklin was before him.

As to Charge XIV of the Formal Written Complaint:

162. On December 10, 1981, Officer James Dolan of the Hudson City Police Department filed two felony complaints in respondent's court against James R. Atkinson, charging him with Criminal Sale Of A Controlled Substance, Third Degree, and Criminal Possession Of A Controlled Substance, Third Degree.

163. The complaints were based on an alleged incident in the City of Hudson on November 27, 1981.

164. Officer Dolan told respondent that no other judges were available to sign an arrest warrant. Officer Dolan had not attempted to contact another judge; he was trying to keep the case away from the Hudson City Court Judge, with whom Officer Dolan was engaged in a public controversy over the city court judge's bail-setting practices.

165. Officer Dolan knew of respondent's reputation for ready availability and sought out respondent in preference to others.

166. Respondent did not question Officer Dolan's veracity concerning the unavailability of other judges.

167. On December 10, 1981, respondent signed warrants of arrest and indicated his bail recommendation of \$30,000 on one of the warrants, notwithstanding that he lacked jurisdiction to issue the warrants under Section 120.30(2) of the Criminal Procedure Law.

168. Officer Dolan arrested Mr. Atkinson on December 11, 1981, and brought him before respondent for arraignment.

169. Respondent arraigned the defendant, set bail at \$30,000 and adjourned the case to December 14, 1981, for a preliminary hearing in his court, notwithstanding that he did not have jurisdiction to arraign the defendant under Section 140.20 of the Criminal Procedure Law.

170. Mr. Atkinson was not represented at the arraignment, and the district attorney was not present.

171. Mr. Atkinson was remanded to jail in lieu of bail.

172. On December 14, 1981, after the preliminary hearing, Mr. Atkinson's attorney, Gary Greenwald, obtained an order from the county court reducing bail to \$15,000.

173. District Attorney Charles Inman consented to the reduction in bail.

174. Mr. Greenwald and Mr. Inman agreed that the \$15,000 bail would cover any additional charges that might arise

as a result of any evidence seized during the searches of the defendant's apartment.

175. On December 29, 1981, Officer Dolan presented respondent with another felony complaint, charging Mr. Atkinson with Criminal Possession Of A Controlled Substance, Third Degree. The complaint was based on the result of another search of Mr. Atkinson's apartment.

176. Respondent issued another arrest warrant for Mr. Atkinson on December 29, 1981, notwithstanding that he lacked jurisdiction to do so under Section 120.30(2) of the Criminal Procedure Law.

177. Respondent knew when he issued the warrant that the defendant's bail had been reduced by the county court and that the defendant had posted bail and had been released.

178. Mr. Greenwald contacted respondent and informed him of his agreement with Mr. Inman. Respondent refused to withdraw the warrant.

179. When Mr. Atkinson appeared voluntarily in response to respondent's warrant, respondent arraigned the defendant and set bail at \$20,000, notwithstanding that he lacked jurisdiction to conduct an arraignment under Section 140.20 of the Criminal Procedure Law.

180. The district attorney was not present at the arraignment and was not consulted with respect to bail.

181. Respondent knew that Section 530.20(2)(b)(i) of the Criminal Procedure Law required him to hear the district attorney's recommendations with respect to bail on a felony charge.

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)(1), 100.3(a)(4), 100.3(a)(5), 100.3(b)(1) and 100.3(b)(2) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1), 3A(4), 3A(5), 3B(1) and 3B(2) of the Code of Judicial Conduct; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 30.9 of the Uniform Justice Court Rules; Section 27(1) of the Town Law; Section 1803 of the Vehicle and Traffic Law, and Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts. Charges I through XIV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has repeatedly abused his judicial powers and violated the law he is sworn to uphold. He has disregarded well-established, fundamental rights of defendants so as to create an appearance of bias and damage public confidence in the impartiality and integrity of the judiciary.

Respondent signed arrest warrants and arraigned defendants brought from outside his legal jurisdiction by

apparent "judge-shopping" policemen. By threatening them with high bail and jail for minor offenses, respondent coerced guilty pleas from defendants who were often unrepresented and, on occasion, youthful.

Respondent imposed high bail for minor offenses without inquiring into the statutory criteria required to determine whether a defendant is likely to reappear in court, and he jailed defendants when they could not make the bail, sometimes for periods longer than they could have lawfully served had they been convicted of the offenses alleged. Respondent repeatedly gave excessive fines for minor offenses and, when they could not be paid, jailed defendants for periods longer than the maximum allowed by law.

Respondent abused the rights of intoxicated and youthful offenders and put defendants in jail without bail pending psychiatric examinations, then failed to order the examinations.

When defendants appealed respondent's harsh treatment, he attempted to frustrate the appeals by refusing to file the necessary papers.

In addition, respondent persistently failed to meet his administrative and financial responsibilities in running his court.

Such a pattern of misconduct shocks the conscience and indicates that respondent poses a threat to the proper

administration of justice. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286 (1983); Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984).

No judge is above the law. The legal system cannot accommodate a jurist who deliberately flouts due process of law. Matter of Ellis, 3 Commission Determinations 53 (Com. on Jud. Conduct, July 14, 1982).

Respondent has so distorted his role as to render him unfit to remain in judicial office. Sardino, supra; Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870 (1983).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Rubin was 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: December 24, 1985

David Bromberg, Esq., Member
New York State
Commission on Judicial Conduct