

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

NORMAN E. KUEHNEL,

a Justice of the Village Court
of Blasdell and the Town Court
of Hamburg, Erie County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Norman E. Kuehnel, a justice of the Village Court of Blasdell and the Town Court of Hamburg, Erie County, was served with a Formal Written Complaint dated November 13, 1978. Respondent filed an answer dated December 8, 1978.

By order dated December 14, 1978, the Commission appointed the Honorable Harold A. Felix as referee to hear and report with respect to the issues herein. The referee conducted a hearing on February 28, 1979, and thereafter filed his report with the Commission.

Counsel for the Commission moved on June 28, 1979, to confirm the referee's report and to render a determination. The

Commission heard oral argument on the motion on July 20, 1979, and thereafter, in executive session, considered the record in this proceeding, and upon that record finds the following facts.

1. On the night of May 5, 1978, as the respondent was leaving a tavern in the Village of Blasdell between the hours of 10 and 11 o'clock, he saw four youths, Steven Lewis, age 14, Patti Kolodziejczak, age 14, Patrick Michael Burke, age 13, and Richard Harmon, age 15, crossing the parking lot of Carlin's Grocery-Delicatessen Store, located at 107 Lake Avenue, Blasdell, New York. Respondent called upon them to stop, which they did. Respondent walked over from the tavern parking lot and asked which one of them had just broken glass or a glass bottle. The youths denied the accusation and, except for one of the youths, refused to reveal their identities. Respondent thereupon ordered them into the store. Although respondent did not identify himself as a judge, the youths recognized respondent and knew him to be justice of the Village Court of Blasdell.

2. As he ushered the youths through the outer and inner doors of the vestibule leading into the store, respondent struck one of the youths, Michael Burke, on the back of the head, causing the youth to fall forward and hit his head on a door frame ahead of him.

3. Respondent telephoned the police, and a Blasdell Village Police Patrolman, Lindsay Dunne, arrived shortly thereafter in a patrol car. Respondent told Officer Dunne that he had caught the four youths breaking glass in the parking lot at Carlin's and he requested that the officer take the youths to the

Blasdell Village Police Station so that he could file a complaint against them. There was testimony at the hearing by Officer Dunne that he detected alcohol on respondent's breath, that respondent's speech was slurred and that in his opinion respondent was under the influence of alcohol, which observations were entered in his police log and report; respondent himself testified to having had "one or two" glasses of beer prior to entering the parking lot at Carlin's (Tr. 219).*

4. Prior to escorting the youths to the police station, Officer Dunne searched the lot with his flashlight at the direction of respondent, but found no evidence of broken glass. In the patrol car the officer asked the youths what they had done and their response was that they had done nothing.

5. Officer Dunne drove all four youths to the local police station. Respondent walked the short distance from Carlin's to the police station.

6. At the police station, the four youths were at a bench opposite the counter. Respondent, on his arrival, walked behind the counter to the office of Lt. Eugene Carberry to speak to that officer.

7. Respondent, upon leaving Lt. Carberry's office, stood behind the counter with Officer Dunne while that officer was in the process of obtaining information from the youths. Respondent then spoke to the youths in a hostile, taunting and derogatory

* Tr." refers to the transcript of the hearing before the referee.

manner, equating them to "black hoodlums" and "niggers" (Tr. 95, 126-27, 189). In his testimony at the hearing, respondent did not deny using the word "nigger." He stated "I don't think I did. I don't usually use that word" (Tr. 235-36).

8. At the police station, respondent identified himself as a judge to the youths.

9. On his way out of the police station, and as he passed in front of the youths, respondent intentionally struck Richard Harmon on the right side of his face, causing Mr. Harmon's nose to bleed. Respondent stated that the youth had stuck his tongue out at him.

10. Following the striking, respondent proceeded to leave the police station without reporting the incident at that time or at any time thereafter.

11. Officer Dunne did not see respondent strike Richard Harmon but heard the sound of the striking, saw Richard Harmon's nose bleed, saw Mr. Harmon's reaction to the blow and heard respondent say: "That's for sticking out your tongue at me" (Tr. 157).

12. Approximately two or three weeks thereafter, Richard Harmon's father, H. Leroy Harmon, met with respondent at the Village Hall. The two men planned a second meeting at which Richard Harmon would be present. At the second meeting, respondent, addressing the matter of his having struck Richard Harmon at the police station, stated that he believed he had been tripped and that the striking had been accidental. He apologized to Richard Harmon and offered to allow Richard to punch him. Respondent proposed that the three parties enter into a general release,

and the Harmons agreed to accept the sum of \$100 in consideration for the release.

13. Respondent prepared the release, and on June 2, 1978, at a bank in the Village of Blasdell, respondent paid Richard Harmon \$100 in cash, and Richard Harmon and his father signed the general release before a notary public, purportedly relieving respondent both individually and as a village justice from any liability arising out of the incident in the Blasdell Village Police Station on May 5, 1978. The release alleged that respondent accidentally struck Richard N. Harmon after having been tripped.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The report of the referee is confirmed. The charge set forth in the Formal Written Complaint is sustained, and respondent is therefore guilty of misconduct.

A judge's obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. Respondent's conduct in the instant matter was both improper and appeared to be improper and as such undermined the integrity of the judiciary.

It was improper for respondent to have engaged in an angry verbal confrontation with the four youths on the evening of May 5, 1978, in the vicinity of Carlin's Grocery-Delicatessen.

It was wrong for him to have struck in anger one of those youths, a 13-year old boy. It was improper for respondent to have taunted the four youths subsequently with derogatory and offensive remarks when they were in police custody at the Blasdell Police Station. It was wrong for respondent to have intentionally struck a second of the youths, a 15-year old boy in police custody in the Blasdell Police Station. Whatever verbal insolence by the youths may have motivated his acts, respondent's conduct far exceeded the provocation.

At the least, it is unseemly and injudicious for a judge to engage in such a fray with juveniles and to assault two of them physically. Indeed, having been recognized by the youths to be a judge and further having identified himself as a judge, respondent was obligated to set a dignified example for these youths and the community. Instead, his conduct diminished confidence in and respect for the judiciary and violated the applicable sections of the Rules Governing Judicial Conduct which require a judge to "himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved" (Section 33.1 of the Rules).

Even were the Commission to attribute respondent's conduct at Carlin's to a reflexive, spur-of-the-moment confrontation, no such explanation would apply to respondent's subsequent conduct at the police station. In resuming the confrontation by taunting the youths at the police station, after some time had elapsed and after having had ample oppor-

tunity to reflect on his conduct at Carlin's and to temper his emotions, respondent exhibited exceedingly poor judgment.

In any event, respondent's striking of the two youths is indefensible. His offer several weeks later to allow one of the youths to punch him in retaliation was irresponsible and unworthy of a judge.

Respondent's conduct is not mitigated by the argument that he was not on the bench at the time of the incidents and was acting in a private capacity. As expressed by the learned referee, himself a former judge of the Family Court, "respondent although off the bench remained cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others. Public confidence in the judiciary is diminished by actions that are suggestive of impropriety and resort to abusive language whether in or out of the courtroom, and may well demonstrate a lack of judicial temperament prejudicial to the administration of justice." Indeed, respondent himself appears to have recognized this concept, inasmuch as the general release he drew for signature by the Harmons sought to relieve him of liability not only as an individual but also as village justice of Blasdell.

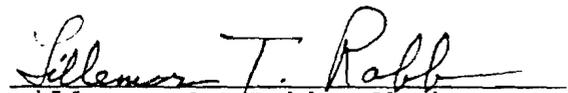
By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kirsch, Mr. Kovner, Mr. Maggipinto, Mrs. Robb and Judge Shea concur.

Judge Cardamone, Judge Rubin and Mr. Wainwright concur in the views expressed herein and dissent only with respect to the determined sanction, noting that respondent's lengthy tenure of 22 years on the bench would make censure a more appropriate sanction.

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.


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

Dated: September 6, 1979
Albany, New York

APPEARANCES:

Cunningham, Pares & Renda (By William J. Cunningham, Jr.) for Respondent
Gerald Stern for the Commission (John W. Dorn, Of Counsel)