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

LAWRENCE J. LABELLE,

Determination

a Judge of the Saratoga Springs City Court, Saratoga County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

E. Stewart Jones, Jr. (Peter J. Moschetti, Jr., and Leonard W. Krouner, Of Counsel) for Respondent

The respondent, Lawrence J. LaBelle, a judge of the Saratoga Springs City Court, Saratoga County, was served with a Formal Written Complaint dated March 8, 1990, alleging that he disregarded defendants' fundamental rights and conveyed the

impression of bias in numerous cases. Respondent filed an answer dated April 9, 1990.

On September 17, 1990, 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 for by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated October 22, 1990.

The administrator and respondent submitted memoranda as to sanction.

On December 13, 1990, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

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

1. Respondent, a lawyer, has been a judge of the Saratoga Springs City Court since 1970. He was acting judge of the court from 1964 to 1969.

2. Between 1986 and 1989, on 96 occasions in 59 cases involving 44 defendants, as denominated in Exhibit A to the agreed statement of facts, respondent committed defendants charged with misdemeanors or violations to jail without bail, in violation of CPL 530.20(1).

3. Respondent was aware at all times during the period that the law requires that bail be set on non-felony charges or that defendants be released on their own recognizance. On several occasions between 1986 and 1989, representatives of the public defender's office and the sheriff's department had advised respondent that such commitments were improper.

4. In testimony before a member of the Commission on August 1 and September 8, 1989, respondent offered several reasons for committing defendants without bail. On September 8, 1989, the following questions were asked, and respondent gave the following answers:

> Q: I suppose it raises the question again: Why did you on other cases set no bail for misdemeanors and violations?
>
> A: As I said before, I believe, in prior testimony, it would have to be some circumstance, either a non-appearance or prior underlying misdemeanor, or there was a problem with identity or there was a psychiatric exam ordered...

> In other words, I think you would say it was a judgment call, basically, on my examination and at the time of the arraignment.

Respondent also testified that he held some defendants without bail because they had no place to go, because he felt that they were a danger to themselves or others or because of mistakes or clerical errors. In one case, respondent said, he did not set bail because the defendant was wanted in another jurisdiction. In another case, he did not set bail because the defendant had refused to cooperate with the probation department in connection with its sentencing report.

5. In his testimony, respondent indicated that as a result of the Commission's investigation, he would no longer commit defendants without bail but would "set the bail so high he couldn't get out," in cases in which he would order psychiatric examinations. In non-felony cases where defendants have a history of not appearing in court, respondent indicated he would "set bail again very, very high and make sure that they don't get out until I see them...."

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

6. The allegation is not sustained and is, therefore, dismissed.

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

7. In twelve cases denominated in Exhibit B to the agreed statement of facts, respondent set bail on arrest warrants or ordered defendants held without bail at times when the defendants were not before him and without reviewing those factors that he was required to consider by CPL 510.30(2)(a).

8. On August 1, 1989, the following questions were asked, and respondent gave the following answers:

> Q: You don't mean that you set bail...when you issued a warrant? You wrote at the top a suggested amount?
>
> A: I don't suggest. That's the amount of bail I set. That's the bail I set.
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> ***
>
> Q: Are you aware that there are certain circumstances before you set bail you are supposed to consider?
>
> A: Certain circumstances, yes. I look at the complaint. I try to set bail at what I feel is reasonable, and I do the same, that's my theory on non-appearance warrants. I want to know what I am dealing with.
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> ***

Q: You set bail at the time the warrant is issued?

A: Particularly in this situation, absolutely.

Q: Just out of curiosity, why don't you wait until the defendant is before you to set bail?

A: My practice is to set the bail first if he's picked up in some other jurisdiction so he can come in.

As to Charge II of the Formal Written Complaint:

9. On June 6, 1986, respondent arraigned William Charlson on a charge of Criminal Trespass, 3d degree, a misdemeanor. Mr. Charlson was accused of sleeping in a hallway at city hall. Respondent committed Mr. Charlson to jail until June 9, 1986, without bail, in violation of CPL 530.20(1).

10. On June 9, 1986, respondent again committed Mr. Charlson to jail without bail until June 12, 1986.

11. On June 12, 1986, Mr. Charlson appeared before respondent and was represented for the first time by the public defender. Respondent again committed Mr. Charlson to jail without bail until June 26, 1986.

12. On June 26, 1986, respondent committed Mr. Charlson to jail without bail until July 10, 1986.

13. On July 10, 1986, respondent sentenced Mr. Charlson to 35 days time served.

14. Respondent testified on August 1, 1989, that he jailed Mr. Charlson without bail because he had no place to go and wanted to stay in jail.

As to Charge III of the Formal Written Complaint:

15. On October 20, 1986, respondent arraigned Mildred Key on a charge of Criminal Mischief, 2d degree, a misdemeanor. Respondent ordered that Ms. Key undergo a psychiatric examination and committed her to jail until October 27, 1986, without bail, in violation of CPL 530.20(1).

16. On October 25, 1986, respondent issued a new commitment order for Ms. Key, again ordering her held without bail for return to court on November 6, 1986.

17. On October 30, 1986, Ms. Key was examined by two psychiatrists and found to be competent to stand trial.

18. On November 6, 1986, Ms. Key reappeared in court. Respondent again committed her to jail without bail until November 13, 1986.

19. Respondent had informed Ms. Key of her right to counsel and had given her a financial affidavit at arraignment but had not asked her whether she wanted counsel and had taken no steps to effectuate her right to assigned counsel while the case was pending, as required by CPL 170.10(4)(a).

20. On November 13, 1986, Ms. Key appeared before another judge and was recommitted to jail until November 17, 1986.

21. On November 17, 1986, Ms. Key appeared before respondent and was represented for the first time by the public defender. She pled guilty, and respondent gave her a conditional discharge.

22. Ms. Key had served 29 days in jail awaiting disposition of her case.

23. Respondent testified on August 1, 1989, that his practice in ordering psychiatric examinations is to sign a court order and give it to police to be relayed to the jail and then to the mental health clinic. CPL 730.20 and 730.30 require a judge to issue the order directly to the appropriate mental health director.

24. Respondent also testifed that he does not require that the reports, once completed, be forwarded directly to the court but allows the mental health clinic to leave the reports at the jail to be taken to court upon defendants' return date. CPL 730.20(5) provides that the reports be made directly to the court.

As to Charge IV of the Formal Written Complaint:

25. On December 27, 1986, respondent arraigned Gilbert Martin on a charge of Disorderly Conduct, a violation. Respondent ordered a psychiatric examination and committed him to jail without bail, in violation of CPL 530.20(1).

26. On December 29, 1986, Mr. Martin returned to court. He was unrepresented. Respondent recommitted him without bail until January 5, 1987.

27. On December 30, 1986, Mr. Martin was examined by two psychiatrists and found competent to stand trial.

28. On January 5, 1987, Mr. Martin returned to court. Respondent sentenced him to 10 days time served.

29. On January 11, 1987, respondent arraigned Mr. Martin on charges of Criminal Trespass and Resisting Arrest, both misdemeanors. Respondent committed him to jail in lieu of $500 bail.

30. On January 15, 1987, Mr. Martin returned to court without counsel. Respondent ordered him held in jail without bail until January 22, 1987, in violation of CPL 530.20(1). Respondent testified on August 1, 1989, that the commitment without bail was a "clerical error."

31. On January 22, 1987, Mr. Martin again appeared without counsel, and respondent issued another order committing him to jail without bail until January 26, 1987.

32. On January 26, 1987, Mr. Martin appeared, represented for the first time by the public defender. Mr. Martin pled guilty to two violations and was sentenced to 18 days time served.

33. On February 6, 1987, respondent arraigned Mr. Martin on a charge of Disorderly Conduct, a violation. Respondent ordered him held in jail without bail, in violation of CPL 530.20(1).

34. On February 19, 1987, Mr. Martin reappeared without counsel. Respondent again committed him to jail without bail until February 26, 1987.

35. On February 26, 1987, Mr. Martin appeared, represented for the first time on this charge by the public defender. Mr. Martin pled guilty and was sentenced to 18 days time served. The maximum sentence for the violation was 15 days, pursuant to Penal Law §70.15(4).

As to Charge V of the Formal Written Complaint:

36. On December 18, 1986, respondent arraigned Edward Merrills on a charge of Criminal Trespass, 3d degree, a misdemeanor. Mr. Merrills was accused of refusing to leave a hospital emergency room. Respondent ordered Mr. Merrills held without bail until January 8, 1987, in violation of CPL 530.20(1).

37. On January 8, 1987, Mr. Merrills reappeared without counsel. He pled guilty, and respondent sentenced him to 22 days time served.

38. Respondent testified on August 1, 1989, that Mr. Merrills was homeless and "begged" to be sent to jail.

As to Charge VI of the Formal Written Complaint:

39. On August 28, 1986, respondent issued a warrant for the arrest of Larry Nellis on a charge of Issuing a Bad Check, a misdemeanor. Respondent wrote on the arrest warrant that bail was set at $50.

40. On October 17, 1986, respondent arraigned Mr. Nellis on the charge, revoked the bail because of an outstanding warrant in another jurisdiction and ordered him held without bail, in violation of CPL 530.20(1).

41. On October 30, 1986, Mr. Nellis appeared without counsel. Respondent recommitted him without bail until November 6, 1986.

42. On November 6, 1986, Mr. Nellis appeared, represented for the first time by the public defender. Respondent again committed Mr. Nellis to jail without bail until November 13, 1986.

43. On November 13, 1986, Mr. Nellis pled guilty, and respondent sentenced him to 28 days time served.

As to Charge VII of the Formal Written Complaint:

44. On April 2, 1987, respondent arraigned John Pellotte on a charge of Disorderly Conduct, a violation, and ordered him jailed without bail, in violation of CPL 530.20(1). Respondent ordered a psychiatric examination.

45. On April 6 and April 9, 1987, Mr. Pellotte returned to court, and each time respondent recommitted him to jail without bail.

46. On April 16, 1987, Mr. Pellotte appeared without counsel. He pled guilty, and respondent sentenced him to 20 days time served. The maximum sentence for the violation was 15 days, pursuant to Penal Law §70.15(4).

47. Respondent never received the psychiatric report he had ordered.

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, 100.3(a)(1) and 100.3(a)(4), and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I, II, III, IV, V, VI and VII of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. The allegations in paragraph 4(b) of Charge I are dismissed.

Where a defendant is charged with a misdemeanor or offense a court must order "recognizance or bail" (CPL 530.20[1]). Over a four-year period respondent consistently and intentionally disregarded that duty. He acknowledged that his commitments to jail without bail in non-felony cases were contrary to law, terming it a "judgment call." His reasons for ignoring the statute are unauthorized by law and do not exist as exceptions to the mandate of CPL 530.20(1). While a judge is empowered to consider a defendant's past failure to appear in setting bail, there is no authority to refuse bail to defendants accused of violations and misdemeanors. This is not an issue of judgment, "poor judgment, or even extremely poor judgment" (Matter of Shilling v. State Commission on Judicial Conduct,

51 NY2d 397, 403; Matter of Cunningham v. State Commission on Judicial Conduct, 57 NY2d 270, 275). It is a deliberate consistent disregard of the law.

In two cases, Pellotte (Charge VII) and the second Martin disorderly conduct case (Charge IV), respondent held defendants in jail without bail for periods longer than the maximum sentence after conviction. This could rise to misconduct even if bail had been set in an amount defendants could not make (See, Matter of Jutkofsky, 1986 Ann Report of NY Commn on Jud Conduct, at 111, 131).

Respondent's practice of holding non-felony defendants without bail for psychiatric examinations is also without "apparent or express legal or rational justification..." (Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290). His failure to follow statutory procedures (CPL 730.20, 730.30) to ensure that the examinations were promptly performed and reported to the court exacerbated the harm to jailed defendants such as Ms. Key (Charge III) who were held long after the reports were completed.

Even a well-motivated concern for homeless defendants does not justify their incarceration where the law does not allow it (Matter of Schneider, unreported, NY Commn on Jud Conduct, Jan. 26, 1990). A civilized society cannot justify a pattern of unauthorized jailings by calling it an act of charity.

Respondent also disregarded the law when he either set bail or ordered defendants held without bail on arrest warrants before the defendants appeared before him.

He repeatedly abused the bail process by improperly using it for punitive purposes (Matter of Sardino, supra, at 289). This is borne out by respondent's testimony that the Commission's inquiry would only prompt him to "set bail again very, very high and make sure that they don't get out..." It also indicates that he will continue to ignore the only legitimate concern of a judge in setting bail, "namely, whether any bail or the amount fixed was necessary to insure the defendant's future appearances in court," (Matter of Sardino, supra).

Despite his legal training and his 26 years on the bench, respondent repeatedly failed to follow the law and promises to continue to subvert its legitimate purposes. "No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who thus disregards the law." (Matter of Ellis, 1983 Ann Report of NY Commn on Jud Conduct, at 107, 113). Respondent has revealed his "misunderstanding of the role of a judicial officer," and "is not fit to serve as a judge" (Matter of Ellis, supra).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Judge Thompson concur.

Mr. Sheehy 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: February 6, 1991

Henry T. Berger

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