

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

IRVING W. LEVINE,

a Judge of the Civil Court of the
City of New York, Kings County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

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

Alain M. Bourgeois (Nathan R. Sobel, Of Counsel) for
Respondent

The respondent, Irving W. Levine, a judge of the Civil
Court of the City of New York, Kings County, was served with a
Formal Written Complaint dated July 11, 1988, alleging that he
promised a former political leader that he would adjourn a
pending case at the leader's request. Respondent filed an

answer dated August 10, 1988. A Supplemental Formal Written Complaint was served on September 6, 1988.

On October 10, 1988, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on October 21, 1988.

The administrator and respondent submitted memoranda as to sanction. On December 15, 1988, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a judge of the Civil Court of the City of New York and was during the time herein noted.

2. On August 1, 1985, respondent presided over 2121 Emmons Ave. Corp. v. Randazzo Clam Bar, Frank Geraci and Patricia Geraci, a commercial holdover proceeding. Respondent approved a stipulation in which the parties agreed that Randazzo Clam Bar would pay \$600 per month rent, that the landlord would be granted a final judgment of possession effective November 30,

1985, and that there would be no application for an extension of time.

3. On November 26, 1985, Randazzo moved to stay the landlord from enforcing the judgment of possession. The matter was referred to respondent.

4. In early December 1985, Samuel Plotkin, public administrator of Kings County, called respondent by telephone. He advised respondent that Meade Esposito, former chairman of the Executive Committee of the Kings County Democratic Party, wanted respondent to call Mr. Esposito.

5. On December 2, 1985, respondent called Mr. Esposito, who said that he wanted to meet respondent for breakfast at a restaurant the following morning. Respondent agreed to meet with Mr. Esposito.

6. On December 3, 1985, Mr. Esposito told respondent that a close friend was a defendant in a case that was being heard by respondent and that the case involved Randazzo Clam Bar. Mr. Esposito told respondent that Randazzo Clam Bar had been a tenant for more than 30 years, was in the process of constructing new premises in the immediate vicinity and needed an adjournment of approximately three months to allow for completion of construction and relocation. Mr. Esposito said that the tenant was willing to pay a rent increase.

7. Respondent told Mr. Esposito that he would adjourn the case pursuant to Mr. Esposito's request. Respondent

intended to convey the impression that he would grant Mr. Esposito's request. As the two men were about to part, respondent kissed Mr. Esposito on the forehead.

8. Respondent knew that Mr. Esposito was referring to 2121 Emmons Ave. Corp. v. Randazzo Clam Bar, Frank Geraci and Patricia Geraci over which respondent had previously presided. Respondent also recalled that Alan Firestone, the attorney for Randazzo Clam Bar, had advised respondent that he was about to go before him on this matter and that the principals of Randazzo Clam Bar wished to settle the matter.

9. Prior to his meeting with Mr. Esposito, respondent had known Mr. Esposito for approximately 25 years. Mr. Esposito had been instrumental in assisting respondent in his career. Respondent believed that Mr. Esposito had assisted him in obtaining the positions of Civil Court law assistant in 1970 and Supreme Court law assistant in 1974 and in arranging a transfer of respondent's assignment as a Supreme Court law assistant from one Supreme Court Justice to another at the end of 1975 when respondent had become displeased with his assignment. Mr. Esposito had also supported respondent's candidacy for Civil Court Judge in 1983.

10. On December 3, 1985, after he had met with Mr. Esposito earlier that day, respondent presided over the Randazzo case. The attorneys for the landlord and tenant requested an

adjournment, and respondent adjourned the matter to December 17, 1985.

11. On December 17, 1985, respondent presided over Randazzo. Mr. Firestone was present, but Harvey Lustig, the attorney for the landlord, was not present because he was on trial in another part of the Civil Court, Kings County. Mr. Firestone communicated to respondent the joint request of respective counsel that the matter be adjourned, and respondent adjourned the proceeding until January 27, 1986. When Mr. Lustig subsequently learned of the adjournment, he was surprised at the length of the adjournment.

12. Effective January 1, 1986, respondent was assigned to the Criminal Court. Although it is rare for a judge assigned to Criminal Court to preside over a Civil Court landlord-tenant matter, the Randazzo case was assigned to respondent in Criminal Court.

13. On January 27, 1986, respondent presided over Randazzo in Criminal Court. Mr. Lustig was present, but Mr. Firestone was ill and was not present. Respondent adjourned the proceeding to February 24, 1986.

14. On February 24, 1986, respondent presided over Randazzo in Criminal Court. The attorneys for the landlord and tenant were present. Respondent adjourned the proceeding to March 13, 1986, after both attorneys agreed to adjourn the proceeding until that date.

15. On March 13, 1986, respondent presided over Randazzo in Criminal Court. Both attorneys were present. Respondent approved a stipulation whereby the parties agreed that enforcement of the judgment of possession would be stayed until October 31, 1986, and that the tenant would pay a monthly rent of \$2,250, effective April 1, 1986.

16. Respondent never informed the attorneys in Randazzo of his meeting with Mr. Esposito.

17. Respondent did not preside over the case after March 13, 1986.

As to Charge I of the Supplemental Formal Written Complaint:

18. On June 2, 1986, two FBI agents asked respondent whether he had met with Mr. Esposito on December 3, 1985, and, if so, whether the Randazzo case was discussed at the meeting. Respondent replied that he met with Mr. Esposito, but he falsely stated that he did not recall what was discussed at the meeting and that he did not discuss the Randazzo case or any case involving Mr. Esposito's friend.

19. Respondent lied when he told the FBI agents that he did not recall the subject of his conversation with Mr. Esposito and that he did not discuss the Randazzo case. At the time of his interview by the FBI agents, respondent recalled the conversation but lied to protect Mr. Esposito. Subsequently, respondent met with the FBI and made full disclosure of the facts of the meeting with Mr. Esposito.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint and Charge I of the Supplemental Formal Written Complaint, as amended by the agreed statement of facts, are sustained, and respondent's misconduct is established.

By telling Mr. Esposito that he would adjourn the Randazzo case, respondent intentionally conveyed the impression that the former political leader was in a special position to influence him, contrary to Section 100.2(c) of the Rules Governing Judicial Conduct. He engaged in an ex parte communication concerning a matter that he knew would come before him and discussed the merits of the case. He promised Mr. Esposito that his rulings would be based not on merit but on his allegiance and loyalty to the political leader. The discussion was not one merely about the scheduling of the case. The tenant was seeking a stay of eviction beyond the previously agreed-upon date. By agreeing to adjourn the case until the tenant could relocate, respondent was promising, in effect, to grant the relief that the tenant was seeking in the matter before him. Respondent has conceded that it was likely that Mr. Esposito reported respondent's promise to the tenant or the

tenant's attorney, a factor that plainly could have influenced further negotiations concerning the amount of rent during the holdover period.

Simply by making the promise, respondent conveyed the appearance that his decisions thereafter were influenced by Mr. Esposito's request. "To be sure, a Judge must view matters before him on their merits alone, without regard to public or professional disapproval. Moreover, a Judge must also avoid creating the appearance that he would decide a matter before him in any other manner." Matter of Cunningham v. State Commission on Judicial Conduct, 57 NY2d 270, 274-75 (1982). To create such an appearance has been called a "perversion of the judicial process...." Cunningham, supra (dissenting opinion at 276). Standing alone, this perversion of the judicial process warrants removal.

Respondent exacerbated his misconduct by lying to the FBI agents about his meeting with Mr. Esposito. His subsequent misgivings do not excuse the egregiousness of his initial misconduct. Deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554 (1986). One who gives false information or conceals information in order to obstruct the administration of justice or of government is not fit to hold judicial office. Matter of Greenfeld v. State Commission on Judicial Conduct, 71 NY2d 389

(1988); Matter of Bailey v. State Commission on Judicial Conduct, 67 NY2d 61 (1986); Matter of Fabrizio v. State Commission on Judicial Conduct, 65 NY2d 275 (1985); Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984); Matter of Boulanger v. State Commission on Judicial Conduct, 61 NY2d 89 (1984).

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

Mrs. Robb, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Kovner and Judge Ostrowski concur.

Judge Altman did not participate.

Judge Rubin and Mr. Sheehy 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 23, 1989


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