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

ANTHONY P. LoRUSSO,

a Judge of the Family Court, Erie 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 (John J. Postel and Jean M. Savanyu, Of Counsel) for the Commission

Phillips, Lytle, Hitchcock, Blaine & Huber (By Joseph V. Sedita; Walter S. Peake, Of Counsel) for Respondent

The respondent, Anthony P. LoRusso, a judge of the Family Court, Erie County, was served with a Formal Written Complaint dated July 8, 1991, alleging a course of offensive, undignified and harassing conduct toward some female employees in the court system. Respondent filed an answer dated July 31, 1991.

By order dated August 5, 1991, the Commission designated Paul A. Feigenbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law.

On November 29, 1991, respondent moved to dismiss specification 4(a) of Charge I and Charge II of the Formal Written Complaint. The administrator of the Commission opposed the motion by affirmation dated December 4, 1991. On December 10, 1991, respondent filed a memorandum in support of his motion, and the administrator filed a memorandum of law dated December 12, 1991. By determination and order dated December 19, 1991, the Commission denied respondent's motion.

A hearing was held on February 24 and 25, March 23, 24, 25 and 26 and May 27, 1992, and the referee filed his report with the Commission on December 10, 1992.

By motion dated December 21, 1992, the administrator moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on January 11, 1993. The administrator replied on January 19, 1993.

The parties appeared before the Commission on January 21, 1993, and the Commission adjourned oral argument. Respondent submitted additional papers on January 26 and February 4, 1993, and the administrator filed a reply to these papers on February 17, 1993.

On March 4, 1993, the Commission heard oral argument, at which respondent and his counsel appeared. Respondent made an additional submission by letter dated April 13, 1993. The

administrator replied by letter dated April 19, 1993. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent was a judge of the Erie County Family Court from January 1, 1990, to March 28, 1993. He was a judge of the Buffalo City Court from December 1975 through December 1989.

2. Between February 1978 and July 1989, respondent engaged in a course of offensive, undignified and harassing conduct toward some female employees in the Buffalo City Court, as specified in Paragraphs 3 through 33 herein. The allegation in Paragraph 4(c) of Charge I is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

3. In January 1976, Ms. A* was 19 years old and had recently graduated from stenographic school. On her third assignment for a court reporting service, she was sent to respondent's courtroom on a temporary basis. At the end of the day, respondent offered her a permanent job as his court reporter and secretary.

4. Ms. A, who lived with her parents and was described by respondent as a "young 19-year-old," consulted with her stenography teacher and her father. Her father called respondent

*For the purposes of this determination, the female court employees are being identified by letter only.

and announced, "We'll take the job." Ms. A understood that she served at respondent's pleasure.

5. In January 1978, when Ms. A was 21 years old and respondent was 37, respondent overheard Ms. A complain to other court employees that she felt bloated from overeating during the holidays. After the other employees left, respondent called Ms. A into his chambers and told her that he could check to see whether she was "retaining water." He directed her into his private bathroom in his chambers, told her to remove her pantyhose, lifted her skirt above her knees, pressed his fingers on her thighs, rubbed her legs and told her to get dressed.

6. A few weeks later, respondent suggested rechecking the "problem". He directed her to the bathroom to remove her pantyhose. Respondent touched her thigh, pulled down her underwear and touched her vagina. Ms. A said that she had never been touched there before. As respondent escalated his sexual activity with Ms. A, she was subjected to conduct with which she was totally unfamiliar.

7. About three weeks later, respondent called Ms. A into his chambers. She found him in the bathroom with his penis exposed. Respondent placed her hand on it and said that he would "teach" her.

8. In May or June 1978, respondent called Ms. A into his chambers, told her to take off her pantyhose and sit on a couch. He removed her underwear, rubbed her vagina and performed oral sex.

9. About two weeks later, respondent called Ms. A into his chambers, took her hand and placed it on his clothed crotch. He then exposed his penis and pushed Ms. A's head down toward it and had her perform oral sex.

10. A few weeks later, respondent again called Ms. A into chambers. He told her to sit on his desk. Her underclothes were removed, and respondent performed oral sex. He then told her to lie back on his desk and engaged in sexual intercourse with her.

11. Sometime before August 1978, respondent called Ms. A into chambers. Her underclothes were removed, and respondent administered an enema, rubbing her side and leg as he did so.

12. In July 1978, respondent called Ms. A into chambers and told her to go into the bathroom and remove her underclothes. He then engaged in anal intercourse with her. When she complained that he was hurting her, respondent stopped.

13. No further sexual contact took place between respondent and Ms. A. They continued to work together until November 1989.

14. Each of the sexual encounters took place near the end of the workday after court sessions had concluded. Respondent locked the doors to his chambers before each encounter. There was little, if any, conversation beyond respondent's directions to Ms. A. No romantic words were exchanged. She referred to respondent as "Judge" during the sessions and testified, "I did whatever he told me to do."

15. On several occasions Ms. A cried after leaving respondent and sometimes experienced physical discomfort during the activity and afterward. After each incident, she hoped the contact would end. Asked at the hearing whether she thought she would lose her job if she did not comply, she replied, "I didn't know what he could do. I didn't know if he could arrange for me to lose my job. I did not know."

As to Charge III of the Formal Written Complaint:

16. In April 1984, Ms. B, a Buffalo City Court clerk, attended a party of the Buffalo Police Department at the Peace Bridge Convention Center.

17. While Ms. B was talking with a group of people, respondent touched her buttocks. She turned around and said, "Don't do that." Respondent did not reply.

As to Charge IV of the Formal Written Complaint:

18. The charge is not sustained and is, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

19. During a morning court session in February 1989, Ms. C, a Buffalo City Court clerk, entered respondent's courtroom with some files. Ms. C was wearing leather slacks and a bulky sweater.

20. As she turned to leave the courtroom, respondent said, "Do you know what you do to men on the bus at night when you go home dressed that way? I bet that you're the reason why Jamie Brame did what he did." Ms. C understood Jamie Brame to be a defendant who had been charged with rape.

As to Charge VI of the Formal Written Complaint:

21. Ms. D, a court assistant in the Buffalo City Court, was assigned to respondent's courtroom from January 1988 to August 1989.

22. As respondent left the bench, he routinely passed behind Ms. D and rubbed his hands on her shoulders and back. There was sufficient room for respondent to walk behind Ms. D without touching her. As time went on, Ms. D pulled herself closer to her desk and began wearing extra shoulder pads. Respondent then began to move his hands down her back to the area of her bra when he touched her. Respondent would often put his face in Ms. D's hair and whisper, "Very good job, dear. See you tomorrow."

23. In January 1988, Ms. D was discussing back pain in Ms. A's office outside of respondent's chambers. Respondent came out of his chambers, told Ms. D that he knew about back pain, told her to turn around and placed his hands on her buttocks, using a description of an X-ray procedure as a pretext. Ms. D moved away from him.

24. In February 1988, respondent asked Ms. D whether she was dating someone and told her that, when she was first employed in the court, men lined up to date her.

25. In March 1988, respondent touched Ms. D's buttocks while they were riding in an elevator in the courthouse.

26. In June 1988, respondent told Ms. D that he had eaten some cookies that she had brought for a luncheon in honor of a court employee. Whispering in a sensual tone, respondent said, "I had an orgasm eating your cookies," which he described to Ms. D as "hard and crunchy on the outside, soft and creamy on the inside." Ms. D tried to end the conversation.

27. In June 1988, respondent said to Ms. D in a sensual tone, "Is that your smell? No, I know your smell."

28. On approximately 10 occasions while she worked in his courtroom, respondent called Ms. D into his chambers on a pretext and commented on her appearance, saying that she was "slender looking" and made comments about her black hosiery and leather clothing while looking her up and down.

29. In the summer of 1988, Ms. D was seated in Ms. A's office when respondent emerged from his chambers and whispered in her ear that he had been discussing with lawyers "delicious and delectable blow jobs." He was breathing heavily and kissed the top of Ms. D's head.

30. In May 1989, Ms. D went into respondent's chambers to leave some papers for him to sign. Respondent walked toward her with his arms outstretched, attempting to embrace her. Ms. D asked, "What are you doing?" and ran into Ms. A's adjoining

office. Respondent followed her, grabbed her and held her in place by the elbows. No one was in the office at the time. Respondent told Ms. D that she reminded him of a "cute nurse" who had recently given him a blood pressure test. Ms. D was frightened and shaken by the incident.

31. In July 1989, respondent entered the courtroom and again whispered in a sensual tone to Ms. D that he had been discussing "delicious and delectable blow jobs" with attorneys in his chambers.

32. In the summer of 1989, respondent asked Ms. D about the procedures for a CAT scan of her sinuses. When she described lying face down, respondent asked, "Did your boobs hurt?"

33. On August 2, 1989, during a break in courtroom proceedings, respondent placed some envelopes near Ms. D. While stroking the seal of an envelope with his finger, he asked Ms. D to lick the envelopes for him. He said, "I heard you're really good at this. Let me see your tongue." When he repeated the last sentence, Ms. D said, in disbelief, "Excuse me?" Ms. A, several litigants and at least one attorney were in the room at the time.

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(a) and 100.3(a)(3), and Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. Charges I, II, III, V and VI of the Formal Written

Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Charge I, Paragraph 4(c), and Charge IV are dismissed.

Respondent engaged in a course of offensive, undignified and harassing conduct in which he subjected subordinate women in the court system to uninvited sexual activity, touching and crude and suggestive comments. He also took advantage of his superior position as a judge and employer in a series of sexual encounters with his young court reporter and secretary who was unsophisticated, sexually inexperienced and submissive.

"Sexual harassment in the work place is among the most offensive and demeaning torments an employee can undergo...." (Petties v State Department of Mental Retardation and Developmental Disabilities, 93 AD2d 960, 961). An employer can "implicitly and effectively make the employee's endurance of sexual intimidation a 'condition' of her employment. The woman then faces a 'cruel trilemma.' She can endure the harassment. She can attempt to oppose it, with little hope of success, either legal or practical, but with every prospect of making the job even less tolerable for her. Or she can leave her job, with little hope of legal relief and the likely prospect of another job where she will face harassment anew." (Bundy v Jackson, 641 F2d 934, 946).

A woman who does not protest does not necessarily acquiesce. There is a "power imbalance between employer and employee that often makes a worker in need of her job feel she must swallow such indignities.... The employee suddenly finds herself treated not as a worker, but rather as a sexual being; yet the advances take place in the context of a work interaction, where the employer-employee relationship limits the acceptable responses. She may well become angry and wish to lash out, yet she reasonably fears adverse job consequences if she protests, even though no such overt threat is made." (Rudow v New York City Commission on Human Rights, 123 Misc2d 709, 713, affd 109 AD2d 1111, lv denied 66 NY2d 605). Respondent never explicitly told the women who were subjected to his unwelcome conduct that their jobs were at stake but there was always the implicit threat that a person in his position could impair their job security. Ms. D endured such indignities for 19 months. She was repeatedly and persistently touched by respondent as he was leaving the courtroom. He repeatedly leered at her and made suggestive comments about her appearance. He often nuzzled her and whispered in a sensual tone. He made crude comments in the presence of others, and twice he touched her on the buttocks.

By her conduct and words, Ms. D made it clear that respondent's attentions were "unwelcome." (See, Meritor v. Vinson, 477 US 57, 68; Rules of the Equal Employment Opportunity Commission, 29 CFR 1604.11[a]). In an effort to avoid his touching, she was forced to adjust her manner of dress and to

attempt to move away from him. She tried to end the conversation when he made crude remarks, made clear that she did not want him to embrace her and expressed disbelief when he made crude suggestions about her tongue. Respondent's uninvited touching of Ms. B at a function outside of the courthouse and his comment in the courtroom to Ms. C, implying that her appearance might incite rape, were also inappropriate and undignified. (See, Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87; Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135). These actions alone establish a pattern of conduct prejudicial to the administration of justice warranting removal from office.

Moreover, under the circumstances of this case, we conclude that respondent's sexual encounters with Ms. A constitute misconduct. By his own admission, Ms. A was an immature 19 year old when he gave her a job as his court reporter and secretary. The record demonstrates that she was still unworldly, docile and submissive two years later when respondent directed her in a series of passionless sexual experiments in his locked chambers over an eight-month period. Ms. A was not a minor; she did not object or complain. But respondent knew that she owed him her job and that she was sexually inexperienced. The first time that he touched her intimate parts, she told him that she had never been touched there before; in their next encounter, he told her that he would "teach" her what to do. As throughout the rest of the workday, respondent gave the orders, and Ms. A complied.

He took advantage of her innocence, her submissive nature and her inferior position in the workplace to subject her to a series of sexual indignities. Once he learned that she would submit without protest, he escalated the nature of the activity in each successive encounter.

Failure to protest or complain at the time does not mean that Ms. A consented to the contact. Respondent was a judge and her boss and had given her a job that was important to her and her family. It is understandable and believable that she summoned the fortitude to come forward only after she was no longer working for respondent, knew that Ms. D had made allegations against him and that the Commission was investigating him. While there is some difference in the details of what happened, respondent does not deny that he was intimate with Ms. A. The record amply supports the referee's finding that Ms. A's version of the events was more credible than respondent's. Sexual activity is by its nature private and therefore lack of corroboration does not require us to disbelieve Ms. A.

We do not hereby make a per se finding that sexual contact between a judge and employee is intimidating and harassing solely because of the disparity in power between the actors. The totality of the circumstances here however, requires a finding of misconduct as to Ms. A. Her situation is not a case of two consenting adults involved in a dalliance. Rather, the chronology of events and activity indicates its one sidedness and oppressiveness.

Respondent used female court employees to satisfy his sexual desires and fantasies. This constituted a gross abuse of his power as a judge and damaged public confidence in the integrity of the judiciary. Female employees were repeatedly subjected to humiliating and unwanted verbal and physical abuse. Even if respondent did not have direct responsibility for hiring and firing, as a judge he was an intimidating figure. Some women nevertheless protested his conduct. Others felt compelled to endure his improper behavior in silence.

"A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." (Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469).

This is not respondent's first abuse of his authority as a judge. He was previously censured for seeking to obtain the release of a defendant from jail earlier than scheduled as a favor to the defendant's father. (Matter of LoRusso, 1988 Ann Report of the NY Commn on Jud Conduct, at 195).

We have considered respondent's arguments concerning improper investigation methods by staff and bias on the part of the referee and find them without merit.

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

This determination is rendered pursuant to Judiciary Law §47 in view of respondent's resignation from the bench after oral argument before the Commission but prior to decision.

Mr. Berger, Judge Altman, Ms. Barnett, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Mr. Sheehy concur as to sanction.

Mrs. Del Bello dissents only as to Paragraph 4(c) of Charge I and as to Charge IV and votes that those allegations be sustained.

Mr. Goldman and Judge Salisbury dissent only as to Paragraph 4(a) of Charge I and as to Charge II and vote that those allegations be dismissed.

Judge Thompson dissents as to Paragraph 4(a) of Charge I and as to Charge II and votes that those allegations be dismissed and dissents as to sanction and votes that respondent be censured.

Mr. Bellamy 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: June 8, 1993

Henry T. Berger

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

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 P. LoRUSSO,

a Judge of the Family Court, Erie County.

OPINION BY
MRS. DEL BELLO,
DISSENTING IN PART

I concur with the majority's findings that respondent engaged in judicial misconduct with respect to Ms. A, Ms. B, Ms. C and Ms. D and that he should be removed from office.

I write separately because I would also sustain the allegations of paragraph 4(c) of Charge I and of Charge IV, both involving Ms. E.

The record amply demonstrates that respondent met Ms. E, a court assistant whom he had known for several years, in an elevator on their way to a ceremony in the courthouse. Respondent attempted to introduce Ms. E to someone but found that he could not remember her name. They met at a reception after the ceremony. Respondent apologized for forgetting her name and, staring directly at her chest, said that he was "just so overwhelmed by your attributes in that dress that I couldn't help myself." Ms. E was shocked, angry and upset and immediately left the party.

These facts were found by the referee and are supported by the proof, and I do not find them de minimus. This is demeaning and undignified conduct for any man in any setting. Women should not be subjected to leering and suggestive remarks about their anatomy. It is especially improper for a judge, and I feel that it is an important part of the pattern of offensive, undignified and harassing conduct displayed by this respondent.

I would sustain the allegations of paragraph 4(c) of Charge I and of Charge IV.

Dated: June 8, 1993

Dolores Del Bello, Member
New York State
Commission on Judicial Conduct

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 P. LoRUSSO,

a Judge of the Family Court, Erie County.

OPINION BY MR. GOLDMAN, DISSENTING IN PART

Like my colleague Justice Thompson, I am troubled by the Commission's reliance in Charge II upon the largely uncorroborated and strongly disputed testimony of a single witness concerning events 14 years earlier in an area of memory susceptible to fallible or distorted retrospection. Since the burden of proof on Commission staff is merely to prove facts "by a preponderance of the evidence" (22 NYCRR 7000.6[i][1]) and not by a greater standard, however, I accept the factual findings in the majority's determination with respect to the sexual activity between respondent and Ms. A (paragraphs 3-15). Nonetheless, I disagree with the majority's conclusion that this sexual activity constituted judicial misconduct and, therefore, concur in the dissenting opinion of Judge Salisbury.

In 1978, over a period of approximately seven months, respondent--then a judge, 37 years old and married--and Ms. A--then his court reporter/secretary, 21 years old and single--at respondent's initiation, engaged in various sexual acts, some unconventional, in respondent's chambers. Respondent never in any way communicated to Ms. A that her court position

would be at all affected if she did not consent to sexual activity with him. Conversely, Ms. A never in any way communicated or indicated to respondent that his advances were unwelcome or that she preferred not to engage in sexual activity with him. Rather, the evidence--even accepting in full Ms. A's factual recitation and discrediting respondent's testimony--reveals that she was a willing, albeit passive and inexperienced, participant in the sexual activity initiated by respondent.

The majority finds that respondent "took advantage" of Ms. A's "innocence, her submissive nature and her inferior position in the workplace." However, literature, media and life experience teach us that many sexual relationships occur between partners of different experience, opposite personalities, and unequal station. Whatever my personal feelings about respondent's behavior, absent evidence of coercion or promise of reward, I do not find misconduct from a sexual relationship between two consenting adults in private--regardless of the relative positions, ages or marital status of the participants, the degree of passivity or enthusiasm of one of the partners, or the choice of sexual activity.

I do, however, join in the majority's determination finding misconduct as to Charges III, V and VI and also Charge I, except as it relates to the relationship with Ms. A. Unlike the situation involving Ms. A, who consented to respondent's requests beginning with his initial approach, respondent's actions, particularly in Charge VI, with respect to Ms. D, constitute a

continued pattern of unwelcome and deplorable sexual harassment, both physical and verbal.

In view of respondent's resignation from the bench, the Commission is limited either to a determination of removal from office or dismissal of the complaint. (Judiciary Law §47). Given that choice, and in view of respondent's serious misconduct and his prior censure by this Commission, I without hesitation join the majority in voting for removal.

Dated: June 8, 1993

Lawrence S. Goldman, Esq., Member
New York State
Commission on Judicial Conduct

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 P. LoRUSSO,

a Judge of the Family Court, Erie County.

OPINION BY
JUDGE SALISBURY
IN WHICH
MR. GOLDMAN JOINS,
DISSENTING IN PART

I find that I cannot agree with the majority of my colleagues with respect to Charge II. The activity involved in that charge persisted over many months. There was no objection, no protestation and no complaints. There were no threats of reprisal of any nature by respondent. Indeed, in her testimony years later, Ms. A gave no indication that she was offended. Her only comment was, "I did whatever he told me to do." While the totality of the conduct may be sordid and reprehensible, the question presented here is judicial misconduct. Having taken the first step without rebuke or even protest, respondent moved to the second step, again, without rebuke or protest. And so it went for months.

Counsel for the Commission conceded on oral argument that there was no coercion, no allegation of criminal conduct and indeed, that the episodes were consensual. This Commission has clearly indicated that a sexual relationship between a judge and

a court employee is not, per se, judicial misconduct. (Matter of Gelfand, 1988 Ann Report of NY Commn on Jud Conduct, at 165, 171; accepted, 70 NY2d 211). On the evidence in this case, I am not prepared to alter that perspective.

Again, in her testimony, long after the relationship had ended, Ms. A made no complaint, indicated that her relationship with respondent was friendly and included a number of social events with family. She offered, on questioning about fear of job loss or other reprisal, only that she did not know what respondent could do. While I may have very strong feelings about respondent's conduct, I do not find judicial misconduct with respect to Charge II. This dissent, of course, is applicable to that part of Charge I which embraces the allegations of Charge II.

In all other respects, I concur with the majority opinion, including sanction.

Dated: June 8, 1993

Hon. Eugene W. Salisbury, Member
New York State
Commission on Judicial Conduct

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 P. LoRUSSO,

DISSENTING OPINION BY JUDGE THOMPSON

a Judge of the Family Court, Erie County.

I concur in the dissent of Judge Salisbury insofar as it concludes that the relationship between respondent and Ms. A was consensual and, therefore, that Charge II fails to establish judicial misconduct. I write separately, however, to briefly add my own observations to those made by Judge Salisbury and to further indicate my disagreement with the majority's decision to impose the extreme sanction of removal.

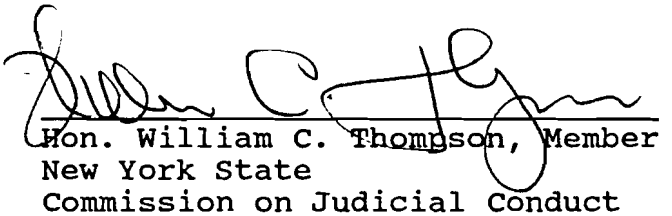
The evidence adduced in connection with Charge II establishes a course of voluntary and consensual conduct which first commenced some 11 years before Ms. A terminated her employment with respondent in 1989. During the lengthy period of time which followed the alleged misconduct, Ms. A registered no objection to respondent's behavior and, significantly, continued in his employ for many years without further incident or complaint of sexual harassment or coercive conduct.

Although the clear inference to be drawn from the evidence is that of mutual consent, the majority nevertheless premises its conclusions of impropriety in large part upon the highly subjective characterization that Ms. A was "docile, unworldly and immature." I cannot subscribe to the majority's analysis, especially in light of the extreme staleness of the charges involved.

Allegations whose reliability has been eroded by the passage of over a decade, and further diluted by a subsequent course of conduct which belies the inference of misconduct, should be carefully reviewed and subjected to a particularly heightened degree of scrutiny. When measured against this evidentiary yardstick, the proof adduced falls short of credibly establishing the existence of judicial misconduct. Subjectively fashioned judgments about an individual's purported unworldly or docile personality constitute an unacceptably slender reed upon which to rest the conclusions of serious misconduct reached by the majority in this case. Moreover, the evidence reveals that Ms. A was a 21-year-old adult when the conduct in question took place and that she worked with respondent until she was 30 years of age, circumstances which belie the assertion that the absence of complaints can be reasonably attributed to her alleged immaturity and youth. Accordingly, I vote to dismiss Charge II.

But for respondent's resignation, which removes him from the bench, I feel the appropriate sanction would have been censure.

Dated: June 8, 1993



Hon. William C. Thompson, Member
New York State
Commission on Judicial Conduct