

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

PAUL McGEE,

a Justice of the Peru Town
Court, Clinton County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Albert B. Lawrence,
Of Counsel) for the Commission

O'Connell and Wolfe (By Louis E. Wolfe
and Lois McS. Webb) for Respondent

The respondent, Paul McGee, a justice of the Peru Town Court, Clinton County, was served with a Formal Written Complaint dated January 7, 1982, alleging inter alia that over a two-year period he engaged in a course of conduct prejudicial to the administration of justice, in that he denied defendants certain fundamental rights. Respondent filed an answer dated January 18, 1982.

By order dated January 29, 1982, the Commission designated the Honorable James A. O'Connor as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 19, 29, 30 and 31 and April 21, 1982, and the referee filed his report with the Commission on September 10, 1982.

By motion dated October 15, 1982, the administrator of the Commission moved to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be removed from office. Respondent opposed the motion in papers dated November 1, 1982. The Commission heard oral argument on the motion on November 29, 1982, at which respondent appeared by counsel, 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. From February 1979 through January 1981, respondent engaged in a course of conduct prejudicial to the administration of justice by failing to advise defendants in criminal cases of their rights, including: the right to counsel; the right to communicate with someone by letter or telephone, free of charge, for the purpose of obtaining counsel; the right of indigent defendants to have counsel appointed for them; the right to an adjournment to obtain counsel; the right to pretrial hearings in

felony cases; and the right to trial by jury in misdemeanor and felony cases. Respondent failed both to accord to defendants the opportunity to exercise their rights and to take the affirmative actions necessary to effectuate those rights, contrary to the requirements of law.

2. Respondent failed to give defendants copies of accusatory instruments.

3. Respondent abused the bail process by using it to coerce guilty pleas.

4. Respondent made improper inquiries of defendants in open court concerning pending charges, and he improperly elicited potentially incriminating statements from them.

5. Respondent engaged in ex parte discussions concerning cases pending before him.

6. Respondent conveyed the impression that he was prejudiced against defendants in his court and that he believed them to be guilty.

7. In some cases, respondent coerced or attempted to coerce defendants into pleading guilty. In other cases, respondent entered pleas of guilty to criminal charges without asking defendants how they pled and without their telling him they chose to plead guilty.

8. Respondent reported to government agencies that defendants had been convicted of various crimes, notwithstanding that the defendants had never received a trial or pled guilty to any crime.

As to Charge II of the Formal Written Complaint:

9. On October 25, 1979, respondent signed a warrant for the arrest of Helen Kellas, charging her with theft of services, a class A misdemeanor.

10. The information, upon which the warrant was issued, had been prepared by a member of the New York State Police and alleged that the defendant had paid by personal check for repairs to a saw, and that she subsequently stopped payment on the check.

11. When the defendant was brought before him, respondent failed to advise her of her right to counsel. When the defendant asked him if she should get a lawyer, respondent replied: "if you want, but it will be costly."

12. Respondent failed to give the defendant a copy of the accusatory instrument.

13. Respondent informed the defendant that the complaining witness had indeed performed the repair services and was entitled to be paid for his labor.

14. Respondent informed the defendant that if she did not plead guilty she could be incarcerated "immediately".

15. Respondent informed the defendant after she pled guilty that she would have "a record" but that it did not "mean anything".

16. After the defendant had entered a plea of guilty and made restitution, the respondent entered a conviction to the

charge on his records and reported it to the Division of Criminal Justice Services.

As to Charge III of the Formal Written Complaint:

17. On September 26, 1979, Donald J. Shappy was brought before respondent on a charge of harassment, a violation.

18. Respondent failed to give the defendant a copy of the information and failed to advise him that he had a right to counsel.

19. Respondent failed to enter a plea of "not guilty" on behalf of the defendant after the latter repeatedly stated that he was not guilty of the charge.

20. Respondent signed a commitment order sentencing the defendant to 30 days in jail unless a fine of \$250.00 was paid.

21. Respondent entered in his records a conviction on the charge, even though the defendant did not plead guilty and was not afforded a trial.

As to Charge IV of the Formal Written Complaint:

22. On August 22, 1979, Beverly M. Gannon was brought before respondent on a charge of petit larceny, a misdemeanor. The defendant was alleged to have left a supermarket without paying for a carton of cigarettes.

23. Respondent failed to ask the defendant to enter a plea to the charge. After an ex parte conference with the arresting

officer, respondent informed the defendant she must pay a \$25 fine.

24. Respondent entered a conviction on the petit larceny charge in his criminal docket and reported the conviction to the authorities, notwithstanding that no trial had been held and the defendant had not pled guilty.

As to Charge V of the Formal Written Complaint:

25. The charge was withdrawn at the hearing and therefore is not sustained.

As to Charge VI of the Formal Written Complaint:

26. On December 6, 1980, Patricia Burl was brought before respondent on a charge of third degree assault, a class A misdemeanor, resulting from an altercation she had had with Laurie Bouyea.

27. The defendant entered a plea of not guilty and told respondent she had acted in self-defense. Respondent ignored her explanation and said: "I saw Laurie Bouyea's eye and you're twice the size she is."

28. Respondent asked the defendant whether she had bail money. On learning that she did not, respondent informed her she would have to be incarcerated in lieu of bail for six days.

29. When the defendant demanded a trial by jury, respondent replied that whether or not she had a jury trial was entirely up to him.

30. Respondent told the defendant that when she returned to court, she was not to bring a lawyer.

31. After the arraignment, the defendant telephoned respondent and asked for clarification on whether she was entitled to be represented by counsel. Respondent again told her not to bring an attorney to court. Respondent also again told her that it was up to him whether she had a jury trial.

As to Charge VII of the Formal Written Complaint:

32. On February 15, 1978, Anthony Jacques was charged with petit larceny, a class A misdemeanor, for allegedly failing to pay for a pair of boots. He was arraigned before respondent on the same date.

33. At the arraignment, respondent failed to give the defendant a copy of the accusatory instrument, failed to advise the defendant of his rights and failed to ask the defendant to enter a plea to the charge. After an ex parte conference with the arresting officer, respondent told the defendant he had a choice between paying a \$50 fine or spending 25 days in jail. Respondent signed a commitment order sentencing the defendant to jail unless the fine was paid.

34. Respondent entered a conviction to the charge in his records and reported the conviction to the appropriate authorities, notwithstanding that no trial had been held and the defendant had not pled guilty.

As to Charge VIII of the Formal Written Complaint:

35. On February 16, 1980, in People v. Richard Test, in which the defendant was charged with class A misdemeanors of driving while intoxicated and unauthorized use of a motor vehicle, respondent conducted a proceeding, found the defendant guilty of the latter charge and sentenced him to jail for five days, notwithstanding that the defendant was visibly intoxicated. Respondent's docket as to the driving while intoxicated charge indicates the following: "2/19/80 Y.O. Released on time served."

As to Charge IX of the Formal Written Complaint:

36. On June 19, 1980, Michael Alexander, age 18, was charged with criminal mischief, 4th degree, a class A misdemeanor, and with two charges of harassment.

37. Respondent failed to advise the defendant of his right to counsel, and he failed to give the defendant a copy of the accusatory instruments.

38. Prior to asking the defendant for his plea to the charges, respondent asked the defendant if he had jumped on the hood of the car involved in the alleged incident underlying the charges, and if he had struck the occupants of the car. Respondent then refused to listen to the defendant's explanation as to what had occurred and admonished him to be quiet.

39. The defendant pled guilty, and respondent sentenced him to \$50 or ten days in jail.

As to Charge X of the Formal Written Complaint:

40. On September 16, 1979, in People v. Helen Macey, in which the defendant was charged with harassment, a violation, for allegedly using abusive language to a trooper, respondent failed to give the defendant a copy of the accusatory instrument, failed to advise her of her rights and failed to ask her to enter a plea to the charge. After an ex parte conference with the arresting officer, respondent told Ms. Macey that she was guilty and the fine would be \$50. He accepted a personal check from her in payment of the fine and entered a conviction to the charge in his records, notwithstanding that no trial had been held and the defendant had not pled guilty.

41. Thereafter, respondent was advised that a stop-payment notice had been placed on Ms. Macey's check. On September 26, 1979, respondent issued warrants for Ms. Macey's arrest on charges of obstructing governmental administration and criminal contempt.

42. At the arraignment of Ms. Macey on the new charges, respondent failed to give the defendant a copy of the accusatory instrument, failed to advise her of one of the charges against her (obstructing governmental administration), failed to advise her of her rights and failed to ask her to enter a plea to the charges. When Ms. Macey stated that she had not stopped payment on the check, respondent said that she had stopped payment and

was guilty. Respondent then imposed a sentence of a \$50 fine or five days in jail, signed a commitment order and reported a conviction to the Division of Criminal Justice Services on the bad check charge, notwithstanding that no trial had been held and the defendant had not pled guilty.

As to Charge XI of the Formal Written Complaint:

43. The charge is not sustained.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.3[a][1] and 33.3[a][4]) and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I through IV and Charges VI through XI of the Formal Written Complaint are sustained and respondent's misconduct is established. Charges V and XI of the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent has engaged in a course of conduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought disrepute to the judiciary and has irredeemably damaged public confidence in the integrity of his court.

The record reveals that respondent routinely denied defendants of their constitutional and statutory rights by failing to advise them of the right to counsel, the right to pre-trial hearings and the right to trial by jury. He failed to give defendants the accusatory instruments upon which the prosecutions against them were based. He coerced guilty pleas. He entered guilty pleas against defendants who had neither pled guilty nor stood trial. Often he did so after conducting improper ex parte conferences with the arresting officers.

Respondent has distorted the legal process in his court beyond recognition. He has routinely and deliberately conducted himself as one predisposed toward the prosecution.

Although ignorance of the law would be no excuse, we note that respondent's knowledge and awareness of the applicable law are not at issue. The record reveals that in some cases that came before him, respondent indeed advised defendants of their rights, as required.

No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who disregards due process. Respondent's conduct has revealed an egregious misapplication of judicial power and a fatal misunderstanding of the role of a judicial officer. He is not fit to serve as judge.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur, except for Judge Rubin, who 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: January 21, 1983


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