

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

PATRICK J. McGRATH,

a Judge of the County Court,
Rensselaer County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Kathryn J. Blake, Of Counsel) for the
Commission

Anderson, Moschetti & Taffany, PLLC (by Peter J. Moschetti, Jr.)
for Respondent

The respondent, Patrick J. McGrath, a judge of the County Court,
Rensselaer County, was served with a Formal Written Complaint dated July 1, 2004,

containing one charge.

On August 31, 2004, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On September 23, 2004, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Rensselaer County Court since 1994 and was re-elected to a ten-year term on November 4, 2003.
2. Between May 12, 2003 and September 4, 2003, respondent presided over a highly publicized murder trial, *People v. Christine Wilhelm*. Respondent was a candidate for re-election in that time period.
3. In the course of the *Wilhelm* trial, several days were devoted to hearings regarding the admissibility of certain evidence relevant to the defendant's assertion of an insanity defense. Respondent ruled against the defendant on this issue; the evidence was not suppressed and was presented to the jury.
4. On July 9, 2003, the defendant was found guilty. Immediately following the announcement of the guilty verdict, defense counsel told reporters at the back of the courtroom that respondent's suppression ruling "was flat-out wrong" and cost his client her freedom.

5. Thereafter, on July 9, 2003, reporters questioned respondent at the courthouse about the defense attorney's statement that the suppression ruling "was flat-out wrong." Respondent replied and was quoted in local newspapers as stating, "I'm comfortable with my decision." Respondent believed that his statement was in response to a personal attack on his judicial record, and therefore permissible under Section 100.5(A)(4)(e) of the Rules Governing Judicial Conduct ("Rules") because he was a candidate for public office.

6. On September 3, 2003, respondent sentenced defendant Christine Wilhelm to the maximum term allowed, 50 years to life in prison. Later that day, respondent was shown on several news broadcasts in the Albany/Rensselaer area, making a statement on the bench during sentencing in which he said, *inter alia*, that he had "no room for mercy" for the defendant.

7. On September 4, 2003, respondent appeared on the nationally televised program "Good Morning America." Excerpts from the sentencing in the *Wilhelm* trial were shown, including respondent's graphic description of the crime and his statement from the bench that he had "no room for mercy." The following interview occurred and was broadcast:

Interviewer: I was curious about something you said... I'm curious about what you meant. Are you saying that the law *required* that sentence, or, having sat through the trial, you *feel* no mercy for this woman?

Respondent: I felt no mercy for her, after listening to the testimony, and the horror and – that she put Peter through and Luke through – I didn't feel

as though mercy was – should have been shown in this case. It was my personal choice.

- Interviewer: When you cover a trial, and as a reporter, I've covered many, you almost sit there and you wonder, "what is the judge thinking," and this one obviously got to you.
- Respondent: This was a very emotional trial. At the end of the day I was physically and emotionally drained. I've sat through many murder trials, but this was probably the worst.
- Interviewer: The defendant in this case tried the insanity defense, which the jury rejected, but any doubt, in your mind, that she suffers from mental illness?
- Respondent: There's no doubt, I don't think in anyone's mind, that she suffers from a mental illness, but the issue was did that mental illness prevent her from knowing the nature and consequences of her act, or that they were wrong?
- Interviewer: And you're convinced she knew both – the consequences and that it was wrong?
- Respondent: Well, it wasn't my decision. The jury was convinced that she didn't meet her burden of proof and in New York the burden is on the defendant to prove the insanity defense.
- Interviewer: Is there any thought in your mind that perhaps she belongs in a hospital and not in a jail?
- Respondent: Not based upon the jury verdict. I have to accept the verdict as it's delivered, and the law requires that I treat this defendant the same way I would any other defendant convicted of a crime.
- Interviewer: But I heard you say earlier, given the fact that you really felt no mercy, going through the

horror of this crime as you watched it, that you think that jail is the appropriate place for her to be?

Respondent: I do.

8. At the time respondent made the comments set forth in paragraph 7 above, he knew or should have known that an appeal would likely ensue and that the subjects discussed could be raised in such an appeal. Notice of Appeal was filed in *Wilhelm* on September 10, 2003.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(B)(8) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above facts, and respondent's misconduct is established.

It is improper for a judge to make "any public comment about a pending or impending proceeding" (Section 100.3[B][8] of the Rules Governing Judicial Conduct; *Matter of McKeon*, 1999 Annual Report 117 [Comm. on Judicial Conduct]). "The rule is clear and unequivocal and makes no exception...for explanations of a judge's 'decision-making process.'" *Matter of O'Brien*, 2000 Annual Report 135, 137 (Comm. on Judicial Conduct).

Since the defendant's appeal of her conviction was likely, respondent's comments even after imposing sentence were impermissible and could compromise the

proper administration of justice.

By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Goldman, Judge Ciardullo, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Judge Luciano, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: November 12, 2004

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", is written over a horizontal line.

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