

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

DAVID W. PETRIE,

a Justice of the Town Court of
Danube, Herkimer County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the
Commission

David W. Petrie, Respondent Pro Se

The respondent, David W. Petrie, a justice of the Town
Court of Danube, Herkimer County, was served with a Formal
Written Complaint dated July 8, 1980, alleging various acts
of misconduct with respect to court funds entrusted to his care.
Respondent did not file an answer.

By motion dated October 3, 1980, the administrator of
the Commission moved for summary determination, pursuant to Section

7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent submitted a letter in response to the motion.

The Commission granted the administrator's motion, found respondent's misconduct established and set the matter down for oral argument on the question of sanction. The administrator filed a memorandum. Respondent did not. Oral argument was waived.

The Commission considered the record of this proceeding on December 18, 1980, and makes the following findings of fact.

1. Between January 1, 1976, and December 31, 1978, respondent failed to deposit in his court account money received in his official capacity within 72 hours of receipt as required by Section 30.7 of the Uniform Justice Court Rules.

2. Between January 1, 1976, and December 31, 1978, respondent's court account was deficient by an average of \$4,813, with the deficiency totaling as much as \$9,860 in one month, as detailed in Schedule A appended hereto.

3. Respondent's practice was to keep in a box in his home, for an indeterminate period of time, the money he received in his official capacity, prior to depositing it in his official court account.

4. Respondent alleges that on September 6, 1976, his home was burglarized and that the only item stolen was the box containing court money. Respondent had not kept records of the money he kept in the box and so could not account for the actual

amount allegedly stolen, though he indicated the figure was approximately \$2,500.

5. Between October 1976 and March 1977, respondent made six deposits in his official court accounts, including \$17,937 from more than 213 checks issued prior to the date of the alleged burglary. Respondent stated that at the time of the alleged burglary, the additional checks were probably in envelopes on top of the desk from which the box was stolen.

6. Notwithstanding the alleged theft of court funds from the box in his home on September 6, 1976, respondent allowed at least 285 checks totaling \$6,220 in fines to accumulate in his home throughout the remainder of September 1976, as detailed in Schedule B appended hereto. Some of these checks were not deposited in respondent's official court account for up to six months thereafter.

7. Between April 1978 and September 1978, respondent accumulated in his home at least 30 checks in payment of fines totaling \$977, as detailed in Schedule C appended hereto. In September 1978 respondent's overall court account deficit was \$2,601.

8. To date, respondent's court accounts remain unreconciled.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial

Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent has been more than simply careless in his handling of public money entrusted to his care. His failure to make timely deposits of official funds resulted in an average monthly deficiency of \$4,813 over a three-year period. His allowing thousands of dollars in court funds to accumulate in his home for months at a time, unrecorded and unprotected, is utterly without justification. We do not credit respondent's explanation that a burglary of his home resulted in the disappearance of a substantial amount of court funds since the record establishes that respondent subsequently deposited a number of checks issued prior to the theft. His complete failure to account properly following the purported burglary, as well as his failure to reconcile his court accounts to date, are evidence either of respondent's unwillingness or inability to discharge the responsibilities of judicial office.

Respondent's gross neglect of these fiduciary obligations is serious misconduct. In Bartlett v. Flynn, 50 AD2d 401 (4th Dept 1976), app dismissed 30 NY2d 942 (1976), a judge was removed from office for "the careless manner in which he handled funds entrusted to his care and the disdain he demonstrated, not only for statutory record keeping, but also for deposit and remittance requirements."

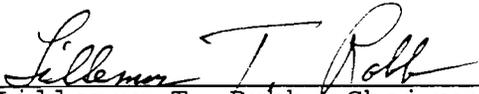
By reason of the foregoing, the Commission determines that the appropriate sanction is removal.

All concur.

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 18, 1981
Albany, New York


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

SCHEDULE A

	<u>Receipts A&C</u>	<u>Payments A&C</u>	<u>Balance At Month's End Should Have Been</u>	<u>Balance At Month's End Was At Least</u>	<u>Approx. Deficiency</u>
October, 1975	\$ 1,405		\$ 1,405		
November, 1975	3,810		5,215	\$ 7,907	
December, 1975	2,213		7,428	1,610	\$ 5,818
January, 1976	2,135		9,563	1,610	7,953
February, 1976	2,300	\$ 5,215 (Oct, Nov)	6,648	2,758	3,890
March, 1976	1,140		7,788	2,673	5,115
April, 1976	1,320		9,108	5,448	3,660
May, 1976	3,240		12,348	7,283	5,065
June, 1976	1,415		13,763	6,468	7,295
July, 1976	2,070		15,833	9,863	5,970
August, 1976	2,875	11,028 ~ (Dec, Jan, Feb, March, May)	7,680	1,160 -	6,520
September, 1976	2,840		10,520	660	9,860
October, 1976	745	2,735 (April, June)	8,530	955	7,575
November, 1976	230		8,760	5,155	3,605
December, 1976	380	4,945 (July, Aug)	4,195	2,105	2,090

SCHEDULE A--continued

	<u>Receipts A&C</u>	<u>Payments A&C</u>	<u>Balance At Month's End Should Have Been</u>	<u>Balance At Month's End Was At Least</u>	<u>Approx. Deficiency</u>
January, 1977	\$ 4,220	\$ 1,355 (Oct, Nov, Dec)	\$ 7,060	\$ 920	\$ 6,140
February, 1977	2,435	4,220 (Jan)	5,275	1,490	3,785
March, 1977	2,565	2,435 (Feb)	5,405	3,138	2,267
April, 1977	2,870	2,565 (March)	5,710	738	4,972
May, 1977	1,810		7,520	3,234	4,286
June, 1977	2,510	2,870 (April)	7,160	4,034	3,126
July, 1977	3,232		10,392	4,324	6,068
August, 1977	2,560	1,810 (May)	11,142	3,559	7,583
September, 1977	2,465	2,510 (June)	11,097	4,319	6,778
October, 1977	1,845	8,257 (July, Aug, Sept.)	4,685	69	4,616
November, 1977	2,120		6,805	2,543	4,262
December, 1977	1,080	1,845 (Oct.)	6,040	2,414	3,626
January, 1978	2,225	2,120 (Nov.)	6,145	2,415	3,730
February, 1978	1,385	1,080 (Dec.)	6,450	703	5,747
March, 1978	800	2,225 (Jan.)	5,025	542	4,483
April, 1978	849	1,385 (Feb.)	4,489	2,857	1,632

SCHEDULE A--continued

	<u>Receipts A&C</u>	<u>Payments A&C</u>	<u>Balance At Month's End Should Have Been</u>	<u>Balance At Month's End Was At Least</u>	<u>Approx. Deficiency</u>
May, 1978	\$ 1,700	\$ 800 (March)	\$ 5,389	\$ 2,823	\$ 2,566
June, 1978	2,752	849 (April)	7,292	2,803	4,489
July, 1978	1,235		8,527	2,803	5,724
August, 1978	2,337	1,700 (May)	9,164	3,068	6,096
September, 1978	3,186	6,324 (June, July, August)	6,026	3,425	2,601
October, 1978	1,413		7,439	4,150	3,289
November, 1978	599		8,038	3,145	4,893
December, 1978	1,220	4,599 (Sept., Oct)	4,659	1,960	2,699
January, 1979	1,503	599 - (Nov.)	5,563	1,248 -	4,315
February, 1979	1,099	1,220 (Dec.)	5,442	1,923	3,519

SCHEDULE B

Checks Deposited
on October 4, 1976

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
6/28/76	Barbara Dolyak	\$ 20
6/29/76	Richard F. Lavigue	15
6/29/76	Raymond E. Furlong	40
6/26/76	Alan Busley	20
7/14/76	Austin ?	20
6/21/76	Henry Belise	15
6/18/76	Charles Lavine	20
6/18/76	Anthony Tadale	20
5/14/76	Robert Loomis	20
6/22/76	Spencer Feldman, Jr.	20
5/17/76	David W. Laughlin	15
5/17/76	Henry Lukasik	20
5/19/76	Richard Lawrence	10
6/16/76	Richard Cowan	30
6/23/76	V. Catlin, Sr.	20
6/?/76	Eugene Gasdale	15
6/30/76	Phyllis Card	20
5/17/76	Ronald W. Moyer	15
5/17/76	Cheryl A. Marek	20
5/13/76	Albert Joseph Melita	20
5/05/76	George Marshall	15
6/12/76	Larry D. Bengé	10
5/12/76	Edward Kuszynski	15
5/15/76	George Mallory	25
6/29/76	Bradley M. Emerson	10
6/14/76	Mrs. H. O. Haines, Sr.	10
6/22/76	Gladys Katz	15
6/22/76	Estelle A. Lynne	30
6/22/76	Ronald Dankowitz	15
6/15/76	Mark A. Bloomer	15
6/16/76	Louise J. Perko	20
5/14/76	Edward Meagher	15
5/18/76	Julie M. Masher	20
5/03/76	Lynn M. Mosley	15
5/01/76	Edward H. Latten, Jr.	15
5/19/76	Helen Lajaie	20

SCHEDULE B -- continued

Checks Deposited
on October 4, 1976
(cont'd)

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
4/30/76	Ray ?	30
7/02/76	?	15
5/17/76	?	20
5/19/76	Mary L. Locy	15
6/18/76	Joan LaPate	20
6/02/76	T. Kloosterman	20
6/30/76	Ellen Lindsay	20
6/23/76	Mildred E. Ferris	10
6/25/76	Felice M. Gasorl	25
6/18/76	Joanne Birks	20
6/17/76	David H. Beiman	20
5/21/76	S. W. Beauregard	20
6/18/76	Donald R. Baumfield	25
6/18/76	Lawrence Boyd	20
6/17/76	Lawrence R. Masse	10
8/09/76	Richard W. Folts	25
7/26/76	?	500
		<u>\$1,475</u> Subtotal

Checks Deposited
on November 23, 1976

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
7/10/76	Glen Winkel	\$ 20
7/13/76	Elissa Simmons	25
7/27/76	Mary Snapp	20
7/06/76	?	20
7/12/76	Alan Richardson	20
7/09/76	Martha Rio	20
7/21/76	Rebecca J. Reed	30
7/02/76	Joseph ?	15
6/30/76	Joseph O'Connor	20
7/27/76	Robert T. D. Liguiri	5
7/02/76	?	20
7/02/76	?	20
7/02/76	Marjorie Dormail	20
7/06/76	Ignacio L. Wust	25

SCHEDULE B -- continued

Checks Deposited
on November 23, 1976
(cont'd)

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
7/29/76	John L. Fraser, J. P.	25
7/15/76	Robert C. Reimann	15
7/09/76	?	25
7/ ?/76	John Walter Plonkim	10
7/15/76	Vivian C. Nashold	20
6/06/76	Matina	25
7/11/76	Laurice Larochelle	20
7/15/76	Darlene B. Konifka	20
7/09/76	Michael S. Rogers	25
7/01/76	Cory E. ?	20
7/13/76	Alan Corueretto	15
7/28/76	Josephine L. Flood	20
7/17/76	Robert Enis, Jr.	15
7/22/76	Lloyd J. Ernst	25
7/20/76	Helen Miller	25
7/01/76	Linda C. Paiola	15
7/02/76	Marie L. ?	30
7/07/76	James L. Aallen	15
7/03/76	Diane Schall	20
6/30/76	?	20
7/09/76	Ralph P. Williams	10
7/01/76	William W. Stauton	20
7/01/76	James R. Rundell, Jr.	15
7/06/76	?	10
7/ ?/76	Gerald Mainville	15
7/02/76	?	15
7/15/76	Paul James	25
7/12/76	David Allen	25
7/01/76	Raymond Seika	20
7/02/76	Vincent J. Germano	15
7/09/76	Clem Gintini	20
7/13/76	Edna Greenwood	10
7/15/76	Barbara G. Fradin	15
7/13/76	Arthur J. Ferry	25
7/07/76	Eleanor Finnegan	15
7/26/76	Linda C. Conklin	20
7/08/76	Henry Richard Baum	20
7/02/76	Eugene F. Deil, Sr.	20
7/19/76	Melvin D. Chaiken	30
7/16/76	Edmond J. Caputo	15
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		\$1,045 Subtotal

SCHEDULE B -- continued

Checks Deposited
on November 30, 1976

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
8/24/76	Jerry B. ?	\$ 15
8/20/76	Laurel F. Ward	15
8/23/76	Richard A. Frary	15
8/25/76	?	25
8/30/76	Joseph A. Rodrigues	25
6/18/76	Bruce ?	20
8/06/76	Lenwood E. Rider	10
8/02/76	Jack S. Gooker	15
7/06/76	Bruce Cole	15
7/30/76	Kathleen Conroy	15
7/02/76	Patricia J. Kinyon	15
7/12/76	A. E. Bradstreet	10
7/07/76	Daniel C. Brown	20
7/07/76	Milton Bailey	25
4/21/76	Edward Walsh	10
6/17/76	Peter Todesco	20
6/15/76	John C. Sherman III	10
6/22/76	Michael Strole	20
6/08/76	Arthur ?	10
6/21/76	Lawrence Dunn	15
5/25/76	John Zelko, Jr.	20
7/26/76	Elizabeth Deo	20
7/30/76	Victor Irving	15
8/07/76	Walter Arend	20
6/17/76	William B. Williams	10
6/08/76	R. Oppenheim	25
7/20/76	Walter P. Coleman	15
7/25/76	Joseph L. Cometa	10
5/06/76	Desiree L. Williams	30
7/22/76	Christine L. Bolden	25
7/15/76	Dennis Brooks	15
7/15/76	William ?	15
8/06/76	Margaret Peringer	15
7/09/76	John H. May	15
7/27/76	Kathleen M. Brennan	50
7/23/76	Steven Banks	15
7/15/76	Bill Brust	15
7/17/76	G. A. Bertoloui	15
7/02/76	William Brilbeck	15
7/19/76	Dave Acker	30
7/22/76	Phil Aiello	25
7/02/76	Susan M. Dipsiner	25
8/20/76	Lawrence F. Didsbury	15
8/28/76	?	35
8/30/76	Fred B. Grimaldi	20
6/18/76	Celio Vinagre	25
6/23/76	Ann Mills	15

SCHEDULE B -- continued

Checks Deposited
on November 30, 1976
(cont'd)

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
7/19/76	Fabio E. Borda	20
8/26/76	Joseph A. Wolfe	20
8/28/76	Anthony Cammarata	10
8/31/76	? Casilla	- 15
8/30/76	Peter C. Fray	20
7/23/76	J. Allan Boyle	20
6/21/76	?	15
9/01/76	Dudley Loftman	25
4/05/76	John Dehulent	15
7/19/76	Gloria Osborurne	15
8/26/76	Ronald C. Powers	25
8/31/76	David Lew	25
8/30/76	David L. ?	30
8/06/76	?	30
8/23/76	Ernest H. Williams	20
8/04/76	Johnnie West	20
8/29/76	Barry G. Trahan	15
8/18/76	David R. Allan	20
8/23/76	Jean Ciomeek	20
8/02/76	? Newcome	15
6/21/76	James A. Kingsbury	15
8/23/76	Dale A. Kinas	15
8/21/76	Anthony J. Finaldi	20
7/24/76	Barbara Goldstein	15
9/01/76	Charles Freihofer	10
8/21/76	Victoria Biondo	15
9/02/76	Paul Bakos	15
8/23/76	James A. Bean	15
8/24/76	Jorge W. Palma	20
8/24/76	James D. O'Connor	20
8/24/76	Mary Ann Roy	15
7/20/76	Donald Cranston	25
7/10/76	?	20
7/20/76	Glenn A. Werry	15
7/15/76	Paul Bullock	10
7/26/76	Roland ?	35
7/10/76	Robert G. Brossica	20
7/08/76	Leonard ?	15
8/30/76	Joan Leydau	15
8/24/76	Ms. L. DeGennow	20
8/25/76	Georgina L. DeFilippo	20
8/30/76	Angeña Oplaute	25
8/31/76	Dorothy Nichols	20
8/23/76	Charles Chodsey	15
6/25/76	John Wechten	15
6/28/76	Edgar N. Jackson	20
6/11/76	?	40
6/15/76	Mark H. Oldfield	15
8/27/76	Eric Leighton	20
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		\$1,810 Subtotal

SCHEDULE B -- continued

Checks Deposited
on December 29, 1976

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
8/29/76	Berta Pupons	\$ 15
8/30/76	L. ?	15
7/31/76	Patricia Stonesifer	10
5/17/76	John C. Rossi	20
9/04/76	?	10
9/01/76	Joel Makawing	15
9/03/76	Philip A. Hartwell	20
8/31/76	Anne-Marie Masse	25
8/30/76	Rodman Maul	25
8/30/76	John Meecipk	15
8/23/76	Christopher Saddewiki	30
8/25/76	?	20
8/24/76	Juan Santos	15
8/30/76	Locksly A. Smith	20
7/07/76	?	30
9/03/76	Salvatore Ativello, Jr.	25
9/03/76	Bert E. West	25
8/01/76	Mrs. Michael P. Uk?	15
9/04/76	?	15
8/28/76	Guido Varisio	20
8/28/76	Marguerite Mirante	15
8/30/76	Peter M. Strauss	15
9/03/76	?	30
		<u>\$445</u> Subtotal

SCHEDULE B -- continued

Checks Deposited
on February 16, 1977

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>	
6/17/76	Sylvia Landry	\$ 20	
5/14/76	M. P. Markus	20	
6/18/76	Donna Clock	20	
7/02/76	Unsigned	15	
9/04/76	Mrs. Song	15	
9/01/76	Nathan Perry	20	
9/03/76	Robert Soloni, Jr.	35	
8/17/76	John G. Chuatal, Sr.	25	
6/16/76	Henry G. Schwinn	15	
6/14/76	Celeste F. Lawler	20	
9/02/76	?	25	
6/16/76	Frederick L. Smith	15	
6/14/76	Susan G. Friday	20	
6/16/76	Mary June Moran	30	
6/22/76	Francis P. Davis	15	
6/02/76	Robin J. Kieves	10	
6/06/76	Leo Ladidus	20	
6/16/76	?	35	
8/05/76	Elaine Cahien	15	
6/14/76	?	40	
6/14/76	Dominic Gigliotti	20	
6/18/76	Mary D. Barthomala	20	
6/18/76	D. NoOne	25	
7/21/76	Freida Gaines	20	
9/02/76	Patrice E. Hinds	30	
9/03/76	Joseph N. Cugini	15	
9/02/76	?	50	
9/04/76	George C. Hansen, Jr.	20	
6/21/76	Charlotte W. Pierce	30	
6/22/76	Marc A. Dupius	15	
6/10/76	Stephen M. Liana	20	
6/15/76	Linda J. Anthony	15	
6/21/76	Ronald Freund	15	
6/18/76	Kathleen Knihl	25	
6/21/76	Jeff B. Munz	15	
6/16/76	Mark W. Dunne	25	
6/23/76	Frank Rinto	20	
6/21/76	Dorothy Ostman	20	
6/18/76	Linda Poruero	20	
6/21/76	Maureen Ryan	25	
6/15/76	?	20	
6/15/76	Robert W. Richards	20	
6/22/76	David F. Ray	20	
6/29/76	Patricia Balch	25	
6/17/76	?	20	
6/15/76	George Schultz	20	
		<u>\$1,000</u>	Subtotal

SCHEDULE B -- continued

Checks Deposited
on March 21, 1977

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
9/03/76	Herbert Brown	\$ 30
9/03/76	Charles Gryzman	15
9/04/76	Phrmile Jones	10
9/03/76	?	20
9/02/76	Joseph F. Baite	15
9/04/76	Raga Johnson	40
9/04/76	James Bello	25
9/03/76	Charane Moon	25
4/22/76	?	200
9/04/76	Donna M. Flynn	10
9/02/76	James A. Fizzinglis	20
9/02/76	Carmen Esper	20
9/02/76	Eddie Bryant	15
		<u>\$ 445</u> Subtotal

TOTAL \$6,220

SCHEDULE C

<u>Date of Check</u>	<u>Name</u>	<u>Amount of Check</u>
6/06/78	Fedele	\$ 40
6/07/78	Romando	15
6/09/78	Giordano	40
6/09/78	Hankamp	15
8/21/78	Richman Filts	100
2/14/78	Richman Filts	100
5/23/78	Richman Filts	200
6/07/78	Michael Gurdo	15
6/08/78	David Indivers	15
6/08/78	Money Order (First Trust)	40
6/10/78	Money Order (J. Jones)	20
6/05/78	Rooney Jordan	17
6/08/78	Money Order (Marine Midland)	15
6/08/78	Money Order (Kaplan)	5
6/09/78	Money Order (Kelly)	15
6/09/78	Money Order (Luz)	25
6/07/78	Lloyd	25
6/09/78	Lemanski	15
6/09/78	Levis	20
6/09/78	Maenza	15
6/09/78	Ruell	30
6/10/78	Russell	20
6/08/78	Sherman	20
6/07/78	N. Tsimekles	50
6/09/78	Jannenbaum	20
6/08/78	Segar	20
6/09/78	Skamns	20
6/10/78	Enright	10
6/08/78	Money Order	15
?/16/78	Schenectady Savings Bank	20
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		\$ 977 Total