

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

JAMES R. STRAITE,

a Justice of the New Berlin Village
Court, Chenango County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

Petrone & Petrone, P.C. (By Louis S. Petrone) for
Respondent

The respondent, James R. Straite, a justice of the New Berlin Village Court, Chenango County, was served with a Formal Written Complaint dated December 23, 1986, alleging, inter alia, that he used his judicial position to influence police to investigate a complaint made by his son and that he engaged in

conduct that denied defendants certain basic rights and conveyed the impression of bias. Respondent did not answer the Formal Written Complaint.

By motion dated February 19, 1987, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be found established. Respondent did not oppose the motion or submit any papers in response thereto. By determination and order dated March 20, 1987, the Commission granted the administrator's motion and found respondent's misconduct established.

The administrator filed a memorandum as to sanction. Respondent neither submitted any papers nor appeared for oral argument.

On April 14, 1987, 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 justice of the New Berlin Village Court from April 1, 1984, to December 22, 1986, when he submitted his resignation to the Chief Administrator of the Courts.

2. On June 24, 1984, respondent called by telephone the State Police barracks at Norwich. Respondent identified himself as a judge to Sergeant Kevin Molinari and shouted at

Sergeant Molinari concerning the failure of the State Police to make any arrests with respect to a complaint made by respondent's son, William Straite, against his neighbors.

3. Respondent told Sergeant Molinari that he wanted his son's complaint investigated, "or I want a good explanation why it can't be done."

4. Respondent then spoke to Zone Sergeant Donald Ellis and indicated that he was dissatisfied with the way the State Police had handled his son's complaint. Respondent told Sergeant Ellis that he would "go all the way to Albany to find out why you cannot do what your job is...."

5. Respondent acknowledged in testimony before a member of the Commission that "I wanted [the police] to know I had a title, and I was a concerned citizen, and I was going to find out something about this affair...."

6. Trooper Elizabeth Reid Wonka was sent to William Straite's home to investigate the complaint made by respondent to Sergeant Ellis. When Trooper Wonka arrived at Mr. Straite's home, she was met by respondent, who directed her to accept Mr. Straite's complaints against his neighbors and to file them in the Pittsfield Town Court.

7. Thereafter, the State Police accepted complaints from Mr. Straite and arrested his neighbors.

As to Charge II of the Formal Written Complaint:

8. On September 10, 1985, respondent arraigned David Lee Harshbarger on a charge of Criminal Sale of Marijuana, Fourth Degree, and committed him to jail in lieu of \$500 bail, notwithstanding that respondent's son, William Straite, had been involved in the undercover investigation that resulted in Mr. Harshbarger's arrest. Respondent learned of his son's involvement in the case immediately before the arraignment.

9. Mr. Harshbarger was subsequently re-arraigned in another court on the same charge and released on bail.

10. On September 23, 1985, respondent issued a bench warrant for the rearrest of Mr. Harshbarger on the same charge, notwithstanding that his son was a material witness in the case and that the matter was then pending in another court.

As to Charge III of the Formal Written Complaint:

11. On October 19, 1984, Brian L. Decker appeared before respondent on charges of Driving While Intoxicated; Driving With .10 Percent or More Blood Alcohol Content; Criminal Mischief, Fourth Degree, and Open Container. Respondent committed Mr. Decker to jail in lieu of bail.

12. Mr. Decker reappeared in court on October 22, 1984, with his parents. Mr. Decker's father, Harry P. Decker, III, informed respondent that the defendant was represented by counsel.

13. Respondent said that he "was not going to wait around all evening for the damned attorney," and indicated to the defendant's parents that respondent would be "lenient" if their son pleaded guilty.

14. The elder Mr. Decker then advised his son to plead guilty, and the defendant did so in the absence of counsel.

15. Respondent then sentenced Brian Decker to \$460 in fines, surcharges and restitution and ordered his driver's license immediately and indefinitely revoked.

16. Mr. Decker's attorney, Colin E. Ingham, arrived in court as the Deckers were leaving. After Mr. Ingham learned that the case had been disposed of, he approached respondent and appealed to him to grant Mr. Decker a conditional license. Respondent replied that the case was over and that there was "no way" he would issue a conditional license.

As to Charge IV of the Formal Written Complaint:

17. On March 9, 1985, Paul F. Carey was charged with Driving While Intoxicated and Failure to Keep Right and was given a summons to appear before respondent on March 19, 1985.

18. Mr. Carey retained Peter J. McBride to represent him. Before Mr. Carey's scheduled appearance before respondent, Mr. McBride's son was killed in an accident, and Mr. McBride's law office was closed. Respondent was notified of the tragedy.

19. On March 19, 1985, after Mr. Carey and Mr. McBride failed to appear in court, respondent issued a warrant for Mr. Carey's arrest.

20. Thereafter, Mr. McBride called respondent several times and offered to produce his client, but respondent refused to give him an appearance date. Respondent was angry and belligerent and told Mr. McBride that he could not tell respondent how to run his court. Respondent shouted at Mr. McBride and, on at least one occasion, hung up the telephone on him.

21. After Mr. Carey was arrested on respondent's warrant, Mr. McBride called respondent and again attempted to obtain a time for arraignment. Respondent again refused to schedule a time and hung up the telephone.

22. Mr. McBride went immediately to respondent's court. Respondent told Mr. McBride that he was a "fucking ball-breaker" and loudly and belligerently told him that it was a "grave mistake" that Mr. McBride had once eliminated respondent from the jury in a case in another court in which Mr. McBride was representing one of the parties.

As to Charge V of the Formal Written Complaint:

23. On December 4, 1984, respondent arraigned a 17-year-old defendant, Theodore D. Canfield, on a charge of Grand Larceny, Third Degree, and committed him to jail without bail.

24. Thereafter, Mr. Canfield's mother, Carol A. Rogers, called respondent. Respondent loudly told Ms. Rogers that her son would be in jail for the next four days and that she could not visit him. Ms. Rogers consulted with an attorney and then called respondent again. Respondent again told Ms. Rogers loudly that she could not see her son and that he had broken the law and was going to pay for it.

25. On December 31, 1984, after Mr. Canfield had been released in his mother's custody, respondent saw the defendant at a local store. On January 1, 1985, respondent called Ms. Rogers and shouted at her. He told her that she was incompetent to care for her son and that respondent was going to have the boy's father, Ms. Rogers' former husband, come and take custody of Mr. Canfield. Ms. Rogers attempted to persuade respondent to leave Mr. Canfield in her care; respondent hung up the telephone.

26. On January 2, 1985, respondent called Mr. Canfield's attorney, Nelson W. Stiles, and ordered him to arrange for the defendant's father to take his son from Ms. Rogers' home. Respondent told Mr. Stiles that Mr. Canfield would either go to live with his father or go to jail.

As to Charge VI of the Formal Written Complaint:

27. On March 13, 1985, respondent arraigned William W. Trimble, Jr., on charges of Loud Exhaust, No Tail Lights and Altered Operator's License.

28. Before the arraignment, respondent asked Mr. Trimble why he had altered his license.

29. On July 10, 1985, Mr. Trimble reappeared before respondent. Mr. Trimble was wearing a three-piece suit. Respondent told Mr. Trimble that respondent was not impressed with "the monkey suit."

30. Respondent loudly and abusively accused Mr. Trimble several times of lying about his reasons for failing to appear on an earlier court date and threatened him with jail if he did not tell the truth.

As to Charge VII of the Formal Written Complaint:

31. On June 23, 1985, respondent, as a member of the New Berlin Emergency Medical Services Unit, accompanied Rick Dye, a hit-and-run accident victim, to the hospital and personally treated Mr. Dye.

32. On July 8, 1985, respondent presided over a preliminary hearing in the case of George H. Garrow, Jr., on a charge of Leaving the Scene of An Accident. The case involved the accident in which Mr. Dye had been injured, and one of the issues at the hearing was the seriousness of Mr. Dye's injury, which would determine whether the charge against Mr. Garrow was to be a felony or a misdemeanor.

33. Respondent presided notwithstanding that he had personal knowledge as to the seriousness of Mr. Dye's injury in that respondent had treated him on the night of the accident.

34. Respondent found against Mr. Garrow and did not inform his attorney of respondent's personal knowledge concerning the facts of the case until the hearing had been concluded.

As to Charge VIII of the Formal Written Complaint:

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

As to Charge IX of the Formal Written Complaint:

36. On June 3, 1985, respondent arraigned Raymond Lund, Dennison R. Hoxie, Zeland Boice and Donald Stringham on charges of Harassment.

37. Respondent did not advise the defendants that they had the right to assigned counsel if they could not afford an attorney, as required by Section 170.10 of the Criminal Procedure Law.

38. When Mr. Lund pleaded not guilty, respondent told him, "Now, unplug your ears, boy."

39. Without determining how the other defendants pled, respondent excoriated them in a loud, angry voice and announced that they would be given a conditional discharge.

40. Respondent ordered them to stay off the village streets after 6:00 P.M. for 90 days. Respondent immediately called the village police chief before him and directed the chief to arrest and commit the defendants to jail without going before a judge if he saw them on a village street after 6:00 P.M. in the next 90 days. Respondent told the police chief that he would sign commitment papers after their incarceration.

41. Respondent concluded the proceeding by saying, "All right now, the three of you, get out of here."

As to Charge X of the Formal Written Complaint:

42. On May 19, 1986, Brooke Backus appeared before respondent on a charge of Unleashed Dog.

43. Respondent did not advise Mr. Backus of his rights and did not conduct a trial.

44. Respondent interrogated Mr. Backus concerning the offense and found him guilty of the charge.

45. Respondent suggested that Mr. Backus had no "brains" and warned him that if he were to be brought into court again on such a charge, respondent could order his dogs killed.

As to Charge XI of the Formal Written Complaint:

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

As to Charge XII of the Formal Written Complaint:

47. On January 7, 1985, Nina H. Pawelko was charged with Speeding. The ticket was returnable in respondent's court.

48. On January 9, 1985, respondent received a letter from Ms. Pawelko in which she said that she was not guilty and stated that the arresting officer had "treated me like a criminal" and was "rude." Respondent replied by setting a trial date.

49. Ms. Pawelko then called respondent and asked whether it was necessary for her to make a six-hour trip from her home for trial. Respondent excoriated her for criticizing the arresting officer, told her that he was going to teach her respect for the law and insisted that she appear in court in person.

50. Respondent acknowledged in testimony before a member of the Commission that he felt that Ms. Pawelko's statements about the arresting officer were "untrue" because respondent knew him to be "a nice boy." Respondent said that he felt that Ms. Pawelko "needed perhaps a little chiding and a little humility...."

51. Ms. Pawelko was "terrified" by her conversation with respondent and decided to mail a guilty plea and a fine to the court.

52. Respondent refused to accept the plea by mail and ordered Ms. Pawelko to appear in person.

53. Ms. Pawelko retained an attorney to represent her. The attorney contacted respondent, and respondent said that he intended to "punish" Ms. Pawelko by forcing her to appear in court.

54. On her attorney's advice, Ms. Pawelko drove to respondent's court, pled guilty and was fined \$40.

As to Charge XIII of the Formal Written Complaint:

55. Since taking office as a judge on April 1, 1984, respondent has also served as a peace officer with the New Berlin Fire Police, an emergency unit that assists local police in crowd and traffic control.

56. For two days each year during this period, respondent directed traffic at a congested crossroads, wearing a uniform and badge. Respondent also directs traffic out of uniform at least once every ten days.

As to Charge XIV of the Formal Written Complaint:

57. Respondent, a part-time judge, is also a claims manager, attorney-in-fact and vice president of an insurance company. His principal duties are to negotiate claims with attorneys.

58. Some of the attorneys with whom respondent deals in his insurance business also appear in his court on occasion.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(3), 100.3(a)(4), 100.3(c)(1), 100.5(c)(1) and 100.5(h) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1), 3A(3), 3A(4), 3C(1) and 5C(1) of the Code of Judicial Conduct, and Section 105(c) of the Uniform Justice Court Act. Charges I through VII, IX and X and XII through XIV of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charges VIII and XI are dismissed.

In a brief judicial career, respondent exhibited, on and off the bench, a thorough disregard of his ethical obligations. He demonstrated by a persistent and varied pattern of misconduct that he is not fit to be a judge and should be barred from holding judicial office in the future.

The evidence establishes that respondent is a rude and biased partisan who has flagrantly abused his judicial authority and violated the law in order to achieve results that conform to his personal prejudices. Respondent repeatedly aligned himself with the prosecution and suggested before trial that defendants were guilty of the offenses charged. He failed to advise defendants of basic constitutional rights as required by law. He elicited incriminating statements from them before trial. He coerced a guilty plea in one case in the absence of counsel. He summarily convicted defendants without trial.

In other cases, respondent threatened to jail defendants without court hearings. He failed to disqualify himself in a case in which his son was a material witness and in a case in which he had personal knowledge of disputed facts. See Section 100.3(c) (1) of the Rules Governing Judicial Conduct.

Respondent engaged in business dealings with attorneys likely to come before him in his judicial capacity, in violation of Section 100.5(c) (1) of the Rules Governing Judicial Conduct. He served as a peace officer, contrary to Section 100.5(h) of the Rules.

On one occasion, respondent invoked the prestige of his judicial office to advance the interests of his son in a private dispute.

In all these dealings, respondent was impatient, undignified and discourteous to lawyers and litigants.

Such egregious misconduct shocks the conscience and indicates that respondent poses a threat to the proper administration of justice. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286 (1983); Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870 (1983); Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984); Matter of Fabrizio v. State Commission on Judicial Conduct, 65 NY2d 275 (1985). No judge is above the law he is sworn to uphold. The legal system cannot accommodate a jurist who disregards the law in such a manner.

Matter of Ellis, 1983 Annual Report 107 (Com. on Jud. Conduct, July 14, 1982).

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

Mrs. Robb, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

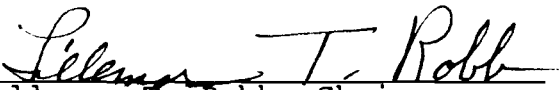
Mr. Bower was not present.

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

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: April 16, 1987


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