

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

EDWIN R. SWEETLAND,

a Justice of the Dryden Town Court  
and an Acting Justice of the Freeville  
Village Court, Tompkins County.

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THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Myriam J. Altman  
Henry T. Berger, Esq.  
John J. Bower, Esq.  
Honorable Carmen Beauchamp Ciparick  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the  
Commission

Holmberg, Galbraith, Holmberg, Orkin & Bennett  
(By Dirk A. Galbraith) for Respondent

The respondent, Edwin R. Sweetland, a justice of the  
Dryden Town Court and the Freeville Village Court, Tompkins  
County, was served with a Formal Written Complaint dated January  
7, 1988, alleging that he made improper comments in a criminal  
case. Respondent filed an answer dated January 25, 1988.

On July 27, 1988, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on August 22, 1988.

The administrator and respondent submitted memoranda as to sanction. On October 20, 1988, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Dryden Town Court and has been since January 1, 1975. He is also acting justice of the Freeville Village Court and has been since June 1978.

2. On September 17, 1987, respondent signed a warrant for the arrest of Jose Orlando Cordova on charges of Burglary, Second Degree, and Sexual Abuse, Third Degree.

3. Mr. Cordova, a Honduran student attending Tompkins-Cortland Community College as part of Georgetown University's Central American Scholarship Program, surrendered to police and was taken to the Dryden Town Court for arraignment before respondent.

4. Mr. Cordova was represented by Wesley McDermott. Mr. McDermott advised respondent that the district attorney, Benjamin J. Bucko, had agreed that Mr. Cordova be released in his own custody on the condition that he surrender his passport to the court.

5. Respondent raised his voice and stated that he opposed the agreement: "I know nothing about this, and as far as I am concerned, he is going to jail."

6. Respondent then left the bench and went into an adjoining office and called Mr. Bucko by telephone. The doors between the office, the courtroom and an adjoining court clerk's office were left open, and respondent's conversation could be heard from both rooms.

7. Respondent asked Mr. Bucko whether he had recommended Mr. Cordova's release. Mr. Bucko confirmed that he had done so. Respondent became upset and asserted that bail should be imposed because the charges were very serious. Mr. Bucko reiterated that he recommended release without bail.

8. At one point during the conversation, respondent asserted that students in the Central American Scholarship Program should be deported. "You better deport these people," respondent said to Mr. Bucko. "You better get them out."

9. After the conversation, respondent returned to the courtroom. He was red-faced, appeared angry and pounded his fist on a table as he spoke with Mr. McDermott and the arresting officer.

10. Mr. Cordova was arraigned. He pled not guilty and surrendered his passport to respondent. Respondent ordered him released in his own custody.

11. Respondent then advised Mr. Cordova that he intended to issue an order of protection on behalf of the complaining witness in the case. Respondent told Mr. Cordova that he was not to return to the building in which the complaining witness lived and in which Mr. Cordova also lived. Mr. McDermott objected, and respondent reiterated that he wanted Mr. Cordova "out of there."

12. Respondent then left the courtroom and engaged in another telephone conversation with Mr. Bucko.

13. When he returned to the courtroom, respondent said to Mr. McDermott, "Well, it will be on your shoulders if it happens again." He then signed a temporary order of protection requiring Mr. Cordova to stay away from the home of the complaining witness.

14. On September 18, 1987, respondent engaged in a telephone interview with Carol S. Bernreuther, a reporter for the Cortland Standard newspaper, in which he discussed the Cordova case, which was still pending in his court.

15. Respondent told the reporter that he was "against" Mr. Bucko's recommendation to release Mr. Cordova. "These birds come up here and commit rape...and the district attorney wants to turn them loose," respondent said, referring to Mr. Cordova and a co-defendant arrested in connection with the same incident. The co-defendant had been charged with rape, but Mr. Cordova had not. Respondent also maintained that Mr. Bucko was "very liberal" and added, "I doubt he even indicts them."

16. Respondent's comments were published in the Cortland Standard on September 19, 1987.

17. On September 18, 1987, the day before the publication of respondent's comments, Georgetown University decided to relocate to other colleges the 36 participants in the Central American Scholarship Program. After the publication of respondent's remarks, 16 participants in the program told the dean of the community college that they were disturbed by the statements. Influenced by respondent's remarks, Georgetown University decided to expedite the relocation.

18. On April 15, 1988, the district attorney's office moved to dismiss the case against Mr. Cordova.

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) and 100.3(a)(6) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(3)

and 3A(6) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's comments at the arraignment of Mr. Cordova clearly conveyed the impression that he was not impartial. Before hearing arguments on the question of bail, respondent declared, "...[H]e is going to jail." He expressed anger at the prosecutor's recommendation that Mr. Cordova be released without bail and said, "You better deport these people," referring not only to the defendant before him who was presumed by law to be innocent, but to 34 other students who had been charged with no crime at all.

The next day, respondent made comments that he should have known would be published and that further indicated partiality. He declared Mr. Cordova guilty of a serious crime with which he had not even been charged: "These birds come up here and commit rape...." It would have been improper for respondent to make any public comment, no matter how insignificant, about the merits of a case pending before him. Matter of Fromer, 1985 Annual Report 135 (Com. on Jud. Conduct, Oct. 25, 1984). Respondent's comments were particularly egregious in that they undermined his proper role as a judge.

The ability to be impartial is an indispensable requirement for a judicial officer. Equally important is the requirement that a Judge conduct himself in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property.

Matter of Sardino v.  
State Commission on  
Judicial Conduct, 58  
NY2d 286, 290-91 (1983).

A continuous pattern of such conduct would require respondent's removal from office (Sardino, supra), as might conclusive evidence that his remarks reflect racial or ethnic bias. Matter of Bloodgood, 1982 Annual Report 69 (Com. on Jud. Conduct, June 11, 1981). Respondent's comments, however, appear to indicate distrust and dislike of all those from outside his community. Such xenophobia is undesirable and inappropriate, though somewhat less egregious than a racial slur.

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

Mrs. Robb, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick and Judge Ostrowski concur.


Mrs. Del Bello, Mr. Kovner and Mr. Sheehy dissent as to sanction only and vote that respondent be removed from office.

Mr. Cleary and Judge Rubin were 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: November 21, 1988

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



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DISSENTING OPINION  
BY MR. KOVNER,  
IN WHICH MRS. DEL BELLO  
AND MR. SHEEHY JOIN

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The law of New York has unequivocally found that expressions of racism or ethnic bias will not be tolerated within the judiciary. Matter of Cerbone, 1984 Annual Report 76 (Com. on Jud. Conduct, Aug. 5, 1983); accepted, 61 NY2d 93 (1984) (references to "niggers" and "black bastards" during barroom confrontation); Matter of Aldrich v. State Commission on Judicial Conduct, 58 NY2d 279 (1983) (use of racial slurs during court proceedings); Matter of Kuehnel, 1980 Annual Report 125 (Com. on Jud. Conduct, Sept. 6, 1979); accepted, 49 NY2d 465 (1980) (statements of "niggers" to youngsters at a police station); Matter of Bloodgood, 1982 Annual Report 69 (Com. on Jud. Conduct, June 11, 1981) (phrase "so long kokie" used in letter to a defendant).

Respondent has argued (p. 8 of his papers and in oral argument at pp. 23, 36-39) and the majority finds that the remarks in question are not racist, but indicate "dislike of all

those from outside his community," a view respondent argues is shared by many of his constituents (oral argument at p. 39).

I read the remarks in a different light. "You better deport these people. You better get them out," (emphasis added) plainly referred to all members of The Central American Scholarship Program, not only to the defendant before him. The statements reflected, to a reasonable observer, prejudice against the Hispanic students in the program.

Respondent compounded his intolerable comments, made in court in a proceeding before him, when he thereafter stated to a newspaper reporter, "These birds come up here and commit rape...and the district attorney wants to turn them loose" (emphasis added). In commenting on a matter pending before him in a manner that could be construed to intimidate the prosecutor and by erroneously characterizing the charge against Mr. Cordova (who was charged, not with rape, but with Sexual Abuse, Third Degree, alleging unwanted sexual touching of a neighboring student who had invited him into her apartment), respondent clearly engaged in misconduct. Independent of these reasons, the remark was grossly improper because it plainly focused on the fact that the defendants were from Central America.

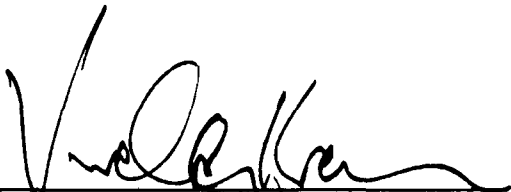
This reading of respondent's published remarks is confirmed by the fact, as stipulated by respondent, that Georgetown University was influenced by the newspaper report to

expedite the relocation of all 36 students to universities in the southwestern United States.

Unlike respondent, I do not believe that the residents of Tompkins County shared his hostility to temporary residents from outside the United States. Indeed, I believe respondent has disgraced not only the judiciary and the State of New York, but his own community as well. Though respondent's counsel argues that some social mores change slowly, comments such as these in 1987, in my view, render the speaker unfit for further service on the judiciary.

The proper sanction should be removal from office.

Dated: November 21, 1988



Victor A. Kovner, Esq., Member  
New York State  
Commission on Judicial Conduct