

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

EDWARD J. TRACY,

a Justice of the Moreau Town Court, Saratoga
County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Cade & Saunders, PC (by Larry J. Rosen) for Respondent

The respondent, Edward J. Tracy, a justice of the Moreau Town Court, Saratoga County, was served with a Formal Written Complaint dated April 30, 2001, containing two charges. Respondent filed an answer dated June 6, 2001.

On June 26, 2001, 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, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Moreau Town Court since 1986. He is not a lawyer. He has attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. In the summer of 1999, respondent reported to the state police that a rock had been thrown against the front door of his residence, that various objects had been thrown at his house over the past two years, and that respondent believed that the perpetrators were three youths – Reagan Moon, Brian Varney and Michael Christon – or their friends who were angry about respondent's sentences. In September and October 1999, the police questioned Brian Varney and Michael Christon, who denied involvement in the vandalism. The state police closed their investigation of respondent's complaints in

in October 1999 without arresting anyone, but respondent continued to believe that the three youths were responsible.

3. As set forth on the attached Schedule A, in 1999 and 2000, respondent failed to disqualify himself and presided over and disposed of numerous cases pertaining to defendants Reagan Moon, Brian Varney and Michael Christon, notwithstanding his belief that these defendants had been involved in vandalism to respondent's residence. During the period, respondent frequently stated to his court clerk that he intended to sentence the defendants to maximum fines, and, in fact, respondent frequently did so.

4. In October 1999, while presiding over charges against Reagan Moon, respondent stated that he had seen Mr. Moon near respondent's house, and upon learning that Mr. Moon's driver's license had been suspended, respondent asked Mr. Moon, "So, I won't have to listen to you drive by my house at one or two in the morning, right?"

5. On May 24, 2000, in sentencing Mr. Moon in connection with traffic charges, respondent advised Mr. Moon to cease his action, and added that Mr. Moon knew what he meant. Respondent told Mr. Moon to "stop the nonsense and grow up," thereby conveying the impression that respondent was addressing the alleged actions of Mr. Moon at respondent's home.

As to Charge II of the Formal Written Complaint:

6. In or about January or February 2000, respondent publicly announced to prosecutors, defense attorneys and a newspaper reporter that any defendant convicted of Driving While Intoxicated or Driving While Ability Impaired By Alcohol, whose blood alcohol test showed a level of .15 percent or greater, would be sentenced to jail and a maximum fine. Respondent's remarks were published in a newspaper account on February 3, 2000. Thereafter, respondent followed this "policy" until the Commission questioned respondent about making such an announcement about future action on cases and failing to consider each case on its merits.

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(B)(4), 100.3(B)(6) and 100.3(E)(1)(a)(i) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge must disqualify himself or herself in matters in which the judge's impartiality might reasonably be questioned. This includes matters in which the judge has a personal bias concerning a party, or the appearance of such bias. Sections 100.2(A) and 100.3(E)(1)(a)(i) of the Rules Governing Judicial Conduct; Matter of Van Buskirk, 1990 Ann Report of NY Commn on Jud Conduct 174; Matter of Lindell-Cloud, 1996 Ann Report of NY Commn on Jud Conduct 91. In view of respondent's belief that three

youths were involved in acts of vandalism to respondent's residence, it was improper for respondent to preside over numerous cases involving these defendants just months after he had reported his suspicions to the police. Respondent's comments on two occasions while presiding over Mr. Moon's cases in which he alluded to Mr. Moon's alleged actions at respondent's home further conveyed the appearance that respondent was biased and underscore why he should not have presided over the defendants' cases.

Respondent compounded his misconduct by making statements to his court clerk indicating that he intended to give the maximum fines to the three defendants when they appeared before him, and then by frequently doing so. Respondent's statements further demonstrate his partiality and strongly suggest that his sentences in the defendants' cases were not decided on the merits, but were predetermined according to the judge's bias.

Respondent's public announcement of a "policy" concerning the strict sentence he would impose on all defendants in certain drunk-driving cases was highly improper. Such a pronouncement is inconsistent with the role of a judge in our legal system, which is to apply the law in each case in a fair and impartial manner (Sections 100.2[A] and 100.3[B][1] of the Rules). While the expression of such a blanket "policy" against drunk drivers may pander to popular sentiment that all such defendants should be treated harshly, respondent's words conveyed the appearance that he would not, and did not, consider each case individually on the merits, after a fair hearing, as he is required to

do. Judicial discretion, which is at the heart of a judge's powers, is nullified when a judge imposes a "policy" that will dictate sentences in future cases. In the exercise of discretion, respondent may impose any sentence permitted by law in such cases, but only after considering the facts of each case and affording each defendant an opportunity to be heard according to law (*see* Section 100.3[B][6] of the Rules). Public confidence in the impartiality and independence of the judiciary is diminished by such statements.

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

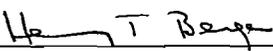
Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

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

Dated: November 19, 2001


Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct

Schedule A

<u>Defendant</u>	<u>Charge</u>	<u>Date Of Arrest</u>	<u>Disposition</u>
Michael Christon	Stopped On Pavement	11/7/99	\$100 fine
	No Seat Belt	11/7/99	\$50 fine/\$30 surcharge
	Speeding 60/45	11/29/99	\$200 fine/\$30 surcharge
	Passed Red Light	12/30/99	\$200 fine/\$30 surcharge
Reagan Moon	Petit Larceny	7/26/98	Reduced \$250 fine/ \$50 surcharge One year CD, Captain Program (Resentenced 10/99 to Community Service and one year CD)
	Consuming Alcohol Under Age 21	7/26/98	One year CD, Captain Program (Resentenced 10/99 Community Service and One year CD)
	Ag. Unlicensed Op., 3 rd Degree	3/24/00	\$500 fine/\$30 surcharge 3 days jail
	One Plate	3/24/00	\$25 fine/\$30 surcharge
	Imprudent Speed	3/24/00	3 days jail
	Illegally Tinted Windows	3/24/00	Dismissed

<u>Defendant</u>	<u>Charge</u>	<u>Date Of Arrest</u>	<u>Disposition</u>
	Failed To Keep Right	6/13/00	Reduced \$100 fine
	Speeding	6/13/00	Reduced \$100 fine/ \$35 surcharge
	Ag. Unlicensed Op., 3 rd Degree	6/13/00	Dismissed
	False Address On License	6/13/00	Dismissed
Brian Varney	No Seat Belt	5/27/99	\$50 fine/\$30 surcharge
	No Helmet	12/16/99	\$25 fine/\$30 surcharge
	Unregistered ATV	12/16/99	\$100 fine
	Unlicensed Operator	12/16/99	\$100 fine
	ATV On Roadway	12/16/99	\$100 fine/\$30 surcharge
	Open Container	9/1/00	\$50 fine
	Failed To Obey Traffic Control Device	9/25/00	\$100 fine/\$30 surcharge