

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

CALVIN M. WESTCOTT,*

a Justice of the Hancock Town Court,
Delaware County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission
F. Gerald Mackin for Respondent

The respondent, Calvin M. Westcott, a justice of the Hancock Town Court,
Delaware County, was served with a Formal Written Complaint dated July 21, 1997, alleging that

* The Formal Written Complaint bears a caption in the name of "Calvin W. Westcott"; it is hereby amended to reflect respondent's correct middle initial.

he attempted to coerce guilty pleas in traffic cases and failed to hold public court sessions as required by law. Respondent filed an answer dated August 9, 1997.

On October 17, 1997, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law § 44(5), waiving the hearing provided by Judiciary Law § 44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On October 23, 1997, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent, who is not a lawyer, has been a justice of the Hancock Town Court since 1983.
2. Respondent made a practice of receiving ex parte communications from police officers concerning the merits of traffic cases before him, including representations that the actual speed that defendants had been driving was greater than the speed charged.
3. Respondent improperly attempted to settle cases by:
 - a) before taking any testimony, eliciting explanations for their pleas of not guilty from defendants Waseem Afzal (charged with Speeding on April 20, 1996), James Hanchrow (charged with Speeding on December 27, 1995), John Hennessy (charged with Speeding on December 12, 1995), Jason Long (charged with Speeding on July 25, 1996) and Barbara Rutledge (charged with Failure To Keep Right on January 16, 1996);

b) suggesting to defendants Afzal, Long, Susanna Klein (charged with Speeding on January 11, 1996) and Christine Staeger (charged with Speeding on July 17, 1996) that he had spoken privately with the arresting officers before the trial date;

c) stating to defendants Afzal, Klein, Staeger and Ramon Espinoza (charged with Speeding on May 28, 1996) that he understood that they had been traveling at higher speeds than those at which they had been charged;

d) informing defendant Espinoza that the arresting officer could augment the charge if the defendant proceeded to a trial rather than pleading guilty;

e) informing defendant Hanchrow that respondent would impose a higher fine if he was convicted after trial than if he pleaded guilty to a reduced charge;

f) permitting arresting officers to sit in a group at a table adjacent to the bench while defendants Afzal, Espinoza, Hanchrow, Hennessy, Rutledge, Daniel Burgos (charged with Speeding on May 24, 1996), Bruce Frank (charged with Speeding on November 25, 1995) and Jaroslov Kormanik (charged with Failure To Stay Within Lane on November 14, 1995) were called before the bench individually; and,

g) refusing, contrary to Vehicle and Traffic Law § 510(4-a)(a), to lift the suspensions that he had placed on the driver's licenses of defendants Frank and Martin Hughto (charged with Speeding on May 11, 1996) after they had appeared in court.

As to Charge II of the Formal Written Complaint:

4. On several occasions in 1996, respondent held court in chambers, excluding the public, contrary to Judiciary Law § 4.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.3(B)(4) and 100.3(B)(6), and Canons 1, 2A and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge has "a duty to conduct himself in such a manner as to inspire public confidence in the integrity, fair-mindedness and impartiality of the judiciary." (Matter of Esworthy v State Commission on Judicial Conduct, 77 NY2d 280, 282). By coercing guilty pleas, conducting ex parte conferences with arresting officers and showing a predisposition toward the prosecution, a judge abandons this responsibility. (Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870, 871).

In twelve cases, respondent gave the appearance that he was aiding the police and the prosecution by attempting to coerce guilty pleas in traffic cases. He regularly spoke with the police ex parte before court and told defendants that he had done so, crediting police statements that the defendants had been driving even faster than the speeds for which they had been charged. Especially coercive were respondent's threats that defendants could incur additional charges or higher fines if they refused to plead guilty.

To question defendants before trial as to why they are pleading not guilty gives the appearance that the judge wants them to waive their right to trial (see, Matter of Cavotta, 1996 Ann Report of NY Commn on Jud Conduct, at 75, 78) and carries the potential of eliciting

incriminating statements (see similarly, Matter of Austria, 1996 Ann Report of NY Commn on Jud Conduct, at 51, 55).

Respondent furthered the appearance that the police were favored in his courtroom and had undue influence over him by allowing them to sit adjacent to the bench in a group, while requiring defendants to stand individually before the judge and the police.

In addition, a judge should not exclude the public from the courtroom. “The sittings of every court within this state shall be public, and every citizen may freely attend the same....” (Judiciary Law § 4; see, Matter of Cerbone, 1997 Ann Report of NY Commn on Jud Conduct, at 83, 85-86).

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

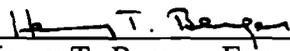
Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Ms. Crotty was 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: December 17, 1997


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