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

GERALD WINEGARD,

a Justice of the Seward Town Court,
Schoharie County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

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

Edward Wildove for Respondent

The respondent, Gerald Winegard, a justice of the Seward Town Court, Schoharie County, was served with a Formal Written Complaint dated July 30, 1990, alleging that he engaged in a course of conduct prejudicial to the fair and proper administration of justice. Respondent filed an answer dated October 1, 1990.

By order dated October 18, 1990, the Commission designated Joseph J. Tabacco, Jr., Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 11 and 12, 1990, and the referee filed his report with the Commission on May 15, 1991.

By motion dated May 31, 1991, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings of fact and for a determination that respondent be removed from office. Respondent opposed the motion on June 19, 1991. The administrator filed a reply dated June 20, 1991.

On June 27, 1991, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent has been a justice of the Seward Town Court since 1976. He is not a lawyer.

2. Since becoming a judge, respondent has attended all required training sessions sponsored by the Office of Court Administration for town and village justices.

As to Paragraph 4(a) of Charge I of the Formal Written Complaint:

3. In the five cases denominated in Schedule A appended hereto, respondent arraigned defendants on charges other than traffic infractions or misdemeanors relating to traffic, even though he did not have jurisdiction to do so, in violation of CPL 100.55 and 140.20.

4. The allegations concerning the cases of Joseph A. Blaser, Richard Dupont, Christina Greeven, Byron W. McCray, Patrick C. Norris and Singh Mahandar are not sustained and are, therefore, dismissed. (CPL 140.20[1][d]).

5. Respondent acknowledges that he had no jurisdiction to arraign defendants on violations or non-traffic-related misdemeanors that arose in towns that do not adjoin the Town of Seward.

6. Respondent testified that approximately 50 percent of the arraignments that he conducted in 1989 involved charges that arose in other jurisdictions.

As to Paragraph 4(b) of Charge I of the Formal Written Complaint:

7. Respondent disposed of the 22 cases denominated in Schedule B appended hereto, even though he did not have jurisdiction to do so, in violation of CPL 170.15(1).

8. The allegations concerning the cases of Michael D. Feldman, Max A. Krulls, Byron W. McCray and Patrick C. Norris are not sustained and are, therefore, dismissed.

9. Respondent acknowledges that he knew that he had no jurisdiction to dispose of matters that arose outside his township unless a defendant in a case arising in an adjoining town wished to plead guilty to the charge immediately after arraignment.

As to Paragraph 4(c) of Charge I of the Formal Written Complaint:

10. The allegation is not sustained and is, therefore, dismissed.

As to Paragraph 4(d) of Charge I of the Formal Written Complaint:

11. On May 21, 1988, William Dorn, Jr., appeared before respondent on a charge of Criminal Possession Of A Weapon, 4th Degree, a misdemeanor. Respondent determined that Mr. Dorn was too intoxicated to arraign, adjourned the proceeding and committed Mr. Dorn to jail without setting bail, in violation of CPL 530.20(1).

12. On March 11, 1989, Douglas T. Ryan appeared before respondent on charges of Driving While Intoxicated, a misdemeanor; No Seat Belt and Stopping On The Pavement, both

traffic infractions. Respondent committed Mr. Ryan to jail without setting bail, in violation of CPL 530.20(1).

13. On July 8, 1989, Singh Mahandar appeared before respondent on charges of Driving While Intoxicated, a misdemeanor; Consumption Of Alcohol In A Motor Vehicle and Failure To Keep Right, both traffic infractions. Respondent indicated that Mr. Mahandar was too intoxicated to arraign and committed him to jail without setting bail, in violation of CPL 530.20(1).

As to Paragraph 4(e) of Charge I of the Formal Written Complaint:

14. The allegation is not sustained and is, therefore, dismissed.

As to Paragraph 4(f) of Charge I of the Formal Written Complaint:

15. On April 8, 1989, respondent committed Daniel J. Dolan to jail in lieu of bail without considering the factors enumerated in CPL 510.30(2).

16. On August 28, 1989, respondent committed Tracy Lord to jail in lieu of bail without considering the factors enumerated in CPL 510.30(2).

17. On July 30, 1989, respondent committed Kenneth Weaver to jail in lieu of bail without considering the factors enumerated in CPL 510.30(2).

18. Respondent acknowledged in testimony before a member of the Commission on March 28, 1990, that he knows that he is supposed to inquire before setting bail about a defendant's ties to the community and family ties.

19. The allegations concerning the cases of Henry Bender, Jr., Steven Bobick, Daniel Camphausen, Michael Coulter, Paul Gabriel, Karen J. Hotaling, Bruce A. Patterson, Jr., and Larry Schondra are not sustained and are, therefore, dismissed.

As to Paragraph 4(g) of Charge I of the Formal Written Complaint:

20. In the eleven cases denominated in Schedule C appended hereto, respondent allowed his son, a police officer who lived with respondent at the time, to appear before him at the arraignment of defendants.

As to Paragraph 4(h) of Charge I of the Formal Written Complaint:

21. In the six cases involving five different defendants denominated in Schedule D appended hereto, respondent failed to advise defendants of their right to assigned counsel if they could not afford a lawyer, in violation of CPL 170.10(4)(a) and 180.10(4).

22. Respondent testified that it is his practice not to advise a defendant of the right to assigned counsel unless the defendant first says that he or she wants a lawyer. In cases

which must be transferred to another jurisdiction for disposition, respondent does not inform defendants at arraignment of their right to assigned counsel, does not determine their eligibility for assigned counsel and does not assign counsel for those eligible; he considers that the responsibility of the judge to whom the case is to be transferred, he testified.

23. The allegation concerning the case of Charles L. Schrom, Jr., is not sustained and is, therefore, dismissed.

As to Paragraph 4(i) of Charge I of the Formal Written Complaint:

24. On August 5, 1988, Lane Proctor appeared before respondent on charges of Driving While Intoxicated, a felony, and Failure To Dim Headlights. Respondent believed that Mr. Proctor was under the influence of alcohol at the time and that he was abusive. Respondent summarily held him in Criminal Contempt and sentenced him to 15 days in jail without setting forth in writing his reasons therefore, as required by Judiciary Law §752. Respondent never conducted an arraignment on the original charges, as required by CPL 170.10(4)(a) and 180.10(4). He transferred the case to another court.

25. On February 26, 1988, Earl L. Tessier appeared before respondent on charges of Driving While Intoxicated and Speeding. Respondent believed that Mr. Tessier was abusive and summarily held him in Criminal Contempt and sentenced him to 15 days in jail without setting forth in writing the reasons

therefore, as required by Judiciary Law §752. Respondent did not complete the arraignment of Mr. Tessier, as required by CPL 170.10(4)(a) and 180.10(4). He transferred the case to another court.

26. On August 20, 1988, Carol L. White appeared before respondent on a charge of Harassment. She was intoxicated at arraignment, and respondent believed that she was abusive. He held her in Criminal Contempt and sentenced her to 30 days in jail without setting forth in writing the reasons therefore, as required by Judiciary Law §752. Respondent completed the arraignment of Ms. White on September 8, 1988.

As to Charge II of the Formal Written Complaint:

27. On August 3, 1989, Charles L. Schrom, Jr., was charged in the Village of Cobleskill by respondent's son, Officer Steven Winegard, with Aggravated Unlicensed Operation, 3d Degree, and Loud Exhaust. Mr. Schrom was 18 years old at the time.

28. Officer Winegard took Mr. Schrom to respondent for arraignment. Respondent and his son lived together at the time, and the arraignment took place in their home. Respondent asked Mr. Schrom whether he understood the charges and whether he wanted a lawyer. When Mr. Schrom replied that he wanted a lawyer, respondent told him that he could not have one because the charges against him were only violations.

29. Respondent asked Mr. Schrom whether he had $250. Mr. Schrom said that he did not and asked to call his father, who also said that he did not have the money. Respondent asked the defendant whether he had a job; Mr. Schrom replied that he did not.

30. Respondent then committed Mr. Schrom to jail in lieu of $250 bail and did not set a return date.

31. Mr. Schrom remained in jail for 26 days until the district attorney inquired about his incarceration. He was released by Cobleskill Village Justice Alfred Toohig on August 29, 1989, and was sentenced to 15 days time served.

As to Charge III of the Formal Written Complaint:

32. On August 28, 1989, Tracy Lord was charged in the Village of Cobleskill by respondent's son with Driving While Intoxicated, Driving With More Than .10 Percent Blood Alcohol Content, Failure To Keep Right and Aggravated Unlicensed Operation, 3d Degree. Mr. Lord was 17 years old at the time.

33. Officer Winegard took Mr. Lord before respondent for arraignment. Respondent and his son lived together at the time, and the arraignment took place in their home. Mr. Lord was under the influence of alcohol at the arraignment. Respondent set bail at $1,000 cash or $2,000 bond, committed Mr. Lord to jail in lieu of bail and ordered him to appear in the Cobleskill Village Court on September 19, 1989, 22 days later.

34. Respondent failed to take any steps to effectuate Mr. Lord's right to assigned counsel if he could not afford an attorney, as required by CPL 170.10(4)(a).

As to Charge IV of the Formal Written Complaint:

35. On May 28, 1989, David J. Smith was charged in the Village of Cobleskill with Driving While Intoxicated, Driving With More Than .10 Percent Blood Alcohol Content and Failure To Obey A Traffic Control Device. Respondent's son was one of the arresting officers and administered a breathalyzer test, which indicated a blood alcohol content of .19 percent.

36. Officer Winegard took Mr. Smith before respondent for arraignment. Respondent and Office Winegard lived together at the time, and the arraignment took place in their home. Mr. Smith did not know and was not advised of the relationship.

37. Respondent read the charges and asked for a plea. Mr. Smith said that he wanted a lawyer. Respondent told him that he would have to enter a plea first.

38. Respondent told Mr. Smith that he would have to either plead not guilty and post $1,000 bail or plead guilty and pay a fine of $417.

39. Mr. Smith pleaded guilty. He could not pay the $417, and respondent committed him to jail for 15 days or until the fine was paid. Respondent did not advise Mr. Smith that he had a right to apply for resentencing if he could not pay the fine, as required by CPL 420.10(3).

As to Charge V of the Formal Written Complaint:

40. On July 30, 1989, Kenneth J. Weaver was charged in the Village of Cobleskill with Assault, 2d Degree, a felony; Resisting Arrest, a misdemeanor; Unlawful Possession of Marijuana, a violation, and Speeding, a traffic infraction. The charges included allegations that he had assaulted respondent's son during the arrest. Respondent and his son lived together at the time.

41. Respondent came to the Cobleskill Police Station to arraign Mr. Weaver at the request of the police. Officer Winegard was present for the arraignment. Respondent did not disclose their relationship. Respondent did not advise Mr. Weaver that he had the right to assigned counsel if he could not afford a lawyer and took no steps to determine his eligibility for assigned counsel, as required by CPL 170.10(4)(a) and 180.10(4).

42. Without considering the factors enumerated in CPL 510.30(2), respondent set bail, committed Mr. Weaver to jail in lieu of bail and ordered him to appear in the Cobleskill Village Court on August 15, 1989.

43. Respondent acknowledges that he has no jurisdiction in the Village of Cobleskill.

As to Charge VI of the Formal Written Complaint:

44. On April 20, 1989, Brian M. Lipes appeared before respondent on a charge of Harassment. Mr. Lipes was 19 years old at the time.

45. Respondent informed Mr. Lipes of the charge and asked him how he wished to plead. Respondent told Mr. Lipes that if he pleaded not guilty, he would spend a longer time in jail because he would have to wait for another hearing.

46. Respondent did not advise Mr. Lipes of his right to counsel, his right to an adjournment to obtain counsel or his right to assigned counsel if he could not afford a lawyer, as required by CPL 170.10(4)(a).

47. Mr. Lipes pleaded guilty, and respondent sentenced him to ten days in jail.

48. Mr. Lipes served the sentence with time off for good behavior. Two days after his release, in a college disciplinary proceeding, he was barred from the dormitories of the State University at Cobleskill, where he was a student and where the Harassment incident had taken place.

49. On May 10, 1989, Mr. Lipes was charged with Criminal Trespass, 2d Degree, based on an allegation that he had been in one of the college dormitories.

50. Mr. Lipes was again taken to respondent for arraignment. Respondent told him that if he pleaded not guilty, he might be sent to jail again. Respondent said that Mr. Lipes was guilty.

51. Respondent did not advise him of his right to counsel, his right to an adjournment to obtain counsel or his right to assigned counsel if he could not afford a lawyer, as required by CPL 170.10(4)(a).

52. Mr. Lipes pleaded guilty. Respondent imposed a $250 fine and a $62 surcharge and gave Mr. Lipes three weeks to pay.

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(a)(1), 100.3(a)(4) and 100.3(c)(1), and Canons 1, 2A, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I, II, III, IV, V and VI of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

A judge has an obligation at the arraignment of a criminal defendant to inform the defendant of his or her rights and to take steps to safeguard those rights. (CPL 170.10[4][a], 180.10[4]). Respondent repeatedly failed to fulfill that obligation and violated the rights of criminal defendants appearing before him.

He denied defendants fundamental constitutional rights concerning counsel and bail. He coerced guilty pleas in three cases, two of them involving the same unrepresented, 19-year-old

defendant. He left an 18-year-old defendant charged with traffic infractions in jail for 26 days in lieu of bail by failing to set a date for his return to court. He held three defendants in Criminal Contempt without following proper statutory procedures and sentenced them to jail for their behavior at arraignment on other charges and never completed the arraignments.

Respondent also handled 23 cases over which he had no jurisdiction and failed to disqualify himself in 11 cases in which his son was the arresting officer, complaining witness and representative of the prosecution.

Such a pattern of conduct is prejudicial to the fair and proper administration of justice. Respondent has "abused the power of his office in a manner that has brought disrepute to the judiciary and has irredeemably damaged public confidence in the integrity of his court" (Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870, 871).

Respondent's own testimony indicates that he was aware of his jurisdictional limitations and that he understood the proper criteria for assigning counsel and setting bail. Such a pattern of deliberate disregard of the law demonstrates insensitivity to the legal and ethical obligations of a judge. (See, Matter of Maney v. State Commission on Judicial Conduct, 70 NY2d 27, 30; Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105, 111).

"No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who thus disregards law." (Matter of Ellis, 1983 Ann Report of NY Commn on Jud Conduct, at 107, 113).

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

Mr. Berger, Judge Altman, Mr. Bellamy, Judge Ciparick, Mr. Goldman and Judge Thompson concur.

Mr. Cleary, Judge Salisbury and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

Ms. Barnett and Mrs. Del Bello 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: September 26, 1991

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

Schedule A

Defendant	Location of Offense	Charge	Date of Arraignment
Anthony D'Andrea	Summit	Criminal Trespass, 2d Degree	12/17/87
Paul R. Hamm	Jefferson	Aggravated Harassment, 2d Degree	2/25/89
David Loughlin	Summit	Criminal Trespass, 2d Degree	12/17/87
Czeslaw Musial	Summit	En Con violations (3)	6/20/88
Jozef Wierciak	Summit	En Con violations (3)	6/20/88

Schedule B

Defendant	Location of Offense	Date of Arraignment by Respondent	Date of Disposition by Respondent
Joseph A. Blaser	Schoharie	5/27/89	6/01/89
Troy E. Bookaut	Cobleskill	11/15/88	12/01/88
Richard Bronner	Cobleskill	11/15/88	2/23/89
Keefe Braun	Cobleskill	4/22/88	5/19/88
Murphy Brown	Sharon	12/11/88	1/15/89
Terry L. Butler	Sharon	7/11/89	7/27/89
Robert Cedeno	Cobleskill	5/22/88	7/14/88
Anthony D'Andrea	Summit	12/17/87	12/17/87*
Jonathan Demarco	Cobleskill	4/11/89	6/01/89
Richard Dupont	Schoharie	6/03/89	6/29/89
Jack Greenhalgh	Richmondville	5/09/89	5/18/89
Christina Greeven	Schoharie	6/03/89	7/13/89
Priscilla Kennedy	Cobleskill	11/15/88	12/01/88
David Loughlin	Summit	12/17/87	12/17/87*
Singh Mahandar	Summit	7/08/89	7/10/89
Audrey Muir	Cobleskill	1/29/88	2/04/88
Czeslaw Musial	Summit	6/20/88	6/20/88*
Frank J. Sandoval	Cobleskill	12/17/89	12/28/89
Stanley Schultz	Cobleskill	1/23/88	6/07/88
Harold G. Wentworth	Cobleskill	11/15/88	12/01/88
Carol L. White	Cobleskill	8/20/88	9/08/88
Jozef Wierciak	Summit	6/20/88	6/20/88*

*Although respondent accepted guilty pleas from Mr. D'Andrea, Mr. Loughlin, Mr. Musial and Mr. Wierciak immediately after their arraignments, since he had no jurisdiction to arraign them (see Paragraph 3 of this determination), he had no jurisdiction to dispose of their cases.

Schedule C

Defendant	Date of Arraignment
John H. Adams	6/10/89
Daniel J. Dolan	4/08/89
Tracy Lord	8/28/89
Patrick M. O'Dell	8/28/89
Larry Omland	8/30/89
John P. Pettys	9/18/89
Brian S. Powell	8/04/89
Larry Schondra	7/15/89
Charles L. Schrom, Jr.	8/03/89
David J. Smith	5/28/89
Kenneth Weaver	7/30/89

Schedule D

Defendant	Date of Arraignment
Murphy Brown	12/11/88
Brian Lipes	4/20/89
	5/11/89
Kenneth McLasky	12/23/89
Brian S. Powell	8/04/89
Kenneth Weaver	7/30/89