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

JOHN J. WOOD,

a Justice of the Wilton Town Court, Saratoga 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

Ferrara, Jones & Sipperly (By Matthew J. Jones) for Respondent

The respondent, John J. Wood, a justice of the Wilton Town Court, Saratoga County, was served with a Formal Written Complaint dated September 1, 1988, alleging that he engaged in a course of conduct prejudicial to the administration of justice by denying defendants basic well-established rights and conveying the impression

of bias. Respondent filed an answer dated September 19, 1988.

By motion dated November 1, 1988, respondent moved for an order directing the administrator of the Commission to comply with respondent's discovery demands or for dismissal of the Formal Written Complaint for failure to comply. The administrator opposed the motion by affirmation dated November 10, 1988. By determination and order dated November 17, 1988, the Commission denied the motion.

By order dated November 4, 1988, the Commission designated Michael Whiteman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 17, 18, 19 and 21, 1989, and the referee filed his report with the Commission on March 13, 1990.

By motion dated March 22, 1990, the administrator moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on April 10, 1990. The administrator filed a reply on April 12, 1990.

On April 19, 1990, 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.

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

1. Respondent has been a justice of the Wilton Town Court since January 1983. He was a state trooper for 20 years before his retirement in 1977.

2. On September 1, 1987, Jefferson Bell appeared before respondent on charges of Driving While Intoxicated and Speeding. It was Mr. Bell's third court appearance in connection with the same case. No representative of the prosecution was present.

3. Respondent informed Mr. Bell of the charges and said that the case had been adjourned so that he could obtain an attorney. Mr. Bell said that he wanted assigned counsel but was having difficulty completing an application for the public defender because he could not read or write.

4. Respondent replied by telling the defendant that the arresting officer had consented to a reduction in the charge to Driving While Ability Impaired.

5. Respondent said that he did not think an attorney would do Mr. Bell "any good."

6. Respondent adjourned the matter to October 6, 1987. Although there was an intervening court date at which the public defender was scheduled to appear, respondent did not adjourn the Bell case to that date.

7. On the adjourned date, Mr. Bell appeared without representation, pled guilty to Driving While Ability Impaired and was fined.

8. On October 2, 1987, respondent arraigned Randy Ferrara, then age 18, immediately after his arrest on charges of Driving While Intoxicated, Failure To Reduce Speed and Uninspected Motor Vehicle. Respondent described Mr. Ferrara's behavior at arraignment as

"completely and totally irrational," and respondent believed him to be intoxicated at the time of arraignment.

9. Respondent adjourned the matter for eleven days and committed Mr. Ferrara to jail in lieu of bail until October 13, 1987. Even though there was a regularly-scheduled court session in the interim, respondent did not re-arraign Mr. Ferrara.

10. At Mr. Ferrara's October 13, 1987, appearance, respondent told the defendant to get an attorney, ordered a psychiatric evaluation and recommitted him in lieu of bail until October 28, 1987.

11. At the jail, Mr. Ferrara obtained an application for representation by the public defender.

12. On October 28, 1987, Mr. Ferrara met an assistant public defender in court for the first time. He pled guilty to Driving While Ability Impaired, Failure To Reduce Speed and Uninspected Motor Vehicle, was fined and sentenced to 26 days time served in jail.

13. On April 22, 1987, Paul LaCross, then age 20, learned that there was a warrant for his arrest, called the state police and was instructed to appear in respondent's court.

14. Mr. LaCross appeared before respondent and was informed that he was charged with Unlawfully Dealing With A Child. No representative of the prosecution was present. Respondent advised Mr. LaCross that he had a right to an attorney but did not tell him that he had the right to assigned counsel if he could not afford a

lawyer, as required by Sections 170.10(3)(c) and 170.10(4)(a) of the Criminal Procedure Law.

15. Respondent offered to reduce the charge to Disorderly Conduct.

16. Mr. LaCross suggested that perhaps he should get a lawyer. Respondent said that if the defendant got a lawyer, respondent would "push" for the original charge and that there was a "good chance" that Mr. LaCross would not win.

17. Mr. LaCross agreed to plead guilty to the reduced charge and was fined.

18. On February 3, 1987, Scott Taylor, then age 18, appeared before respondent on a charge of Petit Larceny.

19. Respondent informed Mr. Taylor of the charge against him and asked him how he wished to plead. Mr. Taylor pled guilty.

20. Respondent did not inform the defendant of his right to assigned counsel, as required by Sections 170.10(3)(c) and 170.10(4)(a) of the Criminal Procedure Law.

21. The allegations as to Christopher Berger, Heather Cole and Larry Upton are not sustained and are, therefore, dismissed.

As to Paragraphs 4(b) and 4(c) of Charge I of the Formal Written Complaint:

22. The allegations are not sustained and are, therefore, dismissed.

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

23. On December 22, 1987, John Barber appeared before respondent on a charge of Speeding.

24. Respondent informed Mr. Barber of the charge and advised him that he could have an attorney.

25. Mr. Barber denied that he had been speeding.

26. Respondent told him that many drivers do not realize that their speedometers are inaccurate. He said that many drivers put oversized tires on their cars which cause inaccurate speedometer readings. He said troopers are given extensive training in detecting speed and are considered experts in determining speed. Therefore, it is not simply a defendant's word against a trooper's word in court because troopers are considered experts, respondent told Mr. Barber.

27. Respondent offered to reduce the alleged speed from 60 to 55 miles per hour and said the fine would be $20 with a $10 surcharge. He asked Mr. Barber whether he could pay the fine. Mr. Barber indicated that he could but left without pleading guilty. Respondent entered a plea of guilty in his court records.

28. On November 24, 1987, Louis Forte appeared before respondent on a charge of Speeding.

29. Respondent informed Mr. Forte of the charge, told him that he had the right to an attorney and asked him for an explanation of what had happened.

30. Mr. Forte contended that the arresting officer had made a mistake.

31. Respondent then spent about five minutes discussing the training that a trooper has in the visual and radar detection of speed. He asked Mr. Forte whether he had had his speedometer calibrated or whether he had deviation sheets for his speedometer.

32. Mr. Forte said that it seemed that an average person did not stand a chance in court.

33. Respondent offered a reduction to a non-moving violation. Mr. Forte rejected the reduction and asked for a hearing. Respondent adjourned the matter.

34. Mr. Forte retained an attorney and negotiated a plea bargain with the prosecutor's office.

35. On November 24, 1987, Robin L. Greene appeared before respondent on charges of No Seat Belt and Dirty License Plates.

36. Respondent informed Ms. Greene of the charges, advised her of her right to an attorney and asked her for an explanation.

37. Ms. Greene said that she had not been wearing a seat belt but that she did not have dirty license plates. She said that the arresting trooper told her that he ticketed her because she had been warning other drivers of his presence on the road.

38. Respondent told Ms. Greene that she could have been charged with Obstructing Governmental Administration and that the trooper had given her a "break" by not doing so. Respondent also told Ms. Greene that she had been speeding and that the trooper had noted on top of one of the ticket copies to respondent that the defendant's speed was 63.4 miles per hour. Respondent said the

trooper had also given Ms. Greene a "break" by not charging her with speeding.

39. Respondent said that he would give Ms. Greene a "break" by granting a conditional discharge and a $10 surcharge on both charges. Although Ms. Greene never pled guilty to Dirty License Plates, respondent entered that disposition in his court records.

40. The allegations as to David Fisher, Gene Park, Richard Ruopp and Larry Upton are not sustained and are, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

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

As to Charge III of the Formal Written Complaint:

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

As to Charge IV of the Formal Written Complaint:

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

As to Charge V of the Formal Written Complaint:

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

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

By his actions, respondent has denied defendants their most fundamental due process rights and has conveyed the impression of bias. Defendants have been deprived of trials and the right to assigned counsel and have been coerced into entering guilty pleas.

The most egregious misconduct involved the conviction of defendants in two cases without either a trial or a guilty plea. See Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870; Matter of Masner, 1990 Annual Report 133 (Com. on Jud. Conduct, Jan. 25, 1989). Respondent attempted to justify his actions by explaining that in each of those cases the defendants in some manner admitted wrongdoing.

In these cases and one other, respondent compounded his misconduct by conveying a clear impression of bias. He gave defendants detailed recitations of police training and expertise and suggested that a police officer's word carries more weight than that of a defendant. While the effect of police training on issues of credibility and admissibility are for a judge and not the Commission

to decide, here respondent effectively informed defendants that he was prejudging both the credibility of witnesses and the merits of cases before him. He thereby abandoned his proper role as a neutral and detached magistrate and gave the unmistakable impression that, as one defendant observed, "the average person doesn't stand a chance" in his court.

A judge must be impartial and must act 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.

In four cases, respondent ignored a clear statutory mandate regarding a defendant's right to counsel. The Criminal Procedure Law (Section 170.10[3][c]) provides that a defendant in a criminal case has a right to counsel at arraignment and at every subsequent stage of the proceedings and the right to assigned counsel if the defendant cannot afford a lawyer. A judge must inform a defendant of these rights, give the defendant an opportunity to exercise them and must "take such affirmative action as is necessary to effectuate them" (CPL 170.10[4][a]).

In one case, a defendant told respondent he could not apply for assigned counsel because he could neither read nor write. Not only did respondent fail to take steps to protect the defendant's right to counsel, he affirmatively discouraged the defendant from exercising his right by telling him that a lawyer would not do him "any good". In another case, when a defendant suggested that he

should have counsel, respondent threatened to withdraw a plea offer and "push" for prosecution on the original charge. In a third case, respondent arraigned a young defendant he knew was intoxicated and committed him to jail in lieu of bail for eleven days without rearraigning him to ensure that the defendant understood his rights. That defendant remained in jail for 26 days without seeing a lawyer. Such prolonged incarceration under these circumstances constitutes a gross disregard of a defendant's rights and is clearly inappropriate. Matter of Ellis, 1983 Annual Report 107, 113 (Com. on Jud. Conduct, July 14, 1982); Matter of Jutkofsky, 1986 Annual Report 111, 131-32 (Com. on Jud. Conduct, Dec. 24, 1985).

In imposing a sanction, the Commission has taken into consideration that respondent has changed his procedures with respect to informing defendants of their right to counsel and has eliminated the practice of holding informal hearings at which the defendant was asked to give his or her defense and after which the respondent made a "finding" and imposed a sentence in lieu of conducting actual trials. The Commission notes that, in each of the cases considered by the Commission involving these informal and clearly unauthorized "hearings", respondent offered a reduction to a lesser charge or a conditional discharge and, in one case, when the defendant refused to accept the proffered reduction, adjourned the matter without a finding. Respondent's actions constituted an improper form of plea bargaining. The procedure used was not sanctioned or authorized by law and appears to have been inherently coercive. We express our strong disapproval of such a procedure.

As to misconduct, the Commission records the following dissents:

Mr. Berger votes to sustain, in addition, the allegations in Paragraph 4(b) of Charge I as to Peter Splain and in Paragraphs 10 and 12 of Charge III.

Ms. Barnett votes to sustain, in addition, the allegations in Paragraph 4(a) of Charge I as to Christopher Berger.

Mr. Bellamy votes to sustain, in addition, the allegations in Paragraph 4(a) of Charge I as to Christopher Berger and in Paragraphs 8(c) and 8(d) of Charge II and votes to dismiss, in addition, the allegations in Paragraph 4(a) of Charge I as to Scott Taylor.

Mrs. Del Bello votes to sustain, in addition, the allegations in Paragraph 4(a) of Charge I as to Christopher Berger and Larry Upton; in Paragraph 4(b) of Charge I as to Bruce MacWhinnie, Peter Splain and Larry Upton; in Paragraphs 6, 8(a), 8(b), 8(c) and 8(d) of Charge II; in Paragraph 10 of Charge III, and in Charge IV.

Mr. Sheehy votes to dismiss, in addition, the allegations in Paragraph 4(a) of Charge I as to Randy Ferrara, Paul LaCross and Scott Taylor and votes to dismiss in toto the allegations in Paragraph 4(d) of Charge I.

Judge Thompson votes to dismiss, in addition, the allegations in Paragraph 4(a) of Charge I as to Paul LaCross and votes to dismiss in toto the allegations in Paragraph 4(d) of Charge I.

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

Mr. Berger, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury, Mr. Sheehy and Judge Thompson concur as to sanction.

Judge Altman, Ms. Barnett and Mr. Bellamy dissent as to sanction and vote that respondent be removed from office.

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: June 22, 1990

Henry T. Berger, Esq., Chair
New York State
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

JOHN J. WOOD,

a Justice of the Wilton Town Court, Saratoga County.

DISSENTING OPINION BY JUDGE ALTMAN, IN WHICH MS. BARNETT AND MR. BELLAMY JOIN

I dissent on sanction and vote removal of Judge Wood. The right to a trial is so fundamental to our system of justice that deprivation of that right cannot be countenanced. Judge Wood systematically conducted hearings in a non-trial setting during which he asked defendants to account for themselves. Then without either a trial or a guilty plea, he entered a conviction. Historically this Commission has removed judges entering convictions without trial or plea. See Matter of Masner, 1990 Annual Report 133 (Com. on Jud. Conduct, Jan. 25, 1989); Matter of Cook, 1987 Annual Report 75 (Com. on Jud. Conduct, Nov. 19, 1986). Only in Matter of Curcio, 1984 Annual Report 80 (Com. on Jud. Conduct, Mar. 1, 1983) was there no removal. The conduct in this case is quite similar to the conduct which resulted in the removal of Judge Masner.

The jailing of a defendant for 26 days without arranging for counsel also indicates a fundamental disregard of due process rights. It is difficult to understand how a judge so indifferent to the fact that a person is jailed for 26 days without the opportunity to

consult with counsel can be permitted to pass judgment on a person's right to remain at liberty.

Respondent also coerced pleas. Viewing the acts of misconduct as a whole, this judge is unfit for judicial office. The fact that he has now changed his procedures does not excuse the past misconduct. Such a gross lack of understanding of due process rights and the judge's role does not instill confidence in the capacity of this judge to deal with the next issue of fairness which may come before him.

Dated: June 22, 1990

Hon. Myriam J. Altman, Member
New York State
Commission on Judicial Conduct