

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

ROBERT P. WYLIE,

a Judge of the Plattsburgh City
Court, Clinton County.

THE COMMISSION:

John J. Bower, Esq., Chairman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Honorable Isaac Rubin
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.

APPEARANCES:

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

E. Stewart Jones, Jr. (Leonard W. Krouner, Of Counsel)
for Respondent

The respondent, Robert P. Wylie, a judge of the
Plattsburgh City Court, Clinton County, was served with a Formal
Written Complaint dated January 12, 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 January 19, 1988.

By order dated May 3, 1988, the Commission designated Marjorie E. Karowe, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 26 and 27, October 26 and December 12, 1988, and the referee filed her report with the Commission on May 3, 1989.

By motion dated November 15, 1989, the administrator of the Commission moved to disaffirm the referee's report, to adopt alternative findings and conclusions and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion on December 29, 1989. The administrator replied on January 10, 1990. Respondent filed a sur-reply dated February 7, 1990. Oral argument was waived.

On January 18 and February 16, 1990, the Commission 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, a lawyer, has been a judge of the Plattsburgh City Court since 1975.

2. On May 9, 1984, respondent arraigned James J. LaTour on a charge of Driving While Intoxicated. Respondent

advised Mr. LaTour that he had the right to counsel and that an attorney would be appointed for him if he could not afford one. Mr. LaTour asked whether he could have counsel assigned. Respondent replied, "No," told Mr. LaTour that he would get an "appearance" and released him on his own recognizance.

3. On May 6, 1986, respondent arraigned Alberta Rabatoy on a charge of Harassment. Respondent advised Ms. Rabatoy of her right to counsel and her right to an adjournment to obtain counsel but did not advise her of her right to assigned counsel if she could not afford an attorney.

4. On June 29, 1984, respondent arraigned Randy K. Watson on a charge of Criminal Mischief, Fourth Degree. Respondent advised Mr. Watson of the charge against him and asked him how he wished to plead. Mr. Watson pled guilty. Respondent then asked Mr. Watson whether he wanted a lawyer. The defendant declined since he had already pled guilty.

5. The allegations as to Daniel P. Breed, Kevin Corson and Nancy Manor are not sustained and are, therefore, dismissed.

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

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

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

7. On October 16, 1986, respondent arraigned Mike Brown on a charge of Disorderly Conduct. Respondent set bail. The defendant then used language which respondent considered abusive. Respondent revoked bail and committed Mr. Brown to jail. When Mr. Brown was produced in court the next day, he pled guilty and was sentenced to time served.

8. The allegations as to Alton Long and Shawn Young are not sustained and are, therefore, dismissed.

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

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

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

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

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

11. On March 28, 1986, respondent arraigned Leonard T. Butler on a charge of Attempted Petit Larceny. During the

arraignment, respondent told the defendant that he was a "thief."

12. On August 14, 1986, respondent arraigned Joseph Cartier on a charge of Aggravated Harassment alleging that he had made a threat of physical harm. At arraignment, respondent said to the defendant, "Eventually, you are going to kill someone."

13. On January 31, 1986, respondent arraigned Kevin Corson on a charge of Disorderly Conduct. Mr. Corson pled not guilty. Respondent asked Mr. Corson whether he was drunk at the time of the incident. Mr. Corson replied that he didn't know exactly what had happened. Respondent then said, "Who do you expect me to believe at trial, you, who say you were drunk at the time, or a police officer?"

14. On January 31, 1986, Linda Dergham appeared before respondent on a charge of Assault, Third Degree. During the proceeding, respondent told Ms. Dergham that she was "sick, sick, sick." After a conference between the attorneys in the case, Ms. Dergham pled guilty to the charge.

15. On May 9, 1984, respondent arraigned James J. LaTour on a charge of Driving While Intoxicated. During the arraignment, respondent told Mr. LaTour, "You're a bum."

16. On May 6, 1986, respondent arraigned Alberta Rabatoy on a charge of Harassment. During the arraignment, respondent said to the defendant, "You're not going to plead not

guilty to this, are you?" When Ms. Rabatoy responded that she did wish to plead not guilty, respondent remarked that he hated "this type of case" and called it "a waste of everyone's time."

17. On January 27, 1987, Brian H. Trombley appeared before respondent on a charge of Harassment brought by his wife. The defendant's wife stated that she wished to withdraw her complaint. Respondent dismissed the charge but referred to Mr. Trombley as "scum."

18. The allegations as to Frederick Giguere, Randy Watson and Daniel Ducharme are not sustained and are, therefore, dismissed.

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

19. In 16 cases involving 13 defendants, as denominated in Schedule A to the Formal Written Complaint, respondent required that bail be posted in cash form only, in violation of Section 520.10(2) of the Criminal Procedure Law.

As to Charge II of the Formal Written Complaint:

20. As set forth in Paragraph 15 herein, respondent referred to the defendant in People v. James LaTour as "a bum."

21. The remaining allegations in Charge II are not sustained and are, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

22. As set forth in Paragraph 14 herein, respondent referred to Linda Dergham as "sick, sick, sick."

23. The remaining allegation in Charge III is not sustained and is, therefore, dismissed.

As to Charge IV of the Formal Written Complaint:

24. As set forth in Paragraph 13 herein, respondent elicited a statement from Kevin Corson and stated, "Who do you expect me to believe at trial, you, who say you were drunk at the time, or a police officer?"

25. The remaining allegations of Charge IV are not sustained and are, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

26. As set forth in Paragraph 17 herein, respondent referred to Brian Trombley as "scum."

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)(2), 100.3(a)(3) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained insofar as they are consistent with the findings

herein, and respondent's misconduct is established.

Respondent's motion to dismiss for lack of jurisdiction and insufficient notice of the allegations is denied.

Respondent has engaged in a course of conduct prejudicial to the administration of justice by repeatedly denying defendants basic, well-established rights and conveying the impression of bias.

By his actions in cases involving 18 different defendants, respondent compromised his impartiality. He referred to defendants who had not been convicted of any crime and were presumed innocent as "scum," "a bum," "a thief" and "sick, sick, sick." He suggested to two defendants that they should not enter a not guilty plea and predicted at arraignment that another would eventually "kill someone." Such comments are inconsistent with the dignity and patience required of judges, and they convey through the judge's own words that defendants are presumed guilty.

In addition, respondent elicited incriminating statements from a defendant at arraignment and failed to advise or effectuate defendants' right to assigned counsel in three cases. See Section 170.10(4)(a) of the Criminal Procedure Law. In more than a dozen cases, respondent ignored a clear statutory requirement that he set at least two forms in which bail might be posted. Section 520.10(2) of the Criminal Procedure Law. In one case, as punishment for making remarks he considered

abusive, respondent summarily committed a defendant without bail, although he was entitled to bail or release. See Section 530.20(1) of the Criminal Procedure Law.

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, 291-92 (1983).

While the totality of respondent's conduct represents a serious departure from the proper role of a judge, we are not prepared to say that public confidence in his ability to do his job fairly is irreparably damaged.

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

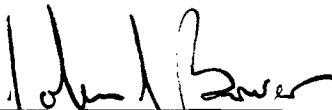
Mr. Bower, Judge Altman, Mr. Berger, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Judge Rubin and Judge Salisbury concur, except that Mr. Berger votes to sustain in toto the allegations in Paragraph 4(c) of Charge I and Mrs. Del Bello votes to sustain in toto the allegations in Paragraphs 4(b), 4(c), 4(d) and 4(f) of Charge I and in Charges II, III and IV.

Mr. Sheehy 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: February 28, 1990



John J. Bower, Esq., Chairman
New York State
Commission on Judicial Conduct