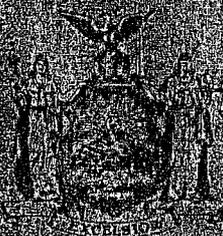


ANNUAL REPORT

1987

New York State
Commission on Judicial Conduct



1987 ANNUAL REPORT
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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INTRODUCTION

The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently.

By offering a forum for citizens with conduct-related complaints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary. The Commission does not act as an appellate court, does not make judgments as to the merits of judicial decisions or rulings, and does not investigate complaints that judges are either too lenient or too severe in criminal cases.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction.¹

¹For the purpose of clarity, the Commission which operated from September 1, 1976, through March 31, 1978, will henceforth be referred to as the "former" Commission. A description of the temporary and former commissions, their composition and workload is appended.

STATE COMMISSION ON JUDICIAL CONDUCT

Authority

The State Commission on Judicial Conduct has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, Section 22), the Commission:

shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts with the approval of the Court of Appeals) and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines that disciplinary action is warranted, it may render a determination to impose one of four sanctions, subject to review by the Court of Appeals upon timely request by the respondent-judge. If review is not requested within 30 days of service of the determination upon the judge, the determination becomes final. The Commission may render determinations to:

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that the circumstances so warrant. In some cases the Commission has

issued such a letter after charges of misconduct have been sustained.

Procedures

The Commission convenes once a month. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate or dismiss the complaint. It also reviews staff reports on ongoing matters, makes final determinations on completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other Commission business.

No investigation may be commenced by staff without authorization by the Commission. The filing of formal charges also must be authorized by the Commission.

After the Commission authorizes an investigation, the complaint is assigned to a staff attorney, who is responsible for conducting the inquiry and supervising the investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and at least one Commission member must be present. Although such an "investigative appearance" is not a formal hearing, the judge is entitled to be represented by counsel. The judge may also submit evidentiary data and materials for the Commission's consideration.

If the Commission finds after an investigation that the circumstances so warrant, it will direct its administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the administrator and the respondent-judge. Where there are factual disputes that make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission will appoint a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges.² Following the Commission's receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters

²A list of those who were designated as referees in Commission cases in 1986 is appended.

pertaining to cases in which Formal Written Complaints have been served, the Commission deliberates in executive session, without the presence or assistance of its administrator or regular staff. The clerk of the Commission assists the Commission in executive session, but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission.

The Commission may dismiss a complaint at any stage during the investigative or adjudicative proceedings.

When the Commission determines that a judge should be admonished, censured, removed or retired, its written determination is forwarded to the Chief Judge of the Court of Appeals, who in turn serves it upon the respondent-judge. Upon completion of service, the Commission's determination and the record of its proceedings become public. (Prior to this point, by operation of the strict provisions in Article 2-A of the Judiciary Law, all proceedings and records are confidential.) The respondent-judge has 30 days to request full review of the Commission's determination by the Court of Appeals. The Court may accept or reject the Commission's findings of fact or conclusions of law, make new or different findings of fact or conclusions of law, accept or reject the determined sanction, or make a different determination as to sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

Membership and Staff

The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor,

three by the Chief Judge of the Court of Appeals, and one each by the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and appoints an administrator and a clerk. The administrator is responsible for hiring staff and supervising staff activities subject to the Commission's direction and policies.

The chairwoman of the Commission is Mrs. Gene Robb of Newtonville. The other members are: John J. Bower, Esq., of Upper Brookville; David Bromberg, Esq., of New York City; Honorable Carmen Beauchamp Ciparick of New York City, Justice of the Supreme Court, First Judicial District; E. Garrett Cleary, Esq., of Rochester; Dolores DelBello of South Salem; Victor A. Kovner, Esq., of New York City; Honorable William J. Ostrowski of Buffalo, Justice of the Supreme Court, Eighth Judicial District; Honorable Isaac Rubin of Rye, Justice of the Appellate Division, Second Department; Honorable Felice K. Shea of New York City, Justice of the Supreme Court, First Judicial District; and John J. Sheehy, Esq., of New York City.

The administrator of the Commission is Gerald Stern, Esq. The deputy administrator is Robert H. Tembeckjian, Esq. The chief attorney in Albany is Stephen F. Downs, Esq. The chief

attorney in Rochester is John J. Postel, Esq. The clerk of the Commission is Albert B. Lawrence, Esq.³

The Commission has 41 full-time staff employees, including nine attorneys. A limited number of law students are employed throughout the year on a part-time basis.

The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.

³Biographies are appended.

COMPLAINTS AND INVESTIGATIONS IN 1986

In 1986, 889 new complaints were received. Of these, 641 were dismissed upon initial review, and 248 investigations were authorized and commenced.⁴ As in previous years, the majority of complaints were submitted by civil litigants and by complaining witnesses and defendants in criminal cases. Other complaints were received from attorneys, judges, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 78 initiated by the Commission on its own motion.

The Commission carried over 173 investigations and proceedings on formal charges from 1985.

Some of the new complaints dismissed upon initial review were frivolous or outside the Commission's jurisdiction (such as complaints against attorneys or judges not within the state unified court system). Many were from litigants who complained about a particular ruling or decision made by a judge in the course of a proceeding. Absent any underlying misconduct, such as demonstrated prejudice, intemperance, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate such matters, which belong in the appellate

⁴The statistical period in this report is January 1, 1986, through December 31, 1986. Statistical analysis of the matters considered by the temporary, former and present Commissions is appended in chart form.

courts. Judges must be free to act, in good faith, without fear of being investigated for their rulings or decisions.

Of the combined total of 421 investigations and proceedings on formal charges conducted by the Commission in 1986 (173 carried over from 1985 and 248 authorized in 1986), the Commission made the following dispositions in 218 cases:

- 119 matters were dismissed outright. (118 of these matters were dismissed after investigations were completed, and 1 was dismissed at the conclusion of a formal proceeding.)
- 44 matters involving 31 different judges were dismissed with letters of dismissal and caution. (42 of these matters were dismissed with caution upon conclusion of an investigation and 2 were issued upon conclusion of a formal proceeding.)
- 16 matters involving 8 different judges were closed upon resignation of the judge from office. (14 of these matters were closed at the investigation stage and 2 during the formal proceeding stage.)
- 21 matters involving 14 different judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election. (All 21 of these matters were closed at the investigation stage.)
- 18 matters involving 16 different judges resulted in formal discipline (admonition, censure or removal from office).

Two hundred and three matters were pending at the end of the year.

ACTION TAKEN IN 1986

Formal Proceedings

No disciplinary sanction may be imposed by the Commission unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge, and the respondent has been afforded an opportunity for a formal hearing. These proceedings fall within the confidentiality provisions of the Judiciary Law and are not public unless confidentiality is waived, in writing, by the judge.

In 1986, the Commission authorized Formal Written Complaints against 36 judges.

The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission with respect to charges served, hearings commenced or other matters, absent a waiver by the judge, until a case has been concluded and a final determination has been filed with the Chief Judge of the Court of Appeals and forwarded to the respondent-judge. Following are summaries of those matters which were completed during 1986 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed seven disciplinary proceedings in 1986 in which it determined that the judges involved should be removed from office.

Matter of Herbert O. Therrian, Jr.

Herbert O. Therrian, Jr., a justice of the Altona Town Court, Clinton County, was served with a Formal Written Complaint dated September 10, 1985, alleging that he gave money to prospective voters to induce them to vote for him and other candidates of his party. Judge Therrian filed an answer dated September 26, 1985.

A hearing was held before a referee, H. Wayne Judge, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Therrian did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated May 1, 1986, that Judge Therrian be removed from office. A copy of the determination is appended.

Judge Therrian requested review of the Commission's determination by the Court of Appeals, which dismissed the requested review for want of prosecution and ordered his removal on August 28, 1986.

Matter of Lawrence L. Rater

Lawrence L. Rater, a justice of the Sherman Town Court, Chautauqua County, was served with a Formal Written Complaint dated May 28, 1985, alleging certain financial depositing, reporting and remitting deficiencies. Judge Rater answered the Formal Written Complaint by letter received on August 8, 1985.

A hearing was held before a referee, Patrick J. Berrigan, Esq. Both sides filed papers with respect to the

referee's report to the Commission. Judge Rater and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated July 25, 1986, that Judge Rater be removed from office. A copy of the determination is appended.

Judge Rater requested review of the Commission's determination by the Court of Appeals, which ordered his removal on February 12, 1987.

Matter of Joseph M. White

Joseph M. White, a justice of the Greenburgh Town Court, Westchester County, was served with a Formal Written Complaint dated October 29, 1985, alleging, inter alia, that he directed a court clerk to select a particular juror and that he made false statements concerning the incident to several authorities. Judge White filed an answer dated December 5, 1985.

The Commission granted the administrator's motion for summary determination and found misconduct established. Both sides filed memoranda as to sanction. Judge White appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated August 8, 1986, that Judge White be removed from office. A copy of the determination is appended.

Judge White did not request review of the Commission's determination, and the Court of Appeals ordered his removal on September 29, 1986.

Matter of Patrick T. Maney

Patrick T. Maney, a justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated March 28, 1986, alleging that he engaged in partisan political activities. Judge Maney filed an answer dated April 30, 1986.

Judge Maney, his counsel and the administrator entered into an agreed statement of facts on June 23, 1986. The Commission approved the agreed statement. The administrator submitted a memorandum as to sanction. Judge Maney neither submitted any papers nor appeared for oral argument.

The Commission filed with the Chief Judge its determination dated September 12, 1986, that Judge Maney be removed from office. A copy of the determination is appended.

Judge Maney requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Matter of Lee Vincent

Lee Vincent, a justice of the Burke Town Court, Franklin County, was served with a Formal Written Complaint dated October 31, 1985, alleging, inter alia, certain financial depositing, reporting and remitting deficiencies. Judge Vincent filed an answer dated January 12, 1986.

A hearing was held before a referee, Robert E. Helm, Esq. Both sides filed papers with respect to the referee's

report to the Commission. Judge Vincent did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated October 23, 1986, that Judge Vincent be removed from office. A copy of the determination is appended.

Judge Vincent requested review of the Commission's determination by the Court of Appeals, where the matter is pending. On December 19, 1986, the Court suspended Judge Vincent pending review.

Matter of Albert Montaneli

Albert Montaneli, a justice of the Ancram Town Court, Columbia County, was served with a Formal Written Complaint dated May 21, 1986, alleging that he mishandled court funds. Judge Montaneli did not answer the Formal Written Complaint.

A hearing was held before a referee, Michael Whiteman, Esq. The administrator filed a motion with respect to the referee's report to the Commission. Judge Montaneli neither submitted any papers nor appeared for oral argument.

The Commission filed with the Chief Judge its determination dated November 17, 1986, that Judge Montaneli be removed from office. A copy of the determination is appended.

Judge Montaneli did not request review of the Commission's determination, and the Court of Appeals ordered his removal on January 15, 1987.

Matter of Curtis W. Cook

Curtis W. Cook, a justice of the Marshall Town Court, Oneida County, was served with a Formal Written Complaint dated July 16, 1986, alleging that he engaged in a course of conduct prejudicial to the administration of justice. Judge Cook did not answer the Formal Written Complaint.

The Commission granted the administrator's motion for summary determination and found misconduct established. The administrator submitted a memorandum as to sanction. Judge Cook neither submitted any papers nor appeared for oral argument.

The Commission filed with the Chief Judge its determination dated November 19, 1986, that Judge Cook be removed from office. A copy of the determination is appended.

Judge Cook did not request review of the Commission's determination, and the Court of Appeals ordered his removal on December 31, 1986.

Determinations of Censure

The Commission completed three disciplinary proceedings in 1986 in which it determined that the judges involved should be censured.

Matter of Sebastian J. Lombardi

Sebastian J. Lombardi, a justice of the Lewiston Town Court, Niagara County, was served with a Formal Written Complaint dated September 7, 1984, alleging that he intervened in a case

before another judge and released the defendant from jail based solely on an ex parte request. Judge Lombardi filed an answer dated October 1, 1984.

A hearing was held before a referee, the Honorable Dean C. Stathacos. Both sides filed papers with respect to the referee's report to the Commission. Judge Lombardi appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated January 2, 1986, that Judge Lombardi be censured. A copy of the determination is appended.

Judge Lombardi did not request review of the Commission's determination, which thus became final.

Matter of Melford C. Hopkins

Melford C. Hopkins, a justice of the Sodus Town Court and Sodus Village Court, Wayne County, was served with a Formal Written Complaint dated April 12, 1985, alleging that he angrily revoked an order of recognizance, set bail and jailed a defendant who had asked for an adjournment in a traffic case. Judge Hopkins filed an answer dated May 11, 1985.

A hearing was held before a referee, John P. Cox, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Hopkins did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated January 24, 1986, that Judge Hopkins be censured. A copy of the determination is appended.

Judge Hopkins did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Matter of Glenn R. Latremore

Glenn R. Latremore, a justice of the Chazy Town Court, Clinton County, was served with a Formal Written Complaint dated August 4, 1984, alleging that he presided over cases involving clients of his private insurance business. Judge Latremore filed an answer dated September 7, 1984.

A hearing was held before a referee, Francis C. LaVigne, Esq. Both sides filed papers with respect to the referee's report to the Commission. Respondent appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated May 30, 1986, that Judge Latremore be censured. A copy of the determination is appended.

Judge Latremore did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Determinations of Admonition

The Commission completed six disciplinary proceedings in 1986 in which it determined that the judges involved should be admonished.

Matter of Floyd W. Colf

Floyd W. Colf, a justice of the Ashford Town Court, Cattaraugus County, was served with a Formal Written Complaint dated July 16, 1985, alleging that he issued an "order" threatening contempt of court based on an ex parte communication. Judge Colf answered the Formal Written Complaint by letter of August 19, 1985.

Judge Colf, his counsel and the administrator entered into an agreed statement of facts on November 4, 1985. The Commission approved the agreed statement. Both sides submitted memoranda as to sanction. Judge Colf did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated February 26, 1986, that Judge Colf be admonished. A copy of the determination is appended.

Judge Colf did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Matter of Gerald Gassman

Gerald Gassman, a justice of the Mansfield Town Court, Cattaraugus County, was served with a Formal Written Complaint dated April 10, 1985, alleging that, based on an ex parte communication from another judge, he released three defendants he had previously jailed in lieu of bail. Judge Gassman answered the Formal Written Complaint by letter of April 29, 1985.

A hearing was held before a referee, Richard D. Parsons, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Gassman did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated March 25, 1986, that Judge Gassman be admonished. A copy of the determination is appended.

Judge Gassman did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Matter of Charles J. Mullen

Charles J. Mullen, a judge of the County Court, Family Court and Surrogate's Court, Cortland County, was served with a Formal Written Complaint dated January 16, 1985, alleging that he held a proceeding in a case in the absence of one of the parties who had been granted an adjournment and that he thereafter issued two warrants for the party's arrest. Judge Mullen filed an answer dated February 27, 1985.

A hearing was held before a referee, Shirley Adelson Siegel, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Mullen appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated May 22, 1986, that Judge Mullen be admonished. A copy of the determination is appended.

Judge Mullen requested review of the Commission's determination but withdrew the request. The determination thus became final.

Matter of Gregory R. Manning

Gregory R. Manning, a justice of the Riverhead Town Court, Suffolk County, was served with a Formal Written Complaint dated October 22, 1985, alleging, inter alia, that he sought special consideration and had ex parte meetings in two cases. Judge Manning filed an answer dated November 20, 1985.

A hearing was held before a referee, Bernard H. Goldstein, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Manning appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated August 15, 1986, that Judge Manning be admonished. A copy of the determination is appended.

Judge Manning did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Matter of K. Ray Edwards

K. Ray Edwards, a justice of the Russia Town Court, Poland Village Court and Cold Brook Village Court, Herkimer County, was served with a Formal Written Complaint dated January 23, 1986, alleging that he engaged in ex parte communication

that he failed to disqualify himself and that he permitted a prosecutor to instruct a jury on a question of law. Judge Edwards filed an answer dated February 13, 1986.

A hearing was held before a referee, Peter Preiser, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Edwards did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated November 21, 1986, that Judge Edwards be admonished. A copy of the determination is appended.

Judge Edwards did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Matter of Lucien Ali

Lucien Ali, a justice of the Pompey Town Court, Onondaga County, was served with a Formal Written Complaint dated March 18, 1986, alleging that he became involved in a public controversy and used the prestige of his office to benefit his position in the controversy. Judge Ali filed an answer dated April 22, 1986.

Judge Ali, his counsel and the administrator entered into an agreed statement of facts on September 11, 1986. The Commission approved the agreed statement. Both sides submitted memoranda as to sanction. Judge Ali did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated November 21, 1986, that Judge Ali be admonished. A copy of the determination is appended.

Judge Ali did not request review by the Court of Appeals of the Commission's determination, which thus became final.

Dismissed Formal Written Complaints

The Commission disposed of five Formal Written Complaints in 1986 without rendering public discipline.

In two of these cases, the Commission determined that the judge's misconduct had been established but that public discipline was not warranted, dismissed the Formal Written Complaint and issued the judge involved a confidential letter of dismissal and caution.

In one case, the Commission found that the judge involved had committed misconduct but that, upon the judge's resignation from office, further action was not warranted.

In another case, the Commission closed the matter after a hearing was conducted in view of the resignation of the judge involved.

In the remaining case, the Commission found that misconduct was not established and dismissed the Formal Written Complaint.

Letters of Dismissal and Caution

Pursuant to Commission rule, 22 NYCRR 7000.1(1), a "letter of dismissal and caution" constitutes the Commission's written confidential suggestions and recommendations to a judge.

Where the Commission determines that the misconduct would not warrant public discipline, the Commission, by issuing a letter of dismissal and caution, can privately call a judge's attention to de minimis violations of ethical standards which should be avoided in the future. Such a communication is valuable since it is the only method by which the Commission may caution a judge as to his or her conduct without making the matter public.

Should the conduct addressed by the letter of dismissal and caution continue unabated or be repeated, the Commission may authorize an investigation on a new complaint which may lead to a Formal Written Complaint and further disciplinary proceedings.

In 1986, 31 letters of dismissal and caution were issued by the Commission, two of which were issued after formal charges had been sustained and a determination made that the judge involved had engaged in misconduct. The 31 letters addressed various types of conduct.

For example, three judges were cautioned for agreeing to be honorees at fund-raising events sponsored by charitable or fraternal organizations, in violation of Section 100.5(b)(2) of the Rules Governing Judicial Conduct.

Several judges were cautioned for exhibiting impatience, discourtesy and other inappropriate demeanor toward lawyers and litigants appearing before them.

Seven judges were cautioned for inordinate delay in deciding or otherwise disposing of cases.

Five judges were cautioned for failing to disqualify themselves in cases in which their impartiality could reasonably be questioned, even where their participation was limited to purportedly "ministerial" acts.

Since April 1, 1978, the Commission has issued 313 letters of dismissal and caution, 24 of which were issued after formal charges had been sustained and determinations made that the judges involved had engaged in misconduct.

Matters Closed Upon Resignation

Eight judges resigned in 1986 while under investigation or under formal charges by the Commission.

Since 1975, 152 judges have resigned while under investigation or charges by the temporary, former or present Commission.

The jurisdiction of the temporary and former commissions was limited to incumbent judges. An inquiry was therefore terminated if the judge resigned, and the matter could not be made public. The present Commission may retain jurisdiction over a judge for 120 days following resignation. The Commission may proceed within this 120-day period, but no sanction other than removal may be determined by the Commission within such period.

(When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future.) Thus, no action may be taken if the Commission decides within that 120-day period following a resignation that removal is not warranted.

SUMMARY OF COMPLAINTS CONSIDERED BY THE
TEMPORARY, FORMER AND PRESENT COMMISSIONS

Since January 1975, when the temporary Commission commenced operations, 8568 complaints of judicial misconduct have been considered by the temporary, former and present Commissions.

Of the 8568 complaints received since 1975, 5893 were dismissed upon initial review and 2675 investigations were authorized. Of the 2675 investigations authorized, the following dispositions have been made through December 31, 1986:

- 1169 were dismissed without action after investigation;
- 473 were dismissed with caution or suggestions and recommendations to the judge;
- 195 were closed upon resignation of the judge;
- 185 were closed upon vacancy of office by the judge other than by resignation; and
- 449 resulted in disciplinary action.
- 203 are pending.

Of the 449 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission:⁵

- 72 judges were removed from office;
- 3 additional removal determinations are pending review in the Court of Appeals;

⁵It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints which resulted in action and the number of judges disciplined.

- 3 judges were suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 147 judges were censured publicly;
- 77 judges were admonished publicly; and
- 59 judges were admonished confidentially by the temporary or former Commission, which had such authority.

In addition, 152 judges resigned during investigation, upon the commencement of disciplinary proceedings or in the course of those proceedings.

REVIEW OF COMMISSION DETERMINATIONS
BY THE COURT OF APPEALS

Determinations rendered by the Commission are filed with the Chief Judge of the Court of Appeals and served by the Chief Judge on the respondent-judge, pursuant to statute. The Judiciary Law allows the respondent-judge 30 days to request review of the Commission's determination by the Court of Appeals. If review is waived or not requested within 30 days, the Commission's determination becomes final.

In 1986, the Court had before it five requests for review, two of which had been filed in 1985 and three of which were filed in 1986. Of these five matters, the Court decided two; three are pending.

Matter of Wesley R. Edwards

On September 18, 1985, the Commission determined that Wesley R. Edwards, a justice of the Stephentown Town Court, Rensselaer County, be removed for seeking special consideration for his son in connection with a traffic citation returnable in another Town Court.

Judge Edwards requested review of the Commission's determination by the Court of Appeals.

In its unanimous opinion dated April 3, 1986, the Court rejected the determined sanction of removal and imposed the sanction of censure. 67 NY2d 153 (1986).

Matter of Joseph E. Myers

On October 21, 1985, the Commission determined that Joseph E. Myers, a justice of the Norfolk Town Court, St. Lawrence County, be removed for preparing a criminal summons and otherwise participating in a matter in which he, his son, and his daughter all had an interest.

Judge Myers requested review of the Commission's determination by the Court of Appeals.

In its unanimous opinion dated July 1, 1986, the Court accepted the Commission's determination and removed Judge Myers from office. 67 NY2d 550 (1986).

CHALLENGES TO COMMISSION PROCEDURES

The Commission's staff litigated a number of cases in 1986 involving several important constitutional and statutory issues relative to the Commission's jurisdiction and procedures.

Honorable John Doe v. Commission

On July 11, 1985, a Justice of the Supreme Court (identifying himself as "Honorable John Doe") obtained an order to show cause in Supreme Court, Erie County, directing the Commission to dismiss an Administrator's Complaint against him. The petitioner asserted that the Administrator's Complaint should be dismissed because the allegations it contained were unsubstantiated and were "entirely different" from those in a Formal Written Complaint that had been served upon him.

On July 19, 1985, the Commission cross-moved for a change of venue or, in the alternative, to dismiss. Counsel to the Commission argued that the Administrator's Complaint, which served as the basis for commencing an investigation, was superseded by the filing of a Formal Written Complaint, and noted that a hearing on the matter was pending. Counsel argued that there is no basis in law for a judge who is the subject of charges and a pending proceeding to demand that action be taken on the initial complaint that gave rise to an investigation.

In a decision dated September 27, 1985, Judge Thomas F. McGowan denied the Commission's cross-motion to change venue or dismiss. The Court held that "basic principles of fairness and due process" require that where the formal charges are "entirely

different" from the allegations of the Administrator's Complaint, a disposition be made of the initiatory complaint. The Court also held that since the underlying events giving rise to the Commission's investigation occurred in Erie County, venue was properly in that county. On December 27, 1985, Judge McGowan granted a motion by the Commission for permission to appeal to the Appellate Division, Fourth Department, insofar as the order denied the Commission's cross-motion for failure to state a cause of action.

On November 10, 1986, the Appellate Division unanimously reversed Judge McGowan's order. Noting that an administrator's complaint is "merely a procedural device 'which triggers the Commission's authority to commence an investigation,'" the Court stated: "No consequences to a judge result from an administrator's complaint except an investigation and no statutory duty is imposed on the Commission to dispose of the complaint in any particular manner or at all." Accordingly, the Court held, on the facts presented, "judicial intervention in the Commission's administrative procedures" was not warranted.

Hanft v. Commission

On April 8, 1986, an individual whose complaint against a housing judge was dismissed by the Commission for lack of jurisdiction commenced an Article 78 proceeding in Supreme Court, New York County, seeking an order declaring that the Commission has jurisdiction over housing judges and directing the Commission to take jurisdiction over his complaint. The Commission filed a

cross-motion to dismiss the petition for failure to state a cause of action. Commission counsel noted that because it is unclear whether under existing law housing judges are "judges of the Unified Court System" and thus within the Commission's jurisdiction, the Commission has determined to refer to the Office of Court Administration all complaints alleging misconduct by housing judges.

In a decision dated July 2, 1986, Judge Ethel B. Danzig granted the Commission's cross-motion to dismiss the petition. Judge Danzig held that the Commission had not acted arbitrarily or capriciously in determining that it did not have jurisdiction over housing judges. Judge Danzig noted the existing procedure for review of complaints against housing judges by the Administrative Judge of the Civil Court, pursuant to an Administrative Order of the Chief Administrator of the Courts.

On August 19, 1986, the petitioner filed a notice of appeal. The matter is pending.

Montaneli v. Commission

On July 25, 1986, Ancram Town Justice Albert Montaneli commenced an Article 78 proceeding in Supreme Court, Albany County, seeking to stay a pending hearing before a referee and to have all matters against him dismissed by the Commission on the grounds that the Commission lacked jurisdiction since, he argued, he had resigned prior to being notified of the Commission's investigation. The judge's request for a stay was denied by Supreme Court Justice Edward S. Conway.

Commission counsel filed a cross-motion to dismiss the petition on August 12, 1986. The Commission asserted that the petition failed to state a cause of action since, pursuant to Section 47 of the Judiciary Law, the Commission's jurisdiction to file a determination of removal against a judge who has resigned continues for 120 days after the Chief Administrator of the Courts has been notified of the judge's resignation.

In a decision dated October 7, 1986, Judge Lawrence E. Kahn granted the cross-motion to dismiss the petition. Noting the provisions of Section 47 of the Judiciary Law, Judge Kahn stated that the Commission's "[j]urisdiction is not predicated upon commencement of any formal or informal investigation prior to the [judge's] resignation" and that, since Judge Montaneli had not complied with the provisions of the Public Officers Law concerning his resignation, the 120-day period afforded to the Commission in which to make a determination had not yet commenced. Montaneli v. New York State Commission on Judicial Conduct, 133 Misc2d 526 (Sup. Ct. Alb. Co. 1986).

Gleason v. McBride, et al.

A litigant who was suing various village officials and others for damages in federal court served a deposition subpoena upon the Commission, seeking certain confidential correspondence and other records from the Commission's files pertaining to a particular village justice. The Commission moved for a protective order on the grounds that the subpoenaed materials are confidential by statute.

On August 1, 1986, the United States District Court (S.D.N.Y.) granted the Commission's motion. Judge Louis L. Stanton cited the importance of protecting the confidentiality of the Commission's proceedings and concluded that requiring the Commission to provide the subpoenaed materials would constitute an "unwarranted intrusion"; this was particularly so, Judge Stanton concluded, since the materials sought were "ultimately extraneous" to the issues in the instant litigation. Judge Stanton stated that even if there had been an "informal admonishment" of the village justice by the Commission, as the petitioner had asserted, such a record would be protected by the statutorily afforded confidentiality.

Matter of Subpoenas

On August 5, 1986, two witnesses subpoenaed to appear in a Commission investigation of a Supreme Court justice obtained an order to show cause in Supreme Court, New York County, seeking to obtain transcripts of their testimony or, in the alternative, to quash the subpoenas. The petitioners argued that their rights to due process of law and effective assistance of counsel would be violated if they were required to testify without thereafter obtaining the transcripts, since they would be testifying about the same matters before other bodies and obtaining the transcripts would enable them to testify as accurately as possible. Commission counsel opposed the request on the grounds that the transcripts are confidential by law and that there was no basis for the motion to quash.

On August 7, 1986, Judge Robert E. White denied the petitioner's application for the transcripts as premature, denied the application to quash, and refused to grant a stay of the petitioners' scheduled appearance before the Commission.

The petitioners filed a notice of appeal and moved for a stay pending appeal. The Court denied the motion for a stay, and subsequently the witnesses testified. By order dated October 30, 1986, the appeal was withdrawn.

SPECIFIC PROBLEM AREAS IDENTIFIED BY THE COMMISSION

In the course of its inquiries into individual complaints, the Commission has identified certain types of conduct which appear to recur periodically and sometimes frequently. Several such areas are discussed below.

The Assertion Of Influence

The Rules Governing Judicial Conduct prohibits judges from lending the prestige of their office to advance the private interests of others and from otherwise allowing personal relationships to influence their judicial conduct and judgment. (Section 100.2 of the Rules.)

In the late 1970's, the Commission uncovered evidence that hundreds of judges, mostly from town and village courts, had sought and obtained favors from other judges on behalf of friends and relatives charged with traffic offenses. The practice of "ticket-fixing" became so routine that many judges regularly filed their favor-seeking letters in court files and otherwise kept records of such requests. From 1979 to 1982, five judges were removed, one suspended, 102 censured and 31 admonished for ticket-fixing and related activity, often for multiple acts of influence assertion. In Matter of Reedy, 64 NY2d 299 (1985), the Court of Appeals held that even a single incident of ticket-fixing may warrant the judge's removal from office. In Matter of Edwards, 67 NY2d 153 (1986), the Court of Appeals held that removal from office may be too severe under certain circumstances, but the Court censured the judge for his serious

misconduct in writing a letter in a pending traffic case to the judge who had jurisdiction.

The assertion of influence, of course, is not limited to ticket-fixing activity. Any communication by a judge seeking some benefit or advantage on behalf of a friend or relative may constitute an improper request for special consideration. In 1984, a Supreme Court justice was admonished for interfering in a case pending before another judge by trying to obtain an adjournment on behalf of his cousin, who was an attorney in the case and whose own request for an adjournment had been denied. (See Matter of Calabretta in the Commission's 1985 Annual Report.) The respondent-judge called the trial judge on his relative's behalf and requested an adjournment, and as a result of this interference, the trial judge disqualified himself from the matter. Regardless of the merits of the lawyer's request for an adjournment, it was improper for one judge to convey his interest in the matter to the trial judge.

A judge's desire to assist a friend or relative may be understandable, but, as the Court of Appeals stated in Matter of Lonschein:

Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved....

50 NY2d 569, 572 (1980)

In Lonschein, the Court of Appeals held that even a simple inquiry by a judge may be improper because of the perception that the judge is implicitly asserting the influence of judicial office to obtain some benefit, even though the judge may not explicitly assert his or her judicial office. In that case, a Supreme Court justice had inquired of a municipal agency as to the reasons for the delay in a friend's application for a business license.

In 1984, a New York City Civil Court judge was admonished for using the prestige of his office to attempt to benefit his nephew, who had been arrested on a criminal charge, by approaching the trial judge and then appealing to the prosecutor to recommend low bail or release. (See Matter of McGee in the Commission's 1985 Annual Report.) In 1979, a New York City Criminal Court judge telephoned the trial judge on behalf of his nephew, who had been charged with a felony, and told the judge that his nephew was a college student and of good character who had done "something stupid." Notwithstanding that the respondent-judge was "obviously motivated by an understandable concern for [his relative's] plight," the Commission concluded that the judge's conduct "amounted to an assertion of special influence" and was highly improper. (See Matter of Figueroa in the Commission's 1980 Annual Report.)

A judge who is improperly approached by a colleague asserting special influence is obligated not only to refuse the request, but also to report the misconduct. In 1986, a Supreme Court justice telephoned a town justice at 4:00 A.M. on behalf of

three defendants, whom the town justice had just arraigned and committed to jail after setting bail. (The two judges had never before spoken to each other.) The Supreme Court justice advised the town justice that the three defendants were responsible businessmen who, if released, would return with bail by noon. As a result of the call, the town justice, who clearly understood the call to be an attempt to influence his decision as to bail, called the jail and asked that the defendants be released. The town justice was admonished for his conduct. (See Matter of Gassman, appended in this Annual Report.)

Judges are required by the Rules Governing Judicial Conduct to exercise such circumspection in both their official and off-the-bench activities as to avoid even the appearance of asserting the prestige of judicial office for their own or another's benefit.

"Screening" Of Potential Lawsuits By Judges

An individual who wishes to commence a civil action, and who complies with the prescribed statutory and jurisdictional procedures, is entitled to file a claim in court. Periodically, the Commission receives complaints alleging that, when a claimant appears in court to commence a civil action (typically a small claim in a town or village court), the local justice will question the individual about the merits of the claim, comment upon its validity, and sometimes refuse to permit the individual even to file the claim. Such a "screening" of complaints by judges, when based on the supposed merits, is improper.

Pursuant to Section 1803 of the Uniform Justice Court Act, a claimant may commence a small claims action in a town or village court by filing "a statement of his cause" with the clerk, and paying a filing fee of two dollars plus mailing costs. In many courts, where there is no clerk, the potential claimant deal directly with the judge at this stage. The statute provides for "an early hearing upon and determination of such claim," and the procedures for a hearing are described (UJCA Sections 1803, 1804). Clearly, a judge who interviews potential plaintiffs, and then refuses to permit them to commence an action if the judge decides that their claims lack merit, deprives them of the right to a full hearing as provided by law.

Any "screening" of complaints by judges also raises questions as to the judge's impartiality. A judge who attempts to dissuade a potential plaintiff from filing a claim, or who tells a claimant, at the time the action is commenced, that the claim is meritless, creates the appearance of having prejudged the merits of the matter. Conversely, when a claim is accepted after screening the merits of the claim, the judge has conveyed the appearance of prejudice in favor of the plaintiff. Judges should avoid any such conduct or statements that deprive claimants of their right to a full hearing of their claim before a jurist who not only is but appears to be impartial.

Ex Parte Communications With Prosecutors

Section 100.3(a)(4) of the Rules Governing Judicial Conduct states in part that a judge, "except as authorized by

law, [shall] neither initiate nor consider ex parte or other communications concerning a pending or impending matter."

The Commission has become aware of instances in which both full-time and part-time judges meet routinely with local prosecutors before court sessions to discuss pending criminal cases. For example, at the hearing in Matter of Sardino, 58 NY2d 286 (1983), an assistant district attorney, attempting to show how conscientious the judge was, testified that he and the judge (a full-time city court judge with legal education and experience) regularly held early morning meetings to review cases on the calendar that day and make judgments as to the merits.

Some non-lawyer town and village justices, perhaps lacking confidence in their ability to handle criminal procedures, seem especially interested in obtaining advice from prosecutors. Many are "briefed" by police officers in traffic and criminal cases, and some often look to the District Attorney's office for guidance and assistance. One judge, who acknowledged having ex parte discussions concerning pending cases with the arresting officers, so confused his own role with that of the prosecutor that he believed it was the District Attorney's responsibility to assign counsel to an indigent defendant. Matter of McGee, 59 NY2d 870 (1983).

In a recent case, resulting in the censure of a town justice, a criminal defense lawyer noticed that the judge's decision denying a pre-trial motion was remarkably similar in style, typing and stationery to the answering affidavit submitted by the District Attorney's office. After defense counsel

requested that the judge disqualify herself, the prosecutor acknowledged that the judge's decision had been typed by a secretary in the DA's office. It developed that, in an ex parte conversation, the judge had advised the prosecutor that she would deny the motion, then accepted the prosecutor's offer to "draft" the decision. While acknowledging that she subsequently accepted every word of the prosecutor's "draft," the judge insisted that the defendant was not harmed in any way by such an arrangement. The judge explained that she often relied on the DA's office for ex parte advice and assistance, and that she would discuss cases with an assistant district attorney when she needed a "sounding board." Indeed, even after the judge's conduct had been questioned by defense counsel, the judge called the DA's office and asked a secretary to draft an order transferring the case to another court. Matter of Rider, unreported (Com. on Jud. Conduct, Jan. 30, 1987).

Ex parte practices in which judges rely for advice on prosecutors or other law enforcement personnel are clearly improper and undermine a fundamental judicial obligation to hear both sides in a dispute fully and fairly in order to render judgment impartially. It distorts the judicial process for the presiding judge to discuss the merits of a case with one side in private. At the very least, such communications give rise to an appearance of impropriety. At worst, they offer one side a means of influencing the judge with information that the other side does not know is before the judge and therefore cannot rebut.

Of course, a judge who needs assistance with legal research and other such matters -- particularly in town and village courts, where law secretaries and law assistants are not provided -- must have some recourse other than to communicate privately with one side or another. One solution is for the Office of Court Administration to assemble a small unit of staff attorneys whose function would be to assist the court system's 2400 part-time town and village justices (about 2000 of whom are not lawyers) as legal research problems arise.

Amendments To The Political Activity Rules

The Rules Governing Judicial Conduct prohibit judges from taking part in any political activity, except on their own behalf when they are candidates for judicial office, and then only under limited circumstances. In several previous annual reports, the Commission has offered detailed commentary on the political activity rules, recommending various amendments and clarifications.

In 1986, Section 100.7 of the Rules was amended by the Chief Administrative Judge (with the approval of the Court of Appeals and the Administrative Board of the Courts), as noted below.

1. During a period when a judge would otherwise be permitted to engage in political activity on his or her own behalf, the judge:

- a. may attend his or her own fund-raiser but not personally solicit contributions there;

- b. may purchase a ticket to a politically-sponsored dinner or affair even where the regular cost of the ticket exceeds the proportionate cost of the dinner or affair; and
- c. may attend a politically-sponsored dinner or affair in support of a slate of candidates, and appear on podiums or in photographs on political literature with that slate of candidates, provided that the judge is part of that slate.

2. A judge who is an announced candidate for judicial office may attend political dinners and affairs in the period beginning nine months before the nomination. If the judge is a candidate in the general election, the rule now permits attendance at such events up to six months after the general election.

3. Except for those periods when a judge is permitted to engage in political activity on his or her own behalf, a judge may not purchase tickets to or attend a politically-sponsored dinner or affair, including those sponsored by a political organization for a non-political purpose.

4. A judge may not be a member of a political club or organization.

All judges, including those who serve part-time and as "acting" judges, must avoid political activity except for the specific activity permitted by Section 100.7 of the Rules Governing Judicial Conduct.

Political Activity By Court Personnel

The Rules Governing Judicial Conduct and the Career Service Rules of the Chief Judge proscribe certain political activities by court employees. For example, a judge's personal

appointees cannot hold political party office, and court employees are limited in the amount of money they may contribute to political organizations. Section 100.3(b)(5) of the Rules Governing Judicial Conduct, and Section 25.43 of the Career Service Rules (22 NYCRR 25.43).

Appearances of impropriety may arise as a result of activities not addressed by the various applicable rules. For example, the Commission has become aware of instances in which court personnel have solicited political contributions on behalf of the judges in their courts. Such solicitations have been directed at attorneys who practice in those same courts before the very judges on whose behalf contributions are requested. In one instance a calendar clerk solicited funds from attorneys on behalf of a judicial candidate.

There is a not so subtle intimidation factor at play when a lawyer is requested by a docket clerk, a motions clerk or a calendar clerk to contribute to the judge's campaign. Whether or not the employee is acting voluntarily or specifically at the judge's direction, the lawyer being solicited is likely to feel coerced and, at the least, believe the judge is aware of and party to the employee's activity.

Of course, where there is evidence that a judge has sought to evade restrictions on his or her own conduct by enlisting an employee to do the prohibited deed, the Commission will act against the judge. But the Commission's jurisdiction does not extend to court employees. The Commission is therefore powerless to correct the appearances of impropriety that may

arise when court personnel, on their own initiative, undertake political chores that benefit the judge, appear to be conducted with the approval of the judge, and affect lawyers and others who do business with the court.

The Office of Court Administration should review the political activity restrictions on court employees and address this issue with appropriate changes enacted to end politics in the courthouse.

Raising Funds For Charitable,
Civic Or Other Organizations

Section 100.5 of the Rules Governing Judicial Conduct outlines the types of extra-judicial activities in which a judge may engage. Speaking, writing and teaching on non-legal subjects is permitted, for example, to the extent such conduct does not interfere with the performance of the judge's duties or detract from the dignity of judicial office.

A judge may also participate in civic and charitable activities, with several specific limitations. For example, if a particular organization is likely to be engaged in proceedings that would ordinarily come before the court, a judge may not serve as an officer, director, trustee or advisor of the organization (Section 100.5[b][1] of the Rules). Nor shall a judge "solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the office for that purpose" (Section 100.5[b][2]). However worthy the cause, a judge cannot promote a charity's

fund-raising event. Indeed, a judge may not even be listed on a charity's stationery which is used for fund-raising purposes. Similarly, the Rules specifically prohibit a judge from being a speaker or the guest of honor at an organization's fund-raising events, though attendance at such events is permitted (Section 100.5[b][2]). (A recent amendment of the rule makes an exception for bar association functions, at which judges may speak or be guest of honor.)

The intent of these provisions is to preserve the independence and impartiality of the judiciary, to protect against the prestige of judicial office being used to advance private (albeit sometimes worthy) causes, and to guard against the duress an attorney or other citizen might feel to participate in a function involving a judge.

In the past three years, the Commission has confidentially cautioned several judges for speaking at charitable fund-raising events or accepting guest-of-honor status. Using a synonym for "guest of honor" does not defeat the prohibition set forth in the Rules, and the recent Commission cautions include such instances. It is troubling that judges either are unaware of these restrictions or believe that they may assist in raising funds for valid public causes despite the rules barring such conduct.

The Right To A Public Trial

With certain exceptions specifically authorized in law, such as cases involving "youthful offenders," all court

proceedings are -- or should be -- open to the public (Section 4 of the Judiciary Law). Periodically the Commission receives complaints alleging that some judges are conducting court proceedings in private, even though the cases are not within the exempted categories. The reasons vary.

Judges in some towns and villages, for example, are compelled to hold court in places other than courthouses, simply because adequate court facilities are not available. As a result, court may be held at the judge's house or place of business, impairing the litigant's right to a trial in a public place, and impairing the public's right to be present at court proceedings. Even if in theory such sessions are open to the public, few people are likely to know about or attend proceedings in the judge's house.

The Uniform Justice Court Act, which imposes certain geographic limits on where court may be held, does not set a standard for the type of facility. In 1972, the Administrative Board of the Judicial Conference promulgated a rule (Section 30.2[a]) stating that the "public is best served by town and village courts which function in facilities provided by the municipality," and requiring judges to hold court in such facilities when they are, in fact, provided.

There are further guidelines in case law. A judge may not hold court in a police barracks or school house, for example, because buildings to which access is limited or which are not truly open to the public cannot satisfy the constitutional and

statutory mandates for public proceedings.⁶ This standard is not strictly enforced. In one jurisdiction, court proceedings have been held in the office of a police official, located in a police station. In another, a barn was reportedly used; in fact, in response to a litigant who wanted to know when his case would be heard, the judge reportedly said he would wait until spring when the town barn would be warmer.

Sometimes, even when the municipality provides a facility, a judge can have difficulty in using it. In some communities where a village hall is used, the judge's regularly-scheduled court nights are sometimes pre-empted by village board meetings or other village events, often without notice. The judge is thus left to fend for himself and deal with the various litigants who appear as scheduled to have their small claims or traffic cases heard. One such village justice whose use of the village hall was abruptly pre-empted was reported as canceling court rather than reconvene "in the pool hall."

Where the municipality does not provide a court facility, the judge is left to hold court wherever practical. Some judges, however, seek deliberately to hold court in private settings, even when courtrooms are provided and available. In a number of instances over the past year, judges in courts not "of record" used courtrooms as waiting rooms and held court in small

⁶People v. Schoonmaker, 65 Misc2d 393, 317 NYS2d 696 (Co. Ct. Greene Co. 1971); People v. Rose, 82 Misc2d 429, 368 NYS2d 387 (Co. Ct. Rockland Co. 1975).

rooms where the public was uninvited. While some facets of a public case must be pursued in confidential settings (e.g. settlement discussions or arguments between opposing counsel on certain evidentiary matters), the taking of testimony and other on-the-record proceedings are supposed to be public. In a recent case, for example, the Appellate Division, First Department, reversed a criminal conviction and remanded the case for a new trial on the defendant's claim that he was denied the right to a public trial when, over his objections, the courtroom doors were closed and locked during the judge's charge to the jury. People v. Christopher Venters, ___AD2d___ (1st Dept., Feb. 10, 1987); NYLJ, Feb. 13, 1987, p. 1, col. 6.

Where the private discharge of public court business constitutes misconduct, the Commission has acted and will continue to act to discipline the offending judge. (See Matter of Burr in the Commission's 1984 Annual Report.) Where circumstances not within the judge's control play a deciding role, however, such as when a municipality does not provide proper facilities and the judge holds court at home, the Commission's options are effectively limited.

The Office of Court Administration should undertake a review of the disparate court arrangements throughout the state and attempt to effect appropriate change by developing standards for local judges. Such standards should then be implemented by administrative judges to ensure that public proceedings are in fact public. The Office of Court Administration should also conduct an ongoing educational program, in addition to the formal

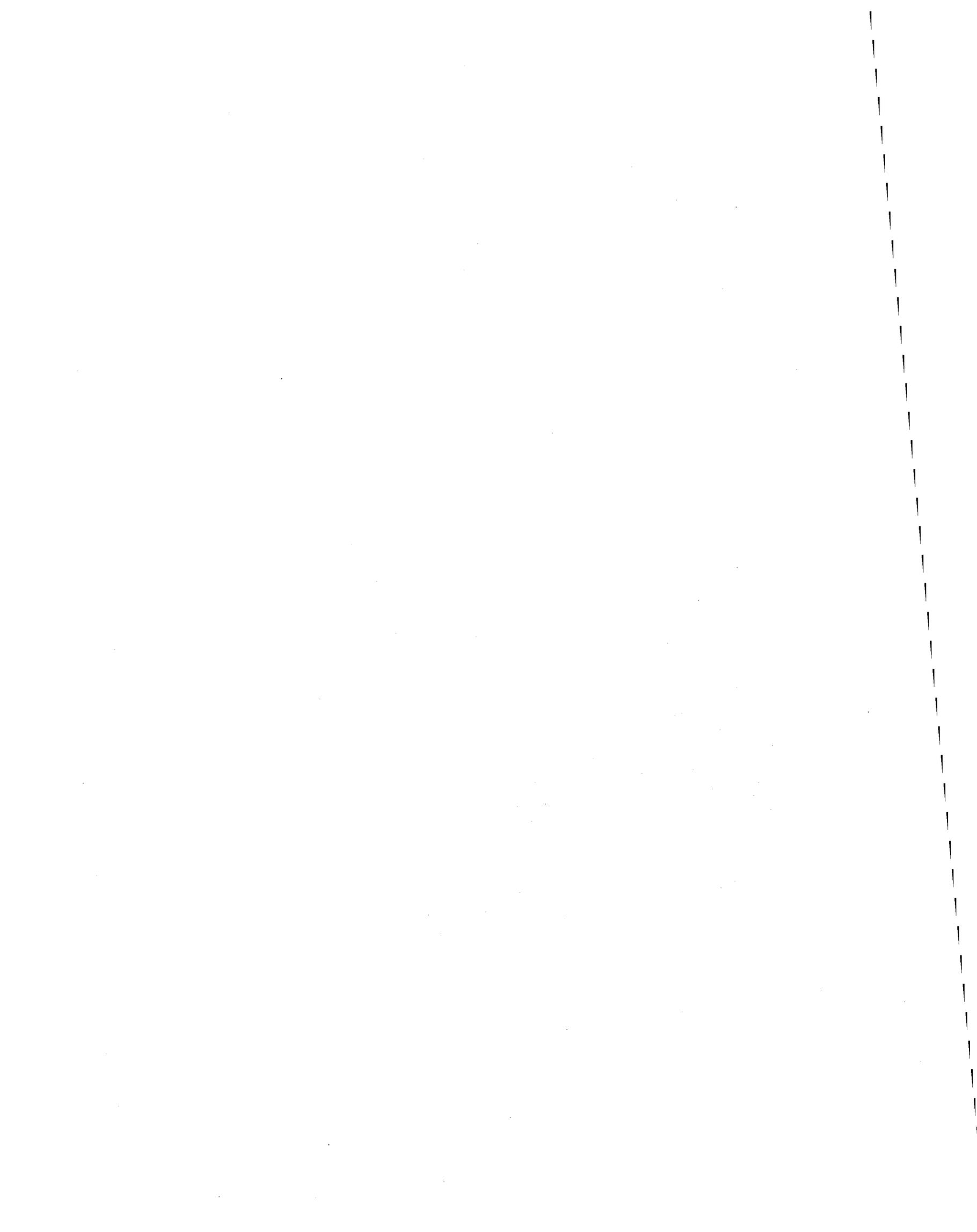
one-week training sessions for town and village justices, to advise part-time judges of the need for public proceedings and the public nature of most court files.

CONCLUSION

Public confidence in the integrity and impartiality of the judiciary is essential to the rule of law. The members of the State Commission on Judicial Conduct believe the Commission contributes to that ideal and to the fair and proper administration of justice.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman
John J. Bower
David Bromberg
Carmen Beauchamp Ciparick
E. Garrett Cleary
Dolores DelBello
Victor A. Kovner
William J. Ostrowski
Isaac Rubin
Felice K. Shea
John J. Sheehy



APPENDIX A

BIOGRAPHIES OF COMMISSION MEMBERS

JOHN J. BOWER, ESQ., is a graduate of New York University and New York Law School. He is a partner in Bower & Gardner in New York City. He is a Fellow of the American College of Trial Lawyers, a Member of the Federation of Insurance Counsel and a Member of the American Law Institute.

DAVID BROMBERG, ESQ., is a graduate of Townsend Harris High School, City College of New York and Yale Law School. He is a member of the firm of Epstein, Becker, Borsody and Green. Mr. Bromberg served as counsel to the New York State Committee on Mental Hygiene from 1965 through 1966. He was elected a delegate to the New York State Constitutional Convention of 1967, where he was secretary of the Committee on the Bill of Rights and Suffrage and a member of the Committee on State Finances, Taxation and Expenditures. He served, by appointment, on the Westchester County Planning Board until 1985. He is a member of the Association of the Bar of the City of New York and has served on its Committee on Municipal Affairs. He is a member of the New York State Bar Association and is presently serving on its Committee on the New York State Constitution. He serves on the National Panel of Arbitrators of the American Arbitration Association.

HONORABLE CARMEN BEAUCHAMP CIPARICK is a graduate of Hunter College and St. John's University School of Law. She was elected a Justice of the Supreme Court for the First Judicial District in 1982. Previously she was an appointed Judge of the Criminal Court of the City of New York from 1978 through 1982. Judge Ciparick formerly served as Chief Law Assistant of the New York City Criminal Court, Counsel in the office of the New York City Administrative Judge, Assistant Counsel for the Office of the Judicial Conference and a staff attorney for the Legal Aid Society in New York City. She is a former Vice President, Secretary and Board Member of the Puerto Rican Bar Association. Judge Ciparick is a member of the Mayor's Commission on Hispanic Concerns, the New York City Commission on the Bicentennial of the Constitution, the Board of Directors of the New York Association of Women Judges, the Board of Directors of the Project Green Hope Services for Women, and the Board of Trustees of Boricua College.

E. GARRETT CLEARY, ESQ., attended St. Bonaventure University and is a graduate of Albany Law School. He was an Assistant District Attorney in Monroe County from 1961 through 1964. In August of 1964, he resigned as Second Assistant District Attorney to enter private practice. He is now a partner in the law firm of Harris, Beach, Wilcox, Rubin and Levey in Rochester. In January 1969 he was appointed a Special Assistant Attorney General in charge of Grand Jury Investigation ordered by the late Governor Nelson A. Rockefeller to investigate financial irregularities in the Town of Arietta, Hamilton County, New York. In 1970 he was designated as the Special Assistant Attorney General in charge of an investigation ordered by Governor Rockefeller into a student/police confrontation that occurred on the campus of Hobart College, Ontario County, New York, and in 1974 he was appointed a Special Prosecutor in Schoharie County for the purpose of prosecuting the County Sheriff. Mr. Cleary is a member of the Monroe County and New York State Bar Associations, and he has served as a member of the governing body of the Monroe County Bar Association, Oak Hill Country Club, St. John Fisher College, Better Business Bureau of Rochester, Automobile Club of Rochester, Hunt Hollow Ski Club, as a trustee to Holy Sepulchre Cemetery and as a member of the Monroe County Bar Foundation and the Monroe County Advisory Committee for the Title Guarantee Company. In 1981 he became the Chairman of the Board of Trustees of St. John Fisher College. He and his wife Patricia are the parents of seven children.

DOLORES DEL BELLO received a baccalaureate degree from the College of New Rochelle and a masters degree from Seton Hall University. She was Regional Public Relations Director for Bloomingdale's until 1986 and is presently President of Salem Concepts, Inc. Mrs. DelBello is a member of the Board of Directors for the Naylor Dana Institute for Disease Prevention; American Health Foundation; Hadassah; the Westchester Women in Communications; Alpha Delta Kappa, the international honorary society for women educators; the Board of Directors for the Hudson River Museum; Board of Directors Universitas Internationalis Coluccio Salutati; and the Advisory Committee, Westchester County Chapter, New York State Association for Retarded Children. She has also been a member of the League of Women Voters, the Board of Trustees of St. Cabrini Nursing Home, Inc., and the Board of Directors, Lehman College Performing Arts Center.

VICTOR A. KOVNER, ESQ., is a graduate of Yale College and the Columbia Law School. He is a partner in the firm of Lankenau Kovner & Bickford. Mr. Kovner served as a member of the Mayor's Committee on the Judiciary from 1969 through 1985. He was a member of Governor Carey's Court Reform Task Force and now serves on the board of directors of the Committee for Modern Courts. Mr. Kovner is Chairman of the Committee on Communications Law of the Association of the Bar of the City of New York, and serves as a member of the advisory board of the Media Law Reporter. Mr. Kovner serves in the House of Delegates of the New York State Bar Association. He formerly served as President of Planned Parenthood of New York City, and he is a trustee of the American Place Theater.

HONORABLE WILLIAM J. OSTROWSKI is a graduate of Canisius College and received law degrees from Georgetown and George Washington Universities. He attended the National Judicial College in 1967. Justice Ostrowski is a Justice of the Supreme Court in the Eighth Judicial District and was elected to that office in 1976. During the preceding 16 years he was a judge of the City Court of Buffalo, and from 1956 to 1960 he was a Deputy Corporation Counsel of the City of Buffalo. He served with the 100th Infantry Division in France and Germany during World War II. He has been married to Mary V. Waldron since 1949 and they have six children and six grandchildren. Justice Ostrowski is a member of the American Law Institute, the Fellows of the American Bar Foundation, the American Bar Association and its National Conference of State Trial Judges; American Judicature Society; National Advocates Society; New York State Bar Association and its Judicial Section; Erie County Bar Association; and the Lawyers Club of Buffalo.

MRS. GENE ROBB is a graduate of the University of Nebraska. She is a former President of the Women's Council of the Albany Institute of History and Art and served on its Board. She also served on the Chancellor's Panel of University Purposes under Chancellor Boyer, later serving on the Executive Committee of that Panel. She served on the Temporary Hudson River Valley Commission and later the permanent Hudson River Valley Commission. She is a member of the Board of the Salvation Army Executive Committee for the New York State Plan. She is on the Board of the Saratoga Performing Arts Center, the Board of the Albany Medical College, the Board of Trustees of Union College and the Board of Trustees of the New York State Museum. Mrs. Robb is a former member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society. She is now a member of the Executive Committee of the Board of the Society. Mrs. Robb received an honorary degree of Doctor of Law from Siena College, Loudonville, in 1982. She serves on the Visiting Committee for Fellowships and Internships of the Nelson A. Rockefeller Institute of Government. In 1984 Mrs. Robb was awarded the Regents Medal of Excellence for her community service to New York State. She is the mother of four children and grandmother of eleven. Mrs. Robb has been a member of the Commission since its inception.

HONORABLE ISAAC RUBIN is a graduate of New York University, the New York University Law School (J.D.) and St. John's Law School (J.S.D.). He is presently a Justice of the Appellate Division, Second Department, to which he was appointed by Governor Carey in January 1982 and reappointed by Governor Cuomo in January 1984. Prior to this appointment, Justice Rubin sat in the Supreme Court, Ninth Judicial District, where he served as Deputy Administrative Judge of the County Courts and superior criminal courts. Judge Rubin previously served as a County Court Judge in Westchester County, and as a Judge of the City Court of Rye, New York. He is a director and former president of the Westchester County Bar Association. He has also served as a member of the Committee on Character and Fitness of the Second Judicial Department, and as a member of the Nominating Committee and the House of Delegates of the New York State Bar Association.

HONORABLE FELICE K. SHEA is a graduate of Swarthmore College and Columbia Law School. She is a Justice of the Supreme Court, First Judicial District (New York County), and is the Presiding Justice of the Extraordinary Special and Trial Term of the Supreme Court for the City of New York. She served previously as Judge of the Civil Court of the City of New York. Justice Shea is a Director of the Association of Women Judges of the State of New York, a Director of the New York Women's Bar Association, a Fellow of the American Bar Foundation, and a Fellow of the American Academy of Matrimonial Lawyers. She is a member of the Association of the Bar of the City of New York, serving on its Council on Judicial Administration; a member of New York County Lawyers' Association, serving on its Special Committee on the Bicentennial; and a member of the American and New York State Bar Associations. Justice Shea is a former president of the Alumni Association of Columbia Law School and a recipient of the Alumni Federation Medal for Conspicuous Alumni Service to Columbia University.

JOHN J. SHEEHY, ESQ. is a graduate of the College of the Holy Cross, where he was a Tilden Scholar, and Boston College Law School. He is a partner in the New York office of Rogers & Wells. He is a senior member of the firm's litigation department and chairman of its clients committee. Mr. Sheehy was an Assistant District Attorney in New York County from 1963 to 1965, when he was appointed Assistant Counsel to the Governor by the late Nelson A. Rockefeller. Mr. Sheehy joined Rogers & Wells in February 1969. He is a member of the bars of the United States Supreme Court, the United States Court of Appeals for the Second and Eighth Circuits, the United States District Court for the Southern, Eastern and Northern Districts of New York, the United States Court of International Trade and the United States Court of Military Appeals. He is a member of the American and New York State Bar Associations and Chairman of the Finance and Administration Committee of Epiphany Church in Manhattan. He is also a Commander in the U.S. Naval Reserve, Judge Advocate General Corps. John and Morna Ford Sheehy live in Manhattan and East Hampton, with their three children.

ADMINISTRATOR OF THE COMMISSION

GERALD STERN, ESQ., is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he received an LL.M. in Criminal Justice. Mr. Stern has been Administrator of the Commission since its inception. He previously served as Director of Administration of the Courts, First Judicial Department, Assistant Corporation Counsel for New York City, Staff Attorney on the President's Commission on Law Enforcement and the Administration of Justice, Legal Director of a legal service unit in Syracuse, and Assistant District Attorney in New York County. He teaches Professional Responsibility at Pace University School of Law as an adjunct Professor of Law.

DEPUTY ADMINISTRATOR

ROBERT H. TEMBECKJIAN, ESQ., is a graduate of Syracuse University and Fordham Law School. He previously served as Clerk of the Commission, as publications director for the Council on Municipal Performance in New York, staff director of the Governor's Cabinet Committee on Public Safety in Ohio and special assistant to the Deputy Director of the Ohio Department of Economic and Community Development. Mr. Tembeckjian is a member of the New York State Bar Association and the Association of the Bar of the City of New York, serving on its Committee on Professional Discipline.

CLERK OF THE COMMISSION

ALBERT B. LAWRENCE, ESQ., is a graduate of the State University of New York and Antioch School of Law. He joined the Commission staff in 1980 and has been Clerk of the Commission since 1983. He is a former newspaper reporter who has written on criminal justice and legal topics. Mr. Lawrence is on the adjunct faculty of the State University where he teaches in the Empire State College program. He is a member and vice president of the Board of Directors of Big Brothers/Big Sisters of Rensselaer County.

CHIEF ATTORNEY, ALBANY

STEPHEN F. DOWNS, ESQ., is a graduate of Amherst College and Cornell Law School. He served in India as a member of the Peace Corps from 1964 to 1966. He was in private practice in New York City from 1969 to 1975, and he joined the Commission's staff in 1975 as a staff attorney. He has been Chief Attorney in charge of the Commission's Albany office since 1978.

CHIEF ATTORNEY, ROCHESTER

JOHN J. POSTEL, ESQ., is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission's staff in 1980 as an assistant staff attorney in Albany. He has been Chief Attorney in charge of the Commission's Rochester office since April 1984.

COMMISSION STAFF

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Gerald Stern

DEPUTY ADMINISTRATOR

Robert H. Tembeckjian

CLERK OF THE COMMISSION

Albert B. Lawrence

CHIEF ATTORNEYS

Stephen F. Downs

John J. Postel

SENIOR ATTORNEYS

Alan W. Friedberg

Jean M. Savanyu

STAFF ATTORNEYS

Henry S. Stewart

ASS'T STAFF ATTORNEY

Cathleen S. Cenci

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Janet F. Whelehan

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*David M. Barlow

*Christopher Barry

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Brunilda Lopez

Susan A. Totten

Linda J. Wentworth

LEGAL RESEARCH ASSISTANT

Deborah Ronnen

LAW STUDENTS

*Pilar Sokol

*John C. Turi

Jeffrey A. Wise

* Denotes individuals who left the Commission staff prior to March 1987.

APPENDIX B

COMMISSION BACKGROUND

Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the appropriate court. All disciplinary proceedings in the Court on the Judiciary and most in the Appellate Division were public.

The temporary Commission was composed of two judges, five lawyers and two lay persons. It functioned through August 31, 1976, when it was succeeded by a permanent commission created by amendment to the State Constitution.

The temporary Commission received 724 complaints, dismissed 441 upon initial review and commenced 283 investigations during its tenure. It admonished 19 judges and initiated formal disciplinary proceedings against eight judges, in either the Appellate Division or the Court on the Judiciary. One of these judges was removed from office and one was censured. The remaining six matters were pending when the temporary Commission was superseded by its successor Commission.

Five judges resigned while under investigation.*

Former State Commission on Judicial Conduct

The temporary Commission was succeeded on September 1, 1976, by the State Commission on Judicial Conduct, established by a constitutional amendment overwhelmingly approved by the New York State electorate and supplemented by legislative enactment (Article 2-A of the Judiciary Law). The Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

* A full account of the temporary Commission's activity is available in the Final Report of the Temporary State Commission on Judicial Conduct, dated August 31, 1976.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions* and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system.

The former Commission, like the temporary Commission, was composed of two judges, five lawyers and two lay persons, and its jurisdiction extended to judges within the state unified court system. The former Commission was authorized to continue all matters left pending by the temporary Commission.

The former Commission considered 1,418 complaints, dismissed 629 upon initial review, authorized 789 investigations and continued 162 investigations left pending by the temporary Commission.

During its tenure, the former Commission took action which resulted in the following:

- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission.

Those proceedings resulted in the following:

- 1 removal
- 2 suspensions
- 3 censures
- 10 cases closed upon resignation by the judge
- 2 cases closed upon expiration of the judge's term
- 1 proceeding closed without discipline and with instruction by the Court on the Judiciary that the matter be deemed confidential.

* The sanctions that could be imposed by the former Commission were: private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing; these Commission sanctions were also subject to a de novo hearing in the Court on the Judiciary at the request of the judge.

The remaining 32 proceedings were pending when the former Commission expired. They were continued by the present Commission.

In addition to the ten judges who resigned after proceedings had been commenced in the Court on the Judiciary, 28 other judges resigned while under investigation by the former Commission.

Continuation in 1978, 1979 and 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the present Commission.

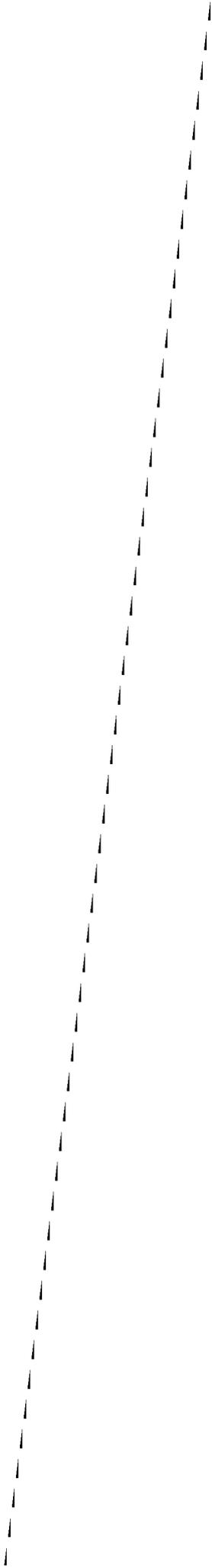
The last five of these 32 proceedings were concluded in 1980, with the following results, reported in greater detail in the Commission's previous annual reports:

- 4 judges were removed from office;
- 1 judge was suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 21 judges were censured;
- 1 judge was directed to reform his conduct consistent with the Court's opinion;
- 1 judge was barred from holding future judicial office after he resigned; and
- 2 judges died before the matters were concluded.

State Commission on Judicial Conduct

The present Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. The Court on the Judiciary was abolished, pending completion of those cases which had already been commenced before it. All formal disciplinary hearings under the new amendment are conducted by the Commission.

Subsequently, the State Legislature amended Article 2-A of the Judiciary Law, the Commission's governing statute, to implement the new provisions of the constitutional amendment.



APPENDIX C

REFEREES DESIGNATED BY THE COMMISSION
IN 1986 TO PRESIDE OVER HEARINGS

<u>REFEREE</u>	<u>CITY</u>	<u>COUNTY</u>
W. David Curtiss, Esq.	Ithaca	Tompkins
Hon. Nanette Dembitz	New York	New York
Robert L. Ellis, Esq.	New York	New York
Eugene C. Gerhart, Esq.	Binghamton	Broome
Hon. Bertram Harnett	New York	New York
Gerald Harris, Esq.	New York	New York
Robert E. Helm, Esq.	Albany	Albany
Gilbert A. Holmes, Esq.	New York	New York
Hon. Matthew J. Jasen	Buffalo	Erie
Marjorie E. Karowe, Esq.	Troy	Rensselaer
Michael M. Kirsch, Esq.	Brooklyn	Kings
John F. Luchsinger, Jr., Esq.	Syracuse	Onondaga
William V. Maggipinto, Esq.	Southampton	Suffolk
Hon. John S. Marsh	Niagara Falls	Niagara
Carroll J. Mealey, Esq.	Albany	Albany
Hon. James A. O'Connor	Waterford	Saratoga
Hon. James C. O'Shea	Rome	Oneida
Peter Preiser, Esq.	Albany	Albany
Nicholas Scoppetta, Esq.	New York	New York
Hon. Morton B. Silberman	White Plains	Westchester
Hon. Donald J. Sullivan	White Plains	Westchester
Samuel B. Vavonese, Esq.	Syracuse	Onondaga
Peter N. Wells, Esq.	Syracuse	Onondaga
Michael Whiteman, Esq.	Albany	Albany

State of New York
Commission on Judicial Conduct

APPENDIX D

Determinations
Rendered in 1986

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

Determination

LUCIEN ALI,

a Justice of the Pompey Town Court,
Onondaga County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Ali, Driggs, Pappas & Cox, P.C. (By C. Andrew Pappas)
for Respondent

The respondent, Lucien Ali, a justice of the Pompey Town Court, Onondaga County, was served with a Formal Written Complaint dated March 18, 1986, alleging that he became involved in a public controversy and used the prestige of his office to benefit his position in the controversy. Respondent filed an answer dated April 22, 1986.

On September 11, 1986, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings, the agreed upon facts and respondent's testimony before a member of the Commission on September 5, 1985. The Commission approved the agreed statement on September 11, 1986.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived. On October 16, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent, an attorney, is a part-time justice of the Pompey Town Court and has been since January 1978.

2. In 1981 and 1982, respondent was involved in a public controversy over the proposed construction of a microwave transmission tower on land next to his home. Because of health and environmental concerns, respondent opposed the construction and publicly advocated a moratorium on construction of facilities that would emit non-ionizing electromagnetic radiation.

3. On March 8, 1982, respondent was contacted by the town zoning enforcement officer, Edward DeLuca, who indicated that he had received a complaint that work was being done on a Southern Pacific Communications Company (hereinafter "SPCC") microwave transmission facility and tower in the town.

4. Respondent told Mr. DeLuca that the workers would be in violation of a local law which called for a moratorium until October 20, 1982, on the construction or modification of commercial broadcast or communications facilities emitting non-ionizing electromagnetic radiation and that Mr. DeLuca had the authority to order work stopped.

5. Mr. DeLuca asked respondent to accompany him to the site.

6. At the site, respondent saw three men working on the tower and their supervisor, Frederick Stephan, working in the ground facility.

7. Mr. DeLuca identified respondent as a town justice and told the workers that they must stop work.

8. Mr. Stephan called the project manager, Butros Hanna, by telephone and relayed the direction that work be halted.

9. Respondent spoke with Mr. Hanna. Respondent advised Mr. Hanna of the moratorium law and declared that he could not allow work to continue. Respondent advised Mr. Hanna that the law could be enforced by issuance of an appearance ticket and could result in a fine. Respondent also said that an order could be obtained from Supreme Court halting the work.

10. Respondent acknowledged in testimony before a member of the Commission on September 5, 1985, that it was improper for him to visit the tower site.

11. On March 10, 1982, respondent contacted Mr. Hanna by telephone and said that he had learned that work was continuing at the tower and that if it was not halted, an appearance ticket would be issued to Mr. Stephan.

12. On March 12, 1982, respondent contacted by telephone another official of the tower facility and requested information concerning the nature of the work being done.

13. On March 30, 1982, SPCC applied to the Pompey Town Zoning Board of Appeals to modify its microwave facility and tower. Respondent attended the meeting and spoke in opposition to the application.

14. After the meeting, respondent told Richard D. Davidson, a Syracuse attorney representing SPCC, and the supervisor of the facility, Keith Kowalski, that he had ordered other company officials not to continue work. Respondent warned Mr. Davidson and Mr. Kowalski that further work would be in violation of the moratorium law and would result in arrest and fines.

15. On April 2, 1982, and April 6, 1982, respondent met with Mr. Davidson to discuss the SPCC application. At both meetings Mr. Davidson asked respondent to provide him with a written copy of what Mr. Davidson believed to be respondent's oral injunction preventing further work at the facility. Respondent neither acknowledged nor denied that an oral injunction had been issued.

16. At no time during this period was any civil or criminal proceeding involving SPCC before respondent. Respondent has no authority to issue injunctions, under Section 209 of the Uniform Justice Court Act.

17. On April 27, 1982, respondent appeared at a public hearing and questioned an engineer representing SPCC concerning its application to the zoning board.

18. On June 1, 1982, respondent attended a meeting at his law office with Mr. Davidson, the town attorney and the town supervisor. Mr. Davidson presented a proposed "consent order" to be signed by respondent as town justice which would have vacated any "stop-work orders" and agreeing to the tower modifications proposed in the SPCC application.

19. Respondent said that he lacked authority to sign such an order but agreed to revise the stipulation "to make it agreeable" to the town.

20. Respondent acknowledged in testimony before a member of the Commission that he was acting in his capacity as town justice at the June 1, 1982, meeting.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings of fact enumerated above, and respondent's misconduct is established.

Respondent used the prestige of his judicial office to advance his private interest in protecting his property and his town from what he perceived as the dangers of microwave tower emissions. Respondent's roles as private citizen and judge became so intermingled that his extra-judicial actions took on the appearance of judicial orders. Respondent did little to allay the confusion.

...[A] Judge cannot simply cordon off his public role from his private life and assume safely that the former will have no impact upon the latter [citation omitted]. Wherever he travels, a Judge carries the mantle of his esteemed office with him, and, consequently, he must always be sensitive to the fact that members of the public, including some of his friends, will regard his words and actions with heightened deference simply because he is a Judge.

Matter of Steinberg v.
State Commission on
Judicial Conduct, 51
NY2d 74, 81 (1980).

Having been identified as a judge, respondent used the authority of the office to do what he had no power to do since no judicial proceeding was before him and he could not lawfully grant injunctive relief. Respondent told a company official that work must not continue on a microwave tower because the law prohibited it. When the company interpreted this as an oral injunction carrying the weight of a lawful court order, respondent failed to correct the misapprehension.

Such perversion of the court's authority and jurisdiction beyond its legal limits to advance private interests is cause for discipline. Matter of Perry, 53 AD2d 882 (2d Dept. 1976); Matter of Alessi, 2 Commission Determinations 409 (Nov. 13, 1981); Matter of Colf, unreported (Com. on Jud. Conduct, Feb. 26, 1986).

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bromberg, Judge Rubin and Mr. Sheehy were not present.

Dated: November 21, 1986

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

FLOYD W. COLF,

a Justice of the Ashford Town Court,
Cattaraugus County.

Determination

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Weyand and Weyand (By Fredric F. Weyand) for
Respondent

The respondent, Floyd W. Colf, a justice of the Ashford Town Court, Cattaraugus County, was served with a Formal Written Complaint dated July 16, 1985, alleging that he issued an "order" threatening contempt of court based on an ex parte communication. Respondent answered the Formal Written Complaint by letter of August 19, 1985.

On November 4, 1985, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on November 18, 1985.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived.

On January 13, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Ashford Town Court and was during the time herein noted.

2. On September 24, 1984, Linda Wright contacted respondent by telephone and said that she wished to file a complaint alleging Trespass against Diane Wright, the wife of Linda Wright's former husband. The complaint concerned an alleged confrontation between Linda Wright and Diane Wright at Linda Wright's home.

3. Respondent told Linda Wright that he would send Diane Wright a letter, advising her to keep off Linda Wright's property.

4. On October 6, 1984, respondent signed and mailed to Diane Wright a letter stating:

This court has been asked to forbid you from the property of Linda Garlock Wright.... Any action towards Mrs. Wright will be considered a contempt of this order and appropriate action will be taken.

5. At the time respondent issued the "order," no civil or criminal action had been commenced, no trial had been conducted, and no decision had been rendered.

6. Respondent had no authority for issuing the "order" against Diane Wright.

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. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent used the prestige of his judicial office to advance the interest of one party to a dispute, notwithstanding that no proceeding was before him and that the other party had not been heard. In doing so, he violated the law and compromised the impartiality of the judiciary.

Respondent's conduct is similar to that of a judge who, apart from any legal proceedings, writes a threatening letter on behalf of one party to collect a debt. Matter of Wordon, 2 Commission Determinations 139 (Com. on Jud. Conduct, April 1, 1980).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary,
Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

Judge Rubin and Judge Shea were not present.

Dated: February 26, 1986

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

CURTIS W. COOK,

Determination

a Justice of the Marshall Town
Court, Oneida County.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Cathleen S. Cenci,
Of Counsel) for the Commission

Woodman and Getman (By William H. Getman) for
Respondent

The respondent, Curtis W. Cook, a justice of the Marshall Town Court, Oneida County, was served with a Formal Written Complaint dated July 16, 1986, alleging that he engaged in a course of conduct prejudicial to the administration of justice. Respondent did not answer the Formal Written Complaint.

By motion dated September 19, 1986, the administrator of the Commission moved for summary determination, for a finding that respondent's misconduct be found established and that he be removed from office. Respondent did not oppose the motion or file any papers in response thereto. By determination and order dated October 16, 1986, the Commission granted the administrator's motion and found respondent's misconduct established.

Oral argument as to sanction was waived. On November 14, 1986, 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 is a justice of the Marshall Town Court and has been since January 1, 1966.

2. Respondent accepted guilty pleas from intoxicated, unrepresented defendants Virginia G. Gustafson on November 27, 1983, Roy T. Walker on April 5, 1985, and Dewey Wratten on September 29, 1982, in violation of Section 170.10 of the Criminal Procedure Law.

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

3. Respondent presided over and disposed of 24 cases arising outside of his geographic jurisdiction, in violation of Sections 100.55(4), 100.55(5), 120.30(2) and 140.20(1) of the Criminal Procedure Law, as indicated in Schedule A of the Formal Written Complaint.

4. Prior to the disposition of 22 of the 24 cases, respondent had been informed by his supervising judge not to dispose of cases arising outside his jurisdiction.

5. Respondent has no explanation for continuing to dispose of cases over which he had no jurisdiction.

6. Respondent testified before a member of the Commission on February 11, 1986, that "it seems ridiculous that I should get up, spend an hour or two doing someone else's work and then not take jurisdiction of the case; and even rightly or wrongly, apparently that is what I did." Respondent testified that he had never refused to hear a case for lack of jurisdiction because he wanted to "help" the law enforcement agents who brought him cases.

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

7. Respondent granted reductions to 20 charges involving 18 defendants without the consent of the district attorney's office, in violation of Sections 180.50, 220.10(3) and 340.20(1) of the Criminal Procedure Law, as indicated in Schedule A of the Formal Written Complaint.

8. Prior to his reduction of 14 of the 20 charges, respondent had been advised by his supervising judge not to reduce charges without the consent of the district attorney's office.

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

9. On August 18, 1982, Samuel Trevino and Jose Guzman were arrested in the Town of New Hartford and charged with Endangering the Welfare of a Child and Criminal Solicitation, Fourth Degree.

10. On August 19, 1982, Mr. Trevino was arraigned before respondent and was committed to jail in lieu of \$1,000 bail.

11. After the arraignment, Patricia Chamberlain, director of the East Utica Community Center, spoke with respondent by telephone on behalf of Mr. Trevino. Respondent said that Mr. Trevino "was not going to get away with it." Respondent added, "These damn Puerto Ricans get away with everything; I know these Puerto Ricans, and he's not getting away with this."

12. On November 2, 1984, Laguana Perry was arrested in the Town of New Hartford and charged with two counts of Petit Larceny, Criminal Possession of Stolen Property, Third Degree, Resisting Arrest and Disorderly Conduct.

13. Ms. Perry was arraigned before respondent.

14. On March 5, 1985, Ms. Perry was given a conditional discharge, and respondent imposed a \$40 surcharge to be paid by March 12, 1985.

15. Respondent issued a warrant for Ms. Perry's arrest when she failed to pay the surcharge.

16. Ms. Perry called respondent by telephone when she heard the warrant had been issued.

17. Respondent told Ms. Perry that he was "sick and tired of you colored people coming out in my town. I give you fines, and you don't pay."

18. Ms. Perry was arrested on the warrant on May 24, 1985, and was taken to respondent's court.

19. Respondent repeated that he was "sick and tired of colored people," and said, "If you want to take things, would you stay in your own town?"

20. When Ms. Perry showed respondent a receipt for a money order she had sent to cover the surcharge, respondent asserted that she had probably cashed the money order and spent it.

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

21. On February 25, 1984, respondent reduced a charge of Aggravated Harassment to Harassment and imposed a \$25 fine and a \$15 surcharge on Jill Marsh in the absence of Ms. Marsh's attorney, notwithstanding that Ms. Marsh had informed respondent that she was represented by counsel and that her attorney, Joseph Shinder, was en route to the court.

22. On May 24, 1985, respondent sentenced Laguana Perry to ten days in jail for failure to pay a \$40 surcharge in the absence of Ms. Perry's attorney, notwithstanding that respondent had been informed that Ms. Perry was represented by counsel and that her attorney was en route to the court.

As to Charge II of the Formal Written Complaint:

23. On February 25, 1984, Jill Marsh appeared before respondent on a charge of Aggravated Harassment.

24. Ms. Marsh told respondent that she was represented by counsel and that she would like to wait for him to appear.

25. Respondent told Ms. Marsh that it did not matter whether she had an attorney and that respondent was going to proceed with the case.

26. Respondent read the charge and asked whether Ms. Marsh had made annoying telephone calls, as alleged.

27. Respondent reduced the charge to Harassment and fined Ms. Marsh \$25 plus a \$15 surcharge, notwithstanding that Ms. Marsh had not entered a plea to any charge and no trial was held.

28. Ms. Marsh was 18 years old at the time.

29. When Ms. Marsh's attorney, Joseph Shinder, arrived at the court, respondent falsely stated that Ms. Marsh had pled guilty and had not mentioned that she was represented by counsel.

30. On August 1, 1984, respondent issued a warrant for Ms. Marsh's arrest on another charge of Harassment.

31. Ms. Marsh was arrested while she was babysitting and was taken to respondent for arraignment.

32. Respondent read the charge and stated to Ms. Marsh, "You had better find someone to mind the children because you're going to jail."

33. Respondent did not inform Ms. Marsh of her right to counsel, to court-appointed counsel if she could not afford a lawyer, or to an adjournment to obtain counsel, as required by Section 170.10 of the Criminal Procedure Law.

34. Respondent set bail at \$1,000, and committed Ms. Marsh to jail in lieu of bail for reappearance in court on August 28, 1984, 27 days later, in violation of Section 30.30(2)(d) of the Criminal Procedure Law.

35. Respondent stated, "You can stay in jail the whole 28 days until your court date, for all I care."

36. Respondent called Ms. Marsh a "troublemaker" and threatened to have her son taken from her custody if she continued to get into trouble.

37. Ms. Marsh was taken to jail and was released several hours later after her father posted bail.

38. Ms. Marsh's stepmother, Mary Ann Marsh, called respondent by telephone after she learned of the arrest. Respondent told Mary Ann Marsh that Jill Marsh was a troublemaker and that if he had his way, she would be placed in a state hospital for the mentally ill.

39. On August 7, 1984, respondent dismissed the charge after the complaining witnesses withdrew their complaint.

40. In releasing Ms. Marsh, respondent warned her, "If you so much as spit on the sidewalk, you're going back to jail."

As to Charge III of the Formal Written Complaint:

41. On November 2, 1984, respondent arraigned Laguana Perry on two counts of Petit Larceny, Criminal Possession of Stolen Property, Third Degree, Resisting Arrest and Disorderly Conduct, notwithstanding that the offenses charged took place in the non-adjointing Town of New Hartford and respondent did not have jurisdiction to conduct the arraignment pursuant to Sections 100.55(4) and 140.20(1)(a) of the Criminal Procedure Law.

42. Respondent failed to inform Ms. Perry of her rights and failed to take any steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law.

43. Ms. Perry pled not guilty and was committed to jail in lieu of \$1,000 bail.

44. Respondent failed to transfer the case to the New Hartford Town Court, in violation of Section 170.15(1) of the Criminal Procedure Law.

45. On March 5, 1985, Ms. Perry pled guilty to the four charges, was given a conditional discharge and ordered to pay a \$40 surcharge. She was represented by an assistant public defender.

46. On May 24, 1985, respondent issued a warrant for Ms. Perry's arrest for failure to pay the surcharge.

47. When she heard that the warrant had been issued, Ms. Perry called respondent by telephone. Respondent made derogatory comments concerning her race.

48. Ms. Perry was arrested and taken to respondent's court.

49. Respondent was informed that Ms. Perry's attorney was on her way to the court, but respondent said that it made no difference and that the attorney could bail Ms. Perry at the county jail.

50. Respondent again made derogatory comments concerning Ms. Perry's race.

51. Respondent sentenced Ms. Perry to ten days in jail, notwithstanding that she produced a receipt for a money order she had purchased to pay the surcharge.

52. Ms. Perry was subsequently released from jail on a Writ of Habeas Corpus issued by the Oneida County Court.

As to Charge IV of the Formal Written Complaint:

53. On February 11, 1986, respondent testified before a member of the Commission in connection with a duly-authorized investigation.

54. Respondent was asked the following questions and gave the following answers:

Q. Is it your understanding that with respect to misdemeanors that arise outside the Town of Marshall, that you have jurisdiction to preside over only those cases that arise in adjoining towns?

A. I believe that that has been brought up, that they must be contingent towns. But--

Q. Contiguous?

A. Contiguous, I beg your pardon. That's right. However, when the officers--they maybe cannot get a judge to answer, and they have a naked nigger on the back seat who has been creating problems, and they have to do something with them or something of that kind.

I use that word, not as an ethnic slur, but I saw it happen.

Q. Saw what happen?

A. A naked negro in the back of a car....

55. Also during his testimony on February 11, 1986, respondent was asked the following questions and gave the following answers:

Q. What do you mean by, no one ever stays in jail?

A. I shouldn't say no one. None of the Corn Hill people ever stay in jail for long, somebody always gets them out....

It would seem that I am a--inclined to be--have less than a favorable opinion of colored people, let's say it that way.

Q. Would you like to comment on that?

A. It has been my experience in my years as Judge that they don't pay fines, they're almost impossible to find once they get back into the ghetto; and even for that reason, I many times ROR them or reasonably fine them. I never throw the book at anybody.

But I have learned that if they--once they get away from you, as I say, they always give you the wrong telephone number and many times the wrong address, and when you release them, you generally lose them until someone by diligent police work eventually recovers them again, because even the Utica Police Department, they just shake their heads, and you can't find them and they don't know where to find them; and if I release them or give them a time schedule to pay a reasonable fine, it never happens. You have got to get them again....

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)(3) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has engaged in a course of conduct prejudicial to the administration of justice. He repeatedly abused his judicial powers and violated the law by presiding over cases over which he had no jurisdiction. Matter of Jutkofsky, unreported (Com. on Jud. Conduct, Dec. 24, 1985). He disregarded well-established, fundamental rights of defendants so as to create an appearance of bias and damage public confidence in the impartiality and integrity of the judiciary.

He failed to afford parties full opportunity to be heard by convicting defendants without a plea or trial in the absence of counsel and by reducing charges and disposing of cases without consulting the prosecutor.

Such a pattern of misconduct shocks the conscience and indicates that respondent poses a threat to the proper administration of justice. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286 (1983); Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984).

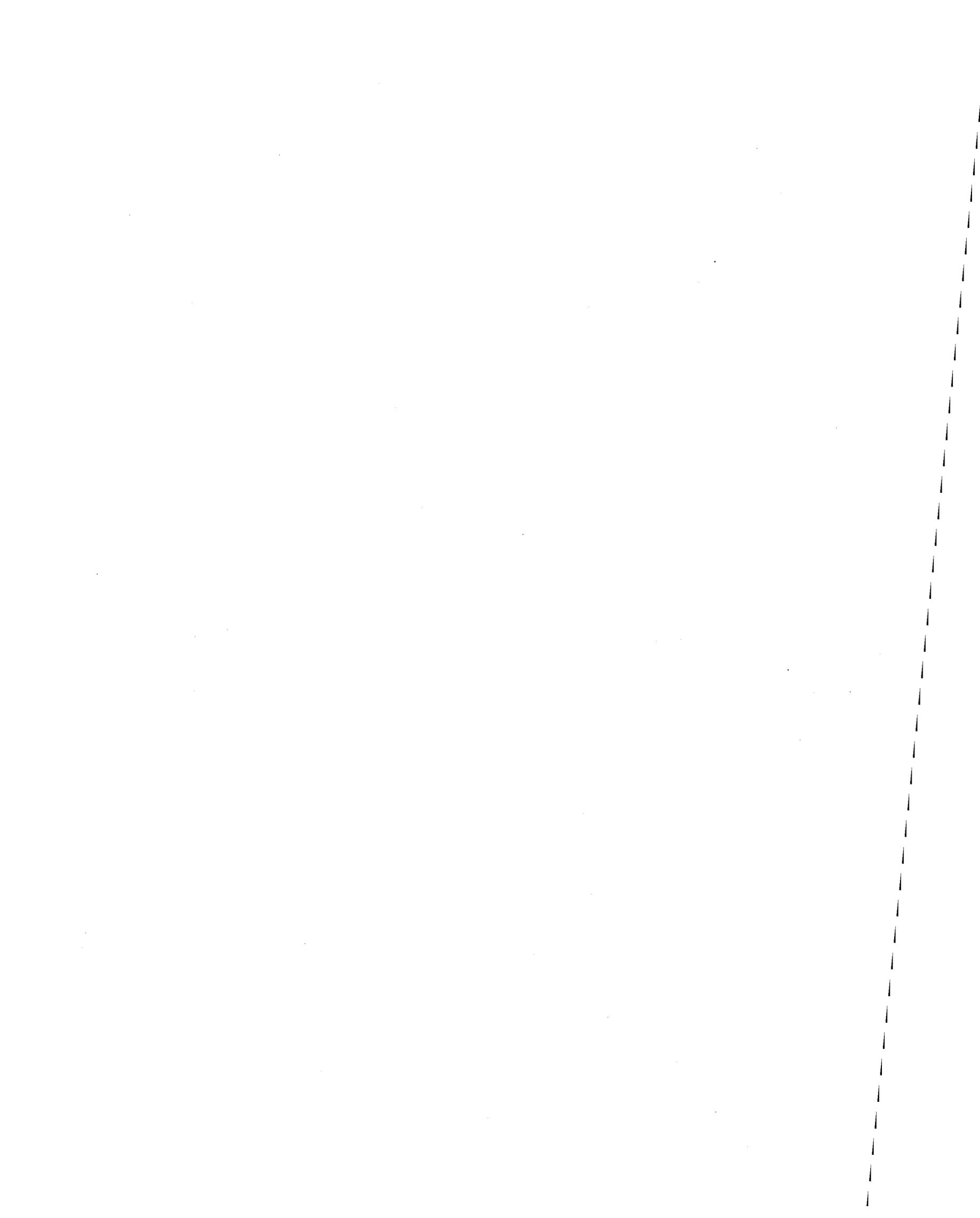
Moreover, respondent's racist remarks on and off the bench, standing alone, demonstrate his unfitness for judicial office. Matter of Cerbone v. State Commission on Judicial Conduct, 61 NY2d 93 (1984); Matter of Bloodgood, 2 Commission Determinations 343 (June 11, 1981).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin were not present.

Dated: November 19, 1986



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

K. RAY EDWARDS,

Determination

a Justice of the Russia Town Court
and an Acting Justice of the Poland
and Cold Brook Village Courts,
Herkimer County.

APPEARANCES:

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

Antonio Faga for Respondent

The respondent, K. Ray Edwards, a justice of the Russia Town Court, Poland Village Court and Cold Brook Village Court, Herkimer County, was served with a Formal Written Complaint dated January 23, 1986, alleging that he engaged in ex parte communications, that he failed to disqualify himself and that he permitted a prosecutor to instruct a jury on a question of law. Respondent filed an answer dated February 13, 1986.

By order dated February 27, 1986, the Commission designated Peter Preiser, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 22, 1986, and the referee filed his report with the Commission on July 14, 1986.

By motion dated September 4, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion on September 24, 1986. Oral argument was waived.

On October 16, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Russia Town Court and has been since 1959. He is also a justice of the Cold Brook Village Court and acting justice of the Poland Village Court.

2. On May 7, 1984, respondent arraigned Louis Muzyk in the Russia Town Court on a charge of Permitting a Bull to Range at Large, a violation of the Agriculture and Markets Law.

3. The arresting officer advised respondent that Mr. Muzyk had refused to furnish personal information needed for the officer's arrest report.

4. Respondent asked Mr. Muzyk to give the information, but Mr. Muzyk refused.

5. Respondent advised the officer to charge Mr. Muzyk with Obstructing Governmental Administration for failing to give the information.

6. The arresting officer swore out an information charging Mr. Muzyk with Obstructing Governmental Administration, and respondent arraigned him on that charge, as well.

7. Respondent had known Mr. Muzyk for many years and had received numerous past complaints about his roaming cattle. Respondent had made numerous extra-judicial attempts in the past to persuade Mr. Muzyk to pay for damage other property owners claimed had been done by Mr. Muzyk's cattle.

8. After Mr. Muzyk's arraignment but before his trial, respondent went to the home of the complaining witness and discussed the facts underlying the Agriculture and Markets charge and discussed the damage alleged to have been done to the witness' property.

9. On March 26, 1985, respondent presided at Mr. Muzyk's trial. After the jury had retired to deliberate and while respondent was out of the courtroom, the jury returned to ask a question on a point of law.

10. When respondent returned to the room, the prosecutor, Assistant District Attorney Patrick L. Kirk, related the question to respondent.

11. Respondent permitted colloquy to continue among the jury, Mr. Kirk and Mr. Muzyk. Mr. Kirk gave instruction to the jury on a material point of law, and respondent failed to intervene.

12. Mr. Muzyk was found guilty by the jury and was sentenced by respondent to a conditional discharge and fines totaling \$125.

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(a)(2), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(2), 3A(4) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings of fact enumerated above, and respondent's misconduct is established.

Faced with a perennial community problem, respondent became overly zealous in an attempt to find a judicial solution. He abandoned his neutral role and created the appearance of partiality.

When Mr. Muzyk was brought to court, respondent failed to disqualify himself notwithstanding that he had engaged in numerous past extra-judicial attempts to deal with the defendant's roaming cattle and the damage they had allegedly caused. Respondent suggested to the arresting officer that an additional charge be laid, then arraigned Mr. Muzyk on the charge. Respondent interviewed a witness outside of court concerning the merits of the case, then presided over the trial notwithstanding this ex parte contact.

At trial, respondent allowed the prosecutor to improperly assume a judicial role by instructing the jury on a material point of law, thus failing to maintain control of his courtroom. Section 100.3(a)(2) of the Rules Governing Judicial Conduct.

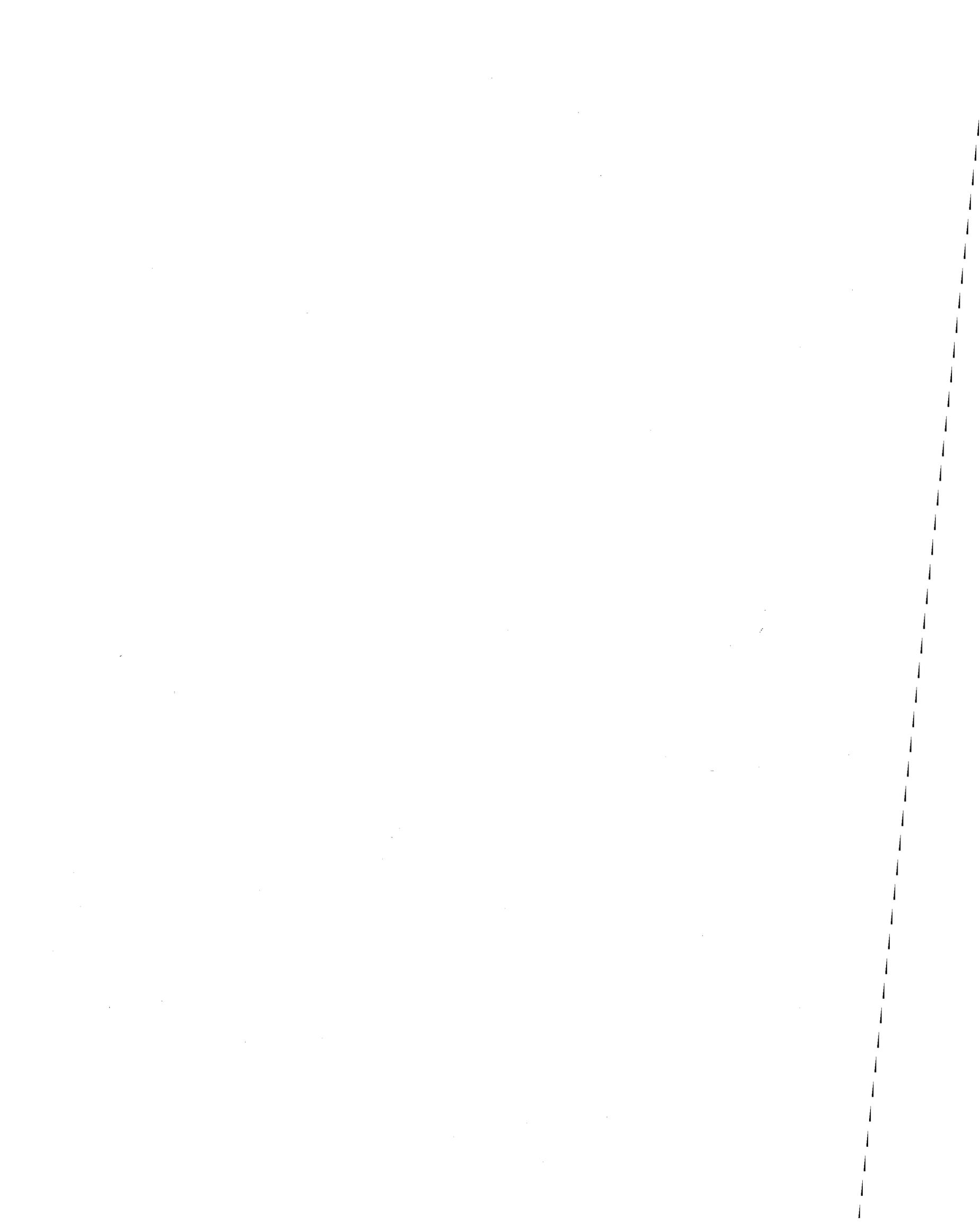
The ability to be and appear impartial is an indispensable requirement for a judge. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290 (1983). Respondent clearly compromised his independence and impartiality by his ex parte contacts and his failure to disqualify himself. Matter of Wilkins, unreported (Com. on Jud. Conduct, Dec. 24, 1985); Matter of Mullen, unreported (Com. on Jud. Conduct, May 22, 1986).

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bromberg, Judge Rubin and Mr. Sheehy were not present.

Dated: November 21, 1986



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 GASSMAN,

a Justice of the Mansfield Town Court,
Cattaraugus County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Honorable Gerald Gassman, pro se

The respondent, Gerald Gassman, a justice of the Mansfield Town Court, Cattaraugus County, was served with a Formal Written Complaint dated April 10, 1985, alleging that, based on an ex parte communication from another judge, respondent released three defendants he had previously jailed in lieu of bail. Respondent answered the Formal Written Complaint by letter of April 29, 1985.

By order dated May 17, 1985, the Commission designated Richard D. Parsons, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 30, 1985, and the referee filed his report with the Commission on December 13, 1985.

By motion dated January 16, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be admonished. Respondent replied to the motion in an undated letter received on January 31, 1986. Respondent waived oral argument.

On February 14, 1986, the Commission heard oral argument by the administrator and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a part-time justice of the Mansfield Town Court and has been for 15 years.

2. Respondent is not an attorney; he is a self-employed building contractor and farmer.

3. Respondent has attended training sessions required by the Office of Court Administration for non-lawyer judges. He is familiar with the annual reports of the Commission and its investigations and decisions on ticket-fixing.

4. On November 22, 1983, John Gross, Jr., John Holer, George Anderson and Aubrey Swanson were arrested in the Town of Mansfield on charges of Unlawfully Taking Deer With Antlers Less Than Three Inches and Taking Deer With The Aid Of An Artificial Light, both misdemeanors under the Environmental Conservation Law.

5. The four defendants were arraigned before respondent in the early morning of November 23, 1983.

6. Respondent adjourned the cases and remanded Mr. Gross, Mr. Holer and Mr. Anderson to the Cattaraugus County Jail in lieu of \$2,000 bail each. Mr. Swanson was released on his own recognizance.

7. At 3:26 A.M. on November 23, 1983, Frank R. Bayger, a justice of the Supreme Court, Eighth Judicial District, called the Cattaraugus County Jail and spoke to Deputy Sidney Lindell, Jr.

8. Judge Bayger identified himself by name and judicial title and asked whether Mr. Gross, Mr. Holer and Mr. Anderson were being held at the jail.

9. After Deputy Lindell confirmed that the three defendants were in jail, Judge Bayger indicated that he knew the men, could vouch for them and asked that they be released.

10. Deputy Lindell referred Judge Bayger to respondent and the district attorney, Levant Himelein.

11. At about 4:00 A.M., Judge Bayger called respondent, identified himself as Frank Bayger and asked whether respondent could help him obtain the release of the three defendants.

12. Judge Bayger told respondent that he knew the men, that they were responsible businessmen and citizens and that he could promise that if they were released, they would return with bail by noon.

13. During the telephone conversation, Judge Bayger told respondent that he had "done some work in the Supreme Court business," and respondent concluded that he was a Supreme Court Justice.

14. Respondent understood that Judge Bayger was attempting to influence respondent's decision in order to obtain the release of the three defendants.

15. As the result of the call from Judge Bayger, respondent called the jail and asked that the defendants be released. At about 7:00 A.M., respondent delivered an order releasing the three men from custody.

16. Respondent did not notify the arresting officer or the district attorney before changing his earlier bail decision.

17. Respondent did not report the call from Judge Bayger to any administrative authority or to the Commission.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.2(c), 100.3(a)(4) and 100.3(b)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B, 3A(4) and 3B(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent considered an ex parte communication from another judge which was clearly designed and understood by respondent as an attempt to influence his decision as to bail. Because the defendants knew a Supreme Court Justice and were able to get him to improperly intervene on their behalf, they were able to obtain their release.

Such favoritism, even when it is not designed to affect the final disposition of a case, impairs public confidence in the integrity and impartiality of the judiciary and has been repeatedly condemned by the courts and this Commission. Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569 (1980); Matter of Kaplan, 3 Commission Determinations 229 (May 17, 1983); Matter of Calabretta, unreported (Com. on Jud. Conduct, Apr. 11, 1984); Matter of Hansel L. McGee, unreported (Com. on Jud. Conduct, Apr. 12, 1984). Moreover, respondent's failure to report Judge Bayger's blatant misconduct in seeking special consideration for his friends violated Section 100.3(b)(3) of the Rules Governing Judicial Conduct.

Two factors must be considered in mitigation. Respondent has acknowledged his misconduct and cooperated in the investigation of the matter. Matter of Kelso v. State Commission on Judicial Conduct, 61 NY2d 82 (1984); Matter of Calabretta, supra. Respondent otherwise enjoys a reputation as a fair and conscientious judge. Matter of Doolittle, unreported (Com. on Jud. Conduct, June 13, 1985).

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

All concur.

Dated: March 25, 1986

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

MELFORD C. HOPKINS,

a Justice of the Sodus Town and
Village Courts, Wayne County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Michael J. Roulan for Respondent

The respondent, Melford C. Hopkins, a justice of the Sodus Town Court and Sodus Village Court, Wayne County, was served with a Formal Written Complaint dated April 12, 1985, alleging that he angrily revoked an order of recognizance, set bail and jailed a defendant in a traffic case who had asked for an adjournment. Respondent filed an answer dated May 11, 1985.

By order dated May 17, 1985, the Commission designated John P. Cox, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 15, 1985, and the referee filed his report with the Commission on October 7, 1985.

By motion dated November 7, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion on November 27, 1985. Oral argument was waived.

On December 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Sodus Village Court and has been since 1964. Respondent is also a justice of the Sodus Town Court and has been since 1979.

2. On September 7, 1983, John A. Bruni appeared before respondent in the Sodus Town Court on a charge of Following Too Closely, a traffic infraction.

3. On advice of his counsel, who was not present, Mr. Bruni asked respondent for an adjournment. The matter had already been adjourned once to give Mr. Bruni an opportunity to obtain counsel and once because respondent was ill.

4. Respondent became annoyed with Mr. Bruni and set bail at \$250 cash or \$500 bond, notwithstanding that while released on his own recognizance, Mr. Bruni had appeared in court three times.

5. Before setting bail, respondent made no inquiry into the factors to determine whether Mr. Bruni was likely to return to court, as set forth in Section 510.30(2) of the Criminal Procedure Law, and acted without good cause, in violation of Section 530.60 of the Criminal Procedure Law.

6. Respondent told Mr. Bruni he had until midnight to raise the bail money. Respondent permitted Mr. Bruni the use of a telephone, then remanded him to the jury box.

7. A short time later, respondent told Mr. Bruni that he was "sick and tired of looking at [his] face." Respondent remanded Mr. Bruni to the custody of the sheriff, and he was taken to jail.

8. Mr. Bruni was polite and cooperative at all times during his appearance.

9. Respondent knew that Mr. Bruni was represented by Christopher D'Amanda but made no effort to contact him before committing his client to jail.

10. No representative of the district attorney's office was present or heard on the subject of bail before Mr. Bruni was committed.

11. Mr. Bruni spent about an hour at the jail before bail was posted.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

The credible evidence establishes that respondent became annoyed with a defendant and, without cause and in contravention of statutory requirements, set bail on a traffic violation as a punitive measure.

Punitive use of bail is improper. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 289 (1983). The capricious abuse of any legal process by a judge because of personal irritation is wrong. Matter of Perry, 53 AD2d 882 (2d Dept. 1976); Matter of Howard Miller, 2 Commission Determinations 71 (Com. on Jud. Conduct, Feb. 11, 1980); Matter of Sharpe, 3 Commission Determinations 233 (Com. on Jud. Conduct, June 7, 1983).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Rubin was not present.

Dated: January 24, 1986

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

GLENN R. LATREMORE,

a Justice of the Chazy Town Court,
Clinton County.

APPEARANCES:

Gerald Stern (Henry S. Stewart and Jean M. Savanyu,
Of Counsel) for the Commission

Neverett, Asadourian & Johnston, P.C. (By Francis H.
Neverett) for Respondent

The respondent, Glenn R. Latremore, a justice of the Chazy Town Court, Clinton County, was served with a Formal Written Complaint dated August 4, 1984, alleging that he presided over cases involving clients of his private insurance business. Respondent filed an answer dated September 7, 1984.

By order dated November 5, 1984, the Commission designated Francis C. LaVigne, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 30 and 31, 1985, and the referee filed his report with the Commission on October 24, 1985.

By motion dated January 23, 1986, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a finding that respondent be removed from office. Respondent opposed the motion on March 7, 1986. The administrator filed a reply on March 13, 1986.

On March 20, 1986, 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 is a part-time justice of the Chazy Town Court and has been since 1972.
2. Respondent is also an agent of the Nationwide Insurance Company and has been since 1969.
3. Respondent is paid a commission for each policy that he services for the company.
4. Respondent operates his insurance business from his home. He sometimes conducts court business in his insurance office.

As to Charge I of the Formal Written Complaint:

5. Respondent presided over and disposed of the following cases in which the defendants held automobile insurance policies serviced by respondent's business and were known by respondent to be clients:

<u>Defendant</u>	<u>Date of Disposition</u>
Dale M. Brown	7/30/80
Dale M. Brown	4/20/83
Donald H. Deso	6/23/82
David M. Duprey	8/6/80
Wendy W. Fung	5/26/82
Dale S. Gonyo	4/12/82
Kenneth T. Hawksby *	5/26/82
Steven D. Jennett	6/23/82
Morris G. Jennette	1/5/81 (two charges)
Kenneth E. Leazott	4/21/82
Alan D. Mooney	9/11/81 (four charges)
Alan D. Mooney	1/27/82
Alan D. Mooney	2/17/82
Alan D. Mooney	4/12/82
Alan D. Mooney	3/30/83
John A. Riley	7/1/82
Randy D. Stromback	4/21/82

* Mr. Hawksby also held a farm insurance policy with respondent's firm.

6. On May 26, 1982, Shelia M. Bunn appeared before respondent on charges of Driving While Intoxicated and Failure To Keep Right. Respondent offered to reduce the D.W.I. charge to Driving While Ability Impaired. Ms. Bunn pled guilty to D.W.A.I. and Failure To Keep Right, and respondent fined her \$250 on the D.W.A.I. charge and \$5 on the other charge. Respondent did not note the convictions on Ms. Bunn's license renewal stub. At the time, Ms. Bunn's automobile insurance was serviced by respondent's business. Ms. Bunn appeared for the court proceeding at respondent's insurance office with her mother, who also had insurance through respondent's business. Respondent testified that he did not realize at the time that Ms. Bunn or her mother were his clients.

7. On May 7, 1982, Robert J. Tripi appeared before respondent on a charge of Failure To Keep Right. Respondent reduced the charge to Unsafe Tire and imposed a \$10 fine. At the time, Mr. Tripi's automobile insurance was serviced by respondent's business. Respondent testified that he did not realize at the time that Mr. Tripi was a client.

8. On May 26, 1982, Steven B. Walker appeared before respondent on a charge of Modified Exhaust. Mr. Walker pled guilty and was given a conditional discharge by respondent. At the time, Mr. Walker's automobile insurance was serviced by respondent's business. Respondent testified that he was not aware at the time that Mr. Walker was a client.

As to Charge II of the Formal Written Complaint:

9. On July 26, 1981, respondent issued a warrant for the arrest of Rodney Sterling on a charge of Trespass, based on an information executed by Ludwig P. Kleinschmidt.

10. Mr. Kleinschmidt was never notified of a court date in connection with his complaint.

11. In August 1981, respondent conducted a hearing in the matter and dismissed the charge against Mr. Sterling.

12. Respondent kept no docket or other record of the disposition of the case.

13. Mr. Kleinschmidt was not notified of the disposition.

14. At the time, Mr. Sterling was a client of respondent's insurance business, and respondent was aware that he was a client.

As to Charge III of the Formal Written Complaint:

15. On October 28, 1981, respondent presided over a non-jury trial in which Mr. Sterling was charged with Harrassment on the complaint of Mr. Kleinschmidt's wife, Marilyn.

16. Respondent dismissed the charge against Mr. Sterling.

17. Respondent kept no docket or other record of the case.

18. Ms. Kleinschmidt was not notified of the disposition of the matter.

19. At the time, Mr. Sterling was a client of respondent's insurance business, and respondent was aware that he was a client.

As to Charge IV of the Formal Written Complaint:

20. On April 2, 1978, Morris G. Jennette was charged with Driving While Intoxicated and Driving To The Left Of Pavement Markings.

21. On June 28, 1978, Mr. Jennette appeared before respondent in his insurance office.

22. On his own motion, respondent reduced the D.W.I. charge to Driving While Ability Impaired and granted a conditional discharge requiring Mr. Jennette to attend a safe driving school.

23. Respondent dismissed the charge of Driving To The Left of Pavement Markings.

24. Mr. Jennette had been convicted in another court 18 months earlier, on December 28, 1976, of Driving With .10 Percent Or More Alcohol In Blood.

25. In the case before respondent, Mr. Jennette was not charged with a felony charge of Driving While Intoxicated, and respondent testified that he was not aware of the previous conviction when he disposed of the case.

26. At the time, Mr. Jennette was an insurance client of respondent and had been since 1973, and respondent knew that he was a client when he disposed of the case.

As to Charge V of the Formal Written Complaint:

27. On September 14, 1980, David M. Duprey was charged with Driving While Intoxicated, Parking Without Lights and Leaving The Scene Of A Property Damage Accident.

28. On September 17, 1980, Mr. Duprey appeared before respondent.

29. Respondent reduced the D.W.I. charge to Driving While Ability Impaired, accepted a plea of guilty and granted a conditional discharge.

30. Respondent also granted a conditional discharge on the charge of Parking Without Lights and dismissed the remaining charge.

31. At the time, Mr. Duprey's automobile insurance was serviced by respondent's business.

32. Mr. Duprey appeared in court with his father, who was also respondent's insurance client.

33. Respondent was aware at the time that both men were clients.

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(c) and 100.5(c)(1) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1), 3C and 5C(1) of the Code of Judicial Conduct; Sections 107, 2019 and 2019-a of the Uniform Justice Court Act, and Section 105.3 of the Recordkeeping Requirements for Town and Village Courts. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent is required to disqualify himself in any case in which his impartiality might reasonably be questioned, such as those in which he has a financial interest in his client's cases or an interest that could be substantially affected by the outcome of a proceeding. Section 100.3(c)(1)(iii) of the Rules Governing Judicial Conduct. A judge who fails to disqualify himself in such situations creates the appearance of partiality, whether or not the disposition of the case is actually favorable to respondent's client. Matter of Wait v. State Commission on Judicial Conduct, 67 NY2d 15 (1986). The appearance of such impropriety is no less to be condemned than is the impropriety itself. Matter of Spector v. State Commission on Judicial Conduct, 47 NY2d 462, 466 (1979).

By hearing and deciding the cases of his insurance clients, respondent cast doubt on the impartiality of his decisions and undermined public confidence in the integrity and independence of the judiciary as a whole.

Respondent had a financial interest in the parties since he received commissions from his work on their insurance policies. His disposition of their traffic cases may have directly affected their insurance rates and may have determined whether or not the insurance company canceled their policies. Thus, respondent may have had a substantial interest in the outcome of the court proceedings since, if the policies were canceled, he would no longer receive a commission for servicing them. This conflict tainted his every action in his clients' cases.

In view of the representations of respondent's counsel that respondent now determines whether parties before him are insurance clients

and disqualifies himself if they are, the Commission is persuaded that the appearance of partiality will not be repeated.

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mrs. DelBello dissents as to sanction only and votes that respondent be removed from office.

Mr. Bromberg, Judge Rubin and Mr. Sheehy were not present.

Dated: May 30, 1986

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

GLENN R. LATREMORE,

a Justice of the Chazy Town Court,
Clinton County.

DISSENTING OPINION
BY MRS. DEL BELLO

Respondent should be removed from office because he engaged in clear and serious conflicts of interest. Serving simultaneously as a local judge with jurisdiction over traffic cases and as an agent for a major auto insurance company, he acted on numerous traffic matters with the clients he had insured. I find it incomprehensible that he did not recognize these conflicts. The facts reveal that it was in his best interest that the clients who came before him for a traffic infraction were not convicted. As an agent, dependent solely upon commissions for his business, respondent saw to it that his clients did not lose either their driving privileges or licenses, for such loss would be a loss of his commissions as well.

There was little if any distinction between his two roles. Respondent's insurance personnel were his court personnel. Some court proceedings were conducted in the very office where insurance policies were written for the traffic violators. For example, respondent reduced three of his clients' Driving While Intoxicated cases; two of them were handled in the privacy of his insurance office.

I cannot accept respondent's professed lack of knowledge of impropriety in his official dealings with his clients. Any responsible person could recognize such a blatant conflict. Certainly, we can expect such basic recognition from a judge entrusted to uphold the highest of standards of conduct.

I vote that respondent be removed from office.

Dated: May 30, 1986



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

SEBASTIAN J. LOMBARDI,

a Justice of the Lewiston Town Court,
Niagara County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Benjamin N. Hewitt, Mark D. Grossman and Samuel J.
Civiletto for Respondent

The respondent, Sebastian J. Lombardi, a justice of the Lewiston Town Court, Niagara County, was served with a Formal Written Complaint dated September 7, 1984, alleging that he intervened in a case before another judge and released the defendant from jail based solely on an ex parte request. Respondent filed an answer dated October 1, 1984.

By order dated October 4, 1984, the Commission designated the Honorable Dean C. Stathacos as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 4 and 5, 1985, and the referee filed his report with the Commission on June 11, 1985.

By motion dated June 21, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent's misconduct was established. Respondent opposed the motion on August 2, 1985.

On September 12, 1985, the Commission heard oral argument on the issue of misconduct, at which respondent appeared by counsel, and, in a determination and order dated September 17, 1985, made the findings of fact enumerated below.

The administrator and respondent submitted memoranda as to sanction. On October 11, 1985, the Commission heard oral argument as to

sanction, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent is a justice of the Lewiston Town Court and was during the time herein noted.

2. On June 25, 1983, Brian S. Rossman was arrested in the Town of Lewiston and charged with two counts of Assault, Second Degree; Resisting Arrest; Driving While Intoxicated; Reckless Driving; two counts of Speeding, and Failure To Keep Right Of Way.

3. Mr. Rossman was arraigned before Niagara Town Justice John P. Teixeira and remanded to the Niagara County Jail in lieu of \$1,000 cash bail or \$3,000 bond.

4. Mr. Rossman was scheduled to appear in the Lewiston Town Court on July 5, 1983, before Justice Randy M. Haseley.

5. After his arrest, Mr. Rossman called a friend, David Szostak, and asked help in seeking release from jail.

6. Mr. Szostak went to respondent and asked him how Mr. Rossman could be released.

7. Mr. Szostak did not know the charges against Mr. Rossman and did not provide respondent with any information concerning them.

8. Respondent was unaware of the charges against Mr. Rossman.

9. Respondent called the Niagara County Jail and asked whether Mr. Rossman was in custody. Corporal David A. Larson confirmed that Mr. Rossman was in custody.

10. Respondent did not ask the charges against Mr. Rossman and did not have before him either a report of the Division of Criminal Justice Services or a local police department containing Mr. Rossman's criminal history.

11. Respondent told Corporal Larson that he wanted Mr. Rossman released without bail.

12. Corporal Larson told respondent that he would send a car to respondent's home to pick up a release order.

13. Respondent told Mr. Szostak that Mr. Rossman would be released in a few hours.

14. Respondent signed an order releasing Mr. Rossman from custody and turned it over to the Niagara County Sheriff's Department.

15. Respondent did not notify the district attorney's office or allow it to be heard on the question of Mr. Rossman's release.

16. On respondent's order, Mr. Rossman was released from jail.

17. The case was subsequently heard by Judge Haseley.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Based on an ex parte conversation with the defendant's friend, respondent released a defendant who had been jailed in lieu of bail by another judge and who was not scheduled to come before respondent at any time. Respondent had no papers concerning the case before him; was not aware of the charges against the defendant; did not inquire into the defendant's past criminal record or other factors concerning the likelihood that he would reappear in court, as required by Section 510.30 of the Criminal Procedure Law; and did not notify or seek the position of the prosecutor, as required by Section 530.20(2)(b)(i) of the Criminal Procedure Law.

By this extraordinary procedure, respondent failed to meet his ethical obligations to respect and comply with the law (Section 100.2 of the Rules Governing Judicial Conduct) and to afford to every person legally interested in a matter full right to be heard (Section 100.3[a][4] of the Rules Governing Judicial Conduct).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mrs. DelBello and Mr. Kovner dissent as to sanction only and vote that respondent be removed from office.

Judge Ciparick and Judge Rubin did not participate.

Dated: January 2, 1986

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

SEBASTIAN J. LOMBARDI,

a Justice of the Lewiston Town Court,
Niagara County.

DISSENTING OPINION
BY MR. KOVNER
IN WHICH MRS. DEL BELLO
JOINS

Unlike the majority, I find an element of favoritism in the record before the Commission. To find otherwise, one must assume that respondent would have granted ex parte relief without any of the facts before him had any citizen sought similar treatment.

With the element of favoritism present, I believe the law is settled that removal is warranted, even if only a single instance is established. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299 (1985). Here, respondent has already been censured for 154 instances of ticket-fixing (Matter of Lombardi, 49 NY2d [v] [Ct. on the Judiciary 1980]), the largest number in any proceeding during this Commission's investigation into ticket-fixing several years ago. I believe the appropriate sanction is removal.

Dated: January 2, 1986

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

PATRICK T. MANEY,

a Justice of the East Greenbush Town
Court, Rensselaer County.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the
Commission

Maney, McConville & Liccardi (By Edward P. McConville)
for Respondent

The respondent, Patrick T. Maney, a justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated March 28, 1986, alleging that he engaged in partisan political activities. Respondent filed an answer dated April 30, 1986.

On June 23, 1986, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on July 16, 1986.

The administrator submitted a memorandum as to sanction. Respondent neither submitted a memorandum nor requested oral argument.

On August 7, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the East Greenbush Town Court and has been since 1971.

2. Respondent, a Democrat, was elected to his fourth term of office in November 1983. His term expires on December 31, 1987.

3. In 1983, respondent sought to have a friend, William Malone, appointed a committeeman of the East Greenbush Town Democratic Committee in order to further respondent's chances of being nominated for reelection in 1987. Respondent knew that Mr. Malone would not oppose respondent's candidacy and hoped that Mr. Malone would influence the town Democratic Committee to nominate respondent for reelection in 1987.

4. In October 1983, respondent introduced Mr. Malone to Jack Devine, then the chairman of the town Democratic Committee, and recommended that Mr. Devine appoint Mr. Malone to a vacancy as town committeeman. Mr. Devine subsequently did so.

5. At the end of 1983, Mr. Devine retired as town chairman and was replaced by Donald Leffler.

6. In 1984, Mr. Malone sought nomination to run for the town council, but Mr. Leffler backed another candidate.

7. Respondent heard rumors that Mr. Leffler might not support respondent for reelection in 1987. Respondent told certain of his legal clients, his close friends and Mr. Leffler himself that respondent was dissatisfied with the leadership of the party.

8. In the spring of 1985, Mr. Leffler; Mr. Malone; the Democratic town supervisor, Michael VanVoris, and others met with respondent in respondent's office to discuss plans for the town Democratic Committee.

9. Respondent told Mr. Leffler that he should resign as party chairman. Respondent repeated the statement to Mr. Leffler at a subsequent meeting between them. Mr. Leffler refused to resign.

10. Mr. VanVoris, Mr. Malone and respondent discussed on at least three subsequent occasions the possibility of removing Mr. Leffler and agreed to attempt to do so at a party caucus on August 5, 1985.

11. Respondent asked Mr. VanVoris to seek the party chair, but Mr. VanVoris declined.

12. Respondent subsequently discussed with Mr. Malone the possibility of his seeking the party chair, and Mr. Malone agreed to become a candidate. Respondent, Mr. VanVoris and others subsequently discussed with Mr. Malone the process by which Mr. Malone would be nominated party chairman at the caucus.

13. Before the caucus, respondent discussed the contemplated removal of Mr. Leffler with several friends and asked them to attend the caucus.

14. Respondent asked Robert Angelini whether he would accept the nomination as temporary chairman of the caucus, and he agreed.

15. On August 5, 1985, respondent attended the caucus. Respondent nominated Mr. Angelini as temporary chairman, and he was elected over a candidate nominated by Mr. Leffler.

16. During a debate, respondent told party members at the caucus that he was dissatisfied with Mr. Leffler's leadership.

17. Mr. Malone was nominated by Mr. VanVoris to replace Mr. Leffler. A question was raised as to the legality of the move. Respondent advised the party members to go forward with the election, that if the election were illegal, it would be voided, but that the opportunity to vote should not be foregone.

18. Respondent voted in favor of Mr. Malone, and he was elected party chairman, 46 to 9.

19. Respondent was not an announced candidate for reelection in 1987, and the caucus was not within nine months of the meeting or primary at which respondent would be nominated for reelection.

20. The election of Mr. Malone was subsequently determined invalid, and Mr. Leffler remained the party chairman.

21. On December 17, 1985, respondent gave testimony before a member of this Commission in connection with a duly-authorized investigation into his political activities. Respondent indicated that he was familiar with the prohibitions against political activity in the Rules Governing Judicial Conduct and testified that he anticipated when he attended the party caucus that he would be called before the Commission.

22. Respondent testified that he feels that the Rules prohibiting political activity by judges are wrong and said, "...I think my political campaign is every day of my life, in sitting as a judge or taking my wife out to a social event."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.7 of the Rules Governing Judicial Conduct and Canons 1, 2 and 7A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Section 100.7 of the Rules Governing Judicial Conduct prohibits a judge from attending political affairs, from participating in political campaigns, from permitting the judge's name to be used in connection with political activity or from engaging in any other activity of a partisan political nature except his own campaign within nine months of his nomination.

Upon taking the bench, a judge relinquishes his First Amendment rights to participate in the political process. "...[I]t has been clearly established that courts do not belong in politics, that the independence of the judiciary depends upon that separation, and that political ties and debts and their accommodation would demean and degrade the courts and ultimately corrupt them." Application of Gaulkin, 69 NJ 185, 351 A2d 740, 743 (1976).

A judge must avoid all partisan political activity so as to prevent "any suspicion that his judicial activities may be influenced by his political preferences." Matter of Hayden, 41 NJ 443, 197 A2d 353, 354 (1964).

Respondent knowingly ignored these principles and prohibitions. Years before the period in which he could properly campaign for reelection, respondent engaged in blatant political activity. He joined with others to plan the overthrow of the local leader of their political party and replace him with a supporter of respondent. Respondent met numerous times with political leaders and participated in a party caucus, publicly expressing his dissatisfaction with the party leadership and promoting new candidates for the office. Such activities by a judge are not permitted at anytime by the Rules and certainly not years before any campaign for reelection.

Respondent's callous disregard for the applicable ethical standards is evidenced by his statements that he anticipated that he would be called before the Commission to account for his political actions and that he feels that he is engaged in political campaigning at all times, on and off the bench.

It is of paramount importance that both in practice and in the public mind, our judicial processes be neutral, fair and free from improper influences. Respondent's excessive involvement in partisan political activities is inconsistent with the preservation of these values and as such mandate his removal from office.

Matter of Briggs, 595
SW2d 270, 277 (Mo. 1980).

Respondent has irretrievably impaired public confidence that his judicial actions will not be influenced by political considerations.

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Mr. Bromberg and Mr. Sheehy were not present.

Dated: September 12, 1986

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

GREGORY R. MANNING,

a Justice of the Riverhead Town
Court, Suffolk County.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the
Commission

Sussman & Gottlieb (By Robert C. Gottlieb; Debra E.
Jenkins, Of Counsel) for Respondent

The respondent, Gregory R. Manning, a justice of the Riverhead Town Court, Suffolk County, was served with a Formal Written Complaint dated October 22, 1985, alleging, inter alia, that he sought special consideration and had ex parte meetings in two cases. Respondent filed an answer dated November 20, 1985.

By order dated December 4, 1985, the Commission designated Bernard H. Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 28, 1986, and the referee filed his report with the Commission on April 22, 1986.

By motion dated May 21, 1986, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a finding that respondent be censured. Respondent opposed the motion on May 30, 1986.

On June 19, 1986, 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 finding:

1. Respondent is a justice of the Riverhead Town Court and has been since 1973.

As to Charge I of the Formal Written Complaint:

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

As to Charge II of the Formal Written Complaint:

3. On December 15, 1984, Donald S. Ceckowski was arrested on a charge of Petit Larceny in the Town of Riverhead.

4. Mr. Ceckowski was arraigned before respondent on December 17, 1984.

5. Respondent and Mr. Ceckowski's parents are members of the same fraternal organization and veterans' organization. Respondent had visited the Ceckowski home in the summer of 1984 and was asked to "christen" the family's new camper.

6. About a week after his arraignment, Donald Ceckowski visited respondent's home. He reminded respondent of the case and told respondent that he knew Mr. Ceckowski's parents.

7. Mr. Ceckowski told respondent the facts surrounding his arrest, indicated that he was embarrassed by the incident and said that he could not afford to hire a lawyer.

8. Respondent told Mr. Ceckowski that Petit Larceny carries a maximum sentence of one year in jail and that he should have a lawyer to defend him.

9. Respondent assured Mr. Ceckowski that he would speak to the prosecutor in the case and get him to talk to Mr. Ceckowski so that he would not have to retain an attorney.

10. Respondent knew at the time of his conversation with Mr. Ceckowski that it was improper for a judge to discuss the merits of a pending case with one party to the dispute outside the presence of the other party.

11. On January 22, 1985, respondent spoke to the prosecutor, Thomas Zayrrhuka, in hopes of sparing Mr. Ceckowski the expense of an

attorney and expecting that the prosecutor would offer to reduce the charge to Disorderly Conduct.

12. Respondent told Mr. Zayrrhuka that he knew Mr. Ceckowski's parents and that they were "nice people."

13. Respondent told Mr. Zayrrhuka that Mr. Ceckowski had visited respondent's home.

14. Respondent asked Mr. Zayrrhuka to talk to Mr. Ceckowski "and work something out without him getting an attorney."

15. Mr. Zayrrhuka offered to consent to an Adjournment in Contemplation of Dismissal.

16. Although an ACD was an unusual disposition in his court for such a case, respondent agreed and adjourned the matter for six months.

17. The case was dismissed on July 22, 1985.

As to Charge III of the Formal Written Complaint:

18. 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), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint is sustained, and respondent's misconduct is established. Charges I and III are dismissed.

By his conduct, respondent created the impression that because of the relationship between respondent and the defendant's parents, Mr. Ceckowski was able to obtain a disposition unavailable to others before the court. Respondent met privately with Mr. Ceckowski and discussed the merits of the case. He then talked to the prosecutor on behalf of the defendant. Respondent failed to disqualify himself after these two improper contacts and granted a disposition that he acknowledges was unusual in his court for such cases.

[A]ny communication from a Judge to an outside agency on behalf of another may be perceived as one backed by the power and prestige of judicial office.... Judges must assiduously avoid those contacts which might create even the appearance of impropriety.

Matter of Lonschein v.
State Commission on
Judicial Conduct,
50 NY2d 569, 572 (1980).

That respondent's disposition was recommended and consented to by the prosecutor after respondent spoke to him on behalf of the defendant in no way mitigates the misconduct. Matter of Morrison, 2 Commission Determinations 261 (Dec. 2, 1980).

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin and Mr. Sheehey concur.

Mr. Bower dissents as to Charges I and III and votes that the charges be sustained and dissents as to sanction and votes that respondent be censured.

Judge Ciparick and Judge Shea concur as to sanction but dissent as to Charge I and vote that the charge be sustained.

Mrs. DelBello concurs as to sanction but dissents as to Charges I and III and votes that the charges be sustained.

Dated: August 15, 1986

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

DISSENTING OPINION
BY MR. BOWER

GREGORY R. MANNING,

a Justice of the Riverhead Town Court,
Suffolk County.

I dissent with respect to Charge III.

Respondent dismissed a number of motor vehicle cases in which the defendants have been charged with Driving While Ability Impaired. He dismissed them as a matter of his "policy." He alleges that he dismissed them wholesale since when a motorist is stopped because of weaving or driving erratically, he should have been arrested pursuant to Driving While Intoxicated irrespective of what the breathalyzer test result was. (This is regardless of the fact that the police do not charge the defendants with either Driving While Intoxicated or Driving While Ability Impaired until after the results of the breathalyzer test are obtained.) According to the respondent, if the results of the breathalyzer tests show that pursuant to Section 1195 of the Vehicle and Traffic Law, the defendant's ability was impaired rather than that he was intoxicated, the police should charge him with Driving While Intoxicated; otherwise respondent will dismiss tickets issued for Driving While Ability Impaired.

The tortured and woefully wrong interpretation of the statute is but whimsy. In fact, respondent dismissed these charges because he lacked the competence to read or understand the statutes involved. When it was pointed out to him that the statutory scheme with respect to charging a defendant with either Driving While Intoxicated or Driving While Ability Impaired is totally contrary to what he had supposed it to be, respondent, as others of limited intelligence are wont to do, became offended rather than grateful for having his error pointed out to him. The Referee concluded "that there was no misconduct as respondent acted on his conviction that he was properly interpreting the law." This, in spite of the fact that a simple reading of the pertinent sections would immediately lead one to the conclusion that there was no rational basis, either in logic or law, for respondent's position. At the argument of this case before the Commission, respondent's lawyers, in their affidavit in opposition, conceded

that the respondent's policy was wrong. Yet, in spite of this additional concession, the majority agreed with the Referee, supposedly on the theory that an honest mistake of the law does not constitute misconduct. Quite to the contrary, there is a point where incompetence itself in a judge becomes actionable misconduct. This case is an example. There is simply no way that one could, in good conscience, agree with respondent's dismissing charges against alcoholic drivers. To release them under the bizarre theory employed by respondent and to enable them to play Russian Roulette with the lives of others on the highway, is an insult to the fair administration of justice.

It is observed that respondent is not a lawyer. That did not deter him from seeking judicial office. Having attained it, he should avail himself of learning and advice by those schooled in the law and law enforcement. Here, without inquiring any further, respondent petulantly chose to disregard the legal advice given to him by the District Attorney and the proper interpretation of the law offered by the police captain. There were innumerable avenues of finding out if respondent's tortured interpretation of the Vehicle and Traffic Law was anything more than an aberration. He chose none. Instead, having been charged, he now asserts his incompetence not as a shield but as a sword. It grieves me that he asserted it successfully.

Charge III should be sustained and respondent should be censured.

Dated: August 15, 1986

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

ALBERT MONTANELI,

a Justice of the Ancram Town
Court, Columbia County.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the
Commission

Cade & Saunders, P.C. (By William J. Cade; Allen C.
Miller, Jr., Of Counsel) for Respondent

The respondent, Albert Montaneli, a justice of the Ancram Town Court, Columbia County, was served with a Formal Written Complaint dated May 21, 1986, alleging that he mishandled court funds. Respondent did not answer the Formal Written Complaint.

By order dated June 4, 1986, 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 30 and August 1, 1986, and the referee filed his report with the Commission on October 2, 1986.

By motion dated October 7, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent did not oppose the motion and waived oral argument.

On November 14, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Ancram Town Court and was during the time herein noted.
2. Respondent personally handles all the recordkeeping for the court, including cashbook, docket book and Audit and Control reports, and personally deposits the court funds.
3. Respondent maintains two bank accounts at Stissing National Bank: a court account and a personal account entitled "Special Account."
4. On April 11, 1983, respondent deposited into his personal bank account a \$2,500 bail check that had been sent to him by the Columbia County Sheriff's Department to hold as bail for Calvin Spence, whose case was pending in respondent's court.
5. At the time of the deposit, there was only \$52.17 in the account.
6. Within 21 days of the deposit of the Spence bail check into respondent's personal account, the balance in that account fell to \$593.33.
7. Respondent disbursed the Spence money from his personal account by writing eleven separate checks to persons and entities unrelated to his court business. None of the checks was payable to the defendant, Calvin Spence, or to Barbara MacIsaac, who had posted the bail on behalf of the defendant.
8. Respondent prepared a false receipt indicating that a \$900 check for Mr. Spence's bail was received on August 2, 1983, and made corresponding entries in his cashbook and docket, notwithstanding that he actually received a \$2,500 bail check on or about April 6, 1983, and deposited the check in his personal account on April 11, 1983.
9. Nine hundred dollars were returned to Mr. Spence by a check dated August 20, 1983, drawn from respondent's court account.
10. No fine or other disposition of the Spence matter was ever reported or remitted to the State Comptroller.
11. On April 24, 1985, respondent deposited into his personal bank account a \$1,000 bail check that had been sent to him by the Columbia County Sheriff's Department to hold as bail for John Waite, III, whose case was pending in respondent's court.
12. At the time of the deposit, respondent's personal account was overdrawn by \$128.54.

13. Within two days of the deposit of the bail check into respondent's personal account, the account was overdrawn by \$197.28.

14. Respondent disbursed the Waite bail from his personal account by writing six separate checks to persons or entities unrelated to court business. None of the checks was payable to the defendant, John Waite, III, or to Emma Dietter, who had posted the bail on behalf of the defendant.

15. Respondent prepared a false receipt indicating that the Waite bail check was received on October 28, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he actually received the bail check on or about April 22, 1985, and deposited the check into his personal account on April 24, 1985. The false receipt was never given to the defendant or to Emma Dietter.

16. On May 2, 1985, respondent deposited into his personal bank account a \$1,000 bail check which had been sent to him by the Columbia County Sheriff's Department to hold as bail for John Waite, III, whose case was pending in respondent's court.

17. At the time of the deposit, there was a balance in the account of \$2.72.

18. Within one day of the deposit of the bail check into respondent's personal account, the balance in that account fell to \$130.57.

19. Respondent disbursed the Waite bail money from his personal account by writing four separate checks to persons and entities unrelated to court business. None of the checks was payable to the defendant, John Waite, III, or to George Dietter, who had posted the bail on behalf of the defendant.

20. Respondent prepared a false receipt indicating that the Waite bail check was received on November 25, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he had received the bail check on or about April 29, 1985. The receipt was never given to the defendant or to George Dietter.

21. Twenty-five hundred dollars were returned to the Dietters by two checks, each dated December 8, 1985, and drawn on respondent's court account.

22. On June 3, 1985, respondent deposited into his personal bank account a \$1,000 bail check which had been sent to him by the Columbia County Sheriff's Department to hold as bail for George Hosier, whose case was pending in respondent's court.

23. At the time of the deposit, there was a balance in the account of \$124.77.

24. Within three days of the deposit of the Hosier bail into respondent's personal account, the balance in the account fell to \$164.86.

25. Respondent disbursed the Hosier bail money from his personal account by writing three checks to persons and entities unrelated to court business. None of the checks was payable to the defendant, George Hosier, or to Kenneth Wiseman, who had posted the bail on behalf of the defendant.

26. Respondent prepared a false receipt indicating that the Hosier bail was received on May 10, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that the check sent by the sheriff was dated May 23, 1985, was received by respondent on or about that date, and was deposited by respondent into his personal account on June 3, 1985.

27. On July 3, 1985, respondent deposited into his personal bank account a \$1,000 bail check which had been sent to him by the Columbia County Sheriff's Department to hold as bail for Kenneth Shea, whose case was pending in respondent's court.

28. At the time of the deposit, there was a balance in the account of \$275.93.

29. Within two days of the deposit of the Shea bail check into respondent's personal account, the balance in that account fell to \$11.92.

30. Respondent disbursed the Shea bail money from his personal account by writing three separate checks to persons or entities unrelated to court business. None of the checks was payable to the defendant, Kenneth Shea, or to Kim Shea, who had posted the bail on behalf of the defendant.

31. Respondent prepared false receipts indicating that he received \$500 bail from Kim Shea on November 25, 1985, that he received \$240 bail from Kim Shea on December 9, 1985, and that he received a \$260 fine from Kenneth Shea on December 16, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he actually received the \$1,000 bail check on or about June 25, 1985, and deposited

the check in his personal account on July 3, 1985. The false receipts were never given to Kenneth or Kim Shea.

32. Seven hundred forty dollars were returned to Kim Shea by two checks, each dated December 18, 1985, and drawn on respondent's court account.

33. On October 16, 1985, respondent deposited into his personal bank account two bail checks totaling \$2,500 that had been sent to him by the Columbia County Sheriff's Department to hold as bail for John MacArthur, whose case was pending in respondent's court.

34. At the time of the deposits, respondent's personal account was overdrawn by \$298.54.

35. Within two days of the deposit of the MacArthur bail check into respondent's personal account, the balance in respondent's account fell to \$866.72.

36. Respondent disbursed the MacArthur bail money from his personal account by writing four separate checks to persons or entities unrelated to court business. None of the checks was payable to the defendant, John MacArthur, or to Katherine MacArthur, who had posted bail on behalf of the defendant.

37. Respondent prepared false receipts indicating that the \$900 MacArthur bail was received on December 31, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he had actually received \$2,500 bail for Mr. MacArthur on or about October 11, 1985, and had deposited the two checks totaling \$2,500 into his personal account on October 16, 1985.

38. Nine hundred dollars were returned to Mr. MacArthur by check dated January 1, 1986, and drawn on respondent's court account.

39. No fine was reported or remitted by respondent to the State Comptroller.

As to Charge II of the Formal Written Complaint:

40. On February 6, 1984, respondent received a fine of \$500 in cash from John Waite, III.

41. Respondent never deposited the \$500 fine money into his court account.

42. Respondent failed to report or remit the \$500 to the State Comptroller.

43. On October 21, 1985, respondent received a fine of \$425 cash from Richard Handlowich.

44. Respondent never deposited the \$425 fine money into his court account.

45. Respondent failed to report or remit the \$425 to the State Comptroller.

46. On December 18, 1985, respondent received a fine of \$260 from Kenneth Shea.

47. Respondent failed to remit the \$260 to the State Comptroller; he reported the Shea case as dismissed in December 1985.

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(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1) and 3B(1) of the Code of Judicial Conduct; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 27(1) of the Town Law; Sections 1803 and 1809(3) of the Vehicle and Traffic Law; Section 60.35(3) of the Penal Law; Sections 30.7 and 30.9 of the Uniform Justice Court Rules then in effect, and Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts then in effect.* Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The record clearly establishes that respondent converted to his personal use court funds that should have been either returned to defendants or remitted to the State Comptroller. Respondent deposited seven bail checks totaling \$9,000 in his personal account and rapidly spent the money on matters unrelated to court business.

The conversion of public funds by a judge entrusted with their care shocks the conscience and warrants removal from office. Matter of Lemon, 3 Commission Determinations 20 (Mar. 15, 1982); Matter of Lew, 3 Commission Determinations 28 (Apr. 22, 1982).

Respondent exacerbated this gross misconduct by failing to report receipt of the money to the comptroller and by falsifying court records to conceal the conversion. Matter of Reeves v. State Commission

* The Uniform Justice Court Rules and the Recordkeeping Requirements for Town and Village Courts were repealed effective January 6, 1986, and replaced by the Uniform Rules for Trial Courts.

on Judicial Conduct, 63 NY2d 105, 108-09 (1984); Matter of Jones, 47 NY2d (mmmm)(Ct. on the Judiciary 1979); Matter of Godin, 3 Commission Determinations 190 (Jan. 26, 1983); Matter of Moore, 3 Commission Determinations 256 (Nov. 10, 1983).

Respondent did not answer the Formal Written Complaint and, thus, is deemed to have admitted its charges. Section 7000.6(b) of the Commission's Operating Procedures and Rules. In addition, respondent failed to testify or present any defense to the allegations against him. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 302 (1985); Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 505 NYS2d 48, 50-51 (1986).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin were not present.

Dated: November 17, 1986

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

CHARLES J. MULLEN,

Surrogate and Judge of the County Court
and Family Court, Cortland County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Edmund J. Hoffmann, Jr., for Respondent

The respondent, Charles J. Mullen, a judge of the County Court, Surrogate's Court and Family Court, Cortland County, was served with a Formal Written Complaint dated January 16, 1985, alleging that he held a proceeding in a case in the absence of one of the parties who had been granted an adjournment and that he thereafter issued two warrants for that party's arrest. Respondent filed an answer dated February 27, 1985.

By order dated March 11, 1985, the Commission designated Shirley Adelson Siegel, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 6 and 7, 1985, and the referee filed her report with the Commission on October 7, 1985.

By motion dated November 11, 1985, respondent moved to confirm in part and disaffirm in part the referee's report. The administrator of the Commission opposed the motion on December 17, 1985, by cross-motion to confirm the referee's report and for a finding that respondent be censured. Respondent filed papers in support of his motion on January 23, 1986. The administrator filed a reply on February 5, 1986. Respondent filed a reply on February 12, 1986.

On February 14, 1986, 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.

1. Respondent is a judge of the Cortland County Court, Surrogate's Court and Family Court and has been since January 1, 1976.

2. In the late summer and fall of 1983, Dawn Janack v. Larry E. Janack was before respondent in the Cortland County Family Court on issues of a family offense and child support.

3. After one appearance and several adjournments, the matter was scheduled to come before respondent on December 6, 1983.

4. On November 22, 1983, respondent issued a warrant for the arrest of Larry E. Janack.

5. Respondent issued the warrant based solely on ex parte communications from three sources.

6. A deputy sheriff or corrections officer whom respondent could not identify further had met respondent in a parking lot and told him that Larry E. Janack, an Army sergeant, had quit the military, was about to leave the jurisdiction and would not pay support for his three children.

7. In addition, respondent issued the warrant based on information from one of three named persons in the county support collections unit that Sergeant Janack was in arrears in his support payments.

8. Furthermore, respondent's court clerk, Marianne Marks, had told him that she had heard that Sergeant Janack was about to leave the area.

9. Sergeant Janack had appeared or had timely requested adjournments with respect to each scheduled court appearance since the proceedings were commenced.

10. Respondent did not contact Sergeant Janack; his attorney, Leslie H. Cohen; Ms. Janack, or her attorney, Frank E. Visco, in an attempt to verify the information.

11. Respondent conducted no proceeding prior to issuing the warrant.

12. On the warrant, respondent recommended an "undertaking" of \$2,500.

13. Sergeant Janack was arrested on Thanksgiving Day, November 24, 1983, and arraigned before McGraw Village Justice Mardis Kelsen, who rejected respondent's recommendation and set bail at \$500.

14. Sergeant Janack's mother posted bail the same day, and he was released from jail.

15. On November 25, 1983, respondent learned that Sergeant Janack had been released on \$500 bail.

16. Respondent then issued a second warrant for Sergeant Janack's arrest solely because he felt that \$500 bail was grossly inadequate to ensure his reappearance in court. Respondent again recommended an "undertaking" of \$2,500.

17. At the time he issued the second warrant, respondent had no additional information concerning Sergeant Janack's alleged intentions to leave the area.

18. Respondent did not attempt to contact the parties or their counsel prior to issuing the second warrant.

19. Deputy Harold D. Peacock, Jr., of the Cortland County Sheriff's Department received the warrant from respondent's court. He called Sergeant Janack by telephone, and Sergeant Janack voluntarily surrendered.

20. Deputy Peacock then called respondent, explained that he knew Sergeant Janack and guaranteed that Sergeant Janack would appear in court as scheduled.

21. Respondent then released Sergeant Janack in Deputy Peacock's custody.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings of fact enumerated above, and respondent's misconduct is established.

Section 428(a)(iii) of the Family Court Act authorizes a judge to issue an arrest warrant in a support proceeding when it appears that a party is likely to leave the jurisdiction. Respondent relies on this statute in justifying the issuance of the first warrant for Sergeant Janack's arrest.

However, respondent's information concerning Sergeant Janack's purported plans to flee was received outside of court. Nothing official had come before him. His action was sua sponte and based on hearsay and, thus, the information was inherently unreliable. Respondent did not afford Sergeant Janack an opportunity to be heard on the matter, notwithstanding that he was represented by counsel. Since Sergeant Janack had appeared or duly requested adjournments for all previous court dates, respondent had no record upon which to base a belief that he would not again appear as scheduled.

Thus, contrary to the findings of the distinguished referee and the arguments of counsel, we find that respondent's issuance of the first arrest warrant was improper in that he considered ex parte communications and failed to afford the parties an opportunity to be heard. Section 100.3(a)(4) of the Rules Governing Judicial Conduct.

We also conclude, as did the referee, that respondent's issuance of the second warrant was improper. Although respondent had recommended bail of \$2,500 on the first warrant, the arraigning judge had Sergeant Janack before her and presumably conducted a full inquiry before setting bail. She felt that \$500 was adequate to ensure his appearance. While respondent may have disagreed and could have properly increased the bail after a new proceeding and a similar inquiry, he was wrong to simply issue another warrant. In doing so, his actions took on the appearance of an adversary, no longer independent and impartial. The ability to be and to appear impartial is an indispensable requirement for a judge. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290 (1983).

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

Mr. Bower, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Mrs. Robb and Judge Ciparick concur as to sanction but dissent as to the finding of misconduct with respect to the first warrant.

Mr. Cleary, Mr. Kovner and Mr. Sheehy dissent as to the finding of misconduct with respect to the first warrant and dissent as to sanction and vote that respondent be issued a confidential letter of dismissal and caution.

Dated: May 22, 1986

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

CHARLES J. MULLEN,

Surrogate and Judge of the County
Court and Family Court, Cortland
County.

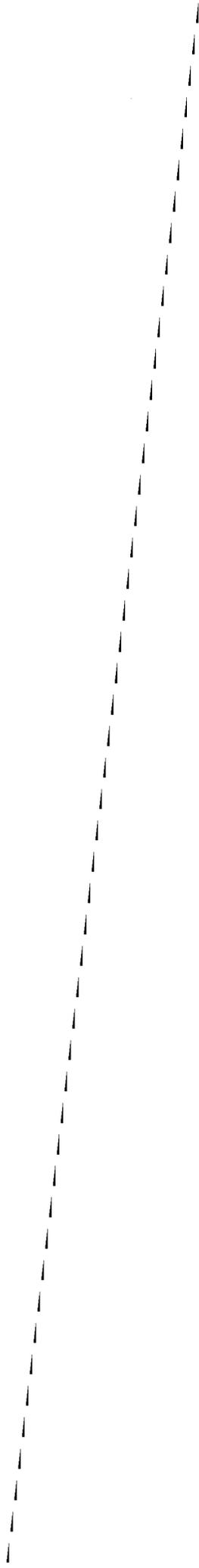
DISSENTING OPINION
BY MR. KOVNER
IN WHICH MR. CLEARY
AND MR. SHEEHY JOIN

I agree with Referee Shirley Adelson Siegel's conclusion that the issuance of the first warrant did not constitute misconduct. Respondent was informed by two sources, one the chief clerk of the Family Court, that they had received information that Sergeant Janack was about to flee the jurisdiction. In addition, respondent was informed, correctly, that Janack was then in arrears on his support payments (to the extent of \$1,350 in two months, notwithstanding Janack's false testimony to the contrary).

As noted in the Introductory Practice Commentary to Article 4 of the Family Court Act, "The increasing numbers of women and children on the welfare rolls because of their husbands' or ex-husbands' failure to support them is stark proof of the Family Court's inability to enforce its mandate." In view of the wide authority vested in the Family Court to enforce support orders, reliance upon information from the governmental entity authorized to collect support payments and to report arrearages, if any, and reliance on information from the chief clerk of the court did not, standing alone, constitute improper reliance on ex parte communications. The undisputed record of arrearages tended to corroborate the information from the court clerk and another uniformed officer of the court. Section 428 of the Family Court Act provides that a warrant may be issued where "it appears that...the respondent is likely to leave the jurisdiction." Although a summons would certainly have been preferable, the issuance of the first warrant did not constitute misconduct.

The issuance of the second warrant, coming after the fixing of \$500 bail by Village Justice Kelsen, was improper and constituted misconduct. However, in light of the fact that the warrant was not executed and in effect withdrawn when respondent was called by the deputy sheriff, I do not believe a public sanction is warranted and would favor issuance of a letter of caution.

Dated: May 22, 1986



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

LAWRENCE L. RATER,

a Justice of the Sherman Town
Court, Chautauqua County.

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the
Commission

John P. Rice, III, for Respondent

The respondent, Lawrence L. Rater, a justice of the Sherman Town Court, Chautauqua County, was served with a Formal Written Complaint dated May 28, 1985, alleging certain financial deposing, reporting and remitting deficiencies. Respondent answered the Formal Written Complaint by letter received on August 8, 1985.

By order dated August 13, 1985, the Commission designated Patrick J. Berrigan, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 23, 1985, and the referee filed his report with the Commission on January 9, 1986.

By motion dated February 20, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on April 9, 1986.

On April 18, 1986, the Commission heard oral argument, at which respondent and his counsel appeared. At the request of the Commission, both counsel submitted additional papers after oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Sherman Town Court and has been for twelve years.

2. On May 6, 1982, the Commission determined that respondent be censured for, inter alia, failing to make deposits in his official court account and failing to remit and report funds received to the State Comptroller in a timely manner.

As to Charge I of the Formal Written Complaint:

3. From July 1982 to June 1984, respondent failed to deposit in his official court account all monies received within 72 hours of receipt as required by Section 30.7(a) of the Uniform Justice Court Rules then in effect, in that:

a) Respondent's deposits were deficient in 13 of the 24 months of the period, as indicated in Appendix A appended hereto;

b) between July 1982 and January 1983, respondent made only one deposit of \$1,030, notwithstanding that he had received court funds in each of the months during that period and that his court account was deficient by \$1,125.50 by December 1982, as indicated in Appendix A appended hereto;

c) In January 1983, when respondent's account was deficient by \$1,125.50, he deposited only \$100 in court funds, as indicated in Appendix A appended hereto.

4. Respondent was aware at all times during the period that he was then required to deposit court funds in his official court account within 72 hours of receipt.

5. Respondent acknowledged in testimony before a member of the Commission on February 1, 1985, that his depositing practices had not improved since his censure by the Commission.

As to Charge II of the Formal Written Complaint:

6. Between July 1982 and April 1984, respondent failed to report and remit funds to the State Comptroller in a timely manner in 19 of the 22 months of the period, as indicated in Schedule B of the Formal Written Complaint. His reports were between two and 151 days late, for an average of 34 days late.

7. Respondent was sent six letters during the period by the State Comptroller, noting that his reports were overdue.

8. Respondent acknowledged in testimony before a member of the Commission on February 1, 1985, that his reporting and remitting practices had not improved since his censure by the Commission.

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, 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3, 3A(5) and 3B(1) of the Code of Judicial Conduct; Sections 2020 and 2021(1) of the Uniform Justice Court Act; Section 1803 of the Vehicle and Traffic Law, and Section 27(1) of the Town Law. The charges in the Formal Written Complaint are sustained, and respondent's misconduct is established.

Notwithstanding his censure by this Commission in May 1982 for similar misconduct (Matter of Rater, 3 Commission Determinations 36 [May 6, 1982]), respondent continued in the succeeding months to mishandle court funds. In the seven months after his censure, respondent made deposits in only two months, notwithstanding that he received court funds each month.

Furthermore, respondent failed to promptly remit court funds to the State Comptroller, in spite of his censure.

The failure by a judge to deposit and remit court funds to the proper authorities brings into question how the money was handled and, thus, diminishes public confidence in the judge and the judiciary as a whole. Such mishandling of public monies constitutes serious misconduct, even when there is no evidence that the funds were used for the judge's personal benefit. Bartlett v. Flynn, 50 AD2d 401, 404 (4th Dept. 1976).

That respondent failed to heed a Commission censure based, in part, on similar prior misconduct further erodes public trust in his ability to properly perform his judicial duties. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 302 (1985); Matter of Skramko, unreported (Com. on Jud. Conduct, Aug. 23, 1984).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner and Judge Ostrowski concur.

Judge Ciparick and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

Mrs. DelBello, Judge Rubin and Judge Shea were not present.

Dated: July 25, 1986

Appendix A

<u>Month/Year</u>	<u>Fines and Fees</u>	<u>Bail and Restitution</u>	<u>Deposits Should Have Been</u>	<u>Deposits Were</u>	<u>Monthly Difference</u>	<u>Cumulative Difference</u>
June 82	\$ 40.00	\$500.00	\$540.00	\$ 540.00	\$ 0	0
July 82	80.00	320.00	400.00	0	-400.00	-400.00
Aug. 82	280.00	200.00	480.00	0	-480.00	-880.00
Sept. 82	160.50	100.00	260.50	1,030.00	+769.50	-110.50
Oct. 82	30.00	100.00	130.00	0	-130.00	-240.50
Nov. 82	185.00	600.00	785.00	0	-785.00	-1,025.50
Dec. 82	0	100.00	100.00	0	-100.00	-1,125.50
Jan. 83	15.00	0	15.00	100.00	+85.00	-1,040.50
Feb. 83	100.00	37.75	137.75	370.00	+232.25	-808.25
Mar. 83	55.00	0	55.00	0	-55.00	-863.25
Apr. 83	0	0	0	1,099.00	+1,099.00	+235.75
May 83	100.00	50.00	150.00	0	-150.00	+85.75
June 83	320.00	125.00	445.00	570.00	+125.00	+210.75
July 83	10.00	0	10.00	0	-10.00	+200.75
Aug. 83	25.00	0	25.00	31.00	+6.00	+206.75
Sept. 83	25.00	0	25.00	0	-25.00	+181.75
Oct. 83	40.00	0	40.00	0	-40.00	+141.75

Lawrence L. Rater, Appendix A--continued

<u>Month/Year</u>	<u>Fines and Fees</u>	<u>Bail and Restitution</u>	<u>Deposits Should Have Been</u>	<u>Deposits Were</u>	<u>Monthly Difference</u>	<u>Cumulative Difference</u>
Nov. 83	\$ 60.00	\$ 0	\$ 60.00	\$ 0	\$ -60.00	+81.75
Dec. 83	470.00	7.50	477.50	570.00	+92.50	+174.25
Jan. 84	0	0	0	0	0	+174.25
Feb. 84	30.00	0	30.00	30.00	0	+174.25
Mar. 84	70.00	0	70.00	72.00	+2.00	+176.25
Apr. 84	40.00	0	40.00	0	-40.00	+136.25
May 84	510.00	0	510.00	550.00	+40.00	+176.25
June 84	30.00	0	30.00	0	-30.00	+146.25

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

HERBERT O. THERRIAN, JR.,

a Justice of the Altona Town Court,
Clinton County.

APPEARANCES:

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

Holcombe & Dame (By Kenneth H. Holcombe) for
Respondent

The respondent, Herbert O. Therrian, Jr., a justice of the Altona Town Court, Clinton County, was served with a Formal Written Complaint dated September 10, 1985, alleging that he gave money to prospective voters to induce them to vote for him and other candidates of his party. Respondent filed an answer dated September 26, 1985.

By order dated October 17, 1985, the Commission designated H. Wayne Judge, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 3, 1985, and the referee filed his report with the Commission on January 27, 1986.

By motion dated February 21, 1986, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings of fact and for a finding that respondent be removed from office. Respondent replied by letter of March 7, 1986. Oral argument was waived.

On March 20, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of Altona Town Court and has been since January 1, 1984.

2. Respondent campaigned for judicial office in the fall of 1983.

3. Respondent campaigned door to door with his party's candidate for town supervisor, Cecil Gero, so that Mr. Gero, an incumbent, could introduce respondent to prospective voters.

4. Respondent contributed \$50 to a fund that he and Mr. Gero used to pay prospective voters that they visited.

5. Respondent and Mr. Gero gave \$5 each to Leah LaBarge, Alden LaBarge, Sr., David LaBarge, Wanda LaBarge, Alden LaBarge, Jr., Melvin Boyd, Emma Boyd and Robert Lucia to induce them to vote for respondent, Mr. Gero and other candidates of their party.

6. The payments were made to induce voters to come to the polls and to vote for a particular person or persons, in violation of Section 17-142 of the Election Law.

7. Respondent was aware that it was improper to pay someone, directly or indirectly, to vote in an election.

8. Respondent won the election by 13 votes.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1, 2A and 7 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent was prohibited from campaigning with another candidate for public office by Canon 7 of the Code of Judicial Conduct which provides that a judicial candidate should not publicly endorse another candidate.

More significantly, respondent violated Section 17-142 of the Election Law by giving money to voters to influence their votes. Such conduct constitutes a felony and, when committed by a judicial candidate, impairs public confidence in the integrity of the judiciary.

We are not persuaded by respondent's suggestion during his testimony before a member of the Commission that voters were paid only expenses, pursuant to Section 17-140(2) of the Election Law then in effect. The \$5 respondent and Mr. Gero uniformly handed out does not appear to be the "reasonable, bona fide and customary" value of travel expenses then permitted by the statute.

Rather, it is clear that respondent was attempting to buy votes, a practice that he knew was contrary to law.

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bromberg, Judge Rubin and Mr. Sheehy were not present.

Dated: May 1, 1986

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

LEE VINCENT,

a Justice of the Burke Town
Court, Franklin County.

APPEARANCES:

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

Honorable Lee Vincent, pro se

The respondent, Lee Vincent, a justice of the Burke Town Court, Franklin County, was served with a Formal Written Complaint dated October 31, 1985, alleging, inter alia, certain financial depositing, reporting and remitting deficiencies. Respondent filed an answer dated January 12, 1986.

By order dated January 24, 1986, the Commission designated Robert E. Helm, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 10, 1986, and the referee filed his report with the Commission on June 4, 1986.

By motion dated August 11, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on September 2, 1986. The administrator filed a reply on September 9, 1986. Oral argument was waived.

On September 11, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Burke Town Court and has been since 1975.
2. Respondent is not a lawyer. He is a part-time judge, holds a college degree in agriculture and operates a farm.
3. Respondent has attended all required training courses for non-lawyer judges offered by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

4. Between February 1981 and October 1984, respondent failed to remit funds and file reports in a timely manner to the State Comptroller in 43 of the 45 months of the period, as indicated in Schedule A of the Formal Written Complaint, as amended.*

5. Respondent's 43 tardy reports ranged from 3 to 202 days late, for an average of 44 days late.

6. During the period, the State Comptroller ordered pursuant to law that respondent's salary be stopped on six occasions for failure to remit court funds.

7. Respondent acknowledged in testimony before a member of the Commission on April 11, 1985, that he was aware that he is required by law to remit funds and report cases to the State Comptroller by the tenth day of the month following collection.

8. Respondent offered no explanation for his failures other than that he "put it off" and "did not make myself do what I should have done."

As to Charge II of the Formal Written Complaint:

9. From December 1980 until December 1984, respondent failed to deposit court funds in his official court account within 72 hours of

* Schedule A was amended at the hearing to change the date the January 1981 report was received to February 6, 1981, and the date the August 1983 report was received to September 21, 1983. The number of days the August 1983 report was late was accordingly amended to 11 days.

receipt as then required by law, as indicated in Schedule B of the Formal Written Complaint.

10. In the four-year period, respondent received fines or bail on 35 occasions. He promptly deposited the money on only four occasions.

11. Respondent kept undeposited money in a briefcase, sometimes for as long as seven months.

12. Respondent testified that he was aware that he was then required by law to deposit court funds within 72 hours of receipt.

13. Respondent had no explanation for his depositing failures.

As to Charge III of the Formal Written Complaint:

14. From 1978 to 1985, respondent failed to perform his administrative and adjudicative responsibilities in that he failed to promptly dispose of 91 cases pending for between six months and three years, as indicated in Appendix A appended hereto.

15. Thirty-six of the cases were disposed of on February 10, 1982, after a State Police investigator implored respondent to dispose of the pending cases in his court. In order to clear his books of cases long pending, respondent imposed unconditional discharges in cases in which the defendants had pled guilty and dismissed cases in which the defendants had not pled.

16. Between January 1981 and December 1984, respondent handled only 201 of the 1,370 cases in the Burke Town Court.

17. From 1980 to 1984, respondent failed to maintain adequate cashbook records as required by law in that cashbook entries were inconsistent with receipts, deposit slips and bank statements, as indicated in Schedule D of the Formal Written Complaint.

18. From 1978 to 1984, respondent failed to maintain complete and adequate dockets of the cases in his court, as required by law.

As to Charge IV of the Formal Written Complaint:

19. On January 28, 1981, Gregory Burnell was charged with Uninspected Motor Vehicle. He pled guilty by mail before respondent on January 29, 1981. On June 22, 1981, respondent imposed a fine of \$5.

The fine was not paid, and the matter remained pending until respondent imposed an unconditional discharge on February 10, 1982.

20. On April 12, 1981, Elizabeth D. Maracle was charged with Speeding. She pled guilty by mail before respondent on April 13, 1981. Respondent imposed a \$20 fine. The fine was not paid, and the case remained pending until respondent imposed an unconditional discharge on February 10, 1982.

21. On January 14, 1981, Duane H. Waugh was charged with Overloaded Consecutive Axles. He pled guilty by mail before respondent on February 2, 1981. Respondent imposed a \$100 fine on June 22, 1981. The fine was not paid, and the matter remained pending until respondent imposed an unconditional discharge on February 10, 1982.

22. On November 5, 1982, Kevin F. Bauter was charged with Speeding. He pled guilty by mail before respondent on November 18, 1982. Respondent imposed a \$15 fine on September 7, 1983. The fine was not paid, and the matter remained pending until respondent dismissed it on January 10, 1984.

23. Respondent made no attempt to use the methods available to him by law to collect the fines.

24. Respondent acknowledged in testimony before a member of the Commission on April 11, 1985, that his failure to collect the fines and promptly dispose of the cases was due to "sloppiness" and "neglect."

As to Charge V of the Formal Written Complaint:

25. 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(a), 100.3, 100.3(a)(1), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct; Sections 107, 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 27(1) of the Town Law; Section 1803 of the Vehicle and Traffic Law; Sections 30.7(a) and 30.9 of the Uniform

Justice Court Rules then in effect, and Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts then in effect.* Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge V is dismissed.

Despite a small caseload--only 201 cases in four years--respondent has neglected nearly every aspect of his administrative and judicial duties. He has failed to promptly dispose of cases and, when urged to do so, dismissed or discharged them wholesale because they had been pending so long. Of the fines and bails he did collect, he failed to promptly deposit most of the money in his official account. Only four times in four years was the money collected promptly deposited. In the same four years, respondent was late in turning the money over to the State Comptroller in 43 months--on one occasion 202 days late.

Such mishandling of public monies constitutes serious misconduct, even where there is no evidence that the funds were used for the judge's personal benefit. Bartlett v. Flynn, 50 AD2d 401, 404 (4th Dept. 1976). Such a violation of the public trust warrants removal. Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981).

In addition, respondent violated the law by failing to keep adequate court records.

Respondent was aware of his administrative duties and acknowledges his negligence.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

Mr. Cleary, Judge Rubin and Judge Shea were not present.

Dated: October 23, 1986

*The Uniform Justice Court Rules and the Recordkeeping Requirements for Town and Village Courts were repealed effective January 6, 1986, and replaced by the Uniform Rules for Trial Courts.

APPENDIX A

<u>Defendant</u>	<u>Date Charged</u>	<u>Date of Disposition</u>
Melvin W. Martin	11/20/78	6/24/81
Melvin W. Martin	11/20/78	6/24/81
Wendell D. Campbell	5/08/80	6/24/81
Val J. Demaine	10/30/80	6/22/81
Robert G. Bombard	9/18/80	6/22/81
Annette M. Crompt	3/05/81	9/23/81
John R. Spinella	6/10/81	2/10/82
Jean M. Arseneault	6/04/81	2/10/82
Raymond Symer	6/04/81	2/10/82
Jean M. Arseneault	6/04/81	2/10/82
Samuel A. Ponto	6/04/81	2/10/82
Jean Louis Quimette	6/10/81	2/10/82
Daniel N. Ducharme	6/10/81	2/10/82
John Simonet	6/10/81	2/10/82
John Simonet	6/10/81	2/10/82
Wilfred J. Gonyea	6/10/81	2/10/82
Yvon Emard	6/10/81	2/10/82
Denis Allard	6/04/81	2/10/82
Lionel LaVallee	6/10/81	2/10/82
George C. Reynolds	10/30/80	2/10/82
Gregory Burnell	1/28/81	2/10/82
Bradley W. Hoppough	9/18/80	2/10/82

Lee Vincent, Appendix A--continued

Gerard Pepin	9/18/80	2/10/82
Elizabeth D. Maracle	4/12/81	2/10/82
Kay Herdman	3/07/81	2/10/82
Lyle P. Bouissey	11/20/80	2/10/82
Duane H. Waugh	1/14/81	2/10/82
Randall F. Deshane	10/13/80	2/10/82
Bradley E. Kirk	11/13/80	2/10/82
Pascal Rodrigue	4/20/80	2/10/82
George D. Baltovich	11/21/80	2/10/82
James G. Johnston	10/30/80	2/10/82
Jonah P. Dezan	7/23/81	2/10/82
James T. Thibeault	6/04/81	2/10/82
Claude Cote	6/10/81	2/10/82
Arthur W. Charette	6/04/81	2/10/82
Justin C. Lawyer	11/03/80	2/10/82
Donald Stubbe	4/22/80	2/10/82
Andre Vodoin	5/21/80	2/10/82
Jean Guy Pelletier	6/26/80	2/10/82
Robert P. Hewitt	6/26/79	2/10/82
Pierre Bazinet	8/13/79	2/10/82
Gary J. Forrette	4/16/81	3/24/82
Gary J. Forrette	4/16/81	3/24/82
Raymond J. Steeves	5/29/81	11/20/82
Donald Soucia	5/20/82	11/20/82
Barbara H. Hunter	5/19/82	11/20/82

Lee Vincent, Appendix A--continued

Robert H. Parks	6/25/81	1/01/83
Michael J. Smith	5/09/81	1/01/83
James K. Earl	8/28/80	3/15/83
Grace E. Latreille	10/10/82	5/04/83
Patricia M. Mageean	4/23/82	5/11/83
John R. Morris	4/05/83	--
Michael W. O'Connor	1/28/81	5/11/83
Michael W. O'Connor	1/28/81	5/11/83
Betty B. Boileau	8/10/82	5/11/83
Kimberly L. O'Connor	12/16/81	5/11/83
Kimberly L. O'Connor	12/16/81	5/11/83
Harry F. Martin	6/10/81	5/11/83
Shirley A. Wood	4/18/81	5/11/83
Rene R. Gagne	12/18/81	9/07/83
David J. Boileau	10/02/82	9/07/83
Roger J. Poirier	11/10/82	11/23/83
Roger J. Poirier	11/10/82	11/23/83
Kevin F. Bauter	11/05/82	1/10/84
James G. McRae	5/12/83	1/10/84
Philip A. Livingston	4/21/83	11/11/83
Brian P. Hall	8/05/83	3/07/84
Brian P. Hall	8/05/83	3/07/84
Dennis R. LaPointe	3/03/84	--
Joseph H. Griffin	8/14/83	4/11/84
Timothy J. LaPlante	8/14/83	4/11/84

Lee Vincent, Appendix A--continued

Donald D. Rowe	7/29/83	4/11/84
Timothy J. LaPlante	8/14/83	4/11/84
Jenny A. Gessler	11/09/83	11/20/84
Douglas K. Hesselstine	5/22/83	6/06/84
Joan K. Craft	5/22/83	11/20/84
Roger R. Bentley	8/07/82	11/21/84
Claude LaCharite	5/12/83	11/24/84
Candie L. Peck	8/05/83	11/24/84
Albert Cox	11/03/83	11/21/84
Timothy R. Fuller	5/12/83	12/05/84
Roland L. Paquin	3/29/84	12/05/84
Charles W. Huto	7/16/83	12/26/84
Charles W. Huto	7/16/83	12/26/84
Alice T. Egan	8/21/83	12/26/84
Paul J. Summers	4/16/83	1/16/85
Paul J. Summers	4/16/83	1/16/85
Paul J. Summers	4/16/83	1/16/85
Paul J. Summers	4/16/83	1/16/85
Brian G. Peck	2/01/84	2/06/85

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

JOSEPH M. WHITE,

a Justice of the Greenburgh
Town Court, Westchester County.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the
Commission

Morosco and Cunard (By B. Anthony Morosco) for
Respondent

The respondent, Joseph M. White, a justice of the Greenburgh Town Court, Westchester County, was served with a Formal Written Complaint dated October 29, 1985, alleging, inter alia, that he directed a court clerk to select a particular juror and that he made false statements concerning the incident to several authorities. Respondent filed an answer dated December 5, 1985.

On January 31, 1986, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion on February 6, 1986. Respondent's counsel filed a reply affirmation on February 12, 1986. By determination and order dated February 14, 1986, the Commission denied the motion to dismiss.

By motion dated May 16, 1986, the administrator moved for summary determination as to Charges I through IV of the Formal Written Complaint and for a finding that respondent's misconduct be found established. Respondent's counsel submitted in reply a letter dated June 9, 1986. By determination and order dated June 19, 1986, the Commission granted the motion for summary determination with respect to Charges I through IV of the Formal Written Complaint and found respondent's misconduct established.

The administrator and respondent submitted memoranda as to sanction. On July 16, 1986, 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 Charge I of the Formal Written Complaint:

1. Respondent, an attorney, is a justice of the Greenburgh Town Court and has been since January 1, 1976.

2. On November 29, 1983, respondent presided over jury selection in People v. Wayne Beresford, in which the defendant was charged with assault, third degree.

3. After several jurors had been selected, respondent ordered his assistant court clerk, Betty DeSilva, to call the name of Dorothy Sergeant from the panel of prospective jurors and to direct her to the jury box.

4. Ms. DeSilva then sifted through the names of prospective jurors in a box used for the random selection of jurors until she found the name of Ms. Sergeant and pulled it.

5. Ms. Sergeant was seated in the jury box, was found acceptable by both sides and was sworn as a juror in the case.

6. The prosecutor, Nicholas Maselli, questioned respondent concerning his direction that a particular juror be called.

7. Respondent denied that he had done so.

As to Charge II of the Formal Written Complaint:

8. By letter of March 22, 1984, in connection with a duly-authorized investigation, the administrator of the Commission asked respondent to reply to allegations that he had directed a court clerk to select the name of a particular juror.

9. By letters of April 16, 1984, and April 30, 1984, to the administrator, respondent denied that he had done so.

10. In the letter of April 30, 1984, respondent falsely stated that he had drawn Ms. Sergeant's name from the box of prospective jurors, that Ms. DeSilva thereafter drew two names for the same seat and that respondent then directed her to call the name that he had drawn.

11. In testimony before a member of the Commission on August 2, 1984, respondent acknowledged that he was not candid in his letter of April

30, 1984. Respondent testified that the version in the letter of how the juror had been selected "came from my own head."

12. Also in his letter of April 30, 1984, respondent falsely denied that he had ever directed court personnel on other occasions to draw the names of particular jurors.

13. In his testimony on August 2, 1984, respondent acknowledged that he had directed court personnel on other occasions to pick the names of particular jurors.

As to Charge III of the Formal Written Complaint:

14. Between November 29, 1983, and January 15, 1984, respondent received a telephone call from the administrative judge of the Ninth Judicial District, Joseph F. Gagliardi. Judge Gagliardi questioned respondent concerning the selection of jurors in the Beresford case.

15. Respondent falsely told Judge Gagliardi that Ms. DeSilva had selected more than one name from the box of prospective jurors and that he had instructed her only to call the first name.

16. In his testimony before a member of the Commission on August 2, 1984, respondent acknowledged that he had not been candid with Judge Gagliardi.

As to Charge IV of the Formal Written Complaint:

17. Between November 29, 1983, and January 15, 1984, respondent spoke to Ms. DeSilva and asked her to give her recollection of the selection of Ms. Sergeant in the Beresford case.

18. Ms. DeSilva told respondent that he had directed her to pull Ms. Sergeant's name.

19. Respondent falsely stated to Ms. DeSilva that his recollection was different than hers.

20. Ms. DeSilva asked respondent whether he was directing her to change her version of the facts. He replied that he was not doing so.

Charges V and VI of the Formal Written Complaint are not before us at this time.

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(a)(1) and 100.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1) and 3B(2) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Section 500 of the Judiciary Law declares it the policy of the state that juries be selected "at random from a fair cross-section of the community...." Respondent subverted this policy and abridged the rights of the defendant when he interfered with the jury selection process and directed a court clerk to choose a particular juror.

Respondent seriously exacerbated his misconduct by attempting over the next eight months to conceal his initial wrong-doing. He made false denials in conversations with the prosecutor and respondent's administrative judge and gave false versions of the events in letters to this Commission. Respondent also had a conversation with the court clerk that can only be interpreted as an attempt to coerce her into changing her version of the facts.

Respondent's actions were obviously designed to obstruct the court officers and this Commission from performing their lawful functions. Such deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550 (1986).

By his conduct, respondent has demonstrated that he is not fit for judicial office.

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

Mrs. Robb, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower was not present.

Dated: August 8, 1986

TABLE OF CASES PENDING AS OF DECEMBER 31, 1985.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
Incorrect Ruling								
Non-Judges								
Demeanor		6	12	3	4	3	5	33
Delays		6	3	6				15
Confl./Interest		7	6	5	1	1	2	22
Bias		6	10	8	2		2	28
Corruption		1	1		2	2		6
Intoxication			1			1		2
Disable/Qualif.		1	1			1		3
Political Activ.		3	1	2		2	2	10
Finances, Records, Training		1	4	2		1	2	10
Ticket-Fixing		1	2					3
Assertion of Influence		7	7	4	1			19
Miscellaneous		8	7	1	2	3	1	22
TOTALS		47	55	31	12	14	14	173

APPENDIX E:
STATISTICAL ANALYSIS OF COMPLAINTS

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

TABLE OF NEW CASES CONSIDERED BY THE COMMISSION IN 1986.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
Incorrect Ruling	343							343
Non-Judges	85							85
Demeanor	30	21	12	3				66
Delays	34	7	3	4				48
Confl./Interest	15	17	4	1				37
Bias	85	27	16	4	1	1	1	135
Corruption	10	13	4					27
Intoxication	2	1	2					5
Disable/Qualif.	1					1		2
Political Activ.	9	7	8					24
Finances, Records, Training	4	11	1		1	3	2	22
Ticket-Fixing	2	4						6
Assertion of Influence	4	10	9		1			24
Miscellaneous	17	38	5	1	1	2	1	65
TOTALS	641	156	64	13	4	7	4	889

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES CONSIDERED BY THE COMMISSION IN 1986: 889 NEW COMPLAINTS AND 173 PENDING FROM 1985.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
Incorrect Ruling	343							343
Non-Judges	85							85
Demeanor	30	27	24	6	4	3	5	99
Delays	34	13	6	10				63
Confl./Interest	15	24	10	6	1	1	2	59
Bias	85	33	26	12	3	1	3	163
Corruption	10	14	5		2	2		33
Intoxication	2	1	3			1		7
Disable/Qualif.	1	1	1			2		5
Political Activ.	9	10	9	2		2	2	34
Finances, Records, Training	4	12	5	2	1	4	4	32
Ticket-Fixing	2	5	2					9
Assertion of Influence	4	17	16	4	2			43
Miscellaneous	17	46	12	2	3	5	2	87
TOTALS	641	203	119	44	16	21	18	1062

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES SINCE THE INCEPTION OF THE TEMPORARY COMMISSION (JANUARY 1975).

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
Incorrect Ruling	3618							3618
Non-Judges	526							526
Demeanor	527	27	446	81	40	32	102	1255
Delays	277	13	44	22	4	1	10	371
Confl./Interest	164	24	231	61	24	9	73	586
Bias	337	33	83	16	7	2	7	485
Corruption	66	14	41		9	4	7	141
Intoxication	11	1	18	3	2	2	11	48
Disable/Qualif.	23	1	18	2	12	6	6	68
Political Activ.	82	10	55	67	3	7	8	232
Finances, Records, Training	114	12	74	37	52	48	47	384
Ticket-Fixing	18	5	57	149	33	57	156	475
Assertion of Influence	14	17	20	6	2			59
Miscellaneous	116	46	82	29	8	17	22	320
TOTALS	5893	203	1169	473	196	185	449	8568

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.