

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

THOMAS S. AGRESTA,

a Justice of the Supreme Court, Eleventh
Judicial District (Queens County).

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for
Commission

Schoer & Sileo (By Michael G. Sileo) for Respondent

The respondent, Thomas S. Agresta, a justice of the
Supreme Court, Eleventh Judicial District, was served with a
Formal Written Complaint dated October 18, 1983, alleging that
he made a remark with racial connotations during the sentencing

of a defendant. Respondent filed an answer dated November 7, 1983.

By order dated November 16, 1983, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 19, 1983, and the referee filed his report with the Commission on February 27, 1984.

By motion dated March 22, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion by cross motion on April 9, 1984. The Commission heard oral argument on the motions on May 10, 1984, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Supreme Court and has been since 1969.

2. On May 23, 1983, respondent presided over the sentencing of Eris Blount and Daniel Hayes, who had been convicted by a jury of two counts each of robbery.

3. Respondent had also presided over two previous trials of Mr. Blount, Mr. Hayes and a third man, James McNeil.

4. In the course of these proceedings, respondent had reviewed a video-taped confession of Eris Blount in which he implicated in a murder and other crimes a man who was never charged. Respondent suppressed the confession, and it was precluded from being admitted into evidence.

5. At Eris Blount's sentencing on May 23, 1983, respondent attempted to elicit from Mr. Blount information which would implicate the other man.

6. Respondent said in open court, "...I know there is another nigger in the woodpile, I want that person out, is that clear?"

7. Mr. Blount, Mr. Hayes and the man respondent was seeking to have implicated are black.

8. The words "another nigger in the woodpile" referred to the third man and to the two defendants. As such, the term constituted a racial epithet.

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. Respondent's cross motion is denied.

Racial epithets, indefensible when uttered by a private citizen, are especially offensive when spoken by a judge. Whether or not he meant it as a racial slur, respondent's use of the term "nigger" in any context is indefensible. That he used the term in open court with black defendants before him and in obvious reference to a particular black person makes his conduct especially egregious.

Furthermore, respondent has persisted in the belief that his remark was not inappropriate and that his "metaphor" was misunderstood. Respondent's claim that he was not referring to a black man and that he apologized for his remark (the apology appeared only in a confidential letter to the Commission) are not persuasive.

The law of New York is clear that such language by a judge will not be tolerated. Matter of Cerbone v. State Commission on Judicial Conduct, 61 NY2d 93 (1984); Matter of Kuehnel, 49 NY2d 465 (1980); Matter of Bloodgood, unreported (Com. on Jud. Conduct, June 11, 1981). The only mitigating factors in this case are respondent's age and his long and unblemished record on the bench.

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

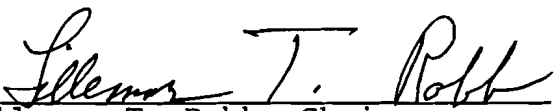
Mrs. Robb, Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 5, 1984


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct