

State of New York  
Commission on Judicial Conduct

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

J. RICHARD SARDINO,

a Judge of the Syracuse  
City Court, Onondaga County.

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## Determination

BEFORE: 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  
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Robert H. Straus and Albert B.  
Lawrence, Of Counsel) for the Commission

Langan, Grossman, Kinney and Dwyer (By  
Richard D. Grossman and James L. Sonneborn)  
for Respondent

The respondent, J. Richard Sardino, a judge of the Syracuse City Court, Onondaga County, was served with a Formal Written Complaint dated May 29, 1981, alleging various acts of misconduct in the course of 63 cases before respondent in 1979 and 1980. Respondent filed an answer on August 11, 1981.

By order dated August 24, 1981, the Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 13, 14, 15, 19, 20 and 21, 1981, and the referee filed his report with the Commission on March 31, 1982.

By motion dated May 11, 1982, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be removed from office. Respondent cross-moved for, inter alia, dismissal of the Formal Written Complaint. The Commission heard oral argument on the motions on June 28, 1982, at which respondent and his counsel appeared. Thereafter the Commission made the following findings of fact.\*

As to Charge I of the Formal Written Complaint:

1. In 62 of the 63 cases listed in Schedule A appended to the Formal Written Complaint (cases numbered 1 through 8 and 10 through 63), respondent engaged in a pattern of behavior in which he knowingly deprived the defendants of basic, well-established rights and conveyed the impression of partiality toward the prosecution and prejudice against the defendants.

(a) In 44 of the 63 cases (numbered 1 through 4, 6 through 8, 13 through 19, 21 and 22, 25 through 27, 29 and 30, 32 through 35, 37 through 41, 44 and 45, 47 through 49, 51 through 55, 58 through 61, and 63), respondent failed to adhere to Sections

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\* Appended hereto and made a part hereof is a summary of each case referred to in these findings of fact, except for People v. Willard Roy, which is described in full detail in paragraph 17 herein.

170.10 and 180.10 of the Criminal Procedure Law, in that he failed to advise the defendants of their rights, failed to accord them the opportunity to exercise those rights or failed to take the affirmative steps necessary to effectuate those rights.

(b) In 38 of the 63 cases (numbered 1 through 3, 6 through 8, 13 through 17, 19, 22, 25 through 27, 29, 32 through 35, 37 through 39, 41, 44 and 45, 49 through 51, 53 through 55, 58 through 61, and 63), respondent failed to afford the defendants their right to the assistance of counsel, and he failed to effectuate that right.

(c) In 52 of the 63 cases (numbered 1 through 4, 6 through 8, 11 through 19, 21 through 26, 28 through 30, 32 through 45, 47 through 49, 51, 53 through 56, 58 through 61, and 63), respondent abused the bail process and thereby improperly caused the defendants to be incarcerated, in that he (i) failed to inquire into factors required to be considered in the fixing of bail, (ii) unreasonably refused to fix bail in certain cases, (iii) fixed bail without legal authorization in some cases, (iv) directed that certain defendants be held without bail in cases where bail is required by law, (v) arbitrarily and improperly directed that certain defendants, unrepresented by counsel, be held without bail for "mental examinations" and (vi) used the bail process in a punitive manner.

(d) In nine of the 63 cases (numbered 4, 6, 8, 11, 12, 13, 21, 30 and 36), respondent made improper public inquiries of defendants, and improperly elicited potentially incriminating statements from them, with respect to charges pending against them.

(e) In 23 of the 63 cases (numbered 5, 6, 8, 11 through 13, 17 through 21, 25, 30, 36, 39, 43, 45 through 48, 55, 57 and 59), at arraignment or before each matter had been adjudicated and the individual defendant's guilt established, respondent conveyed the impression that he believed the defendants to be guilty of the crimes and offenses with which they were charged.

(f) In 39 of the 63 cases (numbered 2, 5 through 8, 10 through 13, 16 through 21, 24 through 26, 29 through 31, 35 and 36, 39, 41 through 48, 52, 55, 57, 59 and 60, and 62), respondent was impatient, discourteous and undignified. He disparaged and demeaned persons appearing before him. Often at arraignments he implied that defendants appearing before him were guilty as charged. He acted in an adversarial manner which conveyed the impression that he was biased in favor of the prosecution and prejudiced against the defendants.

(g) In nine of the 63 cases (numbered 2, 8, 10, 24, 31, 36, 43, 47 and 62), respondent improperly criticized other judges, refused to honor negotiated pleas on sentences, or improperly raised or fixed bail set by other judges in cases not properly before him.

(h) In 17 of the 63 cases (numbered 6 through 8, 17 and 18, 21 through 23, 26, 30, 33 and 34, 42, 53, 55, 57 and 60), respondent scheduled or adjourned the cases in a manner which was likely to deny defendants the right (i) to have timely hearings or trials or (ii) to be released from custody or have the charges against them dismissed for the failure of the prosecution to provide timely hearings or trials.

As to Charge II of the Formal Written Complaint:

2. On January 16, 1979, respondent presided over People v. Kevin Joyce in the Traffic Division of the Syracuse City Court. During that proceeding, before the defendant's guilt or innocence had been established, respondent:

(a) repeatedly disparaged and demeaned the defendant;

(b) improperly deprived the defendant of the right to have bail fixed by revoking the defendant's release on recognition and remanding him to be held without bail;

(c) made the following remarks upon being told the defendant's car had been destroyed in an accident: "Too bad he wasn't destroyed and the car was still here. That would be beneficial to the community...";

(d) conveyed the impression that he believed the defendant to be guilty of the crimes and offenses with which he was charged;

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and his attorney; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge III of the Formal Written Complaint:

3. On May 22, 1980, while arraigning the defendant in People v. Brian Courbat in the Traffic Division of the Syracuse City Court, respondent:

(a) improperly questioned the defendant and elicited facts concerning the case against him before the defendant had entered a plea or had an opportunity to assert his rights to trial and representation by counsel;

(b) conveyed the impression that he believed the defendant to be guilty of the crimes and offenses with which he was charged;

(c) imposed an unconditional discharge on a charge of Driving An Unregistered Vehicle, without taking a plea from the defendant, who was not represented by counsel, and without advising him of his rights, although the defendant had asserted his innocence;

(d) notwithstanding that he had previously dismissed the remaining charges, respondent improperly ordered the defendant held on bail, adjourned the case for 27 days and threatened him with a charge of contempt, because he thought the defendant had addressed him sarcastically;

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge IV of the Formal Written Complaint:

4. On August 15, 1979, while arraigning the defendant in People v. Robert Gemmill in the Criminal Division of the Syracuse City Court, respondent:

(a) repeatedly disparaged and demeaned the defendant;

(b) improperly elicited from the defendant potential admissions and incriminating statements concerning the crimes with which he was charged;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged and suggested that he "should be exterminated";

(d) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and his attorney; and

(e) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge V of the Formal Written Complaint:

5. On February 22, 1980, while arraigning the defendant in People v. Joseph Manzi in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) improperly elicited from the defendant and his mother potential admissions concerning the crime with which the defendant was charged;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(d) deprived the defendant of the assistance of counsel;

(e) improperly failed to afford the defendant's mother the opportunity to be heard on the subject of bail; and

(f) was impatient, undignified, inconsiderate and discourteous to the Legal Aid Society lawyer who had offered to represent the defendant.

As to Charge VI of the Formal Written Complaint:

6. On August 13, 1979, while arraigning the defendants in People v. Norma North, Maria North, Roy Abear and Donald Westcott in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) did not inquire into the indigency of defendant Abear, and did not appoint an attorney, when Mr. Abear requested that an attorney be appointed;

(c) did not inquire into the indigency of defendant Westcott, and did not appoint an attorney, when Mr. Westcott stated he could not afford a lawyer; and

(d) set bail for each of the defendants without inquiring into the facts and circumstances required to be considered.

As to Charge VII of the Formal Written Complaint:

7. On February 14, 1980, while arraigning the defendant

in People v. Donald Parks in the Criminal Division of the Syracuse City Court, respondent:

(a) refused to appoint a Legal Aid Society lawyer, David Okun, as defendant's counsel, despite Mr. Okun's representation to the court that the defendant was eligible for legal aid and that Mr. Okun was prepared to take the case; respondent instead assigned a student from the Syracuse University Law Clinic to represent the defendant;

(b) directed the student to proceed notwithstanding the student's expressed reservations about appearing for the defendant in the absence of the student's supervising attorney, such supervision being required by Section 478 of the Judiciary Law;

(c) suggested that the defendant had not been entitled to assigned counsel on a previous charge because his father, though unemployed when the Legal Aid Society was appointed, had previously been employed;

(d) stated that the Legal Aid Society lawyer "should proceed against [the defendant's] father for reimbursement of the taxpayers of the expenses of legal representation" on the previous case;

(e) cut short the student attorney's time to confer with his client;

(f) conveyed the impression that he believed the defendant to be guilty of the offense with which he was charged; and

(g) made disparaging remarks about the defendant and his family, and was sarcastic, curt, impatient, undignified, incon-

siderate and discourteous to the defendant, to the student and to the Legal Aid Society lawyer.

As to Charge VIII of the Formal Written Complaint:

8. On September 26, 1979, while arraigning the defendant in People v. Paulette Morabito in the Criminal Division of the Syracuse City Court, respondent:

(a) improperly elicited potentially incriminating statements from the defendant;

(b) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged;

(c) conveyed the appearance of prejudice against the defendant because of her previous record; and

(d) was impatient, undignified, inconsiderate and discourteous to the defendant and her attorney.

As to charge IX of the Formal Written Complaint:

9. On September 8, 1979, while arraigning the defendants in People v. James Grimes and James Rivers in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them the opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendants of the assistance of counsel;

(c) failed to inquire into the ability of the defendants to obtain counsel, after being placed on notice that the defendants might be unable to afford counsel;

(d) conveyed the impression that he was prejudiced against the defendants because of the previous record of one of them; and

(e) fixed bail without inquiring into the facts and circumstances required to be considered.

As to Charge X of the Formal Written Complaint:

10. On February 22, 1980, while arraigning the defendants in People v. Donald Jenner and Patty Wilson in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants, who were not represented by counsel, of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) improperly elicited potentially incriminating statements from the defendant Jenner;

(c) conveyed the appearance of prejudice against the defendants;

(d) fixed bail without inquiring into the facts and circumstances required to be considered; and

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendants and the mother of one of the defendants.

As to Charge XI of the Formal Written Complaint:

11. On September 18, 1979, while arraigning the defendant in People v. John Perry in the Criminal Division of the Syracuse City Court, respondent:

(a) improperly ignored the defendant's request to be allowed to make a telephone call;

(b) refused to allow the defendant's newly-assigned attorney to confer with his client before fixing bail, then remanded the defendant in lieu of \$1,000 bail;

(c) fixed bail without inquiring into the facts and circumstances required to be considered; and

(d) acted in an adversarial manner which gave the impression of bias and partiality toward the prosecution and against the defendant.

As to Charge XII of the Formal Written Complaint:

12. On February 13, 1980, while arraigning the defendant in People v. Dorothy Reese in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged;

(b) conveyed the appearance of prejudice against the defendant because of her previous record; and

(c) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and her attorney.

As to Charge XIII of the Formal Written Complaint:

13. The charge is not sustained and therefore is dismissed.

As to Charge XIV of the Formal Written Complaint:

14. On February 21, 1980, while arraigning the defendant in People v. John LaPorte in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take the affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel; and

(c) unlawfully deprived the defendant of his liberty by ordering him held, without bail, on a non-criminal offense charge for which the defendant was not subject to arrest, incarceration or fingerprinting; respondent did so notwithstanding that the defendant was appearing voluntarily pursuant to an appearance ticket.

As to Charge XV of the Formal Written Complaint:

15. On February 18, 1980, while arraigning the defendant in People v. Frank Trivison in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did

not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) did not appoint counsel and did not inquire into the defendant's indigency in response to the defendant's statement that he could not afford an attorney;

(d) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(e) fixed bail without inquiring into the facts and circumstances required to be considered;

(f) conveyed the appearance of prejudice against the defendant because of his previous record; and

(g) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XVI of the Formal Written Complaint:

16. On October 16, 1979, while arraigning the defendant in People v. Glenn Watts in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) failed to inquire into the defendant's ability to obtain counsel;

(d) unlawfully deprived the defendant of his liberty by fixing bail on a non-criminal offense charge for which the defendant was not subject to arrest, incarceration or fingerprinting; respondent did so notwithstanding that the defendant was appearing voluntarily pursuant to an appearance ticket;

(e) adjourned the case for 13 days after fixing bail at \$500 knowing that the defendant was not represented by counsel; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XVII of the Formal Written Complaint:

17. On August 21, 1980, respondent dismissed a charge of speeding in the case of People v. Willard Roy, as a result of a letter he received from Deputy Chief Richard L. Haumann of the Syracuse Police Department, seeking special consideration on behalf of the defendant.

(a) The letter from Deputy Chief Haumann was ex parte in nature and not authorized by law.

(b) Respondent failed to refer the summons to the Traffic Part when he received it in June 1980, and instead, held it until he presided in that Part on August 21, 1980, so that he could dismiss the charge.

(c) The disposition by respondent of People v. Willard Roy was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

(d) Respondent failed to set forth, on the record, his reasons for the dismissal, as required by Section 170.40 of the Criminal Procedure Law, and he failed to require the defendant's appearance in court.

(e) Respondent knew or should have known, prior to dismissing the charge in the Roy case, that it was improper for a judge to grant special consideration to a defendant based on an improper ex parte communication on behalf of the defendant.

As to Charge XVIII of the Formal Written Complaint:

18. On September 6, 1979, while arraigning the defendant in People v. Elaine Benedict in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of her rights, did not accord her an opportunity to exercise those rights, and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) fixed bail without inquiring into the facts and circumstances required to be considered; and

(d) after being advised that the defendant was indigent and was being represented by assigned counsel on other

charges, disregarded a request that counsel be assigned to represent the defendant, revoked the defendant's release on recognizance on the other charges, fixed bail and adjourned the matter before him, all in the absence of counsel for the defendant.

As to Charge XIX of the Formal Written Complaint:

19. On September 18, 1980, while arraigning the defendant in People v. Charles Cronk in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel; and

(c) with knowledge that the defendant was not represented by counsel, improperly and arbitrarily ordered the defendant held, without bail, for an "informal" mental examination.

As to Charge XX of the Formal Written Complaint:

20. On September 6, 1979, while arraigning the defendant in People v. John D. Alling (Dalling) in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) improperly and arbitrarily ordered the defendant held, without bail, for a mental examination, knowing that the defendant was not represented by counsel;

(d) improperly elicited a potential admission from the defendant;

(e) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged; and

(f) fixed bail, pending the outcome of the mental examination, without inquiring into the facts and circumstances required to be considered.

As to Charge XXI of the Formal Written Complaint:

21. On August 15, 1979, while presiding over People v. Edward Dillenbeck in the Criminal Division of the Syracuse City Court, respondent;

(a) disparaged and demeaned the defendant;

(b) was sarcastic, undignified, discourteous and intemperate toward the defendant; and

(c) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XXII of the Formal Written Complaint:

22. On September 11, 1979, while arraigning the defendant in People v. Christopher Gilbert in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(d) improperly and arbitrarily ordered the defendant held, without bail, for a mental examination, knowing that the defendant was not represented by counsel;

(e) fixed bail, pending the outcome of the mental examination, without inquiring into the facts and circumstances required to be considered;

(f) improperly elicited potentially incriminating statements from the defendant;

(g) improperly and unlawfully directed the prosecuting attorney to notify "the county judge" to revoke the defendant's license to possess a weapon, while stating that the defendant would be charged with unlawful possession of a weapon if he did not immediately surrender his gun;

(h) rescinded his order for a mental examination, at the request of the prosecuting attorney, while improperly and unlawfully conditioning the release of the defendant on his own recognizance on the surrender of the defendant's weapons and weapons permit to the Syracuse Police Department; and

(i) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XXIII of the Formal Written Complaint:

23. On June 27, 1979, while sentencing the defendant in People v. Lindy McCauliffe in the Criminal Division of the Syracuse City Court, respondent:

(a) knowingly, improperly and unjustifiably imposed a sentence greater than that approved by the judge who had accepted the defendant's plea of guilty, requiring a modification of the sentence on appeal;

(b) disparaged and demeaned the defendant; and

(c) was impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XXIV of the Formal Written Complaint:

24. On February 23, 1980, while arraigning the defendants in People v. Mary Herring and Josie Miranda in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendants of the assistance of counsel;

(c) conveyed the impression that he believed the defendants to be guilty of the crimes with which they were charged;

(d) fixed bail without inquiring into the facts and circumstances required to be considered; and

(e) was impatient, undignified, inconsiderate and discourteous to the defendants.

As to Charge XXV of the Formal Written Complaint:

25. On March 23, 1981, while conducting a pre-trial conference in People v. Kimberly Cook in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the appearance of prejudice against the defendant and witnesses to be called on her behalf;

(b) conveyed the appearance of partiality toward the prosecution and its case;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged; and

(d) was impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XXVI of the Formal Written Complaint:

26. On September 14, 1979, while arraigning the defendants in People v. Donna Pilon and Sarah Stephens in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the impression that he believed the defendants to be guilty of the crimes with which they were charged;

(b) deprived the defendant Stephens of the right to have bail fixed by holding her without bail on an unrelated charge

which was not properly before respondent and on which another judge had previously fixed bail;

(c) conveyed the impression that he believed the defendant Pilon had been guilty of a charge which had previously been dismissed;

(d) was impatient, undignified, discourteous and intemperate toward the defendant Pilon's mother; and

(e) acted in an adversarial manner which gave the impression of bias and partiality toward the prosecution and against the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.2(a), 33.3(a)(1), 33.3(a)(3) and 33.3(a)(4) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.2[a], 100.3[a][1], 100.3[a][3] and 100.3[a][4]) and Canons 1, 2, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges II through XII and Charges XIV through XXVI of the Formal Written Complaint are sustained in toto. Charge I of the Formal Written Complaint is sustained, except for (i) that portion referring to People v. Thelma Davis, (ii) those portions in subparagraph (b)(4) of the Charge referring to People v. Holmes, People v. Jenner and Wilson, People v. Manzi and People v. Rebensky and (iii) that portion of subparagraph (f) of the Charge referring to People v. Joyce, which are not sustained and therefore are dismissed. Charge XIII of the Formal Written Complaint, as hereinbefore noted, is not

sustained and therefore is dismissed. As to the sustained charges, respondent's misconduct is established.

Respondent has engaged in a course of conduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought discredit to the judiciary and has irredeemably impaired public confidence in the integrity of his court.

The record reveals that respondent routinely conducted himself not as the dignified, impartial adjudicator a judge is required to be but as an intemperate, biased partisan who was predisposed to favor the prosecution and who regularly and deliberately disparaged, demeaned and deprived defendants of their constitutional rights. The evidence of respondent's misconduct is plain and overwhelming.

Respondent knowingly and deliberately ignored certain provisions of the Criminal Procedure Law, such as those which require a judge to advise defendants of the right to counsel and the opportunity to make a telephone call. He knowingly and deliberately ordered certain defendants held for mental examinations, without justification and in the absence of counsel. He knowingly and deliberately required some defendants to post bail for offenses for which incarceration was not authorized. He knowingly and deliberately failed to assign court-appointed lawyers to the indigent, and he did not make the simplest inquiries as to the circumstances of those defendants who volunteered that they could

not afford counsel. Respondent did not rectify his conduct, even when the improprieties of his actions were called to his attention by Legal Aid Society attorneys.

In one case (People v. Courbat, Charge III), respondent knowingly and deliberately reinstated previously-dismissed motor vehicle charges and ordered the defendant held in lieu of bail. This decision was based not on the merits but was motivated by personal pique at the real or imagined sarcasm exhibited by the defendant toward the court.

At times from the bench respondent expressed displeasure with the actions and decisions of other judges and, on occasion, improperly sought to impose his own decisions in matters decided elsewhere and not properly before him. For example, in People v. McCauliffe, Charge XXIII, respondent knowingly and deliberately ignored a sentence approved by another judge in order to impose a greater sentence on the defendant. In People v. Gilbert, Charge XXII, respondent improperly and unlawfully directed the prosecuting attorney to advise another judge to reverse a previous ruling with respect to the defendant. In People v. Joyce, Charge II, respondent declared that he would "not be bound by any other judge or district attorney...including the Court of Appeals."

In other cases, respondent revealed his disbelief of statements made by defendants, well before guilt or innocence was established. He did so on numerous occasions at the arraignment stage, before individual defendants had even entered their pleas.

He said, for example, that one defendant was "probably still out writing bad checks," that another "almost decapitated a couple of police officers," that a third was "carrying a loaded handgun around" and that a fourth had engaged in "gross" conduct by "blow[ing] up a shotgun in a discotheque." He routinely displayed hostility and animosity toward defendants in his court, stating for example, that one should be "exterminated" and another was "scummy."

Respondent's manner in open court was virtually devoid of those qualities of decorum which the Rules Governing Judicial Conduct require: patience, dignity and courtesy by the judge toward all who appear before him. Such appearances of bias diminish public confidence in the impartiality of the judiciary and reveal respondent's disregard for the obligation of a judge to preside in a fair and even-handed manner.

The record also reveals that it was respondent's practice to conduct ex parte discussions with an assistant district attorney on impending matters, prior to the calling of those cases before him. (Transcript of October 19, 1982, pages 31-47.) Such ex parte communications are prohibited by the Rules Governing Judicial Conduct (Section 33.3[a][4], now 100.3[a][4]). The fact that they occurred underscores the appearance that respondent was prejudiced against defendants and predisposed toward the prosecution. Respondent in some cases knowingly and deliberately elicited incriminating statements from defendants who were not yet represented by counsel.

The totality of respondent's conduct shows a shocking disregard for due process of law. Respondent has grossly abused judicial power and process, routinely denied defendants their rights, ignored the mandates of law, disregarded the jurisdiction of other courts, disparaged attorneys, demeaned defendants and otherwise acted in a manner bringing disrepute to the courts and the judiciary.

Respondent has so distorted his role as a judge as to render him unfit to remain in judicial office.

As to respondent's claim that laches bars discipline in this matter, we note the following. The Formal Written Complaint was served in May 1981 after a predicate investigation. The cases at issue occurred in 1979, 1980 and 1981 and were well within the memory of most of the witnesses. Furthermore, transcripts and other documentary evidence were introduced as to all material facets of the charges. In addition, two lengthy adjournments were requested by respondent during the proceedings and were granted. The laches argument is without merit.

As to respondent's claim that certain portions of the Formal Written Complaint should be dismissed because of tainted evidence adduced in support thereof, we conclude that all of the evidence in the record of this proceeding was properly admitted by the referee and was otherwise properly before the Commission.

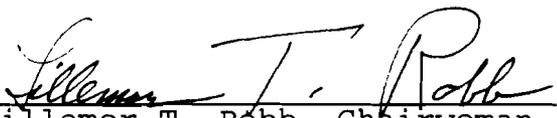
By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

CERTIFICATION

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

Dated: September 20, 1982

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