

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 GOLDSTEIN,

a Justice of the Supreme Court,
10th Judicial District, Nassau County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
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 (Alan W. Friedberg, Of Counsel) for the
Commission

Lyman & Tenenbaum, P.C. (By Irving Tenenbaum) for
Respondent

The respondent, Joseph Goldstein, a justice of the
Supreme Court, 10th Judicial District, was served with a Formal
Written Complaint dated February 13, 1986, alleging that he
removed a witness from the stand, accused him of perjury and
conveyed the impression that he was in custody and that, in

another case, respondent conveyed the impression that he was interested in a matter before another judge. Respondent filed an answer dated April 14, 1986.

On November 10, 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 November 14, 1986.

The administrator and respondent submitted memoranda as to sanction. On December 12, 1986, the Commission heard oral argument, at which respondent and his counsel appeared, 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 is a justice of the Supreme Court, 10th Judicial District, and was a judge of the District Court, Nassau County, for seven years.

2. On February 8 and 9, 1984, in District Court, Nassau County, respondent presided over People v. John G. A _____, in which the defendant was charged with Criminal Mischief and Harassment.

3. Several days earlier respondent had presided over another trial in the same matter which had resulted in a mistrial.

4. In the second trial on February 9, 1984, Detective Robert Ryder of the Old Brookville Police Department testified as a witness for the prosecution. Detective Ryder testified that he had taken one of five police photographs marked as exhibits at the trial and that another witness had taken the other four photographs.

5. At the first trial, Detective Ryder had testified that he had taken several of the photographs.

6. At the second trial, when Detective Ryder testified that he had taken only one of the photographs, respondent announced a recess. Out of the presence of the jury in chambers, respondent declared that Detective Ryder may have committed perjury.

7. Respondent advised the prosecutor, Assistant District Attorney Robert Schroeder, to speak to his superiors and "get rid" of the case.

8. At respondent's direction, court personnel took Detective Ryder's gun from him.

9. Respondent restricted Detective Ryder's movements to the courtroom and chambers for one hour and fifteen minutes while the detective waited for his superior and his attorney to

come to court. Respondent conveyed the impression to Detective Ryder and others that the detective was in custody.

As to Paragraph 6 of Charge II of the Formal Written Complaint:

10. On July 27, 1984, respondent entered a District Court courtroom in which Judge Joseph Saladino was presiding over People v. Daniel S _____. The courtroom had been ordered closed to the public by Judge Saladino because the defendant was eligible for youthful offender status.

11. While in the courtroom, respondent learned that the S _____ case was being heard by Judge Saladino. Respondent had previously recused himself from presiding over S _____ because the defendant was accused of anti-semitic acts against students of the Hebrew Academy of Nassau County, a private school of which respondent was a trustee.

12. During a recess, respondent followed Judge Saladino into chambers. Respondent told Judge Saladino that he could not discuss the S _____ case. Judge Saladino received the impression that respondent knew the family of the complaining witness in the case. In actuality, respondent did not know the complaining witness' family, although some members of the family had attended the Hebrew Academy.

13. Later that day, Judge Saladino declared a mistrial, in part, because of respondent's statements to him.

14. Respondent's purpose in speaking to Judge Saladino was not to influence his decision in S _____, but respondent inadvertently conveyed the impression that he was interested in the outcome of the case and that he was in favor of the prosecution.

15. Respondent now recognizes that he should not have spoken to Judge Saladino under the circumstances.

As to Paragraph 7 of Charge II of the Formal Written Complaint:

16. The allegation 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) and 100.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. Charge I and Paragraph 6 of Charge II of the Formal Written Complaint are sustained, and respondent's misconduct is established. Paragraph 7 of Charge II is dismissed.

Respondent clearly overreacted to a relatively common occurrence in a courtroom: a witness' testimony varied from that in a previous statement. Instead of leaving it to opposing counsel to challenge the witness' credibility, respondent

declared a recess, excused the jury, disarmed the witness, implied that he was guilty of perjury, suggested that the prosecutor agree to dismiss the case and conveyed the impression that the witness was in custody for more than an hour.

Such behavior amounts to an abuse of judicial power and deviates from the high standards of conduct expected of every judge. Matter of Sharpe, 1984 Annual Report 134 (Com. on Jud. Conduct, June 7, 1983).

In another proceeding, respondent entered a closed courtroom where another judge was hearing a case from which respondent had disqualified himself. Instead of leaving the courtroom when he realized what case was being tried, respondent followed the presiding judge into chambers and created the impression that he was interested in the outcome of the case, thereby causing a mistrial.

A judge must avoid even the appearance of impropriety. Section 100.2 of the Rules Governing Judicial Conduct. A judge whose actions create an appearance of favoritism harms the administration of justice. Matter of Suglia, 36 AD2d 326 (1st Dept. 1971).

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

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

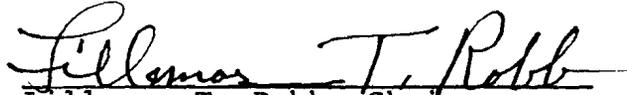
Judge Ciparick, Judge Shea and Mr. Sheehy dissent as to sanction only and vote that respondent be admonished.

Mr. Bower and Judge Rubin were 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: January 29, 1987


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