

FINAL REPORT

OF THE

TEMPORARY STATE COMMISSION

ON JUDICIAL CONDUCT

TO

THE GOVERNOR, THE LEGISLATURE AND

THE CHIEF JUDGE OF THE

COURT OF APPEALS

OF THE

STATE OF NEW YORK

AUGUST 31, 1976



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FINAL REPORT
OF THE
TEMPORARY STATE COMMISSION
ON JUDICIAL CONDUCT

NCJRS

JUL 3 1978

ACQUISITIONS

COMMISSION MEMBERS

MRS. GENE ROBB, Chairwoman

DAVID BROMBERG, ESQ.

MR. HOWARD COUGHLIN

HON. JAMES D. HOPKINS

MICHAEL M. KIRSCH, ESQ.

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WILLIAM V. MAGGIPINTO, ESQ.

HON. ANN T. MIKOLL

CARROLL L. WAINWRIGHT, JR., ESQ.

Administrator

GERALD STERN, ESQ.

801 Second Avenue
New York, New York 10017

LETTER OF TRANSMITTAL

*To the Governor, Legislature and Chief Judge of the Court of Appeals of
the State of New York:*

Pursuant to Section 42(4) of the Judiciary Law, the Temporary State
Commission on Judicial Conduct respectfully submits this final report of
its activities.

Respectfully submitted,

MRS. GENE ROBB, Chairwoman

DAVID BROMBERG, ESQ.

MR. HOWARD COUGHLIN

HON. JAMES D. HOPKINS

MICHAEL M. KIRSCH, ESQ.

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I. Introduction

The Temporary State Commission on Judicial Conduct was established by the New York State Legislature in June 1974. The Commission was authorized to investigate complaints of judicial misconduct and to initiate investigations on its own motion. It was empowered to conduct investigative hearings, subpoena witnesses and records and confer immunity in appropriate cases. The legislation, Article 2-A of the Judiciary Law, gave the Commission the authority to make "suggestions and recommendations" to a judge who was the subject of an investigation, and, in more serious cases, to recommend that removal proceedings be instituted. The temporary Commission itself had no power to remove or otherwise discipline judges.

The nine-member temporary Commission was comprised of three people appointed by the Governor (one lawyer and two lay persons), two by the Chief Judge of the Court of Appeals (both judges) and four by the legislative leaders.* During the past year, the Chairwoman was Mrs. Gene Robb of Latham. The other members were: David Bromberg, Esq., of New Rochelle; Howard Coughlin of Yonkers; Associate Justice of the Appellate Division (Second Judicial Department) James D. Hopkins of Armonk; Michael M. Kirsch, Esq., of Brooklyn; Victor A. Kovner, Esq., of New York City; William V. Maggipinto, Esq., of Southampton;

*Appendix A sets forth brief biographies of the members who served during the past year.

Supreme Court Justice Ann T. Mikoll of Buffalo; and Carroll L. Wainwright, Jr., Esq., of New York City. The Administrator of the temporary Commission was Gerald Stern, Esq.

The Commission's staff consisted of thirty-five people, including thirteen staff attorneys, four investigative attorneys, three investigators and two investigative aides. Offices were established in New York City at 801 Second Avenue, New York, New York 10017; in Buffalo at Suite 905, Buffalo Athletic Club, 69 Delaware Avenue, Buffalo, New York 14202; and in Albany at Agency Building #4, Empire State Plaza, Albany, New York 12223.

An amendment to the State Constitution, effective September 1, 1976, created a permanent Commission on Judicial Conduct.* The Legislature, at its 1976 session, amended Article 2-A of the Judiciary Law, replacing the temporary Commission with its successor agency, the Commission on Judicial Conduct. The Commission received valuable assistance from the legislative leadership, the judiciary committees and, in particular, Senator Bernard Gordon and his staff.

This annual report is the last report of the Temporary State Commission on Judicial Conduct. The report provides a brief review of the work of the Commission over the past 11 months, from the date of the Commission's first annual report.

*Another amendment is now being considered. At a 1976 special session, the Legislature agreed to a constitutional amendment for a new Commission on Judicial Conduct. The amendment, if approved by the 1977 legislature and ratified by the voters in a general referendum, will take effect in 1978. This Commission would be composed of 11 members. The Commission would conduct all hearings and make final determinations as to removal, retirement for disability, censure or admonition, subject to a review by the Court of Appeals.

There are approximately 3,500 judges in New York State, more than 2,400 of whom are part-time town and village justices. As the Commission indicated in its first annual report, most complaints against judges are dismissed, and findings of misconduct have been made against only a small percentage of judges. Misconduct by some judges does not and should not impair the reputation of the many excellent judges in this state.

II. Complaints, Investigations and Action Taken

A. Complaints Received and Investigations Commenced

In the past year the Commission has received complaints from many sectors of the public -- from civil litigants, complainants and defendants in criminal cases, attorneys, judges and law enforcement officers.* Litigants in civil cases and defendants in criminal cases were by far the largest category of complainants, having submitted 69% of the complaints received over the past year. The Commission also reviewed newspaper articles which reported instances of judicial misconduct. Sometimes an investigation of one complaint led to indications that another judge had been responsible for some misconduct. At that point the Commission would initiate a complaint upon its own motion. For example, while checking court dockets pursuant to a complaint which alleged that a part-time (attorney) judge appeared before another part-time (attorney) judge in the same county, staff investigators found that other part-time (attorney) judges

*Appendix B provides an analysis in chart form of all the complaints received.

had made improper appearances in court, thereby violating Section 33.5(f) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference.

The temporary Commission received 439 complaints during the past 11 months. In addition to the complaints received since October 1975, the Commission continued its investigation of the 56 cases that were pending at the time of the Commission's first annual report.

Since its inception in late 1974, the temporary Commission reviewed 724 complaints. After initial review 441 were dismissed for lack of jurisdiction. Most of the complaints dismissed in that fashion were from disappointed litigants and might properly belong in an appellate court. Many other complaints were received which alleged poor demeanor, unnecessary delays in issuing decisions, conflicts of interest and improper political activity. Seventy-seven of these were dismissed after investigation because the allegations were unsubstantiated or because the available evidence did not justify disciplinary action. There are 163 investigations still pending. The permanent Commission will continue to work on these cases. Some reflect relatively minor indiscretions which might warrant admonitions. Many will ultimately be dismissed for lack of sufficient proof.

All investigations were authorized by the members of the Commission after careful review of the complaints. Following

initial inquiries by the staff, reports were made to the Commission. In some cases testimony was then taken from the judge who was the subject of the complaint. Nineteen judges have appeared and given testimony before the Commission since October 1975. In other cases, the Commission elicited from judges written responses to complaints.

The Commission took disciplinary action on a total of 43 complaints. It either recommended to the Chief Judge or an Appellate Division that a removal proceeding be commenced (in seven cases), or it issued an admonition. (It should be noted that multiple complaints were sometimes received against one judge. Each complaint was treated individually, with the result that several complaints could be finally "acted upon" by a single disposition.)

B. Removal Proceedings

The first annual report of the Temporary State Commission on Judicial Conduct, dated October 1975, stated that five removal proceedings had been recommended by the Commission. In each case the Commission had submitted a full report and proposed charges. Since October, three hearings before Supreme Court Justices appointed by the applicable Appellate Divisions have been completed. In all three the Commission's Administrator was designated as Counsel to present evidence. Considerable time

was devoted to the trials, including the motion practice which arose out of these litigated proceedings.

One trial before a Supreme Court Justice appointed by the Appellate Division, First Judicial Department, lasted nine weeks, during which more than 170 witnesses testified. The record consists of almost 7,000 pages of testimony and numerous exhibits. It was charged that the judge acted in an arbitrary manner and demeaned and belittled attorneys, litigants and witnesses who appeared in his courtroom. No final decision has been made in this case as yet.

In another case, a part-time judge was charged with appearing at a police precinct to arraign his former campaign manager and persuading the arresting officers to withdraw the charges. The judge testified that he had no recollection of the event. He was charged with giving false testimony with respect to this incident as well as others. He testified that when he presided over several criminal cases he failed to recall that he had previously represented the defendants. In one such case, he dismissed criminal charges following a trial in his chambers.

A hearing was held before a Supreme Court Justice appointed by the Appellate Division, Second Judicial Department. An attorney on the Commission's staff tried the case on behalf of the petitioner. The trial lasted 24 days. The hearing officer's report was submitted to the Appellate Division. No final

decision has been made in this case as yet by the Appellate Division.

The Commission brought charges against a judge who had a coffee vendor brought into chambers in handcuffs after the judge had determined that he did not like the taste of the vendor's coffee. The judge was also charged with giving false testimony during a Commission investigation. Following a hearing, during which evidence was presented by the Commission staff, the charges were sustained. Thereafter, on motion of the Commission, the hearing officer's report was confirmed by the Appellate Division, Second Judicial Department, and the judge was removed from office.*

A fourth removal proceeding recommended by the Commission has not yet commenced. It is alleged in this case that a (part-time) judge presided over a traffic offense case and accepted a guilty plea from a defendant who was being sued in a civil proceeding arising out of the same traffic accident. The judge, acting as an attorney, represented plaintiffs in the civil suit and presided over the traffic case while the civil suit was pending. The judge, presumably as plaintiffs' attorney, persuaded defendant to sign a statement admitting fault in the traffic case. The judge then accepted defendant's guilty plea to a reduced traffic charge.

*Appendix C is the opinion of the Appellate Division, Second Judicial Department, removing the judge.

This judge has acknowledged presiding over cases in which his clients appeared before him. A related investigation revealed that the judge's law firm referred cases to another part-time (lawyer) judge, who then appeared before the first judge. One defendant appeared before both of these judges. On one occasion, while appearing before Judge A, the defendant was represented by Judge B. On another occasion, the defendant appeared before Judge B and was represented by the law firm of Judge A.

A fifth case is being held in abeyance because of the initiation of criminal charges against the judge for committing perjury before the Commission.

In April 1976 the Commission recommended that removal proceedings be commenced in two other cases. The Court on the Judiciary was convened, and charges were preferred. The Commission's Administrator was designated as Counsel to the Court in both cases.

In one case the respondent-judge admitted registering at a hotel resort under an attorney's name and address. A law firm that regularly appeared before the judge paid for the weekend stay at the resort hotel for the judge and his wife. The judge also admitted presiding over a Small Claims Court trial in which one of this law firm's partners was a party-defendant. Also acknowledged were several cases in which the law partner of the judge's law secretary appeared in the judge's part.

In the other case pending before the Court on the

Judiciary, a judge was charged with being the sole shareholder, president and director of a printing company that did some business with the courts as well as with individuals who appeared in his court. Under the Rules of the Administrative Board of the Judicial Conference, a full-time judge may not be an officer or director of a business. The judge agreed to dispose of all of his interests in the business and was publicly censured by the Court on the Judiciary.* In its opinion the court also took note of charges by the Commission that the judge made injudicious statements in the news media.

In another case, the Commission's Administrator was appointed Counsel to the Judiciary Relations Committee of the Appellate Division, Second Judicial Department. The case concerned a judge's alleged administrative incompetence and failure to perform administrative and judicial duties, resulting in undue delays. A public hearing was held, but the decision is still pending. Two Commission staff attorneys presented hundreds of exhibits in the 24-day hearing, which involved over 60 witnesses.

C. Admonitions

Admonitions played an important role in the Commission's work. They were designed to serve as a deterrent to lesser violations of judicial and ethical standards and enabled the Commission, in less serious cases, to take action which

*Appendix D is the court's opinion censuring the judge.

would not damage the reputation of the judges involved. The permanent nature of the new Commission will help ensure that the previously issued admonitions are heeded; if they are not, more serious action can be taken in the future.

The Commission has admonished fifteen judges since October 1975. Two of the admonitions, upon the recommendation of the Commission, were made public by the Chief Judge of the Court of Appeals. One public admonition concerned the night-time arraignment and disposition of a criminal case in the judge's home in the absence of a prosecutor; the other concerned the signing of orders in blank permitting unregistered persons to vote in a primary election.

Admonitions which were not made public concerned undue delays in rendering decisions and, generally, isolated instances of rudeness, impatience, intemperate comments from the bench, ex parte communications and other improprieties.

D. Resignations

Two full-time judges under Commission investigation and under indictment resigned during the tenure of the temporary Commission.

Three part-time judges under Commission investigation resigned. One Commission inquiry showed that a judge failed to preside for four months and failed to keep his records updated. In addition, some fines which had been collected were missing. The judge resigned shortly after he learned of the Commission in-

quiry. Another judge resigned after a Commission investigation revealed that his law firm appeared before another part-time judge of the same town, in violation of the Rules of the Administrative Board of the Judicial Conference. A third judge, who had delayed disposition of certain traffic cases since 1972, also resigned shortly after the Commission reviewed his court dockets and found serious irregularities.

III. Recommendations

A. Clarification of Administrative Board Rules

During the past year, questions arose with respect to the language of the Rules Governing Judicial Conduct. The Commission's Administrator worked closely with the State Administrative Judge and his staff. Clarification was received concerning some of the Rules Governing Judicial Conduct. Some of the rules, however, require further clarification, and the Commission will continue to make recommendations in that regard to the Office of Court Administration. An effort should be made to review and clarify the rules in light of the Commission's experience.

B. Financial Disclosure

A new provision requiring confidential financial disclosure by judges should be included in the Rules of the Administrative Board. Financial disclosure statements, already required in other branches of government, would make it possible for the Commission to detect conflicts of interest. In many instances, there are no other practical means of uncovering certain conflicts of interest. Furthermore, financial reports would

serve as a significant deterrent to misconduct and the appearance of impropriety. If compelled to report the sources and amounts of outside income, assets and other relevant information, judges would be less likely to engage in activities of potential conflict.

Although the issue of financial disclosure is particularly sensitive and usually controversial, several states have enacted legislation or adopted rules requiring some form of reporting by public officials, including members of the judiciary. According to the American Judicature Society, by early 1976 there were 40 states with some institutionalized system of judicial discipline. At least 22 of these (including the District of Columbia) maintain some requirement of financial disclosure by judges.* The degree to which these statements are considered a public record varies from state to state.

Among the more far-reaching requirements for financial disclosure are Arizona's provisions, which were passed by the state legislature and incorporated by the Arizona Supreme Court in a Code of Judicial Conduct. Financial disclosure for all elected officials, including judges, includes information pertaining to outside earnings, the names of creditors to whom more than \$1,000 is owed, the names of companies in which the judges have invested and the places of employment of members of their families. The forms on which this information is recorded are filed with the secretary of state and are public records.

*These jurisdictions are: Alabama, Arizona, Colorado, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Tennessee, Texas, Vermont and Wisconsin.

An Ohio statute goes a step further, requiring candidates for all elective offices, including judgeships, to file disclosure statements on sources of income as reported for federal income tax purposes, all gifts over \$500, investments of more than \$1,000, and the names of corporations, trusts or partnerships in which the candidates have a legal or beneficial interest. In addition, the Code of Judicial Conduct requires sitting judges to report extra-judicial income.

Wisconsin requires annual financial reports to list the judge's income, assets and liabilities as well as those of his spouse and legal dependents. Failure to comply may result in disciplinary hearings and a possible severe reprimand by the Wisconsin Supreme Court.

All Florida judges are required to file their income tax returns with the Judicial Qualifications Commission.

In New York, Section 33.6(c) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference already provides for limited financial disclosure. Judges are required to report outside (earned) income to the clerks of their courts. Few judges have filed these statements, however, and many seem unaware of the rule. Unfortunately, the rule does not clearly compel a judge to file a report if he has not earned outside income, nor does it include part-time judges who practice law. It is therefore difficult to distinguish

guish between those who are unfamiliar with the rule and those who are deliberately ignoring it.

The language of the Administrative Board rules should explicitly require comprehensive, confidential financial disclosure for part-time as well as full-time judges, whether or not outside income has been earned. This information should be made available to the Commission.

C. Training For Judges

This past year the Temporary State Commission on Judicial Conduct continued to monitor courts presided over by part-time judges. A review of public court records in some of these courts has revealed many instances of shoddy, chaotic, and unauthorized record keeping. Some judges appear to have no knowledge or understanding of the legal requirements for maintaining records. Others have continued to violate or ignore these requirements, even after receiving clear notice of violations from the State Comptroller's Office, Division of Audit and Control. The Commission found that one judge kept no records whatsoever. A second judge haphazardly threw court-collected funds, disposition cards and handwritten notes together into a drawer. The condition of court records in many instances was so poor that it could not be determined whether all fines or other moneys collected were properly accounted for and remitted to the state. Some violations are sufficiently serious to warrant further investigation and hearings by the State Commission on Judicial Conduct. In other instances, the violations

are technical and may be remedied by requiring the judge to undergo more concentrated training.

Ignorance of the standards and rules of judicial conduct in general is prevalent. The Office of Court Administration has made continuing and systematic efforts to train non-lawyer town and village justices. However, many judges need further guidance. Seminars should more comprehensively outline judicial rules, methods and obligations and should be held with greater frequency. All town and village justices must be adequately trained and should be regularly monitored to ensure compliance with all the rules governing the judiciary, including the basic record-keeping requirements. More attention should be given by all judges, both full-time and part-time, to the rules applicable to judicial conduct.

D. Judicial Pressure To Dispose of Cases

The pressure to dispose of cases continues to be a factor in complaints alleging rudeness by judges. This past year the Commission identified instances of extreme pressure placed on attorneys and litigants to settle cases. While it is necessary and proper for a judge to attempt to settle cases, the coercive methods that are sometimes employed should be stopped. All judges, including administrative judges, are reminded that the obligation to dispose of cases should be balanced against the obligations set forth in the Code of Judicial Conduct, the Rules Governing Judicial Conduct and the high standards generally expected of the judiciary.

IV. Conclusion

The temporary Commission will be replaced on September 1, 1976, by the State Commission on Judicial Conduct. The new Commission inherits a large caseload of open cases at all stages of investigation. It begins its operations, however, without many of the obstacles which had faced the temporary Commission. It inherits an ongoing agency with three offices, an experienced staff and a functioning organizational structure.

The members of the Temporary State Commission on Judicial Conduct have found this important effort satisfying and constructive, especially since it was the forerunner of a permanent, Constitutional Commission. We are confident that this new Commission will provide a balanced mechanism to protect the public as well as the judiciary.

Respectfully submitted,

MRS. GENE ROBB, Chairwoman

DAVID BROMBERG
HOWARD COUGHLIN
HON. JAMES D. HOPKINS
MICHAEL M. KIRSCH
VICTOR A. KOVNER
WILLIAM V. MAGGIPINTO
HON. ANN T. MIKOLL
CARROLL L. WAINWRIGHT, JR.

Commission Members.

GERALD STERN, Administrator

August 31, 1976

A P P E N D I X A

BIOGRAPHIES OF COMMISSION MEMBERS

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 Bromberg, Gloger & Lifschultz. Mr. Bromberg served as counsel to the New York State Committee on Mental Hygiene from 1965 through 1966. He was elected a delegate of 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 Financing, Taxation and Expenditure. He is a member of the Association of the Bar of the City of New York and has served as a member of its Committee on Municipal Affairs. He is a member of the New York State Bar Association and has served as a member of its Committee on the New York State Constitution. He is a member of the National Arbiters of the American Arbitration Association.

HOWARD COUGHLIN is the International President of the Office & Professional Employees International Union. He has represented the Eisenhower, Kennedy and Johnson administrations at key international labor conferences in Europe and Asia. He was also appointed by President Johnson to the Labor Advisory Council for the President's Committee on Equal Employment Opportunity and served on the Advisory Committee for the Youth Opportunity Campaign. He represents the AFL-CIO in international labor conferences in the Western Hemisphere. He is Chairman of the Executive Committee for the Executive Board of the American

Arbitration Association, and Vice President of the International Confederation of Commercial, Clerical and Technical Employees. Mr. Coughlin is also a member of the New York Banking Board and was a member of the State Judicial Screening Committee.

HON. JAMES D. HOPKINS is a graduate of Columbia University and Columbia Law School. He is presently a Justice in the Appellate Division, Second Department, having previously served as a Justice of the Supreme Court and a County Judge of the County of Westchester. Justice Hopkins is the Chairman of the Appellate Judges' Conference of the American Bar Association, the Director of the National College of the State of Judiciary, a member of the Council of Judicial Associations of the State of New York, a member of the Federal-State Council of Judges, a member of the Advisory Council for Appellate Justice, a member of the Committee on Uniform Admission Practice of the Administrative Board, the Chairman of the Advisory Committee on Appellate Administration and the Vice President of the Columbia Law School Alumni Association. He is a member of the American Bar Association, the New York State Bar Association, the Westchester County Bar Association, the Rockland County Bar Association, the White Plains Bar Association, the Mount Vernon Bar Association and the American Judicature Society.

MICHAEL M. KIRSCH, ESQ., a graduate of New York University and New York University Law School, is a member of the firm of Goodman & Mabel & Kirsch. He is a trustee and former President of the Brooklyn Bar Association, a member of its

Committee on the Judiciary and a former member of its Committee on Grievances. He is a member of the House of Delegates of the New York State Bar Association and a member of the American Bar Association. He is also a member of the Sub-Committee on the Jury System of the Advisory Committees on Court Administration of the First and Second Judicial Departments, and a former member of the Judiciary Relations Committee for the Second and Eleventh Judicial Districts.

VICTOR A. KOVNER, ESQ., a graduate of Yale College and Columbia Law School, is a partner in the firm of Lankenau, Kovner and Bickford. Mr. Kovner has been a member of the Mayor's Committee on the Judiciary since 1969. He was a founder of the Committee to Reform Judicial Selection and is also a member of the Governor's Task Force on Judicial Selection and Court Reform. Mr. Kovner is a member of the Association of the Bar of the City of New York and serves on the Special Committee on Communications Law as co-chairman of the Sub-Committee on Privacy Legislation.

WILLIAM V. MAGGIPINTO, ESQ., is a graduate of Columbia College and Columbia Law School. He is a senior partner with Anderson, Maggipinto, Vaughn & O'Brien and also serves as the Sag Harbor Village Attorney. He is the First Vice President of the Board of Directors of the Suffolk County Bar Association, a member of the House of Delegates of the New York State Bar Association and a director of the Legal Aid Society of Suffolk County. He serves on the Committee on Judicial Selection of

the New York State Bar Association and was, for three years, Chairman of the Suffolk County Bar Association Judiciary Committee.

HON. ANN T. MIKOLL is a graduate of the State University of New York at Buffalo, where she received a B.A. degree. Her Doctor of Jurisprudence is from the same university. Justice Mikoll has an honorary Doctor of Humane Letters from Canisius College. She is presently a Justice of the Supreme Court, having previously served as Associate Judge of the City Court of Buffalo. Justice Mikoll is a member of the Board of Governors of the American Judges Association, a member of the Board of Directors of the Legal Aid Bureau of Buffalo, Inc., a member of the Board of Directors of the Catholic Charities of Buffalo, a member of the Board of Trustees at Saint Bonaventure University and a member of the Board of Directors at Canisius College, where she holds the Chair of Polish History and Culture. She has received numerous awards and citations for her civic and professional contributions to the community.

MRS. GENE ROBB is a graduate of the University of Nebraska. She works in public relations and program planning at the Albany Institute of History and Art. She is a former President of the Women's Council of the Albany Institute and served on its Board. She also served on the Chancellor's Panel on 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 and the Board of Trustees of Siena College.

CARROLL L. WAINWRIGHT, JR., ESQ., is a graduate of Yale College and the Harvard Law School. He is a member of the firm of Milbank, Tweed, Hadley and McCloy. He served as Assistant Counsel to Governor Rockefeller, 1959-1960. He is a Trustee at the American Museum of Natural History, the Boys Club of New York, and The Cooper Union for the Advancement of Science and Art. He is the Treasurer of the Church Pension Fund of the Episcopal Church. He is a Vice President and former Treasurer of the Association of the Bar of the City of New York and a member of the American Bar Association, the New York State Bar Association, and the American College of Probate Counsel.

A P P E N D I X B

TOTAL OF COMPLAINTS RECEIVED
FROM SEPTEMBER 1974 TO SEPTEMBER 1976

SUBJECT OF COMPLAINT	DISMISSED AFTER INITIAL REVIEW	INVESTIGATIONS			
		PENDING	DISMISSED	OTHER ACTION*	TOTAL
INCORRECT RULING	277				277 (38%)
COMPLAINTS AGAINST ATTORNEYS, FEDERAL JUDGES OR HEARING OFFICERS	63				63 (8.5%)
DISMEANOR	23	86	42	22	173 (24%)
DELAYS	20	6	7	7	40 (5.5%)
CONFLICTS OF INTEREST	6	38	13	7	64 (9%)
BIAS	18	2	4	3	27 (4%)
CORRUPTION	10	17	5	2	34 (4.5%)
INTOXICATION	3	3			6 (1%)
INCOMPETENCE	3	6	1	1	11 (1.5%)
POLITICAL ACTIVITY	2	4	5	2	13 (2%)
UNSPECIFIC	16				16 (2%)
TOTAL	441 (61%)	163 (22%)	77 (11%)	43 (6%)	724 (100%)

*"Other Action" includes admonitions, both public and private, recommendations to the Chief Judge of the Court of Appeals or the appropriate Appellate Division that a removal proceeding be commenced, and resignations prompted by a Commission investigation.

TOTAL OF COMPLAINTS RECEIVED
FROM OCTOBER 1975 TO SEPTEMBER 1976

SUBJECT OF COMPLAINT	DISMISSED AFTER INITIAL REVIEW	INVESTIGATIONS			
		PENDING	DISMISSED	OTHER ACTION	TOTAL
INCORRECT RULING	151				151 (34%)
COMPLAINTS AGAINST ATTORNEYS, FEDERAL JUDGES OR HEARING OFFICERS	29				29 (6.5%)
DEMEANOR	19	74	23	6	122 (28%)
DELAYS	11	6	6	3	26 (6%)
CONFLICTS OF INTEREST	5	37	10	1	53 (12%)
BIAS	9	1		1	11 (3%)
CORRUPTION	5	16	3	1	25 (6%)
INTOXICATION	1	1			2 (.5%)
INCOMPETENCE	1	6		1	8 (2%)
POLITICAL ACTIVITY	1	4		1	6 (1%)
UNSPECIFIC	6				6 (1%)
TOTAL	238 (54%)	145 (33%)	42 (10%)	14 (3%)	439 (100%)

COMPLAINTS FROM LITIGANTS, CRIMINAL COMPLAINANTS
OR DEFENDANTS, OR THEIR RELATIVES OR FRIENDS
FROM OCTOBER 1975 TO SEPTEMBER 1976

SUBJECT OF COMPLAINT	DISMISSED AFTER INITIAL REVIEW	INVESTIGATIONS			
		PENDING	DISMISSED	OTHER ACTION	TOTAL
INCORRECT RULING	138				138 (46%)
COMPLAINTS AGAINST ATTORNEYS, FEDERAL JUDGES OR HEARING OFFICERS	28				28 (9%)
DEMEANOR	17	40	17	1	75 (25%)
DELAYS	11	4	5	2	22 (7%)
CONFLICTS OF INTEREST	2	6	7		15 (5%)
BIAS	8			1	9 (3%)
CORRUPTION	5	1	1		7 (2%)
INTOXICATION	1				1 (.5%)
INCOMPETENCE	1	1			2 (1%)
POLITICAL ACTIVITY		1			1 (.5%)
UNSPECIFIC	5				5 (2%)
TOTAL	216 (71%)	53 (17.5%)	30 (10%)	4 (1.5%)	303 (100%)

COMPLAINTS FROM CITIZENS OR GROUPS
NOT PARTY TO ANY ACTION
FROM OCTOBER 1975 TO SEPTEMBER 1976

SUBJECT OF COMPLAINT	DISMISSED AFTER INITIAL REVIEW	INVESTIGATIONS			
		PENDING	DISMISSED	OTHER ACTION	TOTAL
INCORRECT RULING	7				7 (33%)
COMPLAINTS AGAINST ATTORNEYS, FEDERAL JUDGES OR HEARING OFFICERS					
DEMEANOR	1	5	2	1	9 (43%)
DELAYS					
CONFLICTS OF INTEREST			1		1 (5%)
BIAS		1			1 (50%)
CORRUPTION					
INTOXICATION					
INCOMPETENCE					
POLITICAL ACTIVITY	1	1		1	3 (14%)
UNSPECIFIC					
TOTAL	9 (43%)	7 (33%)	3 (14%)	2 (10%)	21 (100%)

COMPLAINTS FROM JUDGES, ATTORNEYS, DISTRICT ATTORNEYS
OR LAW ENFORCEMENT AGENCIES
FROM OCTOBER 1975 TO SEPTEMBER 1976

SUBJECT OF COMPLAINT	DISMISSED AFTER INITIAL REVIEW	INVESTIGATIONS			
		PENDING	DISMISSED	OTHER ACTION	TOTAL
INCORRECT RULING	5				5 (8%)
COMPLAINTS AGAINST ATTORNEYS, FEDERAL JUDGES OR HEARING OFFICERS	1				1 (1.5%)
DEMEANOR	1	20	3	4	28 (42.5%)
DELAYS		1	1	1	3 (4.5%)
CONFLICTS OF INTEREST	2	8			10 (15%)
BIAS	1				1 (1.5%)
CORRUPTION		12	1	1	14 (21%)
INTOXICATION		1			1 (1.5%)
INCOMPETENCE		1		1	2 (3%)
POLITICAL ACTIVITY					
UNSPECIFIC	1				1 (1.5%)
TOTAL	11 (16%)	43 (67%)	5 (8%)	7 (9%)	66 (100%)

COMPLAINTS INITIATED BY THE COMMISSION
FROM OCTOBER 1975 TO SEPTEMBER 1976

SUBJECT OF COMPLAINT	DISMISSED AFTER INITIAL REVIEW	INVESTIGATIONS			
		PENDING	DISMISSED	OTHER ACTION	TOTAL
INCORRECT RULING	1				1 (2%)
COMPLAINTS AGAINST ATTORNEYS, FEDERAL JUDGES OR HEARING OFFICERS					
DEMEANOR		9	1		10 (21%)
DELAYS		1			1 (2%)
CONFLICTS OF INTEREST	1	23	2	1	27 (55%)
BIAS					
CORRUPTION		3	1		4 (8%)
INTOXICATION					
INCOMPETENCE		4			4 (8%)
POLITICAL ACTIVITY		2			2 (4%)
UNSPECIFIC					
TOTAL	2 (4%)	42 (86%)	4 (8%)	1 (2%)	49 (100%)

A P P E N D I X C

In the Matter of the Proceeding to Remove from Office William M. Perry, a Judge of the District Court, Third District, County of Suffolk.

Temporary State Commission on Judicial Conduct, petitioner;
William M. Perry, respondent.

Gerald Stern, New York, N.Y., for petitioner.

James W. Weber, Huntington, N.Y. and Smith, Finkelstein, Lundberg, Baisley & Yakaboski, Riverhead, N.Y. (Pierre G. Lundberg of counsel), for respondent.

In this disciplinary proceeding instituted by the Temporary State Commission on Judicial Conduct (the Commission), the issues were referred to Hon. DANIEL G. ALBERT, a Justice of the Supreme Court, to hear and report, by order of this court dated January 16, 1976. The petitioner moves to confirm the report of the said Justice. The respondent cross-moves, inter alia, to disaffirm so much of the report as finds charges "6A (1) to (3)" and "6B (1)-(6)" proved.

The respondent was admitted to practice by this court on October 31, 1951. He was duly elected as a District Court Judge of Suffolk County on November 5, 1968 and assumed office on January 1, 1969. He was re-elected on November 5, 1974 and is presently serving as such District Court Judge.

The petition charged Judge Perry with two categories of misconduct: (1) that respondent, on April 30, 1975, without any justification, ordered three law enforcement officers to bring a coffee vendor before him, authorized the use of handcuffs and thereafter excoriated the handcuffed vendor for the quality of his product after he was brought to respondent's chambers; and (2) respondent gave false testimony under oath when questioned about the matter by the Commission.

The reporting Justice has found the respondent guilty of the first category of misconduct in toto, and, with the exception of one specification, has found respondent guilty of the second category of misconduct as well.

After reviewing all of the evidence and the report of Mr. Justice ALBERT, we are in full accord with the findings in the report. Accordingly, the petitioner's motion to confirm the report is granted, the cross motion, insofar as it seeks disaffirmance of the report, is denied, and the respondent is adjudged guilty of judicial misconduct.

On the question of punishment, while the charges stemmed from an isolated incident which, in the ordinary course of events, might have been balanced against respondent's prior unblemished record, the giving of false testimony, particularly by a member of the judiciary, is inexcusable. Such conduct on the part of a judicial officer, whose responsibility is to seek out the truth and evalu-

ate the credibility of those who appear before him is not conducive to the efficacy of our judicial process and is destructive of his usefulness on the bench.

Accordingly, the respondent is removed from his judicial office.

DAMIANI, Acting P.J., CHRIST, RABIN, SHAPIRO AND TITONE, JJ.,
concur.

A P P E N D I X D

STATE OF NEW YORK
COURT ON THE JUDICIARY

In the Matter of the Proceedings
pursuant to Section 22 of Article VI
of the Constitution of the State of
New York in Relation to

OPINION

ROBERT J. FEINBERG

Judge of the County Court and Family
Court of Clinton County

PER CURIAM:

This judicial removal proceeding presents the issue as to what is the appropriate sanction to be imposed by this Court on the Judiciary for the admitted violation of former section 20.8 of the Rules of the Administrative Board of the Judicial Conference and present section 33.5(c)(1) and (2) of that Board's Rules.

Essentially, the violation here involves respondent County Judge Feinberg's continuation, after election to the bench, as president, director and sole stockholder of Clinton Press, Inc., a business entity organized for profit; his sufferance of that corporation doing business with courts and other public and municipal entities in Clinton County.

On July 8, 1976 Judge Feinberg resigned as president and director of the corporation which was and is a family business organized by respondent's father many years ago. He has also arranged to dispose of his interest in the business prior to December 15, 1976.

Violations of judicial conduct rules cannot be condoned and constitute very serious misconduct because, apart from the substantive violation, the appearance of impropriety and the perception by the public of special privilege and advantage must be avoided.

The mitigating circumstances present in this case include the history of this family business, the efforts and agreement of the respondent to disassociate himself from it and finally his resignation, as president and director, albeit precipitated only by the convening of this Court on the Judiciary and the preferment of this charge. Because of these circumstances, removal from office is not called for but a reprimand and public censure is warranted.

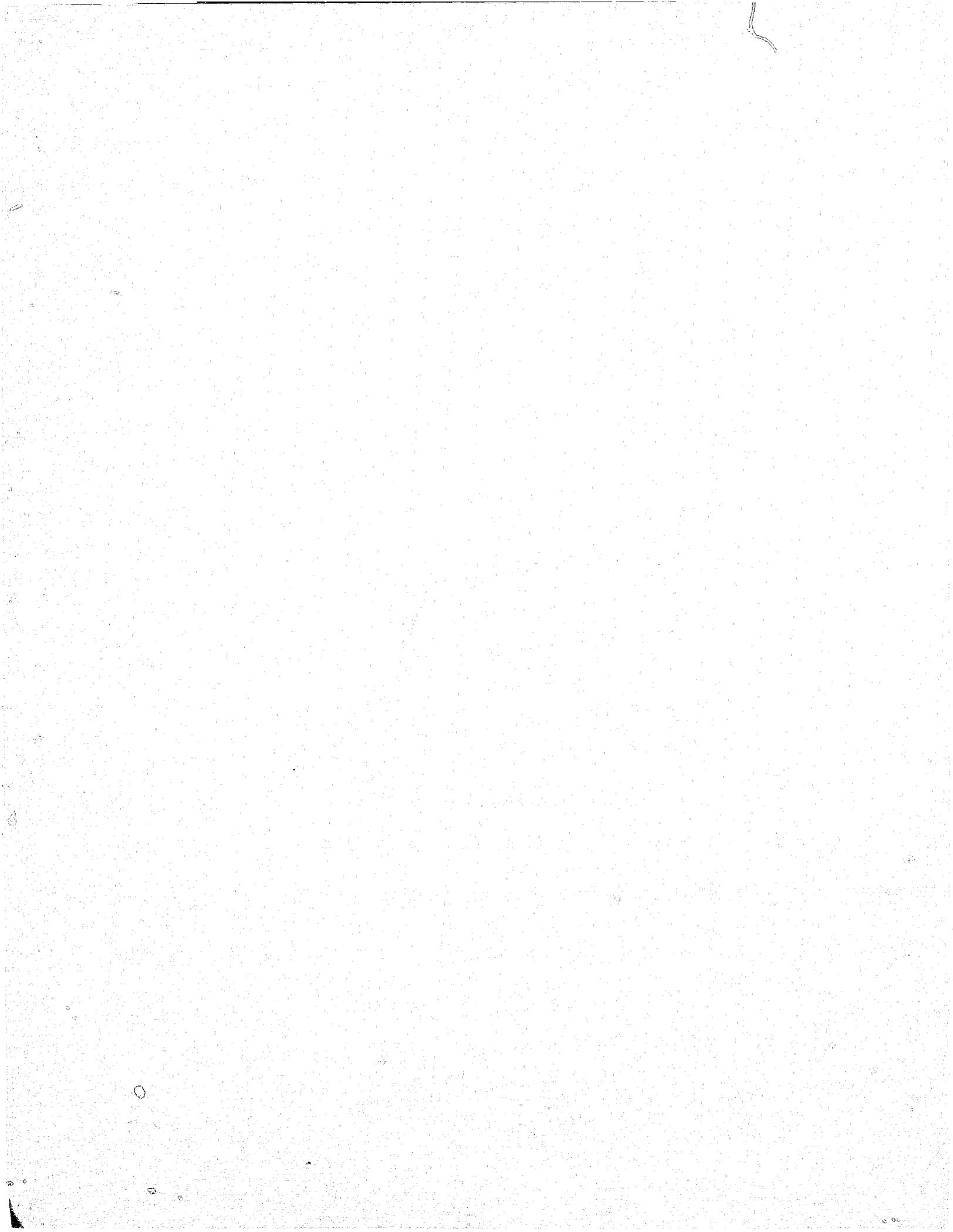
The Court has also taken note of other complaints lodged against Judge Feinberg, concerning alleged injudicious or intemperate media and public statements. These do not in themselves constitute grounds for removal or further disciplinary sanction but the respective counsel have proffered the matter to this Court for our consideration and disposition. Respondent has assured this Court "that he will be more circumspect in his public statements in the future". We only note for the respondent Judge with admonition that he, like all other Judges, must avoid judicial and nonjudicial conduct and statements which bring the judiciary into disrepute.

Accordingly, respondent Judge Feinberg is publicly censured for admitted violation of the preferred charge and

he is admonished with respect to his intemperate public remarks.

Presiding Judge Matthew J. Jasen and Judges Domenick L. Gabrielli, Theodore R. Kupferman, Joseph F. Hawkins, Louis M. Greenblott and Richard D. Simons concur in Per Curiam opinion.

Decided August 20, 1976



END