

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

WILLIAM R. CROSBIE,

Determination

a Justice of the Tarrytown Village
Court, Westchester County.

THE COMMISSION:

Mrs. Gene Robb
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.

APPEARANCES:

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

John G. Bonomi (Sheldon Amster, Of Counsel)
for Respondent

The respondent, William R. Crosbie, a justice of the Tarrytown Village Court, Westchester County, was served with a Formal Written Complaint dated June 6, 1988, alleging that he made three improper telephone calls to police in connection with the arrest of a family and political associate and that he

engaged in ex parte communications and was discourteous in a small claims case. Respondent filed an answer dated July 14, 1988.

On July 18, 1988, the Commission designated Robert M. Kaufman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 3, 4 and 5 and November 4 and 15, 1988, and the referee filed his report with the Commission on March 21, 1989.

By motion dated April 17, 1989, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion on May 5, 1989. The administrator filed a reply on May 16, 1989. Respondent replied on May 19, 1989.

On July 18, 1989, 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, a lawyer, has been a justice of the Tarrytown Village Court since April 1, 1987.

2. On March 11, 1988, at 12:07 A.M., Michael G. Croke was arrested in the Village of North Tarrytown and charged with Driving While Intoxicated, Driving With A Suspended License,

Driving Without A License and other violations of the Vehicle and Traffic Law.

3. Mr. Croke's parents were long-time friends and political associates of respondent. His mother had served as respondent's campaign manager in North Tarrytown when respondent ran for Assembly in 1982. At the time of his arrest, Michael Croke was the Republican candidate for trustee in the Village of North Tarrytown.

4. A news story concerning Mr. Croke's arrest ran in the Tarrytown Daily News on March 11, 1988. Respondent read the story. He heard in street conversations that the police had released the story in order to "sink the Republicans" in the North Tarrytown elections scheduled for March 15, 1988.

5. On March 11, 1988, respondent called the North Tarrytown Police Department and asked to speak to Officer Jose Cotarelo, who had participated in the arrest of Mr. Croke. Respondent identified himself as "Judge Crosbie." He asked Officer Cotarelo whether he had called the press concerning Mr. Croke's arrest. The officer replied that he had not done so. Respondent said:

Well, they made the telephone call and reported the D.W.I. 'cause Croke's a candidate, so this disturbs me very much. I try to cooperate with the North Tarrytown police, but they're not going to get my cooperation if they're going to report D.W.I.s on Republican candidates....

... I'm not going to if they're going to hit our candidates. I'm a Republican.

6. On March 12, 1988, respondent called the North Tarrytown Police Department and spoke to Sgt. Gabriel Hayes. Respondent said that he was going to subpoena the police department's tapes of telephone conversations for the day that Mr. Croke was arrested. Sergeant Hayes asked whether respondent was representing Mr. Croke as an attorney. Respondent replied, "No. I'm the judge. I'm the guy that does your arraignments up here, which I've ceased doing now until I find out what happened." Respondent told the sergeant that someone from the police station reported the arrest to the newspaper, and he called it an "abuse of something up there." He repeated his threat to subpoena the tapes "right away."

7. On March 14, 1988, respondent called North Tarrytown Police Chief Richard J. Spota. Respondent reminded the chief that he had done "lots of arraignments up in your shop...." He told the chief that Mr. Croke's arrest had been reported from a telephone line in the police station and called it "a breach either of ethics or of integrity here...." Respondent threatened not to make himself available for arraignments in the adjoining village and again mentioned issuing a subpoena for the tapes. Chief Spota agreed to examine the tapes to determine whether a call to the newspaper had been made from the police station. He reported to respondent several days later that no such call had been recorded.

8. At no time was Mr. Croke's case before respondent or his court.

As to Charge II of the Formal Written Complaint:

9. 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 and 100.7 of the Rules Governing Judicial Conduct and Canons 1, 2 and 7 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established. Charge II is dismissed.

Motivated by personal and political interests, respondent made three telephone calls to attempt to confirm his suspicion that police had publicized the arrest of a candidate of his party four days before the election. In pursuit of this aim, respondent repeatedly invoked the prestige of his judicial office and threatened to impede the administration of justice. This is evident from his own words in the three calls.

Respondent said that he was disturbed that police had reported the arrest "'cause Croke's a candidate." He threatened not to cooperate with police in the neighboring community by refusing to conduct arraignments when the regular judge was

unavailable "if they're going to report D.W.I.s on Republican candidates." This was repeated several times in a four-day period. Respondent also threatened to use his judicial power to subpoena police tapes of telephone calls made on the day of the candidate's arrest.

Whether he had such power or not, by making such threats, he was clearly attempting to use the power and prestige of judicial office for personal and political ends. This violates Sections 100.2(c) and 100.7 of the Rules Governing Judicial Conduct. The Commission does not accept respondent's claim that he was merely defending a criminal defendant's fair-trial interests. Such an explanation is not borne out by his words.

A lawyer-judge should be especially sensitive to ethical standards. Matter of MacAffer, 2 Commission Determinations 347, 350-51 (Com. on Jud. Conduct, June 11, 1981); Matter of Darrigo, 2 Commission Determinations 353, 360 (Com. on Jud. Conduct, June 25, 1981). Although he acknowledged at oral argument before the Commission that the telephone calls created the appearance of impropriety, respondent insisted at the hearing eight months after the calls that his conduct was proper. This failure to recognize the impropriety of his actions exacerbates the misconduct. Matter of Shilling v.

State Commission on Judicial Conduct, 51 NY2d 397, 404 (1980);
Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d
349, 357 (1984).

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

Mrs. Robb, Mr. Berger, Judge Ciparick, Mr. Cleary,
Judge Rubin and Judge Salisbury concur.

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

Mr. Sheehy dissents as to sanction only and votes that
respondent be admonished.

Judge Altman and Mr. Bower 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: September 8, 1989



Victor A. Kovner, Esq.
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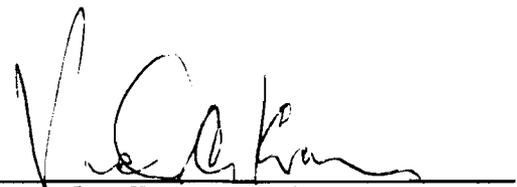
a Justice of the Tarrytown Village
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DISSENTING OPINION
BY MR. KOVNER

This record reveals not an isolated instance of egregious misconduct, but three separate and blatant abuses of public office occurring over a period of four days. Complaints made to law enforcement officers explicitly based upon respondent's political preference plainly affront the administration of justice. To pursue those partisan calls with threats not to cooperate in the performance of his official duties and to subpoena police tapes when no matter was before him was totally inexcusable.

Even though respondent belatedly came to recognize aspects of his misconduct, in my view his ability to provide the appearance of impartial justice in his community has been irreparably damaged. See Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290-91 (1983). I believe the appropriate sanction should be removal from office.

Dated: September 8, 1982



Victor A. Kovner, Esq.
New York State
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