

Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement, as submitted, on March 22, 1979, determined that no outstanding issue of fact remained, and set a date for oral argument to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum prior to oral argument. Respondent did not submit a memorandum and appeared through his attorney for oral argument.

On May 22, 1979, the Commission considered the record in this proceeding with respect to Millington v. New York City Transit Authority, a 1975 jury trial over which respondent presided, and upon that record makes the following finding of fact: On ten separate dates, to wit, April 24, 28, 29 and 30, and May 1, 2, 6, 13, 14 and 20, 1975, respondent used intemperate and injudicious language, as set forth in the agreed statement of facts, directed toward defense counsel while presiding in the Millington case.

Based upon the foregoing finding of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(2) and 33.3(a)(3) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct, and Sections 604.1(e)(1) and 604.1(e)(5) of the Rules of the Appellate Division, First Judicial Department. Charges I through XVII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

The Rules Governing Judicial Conduct require a judge to be "patient, dignified and courteous" to all who appear before him and to "conduct himself at all times in a manner that promotes

public confidence in the integrity and impartiality of the judiciary" (Sections 33.3[a][3] and 33.2[a]). Section 604.1 (e)(5) of the Appellate Division Rules (First Department), where the matter under consideration occurred, requires a judge to be the "exemplar of dignity and impartiality" and to "suppress his personal predilections...[and] control his temper and emotions." Respondent's intemperate conduct throughout the Millington trial was unbecoming a judge and fell far short of the applicable standards noted above.

The Commission notes in mitigation that, subsequent to the commencement of the instant proceeding, respondent acknowledged that his conduct toward defense counsel in Millington had been discourteous and addressed a letter of apology to defense counsel.

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

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 3, 1979

APPEARANCES:

Julien, Schlesinger and Finz (By Stuart A. Schlesinger)
for Respondent

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

LOUIS I. KAPLAN,

STIPULATION

a Judge of the Civil Court of the
City of New York, New York County.
----- X

Subject to the approval of the Commission on Judicial
Conduct ("the Commission"):

It is hereby stipulated and agreed by and between
Gerald Stern, Esq., Administrator of the Commission, the respon-
dent, Louis I. Kaplan and Stuart A. Schlesinger, attorney for
the respondent, that the hearing provided for by Judiciary Law,
Section 44, subdivision 4 in the above entitled matter shall
be waived, and

It is further stipulated and agreed that the Commission
shall make its determination upon the pleadings and, in lieu of
respondent's Answer, upon the following facts:

Respondent presided at the jury trial of Millington v.
New York City Transit Authority, which commenced on April 21,
1975.

During the course of the Millington trial, respondent
made the following statements in open court:

On April 24, 1975, directed defendant's attorney,
Solomon Tanzer, to

"...get [a witness] the hell out of here."

On April 28, 1975, stated to defendant's attorney:

"...Apparently you want to run this court,
Mr. Tanzer. You're not going to run this
court, and I'm sure you're not going to
run any other court....

"...There's been enough delay here, enough
attempts by you to delay this trial....

...and if you didn't act like a pumpkin in
isolation we'd resolve this, but you've
got a chip on your shoulder, and I'm not
going to concern myself with anybody who
has chips on their shoulders. I want you
to understand that I run this court
whether you like it or not.

...then I don't care if we close down the
Transit Authority. Bring them all down
here."

On April 29, 1975, after stating that the resumption
of the trial would be delayed because some jurors had not
arrived, directed defendant's attorney to telephone his superior
for the purpose of informing him that respondent wanted his
immediate presence in court. After a recess to enable defen-
dant's attorney to place the telephone call, respondent engaged
in the following colloquy with defendant's attorney:

"MR. TANZER: Your Honor, I conveyed your
message, sir. Mr. DeRoos has
left. He's on his way over.
He'll be here very shortly.

THE COURT: Why does it take you 45 minutes
to make a phone call? Where did
you disappear?

MR. TANZER: I made a phone call.

THE COURT: And where did you disappear?

MR. TANZER: I had a few other matters to attend to.

THE COURT: What other matters?

MR. TANZER: Pertaining to the case, sir.

THE COURT: But what kind of business --

MR. TANZER: Pertaining to the case. You told me that two jurors were absent --

THE COURT: But they came.

MR. TANZER: I thought you wanted to see Mr. DeRoos before we got started.

THE COURT: You have to open, don't you?

MR. TANZER: Yes.

THE COURT: So why can't we get started?

MR. TANZER: I'm sorry, I misunderstood you.

THE COURT: I don't understand why we have to wait all this time.

MR. TANZER: I thought you wanted Mr. DeRoos here before we got started on my opening. That was my impression.

THE COURT: Well, I wanted DeRoos separate and apart from the opening. I want DeRoos separate and apart from everything else. I want to put an end to all the nonsense. That's why I want DeRoos here. You know damn well why I want DeRoos.

MR. TANZER: May I note my exception to your Honor's characterization of "nonsense."

THE COURT: Yes, I consider it nonsense.

MR. TANZER: May I respectfully have the record reflect the fact that your Honor is now shouting at me, and I respectfully except to that.

THE COURT: And I don't want anymore of this conduct. When I send you out for a phone call, you make your phone call and return immediately. I don't have to wait for 45 minutes for you to make a phone call when you should have had him here this morning at ten o'clock when I directed you to have him.

MR. TANZER: I respectfully except to your Honor's time notation. It's not 45 minutes.

THE COURT: I let you out of here at 14 minutes after ten. It is now 9 minutes to eleven. How many minutes is it? You add it up.

MR. TANZER: If your Honor pleases, may I be permitted to suggest at this time that we note the beginning -- the time when each and every session begins and ends for the record?

THE COURT: Counselor, I run this court, not you, and just remember that. Just remember that.

MR. TANZER: I'll never forget it.

THE COURT: Just remember that, and don't be too wise with me, because I have a method of dealing with wise people. I'm not a Solomon, but I have a method of dealing with wise people.

MR. TANZER: May I again respectfully be permitted to note the fact that your Honor is shouting at me and pointing his finger at me in a threatening manner, and I respectfully except to that.

THE COURT: Get the jury in. Number two juror is not available, and we'll excuse him, gentlemen -- I mean, two alternate.

(The jury was brought into the courtroom.)

On April 30, 1975, after defendant's attorney noted for the record that respondent had been shouting at him; stated:

THE COURT: You know, there comes a point when you will just rile me to the point where you will be sorry. And I have been warning you about this, Mr. Tanzer. Please don't make it necessary for me to take such action that you may regret. Don't be a "wise guy" with this Court.

On May 1, 1975, in response to the statement of defendant's attorney that plaintiff's attorney had taken property belonging to him, stated:

You know, you don't have to be that arrogant, Mr. Tanzer. You could behave like a gentleman at all times. If you thought it was that important, you should have removed it from the records that are on the table, and show some respect for your fellow counsel.

I know you hold a high and important job with the Transit Authority. But in here in this courtroom, you are just another lawyer. And at all times remember that, and behave like a lawyer should behave, with proper dignity, proper respect and proper decorum at all times.

That type of outburst is uncalled for and unnecessary, and very disrespectful not alone to counsel but to the Court, who has a high regard for the members of the bar of this State.

Go ahead. Proceed, Mr. Edelman.

On May 13, 1975, engaged in the following colloquy with defendant's counsel:

THE COURT: Hold it a minute. Isn't it a fact that you have suborned perjury and you yourself have been a party to this when you knew the witness Cochran was taking the witness stand and you offered an instrument, knowing full well that a word was slipped in?

MR. TANZER: Absolutely not, and I resent your Honor's remark, and because of that remark, I now respectfully ask for a mistrial.

THE COURT: Don't shout at me and don't raise your voice and your request for a mistrial is denied.

MR. TANZER: I take exception to your Honor's remark very vehemently.

THE COURT: I don't care how damn vehemently you take it, but don't shout at me because I am not afraid of you and you are not intimidating me.

On May 13, 1975, failed to take any action, when plaintiff's attorney addressed defendant's attorney as "Fuckin' idiot."

On May 14, 1975, stated to defendant's attorney:

THE COURT: Don't you dare do this again. You have done it throughout the trial from the very first opening comments you made. You have caused 22 objections in less than ten minutes. Throughout the trial you have behaved in an undignified, unmannerly manner. You have caused disruptions constantly in the trial and attempted throughout this trial to cause a mistrial, for reasons best known to you. You have had people investigate this case. You have had people visit this court. You have had investigators from the Department of Investigation come here. You have had the District Attorney visit this court for one sole purpose, and that is to cause some confusion in this trial.

I am telling you now, cut it out. I will not tolerate it any further. This Court is interested in substantial justice, and I think every litigant coming before this Court is entitled to a fair and just trial without intimidation and without everything else.

On May 14, 1975, stated to defendant's attorney: "You're a damned liar...."

On May 20, 1975, stated to defendant's attorney:

You think it's a big joke, don't you. I don't like the smirk and grin on your face. You think the trial is a big joke.

On May 20, 1975, stated that defendant's attorney was "playing games" with the court and had submitted Requests to Charge "surreptitiously."

During the course of the Millington trial, respondent made the following statements in the presence of the jury:

On May 2, 1975, after denying the request of the defendant's counsel to be heard in the absence of the jury, stated:

Now, if you do that once more, I'll adjudge you in contempt. Do you understand that? You listen to me and proceed exactly as I tell you, and I don't want you to be looking at Hauman or whoever else is back there. I'm not concerned with whom the hell you're looking at. You do as I tell you when I direct you to do something....

...I'm telling you to move on with this trial. You're delaying the operation of this trial, and this has been going on too far and too long. Get on with the trial, please.

On May 2, 1975, engaged in the following colloquy with defendant's attorney:

MR. TANZER: I offer the full records at this time, your Honor, of both hospitals.

THE COURT: Are you talking about hearsay?

MR. TANZER: I'm talking about the full records.

THE COURT: Counselor, don't play games with me. Are you offering hearsay? I'm asking you, are you offering hearsay, which is contrary to law and contrary to procedure.

MR. TANZER: Sir, in view of --

THE COURT: Are you offering that which you know is not proper?

MR. TANZER: May I answer your Honor?

THE COURT: Yes, you may.

MR. TANZER: In view of Mr. Edelman's statement --

THE COURT: I am not asking you in view of anybody. I'm asking you for a direct answer.

MR. TANZER: In view of Mr. Edelman's statement, I think the jury should have the full record. Yes, sir, in view of Mr. Edelman's statement.

THE COURT: Mr. Tanzer, I'm asking you to respond to my question.

MR. TANZER: I have answered your Honor.

THE COURT: You have not answered my question. I am directing you now to answer my question.

MR. TANZER: I respectfully object to the fact that your Honor is shouting and waiving his his finger at me.

THE COURT: I'm directing you to answer my question. Are you asking the Court to admit error or are you asking the Court to admit something that is inadmissible?

MR. TANZER: I respectfully ask your Honor to admit the full record in evidence in view of Mr. Edelman's statement.

THE COURT: Ladies and gentlemen, there are portions of this record that is inadmissible, and it is those portions that have not been received in the last trial, and they will not be received in this trial. And counsel knows those portions which are inadmissible. Proceed with the trial.

On May 6, 1975, engaged in the following colloquy with defendant's counsel:

MR. TANZER: Excuse me, may I be heard to respectfully object to the fact that your Honor is now shouting at me?

THE COURT: If you took the wax out of your ears or used a hearing aid I wouldn't have to do it. You can't hear, you advised the Court that you can't hear.

MR. TANZER: I have never done that, sir, I have never done that in all --

THE COURT: Let us get on.

MR. TANZER: I object to your Honor's statement, I object to the tone of voice.

THE COURT: Take the jury out.

(Jury excused).

THE COURT: Who is general counsel now that Mr. DeRoos is out?

MR. TANZER: I don't believe we have one, your Honor.

THE COURT: Then get the senior counsel down here because I am going to adjudge you in contempt. Get him right down here on the phone.

On May 14, 1975, engaged in the following discussion:

MR. TANZER: I offer it in evidence, your Honor. Excuse me. May I have a ruling?

THE COURT: Overruled at this time.

MR. EDELMAN: Your Honor, I respectfully object to Mr. Tanzer making speeches.

THE COURT: This has been going on for three weeks. Is Mr. Schroter's name on there?

THE WITNESS: No.

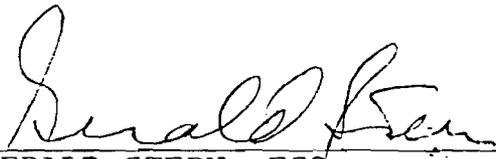
MR. TANZER: I object to your Honor's statement and take exception.

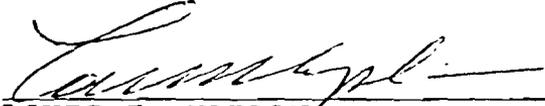
THE COURT: Next question.

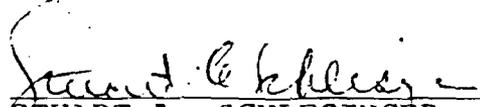
On May 14, 1975, stated defendant's attorney was engaging in an attempt to "cause error at the trial" and had been trying throughout the trial to "accomplish a purpose."

On April 29, 1975, during a conference held outside the presence of the jury, referring to defendant's attorney, Solomon Tanzer, stated in a loud, angry manner that he "would get" Mr. Tanzer; "would set [Tanzer] up"; and that he (respondent) "knew how to do it," "was a very tricky guy," and "had experience in these matters"; respondent also stated, referring to Mr. Tanzer: "I fuck him."

Dated: New York, New York
February , 1979


GERALD STERN, ESQ.
Administrator
State Commission on Judicial
Conduct


LOUIS I. KAPLAN
Respondent


STUART A. SCHLESINGER, ESQ.
Attorney for Respondent