

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

DEC -1 1995

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of:
The Hon. Merle E. Wilcox
District and Municipal Courts
of Island County

NO. 94-1693-F-52

DISSENT

I dissent from the Findings of Fact, the Conclusions, and the sanction imposed.

This complex matter has received considerable publicity. For that reason, I believe it is necessary to provide more narrative explanation than might otherwise be warranted with a dissent.

1. SUMMARY OF COMMISSION'S CASE

The nature and extent of the alleged misconduct is reprehensible. Proving Respondent had engaged in such behavior is a burden which rests with Counsel for the Commission ("Counsel"). Except for the conduct to which Respondent has conceded, the Majority relied exclusively upon uncorroborated evidence to support its Findings.

All Findings of misconduct can be distinguished by degree of substantiation. Findings II.B.1 (dancing), II.B.3 (intrusions on Jungell), II.B.5 (straddling), II.B.10 (intrusion on Williams), II.B.11 (assault) and II.C.3 (Millikan) involved entirely private occasions. Findings II.B.6 (bedroom kiss), II.B.9 (tickling), and II.C.6 (Andersen), by comparison, entail situations which might have been observed. Finally, Findings II.C.1 (recusal), II.C.2 (Priest affidavit), II.C.4 (mitigation hearing) and II.B.4 (raft trip) pertain to events where other persons were present to attest to any alleged misconduct.

With the exception of Finding II.C.3, all Findings which involved strictly private incidents reflect the version of events as depicted, for most part, by the Complainants; this is also true with respect to incidents which may have been observed. Of the

1 behaviors that had been witnessed by others, the Majority founded Findings II.C.1, II.C.2,
2 and II.C.4 on Respondent's testimony, while it accepted the opinion of Complainant in
3 Finding II.B.4. Generally, where a complaint related to a private incident, the Majority
4 supported the Complainant's view, and where the alleged behavior was public, the
5 Majority was more receptive to Respondent's explanation of events.

6 2. EVIDENTIARY STANDARD

7 The Washington State Supreme Court commented in In re: Deming, Wn.2d 82
8 (1987) at p. 109, that "uncorroborated evidence may be clear and convincing if the trier
9 of fact can impose discipline with clarity and conviction of its factual justification". Inherent
10 to uncorroborated evidence is a contradictory recitation of events by those involved; thus
11 it is incumbent upon the Commission to weigh the credibility of the contending parties.
12 To achieve "clarity and conviction", it is necessary to examine uncorroborated evidence
13 on grounds of pertinence, plausibility, and credibility. Findings II.B.1, II.B.3, II.B.4, II.B.5,
14 II.B.6, II.B.9, II.B.10, II.B.11 and II.C.6 all require such scrutiny.

15 Counsel's Hearing Brief cited In re: Hatter, CJC No. 93-1445-F-46, as precedent
16 for the consideration of certain evidence for probative value. That is an accurate
17 depiction of the Commission's treatment in that matter. However, an important distinction
18 exists between the "Hatter" case and this one. Instances of misconduct in In re: Hatter
19 had been corroborated by depositions and court transcripts. In order for the
20 Commission to conclude, based upon its evidentiary standard, that violations of the Code
21 had occurred in "Hatter", it did not need to examine the general character (e.g., motive
22 and credibility) of witnesses, as necessitated in this matter.

23 An assessment of the evidence provided by Janiece Jungell, Liz Buck, Bethany
24 Williams, Lynne Wilcox and Eileen Andersen can begin with the testimony of Dr. Hedrick,
25 who had been retained by Counsel to evaluate reports made by Complainants in the
26 context of a "conceptual framework" of sexual abuse. Dr. Hedrick was not capable of
27

1 making any factual determinations¹, and she was not directed to diagnose the
2 manifestation of psychological symptoms associated with sexual abuse. The value of Dr.
3 Hedrick's testimony derives from her application of the "conceptual framework" and her
4 description of interviews with Complainants.

5 Dr. Hedrick's methodology included a factor of "secondary gain", which she
6 described as being evidence by a "manipulation and distortion of the data"² that "brings
7 into question the credibility of the information."³ "Secondary gain" might colloquially be
8 called "motive".

9 3. DR. HEDRICK'S TESTIMONY

10 Based on her interviews, Dr. Hedrick concluded that the "emotional demeanor" of
11 Ms. Jungell, Ms. Buck, and Ms. Williams had been "consistent" with the information they
12 had given her, and this supported an opinion that "the secondary gain issue was not
13 something that was distorting the information they were giving me".⁴ The accounts
14 proffered by Dr. Hedrick, however, revealed discrepancies between what she had been
15 told by "the girls", as she referred to them, and the testimony they gave before the
16 Commission. These inconsistencies illustrate how Complainants may have manipulated
17 data during their interviews. One discernible inconsistency concerned their family
18 relationships.

19 Dr. Hedrick presented within her framework an additional factor of "(w)hether the
20 behavior of the alleged offender and other family members follows a pattern".⁵ An
21

22 ¹ Tr., p. 641, lines 20-21

23 ² Tr., p. 586, lines 11-12

24 ³ Tr., p. 587, line 3

25 ⁴ Tr., p. 617, lines 16-17

26 ⁵ Tr., p. 585, lines 4-5

1 example is where "(you) often find a lack of connection with a mother figure because that
2 division between the two of them allows the child to be exploited and makes them a more
3 readily accessible victim".⁶ Dr. Hedrick opined that "(t)he elements that are particularly
4 compelling are the girls' statements, and this was all three girls, again, that there was
5 considerable divisiveness created that their stepfather worked to create a wedge between
6 them and their mothers".⁷ She repeated this observation later,⁸ and then added,
7 "(Judge Wilcox) attempted to drive a wedge between (the girls) and their mother(s)...that
8 is something each of them reported to me."⁹

9 Nothing in the testimony of Ms. Jungell, Ms. Buck, or Ms. Williams alleged, or even
10 suggested, that Respondent had tried to "drive a wedge" between them and their
11 mothers. They all asserted that they had once had a poor relationship with their mothers,
12 but they never attributed that condition to Respondent. Complainants had ample
13 opportunity to raise the issue during the proceedings, but they did not; and Counsel
14 never objected to Dr. Hedrick's representation of what she was told during these
15 interviews.

16 4. JANIECE JUNGELL AND LIZ BUCK

17 Ms. Jungell and Ms. Buck raised several issues for probative value (Findings II.B.1,
18 II.B.3, II.B.4, II.B.5, and II.B.6).

19 I agree with Finding II.B.1 to the extent that Respondent's interaction with Ms.
20 Jungell and Ms. Buck may have caused them discomfort. Neither sister testified to
21 having witnessed the conduct that both of them allege, however, even though they were
22

23 ⁶ Tr., p. 585, lines 23-25

24 ⁷ Tr., p. 603, lines 5-9

25 ⁸ Tr., p. 634, lines 6-9

26 ⁹ Tr., p., 666, lines 6-12

1 both present and able to do so. Therefore, whether or not Respondent's behavior could
2 be characterized as being "sexual", as Conclusion III.A.2 indicates, is subject to question.
3 Absent any corroboration, a conclusion that sexual intent underlied Respondent's conduct
4 is difficult to sustain; Respondent himself denies any misconduct in this circumstance.
5 If the Majority could not declare that the specific behavior alleged by Complainants had
6 occurred (regardless of whether or not it was sexual), then how can it factually assert that
7 Respondent's intent was sexual in nature? I dissent from Finding II.B.1.

8 Ms. Jungell said that the intrusions depicted in Finding II.B.3 only occurred "a few
9 times"¹⁰ during the six years she had lived with Respondent. She resided in a
10 household with only one working bathroom,¹¹ and she admitted that she never
11 employed the lock,¹² even though the intrusions made her feel "kind of
12 uncomfortable."¹³ Respondent, on the other hand, admitted recalling one incident
13 where he had intruded upon Ms. Jungell.¹⁴ A single event may have been sufficient to
14 cause Ms. Jungell unease; but an equally plausible explanation is that Respondent may
15 have inadvertently intruded more than once simply because the house had only one
16 functional bathroom. Ms. Jungell's report and the context in which the behavior
17 transpired does not establish sexual intent. I dissent from Finding II.B.3.

18 Finding II.B.4 states that Respondent had inserted his tongue into the ear of Ms.
19 Buck while they were on a rafting trip. Respondent admits to having licked her ear,¹⁵

21 ¹⁰ Tr., p. 193, line 20

22 ¹¹ Tr., p. 212, line 23

23 ¹² Tr., p. 232, lines 19-20

24 ¹³ Tr., p. 193, line 15

25 ¹⁴ Tr., p. 1259, lines 1-5 and p. 1029, lines 9-11

26 ¹⁵ Tr., p. 1032, lines 17-18

1 but denies having "put (his) tongue in her ear".¹⁶ He further said that Ms. Buck's
2 response was that "she sort of laughed."¹⁷ While Respondent's behavior easily lends
3 itself to being considered strange, neither his intent, nor the conduct, can be deemed
4 "sexual" without additional details. This incident occurred in the presence of other
5 persons; yet no one was called to substantiate the claims of either party. Counsel failed
6 to prove with any clarity that Respondent's behavior was sexual. I dissent from Finding
7 II.B.4.

8 Insufficient evidence was introduced to make any determination with respect to
9 Finding II.B.5, which concerns an allegation by Ms. Buck that Respondent had straddled
10 her lap on one occasion. Ms. Buck testified about this incident, but neither Respondent's
11 attorney, nor Counsel, questioned Respondent about it. Because Respondent was not
12 able to respond to this issue, the Majority was not afforded complete information. (This
13 Finding, like II.B.4, had not been included in the original Statement of Charges.) I dissent
14 from Finding II.B.5.

15 Finding II.B.6 concludes that Respondent kissed Ms. Jungell "on the lips" after
16 having entered her bedroom one night. Details of this incident are somewhat clouded
17 by the testimony of Ms. Jungell. At one point, she said that Respondent "tried to kiss me
18 on the lips",¹⁸ and later she testified that he had used his tongue when he kissed her.¹⁹
19 She also stated that he "did kiss me on the lips",²⁰ but that he was not successful in
20
21

22 ¹⁶ Tr., p. 1267, line 12

23 ¹⁷ Tr., p. 1032, lines 19-20

24 ¹⁸ Tr., p. 184, lines 23-24

25 ¹⁹ Tr., p. 185, lines 12-13

26 ²⁰ Tr., p. 208, line 19

1 kissing her passionately.²¹ Respondent indicated that he had attempted to kiss Ms.
2 Jungell ("good-bye"), but he denied sticking his tongue in her mouth.²² He added that
3 Ms. Buck was also in the room at the time of the incident, as she and Ms. Jungell shared
4 the same bedroom. Counsel did not raise the possibility of corroborating evidence
5 through the testimony of either Ms. Buck or Ms. Jungell. Insufficient evidence has been
6 provided to factually support a determination that Respondent's behavior was sexual in
7 nature. I dissent from Finding II.B.6.

8 5. BETHANY WILLIAMS

9 Two Findings arise from the complaints made by Ms. Williams: Findings II.B.9 and
10 II.B.10. While issues of consistency were not common to the previously discussed
11 allegations, they are applicable to those offered by Ms. Williams.

12 Ms. Williams said that she did not "know what went on in the divorce case",²³ and
13 that she only discussed the issue with her mother a "(m)inimal amount",²⁴ yet she
14 attended two court hearings on the matter.²⁵ Ms. Williams also testified that she
15 considers herself "close" to her mother,²⁶ with whom she was living at the time of the
16 divorce.²⁷ Similarly, she reported that she "didn't know anything about the filing (by her
17 mother of a complaint with the Commission)",²⁸ and she insisted that she "didn't discuss
18

19 ²¹ Tr., p. 208, lines 17-20

20 ²² Tr., p. 1260, lines 16-18

21 ²³ Tr., p. 357, lines 15-16

22 ²⁴ Tr., p., 357, line 18 and p. 358, line 12

23 ²⁵ Tr., p. 357, lines 19-21

24 ²⁶ Tr., p. 353, lines 19-21

25 ²⁷ Tr., p. 371, lines 9-10

26 ²⁸ Tr., p. 370, lines 23-25

1 the details" of it with her mother.²⁹ The plausibility of this depiction can be compared
2 against the testimony of Ms. Jungell and Mr. Walker. Ms. Jungell said that Mrs. Wilcox
3 had spoken both to her mother (Linda Andrews) and to herself (twice);³⁰ and Mr. Walker
4 disclosed that Mrs. Wilcox had shared information about the complaint with him more
5 than once.³¹ It does not seem plausible that her mother would not discuss these
6 matters with her own daughter.

7 In the context of Mrs. Williams' attempt to deny prior knowledge, her inconsistent
8 statements seem more salient. Ms. Williams testified that she had never considered
9 Respondent as her father.³² Her mother (Mrs. Wilcox), however, responded affirmatively
10 when asked whether she had said "in declaration that Bethany considered Merle to be
11 her real father" and that Ms. Williams and Respondent had shared hobbies.³³ Ms.
12 Williams herself described her relationship with Respondent at age 17 as a "good
13 friendship".³⁴

14 Ms. Williams also explained the "tickling" incident (Finding II.B.9) in testimony
15 differently than she did in her deposition. Before the Commission she said that
16 Respondent had "grabbed" her breasts,³⁵ while her Statement to Counsel referred to
17 his "touching" of her breasts.³⁶ Exhibit #6 further evidences her contemporary state of
18

19 ²⁹ Tr., p. 374, lines 2-3

20 ³⁰ Tr., p. 221, lines 21-22

21 ³¹ Tr., p. 967-968, lines 22-4 and p. 969, lines 6-11

22 ³² Tr., p. 339-340, lines 25-1

23 ³³ Tr., p. 535, lines 16-23

24 ³⁴ Exhibit #6

25 ³⁵ Tr., p. 313, line 24

26 ³⁶ Tr., p. 360, lines 5-7

1 mind, insofar as she did not report to a counselor any physical, sexual, or emotional
2 abuse. Moreover, Ms. Williams acknowledged that, when "tickling" incidents occurred,
3 she and Respondent may not have always been alone; her mother may have been
4 present in the adjacent room (Ms. Williams indicated that these incidents occurred "mainly
5 in the family room").³⁷ Her mother was not aware that any "grabbing" had taken place:
6 Ms. Wilcox testified that Ms. Williams had "never" reported to her any inappropriate
7 touching.³⁸ Respondent denies this allegation.

8 Ms. Williams described the intrusions addressed in Finding II.B.10 as happening
9 "too often"; this can be distinguished from descriptions such as "all the time" and
10 "frequently". "Too often" is more subjective. These events occurred over a span of seven
11 years.³⁹ Respondent denies that he ever invaded Ms. Williams' privacy. As with Ms.
12 Jungell, some intrusions may have happened, but sexual intent (e.g., voyeurism) is
13 difficult to prove with the evidence presented. Counsel failed to offer that proof.

14 The context and content of the reporting of Ms. Williams raises doubts about its
15 accuracy. I dissent from Findings II.B.9 and II.B.10.

16 6. SUMMARY: PATTERN OF INAPPROPRIATE SEXUAL BEHAVIOR

17 A pattern of complaints does not in and of itself constitute evidence of misconduct.
18 Each complaint must stand on its own merits; the evidence particular to an incident must
19 be sufficient to conclude that a violation occurred. Only after complainants have been
20 individually subjected to a factual determination should they be aggregated for the
21 purposes of decreeing that a pattern of misconduct exists.

22 Whether the intrusions alleged by Ms. Williams and Ms. Jungell represent "sexual
23

24 ³⁷ Tr., p. 344, lines 18-19

25 ³⁸ Tr., p. 538, line 7

26 ³⁹ Tr., p. 444, lines 9-11

1 abuse", according to Dr. Hedrick, depends upon the presence of two factors: (1) "where
2 this occurs in a repetitive way", and (2) where "the intent is sexual".⁴⁰ Dr. Hedrick
3 testified that in certain situations the repetition of a behavior can demonstrate intent. She
4 cited fondling, but not intrusions, as an example.⁴¹ Sexual intent was not proven with
5 respect to the alleged bedroom and bathroom intrusions (Findings II.B.3 and II.B.10).

6 Insufficient evidence was presented to make any factual determination concerning
7 two distinct and isolated events: The alleged straddling of Ms. Buck's lap (Finding II.B.5)
8 and the bedroom kissing of Ms. Jungell (Finding II.B.6).

9 Findings II.B.1, II.B.4 and II.B.9 represent unsubstantiated allegations of
10 misconduct, when corroboration was otherwise, more or less, available. The difficulty of
11 discerning sexual intent with these Findings is problematic. It is not possible to assert
12 with any degree of clarity and conviction that Respondent had engaged in any "sexual
13 behavior" with respect to these three Findings.

14 The Majority concluded that Findings II.B.1, II.B.3, II.B.4, II.B.5, II.B.6, II.B.9 and
15 II.B.10 constitute "a pattern of inappropriate sexual behavior". I dissent from this
16 conclusion on the grounds that the allegations do not stand on their own merits and,
17 therefore, do not collectively represent any pattern of behavior.

18 7. EILEEN ANDERSEN

19 Dr. Hedrick concluded after a half-an-hour interview that Ms. Andersen's demeanor
20 was "consistent" with the level of allegations being raised; in other words, that no
21 secondary gain was apparent.⁴² Ms. Andersen's comments, as recited by Dr. Hedrick,
22 however, could be interpreted differently in context with her testimony.

24 ⁴⁰ Tr., p. 579, lines 7-9 and p. 583, lines 6-7

25 ⁴¹ Tr., p. 642, lines 2-9

26 ⁴² Tr., p. 622, lines 4-5

1 According to Dr. Hedrick, Ms. Andersen reported that "not just her but other
2 people were impressed with the frequency with which they were brushed up against,
3 inappropriately touched, when that didn't seem necessary."⁴³ This statement suggests
4 that Ms. Andersen knew of others who might have also been assaulted by Respondent,
5 but she never raised these observations in her testimony (it might have been declared
6 as hearsay), and no other court employee testified that Respondent had acted
7 inappropriately. In fact, several current and former court employees (Ms. Bunch, Ms.
8 Smith, Ms. Bernhardt, Ms. Hower and Ms. Paczkowski) attested to Respondent's proper
9 behavior.

10 Ms. Andersen's testimony can be examined for consistency, as well. First of all,
11 she said that she had been excited about returning to work.⁴⁴ This seems emotionally
12 inconsistent with her assertion that she was abused "(f)rom the day (Judge Wilcox)
13 stepped into district court office until the day I left".⁴⁵ Second, she reported that her
14 husband, Chris Andersen, had "made (her) call Mr. Weyrich".⁴⁶ He testified, though, that
15 "she made the decision to go to the attorney herself...(l)ike I said, she's a strong-willed
16 woman and she does what she wants to do and I was trying to play a supportive
17 role...and let her make the decision."⁴⁷

18 Ms. Andersen had concealed the official reason for her termination during job
19 interviews with Judges Moller and Anderson. Both judges testified that they had been
20
21

22 ⁴³ Tr., p. 603, lines 21-24

23 ⁴⁴ Tr., p. 80, line 4

24 ⁴⁵ Tr., p. 73, lines 14-15

25 ⁴⁶ Tr., p., 118 line 14

26 ⁴⁷ Tr., p. 432, lines 11-12

1 given the impression that she had left voluntarily.⁴⁸ Judge Anderson also said that she
2 had never mentioned anything about having been inappropriately touched.⁴⁹ Ms.
3 Andersen further testified that she had told the judges that she had been fired out of
4 retaliation stemming from sexual harassment,⁵⁰ but she conceded that she did not want
5 to disclose to the judges that she had been terminated for a "veracity problem".⁵¹

6 At one point, Ms. Andersen testified that Respondent had "never" indicated that
7 there was a problem with her job performance.⁵² Later, she admitted that she had been
8 apprised of his concerns.⁵³ The fact that she had received a memorandum from
9 Respondent dated February 9, 1983,⁵⁴ establishes that she had been informed of his
10 concerns. She also agreed that this memo preceded the alleged incident of sexual
11 harassment.⁵⁵

12 Despite the small size and floor plan of the court office, which placed employees
13 in close proximity, no one witnessed the event complained of by Ms. Andersen. She
14 testified to an inability to "recall" certain details associated with the incident, including
15 whether the jury room had a door (she confirmed that it would have been open during
16 business hours);⁵⁶ whether she mentioned the incident to Lisa Setzer (her
17

18 ⁴⁸ Tr., p. 409, lines 4-5 and p. 132, line 19

19 ⁴⁹ Tr., p. 408, lines 17-19

20 ⁵⁰ Tr., p. 110, lines 11-22

21 ⁵¹ Tr., p. 110, lines 3-7

22 ⁵² Tr., p. 81, line 20

23 ⁵³ Tr., p. 120, line 10

24 ⁵⁴ Exhibit #3

25 ⁵⁵ Tr., p. 126, lines 11-12

26 ⁵⁶ Tr., p. 101, lines 14-16

1 supervisor);⁵⁷ whether she had shouted at Respondent at the time of the
2 harassment;⁵⁸ and whether she subsequently discussed the matter with Respondent.⁵⁹

3 Moreover, Ms. Andersen could not "recall" elements of her conversations with her
4 attorney, Mr. Weyrich.⁶⁰ No corroborating documentation was produced by Ms.
5 Andersen even though she had sought legal counsel. She had destroyed her own copy
6 of a letter sent to Judge Wilcox, and Mr. Weyrich's notes gave no indication that he had
7 been informed of the assault (Mr. Weyrich could not recollect any of his conversations
8 with Ms. Andersen.)

9 Mr. Andersen was the only witness to attest to having been specifically informed
10 by Complainant that she had been physically harassed by Respondent. (Ms. Parker
11 referred to Ms. Andersen's "rebuff" of Respondent's advances⁶¹.) However, no
12 corroborative testimony was offered, even from Mr. Andersen, with respect to having
13 been told by Complainant that the Respondent had said to her, "I can't get you pregnant,
14 obviously", as Finding II.C.7 indicates.⁶²

15 Ms. Andersen was justifiably upset about her termination. The process employed
16 was deplorable, and she was unemployed for several months as a result. (Counsel failed
17 to prove that her termination was connected in any way to the alleged harassment.) The
18 anger Ms. Andersen has acknowledged and manifested towards Respondent;⁶³ the
19

20 ⁵⁷ Tr., p. 101, lines 11-12

21 ⁵⁸ Tr., p. 99, lines 4-5

22 ⁵⁹ Tr., p. 79, lines 14-16

23 ⁶⁰ Tr., p. 105-106

24 ⁶¹ Tr., p. 158, lines 12-15

25 ⁶² Tr., p. 422, lines 21-23

26 ⁶³ Tr., p. 111, lines 13-14

1 potential that she may have tried to manipulate Dr. Hedrick's evaluation; and the issues
2 of inconsistency in her testimony undermines her portrayal of the alleged assault and any
3 comments related with it. Respondent denies the events described by Ms. Andersen had
4 ever happened, but more importantly, insufficient evidence was introduced to
5 demonstrate that Respondent had abused or harassed Ms. Andersen.

6 Counsel's case, under these circumstances, does not rise to the level of clear,
7 cogent and convincing evidence. I dissent from Finding II.C.7 and Conclusion III.A.1.

8 8. LYNNE WILCOX

9 Dr. Hedrick acknowledged that it was "more difficult" to evaluate Mrs. Wilcox's
10 report for the presence of a "secondary gain". Her "ability to assess (the complaint of
11 Lynne Wilcox) completely was somewhat limited"⁶⁴ because of the "mixed emotions and
12 mixed motives" involved in a divorce.⁶⁵

13 Mrs. Wilcox filed her complaint with the Commission within a month of the entry
14 of the decree dissolving her marriage to Respondent.⁶⁶ In the divorce proceedings,
15 Mrs. Wilcox had asked for \$3,500 per month to support herself and her adult
16 daughter.⁶⁷ The judge granted \$800 per month for three months.⁶⁸ The timing of the
17 decree and the submission of Mrs. Wilcox's complaint illustrates her attitude at the time:
18 She was angry.

19 The record establishes a pattern of threats being issued by Mrs. Wilcox.
20 Respondent alleges that Mrs. Wilcox had threatened to "turn him into the Judicial Conduct
21

22 ⁶⁴ Tr., p. 622, lines 13-14

23 ⁶⁵ Tr., p. 622, line 11

24 ⁶⁶ Tr., p. 517, lines 5-11

25 ⁶⁷ Tr., p. 501, lines 15-17

26 ⁶⁸ Tr., p. 502, lines 2-4

Commission" if he didn't pay her \$100,000,⁶⁹ an allegation Mrs. Wilcox denied.⁷⁰ Mildred Anderson testified that Mrs. Wilcox had told her, "I'm going to get even with him";⁷¹ Mrs. Wilcox also denied having made this comment.⁷² Mildred Anderson further reported that Mrs. Wilcox threatened to bring a perjury charge against her,⁷³ and Ms. Broadhurst added that Mrs. Wilcox "made the comment that she was going to take him to the cleaners".⁷⁴ Moreover, Mrs. Wilcox testified before the Commission that when she was returning home with Respondent the day following the judicial conference, she said: "Do you know what my sons would do if they knew what you did to me last night?"⁷⁵

Mrs. Wilcox's description of some events contradicts accounts given by other witnesses. First of all, she characterized the mitigation hearing (Finding II.B.11) as having occurred at night, when no court employees were present.⁷⁶ Two court employees and Respondent testified that the "hearing" happened during the day and in the presence of others.⁷⁷ Second, she testified that she did not discuss her complaint with Mr. Walker during 1994, while he was opposing Respondent in an election;⁷⁸ Mr. Walker recalled

⁶⁹ Tr., p. 1196-1197, lines 24-9

⁷⁰ Tr., p. 515, lines 4-6

⁷¹ Tr., p. 1106, lines 12-19

⁷² Tr., p. 502, line 23

⁷³ Tr., p. 1109, lines 14-15

⁷⁴ Tr., p. 1115, lines 1-2

⁷⁵ Tr., p. 477, lines 5-6

⁷⁶ Tr., p. 490-491, lines 17-17

⁷⁷ Tr., p. 490, lines 17-19

⁷⁸ Tr., p. 527, lines 12-13 and p. 528, lines 3-9

1 that she had.⁷⁹ Furthermore, Mrs. Wilcox said that she had witnessed "in the courtroom"
2 the misconduct alleged by Mr. Millikan (Finding II.B.3),⁸⁰ while Mr. Millikan stated in a
3 deposition dated August 3, 1995, that his "conversation" with Respondent "was strictly
4 private".⁸¹ In his Declaration (Exhibit #34), he affirmed that his exchange with
5 Respondent occurred "in a room behind the courtroom".

6 Where incidents of misconduct alleged by Mrs. Wilcox involved other parties, her
7 version of the events did not prevail with the Majority (i.e., mitigation hearing and Millikan).
8 If Mrs. Wilcox's representation of events in these circumstances were not acceptable, how
9 can one determine with factual clarity and confidence that her characterization of
10 uncorroborated claims are any more credible?

11 Finding II.B.11 summarizes Mrs. Wilcox's version of the "Richland" event, even
12 though Respondent and Complainant offered markedly different accounts of the incident.
13 Without independent confirmation of what transpired, it is difficult to truly discern the
14 extent of the assault with the evidence presented. For that reason, I am compelled to
15 accept Respondent's admission to a lesser degree of physical assault than that in Finding
16 II.B.11.

17 I also disagree with the finding that Respondent had "verbally assaulted" his wife.
18 Judge Clough testified that Mr. and Mrs. Wilcox argued in his presence; this
19 unequivocally proves that they had engaged in at least a verbal dispute. An extension
20 of the Canons to the private discourse between a judge and a spouse, however,
21 establishes a bad precedent: Should the Canons be employed to preclude private
22 disputes between a judge and a spouse?

24 ⁷⁹ Tr., p. 967-968, lines 25-4

25 ⁸⁰ Tr., p. 488, lines 11-12

26 ⁸¹ Dep. p. 19, lines 12-13 and line 25


1 9. SANCTION

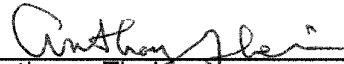
2 I concur with the Order of Censure and all Conclusions, with the exception of III.A.2
3 and III.A.3. My dissent from III.A.3 is limited only to its reference to Finding II.B.11.

4 I believe that violations of the Code of Judicial Conduct occurred with respect to
5 Respondent's pattern of showing favoritism in the courtroom (Findings II.C.1, II.C.2 and
6 II.C.4), and his physical assault of Complainant, Mrs. Wilcox. The former conduct
7 constitutes a violation of Canons 1, 2(A) and 2(B) of the Code of Judicial Conduct, while
8 the latter equates to a violation of Canons 1, 2 and 2(A).

9 I do not concur that Respondent must continue psychological counseling under
10 the direction of the Commission, because I disagree that Respondent had engaged in
11 any behavior warranting such corrective action. The Majority believes that Respondent
12 has difficulty comprehending "personal boundaries". While this may or may not be true,
13 it at least raises the possibility that the conduct the Majority construed as being sexual
14 may not have been sexual at all; instead, his behavior may have simply been a
15 manifestation of an inability to discern personal "boundaries".

16 DATED this 1st day of December, 1995.

17
18 
K. Collins Sprague


Anthony Thein

19
20 
Margo Keller


Hon. Philip J. Thompson