



received the Notice of Cross-Motion to Dismiss the Amended Petition along with a revised memorandum of law from my adversary, the New York State Attorney General which, accordingly, had an additional point, viz., arguments addressed to my additional allegations of violation of the criteria established by Article 78, supra.

5. As most of the arguments on this proceeding are questions of law, I respectfully refer the Court to my memorandum of law herewith. However, I do want to expand the record by way of three articles from the New York Law Journal.

Attached hereto as Exhibit D are articles from the April 5, 1999 issue (pg. 1, col. 6) and the April 12, 1999 issue (pg. 1, col. 5). Both of these are reports of conduct by the subject of the complaint, Judge Recant, while on the bench, which includes her actually handcuffing a lawyer "to a bench in the well of" the courtroom, in public.

The next article (Exhibit E) is from the June 30, 1999 issue (pg. 1, col. 5), and discusses the recent work of the respondent herein, the Commission. It seems that the Commission has not once, during 1998, disciplined a New York City Judge for conduct such as that alleged in this petition.

6. One can conclude from Exhibit E that either no New York City Judges have changed a ruling because they did not like the attorney, or, if they did, it was not reported. Another alternative, of course, is that such violations were reported, but the Commission just did not do anything about it.

7. What is also notable in this case is that the respondent's attorney, the Department of Law of the State of New York, throughout its copious memorandum of law to the Court, HAS NOT EVEN ADDRESSED the fundamental issue before the Court; that is, Judge Recant's (alleged) flagrant violations of changing a ruling in a case because she did not like the attorney, having an ex parte communication with the attorney about changing the ruling back, and removing a member of the public from the Court for no reason other than personal dislike, not to mention intemperant conduct on the bench.

8. Why are these points not even referred to in the opposition on behalf of Eliot Spitzer, the Attorney General of the State of New York?

9. The main issue, as far as I am concerned, is not whether I will win or lose this proceeding at nisi prius, but whether the Judge deciding this proceeding will actually make a ruling based upon the allegations against Judge Recant.

10. It cannot be over-emphasized that this proceeding is strictly a challenge to the Commission's right to disregard the allegations.

11. This proceeding is not for a determination as to whether or not Judge Recant actually committed these actions.

12. The allegations of serious misconduct by Judge Recant were made to the respondent, and the respondent simply said that the allegations were insufficient. That is the issue here. I do not see how that issue cannot be addressed by the Court without

actually evaluating the sufficiency of the allegations I made about Judge Recant to the Commission.

13. The Court is respectfully referred to my Memorandum of Law herewith.

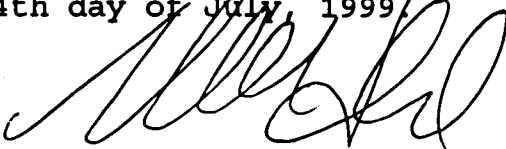
WHEREFORE, I respectfully reiterate the request made by me on the Amended Petition.



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MICHAEL MANTELL

Sworn to before me this  
14th day of July, 1999.



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Notary Public

MICHAEL HASKE  
NOTARY PUBLIC, State of New York  
No. 4637087 Qualified in Nassau County  
Commission Expires Oct. 31, 2000

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4/5/99 NYLJ Page 1, col. 6

## Lawyer Cuffed In Courtroom For Rudeness

BY DANIEL WISE

A LEGAL Aid lawyer was handcuffed to a bench for more than an hour and held in custody for more than four hours for contempt of court on Friday.

Judge Donna Recant sentenced the lawyer, Arnold Levine, to a total of 10 days in jail for failing to apologize for making a "rude" remark, according to a transcript that recorded a portion of Friday's events.

Mr. Levine was released at about 3:30 p.m. when State Supreme Court Justice Herbert Adlerberg issued an order staying the contempt sentence.

About 75 Legal Aid and other lawyers gathered in Judge Recant's courtroom shortly after Mr. Levine was handcuffed to a bench in the well of All Purpose Part 7 at 100 Centre Street. A similar number of lawyers assembled in Justice Adlerberg's courtroom after lunch when Mr. Levine's supervisors presented their stay application.

Judge Recant and Mr. Levine have different versions of what triggered the confrontation.

Although the initial incident was not a part of the official court record, Judge Recant gave her version for the record during the contempt proceeding. According to the transcript, she stated that after Mr. Levine had ignored "repeated warnings" to be quiet and sit down, he had made

Continued on page 5, column 1

Continued from page 1, column 6

insulting remarks "in a loud, clear voice halfway across the courtroom" for the purpose of "showing disrespect and contempt to this court."

According to Michael Letwin, the president of the Legal Aid union, Mr. Levine and other witnesses in the courtroom dispute that he had been warned several times. Instead, Mr. Letwin said that after being told to either sit down or leave the courtroom, Mr. Levine, who at the time was standing inside the rail, responded to the judge "I really can't stand what's going on here so I'm leaving anyway."

According to Mr. Letwin, Mr. Levine was referring to the fact that Judge Recant had made a number of "nasty" remarks to junior Legal Aid attorneys assigned to the part and defendants during the morning's proceedings.

Both sides are in agreement that when Judge Recant ordered Mr. Levine to apologize a short while later, he failed to do so. According to the transcript, Judge Recant demanded an apology, stating "you interrupted this court, and then you made a rude remark which you do not have a right to do."

At that point Mr. Levine interjected,

"Do you have a right to do that?"

Judge Recant responded, "you are in contempt, sir. I warned you, and now you are in contempt. I want him handcuffed."

Later, represented by a Legal Aid supervisor, Mr. Levine did apologize, saying, "I recognize that my action was disrespectful to the court, and I apologize to the court."

Judge Recant, however, said that the apology had come too late after he had already been given an opportunity to purge his remark, but had not availed himself of it.

### Earlier Incident

Office of Court Administration spokesman David Bookstaver said that Judge Recant had held Mr. Levine in contempt of court for using a profanity in her courtroom in June 1995. In that incident, Mr. Bookstaver said, Judge Recant had permitted Mr. Levine to purge the contempt by apologizing.

Mr. Levine's lawyer, Susan Hendricks, who is the director of Legal Aid's special litigation unit, said she was not familiar with the details of the earlier incident, but that it had been discussed with Mr. Levine's supervisors at Legal Aid.

ED "D"

The Eastern District is seeking additional attorneys to apply for membership on the court's Mediation Panel. In particular, the panel is seeking applications from attorneys specializing in tort law and employment law. Panel attorneys, who serve without compensation, must have been in practice for a minimum of five years, and must be admitted to practice in the Eastern District. Applications and additional information are available by contacting ADR administrator Gerald P. Lepp at the Eastern District courthouse in Brooklyn. Details appear in a court note on page 47.

Tenzer Mittman... unfair-business company tickets the 1994 merit, first De... eming a dismissal... the and... re con... have."... p. Mitt... col. 6.

**Profiles from the Bench:** Justice Alan L. Lebowitz, on page 4. Prior judicial profiles can be found online at <http://www.nylj.com>



paid for benefits paid to injured smokers, were too remote to be actionable. The decision is the Second Circuit's first pronouncement on claims for reimbursement by union health funds against tobacco companies, and appears to be just the second ruling nationwide by a federal appeals court on such claims. Last month, a Third Circuit appeals

ed in a conspiracy to deceive the public about the health risks of smoking and the addictiveness of nicotine. This conspiracy, the complaint said, cost the funds millions of dollars more than they would have spent on the tobacco-related illnesses of fund beneficiaries. In knocking out those claims, the

## Court Officials Probe Threats Made to Judge

BY DANIEL WISE

THE OFFICE of Court Administration has started a probe to identify Legal Aid Society attorneys who allegedly made threatening remarks about Criminal Court Judge Donna G. Recant after she sentenced a Legal Aid lawyer earlier this month to 10 days in jail for contempt.

Court officers assigned to Judge Recant's courtroom filed written reports, stating that when the courtroom was cleared after the contempt sentence was issued on April 2, several Legal Aid lawyers either threatened to harm Judge Recant or threatened to damage her car, according to sources who have seen the reports.

Legal Aid management and its union leadership vigorously denied any improper conduct on the part of the 75 lawyers who had gathered in

Continued on page 8, column 4

4/2/92 ■ IN THE COURTS



**MAKING CHANGES:** Paul Morrell supervised the Administration computer programmers working on a large screen.

## Judiciary Nears Jud On Year 2000 Upgr

BY DANIEL WISE

MAY 15 is Y2K-Day for the criminal courts in New York City, Buffalo and their suburbs.

On that day, the hundreds of computer programs used in the operation of those courts, all of them upgraded to recognize the year 2000, will be switched on for the first time.

The switchover in the criminal courts is part of a massive conversion that, by the time it is finished, will require Office of Court Administration computer technicians to comb through 7,400 programs and 4 million lines of code looking for date references on OCA's powerful Hitachi computer, which serves courts in the state's 13 most populous counties.

Much of the job, 92 percent, is already completed, according to Noel Adler, the OCA official in charge of the Y2K conversion. The

Ex + D

More Y2K stories appear on NYLJ.com.



Housing and the Court... dates la... diciary... tributa... work... \$600,00... nearly... ware... have be... ect to... puter... Sever... views w... praise... some... enough... ing. OC

## IDE COUNSEL

ngle and Charlotte Biblow... Cases Allow Discovery... academic and I.Q. Records



Alan C. Eagle



Charlotte Biblow

necessary disclosure may be had of "any other person, upon notice stating the circumstances or reason such disclosure is sought or required."

Defendants in lawsuits brought in New York State courts on behalf of young children seeking damages for personal injuries allegedly caused by the ingestion of lead-based paint often rely on these rules to obtain pre-trial discovery of the academic and I.Q. records of plaintiffs' siblings and parents. The argument is that the learning disability or decreased I.Q. allegedly suffered by the infant plaintiff may be due to factors such as heredity or environment,

rather than exposure to lead paint, and that sibling and parent records may lead to the discovery of admissible or relevant evidence that will help to determine the etiology of the infant plaintiff's alleged injuries.

Generally speaking, New York

Continued on page 5, column 1

## Anderson Kill Firings Fueled New Defection

BY LISA BRENNAN

WHEN ANDERSON Kill & Olick P.C. fired trial lawyer John W. Fried along with 21 of its 130 partners on March 12, the ailing firm inadvertently triggered a further defection. (NYLJ, March 16.)

According to Mr. Fried and three other partners, Lee M. Epstein, a partner in Anderson Kill's Philadelphia office, was so incensed by Mr. Fried's ouster that he demanded an immediate explanation from the firm's new managing partner, Jeffrey Glatzer, and his predecessor, Larry Kill. Mr. Epstein told them that by firing Mr. Fried, they risked losing a multi-million-dollar insurance coverage case involving TWA, scheduled for tri-

Continued on page 8, column 4

ork law... rial and... tto Bib... Rivkin... ent defen... including... pant.

# OCA Launches Probe of Threats to Judge

Continued from page 1, column 3

Judge Recant's courtroom in a show of support for a union member as he was about to be held in contempt.

The court officers' reports, sources said, accused one male Legal Aid attorney of stating "Send the b--- out, we will rip her f---ing head off." Another male attorney was accused of saying, "I know her car, let's go f--- it up."

A third Legal Aid attorney, a female, was accused of telling a court officer, after repeatedly refusing requests to leave the courtroom, that "if you make me go out in the hallway I am going to assault that judge."

There was no indication that the threats were made in Judge Recant's presence.

OCA spokesperson David Bookstaver said that court officials viewed the reports as "extremely serious" and are conducting an investigation "to determine exactly what was said and by whom." If any Legal Aid attorneys are identified as having uttered threats, he said, complaints would be filed with the Disciplinary Committee for the Appellate Division, First Department.

Mr. Bookstaver also said that court officials are attempting to determine whether Legal Aid attorneys had "institutionally abandoned" their duties.

Steven M. Fishner, Mayor Giuliani's Criminal Justice Coordinator, who is in charge of overseeing Legal Aid's contract of \$57.6 million this year, also said there was "great concern about the disruption of defense services" when the Legal Aid attorneys gathered in the courtroom. "The matter is being reviewed," he added.

Michelle Maxian, the head of Legal Aid's Criminal Defense Division, said

that information she received from several Legal Aid supervisors, who were in Judge Recant's courtroom a week ago Friday, was that directives to leave the court had been complied with and that no threatening remarks had been made.

## Attorneys Defended

Michael Letwin, the president of the Association of Legal Aid Attorneys, called the court officers' accusations "a complete fabrication."

Mr. Letwin added that Legal Aid attorneys had massed in Judge Recant's courtroom at 100 Centre Street because of a union policy to show support whenever any member is jailed or handcuffed because "it could happen to any of us."

Ms. Maxian agreed that Legal Aid staff lawyers had acted "appropriately" because they had a "personal interest" in attending a court proceeding in which "a member of their firm was being incarcerated."

Ms. Maxian denied that there had been any substantial disruption of court functions, saying that the attorneys had "at most" been away from their assigned parts for an hour before lunch, and an hour after. Once the proceedings relating to the contempt were over, they resumed their duties and finished their calendars, she said.

## Pointed Exchange

Judge Recant had held a senior Legal Aid attorney, Arnold Levine, in contempt of court, for refusing to apologize after he allegedly made a "rude" remark when she told him to be quiet or sit down on April 2. Before issuing a 10-day jail sentence, the

judge had ordered Mr. Levine handcuffed to a bench in the well of her court. He remained handcuffed for more than an hour and was held in custody for about four hours (NYLJ, April 8).

Mr. Levine was reported to have told Judge Recant, after being told to be quiet or leave, "I can't stand what's going on here so I am leaving anyway."

When the judge demanded that Mr. Levine apologize for having "made a rude remark which you have no right to do," Mr. Levine responded with the question, "Do you have the right to do that?"

At that point Judge Recant ordered Mr. Levine handcuffed and informed him that he was in contempt of court.

As word of the confrontation spread throughout the courthouse, about 75 Legal Aid attorneys and other defense lawyers gathered in Judge Recant's courtroom and were in attendance a short while later when she sentenced Mr. Levine to jail.

Mr. Bookstaver said that the confrontation between Mr. Levine and Judge Recant was the second in the past five years. In 1994, he reported, Judge Recant held Mr. Levine in contempt, but later relented, when he apologized for swearing at her.

Mr. Letwin, the union president, however, accused Judge Recant of having a history of being "disrespectful to Legal Aid lawyers and their clients." Mr. Levine had witnessed that type of disrespect on April 2 and objected to it, Mr. Letwin said.

Later in the day on April 2, Justice Herbert Adlerberg stayed the jail sentence and set a hearing for May 25 on Mr. Levine's request for a writ vacating the contempt order.

# Anderson Kill Firings Lead to New Defection

Continued from page 1, column 3

al on June 14. Mr. Epstein had originated the case, and Mr. Fried was preparing it for trial.

But Messrs. Glatzer and Kill refused to reconsider. So Mr. Epstein quit on March 19 to form a new firm with Mr. Fried. But he will stay at Anderson Kill until May 19 because the firm is enforcing a provision in its shareholders' agreement that requires with-

looking forward to being my own boss."

Although Anderson Kill said that the March 12 cuts were necessary because of a decline in insurance coverage work — the firm's bread and butter — lawyers at other firms who represent policyholders and insurance companies have said the area is booming. (NYLJ, March 29)

Four current and former partners insist that the firm had to take drastic measures because it failed to deal

found out from Mr. Glatzer that he had been fired. "He said, 'John, we've decided to let you go,'" Mr. Fried recalled. "You're not the only one. We'll do what we can to make the transition as nonstressful as possible."

After getting his pink slip, Mr. Fried said, he continued with his deposition, then returned to his office, packed up his belongings, and by the following Monday, was leasing office space at 1250 Broadway from New

# More Money, Complaints for Judges' Conduct Panel

BY VICTORIA RIVKIN

THE YEAR 1998 for the New York State Commission on Judicial Conduct was marked by an increased budget and a small rise in the number of complaints filed against state judges, according to the commission's annual report.

The report, released last week, reported that the commission spent \$1.876 million in 1998, an increase of 8 percent over the prior year.

Also, the number of complaints against judges was up 3.3 percent last year, when the commission fielded

1,451 complaints, an increase of 48 from 1997.

The jump is not unusual: The number of complaints filed with the commission has gone up fairly steadily over the 24 years of its operation. But the largest number of complaints ever received was in 1996, when 1,490 complaints were filed.

Link to NYLJ.com for the Commission's annual report.



Most complaints are thrown out following an initial review. For example, last year, 85 percent were dismissed without investigation, primarily because they concerned a judge's ruling and did not involve alleged misconduct, or were outside the commission's jurisdiction. Judges outside the state unified court system, such as federal judges, administrative and New York City Housing Court judges, cannot be investigated by the conduct commission.

Because of the budget increase, the  
Continued on page 2, column 5

## Judicial Conduct Panel Report

Continued from page 1, column 5

panel was able to hire seven more employees in 1998. Although the commission now employs 27 individuals, the total remains less than half the staff in 1978 when it began operating.

The added staff and investigators allowed the commission to initiate 215 new investigations in 1998, and conclude 154.

Although the commission brought 26 new complaints on its own, the majority were received from civil litigants and defendants in criminal cases, as in the previous year.

In 1998, the commission determined that 22 judges should be publicly disciplined for misconduct. Sixteen of the 22 judges were town or village justices, who make up 69 percent of the state's judiciary.

### Public Discipline

Three Supreme Court justices, Luther V. Dye of Queens, Douglas E. McKeon of the Bronx and William Polito of Rochester, were publicly disciplined.

Judge Dye was censured for "repeatedly making inappropriate comments to his secretary concerning... her physical appearance and his interest in having sex with her."

Judge McKeon was censured for "using the influence of his judicial office with a lawyer who regularly appeared before him to hire a particular woman... and making public comments on television concerning the O.J. Simpson case."

And Judge Polito was admonished for "running graphic and sensational campaign advertisements which portrayed him as biased against criminal defendants."

Three town or village justices were removed from office: Frieda B. Coble, a part-time Village Justice of Earlville, Madison County; Ralph T. Romano, a part-time Town Justice of Haverstraw and Acting Village Justice of West Haverstraw, Rockland County; and Klaus

Sohns, a part-time Town Justice of Franklin, Delaware County. Twelve judges resigned while under investigation or formal charges.

Since 1975, the commission has received 24,294 complaints and conducted 4,994 investigations. Since its inception, more than 400 judges have been publicly disciplined for judicial misconduct, including 127 who were removed from office.

The commission has also confidentially cautioned 913 judges, and 284 have resigned while under investigation or formal charges.

### Demolition Stayed

Continued from page 1, column 4

enforcement is left to the agencies," Ms. Amron countered.

The parties disagreed on the facts as well as the law.

Although the ruling technically applies to some 750 lots in the city, Judge Straub repeatedly asked Mr. Maer how many lots would be affected. Mr. Maer conceded that it would be just over a dozen.

### Just a Few Lots

But Ms. Amron, who had argued that an extended stay would jeopardize private and public financing for the sale of many of the gardens, said the brief stay would affect only a few lots that were scheduled to be sold before July 12.

The arguments came one month after Southern District Judge Allen G. Schwartz rejected the arguments of the conservationists and denied their request for a stay pending appeal.

"That issue was fully briefed at the District Court and the judge agreed with us, but for some reason [the plaintiffs] never fully addressed the issue," Ms. Amron said later.

Yesterday, Mr. Maer argued that the Second Circuit case of *Bryan v. Koch*, 627 F.2d 612 (1980) proved his point. He said the Second Circuit found a disparate impact on minority communities with the closing of a single hospital in Harlem.

But Ms. Amron said that *Bryan v. Koch* never directly addressed the issue of a private right of action and that the Second Circuit had yet to do so.

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### CORRECTION

A June 29 Management & Technology column (p.2), "Ways to Combat High Office Rents," incorrectly stated that Manhattan buildings with street addresses are more expensive than those with avenue addresses. The author, Harvey Kleinman, intended to say that street addresses are less expensive than avenue addresses.

EX "2"