

(No. 79 CC 2.—Complaint dismissed.)

In re CIRCUIT JUDGE KEITH E. CAMPBELL of the
Eleventh Judicial Circuit, Respondent.

Order entered July 15, 1980.

SYLLABUS

On September 21, 1979, the Judicial Inquiry Board filed a multi-paragraph complaint with the Courts Commission, alleging that certain conduct of the respondent constituted a gross abuse of judicial power that is prejudicial to the administration of justice and brings the judicial office into disrepute. In summary form, the charges were: that while the respondent presided in a bench trial in a criminal case, two free lance newspaper reporters came to the respondent's courtroom to observe the proceedings; that the reporters took seats in the spectator's section and one of them began to sketch, without disrupting or interfering with the proceedings, the picture of a witness who was testifying; that the respondent, in a sarcastic, intemperate and rude manner, ordered the reporters expelled from the courtroom without explanation; that thereafter the respondent ordered the courtroom doors locked for the remainder of the trial, thereby excluding the public from the trial; that the reporters' presence and actions did not interrupt the proceedings in the courtroom; and that by engaging in such conduct, the respondent violated Supreme Court Rules 61(c)(1), 61(c)(3), 61(c)(4) and 61(c)(8) (Ill. Rev. Stat. 1977, ch. 110A, pars. 61(c)(1), (3), (4) and (8)).

Held: Complaint dismissed.

Devoe, Shadur & Krupp, of Chicago, for Judicial Inquiry Board.

Jerome Mirza and Associates, Ltd., of Bloomington, for respondent.

Before the COURTS COMMISSION: RYAN, J., chairman, and SEIDENFELD, McGLOON (alternate), HUNT and MURRAY, JJ., commissioners. ALL CONCUR.

ORDER

The Illinois Judicial Inquiry Board (Board) filed a Complaint with the Illinois Courts Commission

(Commission) charging Circuit Judge Keith E. Campbell (respondent) of the Eleventh Judicial Circuit with gross abuse of judicial power and conduct that is prejudicial to the administration of justice and brings the judicial office into disrepute. Specifically, the Complaint charges that on September 1, 1978 the respondent evicted two reporters from a courtroom during a hearing and ordered that the doors to the courtroom be locked.

Thomas Pouliot and David Nelson were reporters who regularly contributed articles to the Post-American newspaper, published and circulated at irregular intervals in the Bloomington-Normal area in McLean County, Illinois. The paper is a "rights oriented" paper covering various controversial issues. The reporters regularly covered narcotics trials. They would, at a narcotics hearing, identify undercover narcotics agents and later photograph them. The pictures of the agents would then be printed in the Post-American paper as a warning to those handling narcotics that these people were agents.

On September 1, 1978, the respondent, without a jury, was conducting a hearing in a narcotics case. When court adjourned at noon, Susan Johns was testifying. She was not a narcotics agent, but was an employee of an agency whose duty it was to test and identify substances purporting to be narcotics. When court reconvened after lunch, Susan Johns did not continue her testimony immediately, but the court first disposed of some matters in another case and then she was recalled to the stand. It appears that Pouliot and Nelson entered the courtroom either just before, or at the time that the hearing resumed. Nelson was carrying a camera and Pouliot was carrying a backpack. There was testimony that there was talking between them as they entered the courtroom and that they continued to whisper, audible to the respondent, the court reporter and defense counsel in the case being tried. After the two reporters were seated,

Pouliot took a notebook from his backpack and pretended to sketch Susan Johns, who was then testifying. At this point, the respondent interrupted the proceedings. The transcript of the testimony at the hearing shows that the respondent, in addressing Pouliot and Nelson, stated that if they were making drawings of the witness, they could do so after she testified, in one of the anterooms but not in the courtroom and directed them to leave the courtroom. After an exchange of comments, the respondent requested the bailiff to take them out. After this brief interruption, the respondent continued with the hearing, and the bailiff escorted the two reporters from the courtroom. The reporters testified that the court directed the bailiff to take them out and to lock the doors, however, the transcript does not support the contention because there is no statement in the transcript about locking the doors.

When the two reporters were evicted, they remained in the hallway outside the courtroom. They saw a narcotics agent sitting in one of the conference rooms and they photographed him. A few minutes later, they saw another agent in the hallway and they photographed him also. They were then told by a deputy circuit clerk that an administrative order of the court prohibited the taking of pictures in the hallway adjacent to a courtroom, but the reporters, nonetheless, continued to attempt to take pictures. A deputy sheriff told them that he was directed to escort from the building anyone attempting to take pictures in the hallway. Nelson then took the film from his camera and threw it to a woman whom he knew, who was a short distance from him in the corridor. Nelson testified that they then took their camera equipment to their car and returned. Both reporters testified that they did not attempt to photograph a witness through the window in the courtroom door, however, the respondent testified that while a witness was on the stand, and during the

disturbance in the hallway, he saw someone put a camera to the glass in the door of the courtroom. One of the defense attorneys also testified that he saw a camera held up to the window in the door. He thought it was while agent Mark Williams was testifying. Mark Williams stated that while he was testifying in the narcotics case he saw someone put a camera to the window in the door and face it toward him. The court reporter at that time also testified that she saw both reporters look into the courtroom and at one time one of them held a camera to the window.

There is no doubt that the activities of the two reporters created a substantial disturbance in the hallway outside the courtroom. The respondent and other witnesses testified that they were able to observe people moving about in the hallway through the windows in the courtroom doors. The respondent stated that he recessed the hearing thinking this would eliminate the disturbance. When it continued, he stated that he told his staff to call the sheriff and he directed that the doors to the conference rooms be locked. After the sheriff was called, the respondent stated that he resumed the trial and directed the bailiff to *secure* the courtroom while the sheriff was clearing the hallway. He said that by securing the courtroom he meant that the bailiff should stand by the courtroom doors. He did not know that they were locked. It is not clear whether the courtroom was locked by the bailiff at this time as a result of this order, or whether the bailiff had locked the doors after evicting the two reporters. In any event, the evidence shows that the courtroom was locked at some time during the hearing.

The two reporters testified that when the respondent ordered them from the courtroom he was sarcastic, abrupt and mocking, and that they were not hostile and had created no disturbance. One of the defense attorneys in the case being heard confirmed the two reporters' contention that they were not disruptive while in the

courtroom by stating that he was not aware of their presence and didn't notice anyone being disturbed. He contradicted the reporters' description of the respondent's attitude, however, by stating that the respondent absolutely was not sarcastic or rude. He described the respondent as firm, but not rude. A deputy clerk and the witness, Susan Johns, stated that they had not noticed any disruption in the courtroom caused by the reporters before their eviction. The respondent testified that in addition to the whispering between the two reporters, Pouliot made certain noises by turning the papers on the pad on which he pretended to be sketching, and that he held the pad up high and to one side and made exaggerated motions as though sketching the witnesses. The respondent stated that he excluded the two reporters because he was being distracted from listening to the evidence. Another defense attorney in that case testified that before the judge spoke to the two reporters, he had heard movements in back of him and papers being turned. He noticed that the court reporter's attention was directed to the back of the room by the noise as she was trying to report the testimony. He also noticed that the respondent's attention had been diverted to the back of the room. He said that when the respondent addressed the two reporters, he was firm, but not rude. Contradicting the testimony of the reporters, this attorney said that when they spoke to the respondent, they were sarcastic, and were not polite. The court reporter testified that the two reporters were noisy when they entered the courtroom and they continued to whisper and shuffled papers when Susan Johns resumed the stand. The court reporter stated that her attention was distracted by the noise. She stated further that when the respondent addressed the two reporters, he was not rude, but the reporters, in their audible conversation with the respondent, to her seemed disrespectful.

It is quite evident that the purported sketching of the

witness, Susan Johns, was just a pretext, the purpose of which is not clear. Pouliot was not an artist and claimed no artistic ability. An article appearing in the October 1978 issue of *Post-Amerikan* was written following an interview with the two reporters. It describes Pouliot's artistic ability and the incident in question in this manner:

"Dave and Tom sat down in the back row of the spectators' section of Campbell's camp. Dave stashed his camera, knowing that an administrative order banned photography in the courtrooms, but Tom whipped out a steno book and began doodling, pretending to sketch the witness up front, a lab technician from Pekin. (Tom can't draw a recognizable sketch of a birdie on a mailbox, but he loves to play around.)"

The notebook in which he was supposedly sketching was introduced into evidence and it contains no sketches but notes of various kinds and some aimless scribbling of incoherent designs. The reporters testified that they were sketching the witness, Susan Johns, so that they could later identify her outside the courtroom and photograph her. However, their testimony further developed that they knew Susan Johns and therefore there was no need to sketch her for identification purposes. Also, she was known not to be an agent so the reason to photograph her was not present. This evidence, together with the testimony concerning the loud whispering, the rustling of papers and the exaggerated motions while pretending to sketch the witness, creates a strong inference that the reporters were in the courtroom either to intimidate the witness, or to in some manner disturb the decorum of the proceedings, or possibly to provoke the judge. Such a conclusion finds support in the above cited article in the *Post-Amerikan*, which, in describing the conduct of the two reporters following their eviction from the courtroom, stated:

“Tom and Dave, true to Post-American tradition, wandered the hushed hallways looking for trouble.”

In *In re Knowlton* (1979), 1 Ill. Cts. Com. 131, this Commission recognized the authority of a trial judge to maintain the proper atmosphere in which to conduct judicial proceedings through the use of contempt power. Of course, other methods less drastic may be utilized by the judge to accomplish this end, including evicting offenders from the courtroom. Under the evidence in this case, we cannot say that the Board has proven by clear and convincing evidence that the respondent acted in an arbitrary manner in evicting the two reporters or that his action in so doing constituted a gross abuse of judicial authority. The evidence which tends to support the contention that the respondent acted in an arbitrary manner comes primarily from the two reporters who were seriously discredited, as noted above, by their testimony that they were there to sketch the witness.

We are concerned about the fact that the courtroom was apparently locked at some time during the hearing. It is not clear as to how this came about. As noted earlier, the two reporters testified that when they were evicted, the respondent told the bailiff to lock the courtroom. However, the transcript of the proceedings, which contains the colloquy between the respondent and the reporters, says nothing about locking the courtroom. One of the defense counsel in the case on trial said that he heard the respondent tell the bailiff to lock the doors, but that was after the reporters had been evicted, and he admitted that the respondent may have been referring to the conference room doors. The respondent testified that during the commotion in the hallway outside the courtroom, he told the bailiff to lock the conference rooms and to *secure* the courtroom. In any event, the courtroom was locked during a part of the judicial proceeding, which, under the facts of this case, it should

not have been. See *Richmond Newspapers, Inc. v. Virginia* (1980), ___ U.S. ___, 100 S. Ct. 2814.

The Board presented no evidence to show that the respondent has evicted spectators from the courtroom, or locked the courtroom during hearings on other occasions. Therefore, even if the respondent's conduct in this respect can be characterized as an unauthorized exercise of judicial power, or an abuse of discretion, it constitutes but a single instance of such misconduct. Prior to July 15, 1976, Supreme Court Rule 62 (58 Ill. 2d R. 62) provided in part: "A judge who *consistently* violates the Standards of Judicial Conduct shall be subject to discipline by the Courts Commission." (Emphasis added.) By an amendment to Rule 62, effective July 15, 1976, the requirement that a judge *consistently* violate the Standards before discipline can be imposed was eliminated, and at the present time, Rule 62 does not require consistent violations. (73 Ill. 2d R. 62.) The change in the language of Rule 62, however, does not make every infraction subject to discipline. It does not, in fact, constitute a substantial change in the substance of the rule. Its effect is to acknowledge that there may be serious single violations of the Standards that will, by themselves, warrant discipline. Thus, this Commission acknowledged in *In re Knowlton* that a single act of abuse of judicial discretion may be so gross as to warrant discipline. However, the present version of Rule 62 continues to acknowledge that because of their general terms, the Standards as set out in Rule 61 (73 Ill. 2d R. 61) may be inadvertently violated on occasions by a judge and such conduct may be too insignificant to call for official action.

The Board charges that the conduct of the respondent constituted a gross abuse of judicial power and conduct that is prejudicial to the administration of justice, and brings the judicial office into disrepute. As

noted earlier, the charges as they relate to the respondent's conduct in evicting the two reporters were not proved by clear and convincing evidence. Likewise, the Board has not established by clear and convincing evidence that the respondent ordered the courtroom locked. The evidence does reflect, however, that the respondent conducted a part of the hearings behind locked doors. This single act does not reflect a general arbitrariness of the respondent in the performance of his judicial functions or the exercise of judicial authority. This single act is not such a gross violation of the general Standards of Judicial Conduct set out in Supreme Court Rule 61 (73 Ill. 2d R. 61) as to require the imposition of discipline.

The Complaint is, for the above reasons, dismissed.

Complaint dismissed.
