



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 01-0743-DI

PUBLIC REPRIMAND

**HONORABLE RICK DAVIS
272ND JUDICIAL DISTRICT COURT
BRYAN, BRAZOS COUNTY, TEXAS**

The allegations before the State Commission on Judicial Conduct (the Commission) were that the Honorable Rick Davis, judge of the 272nd District Court, singled out and verbally abused a relatively new Brazos County assistant district attorney for allegedly trying to undermine his authority in a criminal case, then made profane comments to the Brazos County District Attorney that escalated the already contentious situation even further. Not satisfied with presenting his concerns about the conduct of the young prosecutor to her boss, the district attorney, Judge Davis sent his grievance with the prosecutor to the local media, casting public discredit upon the judiciary and casting reasonable doubt on his ability as a judge to act impartially and fairly. Based on the facts and evidence presented in this case, the Commission finds that a **Public Reprimand** is appropriate.

BACKGROUND

Judge Davis' problems with Brazos County District Attorney Bill Turner and prosecutor Laura Cass stemmed from an April 18, 2001 probation revocation hearing. At the conclusion of that hearing, Judge Davis allowed defendant Joe Friday Rodriguez, Jr., to remain free in order to enable the man to make some progress towards meeting an outstanding child support obligation. At the time of the hearing, a warrant for Rodriguez' arrest was pending in a second child support-related matter. After the revocation hearing, Cass, under the direction of a supervisor, contacted the assistant attorney general in charge of the second matter and informed him of Rodriguez' release

so that the defendant could be arrested on the outstanding warrant. As a result of Cass' conversation with the assistant attorney general, Judge Davis felt that Cass had attempted to undermine his authority.

On April 24, 2001, Judge Davis humiliated Cass in open court and in the presence of 15 to 20 people by yelling, ". . . Ms. Cass, I conclude that you have engaged in conduct that is sneaky, surreptitious, and was deliberately calculated to undermine this court's intention with respect to this defendant, Joe Friday Rodriguez, Jr. You are not welcome in the court."

That afternoon, Judge Davis sent a letter to Turner expressing displeasure that Cass had attempted to "push" an outstanding warrant on a defendant, who the judge wanted released from custody. In his letter to Turner, Judge Davis wrote that Cass acted with "gross misconduct" and that he regarded her actions "as a sneaky, surreptitious and calculated effort to undermine the Court's intended course of action with this particular defendant" In the letter, the judge also requested that Cass be reassigned to another courtroom.

Although Turner was out of town when the April 24th letter was delivered to his office, Judge Davis immediately forwarded this letter, and the record from the two hearings involving the still pending Rodriguez case, to various media outlets, exposing the conflict to public scrutiny. The story ran on at least one local television news station that evening.

In an April 28, 2001 article that appeared in the *Bryan-College Station Eagle*, the reporter quoted Judge Davis' letter and recounted the contents of the court transcript relating to the April 24th hearing. Judge Davis informed the newspaper reporter that "not only did the prosecutor thumb her nose at me, she stuck her tongue out at me" in pushing Rodriguez' warrant. Judge Davis also told the reporter, "I think it is inappropriate for a lawyer who has been licensed less than six months to take it upon herself to thwart my considered decision." After disclosing his contempt for Cass' actions, the judge informed the reporter that he "will never let a dispute with a lawyer affect my personal judgment on a case and will never hold it against a litigant, including the state of Texas."

The article also included a response by Turner and an analysis of the entire situation by Neil McCabe, a professor at South Texas College of Law in Houston. Professor McCabe, who is identified in the article as also being a criminal defense attorney, stated that he supported Cass' decisions and remarked, "I can understand the judge not being happy with it [Cass' action], but it's not misconduct on the part of the prosecutor. It sounds to me like the [assistant district attorney] is doing her job." McCabe expressed more concern about Judge Davis' apparent efforts to oust Cass from his courtroom by publicly pressuring the district attorney via the media. "The judge acts as though it's the judge's courtroom," McCabe said. "It's not. It's the people's courtroom . . . I've got a real problem with the judge trying to use the media to put pressure on the DA to get what he wants. The judge's behavior raises questions about his conduct, not so much the prosecutor's conduct."

In his written response to the Commission's inquiry, Judge Davis stated that he contacted the media because he "was already aware of Mr. Turner's office's manipulation of the truth with the media in the past, and, in light of what I perceived to

be nefarious conduct on the part of Ms. Lalk [one of Turner's assistants] that afternoon, I wanted to ensure that the media had at least some source of information that was accurate." The judge also stated that he believed Turner frequently manipulated the media to advance his own interests and that reporters hung around in his assistants' offices on a regular basis.

In an interview with a staff investigator, Turner denied the judge's allegation, stating that while reporters socialize with some of his staff and stop by his office for interviews, he does not consider the news media his ally, nor does he influence the editorial content of broadcasts and newsprints.

In an undated letter received by Turner in May 2001, Judge Davis again remarked negatively on Cass' character by writing, "Because of you and your assistant, my work is not only a burden. It is drudgery. I look out over the courtroom and see a prosecutor whom I do not trust, whom I believe is treacherous, whom I believe probably has the compassion of an Auschwitz camp guard, and whom I believe would do anything to get her way."

In this communication with Turner, Judge Davis went on to make profane comments to Turner in response to criticism by Turner regarding one of the judge's bond rulings in an unrelated matter. Judge Davis wrote, "For you to characterize one of my decisions as being 'influenced by something coming out of the air conditioner vents' is contemptuous, and breeds a contemptuous attitude in your office. Do you not know that I anguish in prayer before God over many of my decisions? By mocking them, you invade God and my relationship, and it is as if you have defecated on Mt. Sinai, holy ground." A few paragraphs later, Judge Davis informed Turner that ". . . you brother, commit a capital sin in God's economy whenever you are contemptuous. When you say such things, it is just as bad in God's sight as if you were to duck into one of your assistant's offices and fornicate with one of your assistants. Furthermore, these sins have accumulated over time."

Judge Davis also included a Biblical passage that reads, "The wages of sin is death, but the gift of God is eternal life in Christ Jesus our Lord. Rom. 6:23." The judge also included the following passage: "The man who shows contempt for the judge or for the priest who stands ministering there to the LORD your God must be put to death. You must purge the evil from Israel. All the people will hear and be afraid, and will not be contemptuous again. Deut. 17:12-13."

Judge Davis testified before the Commission that one must consider his comments to Turner in the context of the close, spiritual relationship that existed between Turner and the judge and that revolved around theological discussion. According to Turner, however, "Judge Davis mischaracterized our relationship. He exaggerates the closeness of our personal interaction in an effort, in my judgment, to reduce the seriousness of this matter to a personality conflict between two previously close friends. . . . While it is true that I have had lunch with him three or four times over the past two years and he injected himself into an issue concerning the resignation of one of my employees, I would hardly describe the relationship as close."

In his complaint to the Commission, Turner stated that Judge Davis' "attacks upon the District Attorney's Office have escalated over the past few months to the point that I no longer believe he can be fair to the State."

PROCEEDINGS BEFORE THE COMMISSION

During its meeting in Austin, Texas, on February 7-8, 2002, the Commission concluded a review of allegations against the Honorable Rick Davis, Judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas. Judge Davis was advised by letter of the Commission's concerns and provided a written response. Judge Davis appeared before the Commission on February 7, 2002, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, Judge Davis was judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas.
2. On April 24, 2001, Judge Davis singled out and verbally attacked Laura Cass in an abusive manner for allegedly trying to undermine the judge's authority following an earlier revocation hearing. These attacks occurred in open court, during a court proceeding before 15 to 20 people, and in a letter to Cass' boss, Bill Turner.
3. In the April 24, 2001 letter to Turner, Judge Davis ridiculed and demeaned Cass and requested that she be reassigned to another court.
4. After delivering the letter to Turner's office, Judge Davis supplied members of the local media with copies of both the letter and two hearing transcripts that involved a still-pending case.
5. On the day of Judge Davis' contact with the media, Turner was out of town and had no opportunity to read the judge's letter.
6. The incident involving Judge Davis and Cass was aired on at least one television news station that evening. In addition to the letter and excerpts from the hearing transcripts, the judge's observations about his personal conflict with Cass were subsequently published in the *Bryan-College Station Eagle* on April 28, 2001.
7. In a subsequent correspondence, Judge Davis made profane comments to Turner and sent him Biblical passages that could be interpreted by the average reader as containing veiled threats.

RELEVANT STANDARDS

1. Article 5, §1-a(6)A of the Texas Constitution provides that any Texas justice or judge may be disciplined for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Canon 3B(4) of the Texas Code of Judicial Conduct states, in relevant part, that “[a] judge shall be patient, dignified and courteous to litigants, jurors, witnesses lawyers and other with whom the judge deals in an official capacity”
3. Canon 4A(1) of the Texas Code of Judicial Conduct states that “[a] judge shall conduct all the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.”
4. Canon 4A(2) of the Texas Code of Judicial Conduct states that “[a] judge shall conduct all the judge’s extra-judicial activities so that they do not interfere with the proper performance of judicial duties.”

CONCLUSIONS

The Commission concludes from the evidence presented that Judge Davis’ treatment of Laura Cass lacked the patience, dignity or courtesy required of a judicial officer in violation of Canon 3B(4) of the Texas Code of Judicial Conduct. It is the Commission’s opinion that Cass had not engaged in misconduct by informing another agency (the Attorney General’s Office) that a defendant with an outstanding warrant for his arrest had been released from custody by Judge Davis; rather, Cass, under the direction of a supervisor, was simply doing her job.

The Commission expresses great dismay at Judge Davis’ treatment of Cass, a young lawyer licensed less than one year at the time of this incident. In condemning Judge Davis’ very public methods of handling the situation, the Commission recognizes the historic role that the judiciary has played in mentoring young lawyers in order to foster the continually high ethical standards of the legal profession. The Commission is especially appalled at the highly inappropriate use by Judge Davis of the term “Auschwitz camp guard” in connection with Cass.

The Commission further concludes that in contacting the media regarding his personal prejudices against Cass, Judge Davis cast public discredit on the judiciary and reasonable doubt on his capacity to fairly judge future criminal cases brought before his court in violation of Article 5, §1-a(6)A of the Texas Constitution and Canon 4A of the Texas Code of Judicial Conduct. Although the judge told a reporter he would continue to rule on matters involving the State with impartiality, the Commission believes this comment does not ameliorate or eradicate the effect his other comments would have on the average reader.

Lastly, the Commission found that Judge Davis made profane comments in the course of various written communications to Turner. The Commission found that the

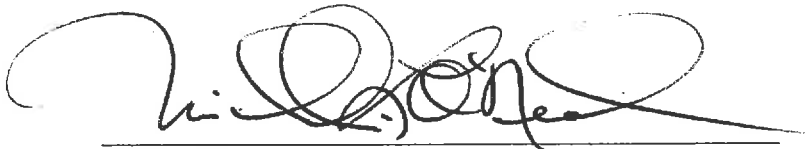
tenor and substance of the communications to Turner cast public discredit upon the judiciary in violation of Article 5, §1-a(6)A of the Texas Constitution.

In condemnation of the above-recited conduct that violated Article 5, §1-a(6)A of the Texas Constitution and Canons 3B(4), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Rick Davis, Judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas.

Pursuant to the authority contained in Article 5, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 1st day of March, 2002.

A handwritten signature in black ink, appearing to read "Michael O'Neal", written over a horizontal line.

Honorable Michael O'Neal, Chair
State Commission on Judicial Conduct