(No. 97 CC 3. - Respondent suspended.)

*In re* ASSOCIATE JUDGE JAMES M. RADCLIFFE
of the Circuit Court of St. Clair County, Respondent.

*Order entered August 23, 2001*

SYLLABUS

On December 2, 1997, the Judicial Inquiry Board filed a complaint with the Courts Commission, charging respondent with conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute in violation of the Code of Judicial Conduct, Illinois Supreme Court Rules 62 and 63. In summary form, the complaint alleged that, on September 1, 1992, respondent presided over a case requesting an injunction against a Special Agent of the Illinois Liquor Control Commission, who had been in the courthouse on a separate matter when he was served with a subpoena to appear; however, he had not been served with a copy of a summons or a petition for injunctive relief. Respondent permitted opposing counsel to question the agent, who along with the FBI had been conducting an undercover investigation of counsel's client for the unlawful use of video poker machines. Although the agent made requests for an attorney at the proceeding, respondent denied those requests and allowed the proceeding to continue. At the conclusion of the proceeding, respondent issued a ruling and entered a preliminary injunction against the agent without setting forth any specific findings of fact.

*Held:* Respondent suspended.

Sidley & Austin, of Chicago, for Judicial Inquiry Board.
Donovan, Rose, Nester & Szewczyk, P.C., of Belleville, for respondent.

Before the COURTS COMMISSION: McMORROW, Chairperson, FUNDERBURK, KNECHT, LAWRENCE, WALTER, and WOLFF, commissioners, CONCURRING; BUCKLEY, commissioner, DISSENTING.

ORDER

Associate Judge James M. Radcliffe (respondent) of the Circuit Court of St. Clair County was charged on December 2, 1997, in a complaint filed by the Judicial Inquiry Board (JIB) with conduct prejudicial to the administration of justice and conduct that brings the judicial office into disrepute.

At the Courts Commission hearing on April 2, 2001, respondent stipulated to and admitted each allegation of fact and each alleged violation of the Code of Judicial Conduct. The Courts Commission received a joint stipulation of facts and joint recommendation for discipline from respondent and the JIB on that date. After considering the stipulation, oral argument, a statement by respondent and materials filed by the respondent in mitigation, the Commission accepts respondent's admissions and enters judgment on the pleadings. The Courts Commission concludes that the recommended and agreed upon discipline of a three-month suspension from office without

pay is an appropriate sanction and just resolution.

## HISTORY

The history of the case, the discipline imposed and the time elapsed since the initial violation all warrant discussion beyond entry of an order based on the joint stipulation and recommendation. Respondent's conduct which is the subject of the JIB's complaint occurred on September 1, 1992. Respondent, acting in his judicial capacity, ordered an injunction to be entered on that date. The case was later removed to the federal district court, and in May 1993, the federal district court dissolved the state court injunction and dismissed the petition for injunctive relief. *Venezia v. Robinson, No. 92-CV-867-WDS (S.D. Ill. May 18, 1993)*. The Seventh Circuit Court of Appeals affirmed the dismissal on February 9, 1994. 16 F.3d 209 (7th Cir. 1994). The Seventh Circuit sent its opinion to the JIB, because it believed the court hearing conducted by respondent was a "parody of legal procedure" which "violated so many rules of Illinois law—not to mention the due process clause of the fourteenth amendment—that it is not worth reciting them."

After investigation, the JIB filed a complaint against respondent on December 2, 1997—approximately five years and 3 months after the event giving rise to the complaint. The record does not definitively explain this delay, but it appears there was an ongoing federal investigation of Mr. Venezia and his attorney, Amiel Cueto, that may have delayed the JIB's decision to file a complaint. Respondent testified under oath twice before the JIB and once before a federal grand jury.

During the 1998-1999 time period, an amendment to the Illinois Constitution was adopted. That amendment changed the composition of the Courts Commission by adding two lay Commissioners who were to be appointed by the Governor. There were other changes as well. There was some delay in the appointment of the lay Commissioners, and thereafter there was unavoidable delay in the approval and adoption of rules of procedure to be followed by the newly constituted Commission.

In the spring of 2000, lead counsel for the JIB announced his intention to terminate his future services to the JIB save for several outstanding cases. New counsel was formally engaged in the autumn of 2000. Thereafter, a case management order was entered in this case, and the matter was set for hearing on April 2, 2001. No continuances were granted or sought, and both counsel for the JIB and for respondent were cooperative and professional in discharging their obligations to their clients and this Commission.

We are aware of and sensitive to the inordinate delay in resolving this case. Judicial discipline is a serious matter and the process should be prompt and fair. We believe the extraordinary circumstances recounted above explain most of the delay. Nonetheless, the disposition of this case is the responsibility of the Commission, and the Commission must also accept partial responsibility for the delay.

## FACTS

On September 1, 1992, respondent was presiding over the chancery call in the Circuit Court of St. Clair County. On that morning, Bonds Robinson, a Special Agent of the Illinois Liquor Control Commission, appeared at the courthouse to give testimony in an unrelated criminal case. Instead, upon his arrival, Robinson was served with a subpoena commanding his immediate

appearance in the matter entitled *Thomas Venezia v. Robinson*. Robinson had no knowledge or notice of such a case, but complied with the subpoena.

The *Venezia* case sought injunctive relief against Robinson requesting he be enjoined from seizing Venezia's video poker machines or extorting bribes from Venezia. Immediately after respondent called the case for hearing, Venezia's lawyer, Amiel Cueto, called Robinson as his first witness. We need not recount all that occurred. What is important is that although Robinson was the defendant in the injunction lawsuit, he was not represented by counsel even though he requested counsel twice during the hearing. He was denied a brief recess to use a telephone to call his office. He was denied the opportunity to explain to the judge why he was both befuddled by the hearing and reluctant to answer questions. Robinson was not served with nor had he seen a copy of the petition for injunctive relief until after Cueto asked him a substantial number of questions relating to Robinson's participation in and knowledge of an ongoing confidential investigation being conducted by the Federal Bureau of Investigation.

Robinson denied soliciting bribes from Venezia and disclosed he was working for the Federal Bureau of Investigation in an ongoing criminal investigation. He wore a recording device during his meeting with Venezia, and his activities were part of that investigation.

Respondent heard the testimony of Robinson as elicited by Cueto, the testimony of Mel Swanson, the manager of a VFW Post where some of Venezia's video poker machines were located, and Venezia, the proprietor of Ace Music and B & H Vending Company.

Thereafter, Mr. Cueto said "...I've made the record. I ask the court to issue a preliminary injunction." Based on the record and the verified petition, the respondent ordered a preliminary injunction to be entered enjoining Robinson from coercing Venezia or employees of his business, extorting bribes, unlawfully interfering in Venezia's business or unlawfully seizing his property.

## ANALYSIS

This extraordinary injunctive relief was granted after Robinson was denied the opportunity to consult with an attorney, present witnesses, ask questions or say anything in his own behalf. He was not served with a summons or a copy of the petition until after the hearing began. The preliminary injunction was entered without respondent making findings of fact. The preliminary injunction was also entered without an expiration date, without a bond and without any date for a hearing on Venezia's petition for a permanent injunction.

There is no evidence of record that respondent had an improper motive in permitting Cueto to ask questions about the undercover operation, or in ignoring Robinson's requests to speak to an attorney. However, even the most broad assessment of respondent's failure to observe basic due process in conducting the hearing, causes us to conclude his conduct undermined confidence in the integrity and impartiality of the judiciary. He failed to adhere to procedures required by law and did not afford Robinson the opportunity to be heard or be represented by counsel.

While the conduct was confined to a single hearing in a single case, the conduct was egregious and deserving of discipline. We do not intend this decision to undermine the morale of busy and dedicated trial judges or cause them to fear disciplinary review of their decisions. This is not a case of a judge having a bad day or committing errors in judgment, or issuing an ex parte temporary restraining order later determined to have been improvidently granted. This is not a case where appellate review would have sufficed or been the more appropriate procedure to address respondent's conduct. This is a case where even though Robinson was made a party to the litigation

and was present in respondent's court, Robinson was stripped of the right to notice and his right to be heard. Applicable law was totally ignored.

We believe the recommended and agreed upon discipline is appropriate because of the destructive effect of such conduct on the administration of justice and the faith that should and must repose in the judicial office. At the same time, we recognize the extensive good work respondent has done in his circuit and the respect his efforts and work ethic have engendered in his colleagues, the bar, and the public. Respondent's personal statement to the Commission indicates he takes full responsibility for his decisions and that this experience has forged him into becoming a better judge. We trust that is so.

Respondent is ordered suspended from his judicial duties for three months without pay. We amend our oral pronouncement and order that respondent's suspension be effective beginning the first day of the first month following the date on which this order is entered.

*Respondent suspended for three months without pay.*

BUCKLEY, dissenting:

I totally disagree with the factual rendition and the rationale of the majority opinion. By my merely stating that this matter is completely outside the realm of our jurisdiction, and to allow this matter to be disposed of without an accurate statement of its derivation and restoration of an unblemished reputation to this just man, would be repugnant to someone with over 40 years of judicial experience.

On September 1, 1992, Judge Radcliffe, sitting in chancery, was presented with a verified petition for a temporary restraining order (TRO), preliminary injunction and permanent injunction. The petition alleged that an Illinois state liquor agent had solicited bribes, committed extortion and threatened to continue raiding and seizing petitioner Thomas Venezia's property unless he made payments to him. Attached to the petition was a copy of a letter mailed by Venezia to both the State's Attorney of St. Clair County and the local field office of the Federal Bureau of Investigation (FBI).[1] Also attached to the petition was a current newspaper article describing a raid on a Veterans of Foreign Wars (VFW) hall located on Scott Air Force Base removing Venezia's property and the presence of respondent Bonds Robinson, Jr. Upon call of the case, the court announced this was "Thomas Venezia versus Bonds Robinson, Jr., 92 CH 299. There's a petition for TRO, preliminary injunction and permanent injunction filed this date" and also announced "Auriel Cueto on behalf of the petitioner."

Attorney Cueto called Bonds Robinson, Jr., as his first witness. Preliminary questioning involved his duties and established that he had been served with a subpoena to be present in court as a witness in this case. He had not been served with a summons nor complaint. He said he thought he needed to have counsel. The court responded that, from the allegations, he probably would need one but not to answer the question now pending, "[w]hom did you call?" He testified that he called an FBI agent. When the witness' beeper went off, he asked for a recess to make a telephone call. The request was denied. There was never a request for a lawyer other than the above statement.

As questioning continued, Robinson alleged that he was assigned to a local FBI office.

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[1]The letter made the same charges as the verified petition.

Robinson acknowledged that the FBI had previously shown him the letter Venezia had sent them. He acknowledged that upon receiving the subpoena, he talked to his FBI agent employer about how he should respond and was told to appear. (The Judicial Inquiry Board (JIB) claims that he had no notice of the nature of this proceeding.) Robinson denied that he ever threatened Venezia or attempted to extort money from him. Robinson admitted that he had seized machines twice from the VFW hall, that he had talked to a Mr. Thornton complaining that he wanted to meet Venezia and that Venezia did not "live up to his obligations."

> "Q. Live up to what obligations?
> A. Of paying me the Two Hundred and Fifty Dollars.
> ***
> Q. *** [y]ou went out and seized the machines?
> A. The State of Illinois seized the machines."

Upon conclusion of the questioning of Robinson, Cueto called two more witnesses, Mr. Swanson and Venezia. Robinson never requested to cross-examine the witnesses nor to call any witnesses. The court announced that it was entering a preliminary injunction.

From Judge Radcliffe's perspective, appearing before him was a dishonest law enforcement officer, defiling his office—the goodly apple rotten at the heart--perpetrating one of the most scurrilous crimes known to man. A minion of the law, pledged to protect society but instead raping one of its citizens. He was clothed by the federal government as a "hoodlum," the description the Seventh Circuit Court utilized in its opinion justifying the commission of what would constitute a crime if done by an ordinary citizen. "Courts tolerate much conduct by law enforcement agents that would be criminal if committed by private persons--for example, buying and selling cocaine *** offering bribes to public officials *** [t]o win the confidence of hoodlums, federal agents sometimes must speak and act like hoodlums." *Venezia v. Robinson,* 16 F.3d 209, 211-12 (1994). But with the vision of hindsight (both Venezia and Cueto were subsequently convicted of federal crimes and sentenced to prison), the JIB surmises that Judge Radcliffe had some foreknowledge that his order was obstructing an ongoing investigation by the United States Government. The JIB further assumes that Robinson, by alleging he acted under the direction of the FBI, had some higher degree of credibility than a presumably legitimate business man alleging that his business would be destroyed unless this hoodlum was restrained from attempting to extort payments and confiscating his property as he had been doing in the past. It is hornbook law, at least in Illinois, that a police officer, by virtue of his office, is entitled to no higher degree of credibility than any lay witness. In actuality, Judge Radcliffe, in his perspicacity, found Robinson, impeached by his own testimony, to be a liar when he denied trying to extort money from Venezia.[2] What Judge Radcliffe lacked was the prescience to divine that Robinson, in fact, was a legitimate federal mole wearing a wire, attempting to obtain evidence against Cueto and Venezia.

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[2]The Seventh Circuit Court, in its statement of facts setting forth evidence presented in the district court proceeding stated:

> "Between the seizures, Bonds Robinson, Jr., one of the agents, sent word to Venezia that he could avoid further interruptions in business by paying graft *** after the second seizure, Robinson sent a message that he had better keep his word if he wanted to avoid additional trouble." *Venezia v. Robinson*, 16 F.3d at 210.

The *Venezia* case was subsequently removed to the United States district court. The United States district judge dissolved the injunction upon the evidence introduced by the United States Government (two FBI agents testified) that Robinson was indeed involved in a federal sting operation. The trial judge also opined that Judge Radcliffe was guilty of making an avalanche of errors in rendering the injunction and stated his injunction was more a TRO than a preliminary injunction.

Venezia appealed the refusal to remand and the dissolution to the Seventh Circuit Court of Appeals.

The seventh circuit court, obviously piqued by the inadvertent unmasking of one of its own, publicly excoriated Judge Radcliffe, accusing him of a "parody of legal procedures which violated so many rules of Illinois law—not to mention the due process clause of the fourteenth amendment--that it is not worth citing them." *Venezia,* 16 F. 3d at 210.

It also held that "an injunction against law enforcement activity requires special justification" (*Venezia,* 16 F. 3d at 211), as if there was even a scintilla of evidence that Judge Radcliffe had foreknowledge of a federal probe or that he was in any way *in pari delicto* with Cueto or Venezia. And, also assuming that an FBI agent could never violate the law.

The seventh circuit court then caused a copy of its opinion to be served upon the JIB, and it became the sole basis for the complaint I am about to describe.

## THE COMPLAINT

The JIB's complaint, stripped of its hyperbole, illegitimate assumptions and extraneous allegations is reduced to accusing Judge Radcliffe of, as the JIB itself describes, making the five following categories of error.

Though the seventh circuit court holds that the errors were not worth citing, I shall take the time to cite Illinois decisions interpreting the statute they claim Judge Radcliffe violated.

### I. No Notice Given To Robinson

No notice is required in the context of a TRO. 735 ILCS 5/11-101 (West 1998). A telephone call or other oral notice may suffice as notice with respect to a preliminary injunction. *Kolstad v. Rankin,* 179 Ill. App. 3d 1022, 1029 (1989). Notice is not always necessary or required prior to the issuance of a preliminary injunction; the trial judge determines this based upon the facts before him. *Board of Education of Community Unit School District No. 101 v. Parlor,* 85 Ill. 2d 397, 402 (1981). In the instant case, Robinson received notice when he was subpoenaed to appear, and did appear in response to the subpoena, and had discussed with his employer what his response to the subpoena should be and had previously reviewed the content of the letter Venezia sent to the FBI the day before the hearing, August 31, 1992. All this clearly demonstrates that Robinson was not surprised by the content of the hearing.

### II. Robinson Was Denied The Right To Counsel

There is no constitutional right to counsel in the context of civil litigation. *Wolfe v. Board of Education of City of Chicago,* 171 Ill. App. 3d 208, 211 (1998).

The issue of assistance of counsel must be examined in the context in which it was presented

to Judge Radcliffe. Initially, Robinson indicated that he may need the services of counsel. However, the question being posed to Robinson at this time was merely "[w]hom did you call?." It must be noted that Robinson had already received the subpoena to appear at the hearing of September 1, 1992. After answering the question, Robinson admitted that he had been instructed to appear at the hearing. Accordingly, while Judge Radcliffe believed Robinson may have been in need of counsel in the face of the existing allegations, he properly determined that there was no such need regarding this particular question. At no other time during the course of the hearing did Robinson request the assistance of counsel.

Paragraph 14 of the JIB's complaint references Robinson's pager going off and his request to use the telephone. That request was denied. This request cannot be considered a request for counsel. (The majority opinion states from a source outside the record, that he wanted to call his office.)

Paragraph 17 of the JIB's complaint references the desire to speak with Judge Radcliffe on an *ex parte* basis. Nor can this be construed to constitute a request for assistance of counsel. Indeed, it would have constituted an improper *ex parte* conversation with the presiding judge.

III. Robinson Was Not Permitted To Actively Participate In The Hearing

At no time did Robinson request that he be allowed to cross-examine Venezia or Swanson, or that he be allowed to explain his actions in regard to Venezia. The record is silent as to whether he remained in the courtroom after his testimony. Robinson was a witness subpoenaed to testify at a petition for a TRO. Obviously, Cueto found him in the court house and served him with a subpoena. Without Robinson's presence, Venezia would have obtained a TRO without notice. This would have been good for only 10 days after Robinson was served with both a summons and the TRO which normally are served contemporaneously.

IV. Failed To Abide By 735 ILCS 5/11-101 In Fashioning The Order Of Preliminary Injunction – No Specific Findings of Fact – No Expiration Date – No Evidence Of Bond

Judge Radcliffe concedes that he committed procedural errors in failing to label the relief he granted a TRO rather than a preliminary injunction and in failing to state the basis of its issuance and an expiration date. However, judicial interpretation of 735 ILCS 5/11-101 does not require strict adherence to the statutory provisions. See, *e.g., Cameron v. Bartels*, 214 Ill. App. 3d 69, 77-78 (1991) (failure to include in the court order reasons for issuance of preliminary injunction does not constitute reversible error); *Binder Plumbing & Heating, Inc. v. Plumbers and Pipefitters Local Union No. 99,* 253 Ill. App. 3d 972, 979 (1993) (no reversible error resulted from the form of the order wherein the order for injunction gave no reason for its issuance); *Howard Johnson & Co. v. Feinstein,* 241 Ill. App. 3d 828, 838 (1993) (where order granting preliminary injunction violates the requirement of section 11-101 of the Code of Civil Procedure the proper remedy is to remand the order to the trial court with instructions to modify the order in compliance with statutory requirements); *Hoover v. Crippen*, 151 Ill. App. 3d 864, 869 (1987) (when a preliminary injunction is issued without notice of hearing it is not error for the trial court to issue the injunction without bond).

V. Most Important Of All (As The JIB Proclaims)

"The proceeding was designed to engage in discovery of an ongoing criminal investigation." Conceivably, that was Cueto's and Venezia's objective. But after seven years of probes, repeated appearances under oath before the JIB, and an appearance before a Federal Grand Jury under oath, the JIB acknowledges that it does not have a scintilla of evidence that Judge Radcliffe had foreknowledge of the federal investigation nor that he was acting *in pari delicto* with Cueto or Venezia. Yet, the JIB still had the effrontery to ask us to approve the stipulation and proposed penalty because "reading the transcript, one has to believe that there was something wrong." It is incredible that in this day and age in the United States of America, this Salem-like solution has been so cavalierly suggested as a sufficient basis for finding Judge Radcliffe guilty of knowingly engaging in assisting Cueto and Venezia in the discovery of an ongoing federal criminal investigation. What is also incredible is that there is not even a suggestion of this "[m]ost important of all" oral accusation in the body of the complaint.

The majority totally ignores the fact that Robinson, at most, was a proposed defendant. He was merely a subpoenaed witness to a petition for a TRO. He was never served with a summons, nor did he ever file an appearance. Did Judge Radcliffe have a duty to take over the questioning when Robinson alleged that he was an officer of the law working in a federal sting? I think not. The gist of the petition was that Robinson, shielded by his office, was extorting the petitioner and threatening to continue to confiscate his machines if he did not pay him off. What right would Judge Radcliffe have had to dictate the order in which witnesses would be called? Did he have the duty to interrupt the hearing to allow a witness to respond to a beeper? A duty to have an *ex parte* discussion with a witness? A duty to notify a witness that he could ask for a recess and that he could have a lawyer? The record is silent as to whether Robinson was ever served with a copy of the injunction which would have been ineffective in any event, as the federal district court judge found, because Robinson has never been served with a summons.

It has to be obvious that the JIB wants the Commission to find that Judge Radcliffe was hand-in-glove with Cueto and Venezia notwithstanding the JIB cannot produce any evidence except the transcript, which is a 26½ page document—each page containing 24 lines, triple spaced, 40% of which contain 6 words or less. There is no allegation of repeated conduct, no allegation of willful misconduct in office, and no allegation of persistent failure to perform judicial duties.

Furthermore, the majority has gratuitously suggested an excuse for the JIB's failure to prosecute this case for seven years. Can anyone possibly believe that it would take seven years to prosecute him for these procedural errors? Prodded by our recently appointed case manager to move forward with the case, the JIB offered Judge Radcliffe an opportunity to purchase his peace. If he would admit the charges in the complaint and take a three-month suspension, the JIB would recommend this punishment to the Commission.

We have no right to demand of our judges that they be a Thomas More. Unlike More, Judge Radcliffe signed the stipulation, as well he should have because all the complaint alleges is, at worst, a series of procedural errors in a 30-minute hearing. These errors should have been properly addressed to the appeal process which is designed to furnish both a process and a remedy and should not be subject to discipline by the Commission. I submit that any judge in his right mind, having endured seven years of unfounded inferences and egregious misstatement of fact, humiliated by an unfair indictment by an intermediate appellate court, existing the entire time under a sword of DAMOCLES, would not mortgage the farm to obtain the wherewithal to pay a $30,000 fine and end his torment and that of his family, rather than come before this tribunal which has the unbridled power to strip him of his robe and deprive him of his judicial pension without the possibility of

appeal.

In *People ex rel. Harrod v. Illinois Courts Comm'n*, 69 Ill. 2d 445, 471 (1977), the Illinois Supreme Court concluded that in order "to maintain an independent judiciary mere errors of law or simple abuses of judicial discretion should not be the subject of discipline by the Commission." Moreover, the supreme court established the requirement that, in the context of a claim by the JIB that a judicial officer's conduct involved an erroneous interpretation of the law, a single isolated event of that nature is insufficient to establish jurisdiction with the Commission. *Harrod,* 69 Ill. 2d at 472. Accordingly, the supreme court has required that only repeated and gross abuses of judicial power will permit the Commission to exercise jurisdiction. *Harrod,* 69 Ill. 2d at 472.

*Harrod* also teaches us that the function of the Commission is one of fact finding. Its function in this case as in *Harrod* was to apply the facts to the determined law, not to determine, construe or interpret what the law should be. When determining whether Judge Radcliffe's order was without authority of law it applied its own independent interpretation and construction of 735 ILCS 5/11-101 to his conduct exceeding its constitutional authority.

What abuse of power was there in the injunction Judge Radcliffe entered? Its only criticism could possibly be its vagueness:

"PRELIMINARY INJUNCTION"

> "Upon verified petition and for good cause shown, this Court issues its Preliminary Injunction, enjoining and restraining Bonds Robinson, Jr., from threatening or coercing Thomas Venezia or any employee of Ace Music or S & H Vending; that Bonds Robinson, Jr., is enjoined and restrained from soliciting bribes or acts or extortion; that Bonds Robinson, Jr., is enjoined and restrained from unlawfully interfering with Thomas Venezia's business and/or from unlawfully seizing the property of Thomas Venezia, Ace Music or S & H Vending."

Simply stated, the order requires Robinson to conduct himself as an ordinary citizen of the State of Illinois; that is, it requires him to obey the law and not to engage in any criminal activity. The order is not egregious in its content. Hence, the content of the preliminary injunction and its provisions further support the contention that the hearing of September 1, 1992, and the resulting court order do not reflect errors of law or abuses of discretion.

The final plea by counsel of the JIB, before the Commission was: "Your Honor, the transcript itself is the evidence, and respectfully our position is very powerful evidence where something is amiss something is wrong with the picture. It is so far beyond bounds of the exercise of a judge's appropriate discretion, that it is for that reason that the JIB brought this complaint."

What has been done to this respondent is tragic but what we do by establishing this unconstitutional usurpation of jurisdiction as legal precedent for the judiciary of the State of Illinois is a travesty.

I urge the Commission to have the courage to acknowledge that we erred when we denied Judge Radcliffe's motion to dismiss the complaint; to adhere to the salutary precepts laid down for us in *Harrod* and thus avert the necessity of a filing by Judge Radcliffe on his own behalf and on the behalf of the entire judiciary of the State of Illinois of a petition to the Illinois Supreme Court for a

*writ of mandamus* directing the members of the Commission to expunge the order suspending the petitioner from his judicial duties.