(No. 93 CC 2. — Complaint dismissed.)

In re CIRCUIT JUDGE MICHAEL C. CLOSE of the Circuit Court of Cook County, Respondent.

Order entered March 9, 1994.
Motion to reconsider denied on March 9, 1994.

SYLLABUS

On June 10, 1993, the Judicial Inquiry Board filed a three-count complaint with the Courts Commission, charging the respondent with willful misconduct in office, conduct that is prejudicial to the administration of justice, and conduct that brings the judicial office into disrepute. In summary form, the complaint alleged that while presiding over a bond hearing in 1991, while presiding over a sentencing hearing in 1992, and following a bench trial in 1992, the respondent made derogatory and demeaning ethnic and nationality based statements about defendants and witnesses who appeared before him; and that by such conduct the respondent violated Supreme Court Rules 61, 62A, 63A(3) and 63A(7).
Held: Complaint dismissed.

Sachnoff & Weaver, Ltd., of Chicago, for Judicial Inquiry Board.

Brian L. Crowe and Associates, of Chicago, for respondent.

Before the COURTS COMMISSION: HEIPLE, J. chairman, EGAN, RARICK, DUNNE (alternate) and DREW (alternate), JJ., commissioners. ALL CONCUR.

ORDER

The Illinois Judicial Inquiry Board (Board) has brought the instant three-count complaint against the respondent, Judge Michael C. Close, charging him with willful misconduct in office, conduct that is prejudicial to the administration of justice, and conduct that brings the judicial office into disrepute. The basis for these charges are several allegedly derogatory and demeaning ethnic and nationality based statements made about defendants and witnesses who appeared before him.

All three counts charge violations of Supreme Court Rules 61, 62A, 63A(3) and 63A(7). These rules state:

> Rule 61: An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.
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> ***
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> Rule 62A: A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.
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> Rule 63A:
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> ***
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> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.
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> ***

> (7) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction.
> ***

The facts of this case are not in dispute. At issue is whether statements made by the respondent violated the Rules of Judicial Conduct.

We first articulate the facts as they relate to each count, which consist of the statements made by the respondent and the respondent's defense. The Board's case consisted of little other than the statements themselves; thus, we understand its position to be that the statements were *per se* violations of the Code of Judicial Conduct. All cases referred to were heard by the respondent in the Second District of the Circuit Court of Cook County.

COUNT I

On September 10, 1991, the respondent presided over a bond hearing in the case of *People v. Milanovic, et al.* Both defendants were Yugoslavian Nationals. The Assistant State's Attorney sought the surrender of defendants' passports as a condition to their release on bond. In denying this request, the respondent said:

> United States is easy to give out citizenship, most of them are still citizens anyway. Yugoslavia citizenship, whatever country, they will end up anyway so they can get foreign pass to leave the United States.
> ***
> Be better they went back to Yugoslavia. *** I can at any time take his passport. I don't see any reason to do that. Most of the Yugoslavia Nationals don't give a darn one

> way or another, they will do whatever they damn well please. That's always been their habit, their practice, not greatest, citizens in the United States. I am not saying your particular client isn't. They have their own attitudes about matters, they come and go as they damn well please.

The respondent called Judge George A. Marovich in his defense. Judge Marovich was Judge of the Circuit Court of Cook County from 1971 to 1981, and they were assigned to the "Repeat Offender Call" together from 1977 to 1981.

Judge Marovich's ethnic background is Serbian. He demonstrated a thorough familiarity with the history and current affairs of Yugoslavia. He reviewed the transcript of the Milanovic bond hearing, and testified to this Commission the following opinions:

> Yugoslav Nationals do have more loyalty to their particular National Groups albeit Serbians or Croatian than they do to the country Yugoslavia. [Respondent] was attempting to convince the State's Attorney and make a record as to the fact that Milanovic was not likely to flee the U.S. and go back to Yugoslavia.
>
> [Respondent] was not critical of U.S. citizens of Yugoslavian origin. The meaning of [respondent's] words *** was that the Yugoslavian Nationals would not be good citizens of the country of Yugoslavia.
>
> As an ethnic Serbian, I take no offense at [respondent's] comments during the September 10, 1991 bond hearing.

The respondent also called Judge Robert Boharic, a Judge of the Circuit Court of Cook County and an ethnic Croatian, as well as Mr. William Lee Parks,

who represented the defendants at the bond hearing. Both came to the same conclusions as Judge Marovich.

COUNT II

On November 6, 1992, following the bench trial in *People v. Schellenger*, the respondent found defendant Schellenger guilty of armed robbery and armed violence, but not guilty of home invasion. In support of his acquittal on the home invasion charge, the respondent made the following remarks:

> Nonetheless, we do live in a very -- society [*sic*] here in the States, and given the variety of different groups that come and presently do reside in the U.S., Mormons, Guatemalans among others, which is a bit on the usual [*sic*] side for what it is worth, nonetheless, the Scandinavians here in American society have always been an interesting variety, not the least of which the young lady that the State put on who has a Danish background and I don't mean to make light of the Danes or anybody else, but I have always found them to be very liberal and moving in and around and about in the American society and I would not find it unusual for an individual of the complaining witness' background to pick up an individual such as the defendant at the Discotheque [*sic*] on Lawrence and Western and to take him home with her and the confrontation that occurred thereafter where she demanded or wanted sex with the defendant. I don't think that would be so unusual as to stretch the imagination.

During Schellenger's sentencing hearing on December 19, 1991, the respondent made the following remarks:

> I look further and find there are some indications that the defendant was born in Guatemala and that he is a Guatemalan national, I take it. He is not a citizen of the United States, and I certainly hope that the government of the United States does [sic] serious consider conferring upon this individual a citizenship in this country. I do hope that the Department of Immigration Naturalization will seriously consider deporting the defendant from the United States as quickly as possible, but certainly no sooner than the end of his sentence in the Illinois Department of Corrections. ***
>
> I do believe that the woman who appeared here, an individual that had come from Denmark to the United States, did end up in a situation in which she became enamored with the defendant and an invitation possibly was extended for some frolicking over at her residence here in the City of Chicago and that the defendant did proceed to that location. ***
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> It's unfortunate that individuals are allowed to come into the United States of America and violate the laws of this country in the manner in which the defendant has done so. There are enough problems, enough violence in the United States without bringing any more of it into the United States from outside. We have enough imported Japanese cars to have created a problem with our imbalance of trade so that economically -- and I don't think we have to import any more crime than we have already been able to generate domestically. ***

> Certainly, Mr. Schellenger, on the date in question, did exceed the limits of the law and the way that he acted towards this individual -- oftentimes we are in a position of blaming the victim for placing herself in this position. ***
>
> But we will do the best that we can in trying to make a useful individual out of the defendant so, that when he returns to Guatemala, he might be able to make some contribution there to the people there in Guatemala or in some country that will have him. But certainly as I indicated, [sic] had hoped that he never again is allowed to move freely about in the United States of America.

In his defense, the respondent called James M. Sammons. Mr. Sammons is a former assistant Public Defender, and represented Schellenger when the comments at issue were made. Mr. Sammons testified that the comments were made to demonstrate the respondent's basis for his finding of not guilty on the home invasion charge. The respondent found that the Spanish speaking defendant had met the complainant in a nightclub, that the complainant had invited the defendant to her apartment, and that a language barrier may have invited confusion. Sammons opined that the comments were made pursuant to the respondent's responsibility to weigh the credibility of the witnesses.

Mr. Sammons further testified that the comments concerning deportation were proper as "giving his feeling to some future immigration authority [with] respect to what the Judge felt they ought to do if they had the basis for deportation." He testified that articulating such an opinion is required under 8 U.S.C. §1251(b)(2) ("Title 18").

The respondent testified on his own behalf, and agreed that his reference to the importation of Japanese cars, as well as the complaining witness'

Danish origin, were tangential remarks which would have best not been said. He explained that his purpose in making the remarks was to show why he was finding the defendant not guilty of home invasion, but guilty of the armed robbery and armed violence; his rationale for the sentence imposed; and why he would not sign a Title 18 order recommending that defendant remain in the country as a convicted felon.

COUNT III

On April 18, 1992, the respondent presided over the sentencing hearing in *People v. Jones and Upchurch*, and made the following statements:

> But, lo and behold, even on this -- as we speak right here, in the merry-old England -- or, in the realm right now in the north of Ireland, you don't have a right to trial by jury if you offend upon the English law as they impose it on Irish people.
>
> And you know a little about slavery, and I know a little about slavery, and we all know a little about slavery. And you don't have to be a slave to know a little about slavery. And the Irish were enslaved by the English overlords for centuries, as were blacks in America. It is those very cheerful limey Britishers that -- along with their Dutch cousins, the original man, in more ways than one, that brought a lot of Africans to America and enslaved them here. So, the British we owe an awful lot of debt to for our law and for a large part of our population. All of this does not set well with me or with you and with a lot of other people.
>
> But, today, if you are an Irishman in the north of Ireland and you offend against the British crown, you don't have a right to have 12 people racked over there because good old

> John Bull will give you a judge that will handle the case without the interference of 12 citizens, even without the interference of 12 Protestant citizens ready to do the bidding of the crown, any uppity Catholic that may have offended the crown. ***
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> But, given the facts in this case, and the victim -- and the victims, so to speak, those people that were present at the time of the offense, the black victim and the white victim, and the infant child -- and God knows, who knows why some white lady is married to some black man or some black man is married to some white lady. I don't really give a darn because that's none of my damn business.

The respondent, in his defense, introduced the sentencing hearing testimony of Joseph Conga and his wife Kristine. Mr. Conga, a black man, and Mrs. Conga, a white woman, were assaulted and robbed by the defendants. Mr. Conga testified that, "He [defendant Jones] says he hated white people and that the black man like me have no business marrying a white woman and he spit on my wife."

Later, Mrs. Conga testified that "He [defendant Jones] said that being my husband is from Africa that he shouldn't be married to -- excuse me -- Bitch. And he spit at me and gritted his teeth and he said that he hates white people and that they are honkies and that a brother -- my husband is not a brother because he married a white woman."

The respondent also called Assistant State's Attorney Joy Peigen. Peigen was assigned to the respondent as a Felony Trial Prosecutor from 1984 until 1992. Peigen testified that she was the prosecuting attorney in *Jones and Upchurch*, and that she participated in the sentencing hearing in which

the allegedly offensive statements were made. She testified that she understood [respondent] to mean when he said that was, he was referring to the testimony of the trial of Mr. Jones and Mr. Upchurch and stating that what they said was not going to matter in his sentencing. When he sentenced the two individuals, that he was not going to take into account their prejudices.

The respondent also called James Sammons in his defense. Sammons represented the defendants in *Jones and Upchurch*, and came to the same conclusions as Peigen concerning the respondent's reasons for making the statements.

The respondent also called former Appellate Court Justice Eugene Pincham in his defense. Justice Pincham testified that he had known the respondent for 35 or 40 years, that he had reviewed the sentencing transcript, and that he "[r]ead the transcript as an expression by the Judge that race had nothing to do with his decision in the case. That he would not be influenced by the fact that the victim was [in] an interracial marriage, and that he was basing his decision uninfluenced by those factors."

The respondent called Adam Bourgeois, a practicing attorney for 42 years. Mr. Bourgeois testified that he viewed the respondent's findings as necessary to clarify for the record the basis on which the respondent was imposing his sentence.

Finally, the respondent testified in his defense that he wanted there to be no question on review of the record that he considered this exchange in sentencing defendant. He testified that he felt a judge should make such matters clear. Concerning the statements referring to the British system of justice in Northern Ireland, the respondent testified that he was explaining to the defendants that they had received a fair trial.

All of the respondent's witnesses testified that the respondent has a reputation as an excellent judge, as

someone who is fair and impartial, and as someone who listens to the evidence and makes his decisions based on that evidence. These witnesses also testified that the respondent's reputation for being free of ethnic and racial prejudices is excellent.

FINDINGS

1. We find that the respondent has affirmatively demonstrated that, while perhaps not artfully made, all but two of the comments challenged by the Board were proper and necessary to support his decisions and required of his role as judge over the proceedings.

2. We agree with the respondent's assessment that his comments concerning Danish people and imported Japanese cars were tangential remarks that would have best been left unsaid. However, we do not believe they were so inappropriate as to rise to the level of a violation of the Code of Judicial Conduct.

3. We find that the Board has failed to come forward with even one supporting witness or exhibit to support its case. Instead, it has placed its complete reliance on the language used by the respondent, asserting that the language, standing alone, is a *per se* violation of Supreme Court Rules 61, 62A, and 63A.

We find that the Board's reliance is misplaced. We also find that the Board, in so relying, has been remiss in its duties to this Commission to offer proof in the cases in which it calls this Commission to review.

The Board offered no evidence that the respondent's conduct in any way brought the judiciary into disrepute. The Board offered no witnesses to suggest that the respondent's conduct amounted to any appearance of impropriety. The Board did not show that the respondent was not being considerate when he made the remarks that are the subject of this

complaint. The Board presented no one to testify that the respondent's conduct was anything other than an attempt to explain to the parties the basis for his rulings in the three separate cases. The Board did not present a single citizen of this State to say that he would be shocked or dismayed to hear the language used from the bench.

We remind the Board that it must do more than allege judicial misconduct. It must prove its case.

The Board is asking this Commission to impose discipline solely upon the stipulation that the respondent did in fact use the language set forth in the complaint. This we decline to do. Viewed in the context in which the language was used and the purpose to be served thereby, we find that the respondent violated no Supreme Court Rule. The allegations of the respondent's violations were not, as required by Rule 11 of the Courts Commission's Rules of Procedure, proven by clear and convincing evidence.

We reiterate our position, most recently articulated in *In re Scrivner*, 92-CC-1 (1992), that cases of inappropriate conduct on the part of a judge which do not warrant prosecution can better be resolved informally between the Board and the judge concerned, rather than by filing formal disciplinary charges with this Commission. This is what should have occurred in this case.

Complaint dismissed.