

COURT SAYS O'HARA CAN STAY ON BENCH

T.P. 6-5/68
But Finds Judge Guilty
of Misconduct

With one dissent, the Supreme Court of Louisiana Tuesday found Judge Malcolm V. O'Hara guilty of misconduct but not guilty "of that flagrant and extreme misconduct which would warrant his removal" from office.

The decision favoring the Criminal District Court judge, who is on a leave of absence from his judgeship, was written by Associate Justice Mack E. Barham. Associate Justice E. Howard McCaleb dissented.

In Baton Rouge, Atty. Gen. Jack P. F. Gremillion issued the following statement:

"The attorney general was asked by Gov. McKeithen, more than 25 taxpayers of New Orleans, the Metropolitan Crime Commission and the New Orleans Bar Association to bring removal proceedings against Judge O'Hara for alleged misconduct. The state presented every bit of evidence of alleged misconduct that we could find and we did it fairly and impartially.

"I understand, although I have not read the decision, that the Supreme Court of Louisiana agreed that Judge O'Hara violated the code of ethics and was guilty of many indiscreet, unwise and questionable actions. However, the court found that the totality of Judge O'Hara's action did not amount to gross misconduct within the meaning of Louisiana law. The Supreme Court of Louisiana in this case was one of original jurisdiction, which means that they received and judged the evidence themselves.

"The state's chief witness was Edward Grady Partin of Baton Rouge, who claimed that Judge O'Hara tried to get him to change his testimony to help Judge O'Hara's friend, Zachary Strate. Apparently, the Supreme Court of Louisiana was not impressed with Mr. Partin's testimony."

The state based its suit on the contention O'Hara was guilty



JUDGE MALCOLM O'HARA
Removal suit dismissed.

of gross misconduct in his private affairs.

The nine particulars relied on in the suit included allegations the judge practiced law while a judge; associated with a known convicted felon, Zachary A. Strate; attempted to gain evidence involving a court proceeding; used his office as an influence to try to obtain evidence of wire tapping from a Baton Rouge Teamsters Union official, Edward Grady Partin; failed to abide by warnings of his association with Strate given him by members of the bar; participated in a meeting to aid Strate's attempt to get evidence from television investigator Walter Sheridan; conspired with James H. Gill and Strate to obtain testimony to set aside the convictions in federal court of Strate and Teamsters Union President James Hoffa and accepted gifts and gratuities from a person known by him to be a convicted felon.

The ninth contention was that the defendant should be removed from office if he relied upon the Fifth Amendment in a refusal to testify before a federal grand jury.

"Since we have previously disposed of this (ninth) matter by ruling upon the admissibility of certain testimony and the necessity for answering certain interrogatories, it will not be considered," Justice Barham said.

The justice said, "It is neither alleged nor proven that Malcolm V. O'Hara tried to get anyone to perjure himself or tried to obtain false evidence to overturn any conviction."

NOT PERTINENT

He said therefore it was not pertinent whether O'Hara was seeking to change someone's testimony or seeking to acquire new testimony.

Also, Justice Barham said it was immaterial whether O'Hara was trying to overturn Strate's conviction or Hoffa's conviction.

He said it was apparent from facts previously given that O'Hara did not engage in practice of law although he did assist Strate.

"It is really immaterial to this court whether Strate was technically a convicted felon or whether the appeal which was pending removed him from the category of a convicted felon,"

he said.

He said O'Hara admits the association with Strate, and "admits conduct in behalf of Strate which is far more serious than the mere association with him."

Grouping the state's contentions three, four and six together, he said the court saw no need to pass upon a technical question of conspiracy, but did "find that O'Hara clearly acted in concert with Gill and Strate to obtain information for the purpose of overturning a criminal conviction."

ACCEPTING GIFTS

Justice Barham said O'Hara

ADVERTISEMENT

admitted accepting gifts and gratuities from a known convicted felon.

"In summation, a fair conclusion to be reached from the facts presented by the record in this case is that Malcolm V. O'Hara associated with Strate knowing that he had been convicted in a federal district court of a felony; that he used his title of judge and the prestige of his office in an attempt to obtain evidence in order to set aside a conviction in a federal court, and that he accepted gifts and gratuities from Strate."

Justice Barham said if O'Hara were to be removed the court must find that the proven actions and conduct constituted "gross misconduct."

"We have no difficulty in charging the defendant O'Hara with misconduct. His conduct does not comply with the standards set forth in the Canons of Judicial Ethics."

GROUNDS FOR REMOVAL

An elected official is subject to removal from office only if disregard of the Canons of Ethics or of any other standard of conduct is such as to constitute gross misconduct, Justice Barham said.

"While we as individual members of the judiciary find O'Hara's conduct unacceptable in his relationship with and ef-

forts in behalf of Strate, we cannot as a court of law acting under the clear language and intent of the Constitution, substitute this personal judgment for the electorate's judgment.

"Although the defendant is guilty of misconduct, we do not find him guilty of that flagrant and extremely misconduct which would warrant his removal under the constitutional provisions.

"He has compromised his office and the high degree of trust

THE TIMES-PICAYUNE, NEW ORLEANS,

placed in him by the electorate, but the record does not reflect that this conduct has rendered him 'utterly unfit' to perform the functions of his office."

He concluded that O'Hara's conduct does not meet the Constitutional requirement for removal for "gross misconduct."

Joining in the ruling were Chief Justice John B. Fournet and Associate Justices Joe B. Hamiter, Frank W. Hawthorne, Joe W. Sanders, Frank W. Summers and acting Associate Justice Edward L. Gladney sitting

in for Walter B. Hamlin, who returned to the bench Tuesday.

DISSENTING OPINION

In his dissent, Associate Justice McCaleb said, "On the facts found by the majority, I am unable to subscribe to the view that Judge O'Hara was not guilty of 'gross misconduct' within the meaning of the Constitution and as the term is further defined and explained by this court in Stanley vs. Jones."

He said O'Hara's conduct

LA., WEDNESDAY MORNING, JUNE 5, 1968

"assuredly cannot be characterized as a series of personal indiscretions of a private sort disassociated with his judicial office, nor can his acts be viewed simply as thoughtless improprieties violative only of the Canons of Judicial Ethics.

"Whenever a judge uses the title and prestige of his office in an attempt to obtain evidence in order to set aside a conviction in another court, he said, and accepts gifts and gratuities from one who would be benefited by the overturn-

ing of the conviction, he is guilty of gross misconduct in my estimation."

Justice McCaleb said these acts reflect such serious defects in his character "as to render him utterly unfit to perform the delicate and important functions of the office he holds, and constitutes such conduct as to cause others to question his character and morals, and the people to lose respect for him as a man and respect for the court over which he presides as well."