

Misconduct 'Not

DISMISS O'HARA



The Louisiana Supreme Court today dismissed a suit that sought to remove Criminal District Judge Malcolm V. O'Hara from office.

In a 6-1 decision, the court ruled that while O'Hara is guilty of misconduct, he is not "guilty of that flagrant and extreme misconduct which would warrant his removal under the Louisiana Constitution."

THE STATE attorney general's office had charged that O'Hara violated both the Louisiana Code of Judicial Ethics and the state Constitution through activities to overturn the convictions of Teamsters

Union President James R. Hoffa and New Orleans builder Zachary "Red" Strate.

In the majority decision written by Justice Mack E. Barham, the high court decided that while O'Hara acted improperly, his conduct did not meet the legal requirements for his removal.

Casting the lone dissenting

vote was Justice E. Howard McCaleb.

Justice Barham's majority opinion said O'Hara "did attempt to obtain evidence of wiretapping to aid and assist a convicted felon in a court proceeding, and his office (as a judge) was an influence in this effort."

The justice wrote:

NEW OR STATES

VOL. 91—NO. 308

TUESDAY,

Flagrant' -- Court

OUSTER SUIT

"In summation, a fair conclusion to be reached on 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 ob-

tain evidence in order to set aside a conviction . . . and that he accepted gifts and gratuities from Strate."

Barham wrote that "If O'Hara is to be removed in this proceeding from his office as criminal district judge for the Parish of Orleans, this court must find that the proven actions and conduct of

O'Hara constitute 'gross misconduct.'"

"Misconduct in general is improper conduct or wrong behavior," the decision continues, "but as used in speech and in law it implies that the conduct complained of was willful and intentional."

"IT IS MORE than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or total lack of concern for one's conduct."

"'Gross' is generally defined as flagrant and extreme," Barham continued. He then cited Stanley vs. Jones, the only previous Lou-



LEANS - ITEM

JUNE 4, 1968

PRICE 10c

See O'HARA— Page 14 JUDGE MALCOLM V. O'HARA

O'Hara--

Continued from Front Page

isiana case involving the removal of a judge for gross misconduct not connected with his office.

In that case the "gross misconduct" consisted of "letters of threat, coercion and blackmail; false swearing; the issuance of worthless checks . . .; the use of threat and coercion on lawyers who practiced before the court."

Barham concluded: "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."

But these, though important, do not replace the criteria for removal stated in the Constitution, the justices decided.

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

"He has compromised his office and the high degree of trust placed in him by the electorate, but the record does not reflect that this conduct has rendered his utterly unfit to perform the functions of his office.

"The record reflects, to the contrary, that during the two years while he was pursuing the course of conduct complained of, O'Hara's discharge of his official duties was not encumbered," the decision said.

In his dissenting opinion, Justice McCaleb wrote:

"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 a federal court' or in any other court for that matter, and accepts gifts and gratuities from one who would be benefited by the overturning of a conviction, he is guilty of gross misconduct, in my estimation."

The state had charged that O'Hara accompanied Strate, a close friend, to Baton Rouge to get Edward Grady Partin,

a Teamster leader, to sign a statement that wiretapping had been used by the federal government in obtaining criminal convictions against Strate and Hoffa.

O'Hara's attorney, Russell J. Schonekas, contended that his client's actions were solely in the interest of justice.

Judge O'Hara issued this statement:

"While I have not yet had an opportunity to study and analyze the opinion, I have been told by my attorney that the decision of the Supreme Court was favorable and that my conduct as a judge was found to be commendable.

"HOWEVER, it is my understanding that they did reprimand me for some of my personal activity.

"I accept the admonition of the court and will return to my court and perform my duties as previously, ever mindful of the fact that my personal life cannot be separated from my judicial life.

"It has been a trying ordeal for me and my family but finally the suit is practically at an end.

"Immediately, I intend to

ask the Supreme Court to revoke my prior request and their order granting me a leave of absence from my duties as a judge.

"I HAVE no ill feelings toward anyone. I am just deeply grateful to all who remained loyal to me during these past months, and to my fellow judges who handled my court during my absence.

"Lastly, my eternal thanks to my attorneys, Edward Wallace and Russell J. Schonekas.

"Since the attorney general legally may apply for a rehearing, the proceedings are actually not final so I cannot comment any further."

The suit was instituted by Attorney General Jack P. F. Gremillion after several New Orleans groups, including the Metropolitan Crime Commission, filed petitions requesting the action.