

State of New York
Commission on Judicial Conduct

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

Determination

SEBASTIAN J. LOMBARDI,

a Justice of the Lewiston Town Court,
Niagara County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Benjamin N. Hewitt, Mark D. Grossman and Samuel J.
Civiletto for Respondent

The respondent, Sebastian J. Lombardi, a justice of
the Lewiston Town Court, Niagara County, was served with a
Formal Written Complaint dated September 7, 1984, alleging that
he intervened in a case before another judge and released the

defendant from jail based solely on an ex parte request. Respondent filed an answer dated October 1, 1984.

By order dated October 4, 1984, the Commission designated the Honorable Dean C. Stathacos as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 4 and 5, 1985, and the referee filed his report with the Commission on June 11, 1985.

By motion dated June 21, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent's misconduct was established. Respondent opposed the motion on August 2, 1985.

On September 12, 1985, the Commission heard oral argument on the issue of misconduct, at which respondent appeared by counsel, and, in a determination and order dated September 17, 1985, made the findings of fact enumerated below.

The administrator and respondent submitted memoranda as to sanction. On October 11, 1985, the Commission heard oral argument as to sanction, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent is a justice of the Lewiston Town Court and was during the time herein noted.

2. On June 25, 1983, Brian S. Rossman was arrested in the Town of Lewiston and charged with two counts of Assault,

Second Degree; Resisting Arrest; Driving While Intoxicated; Reckless Driving; two counts of Speeding, and Failure To Keep Right Of Way.

3. Mr. Rossman was arraigned before Niagara Town Justice John P. Teixeira and remanded to the Niagara County Jail in lieu of \$1,000 cash bail or \$3,000 bond.

4. Mr. Rossman was scheduled to appear in the Lewiston Town Court on July 5, 1983, before Justice Randy M. Haseley.

5. After his arrest, Mr. Rossman called a friend, David Szostak, and asked help in seeking release from jail.

6. Mr. Szostak went to respondent and asked him how Mr. Rossman could be released.

7. Mr. Szostak did not know the charges against Mr. Rossman and did not provide respondent with any information concerning them.

8. Respondent was unaware of the charges against Mr. Rossman.

9. Respondent called the Niagara County Jail and asked whether Mr. Rossman was in custody. Corporal David A. Larson confirmed that Mr. Rossman was in custody.

10. Respondent did not ask the charges against Mr. Rossman and did not have before him either a report of the Division of Criminal Justice Services or a local police department containing Mr. Rossman's criminal history.

11. Respondent told Corporal Larson that he wanted Mr. Rossman released without bail.

12. Corporal Larson told respondent that he would send a car to respondent's home to pick up a release order.

13. Respondent told Mr. Szostak that Mr. Rossman would be released in a few hours.

14. Respondent signed an order releasing Mr. Rossman from custody and turned it over to the Niagara County Sheriff's Department.

15. Respondent did not notify the district attorney's office or allow it to be heard on the question of Mr. Rossman's release.

16. On respondent's order, Mr. Rossman was released from jail.

17. The case was subsequently heard by Judge Haseley.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Based on an ex parte conversation with the defendant's friend, respondent released a defendant who had been jailed in

lieu of bail by another judge and who was not scheduled to come before respondent at any time. Respondent had no papers concerning the case before him; was not aware of the charges against the defendant; did not inquire into the defendant's past criminal record or other factors concerning the likelihood that he would reappear in court, as required by Section 510.30 of the Criminal Procedure Law; and did not notify or seek the position of the prosecutor, as required by Section 530.20(2)(b)(i) of the Criminal Procedure Law.

By this extraordinary procedure, respondent failed to meet his ethical obligations to respect and comply with the law (Section 100.2 of the Rules Governing Judicial Conduct) and to afford to every person legally interested in a matter full right to be heard (Section 100.3[a][4] of the Rules Governing Judicial Conduct).

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

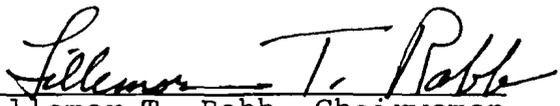
Mrs. DelBello and Mr. Kovner dissent as to sanction only and vote that respondent be removed from office.

Judge Ciparick and Judge Rubin did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: January 2, 1986


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct

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DISSENTING OPINION
BY MR. KOVNER
IN WHICH MRS. DEL BELLO
JOINS

Unlike the majority, I find an element of favoritism in the record before the Commission. To find otherwise, one must assume that respondent would have granted ex parte relief without the facts before him had any citizen sought similar treatment.

With the element of favoritism present, I believe the law is settled that removal is warranted, even if only a single instance is established. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299 (1985). Here, respondent has already been censured for 154 instances of ticket-fixing (Matter of Lombardi, 49 NY2d [v] [Ct. on the Judiciary 1980]), the largest number in any proceeding during this Commission's investigation into ticket-fixing several years ago. I believe the appropriate sanction is removal.

Dated: January 2, 1986



Victor A. Kovner, Esq., Member
New York State
Commission on Judicial Conduct