

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

ALBERT MONTANELI,

a Justice of the Ancram Town Court,
Columbia County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Albert B.
Lawrence, Of Counsel) for the Commission

Daley and Baldwin (By Andrew J. Baldwin)
for Respondent

The respondent, Albert Montaneli, a justice of the Ancram
Town Court, Columbia County, was served with a Formal Written Com-
plaint dated October 14, 1981, alleging that he improperly inter-
vened on behalf of the defendant in a case not before him in
November and December 1980. Respondent filed an answer on November
25, 1981.

By order dated December 1, 1981, the Commission designated the Honorable Simon J. Liebowitz referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 11, 1982, and the referee filed his report with the Commission on March 15, 1982.

By motion dated May 5, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on May 21, 1982, and waived oral argument.

The Commission considered the record of the proceeding on June 28, 1982, and made the following findings of fact.

1. Joseph DiCaprio is the owner of a bar in the town of Ancram. He was arrested on November 28, 1980, for two counts of serving alcohol to minors, a misdemeanor. The case was returnable before Ancram Town Court Justice Joan Dwy, respondent's co-justice.

2. Mr. DiCaprio and his family and respondent are close personal friends.

3. On the night of November 28, 1980, after the arrest of Mr. DiCaprio, respondent telephoned the State Police officers who had made the arrest. Respondent identified himself as the Ancram town justice and as a close friend of Mr. DiCaprio and the DiCaprio family.

4. On December 8, 1980, respondent spoke to the assistant district attorney assigned to the DiCaprio case and engaged the

prosecutor in a conversation relating to a possible plea bargain, reduction of sentence and lenient treatment of his friend Mr. DiCaprio. The prosecutor rejected respondent's suggestions and told respondent not to involve himself in the case in any way.

5. On December 8, 1980, respondent spoke to Justice Dwy and suggested a fine of \$200 in the event the defendant pled guilty to the charge. Such fine would be less than the maximum penalty allowed by law of \$250 or 90 days in jail per count. Justice Dwy subsequently imposed a fine of \$200 on Mr. DiCaprio.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(b), 33.2(c), 33.3(a)(4) and 33.3(c) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a], 100.2[b], 100.2[c], 100.3[a][4] and 100.3[c] and Canons 1, 2A, 2B, 3A(4) and 3C of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained to the extent indicated in the findings and conclusions herein, and respondent's misconduct is established.

Respondent lent the prestige of his office to advance a private interest (i) by identifying himself as a judge when he made inquiries to the police on behalf of a friend who was arrested and (ii) by attempting to influence the prosecutor and presiding judge as they discharged their responsibilities in the case. In essence, respondent sought special consideration on behalf of a friend charged with a crime. See, Matter of Byrne, 47 NY2d (b), (c), (Ct. on the Jud. 1978).

Respondent's conduct undermined the administration of justice and diminished public confidence in the integrity and impartiality of the judiciary.

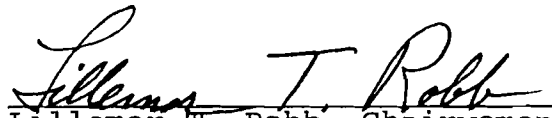
By reason of the foregoing, the Commission determines that respondent should be censured.

Judge Alexander, Mr. Bower, Mr. Cleary and Judge Rubin dissent and conclude that respondent's misconduct was not established.

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: September 10, 1982


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