

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

MORTEN B. MORRISON,

Determination

a Justice of the Town Court of
Pomfret, Chautauqua County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Christopher B. Ashton,
Of Counsel) for the Commission

Smith, Murphy & Schoepperle (Victor Alan Oliveri,
Of Counsel) for Respondent

The respondent, Morten B. Morrison, a justice of the
Town Court of Pomfret, Chautauqua County, was served with a Formal
Written Complaint dated October 10, 1979, alleging eight
charges of improper influence in traffic cases. Respondent filed
an answer dated December 1, 1979.

By order dated March 6, 1979, the Commission designated
George M. Zimmermann, Esq., as referee to hear and report proposed
findings of fact and conclusions of law. The hearing was held on

December 11, 1979. The referee filed his report to the Commission on April 26, 1980.

By motion dated July 22, 1980, the administrator of the Commission moved to confirm in part and to disaffirm in part the report of the referee, and for a determination that respondent be censured. By cross-motion dated August 5, 1980, respondent moved to disaffirm in part and to confirm in part the report of the referee, and for dismissal of the Formal Written Complaint. Oral argument was waived. The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the following findings of fact.

1. Charge I: On May 17, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Clifford L. Borst as a result of a request he received from Justice Edward H. Snyder of the Village Court of Brockton, seeking special consideration on behalf of the defendant. Judge Snyder's communications were ex parte, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

2. Charge II: On August 30, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Jerome C. Lutz as a result of a request he received from New York State Trooper D.E. Flynn, seeking special consideration on behalf of the defendant, who is Trooper Flynn's father-in-law. Trooper Flynn's communication was ex parte, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant.

Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

3. Charge III: On July 13, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. William Vickers and thereafter disposed of the case by accepting forfeiture of \$25.00 posted as bail on behalf of the defendant, as the result of his communications with Justice Sebastian Lombardi of the Town Court of Lewiston, who sought special consideration on behalf of the defendant. The communications between respondent and Judge Lombardi were ex parte, unauthorized by law and unrelated to the guilt or innocence of the defendant. Respondent's disposition of this case was not based upon the facts or the law but was the result of an agreement between him and Judge Lombardi that the defendant would not be required to appear in respondent's court, that the defendant would post \$25.00 to be called bail, that the \$25.00 would be forfeited and that the defendant would not be prosecuted further on the charge. Respondent thereafter took no action to secure the appearance of the defendant in his court or to ensure a final disposition of the charge against the defendant.

4. Charge IV: On May 5, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Lester E. Bennett as the result of a request he received from Justice Rollin L. Fancher of the Town Court of Dunkirk, seeking special consideration on behalf of the defendant, who is a friend of Judge Fancher's. Judge Fancher's communication was ex parte, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition of

the case was unrelated to the guilt or innocence of the defendant and was not based upon the facts of the case or the law.

5. Charge V: On April 5, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Thomas Gawel, as the result of a request he received from New York State Trooper Thornton, seeking special consideration on behalf of the defendant. Trooper Thornton's communication was ex parte, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based on the facts of the case or the law.

6. Charge VI: On June 15, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Richard A. Manning as the result of a request he received from Police Chief John A. Kohler of the Town of Hanover, seeking special consideration on behalf of the defendant, who is a personal friend of Chief Kohler. Chief Kohler's communication was ex parte, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition of the case was unrelated to the guilt or innocence of the defendant and was not based upon the facts of the case or the law.

7. Charge VII: On August 5, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Kenneth G. Waite, and thereafter granted an unconditional discharge, as the result of a request he received from New York State Trooper G.C. Bentley, seeking special consideration on behalf of the defendant. Trooper Bentley's communication was ex parte, unauthorized

by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based upon the facts of the case or the law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VII of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge VIII of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By acceding to such ex parte requests for special consideration from judges and others with influence, respondent violated the Rules and canons enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 47 NY2d (b) (Ct. on the Judiciary 1979), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id. at (c).

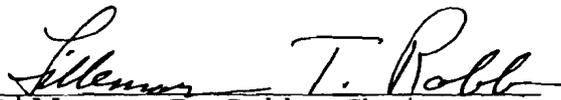
Respondent suggests that his actions in the instant matter are mitigated by his having secured "consent" to the reductions by the arresting officers in the various traffic cases discussed herein. The Commission concludes that by securing such "consents", respondent exacerbated rather than mitigated his misconduct. By becoming an intermediary between the seekers of special consideration and the arresting officers, respondent became an active participant.

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

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: December 2, 1980
Albany, New York


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