

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

JACK SCHULTZ,

a Justice of the Town Court of
DeWitt, Onondaga County.

Determination

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

APPEARANCES:

Gerald Stern (Raymond S. Hack and Stephen F. Downs,
Of Counsel) for the Commission

Brennan, Centner, Palermo & Blauvelt (Thomas E.
Goldman, Of Counsel) for Respondent

The respondent, Jack Schultz, a justice of the Town Court of DeWitt, Onondaga County, was served with a Formal Written Complaint dated March 1, 1979, setting forth 13 charges of improper influence in traffic cases. Respondent filed an answer dated April 6, 1979.

By order dated May 7, 1979, the Commission designated

Paul C. Gouldin, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on August 28, 1979, and September 12, 1979. The referee filed his report to the Commission on February 29, 1980.

By motion dated May 12, 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 May 29, 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. The Commission heard oral argument on the motions on July 24, 1980, thereafter in executive session considered the record of this proceeding, and upon that record makes the determination herein.

Charges I, XI and XII of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the following findings of fact.

1. Charge II: On December 8, 1975, respondent sent a letter to Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in People v. Pamela P. Williams, a case then pending before Judge Kuehnel.

2. Charge III: On February 22, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Dennis P. Donovan as a result of a written communication he received from Trooper Pater Pazone, seeking special consideration on behalf of the defendant.

3. Charge IV: On July 26, 1975, respondent reduced a charge of speeding to failing to keep right in People v. Dawn V. Hallinan as a result of a written communication he received from Justice Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

4. Charge V: On December 31, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Thomas L. Kelly, Jr., as a result of a written communication he received from William F. O'Brien, III, district attorney of Madison County, seeking special consideration on behalf of the defendant.

5. Charge VI: On July 7, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Edward J. Keough as a result of a written communication he received from Trooper R. F. McCorry, seeking special consideration on behalf of the defendant.

6. Charge VII: On September 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Manuel M. Martinez as a result of a written communication he received from Justice James S. Jerome of the Town Court of Geddes, seeking special consideration on behalf of the defendant.

7. Charge VIII: On December 1, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. David J. Masterpolo as a result of a written communication he received from the issuing officer, seeking special consideration on behalf of the defendant.

8. Charge IX: On October 7, 1976, respondent reduced a

charge of speeding to driving with an inadequate muffler in People v. Agnes M. Smith as a result of a written communication he received from third party identified as "R.G.B.," seeking special consideration on behalf of the defendant.

9. Charge X: On July 12, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Louis W. LaFrance as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

10. Charge XIII: On July 25, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. James E. Callahan as a result of a communication he received from Richard A. Hennessy, Jr., senior assistant district attorney in Onondaga County, seeking special consideration on behalf of the defendant.

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 II through X and Charge XIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

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

making an ex parte request of another judge for a favorable disposition for the defendant in a traffic case, and by acceding to such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge...shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge...shall convey or permit others to convey the impression that they are in a special position to influence him... [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it... [Section 33.3(a)(1)]

A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings... [Section 33.3(a)(4)]

Respondent's misconduct in this case is exacerbated by the fact that he is an attorney who should have been especially sensitive to both the impropriety and appearance of impropriety in his actions. In addition, in his letter to another judge (Charge II), respondent indicated his willingness to accommodate a request for consideration similar to the one he himself was making, stating "if I can reciprocate at all please do not hesitate to call upon me." Such an offer of reciprocity compounds respondent's misconduct.

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, 420 NYS2d 70 (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 71-72.

In the instant case, respondent argued that the "mere showing of reductions made as a result of communications" from, inter alia, police officers, is insufficient as a basis for judicial discipline, citing Matter of William J. Bulger v. State Commission on Judicial Conduct, 48 NYS2d 32 (1979). We believe that Bulger is inapposite.

In Bulger, the Court reviewed a determination that a town court justice be censured for misconduct relating to improper influence in traffic cases. The Court accepted the Commission's determination, but dismissed four of the fourteen charges in which the Commission found that the judge had reduced traffic charges against each of four defendants "as a result of a communication he received on behalf of the defendant." The four communications were sent by a New York State police investigator, a village police officer, a New York State police sergeant and a defendant's attorney. The essence of the Court's finding was not that all communications from such individuals are permissible but that, absent a finding based on the record that a particular letter sought special considera-

tion, such a communication alone could not support a finding of misconduct. In Bulger, such a finding was not made. Here, however, such findings based on the record are made as to all the sustained charges.

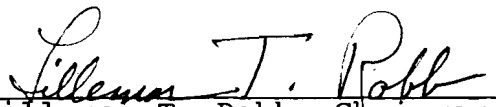
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur, except for Mrs. Robb, who dissents only as to Charge VI and votes to dismiss the charge.

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: October 8, 1980
Albany, New York


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