

TICKET-FIXING:
THE ASSERTION OF INFLUENCE
IN TRAFFIC CASES

INTERIM REPORT
BY THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

JUNE 20, 1977



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LETTER OF TRANSMITTAL

To the Governor, the Legislature and the Chief Judge of the Court of Appeals:

The State Commission on Judicial Conduct submits for your review this interim report entitled, "Ticket-Fixing: The Assertion of Influence in Traffic Cases." This interim report is submitted pursuant to Section 42(4) of the Judiciary Law.

The present inquiry evolved from an investigation in 1976 by the Temporary State Commission on Judicial Conduct of a complaint unrelated to ticket-fixing. While reviewing various court records in the course of the earlier investigation, the temporary Commission came upon evidence that a particular judge had been granting requests from other judges for favorable treatment for various defendants charged with traffic violations. The temporary Commission, on its own motion, initiated an inquiry into the alleged improper influence in these traffic cases. That investigation was continued by the State Commission on Judicial Conduct after its establishment on September 1, 1976. The Commission's investigation, which initially involved one judge who had allegedly granted favorable treatment, has extended to 38 counties to date and has implicated more than 250 judges.

This interim report outlines the Commission's inquiry into judicial ticket-fixing practices, while observing the strict confidentiality requirements of Section 44 of the Judiciary Law.

Respectfully submitted,

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INTRODUCTION: TICKET-FIXING IN NEW YORK STATE

The State Commission on Judicial Conduct has uncovered a widespread pattern of ticket-fixing in many areas of New York State. The Commission has documentary evidence that many town and village justices and some city court judges are being improperly influenced in the disposition of speeding offenses and are granting favors to friends, relatives, other judges, police officers, and people in politics and holding public office. The evidence gathered by the Commission to date reveals that more than 250 judges -- mostly town and village justices -- in 38 counties have either made requests of other judges for special consideration, granted such requests, or done both. Some have granted favors many times -- one judge has acknowledged over 500 favors.

The Commission has copies of over 700 letters requesting the dismissal or "reduction"* of traffic-related offenses as favors for friends and relatives. These letters explicitly request special treatment as a favor; some indicate that the motorist is a relative or friend of the party making the request. No pretense is made in these letters of there being a valid defense to the violation charged or other proper reason for the disposition requested. Some of the court records examined by the

* The term "reduction" explained in some detail in this report refers to a conviction of a lesser offense than the one charged. For example, reductions have been given from original charges of speeding to passing a red light, failure to keep right, equipment violations (such as faulty muffler), and even parking violations.

Commission are equally revealing. They show the original charge, the "reduced" charge and, sometimes, the name of the party requesting a favor.

Almost always, requests for favors have been granted. Quite often, judges requesting the favors have indicated in letters to the judges doing the favors that they should feel free to request similar favors in return. Many of the favors were returned. Reciprocal requests were granted when judges who had provided favors sought them for their friends and relatives.

The Commission believes that in the overwhelming majority of traffic cases where decisions were rendered on the basis of favors or special influence, there was no direct monetary benefit conferred upon the judges who presided. In a few cases, special benefits or favors are alleged to have been sought as a quid pro quo for favorable consideration. In one case investigated by the Commission, for example, a judge agreed to suspend a fine if he received sexual favors from a friend of the defendant. (The Commission reported the case to the local district attorney's office, and the judge immediately resigned his judicial office.) In several other cases, favors were granted to clients of lawyer-judges who are permitted to practice law. These judges either favorably disposed of their own clients' cases or sought favors on behalf of their clients from other judges. When such favors are granted to clients, obviously the judge's private law practice is enhanced.

There are more than 2,000 town and village justices in

the state. Obviously, the Commission has not investigated all of them. Not every court has been reviewed in the 38 counties to which the Commission's inquiry has extended to date, and in the remaining 24 counties no investigations have been conducted. Thus, the Commission does not know whether the misconduct identified to date is engaged in by a majority of town and village justices. Sworn testimony taken to date, however, indicates that this abhorrent practice is widespread and that only a small fraction of it has been identified.

TRAFFIC VIOLATIONS: THE PRESCRIBED PROCEDURES

Uniform traffic tickets are issued by various police agencies to alleged traffic violators. Under regulations promulgated by the Commissioner of Motor Vehicles, an officer who issues a traffic ticket must, under penalty of perjury, swear or affirm to the truth of the allegations of the charge.

A motorist charged with speeding may plead either guilty or not guilty to the offense charged. He need not appear in court in person. If he chooses not to appear, he is required to sign the back of the summons (acknowledging his guilty plea to the charge) and mail the summons to the court which has jurisdiction. If he pleads guilty by mail he is required to submit a portion of his driver's license (which contains a record of prior traffic convictions). The conviction is then recorded on his license by the court which has jurisdiction over the case. The

speeder is then advised of the court's disposition, which is generally a fine payable by mail. If he pleads not guilty by mail, he is advised of the date he must appear for trial.

A "point" system is used in New York by the Department of Motor Vehicles: most "moving" violations are assigned a point value of two points, a speed in excess of the speed limit up to 25 miles per hour is assigned three points, and a speed in excess of 25 miles over the speed limit is assigned five points. A motorist who receives between seven and ten points within an 18 month period may be required to attend a driver improvement clinic. There are no points assigned for conviction of a non-moving violation such as illegal parking or driving with a noisy muffler or bald tire. Receiving nine points for speeding within an 18 month period, or eleven points for any series of violations, may lead to suspension or revocation of a driver's license. The Department of Motor Vehicles also has discretion to revoke or suspend a license for three or more violations within an "unusually short period of time." Points may be subtracted from a driver's record upon the completion of an approved course.

The vast majority of drivers who receive summonses for speeding plead guilty, generally by mail, pay the required fines and have their licenses marked accordingly. Given the two choices prescribed by law, they usually choose to forego a trial and instead accept a conviction based upon their pleas of guilty.

TICKET-FIXING PRACTICES

Reductions of Charges

Plea discussions and "reductions" have become commonplace in disposing of criminal charges. Appellate courts have sanctioned the acceptance of a "lesser included offense" by a trial court in lieu of a trial on the most serious offense charged. Generally, there must be some relationship between the offense charged and the offense accepted for conviction. The Criminal Procedure Law defines a "lesser included offense" as an offense of a lesser degree committed at the same time that a more serious offense is committed (Criminal Procedure Law, Section 1.20). This provision of law is applicable as well to the disposition of traffic offenses.

In many areas of the state, a relatively few motorists charged with speeding are permitted to plead guilty to other (unrelated) moving and non-moving violations. Infractions of passing a red light or a stop sign have been substituted in court for speeding offenses, although the conviction has no relation to the speeding offense. Not every reduction is the result of ticket-fixing. In some areas, if a person retains an attorney, a speeding charge may be reduced to an offense which carries less than three points. This appears to be a courtesy to attorneys retained in such cases. Some reductions may be granted when mitigating circumstances are presented to the court. Some judges have advised the Commission that due to the inconvenience of

conducting trials, reductions have also been granted when defendants initially pleaded not guilty.

The Commission has seen court records of cases in which there have been reductions from driving while intoxicated (a misdemeanor) to speeding (a three-point, moving violation) and even to driving with an unsafe tire (a no-point, non-moving violation). Some driving while intoxicated (misdemeanor) cases have even been reduced to parking and other no-point violations. Speeding charges have been reduced to non-moving violations including parking offenses. Although these reductions do not appear to be legally authorized, they are not the focal point of this investigation.

Reductions and other dispositions that are granted as favors are of primary concern to the Commission. Those with influence have succeeded in obtaining pleas "reduced" (from speeding) to illegal parking, driving with a bald tire and driving with a noisy muffler. No points result from these infractions. No-point violations have even been granted as favors in misdemeanor cases. Some traffic violators charged with "moving" violations have even avoided receiving points after their second and third "moving" offenses. Town and village justices have requested favors of other town and village justices on behalf of repeated offenders. In some cases, speeders have used the services of different town or village justices to do their bidding.

It is noteworthy that by express policy of the Department of Motor Vehicles, reductions from speeding offenses are not permitted in New York City, Buffalo and Rochester, where administrative agencies have jurisdiction over traffic offenses. Motorists charged with speeding in those jurisdictions have the choice of pleading guilty or not guilty to the offense charged, as prescribed by law. In these jurisdictions, requests for reductions to fictionalized charges are not entertained. The result of having such a wide discrepancy of procedures is obvious. Whether or not a motorist faces the full impact of the law depends on where he lives and often on whom he knows.

Other Favors

The use of special influence is not limited to the reduction of charges from speeding to non-moving violations. Outright dismissals have been requested and arbitrarily granted, solely as favors to the persons making the requests. There is evidence that reductions and dismissals have also been granted as favors in a few misdemeanor traffic cases. Favors also have been granted on fines. Sometimes the requesting parties asked for and obtained specific fines of \$5.00 or \$10.00. (Motorists without influence generally pay more). Even unconditional discharges (no fines) have been granted upon specific requests of town or village justices or friends of the presiding justices. Some town or village justices requesting favors for their friends, relatives or clients have sent their own personal checks to other town or

village justices, covering the amount of the proposed fines. In some of these cases, the checks have accompanied the written request for the favor; in other cases, the checks represented the amounts agreed to during earlier conversations. At times, judges requesting the favors have stricken the original charges on the summonses, entered the reduced charges, and then sent the summonses to the judges who had jurisdiction.

Favors are also requested to reduce the amount of the excessive speed shown on the face of the summons. One defendant was issued a summons for driving over 100 miles per hour in a 55 miles per hour zone. His speed was recorded by radar. He consulted a friend (a police officer) who contacted an attorney who had been associated in law practice with the presiding judge, and the defendant was able to plead guilty to driving only 20 miles per hour over the limit. The effect of the reduced speed was to reduce the number of points given to the driver (from five to three) and, possibly, to bar a Department of Motor Vehicles hearing which might have resulted in revocation or suspension of his driver's license. A similar favor was done upon the request of one town justice to another. An 89 miles per hour speed (in a 50 miles per hour zone) was changed to read 60 miles per hour. As a result of the alteration on the summons, the driver received fewer points and did not face a Department of Motor Vehicles hearing to determine whether he should lose his license.

An added feature of the reduction granted as a favor is that generally the defendant's license is not marked accordingly,

although it should be. Section 514 of the Vehicle and Traffic Law mandates that non-moving violations such as faulty muffler and bald tire be recorded on the conviction stub of the driver's license. Of those cases analyzed by the Commission, most reductions granted as favors had not been recorded on the driver's license.

Bail Forfeitures

Another form of ticket-fixing identified by the Commission is an agreement to accept an amount of money as a bail forfeiture in lieu of an appearance by the defendant. In such a case, a defendant is told that he need not appear on the scheduled court date. He simply sends the court (or, more often, asks a judge with whom he is friendly to send to the court) an amount of money which is equal to a moderate fine. The judge who has jurisdiction over the traffic case accepts the money as "bail," and when the defendant does not appear (in accordance with the plan), the "bail" is forfeited. It is remitted to the state, and the defendant is not convicted and has no mark of conviction on his license. Apparently, when a bail forfeiture is accepted in advance of the defendant's scheduled appearance, the case is considered closed by the judge, contrary to state law and policy requiring the charges to be disposed on the merits. In those cases where the bail forfeiture is properly reported, the defendant receives the assigned number of points.

One variation of the agreement to accept a bail forfeiture in lieu of a conviction occurs after a defendant has failed to appear and has received a notice from the Department that, because of his failure to appear in court, he may not be able to renew his license. At this point the defendant seeks a double-barrelled favor. Typically, a judge with whom the defendant is friendly requests both a reduction (i.e., to a no-point muffler or bald tire violation) and notice to the Department that the defendant appeared in court. A court that grants this favor overlooks not only the original traffic charge but also the failure of the defendant to appear in court in response to the original charge. This defendant has received quite a favor: he received no points on his driving record, his driver's license does not show any conviction (because in the cases analyzed by the Commission, the reduced charge had not been recorded), his application for a license renewal will not be barred, and any arrest warrant issued for his original failure to appear has been quashed. All these benefits are derived because a traffic violator who flouted court process (by not appearing in court or pleading guilty) knows a person who can ask and obtain favors from a judge.

Alteration of Summonses

It is noteworthy that in most of the cases identified by the Commission in which favors have been provided, the summons

was altered to reflect the reduced charge or the reduced speed. These alterations have been made despite the fact that the officer issuing the summons had sworn in affidavit form, pursuant to law, that the speed entered on the summons was the precise speed of the motorist's car. Thus, with apparent disregard that they were changing the sworn statement of another person (the officer who issued the summons), some justices simply struck either the original charge or the speed of the motorist's car and entered the new reduced charge or the reduced speed. There is no authority in law to alter summonses in this manner, and an affidavit may be changed only by the affiant as prescribed by law. Many judges believe that the alteration of the summons conforms to law simply because they obtain the "consent" of the police officer who issued the summons.

POSSIBLE ILLEGALITY

The Commission is hesitant and has no authority to draw conclusions that the conduct described above violates specific provisions of law which are punishable as crimes. The responsibility of the Commission is to identify misconduct and to impose or seek the imposition of discipline for unethical conduct. Although the Commission is neither a court nor a prosecuting agency, it appears relevant to note that there are several provisions of law brought into question by ticket-fixing practices. A Suffolk County District Court judge has recently been convicted

of the crime of Official Misconduct for fixing a speeding ticket in court.* The judge received no direct benefit for the favor granted. An appeal is pending.

Many of the reductions commonly employed in traffic cases have no basis in law. They are not "lesser included offenses" as defined by the Criminal Procedure Law and have not the slightest connection to the offense charged. Any illegality in such reductions, of course, is greatly compounded when tickets are "fixed" -- that is, when the reduced charges are granted solely as favors to the errant driver or to a third person.

A provision of the Vehicle and Traffic Law, Section 207, subdivision 5, aptly cited in one Appellate Division opinion as "the ticket-fixing section," provides as follows:

Any person who disposes of any uniform traffic summons and complaint in any manner other than that prescribed by law shall be guilty of a misdemeanor.

Whether or not crimes have been committed in connection with ticket-fixing is left to other agencies to determine in the first instance and to the courts in the final analysis. The Commission's primary concern in this regard is any judicial decision based upon factors which are unrelated either to the merits of the case or to mitigating circumstances. The evil of ticket-fixing is that special influence becomes the essence of the judicial determination. If a judge makes a decision based

* People v. La Carrubba, 176 (117) N.Y.L.J., Dec. 20, 1976, p. 17, c.6 (pre-trial motion to dismiss indictment).

upon such influence, it is highly improper and unethical, even if the result would otherwise be proper. It is equally improper for an intermediary, especially a judge, to seek personal favors on behalf of defendants.

TESTIMONY OF JUDGES INVOLVED

The Commission has taken the testimony of some of the judges who have requested favors and some who have granted favors. Most have professed a recognition of the impropriety of the practice, noting simply that it is a prevailing custom that they inherited upon taking office. These judges have accepted the practice of doing favors as something expected of them. One judge testified that while he did not like the practice, he assumed it was a necessary price for re-election. Many, of course, have felt comfortable asking for favors after they had granted them at the request of other judges. A few town justices still insist there is nothing improper in the practice. These judges reason that all requests for consideration are treated equally; most people, they add, simply do not make such requests.

The judges questioned by the Commission maintain that the practice is widespread. Some claim that every town and village justice engages in it. Although the Commission has ascertained that the practice is widespread, it is known that some judges have flatly refused to engage in it. One town justice who has engaged in the practice, in explaining why requests

for favors were not made during a particular period, testified that a fellow judge (now deceased) in the same court let it be known that he refused to honor such requests. Another town justice had a form letter printed rejecting requests for favors made to him.* (The need for a form letter of this kind indicates that the judge received many requests for favors. It is noteworthy that the form letter began with the salutation, "Dear Judge." The name of the judge requesting the favor was then typed in. This appears to confirm the Commission's experience that most of the requests for favors are made by judges to judges). Another judge had a similar form letter prepared but continued to make personal requests for favorable dispositions in a few cases. His form letter advising motorists of his refusal to make requests for favors was used to reduce the number of times he sought favors. He continued, however, to grant requests for favors and to seek favors of other judges on behalf of some people.

Most of the judges engaging in this practice who testified before the Commission rationalized their conduct by stating

* The form letter rejecting the request for a favor called attention to criticism of the town and village justice court system and warned that unless "changes are made" the system will be replaced. The letter contains this paragraph:

I have made it a policy not to change or reduce any charges unless the arresting officer comes in and changes the information or the District Attorney moves for such reduction. I will not be a party to eliminating our lower courts.

that they usually obtained the "consent" of the police officers who had issued the summonses. (In this context, it is notable that judges generally have few problems in obtaining such consent for favored treatment. Police officers apparently have found it difficult to refuse requests by judges). These judges testified that they have relied on the so-called consent of the police who, they allege, acted on behalf of the district attorney in agreeing to the reduction of charges. In the overwhelming majority of cases, the officer consented or, more precisely, indicated that he had no objection to the reduction or dismissal.

Such "consent" by the police for favorable treatment has no effect in law, regardless of whether the local prosecutor knows of the practice. Indeed, since some of the requests for favored treatment have been made by law enforcement personnel, such "consent" apparently has often led to the police joining those who make such improper requests. It is unlikely that after a police officer's consent is obtained for the reduction or dismissal of a speeding charge, the presiding judge would deny a similar request made by that police officer in another case. One judge, who had been a police officer, explained his role in fixing tickets by the lessons he had learned as a police officer seeing tickets being fixed. Another judge who had been a police officer also described his experience of being asked by judges whether he objected to special treatment for a few select persons who had received traffic summonses.

Apparently, the only criterion used by the individual police officer or his superiors in granting consent is whether the speeder was disrespectful when he received the summons. This practice is intended simply to weed out among those with influence the few who have given the police a difficult time. This is hardly the proper basis for a judge's determination as to guilt or innocence, and in no way could it properly substitute for the standard procedure of obtaining the district attorney's informed consent for reductions. Regardless of who gives consent, if a judge seeks a certain disposition or approves of it on the basis of friendship or politics, or as a favor to another judge, it is highly improper and unethical.

THE ADVERSE CONSEQUENCES OF TICKET-FIXING

The detriment to the system of justice and to the public policy of this state is clear. Those town and village justices and other judges who have engaged in this practice have created two systems of justice, one for the average citizen and another for people with influence. While most people charged with traffic offenses accept the consequences, including the full penalties of the law, the points on their records and possible higher insurance costs, some are treated more favorably simply because they are able to make the right "connections." In cities where administrative agencies handle traffic offenses, ticket-fixing is virtually unknown. Thus, large numbers of New York

State residents are discriminated against either because they lack influence to get special consideration or because ticket-fixing does not exist in their areas of the state. Ticket-fixing also discriminates against the "outsider" -- the person from out-of-town or out-of-state who is ignorant of local customs and therefore is not able to be part of the ticket-fixing network. Of all the evils of ticket-fixing, possibly the most serious is the unequal and discriminatory enforcement of the law.

The system of justice is subverted in other ways by ticket-fixing. Those with influence know they have succeeded in receiving special treatment -- no points, no record of a moving violation and, generally, a lower fine. This breeds disrespect on the part of those who obtain favors, not only for that part of the judicial system which deals with traffic cases, but for the entire justice system. Also, the police who "consent" to ticket-fixing often appear in court in other cases. It is not hard to imagine how disrespect is generated and how it may affect the perception of the courts by police, prosecutors, lawyers and those who have received special consideration. Although ticket-fixing is not widely perceived by the public, many police officers, prosecutors, lawyers and judges know that it does exist. While we cannot assess the full adverse effect on the criminal and civil justice systems, it is fair to assume that the costs to these systems are substantial.

The Commission is not impressed with the implicit

argument that traffic cases are unimportant. In addition to the disrespect generated by this practice, ticket-fixing has frustrated the policies of the state in dealing with speeding offenses and in some cases with dangerous drivers. As indicated above, convictions on drivers' licenses are only recorded when an individual does not receive special consideration. Some individuals appear to have almost total immunity from conviction since they can repeatedly obtain favored treatment and can avoid any record of even a series of speeding violations. This feeling of immunity may actually encourage driving at unsafe speeds. Obviously, the practices identified by the Commission have the undesirable effect of keeping on the road those drivers who may deserve to have their licenses suspended or revoked. Even a single speeding violation reduced to a parking violation, in the case of an individual with other speeding convictions, would result in concealing a bad driving record from motor vehicle authorities.

Ticket-fixing also adversely affects fair and efficient police work. Some police officers have indicated that they know which citizens in their communities receive special treatment and that giving summonses to these people is useless.

The Commission found that, invariably, when favors were granted, there had been no review by the court of the defendants' prior driving records. Thus, the determination to grant special consideration was based solely upon the special influence of the one seeking the favor and not on the record of the defendant or

the circumstances behind the issuance of the traffic ticket. Even an appropriate fine in such a case (i.e., one based on whether there have been other traffic offenses within the prior 18 months) was rendered impossible. In several instances, those who received favors and were moderately fined (or given unconditional discharges) had been involved in serious traffic cases.

Also of concern to the Commission is that the state and its localities are penalized financially by ticket-fixing. Fines are paid by some, not by others. When tickets are fixed, speeding and other traffic offenses are not recorded, and moderate fines are levied in cases calling for more substantial fines (due to the actual poor driving record of some individuals). The amount of a fine and whether it is paid should not be based on the influence a person can muster.

The fixing of traffic tickets creates an illicit atmosphere within the courts which could easily carry over to other cases. Once the system recognizes fixing, or legitimatizes it, the principals involved may find it easier to "fix" more serious cases. "Fixing" speeding tickets, for example, is only one step removed from fixing crimes such as driving while intoxicated and reckless driving. If "fixing" becomes accepted instead of recognized as the odious practice it is, it may spread to other cases. For this reason, ticket-fixing represents a serious threat to the entire court system.

PROSPECTS FOR REFORM

Most of the judges who have been required to testify have volunteered that they intend to desist from requesting or considering special favors. The scope and duration of this development remains to be seen.

By releasing this report, it is the intention of the Commission to alert the public, the courts, district attorneys, police officials, and any town and village justices and other judges who are engaging in these practices, to the seriousness of this misconduct.

Court administrators, police officials and district attorneys' offices should contribute to reform by exercising greater supervision and control over their respective subordinates. There is virtually no administrative supervision over most town and village courts. Training programs for judges do not sufficiently emphasize ethical standards. All judges should be advised of the impropriety of these practices. Similarly, police and prosecuting officials should issue strict instructions to their personnel not to engage in ticket-fixing, either by giving consent to the requests of others or by seeking favors.

The Commission, of course, will continue to conduct investigations to uncover ticket-fixing. Appropriate disciplinary steps will be taken.

This interim report is respectfully submitted by the
State Commission on Judicial Conduct.

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