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**Black Transit Police Officers Lose Appeal in Bias Complaint
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Black Transit Police Officers Lose Appeal in Bias Complaint

By Alan Kohn

The U.S. Court of Appeals for the Second Circuit yesterday dismissed a district judge's finding that New York City Transit Authority police were excessively lenient in disciplining white officers.

The Court's decision in *Woodbury v. City Transit Authority*, 87-7149, ended a suit in which black and other minority officers charged the Authority with discrimination in employment, job assignments, promotions and disciplinary proceedings. The claims of eleven individual minority officers were dismissed at trial and not appealed.

Injunction Issued

While finding for the Transit Authority on the individual claims, Judge Charles P. Sifton, of the U.S. District Court for the Eastern District of New York, found that the evidence, while "hardly overwhelming," indicated intentional discrimination existed in the start of disciplinary proceedings in the form of excessive lenience by white superior officers toward other white officers.

Judge Sifton enjoined the Author-

ity last year from further discrimination and ordered it to comply with specified deadlines for publishing new rules and procedures to end racial bias in the disciplinary system. The requirement for the rules was stayed pending appeal.

The Circuit Court reversed. Judge Roger J. Miner wrote the Court's eighteen-page opinion with which Judge J. Daniel Mahoney concurred. Chief Judge Wilfred Feinberg wrote a six-page dissent in which he would have remanded for clarification of Judge Sifton's findings.

Treating the Case

Judge Miner stated the majority of the panel would treat the appeal under Title VII of the Civil Rights Act of 1964 as a case of discriminatory treatment, in which proof of discriminatory motive is essential.

Reviewing the record, the majority held the plaintiffs "failed entirely to create a rebuttable presumption of purposeful discrimination." Among its findings were the following:

- Judge Sifton "misapprehended

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the information conveyed by the statistical evidence" so that his finding of excessive lenience was "wholly unsupported by these statistics."

- Even when properly interpreted, the statistics were "at best of marginal significance."

- Judge Sifton "specifically credited certain expert testimony that virtually precludes a finding of excessive lenience."

- The "sincere impressions" of plaintiffs' witnesses "constitute an equally dubious basis for the ... finding of discrimination."

The plaintiffs were represented by Lawrence S. Cumberbatch. The defense lawyers were Martin B. Schnabel and Albert C. Cosenza, of Brooklyn.