

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to :

MARK J. GRISANTI, :
a Judge of the Court of Claims and a :
Supreme Court Justice, Erie County. :

ORAL ARGUMENT

Commission Office
61 Broadway, Suite 1200
New York, NY 10006

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September 7, 2023
11:24 AM

B e f o r e:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore (via videoconference)
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah
Commission Members

P r e s e n t:

For the Commission

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For the Respondent

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Vincent E. Doyle, III, Esq.
Honorable Mark J. Grisanti

A l s o P r e s e n t:

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MS. ZAHNER: Good morning, Mr. Belluck and members of the Commission. This is the oral argument in the *Matter of Mark J. Grisanti*, a Judge of the Court of Claims and an Acting Justice of the Supreme Court. Judge Grisanti is appearing with his attorneys, Mr. Connors and Mr. Doyle. Mr. Postel is appearing for the Commission.

MR. BELLUCK: Okay. Good morning. In the *Matter of Mark J. Grisanti*, a Judge of the Court of Claims and an Acting Justice of the Supreme Court, this is the oral argument with respect to the referee's report, a determination of whether misconduct has occurred, and if so, the appropriate sanction.

Counsel will each have 30 minutes for their argument. Counsel for the Commission may reserve a portion of his time for rebuttal. After the initial presentations, the judge may if he wishes, make a presentation to the Commission not to exceed ten minutes. Counsel for the respondent may reserve time to speak after the judge but prior to the rebuttal. The judge and counsel are subject to questioning by the Commission at any time during their

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presentations. And counsel is advised that their argument should be confined to the record and any statements outside the record will be disregarded.

You will notice that there are lights on the podium to indicate your time. The green light means you may continue to speak, a blinking green light means you have two minutes left and a yellow light means you have one minute left. When the light turns red you should stop your argument.

We'd like to remind you to please silence your cellphones and electronic devices to prevent any interference with the recording of the proceeding.

We do have one member of the Commission who was appointed just yesterday by the Governor, appearing remotely. If there are any technical difficulties, we will pause the argument and any time lost will not be counted against your presentation.

Mr. Postel, are you ready to proceed?

MR. POSTEL: I am, Chair Belluck.

Chair Belluck, members of the Commission, I would like to reserve five minutes

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for rebuttal please.

MR. BELLUCK: Okay. Thank you.

MR. POSTEL: Our society requires its citizens, and especially its judges, to resolve disputes through words not violence. The record before you portrays a judge who chose to employ repeated physical aggression as his means of resolution. For this and his other misconduct, removal is the appropriate sanction.

Respondent's public brawling and his shoving of a police officer displayed a shocking lack of judgment indelibly tarnishing the perception of his dignity and undermining the dignity of the judiciary as a whole. That misconduct is exacerbated by respondent's failure to have disclosed that he was receiving payments totaling over \$27,000 from an attorney who was either appearing before him or receiving assignments and financial rewards.

This public brawl, this public street brawl was a needless confrontation which respondent escalated time and again. I know that members of the Commission have seen *Exhibits 41*. And if you look at that exhibit, you see that respondent drove directly into his driveway. He

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was not impeded and the driveway was not blocked, as he falsely told the 9-1-1 operator. Then knowing he had made a police report, respondent could have simply waited in his house for them to arrive. He should have waited. But he didn't. Respondent didn't need to engage the Meles in profanity, repeated profanity, but he did. Respondent didn't need to escalate the situation by crossing the street with the intention of challenging Mele. But he did. Respondent didn't need to renew the street brawl. But he did, twice. Respondent didn't need to goad Mele into fighting. But he did, saying to him, "Come on, come on, what you got? Want to go again tough effin guy? I'll flatten your effin face again." Standing alone, respondent's disgraceful, shirtless public street fight merits removal. But that egregious misconduct does stand alone.

JUDGE MILLER: Counsel?

MR. POSTEL: Your Honor?

JUDGE MILLER: I just wanted to ask you to focus on the *Edwards* case, the Court of Appeals case where apparently the Commission removed a judge for clearly inappropriate

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activity and the Court of Appeals reversed and moved the sanction down to censure commenting that, I think largely that, this was a family, a family member who was under threat, and under those circumstances it was appropriate. I am not reading the whole ruling but was appropriate.

MR. POSTEL: I know the case.

JUDGE MILLER: And then we have our own case, I think it's the *Canary* case, where we also seem to indicate that because family members were involved in it. There appears to be two precedents. Even though you have outrageous behavior, we should consider and this involved his wife who is also overly emotional and over the top. But, so, how do you respond to that? Why shouldn't we be governed by the *Edwards* case?

MR. POSTEL: I think both cases are distinguishable for important reasons. As to *Edwards*, we begin with the fact that it's not a case involving violence. It's a case involving ticket fixing. And in their decision, they made a reference to the judge's judgment being affected by his son's involvement. But they also said that

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that was not the standard and that that alone should not excuse him. So that's different, different dramatically from what we have here.

And in *Canary*, let me say at least two things maybe more. The law changes over time and I think that's appropriate to understand. And *Canary* gave this judge and other judges the clear direction that pushing a police officer was wrong. But the difference in *Canary* is this, the push came after his son had been arrested and taken into custody. This push came during the lawful arrest process, it was found by the referee a lawful maneuver, in which he pushed and impeded the officer from doing his job. I submit that those are dramatic differences.

And in continuing that, you should understand that respondent's actions towards Officer Gehr were so aggressive as described by Officer Muhammad that he was actually constrained. Officer Muhammad felt constrained to bear hug respondent away from Officer Gehr. And in doing so, he had to tell respondent three times, don't fight a cop. In pushing Officer Gehr as he was executing his lawful duty, respondent simply crossed the line. Standing alone, that

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public misconduct is sufficient for removal.

JUDGE SINGH: And what case would cite that proposition, sir?

MR. POSTEL: I think that as we've said here, we have a *sui generis* presentation and I think that what you look at and see on the video, which would be public as a part of any discipline is the kind of the thing that needs the public's confidence to be restored. So, this case standing alone, the push and what you see is sufficient to make that determination.

JUDGE MILLER: Should we take into account the behavior of the police officers –

MR. POSTEL: – And, if I might have a moment – I think we begin and maybe you want to end on *Blackburne*.

JUDGE MILLER: What's that?

MR. POSTEL: *Blackburne*.

JUDGE MILLER: In response to that –

MR. POSTEL: In response to Judge Singh's question.

JUDGE MILLER: Okay.

JUDGE CAMACHO: How about the *Newman* case in which the judge who was involved in a DWI accident, was uncooperative

1 during his arrest, tried to break away from the
2 officer's grasp and had to be forced into the
3 patrol car and threatened to take the officer's
4 gun?

5 MR. POSTEL: Again, here, as in *Canary*,
6 we had an arrest already being done. Here we
7 did not have the physical nature or in that case
8 the profanity level that we have here as well.

9 JUDGE MILLER: I have a question. To
10 what extent should we take into account the
11 actions of the police officers? You know,
12 watching this they did not serve as a calming
13 element and in fact you can almost, it's never
14 justified to fight with a police officer but the
15 confrontational nature and there's a part of the
16 tape where I forget which officer who –

17 MR. POSTEL: – Officer (INAUDIBLE) I
18 think –

19 JUDGE MILLER: – Who wasn't called
20 and therefore you had an adverse inference,
21 literally comes up to the judge, I mean, it's not
22 the way to assert authority.

23 MR. POSTEL: You're talking about
24 Officer Hy.

25 JUDGE MILLER: Right. So to what

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extent do we consider that in analyzing the judge's conduct?

MR. POSTEL: Well, Officer Hy I think that it's kind of irrelevant in the sense that this misconduct, the street brawl, the pushing of the cop had all occurred before Officer Hy got involved. He was a late appearance on the scene. His role in this was to come to the conclusion, as I'll go into, that what the judge was saying to the police was inappropriate. What he was saying, you're name dropping, you're invoking the names and you are expecting special treatment and at a certain point he'd decided he had enough. And his language was coarse. I don't believe that the language is always not coarse in a circumstance like this, but his language was coarse, but it really had very little if nothing to do with what we are here for today.

JUDGE SINGH: But don't you think the entire incident, the police officers could have de-escalated the situation as opposed to, it appears at least from the body cams of being part of the escalation?

MR. POSTEL: Certainly. So, let's start with their arrival. If you look at their arrival, the

1 very first moment Officer Gehr gets out of the
2 car he's presented with a screaming individual,
3 the same individual who the cuffs were placed
4 on later.

5 MR. BELLUCK: You talking about the
6 wife?

7 MR. POSTEL: I am. And Officer Gehr's,
8 and she continued that pattern. Officer Gehr's
9 testimony at the hearing was, I then knew that I
10 wanted to engage in de-escalation. So, what this
11 comes down to is Ms. Grisanti was upset and
12 more than that that he first chose to talk to the
13 people on the other side, the Meles. And in
14 doing so, what we have is a woman who
15 approaches Officer Gehr and must be ushered
16 back by the other officer to the other side of the
17 street. This is not five feet. To the other side of
18 the street. Then again goes towards Officer Gehr
19 and again must be ushered back to the other side
20 of the street. All while loudly, clearly screaming
21 profanities.

22 MR. BELLUCK: Mr. Postel, Judge Falk
23 wants to ask a question. But while you are on
24 this thought, what, what I guess weight should
25 we give to the judge's wife's conduct here

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because a substantial part of the referee report with respect to Charge I involves actions by her specifically? And you are also referencing them. But she's not the one before us.

MR. POSTEL: I'm referencing them in an answer to Judge Singh's question.

MR. BELLUCK: Right.

MR. POSTEL: But I think they fall into two different categories. As to Charge, as to the first portion of Charge I with regard to the Meles, really nothing. And I will get to that in a moment. She didn't go across the street first. Yes, she engaged them. Yes, respondent engaged them. Yes, the fight broke out with her. That's different than what happened later. And there was an exchange of profanities across the street. But later it was her conduct in not obeying the police officer.

MR. BELLUCK: But you, you would agree that her conduct is not really relevant?

MR. POSTEL: Not relevant in any way.

MR. BELLUCK: Okay. Judge Falk?

JUDGE FALK: What, if any, so watching Officer Gehr he clearly in my mind goes from zero to a hundred and not the best police conduct

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and takes the judge’s wife down, right in front of her – him. What if any mitigation should we consider with respect to the judge’s actions when he pushed or made contact with Officer Gehr?

MR. POSTEL: I would suggest none and I will tell you why. First we listen to Officer Muhammad who the referee lauded in his report, that Officer Gehr did not run across the street at Ms. Grisanti. We see in the video that he did not run across the street at her. We see that in fact there had been an attempt to de-escalate the situation as I’ve described and more, “Please stop, please stop.” And yet she doesn’t. And her words to him, this is relevant only to the arrest scenario, her words to him were challenging. They were more than discourteous. They were profane, in the course of his duty. And yes he tries to cuff her because he believed that’s what he had to do to continue his investigation. And in trying to cuff her, respondent yells at him, “Hey, hey, hey.” And then takes eight steps, eight, towards the officer before putting two hands on his back and shoulder and pushing. This impeded the officer. It kept him from completing the cuffing as he testified.

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JUDGE MILLER: Counsel, you indicated in response to a question from the Chair that we should – that the behavior of the wife is almost irrelevant. But that seems contrary to the two cases we discussed before where the key factor in both cases was that there was a familial relationship, I think they called it the paternal instinct, where this, I don't know what you'd – wife instinct with –

MR. POSTEL: – I think –

JUDGE MILLER: – Men in their mind are trying to protect their wives. So it's clearly relevant the question is where do we put it, correct?

MR. POSTEL: And I think that's again we're talking about two different things. On the one hand it's, is the fact that it's his wife a mitigating factor, and I think not. The second is was her conduct, that's a different question, in dealing with Officer Gehr, how did that affect Officer Gehr since the question was he rushed at her, he looked to be not de-escalating. I suggest that he was de-escalating until that very moment. So, it's important to understand her contacts with regards to Officer Gehr but not her conduct in

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terms of the entirety of whether the judge should or should not have engaged in misconduct.

JUDGE CAMACHO: Do you think that the seizure of the wife was lawful?

MR. POSTEL: Yes.

JUDGE CAMACHO: Why? What was she being seized for, what was she being arrested for?

MR. POSTEL: Well she was being arrested and ultimately released for having disregarded the police officer's multiple, I believe five times, direction to her to stand down, to move away. And in the course of that she was more than just disregarding the officer's direction in a tense scene. My argument is that's de-escalation. More than just failing to adhere she was actually inciting the already difficult situation with the nature of her language.

JUDGE CAMACHO: How about Officer Muhammad saying she's good, she's good, she's good three times?

MR. POSTEL: True. Whether or not Officer Gehr heard that on the way in to place her in custody is in doubt. His testimony was equivocal on that. But it doesn't matter because

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we have a member of the Buffalo Police Department believing at that moment that he needed to do this, to execute his duty and to de-escalate a scene. And you can't help but watch the video –

JUDGE SINGH: – It sounds like an arrest is not de-escalating the scene, putting a wife in handcuffs when there's a neighborhood brawl, I guess.

MR. POSTEL: But we know –

JUDGE SINGH: – There are other ways. He says go back into the house and she doesn't listen. But there are other ways to de-escalate, no?

MR. POSTEL: Well, you know, you've said it. She did not listen to the officer. She upped the ante in terms of the stress level of a situation that was already bad. And in fact she did not listen to respondent who told her to stop. So, I don't know that Officer Gehr had a whole lot of choices. But it doesn't matter because it's not our position to decide whether he was right or wrong. It wasn't respondent's position to decide whether he was right or wrong. And in connection with that, respondent did not file a

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complaint with the Buffalo Police Department. Mrs. Grisanti didn't file a complaint. There was no lawsuit filed. And the referee found that it was a legal maneuver in the course of play taking her into cuffs. I don't know that we can, you can assert your judgment in place of the officers at that moment. It was a time of tension.

MR. RASKIN: Mr. Postel.

MR. POSTEL: Mr. Raskin?

MR. RASKIN: Are you asking us to find no mitigation on behalf of the respondent as a result of his wife's conduct and no aggravation as it relates to Officer Hy's finger pointing in respondent's face saying, if my recollection is correct, don't use the name of a copper or don't name-drop a copper with some aggression, I would suggest. So, is that what you are asking us to do?

MR. POSTEL: I think the level and tenor of Officer Hy was totally irrelevant. What's relevant about Officer Hy is the conclusion he drew from what respondent was saying. The conclusion that the repeated references to his relatives in the Buffalo Police Department, his connections to senior officials in the Buffalo

1 administration specifically the Deputy
2 Commissioner and the Mayor, that that was
3 name-dropping. And he took the conclusion that
4 that as a request for special treatment, that his
5 behavior may have been over the top really
6 doesn't matter at all, I don't think. It's not
7 mitigating in any fashion because it's not
8 relevant to what we are here for today.

9 MR. RASKIN: Thank you.

10 MR. POSTEL: So, the Officer Gehr
11 situation occurs, the handcuffs are placed on
12 Mrs. Grisanti, respondent has shoved him and
13 steps away. Mrs. Grisanti is taken to the car.

14 JUDGE MILLER: Counsel, can I follow
15 up that question? What, to what extent should
16 we take into account the actions of these
17 neighbors and the alleged history of harassment
18 and problems on the block? Is that a mitigating
19 factor?

20 MR. POSTEL: The referee termed it
21 extreme provocation. And there was a history of
22 bad relations –

23 JUDGE MILLER: – Extreme provocation
24 by the neighbors?

25 MR. POSTEL: By the neighbors.

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JUDGE MILLER: So, therefore it is, it is a mitigation?

MR. POSTEL: I don't think it's mitigating. I think it's, it goes to the nature of what had happened before. The evidence on this is somewhat different. If you look at judge's, the judge's statement to Detective Moretti in the police station afterwards, he refers to the last confrontation having been three years prior. But I don't think that matters.

JUDGE MILLER: In terms of de-escalation when I was watching, couldn't the cops had asked the neighbors to go back into their house?

MR. POSTEL: Well, the neighbors were part of the situation.

JUDGE MILLER: No, no. I understand.

MR. POSTEL: Sure, they could have done a lot of things.

JUDGE MILLER: You are trying to de-escalate, I'm not second guessing these Buffalo police, but I mean it would seem logical I don't whether his wife was drunk. She seemed a bit out of control. And, rather than grab her it seemed to me with just get the neighbors, go

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back in your house.

MR. POSTEL: I think that –

JUDGE MILLER: – Wouldn't that have –

MR. POSTEL: – They did not know the circumstances that you now have.

JUDGE MILLER: Okay.

MR. POSTEL: They didn't have the context, I'm referring to the officers, that you now have. Could they have done many things, certainly. But it seems to me that it was not irresponsible, illogical, unreasonable to simply say, you stay on your side, you stay on your side, which is what the neighbors were doing. I'm going to talk to you first and then I'm going to talk to you. That seems to me, remember, there's an entire street between these houses and on a bit of a diagonal. In that circumstance, I don't think that it's properly placed for us to say they made a mistake in what they did. They didn't understand totally what they were dealing with. They came to but not initially.

So, shoves the officer, the wife is placed in the car and then what happens? Attempting to effectuate his wife's release from custody, he first angrily threatens the officers, saying while

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pointing at them, “You better get off my effin wife. You arrest my effin wife. You’re going to be sorry. If you don’t get the cuffs off right now, you are going to have a problem.” Respondent wanted his wife out of the car. He could have asked politely for her release. He didn’t. He could have asked to speak with her at the car. He didn’t even do that. Instead he profanely yelled at the officers. The profanity indicated the urgency with which he wanted a result. As you have seen and heard in Exhibits 44 and 49, his tone, his manner and his volume conveyed the edge to his demands. The timing coming right after shoving Officer Gehr provide a clear context for the anger you are witnessing. That these were threats is made clear by Officer Muhammad’s immediate reaction, telling respondent not to threaten them, and his testimony at the hearing that this was a threat.

JUDGE SINGH: An implied threat? What kind of threat?

MR. POSTEL: I think it’s a direct threat. You are going to be sorry. You are going to have a problem.

JUDGE SINGH: Well, it could be I’m

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going to bring a lawsuit. It could be all kinds of things, right?

MR. POSTEL: Certainly. At this point we don't know what the specific threat was. My, I'm urging you in looking at that and listening to that understanding the tone, manner and volume, that it comes off, they come off as threats. And it's particularly important to understand, they were not said in a casual context. They were in the immediate aftermath of his wife having been placed in the car. They are connected. The immediate aftermath of his shoving the police officer. They are connected. The *res gestae* in the entirety tells us that these were threats in order to effectuate a release. As does his subsequent conduct.

MR. SEITER: What do you make of the Officer's, however, testifying that they did not feel threatened?

MR. POSTEL: Well I think there are two things. First, I think Muhammad considered it an empty threat. But an empty threat is still a threat. Second, I think the officers are the officers and you are dealing with police officers and I don't know often they're going to say

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anything about threats or that they felt threatened. But, but, most important is that this is an objective standard not a subjective standard. So, when you look and listen, I believe you will come to the same conclusion. Invoked –

MS. MOORE: – Could I, could I, could I interject?

MR. POSTEL: Ms. Moore?

MS. MOORE: Can you hear me clearly?

MR. POSTEL: Yes.

MS. MOORE. Because I'd like to explore this concept of a threat a bit more. And, if I understand it, your position is that because the police officer stated that he wasn't personally threatened or, or actually that other position that he didn't really feel personally threatened therefore there wasn't really a threat. Can you say a little bit more about that because I get that you're saying that there is the objective threat, right and then the subjective threat? Can you elaborate a bit more?

MR. POSTEL: Sure. I think as I've said if you look at the tone, manner and volume, how it came about, you'll see that it comes across as a

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threat. That this one officer said it was an empty threat doesn't mean it wasn't a threat. It just meant that to him it's not, not an important thing. That's not the standard. The standard is how you would look at it objectively. It's relevant. I'm not claiming it's not relevant but it's not the only thing. You have to look and listen to what he said.

MS. MOORE: And, looking at it objectively you see the content of the threat of consisting of exactly what? A threat to do what?

MR. POSTEL: To make them sorry and cause them problems. And, he reinforces that as the referee found by referring to the Deputy Commissioner as his cousin. That was false. And his relationship to his good friend, the Mayor. They go part and parcel.

But I see my time is coming to an end. So, just let me say in total, in considering the entirety of what happened here. We can't do this without understanding his having taken money from individual, a lawyer who was appearing before him, knowing that the lawyer could have and should have been on the recusal list, which he knew existed. He didn't do it. And then failing

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to completely file, accurately file his financial disclosure form for 2015 and then for five years after that pursuant to a different section.

I would, I would close with this, as the Court of Appeals stated in *Matter of Astacio*, it is the sum total of all respondent's misconduct, Charge I, Charge II and Charge III. On the bench, excuse me, off the bench and on the bench, which I believe have undermined the integrity and dignity of the judiciary and mandate removal.

MR. BELLUCK: Mr. Postel, just, just before you let respondent's counsel start their argument, the, the use of the F word over and over again, it's not the use of the word it's the context that you are claiming is part of the misconduct?

MR. POSTEL: I don't think you can separate the context from the word. All of this involved as to Charge I, physical violence, the angry used of the F word conveys how important things are and it conveys the level of its a heightened experience. It's wrong. It is wrong for a judge to stand in the middle of the street screaming profanities for any reason. It's wrong

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and he certainly should have known better.

MR. BELLUCK: Okay. Thank you.

MS. MOORE: If, if I could just ask one more thing. You used the term heightened. His use of the F word is being heightened under the circumstances, but considering that pretty much everybody else involved was also using that same term, are you saying that it is heightened in the abstract? Because it doesn't seem to be heightened in this particular circumstance.

MR. POSTEL: Well, first off it's heightened in the sense that this is a judge and he shouldn't be saying this. But second, I think that yes, if you look at how this started, the judge's use of those language, use of those words became heightened especially when you consider he tried to say that he accepted responsibility right from the start and that that's mitigating. I would argue that –

JUDGE SINGH: – But doesn't context matter in this case in terms of when the words were used because of what was going on as opposed to a judge maybe in court using those words or outside court? Shouldn't we look at the entire context to see if those words, how to

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evaluate those words?

MR. POSTEL: Context always matters. I don't think we could argue that. But I don't think that in context mattering it should change your view on this because of the extent of their use. The repeated, the escalation of their use. These specific words. I have only cited those words he used in connection with the threats to the police officer and his escalation in dealing with Mr. Mele. But there were other words and they were worse words. And, Ms. Moore, there is no, there is no circumstance in which a judge should be able to say this, to use these words, this often and not face public discipline.

MR. BELLUCK: Thank you, Mr. Postel.

MS. MOORE: I understand that. Thank you.

MR. BELLUCK: Mr. Connors, we let counsel for the Commission go over a little bit. So, if you need a few more minutes of time please take them.

MR. CONNORS: Thank you. And, Chair Belluck I would like to reserve five minutes for rebuttal please.

MR. BELLUCK: Thank you.

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MR. CONNORS: Members of the Commission, I am going to start where I hadn't intended to start but because there were three questions by Commission members about the threats, I think it's critically important that I emphasize for you the findings of the referee with respect to these allegations of threats. Because, clearly what happened in this case and the referee's report at page 9, "I do not find that respondent threatened the Buffalo Police with his comments" specifically that Judge Grisanti did not intend the remarks to be threats. His remarks did not have a threatening affect and that the officers testified that they were neither intimidated nor threatened by the comments. That's at referee's report at pages 9 and 10.

MR. ROSENBERG: But don't we have the video?

MR. CONNORS: You do. You do have the video.

MR. ROSENBERG: So, is the referee's impression greater than our own eyes?

MR. CONNORS: Well, we do give great deference to the referee's findings as has been reported in your cases and in the Court of

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Appeals. And the reason we do that is because this referee spent nine days in this hearing, an experienced trial lawyer and experienced referee. He saw the judge. He saw the video. He evaluated everyone. And he came down with these unequivocal conclusions that are directly opposite to what they are asking you to believe today. He specifically made that finding.

MR. ROSENBERG: But we all can look at the video and make our own conclusion, right?

MR. CONNORS: Absolutely, you can. The Commission has the power and authority to do that. But, with all due respect Mr. Rosenberg, you weren't there. You didn't hear –

MR. ROSENBERG: – I have a video that was there.

MR. CONNORS: But you didn't experience the demeanor of the witnesses. You didn't experience the cross-examinations. You didn't experience what is the natural evolution of the trial process and the reason for having those particular hearings. That's something you didn't experience. And I only wish that you did.

MS. MOORE: But that really is secondary to the primary incident itself and I'm having a

1 hard time seeing how the words of the
2 respondent, “I’ll flatten your face” is not a threat
3 irrespective and (INAUDIBLE) but setting aside
4 for the moment the referee’s findings is hard to
5 see that as anything other than I will flatten your
6 face and there’s a physical aspect to those
7 remarks.

8 MR. CONNORS: So, Ms. Moore, in the
9 context of what happened according to the video
10 and the testimony that supplemented the video,
11 at that time, Joseph Mele who is described as
12 bellicose by the referee which I think was an
13 understatement. Mele approached him and
14 swung at him, missed him and fell down on the
15 ground and his glasses intruded into his eyes and
16 that’s what caused the damage to his eye. At that
17 point, Judge Grisanti stepped back instead made
18 that comment that basically you do that again
19 and your face will get flattened again. The face
20 was flattened by his own conduct, Mele’s own
21 misstep. Even his wife testified later that he
22 tripped over the curb. As much as they try to
23 change it and make it some type of an assault.

24 But one thing that happened and this is
25 important Ms. Moore, Joseph Mele wasn’t called

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as a witness. Now, I don't, I don't criticize my colleague for that. He's an able and experienced lawyer. He was in the courtroom, Mele. But, after the disastrous performance by Gina Mele on the witness stand, I don't blame him for not calling Joseph Mele. But the impact of the failure to call him as we all know constitutes the requirement that the referee impose an adverse inference. It's a classic missing witness rule. And that missing witness rule says, Mele because you didn't show up, we are going to find everything against you and that none of your testimony would have supported any of the claims you made in this case. And that's a significant factor when you are trying to evaluate what happened. And you heard the judge testify and so did the referee. He had an opportunity to –

JUDGE SINGH: – But isn't the real serious conduct here is the actions with the officers. So, why don't you focus on that part of it and then please explain to me why you don't think the actions were so egregious that would warrant removal like in *Blackburne*, for example.

MR. CONNORS: I will gladly do so,

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Judge. Let's start with the way in which the questions were posed regarding Officer Gehr. As you know at the scene, Officer Gehr was on the south side of [REDACTED] Avenue and ultimately ran across to the west, to the north side to encounter Maria Grisanti, who was yelling at the time. But yelling is not a criminal offense. And he ran across and he grabbed her by the wrist, turned her around and violently took her to the ground. Judge Grisanti was standing there behind her, and it happened in front of him. The best view was the body camera of Officer Muhammad. So, he takes her to the ground violently. You know from the other testimony she's got neck problems and back problems and the judge is worried and he does intervene. But here is the direct answer to your question, Judge Singh, when I cross-examined Gehr I said to him, you are familiar with the manual of procedures for the Buffalo Police Department? Yes, I am. You are familiar with de-escalation techniques? Yes, I am. You know that you are supposed to try everything before you engage physically with an individual if you are going to arrest. You know you are supposed to talk with

1 them, you are supposed to reason with them,
2 supposed to let them have their say. He did none
3 of that and he admitted on cross-examination that
4 not only did he do none of the de-escalation
5 techniques, but he understood why Judge
6 Grisanti would be upset with him. That's right
7 in the transcript on page 215. He understood.
8 Of course, he understood because he knew he
9 overreacted. His conduct was not in accordance
10 with his own procedures.

11 MR. ROSENBERG: Do you think that the
12 respondent, your client was justified in his
13 actions?

14 MR. CONNORS: This is what I think
15 about that. I think that, first of all let's focus on
16 what he actually did. Let's see what the proof
17 said. The proof says that he put both his hands
18 on his shoulder, right. What Gehr said in his
19 testimony in his first interview with the
20 Commission, I didn't even notice that he touched
21 me. I didn't even notice it. He also testified –

22 MR. ROSENBERG: – But, I am asking
23 you a question. Is what you are arguing now that
24 the, it's the police's failure to follow whatever
25 regulations you've alleged they should have

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followed is exonerates your client from this behavior?

MR. CONNORS: Under normal circumstances you are not permitted to put your hands on a police officer. But there is case law and there is statute in our state that says when someone is subjected to an excessive force in an arrest they can stop themselves from a beating. That's what the court says in the Court of Appeals. And keep in mind the context of this encounter. It was 2020, 2019, the summer of that year. 2020 there was a number of excessive brutality claims in the City of Buffalo. They reached a lot of publicity. They were well known, alright. With that context and standing there as the husband, as the parent did in *Canary*, as the husband did in *Edwards*, as the other relative did in *Newman*, and he's looking at it happen right in front of him. As Gene Pigott said, the former acting Chief Judge of the State of New York, I am not sure I wouldn't have done the same thing under the same circumstances. That has to be factored in this, Mr. Rosenberg. You have to consider that.

MR. ROSENBERG: Wouldn't, Judge

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Pigott said what?

MR. CONNORS: Judge Pigott said at the end of his character testimony in this particular case, and it's important because Judge Pigott rose from Presiding Judge of the Fourth Department, where –

MR. ROSENBERG: – I know who Judge Pigott is.

MR. CONNORS: Okay.

MR. ROSENBERG: I've argued in front of him.

MR. CONNORS: Okay. And what he said, and he knows about judges because he sat on these cases on the Court of Appeals. He said that I can't be certain that I wouldn't have done the same thing under the circumstances. It's at the conclusion of his testimony.

MR. ROSENBERG: He's referring to your client?

MR. CONNORS: He's referring to Judge Grisanti.

MR. ROSENBERG: So, a character witness is exonerating your client?

MR. CONNORS: Well, I wouldn't say they exonerate but they clearly mitigate. This

1 case is about mitigation. I am not asking you to
2 exonerate him. He's accepted responsibility for
3 his conduct, for his terrible language, for his
4 profane comments. He's accepted that. It just
5 doesn't rise to the level and the record doesn't
6 support it that the Commission's counsel wants
7 you to accept.

8 JUDGE FALK: Where has –

9 MR. BELLUCK: – Can you, can you hang
10 on just one second? Commissioner Moore did
11 you want to follow up on your question?

12 MS. MOORE: Yes. I want to ask
13 something. And, I appreciate your insights about
14 the judge and other judge's perception. But I
15 have to tell you I'm coming at this from a lay
16 citizen's perspective and it's hard for me to
17 imagine a circumstance in which a lay citizen
18 could put his hand on an officer, whether it's
19 shoving, whether just touching in the process of
20 an arrest. It's hard for me to see that going over
21 as something that is excused because the, I
22 guess, the extreme nature of the arrest which I'm
23 not entirely persuaded of yet. So, so what about
24 that? What about the fact that if it, you know
25 your average Joe Blow goes over and shoves,

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touches a police officer to the point that the other police officer has to restrain that person? I mean, most people would see that as a basis for a criminal charge.

MR. CONNORS: So, Ms. Moore, I want to be perfectly clear in my response to you. I do not for a second say that Judge Grisanti placing his two hands on the shoulder of Officer Gehr was excusable. I say that's misconduct. And I say that there should be a sanction for this, that misconduct. But you cannot impose a sanction without looking at the entire context, without placing it in the context of what happened to his wife right in front of him. And that's what mitigation is all about. That's what happened in *Canary*, that's what happened in *Newman*, that's what happened in *Edwards*. There were situations where parental, parents were involved with their children, others were involved with the close family members and that day and that event and that time got the best of them. And they did something they shouldn't have done. But I don't shrink from the fact that you have a legitimate right in the State of New York if you are, someone is subjected to an excessive beating

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to brutality that you don't, that you can't defend yourself.

MR. BELLUCK: Judge Falk.

JUDGE FALK: If I break this down if the event in the neighborhood, had four separate parts, we have the confrontation with the neighbors, and now we have the pushing of Officer Gehr and now we have the statements towards Officer Gehr and then we have, I'll call it name dropping and the beratement of, to Officer Gehr. Just so, one thing we know, the officers were not involved with the confrontation with the family across the street. So, with respect to the words that were said by the judge, the threats that were made to the neighbors and of the street brawl, the term they used in the reports, is that misconduct? And in your mind, if so, what should the sanction be just before the police get involved and everything gets even worse?

MR. CONNORS: Well, it is misconduct and we've said that in our papers, Judge. And, and the sanction that could be, should be involved would be either, for that particular event either admonition or censure. And the

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reason I say that is because the only way in which Commission counsel can elevate this from a censure to removal is by alleging what he did in his papers that there was a lie to cover everything up. That never happened. And the judge never found that. Or, that there were this type of threats and the judge never found it. Everything is contrary to the report of the referee because it isn't supported by the record here, which is what we have to go on.

So, yes, sanction certainly should be imposed for that. But you're not going to take a person out who's been so productive and whose mitigation is so uncontroverted and excellent. And that his recognition of his problem was so deep.

JUDGE SINGH: The Commission argued it's the conduct of the aggregate, it's Charges I, II and III, that warrant removal. How should we look at Charges II and III?

MR. CONNORS: So, Charges II and III are, to be perfectly candid with you Judge, if that's all there were there'd be a letter there would be because the mistakes that were made were what they called careless and negligent.

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The judge and the referee said they were inadvertent. And you know the *Alessandro* case, Francis not Joseph, better than I do. You know the other cases where they talk about if it's negligent and if it's careless and there is no intent to deceive or mislead that the sanction is much, much less. And here this was found by the referee who had all the evidence available. So, so if you take them in the aggregate, you have improper inappropriate conduct that occurred in Charge I and you have some careless recordkeeping and some negligent failure to attend to detail. But those do require a little bit of explanation.

Those appointments that he made, five appointments out of a hundred and thirty appointments handled largely by his clerk because in the foreclosure part in Buffalo they have a triage device where there's one lawyer and usually unrepresented defendants in a foreclosure action. They try to work it out. But it doesn't get worked out. It gets sent out randomly to the judges. And in this case it goes to Doug Curella. You heard his testimony or you saw his testimony. And he tries to do it in

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accordance with the judge’s instruction which were spread them out, give those appointments to where people need them. *No quid pro quo* here. Nothing definite that he had to assign them to, to a well-qualified guy by the name of Matthew Lazroe, who he really didn’t even know until he purchased part of his practice when he went to the bench. So, so –

JUDGE SINGH: – So, you know, I was a law clerk. I did some of that stuff too. But, if I make a mistake, my judge takes responsibility –

MR. CONNORS: – It’s true –

JUDGE SINGH: – For that mistake. That’s where the buck stops.

MR. CONNORS: And that’s why we are here. And that’s why we’re here.

JUDGE SINGH: Isn’t the judge –

MR. CONNORS: – Without a question.

JUDGE FALK: Isn’t the judge signing the order to appoint as a result?

MR. CONNORS: Yes. What happens is the law clerk will select from the part –

JUDGE FALK: – Part 30, Part 36?

MR. CONNORS: Part 36 or 37. You have to qualify to be on that list and then it goes up.

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And you are right, Judge Falk, it ultimately ends on his desk and he signs it. And he did in these, in these circumstances.

MS. GRAYS: But before we even get to that piece of it, he knew earlier that he had a relationship and that wasn't declared at the outset or telling the staff that he had a relationship and they should watch out for that attorney being on any matters that may come before him and that was not done.

MR. CONNORS: You're saying he should have done that? No question, Ms. Grays. No question about that. He should have been more diligent to make sure that the recusal list was complete. The recusal list, oddly enough included Peter Pecoraro. It wouldn't have been very much to add in Matthew Lazroe. That's his fault. He did that wrong and the sanction should be, should meet that particular –

MR. ROSENBERG: – And he didn't include it in the financial reporting?

MR. CONNORS: Well, so there's two financial reports here. There's one for the financial disclosure statement of the Unified Court System, alright. He put down the fact that

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he was making the periodic payments and he didn't include the down payment that was initially made. Actually, it was made before he became a judge. But he didn't put it down. And in the other ones, the other are very interesting and it was interesting research that we did on that aspect of it called the Clerks Disclosure, which as you know as early as 1989 there were Judicial Advisory Committee reports that said you don't have to file those. And then it came to light through an article in Law360 that so many people didn't file, including judges all the way to the Court of Appeals, that they rescinded that obligation. So, seriously, you have the protection of the Judicial Advisory Committee, an opinion which takes you out of the realm, of misconduct, and you have mistakes that he made. Primarily he didn't not file. He didn't deceive. It wasn't misleading. It was incomplete. He put down the periodic payments. And if the reason for those filings is that the public should be on notice that when I have a judge I want to know what that judge's relationship is with others. What are the financial relationships? Who's giving him

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money? I want to know that, alright. Well it's there and disclosed anyway. It's not complete but they knew that there were periodic payments if anyone ever looked at those disclosures to see and there's no mention of *quid pro quo*. There's nothing here that shows that he was wrong. He, he ruled against Lazroe on the only substantive summary judgment motion that he had to make. The awards, the fees were *di minimus*. It's just something that wouldn't warrant, certainly wouldn't warrant removal.

MR. ROSENBERG: But the physical altercation, everything was precipitated by your, by respondent, right?

MR. CONNORS: You talking about on [REDACTED] Avenue, precipitated by respondent?

MR. ROSENBERG: Yeah.

MR. CONNORS: Absolutely not. No. The referee didn't find that.

MR. ROSENBERG: He didn't call the, call the police and say that his car, that his driveway was being blocked when it wasn't?

MR. CONNORS: That doesn't precipitate any type of what occurred. What happened factually and what the referee found is this, after

1 they came back from dinner and had some pint,
2 they stopped for ice cream, they pulled up south
3 on [REDACTED] and as they pulled up they saw this
4 extended cab that was parked adjacent to their
5 apron and so he had to make an adjustment to go
6 in, alright. Not the end of the world. It's
7 certainly something that not should –

8 MR. ROSENBERG: – And not illegal?

9 MR. CONNORS: And, and probably not
10 illegal. Probably not illegal.

11 MR. ROSENBERG: Wasn't that the
12 policeman's opinion when they were there?

13 MR. CONNORS: Well that's what he said
14 initially. But if you read the entire transcript,
15 here's what the officer said, he said, they clearly
16 did it to annoy you and they clearly did it to F
17 with you. That's what the police said.

18 MR. ROSENBERG: Can you park in a
19 legal spot to annoy somebody?

20 MR. CONNORS: Can you do that?

21 MR. ROSENBERG: Yeah.

22 MR. CONNORS: Yeah. I guess you can.

23 MR. ROSENBERG: Is that what happened
24 here?

25 MR. CONNORS: That he parked, that they

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parked in illegal spots to annoy someone?

MR. ROSENBERG: Yeah.

MR. CONNORS: Among the other things they've done for the past eight years on that block. And so, he did the right thing initially, Mr. Rosenberg. What he did was this, he called D District and they said call 9-1-1. He called 9-1-1 and told them about it. Those were the right things and the appropriate things to do.

MR. ROSENBERG: But he said there was a car was blocking his driveway when it wasn't.

MR. CONNORS: Well, he said the car was blocking his driveway. I think that's a matter of opinion. Some of the police officers when they got there –

MR. ROSENBERG: – So now it's a matter of opinion?

MR. CONNORS: I think when the police officer got there and he looked at it, he said clearly there's an issue because there's eight feet in front of them that they could have parked on and they did it to annoy him.

MR. ROSENBERG: They could have parked it some –

MS. MOORE: – But then –

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MR. ROSENBERG: – Further down but where they parked was not blocking his driveway.

MR. CONNORS: So –

MR. ROSENBERG: – I mean we have the video. See, you keep going to the referee. Why should we go by the referee when we can see for ourselves what happened?

MR. CONNORS: Well I think I did answer that question. But I'll answer your question. If you're coming south on [REDACTED] you are coming down there and you have this video and you have a photograph in our presentation. You'll see as you approach the driveway where the Grisantis live that the extended cab blocks their view of pulling into their driveway. And it was parked two or three –

MR. ROSENBERG: – Blocks their view of what?

MR. CONNORS: Blocks their view of the driveway. You can't see exactly where the driveway starts. You can't the apron. And it's blocked two or feet apart from the curb, making it even more difficult to see it. And that, that's a culmination of all the things that have happened

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on that block.

MR. BELLUCK: Commissioner Moore, did you have a question?

MS. MOORE: Yes. That may be the case that it was very close but if this was an ongoing issue of them parking as it was described by the respondent as edging the driveway, it seems the respondent had mastered the skill of moving around it.

But I want to return to the, what's a key point which is when he's on the 9-1-1 call, the statement is made that the driveway is blocked. And the officer, actually I believe it's Officer Gehr, who is in conversation with the neighbors at the point of (INAUDIBLE) is obscured as it appears to be blocking the officer, said right there that it was blocked and at no point after the police officers arrived, does the respondent attempt to make the argument that it's blocked because it's very clearly not blocked. And one of the officers confirmed, is this where the truck was when you made the call? So, help, help me wrap my brain around how that's not saying something that is not true. Clearly, untrue.

MR. CONNORS: So, there's two answers

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to your question. Number one is I think with respect to the approach that was made by the Grisanti vehicle, it's a matter of perception. When you look at that and you take into the context the history of all that's gone on between these families, I think it's a fair interpretation that you could say that it's blocked. But I also point again to the referee who said, I find that these were not deliberately false statements, that they were his perceptions of the events. And that's, I think, the best answer I can give to you. But, but he did the best in, he did the right thing by trying to first involve the police, let them make some judgments as well. Look at the –

MR. ROSENBERG: – But then after he (INAUDIBLE) the police, when they was waiting for them to show up, he was, him and his wife were screaming at the Meles, or however we pronounce their name, from across the street that led to a physical altercation, right?

MR. CONNORS: Well the fateful error was walking across the street. That was the real mistake.

MR. ROSENBERG: Right.

MR. CONNORS: Had they stayed on their

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MR. ROSENBERG: — So they precipitated it.

MR. CONNORS: Well, the judge, referee did not find that. And here's what happened, here's why I say this to you.

MR. ROSENBERG: Are we bound by what the referee found?

MR. CONNORS: You are not. And I've told you that already. But, but, but what happened is that when he got over there and got there (INAUDIBLE), do you think he was actually going across the street to start a fight with Mele when he was holding a bag of dog excrement, excrement in his hands? He wasn't. He said and he testified that that's no way to go to a fight. He testified that, I was going over to tell him look it Joe I've called the police, let's resolve this, pull it up eight feet and we won't have a problem. And then all hell broke loose. But to say that he is the one that started the fight is absolutely not supported by the record.

MR. ROSENBERG: Did he have the right to make him pull up eight feet?

MR. CONNORS: No. He didn't have the

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right to do that. No. No.

MR. BELLUCK: Mr. Connors, could you I think you heard the questions about Mrs. Grisanti's behavior. Could you just comment on how you think the Commission should interpret that or rely on it or not rely on it?

MR. CONNORS: Well as you pointed out, Chair Belluck, obviously it's Judge Grisanti who is appearing before you to determine appropriate sanctions. But you cannot eliminate the conduct of Maria Grisanti at the time. And as she said in her testimony, every day she regrets what she did. And every day she, she's sorry for what she brought upon here. And you have to factor that into the mitigation that she engaged the, the profanities were exchanged on an equal basis. Although I think Gina might have got the better of that battle of the profanities. But, but she was involved in, in the fracas that caused him to go over there and try to extricate her, try to get her out from under the choke when Gina was choking her and, I'm sorry, when Theresa was choking her and Gina was saying effin choke her, effin choke her. And that's what he saw. So I do think you have to factor in the conduct of

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Maria Grisanti here and I think it mitigates it dramatically.

MR. ROSENBERG: But as you say, if he didn't go across the street it wouldn't happen.

MR. CONNORS: I never disputed that, Mr. Rosenberg.

MR. SEITER: How do you explain the judge dropping names of the officers because that, that really concerns me. Why would he do that if it's not for preferential treatment?

MR. CONNORS: I think it's unseemly that it occurred. But I think that the explanation is a valid explanation. It started, Mr. Seiter, when there was a confrontation with Gehr and Muhammad intervened, Muhammad, Lieutenant Muhammad intervened and he grabbed him and he said you are not going to fight a cop. And he said I'm not going to fight a cop. My daughter and my son-in-law are police officers, okay. That's the way it started, alright. The mention of Mayor Byron Brown was this, next door to the Grisantis are the Chwalinskis. Gerald Chwalinski is the City Clerk for the City of Buffalo. And Gerald had relayed all these problems, these host of problems over the past

1 eight or ten years about Mele, okay. And so
2 what he said was Mayor Brown knows all about
3 this. He's told me to forget it. He told me to
4 take it easy. But Mayor Brown knows it. So,
5 yeah, does it sound like he's trying to seek
6 preferential treatment. Yeah, these drops. But
7 you know what the officer said at the end of this?
8 They said this was no big deal to us. People
9 repeatedly drop names of officers that they
10 knew.

11 MR. ROSENBERG: Isn't what they took
12 matters that significant or what your client was
13 trying to get?

14 MR. CONNORS: Is it, I missed the
15 beginning of that?

16 MR. ROSENBERG: What was, isn't the
17 significance of your client trying to get
18 preferential treatment whether or not his efforts
19 in that regard didn't work?

20 MR. CONNORS: Clearly he testified that's
21 not the reason why he mentioned those names.

22 MR. SEITER: But shouldn't –

23 MR. CONNORS: – Not to seek
24 preferential treatment.

25 MR. SEITER: Shouldn't he as a judge

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however be held to a higher standard?

MR. CONNORS: No question. I totally agree. I do agree with you on that.

JUDGE MILLER: Counsel, I think it's undisputed that the judge did not say I'm a judge, you better – so the question becomes if a judge or anybody mentions something, is it judicial misconduct or just improper? I mean does it rise to the level of judicial misconduct to say my son and daughter are involved in the police or I'm close to the mayor?

MR. CONNORS: It does not.

JUDGE MILLER: Is that judicial misconduct or is that something that maybe shouldn't be said?

MR. CONNORS: It does not arise to the type of misconduct. As the officer said, it happens all the time. Where I think it comes into play, Judge Miller, is that given the fact that you are a judge and you are held to a higher standard, you should be very judicious with respect to those kinds of statements because they could be interpreted as seeking preferential treatment. And I think that's something that deserves a sanction but it doesn't deserve –

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JUDGE MILLER: So it is judicial misconduct? Because you are acknowledging misconduct.

MR. CONNORS: I am acknowledging that in that circumstance, those statements were improper, were improper.

MS. MOORE: Well, I'd like to push a little bit on your emphasis on the fact that it was these circumstances. And if you'll indulge me, I just wanted to recap very quickly what the neighbor said she, when speaking to Officer Gehr, before he went over she said, and I am quoting, "This is what they do, they throw around that their son-in-law is a cop, the daughter is a cop, then it always gets turned around, turned against us somehow or some way because they pull all their weight. I am sure they made a phone call." So, why don't you take that as face value as accurate. It certainly seems to be corroborated by the fact that on this particular day, the judge repeatedly sought to leverage his family and political connections. And for me that raises the question of how much public confidence can, can rest in his court when you see this sort of behavior. And if the suggestion is to have him

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removed, doesn't that seem to at least cut against the problem that the rule is trying to address, that he undermined the integrity of the judiciary, the public confidence? And this is a pattern.

MR. CONNORS: Well, let me first address your first part of your question. That statement was made by Gina Mele, alright. That's the same person, Ms. Moore, who said repeatedly all he said was I'm a judge, I'm a judge. She said it to everyone at the scene that he was invoking the prestige of his office and that was flat out absolutely false. And not surpr –

MS. MOORE: – I understand that. But that's why I conceded even if we satisfy the accuracy of her statement, she's part of the public and it's her perception since we want to talk about perception. But there is the other that we saw ourselves throughout from the 9-1-1 call even to the interview at the police station, this repeated invocation of family and political connections. So, let's set her aside and share with me your thoughts.

MR. CONNORS: Well my thoughts are that the testimony of Judge Grisanti I think shed some light and provided some explanation for

1 why he mentioned those names. I thought he
2 was very candid in his statement to the referee
3 for the reasons why he mentioned Mayor Brown
4 and the reason why he mentioned his relatives
5 who are in the police force. I thought that was
6 an alternative explanation, one that was an
7 acceptable explanation. If it's not a satisfactory
8 explanation, it still doesn't rise to the level of
9 removal. It's not the type of ultimate sanction
10 that's required here. It's, it's not what they call
11 judicial beheading for that purpose. There are so

12 —

13 MS. MOORE: — Thank you.

14 MR. BELLUCK: Okay. Mr. Connors, is
15 the judge going to speak to us?

16 MR. CONNORS: Yes.

17 MR. BELLUCK: Okay.

18 MR. CONNORS: Absolutely.

19 MR. BELLUCK: Judge?

20 JUDGE GRISANTI: Members of the
21 Commission, counsel for the Commission, first I
22 want to express my gratitude for allowing me the
23 privilege of communicating my thoughts and the
24 context of the matters that have brought us
25 together today. It's unfortunate. And I take

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responsibility that we have to meet under these circumstances. But I thank all of you.

Members, I accept and concede that my conduct violated the rules that I did not maintain a high standard of conduct and I didn't act in a manner that promotes confidence. I understand the importance of an independent and honorable judiciary and that it is indispensable and requires a high standard of conduct. On the bench, I faithfully abide by that rule. On June 22, 2020, I did not regarding my conduct and actions with my neighbors and police. I had given the explanation at the hearing and the context of my actions and responsibility, which I accept and the steps that I took and continue to take to this day to again make sure it doesn't happen. As I said, I truly understand.

JUDGE SINGH: The question is why? You know, this was, this was over the news. And frankly I saw it on the news years ago and so my first thought was why, why would you do something like that?

JUDGE GRISANTI: When I came down that street and as, as Terry described, and it's true, coming down the street, this truck, this

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extended cab is parked two to three feet from the curb. I go to make the turn. I know that counsel says oh he got in it no problem. You could see me braking. I had to make an adjustment. This isn't a one-time incident. This has been happening every Monday through Thursday for the last six years, every single day.

JUDGE SINGH: But the point's been made, that's a legal spot and of course you can't compel them to, to if it's a legal spot –

JUDGE GRISANTI: – Here's, and I appreciate that judge, here's what they do, okay. And I don't know if it was clear, if you read it. If you're coming out of my driveway, I have a flaring driveway, I call it the apron. I don't know if anybody calls it that. I call it the apron, it flares out. Ms. Mele will come up and she will pull up to that apron and let's say the left side. And if she's not close enough, she actually gets out of the car and pulls up further till she's right at that tip. And I've testified that I've said to her and her husband numerous times, why do you have to do that when you have eight feet behind you have and eight feet in front of you? Why do you have to pull up right to the tip? And I either

1 get the finger or I get spit at. And the reason
2 why is because my children, when they were
3 parking in the driveway, they would back out,
4 they would scrape the bumper if it's on this side
5 or they would scrape the front end of the car on
6 this side, when they would come out of the
7 driveway. That's how tight it is and I had young
8 kids at the time that were driving and that's what
9 was happening.

10 What I eventually, had bushes on my front
11 part, not the apron but on my front part of my
12 driveway, I removed the bushes. I expanded my
13 parking pad so I can have all my kids park
14 further. I didn't touch the apron of the driveway.
15 They would still do it. But not only that, they
16 then started calling the City of Buffalo on us,
17 stating that either the curb cut, for three years I
18 had the city calling me and kept coming over.
19 Every Thursday when they moved the car to the
20 other side of the street, they take their garbage
21 from their car and they dump it in front of our
22 house. Anytime my wife's outside watering, Mr.
23 Mele is out there gawking and saying stuff to
24 her.

25 So, when I came down there and I saw the

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truck, I looked and I said you know what, I said we've never called the police before. I said I'm going to call the police. I said this, this is ridiculous. This, this, this has got to stop. And I went inside the house, I unloaded. My wife went to take our dog for a walk. I met her. She came. We're standing there. She's looking at the back of the truck. And they come out of the house on their, it doesn't show it, but they come out on their sidewalk that leads from the driveway to the front door. And they start yelling, is there an effin problem? What's the problem? And I said, there's no problem except other than the fact that you could move up here. You could move, you can move the truck. Ms. Mele started swearing at my wife. He started swearing at me. I start going across the street and I'm pointing as I'm going across the street.

Now, if you see the video, the video and the audio they don't match. And I believe the officer testified they don't match because they had to try to find it. In my opinion, they were trying to erase the audio. But the video and audio don't match. And the dates don't match and the time doesn't match. So, they had ample

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opportunity. They were trying to do something.
But anyways –

MR. ROSENBERG: Are you accusing the
police of altering the video?

JUDGE GRISANTI: No. I'm accusing,
before the police were able to get it from the
Meles, the Meles were upstairs and it was on the
officer's camera, they were trying to do
something with the video and the officer said
stop touching it. I will go and I will retrieve it.
It took him a day to get it.

MS. GRAYS: Just to clarify, you mean the
home security video?

JUDGE GRISANTI: The home security
video of the Mele's is not –

MS. GRAYS: – Okay.

JUDGE GRISANTI: The same date and
time and the audio doesn't match up.

MS. GRAYS: Okay. Thank you.

JUDGE GRISANTI: I am telling you, not
only as an officer of the court as a judge and I do
not lie, that I was pointing at him as I was going
across the street saying you have eight feet here.
And it's clear you can see that. Counsel says I
was pointing to somebody else. But I, but I'm

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pointing and saying there is eight feet here.

He comes down the driveway. My wife puts her hand out to stop him. He was coming like a freight train. He pushes her –

MR. ROSENBERG: – Comes down his own driveway?

JUDGE GRISANTI: Pardon me?

MR. ROSENBERG: Comes down his own driveway?

JUDGE GRISANTI: Comes down his own driveway. I'm not in his driveway. They try to say we were in their driveway and they try to say that we had belongings of ours in their driveway but they were our belongings.

MR. ROSENBERG: Where were you?

JUDGE GRISANTI: We were at, in the street, just before the apron of their driveway. You look at the video, we're not in the driveway.

MR. ROSENBERG: Why were you in the street?

JUDGE GRISANTI: I walked over there explaining to him because he's shouting at me and yelling at me and swearing at me and I said, Joe, you could move up here. And I'm pointing. He comes down, my wife puts her arm out. She

1 pushes him arm away and you can see me go
2 back. He pushes me, okay. At that moment, the
3 other two come out and they start attacking the
4 wife. I'm sitting there thinking, you know what,
5 my neighbor, Tony Riccio, who moved because
6 of them said sometimes if you challenge him
7 he'll back down. And that's why I was saying to
8 him, come on, Joe, what else you got? I thought
9 he'd back down. He didn't back down. He and
10 his wife and his sister-in-law were on my wife.
11 He was blocking her from trying to move to
12 break free, which is why my wife had to bite
13 him. And you can see me in that video pulling
14 her at the corner of her arms to try to get her
15 across the street. And I did. And we got into our
16 driveway and he followed us –

17 MR. ROSENBERG: – Why were you in
18 street to begin with?

19 JUDGE GRISANTI: Pardon me?

20 MR. ROSENBERG: Why, what, what,
21 couldn't you point at the eight feet from your
22 property?

23 JUDGE GRISANTI: I was trying to do
24 that. I was trying to do that, pointing it out. He
25 was yelling above me. And I'm just, I'm kind of

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walking out in the street overlooking the truck and pointing. That's what I was doing.

MR. BELLUCK: Judge?

JUDGE GRISANTI: Do I regret that every single day going across the street? Absolutely. Do I regret every single day that my wife feels like she is part of this problem? She says it. If I did not say and scream while the police officer was telling me to stop, she says it wouldn't have happened. I said Maria, I'm the one that takes responsibility for this. I went across the street –

JUDGE SINGH: – So what caused you to put your hands on a police officer? You're a judge. You're a lawyer.

JUDGE GRISANTI: I was standing there talking to Officer Muhammad and I was explaining to him where the car was parked. It's on his video. I'm explaining to him. Next thing I know, he wasn't walking, he went by us, pretty, pretty quickly. His partner is telling him, I got her, I got her. And he walks by and I'm walking behind him as he's walking and I see her, my wife is 5'1", 105 pounds, I see her grab her, twist her and throw her down to the ground. I pushed him and I tell him, which is improper, get the F

1 off my wife. And I did that because I said to
2 myself he has no idea what she just went
3 through. He has no idea what, that she was
4 almost choked out into unconsciousness by a
5 sister-in-law of the Meles, who actually knows
6 jujitsu. And she said that on the tape, "I know
7 jujitsu." With the one egging on her on and the
8 other one trying to stop her from me breaking her
9 free.

10 MS. YEBOAH: Judge?

11 JUDGE GRISANTI: That's why I pushed
12 the officer.

13 MS. YEBOAH: Judge? One of the first
14 things that you said to us today was that you're
15 sorry that we have to meet under these
16 circumstances. I don't know if you meant you're
17 sorry that you have to be here because the
18 Commission is calling you to be accountable for
19 your actions. But the fact is that you're not here
20 because of our actions. We're here today
21 because of your actions.

22 JUDGE GRISANTI. Oh, absolutely. I
23 understand that. Absolutely.

24 MS. YEBOAH: Do you understand that?

25 JUDGE GRISANTI: I do.

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MS. YEBOAH: And is that how you see it?

JUDGE GRISANTI: I completely understand that. And, as a matter of fact going further, I truly understand as we are here today the high standard on the one hand that we have. And that I will always strive for. And adhere to in my judicial capacity. I'm embarrassed –

MS. MOORE: – If I could inter –

JUDGE GRISANTI: Yes.

MS. MOORE: If I could interject in that flight path, it sounds like you are talking about what your view is going to be as well as your actions going forward. But may I very gently say that your demeanor, your tone, your presentation, and, and I am doing this remotely, strikes me as still being irked by the fact that your neighbors park where they park and I'm thinking if they continue to do that and there's no indication that's going to stop. If, if you're still irked by that then what's your plan for not being irked to the extent that you were and would it be fair to read what I'm seeing as your disposition, you're explaining it as them being wrong as a lack of genuine contrition.

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JUDGE GRISANTI: With all due respect, I was answering a question that he asked me why did I go across the street and what was the deal with the cars? That would never, ever happen again from the tools that I've learned not only from counselors into what was going on in my life, but that would never happen again. And I am truly embarrassed, ashamed, apologetic, remorseful of what actually happened. It was, for lack of a better term, so uncharacteristic of how I act and behave that the only thing that I can tell you all is that taking into consideration everything that the Meles did in the past, what was going on in my life with regards to family members who were ill and dying and everybody deals with that every single day, it was, it was the old adage of, that was like the straw that broke the camel's back, where everything came to a head. And when I looked at that and I saw that on the video, I said to myself I can't believe it.

And the next day I immediately contacted my AJ. I immediately contacted a friend of mine from Judicial Wellness. We've had conversations. He had set me up with CCA,

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which is an organization from the courts to go get help with regards to what I was perceiving as grief and loss and anger that came out. And I was trying to find answers. I utilized all of those sessions and then went to, who he referred me to, somebody in the Buffalo area that I continue to this day. And with the tools that they provided me in controlling and with regards to anger, that issue will never come to fruition again. Even if the neighbors were parked on my driveway –

MS. MOORE: – Even if they have the right to park there?

JUDGE GRISANTI: They absolutely have the right to park there.

MR. BELLUCK: Judge, any, any last words you want to say to us since your time is up?

JUDGE GRISANTI: I just want to say that I do not feel that I am irretrievably damaged. And I feel that I can continue doing what I am doing on the bench. I strive for excellence on the bench. I have a great rapport with plaintiffs and defense and, and all counsels. There's no complaints. I continue to improve and, and expand on what some of the judges would know

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as standards and goals, which are very difficult. And I continue to this day in counseling to make sure that I stay level headed. It was so uncharacteristic and if you, and I'm not really, the neighbors on the street that testified, I don't socialize with them, I'm not out with them all the time. They came in here and testified to really talk about my character and that that's so out of character for me. Even the language, the profane language was completely improper. What I did to the officer was improper. When the officer grabbed me, Officer Muhammad, I said to him I am not going to fight a police officer because my kids are police officers and I understand what they go through because I hear it from my kids. It wasn't done for preferential treatment. I wasn't in handcuffs and I knew my wife was in the police car, not under arrest but just to calm down, that's why she was in the police car. And to answer some of the questions, Mayor Byron Brown knows what went on in this street from the ten years of another neighbor dealing with the situation also with the Meles. And that's, I said even Mayor Byron Brown knows what goes on around here. And he said, Mark, just ignore

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them and try to stay away. I didn't ignore them. It was, it was completely improper and I understand all aspects.

But if I can have a minute to explain the other charges, immediately when I found out about the financial disclosures, I corrected same. I contacted the Ethics Commission. I corrected same. With regards to Mr. Lazroe, my clerk did not know that he had bought my law practice. I understand completely about the appearance of impropriety. And I took action when it came to fruition of listen, this doesn't, this doesn't look good and it was something that was brought to my attention from a letter that was written to my AJ and by that time the six or seven cases were gone. For a bunch of them, he didn't even appear in front of me so I didn't even know he was on all of those cases. And there was another one when I actually ruled against him on a summary judgment motion. So, I wasn't favoring anybody. It wasn't anything that I was doing like a *quid pro quo* or anything like that. But as soon as I found out, I, I took the matters to have the recusal.

MR. RASKIN: Judge, he did appear, Mr.

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Lazroe did appear in front of you on a number of occasions while this was going on, after you had sold the practice, is that correct?

JUDGE GRISANTI: He appeared in front of me on a court evaluatorship. The foreclosures, he did not. And he was, the foreclosures where if he saved somebody's house from a foreclosure, then the bank would send an order in. It would go on a wheel and then somebody would have to, if it came to me, I would sign the order saying that the bank is stopping the foreclosure process because the person saved their house. That happened, when I looked through the cases, a couple of times.

MR. RASKIN: How many times did Judge Laz – did Mr. Lazroe appear in front of you?

JUDGE GRISANTI: He appeared in front of me a total of three times regarding two guardianships and another time regarding, because I went ahead and go back and looked at the cases because these were in 2018 and '19.

MR. RASKIN: Yes, I mean subsequent to the sale.

JUDGE GRISANTI: So, it –

MR. RASKIN: – of your practice –

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JUDGE GRISANTI: Subsequent to the sale, he appeared in front of me three to five times.

MR. RASKIN: Thank you.

MR. BELLUCK: Okay. Thank, thank you, Judge.

JUDGE GRISANTI: Any further questions?

MR. BELLUCK: Mr. Connors, you have –

MS. MOORE: – I have one on Charge III, Judge.

JUDGE GRISANTI: Yes?

MS. MOORE: You indicated that you mistakenly checked the wrong box when reporting your extra judicial income. Do you just recall off hand how many boxes where you checked \$5,000 when it should have been \$15,000 if I recall correctly, do you remember the other boxes that were there?

JUDGE GRISANTI: On the financial disclosure, if I recall, I answered questions 12(a), 12(b), 13 and I believe it was 18. As a matter of fact, I actually answered too many questions, more than I should have. But the dollar amount has a category between, I don't have it in front of

1 me but between five and ten thousand and it
2 should have been between twenty, it should have
3 been category, I believe, (b) instead of (a)
4 checked on that box. And I wrote to the judicial,
5 well I wrote to the Ethics Commission and they
6 said just correct that with your next filing and I
7 did so.

8 MS. MOORE. Thank you.

9 MR. BELLUCK: Thank you, Judge. Mr.
10 Connors, do you, do you have anything you want
11 to say in rebuttal?

12 MR. CONNORS: I do, Chair Belluck.
13 After nine days of testimony at a hearing,
14 eighteen witnesses, more than eighty exhibits
15 and a comprehensive report by Referee Easton,
16 we now have the following findings of fact,
17 which have been established and are
18 uncontroverted. No lies. He found he wasn't a
19 liar. No threats.

20 MR. ROSENBERG: Uncontroverted, the –

21 MR. CONNORS: Yes. The referee's
22 report.

23 MR. ROSENBERG: I'm saying the
24 Commission agrees with that?

25 MR. CONNOR: Well, they have to. It's in

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the report. They may not agree with the report, but that's their prerogative.

No misleading financial disclosures. Inadvertent was the finding by the referee. He never invoked the judicial office, either explicitly or implicitly. In fact, the officers testified they didn't even know he was a judge until after the event occurred. We have uncontroverted evidence of the precipitating factors, submitted by Dr. Morra, who spoke about the window of tolerance. Chris Frigon and also the licensed clinical social worker that he initially met with, Jakob Smidt, and still meets with. And the reason why that's significant, Commissioners, is when you take that step to show that you recognized that there's a problem and there's insight and you want to address it, it has to be considered in mitigation because it shows that you won't be back here again in front of you trying to discuss some type of another event because you've got better coping mechanisms, better skills and you're, you're a better person, as he said he would be.

It wasn't court ordered and it wasn't, it was done before the Commission's investigation

1 started. The incident took place in the context of
2 multiple attacks on his wife. His judgment was
3 clouded, we know from *Canary* and *Newman*
4 and *Edwards*, that those are factors –

5 JUDGE SINGH: – So, so is it the
6 mitigation that distinguishes this case from cases
7 for example like *Blackburne*?

8 MR. CONNORS: Yes. *Blackburne*, you
9 know, the thing about *Blackburne*, and that case
10 was a situation where she was on the bench, it
11 was judicial activity and she interfered in the
12 administration of justice and that, that is what
13 distinguishes –

14 JUDGE SINGH: – But couldn't you argue
15 that's exactly what was going on here? There
16 was an attempt to interfere with –

17 MR. CONNORS: – But it wasn't done, I
18 don't want cut, slice things too thin, but it wasn't
19 a judicial action, alright. But you are right,
20 judge, it is the mitigation that's been submitted
21 here and that, that is uncontroverted mitigation.
22 And there were no expert witnesses or no
23 witnesses at all from the other side who said any
24 of that is untrue.

25 JUDGE MILLER: Counselor, I just wanted

1 to clarify, your client mentioned something,
2 excuse me, on the financial disclosure situation
3 with respect to the twenty-five grand, did he say
4 that he checked box (a), which is less than that
5 and not box (b), and that's what we're focusing
6 on?

7 MR. CONNORS: Yes.

8 JUDGE MILLER: Okay.

9 MR. CONNORS: Yes, yes.

10 JUDGE MILLER: Thank you.

11 MR. CONNORS: But he did put in the
12 periodic payments as well.

13 JUDGE MILLER: Okay. Thank you.

14 MR. CONNORS: He acknowledges his
15 wrongdoing and he apologized to law
16 enforcement. It's significant when you
17 apologize immediately before the Commission is
18 involved or before I'm engaged or anything
19 because it shows recognition. And he
20 apologized to Lieutenant Turello, Detective
21 Moretti and he apologized to Officer Gehr as
22 well, who said he understood.

23 Now, he's got an unblemished thirty-year
24 record, unblemished as a lawyer and as a judge.
25 Never a grievance filed against him, never a

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complaint filed against him as a judge. Let me correct that, one complaint Judge Feroletto talked about was trial scheduling resolved by her clerk. You haven't seen, the incomplete disclosure was careless not negligent. And we know that that is not something that warrants removal. I know the other cases that talk about no, no motivation by personal profit, that's sure. No ill will or vindictiveness at all as well. And so, what you have is, you have truly a case of mitigation. And you don't have a record that supports the removal by your precedent and by the Court of Appeals precedent.

JUDGE MILLER: I have one last question.

MR. CONNORS: Sure.

JUDGE MILLER: It's on my mind. I think you mention in your brief, my recollection that I actually remembered it, was the judge's vote in the favor the Marriage Equality Act and you mentioned that is a, indicating character of the judge. Can you just indicate, I mean you, I was initially surprised to see it and I thought I understood? So, could you just comment briefly on it, counsel?

MR. CONNORS: It's probably a good way

1 for me to close. The hallmark of our Rules of
2 Judicial Conduct are integrity and independence.
3 And I can't think of a better example of someone
4 who has demonstrated in his career integrity and
5 independence, than someone who votes for a
6 piece of legislation when it's contrary to the will
7 of his party when he loses the two endorsements
8 and ultimately his career in the Senate but he did
9 what he thought was right. That's what we need
10 judges to do every day. We need that to be the
11 touchstone, not to be the political wins. And that
12 demonstrated his commitment to integrity and
13 independence and I think it proves that he's not
14 irretrievably damaged.

15 MR. BELLUCK: Thank you, Mr. Connors.
16 Mr. Postel, if you need more, a little more than
17 five minutes, please take that time.

18 MR. POSTEL: I would suggest that
19 someone with as proposed an exemplary record
20 and so committed to doing right as Mr. Connors
21 just described respondent in the circumstances
22 would have known to do better in these
23 circumstances.

24 JUDGE MILLER: Are you, I guess I was
25 just about to ask you the same question, should

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we take into consideration his past actions in voting in favor of the Marriage Equality Act or is that something we should just disregard?

MR. POSTEL: Nothing in the Court of Appeals in multiple cases has talked about character being over, character testimony being overcome by the nature of the misconduct. I would say this, respondent’s counsel referenced two points I think that are important to start with.

First is the so-called supposed apology he made to the police as mitigating and represent, recognizing the impropriety of what he did. Let me read to you his apology, it’s right out of the transcript, Commission, it’s Exhibit 11A. “Get her out of the car and I’ll bring her inside. And I didn’t mean to tackle you but I mean you kind of threw my wife down on to the ground pretty hard and I don’t appreciate that. You need to chill out about that. Just giving you a little constructive criticism, dude.” That doesn’t certainly ring as a sincere apology to me.

And respondent counsel also, and respondent in the course of the proceeding represented how he came to cross the street. It was a false narrative perpetuated and over and

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over again by respondent during the incident that he saw his wife in a chokehold, that he was inside his house and then went over to rescue her. The natural consequence of that is to minimize his own responsibilities. That's the false narrative he gave to the police. It's untrue, totally and utterly untrue. He led his wife across the street and he led his wife across the street and I'll give you his own words from the transcript, with the intention to challenge Mr. Mele. He knew what was going on.

As to Charges II and III, it's absolutely wrong, in my opinion, that these were matters that only merited a letter of caution. The referee himself, and I'll read you his words, concluded as to Charge II, "Respondent's conduct as it relates to Charge II reveals a lack of sensitivity for the ethical standards for judges and warrants public discipline." I would think that if you look at *LaBombard, George and Doyle*, you can come to the same conclusion.

JUDGE SINGH: Were there more aggravating factors in these cases, sir, that –

MR. POSTEL: – I think the cases were different. I think –

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JUDGE SINGH: – But were there
aggravating –

MR. POSTEL: – There were aggravating
factors –

JUDGE SINGH: – Were there aggravating
factors –

MR. POSTEL: – Yes –

JUDGE SINGH: – Were there aggravating
factors not present in this case?

MR. POSTEL: Yes.

JUDGE SINGH: This is a one-off, in that
the major, the assault rather than the arrest, that’s
the one-off incident, right?

MR. POSTEL: Correct.

JUDGE SINGH: There’s no prior
discipline?

MR. POSTEL: The arrest and the shove.

JUDGE SINGH: Right.

MR. POSTEL: Right. I think that in,
finally, and again in final conclusion, I think the
sanction of removal is appropriate here to restore
public confidence, in what is without a doubt a
significantly improper, egregious public event
witnessed by neighbors, seen on television,
reported in the news and on the internet and

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YouTube. It's imperative to restore public confidence in the judiciary. Thank you.

MS. GRAYS: I have a question before you step down.

MR. POSTEL: Ms. Grays?

MS. GRAYS: For the *Matter of Mahon*, were there any other circumstances aside from what occurred in the courtroom that were the basis of the, or part of the censure?

MR. POSTEL: I think *Mahon* stands for the concept that using language of that nature is inappropriate for the judge. The fact that it was in a courtroom made it worse.

MS. GRAYS: Thank you.

MR. BELLUCK: Okay. Mr. Postel, thank you. Mr. Connors, Mr. Doyle, Judge Grisanti, thank you so much for coming. This concludes our hearing.


(Whereupon the oral argument was concluded at 12:53 PM.)

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CERTIFICATION

I, JACQUELINE AYALA, an Assistant Administrative Officer of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on September 7, 2023.

Dated: October 6, 2023



JACQUELINE AYALA