To Be Argued By
Robert H. Tembeckjian, Esq.
Time Requested: 15 Minutes

JCR-2024-00007

Court of Appeals of the State of New York

In the Matter of the Request of
ERIN P. GALL,
a Justice of the Supreme Court, Fifth Judicial District,
Oneida County,

Petitioner,

For Review of a Determination of the
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Respondent.

BRIEF FOR RESPONDENT STATE COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
Counsel for Respondent State Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223
(518) 453-4600

Of Counsel:
Edward Lindner, Esq.
Cathleen S. Cenci, Esq.
Denise Buckley, Esq.
S. Peter Pedrotty, Esq.
David Stromes, Esq.

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PRELIMINARY STATEMENT

This brief is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission Counsel") in response to Petitioner's brief dated September 12, 2024, and in support of the determination of the Commission on Judicial Conduct ("Commission") dated July 17, 2024, that the Honorable Erin P. Gall ("Petitioner") has committed judicial misconduct and should be removed from judicial office.

INTRODUCTION

In the early morning hours of July 2, 2022, after police responded to a large fight that broke out at a high school graduation party that Petitioner was attending as a guest, Petitioner repeatedly invoked her judicial office during a public, racially-charged, and profanity-laced confrontation with police officers and four Black teenagers, who were stranded at the scene. Over more than an hour, as captured on police body and dashboard cameras, Petitioner, *inter alia*:

- made racially biased, demeaning and/or profane comments to and about the Black teenagers, including that they did not "look that smart" and would not be going to "business school" like her son, that they were too poor – unlike Petitioner and her friends – to afford cocaine, and that it was appropriate for the party host to tell the teenagers to "go fuck [them]selves";
- told the police that if the teenagers returned to her friends' property to look for their car key, she would call the police so they could arrest or shoot the teenagers, "[b]ecause when they trespass you can shoot them on the property";

- expressly threatened, as a follow-up, "I'll shoot them on the property";
- volunteered to police that she was a Supreme Court justice and then repeatedly – at times profanely, *e.g.*, "I'm a fucking judge" – invoked her judicial office while demanding that the Black teenagers be removed or arrested, notwithstanding the officers' insistence that there was no legal basis for an arrest;
- threatened to call the chief of police after the officers refused to make arrests, asserted to police that they were in her "jurisdiction," and asked for an officer's name when he expressed incredulity at that remark;
- responded to an officer's concern that arresting the Black teenagers at Petitioner's behest would land the police in her court on a civil rights lawsuit by asserting that she was "always on [law enforcement's] side" and would "take anyone down" for the police in such a suit;
- loudly expressed her satisfaction that her son had "kick[ed] the shit out of" and "put a smack down" on one or more of the Black teenagers;
- made disparaging comments about applications for Extreme Risk Protection Orders that are designed to deny access to firearms to individuals who are likely to harm themselves or others, and encouraged police personnel not to file them in her court; and
- aggravated her already egregious misconduct when, weeks later, she continued to complain that the officers deflected her exertions of judicial influence and did not arrest the four Black teenagers.

Petitioner stipulated that her comments about the four Black teenagers created at least the appearance of racial bias. Compounded by her threat to shoot the teens and her rash encouragement of the police to do the same, Petitioner's behavior would compel removal even without the additional acts of egregious misconduct she committed and sought to blame on others. The Commission found that Petitioner's conduct so severely undermined public confidence in the judiciary

and in her ability to serve as a fair and impartial judge that no amount of mitigation could excuse it. This Court should accept the Commission's determination and remove Petitioner from the bench.

PROCEDURAL HISTORY

A detailed procedural history of this matter is set forth in Commission Counsel's brief to the Commission (R335-37).[1] In short, on September 22, 2022, the Commission authorized investigation of a complaint alleging, *inter alia*, that on or about July 1, 2022,[2] Petitioner invoked her judicial office and intervened with police officers at a party where her husband and son were involved in a fight (ASF: R52-53 ¶2; Ex 1: R81).

On November 15, 2022, Petitioner appeared with her attorney to give testimony during the Commission's investigation. She admitted that she committed the conduct depicted on the police bodycam footage,[3] but claimed that she acted under "exigent circumstances" after having witnessed her husband and son allegedly get attacked by a group of Black "kids" (Ex 9: R118-20, R154). She

[1] Citations preceded by "R" are to the Record for Review, filed by Petitioner. "ASF" refers to the Agreed Statement of Facts and "Ex" refers to exhibits annexed thereto; "Det" refers to the Commission determination in this matter; "Conc" refers to the concurrence.

[2] The events at issue began in the late evening hours of July 1, 2022, and continued past midnight into the early morning hours of July 2, 2022. To avoid confusion, hereafter those events will be referred to as having occurred on July 2, 2022.

[3] Copies of the bodycam and dashcam videos, which were provided to Petitioner in advance of her testimony, are annexed to the ASF as Exhibits 3 through 8.

testified that she "had never witnessed a fight or an assault" (Ex 9: R112) and "literally had never expected or experienced anything quite like" that (Ex 9: R119). Neither her testimony nor her subsequent written submission to the Commission raised the [redacted] defense Petitioner would later assert when formally charged with misconduct (*see* Ex 9: R92-197; Ex 10: R210-11)

Petitioner was served with a Formal Written Complaint dated May 23, 2023 (ASF: R53 ¶¶6-7; Ex 11: R217). She filed a Verified Answer dated July 18, 2023, in which she admitted that she committed misconduct and proposed that a sanction less than removal be imposed (ASF: R53 ¶8; Ex 12: R238). Her Answer also set forth affirmative defenses, including that she had acted as a distressed wife and mother, and that her conduct on July 2, 2022, was the result of extreme emotional distress triggered by [redacted] associated with a [redacted] assault that occurred in 1990 (Ex 12: R238-46).

The parties executed and the Commission accepted an Agreed Statement of Facts, dated March 1, 2024, constituting the entire record in lieu of a hearing (ASF: R51).

On July 17, 2024, the Commission issued a determination that Petitioner, as conceded, violated Sections 100.1, 100.2(A), 100.2(C) and 100.4(A)(1), (2) and (3) of the Rules Governing Judicial Conduct ("Rules"). The Commission determined that she should be removed from office (Det: R1-40).

THE STIPULATED FACTS

A. Petitioner and her family attended a high school graduation party hosted by their friends.

On July 1, 2022, Stephen and Gina Pearce held a high school graduation party for their son, Jackson Pearce, at their residence at 8855 Tibbitts Road in the Town of New Hartford (ASF: R54 ¶9). Petitioner, her husband William Gall III, and their three teenage children, including her then 18-year-old son, William Gall IV, were among the approximately 60 attendees invited by Stephen and Gina Pearce (*id.* ¶10). In addition, Jackson Pearce separately invited a number of friends via private message over Snapchat (*id.* ¶11).

The Pearces hired a bartender to serve alcoholic beverages from 6:30 PM to 10:00 PM. The Pearces also provided a keg of beer from which guests could serve themselves, and which remained accessible after the bartender left. At a hearing, Petitioner would testify that she did not consume any alcohol at the party and was sober during the entirety of the events of July 2, 2022 (ASF: R54 ¶12).

B. Late in the evening, dozens of uninvited teenagers arrived at the party, and confrontations broke out.

Sometime after 11:30 PM, a large number of teenagers who had not been invited by the Pearces arrived at the party, joining dozens of teenagers already in attendance. By that time, the crowd had spilled outside the tent that the Pearces had set up on their front lawn and spread into and/or around the road adjoining the

Pearces' property. Thereafter, arguments ensued between invited and uninvited individuals. Petitioner saw an unknown individual, whom she believed was uninvited, overturn a tray of food, and she heard people talking loudly, some with vulgarity. In an attempt to clear the area, Petitioner's husband and son, along with another invited adult, began to shepherd individuals away from the tent area and toward Tibbitts Road (ASF: R55 ¶¶13-15).

C. William Carter, Jahshiem Valladares, and two of their friends learned about the party on social media and arrived to find widespread chaos.

On the evening of July 1, 2022, four Black male teenagers – William Carter, Jahshiem Valladares, and two others known as "Dooley" and "Havo"[4] – were socializing in Utica when Havo learned about a party in New Hartford via a live video feed from an unidentified friend in attendance (ASF: R56 ¶16).[5] At 11:44 PM, that friend texted the address to one of Mr. Carter's group.[6] A few minutes later, Mr. Carter drove Mr. Valladares and their two other friends to the party in his

[4] Mr. Carter and Mr. Valladares declined to provide the full names or contact information for Havo and Dooley. Commission Counsel was unable to ascertain their identities or contact them (ASF: R56 ¶16, n2).

[5] Mr. Carter and Mr. Valladares declined to provide the name of the friend. It is unknown whether the friend had been invited to the party by any of the Pearces (ASF: R56 ¶16, n3).

[6] The text listed the house number as "8885" instead of "8855" (ASF: R56 ¶16; Ex 14: R249).

mother's SUV. The drive took about 20 minutes. No one from Mr. Carter's group was invited by any of the Pearces (ASF: R56 ¶16, R73 ¶69).[7]

Mr. Carter's group arrived at the Pearces' address after midnight and parked on the shoulder of Tibbitts Road, across the street from the Pearces' driveway and not on the Pearces' property. At a hearing, Mr. Carter and Mr. Valladares would testify that, upon their arrival, they observed a large number of individuals, including teenagers and adults, congregating on Tibbitts Road, near the end of the Pearces' driveway (ASF: R57 ¶17).

At a hearing, Mr. Carter would testify that, shortly after getting out of the SUV, he heard raised voices and arguing. Although Mr. Carter did not see anyone physically fighting at that time, he quickly decided that he and his friends should leave. A cell phone video of the chaotic scene recorded by Mr. Carter at 12:19 AM on July 2, 2022, approximately three minutes before the first police officer arrived on the scene, shows Mr. Carter exclaiming, "What the fuck" as he panned his camera around to show a mob of teenagers arguing with one another in the middle of the road (ASF: R57 ¶18; Ex 15 [video]).

[7] Mr. Carter had a learner's permit, but not a full license. At a hearing, Mr. Valladares would testify that he smoked marijuana about an hour before leaving for the party, and Mr. Carter would testify that he did not smoke marijuana. Petitioner did not know of any alleged marijuana use until after the conclusion of the Commission's investigation in this matter (ASF: R56 ¶16).

Shortly after Mr. Carter stopped recording, a fight or multiple fights broke out among a large group of individuals, some of whom had not been invited to the party (ASF: R57 ¶19; *see* Ex 19 [video]). At a hearing, Mr. Carter and Mr. Valladares would testify that they attempted to avoid the fighting and leave but were grabbed from behind by other unidentified individuals and swept into a fight as Mr. Carter was attempting to unlock the SUV (ASF: R59-60 ¶25).

D. Petitioner's husband and son were also involved in a fight, but neither sought nor needed medical treatment.

At around the same time, Petitioner's husband and two other adults were attempting to separate several unknown individuals who were fighting. In the confusion, Petitioner's husband, Mr. Carter and Mr. Valladares became involved – though not necessarily with one another – in a physical altercation in or near a ditch along the road, during which Petitioner's husband had the back of his shirt ripped and suffered injuries to his ears, while Mr. Carter sustained a small facial abrasion. Mr. Valladares suffered a laceration under one of his eyes, which bled and later required stitches (ASF: R60 ¶26; Exs 16-18: R250-54).

At some point, as William Gall IV was continuing to help clear the area, he was attacked by individuals whom Petitioner and her family had never seen before and believed were uninvited (ASF: R58 ¶20). At a hearing, Petitioner would testify that her son was approximately five feet from her when she saw him get slapped on the right side of his head, and when he attempted to retreat, several

unknown individuals violently attacked him, bringing him to the ground where they kicked, stomped and punched him about his head, face and body (*id.* ¶21). Petitioner would further testify that, while watching the attack, she "froze," did not physically intervene, and stood there in shock without doing anything (*id.* ¶22). Although William Gall IV sustained injuries to his ribs and face, those injuries did not require medical attention (*id.* ¶21; Ex 10: R212-16).[8] Neither Petitioner's son nor husband sought or received any medical treatment (ASF: R61 ¶30).

E. Mr. Carter realized he had lost his car key.

When the fighting stopped, Mr. Carter realized he no longer had his car key. With no other way to leave the scene, he and his three friends began searching the area for the key (ASF: R61 ¶31).

F. Officers from several law enforcement agencies arrived on the scene, broke up fights, and observed signs of underage drinking.

At 12:22 AM, New Hartford Police Department Officers Robert Cornish and Eric Cappelli arrived at the Pearce residence in response to multiple reports of a large party with numerous fights. Soon thereafter, police personnel from the Oneida County Sheriff's Department, the Kirkland Police Department, the

[8] During the Commission's investigation, Petitioner identified photographs of Havo and Dooley as two of the individuals she saw fighting her son. At a hearing, Petitioner would testify as to those prior identifications, as well to the fact that she believed on July 2, 2022, that Havo and Dooley initiated the assault (ASF: R59 ¶¶23-24). However, in view of the totality of the circumstances surrounding the incident, including the darkness of night, rainy conditions, and large number of persons involved in the melee – many of whom were unknown to Petitioner at the time – the parties agree that the evidence is insufficient to support any finding as to whether Havo and Dooley fought with Petitioner's son (*id.* ¶24) (emphasis added).

Whitestown Police Department, and the New York Mills Police Department arrived at the scene (ASF: R61 ¶32). Petitioner was aware that officers and deputies at the scene wore operational body cameras (ASF: R62 ¶34).

Officers Cornish and Cappelli broke up numerous fights and directed the partygoers to leave the area. It appeared to them and other police personnel that many of the teenagers had been drinking alcohol and/or were intoxicated. Police personnel also observed numerous alcoholic beverage containers littering the ground on or around the Pearces' property, as well as along the road. The police did not issue any tickets for underage drinking (ASF: R62 ¶33).

G. Over the course of approximately an hour and fifteen minutes, Petitioner repeatedly invoked her judicial office and engaged in a loud, public, and profanity-laced confrontation with police and Mr. Carter's group, which included demands that Mr. Carter and his friends be arrested.

Shortly after the police arrived, Petitioner approached Officer Cappelli and volunteered, "I'm Erin Gall, I'm a Supreme Court judge." She told him that the party had gotten out of control (ASF: R62 ¶35; Ex 4a [video]) (emphasis added).

Soon thereafter, Stephen Pearce, who appeared intoxicated, ran toward Mr. Carter's group and screamed obscenities at the four Black teens as they looked for the lost car key. As other adults physically restrained Mr. Pearce, Petitioner – despite being a guest at the party who did not live in the neighborhood – yelled:

> You got to leave! You're not going to find your keys. You got to call an Uber and get off the property. That's what I'm

> saying. No. Done. You're done. Done, done, done. Get off the property!

(ASF: R62-63 ¶36; Exs 3a, 4b [videos]).

Again invoking her judicial office, Petitioner continued, "And's that's from Judge Gall! I'm a fucking judge! And I'm telling you! Get off the fucking property!" (ASF: R62-63 ¶36; Ex 3a [video]) (emphasis added). Apparently responding to someone who called her something other than "judge," she shouted, "No, judge. It's judge. I could give a fuck. . . . I don't want anyone on the property. If I have to clear it out, I will" (*id.*; Ex 3a [video]) (emphasis added).

When Officer Cornish asked Petitioner if anyone needed medical attention, Petitioner replied in a more moderate voice, "No, Jesus, no. No, honestly, I'm a Supreme Court judge" (ASF: R63 ¶37; Ex 3b [video]) (emphasis added). She then resumed yelling:

> They're not going to find keys . . . and you know what, this is just a stall tactic. They got to go. They got to go. There's no keys. There's absolutely no keys. You know what you're not going to find your mom's keys. You gotta ask her for a second set, bro!

(ASF: R63 ¶38; Ex 3b [video]).

Mr. Carter or one of his friends told Petitioner, "It's not going to work like that," to which Petitioner – invoking her judgeship yet again – replied:

> Yeah, that's how it's going to work. I'm telling you, that's how it's working. Well, you're going to get in an Uber, buddy, or

> you're going to get a cop escort home. That's how it's happening. That's what I'm telling you right now. That's how I roll. That's how I roll. That's how Mrs. G rolls. That's how Judge Gall rolls. We're clearing this place out.

(ASF: R63 ¶39; Ex 3b [video]) (emphasis added).

Stephen Pearce subsequently yelled at the officers that Mr. Carter's group should be arrested, and Petitioner voiced her agreement, adding, "They were trespassing and . . . they should be arrested" (ASF: R64 ¶40; Exs 4c, 6a [videos]). She told the officers, "This is not my first rodeo" and opined, "they should either be arrested or driven off the property. We shouldn't be looking for their keys. They assaulted people here. We're not pressing charges. We just need them gone." When the officers did not do as she asked, Petitioner said, "I don't know if I have to call the Chief of Police. This is ridiculous" (*id.*; Exs 4c, 6a [videos]).

Several minutes later, when Petitioner resumed screaming that everyone should stop looking for the lost car key, the following exchange occurred between Petitioner and Officer Cappelli:

Petitioner:	I'm not looking for keys. Guys, don't look for keys anymore, please. I don't care about this kid's fucking keys.
Ofc. Cappelli:	I do. So relax.
Petitioner:	I don't.
Ofc. Cappelli:	It's not even your house. Chill out.
Petitioner:	It's my jurisdiction though.

Ofc. Cappelli: Okay.

Petitioner: Yeah it is! Yeah it is! Yeah it is! Don't laugh!

Ofc. Cappelli: I'm not.

Petitioner: What's your name.

Ofc. Cappelli: Cappelli.

Petitioner: Cappelli. Okay. I'll make sure I tell them. I mean seriously you're worried about a trespasser and an assaulter's keys. He committed a crime and you're looking for his keys.

Ofc. Cappelli: So did all of the adults giving all of these kids booze, so what do you want?

Petitioner: What was that?

Ofc. Cappelli: So did all of the adults giving all of these kids booze.

Petitioner: I don't know who this kid was. No, we don't even know who this kid is! No adult gave this kid booze. Cappelli.

(ASF: R64-65 ¶42; Ex 4d [video]) (emphasis added). When Petitioner said, "I'll make sure I tell them," she was referring to her intention to call a lieutenant she knew in Cappelli's department to complain about his actions (ASF: R66 ¶43).

While arguing with Deputy Steven Eilers about whether Mr. Carter's group had committed a trespass offense, Petitioner once again touted her judgeship, stating, "If you're not invited by a homeowner, it's still trespassing. I've done this for a million years. I'm a lawyer. I'm a judge. I know this" (ASF: R66 ¶44; Ex 5a

[video]) (emphasis added). Petitioner then told Officer Cornish to tow the SUV or to issue Mr. Carter a ticket. When Cornish explained to Petitioner that they could do neither because the vehicle was not illegally parked, Petitioner replied, "Well, put him in the back of a cop car and let him wait there" (*id.* ¶45; Ex 3c [video]).

At 12:50 AM, Mr. Valladares' sister, Mahkay-lah Mezza, arrived at Tibbits Road in response to Mr. Valladares's phone call. Because Ms. Mezza could not fit Mr. Carter and his three friends into her car, she waited with Mr. Carter's group for a relative to arrive with a spare key (ASF: R66 ¶46).

Shortly before 1:00 AM, Stephen Pearce screamed obscenities urging the police to remove Mr. Carter's group from the scene. Standing next to Mr. Pearce, Petitioner yelled, "This is ridiculous," and again insisted that the Black teens were trespassing (ASF: R67 ¶47; Exs 4e, 6b [videos]). Asserting her judicial title once more, Petitioner added, "I'm a judge, he's a lawyer. We're telling you. I'm telling you" (*id.* ¶47; Exs 4e, 6b [videos]) (emphasis added).

Stephen Pearce argued with the police about whether Mr. Carter could legally park on the shoulder of the road. Mr. Pearce told the deputies to "[p]olice the fucking area." Petitioner added, "Police it, police it. Oh, my god, you're not doing much. They're obstructing a public road. That's not a crime?" (ASF: R67 ¶48; Exs 4e, 6b [videos]).

When Petitioner mentioned to Deputy Norman Lyke that she heard Mr. Carter's group wanted to press charges, Lyke stated, "But how about this? How about we end up in front of your court for a civil rights violation because we violated all their civil rights." Petitioner replied, "Listen, but guess what, the good part is – the good part is I'm always on your side. You know I'd take anyone down for you guys. You know that. You know that. You know I am on your side" (ASF: R67-68 ¶¶49-50; Ex 3d [video]) (emphasis added).

Shortly after 1:00 AM, as Stephen Pearce continued to complain that the police had made no arrests and issued no tickets, Petitioner asked if Mr. Carter's group had been charged with anything. Officer Cornish stated that Mr. Carter's group wanted to press charges for assault and underage drinking, and Petitioner told the officer that he needed to get the names of the people in Mr. Carter's group because "we're pressing charges against them for trespassing" (ASF: R68 ¶52; Ex 3e [video]). When the police disputed whether Mr. Carter's group had been trespassing, Petitioner stated:

> It's a private property . . . wait, they were looking – you were looking. My point is he's saying they want to press charges so I'm saying if they're pressing charges we're pressing trespassing. . . . Well, can I say this, if they're pressing charges, we're pressing trespassing charges and assault.

(ASF: R68-69 ¶53; Ex 3e [video]). When a deputy advised Petitioner that a charge of assault required physical injuries or substantial pain, Petitioner laughed and –

asserting her office yet again – stated, "Okay, I know the law. I'm a judge" (ASF: R69 ¶54; Ex 3e [video]) (emphasis added).

Addressing Petitioner's mention of assault charges, an officer commented that Petitioner's son "look[ed] like a million bucks." Petitioner replied, "I taught my son well. He put a smack down once he got hit" (ASF: R69 ¶55; Ex 3f [video]). Petitioner disputed Officer Cornish's statement that Mr. Carter's group got the "worst end" of the fight and, repeatedly hitting her fist into the palm of her hand, said, "Hopefully he did get the worst end of it because I taught my son to kick the shit out of anyone who hits him first" (*id.* ¶¶ 55, 56; Ex 3f [video]). About a minute later, Petitioner stated, "My husband and son got hit first . . . but they finished. Like I taught 'em" (*id.* ¶57; Ex 6c [video]).

A short while later, when Deputy Eilers – speaking to other police personnel – said that "taking anything off [his] belt" would create too much paperwork, Petitioner interjected, "Do you want to talk way too much paperwork? Guess what we have to do now? We're all on call for ERPOs. . . . Do ERPOs make you guys crazy?" (ASF: R70 ¶58; Ex 6d [video]).[9] A deputy responded, "No, we're not

[9] Pursuant to Section 6340(1) of the CPLR, an Extreme Risk Protection Order ("ERPO") is a "court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun." While anyone may file an application for an ERPO, all law enforcement officers are required by Section 6341 of the CPLR to file an application for an ERPO "upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself or others." Pursuant to CPLR §6341, such applications are to be filed in the supreme court in the county where the

going to pay attention," to which Petitioner replied, "Don't! Don't! Because I get called in the middle of night, too, for those" (*id.* ¶59; Ex 6d [video]).

Petitioner then argued to Deputy Eilers that Mr. Carter's group had committed Criminal Trespass and/or Assault. Although Deputy Eilers explained to Petitioner that the New Hartford Police had jurisdiction over the matter, Petitioner stated that she wanted to press charges and asserted that she could call Sergeant Grant Langheinrich to file charges through the sheriff's department (Ex 5b [video]). Sergeant Langheinrich is personal friend of Petitioner and, at the time, was in charge of security at Petitioner's courthouse (ASF: R70-71 ¶60).

At 1:27 AM, as Mr. Carter and his friends sat in the SUV still waiting for someone to arrive with a spare key, Petitioner said to Deputy Eilers, "Watch, I bet if they push the button, the keys are in the car" (ASF: R71 ¶61; Exs 5c, 6e [video]). Petitioner, who a few minutes earlier had told Deputy Eilers that her son would be attending business school in the fall, said of Mr. Carter and his group, "<u>They don't look like they're that smart. They're not going to business school, that's for sure</u>" (*id.* ¶62; Exs 5c, 6e [video]) (emphasis added).

At 1:35 AM, one of Mr. Carter's relatives arrived with an extra key for the SUV (ASF: R71 ¶63). As Mr. Valladares and Ms. Mezza were preparing to leave,

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individual against whom the order is sought resides. As a Supreme Court justice, Petitioner is required to review applications for ERPOs filed in her court (ASF: R70 ¶58 n7).

Stephen Pearce said, "Thanks for coming out, guys." Ms. Mezza replied, "You're welcome," and Mr. Pearce responded, "Go fuck yourselves." Ms. Mezza asked, "Whoa, is that acceptable?" Petitioner laughed and yelled, "Yes, it is!" Ms. Mezza said, "I just came to get my brother." Mr. Pearce repeated, "Thank you, thanks for coming." Ms. Mezza replied, "Man, you look like a fucking cokehead." Petitioner remarked, "You look like a cokehead, okay. We might be able to afford the coke, but we don't do it" (ASF: R71-72 ¶64; Exs 5d, 6f [videos]).

H. Petitioner threatened to shoot the four Black teenagers if they returned to the property to look for their lost car key, and she encouraged the police to do the same.

At 1:37 AM, Mr. Carter drove off with Havo and Dooley, leaving Mr. Valladares and Ms. Mezza at the scene (ASF: R72 ¶65). While they were sitting in Ms. Mezza's car with the windows open, trying to establish a GPS route, Officer Cornish approached Petitioner and Stephen Pearce, who was continuing to yell. Officer Cornish noted that the key to the SUV might turn up in the morning, and Petitioner interrupted him and said, "We're absolutely going to throw it in the toilet . . . You're welcome. If you think we're gonna – if you think we're gonna turn over – we're not looking for any keys" (*id.* ¶66; Ex 3g [video]).

Officer Cornish suggested that the best outcome would be if someone found the key and turned it in to the police, in which case no one from Mr. Carter's group

would need to return to look for it. In response, Petitioner loudly declared that she or the officers could shoot the Black teens if they returned to look for the key:

> Well, if they come back looking for it, I'll call you while they're on the property. Because you want to find them on the property. I'll call you when they're on the property. If they did, they'll be arrested, or they'll be shot on the property. Because when they trespass you can shoot them on the property. I'll shoot them on the property.

(ASF: R73 ¶68; Ex 3g [video]) (emphasis added). From the passenger seat of Ms. Mezza's vehicle, Mr. Valladares heard Petitioner's threat about shooting them and reported it to Deputy Eilers (*id.*).

At that point, Kirkland Police Officer Joseph McCormick – addressing Petitioner as "lady" or "ma'am" – said, "This isn't Texas. You can't shoot somebody for simply going on your property. . . . Do you hear what you're saying? You're all white, privileged people with high-power jobs" (ASF: R73 ¶69; Ex 5e [video]). Petitioner, yet again invoking her judgeship, replied, "Don't call me 'Lady.' 'Judge.' It's 'Judge.' . . . You guys didn't really do much" (*id.* ¶¶69-70; Ex 5e [video]) (emphasis added).

I. Weeks later, Petitioner had conversations with three members of the sheriff's department, during which she complained about how police personnel handled the situation at the party.

On July 14, 2022, at the Oneida County Courthouse, Petitioner had conversations with Sergeant Langheinrich, Deputy Edmund Wiatr and Deputy

Michael Baker, during which she expressed, *inter alia*, her dissatisfaction with how the officers from New Hartford Police handled the situation at the Pearces' party on July 2, 2022 (ASF: R74 ¶73).

J. Petitioner conceded that her behavior created at least the appearance of racial bias and bias in favor of law enforcement and was otherwise incompatible with the role of a judge.

In the Agreed Statement of Facts, Petitioner acknowledged that:

- she created "at least the appearance of racial bias" through her statements that Mr. Carter and his friends did not look "that smart" and were "not going to business school" like her son (ASF: R76 ¶75[D]);
- She additionally created "at least the appearance of racial bias" by stating that she would shoot the young Black men if they returned to search for the missing car key (*id.*);
- She created at least the appearance of bias in favor of law enforcement through her assertion to police personnel that she was "always on [their] side" and would "take anyone down" for the police, along with her disparaging statements concerning ERPOs (*id.* ¶75[F]); and
- Her expressions of satisfaction that her son had "kick[ed] the shit out of" and "put the smack down on" another partygoer, and her declaration that she would "shoot the young Black men if they returned to search for the missing car key, were unbecoming of and incompatible with the role of a judge" (*id.* ¶75[E]).

K. Petitioner conceded that by repeatedly invoking her judicial title and threatening to call superior officers, she created at least the appearance that she sought preferential treatment based on her judicial status and/or lent the prestige of her office to advance private interests.

In the Agreed Statement of Facts, Petitioner made the following acknowledgements about her conduct in the aftermath of the graduation party:

- By repeatedly invoking her judicial office to police officers during the events of July 2, 2022, Petitioner created at least the appearance that she was seeking preferential treatment based on her status as a judge, and thus lent the prestige of her office to advance her own and her friends' private interests;

- By repeatedly invoking her judicial office to Mr. Carter and his friends, Petitioner created at least the appearance that she was speaking with judicial authority when ordering them to leave the Pearces' neighborhood, and thus lent the prestige of her office to advance her own and her friends' private interests; and

- Her threat to call an officer's superior created at least the appearance that she was leveraging her judicial position to pressure the officers on the scene to do as she wished.

(ASF: R75-76 ¶75[A]-[C]).

The parties further stipulated that Petitioner would testify at a hearing that she regrets her behavior toward the officers and Mr. Carter's group, that she acknowledges that the officers handled the situation appropriately, and that her conduct made the officers' jobs more difficult (ASF: R77 ¶76[A]-[C]).

L. Petitioner asserted that the behavior underlying her misconduct was related to [redacted] stemming from a [redacted] assault she suffered in 1990.

The parties further stipulated that at a hearing, Petitioner would testify that (1) her overreaction to the events of July 2, 2022, was related to a traumatic event she suffered on April 29, 1990, when she was the victim of a [redacted] assault as an 18-year-old freshman attending Boston College, and (2) witnessing assaults on her son and husband on July 2, 2022, "triggered memories" of the 1990 [redacted] assault

and caused her "severe emotional distress and feelings of [redacted]" (ASF: R78 ¶77). Additionally, at a hearing, Petitioner would call Norman J. Lesswing, Ph.D., and Joanne Joseph, Ph.D., as witnesses in support of her defense that her conduct on July 2, 2022, was triggered, in part, by a trauma-based reaction to her having been [redacted] assaulted in 1990 (*id.* ¶78; Exs B-1-B-4: R259-310).

THE COMMISSION'S DETERMINATION

The Commission unanimously determined that Petitioner's conduct warranted her removal from office. Two members concurred in a separate opinion by Nina Moore, elaborating upon certain aspects of that misconduct.

A. The Majority Opinion

After making findings of fact consistent with the stipulated evidence the majority held that Petitioner – by her own admission – improperly "len[t] the prestige of her judicial office to advance her own and her friends' private interests, create[ed] at least the appearance of racial bias, create[ed] at least the appearance of bias in favor of law enforcement and engag[ed] in conduct unbecoming of a judge" (Det: R29-30). Finding that Petitioner's "wide array of misconduct severely undermined public confidence in the judiciary and her ability to serve as a fair and impartial judge," the majority imposed the sanction of removal from office (Det: R39). The majority reasoned that, "'consider[ing] the full spectrum of her behavior and its impact on public perception of the judiciary'" (Det: R39, quoting

Matter of Astacio, 32 NY3d 131, 137 [2018]), Petitioner "engaged in 'truly egregious' misconduct, . . . acted in a manner unbecoming a judge, brought reproach upon the judiciary and irreparably damaged her ability to serve as a judge" (Det: R39-40, quoting *Matter of Mazzei*, 81 NY2d 568, 571-72 [1993]).

The majority recognized that, over the course of an hour and 20 minutes, Petitioner "invoked her judicial office more than a dozen times [in] seeking to obtain preferential treatment and to influence the actions of the police and the conduct of the teenagers" (Det: R31). Those invocations of office included Petitioner:

- "gratuitously stat[ing] to the police, "I'm a Supreme Court Judge";
- "invok[ing] her judicial office in an attempt to have the four Black teenagers arrested for assault";
- "laugh[ing] at a deputy" when he stated that the teenagers' conduct did not make out an assault charge and asserting, "'I know the law, I'm a judge'";
- insisting to the police, "'. . . I've done this for a million years. I'm a lawyer. I'm a judge. I know this. . . . I'm telling you'";
- yelling, ". . . Get off the property! And that's from Judge Gall! I'm a fucking judge! And I'm telling you! Get off the fucking property! No, judge. It's judge. I could give a fuck . . . ."; and
- "directing the teenagers to leave" by stating, "'Well, you're going to get in an Uber, buddy, or you're going to get a cop escort home. . . . That's how Mrs. G Rolls. That's how Judge Gall rolls.'"

(Det: R: 31-32). Compounding her misconduct, Petitioner "also attempted to use her judicial position to influence [the officers'] actions" by taking their names and "indicating that she would call their superiors if they did not follow her instructions" (Det: R33).

The majority found that Petitioner committed "additional serious misconduct" by making comments that "created at least the appearance of racial bias," including by:

- saying "that the Black teenagers 'don't look like they're that smart. They're not going to business school, that's for sure'";
- asserting that if the Black teenagers returned to look for their car key, "'they'll be arrested, or they'll be shot on the property. Because when they trespass you can shoot them on the property'"; and
- stating, "I'll shoot them on the property."

(Det: R34). Quoting from this Court's recent decision in *Matter of Putorti*, the majority emphasized "'that the appearance of [racial bias] is no less to be condemned than the impropriety itself,'" and held that "[w]hen [Petitioner] created at least the appearance that she harbored racial bias, she severely undermined public confidence in her integrity and impartiality" (Det: R35).

Petitioner "also made comments that created the appearance that she was biased in favor of law enforcement" (Det: R35). Those comments included telling the police that she was "'always on [their] side'" and would "'take anyone down'" for them after a deputy expressed concern that arresting the Black teens at

Petitioner's behest could land him "in front of [Petitioner's] court for a civil rights violation" (Det: R35). As the majority noted, not only was this an improper public proclamation of Petitioner's "partiality toward law enforcement," but these statements "were additional evidence of [her] appearance of racial bias" (Det: R35). In the same vein, the majority found, Petitioner "made disparaging comments regarding Extreme Risk Protection Orders that she was required to review" as a judge, which "improperly belittled an important public safety tool and appeared to be [an] attempt[ ] to ingratiate herself with the law enforcement personnel at the scene" (Det: R35-36).

The majority determined that Petitioner's "profanity-laced statements on a public street detracted from the dignity of her judicial office" (Det: R36). Those statements included:

- "I'm a fucking judge";
- "I don't care about this kid's fucking keys"; and
- "he put a smack down" (referring to her son fighting with one of the Black teenagers).

(Det: R36).

The Commission reviewed the evidence Petitioner submitted regarding her [redacted] diagnosis and was "very sympathetic to the impact of [Petitioner's] past trauma" (Det: R37). They nonetheless rejected Petitioner's argument that that her "past trauma" and related psychological "diagnosis"

"excused" her "significant misconduct" or was mitigating as to sanction (*id.*). Specifically, the majority found that "the psychological evidence" Petitioner presented did nothing to "explain[ ]" why that she "repeatedly assert[ed] her judicial office for more than an hour, . . . directed the police to arrest the Black teenagers and made statements which created the appearance of racial bias and bias in favor of law enforcement" (Det: R37).

In addition, the majority observed that Petitioner's "arguments regarding a psychological explanation for her conduct" were "undercut by her actions approximately two weeks after" the fact, when – "after she had time to reflect" – she complained about "how [law enforcement personnel] handled the situation" to various members of the Oneida County Sheriff's Office (Det: R38). The majority determined that "[b]y having these conversations in the courthouse two weeks later, [Petitioner] appears to have failed to recognize her misconduct during the earlier incident and to have ignored the impact of her judicial status on her complaints to law enforcement personnel" (Det: R38) (citing *Matter of Lonschein*, 50 NY2d 569, 573 [1980]).

The Commission concluded that even if Petitioner's "reported psychological condition . . . played a role in her actions," she "irreparably damaged her integrity by repeatedly invoking her judicial office and forfeited her ability to be and to

appear to be impartial, particularly as it relates to race and law enforcement personnel" (Det: R37-38) (citing *Matter of Restaino*, 10 NY3d 577 [2008]).

B. <u>The Concurrence</u>

Commission member Nina M. Moore, joined by the Honorable Fernando Camacho, filed a concurring opinion to "underscore" certain "especially consequential" issues and facts (Conc: R41).

The concurrence emphasized that while judges – like anyone else – may have "personal problems," the "foundational precept" that the judiciary "exists to serve the public interest in justice . . . is not superseded by the emotional and psychological problems of individual judges" and "applies with added force when a judge's personal issues directly undermine public trust in the temperament, mental soundness, and fairness of those who wear the robe" (Conc: R42).

In response to Petitioner's trauma defense, the concurring members found "strong hints of strategizing around the psychological evidence," insofar as Petitioner "did not pursue a forensic psychological evaluation until . . . shortly after she was notified of formal charges . . . [and] almost a year after the admitted misconduct" (Conc: R43), and in that "at the outset of interactions with one of the witnesses called to support her trauma defense, [Petitioner] specifically asked the witness to concentrate on" the diagnosis at the heart of that defense (Conc: R44). And even then, the concurrence noted, Petitioner herself conceded that trauma did

not explain "all" of her misconduct, as the ASF reflected that her misconduct at issue "was triggered only *in part* by her reaction to [the] 1990 assault" (Conc: R44) (emphasis in original).

The concurring members "commend[ed]" the "remarkably temperate decision-making of [the] responding police officers" in the face of Petitioner's "improper demands" (Conc: R44). "The point of note," the concurrence wrote, "is that police officers had to explain to a judge the multiple reasons why they could not lawfully submit to her pleas to handcuff, detain arrest and/or remove the teenagers," and it emphasized that but for the "measured and reassuring" judgment of the police, the situation surrounding Petitioner's misconduct "could have led to far more harmful outcomes than occurred" (Conc: R44-45). Specifically, the concurrence averred, the Black teenagers easily could have been "unlawfully victimized by the criminal justice system, due to mistaken identity by a White female judge, based on the argument that it was because she was assaulted when she was a college freshman" (*id.*). The Concurrence concluded, "No matter how extremely unfortunate and regrettable [Petitioner's] 1990 assault, the long reach and unpredictability of its effects cannot be enabled to wrongly jeopardize the freedom and safety of others" (*id.*).

The concurring members observed that "questions remain as to the precise mechanisms by which [Petitioner's] victimization of 1990 accounts for her choices

34 years later," given that aspects of Petitioner's claims and behavior were "difficult to reconcile" (Conc: R46). Specifically, the concurring opinion highlighted that Petitioner:

- claimed an "aversion to violence due to the 1990 incident," yet "boast[ed]" in the aftermath of the graduation party "of having taught her son to 'put a smack down' and 'to kick the shit out of anyone who hits him first'";

- froze in shock as she observed her son being attacked, "yet moments later was clear-headed enough to present reasoned arguments" to the responding police as to why they should do as she wished; and

- experienced an "odd pattern of the timing of her [trauma-based] impacts," in that her [redacted] seemed to "appear, disappear, then reappear and disappear again" without "predict[ion]," despite Petitioner's express indication at one point between 1990 and 2023 that "she had recovered from that traumatic experience of 1990."

(Conc: R46-47).

Finally, the concurrence expressed concern that, were Petitioner permitted to remain on the bench, "Black litigants, attorneys, court staff and others who enter [her] courtroom" would "have to carry the additional burden of wondering whether their matters will be adjudicated by a judge of sound and sober mind, or a traumatized judge with a proclivity toward racial stereotyping and racially tainted directives" (Conc: R48).

Here, the concurrence noted that, in addition to stating that the Black teenagers did not "look like they're that smart" and threatening to shoot them, she chided that they were unable to afford cocaine and spoke to them using "derisive

deployment of Black English," or "blaccent," by calling them "bro" and stating, "That's how I roll. That's how Mrs. G rolls. That's how Judge Gall rolls" (*id.*). Although Petitioner offered "articles to explain away her racialized behavior based on a research finding that . . . people resort to racial stereotyping when they get angry," "no credible systematic research attributes reflexive racism against Black people to the kind of long ago criminal victimization that [Petitioner] offers as a defense" (Conc: R49-50). In light of that, the Concurrence concluded, Petitioner "should not sit on the bench with Black litigants left to cross their fingers and hope for the best" (Conc: R50).

POINT I

THE COMMISSION CORRECTLY DETERMINED THAT PETITIONER'S EGREGIOUS PUBLIC MISCONDUCT, WHICH INCLUDED RACIALLY-CHARGED AND PROFANITY-LACED TIRADES ALONG WITH REPEATED INVOCATIONS OF HER JUDICIAL OFFICE, RENDERS HER UNFIT FOR THE BENCH.

Petitioner conceded – and the Commission unanimously determined – that her actions on July 2, 2022, violated the Rules (ASF: R74-75 ¶74). Her sole argument here is that the Court should reject the Commission's recommendation of removal and impose a lesser sanction. The Commission correctly determined that Petitioner's "wide array of misconduct severely undermined public confidence in the judiciary and in her ability to serve as a fair and impartial judge," thus compelling her removal (Det: R39).

Despite the abundance of shocking video evidence and Petitioner's stipulation that her conduct violated the Rules, she now asks for a sanction lesser than removal by arguing that her misconduct was the product of a trauma-based reaction to a [redacted] assault she suffered in 1990. The Commission rightly rejected that attempt at mitigation, holding that even if her "reported psychological condition" played some role in her misconduct, Petitioner "irreparably damaged her integrity by repeatedly invoking her judicial office and forfeited her ability to be and to appear to be impartial, particularly as it relates to race and law enforcement personnel" (Det: R37-38).

A. Petitioner's misconduct created at least the appearance of racial bias and bias in favor of law enforcement, which are incompatible with judicial office.

As this Court has made clear, racial bias – or even the appearance thereof – has no place on the bench. *See, e.g.*, *Matter of Putorti*, 40 NY3d 359 (2023) (removing judge who *inter alia* brandished a gun in court, then attempted to justify it by claiming that a "big Black man" had approached the bench too quickly for the call of his case); *Matter of Schiff*, 83 NY2d 689 (1994) (holding that statements involving racial stereotypes "cast[ ] doubt on [a judge's] ability to fairly judge all cases before [her]"); *Matter of Esworthy*, 77 NY2d 280, 282-83 (1991) (removing judge who *inter alia* "used racially charged language that was highly insulting to certain ethnic groups," which "necessarily ha[d] the effect of leaving litigants with

the impression that our judicial system is unfair and unjust"). A judge also commits serious misconduct when she demonstrates bias in favor of law enforcement. *See Matter of Watson*, 100 NY2d 290 (2003).

Here, Petitioner conceded that various statements she made in the aftermath of the graduation party created "at least the appearance of racial bias" and bias in favor of law enforcement (ASF: R76 ¶75[D], [F]). Simply put, Petitioner has created a circumstance where the public will have "irretrievably lost 'confidence in [her] ability to properly carry out [her]' constitutionally-mandated responsibilities in a fair and just manner." *Restaino*, 10 NY3d at 590 (quoting *Matter of Aldrich*, 58 NY2d 279, 283 [1983]).

1. Petitioner's suggestion that the police shoot the Black teenagers if they returned to the property, and her subsequent threat to shoot them herself, exhibited racial bias inconsistent with judicial office.

Petitioner forfeited the public's trust when, amid her hour-plus tirade, she announced that if the stranded Black teenagers returned to look for their car key, they would be "shot on the property" (ASF: R73 ¶68; Det: R34; Ex 3g [video]). Specifically, she told the police:

> Well, if they come back looking for it, I'll call you while they're on the property. Because you want to find them on the property. . . . If they did, they'll be arrested, or they'll be shot on the property. Because when they trespass you can shoot them on the property. I'll shoot them on the property (emphasis added).

(ASF: R73 ¶68; Det: R34; Ex 3g [video]). Those threatening and racial comments – all captured on video – "severely undermined public confidence in [Petitioner's] integrity and impartiality" (Det: R35). *See Putorti,* 40 NY3d at 367.

It is especially troubling that Petitioner made these statements after having persistently reminded the officers that she was a "Supreme Court judge" who had "jurisdiction" and who "kn[e]w the law" (*see* Part B*, infra*). These repeated invocations of her judgeship "'change[d] the complexion of the interaction'" and created the appearance that Petitioner was "adding her judicial clout to all of her statements," including her authorization for the police to shoot unarmed Black teens for doing nothing more than returning to look for their missing car key along a public road. *Michels*, 2019 Ann Rep of NY Commn on Jud Conduct at 171, 178.

While it was unlikely that any of the officers – who "commendabl[y]" handled this situation (Conc: R44) – would have ever acceded to Petitioner's shocking suggestion, the reality is that Black men are "2.5 times more likely than white men to be killed by police." Priyadarshini Das, *What Counts as 'Racist Enough?': A Clearer Standard For New Trials When Jurors Demonstrate Racial Bias*, 31 J.L. & Pol'y 136, 137-38 (2022). Petitioner's racial and reckless misstatement of the law was thus much more than an affront to common decency; it risked making Mr. Carter and his friends another tragic addition to that statistic.

Moreover, in making her comments that the Black teens could be shot, and in threatening to shoot them herself, Petitioner exploited the same "classic and common racist trope" that this Court found so troubling in *Matter of Putorti*. *See* 40 NY3d at 366. By threatening to shoot the Black teenagers for doing nothing more than returning to look for a lost key, Petitioner broadcast her belief that they would be dangerous or threatening even in that benign situation. But as a judge who repeatedly claimed that night to know the law (ASF: R66 ¶44, R69 ¶54), Petitioner must have been aware that Penal Law § 35.15(2) provides only limited circumstances in which a person is justified in using deadly physical force, and observing a group of teenagers looking for a lost key along a public road is not among them.

2. Petitioner exhibited racial bias and bias in favor of law enforcement by commenting that Mr. Carter and his friends did not look as "smart" as her White son, insinuating that they were poor drug users, and promising to protect the police if they faced civil rights charges for unlawfully arresting the Black teenagers.

In a relatively subdued moment in comparison to the rest of her tirade, Petitioner laughingly told the police that the four Black teens "don't look like they're that smart," and that they – unlike her White son, William Gall IV – would not be "going to business school, that's for sure" (ASF: R71 ¶¶61-62; Det: R23, R34; Exs 5c, 6e [videos]). Petitioner admitted the patently obvious: her comments created the appearance of racial bias (ASF: R76 ¶75[D]). Indeed, since nothing

about in the appearance of the four teens could have suggested they were unintelligent, the only reasonable conclusion is that, to Petitioner, the teens were inherently unintelligent because they were Black, evoking a racial stereotype that Black men are less intelligent than whites. *See, e.g.*, Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom*, 2018 Mich St L Rev 1243, 1261, 1306 (2018) (noting, *inter alia*, "the stereotype that African Americans are less intelligent than Whites"); Joseph W. Rand, *The Demeanor Gap: Race, Lie Detection and the Jury*, 33 Conn L Rev 1, 42 (2000) (same).

Petitioner compounded the appearance that she harbored racial bias when she evoked yet another racial stereotype: that the Black teens were poor and used drugs. Here, after Petitioner childishly cheered on Stephen Pearce's vulgar suggestion that Ms. Mezza and Mr. Valladares "go fuck [them]selves" as they were quietly and peacefully getting into Ms. Mezza's car, Ms. Mezza replied that Mr. Pearce looked like a "fucking cokehead" (ASF: R71-72 ¶64; Exs 5d, 6f [videos]). At that, Petitioner snidely remarked, "We might be able to afford the coke, but we don't do it" (*id.*). "Little needs be said about the pervasive and harmful racial stereotypes regarding African Americans and drugs . . . ." *Harden v Hillman*, 993 F3d 465, 482-83 (6th Cir 2021) (discussing negative racial stereotype depicting Blacks as impoverished, inner-city crack and heroin addicts).

Petitioner's remark clearly suggested that she and her White friends could afford cocaine while Black people like Ms. Mezza and the Black teenagers could not, thus evoking the very stereotype that the Sixth Circuit found offensive.

In defending those statements, Petitioner dubiously claims that her "confrontational and taunting" manner, though "directed toward young [B]lack men, would likely have been the same if they were any other race" (PetBr: 13). Yet Petitioner's snide remark about cocaine was directed not toward the "young Black men," but toward Ms. Mezza, who came to the scene in the middle of the night to pick up her stranded and injured brother. Given that Ms. Mezza had not been present for – let alone participated in – any of the fighting, Petitioner's racial vitriol toward her could not have been driven by the purported fear or anger that she felt toward the others. On these facts, skin color is the only reasonable explanation for Petitioner's comments.

Finally, Petitioner significantly exacerbated her misconduct by promising to use her judicial authority to protect the police against any civil rights lawsuit that might stem from their acceding to her demands that they unlawfully arrest the Black teens:

> [B]ut guess what, the good part is – the good part is I'm always on your side. You know I'd take anyone down for you guys. . . You know I am on your side.

(ASF: R67-68 ¶50; Ex 3d [video]).

Beyond creating the appearance that she harbored racial and pro-police biases, Petitioner stunningly abandoned all sense of judicial impartiality by overtly saying she would help the police get away with violating the teens' constitutional rights. All told, Petitioner's statement "convey[ed] the message that [she] is willing to conspire to flout the law," making removal "an appropriate, and perhaps even the only appropriate, remedy." *Matter of Backal*, 87 NY2d 1, 8 (1995).

3. Petitioner's insistence that she did not harbor actual racial bias against the Black teenagers, or use any racial epithets, underscores her lack of appreciation of the gravity of her misconduct.

Before this Court, Petitioner goes to great lengths to insist that, "[w]hatever the appearance," she did not harbor any actual racial bias against the Black teenagers (PetBr: 8-9, 11, 13).[10] But that assertion – even if true – would not help Petitioner, as this Court has held that judges have a "continuing obligation to avoid even the appearance of impropriety" and "stress[ed]" that "the appearance of racial bias . . . is no less to be condemned than is the impropriety itself." *Putorti*, 40 NY3d at 366 (internal quotations marks and citations omitted); *see also Matter of*

[10] While Petitioner claims "[t]he Commission did not charge [her] with racial bias" (PetBr: 9), the only Rule that specifically mentions racial bias, 100.3(B)(4), is inapplicable here because it pertains only to adjudicative responsibilities, which is not the context in which Petitioner's bias manifested. The Commission did charge her with violating Rule 100.4(A)(1), "in that she failed to conduct her extrajudicial activities so that they do not cast reasonable doubt on her capacity to act impartially as a judge." "Impartiality" is defined as "the absence of bias or prejudice in favor of, or against, particular parties or classes of parties." Rule 100.0(R) (emphasis added). Rule 100.4(A)(1) clearly encompasses the racially biased statements that Petitioner has stipulated "created at least the appearance of racial bias" (ASF: R76 ¶75[D]). Those statements were set out explicitly in Formal Written Complaint ⁋⁋ 5(D), 5(E), 38, and 43 (Ex 11: R219-20, R232-34).

Duckman, 92 NY2d 141, 153 (1998); *Matter of Sardino*, 58 NY2d 286, 290-91 (1983). Petitioner's unwillingness or inability to appreciate that simple but critical concept underscores her lack of fitness for the bench.

Even if she had no racist intent, Petitioner should have recognized that a White judge publicly threatening to shoot young Black men, and encouraging police to do the same, would give the appearance of racial bias. Indeed, even the police recognized as much, given one officer's response to her threat: "Do you hear what you're saying? You're all white, privileged people with high-power jobs. . . ." (ASF: R73 ¶69) (emphasis added). No doubt the public's perception of Petitioner's misconduct is the same, and their "trust in [her] ability to discharge the responsibilities of judicial office in a fair and just manner" has been fatally compromised. *Putorti*, 40 NY3d at 367-68 (citing *Restaino*, 10 NY3d at 590) (internal quotation marks omitted).

Moreover, despite her current protestations, the very arguments Petitioner makes before this Court reveal a racism that is more than latent. First, Petitioner claims she "feared for her safety and that of her family" when she made the racially charged statements to and about the Black teenagers, and "[i]f there was implicit bias" on her part, it manifested because "she was resorting to stereotypes out of fear and stress" (PetBr: 11, 13). Yet the notion that Petitioner was in fear when she made the race-based comments and threatened gun violence is

"confounding," given that all of her charged behavior occurred "*after* she was surrounded in the safety of multiple police officers armed with guns and badges" (Conc: R46). In any event, as sensitivity and self-control are "vital to the demands of" a judgeship (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]), the presence of fear and stress – the latter of which is inherent in the job of a Supreme Court Justice – do not mitigate Petitioner's invocation of racial stereotypes. Put simply, if people "[s]ometimes . . . lack the cognitive or behavioral resources to do more than resort to stereotype" as Petitioner contends (PetBr: 12, quotation marks and citation omitted), those people should not be judges.

Second, Petitioner claims credit for not uttering specific "racial descriptors" as in *Putorti* (*see* 40 NY3d at 359), or a vile "racial slur" as in *Matter of Agresta* (*see* 64 NY2d 327 [1985]) (PetBr: 9-10). Yet, if egregious misconduct were deemed to be mitigated by the assertion that it could have been even worse, no judges would be removed, no matter how bad their behavior.

Third, Petitioner makes the shocking argument that she would be subject to no more than a censure even if she had used the word "n*****r," as in *Agresta*, (PetBr: 9). Apart from the fact the judge in *Agresta* was already retired when the case was decided nearly 40 years ago, Petitioner demonstrates no recognition that an "enlightened society" has evolved to condemn words and practices that were once thought to be acceptable. *Matter of Dye*, 1999 Ann Rep of NY Commn on

Jud Conduct at 93, 94. And of course, use of the "N" word is not the only way to reveal racism, as Petitioner demonstrated.

Moreover, Petitioner conveniently ignores all the cases in which judges were removed for inserting race in off-the-bench confrontations. *Matter of Cerbone*, 61 NY2d 93 (1984); *Matter of Kuehnel,* 49 NY2d 465, 469 (1980); *see also Matter of Fabrizio*, 65 NY2d 275 (1985) (judge used racial epithets, including the "n*****r"); *Matter of Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct at 224) (judge *inter alia* referred to "colored people"); c*f Matter of Senzer*, 35 NY3d 216 (2020) (judge's single off-the-bench use of the word "cunt" warranted removal).

Were Petitioner permitted to remain a judge, Black litigants and attorneys appearing before her would "have to carry the additional burden of wondering whether their matters will be adjudicated by a judge . . . with a proclivity toward racial stereotyping and racially tainted directives," and simply be forced "to cross their fingers and hope for the best" (Conc: R48, R50). Because Petitioner's misconduct demonstrates biases that "cast[ ] doubt on [her] ability to fairly judge all cases before h[er]," she must be removed from office, whether the racial and pro-police biases she demonstrated were actual or perceived. *Schiff*, 83 NY2d at 693; *see also Putorti*, 40 NY3d at 366; *Esworthy*, 77 NY2d at 283.

B. Petitioner's repeated invocation of her judicial title in an attempt to strongarm and curry favor with the police, and to intimidate the Black teenagers, additionally demonstrates her lack of fitness for office.

As this Court held over 40 years ago, "a Judge cannot simply cordon off h[er] public role from h[er] private life and assume safely that the former will have no impact upon the latter." *Matter of Steinberg*, 51 NY2d 74, 81 (1980). Rather, a judge "must always be sensitive to the fact that members of the public . . . will regard h[er] words and actions with heightened deference simply because [s]he is a Judge" – a title that may have a "persuasive and perhaps even subtly coercive effect" in the judge's personal dealings, given the "power and prestige that the title implies." *Id*.

The Commission found that Petitioner violated those principles so egregiously as to warrant removal (Det: R30-34, R39). Notably, in *Matter of Astacio*, 32 NY3d 131 (2018) this Court held that a judge who invoked her judicial title twice in the course of a DWI arrest "magnif[ied] the impact" of her misconduct. *Id.* at 136. Here, Petitioner touted her judicial office 14 times in little over an hour while attempting to influence the police and intimidate the stranded Black teenagers.

1. Petitioner invoked her judicial title while trying alternately to strong-arm and curry favor with the police.

From the moment the police arrived on the scene and Petitioner introduced herself as a "Supreme Court judge," through her successive conversations with other officers and profanity-laced outbursts at four Black teenagers, Petitioner repeatedly invoked her judicial office while seeking preferential treatment from police, ordering the Black teens to leave the neighborhood, and demanding that the police remove or arrest the stranded teenagers. Petitioner conceded, and the Commission found, that by repeatedly invoking her judicial office to police officers and Mr. Carter's group, she created the appearance that she was using the prestige of her judicial office to seek preferential treatment to advance her own and her friends' private interests (ASF: R75 ¶75[A]-[B]; Det: R31).

Petitioner's invocations of office were entirely gratuitous. Upon approaching the first officer she saw, she volunteered, "I'm Erin Gall, I'm a Supreme Court judge" (ASF: R62 ¶35; Ex 4a). Likewise, when another officer asked her if anyone needed medical attention, Petitioner irrelevantly replied with her judicial title, saying, "No, Jesus, no. No, honestly, I'm a Supreme Court judge" (ASF: R63 ¶37; Ex 3b). These assertions of her judicial office served no purpose other than to ingratiate Petitioner with the police in a transparent attempt to obtain preferential treatment, which broadcast to the public the message that, in her view, our State has "two systems of justice, one for the average citizen and

another for people with influence." *Matter of Hunt*, 2012 Ann Rep of NY Commn on Jud Conduct at 106, 110-11 (internal quotation marks omitted).

Petitioner compounded her already serious misconduct by explicitly invoking her office while demanding that the police defer to her on whether they had grounds to arrest or charge the teenagers. Specifically:

- While arguing with an officer about whether Mr. Carter and his friends were trespassers, Petitioner remarked, "If you're not invited by a homeowner, it's still trespassing. I've done this for a million years. I'm a lawyer. I'm a judge. I know this" (ASF: R66 ¶44; Ex 5a [video]);

- When the officers refused to remove the stranded Black teens from the public road as they looked for their car key, Petitioner asserted, "We didn't invite him. There was trespassing, there were assaults. . . . I'm a judge . . . I'm telling you" (ASF: R67 ¶47; Exs 4e, 6b [videos]); and

- When Petitioner commented that she wanted to press charges for assault and a deputy advised her that assault required physical injury or substantial pain, Petitioner replied, "Okay, I know the law. I'm a judge" (ASF: R69 ¶54; Ex 3e [video]).

And, when one of the officers had the temerity to call her "lady," Petitioner shot back, "Don't call me 'Lady.' 'Judge.' It's 'Judge.' (ASF: R73 ¶69; Ex 5e [video]).

In light of these facts, Petitioner was plainly leveraging her judicial title to get the police to believe her account, bend to her will, adopt her tortured view of the law, and resolve the situation in a manner advantageous to her and her friends. This overt and repeated use of her title "suggest[s] a [habit and] willingness to

misuse [her] judicial office for personal advantage – a quality that is antithetical to the judicial role." *Matter of LaBombard*, 11 NY3d 294, 299 (2008).

When Petitioner's invocations of her judicial office did not get her what she wanted, she resorted to outright threats, commenting – at a time when all the police personnel knew she was a judge – that she would contact their superior officers if she did not get her way. After the officers refused to arrest Mr. Carter and his friends, Petitioner indicated that she knew which department they were from and commented, "I don't know if I have to call the Chief of Police" (ASF: R64 ¶40; Exs 4c, 6a). Similarly, when another officer asked Petitioner to "relax" and pointed out that she did not even live at the property, Petitioner proclaimed, "It's my jurisdiction," asked the officer's name, and indicated her intention to call a lieutenant she knew in that officer's department (ASF: R64-66 ¶¶42-43, 75[C], Ex 4d). And, when yet another officer disagreed with her that the teens had trespassed, Petitioner replied that she could call a sergeant she knew to make sure the charges got filed (ASF: R70-71 ¶60; Ex 5b). That the officers did not bow to Petitioner's persistent pressure does not diminish the severity of her misconduct.

Petitioner's attempt to ingratiate herself with the officers by complaining about having to be "on call for ERPOs" is most troubling (ASF: R70 ¶¶58-59; Ex 6d [video]). Not only did Petitioner complain that these potentially life-saving orders were just "too much paperwork," she explicitly encouraged the police to

disregard their obligations under the law to file ERPOs in her court "[b]ecause [she] get[s] called in the middle of night, too, for those" (*Id.*). These comments, apart from being outrageous and unbecoming of a judge, were incredibly callous and dangerous. ERPOs are protective orders, issued in situations where an individual's possession of a firearm poses an "extreme risk" to self or others, and law enforcement officers are statutorily required to file an ERPO application "upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself or others" (ASF: R70 ¶58, n7). By encouraging the police to shirk their legal obligation to file ERPOs because she finds them inconvenient, Petitioner failed to be faithful to the law, with potentially perilous consequences to at-risk individuals and the public.

2. Petitioner repeatedly invoked her judicial title in order to intimidate the stranded Black teenagers.

Much of Petitioner's tirade in the aftermath of the party was directed at the Black teenagers, who were unable to leave Tibbitts Road because Mr. Carter had lost his car key. When the teens persisted in looking for the key despite Petitioner's irrational demands that they "got to leave," she flaunted her judicial title, adding, "And's that's from Judge Gall! I'm a fucking judge! And I'm telling you! Get off the fucking property!" (ASF: R62-63 ¶36; Ex 3a). When one of the teens apparently responded by calling her something other than "Judge," Petitioner shot back, "No, judge. It's judge. I could give a fuck. . . . I don't want anyone on

the property. If I have to clear it out, I will" (*id.* ¶36; Ex 3a). Petitioner continued a few minutes later, shouting:

> [Y]ou're not going to find your mom's keys. You gotta ask her for a second set, bro. . . . [Y]ou're going to get in an Uber, buddy, or you're going to get a cop escort home. That's how it's happening. . . . That's how I roll . . . That's how Mrs. G rolls. That's how Judge Gall rolls.

(ASF: R63-64 ¶¶38-39; Ex 3b).

The fact that Petitioner repeatedly chose to add her judicial title to the equation when simply shouting did not achieve what she wanted further demonstrates her willingness to abuse her authority for personal gain and additionally illustrates her lack of fitness to hold that authority. [11]

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[11] The concurring members found that these remarks constituted yet additional "jolting" evidence of racial bias, insofar as Petitioner's "mocking" use of the words "bro" and "how I roll" were evocative of a "derisive deployment of Black English," or "blaccent" (Conc: R48). Petitioner now complains that those remarks were "never charged" and she was "never confronted by the Commission members about this issue" (PetBr: 23). As discussed (*see* n10, *supra*), the Commission did charge Petitioner with racial bias, and the fact that the concurring members recognized additional indicia of racial bias beyond those identified by Commission Counsel is unremarkable.

More to the point, Petitioner is flatly wrong to suggest that she was "never confronted" with these facts. In fact, Commission Member Moore asked Petitioner's counsel about these very comments being "Black vernacular" at oral argument, and counsel conceded in response that he had considered this issue stating, "I came here today, frankly, concerned about how to defend against the specific language that was used" (Oral Argument Transcript: R443-44).

Petitioner's related argument that the concurrence "prejudiced the panel" (PetBr: 23) is meritless on its face. First, the observations and conclusions in the concurrence were logical, scholarly, sourced, and consistent with any thoughtful appellate concurring opinion. Second, that the language Petitioner finds objectionable was not incorporated into the determination refutes her claim that the majority was somehow unfairly influenced by it.

Petitioner also decries being labeled as "racist" (PetBr: 25-26), but neither the determination nor the concurrence does so. The word is used only once, citing a decision that says, "whether . . . knowingly racist or simply ill-considered," certain conduct is indefensible (Det: R35). At any rate, on this record, as in *Putorti*, condemning Petitioner's use of "racist" tropes is entirely justified. 40 NY3d at 366.

3. Petitioner continued to invoke her judicial office long after the fighting had ended, the police had de-escalated the situation, and she had visibly calmed down.

Petitioner's invocation of her judicial office was not an isolated moment of poor judgment during the stress of an altercation. She invoked her office repeatedly, including long after the fighting had ended.

Indeed, the bodycam video clearly shows that even after the police had taken charge of the scene and Petitioner had finally calmed down, she – speaking jovially to police and calmly talking down a belligerent Stephen Pearce – still could not resist reminding everyone that she was a judge (*see* Exs 3d, 3e, 4a, 5c, 6d, 6e [videos]). Her repeated invocation of her judicial title over such a lengthy period of time, in moments of quiet calm as well as loud agitation, was an intolerable abuse of her judicial office that renders her unfit to continue holding it.

C. Petitioner's profanity-laced public tirade and celebration of the violence perpetrated against the Black teenagers were unbecoming of a judge and support her removal from office.

During her public tirade in the aftermath of the graduation party, Petitioner – for over an hour and while completely sober (ASF: R54-55 ¶12) – screamed a barrage of profanities at the stranded teenagers, as well as at the police who were disregarding her directives to break the law. In particular, she said the following:

- "I'm a fucking judge! And I'm telling you!" (ASF: R62-63 ¶36; Ex 3a [video]);
- "Get off the fucking property!" (*id.* ¶36; Ex 3a [video]);

- "I could give a fuck!" (*id.* ¶36; Ex 3a [video])!";
- "I don't care about this kid's fucking keys" (ASF: R64-65 ¶42; Ex 4d [video]); and
- "I taught my son to kick the shit out of anyone who hits him first" (ASF: R69 ¶56; Ex 3f [video]).

This kind of language is plainly unbecoming of a judge, and in combination with her other misconduct, supports the Commission's determination of removal.

In addition, while attempting to persuade police personnel to charge the four Black teens with criminal assault, Petitioner loudly expressed satisfaction that her son had "put a smack down" and "kick[ed] the shit out of" whoever hit him, and "finished" the fight "[l]ike [she] taught 'em" (ASF: R69 ¶¶ 55-57, 75[E]; Exs 3f, 6c [videos]). Petitioner conceded that these comments were unbecoming and incompatible with the role of a judge (ASF: R76 ¶75[E]). They were all the more appalling here, in that her son sustained only minor injuries and did not need medical attention (ASF: R58 ¶21) while both Mr. Carter and Mr. Valladares were left bleeding, and the latter required stitches to close a deep gash below his eye (ASF: R60 ¶26; Ex 17: R251). That Petitioner would celebrate injuries and pain inflicted on others, whatever the circumstances, again demonstrates her lack of fitness for judicial office.

D. Petitioner aggravated her misconduct by complaining about the police response to various members of the sheriff's department, two weeks after the fact.

This Court has made clear that a judge's "misconduct is compounded" when she "fail[s] to recognize [her] breaches of our ethical standards" and "continue[s] to minimize the import of [her] actions." *Matter of Ayres*, 30 NY3d 59, 65 (2017).

Petitioner demonstrated as much in this case. As the bodycam footage shows, the officers at the scene acted calmly and professionally throughout, trying to defuse the hostility even while Petitioner was proclaiming that she was "a fucking judge." Rather than show remorse at the scene or in the days after her unacceptable behavior, Petitioner continued to complain. While speaking to three members of the sheriff's department at her courthouse two weeks later, Petitioner criticized the police personnel at the scene for how they handled the situation – *i.e.,* that they ignored her assertions of influence and refused to remove or illegally arrest the four Black teenagers (ASF: R70-71 ¶60, R74 ¶73).

Notwithstanding her sustained vitriol toward the New Hartford police officers, Petitioner belatedly acknowledged – as she faced removal from office before the Commission – that the officers handled the situation appropriately, that her conduct made their jobs more difficult, and that she regrets her behavior toward them (ASF: R76-77 ¶¶75-76). But that is hardly mitigating, especially considering her current assertion that "[i]t is not surprising that two weeks after the

assault on her family she would ruminate with a police officer at the courthouse who is a friend that she thought the police could have done more" (PetBr: 22). Petitioner's assertion that her behavior was "not surprising" shows an utter lack of awareness, let alone remorse, for her misconduct. In any event, to the extent that her claim in the ASF she "regrets her behavior toward the officers" may be viewed as contrition, this Court has recognized that "[i]n some instances contrition may be insincere, [while] in others no amount of it will override inexcusable conduct." *Matter of Bauer*, 3 NY3d 158, 165 (2004).

POINT II

THE COMMISSION APPROPRIATELY REJECTED PETITIONER'S CONTENTION THAT HER MISCONDUCT IS EXCUSED OR MITIGATED BECAUSE IT WAS A REACTION TO A TRAUMANTIC EVENT THAT HAD OCCURRED OVER 30 YEARS AGO.

In defense of her egregious misconduct, Petitioner offered the opinions of (1) Norman J. Lesswing, a psychologist who met with her for the first time after the Formal Written Complaint had been filed and diagnosed her with [redacted] based on that one session (ASF: R78 ¶¶77-78; Ex B-1: R265), and (2) Joanne Joseph, a psychologist who provided services to Petitioner in 1990 and resumed providing services to her after Petitioner was served with charges and met with Lesswing (ASF: R78 ¶¶77-78, Ex B-4: R301-10). The gravamen of the defense is that she was the victim of [redacted] assault in 1990, which

created underlying dormant trauma that resurfaced on July 2, 2022, upon seeing her husband and son attacked. That trauma, Petitioner claims, "explain[s] her behavior" insofar as she "compensated with an extreme over-reaction" when the police arrived and is thus "mitigat[ing]" as to sanction (PetBr: 5, 18, 21).

The Commission reasonably and appropriately found that Petitioner's "significant misconduct is not excused by this evidence" (Det: R37).

Commission Counsel acknowledges the profound and lasting effects that [redacted] assault has on its victims, including Petitioner. The record in this case, however, simply does not support Petitioner's contention that all of her conduct on July 2, 2022, was the result of her past trauma. Indeed, she stipulated otherwise in agreeing that, at best, her conduct at issue was "triggered, in part," by "a trauma-based reaction" (ASF: R78 ¶78; Conc: R44) (emphasis added).

A careful examination of the record does not remotely support Petitioner's contention the 1990 trauma provoked her 2022 racial comments, threats to shoot the Black teens, profanities, praise of her son's fighting, invocations of judicial title, minimization of protective orders, bullying of police, or any of the rest of her misbehavior. The bulk of her misconduct was disconnected from the stress of the post-party fight and was directed not at the individuals whom she assumed had attacked her husband and son, but at the four Black teens who arrived late and were themselves startled by the fighting that was already underway.

The psychological evidence proffered in support of Petitioner's defense is sorely lacking. Joseph's report makes no finding of any kind that Petitioner's conduct was the result of her trauma. Lesswing's report – which suffers from suspect methodology and draws a conclusion based not on facts, but "strategizing around the psychological evidence" (Conc: R43) – faults the Commission's Formal Written Complaint for not taking into account a claim Petitioner did not raise until after the Complaint was issued.

In any event, as the Commission rightly found, Petitioner's misconduct was "so inexcusable" that "no amount of mitigation can be sufficient to restore the public's trust in [her] ability to discharge the responsibilities of judicial office in a fair and just manner." *Putorti*, 40 NY3d at 367; *see* Det: R37 (quoting *Restaino*, 10 NY3d at 577) (internal quotation marks omitted).

A. Petitioner's trauma does not explain or justify her racial comments.

There is nothing in the Lesswing or Joseph reports to indicate how the 1990 trauma explains Petitioner's racial remarks. If there were a connection, it could only be that the trauma either caused the underlying racial bias she exhibited in 2022, or it exposed a latent racial bias that was already there. Yet there is no evidence of either in the psychological reports. Petitioner's racial biases were so grossly and publicly manifested that they cannot be ignored, and they disqualify her from holding judicial office (*see* Point I, *supra*).

Moreover, contrary to Lesswing's assertion that Petitioner's misconduct was the result of an "overwrought" or "emotional" response (PetBr: 15; Ex B-1: R264-66), the bodycam footage shows that Petitioner appeared calm – and at some points jovial (*see* Exs 5c, 6e [videos]) – as she boasted about her son "put[ting] a smack down once he got hit" (Ex 3f [video]), and as she mocked the four Black teenagers and Ms. Mezza with racial tropes and stereotypes (Exs 5c, 5d, 6e, 6f [videos]; *see* ASF: R69 ¶55, R71-72 ¶¶61-62, 64). In fact, Petitioner evoked the offensive racial stereotypes about their intelligence and financial means over an hour after the police de-escalated the situation and she acknowledged that her family did not need medical attention.[12] Likewise, Petitioner threatened to shoot the Black teens in a calm tone of voice, long after any potential danger to her family had been neutralized and she was "surrounded in the safety of multiple officers armed with guns and badges" (Conc: R46; ASF: R73 ¶68; Ex 3g [video]). Given those facts, it is hard to understand – and neither Petitioner nor her psychologists have explained – how or why her cold and calm expressions of racial bias were related to her past trauma.

[12] Petitioner greeted the police at 12:24 AM (Ex 4a [video]). At 12:32 AM, she assured an officer that no one in her family needed medical attention (Ex 3b [video]). Her comment that the teens did not "look that smart" and were "not going to business school" occurred at 1:27 AM (Exs 5c, 6e [video]). Her suggestion that the teens and Ms. Mezza could not afford cocaine occurred at 1:36 AM (Exs 5d, 6f [video]). Her remark about shooting them came two minutes later, at 1:38 AM (Ex 3g [video]).

Crucially lacking from her psychologists' records is any indication that Petitioner acknowledged an awareness of her apparent racial biases, or that she regrets the harm caused by giving the appearance that she harbors racial bias. Indeed, despite her bare and belated assertion to the contrary (PetBr: 7), there is no evidence in the stipulated record that Petitioner received any counseling after August 21, 2023 (*see* ASF: R51-80; Ex B-4: R310 [notes from August 21, 2023]).

B. Petitioner's trauma does not explain or justify her offensive and biased statements to police.

A judge's obligation to be and appear unbiased was plainly violated by Petitioner's bluntly stated willingness to "always" be on the "side" of the police and "take anyone down for [them]" (ASF: R67-68 ¶¶49-50; Ex 3d [video]). Neither Lesswing nor Joseph explain how that indefensible pro-police bias could have been caused by the 1990 trauma, and it is not surprising that Petitioner's brief does not address it either.

Likewise, Lesswing and Joseph offer no discernible connection between Petitioner's putative "trauma response" and her shocking suggestion that the police should ignore the law and decline to file ERPOs when dangerous situations arise because they would interrupt her sleep (*see* ASF: R70 ¶¶58-59; Ex 6d [video]). Apart from the obvious fact that the 2022 graduation party events had nothing to do with ERPOs, Petitioner's experience as a [redacted] assault victim should have made her especially sensitive to victims of violent assaults and the protections an

ERPO would provide them. Yet unprompted, Petitioner advised the police to ignore the law that requires them to seek an ERPO "upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself or others" (ASF: R70 ¶58, n7). Petitioner's cavalier and unconscionable disregard of such inherently dangerous situations, involving unstable and violent individuals, irreparably compromised her integrity as a judge.

Finally, Petitioner's contention that her 1990 trauma caused her misconduct on July 2, 2022, was undermined by her criticism of the responding police personnel two weeks after the fact, in a conversation with three members of the sheriff's department on July 14, 2022 (Det: R38; *see* ASF: R74 ¶73). Indeed, after having nearly two weeks to reflect calmly on her actions, Petitioner should have recognized that the police response was "commendable" and "temperate" (Conc: R44), as she ultimately conceded (ASF: R77 ¶76[C]). That she continued to complain about it nearly two weeks later indicates that her misconduct was not the result of a momentary, trauma-induced lack of control, but that long after the stress had faded, she "failed to recognize her misconduct during the earlier incident and . . . ignored the impact of her judicial status on her complaints to law enforcement personnel" (Det: R38).

C. Petitioner's trauma does not explain or justify the repeated assertions of her judicial office for personal gain.

There is no plausible connection between Petitioner's trauma-based diagnosis and the repeated invocation of her judgeship – particularly her gratuitous references to her judicial title in moments of calm. For instance, Petitioner did not appear to be acting under stress when she calmly approached the first officer she saw on the scene and gratuitously introduced herself as a "supreme court judge" (Ex 4a). Despite Lesswing's characterization, the video footage of that moment does not depict an individual who – as she claimed to both Lesswing and Joseph – was "out of control" (Ex B-1: R263; Ex B-4: R305-07, R310). Similarly, Lesswing's theory of a trauma-based response does not explain why Petitioner replied to an officer's question asking whether anyone needed medical attention by asserting, "No, honestly, I'm a supreme court judge" (Ex 3b [video]).

In short, these repeated assertions of judicial authority – which continued for over an hour after the police arrived and the fighting had ended – were conscious, deliberate, and calculated choices on Petitioner's part to invoke her judicial prestige for personal gain. By no stretch of reality can they be called a "trauma-based" "extreme" or "irrational" "over-reaction" (PetBr: 5).

D. The psychological reports submitted by Petitioner are demonstrably flawed and, as the Commission determined, insufficient to support Petitioner's defense in any event.

The record in this case does not support Petitioner's argument that a trauma-reactive response to a 1990 event explains the 2022 misconduct charged against her. The reports offered in support of Petitioner's claim are seriously flawed.

The Joseph report made no findings as to whether or how Petitioner's misconduct was related to her trauma (*see* Ex B-4: R305-10). Moreover, Joseph's report is based entirely on Petitioner's subjective version of what happened on July 2, 2022, insofar as she did not review the bodycam footage, read the statements of other witnesses, or even review the Formal Written Complaint (*see id.*). While Joseph was aware that Petitioner's July 2 conduct was "apparently . . . under judiciary [sic] review," her report makes clear that it was Petitioner who specifically asked her "to concentrate mostly on . . . recurrent [redacted] symptoms" (Ex B-4: R306). It could not be more obvious that Petitioner geared her approach to Joseph toward the defense she had already decided to raise.

The Lesswing report is also seriously flawed, and the circumstances of his involvement also suggest that he was retained as part of a litigation strategy, as both the Commission determination and concurring opinion recognized. Petitioner did not seek a psychological diagnosis or receive any counseling until after she was served with the Formal Written Complaint, after the Commission's investigation

was concluded and more than seven months after she claims she first recognized the connection between her 1990 [redacted] assault and her 2022 conduct at the graduation party (Det: R37, n9; Conc: R43; Ex B-1: R260, R263; Ex 9: R96; Ex 11: R217). In fact, Petitioner made no mention of the [redacted] assault or trauma when she testified during the Commission's investigation, nor when she submitted material for the Commission's consideration after testifying but before the charges at issue were authorized (Ex 9: R92-197; Ex B-1: R263; Ex 10: R210-11; *see* Conc: R43). Simply stated, the belated timing of Petitioner's outreach to Lesswing, combined with the fact her attorney arranged it (Conc: R43; Ex B-1: R260, R263; Ex 9: R96; Ex 11: R217), support the conclusion that this lone appointment was more a matter of strategy than therapy.

Even if that were not the case, the Lesswing report is of little probative value. Lesswing made his diagnosis during his one and only session with Petitioner, which lasted just two and a half hours and employed a PCL-5 test (Ex B-1: R259-67; Ex B-3: R300). While lauded by Petitioner (PetBr: 14), the PCL-5 has been criticized within the scientific community for being "susceptible to bias and misinterpretation" due to factors that include the patient's "response bias, verbal intelligence estimates, self-rating errors, lack of opportunity to clarify symptoms, and difficulty differentiating distress associated with [redacted] symptoms from general distress." Bovin, M.J., & Marx, B.P., *The Problem With*

Overreliance on the [redacted] *as a Measure of* [redacted] *Diagnostic Status*. CLINICAL PSYCHOLOGY: SCIENCE AND PRACTICE, 30(1), 122-25 (2023).[13] Given the timing of that testing, as noted by the decisions below (Det: R37; Conc: R43; *see* Ex 11: R217; Ex B-3: R300), Petitioner had an obvious motivation to answer the subjective questions by self-reporting high numerical scores that would lead to a diagnosis helpful to her defense in the Commission litigation.[14]

Furthermore, Lesswing's report makes extraneous and unsubstantiated attacks on the Commission itself (Ex B-1: R259-67), which suggests that his conclusions were primarily drafted with litigation in mind. Lesswing opines that the "factual allegations" in the Formal Written Complaint were "constrained by an inherent investigatory assumption that [Petitioner] exhibited 'bad behavior' for a judge," and were tainted by "prosecutorial *confirmation bias*" (Ex B-1: R266). Of course, Lesswing did not interview any Commission members or staff before

[13] Available at https://www.[redacted] (last accessed Oct. 7, 2024).

[14] That is not to suggest that [redacted] cannot be reliably diagnosed. Unlike the [redacted], the [redacted] Scale 5 ([redacted]) is a diagnostic review that permits "a trained assessor in real time" to address and correct for subjectivity on the part of the patient. Bovin & Marks, *supra* at 122-23. For that reason, among others, "[t]he [redacted] is considered the gold standard for diagnosing [redacted] while the [redacted] should "be used as a screen or aid, to make a provisional diagnosis of [redacted] and . . . for research purposes." B[redacted] P[redacted], N[redacted] A. Y[redacted], *Chapter 2 -* [redacted]*: Diagnosis, measurement, and assessment,* in *Translational Epigenetics*, EPIGENETICS OF STRESS AND STRESS DISORDERS at 19-26 (Academic Press, Vol 31, 2022), available at *https://*[redacted] (last accessed Oct. 7, 2024).

reaching this conclusion, and he has not demonstrated or even claimed expertise in judicial ethics (*see* Ex B-5: R313-22). In fact, he seems unaware that all the allegations set forth in the Formal Complaint were presented to the Commission at the close of the investigation, that the Formal Complaint was authorized not by its attorneys but by the Commission members, and that the authorization came after review of the entire investigatory file that included, *inter alia*, Petitioner's sworn testimony, her written supplementary statement, the bodycam footage, and the testimony of witnesses.[15] Lesswing's report is inept insofar as it clumsily attempts to malign the motives of the Commission and its staff, and disingenuous insofar as it obviously ignored material facts that undermined its patently biased conclusion.

Petitioner now criticizes the Commission for rejecting her experts' opinions without any contrary expert evidence from Commission Counsel (PetBr: 14). However, as this Court has made clear, no such rebuttal evidence is required, and factfinders are free to reject unrebutted expert testimony. *In re Huie*, 2 NY2d 168, 170 (1956) (holding that commissioners of the Board of Water Supply for New York City were "not bound by the opinions of expert witnesses," and noting that "even a jury may disregard uncontradicted expert testimony"); *Matter of City of*

[15] The Commission's Annual Report clearly establishes that it has no "prosecutorial confirmation bias." In 2023, the Commission reviewed 2,982 complaints, deemed that 208 warranted formal investigation, issued eight formal disciplinary determinations and entered into nine resignation stipulations. The 2024 Annual Report is available at: https://cjc.ny.gov/Publications/AnnualReports/nyscjc.2024Annualreport.pdf.

New York (Chelsea Management Corp.), 37 AD2d 541, 541 (1st Dept 1971) ("The Court of Appeals has forcefully and clearly held that the 'Supreme Court, in its fact-finding role, is not bound rigidly to follow literally opinions expressed for its guidance'" by expert witnesses) (quoting *Matter of City of New York (Coogan)*, 20 NY2d 618, 625 [1967]); *see also Galimberti v Carrier Industries, Inc*., 222 AD2d 649, 650 (2d Dept 1995) ("The fact that the testimony of the plaintiff's dental expert was uncontradicted does not render such testimony conclusive"); *Mechanick v Conradi*, 139 AD2d 857, 858 (3d Dept 1988) (rejecting appellate claim that jury was required to accept unrebutted expert testimony, holding, "There is no absolute duty to rebut expert testimony and a jury may . . . reject an expert's testimony even if it is uncontradicted").

Any efforts Petitioner has undertaken to use therapy as means of attempting to heal her prior trauma should be lauded. However, given the serious infirmities in Lesswing's report and the lack of any finding of causality in Joseph's report, the Commission was right to find these reports insufficient to support Petitioner's defense. Thus, Petitioner's current claim that the Commission did not have "a sound basis to reject the reports and opinions of two psychologists" (PetBr: 14) is untenable.

POINT III

PETITIONER HAS REPEATEDLY FAILED TO ACCEPT RESPONSIBILITY FOR HER MISCONDUCT BY CONTINUING TO BLAME THE BLACK TEENAGERS AND BASELESSLY INSISTING – CONTRARY TO THE STIPULATED FACTS – THAT THEY STARTED THE FIGHT WITH HER SON AND HUSBAND.

In agreeing to proceed on an ASF rather than subject herself to an evidentiary hearing, Petitioner stipulated – with the assistance of experienced counsel – "that the Commission shall make its determination" on the facts in the agreement and exhibits attached thereto, "which shall constitute the entire record in lieu of a hearing" (ASF: R51). Yet, Petitioner – both before the Commission below, and again her in brief to this Court – has reasserted earlier self-serving positions that she abandoned when stipulating to contrary facts in the ASF, after being provided with discovery (*See* ASF: R51; Ex 9: R115-18, R129-44).

In particular, the ASF contains no evidence that Mr. Carter or Mr. Valladares fought with Petitioner's son, and it affirmatively states that the "evidence is insufficient to support any finding as to whether Havo and Dooley fought with or assaulted [her] son," despite her prior belief to the contrary (ASF: R59 ¶¶23-24). The ASF also contains no evidence that any of the four Black teenagers fought with Petitioner's husband (*see* ASF: R60 ¶26). Now, however, Petitioner inexplicably asserts the following as fact:

- She "observe[d] her son being slapped by Dooley, being knocked to the ground and kicked and punched by four interlopers including Havo, Dooley and Carter" (PetBr: 2-3);

- "She identified Havo, Dooley and Carter as engaging in a fight further with her husband as he was attempting to clear the area" (PetBr: 3);

- She "identified Havo and Dooley as well as Mr. Carter as individuals who brutally attacked her son" (PetBr: 3);

- She "saw the individuals who attacked her son standing around afterwards and they weren't leaving the property (Exhibit 9, pp.25), and were present at the property looking for keys that had been lost during the fight" (PetBr: 4);

- She "observed . . .Dooley, slap[ ] her son and then engage[ ] in a fight with him kicking him while he was on the ground about the head and body," and "observed Mr. Carter and Havo engaging in the same conduct" (PetBr: 10); and

- She "identified, Havo and Dooley, as the individuals who struck her son and started the fight . . ." (PetBr: 26-27).

And, though Petitioner now goes to great lengths to paint the Black teenagers as "aggressors" (PetBr: 4-5, 13, 16), she stipulated in the ASF that Mr. Carter and his friends were late arrivals to a party that attracted dozens of uninvited guests, and that it had already erupted into chaos by the time they arrived (ASF: R456-57 ¶¶16-18; Ex 14: R249; Ex 15 [video]).

In *Putorti*, this Court found it "troubling" that the judge "deni[ed] in this Court . . . facts to which he previously stipulated." *Putorti*, 40 NY3d at 368. That Petitioner has done the same here goes beyond merely "troubling," as her attempt at revisionist history demonstrates not only her inability to accept responsibility for

her conduct – a significant aggravating factor as to sanction (*Ayres*, 30 NY3d at 65) – but a lack of respect for the proceedings before the Commission and this Court.

Petitioner also makes the extraordinary claim that Havo and Dooley should be treated as "missing witnesses," and that she is entitled to "the inference accorded a missing witness," because "Valladares and Carter did not cooperate with the Commission and declined to give the names of Havo and Dooley," and "Commission Counsel in [turn] fail[ed] to obtain a Court order to compel their testimony" (PetBr: 27).

Frankly, it is shocking that a Supreme Court justice represented by experienced counsel would make such a frivolous claim before this Court, knowing full well that she waived her right to make this kind of challenge at a hearing when she decided that she preferred to proceed via an Agreed Statement of Facts. *Cf People v Sambola*, 221 AD3d 1180, 1181 (3d Dept 2023) (defendants forfeit certain trial rights by pleading guilty, including the rights to call and cross-examine witnesses); *People v Williams*, 59 AD3d 339, 341 (1st Dept 2009) (same). Put bluntly, this Court cannot permit Petitioner – "aided by the advantages of hindsight" – to "reverse h[er] chosen course" and pursue strategies she forfeited

below, as that would be tantamount to "countenanc[ing] h[er] eating h[er] cake and having it too." *People v. Tarisa*, 50 NY2d 1, 9 (1980).[16]

[16] Even if Petitioner had not knowingly adopted the stipulated facts (*see* ASF: R51) and this matter had been tried, Petitioner's belated claim of prejudice due to "missing witnesses" would have to be rejected. Petitioner's misconduct on July 2, 2022, is comprehensively recorded on police video, as set forth in excruciating detail in the facts to which she and her attorney agreed. That same damning evidence would conclusively establish Petitioner's misconduct at a hearing, yet she points to no evidence that the "missing" witnesses are under the Commission's control, or that they had any material or non-cumulative testimony to offer, as would be required. *People v Smith*, 33 NY3d 454, 458 (2019); *DeVito v Feliciano*, 22 NY3d 159, 165-66 (2013).

CONCLUSION

By reason of the foregoing, it is respectfully submitted that this Court should accept the Commission's determination that Petitioner engaged in judicial misconduct and should be removed from judicial office.

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Albany, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

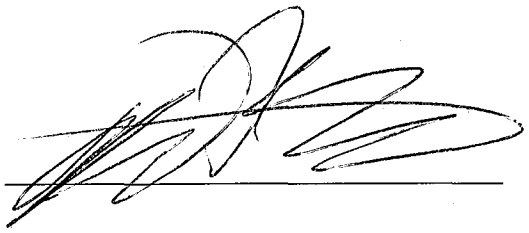
By: _____
David Stromes
Senior Litigation Counsel
Empire State Plaza
Corning Tower, Suite 2301
Albany, New York 12223
(518) 453-4600

Of Counsel:

Edward Lindner, Esq.
Cathleen S. Cenci, Esq.
Denise Buckley, Esq.
S. Peter Pedrotty, Esq.
David Stromes, Esq.

CERTIFICATION PURSUANT TO RULE 500.13(C)(1)

I certify that this brief was prepared using Microsoft Word and that the total word count for the body of the brief is 16,436 words.



David Stromes
Senior Litigation Counsel