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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF HON. ROBERT J. PUTORTI,

Petitioner,

-against-

NO. 61

COMMISSION ON JUDICIAL CONDUCT,

Respondent.

20 Eagle Street
Albany, New York
September 12, 2023

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

NATHANIEL V. RILEY
CERIO LAW OFFICES
Attorney for Petitioner
407 South Warren Street
Suite 5
Syracuse, NY 13202

ROBERT H. TEMBECKJIAN, ESQ.
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
Attorney for Respondent
61 Broadway
Suite 1200
New York, NY 10006

Ashley Bennett
Official Court Transcriber



1 CHIEF JUDGE WILSON: The next case on the
2 calendar is number 61, matter of Honorable Robert J.
3 Putorti. Good afternoon, Counsel.

4 MR. RILEY: Good afternoon. And thank you, Mr.
5 Chief Judge Wilson. Nate Riley for Justice Putorti. And
6 may it please the court, with the court's permission I
7 would like to ask to reserve three minutes for rebuttal.

8 CHIEF JUDGE WILSON: Absolutely.

9 MR. RILEY: Thank you. This court only exercises
10 its authority to remove duly elected judges upon instances
11 of truly egregious misconduct or circumstances. And the
12 alleged aggregate misconduct here did not meet the very
13 high standard in this case involving, at worst, imprudence
14 or very poor judgment. And there were many mitigating
15 circumstances not adequately considered by the court - - -
16 I'm sorry, by the CJC below.

17 In accordance with the dissent below, this court
18 should reject the sanction of removal. First, the advisory
19 opinion, 18-165 in Judge Hobbs' memos, should have
20 foreclosed further inquiry into brandishing the pistol or
21 waving it toward Defendant Wood for many reasons, but in
22 any event, should result in no more than censure here.

23 According to 18-165, Justice Putorti's
24 supervising judge, Judge Hobbs, remained in the best
25 position to assess the motivation and receptiveness to

1 guidance - - -

2 JUDGE TROUTMAN: How does the fact that there - -
3 - in lieu of a hearing here, there was an agreed statement
4 of facts stipulated as constituting the entire record. So
5 instead of a hearing, everybody agreed that these were the
6 facts. And did petitioner admit he was not justified in
7 brandishing a gun at the litigant, that his mention of the
8 litigant's race may have created the appearance of racial
9 bias, and that he violated the - - - the rules as charged
10 in charges I and II, including that he failed to perform
11 his judicial duties without manifesting it in words or
12 conduct, bias, or prejudice based on race?

13 MR. RILEY: Judge Troutman, there's a couple of
14 things there that I'd like to - - - to take in order if I
15 could. I think we tried to address this in our reply
16 brief, that this was the essential issue in this - - - in
17 this litigation. And our reply brief below, and I think in
18 our - - - I believe in our reply brief below, which is in
19 the record as well, the issue of whether or not there was
20 racial bias here was the central issue, so we were not
21 conceding that by indicating that - - - by making an
22 acknowledgement.

23 JUDGE TROUTMAN: So what was the effect of the
24 acknowledgment?

25 MR. RILEY: I - - - I think the effect of the

1 acknowledgment was - - - just to say that this is the issue
2 that is before the court, and to present the legal issue as
3 to whether or not his conduct, which was no more than - - -
4 relating that this was a large, black man that was rushing
5 the bench. Whether or not that - - -

6 JUDGE TROUTMAN: So he didn't have - - -

7 MR. RILEY: - - - constituted - - -

8 JUDGE TROUTMAN: - - - a hearing?

9 MR. RILEY: Correct, there was no hearing.

10 JUDGE TROUTMAN: So the record is the record that
11 you agreed was the record, correct?

12 MR. RILEY: That is the - - - correct, that is
13 the record that we agreed. But I - - - I - - - again, and
14 I think we - - - we approach this in our reply brief by
15 distinguishing between what would be considered an
16 acknowledgement and an admission. And I don't think that
17 there was an admission here. I do think that he does - - -
18 he does acknowledge what happened in this case, which is
19 that there was, what he relays as a large, black man
20 approaching the bench, and he, subjectively, feared.

21 And then to get to Your Honor's second point, as
22 to whether or not we --

23 JUDGE TROUTMAN: Was that an accurate assessment
24 based upon the description of he was a 165 pounds, I
25 believe, just 6 --

1 MR. RILEY: He was 6, 0, and he was 165 pounds,
2 correct. So I think that he - - - there - - - he's
3 accurately reflecting both his race and obviously, his
4 gender, but he provides - - - there's some variance as to
5 the stature of this individual. And I think that the
6 variance as to the stature of this individual could
7 demonstrate racial bias, right? If it's - - -

8 JUDGE TROUTMAN: Uh-huh.

9 MR. RILEY: - - - if you're saying that this - -
10 - this is an individual who is so large - - - is larger
11 than life and he's coming at me. But I also think that it
12 goes to justification, and I think that's what he was
13 trying to get at, was that he has this large person that's
14 coming - - - that's rushing towards the bench, and he
15 doesn't - - -

16 JUDGE TROUTMAN: He didn't agree that there was
17 no justification? Those stipulated facts - - -

18 MR. RILEY: So I think we - - - we arguably
19 agreed that as to the objected portion - - - so there's an
20 object development and a subject development to any sort of
21 a justification defense under this court's decision in, In
22 Re: Y.K., and some other cases. And I think, arguably, as
23 to the objective portion, whether or not he - - - the - - -
24 the individual rushing the bench without a weapon, I think
25 that is where we would probably have to concede that - - -

1 that did not constitute deadly force that was approaching
2 him.

3 However, we cite to some cases in our briefs that
4 it would still be appropriate for him to brandish a gun,
5 particularly a gun that has not been racked and loaded, to
6 dispel that - - - that potential threat.

7 So subjectively, I don't think that we did
8 concede, at any point, that he was - - - that he had the
9 subjective fear of the individual that was approaching him
10 at the bench.

11 JUDGE CANNATARO: And why was that? Are you
12 saying it's because he was a large, black man?

13 MR. RILEY: Because he was rushing the bench.
14 Because - - - and again, in the record I think that it's
15 also stipulated to that there are no other witnesses to
16 this event, it was just the two of them. All right,
17 there's my client, Justice Putorti, and the individual
18 Defendant Wood who are there. And it's - - - according to
19 Justice Putorti, who retells us - - - this incident
20 multiple times, the individual is rushing towards the
21 bench. In one instance he says that there was security
22 there, but we know that there was not security there from
23 the security guard saying that he has no recollection of
24 it, which is also in the record. And so he subjectively
25 feared that this individual who had been charged with a

1 serious --

2 JUDGE TROUTMAN: Wasn't it your --

3 MR. RILEY: - - - violent felony --

4 JUDGE TROUTMAN: - - - client that said there was
5 security there?

6 MR. RILEY: I'm sorry, Judge, I was speaking over
7 you.

8 JUDGE TROUTMAN: It was - - - was it your client
9 that suggested that there was security there, and that they
10 had some conversation about how quickly he did what he did?

11 MR. RILEY: So in the Judge Hobbs memorandum,
12 Judge Hobbs relays that Judge - - - Justice Putorti does
13 indicate that there was security there that day. But in
14 our agreed-to statement of facts, as Your Honor has pointed
15 out this morning, the - - - the agreement was that - - -
16 and I think it's in paragraph, I want to say sixteen, that
17 there were no other individuals there that day.

18 So as to the - - - the record that's on appeal
19 here, yes, there was inconsistency, but - - -

20 JUDGE TROUTMAN: In this instance, you have a
21 person who is a judge, and we have the rules of - - - with
22 respect to judicial conduct and how judges are to perform
23 their duties. How does this conduct impact - - - and it
24 doesn't have to be actual, the appearance of bias and
25 prejudice and that, how does that affect his ability to go

1 forward and be an impartial arbiter and for the public to
2 have confidence in what he does if he's not removed?

3 MR. RILEY: Well, I think that the public, at
4 least within his community, does have some confidence
5 instilled in him still based upon the fact that he was
6 re-elected following this incident and following this - - -
7 the investigation here.

8 JUDGE TROUTMAN: So you're saying - - -

9 MR. RILEY: But to answer your - - -

10 JUDGE TROUTMAN: - - - as a judge, it's just
11 limited to the people that elected him, it is not as to how
12 it can impact the judiciary as a whole?

13 MR. RILEY: No, but I do think that that is some
14 indication as to whether or not the public has lost
15 confidence in him, right? And I think that the standard is
16 the public and not just the judiciary. If he would --

17 JUDGE TROUTMAN: But you're saying his public,
18 the people that elect him. So it doesn't matter that it
19 may badly reflect upon the judiciary as a whole outside of
20 his elective community. Is that what you're saying?

21 MR. RILEY: I guess I have to resist the - - - I
22 have to resist Your Honor's question, that I don't think it
23 reflects poorly in that he did subjectively have this fear
24 of the individual, right? If he was just randomly pulling
25 his gun out of at any litigant for no purpose whatsoever, I

1 think I could agree with Your Honor that it would reflect
2 very poorly upon the entire judiciary if we were to allow
3 that to continue. But that was simply not the case here.
4 And I think it's uncontradicted in the record that he did
5 have the subjective fear of the individual that was rushing
6 towards the bench.

7 CHIEF JUDGE WILSON: So I'm going to hold you up
8 on that over here for a second. So I may have misheard you
9 earlier, but I thought I heard you say that because the
10 Judge had a subjective fear of this defendant rushing the
11 bench, he was justified in - - - in brandishing his weapon.
12 Did I mishear that?

13 MR. RILEY: No - - - No, Judge. I think that - -
14 -

15 CHIEF JUDGE WILSON: So that's - - - that's a
16 fair statement of your position?

17 MR. RILEY: I think that it's arguable as to
18 whether or not he had justification here under 3515 and
19 under - - - we cited a case from - - - albeit from the
20 Third Department - - -

21 CHIEF JUDGE WILSON: I'm sorry, but what does
22 arguable mean?

23 MR. RILEY: I'm sorry, Judge. Our position - - -
24 our position is that with respect to the Ellis case, which
25 we think presented similar factual circumstances that

1 there, there was an individual who used a knife and was
2 swinging it at the person that was - - -

3 CHIEF JUDGE WILSON: Yeah, but this guy's
4 unarmed, so I'm asking something different.

5 MR. RILEY: Okay.

6 CHIEF JUDGE WILSON: Right. If - - - if a judge
7 is on the bench and a defendant is rushing towards the
8 bench, let's take that, and the defendant is unarmed,
9 right? And the judge has, in your words, a subjective
10 belief that he's in danger, it's okay to brandish a weapon,
11 a firearm? That's justified?

12 MR. RILEY: That - - - that's our position
13 according to the Ellis case, yes.

14 CHIEF JUDGE WILSON: And that's your position
15 here today?

16 MR. RILEY: Yes, Judge.

17 JUDGE HALLIGAN: And - - - and so - - -

18 CHIEF JUDGE WILSON: So then I don't understand
19 why you want him to be censured. What would we be
20 censuring him for?

21 MR. RILEY: Well, we don't. I mean in our brief
22 we ask that he - - - that he not be censured, that there be
23 no admonition.

24 CHIEF JUDGE WILSON: I thought you were earlier
25 asking that the - - -

1 MR. RILEY: It would be no worse than - - -

2 CHIEF JUDGE WILSON: - - - judge be censured.

3 MR. RILEY: No worse than censure because the
4 proposed punishment here has been removal. And so that's
5 what - - - that's what we are seeking, is to reduce this
6 from removal. And for - - -

7 CHIEF JUDGE WILSON: But you really think he did
8 nothing wrong if - - - if we take, as a fact, that he
9 subjectively believed he was threatened?

10 MR. RILEY: Correct. And we also - - - we make
11 similar arguments with respect to the race issue, Judge,
12 which my opponent believes - - - or I'm sorry, the CJC
13 presented below, constituted a bias and prejudice in that
14 he described him as a large, black man. We - - - we do not
15 feel that that, in any way, demonstrated racial bias.

16 CHIEF JUDGE WILSON: Well, what is - - - what
17 does the black add to the threat?

18 MR. RILEY: I'm sorry, what does what?

19 CHIEF JUDGE WILSON: What does the black add to
20 the threat?

21 MR. RILEY: Absolutely nothing, Judge. He's
22 retelling the incident to - - - to other individuals. He's
23 accurately retelling that incident as - - -

24 CHIEF JUDGE WILSON: I suppose, but he didn't
25 describe what clothing he was wearing.

1 MR. RILEY: Correct, he did not.

2 CHIEF JUDGE WILSON: Because that was irrelevant
3 to the threat.

4 MR. RILEY: Correct, that would be irrelevant to
5 the threat.

6 CHIEF JUDGE WILSON: Okay. So - - -

7 JUDGE HALLIGAN: So your view is that no matter
8 how objectively unreasonable a subjective fear might be,
9 the subjective fear, nonetheless, shields someone from any
10 action?

11 MR. RILEY: Well, it's highly - - - it depends
12 upon the charge at issue, and that's one of the issues that
13 I have with this case. So if you - - - if you're charged
14 with a serious violent felony, and if it was - - - then
15 potentially, no, I would be incorrect there. But this is
16 why we argue that 18-165, we think, does not make for a
17 good analytic framework for looking at these issues because
18 it requires that supervising judge to get into very
19 complicated issues of what type of threat was presented,
20 whether or not the individual, the judge in that case,
21 adequately retreated, things that are not going to be
22 typically in the record, and you're going to have to ask
23 some very difficult questions as a supervising judge of
24 that judge that you're supervising there. But - - - so it
25 really depends upon, you know, the circumstances presented.

1 And here we're arguing - - -

2 JUDGE TROUTMAN: So again, just so that I'm
3 clear, your position is even if it is objectively
4 unreasonable, if your client or any judge in this state
5 subjectively believes that they're in fear, they may pull
6 out guns on litigants?

7 MR. RILEY: So I may be saying this poorly, but
8 in the - - - in the case of People v. Ellis that we rely
9 upon for that position, there was the use of what would be
10 considered deadly force in the use of a knife that was used
11 to - - - to ward off somebody. And in that case, the court
12 said that the individual would be entitled to a
13 justification charge under those factual circumstances
14 where the individual that was charging towards them did not
15 have any weapon.

16 JUDGE CANNATARO: But those are people, and these
17 are judges, and we hold judges to an even higher standard.

18 MR. RILEY: Absolutely, Judge.

19 JUDGE CANNATARO: And in this case, I - - - I
20 think the point we're all sort of circling around, is that
21 even his subjective belief has to be evaluated under some
22 sort of reasonableness standard.

23 MR. RILEY: It does. And I think what's even
24 more instructive is just some of the other cases in which
25 the CJC has evaluated the discharge of weapons and decided

1 that there has not been any sort of - - - that there's been
2 no more than a censure or admonition in those cases. We
3 specifically rely on Ciganek in which an individual shot at
4 turkeys near bystanders, which is certainly much more
5 egregious conduct than what occurred here where there was
6 no discharge of any weapon, and that - - -

7 JUDGE TROUTMAN: You're saying shooting - - -

8 MR. RILEY: - - - individual was only admonished.

9 JUDGE TROUTMAN: - - - at turkeys - - -

10 MR. RILEY: In a crowded street.

11 JUDGE TROUTMAN: In a crowded street, wholly
12 inappropriate. But you're saying it is not as egregious to
13 point at a litigant who is before you to receive an
14 adjudication of their case, and they're supposed to,
15 thereafter, have confidence in the judicial system? That
16 they're an actual litigant in the courtroom.

17 MR. RILEY: Right. I think that not discharge -
18 - - not discharging the weapon is less egregious than
19 discharging a weapon.

20 JUDGE TROUTMAN: It doesn't matter where it
21 happened?

22 MR. RILEY: I think the circumstances absolutely
23 matter, and I think that the circumstances in both Ciganek
24 and Sgueglia where - - - where, again, the firearm was
25 discharged in chambers accidentally and that judge was only

1 censured.

2 JUDGE TROUTMAN: We're in the courtroom - - -

3 MR. RILEY: Right, that's - - -

4 JUDGE TROUTMAN: - - - pointing it at a litigant.

5 What impact is that?

6 MR. RILEY: Right, so that's what I'm - - -

7 that's kind of what I'm - - - I'm getting at. In the

8 Sgueglia case, that was another instance in which there was

9 a firearm in the courthouse, and that firearm was actually

10 discharged, which I - - - which is arguably much more

11 egregious conduct than what occurred here. And in that

12 case that individual was only censured. And so that's - -

13 -

14 JUDGE GARCIA: Counsel, didn't the Commission

15 also consider his subsequent conduct? I think they

16 described it as a lack of insight into the gravity of the

17 misconduct. I think, namely, telling this story on a

18 number of occasions after the incident?

19 MR. RILEY: So if I could, there's four occasions

20 in which they're talking about him retelling the - - - the

21 incident. And I think that the retelling of the incident

22 only matters with respect to - - - the repeatedly retelling

23 of the incident only matters with respect to whether or not

24 it demonstrates racial bias. And in a few of those

25 instances there's no - - - no mention of race whatsoever.

1 In one instance he's telling it to the cousin who then
2 publishes the - - - the article with Hofstra University,
3 and there's no mention of race there.

4 JUDGE CANNATARO: He didn't say large, black man
5 for the article?

6 MR. RILEY: I don't believe there's any
7 indication of large, black man for the article. He does
8 talk about large, black man, or a football-player-sized
9 individual when he's describing it to Judge Hobbs.

10 JUDGE TROUTMAN: It is only - - -

11 MR. RILEY: And Judge Hobbs is - - -

12 JUDGE TROUTMAN: - - - after it's published, he's
13 proud of the article, then race starts getting inserted and
14 reinserted.

15 MR. RILEY: Yes, I think that the first instance
16 of race that we see in this came after the article, yes.
17 But the article is one - - - is - - - and again, the
18 article, I think, demonstrates his pride in gun ownership,
19 his pride in exercising his second amendment right. I
20 think that the article actually - - -

21 JUDGE TROUTMAN: He's a judge.

22 MR. RILEY: Yes.

23 JUDGE TROUTMAN: We're supposed to be looking at
24 him as a judge. And judges with respect to rights that we
25 have are - - - are lessened because we accept the judicial

1 office, than general citizens. We have to conduct
2 ourselves in a certain manner, in a manner that does not
3 negatively impact on the administration of justice and our
4 ability to fulfill our responsibilities. And you're saying
5 here, the judgment of retelling the story in the way that
6 he told it is evidence that he's not biased?

7 MR. RILEY: Yes, because I think in - - - in the
8 first instance in which he retells it, there's absolutely
9 no mention of race. In the second instance in which he
10 retells it, when he's describing it to judge - - - I'm
11 sorry, to the - - - the judicial conference, there is a
12 mention of race, but it's an accurate mention of his race,
13 and he says a large, black man approached the bench. I
14 don't think that it is - - -

15 JUDGE TROUTMAN: And it's not evidence of a
16 stereotype?

17 MR. RILEY: No, I think - - - I think the - - -
18 the CJC wants to argue - - - wants to focus upon him
19 mentioning his race, but I think the - - - the larger point
20 here that he tried to make, and that we're certainly trying
21 to make on appeal, is that this was a large individual that
22 was rushing towards the bench, and that he had - - -

23 JUDGE CANNATARO: Wasn't your argument with
24 respect to the - - - the racial description, at some point,
25 that it was for purposes of accuracy so that he was

1 correctly identifying who it was that was rushing the
2 bench?

3 MR. RILEY: Yes, and he had an obligation to do
4 that when he's speaking with Judge Hobbs because this is a
5 very serious incident that Judge Hobbs is investigating.

6 JUDGE CANNATARO: Okay. But what's your
7 obligation to do that at the judicial conference? I mean
8 why - - - why is it so important that you communicate to a
9 gathering of your peers at a symposium on security that the
10 person who rushed the bench was black?

11 MR. RILEY: I think he's just trying to - - -
12 he's - - - according to the record, he's asking everybody
13 else there for guidance as to what occurred in that
14 incident.

15 JUDGE CANNATARO: Guidance for when black people
16 do it as opposed to other people?

17 MR. RILEY: A fair question, Judge, as to whether
18 or not it needed to be - - - as whether or not it needed to
19 be mentioned, but I think that he - - - he did not need to
20 - - - perhaps he did not need to mention his race, but he
21 did need to provide an accurate description to those
22 individuals so that they could assess whether or not his
23 conduct was appropriate given the threat that he faced at
24 that time.

25 CHIEF JUDGE WILSON: Thank you, Counsel.

1 MR. RILEY: Thank you, Judge.

2 MR. TEMBECKJIAN: Chief Judge, Your Honors, may
3 it please the court, Robert Tembeckjian for the Commission
4 on Judicial Conduct.

5 JUDGE TROUTMAN: Can you help me with what is the
6 impact, if anything, of the stipulated facts in record?

7 MR. TEMBECKJIAN: Stipulated facts before you are
8 the record on which the Commission made this decision and
9 which this Court must decide whether to uphold that
10 decision. The - - - Judge Putorti waived his right to a
11 hearing, he waived his right to cross-examine witnesses,
12 and he signed with counsel, the same law firm that's
13 representing him here today, the facts that were before the
14 Commission, and that are before you. And in that record,
15 he admits that in the courtroom he was not justified to
16 brandish a loaded weapon at an unarmed defendant, evidently
17 for coming up too fast in front of the line.

18 JUDGE TROUTMAN: The stop line.

19 MR. TEMBECKJIAN: The stop line, so to speak. He
20 admits and the record shows that there was a uniformed
21 officer at the bench who did not see this supposed
22 provocation. He admits that there was an assistant
23 district attorney before the bench who did not see this
24 supposed provocation, because he admitted and stipulated on
25 advice of counsel, that if those people were called, they

1 would not have seen - - - they would not have been able to
2 testify that they saw this provocation. He, in fact, went
3 on to say that he had a, what would've been a memorable
4 exchange with the uniformed officer at the bench, for his
5 own security, who supposedly joked, you're pretty quick on
6 the draw.

7 JUDGE TROUTMAN: So what you're saying - - -

8 MR. TEMBECKJIAN: And stipulates that that
9 officer - - -

10 JUDGE TROUTMAN: - - - is if he had - - -

11 MR. TEMBECKJIAN: - - - has no recollection of
12 that conversation.

13 JUDGE TROUTMAN: But if he had not stipulated
14 there would have been an actual hearing where he could say,
15 he reasonably believed he had subjective and objective
16 reasons for the manner in which he acted.

17 MR. TEMBECKJIAN: Yes, if there had been a
18 hearing he would have had the opportunity to cross-examine
19 these witnesses that we would have put on. But I would
20 urge and submit to you that the result would have been the
21 same which is why he stipulated to it in the first place.
22 And that's what the court really is presented with here.
23 In the courtroom he did something that no judge should do.
24 Without justification, he brandished a loaded weapon at an
25 unarmed defendant, for coming up, supposedly, too fast.

1 Something that I would imagine that any trial judge with
2 experience in New York at some point or another has had.
3 People are anxious in the courtroom, and they sometimes
4 cross the line. Yes.

5 JUDGE HALLIGAN: Can I ask - - -

6 MR. TEMBECKJIAN: Please.

7 JUDGE HALLIGAN: - - - you, in your brief,
8 explain why you think a couple of cases cited by petitioner
9 that involve sanctions less than removal - - -

10 MR. TEMBECKJIAN: Yes.

11 JUDGE HALLIGAN: - - - are distinguishable. What
12 case or cases would you point us to where the Commission
13 has imposed the sanction of removal that you think are
14 analogous? It's obviously the most, you know, extreme
15 sanction that can be - - -

16 MR. TEMBECKJIAN: I don't think there is an
17 analogous case to this. I think this is sui generis.

18 JUDGE HALLIGAN: So what are the - - -

19 MR. TEMBECKJIAN: I am unaware - - -

20 JUDGE HALLIGAN: - - - circumstance - - -

21 MR. TEMBECKJIAN: - - - in my forty years of
22 doing this work, that there has ever been a situation where
23 a judge brandished a loaded weapon in the courtroom at a
24 defendant under any circumstance, let alone one in which he
25 admits that it was without justification. All of our other

1 removals for egregious behavior have involved facts really
2 anomalous to this. This - - - this is really an unusual,
3 extraordinary event. All the more reason, I think, for the
4 Commission to have treated it as seriously as they did.
5 This is not the kind of thing that judges do, or we expect
6 them to do.

7 JUDGE CANNATARO: What was the status of security
8 in the courtroom? Did I hear you say at the beginning of
9 your argument that there was security in the courtroom?

10 MR. TEMBECKJIAN: There was a uniformed police
11 officer at the bench.

12 JUDGE CANNATARO: Who just happened to be there
13 or who was assigned to be in the room with - - -

14 MR. TEMBECKJIAN: In this record, I believe it
15 indicates that he is there for security purposes, not just
16 that it was an accident.

17 JUDGE CANNATARO: Okay. Because I mean there was
18 something in the record about uniformed officer - - - it
19 was adjacent to the police station, and - - -

20 MR. TEMBECKJIAN: Yes.

21 JUDGE CANNATARO: - - - uniformed officers would
22 pass through. But that's not - - -

23 MR. TEMBECKJIAN: Yes, but here - - -

24 JUDGE CANNATARO: - - - in this circumstance.

25 MR. TEMBECKJIAN: - - - he was at the bench for

1 security purposes.

2 JUDGE GARCIA: Counsel, as I understood the
3 Commission's findings that the subsequent conduct went more
4 than to just exhibiting racial bias, it went to lack of
5 remorse, and I think it might even be described as
6 boastfulness somewhere in the - - -

7 MR. TEMBECKJIAN: Yes. Even after this
8 one-in-a-lifetime event in the courtroom, rather than show
9 contrition until he was before the Commission, he bragged
10 about it. His co-judge used the term boasting or bragging
11 to describe what he was doing when he showed the article
12 that talked about how he brandished a weapon carrying in
13 the courthouse. And then at num - - - several conferences
14 with other judges, in addition to the one-on-one
15 conversation with his supervising judge, he referred to the
16 events, and exaggerated - - - as he did the provocation in
17 the courtroom, he exaggerated the circumstances under which
18 he felt supposedly threatened. This big, large, black man,
19 built like a football player, six foot nine, was actually a
20 six foot, 165 pound individual. He could have called him
21 Mr. Wood, but he referred to him by race, showing a lack of
22 real appreciation for the responsibility of a judge, on or
23 off the bench, to behave without manifesting bias or
24 prejudice.

25 The race of the - - - of the defendant was



1 absolutely irrelevant to what happened here, unless, in
2 some way, it's partly what motivated the judge to have
3 whipped out - - - to have whipped out the gun. He really
4 didn't show in these boastful retellings that he understood
5 or appreciated the responsibility of a judge.

6 People come to a courtroom to resolve their
7 disputes in reasoned, dispassionate circumstances. They
8 have a right not to imagine that a judge is going to whip
9 out a loaded weapon. Though there might not have been a
10 round in the chamber, he acknowledges that it was a loaded
11 weapon, and as he told Judge Hobbs, he could have put that
12 in a flash into the chamber. He risked not only the safety
13 of the defendant, but anybody else in the courtroom by - -
14 - by whipping out the gun, and then by repeatedly bragging
15 about it in conversations with - - - with other judges.

16 CHIEF JUDGE WILSON: So if we - - - if we - - -
17 sorry, over here.

18 MR. TEMBECKJIAN: Yes.

19 CHIEF JUDGE WILSON: If we separate his conduct
20 into the two pieces, in the courtroom and then afterwards.
21 In the courtroom, at least my understanding is, he said
22 he's not bringing his gun to court ever again. I think
23 that's - - - is that right, that he said he's not going to
24 do that?

25 MR. TEMBECKJIAN: Yes, he says that.

1 CHIEF JUDGE WILSON: Okay. And then for the
2 outside of the courtroom behavior, there's at least a view
3 of his conduct as kind of Walter Mitty-ish. Put the racial
4 piece aside, the - - - turning somebody who's six feet tall
5 into six foot nine, and a football player, and all this - -
6 - I don't know if you know that story, the Secret Life of
7 Walter Mitty, but - - -

8 MR. TEMBECKJIAN: I do.

9 CHIEF JUDGE WILSON: Yeah. But I mean, you know,
10 not clear that we want Walter Mitty on the bench, but
11 putting the best spin on this, he made a mistake, a really
12 bad mistake, but he says he's not - - - going to put
13 himself in the situation where he's not going to do that
14 again. And his overly exaggerating behavior is a
15 personality characteristic that some people have. Should
16 we just censure him?

17 MR. TEMBECKJIAN: No, Your Honor, because this
18 court said in - - - in matter of Bower, sometimes an
19 apology is insincere, and at other times no amount of a
20 sincere apology can undo the prejudice to the
21 administration of justice by the behavior that brought us
22 here in the first place.

23 Here the prejudice to the administration of
24 justice and a judge who is responsible for the
25 dispassionate resolution of disputes, and hopefully - - -

1 JUDGE TROUTMAN: What about the - - -

2 MR. TEMBECKJIAN: - - - the finding of truths - -
3 -

4 JUDGE TROUTMAN: - - - suggestion that in his
5 community, they still have trust in his ability to - - -

6 MR. TEMBECKJIAN: It - - - it makes no
7 difference, Your Honor. We are - - - we - - - we have an -
8 - - we've applied an objective standard to judicial conduct
9 and to - - - and to judicial behavior. We have a
10 constitutional scheme in New York for evaluating and
11 determining and adjudicating complaints of misconduct
12 against judges. The Commission on Judicial Conduct in the
13 first instance; this court on review in the final instance.
14 We don't make exceptions for a community in one part of the
15 state that might re-elect a judge, thinking this is the
16 kind of person we want on a bench, versus another part of
17 the state where they might turn him out of office because
18 they think the behavior is shocking.

19 Subjective is irrelevant. And the view of the
20 elected, in terms of determining whether someone has
21 violated the rules to such an extent that their removal is
22 justified, is in the first instance for the Commission and
23 in the final instance with this court. And I would add,
24 given some of the observations that my adversary made, that
25 it is not for the Advisory Committee on Judicial Ethics nor



1 for a supervising judge to substitute their judgment for
2 the constitutionally authorized entity that is supposed to
3 make these judicial conduct determinations in the first
4 place.

5 JUDGE TROUTMAN: Because they can take certain
6 actions, but then if the case is referred to you, it can be
7 determined that that was insufficient, correct?

8 MR. TEMBECKJIAN: Correct. And we can't assume
9 that Judge Hobbs, in the first instance, or the advisory
10 committee later on, had all of the facts before them. They
11 certainly show no indication of having interviewed the
12 assistant district attorney, or the police officer in the
13 courtroom, or having taken Judge Putorti's testimony under
14 oath, or having spoken to his co-judge who said that he was
15 boasting about it, or the other judges at various judicial
16 conferences in which he brought this up. These are, at
17 least - - - these - - - the - - - the - - - these are - - -
18 this is part of the record that was developed by the
19 constitutional scheme that we have had in place in New York
20 for over 40 years, and which I think has worked quite - - -
21 quite well for the - - -

22 JUDGE CANNATARO: Counsel - - -

23 MR. TEMBECKJIAN: - - - counsel first and for the
24 court ultimately.

25 JUDGE CANNATARO: There's another set of



1 behaviors here. There's the fundraising violations.

2 MR. TEMBECKJIAN: Yes.

3 JUDGE CANNATARO: We haven't - - - we haven't
4 discussed those. And I think, maybe you disagree, but
5 those very often are not removable offenses, similar types
6 of things to what happened here.

7 MR. TEMBECKJIAN: I would agree.

8 JUDGE CANNATARO: What do we do with that? Do -
9 - - does that get added into the sort of totality of the
10 circumstances with respect to the penalty here? Does it -
11 - - does it push it over the edge? If you're on the fence
12 with regard to all the other stuff, or does that exist
13 separately in its own universe?

14 MR. TEMBECKJIAN: I - - - I think we - - - we
15 look at the conduct here as - - - as a whole. If the only
16 thing we had were the fundraising violations, Judge
17 Cannataro, I - - - I would not have recommended removal,
18 perhaps an admonition under certain circumstances, perhaps
19 even a private caution, particularly if it had been a
20 first-time event and the judge was now sensitized to his
21 behavior.

22 What makes these fundraising violations
23 significant is that they occurred after he knew and while
24 he was under investigation by the Commission. He knew that
25 his ethical obligations were being scrutinized at the time

1 he, unrelated to the gun event, committed these other
 2 violations, which the Commission rightly concluded suggests
 3 that he did not really appreciate the role and
 4 responsibility of the judge and his obligation to abide by
 5 these rules.

6 He demonstrated a cavalier attitude toward his
 7 ethical obligations when knowing the Commission was looking
 8 at him. He went ahead and committed a whole bunch of other
 9 violations for all the world to see because it was on
 10 social media, not just in the closed environment of a
 11 courtroom. Which, of course, obviously, he then broadcast
 12 by doing this interview and then talking about it with
 13 various other judges. It demonstrates as a whole that this
 14 record reflects a judge who reacts without thinking, who
 15 doesn't have a real sense of decorum, doesn't really
 16 appreciate the ethical mandates that are imposed on him and
 17 on the entire judiciary.

18 And so for that reason, bad as the gun episode is
 19 by itself, and if charge I were the only thing we had, we
 20 would still be discussing removal here. The fundraising
 21 violations really compound the - - - the picture, and - - -
 22 and for the Commission, really left no - - - no doubt or -
 23 - - or option, and I would respectfully request the same of
 24 the Court.

25 CHIEF JUDGE WILSON: Thank you.

1 MR. TEMBECKJIAN: Thank you.

2 MR. RILEY: If I may, very briefly, when I was
3 responding to Judge Troutman's question earlier, I referred
4 to paragraph sixteen of the stipulated facts where it says
5 that, "While Mr. Wood was on court premises, respondent
6 brandished a gun at him, notwithstanding that Mr. Wood was
7 not acting in the manner demonstrating deadly force, there
8 were no other witnesses to this event". And so there was
9 not security, according to the stipulated facts on that
10 day, and all we have to go by are the two statements of my
11 client and Mr. Wood. Mr. Wood was not investigated - - -
12 was not part of the investigation by the CJC.

13 As to the mitigating evidence here, I think as
14 the dissent recognized below, and as the lower court
15 majority failed to recognize, there was abundant mitigating
16 circumstances that existed here that should reduce any sort
17 of penalty from removal to a sanction - - - to a lesser
18 sanction.

19 There is no history of any prior discipline for
20 Judge Putorti prior to this - - - to this - - - these
21 incidents. He fully cooperated with the CJC in their
22 investigation. He entered into the agreed statement of
23 facts, he did - - - which, thereby, allowed them to review
24 the evidence without having to subpoena any witnesses or
25 have any testimony. He responded to interrogatories by

1 providing them the only financial records in this case that
2 established the evidence as to charge II. You see that in,
3 I think it's November of 2020, he's asked - - - the
4 interrogatories are sent to them in December, he responds
5 by providing them all of the - - - the witness - - - I'm
6 sorry, all of the attendees for all the functions and also
7 all the financial information there. And so he was fully
8 compliant with the CJC's investigation, and to suggest
9 otherwise, that simply ignores that fact.

10 And he wasn't trying to hide anything, as he
11 could have, by removing the Facebook post or anything,
12 during this investigation. He handed over everything that
13 he had and essentially established the case as to charge II
14 for them, and explained, as he did on the record, his
15 failure to recognize that this - - - that even fundraising
16 on behalf of an altruistic organization, such as this court
17 recognized in, In Re: Harris, could lead to potential
18 discipline. So there were mitigating circumstances here
19 that were - - - that were numerous.

20 As to the bragging or the boastfulness, again, I
21 think I just come back to the point that he - - - he was
22 boastful as to his second amendment right, right? That was
23 the entire purpose of the article, was that he was trying
24 to show everybody that, like, he was proud because of his
25 heritage and because of coming up - - - because it's

1 something that had been shared throughout his family
2 history of his right to carry this weapon. It was not
3 trying to be bragful or boastful that - - - that he did
4 what he did with respect to an individual of race. It was
5 only his second amendment rights that were - - - that were
6 important to him in terms of the bragging or boastfulness
7 that occurred here.

8 And so for that reason, we ask that you reject
9 the sanction of removal, and in your discretion, enter no
10 worse than a censure.

11 Thank you, Judge.

12 CHIEF JUDGE WILSON: Thank you, Counsel.

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Ashley Bennett, certify that the foregoing transcript of proceedings in the Court of Appeals of Robert J. Putorti v. Commission on Judicial Conduct, No. JCR-2022-10 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Ashley Bennett

Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: September 21, 2023

