STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of an Investigation
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to
WALTER W. JONES,

Respondent,

a Judge of the Canandaigua Town Court,
Ontario County.

MEMORANDUM OF LAW SUBMITTED
ON BEHALF OF HON. WALTER W. JONES, JR.

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PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of the Respondent, the Hon. Walter W. Jones, Jr., Judge of the Canandaigua Town Court, Ontario County, by his attorney, Charles D. Steinman, Esq., in response to the Memorandum by Counsel to the Commission in Support of Recommendation that the Referee's Report be Affirmed and the Respondent Removed from Judicial Office[1], dated December 23, 2025. Where applicable, this Memorandum also serves as our opposition to the proposed Conclusions of Law contained in the Referee's Report of David M. Garber, Esq., dated December 4, 2025[2].

As set forth more fully below, and Judge Jones has consistently admitted that he made the statements attributed to him on May 10, 2024 and May 14, 2024 which form the basis of the two charges contained in the Formal Written Complaint, dated April 3, 2025[3]. We acknowledge that this Commission may find that Judge Jones' admissions and the proof that was adduced at the

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[1] Hereafter referred to as "Counsel's Memorandum"
[2] Hereafter referred to as "Report". References to pages within the Report will be to "R__".
[3] Although Judge Jones made the statements at issue, we have filed herewith our detailed objections to the Referee's proposed Findings of Fact relating to the number of times he uttered the "N-word", the volume of his voice when he did so as well as a number of other proposed findings. See Objections to Referee's Report Submitted on Behalf of Hon. Walter W. Jones, Jr., dated January 15, 2026.

hearing are sufficient to sustain the charges contained in the Complaint. However, should the Commission so find, we respectfully submit that the appropriate sanction would be, at most, a confidential letter of caution and, at worst, a letter of censure.

POINT I

JUDGE JONES ACKNOWLEDGES THAT HIS COMMENTS ON MAY 10, 2025 AND MAY 14, 2025 WERE INAPPROPRIATE.

While we have taken exception to a number of the factual findings of the Referee[4], Judge Jones has consistently and candidly acknowledged that on May 10, 2025 he used the N-word in recounting a story involving his father which occurred in 1957. Similarly, Judge Jones has never denied making the on the record statements[5] in the *People v. D*[redacted], which he himself characterized as "a dumb thing to say".

Based upon the foregoing statements, Commission Counsel filed a Formal Written Complaint, Charge 1 of which related to the May 10, 2025 events and Charge 2 of which related to the May 14, 2025 events. Charge 1 alleged violations of Sections 100.1, 100.2(A) and 100.4(A)(1) and (2) of the Rules Governing Judicial Conduct. These sections of the Rules require judges to: uphold the integrity and independence of the judiciary (§100.1); avoid impropriety and the appearance of impropriety and act in a manner which promotes public confidence in the integrity and impartiality of the judiciary (§100.2[A]); and conduct their extra-judicial activities in a manner that does not case reasonable doubt on their capacity to act impartiality as a judge and detract from the dignity of their judicial office (§100.4[A][1] and [2].

[4] See Respondent's Objections to Referee's Report, submitted herewith.
[5] Although the statements were on the record, the arraignment of Ms. D[redacted] had concluded and she was not present to hear them.

Candor compels us to acknowledge that, as to Charge 1, the existing case law of New York supports the Referee's proposed finding that Judge Jones utterance of the N-word was violative of the Rules. See *Matter of Agresta* (1985 Ann Rep 109 [Comm. On Jud. Conduct, July 5, 1984]), *sanction adopted* 64 N.Y.2d 327 (1985). Despite this concession, we respectfully submit, as set forth in detail below, that this violation, neither by itself nor in conjunction with Charge 2, warrants the extreme sanction of removal (see Point II, below).

As to Charge 2, which is based upon the record in *People v. D*[redacted], Commission Counsel alleges a violation of §100.3(B)(4) which requires judges to perform their judicial duties without racial bias or prejudice by words or conduct. The Referee found that this charge had likewise been proven and, as to that recommendation, we object.

We respectfully submit that Judge Jones' comments, while inappropriate, do not fall within the ambit of this particular Rule. At the time of Judge Jones' comments, Ms. D[redacted]' arraignment had already been concluded and she was absent from the courtroom. All of the judicial determinations had already been made. Thus, Judge Jones had already performed his judicial duties at the time of the comments and there is no proof that any of his determinations were affected by racial bias or prejudice[6]. Quite to the contrary, the Commission's own witness, the Court Clerk, Ms. Bartolotta, testified that Judge Jones always treated defendants with dignity and respect, presumably including Ms. D[redacted]. Based upon the foregoing, we respectfully submit that this particular violation of the Rule should not be sustained.

[6] Commission Counsel has attempted to argue that Ms. D[redacted] was "saddled with high bail", a determination which was *not* made by the Referee. We vigorously deny Counsel's assertion (see Objections to Referee's Report, p.10, ¶59-62).

POINT II

SHOULD THE COMMISSION DETERMINE THAT JUDICIAL MISCONDUCT HAS OCCURRED, COMMISSION COUNSEL'S RECOMMENDATION THAT JUDGE JONES BE REMOVED FROM OFFICE IS CONTRARY TO THE PRECEDENTS OF THIS COMMISSION AND THE N.Y. COURT OF APPEALS.

As conceded throughout these proceedings, Judge Jones has unequivocally stated that his comments after the D[redacted] arraignment on May 14, 2024 were inappropriate, characterizing them as "stupid" and "a dumb thing to say". With reference to Judge Jones' quotation of his father using the "N-word" on May 10, 2024, we recognize that the Commission may conclude that *Matter of Agresta, supra,* mandates the conclusion that judicial misconduct has occurred. If the Commission so concludes, we respectfully submit that a confidential letter of caution is the appropriate sanction.

A review of the cases most factually similar to the case at bar reveals that a sanction short of removal is the appropriate remedy. Ironically, the case most heavily relied upon by Commission Counsel, *Matter of Agresta, supra,* is one such case. In *Agresta,* while on the record and in the presence of a black defendant, in a blatant attempt to coerce the defendant into implicating his uncle in the crime, the respondent judge stated "I know there is another [N-word] in the woodpile." *Agresta,* at 327. Despite the fact that the offensive comment in *Agresta* was made in the presence of a black defendant and in open court, this Commission determined that censure was the appropriate remedy, citing the *Agresta* respondent's unblemished record on the bench and his age.

We respectfully submit that the facts of *Agresta* are far more egregious than those of the present case. In *Agresta,* the respondent's statements were made in open court and in the

presence of the defendant, who was black. Arguably, the respondent's comments were additionally inappropriate on the grounds that they were made in the context of attempting to coerce the defendant into implicating his uncle in the crime. In the present case, Judge Jones' comments on May 10, 2024 were completely unrelated to his judicial functions, were made out of court to only two individuals[7], and the party who Judge Jones quoted his father as referring to was not only not present but, in all likelihood, long since deceased. While this Commission may find Judge Jones' use of the N-word violative of the Rules, it is abundantly clear that it was not motivated by malice. Rather, Judge Jones believed that the story he told about the state of racial relations in the deep South in the 1930's and up until 1957 was and is an important story to tell, even if his inclusion of the N-word in doing so was inappropriate. Finally, both of the factors relied upon by the Court of Appeals in rejecting this Commission's finding of removal in *Agresta* weigh heavily in Judge Jones' favor; he has an unblemished disciplinary record since ascending to the bench in 1999 and he is 81 years old. See also, *Matter of Edwards*, 67 N.Y.2d 153 (1987) (removal unwarranted based upon "aberrational" nature of judge's misconduct and his 21 years on the bench and unblemished disciplinary history).

The cases in which racial epithets have been used by judges and where removal is warranted are readily distinguishable and are uniformly accompanied by egregious behavior. Thus, in *Matter of Fabrizio*, 65 N.Y.2d 275 (1985), not only did the respondent judge use racial epithets, including but not limited to the N-word, on multiple occasions he:

> ". . . in the relatively short period that he has served as a Town Justice, engaged in numerous instances of egregious misconduct, including the seeking of special consideration for two defendants in other courts, using racial slurs, altering transcripts, advising his

[7] Despite Commission Counsel's repeated attempts to prove that someone else *might* have overheard Judge Jones' comments, the Referee found that there was no proof that anyone else overheard him (see Referee's Report, ¶32).

> court reporter to change stenographic notes that had been subpoenaed by the Commission on Judicial Conduct, and sitting on a small claims case in which the defendant was his dentist for 10 years without disclosing the relationship or offering to disqualify himself. In addition, petitioner attempted to impede the Commission's investigative efforts throughout by falsifying evidence and intimidating witnesses." *Matter of Fabrizio*, at 276, 277.

A review of the facts in the cases relied upon by Commission Counsel in support of its contention that Judge Jones should be removed from office reveal them to be readily distinguishable. In *Matter of Cerbone*, 61 N.Y.2d 93 (1984), the respondent judge was removed based upon a physical altercation in a bar in which he threatened black patrons, such threats being "embellished with racial epithets", used "abusive and profane language", stated that he was a judge and would punish any black patrons who came into his court and either shoved or pushed several black patrons. The Court of Appeals confirmed this Commission's determination that removal was warranted. Judge Jones did not engage in a physical altercation, nor did he abuse his judicial office by making threats, nor did he use "abusive and profane" language. He recounted a story which, in his mind, was an important one about race relations from years ago in the deep South. If he was wrong in the telling of the story, neither his motives nor his conduct can be compared with the respondent in *Cerbone.*

Commission Counsel's attempt to rely on *Matter of Mulroy*, 94 N.Y. 2d 652 (2000) is similarly misplaced. In *Mulroy*, the respondent County Court Judge urged the prosecutor at a charity event to "be reasonable" in offering pleas to two defendants because the 67 year old murder victim was "just some old [N-word[8]] bitch". *Mulroy*, at 656. The Court of Appeals, in approving the sanction of removal, found that the Respondent's "disparaging remarks were not

[8] Both the Commission and the N.Y. Court of Appeals used the actual "N-word" in their written decisions, not the euphemism used herein.

isolated", noting that the Respondent had also stated to the District Attorney "You know how you Italian types are with your Mafia connections." *Mulroy*, at 656, 657. The respondent judge also exhibited "intemperate behavior on the bench", including a profane, on-the-record outburst during jury deliberations in which, *inter alia*, he expressed his desire to get out of Utica because it was "men's night out" in Syracuse and that Utica was "a f***ing[9] hellhole". *Mulroy*, at 657. Judge Jones' conduct pales in comparison to that of the respondent in *Mulroy*.

Given the gravity of the conduct of the respondent in *Matter of Kuehnel*, 49 N.Y.2d 465 (1980), any attempt to compare it with that of Judge Jones fails upon the most superficial scrutiny. In *Kuehnel*, the respondent took it upon himself to call the police on four youths of an "identifiable ethnic group" whom he suspected of breaking glass in a parking lot (*Kuehnel*, at 468). When the respondent's questioning of the youths did not proceed to his satisfaction, the respondent struck one of them, age 13, in the back of the head, causing him to strike his head on a bulletin board or a doorframe (*id.*). Even more egregious than the foregoing, the Court of Appeals elaborated on the respondent's subsequent "less restrained" conduct:

> "Upon entering the station, petitioner proceeded to upbraid the youths in a most injudicious manner. His language was vulgar and derogatory, his manner taunting and hostile. He uttered particularly demeaning comments concerning an identifiable ethnic group and stated that if he ever saw one of the youths before his court, he would send her to jail. While leaving, petitioner, presumably irritated by the attitude of the four youths, was prompted to vent his displeasure by intentionally, and without justifiable provocation, striking one of them, age 16, in the face, causing his nose to bleed." (*id.*).

[9] The Court of Appeals used the actual four-letter profanity in its decision. We decline to do so.

It is clear from a reading of *Kuehnel* that the respondent's offensive ethnic comments were hardly the lynchpin upon which this Commission and the Court of Appeals based their determinations. Thus, *Kuehnel* lends no support to Commission Counsel's position.

Also relied upon by Commission Counsel is *Matter of Purtorti*, 40 N.Y.3d 359 (2023). In *Purtorti*, the respondent, "[w]hile presiding over his courtroom . . . brandished a loaded firearm at a litigant who presented no threat to anyone." *Purtorti*, at 368. Showing no remorse, the respondent repeatedly and gratuitously referred to the litigant's race and participated in a press interview to do so. This Commission also found that the respondent had inappropriately used social media to solicit campaign contributions. This Commission was also troubled by the fact that the respondent denied facts to which he had previously stipulated. This Commission and the Court of Appeals concluded that the severity of this conduct and its cumulative nature warranted removal. Clearly, both the gravity of Judge Jones' conduct, as well as its limited nature, contrast with *Purtorti*.

The venal racial comments made by the respondent in *Matter of Schiff*, 83 N.Y.2d 689 (1994), cited by Commission Counsel, formed only one basis of the Court of Appeals' decision to confirm this Commission's determination to remove him from judicial office. The respondent in *Schiff* stated that he recalled a time when it was safe for young women to walk the streets "before the blacks and Puerto Ricans moved here". *Schiff*, at 692. When the Assistant District Attorney who had heard the remark advised the respondent that his comment was inappropriate and had taken a toll on the person to whom it was directed, the respondent doubled-down and said "I know. That's why I said it". *Schiff*, at 693. Compounding the respondent's misconduct, he also threatened to use his "judicial powers to satisfy a personal vendetta", employing expletives in doing so. *Schiff*, at 693. In a third charge, the Commission found that the

respondent, over a two year period, had failed to maintain adequate records in over 600 criminal cases and failing to timely remit or report to the State Comptroller fines and surcharges. *Schiff*, at 693. The Court of Appeals found that the cumulative conduct recited above, and not one single charge, warranted the respondent's removal. *Schiff*, at 695.

Matter of *Matter of Duckman*, 92 N.Y.2d 141 (1998) likewise does not advance Commission Counsel's recommendation. In that case, in which the hearing on the multiple charges consumed 4,000 pages of testimony, this Commission found that in 16 cases the respondent:

> ". . . willfully disregarded provisions of law that resulted in the improper dismissal of criminal charges, delivered *ad hominem* criticisms and injudicious lectures to assistant district attorneys that unfairly attributed to them improper and harsh values and judgments in their role as prosecutors and made intemperate, derisive and otherwise inappropriate comments to assistant district attorneys. * * * [B]y reason of the foregoing, [petitioner] abused the power of his office, displayed evident bias against the prosecution, and acted in a manner inconsistent with and prejudicial to the fair and proper administration of justice." *Duckman*, at 143, 144.

The determination of an appropriate sanction is a necessarily fact-specific inquiry. Nonetheless, we respectfully submit that the foregoing cases demonstrate that not one judge in New York has ever been removed from the bench for comments made by Judge Jones under the factual scenarios presented herein.

The N.Y. Court of Appeals has long recognized the principle that judicial [r]emoval is an extreme sanction and should be imposed only in the event of truly egregious circumstances . . . Indeed . . . removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment." *Matter of Cunningham*, 57 N.Y.2d 270, at 275 (1982)(internal citations omitted). In determining the appropriate sanction the Court of Appeals has considered

the following factors in the determination of an appropriate sanction: 1) the offending party's career as a whole; 2) the offending party's motivation for engaging in misconduct; and 3) candor. *Matter of Skinner*, 91 N.Y.2d 142 (1997).

Measured by these standards, we submit it is abundantly clear that removal is unwarranted. Judge Jones has been a respected member of the bar for 50 years. He is now in his eighties and has, for the past 26 years "has been the elected choice of the voters to hold the office of Town Justice, with no evidence of any prior complaints regarding his judicial service". *Skinner*, 91 N.Y.2d at 144.

As in *Skinner*, "there is no indication that petitioner was motivated by personal profit, vindictiveness or ill will". While *Agresta* may bar this Commission from considering the context in which Judge Jones uttered the N-word for the purpose of determining whether or not he has violated the Rules of Judicial Conduct, it may certainly consider the context for the purpose of considering the appropriate penalty. With respect to the 1957 story in which Judge Jones quoted his father using the N-word, Judge Jones told the story in a parking lot to two individuals[10]. According to his uncontroverted testimony, he felt that it was an important story to tell about race relations and how two children in the racist South formed a bond at a time when it could have catastrophic consequences for both. He gained nothing by recounting this story, nor his inclusion of the N-word in doing so.

With reference to the May 14, 2024 comments by Judge Jones, while made in court and on the record, they were made after the arraignment and after Ms. D[redacted] had exited the courtroom. Again, Judge Jones gained nothing by making his comments. Judge Jones testified

[10] As noted previously, the Referee found that there was no evidence that anyone else heard Judge Jones' story.

that the race card comment, although inappropriate, was motivated by his sincere sympathy for Ms. D[redacted] and his perception that she viewed herself as a victim (Tr.157). Similarly, Judge Jones gained nothing by his comments to Mr. Conklin about Ms. D[redacted]' anger and potential for violence. Judge Jones thought it to be a "lighthearted" colloquy with counsel. This error in judgment is hardly of such a venal nature as to warrant removal, either individually or in combination with the other charges against him.

Finally, we respectfully submit that Judge Jones has been cooperative with the Commission's representatives and has been candid in his responses. While the Referee found that some of his comments were not credible, a finding with which we vigorously disagree, he has never denied making the comments attributed to him which form the basis of the Formal Written Complaint. As to the May 14, 2024 comments, he has unequivocally conceded that they were "stupid" and "a dumb thing to say". As to the N-word story, if Judge Jones violated the mandate of *Agresta*, it must also be said that, given the total context of the events of that date, his error was one of ignorance and not motivated by venality or malice. In addition, he has testified that were he to repeat the story in the future he would not use the N-word "[b]ecause it causes so much upset and consternation and discomfort" (Tr.176).

In sum, if this Commission finds that Judge Jones violated the Rules of Judicial Conduct, we respectfully submit that his errors reflect only "poor judgment" and not the "egregious conduct" that the Court of Appeals has deemed necessary to invoke the extreme penalty of removal. While the appearance of bias may be as actionable as actual bias, the reality is that both of the witnesses called by Commission Counsel testified that they had never observed Judge Jones treat any minority in a discriminatory manner, Ms. Bartolotta going so far as to testify that Judge Jones treats everyone with dignity and respect. As Judge Fuchsberg of the N.Y. Court of

Appeals succinctly stated: "Judges are but men and women who are nonetheless worthy though, like all human beings, they are sometimes less than perfect" *Matter of Lonschein,* 50 N.Y.2d 569, 574 (1980) (Fuchsberg, J., dissenting in part). We respectfully submit that Judge Jones' errors, if this Commission finds them to be so, reflect a lack of perfection rather than a pervasive inability to perform the duties of the office he has held for 26 years. Based upon all these factors, we respectfully urge the Commission to issue a private letter of caution.

Dated: January 14, 2026

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OBJECTIONS TO REFEREE'S REPORT SUBMITTED ON BEHALF OF HON. WALTER W. JONES, JR.

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PRELIMINARY STATEMENT

The Respondent herein, the Hon. Walter W. Jones, Jr.[1], Judge of the Canandaigua Town Court, Ontario County, by his attorney, Charles D. Steinman, Esq., submits the following objections to the Referee's Report of David M. Garber, Esq., dated December 4, 2025[2].

At the outset, we wish to make it clear that we have no objection to the principal proposed findings of fact made by the Referee which conclude that on May 10, 2024, while in the parking lot of the Ontario County Jail following arraignments at a Centralized Arraignment Part ("CAP"), Judge Jones related a story to his court clerk, Kristen Bartolotta, and his assigned Assistant Public Defender, Cali Anne Valenti, which included a quotation of his father using the "N-word[3]" in 1957 in referring to an African-American acquaintance of his father. We further do not object to the Referee's proposed finding that on May 15, 2024, following a CAP arraignment of an African-American defendant named S[redacted] D[redacted], on the record but out of Ms. D[redacted]'

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[1] Hereafter referred to as "Judge Jones".
[2] Hereafter referred to as "the Report". References to pages within the Report will be to "R__".
[3] As we have done consistently throughout these proceedings, we do not use the full racial slur which is specified in the Commission's Formal Written Complaint. We have previously stipulated that Judge Jones used the full word, and not the euphemism "N-word" in quoting his father.

presence, Judge Jones made the statement that "Naturally, she [Ms. D[redacted]] played the race card". We also do not object to the Referee's proposed finding that at that same time, Judge Jones said that Ms. D[redacted] "probably would have [attacked the Assistant Public Defender] if she hadn't been handcuffed". We fully acknowledge that these statements were made, as conceded and testified to by Judge Jones himself. Additionally, Judge Jones admitted at the hearing that the "race card" statement he made during the *D*[redacted] proceedings were "a mistake", "a stupid thing to do" and "a dumb thing to say"(Transcript of Hearing conducted on August 21, 2025[4], p.154-155). However, as specified below, we also submit that a number of the Referee's proposed findings of fact were not proven by Commission Counsel by a preponderance of the evidence and should be rejected by this Commission.

OBJECTIONS TO REFEREE'S PROPOSED FINDINGS OF FACT[5]

I. AS TO CHARGE I

¶16. The Referee's proposed finding of fact asserts that "Ms. Valenti was uncomfortable accepting them [books given to her by Judge Jones] because she desired to maintain a professional distance between herself as an Assistant Public Defender and Respondent[6]". While such may have been Ms. Valenti's unexpressed feeling at the time, nowhere in the record is there any indication that she ever communicated this alleged discomfort to Judge Jones in any manner, nor did she decline his offer of the books. How Judge Jones was supposed to be aware of this alleged discomfort on the part of Ms. Valenti given her conduct to the contrary is left

[4] References to pages in the Hearing Transcript will be to "Tr.__".
[5] Objections to specific proposed findings of fact will be referred to by reference to the paragraph numbers in the Referee's Report ("¶__"). Any objections to the Referee's Conclusions of Law are contained in our separate Memorandum of Law which is submitted herewith.
[6] Indeed, had Ms. Valenti truly wished to maintain "professional distance" she could have easily made an excuse that she had to be elsewhere following CAP court and could not accompany Judge Jones and Ms. Bartolotta to his car.

unexplained by the Referee. The irrefutable fact that Ms. Valenti did not express her alleged discomfort to Judge Jones, either explicitly or impliedly, is omitted from the Referee's proposed findings of fact and we object to such omission.

¶19. In this proposed finding, the Referee asserts that Judge Jones referred to one of the black workers on his grandfather's farm as "N-word" Harry. This assertion is susceptible to several interpretations, one of which is correct and the other of which is highly objectionable. We have consistently acknowledged that on May 10, 2024 Judge Jones recounted a story to Ms. Bartolotta and Ms. Valenti in which he related a 1957 incident in which Judge Jones' father, while driving his car in rural Texas with Judge Jones in it, saw an individual walking on the side of the road who Judge Jones' father identified as "N-word" Harry. In relating the story, Judge Jones used the actual "N-word" that his father did. To the extent that the Referee's proposed finding is that Judge Jones used the "N-word" in quoting his father on this one occasion, we have no objection.

Both of the Commission Counsel's witnesses to the conversation, as well as Judge Jones, testified that this is the *only* context in which Judge Jones used the word (see Testimony of Cali Anne Valenti, Tr.54). Ms. Bartolotta's testimony was equally unequivocal:

> "MR. STEINMAN: -- this is cross. She's testified about the conversation to the best of her recollection, but I want to clarify that it was Judge Jones quoting his father, right?
>
> THE WITNESS: Yes" (Tr.96).

To the extent that the Referee's proposed finding is that Judge Jones did so on any other occasion or in any other context is wholly unsupported by the record and should be rejected.

¶25. In his proposed findings, the Referee states that Ms. Valenti testified "credibly"[7] that Judge Jones referred to "N-word Harry" four times, twice while introducing the story and twice when Judge Jones recounted his father recognizing his childhood friend Harry walking along the road. This testimony as to the number of times Judge Jones uttered the epithet, and the context in which he uttered it, stands in stark contrast to that of both of the two other persons present. Ms. Bartolotta testified that Judge Jones, said it, at most, two or three times (Tr.79). Judge Jones testified unequivocally that he only used it once (Tr.151). Critically, Ms. Bartolotta also stated that Judge Jones only used it in quoting his father, not in "introducing" the story. The Referee, while purportedly relying on Ms. Valenti's testimony, fails to note this important inconsistency in her testimony:

> "Q. And in the context of this particular conversation, I want to make sure we're clear about this, you testified that Judge Jones used the N-word *quoting his father*, that that's what his father referred to this individual as, am I correct?
>
> A. Correct." (Tr.54) (emphasis supplied).

Thus, Ms. Bartolotta consistently and Ms. Valenti, on at least one occasion, testified that Judge Jones used the N-word only in quoting his father, corroborating Judge Jones' testimony on this critical point. We respectfully submit that the Referee's implication that Judge Jones used the epithet at any time other than in telling, not "introducing" the story involving his father and quoting his father when his father saw Harry along the side of the road, is not supported by the preponderance of the evidence and should be rejected by the Commission.

¶27. In these proposed findings the Referee recounts that Ms. Bartolotta was "uneasy" about Judge Jones' use of the "N-word". As we noted with reference to the proposed findings in

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[7] Curiously, while the Referee refers to and quotes Ms. Bartolotta's testimony, the Referee does not state that her testimony was credible, unlike Ms. Valenti's, although he gives no reason for not doing so.

¶16, we do not dispute that such may have been the feelings of Ms. Bartolotta. Nonetheless, the record is clear that she never communicated this alleged discomfort to Judge Jones, or, having heard the word on one occasion, tell him that she found it objectionable. These facts are clear from the record and we object to their omission. If the Referee found it relevant to point out that Ms. Bartolotta was upset, we believe that it must be noted that such distress was never communicated to Judge Jones at the time. Curiously, the Referee notes that Ms. Valenti never made any objection despite her similar purported concern (see ¶33).

¶28. In this proposed finding, the Referee states that "*people* were walking between the parking lot where they had parked their cars and the jail building" (emphasis supplied), attempting to raise the inference that someone other than Ms. Bartolotta and Ms. Valenti heard Judge Jones. This is inaccurate. As clearly depicted by the Commission Counsel's own exhibit, only *one* person walked to his car from the jail, and he did so at an angle walking away from Judge Jones' car and was nowhere near it at the time of the conversation at issue (see Commission Exhibit 1). While there were several people on the sidewalk in front of the jail entrance, they remained some distance away on the sidewalk and did not enter the parking lot and were certainly not walking to their cars (see Commission Exhibit 1). As Judge Jones testified, no one was within hearing range, especially in light of the fact that he was speaking in a normal conversational tone (Tr.81, Tr.99, Tr.153-154; see discussion of ¶¶30 and 37, below). We submit that the multiple efforts by Commission Counsel to prove that someone other than Ms. Valenti and Ms. Bartolotta heard Judge Jones were ultimately unsuccessful, as found by the Referee (Report ¶32).

¶29. While we have no quarrel with the finding that Ms. Bartolotta and Ms. Valenti were concerned that someone in a car parked in the lot several spaces away from Judge Jones' car

might have overheard him speak, we submit that the Referee should also have noted that neither of them expressed any concern at the time.

¶¶30, 37. There were three witnesses to Judge Jones' story: Judge Jones himself, Ms. Bartolotta and Ms. Valenti. Despite the fact that two of them testified that Judge Jones' tone of voice was "normal" or "reasonable", the only witness the Referee found credible was Ms. Valenti, who testified to the contrary and that Judge Jones was "yelling" out the N-word. This proposed finding is against the weight of the credible evidence and we vigorously object thereto for several reasons.

First, given the context of Judge Jones' story, him "yelling" "N-word" Harry makes no sense. The only person who was a witness to the 1957 events themselves was Judge Jones, who testified that his father made the observation of Harry to Judge Jones while they (Judge Jones and his father) were riding together in the car. Judge Jones testified without contradiction that Judge Jones' father didn't yell out the window at or to Harry, but merely pointed him out to Judge Jones. Thus, there was no reason for Judge Jones' father to yell at Judge Jones, who was seated right next to him in the car, nor, consequently, any reason for Judge Jones to "yell" in recounting the story.

Second, had Judge Jones been "yelling", such that others in the area could hear him, it is only logical that some sort of reaction would be exhibited by those in the area, especially since the Referee found that there were others walking around the parking lot[8]. A review of the videotape of the parking lot reveals no reaction by any of the persons depicted in the area. Furthermore, if Ms. Valenti truly had concerns that someone else could hear Judge Jones

[8] As noted above, we object to this finding.

"yelling" the N-word four times, we submit that a logical response on her part would have been to caution Judge Jones that he was being too loud. Of course, this never occurred.

Had Commission Counsel wished to establish that Judge Jones was "yelling" they could have identified the other individuals on the videotape and subpoenaed them to testify that he was doing so. That no such testimony was introduced amply supports the Referee's finding that there is no evidence that any bystanders overheard Judge Jones' comments (¶32).

As noted consistently throughout our submissions and as testified to by Judge Jones at the hearing he admitted using the N-word in quoting his father on one occasion. We respectfully submit that to assert that he "yelled" in doing so is pure embellishment on the part of the only witness who testified that he did so, in contravention of every other witness present at the time.

Based upon the foregoing, we respectfully submit that the Referee's proposed finding that Judge Jones was "yelling" the N-word is against the weight of the credible evidence and should be rejected by the Commission.

¶44, fn.5. Relegated to a footnote is the Referee's attempt to find Judge Jones' testimony contradictory. Judge Jones testified unequivocally that the N-word is a horribly inappropriate and insulting term and does not use it himself (Tr.146-148, Tr.153, Tr.191). In his footnote, the Referee attempts to find a contradiction by reference to Judge Jones' testimony wherein he stated that the N-word was a "descriptive term", akin to calling someone "shorty" (Tr.174).

Glaring by its omission by the Referee is the fact that it is clear that Judge Jones was referring to the use of the term *roughly 70 years ago in his house:*

"Q. And I believe you testified earlier that you - - *back then*, you didn't really consider the N-word to be a bad - - a necessarily bad term.

A. I don't think I knew how bad it was *at the time*." (Tr.173) (emphasis supplied).

* * * *

A. Remember, I was fairly young at this point (Tr.174).

Judge Jones recognizes the odious nature of the N-word. He did not have this knowledge growing up in a racist house 70 years ago. Thus, we submit that the "contradiction" alluded to by the Referee is non-existent and its inclusion in the Report is highly objectionable.

II. CHARGE II

¶¶54-58, 63. That Ms. D[redacted] had sustained a significant injury is clear beyond cavil. Judge Jones acknowledged that he was aware that she had "sustained an injury of some sort" and was present when someone stated on the record that she had a fractured eye socket[9] (Tr.158, 159). Despite this acknowledgement, the Referee found it necessary to conclude that Judge Jones testimony was incredible to the extent that he stated that he was unaware of the "nature and severity" of the injury (¶58). We object to this finding on several grounds.

First, it is demonstrably untrue that Judge Jones knew nothing about "the nature and severity" of Ms. D[redacted]' injury. As noted above, he was present in court when it was stated that she had suffered a fractured eye socket. He also testified that he observed some type of injury,

[9] The "Unidentified Male's" (later identified as either a Deputy Sheriff or a Correction Officer) comment that Ms. D[redacted] had suffered a "broken orbital socket" is noteworthy. The most likely inference from this comment is that Ms. D[redacted] had already been diagnosed by a medical professional and either had received, or was going to receive, medical treatment. The only other inference which could be drawn is that the Unidentified Male made the diagnosis himself, which we submit is highly unlikely.

although Ms. D[redacted] was to his left and turned in such a manner that he could not observe the full injury.

Secondly, and further supporting our objection, there is absolutely no motive for Judge Jones to lie about his knowledge of the nature and extent Ms. D[redacted]' injury. His sole duty during the arraignment is to ensure that Ms. D[redacted] was represented by counsel, that a plea was entered[10] and that appropriate bail be fixed. Judge Jones is not a doctor and it is neither necessary nor appropriate for him to diagnose or treat Ms. D[redacted], nor to ensure that she be treated. As long as Ms. D[redacted] was in the custody of the jail, it was the obligation of the jail personnel to ensure that Ms. D[redacted] received appropriate medical care and to respond to Ms. D[redacted]' complaints, as set forth in ¶63 (see *Estelle v. Gamble*, 429 U.S. 97, 104 [1976] [violation of 42 U.S.C. §1983 for correctional staff to be deliberately indifferent to an inmate's serious medical needs]). Judge Jones gains nothing by lying about his not seeing the full extent of Ms. D[redacted]' injuries and, to the extent that the Referee found to the contrary, we object.

¶¶59-62. In these proposed findings, the Referee discusses the issue of Ms. D[redacted]' bail. The Referee correctly notes that the assigned Assistant District Attorney recommended bail in the amount of $3,000 cash, $6,000 bond and $12,000 partially secured bond. The Assistant Public Defender sought lower bail in the amount of $1,000 cash, $2,000 bond and $4,000 partially secured bond. Judge Jones accepted the Assistant District Attorney's recommendation.

Had Commission Counsel not argued that Judge Jones "saddled Ms. D[redacted] with high bail" (see Memorandum of Commission Counsel, p.28[B]) we would have been content not to comment upon such proposed findings. However, given Commission Counsel's attempt to

[10] In this case, the entry of a plea was a mere formality, since a plea of guilty to the felony with which Ms. D[redacted] was charged would not have been permissible in a local criminal court such as Judge Jones'.

interject the question of the propriety of Judge Jones' bail determination into these proceedings, we are compelled to object to the Referee's proposed findings to the extent that he omitted certain uncontroverted facts from his Report.

What is "high bail" is, absent a judicial determination, a matter of opinion. Ms. D[redacted], her counsel and Commission Counsel may very well have the opinion that her bail was "high", but that does not make it so. From a purely legal standpoint, until such time as Judge Jones' bail determination is reversed as excessive by a higher court[11], it is the determination of the Court and is presumptively appropriate. The Commission's attempt to portray Judge Jones as a racist because he set "high bail" is absurd. The Commission's own witnesses testified that they never observed Judge Jones discriminate against a defendant on the basis of race. It must also be recalled that that Judge Jones did not make his bail determination in a vacuum; he was simply concurring in the bail recommendation of the District Attorney's Office, a practice which the Commission's own witness, who was Ms. D[redacted]' attorney at the time, conceded was the rule rather than the exception (Tr.119). Thus, given Commission Counsel's unsupported "saddled with high bail" comment, we object to the extent that the Referee omitted from his proposed findings that Ms. D[redacted]' bail was not excessive, that there was no evidence that it was ever modified by a higher court, that Judge Jones' acceptance of the District Attorney's recommendation was not atypical and was not influenced by Ms. D[redacted]' race.

[11] There is no proof in the record that Ms. D[redacted]' bail was ever lowered by a higher court.

CONCLUSION

As stated in our prefatory remarks, we concede that Judge Jones uttered the N-word, although we contend that he did it on one occasion only and in a conversational tone unheard by anyone other than Ms. Bartolotta and Ms. Valenti. We also concede that Judge Jones made the on the record comments attributed to him after the arraignment in the *D*[redacted] case. Nevertheless, based upon the foregoing, and to the extent specified herein, we object to the Referee's Proposed Findings of Fact.

Dated: January 15, 2025

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