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COURT OF APPEALS  
STATE OF NEW YORK

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MATTER OF  
THE HON. ALAN M. SIMON,  
  
Appellant.

No. 135

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20 Eagle Street  
Albany, New York 12207  
September 07, 2016

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA

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Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Number 135, Matter of  
2 the Honorable Alan M. Simon.

3 MR. MANDELKER: Good afternoon, Your Honor.  
4 May it please the court. My name is Lawrence  
5 Mandelker, I represent the petitioner. May I  
6 introduced my colleague, Erik Mass, who is in this  
7 courtroom and before the court for the first and I  
8 hope of many times - - -

9 JUDGE PIGOTT: Um-hum.

10 MR. MANDELKER: - - - in the future.

11 CHIEF JUDGE DIFIORE: As do we.

12 MR. MANDELKER: I'd like to reserve one  
13 minute.

14 CHIEF JUDGE DIFIORE: Certainly.

15 MR. MANDELKER: Our judicial system is  
16 bottomed on the public's respect for the judiciary as  
17 a whole, and its perception of each judge's ability  
18 to serve as an impartial arbiter. And that's why a  
19 higher standard of conduct is required from a judge  
20 than from a non-judicial officer.

21 Even one instance of certain types of judicial  
22 misconduct - - - fixing a case, trampling on the  
23 litigant's fundamental rights, racial prejudice, bias,  
24 favoritism, self-dealing; so prejudiced the public's  
25 perception of the judge's ability to serve as an impartial

1 arbiter, that they result in a - - - in an irretrievable  
2 loss of public confidence in a judge's ability to carry  
3 out his or her judicial responsibilities.

4 CHIEF JUDGE DIFIORE: Counsel, did your  
5 client concede the conduct in the findings - - -

6 MR. MANDELKER: Yes.

7 CHIEF JUDGE DIFIORE: - - - from the  
8 report?

9 And talk to us about how that goes toward  
10 respect for the - - - building respect and confidence - -  
11 -

12 MR. MANDELKER: So - - -

13 CHIEF JUDGE DIFIORE: - - - in the judicial  
14 system.

15 MR. MANDELKER: - - - that's exactly where  
16 I am.

17 CHIEF JUDGE DIFIORE: Yes, please.  
18 Specifically.

19 MR. MANDELKER: Judge Simon's conduct vis-  
20 a-vis the intern, Maxary Joseph, was unacceptable and  
21 requires the imposition of a public censure, but not  
22 removal; here is why. One, it was not motivated by  
23 bias, favoritism, prejudice, self-dealing, or  
24 corruption.

25 JUDGE STEIN: What does that have to do

1 with public perception?

2 MR. MANDELKER: Because those are the  
3 things if - - - Your Honor, if you look at the cases  
4 where removal has been approved by this court, has  
5 been ordered below, approved by this court, they all  
6 involved the type of things that I talked about.  
7 Self-dealing, bias, favoritism, that irretrievably  
8 broke the public's confidence in an ability to get a  
9 fair trial, should they bring a litigation before  
10 that judge or before the judiciary as a whole.

11 JUDGE FAHEY: Well - - -

12 CHIEF JUDGE DIFIORE: Were there findings  
13 that - - - that Judge Simon testified falsely?

14 MR. MANDELKER: There - - - there were  
15 findings, there were findings, and that is certainly  
16 an aggravating factor; I wouldn't tell you that it's  
17 not an aggravating factor. But if you look at the  
18 record as a whole, that his misconduct, particularly  
19 for Maxary Joseph, I'm separating out - - -

20 JUDGE RIVERA: Well, why - - -

21 MR. MANDELKER: - - - Maxary Joseph - - -

22 JUDGE RIVERA: - - - why does the - - -

23 MR. MANDELKER: - - - from the rest.

24 JUDGE RIVERA: Excuse me. Why does it  
25 reference to a public official as part of the Haitian

1 Mafia suggest some type of bias that - - - that the  
2 public might worry will infect the judge's conduct -  
3 - -

4 MR. MANDELKER: Well, first of all - - -

5 JUDGE RIVERA: - - - in his official  
6 capacity?

7 MR. MANDELKER: Yes, Your Honor. First of  
8 all, that was not the theory under which the  
9 Commission brought - - -

10 JUDGE RIVERA: I'm asking you. They  
11 certainly referred to it and found that he had said  
12 this, so I'm asking you.

13 MR. MANDELKER: The answer is, if you look  
14 at his reelection as a village justice, when he got  
15 fifty percent of the vote in a three-person race, his  
16 elec - - - reelection as a town justice where he got  
17 ninety-nine percent of the vote, seventy percent of  
18 the village of Spring Valley, his appointment as an  
19 acting lead justice - - -

20 JUDGE RIVERA: If - - - if a judge refers  
21 to a particular group based on ethnicity or national  
22 origin as part of a corrupt enterprise, do you think  
23 that somehow makes the public suspect that they  
24 harbor a bias?

25 MR. MANDELKER: I think that the public

1           could.

2                         JUDGE RIVERA:   Um-hum.

3                         MR. MANDELKER:   But it is weighed against  
4           what happened to the public in this case.

5                         JUDGE ABDUS-SALAAM:   Counsel, could you go  
6           - - -

7                         MR. MANDELKER:   And that's what you have to  
8           balance.   Sorry, Judge.

9                         JUDGE ABDUS-SALAAM:   Could you go back to -  
10          - - you mentioned you look at the record as a whole,  
11          but you then start - - - you separate what happened  
12          with the intern, Mr. Joseph, from the rest of the  
13          conduct that the Commission looked at and made a  
14          determination about.   Why?

15                        MR. MANDELKER:   Because my argument is  
16          slightly different between - - - between the two.  
17          Because I think that the incident with Mr. Joseph,  
18          the Commission argued, Commission counsel argued  
19          before the Commission that that incident in and of  
20          itself should have been insufficient to justify his  
21          removal.   So that's why I want to address that  
22          separately, and then address - - - address everything  
23          as a whole.   And that's - - - that's the reason.

24                        JUDGE FAHEY:   I think what you mean it was  
25          sufficient to remove him as a whole; isn't that what



1 just - - -

2 MR. MANDELKER: Yes.

3 JUDGE FAHEY: - - - to get to the point.

4 Anyway, the point being is that, is it fair to say  
5 the only reason no one was put in jail here during a  
6 series of outbursts and a series of people being held  
7 in contempt is because the sheriffs or the court  
8 officers refused to execute those orders?

9 MR. MANDELKER: I'm not sure of that. I'm  
10 not sure about that, Your Honor. In Restaino - - -

11 JUDGE FAHEY: I count at least six  
12 different times that people were threatened with  
13 contempt.

14 MR. MANDELKER: Yes, Your Honor, but in  
15 Restaino, on the bench conduct, rights of litigants -  
16 - -

17 JUDGE FAHEY: I think you may be right.  
18 Restaino may be worse - - -

19 MR. MANDELKER: Correct.

20 JUDGE FAHEY: - - - than what we saw here -  
21 - -

22 MR. MANDELKER: And here - - -

23 JUDGE FAHEY: But - - - let me finish.

24 MR. MANDELKER: Yes, sir.

25 JUDGE FAHEY: But Restaino was one

1 incidence, and that judge unfortunately was - - - had  
2 to be removed. This involves a series of interests  
3 and incidents, and a pattern of behavior over time.  
4 While there wasn't anyone incarcerated, it's kind of  
5 a situation of, there but for the grace of God, and  
6 because the officers wouldn't obey the orders, and in  
7 Niagara Falls they did.

8 MR. MANDELKER: Except for one thing, Your  
9 Honor.

10 JUDGE FAHEY: Um-hum.

11 MR. MANDELKER: The pattern stopped.

12 JUDGE FAHEY: Um-hum.

13 MR. MANDELKER: The pattern stopped spring  
14 of 2014.

15 JUDGE STEIN: How do we know it won't start  
16 again if something triggers his feeling of, you know,  
17 of things not being done well or people being crooked  
18 or whatever his personal thoughts may be?

19 MR. MANDELKER: If - - - if Your Honor will  
20 just bear with me, I don't like to answer a question  
21 by asking a question - - -

22 JUDGE PIGOTT: Um-hum.

23 MR. MANDELKER: - - - but I have to ask a  
24 question to make the point of my answer.

25 Let's assume he served in Ramapo, no problem,

1 the whole time. He served two years in Spring Valley  
2 after the last incident, no charges, no nothing. So the  
3 question is, if there were new charges against him  
4 subsequent to early 2014, he would be presumed innocent  
5 and he would have - - - and the Commission would have had  
6 the burden of proof to overcome his presumption of  
7 innocence.

8 The fact that there were no charges against him  
9 from early spring 2014 until his suspension in Spring  
10 Valley, the fact that there were no charges proffered  
11 against him ever in Ramapo, the fact that there were no  
12 charges ever proffered against him ever in Suffern - - -

13 JUDGE STEIN: Well, maybe he thought  
14 everybody there was competent and he didn't need to -  
15 - -

16 MR. MANDELKER: But Your Honor - - -

17 JUDGE STEIN: - - - his power.

18 MR. MANDELKER: - - - you're doing the same  
19 thing; you're presuming guilt instead of presuming  
20 innocence.

21 JUDGE STEIN: Well, no, I'm not presuming  
22 guilt; I'm saying that - - - that it is the job of  
23 the Commission and this court to protect the public  
24 and to uphold the dignity of the judicial office. So  
25 - - -

1 MR. MANDELKER: I'm sorry.

2 JUDGE STEIN: - - - as he - - - I mean, you  
3 talked about a balancing. Isn't that something that  
4 is appropriate for us to consider in balancing?

5 MR. MANDELKER: Yes, but what you had - - -  
6 these proceedings are different from all others  
7 because the judge is invited to address the  
8 Commission. And the reason for it is because the  
9 referee can't report on mitig - - - on penalty, only  
10 reports on guilt or innocence. And he pro - - - he  
11 said, what I did was wrong and I won't do it again.  
12 And rather than say, okay, do we take his word on it,  
13 you just have to look at his record.

14 JUDGE GARCIA: Well, he said, what I did  
15 was wrong, later, right? At first he said, I was  
16 empowering this person that he called the Haitian  
17 Mafia, and made excuses for his conduct, and then  
18 there seemed to be a point in these proceedings where  
19 he went with, what I did was wrong and I'll never do  
20 it again.

21 MR. MANDELKER: Yes, Your Honor. So I'm  
22 somewhat - - -

23 JUDGE GARCIA: Doesn't that go to the point  
24 of, well, maybe once these proceedings are over he'll  
25 do it again?

1 MR. MANDELKER: Well, Your Honor, I think  
2 that whether realization came to him early or late,  
3 it came to him. And it was buttressed by the fact  
4 that he didn't do anything wrong in Ramapo, he didn't  
5 do anything wrong in - - -

6 JUDGE RIVERA: But - - - but if there are  
7 findings of - - -

8 MR. MANDELKER: I'm sorry, Your Honor.

9 JUDGE RIVERA: But if there are findings of  
10 false testimony, doesn't that cut against the  
11 credibility?

12 MR. MANDELKER: The answer is, yes, the  
13 Commission could - - - can take into account the  
14 false testimony. You have to look at the nature of  
15 the false testimony. I think one of it was he said  
16 he didn't touch Mr. Joseph, or maybe he just touched  
17 him on the elbow, and there was other testimony that  
18 he may have pulled him from the chair or put his arm  
19 on - - - on him.

20 And so that's one falsity. Is that  
21 material, not material? I don't know. A finder of  
22 fact will decide that. And the other was whether he  
23 had threatened a Mr. Deere - - -

24 CHIEF JUDGE DIFIORE: Dispensing mercy, are  
25 we, to parse what is somewhat false, not false, to

1 your point?

2 MR. MANDELKER: Now, what I'm saying is,  
3 you look at the nature of what happened, that all of  
4 it was motivated by tremendously, tremendously  
5 improper judgment, improper judgment. No finality  
6 here. He was trying to protect - - - in his opinion,  
7 he thought the mayor was venal, that she was corrupt,  
8 and she was trying to undermine the integrity and  
9 independence of the court, and he was trying to  
10 protect it.

11 And then later on, with the others, he was  
12 trying to - - - he used an interesting word, and they  
13 asked me - - - the Commissioner asked me about it at oral  
14 argument, empower his staff, to act professionally, not to  
15 be - - -

16 JUDGE RIVERA: It's certainly possible to  
17 look at his conduct and not draw that conclusion; do  
18 you agree with that?

19 MR. MANDELKER: No, Your Honor, I don't.

20 JUDGE RIVERA: There's no other way to see  
21 or to interpret this conduct?

22 MR. MANDELKER: I'm biased, so I don't  
23 interpret the conduct that way.

24 JUDGE ABDUS-SALAAM: But what was he doing,  
25 Mr. Mandelker, with the tenant who had hired legal

1 services or gotten legal services to help him, and  
2 then Judge Simon decides that they're not helping  
3 him, and removes them from his case without even  
4 giving them the opportunity to say anything about  
5 that or the tenant?

6 MR. MANDELKER: I have a problem with the  
7 premise of your question, Your Honor, with due  
8 respect, because - - -

9 JUDGE ABDUS-SALAAM: You disagree that  
10 that's what he did?

11 MR. MANDELKER: I disagree that they were  
12 representing the tenant.

13 JUDGE ABDUS-SALAAM: All right. No, I said  
14 help him; I changed that.

15 MR. MANDELKER: Because - - -

16 JUDGE ABDUS-SALAAM: I understand that they  
17 didn't formally represent him.

18 MR. MANDELKER: Right.

19 JUDGE ABDUS-SALAAM: But he - - - but Judge  
20 Simon concluded that they did, and ordered them into  
21 court with - - - on very little notice, and then  
22 acted as if they were representing him, and removed  
23 them from his case.

24 MR. MANDELKER: Right. And appointed  
25 someone else, and this tenant, who had been

1           improperly locked out of his residence, and was  
2           living on the street, homeless, was now restored back  
3           to his premises because Judge Simon had an attorney  
4           there who said, okay, I am representing this person,  
5           and I could put - - - we could do the relief that the  
6           court was issuing.

7                         Rather than undermine or trample on Mr. Scott's  
8           (sic throughout) rights, he was responsible; he, Judge  
9           Simon, was responsible for a quick adjudication of that  
10          proceeding so that Mr. Scott was able to be back in his  
11          premises and off the street.

12                        JUDGE ABDUS-SALAAM: Well - - -

13                        MR. MANDELKER: Now, does that excuse the  
14          fact that he spoke rudely to the attorney? No.

15                        JUDGE ABDUS-SALAAM: Well, had Mr. Scott  
16          chosen that legal services office to represent him,  
17          then Judge Simon undermined his ability to choose his  
18          counsel. Is that something - - -

19                        MR. MANDELKER: But they weren't his  
20          counsel. That's - - -

21                        JUDGE ABDUS-SALAAM: If - - - if - - - I  
22          said if he had chosen - - -

23                        MR. MANDELKER: But he didn't.

24                        JUDGE ABDUS-SALAAM: - - - them to  
25          represent him.

1 MR. MANDELKER: He didn't. They - - - they  
2 said, we don't represent him, we don't represent him.  
3 Nothing - - - none of the papers that we've signed  
4 should be construed to mean that we represent this  
5 gentleman. That's what they said.

6 JUDGE ABDUS-SALAAM: Well, there are  
7 different forms of representation. There is limited  
8 scope, there is full representation; there are all  
9 kinds of help that people get who don't have a full -  
10 - -

11 MR. MANDELKER: I don't want to be - - -

12 JUDGE ABDUS-SALAAM: - - - representation  
13 from lawyers.

14 MR. MANDELKER: I don't want to be flip,  
15 but I think it's like being pregnant. You either  
16 representing somebody or you're not representing  
17 somebody.

18 JUDGE FAHEY: Is it correct that he fined  
19 her 2,500 - - - fined him 2,500 dollars?

20 MR. MANDELKER: He fined the legal services  
21 2,500 - - -

22 JUDGE FAHEY: Hudson Valley Legal Services  
23 were fined 2,500 dollars - - -

24 MR. MANDELKER: Yes, sir, and then he - - -

25 JUDGE FAHEY: - - - let me finish. Did the

1 judge have the authority to do that?

2 MR. MANDELKER: No.

3 JUDGE FAHEY: Okay.

4 MR. MANDELKER: But, Your Honor - - -

5 JUDGE FAHEY: Go ahead.

6 MR. MANDELKER: - - - if the remedy for a  
7 judge making a mistake of law or a mistake of fact is  
8 discipline and not appeal, then we're in a different  
9 judicial system that I - - - that I know of.

10 I'm not telling you that what he did was correct  
11 in terms of fining them, but they had a remedy, and they  
12 availed themselves of the remedy, and as I understand the  
13 record just before the submission of the Article 78, I  
14 guess it was in the nature of prohibition, he remitted the  
15 fine.

16 CHIEF JUDGE DIFIORE: Thank you, Mr. Mandel  
17 (sic).

18 MR. MANDELKER: Thank you, Your Honor.

19 CHIEF JUDGE DIFIORE: Counsel.

20 MR. LINDNER: Good afternoon, Your Honors.

21 Edward Lindner for the Commission. May it  
22 please the court.

23 JUDGE PIGOTT: Mr. Lindner, what's our  
24 standard of review?

25 MR. LINDNER: Plenary.

1 JUDGE PIGOTT: We could - - - we can look  
2 at this as if it was brand new in front of us.

3 MR. LINDNER: You can.

4 I think the crux of the matter, and what you  
5 should look at, is that this petitioner just lacks  
6 judicial temperament.

7 JUDGE FAHEY: I didn't hear that; I'm  
8 sorry. Say it again.

9 MR. LINDNER: Lacks the judicial  
10 temperament. In the six charges that sustained by  
11 the Commission, you see a judge who is repeatedly  
12 angry, he's impulsive, and he's willing to use his  
13 judicial power in the most petty and vindictive ways.

14 JUDGE PIGOTT: Mr. Mandelker's argument, as  
15 I understand it, is he is willing to fall on his  
16 sword and concede all of that that happened, but he  
17 said, that was four years ago in one place and two  
18 years ago in another. Therefore, it's the penalty  
19 that it's the question.

20 MR. LINDNER: Yes.

21 JUDGE PIGOTT: Is that where we are?

22 MR. LINDNER: He thinks is not so bad. The  
23 Commission disagrees.

24 JUDGE PIGOTT: He's gotten better. He's -  
25 - -

1 MR. LINDNER: Not so bad. Not so bad - - -

2 JUDGE PIGOTT: - - - in the light.

3 MR. LINDNER: - - - that people lived in  
4 terror that they were going to be put in jail, not so  
5 bad that a college student just trying to do a summer  
6 internship, so that he could have something on his  
7 resume is sitting there for two hours thinking that  
8 the judge is going to deprive him of his liberty.

9 JUDGE RIVERA: What distinguishes this case  
10 and - - - and requires removal as opposed to censure?  
11 Because that's what this is boiling down to. Or at  
12 least - - -

13 MR. LINDNER: Right.

14 JUDGE RIVERA: - - - that's his argument.

15 MR. LINDNER: Well I - - -

16 JUDGE RIVERA: What - - - what's the  
17 decision here?

18 MR. LINDNER: - - - I have to take issue a  
19 little bit with what Judge Fahey said, because I do  
20 think that as far as the Max Joseph incident goes,  
21 Restaino is the appropriate case. But I think, by  
22 almost every measure, this case is worse.

23 It's true that in Restaino fourteen people  
24 went to jail and that no one went to jail here, but  
25 as the judge pointed out, that's only because the

1 police, the sheriff's department, and a court officer  
2 refused to carry out the judge's directive.

3 And I would stop and think about that for a  
4 minute. The court officer refused to carry out a judicial  
5 directive. Two law enforcement agencies refused to carry  
6 out that directive. You can look at forty years of  
7 Commission cases, and I will tell you that we have never  
8 seen that. It's unprecedented the level of disrespect - -  
9 -

10 JUDGE FAHEY: Well, let me ask you this.  
11 Let's - - - he's admitted the miss - - - the  
12 misconduct. And the misconduct involves a series of  
13 actions that can fairly be characterized at a minimum  
14 as erratic, and maybe - - - maybe is lacking judicial  
15 temperament. In mitigation, was there any medical  
16 evidence offered at all?

17 MR. LINDNER: There was nothing during the  
18 hearing. There was one question asked when he made a  
19 statement before the Commission - - -

20 JUDGE FAHEY: Um-hum.

21 MR. LINDNER: - - - and he said that under  
22 the advice of his counsel, he'd begun seeing a mental  
23 health counselor apparently, about a month before the  
24 oral argument in front of the Commission.

25 And that's unlike Restaino. I mean, there's a

1 lot in Restaino that is neared here. There was a lot of  
2 mitigation in Restaino.

3 JUDGE FAHEY: Um-hum.

4 MR. LINDNER: There was medical testimony  
5 there that the judge had these psychological  
6 stressors, which the judge had taken concrete steps -  
7 - -

8 JUDGE FAHEY: Well, the judge - - - the job  
9 can be a hard job, and we understand that. What I'm  
10 wondering about is sometimes with the age of the  
11 petitioner, there may be different conditions that  
12 wouldn't be - - -

13 MR. LINDNER: There's no testimony - - -

14 JUDGE FAHEY: - - - a problem for us.

15 MR. LINDNER: - - - there's no evidence as  
16 to that - - -

17 JUDGE FAHEY: Thank you.

18 MR. LINDNER: - - - other than - - -

19 CHIEF JUDGE DIFIORE: Should it make a  
20 difference, counsel, in this - - - in our  
21 determination of the appropriate sanction that most  
22 of the conduct, to my reading here, took place off  
23 the bench and within the confines - - -

24 MR. LINDNER: That's correct.

25 CHIEF JUDGE DIFIORE: - - - of the court

1 chambers or the court offices?

2 MR. LINDNER: That's correct. But the  
3 rules require a judge to be patient, dignified, and  
4 courteous to everyone that he or she deals with in an  
5 official capacity. And throughout this case, you see  
6 him dealing in an official capacity, running the  
7 courtroom in a way that's far from patient,  
8 dignified, or courteous. It clearly was a violation  
9 of the rules.

10 If I can get back to Restaino because there are  
11 a couple of points I want to make. In Restaino, I argued  
12 that case, that conduct there was clearly bad. But it  
13 really was a single instance. It was two hours of  
14 inexplicable madness, as one Commission member called it.  
15 And that's all.

16 There were no five other charges in that case.  
17 The judge's - - - his rulings in that case were crazy, but  
18 he wasn't undignified, he wasn't screaming, he wasn't  
19 yelling obscenities about the mayor. He didn't come down  
20 from the bench, and grab a college student by the arm, and  
21 try to pull him out of his chair.

22 Does every - - - and every way that you look at  
23 this, this case is just really worse than that. And the  
24 only difference in Restaino that could possibly inure to  
25 his benefit is the fact that the judge there sent people

1 to jail.

2 And I'd ask you, if in Restaino, the judge had  
3 ordered these people to jail and the court officers had  
4 taken them out into the hallway and then simply released  
5 them, would anyone seriously be arguing that it wasn't so  
6 bad that he sent all those people to jail?

7 You focus on the judge's conduct and you have  
8 everything that you have in Restaino, and then you've got  
9 five other charges, complete lack of contrition, two  
10 instances of false testimony; this is just worse than  
11 Restaino on every - - - on every count.

12 And then there's the - - - the Malcolm Curtis  
13 matter. I believe counsel referred to it as Mr. Scott,  
14 but it was Mr. Curtis. It's really - - - you know,  
15 there's an example almost of everything that you don't  
16 want to see a judge doing in that one charge. You start  
17 with profound ignorance of the law, both as to poor-person  
18 status, and to attorney statute.

19 We have a judge who is making a decision not to  
20 sign a poor-person relief based on out of court rumors,  
21 completely unsubstantiated, that the tenant is a drug  
22 dealer.

23 You have denial of due process, taking away his  
24 attorney without allowing the attorney to speak, without  
25 allowing him to speak. And you have all of that wrapped

1 in what the legal services attorney testified was a rude  
2 and nasty tone. It really is a microcosm. If we didn't  
3 have charge 1, I might be arguing that charge 2 by itself  
4 was sufficient to justify his removal.

5 I also just like to briefly address the notion  
6 that somehow the judge was motivated in the - - - the  
7 Curtis matter to get this poor individual back into his  
8 apartment. I'll just note that when Mr. Curtis showed up  
9 on the 26th with an order to show cause, the judge refused  
10 to sign it based on this notion that he was a drug dealer.  
11 When he finally did sign it, he made it returnable for the  
12 following week, which is hardly evidence that the judge  
13 was interested in getting him into his apartment that day.

14 JUDGE STEIN: Isn't that the problem, that  
15 his conduct seems to be motivated by his personal  
16 views of those around him?

17 MR. LINDNER: But there's a lot of anger in  
18 this case. He just is a - - - he's just a petty  
19 tyrant, and he's throwing around these threats of  
20 contempt. And I think you see that in Curtis,  
21 because it's only after - - -

22 JUDGE STEIN: But why doesn't that exhibit  
23 itself in any of the other courts?

24 MR. LINDNER: All I can say is, Your Honor,  
25 we don't have any complaints; we have nothing in the

1 record. But the absence of evidence isn't always  
2 evidence of absence.

3 JUDGE FAHEY: How does that - - - how does  
4 a county executive raised charge - - - I think it was  
5 charge 5 - - -

6 MR. LINDNER: Yes.

7 JUDGE FAHEY: - - - could compare with  
8 these other charges?

9 MR. LINDNER: It's a serious breach of the  
10 rules prohibiting judges from engaging in political  
11 conduct. You know, you have here a judge - - - and  
12 first, there's a bit of anger in this charge as well,  
13 because he and Judge Fried were friends originally,  
14 back in 2009, and they clearly had a falling out. In  
15 2012, Judge Fried was involved in the Maxary Joseph  
16 incident. Now, it's the following year. Judge Fried  
17 is off the bench, and he's running for county  
18 executive against Mr. Day.

19 And there is an issue in the case as to how the  
20 county is going to deal with substandard housing. And Mr.  
21 Day is making the claim that the Judge Fried, then Mr.  
22 Fried, you know, wasn't tough enough on slumlords. And he  
23 gets him information about this, and he calls up the  
24 petitioner who happily tells him the story about how they  
25 went together, and they looked at this office space, and

1 the petitioner, our hero, tells him, we can't take this  
2 space because this man is a slumlord, and he has cases in  
3 front of the court.

4 Mr. Day says, this is really explosive  
5 information; this is what exactly he needs. He asked for  
6 permission to use the judge's name and to quote him in  
7 this political campaign, which he does. Mr. Day calls him  
8 back a second time and he reads him the statement. He's  
9 had time to think about this, but he's happy to put - - -

10 JUDGE ABDUS-SALAAM: If these were the only  
11 - - - if that were the only charge - - -

12 MR. LINDNER: Censure.

13 JUDGE ABDUS-SALAAM: - - - would we be  
14 looking at - - -

15 MR. LINDNER: Censure.

16 JUDGE ABDUS-SALAAM: - - - we would be  
17 looking at censure.

18 MR. LINDNER: It's a serious censure, it's  
19 in the neighborhood of Matter of Rob (ph.). I  
20 shouldn't say that so - - - so quickly, because I  
21 don't know if we developed that what the Commission  
22 would say, but it doesn't seem to me that it's quite  
23 at the level.

24 JUDGE ABDUS-SALAAM: Well, if we were  
25 looking at that and the Mr. Joseph incident, would we

1 still be talking censure - - -

2 MR. LINDNER: Absolutely.

3 JUDGE ABDUS-SALAAM: - - - or would we be  
4 talking something else?

5 MR. LINDNER: Max Joseph, by itself, when  
6 you look at Restaino and all the mitigating factors  
7 that were there, all of the arguments that - - - that  
8 he's making now, even if you believe them, were made  
9 in Restaino and they weren't enough.

10 I'll just end by saying, in Matter of Bauer, you  
11 said sometimes contrition is insincere, and sometimes no  
12 amount of it is enough. And that's exactly this case.  
13 We've laid it out in our brief and there's every reason  
14 for the Commission to have had doubts about the sincerity  
15 of this eleventh hour epiphany, this contrition.

16 All through the hearing, his initial brief to  
17 the Commission, he's insisting, even in his first brief to  
18 the Commission, that the Max Joseph incident was the fault  
19 of the clerks who were antagonistic against him. It's  
20 only when present counsel is hired that he suddenly  
21 changes his tone and he's filled with remorse.

22 And if you look - - -

23 JUDGE RIVERA: That - - - is it that he can  
24 never regain public confidence, because that's why  
25 he's showing - - -

1 MR. LINDNER: That's what you said in  
2 Restaino - - -

3 JUDGE RIVERA: - - - those election  
4 results, right?

5 MR. LINDNER: - - - and I think that's  
6 true.

7 JUDGE RIVERA: Um-hum.

8 MR. LINDNER: I think when you get to the  
9 point where law enforcement is refusing to carry out  
10 a directive from the judge, the public confidence in  
11 his ability to do the job is broken.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 MR. LINDNER: Thank you, Your Honor.

14 CHIEF JUDGE DIFIORE: Mr. Mandelker.

15 MR. MANDELKER: Another way of looking at  
16 it is that they were trying to protect the judge from  
17 getting into even more trouble.

18 The incident with the tenant, my friend said  
19 that the order to show cause was returnable a week later,  
20 but Judge Simon advanced it so that it was returnable the  
21 very next day. And he brought the landlord in, the  
22 correct landlord, so that relief could be awarded that  
23 very same day.

24 JUDGE FAHEY: You know what, Mr. Mandelker,  
25 on that - - - what strikes me about it is, it does

1           seem that the representation, or help that was being  
2           given to Mr. Curtis was incompetent or inadequate.  
3           And so - - - but a judge in city court or town court  
4           deals with that all the time. And so we're talking  
5           here about temperament, not about - - - not about a  
6           mistake of the law.

7                       MR. MANDELKER: Right.

8                       JUDGE FAHEY: And I think you're right  
9           about that. That part of it is - - - it's not the  
10          mistake of law that really matters here; it's about  
11          the temperament and how it was handled.

12                      MR. MANDELKER: Correct. And if you - - -  
13          if you are balancing the fact that he "removed the  
14          attorney" versus the fact that it was so that he  
15          could provide the ultimate merits relief to the  
16          litigant, I think that is something that's important.  
17          But - - -

18                      JUDGE ABDUS-SALAAM: That was only after he  
19          determined that he liked the tenant after all. That  
20          the rumors that he'd heard, which allegedly caused  
21          him not to sign the order to show cause, were untrue.

22                      MR. MANDELKER: Don't we want judges to be  
23          able to take in information as it comes and act on  
24          the information rather than be closeminded?

25                      JUDGE RIVERA: Well, the point - - -

1 JUDGE ABDUS-SALAAM: The point - - -

2 JUDGE RIVERA: I think the point is - - -

3 JUDGE ABDUS-SALAAM: The point, Mr.

4 Mandelker - - -

5 JUDGE RIVERA: - - - you don't want to  
6 start with from biased.

7 JUDGE ABDUS-SALAAM: - - - is that he was -  
8 - -

9 MR. MANDELKER: I - - - I underst - - -

10 JUDGE ABDUS-SALAAM: - - - closeminded to  
11 begin with.

12 MR. MANDELKER: But - - - but - - -

13 JUDGE RIVERA: Or from biased to begin  
14 with.

15 JUDGE ABDUS-SALAAM: Yeah.

16 MR. MANDELKER: Well, I - - - I don't think  
17 there was the bias there, because he went out of his  
18 way to get relief to this tenant. Out of his way to  
19 make sure that this tenant - - -

20 JUDGE RIVERA: You mean after he set a date  
21 a week into the future with ins - - - which looks  
22 like it insured that this person would be on the  
23 streets for week?

24 MR. MANDELKER: And then advanced it within  
25 a few hours, advanced it within a few hours. The

1 first thing he did, brought the man in, gave him  
2 poor-person status; that's what he did.

3 Last point that I'd like to make. My friend  
4 said, the absence of complaint doesn't mean anything, but  
5 that's not what this court said in Watson. In Watson, one  
6 of the things you relied on in reducing the penalty from  
7 removal to censure was the fact that for two years Judge  
8 Watson had served on the bench, no complaints, no problems  
9 with him.

10 I think it's very easy to say let's ignore the  
11 reality that Judge Simon has served five or six years in  
12 Ramapo never with a complaint that he was selected to  
13 serve in Suffern by the administrative judge in the Ninth  
14 District, and that he was reelected in Spring Valley.  
15 Fifty percent of the voters - - - it's a small - - - it's  
16 a small village. If he was so out of control, and so  
17 biased, and all the rest, and the public had no confidence  
18 in him, how would they have elected - - - reelected him,  
19 fifty percent of the vote, three-person race, no further  
20 complaints.

21 We ask the court to exercise its powers of  
22 review. It's plenary. This is the - - - one of the times  
23 when the judicial disciplinary process may have worked  
24 because you've gotten a change of conduct. That's the  
25 important thing here. There's a change of conduct. And

1           isn't that really - - - we're not after punishment; we're  
2           after a change of conduct.

3                        So on a going forward basis, the public will be  
4           served, and the public will have confidence, and that's  
5           what you have here.   And the - - -

6                        CHIEF JUDGE DIFIORE:   Thank you, Mr.  
7           Mandelker.

8                        MR. MANDELKER:   Thank you.

9                        (Court is adjourned)

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

I, Meir Sabbah, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of the Hon. Alan M. Simon, No. 135 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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