STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding pursuant to Section 44, Subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

Judge of the County and Surrogates Court and Acting Judge of the Family Court and an Acting Justice of the Supreme Court Sullivan County.

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61 Broadway
New York, New York

May 6, 2019
10:07 a.m.

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

JUDGE MICHAEL F. MCGUIRE
Pro Se

Also Present:

MICHAEL MAISONET
Senior Court Clerk and FTR Operator

INDEX OF WITNESSES

For the Commission

	Direct	Cross	Redirect	Recross
Nicholas Stanton	79	83	X	X
Guillermo Olivieri	94	164	X	X

MR. MAISONET: On the record.

THE REFEREE: Good morning, everyone. Today is May 6, 2019. This is a hearing in the Matter of Michael F. McGuire, a Judge of the County and Surrogates Court and Acting Judge of the Family Court and an Acting Justice of the Supreme Court Sullivan County, pursuant to Section 44, Subdivision 4 of the Judiciary Law. My name is Mark Arisohn and pursuant to an order of the Commission dated November 15, 2018, I have been appointed by the Commission on Judicial Conduct to referee and hear -- to hear and report proposed findings of fact and conclusions of law.

I will now take the appearances of counsel and the parties.

MS. TISHMAN: Pamela Tishman, Principal Attorney of the New York State Commission on Judicial Conduct.

MR. LEVINE: Mark Levine on behalf of the Commission.

JUDGE MCGUIRE: Mike McGuire, lead counsel for respondent.

THE REFEREE: Appearing pro se?

JUDGE MCGUIRE: Right now, yes.

THE REFEREE: A court reporter, who will transcribe the proceedings is present. In addition, these proceedings are also being digitally recorded by Mike Maisonet. Both the court reporter and the person operating the digital recorder will go on the record and off the record at my direction. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment.

Commission Investigator Christina Partida will keep a running list of exhibits, which will be provided to the transcriber for inclusion in the appendix to the transcript. Commission

counsel will use numbers, respondent's exhibits will be marked with letters. It is my function to indicate clearly for the record whether or not each exhibit has been received into evidence. The investigator will mark the stickers on the exhibits with a notation indicating the exhibit was received in evidence. At the conclusion of the hearing, the original exhibits will be forwarded to the clerk of the Commission. The stenographer will provide a transcript to Commission staff. In addition, as a backup, the audio recording will be available to Commission administrative staff. When the transcripts are prepared, they will be distributed with copies of the admitted exhibits to counsel for respondent -- or in this case respondent -- Commission Counsel and me. At the end of the hearing we will discuss a schedule for submitting briefs with proposed findings of fact and conclusions of law.

The rules of evidence applicable to a non-jury trial will apply. I will administer an oath to each witness.

And then I'm required to ask, are there any preliminary matters we need to discuss before we start and I have one, but does anyone else have any preliminary matters?

JUDGE MCGUIRE: Just before we get started, I was making an inquiry and I think I could probably do it with Counsel rather than doing it on the record about a couple of the documents that were shared in discovery.

THE REFEREE: Okay.

JUDGE MCGUIRE: So in those -- amongst those documents are several pages of my personal notes and I would like to know how the Commission got those because the only way to get them would be a subpoena to me.

THE REFEREE: Well, as you said, why don't you discuss this with Commission Counsel off the record and if there's an issue we can take it up

at the time.

JUDGE MCGUIRE: Fine.

THE REFEREE: But what I want to discuss before we proceed is this simple point that, Judge McGuire, you're here today appearing pro se?

JUDGE MCGUIRE: Yes.

THE REFEREE: And I would just like your assurance for the record that you have carefully considered the risks that are present as a result of representing yourself?

JUDGE MCGUIRE: So I certainly am aware of that. I'm familiar with trials. The way we'll proceeding throughout the course of this is some of the witnesses I will have counsel with me, others I will not. It's basically a co-counsel type of a situation. And the reason for that is it just wasn't possible to find someone that could clear a calendar for an entire month.

THE REFEREE: But my question was a little different. My question is, as

somebody familiar with the judicial system, I am assuming that you are familiar also with the risks imposed by self-representation?

JUDGE MCGUIRE: Absolutely, I'm aware of that.

THE REFEREE: And you've carefully weighed those risks?

JUDGE MCGUIRE: I have.

THE REFEREE: And you have voluntarily and knowingly waived your right to counsel?

JUDGE MCGUIRE: Well, I haven't waived my right to counsel, but at this point now, I am proceeding pro se for today. That, for example, will change tomorrow when I have an attorney that will be here for the rest of it.

THE REFEREE: Well, that statement concerns me a little bit because you're proceeding pro se, which means, at least for today, you have waived your right to counsel?

JUDGE MCGUIRE: Correct.

THE REFEREE: And you've done

that knowingly and intelligently?

JUDGE MCGUIRE: Yes, sir.

THE REFEREE: Okay. Any other preliminary matters we need to take up?

Does either side wish to make an opening statement? And I will say that it's not required, but for my purposes I would appreciate it.

MS. TISHMAN: I was not going to make an opening statement.

THE REFEREE: Would you like to make an opening statement?

JUDGE MCGUIRE: I will make an opening statement.

THE REFEREE: Okay. Then we will proceed with that.

Judge McGuire, please proceed when you're ready.

JUDGE MCGUIRE: So this case will offer very little by way of factual dispute. The challenges for the factfinder will be in the reasonable inferences to be drawn from the proven facts.

We've heard the parable of the

person who goes to bed at night, it's not raining. Wakes up the next morning to see the street wet, the sidewalk wet, people wearing raincoats and carrying umbrellas. Under those circumstances it's certainly reasonable to infer that it rained overnight from the proven facts of the wet street, the umbrellas and the raincoat.

This case will be much more challenging when asked to infer from the proven facts that Judge McGuire lacks the judicial temperament necessary to effectively administer justice as to preside over cases in this State.

What you'll hear from the Commission's presentation, I suspect, that there's been six to nine courtroom events which included a judge raising their voice or their inflection of their voice in order to maintain order or emphasize a critical point of law or fact.

You will hear that Judge McGuire

has had some folks removed from the courtroom for brief periods because of their conduct and you'll hear that he had some excited exchanges with a couple of employees.

I suspect that the Commission will encourage their witnesses to emphasize their emotions. This case does not turn on emotion. The facts and inferences in this case cannot be tied to emotion. It must be viewed within the perspective that they occurred. Some 45,000 appearances presided over during the past eight and a half years, handling amongst the most emotionally charged cases known to the Unified Court System.

I've worked extremely close with well over 100 court employees and you'll likely hear from just a few who have taken exception to me. And that, the evidence will show comprises a *di minimis* percentage of the total time that I've even been engaged with those particular individuals.

You will hear from one court officer. I suspect the evidence will show that he was embarrassed on one day over and eight-and-a-half-year period related to a single interaction which lasted from between a mere matter of seconds to maybe a minute. As a result, I submit the evidence will show that that individual has maintained a vendetta against the judge, merely expected that officer to do his job and do it well.

The Commission's case, I suspect, will not allow you to hear from some 15 to 20 other court officers who look forward to working with Judge McGuire every day and look forward to every opportunity to interact with him.

Likewise you'll likely hear from a former secretary, who for four years worked for Judge McGuire, and never voiced a complaint to anyone. Never voiced concerns of the people closest to her about her treatment by the judge. Was never denied vacation time

or never denied an accommodation to tend to family or personal matters and who later would attempt to build, I submit the evidence will show, a baseless, contrived for litigation, illusion of Genghis Khan ruling over an organization of greed, corruption and abuse because of a single two to three-minute interaction in which the judge was experiencing the potential of a devastating loss of more than five years of work.

And the evidence will show that although the judge was distraught, even frantic, he did not address a crossword or comment to his confidential secretary, but merely went about in a frantic effort to recreate nearly eight hours of preparation for a busy calendar in about 20 minutes. And thereafter set his sights on determining whether or not any of the lost data could be retrieved.

The evidence will establish that the Judge, after being elected, set

about to shutdown a successful sole practice which required the transfer of hundreds of files. Contacting well over a 1,000 clients and wrapping up countless cases in a span of about six weeks while simultaneously preparing to take the bench.

The evidence will show that the Judge and his wife undertook this massive task and were largely successful, leaving a few, mostly ministerial acts, that were completed after January 1st of 2011. And even set forth within that shutdown, a plan to ensure that indigent clients who could not otherwise obtain assigned counsel, would continue to be represented by confident counsel for little or no money.

The wind-down plan allowed for former clients to be able to contact the former, now inactive firm, if they needed to obtain critical documents that by law the now inactive firm was required to retain. While at the same

time, minimizing anxiety by former clients and minimizing the need to have them contact Chambers to address prior law office issues.

The Commission, I submit, while asking you to infer that the Judge continued to practice law after becoming a judge will likely not point out that the Judge refused to attempt even to collect nearly $250,000 in accounts receivable that he had earned prior to January 1, 2011 because of the inescapable inherent conflict in having a sitting County Court Judge potentially suing former clients for money.

You will hear that the Judge represented his son in the City Court the Oneonta after the judge in Oneonta and a prosecutor declared that they did not follow certain clear and unequivocal provisions of New York Law because they didn't agree with them.

The evidence will show that after it became apparent that the Judge could

not hire local counsel in Oneonta or local counsel in Sullivan County, he was confronted really with two feasible options; allow his son, an honor student to go it alone and risk being put out of his dormitory and having his otherwise clean record marred by a drug conviction or his dad, as many parents would do, would render assistance to him. There's no dispute over those facts. The Judge has taken full responsibility for his role in representing his son, but what distinguishes that event from other, which have resulted in formal discipline by the Commission, is that Judge McGuire never identified himself as a judge, never used in any way the prestige of his office for personal benefit for either himself or his son.

You'll hear from the Commission, I suspect, about friends of the Judge who purchased a home. And you'll hear had the Judge spoke to them about that process. Even assisted with some of

the nonlegal aspects of the process. You will not, however, hear that the Judge played any role in drafting or reviewing contracts, deeds, closing statements, HUD statements, tax transfer documents. You will not hear that the Judge attended a closing, handled any of the financial transactions, reviewed a title report, each of those constituting the legal aspects of a real estate transaction.

But the Judge will not dispute and has not disputed that he was aware of and did speak with his friends about the transaction. And indeed, that he was not able to represent them on it. But it will not be disputed that he did, not in his judicial capacity and not in the nature of legal advice, attempted to assist these elderly folks in transitioning from one home to another.

The evidence will show that Sullivan County is a small rural community and that there are possibly a

dozen or less attorneys that handle the overwhelming majority of cases which are presided over by Judge McGuire.

The evidence also show that given the nature of their practice, these dozen or so attorneys, of which Judge McGuire was one before ascending to the bench, become very familiar with one another, even friendly. They share in personal tragedy and celebration. Indeed, as I waited in the outer room I learned that one of those attorneys lost their mother suddenly yesterday.

Their children complete against one another, they attend school with one another. Attorneys share few local shopping areas, attend bar functions together. It's not at all uncommon for lawyers to assist one another with cases, even make appearance for them when conflicts arise.

The evidence will also show that the custom and practice has been commonplace and has yielded two Chief Justices and several Appellate Division

Justices. Indeed, it's virtually impossible in these small towns to avoid interaction with one another.

The transition from advocate to judge is a very difficult one under the very best of circumstances. It's only magnified when the judge must also balance advocacy for children who are often caught in the middle of families riddled with drug abuse and violence. We've all heard that children in the system and the effects that that has on them. The trauma that accompanies their experiences. The Family Court judge is often confronted with addressing those circumstances, which under the guise of zealous advocacy, children constitute collateral damage between warring fashions.

The Unified Court System has invested countless resources to instruct judges about the long-term effects of childhood trauma, how to recognize it, how to minimize it. We spent over two years developing a youth

court to facilitate issues related to children.

The evidence will show that Judge McGuire has dedicated his life to helping children as a teacher, as a coach, as a lawyer and as a judge.

The evidence will show that as he transitioned from the role of advocate to the role of judge, he evolved in the approach and the strategies that he undertook to try to shield children from childhood trauma at the hands of their parents or the foster care system. The result has been that you'll hear about less than ten instances where, perhaps, the Judge reacted with more emotion than necessary under the circumstances. Which you will not likely hear from the Commission's presentation will be the more than 45,000 instances where the Judge's responses were measured, reasoned, rational and calm, treating everyone with whom the Judge interacted with courtesy and compassion, with an

approach contemplated only to assist the parents to move forward in harmony.

The Commission evidence likely will also not include that the Judge, because of his at times unorthodox style and caring, is credited with saving the lives of numerous young people and families who because of the surge of drugs and violence, were in a collision course with disaster. And so, as we embark on this crusade in that promoting the public's confidence of the judicial system, I ask that the factfinder be mindful that barking at a few people results in the preservation of even one life, then the Judge can proudly accept the consequences for those barks because the Judge can bask in the afterglow of the lives preserved.

Thank you.

THE REFEREE: Are we ready to proceed?

MS. TISHMAN: Yes.

THE REFEREE: Call your first

witness, please.

MS. TISHMAN: Before I call my first witness I'd like to enter into evidence a number of certified court records.

THE REFEREE: Okay.

MS. TISHMAN: And if you look at the first volume of -- or every volume of the bench book you will see an index and it's probably easier to go through that.

THE REFEREE: So let me ask you, have these exhibits that you're about to enter been discussed with respondent and -- do we know whether there are going to be any objections?

MS. TISHMAN: They are certified court records that we have given to respondent.

THE REFEREE: I understand that, but do we know if there are going to be any objections?

MS. TISHMAN: No, we don't.

THE REFEREE: I guess we better do them, unless you know what she's

talking about?

JUDGE MCGUIRE: I don't know specifically. If she tells me which ones they are.

MS. TISHMAN: If we go to charge one of the Commission's Counsel exhibit list, which is the index at the start of the bench book.

THE REFEREE: Yes.

MS. TISHMAN: And then you can see the index and then you can see the exhibit.

Exhibit Roman Numeral I-1 is a certified Sullivan County Family Court file for *O* [redacted] *v R* [redacted]. That's a certified record.

And then 1A, 1B and 1C are specific documents from that certified file that -- those are the documents that will be used.

Now, we will move those into evidence.

THE REFEREE: Any objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: No objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: So Exhibit I-1, I-1A, I-1B and I-1C and I-2 are received.

(Commission Exhibits I-1, I-1A, I-1B, I-1C and I-2 were marked in evidence, as indicated.)

MS. TISHMAN: Okay. Exhibit I-2 is the certified audio.

Exhibit Roman Numeral I-2A is a transcript of the certified audio.

THE REFEREE: Are you offering that as well?

MS. TISHMAN: Yes.

THE REFEREE: Any objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: In evidence.

(Commission Exhibit I-2 and I-2A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit Roman Numeral I-3A, 3B and 3C are admissions that were made by respondent during a prior appearance when the respondent was put under oath and I'm offering those to be admitted.

THE REFEREE: So I-3A and I-3B and I-3C, what about I-3?

MS. TISHMAN: There isn't a I-3.

THE REFEREE: So what is the empty box between I-2A and --

MS. TISHMAN: It was just a title for what's to come.

THE REFEREE: Okay. Any objection?

JUDGE MCGUIRE: No.

THE REFEREE: Any objection to I-3A, 3B, 3C?

JUDGE MCGUIRE: No objection.

THE REFEREE: So those three are admitted.

(Commission Exhibits I-3A, I-3B and I-3C were marked in evidence, as indicated.)

MS. TISHMAN: If you go to charge 2, Exhibits Roman Number II-1, 1A, 1B is the certified court file and there is specific documents taken out of those court files.

I now move to have those put into evidence.

THE REFEREE: Any objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: Those are admitted.

(Commission Exhibits II-1, II-1A and II-1B were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit Roman Numeral II-2 is a certified transcript of a Supreme Court court appearance, I ask that that be admitted.

THE REFEREE: Objection?

JUDGE MCGUIRE: Just so the record is clear, it's County Court, it wasn't Supreme Court.

THE REFEREE: Any objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit II-2 is admitted.

(Commission Exhibit II-2 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibit II-3 is a certified transcript of the County Court, same county for *P*[redacted] *v* *G*[redacted], it's just a different date.

I'm entering that into evidence.

THE REFEREE: Any objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit II-3 is admitted.

(Commission Exhibit II-3 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibit 4A, 4B, 4C, 4D are admissions from the same proceedings that I mentioned before when respondent appeared at the Commission and was put under oath.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits II-4A, 4B, 4C and 4D are admitted.

(Commission Exhibits II-4A, 4B, 4C and 4D were marked in evidence, as indicated.)

MS. TISHMAN: Charge 3, Exhibit Roman Number III-1 is the certified court file and Exhibit III-2 is the certified audio recording.

I request that those be admitted into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits III-1 and

III-2 are admitted.

(Commission Exhibits III-1 and III-2 were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit III-2A is a transcript of the audio of the certified audio recording.

And I request that that be put into evidence.

JUDGE MCGUIRE: That's the same case, different date or different time?

MS. TISHMAN: No, it's the transcript of the audio of III-2.

JUDGE MCGUIRE: I apologize.

No objection.

THE REFEREE: Exhibit III-2A is admitted.

(Commission Exhibit III-2A was marked in evidence, as indicated.)

MS. TISHMAN: And now I request that Exhibit III-3 and III-3A be admitted into evidence.

III-3 is the certified audio recording and III-3A is a transcript of that recording.

JUDGE MCGUIRE: No objection.

THE REFEREE: Okay. Exhibit III-3 and III-3A are admitted.

(Commission Exhibits III-3 and III-3A admitted into evidence.)

MS. TISHMAN: Exhibit III-4A, 4B, 4C, 4D, E and F are admissions from the same testimony that I've mentioned before and I request that they be put into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits III-4A, 4B, 4C, 4D, 4E and 4F are admitted.

(Commission Exhibits III-4A through 4F marked in evidence, as indicated.)

MS. TISHMAN: Charge 4. I request that Roman Numeral IV-1, which is the certified court file to be put into evidence.

JUDGE MCGUIRE: No objection.

That's IV-1?

MS. TISHMAN: Yes.

JUDGE MCGUIRE: Yes, no objection.

THE REFEREE: Exhibit IV-1 is admitted.

(Commission Exhibit IV-1 marked in evidence, as indicated.)

MS. TISHMAN: And IV-2 and IV-2A, IV-2 is the audio, certified audio recording and IV-2A is a transcript of the certified audio recording.

JUDGE MCGUIRE: No objection.

THE REFEREE: So Exhibit IV-2 and IV-2A are admitted.

(Commission Exhibits IV-2 and IV-2A were marked into evidence, as indicated.)

MS. TISHMAN: Exhibits IV-3 and IV-3A, IV-3 is the certified audio recording and IV-3A is a transcript of the audio recording.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits IV-3 and IV-3A are admitted.

(Commission Exhibits IV-3 and IV-3A were marked in evidence, as indicated.)

MS. TISHMAN: And Exhibit IV-4 is

a certified copy of an Aided Reported.

I request that that be put into evidence.

JUDGE MCGUIRE: Well, that's not part of a court proceeding. That's a hearsay document.

THE REFEREE: Is there an objection?

JUDGE MCGUIRE: There is.

THE REFEREE: And the objection is what?

JUDGE MCGUIRE: It's hearsay, it's not part of the court file. It's not part of the court record.

MS. TISHMAN: If you look at the exhibit, it might be helpful.

JUDGE MCGUIRE: Okay.

THE REFEREE: Sure.

MS. TISHMAN: It is in Volume 2 and you can see Volume 2 has different tabs for different charges. If you can look at Charge 4 and then go to Exhibit 4. Has everyone found it?

THE REFEREE: Yeah, I'm with it.

So was your objection that this

was hearsay?

JUDGE MCGUIRE: Correct.

THE REFEREE: Was it based on something other than the fact that it is a business record?

JUDGE MCGUIRE: Well, okay, so I understood that it was part of the court file that she was representing. But here she's admitting it as a business record under 45.12, I withdraw my objection on that.

THE REFEREE: Okay. So Exhibit IV-4 is admitted.

(Commission Exhibit IV-4 was marked in evidence, as indicated.)

MS. TISHMAN: And now Exhibit IV-5A, 5B, 5C, 5D and 5E I'm asking to be admitted as admissions from the same appearance when the respondent was put under oath.

JUDGE MCGUIRE: No objection.

But your Honor, could we go back to the IV-4?

THE REFEREE: One second.

JUDGE MCGUIRE: Okay.

THE REFEREE: Exhibit IV-5A, IV-5B, 5C, 5D and 5E are admitted.

(Commission Exhibits IV-5A through 5E were marked in evidence, as indicated.)

THE REFEREE: Go back to what?

JUDGE MCGUIRE: IV-4, the business record.

THE REFEREE: Yes.

JUDGE MCGUIRE: So that contains hearsay within the business record, statements of the person they aided and I would ask that that be redacted.

MS. TISHMAN: You're talking about the detail section?

JUDGE MCGUIRE: Correct.

THE REFEREE: So let me ask you a question, is this something we're dealing with today?

MS. TISHMAN: This actual document?

THE REFEREE: Yes.

MS. TISHMAN: I don't think so.

THE REFEREE: So why don't you take it up with Judge McGuire and see

if you can come up with some accommodations.

JUDGE MCGUIRE: Fine, no problem.

MS. TISHMAN: Okay. I just want to make a note. Just give me one second. I just want to make sure we're not doing it today.

JUDGE MCGUIRE: Excuse me for jumping up and down.

MS. TISHMAN: Okay. We can move on.

Going to Charge 5, V-1, certified Sullivan County, the Family Court record, V-1, I am moving to put that into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit V-1 is received.

(Commission Exhibit V-1 is marked in evidence, as indicated.)

MS. TISHMAN: V-2 and V-2A, one being the certified audio recording, the other being the transcript of the audio recording.

I'm moving to put those into

evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: V-2 and 2A are received.

(Commission Exhibits V-2 and V-2A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit V-3 and 3A, one's the certified audio recording and the other is the transcript of the audio recording and I'm asking that they be put into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits V-3 and 3A are received.

(Commission Exhibits V-3 and 3A were marked in evidence, as indicated.)

MS. TISHMAN: I am going to move that Exhibit 4A, 4B, 4C, 4D and 4E, which are admissions, being put into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits V-4A, 4B, 4C, 4D and 4E are received.

(Commission Exhibits V-4A through 4E were marked in evidence, as

indicated.)

MS. TISHMAN: Charge 6, Exhibit VI-1 is a certified court file.

I ask that that be moved into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VI-1 is received.

(Commission Exhibit VI-1 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibits VI-2 and VI-2A, one's the certified audio, 2A is the transcript of the certified audio.

And I ask that those be moved into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VI-2 and VI-2A are received.

(Commission Exhibits VI-2 and VI-2A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit VI-3 and VI-3A, it's a certified audio recording and a transcript of the audio.

I request that that be moved into

evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: VI-3 and 3A are received.

(Commission Exhibits VI-3 and VI-3A are marked in evidence, as indicated.)

MS. TISHMAN: Exhibit VI-4A, 4B, 4C, 4D, 4E and 4F are admissions and I request that they be moved into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits VI-4A, 4B, 4C, 4D, 4E and 4F are all received.

(Commission Exhibits VI-4A through 4F admitted into evidence.)

MS. TISHMAN: Going to Charge 7, Exhibit VII-1 and VII-1A is a certified court file -- I mean, certified audio and the transcript of the audio.

I ask that that be admitted into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits VII-1 and VII-1A are both received.

(Commission Exhibits VII-1 and VII-1A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit VII-2 and VII-2A are certified audio and the transcript of the.

And I ask that that be moved into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VII-2 and 2A are both received.

(Commission Exhibits VII-2 and VII-2A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit VII-3 is a certified copy of an Aided Report for S[redacted] R[redacted].

I request that that be moved into evidence.

JUDGE MCGUIRE: I would have the same objection, your Honor, that imbedded in that is going to be hearsay.

MS. TISHMAN: That will be used today.

THE REFEREE: That will be used today, so let's take a look at this.

MS. TISHMAN: So it is Volume 3.

THE REFEREE: I think I figured out your scheme here.

MS. TISHMAN: It's a business record also.

THE REFEREE: Charge 7, Exhibit 3, right?

MS. TISHMAN: Yes. I don't believe there is any --

What's the objection? I'm sorry.

THE REFEREE: This all appears to be information --

JUDGE MCGUIRE: Yes, I will withdraw the objection.

THE REFEREE: Okay. So Exhibit VII-3 is received.

(Commission Exhibit VII-3 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibit VII-4 is a certified court file and Exhibit VII-4A is part of the court file.

I just want to note for the record that Exhibit VII-4 is not -- the

whole court file is not included, it's just the certification for the court file because the court file was so large, we -- and we were only using one exhibit, the entire court file is available to respondent if he wants to look at it. But we are just introducing the certification for the court file.

And then Exhibit 4A, which is the one page of that court file.

JUDGE MCGUIRE: That's fine, no objection.

THE REFEREE: So Exhibit VII-4 and VII-4A are received.

(Commission Exhibits VII-4 and VII-4A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits VII-5 and VII-5A is the certified audio and the transcript of the audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: VII-5 and VII-5A are both received.

(Commission Exhibits VII-5 and

VII-5A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits VII-6 and VII-6A is a certified audio and a transcript of the audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VII-6 and 6A are both received.

(Commission Exhibits VII-6 and VII-6A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits VII-7 and VII-7A, again a certified audio and the transcript of the audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VII-7 and VII-7A are both received.

(Commission Exhibits VII-7 and VII-7A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit VII-8 and VII-8A, again, this is a certified court file. Exhibit 8 is just the certification and Exhibit 8A is the one page file from the court file. We have

the entire court file if respondent needs it.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits VII-8 and VII-8A are both received.

(Commission Exhibits VII-8 and VII-8A admitted into evidence.)

MS. TISHMAN: VII-10A and VII-10B are admissions.

THE REFEREE: What about 9?

MS. TISHMAN: Oh, I'm sorry. That is the Appellate Division decision, yes, I will put it in evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VII-9 is received.

(Commission Exhibit VII-9 was marked in evidence, as indicated.)

MS. TISHMAN: VII-10A and VII-10B are admissions.

JUDGE MCGUIRE: No objection.

THE REFEREE: VII-10 and VII-10B are both received.

(Commission Exhibits VII-10A and

VII-10B were marked in evidence, as indicated.)

MS. TISHMAN: Going to Charge 8, VIII-1 is the certified copy of the Criminal Court calendar.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit VIII-1 is received.

(Commission Exhibit VIII-1 was marked in evidence, as indicated.)

MS. TISHMAN: VIII-2 and VIII-2A is the certified audio and the transcript of the audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits VIII-2 and VIII-2A are both received.

(Commission Exhibits VIII-2 and VIII-2A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits VIII-3 and VIII-3A is the certified audio and a transcript of the audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: VIII-3 and VIII-3A are received.

(Commission Exhibits VIII-3 and VIII-3A were marked in evidence, as indicated.)

MS. TISHMAN: VIII-4A, B, C, D, E, F and G are all admissions. We request that they be admitted into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits VIII-4A through 4G are all received.

(Commission Exhibits VIII-4A through 4G were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit -- Charge 9, Exhibit 1 is the certified court file. I request that that be admitted.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit IX-1 is received.

(Commission Exhibit IX-1 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibit IX-2 and 2A is the audio and the transcript of that audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits IX-2 and 2A are both received.

(Commission Exhibits IX-2 and IX-2A were marked in evidence.)

MS. TISHMAN: Charge 10, Exhibit 1 and then 1A through 1G. Exhibit 1 is the certified court file. 1A through 1G are specific pages from that court file.

I request that they be admitted into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits X-1 and 1A through 1G are all received.

(Commission Exhibits X-1 and 1A through 1G were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit X-2 is a certified audio recording and 2A is the transcript.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits X-2 and 2A are received.

(Commission Exhibits X-2 and X-2A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit X-3 and X-3A is the certified court file and then a piece of that certified court file -- a document from that certified court file.

JUDGE MCGUIRE: No objection.

THE REFEREE: X-3 and 3A are both received.

(Commission Exhibits X-3 and X-3A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit 4 through Exhibit 15, we could not come to an agreement about and they are admissions. There is a witness here who will be testifying as soon as we go through the rest of the documents.

THE REFEREE: So these are exhibits that are objected to?

MS. TISHMAN: Yes.

JUDGE MCGUIRE: Well, those are exhibits we asked for them to provide us separate from the volume of things and they chose not to do that for us.

THE REFEREE: I'm not understanding that.

JUDGE MCGUIRE: When they asked to have those exhibits consented to go in, we responded that, "Please send us specifically the exhibits that you want to put in." And their response was, They were included in the volumes of things that we had.

We wanted those five or six exhibits sent to us in a separate -- email would have been fine -- so that we could see specifically the ones that they were referring to. They chose to call a witness, which is fine.

MS. TISHMAN: That's not quite right, your Honor. We --

JUDGE MCGUIRE: Well, hold on a second. There is written communication.

THE REFEREE: Just a second, Miss Tishman is speaking now.

MS. TISHMAN: What we did was we gave him the Bates stamp number of every single document that we were intending to call and we had given him, through discovery, documents that were

Bates numbered. And we gave him the exact Bates number of each document, the name and the Bates numbers of the documents so he could find the -- so that respondent could find the documents.

THE REFEREE: So Judge McGuire, are you saying that you don't know what Exhibit X-4 is, for example?

JUDGE MCGUIRE: Well, no. What I'm saying is that I wanted to see separate from those volumes of stuff that we had, exactly those eight or ten documents in a separate email, so that I could print it, staple it and know exactly what was in evidence instead of relying on searching through some 10,000 pages of documents.

THE REFEREE: Okay, I understand what you're saying, but my question is, do you now know is Exhibit X-4 is?

JUDGE MCGUIRE: I am familiar with it, yes.

THE REFEREE: Do you have an objection to it?

JUDGE MCGUIRE: Well, if you allow me, I would like to take a look at them. If they have them handy I'll take a look at them now.

THE REFEREE: Well, let's this. Are these exhibits in X-4 through -- what did you say, X-14?

MS. TISHMAN: Yes.

THE REFEREE: Are those exhibits something we're going to deal with today?

MS. TISHMAN: I have a witness from Progressive Insurance waiting to testify about them.

THE REFEREE: So, would it be more practical to go through the exhibits before the witness takes the stand or do you want to do this through a witness?

MS. TISHMAN: Okay.

THE REFEREE: It doesn't seem to me that we're going to be making frivolous objections here?

JUDGE MCGUIRE: No, that's not at all.

THE REFEREE: If there are no objections to these exhibits, it sounds to me like it would be more efficient to just have Judge McGuire not make any objections to them if he can.

JUDGE MCGUIRE: Right.

MS. TISHMAN: Okay. So they are in Volume 4, Charge 10, starting with Exhibit 4.

THE REFEREE: So Exhibit 4, if I'm looking at this correctly, is a letter on the letterhead of Michael F. McGuire dated March 17, 2010, addressed to a claims representative at Progressive Insurance.

And then, I gather, enclosed with that are documents that follow?

MS. TISHMAN: Yes.

THE REFEREE: Which all appear to be redacted one way or another, so what is your objection to this exhibit?

JUDGE MCGUIRE: No objection.

THE REFEREE: So Exhibit X-4 is received.

(Commission Exhibit X-4 was

marked in evidence, as indicated.)

THE REFEREE: What about X-5?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-5 was marked in evidence, as indicated.)

THE REFEREE: X-6?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-6 was marked in evidence, as indicated.)

THE REFEREE: X-7?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-7 was marked in evidence, as indicated.)

JUDGE MCGUIRE: Objection.

THE REFEREE: X-8.

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-8 was marked in evidence, as indicated.)

THE REFEREE: X-9?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-9 was marked in evidence, as indicated.)

THE REFEREE: X-10?

JUDGE MCGUIRE: Well, on this, your Honor, I don't have an objection to that document going into evidence. In fact, I would probably put it in myself.

THE REFEREE: Then it's received.

JUDGE MCGUIRE: The issue that I'm going to reserve on is whether or not I had any knowledge of that document before I was shown by the Commission.

THE REFEREE: That's a different issue, right?

JUDGE MCGUIRE: Correct.

THE REFEREE: So X-10 is received.

(Commission Exhibit X-10 was marked in evidence, as indicated.)

JUDGE MCGUIRE: The same issue as to 11.

THE REFEREE: So that's received, no objection?

JUDGE MCGUIRE: No objection.

(Commission Exhibit X-11 was marked in evidence, as indicated.)

JUDGE MCGUIRE: 12, no objection.

THE REFEREE: Received.

(Commission Exhibit X-12 was marked in evidence, as indicated.)

JUDGE MCGUIRE: 13, no objection.

THE REFEREE: Received.

(Commission Exhibit X-13 was marked in evidence, as indicated.)

JUDGE MCGUIRE: 14, no objection.

THE REFEREE: Received.

(Commission Exhibit X-14 was marked in evidence, as indicated.)

JUDGE MCGUIRE: 15, same issue, I had no knowledge that that was happening, no objection.

THE REFEREE: Exhibit 15 is received. Okay.

(Commission Exhibit X-15 was marked in evidence, as indicated.)

THE REFEREE: Now we're onto something else.

JUDGE MCGUIRE: Right.

MS. TISHMAN: Okay. Exhibit 16 -- Exhibit X-16 -- X-16 is a certified copy of the deed from Ulster County.

JUDGE MCGUIRE: No objection, it's certified.

THE REFEREE: Exhibit 16 is received.

(Commission Exhibit X-16 was marked in evidence, as indicated.)

MS. TISHMAN: The same with Exhibits X-17 through X-35. This -- again, I have a witness here to testify about putting these into evidence as business records.

THE REFEREE: Okay. Do you have any objection to --

JUDGE MCGUIRE: No objection.

THE REFEREE: -- 17?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-17 was marked in evidence, as indicated.)

THE REFEREE: 18?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-18 was marked in evidence, as indicated.)

THE REFEREE: X-19?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-19 was marked in evidence, as indicated.)

THE REFEREE: X-20?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-20 was marked in evidence, as indicated.)

THE REFEREE: X-21?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-21 was marked in evidence, as indicated.)

THE REFEREE: X-22?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-22 was marked in evidence, as indicated.)

THE REFEREE: X-23?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-23 was marked in evidence, as indicated.)

THE REFEREE: X-24?

JUDGE MCGUIRE: X-24, no objection.

THE REFEREE: Received.

(Commission Exhibit X-24 was marked in evidence, as indicated.)

JUDGE MCGUIRE: 25, no objection.

THE REFEREE: Received.

(Commission Exhibit X-25 was marked in evidence, as indicated.)

JUDGE MCGUIRE: Now, these are all emails that the witness would testify that they prepare and maintain in the ordinary course of business, they save their emails by file?

MS. TISHMAN: Yes.

JUDGE MCGUIRE: That's what he would testify to?

MS. TISHMAN: Yes.

JUDGE MCGUIRE: Okay, no objection.

THE REFEREE: X-26 is received.

(Commission Exhibit X-26 was

marked in evidence, as indicated.)

THE REFEREE: 27?

JUDGE MCGUIRE: Well, 27 I would object to, but you're going to have the author of that presumably here any way because that can't be part of the bank's business record, it doesn't involve them.

MS. TISHMAN: It's a law firm, it's not a bank.

JUDGE MCGUIRE: Or the law firm.

MS. TISHMAN: And actually, it is part of their records.

THE REFEREE: What's your objection?

JUDGE MCGUIRE: The objection is that it's not anything that is sent to the law firm.

THE REFEREE: Okay, so we'll maintain that objection and you will present the witness on that.

What about 28?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-28 was

marked in evidence, as indicated.)

THE REFEREE: 29?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-29 was marked in evidence, as indicated.)

THE REFEREE: 30?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-30 was marked in evidence, as indicated.)

THE REFEREE: 31?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-31 was marked in evidence, as indicated.)

THE REFEREE: 32?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-32 was marked in evidence, as indicated.)

THE REFEREE: 33?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-33 was

marked in evidence, as indicated.)

THE REFEREE: 34?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-34 was marked in evidence, as indicated.)

THE REFEREE: 35?

JUDGE MCGUIRE: No objection.

THE REFEREE: Received.

(Commission Exhibit X-35 was marked in evidence, as indicated.)

THE REFEREE: 36?

JUDGE MCGUIRE: That is unrelated to that transaction.

MS. TISHMAN: We are now on a different group of documents.

THE REFEREE: Okay.

MS. TISHMAN: And I may skip Exhibit 36 and 37 and go right to X-38.

THE REFEREE: So what is the --

MS. TISHMAN: They will come in through witnesses.

THE REFEREE: 36 and 37?

MS. TISHMAN: Yes.

THE REFEREE: Will come in

through witnesses?

MS. TISHMAN: Yes.

THE REFEREE: Okay. 38?

MS. TISHMAN: 38 is certified Sullivan County record and 39 is also a Sullivan County record of the same -- about a property -- the same property.

JUDGE MCGUIRE: No objection.

THE REFEREE: X-38 and 39 are received.

(Commission Exhibits X-38 and X-39 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibit 40, 40A, 40B, C, D and E, it's a certified court record and then specific documents from that court file.

JUDGE MCGUIRE: No objection. We're up to 40E, right?

MS. TISHMAN: 40A.

JUDGE MCGUIRE: Through E?

MS. TISHMAN: Yes, 40 and then A, B, C, D, and E.

JUDGE MCGUIRE: Right, no objection.

THE REFEREE: Exhibits X-40 and then 40A through E are received.

(Commission Exhibits X-40 and X-40A through E were marked in evidence, as indicated.)

MS. TISHMAN: Now I am going to admissions, Exhibit X-41A through X-47Q and it started on page 16 and it goes to page 20.

JUDGE MCGUIRE: No objection.

THE REFEREE: Okay. So Exhibits X-41A through forty --

MS. TISHMAN: 7Q.

THE REFEREE: -- 7Q are all received.

(Commission Exhibits X-41A through X-47Q were marked in evidence, as indicated.)

THE REFEREE: Just give me a minute now, please.

Okay. We're up to 11.

MS. TISHMAN: Charge 11, it will be XI-1 through 4 will be through a witness. X-5 is a certified court record and I'm asking that be admitted.

JUDGE MCGUIRE: No, objection.

THE REFEREE: XI-5 is received.

(Commission Exhibit XI-5 was marked in evidence, as indicated.)

MS. TISHMAN: Then going to XI-9, that's a certified court file. I ask that that be admitted.

JUDGE MCGUIRE: Just for clarification, XI-6, 7 and 8 are not being offered. Those are emails. Those are going through a witness?

MS. TISHMAN: Through a witness.

JUDGE MCGUIRE: Okay, so we're up to 9?

MS. TISHMAN: Up to 9.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit X-9 is received.

MS. TISHMAN: It's Exhibit XI.

THE REFEREE: I'm sorry, XI-9 is received.

(Commission Exhibit XI-9 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibits XI-10, 11, 12 and 13 will be admitted through a

witness.

But Exhibit XI-14 and 14A is a court file and I would ask that those two exhibits be admitted.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-14 and 14A are admitted.

(Commission Exhibit XI-14 and XI-14A were marked in evidence, as indicated.)

MS. TISHMAN: Then Exhibits 15 through 19, Exhibit XI-15 through 19 will be admitted through a witness, so we are going to move to Exhibit XI-20 and 20A and that's a certified court file.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-20 and 20A are admitted.

(Commission Exhibits XI-20 and XI-20A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-21 through 24 will be entered through a -- admitted through witness, so we are

going to Exhibit XI-25, which is a certified court file and I ask that it be admitted.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-25 and 26 are admitted.

(Commission Exhibits XI-25 and 26 were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits 26, 27, 28 will come in through a witness.

And we're going to Exhibit XI-29 and 29A and 29B. Again, for the record, this is a certification form and the whole file is not being admitted because of the volume. The file is available for respondent if he wants it.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-29, 29A and 29B are admitted.

(Commission Exhibits XI-29, 29A and 29B were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-30, XI-30A, B, C, D, E and F, I ask to be

admitted.

Again, Exhibit XI-30 is the certification, not the whole court file.

JUDGE MCGUIRE: Then follow are the specific documents from the file, correct?

MS. TISHMAN: Exactly.

JUDGE MCGUIRE: No objection.

MS. TISHMAN: And we have the whole court file available if respondent wants it.

JUDGE MCGUIRE: No objection, thank you.

THE REFEREE: Exhibits XI-30 and 30A through 30F are admitted.

(Commission Exhibits XI-30 and 30A through 30F were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-31, XI-31A and 32B, it's a certified court file. Again, we are only admitting the certification and the specific documents that will be used. The file is available if respondent wishes.

JUDGE MCGUIRE: Objection.

THE REFEREE: Exhibits XI-31 and 31A and 31B are admitted.

(Commission Exhibits XI-31, 31A and 31B were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits XI-32, 32A, 32B is the certified court file. Again, the certification is being admitted and not the entire file.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-32, 32A and 32B are admitted.

(Commission Exhibits XI-32, 32A and 32B were marked in evidence, as indicated.)

MS. TISHMAN: Exhibits XI-33, 33A, 33B are certified court file. Again, the certification is being admitted and then specific documents.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-33, 33A and 33B are admitted.

(Commission Exhibits XI-33, 33A and 33B were marked in evidence, as

indicated.)

MS. TISHMAN: Exhibit XI-34, 34A and 34B is a certified court file. Again, the certification is being admitted and then specific documents.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-34, 34A and 34B are admitted.

(Commission Exhibits XI-34, 34A and 34B were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-35 and then it goes 35A through I. Again, it's a certification and then specific documents.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-35 and 35A through 35I are admitted.

(Commission Exhibits XI-35 and 35A through 35I were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-36 will be admitted through a witness.

And now we are going to go to Exhibit XI-37 and 37A through I. And

again, this is a certification, not the entire court file and then specific documents being used from that court file. The court file is available to respondent if he wishes.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-37 and 37A through 37I are admitted.

(Commission Exhibits XI-37 and 37A through 37I were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-38 and 38A, is a certified audio recording and a transcript of that audio.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-38 and 38A are admitted.

(Commission Exhibits XI-38 and 38A were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-39 is a certified copy of the deed from Sullivan County Clerk. I ask that that be admitted.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-39 is admitted.

(Commission Exhibit XI-39 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibits XI-40, 40A, 40B is a certification of a case file, not the entire file and then specific exhibits being used. Again, the file is available for respondent if he wishes.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-40, 40A and 40B are admitted.

(Commission Exhibits XI-40, 40A and 40B were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit 41 is a certified record of a case.

I ask that that be admitted.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-41 is admitted.

(Commission Exhibit XI-41 was marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-42, 43,

44 and 45, they are all certified documents from the case file of *D[redacted] v B[redacted]*. I ask that they all be admitted.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-42, 43, 44 and 45 are all admitted.

(Commission Exhibits XI-42 through 45 were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-46 will be admitted through a witness.

And then Exhibits XI-47A through F are admissions.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-47A through F are admitted.

(Commission Exhibits XI-47A through F were marked in evidence, as indicated.)

MS. TISHMAN: And then Exhibit XI-48A through J are admissions.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-48A though 48J are admitted.

(Commission Exhibits XI-48A through 48J were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-49A through 49R are admissions.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibits XI-49A through 49R are admitted.

(Commission Exhibits XI-49A through 49R were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-50A through 50G are admissions.

THE REFEREE: Are offered?

MS. TISHMAN: Are offered for evidence, thank you.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-50A through 50G are admitted.

(Commission Exhibits XI-50A through 50G were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-51A through 51D are admissions and being offered into evidence.

JUDGE MCGUIRE: Those are admissions? No objection.

THE REFEREE: Exhibits XI-51A through D are admitted.

(Commission Exhibits XI-51A through 51D were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-52 and Exhibit XI-53 are admissions and being offered into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: 52 and 53 are admitted.

(Commission Exhibits XI-52 and XI-53 were marked in evidence, as indicated.)

MS. TISHMAN: Exhibit XI-54A through D are admissions and being offered into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-54A through 54D are admitted.

(Commission Exhibits XI-54A through 54D were marked in evidence, as indicated.)

MS. TISHMAN: Charge 12, all the exhibits in that charge are going to be offered into by a witness.

Going to Charge 13. XIII-1 will be offered into by a witness.

And then XIII-2A through 2E are admissions and we ask they be offered into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: So Exhibits XIII-2A, 2B, 2C, 2D and 2E are admitted.

(Commission Exhibits XIII-2A through 2E were marked in evidence, as indicated.)

MS. TISHMAN: The next section is photographs and those are photographs 1 through 20. We can -- I can put them in through a witness, but if the respondent agrees to the photographs then --

JUDGE MCGUIRE: Do you have them in a packet somewhere because they are all photographs of my chambers and my courtroom?

MS. TISHMAN: They are Volume 6 and they have the colored tabs.

JUDGE MCGUIRE: Okay. So you Honor, if I may. Photo 1 is a fair and accurate representation of my courtroom as it looks today and as it looked on February --

THE REFEREE: Just tell me whether you have an objection or not.

JUDGE MCGUIRE: No objection.

2, no objection; 3, no objection; 4, no objection; 5, no objection; 6, no objection; 7, no objection; 8, no objection; 9, no objection; 10, no action; 11, 12, 13, 14, 15, 16, 17, 18 -- 18, 19, 20, no objection.

THE REFEREE: Okay. So Exhibits PH-1 through PH-20 are all received.

(Commission Exhibits PH-1 through PH-20 were marked in evidence, as indicated.)

THE REFEREE: Are you ready for a witness?

MS. TISHMAN: Yes, I would just ask if for one second we could take a

short five-minute break?

THE REFEREE: Sure. Let's go off the record.

JUDGE MCGUIRE: Before we do that, your Honor, I would call again for production of the audio transcripts of the depositions that were taken of the various witnesses here. As you've just seen in the proffer and respondent has not objected to, there is certainly a difference between a transcript and an audio recording. When we have benefit of an audio recording, that's the best evidence of what was discussed and I would ask for production of that.

THE REFEREE: What audio recordings are you speaking about?

JUDGE MCGUIRE: There's -- various witnesses were deposed and there is an audio transcript of those depositions because it says on the first page of the deposition that it's being -- that the deposition is being audio recorded. And we've been provided with the transcripts, but not

the audio.

THE REFEREE: Are transcripts certified?

JUDGE MCGUIRE: The transcripts are certified from here, but we just have transcripts of proceedings and the audio's going in because the audio is different and I've consented to that.

I should certainly have the benefit of having the audio version of the depositions prepared so that I can use that when cross-examining people.

THE REFEREE: So let me understand this, you're talking about investigatory interviews?

JUDGE MCGUIRE: No, I'm talking about depositions of witnesses that will testify here.

THE REFEREE: And you have those transcripts?

JUDGE MCGUIRE: I have the transcripts.

THE REFEREE: But you don't have the audio?

JUDGE MCGUIRE: I don't have the

audio.

THE REFEREE: And you're introducing into evidence the transcripts of the audios?

MS. TISHMAN: No.

THE REFEREE: Do you have any reason to believe that the transcripts are inaccurate?

JUDGE MCGUIRE: Well, it's not a matter of them being inaccurate, but the reason the Commission wants the -- transcripts of the court proceedings are not inaccurate either. But they want the audio to go in because they want the Court to have benefit of inflection, of tone, much in the same way that we assess the body language of a person.

THE REFEREE: Here's what I'm going to do on this. These transcripts are either going to be used as prior inconsistent statements or not. Right?

JUDGE MCGUIRE: They may be.

THE REFEREE: And if they are and there's some issue that comes up as to

whether or not the transcript is accurate, the witness can say whether it's inaccurate or not and we'll deal with that at that point. But at this moment I don't see any basis for you to get the audio, so that motion is denied without prejudice.

JUDGE MCGUIRE: Thank you.

THE REFEREE: We'll take a -- do you want five minutes or ten?

MS. TISHMAN: Ten minutes.

THE REFEREE: Ten minutes, off the record.

JUDGE MCGUIRE: Thank you.

MS. TISHMAN: Thank you.

MR. MAISONET: Off the record.

(A brief recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Will the Commission please call its first witness.

MS. TISHMAN: The Commission is calling Nicholas Stanton -- S-T-A-N-T-O-N.

JUDGE MCGUIRE: So your Honor, Mr. Stanton is from Progressive?

MS. TISHMAN: Yes.

JUDGE MCGUIRE: So Progressive Insurance is currently involved in litigation representing me in a crash involved -- actually, my son, minor son, so I just make that disclosure. I don't know that Mr. Stanton has any knowledge of that or would effect it in any way. I know it's a big company.

THE REFEREE: Okay, appreciate it.

(The witness entered the room.)

MS. PARTIDA: Witness entering.

THE REFEREE: You are Nicholas Stanton?

MR. STANTON: Yes, I am.

THE REFEREE: A court reporter, Mr. Stanton, who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away

from the microphone and talking over other speakers.

Please refrain from responding until a question is completed and answer each question with words, not a nod or a gesture.

Please refrain from creating excessive background noise, as it becomes amplified on the recording.

Please turn off cell phones and other electronic equipment.

Do you understand all that?

MR. STANTON: I do.

THE REFEREE: Mr. Stanton, would you please rise and raise your right hand.

Do you swear or affirm under the penalty of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

MR. STANTON: I do.

THE REFEREE: Please be seated and state your full name for the record.

MR. STANTON: Nicholas Joseph

Stanton.

THE REFEREE: You may proceed.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Mr. Stanton.

A. Good morning.

Q. Are you currently employed?

A. Yes.

Q. And where are you employed?

A. Progressive Insurance.

Q. And what's your title?

A. Claims manager.

Q. How long have you worked for Progressive Insurance?

A. About 20 years.

Q. How long have you been a litigation claims manager?

A. For 10 years.

Q. And your current responsibilities?

A. I oversee a group of supervisors and claims representatives that resolve injury claims.

Q. And how many people do you oversee?

A. About 55.

Q. Have you testified in court before?

A. Yes, I have.

Q. I'm going to show you what has been accepted into evidence as Commission Exhibit Roman Number X-14. Are you familiar with this document, X-14?

A. Yes.

Q. Is this an activity log that is maintained by Progressive Insurance?

A. Yes, it is.

Q. And if we could go to page 1 of this document, X-14, and go to the January 20, 2011, 1:45 note. And if you can just tell us what "CC PIP M-Auth" means?

THE REFEREE: I'm sorry, could you tell me where you are?

MS. TISHMAN: The first page.

THE REFEREE: Yep.

MS. TISHMAN: The January 20, 2011, 1:45 p.m.

THE REFEREE: Yes, I got that. And which one are you asking about?

MS. TISHMAN: The 1:45 p.m.

THE REFEREE: Yes.

Q. And I'm asking if you could tell us what "CC" means in that line?

THE REFEREE: "Have not yet received CC"?

Q. "Have not yet received CC," what does "CC" mean?

A. Claim and carrier.

Q. And then what does "PIP" mean?

A. "PIP," it's for personal injury protection.

Q. And "M-Auth"?

A. Medical authorization.

Q. And now, if we go to the next one, which is, again, January 20, 2011 at 1:48 p.m. And the first line says, "CLLD ATTY," can you tell us what that means?

A. Call attorney.

Q. And then it says, "Spoke with L-A," what does that mean?

A. Legal assistant.

Q. And if we can go down to the indication that's the third dash, it says, "ADV-D," what does that mean?

A. Advised.

Q. And if we can go to the last indication that's by the last dash and can you tell us what "INJ-TX" means?

A. "INJ" stands for injury. "TX" stands for treatment.

Q. And then if we can go to page 2 and if we can go to the October 7, 2011, 10:37 a.m. note. And if you can tell us what -- it says, "Sent ATTY," what does that mean?

A. Attorney.

Q. And then "CTC LTR"?

A. Contact letter.

Q. And if we can go to the October 31, 2011 indication on that same page, it's October 31, 2011, 2:46 p.m. and what does "GTO" mean?

A. That's a typo. It should be "To," T-O.

Q. So the "GTO" should really be just T-O?

A. Correct.

Q. And if we can go to page 3, 11/26/2012 at 6:52 a.m.?

JUDGE MCGUIRE: I'm sorry, we are

on page 3 now?

MS. TISHMAN: Yes, we're on page 3, January 26, 2012 at 6:52 a.m.

Everyone there?

THE REFEREE: Yes.

Q. It says -- the word, "Draft," is used, what does that mean?

A. That's for a check.

Q. Now does this activity log also show phone calls made -- phone calls made to or phone calls made by Progressive Insurance?

A. Correct, yes, it does.

Q. And who the Progressive Insurance party spoke to?

A. Yes, it does.

MS. TISHMAN: I have nothing further.

THE REFEREE: Any cross?

JUDGE MCGUIRE: Briefly, Judge.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Mr. Stanton, good morning.

A. Good morning.

Q. Now, this activity log where it

says, for example, on page 2, 10/31/2011, 2:46 p.m., "Attorney office" -- do you see where I am, "Wendy Weiner calls"?

A. Yes.

Q. Did anyone from Progressive ever speak to Mr. McGuire?

A. I don't have knowledge. If it's documented here that they spoke to him, then they would have spoke to him.

Q. So if it's not on here, then they never spoke to Mr. McGuire?

A. I did not say that.

Q. Well, would it be documented if they did?

A. It should be, yes.

Q. And if it's not documented then they either did or they didn't follow procedure?

A. Correct.

Q. Now, 1/26/2012, 6:52 a.m.?

MS. TISHMAN: I'm sorry, which page?

JUDGE MCGUIRE: Page 3, I'm sorry.

Q. 1/26/12, 6:52 a.m., "Attorney

called lost draft," do you see that?

A. Yes.

Q. Do you know who it was that called?

A. It says, "Attorney," so.

Q. Could that be the attorney's office?

A. It probably would mean the attorney of record.

Q. But it wouldn't put a name down?

A. No, he didn't put the name down.

Q. Is that a phone message?

A. No, it doesn't indicate it's a message.

Q. So he would have spoken -- he or she would have spoken to someone at 6:52 in the morning?

A. That's what it says.

Q. Well, is there anybody in the office at 6:52 in the morning?

A. I have staff in the office at 6:52, yes.

Q. So Mr. Saffron isn't here today?

A. No, he's not.

Q. So we don't know who he spoke to?

A. I can't testify for him.

Q. Right, you don't know who he spoke to, right?

A. It says, "Spoke to the attorney."

Q. Now, sometime on or about 1/20/2011, did you receive a communication from the attorney's office? I'm on page 1 now, I'm sorry.

A. Can you direct me to what you're referring to?

Q. Yeah, I'm at page 1, the line just under the blacked out portion?

A. January 20, 2011 at 1:52 p.m.?

Q. Mm-hmm. So you had not yet received anything?

A. What is your question?

Q. My question is, did you receive anything in response to that inquiry?

A. This note states, "Sheila, please send second, third? Request letter to attorney requesting his client's claim and carrier no-fault" --

Q. I'm sorry, I'm above that.

A. Okay. At the 1:48 entry? I'm not sure what you're referring to.

Q. 1:48 entry, yes.

A. Okay. And your question is in regards to what?

Q. Was there a communication between Progressive and the attorney?

Let me make it easier, there was communication, correct?

A. Can you cite what you're speaking about?

Q. Well, I'm trying to understand the form and I can appreciate certainly that if somebody looked at my shorthand they probably couldn't decipher it. I'm just trying to decipher it.

I'm at 1/20/2011, 1:48.

A. "Called attorney, spoke with legal assistant, Maryann."

Q. Okay.

A. "Inquired if she had claim and carrier PIP medical auth to send to me. She said she doesn't know. Advised I spoke to attorney on November 23, 2010 and he informed me he would send it to me. She apologized and said right around that time, attorney was elected county judge and things

were crazy. She will elevate my request to attorney again for the medical authorization and injury treatment status. Thanks."

Q. And then -- so that was an inquiry about some documents, correct?

A. It was a request for a document, yes.

Q. An authorization?

A. Yes.

Q. Okay. And was that ultimately received?

A. From my reading of the file, I believe it was, yes.

Q. And now, at that time, is that all Progressive was waiting for?

A. I'm not sure.

Q. Okay. So if that document that you were looking for was, say, in an office, and the secretary sent it, that would just be that, somebody forwarding mail to you, correct?

A. I'm not sure I understand the question.

Q. Well, if you called an office on November of 2010 -- November 20th --

November 23, 2010 there was an inquiry for this PIP, yes?

A. There was a request for a medical authorization.

Q. Okay. All right.

And that was ultimately received?

A. I believe so.

Q. Okay. And there was a request on November 23rd of 2010 and you spoke with the attorney and he said that he would send it, is that what your notes say?

A. November 23, 2010?

Q. Mm-hmm. It's the first entry on page 1.

A. November 26, 2010?

Q. No, November 23rd.

A. I don't have that here.

JUDGE MCGUIRE: Your Honor, may I approach the witness?

THE REFEREE: Yeah, I don't see where you're talking about either.

JUDGE MCGUIRE: I don't know if we all have the same document. May I approach the witness?

THE REFEREE: Sure.

Q. Do you have that entry there?

A. That's not dated as being entered on November 23rd.

Q. Okay, I understand what you're saying, okay, yes.

So that is referencing a phone call on November 23, 2010?

A. Correct.

MS. TISHMAN: Judge, where are we exactly?

THE REFEREE: Okay, I see where that is. That's like the third dash.

MS. TISHMAN: On the January 20, 2010.

THE REFEREE: On the January 20th contact.

MS. TISHMAN: At 1:48?

JUDGE MCGUIRE: Correct.

Q. So according to this record somebody spoke with the attorney on November 23rd. Now, someone spoke with the attorney on November 23rd and he or she said or they said that they would forward this document that you needed?

A. It appears to be correct.

Q. Okay. And then you called back -- you or someone from Progressive -- called back on January 20th and asked about it?

A. Correct.

Q. Okay. And isn't it possible that that document was there and just had never been forwarded to you?

A. I don't know.

Q. Well is it possible?

A. I don't know.

Q. You don't know if it's possible?

A. Which document where?

Q. The document that you had called about on November 23, 2010?

A. Is it possible where?

Q. That the attorney had it, but just hadn't had the opportunity to mail it out yet?

A. Sure, I guess so.

Q. Yeah, okay.

JUDGE MCGUIRE: Nothing further.

THE REFEREE: Any redirect?

MS. TISHMAN: Nothing.

THE REFEREE: Thank you,

Mr. Stanton, you're excused.

THE WITNESS: Thank you.

(The witness exited the room.)

THE REFEREE: Please call your next witness.

MS. TISHMAN: The Commission calls Sergeant Guillermo Olivieri.

(The witness entered the room.)

MS. PARTIDA: Witness entering.

THE REFEREE: Sergeant Olivieri, please have a seat.

A court reporter who will transcribe the proceedings is present. In addition these proceedings are being digitally recorded. The proceedings will be transcribed.

In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until a question is completed and answer each question with words, not a

nod or a gesture.

Please refrain from creating excessive background noise, as it becomes amplified on the recording.

Please turn off cell phones and other electronic equipment.

Can you please rise and raise your right hand, sir.

Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat and state your full name for the record.

THE WITNESS: My name is Guillermo Olivieri.

THE REFEREE: Can you spell it, please.

THE WITNESS: G-U-I-L-L-E-R-M-O, last name is Olivieri -- O-L-I-V-I-E-R-I.

Can I just turn my phone off? I apologize.

THE REFEREE: Yes, please do. Whenever you're ready, Miss Tishman, you may proceed.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Sergeant Olivieri.

A. Good morning.

Q. Are you currently employed?

A. Yes.

Q. Where are you employed?

A. I work for the New York State Court system. I'm a sergeant at Sullivan County Family Court in the Third Judicial District.

Q. And where is the Third Judicial District located?

A. It's located in Albany and it encompasses Schoharie, Ulster, Green County, Columbia County, Sullivan County.

Q. And how long have you been a sergeant?

A. I've been a sergeant since September of 2009.

Q. When did you first become a court officer?

A. January of 2002.

Q. Now, where are you currently assigned?

A. Sullivan County Family Court.

Q. How long have you been assigned to Sullivan County Family Court?

A. September of 2009.

Q. To when you became a sergeant?

A. Yes.

Q. And from September 2009 to the current time, you have been a sergeant in the Family Court in Sullivan County?

A. Primarily, yes, yes.

Q. Prior to becoming a sergeant in Family Court in Sullivan County, you were a court officer and where were you assigned?

A. Prior to becoming a sergeant in Sullivan County, I was a court officer in Ulster County.

Q. Now, as a sergeant in Family Court in Sullivan County, can you explain to us your duties?

A. I ensure safety and maintain order and decorum in the courtrooms in the court facility. I am in charge of making

sure that the daily calendars and daily assignments are done correctly, building patrols, just make sure that the facility and court users are safe.

Q. Do you supervise anyone?

A. Yes.

Q. Who do you supervise?

A. I supervise over six other court officers.

Q. And where are those court officers assigned?

A. They are assigned on a month-to-month basis varying locations within the facility. Magnetometer posts are usually two officers are assigned there. There's a mobile patrol, that's, you know, assigned to be mobile in the event that we need someone to respond to a location. There's a magistrate's part and two judges in the courtrooms.

Q. Now, are all the court officer that you supervise assigned to Family Court in Sullivan County?

A. Yes.

Q. Are the court officers peace

officers?

A. Yes, they are.

Q. And do you carry a gun?

A. Yes, I do.

Q. Where do you wear your gun?

A. On my right-hand-side of my hip on my duty belt.

Q. Is Family Court in the same building as Supreme County Court?

A. No, it's not.

Q. Where is Family Court located?

A. 100 North Street, Monticello, New York 12701.

Q. What are the hours of Family Court, what time does it open?

A. We open the doors at ten of nine and close them at a quarter of five, but the operations are 9:00 to 5:00.

Q. Is there a lunch break?

A. Yes.

Q. What time is that?

A. 12:30 to 1:30.

Q. Now, you mentioned that judges sit in Family Court, what judges sit in Family Court?

A. Judge Meddaugh, Judge McGuire, Support Magistrate Karen Linen.

Q. And Judge Meddaugh, for the record is spelled M-E-D-D-A-U-G-H?

A. Correct.

Q. And Support Magistrate Linen is L-I-N-E-N?

A. Correct.

Q. And from the time that you started in 2009, were those the three judges that sat in Family Court?

A. Initially we had Judge Ledina who was the Family Court judge prior to Judge McGuire.

Q. And Ledina, for the record, is L-E-D-I-N-A?

A. Correct.

Q. And then when Judge Ledina was no longer a judge in Family Court, what judge took his place?

A. Judge McGuire.

Q. Were you a sergeant in Family Court when Judge McGuire started in January of 2011?

A. Yes.

Q. How many times a week does Judge McGuire have a calendar?

A. Initially it was every day and I know there was times where he would have calendar on the County Courthouse, I believe on Wednesdays. But even him being assigned to the County Court, maybe on a Wednesday, he would sill have calendar. Sometimes he would come down and do it in between his County Court matters. So, I would say every day.

Q. Now, does each judge and the magistrate have their own courtroom?

A. Yes.

Q. About how many court officers are there in total?

A. With myself or just?

Q. Not yourself.

A. Six officers.

Q. And you mentioned before the magnetometer, how many court officers are assigned to the magnetometer?

A. Normally it's two and depending on the mobile it can be three, depending on the calendar. If it's a busy day we try to

make sure that there's three officers at the magnetometer station.

Q. And are they assigned different jobs?

A. Yes.

Q. And can you tell us those jobs?

A. The first officer is in charge of the intake and he's the front desk and he'll ask the litigants or whoever -- members of the public coming in, he'll ask them, you know, "How may I help you?" "What are you here for today?" And he directs where they should go. And also checks in the litigants if they have a court matter.

The second officer is in charge of the actual x-ray machine and to make sure that any bags going through it, if there's any weapons or anything that could be hazardous. And he's also in charge of scanning people coming through as well.

Q. And are three court officers assigned -- well, I withdraw that.

How many court officers are assigned to each courtroom?

A. One.

Q. So there's only one court officer in each courtroom?

A. Yes, assigned. If there's an issue we suspect there might be a case that warrants having two officers we would do so.

Q. But in the regular course of the every day, it's one court officer for each courtroom?

A. Yes.

Q. So -- and then you said that there's one court office that's mobile, and what does that court officer do?

A. That officer is assigned to be mobile to fill in where he's needed. There's a has Surrogate Court on the opposite side of the building. There are times if we have our full staffing levels, we will allow them to have security coverage by that mobile.

But on most of the occasions that mobile fills in for officers that either call out sick or have vacation or building perimeter checks.

Q. How do court officers communicate with each over while they're working?

A. We communicate via radio.

Q. And does each court officer have a radio?

A. Yes.

Q. Where do the officers wear the radio?

A. Usually it's attached to your duty rig and all of the radios at the Family Court have a mic.

Q. When you say, "Attached to your duty rig," what is a duty rig?

A. It's a belt you wear that has your handcuffs, your pepper spray, baton, firearm, keys, radio.

Q. And you mentioned that there's a mic, where is the mic kept?

A. Depending on the officer's preference, there's a couple of different locations. You can put it on your shoulder, on the sleeve, on your inside of your shirt in front of you. Those are the two primary locations that an officer would have their radio mic attached.

Q. Does every officer have a radio?

A. Yes.

Q. And when court officers radio each other, how do they refer to Judge McGuire's courtroom?

A. They would say, "Courtroom 2 or Part 2."

Q. How would they refer to the magnetometer?

A. "Post 1."

Q. And during the day, where are you generally located?

A. During the day I'm either at the magnetometer station or in previous years when we had five officers, now we have six, it varies. Mostly I try to be at the front desk, the magnetometer station. If not, I'll be in the operations office, which is just outside of the front desk, the intake window where people file their paperwork.

Q. In the courtroom, is there a court reporter?

A. No.

Q. Are proceedings somehow -- well, is there an audio in the courtroom?

A. Yes, there's an audio.

Q. What happens when people arrive

at the court house who are on the calendar, who are litigants for the day?

A. Litigants for the day, they come into the front desk and we'll have the calendars for the parts at the front desk with us and our duty is to check in the litigants coming in and lining up cases to get them ready to go into the courtrooms.

So the litigants come to the front desk, they let us know what they're there for that morning. And if they have a court matter, we find their name and then circle them on the calendar and then have them have a seat and get ready for their call.

Q. Where do they sit?

A. They can sit -- there's a couple of different locations. Right in front of us there is about three or four benches that they can sit. And then just outside the front door in the hallway there's some seating areas. Because it's a small location, so we try to keep it so that it doesn't -- the maximum occupancy doesn't exceed the number.

Q. Now I'm going to show you what has been marked into evidence as Commission Exhibit 11, 12, 13, these are photographs.

THE REFEREE: PH?

MS. TISHMAN: PH, I'm sorry.

PH-11, 12, 13, 14 and 15.

Q. I am going to show you what is marked PH, if you can go -- into evidence, PH-11, is this a picture of the magnetometer?

A. Yes.

Q. And is this where you would be standing?

A. Yes.

Q. And the two court officers?

A. Yes.

Q. Now, you see on the other side you see there's doors with glass on them and lots of signs?

A. Yes.

THE REFEREE: Could you just wait one second, Miss Tishman. Do I have copies of these?

MS. TISHMAN: Yes, they are in Exhibit 6 under the colored tabs at the

very back.

THE REFEREE: Which one are you talking about now?

MS. TISHMAN: 11.

Q. Now, there are two glass doors on the right-hand-side of the picture, where does that lead to?

A. That's the public entrance or the exit depending on which way -- if you're going out, obviously.

Q. Now, if we can go to PH-12, now is this picture of the magnetometer also?

A. Yes.

Q. And I see, are these blue chairs the waiting chairs for individuals?

A. Yes.

Q. And these are for waiting for cases?

A. Correct.

Q. And again, on the right-hand-side is an exit sign and then two glass doors, is that the doors to go to the outside?

A. Yes.

Q. And Exhibit PH-13, now, in this exhibit on the left-hand-side you see kind

of wood cubbies, what are those for?

A. These are like desks. So that if individuals are filing court petitions or paperwork, they had an area to sit down and use the desk to write and stuff.

Q. A right past those wood cubbies there's a door that appears to be open, where does that door lead?

A. That door leads to the intake window where people file their paperwork.

Q. And now we are going to go PH-14 and is this looking at the cubbies and the waiting area from just a different angle?

A. Yes.

Q. And PH-16, do you have that?

A. I don't.

MS. TISHMAN: We will just stop there for a moment.

Q. Now, after a litigant checks in and has gone through the magnetometer, where do they wait until their case is called?

A. They can sit at either of the blue benches on the right-hand-side or the left-hand-side or they can wait outside, there's a couple of rows of seating outside

the front entrance in the hallway.

Q. If I can show you PH-17, please. Now, is this -- look at PH-17, we see -- what does this show?

A. This is the front entrance of Family Court and on the left-hand-side there is the seating area that I was referring to earlier.

Q. Now, the two doors that we see, are those the doors that lead to the area with the magnetometers?

A. Yes.

Q. So, you were saying that people could wait by the magnetometer or they can wait outside where the seats are shown in PH-17?

A. Correct.

Q. Now, so how are cases called into Judge McGuire's part?

A. Well, once we have a match -- when I say, "Match," we have parties on both sides and the case is ready, whether they have attorneys or not, we left the officer in the part know that we have cases that are ready to get called.

And the radio transmission will come over to the front desk, the magnetometer station by the officer and will let us know what number -- the number of -- because each individual case has a number, like, the first case, second case, third case. And the individual in the part would say, "Post 2 to Post 1, can you please call case number five?"

Q. And Post 2 is?

A. Post 2 is the courtroom 2, Part 2.

Q. And whose courtroom was this?

A. Judge McGuire's or Part 1 or Part 3.

Q. Now, is there a calendar of cases where -- if Judge McGuire is holding -- presiding that day, is there a calendar?

A. Yes.

Q. And are cases called in the order of the calendar?

A. Sometimes. We try to, but sometimes they are called out of order depending on who's present at the time.

Q. And are litigants given a

specific time to appear in court?

A. Yes.

Q. And are they given different times throughout the day?

A. Yes.

Q. And about how many cases are on for a specific time?

A. It varies, but I would say maybe three. On a busy day it could be four, five, given time slots. So at like 9:00, there would be four 9:00. Then it will go to 9:30. It'll be, you know, four or five 9:30 on busy days. On slower days it might be two or three during those time slots.

Q. Now, court officers, if they're assigned to the assignments that you mentioned before, how long do they remain in that assignment?

A. It's about 30 days, about a month's time.

Q. Now, how many cases are in the courtroom at a time?

A. Just one, usually.

Q. So one case is in the courtroom and then the other cases are all waiting i

the area that we've described before?

A. Yes or we stage them or line them up. So if one's in the courtroom, just outside of the courtroom so that we can try to move the calendar faster, we would have a ready matter, a ready case just outside the courtroom door so that once the parties exit the courtroom, another case is ready to go in.

Q. So there would be one case in the courtroom and parties right outside the courtroom door?

A. Yes, on the next case that's about to go in the court.

Q. And is there seating there?

A. No, there isn't any seating. They're usually just standing, just waiting.

Q. Can you describe for us how the court officers at the magnetometer know that Judge McGuire's part is ready for another case, just describe the process for us?

A. Okay. So let's say I'm in courtroom 2 and I have a case inside my courtroom and I call out to the front desk. I would say, "Part 2, Post 1, line up number

3" and I would advise them what case I need -- I wanted next on the door. And Post 1 would say, "Received" and the announcement speaker would call that case and line that next case up on the door.

Often times that officer also transmits and says, you know, "Post 2 to Part 1 -- Post 1 or Part 2, Post 1, do we have attorney on number 4 or did the respondent show up on number 4?" There's constant communication between the parts to make sure that they have ready matters while they're in there, so we're communicating back and forth.

Q. Now, I'm going to show you what is marked PH-1, 2, 3 and 4 and we can look at PH-1. This is Judge McGuire's courtroom, right?

A. Yes.

Q. And you've been in Judge McGuire's courtroom before?

A. Yes.

Q. Now, there's a door to the left of the bench, where does that door lead?

A. That need leads to the hallway

outside of this courtroom by his chambers.

Q. And the door that is on the right side of the picture, right by the bench, where does that door lead?

A. That leads to Judge McGuire's private chambers -- office.

Q. So to his private office?

A. Correct.

Q. If you can look at PH-2 and this is, again, Judge McGuire's courtroom, if we can look at the door on right-hand-side under the exit sign, where does that door lead?

A. That leads to the hallway to the front to the magnetometer area.

Q. And if we can go to PH-3, there's a desk on the side by the Judge's bench, it looks like a white sweater or something on it, who would sit there?

A. The court assistant or the court clerk.

Q. And if we can go to PH-4, now, this door is the back of Judge McGuire's courtroom is now open and can you see the magnetometer from this -- in this picture?

A. Yes.

Q. Where is that?

A. It's directly behind what's the second exit sign and doorway entry, you can see the magnetometer machine, the x-ray machine.

Q. I'm going now to show you Commission Exhibit PH-13, 14 -- you might have 13 -- I'm sorry, 13, 15, 16?

A. 15, 13.

Q. We're giving them to you.

MS. PARTIDA: I believe he already has --

THE WITNESS: I have 13 and 15.

MS. PARTIDA: So let me just give you 14.

THE WITNESS: I have 14.

MS. PARTIDA: You do? Okay.

Q. We are going to go to Commission Exhibit PH-15. Now, you see the magnetometer in the forefront of the picture?

A. Well, that's the x-ray machine that's next to the magnetometer.

Q. I see. And can you see Judge

McGuire's courtroom in this picture?

A. Yes.

Q. Can you tell us where it is?

A. It's the second door on the right-hand-side past in the hallway.

Q. So we see a door open and then we see a picture of a sunrise or sunset, not sure and then passed that, is that the door that you're referring to on the left of the sunrise picture?

A. Yes, that's correct.

Q. And if we can look at PH-16, can you see Judge McGuire's courtroom in this picture?

A. Yes.

Q. And where is it?

A. It's on the left-hand-side with the two doors side by side with some signage on it.

Q. That's on the left-hand-side down the hall by the left of the picture with the sunrise?

A. Correct.

Q. Now, I want to draw your -- I withdraw that.

Was Court Officer Miguel Diaz one of the officers that you supervised in 2013?

A. Yes.

Q. And I want to draw your attention to February 25, 2013, were you working that day?

A. Yes.

Q. Where were you posted?

A. I was posted at the front desk, the magnetometer station.

Q. Did Judge McGuire have a calendar that day?

A. Yes.

Q. Who was the court officer assigned to Judge McGuire's part that day?

A. Officer Diaz.

Q. Is that Miguel Diaz?

A. Miguel Diaz, yes.

Q. What, if anything, happened that morning?

A. In that morning I received a radio transmission from Miguel Diaz asking to -- he radioed, "Part 2 to Family Court Sergeant" and I responded by, "Go ahead for Sergeant." And he said, "Judge McGuire

wants to see you in chambers."

Q. Where was Court Officer Diaz when he radioed you?

A. He was in the courtroom.

Q. Whose courtroom?

A. Judge McGuire's courtroom.

Q. Did you hear any other voices aside from Miguel Diaz when he radioed you?

A. I heard Judge McGuire in the background.

Q. And what did you hear?

A. I couldn't make out what was being said, but it was coming over, it was like a yelling.

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

Q. And who did you hear yelling?

A. Judge McGuire.

Q. What was the tone of Judge McGuire's voice?

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

JUDGE MCGUIRE: Your Honor, there's an audio transcript, so the Court can make their own determination

of what the tone was or what the intonation was or what the level was.

THE REFEREE: He can testify to what he heard and what he recalls.

Q. You can continue, you can answer the question.

A. I couldn't make out what was being said, but I heard Judge McGuire in the background.

Q. What, if anything, did you say to Court Officer Diaz?

A. I radioed back, "10-4, en route," which means that I was en route to the location.

Q. Where was the location?

A. The location was in chambers he said.

Q. Who said?

A. Miguel Diaz, Officer Diaz radioed that Judge McGuire wanted me to speak to him in chambers. So I radioed back that I was en route to chambers.

Q. What, if anything, did you do as a result of the call from Court Officer Diaz?

A. I immediately stopped what I was doing at the time. I might have been checking in people or scanning individuals.

JUDGE MCGUIRE: Objection to what he might have been doing.

THE REFEREE: Yes, just tell us what you recall.

A. I recall stopping what I was doing and I headed towards chambers.

Q. And how did you get to chambers?

A. I went through chambers through the -- there's a law library by court officer operations, my office and it's through the double doors next to the intake window. I went in that correction.

MS. TISHMAN: I'd like to show the witness PH-18 and PH-19.

Q. And if you look first at PH-18, this is the library you referred to?

A. Yes.

Q. And the door that we see, the open door that we see, where does that lead to?

A. If you follow that, if you make a right it leads to Judge McGuire's chambers.

If you go left, it leads to Judge Meddaugh's chambers and the back office staff area.

Q. And if you could look at what is marked PH-19, that is also another picture of the library?

A. Yes, that's the entrance where I was coming in from.

Q. And where does that door lead to?

A. That leads to the hallway just outside of where the litigants or people file paperwork at the intake front desk window.

Q. Now, and that's how you came in after you got the radio call from Court Officer Diaz?

A. Correct.

Q. Now, when you walked through the library, where did you go?

A. I walked through the library and I made a right towards Judge McGuire's chambers.

Q. I am now going to show you what is marked PH-5 and 6, 7, 9.

Now, if you can look at first PH-5, do you see the door to the library in

PH-5?

A. Yes.

Q. And is that the door on the bottom -- the first door on the bottom right?

A. Correct.

Q. And do you see Judge McGuire's private chambers in this picture?

A. Yes.

Q. Where is that?

A. It's the door all the way at the end of the hallway underneath the exit sign.

Q. Now, the second door, the door right past the library on the right-hand-side, where does that lead?

A. That's the deputy chief clerk, Stacy Benton's office.

Q. And past the door frame, what area is that before you get to Judge McGuire's private chambers?

A. That his chambers area and his secretary sits there and his law clerk on the left-hand-side has a little office just passed the copy units there.

Q. And I want you now to look at

PH-6, and what is this view?

A. That is the view I was describing. So, on the right-hand-side underneath the clock is where his law clerk's office and then the desk area is where his secretary would sit.

Q. So the door under the clock leads to Judge McGuire's law clerk?

A. Correct.

Q. At that time, in 2013, who was Judge McGuire's law clerk?

A. Mary Grace Conneely.

Q. And that's spelt C-O-N-N-E-E-L-Y?

A. Correct, I believe so.

Q. Now, you said that -- you mentioned the desk on the bottom left corner, in 2013, who sat there?

A. Wendy Weiner.

MS. TISHMAN: W-E-I-N-E-R, for the record.

Q. And the view looking down the hall, is that the view headed to the library?

A. Yes.

Q. And Judge McGuire's private

chambers, is that seen in this picture?

A. From the view where you would be taking the photo, it would be where his private chambers would be.

Q. So it would be behind where the person taking the photograph was?

A. Correct.

Q. So, you said before that you walked through the library to get to Judge McGuire's chambers, describe for us what happened?

A. While I was en route, when I made the left out of the library, I saw Judge McGuire coming towards me.

Q. Was he in his robe?

A. He was.

Q. Can you describe for us how Judge McGuire came towards you?

A. Judge McGuire came towards me, he was yelling. He was yelling something to the fact that -- in a very loud voice, "I want another officer now, now, I want another officer now."

And he was coming towards me in a very aggressive manner, red in the face and

he was pointing in my direction.

Q. You said he was pointing, can you describe how he was pointing?

A. I wouldn't say hand fully extended, but maybe halfway extended and pointing in my direction as if he was, you know, speaking to me -- like pointing at my direction, like very, very agitated, upset.

MS. TISHMAN: And I would like the witness to reflect that the witness had his elbow bent and his right hand with one finger extended.

Q. And was Judge McGuire pointing towards you?

A. Yes.

Q. And about -- can you describe how Judge McGuire was moving towards you?

A. He was moving towards me very -- he seemed very quickly. I was taken back. I was in shock. I was scared to be honest with you. I didn't know what I did to warrant being yelled at and I was taken off guard. I was nervous.

Q. When you say -- before you said Judge McGuire walked towards you

aggressively, what did you mean about that?

A. His door -- the door to this courtroom swung open. As I was approaching, I saw him come out of that door.

Q. Which door were you talking about? If we can look maybe to Commission Exhibit PH-1?

A. If we were -- PH-1? I'm looking at PH-1.

Q. Does this show one of the doors that you saw Judge McGuire coming from?

A. Yes. It is my recollection that I saw him what seemed to have come out from where the door on the left, where the court clerk would be sitting, out that door on the left.

Q. And when you say him come out the door, describe what you saw?

A. I saw Judge McGuire coming towards me in an aggressive -- it seemed in a fast paced -- an aggressive state, yelling and red in the face pointing at me as he was approaching me.

Q. And what was Judge McGuire saying?

A. He was very loud and said he wanted another officer now, another officer now, "I need to move a calendar," referencing the calendar. The court proceedings, the calendar, that morning.

Q. How close did Judge McGuire get to you?

A. I want -- I was standing just before or just underneath the second doorway.

Q. What picture are you looking at?

A. I apologize, I'm looking at PH-5. So I was past Stacy Benton's office and I was just about to walk -- or I was under the second doorway there.

Q. So the doorway past where Stacy Benton's office is?

A. Correct, before the copier machine.

Q. How close was Judge McGuire when he raised his finger to you and said, "I want another court officer in my courtroom now"?

A. From my recollection, it was from the minute he turned and saw me. He was

saying that and he was walking towards me and he got to at least the middle of the copier, if not closer towards me, past the copier.

Q. At the end, how far was he from you?

A. A couple of feet.

Q. And what did you do?

A. At the time I was in shock and I --

JUDGE MCGUIRE: Objection, nonresponsive.

THE REFEREE: Yeah, just answer the question, Sergeant.

A. I responded back to Judge McGuire that I would and I stuttered because I was nervous.

JUDGE MCGUIRE: Objection, move to strike.

THE REFEREE: Please answer the question.

A. I told Judge McGuire that I would accommodate his request, but for him not to talk to me in that tone.

Q. And physically, what did you do

when Judge McGuire was coming towards you?

A. I got into a bladed stance.

Q. Can you describe to us what a bladed stance is?

A. A bladed stance is a stance where you move your body in a way to have your firearm and -- furthest away from a subject or someone you're having an encounter with.

And at that moment, as Judge McGuire was approaching, I got into a bladed stance.

Q. And why did you do that?

A. It was instinctual. I just went into that stance because I didn't know what to expect, to be honest.

Q. What did you think might happen?

A. I don't know.

JUDGE MCGUIRE: Objection.

A. I don't know. I know he was coming at me very aggressive. He was angry. He was screaming at me.

JUDGE MCGUIRE: Objection to my state of mind.

THE REFEREE: Sustained, strike it.

Q. Why did you go into a bladed stance, what did you that was going on?

JUDGE MCGUIRE: Objection, asked and answered.

THE REFEREE: Sustained.

Q. Where did you learn about bladed stance?

A. I learned that in the academy and through training.

Q. When you went into a bladed stance, you said you moved your body, how was your body moved in a bladed stance? What position were you in?

A. You turn away from the individual so that your shoulder is looking at the individual and you just protect -- it's a position that I'm trained to protect yourself. I don't know how else to describe it.

Q. Do you move on an angle?

A. Correct, an angle away from whatever's in front of you.

Q. When you moved into a bladed stance with Judge McGuire, what shoulder did you have forward?

A. My left shoulder was facing Judge McGuire.

Q. And which shoulder, your right shoulder was behind?

A. Correct.

Q. Why was your right shoulder behind?

A. Because I'm right-handed with my firearm and that's where it is, that's where I turn.

Q. So you went into a stance so that your firearm would be behind you?

A. Yes.

Q. When you said to Judge McGuire, "Please do not talk to me in that tone," how did the Judge respond?

A. The Judge went on to explain why he needed another officer. We had to move this calendar. He was yelling and I turned around and walked away. At that point after I sad that I would grant his request and for him not to talk to me in that tone, I remember turning away and walking in the other direction. But I heard him say, "I need to move this calendar" and after that I

don't recall what was said to be honest.

Q. What was the volume of the Judge's voice when he said, "I have a calendar to do, we need to move the calendar"?

A. He was still yelling, not as loud as he was prior to the first initial conversation or what he was yelling at me.

Q. What was the volume of the Judge's voice in the first initial conversation?

JUDGE MCGUIRE: Objection, asked and answered.

THE REFEREE: Sustained.

Q. So what did you do next?

A. I immediately walked back towards the library, made the left into the library and went to the front desk of the front entry point and I called my lieutenant, my supervisor, Kevin McCabe.

Q. Lieutenant Kevin McCabe?

A. Correct.

Q. And that's spelt for the record, M-C, capital C, A-B-E?

A. Right.

Q. And you spoke to Lieutenant McCabe?

A. Yes.

Q. How were you feeling when you left Judge McGuire?

A. I was --

JUDGE MCGUIRE: Objection, relevance.

THE REFEREE: Overruled.

Q. You can answer the question.

A. I was nervous, embarrassed, scared. I was shaken up. I felt as if I had -- I never had an incident with a judge in that regard to this point in my career and I was afraid, to be honest. It could be interpreted that I yelled back. I didn't know how I was going to -- I was a mess, to be honest. I called the lieutenant to come down to advise him what was going on.

Q. Did you have any conversation with the Judge after the event about what had happened that day?

A. No.

Q. Did the Judge ever apologize to you about what had happened that day?

A. No.

Q. Now, when you are at the magnetometer, can you hear Judge McGuire in his courtroom?

A. On occasion, yes.

Q. Can you describe what you mean by that?

A. On an occasion where normally we won't hear anything, but on occasion there were times where --

JUDGE MCGUIRE: Objection, can we get a time and a day?

THE REFEREE: I don't know we can get that. Is this in general?

THE WITNESS: I interpreted the question to be in general.

THE REFEREE: You may proceed.

THE WITNESS: Can I elaborate?

THE REFEREE: Sure.

A. When you say, "Can you hear Judge McGuire from the front?" On a normal occasion where there isn't any yelling or there's not a lot of litigants in the hallway or people in the hallway, I would say, "No, I couldn't here Judge McGuire."

But on occasion, quite frequently, we would hear yelling in the courtroom and you can hear Judge McGuire's voice.

Q. Yelling in what courtroom?

A. Courtroom 2.

Q. And is that Judge McGuire's courtroom?

A. Yes.

Q. And who would be yelling?

A. Judge McGuire.

Q. About how long did this happen?

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

JUDGE MCGUIRE: Are we going to get into how often and when?

THE REFEREE: Overruled.

JUDGE MCGUIRE: How do you cross-examine that?

THE REFEREE: Overruled.

JUDGE MCGUIRE: Okay.

MS. TISHMAN: Well --

THE REFEREE: It's overruled.

MS. TISHMAN: Okay.

Q. You can answer.

A. I would say minimum, once a day multiple times a day we would hear Judge McGuire yelling.

Q. And was the door to Judge McGuire's courtroom open or closed?

A. Closed.

Q. Abut how far is the Judge's courtroom from the magnetometer?

A. I would say 75 to 100 feet away, maybe 85 feet, 75, 85 feet.

Q. What would you do when you would hear the yelling?

A. Initially, when we first started hearing the yelling, we would run to the courtroom thinking it was a disruptive litigant or an officer having a problem with a litigant or something going on in the courtroom. So initially we ran to the courtroom.

Q. When you ran to the courtroom, what did you do?

A. We would enter the courtroom to see if there was anything happening at that time because my main concern -- our office's main concern was the safety of everyone in

the courthouse, so we go with that in mind. So we would walk in and observe what was happening in the courtroom.

Q. What did you see when you went into the courtroom?

A. It would be Judge McGuire yelling or -- at either attorneys or a litigant.

Q. Was there any emergency happening in the courtroom?

A. No.

Q. And you said that you heard this at least once a day during Judge McGuire's calendar, what happened over time?

A. Over time we would be mindful of where the yelling would be coming from because there is conversation rooms outside of Judge McGuire's courtroom in the hallway there, there's three of them. And we would ascertain whether or not it was someone there arguing with an attorney or a litigant or if it was coming from the courtroom.

And we would -- it went from running to the courtroom to calling on the radio to make sure everything was okay in the part.

Q. And why did the procedure change?

A. Because it was becoming disruptive. We were running to the courtroom door quite often initially.

Q. And how often in like a court calendar would you be running to Judge McGuire's part after hearing yelling?

A. Initially I would say maybe two, three times a day maybe.

Q. How long was it -- did this continue before you stopped running to the part and started just calling the part?

A. Over the course of a few weeks.

Q. And then would you continue to hear the yelling?

A. Yes.

Q. But you know longer ran to the part?

A. Correct.

Q. And how long did -- what time period was it that you -- I withdraw that.

Did you hear the yelling from Judge McGuire's part in 2011 when the Judge became a judge?

A. Yes.

Q. Was assigned to Family Court?
A. Yes.
Q. And in 2012, when the Judge was assigned to Family Court?
A. Yes.
Q. And in 2013, when the Judge was assigned to Family Court?
A. Yes.
Q. And 2014?
A. Yes.
Q. And 2015?
A. Yes.
Q. And how about after 2015?
A. Not as much.
Q. Now, was the frequency of the yelling from 2011 to 2015 basically the same for every court calendar?
A. Yes.
Q. Did any of the other court officers that you supervise ever talk to you about how Judge McGuire treated them?
A. Yes.
Q. Who talked to you?
A. Officer Miguel Diaz and Officer Brenda Downs.

THE REFEREE: Can you give me that name, please?

THE WITNESS: Brenda Downs -- D-O-W-N-S.

MS. TISHMAN: Yes.

Q. Now, I want to draw your attention to January 28, 2013, were you involved with the *P*[redacted] *v P*[redacted] *and R*[redacted] matter?

MS. TISHMAN: And I will spell the names for the record, P[redacted] -- P-[redacted] -- v P[redacted] -- P[redacted] -- and R[redacted] -- R[redacted] -- matter.

A. Yes.

Q. And what happened on January 28, 2013?

A. I received a radio transmission from, I believe, Officer Downs referencing us having to call 911. I'm not sure if it was Officer Downs or someone in the part referencing a 911 call had to be made and that someone was having trouble breathing and had a heart condition.

Q. What courtroom was it referencing?

A. Courtroom 2.

Q. So what did you do?

A. I immediately ran to Courtroom 2. I wasn't sure where I was at the time, but I ran to Courtroom 2 and I ensured that 911 was being called. I actually believe Brenda Downs called.

Q. And Courtroom 2, who is Courtroom 2 assigned?

A. Judge McGuire.

Q. What did you seen when you got Courtroom 2?

A. At the time I attended to an older woman who was later Miss R[redacted], who was having trouble breathing. And was very upset, couldn't breathe, she said her heart. She had a heart condition and she needed help.

Q. And what did you do?

A. I believe I immediately took her outside into one of the conference rooms and tried to calm her down, gather information. I believe her daughter was with her. I was gathering information from her daughter as well to see if there was any conditions that

we needed to worry about, any medications she was taking and try to reassure her that she would be okay. I knew that 911 was responding and I was just hoping to try to get her to calm down and catch her breath.

Q. And what, if anything, did she say to you?

JUDGE MCGUIRE: Objection.

THE REFEREE: Let's hear it and we will see what -- hearsay?

JUDGE MCGUIRE: Yes, sir.

THE REFEREE: Let's see what the answer is.

A. She said that, "He's out of control, he shouldn't be talking to me like that, he did this to me," referencing Judge McGuire.

JUDGE MCGUIRE: Move to strike.

THE REFEREE: Why isn't that hearsay?

Objection is sustained, strike it.

Q. And did the ambulance come?

A. Yes.

Q. Now, how does Judge McGuire

handle a situation where the Judge believed a litigant is disruptive in the courtroom?

A. It depends. My experience is that it depends.

Q. Have you ever been called to go to Judge McGuire's part when Judge McGuire has believed that a litigant has been disruptive?

A. Yes.

Q. And what happened when you got there?

A. It's different occasions. Either the Judge was admonishing the subject, the individual, yelling at them and other times he would have us take them into custody.

Q. And when Judge McGuire had you take an individual into custody, would you receive a radio call about the incident?

A. Yes.

Q. Can you tell us what you would receive and what would you do?

A. I would receive a radio transmission that we have a remand, which means we have someone under arrest, we're talking them into custody.

Q. Who would you receive the radio transmission from?

A. Whoever was working inside the courtroom.

Q. Prior to getting their radio transmission that you had a remand, could you hear anything from Judge McGuire's courtroom?

A. At times.

Q. What would that be?

A. Yelling.

Q. Who would be yelling?

A. Judge McGuire.

Q. What did you do when you would get to Judge McGuire's courtroom?

A. I would assist the officer in the part.

Q. How would you assist them?

A. If they were taking a subject into custody or if Judge McGuire was yelling at the individual, I would stand next to the officer who would be behind the subject.

Q. And then what would happen?

A. At times he would say, "Take him away." Or at times if I responded and the

subject was getting handcuffed, I would help and handcuff.

Q. And when a litigant was handcuffed, were they handcuffed in the front or the back?

A. In the back.

Q. And where were they taken?

A. To a holding area that we have. It's an attorney waiting room. It's next to my office, operations office, next to the library there's an attorney waiting area that we use as a holding cell.

MS. TISHMAN: I ask that the witness be shown PH-7 through 10 and PH-13.

MS. PARTIDA: You have 13, right?

Q. If you can look at PH-7?

A. Yes.

Q. What is this picture?

A. The attorney waiting room, holding cell.

Q. Is this what you described before where litigants that were handcuffed would be taken?

A. Correct.

Q. Now, there is a glass window in the back of the picture, what does that lead to?

A. That's my office/operations office.

Q. And can you see from your office into the room where litigants who were handcuffed taken?

A. Yes.

Q. Now, when a litigant -- I'm going to go now to picture PH-8 and what is this picture.

A. That's the operations office.

Q. That's your office?

A. Yes.

Q. And is that the window that we saw before?

A. Correct.

Q. Where does it look into?

A. Into the holding area attorney room.

Q. And if we can go to PH-9, what's this?

A. This is the hallway that leads to the attorney conference room to the

operations office and the hallway that leads to the library.

Q. And PH-10, do you have that picture?

A. Yes.

Q. What is that?

A. That's the entry to the hallway where you would make a right to the attorney waiting room and operations office.

Q. If we look on the left-hand-side of the picture, there are wood cubbies, are those the same cubbies that we saw in the other picture before?

A. Correct.

Q. And what would happen if a litigant was taken to the attorney room?

A. We would radio to the front desk to clear the hallway. Obviously, we can't clear the whole hallway, the whole front entrance there, but we clear the one side so that we can escort the individual past the magnetometer station and through the double doorway to the holding area.

Q. When the litigant who's been ordered to be handcuffed is taken to the

attorney room, are they walked through the waiting area in handcuffs?

A. Yes.

Q. And are there people in the waiting area?

A. Yes.

Q. People waiting for their cases to be called?

A. Yes, or filing paperwork.

Q. And they were waiting in those blue chairs that we saw before?

A. Correct.

Q. And when they -- the litigant -- and how many court officers would be with the litigant when they were walked through the waiting area?

A. Two.

Q. And where would those two officers be in relationship to the litigant?

A. One in the front and one in the back. One with his handed physically on the person making sure that we have control and one just leading the way in case there were any family members or members of the public that we had to keep safe or away from the

subject or individual.

Q. What would happen once the handcuffed individual was taken into the holding room?

JUDGE MCGUIRE: Judge, I've allowed some of this to go, but we're talking about generalities and we don't have any specifics whatsoever. I mean --

THE REFEREE: Is this an objection?

JUDGE MCGUIRE: It's an objections.

THE REFEREE: It's overruled. You may proceed.

Q. You can answer.

A. Can you repeat that last question? I'm sorry.

Q. And what would happen when the handcuffed litigant was taken into the holding room, the attorney room?

A. Initially we bring him into that area and we search the individual for any contraband and then we have him have a seat.

THE REFEREE: Sir, let me

interrupt you for a second just in line with that objection. Is this something that happened once or this happened more than once?

THE WITNESS: More than once.

THE REFEREE: How many times?

THE WITNESS: One to three times a month.

THE REFEREE: You may proceed.

Q. And did you usually respond when this happened one to three times a month?

A. Yes.

Q. So when the litigant was in the room, the holding room, you said you did a search of the litigant?

A. Initially we did and eventually we stopped doing that.

Q. Why was that?

A. It's my previous experience and experience in the courtroom system, when we remanded someone we had a holding order if someone was held in contempt, so we had something to secure someone. So, we were going to process that individual, so we would call Corrections. That's what prompts

a search of a person's property because they're going to go into a facility. So we want to make sure that the person is searched prior to making a said call.

Initially, when we were taking them into custody, we thought they were going to Corrections, but it turned out that they were -- the case would be recalled into the part and then the individuals would be released.

Q. Was it called into the part that same day?

A. Yes.

Q. Did you ever receive any paperwork from Judge McGuire documenting that he had ordered litigants put into custody?

A. No.

Q. In your experience, was it usual not to receive paperwork?

A. Was it usual not to receive paperwork.

Q. Yes.

A. It's my experience that you receive paperwork when you're talking

someone to custody.

Q. Why was the litigant brought into the attorney room?

A. It would vary from -- on occasion. It depended. I mean, once -- sometimes we would take the subject into that room and wait. The case would be second called and we would bring the individual when the judge is ready and he would explain to the individual why he was taken out of the courtroom into custody and then we would release him or her.

Q. But who -- on whose order did you take that person into custody?

A. The Judge.

Q. What judge?

A. Judge McGuire.

Q. And why were these individuals processed like you described before, like you had processed other people that were going to go to Corrections?

A. They were going to be released. Or they were going to be heard, the case was going to be called again and either remanded to Corrections or released.

Q. Now, when an individual was taken into the attorney room, how many court officers were with the individual when they were brought into the attorney room?

A. Two.

Q. Did the officers -- court officers stay with the individual in the attorney room?

A. Yes, it would either be myself or the mobile officer, but the officer that was working the part would return to the courtroom.

Q. Return to Judge McGuire's part?

A. Correct.

Q. Where would the court officer remain who was assigned to the litigant that was taken from Judge McGuire's part?

A. We would secure the holding area, make sure there was no objects, the subject or an individual can grab and use to harm himself or herself or others and we would sit in Operations because that door is secured, it locks. And we could observe the individual sitting in that room.

Q. So the court officer, would they

be in the same exact room as the individual who was taken from Judge McGuire's part?

A. Well initially, they bring them in and then they have them sit down and then they close the door and they sit in Operations where that glass window -- well, it's a Plexiglass window that you can see and observe them in that room.

Q. And when the litigant was in that room, were they handcuffed?

A. Yes.

Q. And were they handcuffed in the front or the back?

A. The back.

Q. Were they handcuffed the entire time they were in that room?

A. Yes.

Q. About how long did litigants stay in that room?

JUDGE MCGUIRE: Objection, could we get what she's talking about?

THE REFEREE: Yeah, this might change from time to time, no?

MS. TISHMAN: Okay.

THE REFEREE: Sustained.

Q. Let me ask this, in 2011 were litigants handcuffed and brought to the attorney room on Judge McGuire's order?

A. Say that one more time?

Q. In 2011, were litigants handcuffed and taken out of Judge McGuire's part and brought to the attorney room?

A. Yes.

Q. About how often did that happen?

A. As I stated before, it felt like one to three times a month.

Q. And in 2012, were litigants taken out of Judge McGuire's court part and brought to the attorney waiting room and handcuffed?

A. Yes, it seemed that way.

Q. Well, were litigants in 2012 ordered by Judge McGuire to be taken out of his courtroom and brought to the attorney room?

A. Yes.

Q. In 2013, were litigants ordered by Judge McGuire to be handcuffed and taken out of the courtroom and brought to the attorney room?

A. Yes.

Q. In 2014, were litigants ordered by Judge McGuire to be handcuffed and taken out of Judge McGuire's courtroom and brought to the attorney room?

A. Yes.

Q. And 2015, were litigants ordered to be handcuffed by Judge McGuire and brought to the attorney room?

A. I believe so.

Q. What do you mean?

A. Yes, I want to explain this without -- when I say, "It seems as if it was one to three a month," it seemed that way on average, it felt that way. Do you understand?

So when you go you from 2011 to '15, I'm sure that it happened in 2015, where, you know, it's --

JUDGE MCGUIRE: Objection, move to strike.

THE REFEREE: Overruled.

A. I'm just trying to paint a picture of what I'm describing in terms of -- to answer you, yes, in 2015 people were

taken into custody. Was it one or three a month? It's been so long from 2011 to '15 that it's hard to describe.

I don't have documentation showing one, two, three, four, but I'm just saying that collectively and what I observed, it felt and it happened as if it was one to three times a month throughout the time that we are talking about. I don't know how else to describe that without --

THE REFEREE: Before we go on, Miss Tishman, it's almost 1:00. How much more direct do you have?

MS. TISHMAN: I'm almost finished with the direct.

THE REFEREE: Another few minutes?

MS. TISHMAN: Probably 15.

THE REFEREE: I think we should take a break at this point.

MS. TISHMAN: Okay.

THE REFEREE: So, we're going to take a lunch break and then we will come back and resume your testimony.

How long do we need for lunch?

MR. LEVINE: An hour?

THE REFEREE: So let's resume at 2:00.

JUDGE MCGUIRE: Very good.

THE REFEREE: Off the record.

(A recess was taken.)

MR. MAISONET: We are on the record.

THE REFEREE: Miss Tishman, are you ready to proceed?

MS. TISHMAN: Yes, but before we just call Sergeant Olivieri back, I just wanted -- I thought it would be a good idea to put the Commission bench book index into evidence because -- for a guide of all the exhibits that we quickly went through and entered into evidence, so.

MR. LEVINE: In other words, because we didn't say all the case names, unless there be some confusion with the record at the end, I think it would be more handy.

JUDGE MCGUIRE: It would be a Court's exhibit?

MS. TISHMAN: No, it would be Exhibit D. In the first part of the index you see, "Pleadings and Rules." A is the Formal Complaint, B is Respondent's Answer, C is Commission Counsel's Witness List. We can make the Index, D.

THE REFEREE: Okay, that's fine with me.

MS. TISHMAN: Under that subsection.

JUDGE MCGUIRE: That's fine.

MS. TISHMAN: Okay.

THE REFEREE: Okay.

(Pleadings & Rules Exhibit D was marked in evidence, as indicated.)

(The witness entered the room.)

MS. PARTIDA: Witness entering.

THE REFEREE: You may sit, Sergeant. You're still under oath.

THE WITNESS: Thank you.

THE REFEREE: You may proceed.

Q. Sergeant Olivieri, when there is a litigant handcuffed in the attorney room holding room, who decides when that

individual comes back to Judge McGuire's courtroom?

A. The Judge will.

Q. And when they -- the litigant comes back to Judge McGuire's courtroom, how do they walk? What area do they walk through to get to the Judge's courtroom?

A. Through the hallway and out the double doors and then through the public hallway towards his courtroom.

Q. And when they walk from the attorney room holding room back to Judge McGuire's courtroom, are they handcuffed?

A. Yes.

Q. Are they handcuffed in front of them or behind them?

A. Behind them.

Q. And when they walk from the attorney room holding room to Judge McGuire's courtroom they are walking through the waiting area, were there usually people in the waiting area?

JUDGE MCGUIRE: Objection to what was usual.

THE REFEREE: Overruled.

A. We clear the area before transporting the individual back. I mean, they're in a separate location, they can still see the public hallway. They're just not in the direct line of sight or in their way as we're walking towards the courtroom.

Q. Would there be people sitting in the blue chairs that we saw in the pictures?

A. Yes.

Q. I'm going to show you what is marked PH-20 and what is this a picture of?

A. That is the front of the Government Center building that it shows the annex side of where Family Court is located. This the building on the right-hand-side.

Q. The building on the right-hand-side of the concrete building, what building is that?

A. Family Court.

Q. And building on the left-hand-side that has windows on it, what building is that?

A. It's the Government Center, Sullivan County Government Center.

Q. And the Sullivan County

Government Center and the Family Court building on the right, are they connected?

A. Yes, via a breezeway.

Q. Can you see that in the picture?

A. Yes.

Q. Is that kind of behind the those trees?

A. Correct.

Q. Do you know who Wendy Weiner is?

A. Yes.

Q. Who is she?

A. She is a -- I believe deputy chief clerk at Sullivan County Surrogate Court.

Q. And in 2011, was she Judge McGuire's confidential secretary?

A. Yes.

Q. And was she Judge McGuire's confidential secretary for a number of years?

A. Yes.

Q. I want to draw your attention to January 14, 2015, what, if anything, happened?

JUDGE MCGUIRE: Objection,

hearsay.

THE REFEREE: Overruled.

JUDGE MCGUIRE: Judge, he wasn't there.

THE REFEREE: Well, we will find out. He's being asked what happened.

Do you know what happened?

THE WITNESS: Can I refresh my recollection with any --

Q. Well, why don't I ask you another question. On January 14, 2015, did you have a conversation with a court officer, Brenda Downs.

A. Yes.

Q. As a result of that conversation, what did you do?

A. As a result of our conversation I went to meet with Wendy Wiener.

Q. Where did you meet her?

A. She was located in Mary Grace Conneely's office, which is the law clerk of Judge McGuire.

Q. Was that in Judge McGuire's chambers area?

A. Yes.

Q. And did you speak to Miss Weiner?

A. Yes.

Q. And did you -- can you describe Miss Weiner -- her condition when you saw her on January 14, 2015?

A. She was visibly shaken up, very nervous.

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

A. She was teary-eyed and quite frankly, seemed scared.

JUDGE MCGUIRE: Objection.

THE REFEREE: Is this what you observed?

THE WITNESS: What I observed?

THE REFEREE: Overruled.

Q. About what time of the day was this on January 14, 2015?

A. It was -- my conversation with her was anywhere between 8:30 and 8:40. It was the beginning of my tour, my your that day.

Q. What did you do as a result of your conversation with Miss Weiner?

A. As a result of my conversation

with Miss Weiner, I had a discussion with chief clerk, Christina Benson, and I had made a call to my Lieutenant, Kevin McCabe.

Q. And then after you spoke to these individuals, what, if anything, did you do?

A. I had discussed with them what Wendy Wiener had talked to me about.

Q. Did there come a time that you made a report?

A. I believe so, yes.

Q. Do you remember if you made a report at that point?

A. Yes.

MS. TISHMAN: I have no further questions of this witness.

THE REFEREE: Thank you.

Judge, cross-examination.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Good afternoon.

A. Good afternoon, Judge.

Q. I'm going to ask you some questions. Most of my questions can be answered with a "Yes" or "No." If I ask you something you don't understand, just let me

know that. I will be happy to rephrase it.

Okay?

A. Okay.

Q. All right. So now, in preparation for your testimony today, who, if anyone, had you spoken to?

A. In regards -- in regards to the testimony? Can you elaborate, please?

Q. Sure. Did you speak with anyone prior to testifying today about your testimony today?

A. Yes.

Q. Who, if anyone, did you speak with?

A. Miss Tishman.

Q. How many times did you speak with Miss Tishman?

A. Twice.

Q. When were they?

A. Initially when -- I don't recall the first time. A couple of years ago, maybe a year and a half.

Q. So some time in 2018?

A. I would be guessing, your Honor.

Q. Well, I don't want you to guess.

A. Yes.

Q. So at some point you came down here or someplace and gave a statement under oath?

A. Correct.

Q. Do you remember when that was?

A. I don't recall the date, but I remember doing it.

Q. Is there anything that would refresh your recollection?

A. I'm sure, yeah.

JUDGE MCGUIRE: Judge, do you want me to have this marked to refresh his recollection?

THE REFEREE: I think we should.

(Respondent Exhibit A marked for identification, as indicated.)

JUDGE MCGUIRE: May I approach, your Honor?

THE REFEREE: Yes.

Q. I'm showing you what's been marked as Respondent's A for identification. Just take a look at that and when you're done looking at it, just put it down and look up.

A. Okay.

Q. All right. So does that refresh your recollection with respect to when you gave a sworn statement?

A. Yes.

Q. So when was it?

A. 2016.

Q. So that was three years ago, more than three years ago?

A. Yes.

Q. Right. So when you said that it was about a year and a half ago you were mistaken?

A. Yes.

Q. Okay. So before you gave that statement on January 19, 2016, had you spoken with anybody about your testimony on that day?

A. Before that day?

Q. Before that date?

A. About my testimony?

Q. On that date?

You can look at me, Sergeant, that's okay.

MR. LEVINE: Objection.

A. So I'm clear what the question is --

Q. Okay, let me rephrase it.

So we can agree that you came down on January 19, 2016?

A. Correct.

Q. More than three years ago?

A. Correct.

Q. And we can agree that, in your mind, it was a year and a half ago? Well, that's what you said?

A. I said that, yeah, I was guessing.

Q. Okay. So I don't want you to guess. If you don't know, let me know that. Okay?

A. Right.

Q. So do you remember -- was it down here that you gave the testimony, be it a different room, but down in this building, 61 Broadway?

A. Correct.

Q. So before you came here, did you speak to anyone about the substance of what you were going to be testifying about?

A. I spoke with my supervisor in regards of having to come down.

Q. Okay. And who were they?

A. I know Lieutenant Kevin McCabe.

Q. Okay.

A. I believe -- I'm not sure which chief. I had Chief Janet Jordan originally and then it was Chief Alfred Moscola.

Q. So there was a change in chiefs sometime in that period?

A. Correct, but definitely Kevin McCabe in terms of what I was being subpoenaed to come down.

Q. And to one of the Chiefs, either chief Jordan or Chief Moscola, whoever was the Chief at the time?

A. Correct.

Q. So, when you spoke with them, did they take any notes?

A. No. I spoke with Lieutenant McCabe in person.

Q. Okay.

A. And relaid -- I spoke with Lieutenant McCabe in person and I think to an extent of either Chief Jordan or Moscola,

I believe it was Jordan.

Q. Okay.

A. Just that I was coming down here and they said to cooperate, do whatever it is you need to do.

Q. Tell the truth?

A. Tell the truth.

Q. Okay. So where was it that you spoke to Lieutenant McCabe?

A. It might have been in his office or he might have come down after I received a call from Miss Tishman because I notified him directly.

Q. Okay. So, either in his office, which is on the second floor of the Government Center?

A. Correct.

Q. That's the office you're referring to?

A. Correct. Or the office that's outside the attorney waiting room, I'm not sure.

Q. What you called the control room in some of the photographs?

A. The operations room.

Q. So when you spoke with Lieutenant McCabe, other than yourself and Lieutenant McCabe, who else was present?

A. I don't believe anyone else was present.

Q. Okay. You don't recall there could have been someone else plenty?

A. I don't anyone else was present.

Q. And when you were speaking with Lieutenant McCabe, did you make any notes?

A. Did not make any notes in regards -- regarding our conversation and the conversation I had with Miss Tishman, that I had to come down here.

Q. We haven't gotten to Miss Tishman yet.

A. Right.

Q. We're just talking about Lieutenant McCabe.

A. Right.

Q. Did Lieutenant McCabe make any notes?

A. Not that I know of.

Q. But you were in the same room with him, right?

A. Right.

Q. It was with the Chief, was it over the phone or by an email?

A. I believe it was over the phone.

Q. All right. So then you said you also spoke to Miss Tishman before you came here in 2016?

A. It might have been '15 because when I came down it was January of '16.

Q. Okay. Let me be clear with my question, thank you.

Before you came in January of '16, you spoke with Miss Tishman?

A. Correct.

Q. Okay. And you said you called her after you got a subpoena?

A. I don't believe I said I called her after the subpoena. I don't know how the context of our conversation happened back then.

Q. So was it in person?

A. I don't recall.

Q. Okay. So you don't recall whether you spoke to Miss Tishman in person?

A. I spoke to Miss Tishman in

person.

Q. Okay. When was that?

A. I came down here, there might have been a time -- no, that was after I spoke to her on the '16.

Q. Let's just stay with the '16?

A. Sure. Sure.

Q. So you came here on the '16?

A. Correct.

Q. And the person who questioned you that day was Miss Tishman?

A. Correct.

Q. Okay. When you met her in person that day, January of 2016, was that the first time that you had met her in person?

A. I believe so, yes, I believe so. I believe so.

Q. Okay. But -- so, other than in person, had you spoken to her on the phone?

A. I had spoken to her on the phone, I believe.

Q. Okay. And how many times did you speak with her on the phone?

A. I don't know. I don't recall.

Q. More than five?

A. No, not more than five. It would probably be one time to arrange coming down, if I'm not mistaken.

Q. Okay.

A. To be honest with you, your Honor, I don't recall a lot of -- well, not -- the conversations that I had with Miss Tishman or Kevin McCabe, you know -- I mean, it was 2011. I can try my best and answer your questions.

Q. That's all I'm asking.

A. Sure.

Q. So your memory from 2016 is a little vague?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. Your memory from 2016 is a little vague?

A. I remember having the deposition or the document you showed me, I remember that and I remember subsequent -- after that, Miss Tishman came down, took some photos.

Q. Well, I want to say with that date.

A. I know, you're just talking about what I remember and I know up until that point, any communication with my Lieutenant, my superiors and Miss Tishman prior to that January date, I don't -- you know, I can try to answer the best that I can.

Q. Okay. I don't want to belabor the point.

A. Right.

Q. So when you came down here in January of 2016, that was the first time you met Miss Tishman in person?

A. I believe so, yes.

Q. But you had spoken to her at least once on the phone?

A. Yes.

Q. And had you spoken to her about the substance of the information that you were going to testify about?

A. I don't think so. I think it was more along the lines, "Come down, we can ask you some questions here."

Q. So you have never had any discussions with Miss Tishman prior to coming down and giving your testimony?

A. That I can recall? No.

Q. Okay. Did you have conversations with anyone else prior to coming down on the 16th -- in 2016, January 19, 2016?

A. My Lieutenant.

Q. Okay.

A. I believe one of my Chiefs because I had to get -- to my understanding, I had to show proof that I was coming down here.

Q. Mm-hmm.

A. Not that I can recall.

Q. Okay. All right. So, have you been called in to the Commission on Judicial Conduct very often?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. No.

Q. So this is the only time that you've offered testimony about your experiences in court to this body?

A. Today and the other time.

Q. Right. Well, I'm still on the 19th?

A. Yes.

Q. January 19, 2016.

Okay. So, is it fair to say that this was a pretty significant event in your career?

A. Yes.

Q. And yet, your memory is scant of that?

MR. LEVINE: Objection. He's testifying, let him ask the questions.

JUDGE MCGUIRE: It's close.

THE REFEREE: Overruled.

MR. LEVINE: You still can't testify, ask the questions.

THE REFEREE: Overruled, you can answer.

A. I would say up until being sworn in and testifying with questions back and forth, up until that point, I tried to put this behind me. I didn't want to have it -- so yes, in terms of -- I wouldn't say scant, but I would say that it was something that I didn't want to think about.

So, anything prior to me being there, swearing in a tape recording, I'll be very honest with you, I didn't want to think

about.

Q. So anything that happened, say in 2015, you didn't want to think about? You tried to put it out of your mind?

A. There's things that stick out. I mean, I'm sure, but to put a blanket statement like that.

In regards to this, where I was talking to supervisors or anybody else about testimony prior to that '16 date, you know, I could try to answer the best that I can and if I remember, I remember.

Q. So you've been a court officer since 2002?

A. Correct.

Q. A sergeant since 2009?

A. Correct.

Q. And this is the first time that you've been before this body?

A. Correct.

Q. Have you given testimony at any other proceeding since 2002?

A. No.

Q. So this is the only time that you've actually come into a court and given

testimony?

A. Correct.

Q. And yet, you really don't have any recollection of who you spoke to prepare to give this testimony?

A. From January on -- I mean, from the January '16 date back, outside of -- all right. There was an -- I'm trying to just stick to your question in terms of -- because maybe I'm confused, in terms of what you're asking. Okay?

There was the union issue -- the issue --

Q. I want to separate -- I'm sorry.

A. Right, there's a lot. I could be misconstrued and I'm misunderstanding what you're asking in terms of the way --

THE REFEREE: Sergeant, can I give you some advice here?

THE WITNESS: Sure.

THE REFEREE: If you would listen to the question and stop talking while you're thinking out loud, that's not a good idea.

THE WITNESS: Okay.

THE REFEREE: What I would do if I were you is listen to the question and just answer the man's question. Okay?

THE WITNESS: Sure.

Q. So, prior to giving testimony on January 19, 2016 --

A. Right.

Q. -- you had not spoken to anyone affiliated with the Commission about what your testimony would be?

A. Correct.

Q. So now you said there was a union issue, what was the union issue?

A. When I said, "Issue," I meant a union conversation about what I initially saw and there was an inquiry made. I don't know if it was the union. There was an OIG investigation -- I don't know if it was determined an investigation. I was directly asked questions about certain stuff.

Q. Okay.

A. So, that's what I was referring to when I said, "Union."

Q. Okay, fair enough. So, when was

the union issue dealt with?

A. To my understanding, some time before the January 2016 date.

Q. Let me just -- because I don't know. By the way, you and I have never spoken about these events, right?

A. Correct.

Q. I've never approached you attempting to influence you in any way?

A. No.

Q. So, this union issue, you said you spoke to someone, was the union issue about the February 25, 2013 incident that you described for Miss Tishman? Was that the union issue or was there another union issue?

A. I'm not sure of when or which dates the union had approached me to talk to me about what.

Q. Okay, fair enough. So, can we agree that the incident that you described for Miss Tishman happened about three years -- two years and 11 months -- prior to your testimony on January 19, 2016?

MR. LEVINE: Objection. What

issue is he talking about?

JUDGE MCGUIRE: The issue that he described for Miss Tishman that occurred on February 25, 2013.

THE REFEREE: So why don't you ask the question again and use the dates.

JUDGE MCGUIRE: Okay. I thought I had, but I apologize.

Q. So you remembered testifying about an event, an interaction that you and I had that was February 25, 2013, that's the date of the incident, not the date of the testimony?

A. Correct.

Q. Do you remember that?

A. Yes.

Q. Okay. Can we agree that February 25, 2013 is about two years and 11 months prior to the testimony that you gave here on January 19, 2016?

A. Correct.

Q. Okay. So my questions now are focusing on the interim between February 25, 2013 and January 19, 2016, was there a union

issue during that period of time?

A. I believe there was an inquiry made after that incident.

Q. You believe?

A. I know there was one.

Q. There was? Okay.

And did you speak with anyone about that?

A. I believe it was an Investigator Piazza.

Q. And he was from the union?

A. He was from Office of the Inspector General's Office.

Q. When did you speak with Investigator Piazza?

A. Sometime after that February incident.

Q. So in 2013?

A. I think so. I'm not sure. I'm not sure if it was '13 or '14.

Q. Again, as we go back further, your memory is more scant?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. The memory of specific dates that

I spoke with people about this matter or persons that I was allowed to speak with.

Q. What do you mean, "Allowed to"?

THE REFEREE: Let him finish his answer, please.

JUDGE MCGUIRE: I'm sorry.

A. There comes a pint where, you know, I was subpoenaed, so they say I can't say nothing to anyone.

Q. Who said that?

A. Well, I was informed that this matter was confidential at some point, so I followed that.

Q. When were you made aware of that?

A. Upon the '16 date.

Q. When you came down on January 19, 2016?

A. Yes, just prior to that.

Q. So my question is, did you speak to Investigator Piazza before that?

A. Yes.

Q. Was it about the sum and substance of the events that you described for Miss Tishman earlier today?

A. There was some, yes.

Q. So we can agree you spoke to Investigator Piazza prior?

A. Yes.

Q. And you think it may have been sometime in 2013?

A. Or '14, I'm not sure how long --

Q. Okay.

A. -- after the incident.

Q. Well, was it in proximity to that incident?

A. It was -- in my mind there was two separate incidents and I had upon the first incident --

Q. Hold on a second.

THE REFEREE: You got to let him finish the question.

JUDGE MCGUIRE: But he wasn't answering my question.

THE REFEREE: Let him finish the answer.

JUDGE MCGUIRE: Okay, fair enough.

A. And I apologize. I'm just trying to explain so that we can probably get to where you're -- in terms of where I'm

thinking and how I'm thinking about this.

There is two events. There was that February event. I notified any supervisors. I sent emails up in regards to the incident.

Q. Mm-hmm.

A. At some point there was an inquiry made, either via the union or Piazza, and I'm having trouble remembering whether it was after the second event, that that inquiry incurred or before the second event and --

Q. So what was the second event?

A. The second event was the Wendy Weiner incident.

Q. And that's the one that you did not witness?

A. That was the one that I did not witness, correct.

Q. So at some point you spoke to Investigator Piazza, do you know where he was from?

A. Inspector General's Office, I believe.

Q. So that's part of the Office of

Court Administration?

A. Correct.

Q. So the union is not part of the Office of Court Administration?

A. There was a -- correct, I will answer your question, correct.

Q. I'm sincerely not trying to confuse you.

A. No, that's fine.

Q. What union are we referring to?

A. I have CSCA, Kevin Muller and Jeffrey Boos, who are Vice President and President of our union.

Q. So did you speak with them about the 2013 incident?

A. Yes.

Q. You did?

A. Yes.

Q. All right. When did you speak with them about the 2013 incident?

A. Soon after the incident, after reporting it to my supervisors.

Q. So you spoke to them?

A. I spoke, I believe, to Kevin Muller, not Jeff Boos. At some point, Jeff

Boos, Kevin Muller and some other woman from the union came and made inquiry to the court staff at Family Court. And prior -- and then that's the timeframe I'm having trouble remembering when that was because it was that and then there was a second time with Mr. Piazza that came down.

Q. Okay.

A. And those are the times that I remembered speaking to someone about this to somebody outside of my supervisors or Miss Tishman.

Q. So you believed though -- and correct me if I'm wrong -- that when you spoke to Mr. Muller and Mr. Boos, is it Boos or Booze?

A. Yes, Jeff Boos.

Q. B-O-O-S?

A. Yes.

Q. Okay. When you spoke to them you believed it was in proximity to the 2013 incident?

A. I believe so.

Q. But you're not sure?

A. Not sure.

Q. And then Investigator Piazza was more in proximity to the 2015 incident?

A. I believe so.

Q. So do you remember speaking with President Muller and Mr. Boos?

A. Vaguely.

Q. Vaguely?

A. Yeah.

Q. And that was in 2013?

A. Again, it's either '13 or '14.

Q. So let me ask you this, Sergeant?

A. Yes.

Q. This incident in 2013 would you agree was significant in your mind?

A. Yes.

Q. And you were able to testify in detail about it today, right?

A. Absolutely.

Q. And yet, you don't remember talking to the union about it?

A. I don't remember the date.

Q. I'm not asking for the date.

A. Okay. So I don't remember -- can you repeat the question?

Q. Okay. I wasn't asking for the

date, I'm saying do you remember the meeting?

A. I remember talking to Kevin Muller about what happened.

Q. Do you remember if Mr. Boos was there?

A. On a separate occasion there was a time where Mr. Boos was present, but I might not have talked to him about the matter. He might have been inquiring with other court employees about the matter, but he knew of the matter.

Q. All I'm asking, Sergeant, is did you meet with Mr. Muller and Mr. Boos?

A. I spoke with Kevin Muller.

Q. Alone?

A. Definitely I spoke with Kevin Muller alone, either via phone or in person.

Q. So now you don't even remember if it was in person?

A. I definitely spoke with him in person, but there might have been a time where I talked to him on the phone to have him come in person?

Q. So you called him?

A. I spoke to him, yes.

Q. Did you call him or did he call you?

A. I think I called him.

Q. Okay. Again, I'm not asking for a specific date, was it in close proximity to February 25, 2013 or was it months later?

A. It was close to the first date, yes.

Q. So you said you spoke with him in person at one point?

A. I believe so, yes.

Q. You're not sure?

A. I spoke with him. Was it in person in close proximity to the date or was it in person when Piazza came over and spoke with me and I spoke to Kevin Muller? I'm not sure of the date.

Q. Well, let me ask you this, is it fair to say after you and I had this interaction, one of the first things you did was contact the union?

A. The first thing I did was I notified my supervisor.

Q. Right. Asking him to come down?

A. I sent an email to the district office to the supervisor.

Q. Mm-hmm.

A. And there was a conversation with the union.

Q. The same day?

A. I'm not sure if it was the same day, but at some point.

Q. Do you remember if it was in proximity or was it months or years later?

A. No, it was close, I would say.

Q. All right. Now, when you contacted the union you had not yet come back to speak with the Judge about what had transpired, correct?

A. Yourself, your Honor? You mean, Judge, you?

Q. Yes.

A. No, we never spoke on it.

Q. So even now, more than six years later, you still haven't approached me to speak about it?

A. No.

Q. Did you speak to Judge Meddaugh about it?

A. No.

Q. Did you speak with Magistrate Linen about it?

A. No.

Q. Did you speak to the Chief Clerk about it?

A. Yes.

Q. When was that?

A. The first incident Miss Benson was not -- I believe she was not -- she was on vacation, if I'm not mistaken or wasn't around. The only reason why I say that is because I usually talk to her and my immediate supervisor with anything that happens.

Q. Well, let me ask you this --

A. Yes.

Q. -- when this incident happened -- now you're a peace officer, correct?

A. Yes.

Q. You're trained?

A. Correct.

Q. And you're also a Sergeant, correct?

A. Yes.

Q. And you're given training there. Can you we agree that recordkeeping is something that's very important, particularly for a sergeant or an administrator?

A. Yes.

Q. So the Chief Clerk is the person that is operationally responsible for the court, can we agree on that?

A. Yes.

Q. The judges handle the cases, but the Chief Clerk is responsible for the operations?

A. Correct.

Q. So, you don't remember if the Chief Clerk was there that day or not?

A. The Chief Clerk was definitely not there that day.

Q. Okay. So, did you send an email to her?

A. I believe I spoke with her soon after she got back. I spoke with my immediate supervisor and I believe Stacy Benton, who was there when the event occurred. She was standing right there when

it happened.

Q. So, the fact it happened right outside her office?

A. Correct.

Q. It didn't happen in the doorway down the hall, it happened right outside her office?

A. There's her office and then there's the two feet and then there's an entry point, it happened like right there. Like in between that two feet.

Q. All right. So did you prepare a report for the Chief Clerk?

A. I would not normally do that. I would notify my supervisor and he would do that.

Q. Okay. Do you know if he did that?

A. I don't know. I just -- I submitted an email in regards to what -- he told me to send an email to Chief Jordan and I did that.

Q. Did he prepare a copy of a report for you?

A. No, he didn't do anything for me.

Q. All right. So you said you spoke to Miss Benton, which is the Deputy Chief Clerk?

A. Correct.

Q. But she had, in fact, been there during the interaction?

A. Correct.

Q. Okay. So, ultimately you say Mr. Muller came to the court and you spoke with him?

A. I spoke with Kevin at some point.

Q. Do you remember if it was in person?

A. I spoke with him in person and on the phone. I'm not sure if I went into specific details over the phone, but I contacted him and at some point I met with him.

Q. So you told him you wanted to talk to him about something?

A. Correct.

Q. Okay. So when he came to the court, where did you meet with him?

A. I don't recall.

Q. You don't recall.

And you don't recall if there was anybody else there?

A. When I met with Kevin initially at one point I believe there was no one there initially.

Q. Did Mr. Muller take any notes at that meeting?

A. I don't believe so.

Q. But you don't recall?

A. I don't believe so. I don't believe so.

Q. So are you pretty sure that he didn't take notes?

A. I don't believe so, but it's possible. But I don't believe so.

Q. It's possible?

A. But I don't believe so though.

Q. And you don't remember where the meeting took place?

MR. LEVINE: Objection, asked and answered. He asked that question three times.

THE REFEREE: Sustained.

Q. After you met with Mr. Muller that time, did you have any other

conversations with anybody about this incident from 2013?

A. Not that I remember.

Q. Well, did you speak to any of the court officers that are under your command?

A. Well, there were court officers that heard it and knew that something had transpired.

Q. I'm not interested in what other people heard or saw because we don't know that?

A. Okay.

Q. But my question is, did you speak to other court officers about it?

A. Yes.

Q. Who?

A. I'm not sure what. I know that there was a lot questions as to what just happened, "What happened?"

Q. Who asked that question?

A. Whoever was there that day, I don't know. I don't recall.

Q. So you don't recall?

A. I don't know who specifically asked, but I know I articulated that I

couldn't believe what happened.

Q. So you articulated, but you don't remember who you spoke to?

A. I do not recall. Put it this way, there's -- at the time there was only five of us there, I believe.

Q. Do you remember who they were?

A. Definitely -- I don't know if I spoke to Officer Agar, but definitely probably spoke to Diaz. I believe Officer Corra was there.

Q. You believe? Are you sure he was there?

A. I mean, I don't have the court calendar for that day or my schedule that would show me who was there that day, but I know there was inquiries as to what just happened and I said what happened to a couple of officers, I don't know.

Q. But you don't know who?

A. I don't.

Q. So you said Agar, Corra and Diaz, right?

A. Well, I'm only going off of -- you know, the command, there was only five

guys at the time.

Q. So do you know if you spoke to Officer Agar?

A. I might have, I don't know.

Q. You don't remember?

A. I don't remember. I would be saying something that I don't know.

Q. I don't want you to guess. I don't want you to guess. All right.

So you don't remember where you spoke to him. Did exchange emails with anybody?

A. I submitted a letter per the request of Lieutenant McCabe, an email to Chief Jordan. I might have -- somehow the union might have gotten a copy of that letter, I don't know if I showed it to Kevin or not.

Q. Did you provide that to the union?

A. I'm not sure.

Q. You don't remember if you showed it or not?

A. I'm not sure. He might have gotten it and said, "This is what happened"

as I was telling him what happened. I do believe he saw a copy of it. I don't know if I gave it to him or he got it from Janet or whoever it was. I know Janet was the chief at the first incident.

Q. So you sent a memo to Lieutenant McCabe?

A. Correct.

Q. Do you know, what, if anything, he did with it?

A. I do not know what he did with it.

Q. Now, that memo that you sent to Lieutenant McCabe, was that an official Office of Court Administration document?

A. It was an email from me to him CC'g Janet Jordan, so is it an official document? No.

Q. It's not?

A. No.

Q. So you're a Sergeant, correct?

A. Correct.

Q. An administrator?

A. Yes.

Q. And you don't know what the

policy of OCA is with respect to recordkeeping?

MR. LEVINE: Objection, he doesn't work for OCA.

THE REFEREE: Overruled.

A. My policy -- well, to my understanding, and understanding that I was two years I believe a supervisor there, but I went under the direction of -- under Lieutenant McCabe. So whatever he told me, I emailed and to my understanding, I did what was asked of me and I had a copy of the said email. And I notified my union about a concern I had.

And to the extent of my Chief and Christina Benson and Stacy Benton, they knew what had transpired, Stacy was there. So in my understanding at that point given direction from Lieutenant McCabe, Janet Jordan, I fulfilled what I needed to.

Q. Well, Miss Benson didn't know because you said she was on vacation?

A. Subsequent afterwards in terms of when you said as an administrator for recordkeeping, I was just referencing that

later on I thought I did what I needed to do at that time because everyone that I needed to notify about certain things had known or found out that something had transpired.

Q. So is it your custom and practice to maintain your own set of records for what transpires in your court?

A. If -- with supervising individual officers and recordkeeping in terms of like magnetometer or contraband reports, daily activity logs, radio logs, there's a whole set of documents that I maintain and have.

Q. Okay.

A. And evaluations and --

Q. How often are evaluations done?

A. On a yearly basis.

Q. So you have to do five a year or six a year?

A. No, we do the evaluations once a year.

Q. I'm sorry, I was not clear and I apologize for that.

You have six people that you supervise?

A. Yes.

Q. So you do six a year?

A. Yes.

Q. And they are all done in January generally?

A. Yes.

Q. Now contraband, what's a contraband report?

A. Well, when individuals come into the building, the facility and they have pepper spray or a knife or a razor, we voucher them. And it becomes a -- we have a contraband -- 135 I believe is the form that we fill out that we voucher and we hold it. But every time we do that, at the end of the month, we notate how many knives were held, how many cameras, how many pepper sprays, razors and that's with contraband in terms of a report.

Q. So in your experience over the last 10 years, how often do you get contraband coming into Family Court?

A. Every day.

Q. Every day?

A. Yeah.

Q. Sometimes it's a gun, correct?

A. Correct.

Q. If the person is a licensed holder you secure it?

A. Correct.

Q. And give it back to them when they leave?

A. Correct.

Q. Even if it's an attorney?

A. Correct.

Q. So, those reports for contraband are actually done by the person -- the officer who is checking the people in, correct?

A. Yes.

Q. Okay. So, then what report do you do as the sergeant other than the receipt in duplicate that's prepared when somebody comes in?

A. For contraband only you're remembering to?

Q. Contraband, yes?

A. Well, the officers, we keep the receipts and at the end of the month, I tally all of the numbers. And then there's a form that I fill out using those receipts.

Q. So each month, how long does it take you to tally those forms?

A. It varies, but not long.

Q. An hour?

A. Maybe.

Q. Maybe less than an hour?

A. Yes.

Q. And then you said the magnetometer, what kind of reports do you have for the magnetometer?

A. There's a calibrations, we have to calibrate the machines, make sure they are working properly and then we maintain the log for that.

Q. And is that done by officers -- strike that.

Is that done once a day?

A. Yes.

Q. Is it done in the mornings?

A. Correct.

Q. So is that done by the people that open?

A. Yes.

Q. And then that's put in a log?

A. Correct.

Q. So, they would call to your attention if the machine was out of calibration, correct?

A. Correct.

Q. But other than that, it would just be noted in the log?

A. Right, who did it and when, right.

Q. Do you look over the log?

A. Yes.

Q. How much time do you spend looking over the log?

A. Well, I just do -- the first day of the month I do the month's prior. So, all of the forms that we need to do.

Q. So with respect to the calibration and the first day of the month, you would look back over 31 other calibrations?

A. Yes.

Q. And can we agree that generally it's calibrations are accurate?

A. Yes.

Q. Because you would know if there was a problem that happened during the

month?

A. Yes.

Q. So we can agree then that the time you spend actually doing that report on the first of each month is how long?

A. Collectively with the proper receipts?

Q. No.

A. With that?

Q. Yes, just the calibration?

A. Five minutes, 10 minutes.

Q. So now you're up to an hour and 10 minutes of recordkeeping a month, what other records do you keep?

A. So, we do the monthly reports. Any aided reports, meaning if I had to render any aid to any individuals or an Unusual Occurrence Report, if we -- someone gets into an altercation or we have to make an arrest or someone gets injured outside or an initial report. I do forms like that.

Q. So when someone is aided, there's a report for that?

A. Correct.

Q. And in your 10 years of

experience, how frequently are peopled aided?

A. It varies, but quite often.

Q. Quite often?

A. Yes.

Q. And when you say, "Aided," we heard testimony about Miss R[redacted] that had to be aided?

A. Correct.

Q. That was one incident?

A. Mm-hmm.

Q. What other -- give me a flavor of when you say an, "Aided Report"? If somebody came in -- hypothetically, if somebody comes in and they say, "I want to file a Family Offense Petition" and you assist them with showing them where the front window is?

A. Yes.

Q. Would that generate an Aided Report?

A. No.

Q. So when you talk about aided, what kind of --

A. An Aided Report is -- so if

anyone -- if 911 needs to be called, if someone has a slip and fall or someone is needing some kind of first aid or help, we get all the information and we notate it and we file an Aided Report.

Q. So is it fair to say that when we're talking about aided, we're talking about medical/first aid?

A. Yes.

Q. And you said it's quite frequent that that happens, in your 10 years of experience?

A. Yes.

Q. Once a day?

A. It's hard to say, sometimes we could have it -- you know, it varies.

Q. Well, let me ask you because you had very specific recollection of people that were removed from the courtroom, but now you're telling me it varies with respect to times 911 has to be called?

A. Specific? I believe I think I said it was R[redacted].

Q. That was one?

A. Right.

Q. Any others?

A. In regards -- so what's the question again?

Q. We got lost in the question.

A. Yeah, we did, I'm sorry.

Q. So my question was, you said one of your responsibilities as a sergeant was to prepare Aided Reports?

A. Correct.

Q. And we established that an Aided Report is something that's generated when someone is primarily is given first aid or EMS assistance, medical assistance?

A. Mm-hmm.

Q. And I asked you how often that happens and you said, "Quite frequently"?

A. Right.

Q. So, the Miss R[redacted] situation really was just another of those aided reports, correct?

A. Yes.

Q. And you say there's a lot of them?

A. There's quite a few, yes.

Q. Well, in a given month, how many

Aided Reports would you have?

A. Sometimes there's four, sometimes there's one, depends on -- I mean, as you know the numbers have been down in Family Court recently, the summertime, it all depends on how many people are coming into the court and it varies, but it could be three times a month.

Q. So how much time do you spend compiling those Aided Reports each month?

A. Per report probably 30 minutes or so, 40 minutes.

Q. So when someone is rendered aid, do you complete the report at the end of the month or do you complete the report contemporaneously?

A. We have to do it the day -- one business day we have to do it and enter it into the system.

Q. So, is it always the sergeant that issues -- that completes the report or is it the officer that rendered aid?

A. The officers that render the aid, but they usually come to me to help with the writing of the report.

Q. So you graduated from the academy in 2002?

A. Correct.

Q. Did they train you in completing these aided reports then?

A. No, they briefly showed you what it was and they said you would learn on the job as it happened and that's exactly what has happened.

Q. So what kind of information is on that Aided Report?

A. Pedigree information, you know, the individual, the injury, what caused the injury, the times, who arrived, were there any witnesses, the nature of the illness or the incident.

Q. So when you say, "The pedigree information," that's not of the officer?

A. No, the pedigree information of the person that had the --

Q. That needed aid?

A. That needed aid.

Q. Okay. So, does it say the name of injured party? Address? How is the form laid out?

A. Yes, it has their name and address, age. There is a section for you to articulate what the issue --

Q. A narrative?

A. A narrative and then there's a section for the officer writing the report, what was it and who they reported it to.

Q. So, when you're trained, either in the academy or -- strike that.

Have you been a sergeant who has supervised -- I don't know what they would be called. I would call them "plebes" having had a military family background. I'm talking about somebody that graduated from the academy, but is -- is there a period of time when they go through like a field training?

A. Like a trainee?

Q. A trainee?

A. Yes.

Q. So when they come out of the academy they are a trainee?

A. Correct.

Q. So that you had trainees under your command over the last 10 years?

A. Yes.

Q. So when they're trainees, what is the expectation with respect to what they learn from you?

A. Well --

MR. LEVINE: Objection.

THE REFEREE: Sustained, I understand the question.

JUDGE MCGUIRE: Neither do I.

Q. So trainees are sent to your?

A. Yes.

Q. Based on your training and experience, what are you supposed to do with them?

A. Well, if I get an officer at Family Court, I spend -- I spend quite a few hours with that officer initially and go over protocol and certain things that we see at the Family Court.

Q. Like what?

A. Well, I train them on how we check people in, you know, contraband, how to look at the magnetometer and run cases, calendar calls.

I pair them up with a seasoned

officer so that they can learn from them also as to how we run that particular court because every court location is a little different.

Q. Okay.

A. So, I mean, I am in charge of getting them to a point where they fulfill all the requirements in terms of knowing what their job entails.

Q. Do you go over with them the reports that they are going to be responsible for completing?

A. When I have a trainee and an aided case happens, I absolutely have the trainee come over and observe how we articulate in the report what needs to be put on paper, I guess.

Q. So, is it my understanding that it's not standard protocol that you review with the trainees reports that they'll be expected to complete?

A. No, I do. I mean -- and I do it firsthand as well.

Q. So --

A. I'll show them what an Aided

Report is.

Q. You show them what it is?

A. And then I'll show them what all the reports are.

Q. Okay.

A. And then when they happen, I show them how to enter them and --

Q. Fill it out?

A. Yeah, fill it out.

Q. So, a trainee wouldn't respond to a person in need of aid alone?

A. They can if they're the first one at the scene.

Q. Okay. But would you have a more seasoned officer accompany them?

A. I ideally would want to, but in a situation where you have five individuals, there's a chance that they can, but we try not to.

Q. Well, are the trainees set off on their own or are they assigned to a field training officer?

MR. LEVINE: I'd like to object to the relevance. He didn't even give him a --

THE REFEREE: Yeah, I'd like to understand that also. I've been waiting for an objection. What is the relevance of this?

JUDGE MCGUIRE: Well, I'm trying to ascertain, as a sergeant, what his responsibilities are.

THE REFEREE: I understand what you're trying to do, but what's the relevance?

JUDGE MCGUIRE: Well, the relevance is, your Honor, is that Sergeant Olivieri has testified chapter and verse about things that aren't even part of the charges. And he seems to have very specific recall of those things, but very scant recall of things that have happened much more proximate to today.

THE REFEREE: And that would suggest that you could go into every bit of trivia that took place every single day during his employment? I'm not going to let you --

JUDGE MCGUIRE: Well, your Honor,

I don't think an Aided Report is trivial.

THE REFEREE: I'm not going to let you do.

JUDGE MCGUIRE: Okay, fair enough.

THE REFEREE: So, if you can explain to me, what is the basis of the training questions and the Aided Reports?

JUDGE MCGUIRE: I'll withdraw it and I'll go on.

THE REFEREE: Okay, good.

JUDGE MCGUIRE: Okay.

Q. So, what part of these Aided Reports do senior officers need assistance with?

MR. LEVINE: Objection.

THE REFEREE: I thought we were moving on?

JUDGE MCGUIRE: We are moving on from the trainees, I'm on seasoned officers now. Last question, your Honor.

THE REFEREE: Okay.

Q. What part of those reports does the seasoned officer need assistance with?

A. Well, just the writing of it. The pedigree information is self-explanatory; date of birth, address, names, type of illness.

But the report writing part, you used to say -- I was trained originally way back in 2002. You would identify someone -- as a responding officer you would say, "At time and place of occurrence, RO" -- responding officer -- "observed subject trip and fall down the stairs. RO responded to subject placed" -- you know.

Q. I understand.

A. Now it's, "I observed Miss Rivera or Thompson fall down the stairs. I" -- so there's --

The way they write them now it's different and that's changed over the last few years. And that's the only reason why the officers are, "Can you help me write this?" I will get all the information and then they'll go over it and I'll ask, "Does this fairly and accurately represent what

you're saying?" "Yes." And then they'll take it and then enter into the --

Q. Okay.

THE REFEREE: Let's move on to something relevant, please.

JUDGE MCGUIRE: We will.

Q. So when someone is placed in custody is there a report for that?

A. There is -- more recently and I'm not sure of when it happened, there's a blue book that we have that we enter if someone is being remanded to the care of Ulster -- not Ulster County, I apologize, Sullivan County Sheriff's Department, for example, and we have a remand.

We'll enter that in the book and it'll state the name of the person. Unless it's a juvenile, which we can't -- we're not allowed to give that information. We just initial it with the first initials of their names. And we have documentation in that regard.

But that happened -- I'm not sure if it was '15. I'm not sure what date, but we started maintaining that book. I believe

that the change of when -- there was a big change for juvenile delinquents and how we handle them and the procedures of where their rooms are located. And it coincided with the Federal mandate that all courts had to have certain restrictions in terms of being housed near adults. No one is to see them or come in contact with the juveniles.

Q. So that was October of 2018?

A. I would be guessing a date, your Honor, but I know that right around that time frame there was a new procedure in terms of how we were notating --

Q. So prior to that, if somebody was removed from court and there was an incident in the court, there's no record of it?

A. When you -- incident -- if we make an arrest --

Q. I'm not talking about an arrest.

A. I'm sorry.

Q. I'm talking about any incident in a courtroom that requires a response by court officers, is there a record kept of that?

A. Only if it's unusual, outside the

scope of our job.

Q. So is it unusual in Family Court for people to be removed and held for a period of time; is that unusual?

A. Yes.

Q. So are there records of each time that happened?

A. No.

Q. So there are no records of those initial occurrences?

A. No.

Q. So, okay. So, now, as a sergeant responsible for the Family Court --

A. Yes.

Q. -- do you keep your own notes and records of situations that happen?

A. At times.

Q. If it's something unusual?

A. Yes.

Q. Placing somebody in custody, even temporarily, based on your training and experience is unusual?

A. Placing someone in custody is -- or to place someone in custody or someone has an offense and I arrested someone and

placed them into custody?

Q. I'm not talking about arrests. I'm talking about placing someone into custody, taking them into what I'll call the attorney room -- the holding room?

A. If given on the record an order to place someone into custody, I would advise my supervisor.

Q. And that's Lieutenant McCabe?

A. Correct. And that was unusual, but it became common practice. Did I write an Unusual Report about it? I notified my Lieutenant in regards to each.

Q. Each time it happened?

A. Couple of times, initially.

Q. A couple of times?

A. Initially, yes.

Q. So you were using your own discretion to determine what needed to be reported and what didn't?

A. Well, it was understood that if on the record, your Honor, would or a judge would say, "Take subject into custody," we would do as the judge did on the record.

Initially I notified my

Lieutenant in regards to what was happening and then he said -- he would ask, "Is it on the record?" And my answer would be, "Yes." "Do what the judge wants."

Q. So would it be fair to say -- I don't want to put words in your mouth -- that would be protocol?

A. No, I would say it's not normal practice and -- in my experience it was not normal practice.

Q. Okay. A judge directs the court officer to take someone into custody and you've acknowledged that's unusual?

A. Yes.

Q. And you make no record of it?

A. I notify my Lieutenant.

MR. LEVINE: Objection, this has been asked three times.

THE REFEREE: Overruled.

JUDGE MCGUIRE: It's been asked, but I don't think it's been answered.

THE REFEREE: Overruled.

Q. How do you notify your Lieutenant?

A. Via phone.

Q. By phone?

A. Yes.

Q. Do you follow it up with an email?

A. No, but he's aware of me telling him that and giving me the answer of, "Well, is it on the record?" "Yes." "Then do what the judge wants." And that's what I was told to do and I did it.

Q. So let me understand this, a judge directs you to take someone into custody, you confer with the Lieutenant first whether or not you should take him into custody?

A. Well, I never was in a position -- I responded to it nine times out of ten of it already happening. But on the record -- if I was in there I would say on the record, "Are we talking him into custody, your Honor?" "Yes," if it was a yes and would ensure that it was on the record and take subject into custody, into the holding cell and wait upon the call to bring the case back in.

Q. So just so that I'm clear, once

you take them into custody, you take them into the holding room. As the sergeant, you don't make my blotter entry, notation, email, anything in writing?

A. We -- since --

Q. Sergeant, that's a "Yes" or "No"?

MR. LEVINE: Objection.

JUDGE MCGUIRE: It's a "Yes" or "No."

THE REFEREE: Just answer.

A. Now since Chief Moscola has been in place.

Q. When did that happen?

A. '15 or '18, I'm guessing when he became the Chief. He implemented a whole new change in terms of how we report arrests, any remands. We now do Unusual Occurrence Reports.

Q. Now you do?

A. Well, he made it an issue to start doing it.

Q. Do you know when you started doing it?

A. I don't know when he implemented that or wanted it to be done.

Q. And how were those done?

A. So, if we come in contact with an individual comes in and we ascertain that there's a warrant.

Q. Sergeant, all I want to know is how is it done? Is there a form? Is there a book? Is there a blotter?

A. There's a UOR, Unusual Occurrence Report, that we fill out when we arrest someone.

Q. Okay.

A. If we are in a courtroom and we're a County Court, for example.

Q. Mm-hmm.

A. And an individual gets remanded.

Q. Mm-hmm.

A. They do not write an Unusual Occurrence Report on that remand.

Q. Well, because the sheriff is there?

A. Well, it depends on the location, but there's -- sometimes there's -- well, in Sullivan County -- I'm giving you an example of an Ulster County.

So, if the sheriff is there and

they have individuals that are remanded already or they're going to see the judge and they're there. If the judge remanded an individual right there, it is followed by some kind of order. We take the subject into custody, we transfer custody to the sheriff's department right there. There is no UOR filed there.

Q. But when you answered --

A. So in Family Court, initially was like, "We are going to do what County Court is doing, right? I guess. He's on the record saying to do this." "Yes, as long as it's on the record" and that's what we did.

Now, there's -- we do all UORs. If you gave me today at Family Court a UOR -- I mean, a commitment on someone at Family Court, we would take the subject into the back. We'd put it in that blue logbook that we now have and I would inquire to the Lieutenant, "Do we do a UOR? I got a commitment remand on this individual." And he would say, "Yes" or "No" and I would follow that direction.

Q. So that's a commitment?

A. That's if there was an order remanding an individual.

Q. Correct.

A. Yes.

Q. That's not my question.

A. I understand, I'm just explaining.

Q. I'll ask my question and I'll try to ask it a different way. It really calls for a "Yes" or "No."

A. Okay.

Q. If you can't answer it "Yes" or "No," just tell me.

On the 150 occasions when you testified for Miss Tishman that I ordered you to put people in custody, is there a record of any of those 150?

A. There might be.

Q. Sergeant, you're the sergeant, is there or isn't there?

A. There might be in the blue book some, there may be.

Q. When did the blue book come into being?

A. I don't have the date in front of

me, your Honor.

JUDGE MCGUIRE: I call for production of the blue book.

THE REFEREE: Okay.

JUDGE MCGUIRE: And I can't go on with cross until I get that blue book at this point.

MR. LEVINE: First of all, that's shifting the burden here because -- well, any way, these are court records. The Judge can get them himself if he wanted.

JUDGE MCGUIRE: No, the Judge can't get them himself.

MR. LEVINE: Excuse me.

THE REFEREE: Okay, just one at a time.

MR. LEVINE: Number 2, I don't see the relevance of this. In other words, the issue in this case is the extent to which the Judge improperly, without filling out any paperwork, any commitment orders, making any record, except on the record, put people into custody.

He's now trying to twist this around somehow that the officers did something wrong. I don't see it as being relevant. I see it as a way to delay this proceeding.

THE REFEREE: The way I am understanding this and I could be wrong and this is the first time I've heard about this number 150, but apparently he's previously testified that there were 150 occasions in which Judge McGuire asks the Sergeant to take someone out of the courtroom and put them in a holding pen; is that right?

JUDGE MCGUIRE: Well, three a month for four years is 144.

MR. LEVINE: That's not --

THE REFEREE: And that the Judge is -- Judge McGuire is calling into the question the credibility of that testimony by trying to show that if that really happened, there aught to be records to show it.

MR. LEVINE: But the records

wouldn't show it, that would be the transcripts.

THE REFEREE: I understand your point. I understand your point. And so, the transcripts will say what they say, and there aren't 150 of those here.

MR. LEVINE: No because they're all on tape, that's the whole thing.

JUDGE MCGUIRE: You have six, there are charges of six.

MR. LEVINE: My point is that in order to find these things, okay, he did these things on the record, but he did them on tapes, we'd have to look through every tape to try to find it. Okay? That's the point that I'm making here, that we were unable to undercover.

This other testimony was elicited here as background information, but the charges are what they are.

THE REFEREE: Okay. So my understanding is that the witness has testified that this happened one to

three times a month and that we have six examples of that in this case which are actual charges?

MR. LEVINE: Correct.

MS. TISHMAN: Exactly.

THE REFEREE: So what's the blue book have to do with that?

JUDGE MCGUIRE: What the blue book has to do with that is either the Court has to strike his testimony about one to three per month or I have a right to see the records that they have so that I can cross-examine on that. He doesn't even know when he started keeping the blue book.

THE REFEREE: Okay. That objection is overruled, you may proceed, your objection.

JUDGE MCGUIRE: My request for production of the blue book?

THE REFEREE: Your request of production of the blue book is overruled.

JUDGE MCGUIRE: So your Honor, respectfully, I would ask that any

testimony about the 150 would be stricken because --

THE REFEREE: Denied, proceed.

JUDGE MCGUIRE: Judge, how can I proceed when I don't have a fair opportunity to question this witness and get the records that he keeps, that are in his custody and control to support his testimony or refute? I mean, it's basic cross. I have a right to refute it. He's saying there's records to support his testimony.

THE REFEREE: He's not saying that. He's saying there may be some in the blue book, there may not be some.

JUDGE MCGUIRE: Well, I have a right to see the blue book. Even if we continue today, I have a right to see the blue book.

THE REFEREE: Where is the blue book?

THE WITNESS: It is at the Family Court. There is a series because there's -- let's just say 50 pages on it -- and I don't know how many blue

books we've gone through in the amount of time since it was implemented. And I know that at least of two of them, I believe, that we have at the operations.

I don't know when the date that we started using that blue book right now to do that. But I know it kind of happened around the time of the implementation of the JD rules, it kind of happened right around that same time frame and I'd be guessing.

THE REFEREE: So let me ask you this, so you testified earlier there were one to three incidents a month starting in 2011, was there a blue book in 2011?

THE WITNESS: I don't believe so.

THE REFEREE: Was there a blue book in 2012?

THE WITNESS: I don't believe so.

THE REFEREE: Was there a blue book in 2013?

THE WITNESS: I don't believe so.

THE REFEREE: Was there a blue

book in 2014?

THE WITNESS: I'm not sure. I'm not sure if it was like --

THE REFEREE: So with respect to 2011 to 2013, the blue book is totally irrelevant. And with respect to 2014, he's not sure it exists. So, I don't know what you want me to do here. So I would just move on.

JUDGE MCGUIRE: Okay.

Q. So, going back to 2011 when these incidents occurred that you described for Miss Tishman, was there any record kept of that?

MR. LEVINE: We've just gone through this whole thing.

THE REFEREE: Well, let's have it again so it's more clear.

JUDGE MCGUIRE: I don't have an answer.

A. The only record, to my knowledge, was me telling my supervisor that we had a remand.

Q. So your supervisor might have a record?

A. I don't know what he has.

THE REFEREE: And also the order by the Judge on the record, correct?

THE WITNESS: Correct -- well -- absolutely. The one thing for sure is the order from the Judge on the record because it was mandated from my Lieutenant to make sure it's said on the record.

THE REFEREE: Okay. It's almost 3:30, we're at an hour and a half, why don't we take a ten-minute break?

JUDGE MCGUIRE: Very good.

THE REFEREE: How much longer do you have on the cross?

JUDGE MCGUIRE: Quite a bit.

THE REFEREE: What time do you want to sit to today?

MR. LEVINE: 5:30.

MS. TISHMAN: I have a witness whose been here since this morning.

THE REFEREE: I think you can excuse your witness.

MS. TISHMAN: Okay. I have a witness who was just coming now, that's

not a problem. I just have a witness who has been here since 9:30.

THE REFEREE: So, we're on the record still, so let's discuss this. You're cross will take the rest of the day, am I correct on that?

JUDGE MCGUIRE: Yes, but I'm amenable, if the other witness is shorter, then I would allow to take him out of turn so that he wouldn't have to come back also.

MR. LEVINE: I don't know what your cross would be on that witness, so it may not be for sure.

MS. TISHMAN: Are you going to finish today with the Sergeant?

JUDGE MCGUIRE: I might. I mean, I will try to. I would think I would, an hour and a half, two hours to go.

THE REFEREE: Well, let's take a ten-minute break. Why don't the parties talk to each other and figure it out.

So, off the record and a ten-minute break.

MR. MAISONET: Off the record.

(A brief recess was taken.)

(The witness reentered the room.)

MS. PARTIDA: Witness entering.

MR. MAISONET: We are on the record.

THE REFEREE: You may proceed.

Q. So Sergeant, I want to move on to some other areas. So, you testified that there was one to three times a month when I ordered somebody taken into custody, do you remember that testimony?

A. Yes, I thought I said it felt like one to three times a month.

Q. I'm not concerned with what it felt like.

A. Right.

Q. I'm concerned with what it was because facts are very important. So, was it one to three times a month?

A. I don't have anything to show outside of the record how many times it happened. It felt as if it happened one to three times a month.

Q. Again, I'm not concerned with

feelings --

A. Right.

Q. -- because there are serious charges here and feelings are not going to carry the day, facts are.

MR. LEVINE: Objection.

Q. So, Sergeant, as you sit here today, do you have any specific recollection of a specific case or name of a person that I ordered placed into custody?

A. If you give me a second -- K[redacted]. I remember K[redacted].

Q. K[redacted]?

A. K[redacted] or K[redacted].

Q. K[redacted] --

MS. TISHMAN: K-[redacted].

Q. Okay, Mrs. K[redacted]?

A. Correct.

Q. That was the grandmother?

A. Correct.

Q. Any others that you have a specific recollection of?

A. I remember a couple of faces that I'm not remembering names right now.

Q. And that's okay.

A. And your Honor, I would come in 80 percent of the time to the individual already be in custody and I would help, so I wouldn't necessarily remember the names that -- like being in the courtroom as it was happening.

Q. So sometimes people are taken into custody for not paying child support, yes?

A. Yes.

Q. And you come in and help with those also?

A. Yes.

Q. And sometimes people are taken into custody for juvenile delinquent proceedings?

A. Yes.

Q. And you would come in and aid on those as well?

A. At times, yes.

Q. PINS we don't put in custody?

A. Correct.

Q. So my issue is just with the disruptive behavior. So the only case and person that you can specifically testify to

today is Mrs. K[redacted]?

A. That I can recall name-wise, yes.

Q. Other than that you have no other records to support any other people that were put in?

A. No, not outside of what was on the record.

Q. So you can only testify today of your firsthand knowledge of Mrs. K[redacted]?

A. Name-wise, right now, yes.

Q. Do you have any other specifics that would point to any other specific instances? I mean, for example, January of 2011, do you recall any instances in January of 2011?

A. Yes.

Q. Okay. Which case was it?

A. No. Instance no? No, I don't. I don't have any specific names, I apologize.

Q. Now, you went to the Appellate Division for a period of time; is that correct?

A. Yes, I did.

Q. When were you at the Appellate

Division?

A. I believe it was 2017.

Q. How long were you there?

A. Four months.

Q. Why did you leave there?

A. I left there because the contract that CSCA negotiated, I lost a significant amount of money and it just wasn't what I thought it would have been and I decided to come back.

Q. Did you lose your rank when you went up there?

A. I did. I lost my sergeant's rank, became a court attendant, which -- it's a line difference. And CSCA had instituted a lump sump, a longevity bonus payment schedule to the contract and at the Appellate Division, you would have to wait a year before you became a senior court attendant which bumped your increase up to lines, but the catchup -- it was financial, honestly.

Q. Okay, fair enough.

All right. So, as to avoid going through month to month to get to one to

three of each of those months -- I'm happy to it, but I don't think anybody wants me to do it and I don't particularly want to do it -- can we agree that the only specific case that you can point to today is Mrs. K[redacted]?

A. Yes.

Q. So, let's turn the page and move on to something else.

So, you were a court officer in 2002, what training did you have to become a court officer?

A. A 24-week academy class at William Street in Manhattan.

Q. What, if anything, did you have to do to become a sergeant?

A. You had to take a sergeant promotional exam.

Q. And you took that and successfully passed it?

A. Correct.

Q. What kind of information differs in between what a sergeant does and what a court officer does?

A. The difference is on a supervisory level you have more

communication with judges, clerks and you're overseeing the court operations, but you work hand in hand with your lieutenants.

So, you write -- you do all the report writing in terms of monthly reports, but the responsibility over the facility day-to-day operational aspects are different. It's scheduling and training and stuff like that.

Q. So your -- part my words, not yours -- like an administrative team?

A. To an extent, yes.

Q. So you work with the Lieutenant?

A. Yes.

Q. You have some communication with the Chief?

A. Yes, but it is limited now in terms of how -- we now have several lieutenants, several captains from 2002 and -- from when I became a sergeant, 2009, things changed a little bit in terms of how they want communication to be done, the chain of command. So they want me to give everything to my Lieutenant and then from there.

Q. So, you work up the chain of command through your Lieutenant?

A. Yes.

Q. So for the most part, that's who you report to?

A. Correct.

Q. And the Lieutenant's responsible for all the courts -- Superior Courts in Sullivan County?

A. Correct.

Q. So he's got the County Court building and the Family Court building?

A. Correct.

Q. And the Surrogate Court?

A. Yes.

Q. So, Sergeant, do you have any criminal history?

A. No.

Q. Do you have a history of disciplinary action?

A. None.

Q. Either by the Office of Court Administration or any other employer?

A. Never.

Q. So when you became a Sergeant,

your first assignment was Sullivan County Family Court?

A. Correct.

Q. So that was in 2009?

A. Correct.

Q. Did you have interactions with now Judge McGuire when he was still a practicing attorney?

A. Yes.

Q. And how would you characterize those interactions?

A. Friendly, normal in terms of the officer and attorney that frequent the courthouse quite often.

Q. I was there quite a bit?

A. Everyday, pretty much.

Q. Sometimes I was there all day?

A. Yes.

Q. So we would exchange small talk?

A. Yes.

Q. And you would classify it as friendly?

A. I would say so.

Q. Okay. And then Judge McGuire took the bench in 2011, right?

A. Yes.

Q. And did that friendship continue --

A. I thought so.

Q. -- in 2011?

A. Initially, yeah.

Q. You'd pop back occasionally?

A. Absolutely.

Q. There was an issue at your child's school one day that you sought some input from a couple of us on whether to send the child to school or not?

A. Right.

Q. That was a potential terroristic threat or something?

A. Right, I think so.

Q. And you talked to me about it?

A. Yes.

Q. You didn't talk to me as a judge about it?

A. Right. I believe there was a group of us back there, we were talking about it, yeah, in the courtroom.

Q. So, is it fair to say that you spend the overwhelming majority of your time

out front by mags or in your office?

A. Primarily out front, yeah, and yes, sure.

Q. So you pass through the back and you and I have more familiarity with it than maybe the others do, but the back would be the areas where my chambers are, Judge Meddaugh's chambers, the library, that area, you may pass through there once or twice a day, but it's pretty much just a pass through?

A. Correct.

Q. You don't hangout back there?

A. No.

Q. So we don't have -- is it fair to say that you have more opportunity for a casual interaction with attorneys than you do with the judges?

A. Yes.

Q. Because they are out there waiting?

A. Correct.

Q. While you're there doing your administrative work and the judges are busy, okay.

And so, that cordial relationship, come back, say hello, how are your kids and whatnot, how was your trip from Ulster County and whatnot, that continued, right?

A. Yes.

Q. Until 2013?

A. Correct.

Q. Now, since 2013, did the Judge take any steps to have you disciplined for insubordination?

A. Have I disciplines?

Q. No, has the Judge, Judge McGuire taken any steps to have you disciplined?

A. No.

Q. To your knowledge, has he made a report to the Office of Court Administration?

A. No.

Q. The district office?

A. No.

Q. So, now, the hours of operation for the court are you said you open the doors at 10 minutes to 9:00?

A. Yes.

Q. The first officers come in at 8:30?

A. Correct.

Q. They do a protective sweep and they have other chores -- I call them chores or they are details perhaps?

A. Yes.

Q. And then they open the doors and start bringing people through the mags at about 10 minutes to 9:00?

A. Yes.

Q. And then the balance of the court officer detail comes in at 9:00 or 9:30?

A. At 9:00.

Q. So you're at full crew by 9:00?

A. Yes.

Q. Well, is anybody scheduled to come in later than 9:00?

A. No, we're scheduled for 9:00.

Q. So that would include five to six court officers?

A. Yes.

Q. A sergeant?

A. Yes.

Q. And a lieutenant?

A. Well, yes, you know -- in the County, yes. The Lieutenant could be in his office. I could be, you know, in operations. There could be someone on vacation, I mean, but yes.

Q. I understand. But whoever is expected in, is in by 9:00?

A. Yes.

Q. Okay. Then you say they close -- the court closes at 12:30?

A. Correct.

Q. And if we go over 12:30, what happens?

A. We -- depending on how much time goes over 12:30, sometimes we will open at 12:30, but sometimes the judges and the chief clerk will allow that part to open a little later if we went over.

Q. Like a flex?

A. Yeah.

Q. If it's five to 10 minutes we'll open at 1:45?

A. Correct, so we won't accrue overtime.

Q. So if we don't flex, then there's

overtime?

A. Yes.

Q. Now, you started in 2002, between 2002 and 2011 overtime was more prevalent and common that it is today?

MR. LEVINE: Objection to the relevancy.

THE REFEREE: Overruled.

A. Yes, I think so.

Q. In fact, prior to 2011, there was virtually an hour of overtime paid out every day?

A. Depending on if the judges went past a certain time, it would be 15 minutes, an hour, it could be half an hour. It all depended on who was off that day. But on average I would say maybe a minimum of 15 minutes, 20 minutes -- no, 15 and a half an hour, depending.

But there were times where you would get an hour. Certainly, there were times where three officers would get an hour.

Q. Well, by not closing between 12:30 and 1:30 to allow most everybody to go

out, prior to 2011 it was not uncommon for judges to work right through the day, right?

A. Absolutely.

Q. And that would result in several hours of overtime, right?

A. Yes.

Q. Now, what happened in April of 2011? You were already an administrator then, what happened in April of 2011?

A. With the overtime aspect?

Q. No, with the overall budget?

A. There was some constraints. I believe they implemented closing the facility at the time and they wanted to cut back on a lot of overtime.

Q. In fact, there was massive cuts to the Office of Court Administration budget, right?

A. Yes.

Q. A lot of people lost their jobs?

A. I don't know if any court officers did.

Q. I'm not talking about court officers, but in general?

A. Yes.

Q. There were people that lost their jobs?

A. Yes.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. So then, starting April of 2011, is it fair to say there was more emphasis placed on staying within the 9:00 to 12:30 and 1:30 to 4:30?

A. In which -- in what regard?

Q. Well, instead of a judge being able to work right through, which would cause the State to incur overtime, sometimes as much as three hours, by closing we cut down the overtime, right?

A. Yes.

Q. Well, by cutting down overtime, what happens to the pay checks of the people who were getting overtime?

A. It lessens.

Q. It would lessen?

A. Yes.

Q. And that's important, isn't it?

A. To some, yes.

Q. Well, it would be important to

you, right?

A. Yes.

Q. Well, you left the Appellate Division because you weren't making as much money, right?

A. That and the fact that I was losing my sergeant's rank, which then enabled me to take further promotional exams at the Appellate. I would be stuck at the Appellate.

Q. But you knew that before you went to the Appellate Division?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Prior to the contract settlement, yes.

Q. So you knew that and you went any way?

A. Prior to the contract settlement, yes.

Q. So we can agree that there was change after April 2011 where there was an effort to eliminate overtime?

A. Yes.

Q. And that was done to save other

people's jobs?

A. Yes.

Q. You're active in the CSCA, CSCA represents other than court officers, right?

A. Yes.

Q. It represents the court clerks, not chief clerk, but the clerks?

A. The administrative side.

Q. I used to say, "The ladies," but I say, "Folks," because we have men and women now that work in the office, right?

A. Yes.

Q. All right. So, there were cuts.

All right. So, can we agree then that in order to finish the day's work and avoid overtime, we had to make sure that cases moved in and out most efficiently?

A. Yes.

Q. So, you said there's four to five cases on a busy day that are 9:00 cases?

A. Yes.

Q. Those would be non-trials, those are what we call, "Arraignment days"?

A. Correct.

Q. Judge Meddaugh's arraignment day

is Tuesday, right?

A. Yes.

Q. So he has a heavy load on Tuesday?

A. Very heavy.

Q. And Judge McGuire's heavy load is Monday?

A. Yes.

Q. So it's particularly important when there's a heavy load to move cases in and out?

A. Yes.

Q. So, when a case goes into the courtroom, we'll say, "Courtroom 2," the next case is -- I'll use the word, "Queued," on the door?

A. Yes.

Q. So that when the court officer -- I'm using that to describe the officer assigned to the part during court -- opens the door, one group can go out, one group can come in?

A. Yes.

Q. To minimize the gap between cases?

A. Correct.

Q. Because if we have, say, 25 cases on in the morning and we lose two minutes between each case, we've packed 50 minutes onto the calendar, correct?

A. Correct.

Q. It's fair to say that in your experience ten years in Family Court, you want to afford the judge the maximum opportunity to spend the most possible time with the litigants to address their concerns?

A. We try to, yes.

Q. So if there's a delay to get cases in and out, that minimizes the time within that fixed point that judges can spend time with the litigants?

A. Yes, we try to get the cases that are ready so that can happen, yes.

Q. And sometimes your hands are figuratively tied because you have attorneys that are maybe appearing in all three parts?

A. Correct.

Q. So the job, the responsibility if you will, of the people who are out at the

mags, the two to three, and on a busy day, even a sergeant, you jump in and help out too on a busy day?

A. A lot of times, yes.

Q. So on a busy day, those three or four people, one of their responsibilities is to get those cases queued up, right?

A. Yes.

Q. And if Mr. Jones, the attorney, is needed for case two in front of Judge McGuire, but he's in front of Judge Meddaugh, you go down to case three?

A. Correct.

Q. And if case four is, say, a 9:30 case and nobody here's yet, then you would tell them we don't have anything ready, right?

A. Yes.

Q. But when you say there's a case ready, that's the signal to the person in the courtroom that everyone's present and accounted for?

A. Correct.

Q. Now, did you work in Ulster County Family Court?

A. Yes.

Q. Now, that was a unique situation because people came in on the first floor, right?

A. Correct.

Q. On the ground floor?

A. Yes.

Q. But the courtrooms and Support Magistrate was where?

A. Upstairs.

Q. So the folks that worked in that courthouse got very accomplished at moving the people upstairs so that they could be ready for the two Family Court judges, now three Family Court judges that are upstairs?

A. It's four now -- well, yes, we did.

Q. In the old courthouse there was initially two?

A. Yeah.

Q. So you had to really work to get them from through the mags and up the stairs, right?

A. Correct.

Q. And it was the same system

though, you had a microphone and you let the court officers know in the courtroom, "I've got case three ready to go"?

A. Correct.

Q. And is it fair to say that as soon as -- and I'll use these numbers so it's ordered -- as soon as case one walks through the door of the courtroom, you're gathering up the people for case two?

A. Yes.

Q. And you have them waiting in the hallway right outside, in my case, Judge McGuire's courtroom or inside the vestibule by Judge Meddaugh's courtroom?

A. Correct.

Q. And is it fair to say that that's probably why Judge Meddaugh and Judge McGuire separate their arraignment days because you would be overwhelmed with people?

A. Correct.

Q. To make it a little bit more manageable?

A. Yes.

Q. Because on Judge Meddaugh's

arraignment days, Judge McGuire's part is usually a trial, correct?

A. Correct.

Q. So you've got one set of people and attorneys, they go in and then you don't have to deal with more people coming in?

A. Yes.

Q. All right. So, the same protocol is followed for each of the judge's. Right?

A. Yes.

Q. The person goes in and then we go to the next, okay.

So, how many seats are there in the Family Court complex in the waiting room?

A. If you want me to look at the photo, I can?

Q. Just tell me which photo you're looking at, that would be helpful?

A. 12.

Q. Okay. So let's look at photo Exhibit 12?

A. Yes.

Q. Okay. Now, that shows seats in the waiting area and it shows the mag and it

shows the x-ray machine?

A. Right.

Q. And what I'll call the information desk, the officer's desk, is that a fair and accurate representation of how the court looks today?

A. Very similar. Very similar, yes.

Q. Well, what's different?

A. Well, the chairs are now a different style chair. So I'm not sure how many of the blue chairs compared to the newer chairs in terms of the count, I think it's 12. If you look at 14 and 12, there's 12 blue chairs and then there's two more of these chairs by the desk. And then there's a couple of more chairs on the other side by where the picture where the sun is, there are two more.

Q. So the chairs that are across from the x-ray machine?

A. Yes.

Q. Are they there now?

A. Not the blue chairs, they're different chairs now.

Q. What color are they?

A. They are the chairs that were out in the hallway.

Q. They're still blue, they're dark blue, right?

A. Yes, they are.

Q. Okay. And what happened to those five chairs that are in that picture now?

A. There were five chairs in front of the officers' desk, they're in the hallway now. We took the chairs.

Q. I'm looking at Exhibit 12.

A. Okay.

Q. You see where the x-ray machine is?

A. Yes.

Q. So opposite the x-ray machine there's the board where there's some brochures and information?

A. Right.

Q. The seats that are just below that?

A. Yes.

Q. Those are not there anymore, correct?

A. Those blue chairs aren't. They

were replaced with another set of chairs.

Q. Where are those chairs now?

A. The blue chairs?

Q. Yes.

A. They are out in the hallway.

Q. All right, okay.

So, do you know how many litigants can sit in chairs in the Sullivan County Family Court?

MR. LEVINE: Objection for the relevance.

JUDGE MCGUIRE: He's the sergeant for ten years.

THE REFEREE: What's the objection?

MR. LEVINE: Relevancy.

THE REFEREE: Overruled.

A. I would say around 16, maybe 20 chairs collectively throughout the lobby and in the hallways there.

Q. Okay. In the outside hallway?

A. Just by virtue of photo 12 --

Q. Right?

A. -- photo 14, I count 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 -- by the

computer desk there is 15, 16 -- there should be another chair around the corner from that computer desk where the photo is of the sun. There's maybe one or two more chairs there, so that would be 16. And then in the conference rooms, there's four chairs in each of those.

Q. In each conference room?

A. Yes. So, on a given time though, realistically, sitting, I would say 16 to 20 if to capacity. I mean, we've had it more than that depending on the cases being lined up.

Q. Just to distinguish, I'm talking about chairs that are inside the mag?

A. Correct.

Q. 16 to 20?

A. Yeah, I would say something about that.

Q. So can we agree that a case rarely has more than 16 people involved with it?

A. Yes.

Q. Usually it's somewhere between two and six?

A. That's about right, yes.

Q. So, by the way, those rows of chairs, are there any rows of chairs like that down by Judge McGuire's courtroom?

A. No.

Q. Now, as a Sergeant, based on your training and experience, do you think it's a good idea to be able to have litigants sitting rather than standing moving about?

A. Depending on if there's enough room for them to sit, yeah, sure.

Q. As a sergeant who is principally responsible for the safely and control of people in Family Court, have you ever discussed having chairs put down by Judge McGuire's courtroom?

A. No.

Q. That might help staging cases, wouldn't it?

A. There just wasn't any -- there's no room to put any chairs.

Q. Okay. Do you know how big the area is in Judge McGuire's courtroom area, the outside?

A. Off the top of my head? No, I

would be guessing. But there was a long time these big -- I don't know if you recall -- desks or I mean, file cabinets.

Q. Mm-hmm.

A. They were outside your courtroom for a very long time.

Q. Right.

A. And if there was any location, maybe they could put a couple of seats, maybe would be there. But that's out of -- I think the County deals with the terms of the occupancy and the rules in that regard.

Q. Well, direct your attention to photo Exhibit 16?

A. Yes.

Q. As you come through the doorway, which is right in the foreground in that photograph?

A. Yes.

Q. Immediately to your left, what's there?

A. Immediately to the left after you get to that door?

Q. Correct.

A. That's a table there.

Q. Any chairs?

A. I believe there's two.

Q. And what's that table uses for?

A. When there's people wanting to file petitions, they were running out of spaces for people to write. So there was only three desks in the facility, so I believe it was determined -- it wasn't me, but it was there since I believe since I've been there and it's used for a secondary area for people to file, if they're filing to petitions, to do their paperwork, a place to write.

Q. In your tens years working in Sullivan County Family Court, how frequently are all four of these cubicles occupied?

A. Initially, quite often. In the last few years it hasn't been as much.

Q. And then how often is that table to the left in the foreground in Exhibit 16, how often are all four cubicles and that table used simultaneously?

A. Not often. No, not often.

Q. Again, would it be helpful to you as a sergeant to have chairs down in the

area in front of Judge McGuire's courtroom?

MR. LEVINE: Objection.

Q. In order to stage cases?

THE REFEREE: Overruled.

A. I don't necessarily think so.

Q. So then having the people in proximity of the courtroom, as a sergeant, based on ten years of training and experience, that's not a problem?

A. Well, what happens is, that hallway is very narrow right there. There were attempts to happen even if we were to have the people sit, even with the chairs to write at that desk, if there are two people sitting there and there are people on that desk and there's a case being lined up, it gets really congested in there.

So, if we had to respond to a courtroom or attorneys are in the two conference rooms next to the -- it gets loud and you probably would hear them talking in your courtroom and --

Q. I would hear them with the door closed?

A. There's a chance, yes, I believe

so, there might be.

Q. So my question is, if you were to replace one of those tables with a few chairs, wouldn't that make the movement of people -- since you're responsible for safety and management, wouldn't that make it easier for you?

A. I don't think so.

Q. You don't?

A. No.

Q. You don't think that having people that are next up, right there by the courtroom would help the movement of people more efficiently?

MR. LEVINE: Objection, this is so far beyond the scope of what we're talking about. He's asked the same question, he's given the answer, he's not sure.

THE REFEREE: This will be the last question on this.

A. I don't think it would help.

Q. All right. So --

A. Because the proximity from that desk to the four chairs that is across from

the magnetometer where we would be talking is maybe less than 10 feet and --

Q. Okay.

THE REFEREE: Let's move on.

JUDGE MCGUIRE: We are going to move on.

THE WITNESS: Sorry.

Q. So you radio in when a case is ready and that means that the case is ready, right?

A. Myself or others, yes.

Q. Right. All right. And we agree that we have assigned times 9:00, 9:30, 10:00, 10:30, 11:00 and so on, right?

A. Yes.

Q. So, let's go to February 25, 2013, okay? Officer Miguel Diaz is in my courtroom?

A. Correct.

Q. And you say you get a radio call from Officer Diaz at about 9:20, is that your recollection?

A. Did I say 9:20? I don't know if I said the time exactly, but it was fairly early in the morning.

Q. Okay. I think the transcript says 9:30?

A. I'm not sure what time.

Q. So 9:20, 9:30?

A. Yes.

Q. And you said you heard Judge McGuire yelling, but you couldn't hear what exactly he was yelling about?

A. Right.

Q. But you said that Officer Diaz seemed concerned on the radio or no?

A. His voice, when it came over, was kind of -- it sounded different. It sounded different, yes.

Q. Were you concerned about it?

A. Yes.

Q. You were?

A. Yeah.

Q. Okay. Now, prior to February 25, 2013, Judge McGuire had spoken with you about his concerns with respect to Officer Diaz's mechanics in the courtroom, yes?

A. Yes.

Q. In fact, he had spoken with you and the Lieutenant about it?

A. We've had conversations.

Q. The three of us?

A. Yes.

Q. And in fact, you had, along with the Lieutenant, committed to work with him a little bit?

A. Yes.

Q. And you were going to have somebody come in and supervise him and see if they could work with him a little bit, right?

A. Yes.

Q. Because there was an issue -- he was having problems with his radio, right, his radio was very loud? That was raised to you?

A. Yes.

Q. And that at times the radio being loud and the amount of communication that went back and forth would be disruptive in court?

A. It could be.

Q. Well, most of the court officers that are in court, we never hear their radios, correct?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

MS. TISHMAN: How would this witness know?

MR. LEVINE: I was just going to say that.

THE REFEREE: If he knows.

A. When we got the new radios, because they chirp, there was an issue with all the judges saying that the radios -- but prior to that, I didn't really hear anything.

Q. So all the judges were concerned because the new radios chirped and made noise?

A. Well, the recent.

Q. The new ones?

A. The new ones, yeah.

Q. So then you're aware that the radios -- excessive noise from the radios would be disruptive?

A. Back in 2013?

Q. Well, are you aware that loud radios would be disruptive?

A. Oh, I'm sorry, yes, I guess, yes.

Q. Well, you said they all have mics, right, on their shoulders?

A. Yes.

Q. Why do you have them?

A. So you can speak quietly into the mic.

Q. Because what makes Family Court different from County Court with respect to calling in the cases?

A. You're in the courtroom.

Q. Right. Right. You don't have to communicate with the mag in County Court as often, right?

A. Right.

Q. So, there's a lot of communication, so, in fact, equipment was purchased to allow that to occur quietly, correct?

A. I don't know why they were purchase.

Q. Well you just said that the mics are there to allow the court officers to communicate making less noise?

A. Well, the mics in general are used for your advantage, instead of pulling

back and pulling out a radio and talking like this, it's just the ease of use in general.

In Family Court it allowed us to communicate more quietly. But I don't know why OCA purchased the new radios thinking that it was quieter. The radios that we had worked fine.

Q. Well, Sergeant, in County Court they don't have mics, do they?

A. In County Court, I believe some officers choose not to have them and initially when we first got the new radios, they didn't come with mics. The Family Court's did, but the County Court had two mics, I believe.

Q. So it's not a safety issue, it's a noise issue?

A. From my understanding.

Q. Sergeant?

A. Go ahead.

MS. TISHMAN: Let him answer.

THE REFEREE: Yeah, we didn't get an answer. Do you have an answer to that question?

A. Well, a blanket why mics are used or better than not? Like I said, it's an interpretation of whoever's using it. We don't require anyone to have a mic. Officers use it at their discretion.

Q. Not in Family Court?

A. In family Court we don't require that everyone have a mic. Everyone elects to use it because if -- they use it to speak into it quietly and not have to pull it out. But that's just a practice that we've adopted over the years that we've been there.

Q. So, they do it so that they can communicate more quietly?

A. Some do, yes.

Q. Would noise be a problem in Family Court?

A. Yes.

Q. Okay. That is a problem.

So Judge McGuire had spoken to you about his concerns about Officer Diaz's radio management, correct?

A. I recall conversations about Miguel Diaz running calendars and his

communicative skills, his accent.

Q. His accent?

A. I don't recall any specific radio --

Q. Okay.

A. Being loud on the radio.

Q. But running the calendar was a problem.

Now, we've already agreed that queueing the case is the responsibility of the people outside the courtroom, not inside the courtroom, correct?

A. It all depends, it's a fluid -- it depends.

Q. Sergeant, a court officer brings a case into courtroom number 2. The people outside courtroom number 2 are queueing up the next case outside the door, correct?

A. It really depends, your Honor. I mean, the officer in the part, when he brings in the case, can queue and say, "I need case number -- a case before that" because the variables change. It doesn't necessarily have to be that way.

Q. Sergeant, you testified earlier

today that when a case goes in, the next case is queued up by the courtroom, correct?

A. Yes.

Q. That's done by the officer in the courtroom or outside the courtroom?

A. In the courtroom.

Q. So, the officer inside the courtroom, how is he queueing up the people that are outside the courtroom?

A. He's notifying the front desk to call the case and put it or queue it on the door. The officer in the part is dictating that to the front desk.

Q. So the front desk does nothing until they are alerted that the person in the courtroom wants the next case on the door?

A. The judge or the officer who is running the courtroom, yes.

Q. Well, we can agree that it's more often than not that it's the officer that calls the cases than the judge, correct?

A. Correct.

Q. Because the judge has no idea what cases are -- in your words -- ready,

correct?

A. Correct. But at times the judges might need to handle a matter that they know is going to be resolved faster than a case that might be in front of another judge and might relay that message to an officer, "I need to get this case next because this next one after that is going to take a long time."

Q. So that's the exception rather than the rule, correct?

A. Correct.

Q. On an arraignment day, the case goes in, the next case gets put on the door or you wait until the court officer in the courtroom calls for the case?

A. The officer in the courtroom lets us know as the door is closing, line up whatever case he wants.

Q. As the door is closing, as a case is going in?

A. Correct.

Q. They're telling you to line up the next case?

A. Correct.

Q. So if the next case is not lined up, where did the system break down?

A. Well, depending on --

Q. Sergeant, if the case is not lined up, where did the system break down?

A. It's not the officer. It's -- it could be the defendant who is in the parking lot getting a piece of paper for the Court. It could be an attorney who's tied up inside the part. There was an attorney who was just standing there who went behind the Court to talk to the clerk.

If we call the case and we assume that the parties are here, they're checked in, they're in our vicinity, we call it. And there's times where other people are coming in, we're busy and if that officer goes to the door and the case is not lined up, is that a breakdown on our end or is that Mr. Whoever who decided to go to the bathroom at that time or the attorney who went go speak with the chief clerk in the because of a file they were missing?

Q. So where is the bathroom, by the way, in Family Court?

A. The bathroom is outside the facility.

Q. You have to go out of the mags?

A. Correct.

Q. And the chief clerk is in the back, correct?

A. Correct.

Q. All right. So, page 8, line 18, were you asked this question and did you give this answer?

THE REFEREE: Do you want to show it to him?

Q. This is the deposition of January 19, 2016.

MR. LEVINE: There's not a proper foundation. What is the prior inconsistent statement?

JUDGE MCGUIRE: We are getting to that right now.

MR. LEVINE: Well, you're supposed to show the witness what you're asking.

JUDGE MCGUIRE: That's what I'm about to do.

MS. TISHMAN: I'm sorry, where

are we?

JUDGE MCGUIRE: We are in the deposition transcript.

THE REFEREE: Do I have this?

JUDGE MCGUIRE: Page 8 -- I don't know.

MS. TISHMAN: I will give it to you, page 8.

THE REFEREE: Thank you. Page 8, what line?

JUDGE MCGUIRE: We will start with line 11.

Q. "Question" -- were you asked this question, did you give this answer?

"Question: Does he have a courtroom and has room for litigants to sit when their case isn't called while they're waiting for their case to be called?

"Answer: No. There is room for some litigants, but what primarily happens is we call a case and that case goes in."

Were you asked that question, did you give that answer?

MS. TISHMAN: "The case goes in," not "that case."

Q. "The case goes in"?

A. Yes.

Q. Line 15, "Question: Goes in where?" "Answer: Into the courtroom."

Were you asked that question, did you give that answer?

A. Yes.

Q. Line 17, "Question: Right. Referring to into the courtroom." "Answer: Let's just say he has three matters on, for example, at 9:00. We call the first case in the courtroom. When that case goes in, we call the second case and we line it up and they wait outside the door of the courtroom in the hallway."

Were you asked that question and did you give that answer?

A. Yes.

Q. "Question" -- line 22, "Now is that true for Judge Meddaugh also?" "Answer: Yes. Yes."

Were you asked that question, did you give that answer?

A. Yes.

Q. Line 24, "And how about Judge

Linen?" "Answer: Correct, came thing."

Were you asked that question, did you give that answer?

A. Yes.

Q. So now you're saying that you don't line up case two, you wait until the officer tells you that they're in the courtroom and then you call them, but they may be in the bathroom?

A. No. The officer, as he's bringing in the cases, lets the front desk know which case to call next that we line up outside the door.

Q. And that would be from amongst cases that are ready, correct?

A. Correct.

Q. He wouldn't ask you to call a case that's not ready, correct?

A. Correct.

Q. So you've told him which cases are ready?

A. Correct.

Q. So when the case is ready and it's intimate that they're going to be going into court --

THE REFEREE: Imminent you mean?

JUDGE MCGUIRE: Imminent. What did I say, "Intimate," imminent.

Q. They're imminently going to be going into court?

A. Right.

Q. Is there any control at the mag to keep them from wondering back out of court?

A. If a litigant or an attorney wants to go to the restroom, if --

Q. So if they need to go to the restroom, they go to the restroom?

A. They go to the restroom. However, if we at the time notice that that subject, the person, whoever is about to be called into courtroom and we see that they're going to the restroom, we will say, "Sir, ma'am or Mr. Attorney, don't go anywhere, you're going on next."

Q. Right.

A. We try or best to accommodate that, but there are times where if there's only two officers at the magnetometer, head down, checking people, screening bags, hand

scanning, there's the occasional attorney or litigant that might leave. And the officer in the part wants that case ready, we line it up and call that case, but at that split second they're not there.

Q. So do you then call -- so you're telling me that people can walk through the magnetometer undetected by a court officer?

A. On the way out to the restroom?

Q. Isn't it the same route, in and out?

A. Yes, they can leave, absolutely.

Q. I'm not saying that.

A. Undetected? We can observe -- we will observe who's walking out, but you're interpreting that the officer who is controlling three different courtrooms at times, who are -- was watching through the peripheral someone come out.

Q. Sergeant, I understand that you want to get your story out, but I want to stay with the facts.

MR. LEVINE: Objection.

JUDGE MCGUIRE: Withdrawn.

Q. We've already established that

Judge McGuire and Judge Meddaugh split their busy days, their arraignment days, correct?

A. Yes.

Q. And that on Judge McGuire's arraignment date, Judge Meddaugh is usually doing trials, correct?

A. For the most part, yes.

THE REFEREE: Judge McGuire, do we need to go over this again? We've had this.

JUDGE MCGUIRE: Well, maybe we do because he just said that they're trying to control three different courtrooms.

Q. My question is you're telling me that -- referencing photo 11?

A. Yes.

Q. That's the magnetometer, correct?

A. Correct.

Q. Pretty close to the control desk, right?

A. Yes, absolutely.

Q. Is there always someone sitting at the control desk?

A. Two.

Q. Always two sitting at the control desk?

A. Absolutely.

Q. And possibly a sergeant?

A. Absolutely.

Q. You're telling me that people can wonder out through there without anybody saying to them, "Hey, you got a case that's ready to go in"?

A. We call the case out on a loudspeaker, so they should be aware that the case is called.

Q. But you don't actually move them down towards the judge's courtroom?

A. We try to, to the best of our ability.

Q. So now, on this February 25, 2013, you heard Officer Diaz and you say he sounded concerned, correct?

A. Yes.

Q. Now, up to that instant, between 9:20 and 9:30, you and Judge McGuire had a good relationship, right? We established that already?

A. Yes.

Q. Okay. And Officer Diaz sounded concerned?

A. He called out, "Sergeant," over the radio, which rarely happens.

Q. Okay. But you said that he sounded concerned and shaken up?

A. Yes, correct, yes.

Q. Okay. So you chose to take a path around through the library rather than going to see why your officer was shaken up, correct?

A. I listened to what the officer told me and he said Judge McGuire wanted to see me in chambers and that's why I went that way.

Q. But you still didn't know why Officer Diaz was shaken up, right?

A. I assumed when I heard you yelling in the background that that was the reason why he was upset.

Q. What was I saying?

A. I don't recall. I couldn't make it out, I just heard your voice.

Q. You heard my voice?

A. Yes.

Q. Okay. But you said Officer Diaz sounded concerned, can't you get to Judge McGuire's chambers through the courtroom?

A. Yes.

Q. So you weren't really concerned about Officer Diaz, you were just reporting back to the chambers where he asked you to go?

A. At the time when he transmitted and I heard you yelling in the background, I assumed that it was something to do with him running the calendar, that wasn't something that needed to be addressed immediately running to the courtroom that way. I assumed it was a complaint you were making about him or something you were upset at and you were yelling over it.

Q. Because we had gone through three cases and sat two, three minutes between each case waiting for the next case to show up. Isn't that correct, Sergeant? Isn't that what I was upset about?

MR. LEVINE: Objection to the Judge yelling at the witness.

THE REFEREE: I don't think he's

yelling.

JUDGE MCGUIRE: I'm not yelling at the witness.

A. I believe there was a -- we had called a case and the person was in the parking lot and was not coming to the front.

Q. So that case wasn't ready, correct?

A. It was ready because the parties were listed. It was past the time that it was scheduled for and we attempted to get that person into the building.

Q. But that had happened all three of the first cases, correct, that was the third case going in that morning?

A. That morning, I'm not sure where the breakdown was that made that incident transpire.

Q. Fair enough. So what investigation, if any, did you do following that incident to ascertain where, if any, breakdown there was?

A. I deferred any of that to my Lieutenant from that point on.

Q. Well, do you know whether the

Lieutenant spoke to any of the court officers involved?

A. Not off the top of my head.

Q. Sarge, your focus was on, "Get the judge" after that, wasn't it?

THE REFEREE: Get the what?

JUDGE MCGUIRE: Get the judge.

A. No.

Q. You had no interest in finding out where your staff might have broken down that, did you?

A. I was working the magnetometer that day and was trying to call that case because I knew we had to get the calendar rolling, particularly in the morning, because you wanted cases on your door at 9:00.

Q. So that we could finish by 12:30, right?

A. If that's what it was.

Q. Well Sergeant, wasn't that after April of 2011?

A. Yes.

Q. Wasn't that after we had a mandate to close from 12:30 to 1:30?

A. Yes.

Q. And wasn't that to the benefit of the court officers if we didn't finish so they would get overtime?

A. Repeat that last part again.

Q. Isn't it a benefit to the court officers if we don't finish by 12:30 so that they get overtime?

A. Not going forward from that date. It was understood that we would not get any overtime, there was none.

Q. So even if you work straight through lunch, you don't get overtime?

A. We didn't work straight through lunch.

Q. That's not my question. You said that it was your understanding that you wouldn't get overtime?

A. We were not allowed to work through lunch after that timeframe with overtime.

Q. Sarge, you're not telling me that there hasn't been any overtime in the last six years, are you?

A. I didn't say that.

Q. So if cases go over and the judges don't flex their time, there would be overtime? You testified about that quite a while ago?

A. Yes, I did.

Q. Okay. So, it's a benefit to get overtime, isn't it?

A. Not anymore, it's not.

Q. It's not a benefit?

A. We don't get overtime.

Q. Because the cases have to be called and done, correct?

A. We close at 12:30.

Q. So if my cases aren't done by 12:30, what are the options?

A. Bringing the case back, adjourn the case.

Q. Bring the case back when?

A. Another date.

Q. Another date and inconvenience the litigants that were there waiting, correct?

A. That's not my determination.

Q. Well, let me ask you this.

A. I don't make that decision.

Q. Let me ask you this --

A. Yes.

Q. -- because I don't want to be argumentative.

People show up in court, right?

A. Yes.

Q. They show up in court and their case never gets called, can we agree that's an inconvenience?

A. Yes.

Q. So if we don't get the cases done by 12:30 or 4:30, one option is to inconvenience the litigants and make them come back another day?

A. That's one option.

Q. One option is to work through and then incur overtime?

A. Which rarely happens.

Q. But it could happen?

A. It could happen.

Q. It could happen and in fact, it does happen?

A. On occasion.

Q. On occasion. It happened a lot more pre-April 2011?

A. Correct.

Q. And it's more likely to happen on a day when a judge has a very busy calendar, correct?

A. It depends.

Q. If a judge has only one case coming in, there's not a lot of breakpoints, correct?

A. Correct.

Q. The judge pretty much can control the flow of the day, correct?

A. Correct.

Q. But when there's 60 cases and there's a break between every case, who controls the flow?

A. We try our best to control the flow.

Q. Correct. So let me ask you this, Sergeant, being all part of the same team, what, if anything, have you done as the supervisor of the Family Court to try to ensure that once a case is queued up, the people don't leave there? What, if anything, have you done?

A. I've had initially discussions

with officers in terms of trying to be aware of where people are. But given -- every scenario is different in terms of how busy we are at any given moment.

Q. Sergeant, I'm really not trying to make this difficult. I asked you not -- I believe we all have challenges that those who don't do our jobs, don't understand. I respect that and I appreciate that. That's not what I'm talking about.

My question is, knowing that at times the calendars are very full, I'm asking what, if anything, have you done as the supervisor to ensure that when a case is queued on the door, those people stay on the door? What have you done, if anything?

A. I collectively had conversations with officers about particularly the time when you were working your courtroom and you wanted to be on time, I had conversations. However, we cannot control when someone has to go to the restroom or when an attorney decides to be somewhere.

Q. So when you were in Ulster County Family Court and you brought people

upstairs, didn't you tell them, "You're next on, don't leave this area"?

A. We would advisee them, "You're on deck. You're going in next."

Q. Don't leave the area?

A. We never had to tell anyone, "Don't leave the area."

Q. Have you ever spoken to any sergeant who work in other Family Courts to see how they address this issue?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. This issue really only arised in Sullivan County Family Court.

Q. So Sullivan County is the only Family Court that you're aware of that has issues where people who are -- so Sullivan County Family Court is the only place you're aware of that has this issue where people who are next up may run to the bathroom or out to the parking lot?

A. No. What I'm saying is I've never have had it become an issue to where we had to have extended dialogue in terms of making sure that people were on the door.

Q. So it's not generally a problem?

A. Not necessarily. I mean, even with Judge Meddaugh, we didn't have this problem in the same building, I mean.

Q. We can agree that on the morning of February 25th we had this problem because the first three cases were all delayed an extended time in between the cases, can we agree on that?

A. For whatever reason that morning the calendar was not running smoothly and it was not Miguel Diaz's fault, nor was it mine.

Q. So it was the litigants' faults?

A. One occasion, yes. And I don't know whether or not -- I don't know if you recall, you wanted 9:00 cases lined up on your door irregardless of who was in the building. And there were plenty of times where 9:00 we would have one party. And there was plenty of times where that would cause a second call because we would wait five or ten minutes for the other party to get there and that was the start of what could cause a delayed calendar, not the

fault of any officer.

Q. So it's the fault of the judge?

A. Didn't say that.

Q. Let me ask you, Sergeant Olivieri, is it unreasonable for a 9:00 calendar to start at 9:00?

A. No.

Q. So the judge was being reasonable wanting to start at 9:00 because we had five cases to get in at 9:00, between 9:00 and 9:30, correct?

A. Yes.

Q. And then we had another five ready at 9:30, between 9:30 and 10:00?

A. Yes.

Q. There's a lot more flexibility on a trial day, can we agree on that?

A. Yes.

Q. So, we had had these discussions about the Judge's concerns about Miguel Diaz operation of a calendar, correct?

A. Yes.

Q. And there had been a commitment made by yourself to the Judge that you would work with him?

A. Yes.

Q. But you never came into the courtroom to watch him manager a calendar, did you?

A. I believe I did once or twice.

Q. Okay. How long did you stay?

A. At least the morning calendar.

Q. Mm-hmm, okay.

So, the Judge comes out, still in his robe, right? This is on the morning of February 25, 2013, you hear the judge say something, you knew that the Judge's concern probably was that the calendar was not moving efficiently that morning?

A. Yes.

Q. And we're only three cases in and it was already not running efficiently?

A. I don't dispute that.

Q. So, you came in through the library?

A. Yes.

Q. The Judge came out of his office, right?

A. I believe it was out of the clerk's door, not your office.

Q. So let's get -- I'm referencing photograph five?

A. Okay.

Q. So it's your testimony that the judge didn't come out of his private office, which is all the way at the back as you look, with the gold plate on the door, he didn't come out -- I didn't come out of that door?

A. What I recall for whatever reason and I'm being honest that your door could have open and you were coming out of there, but what I remember and I feel and thought, you came out of the other door.

Q. So how would the --

A. I don't know, your Honor.

Q. No, okay.

Calling your attention now to photo 3?

A. Okay.

Q. So when the Judge is presiding over a case, can we agree that he's seated between the two flags?

A. Wait, I'm looking at 13, I apologize.

Q. 3?

JUDGE MCGUIRE: Can I approach, your Honor?

MS. TISHMAN: I's rather use the exhibits.

JUDGE MCGUIRE: I'm going to use it.

Q. So is it fair to say that when the Judge is presiding over a case he's seated in between the two flags that are shown there?

A. Yes.

Q. And now the door that's to the right, that goes into the judge's private office?

A. Correct.

Q. And there's an opening behind the witness box and the bench so the judge can walk out and walk straight up onto the bench?

A. Yes.

Q. So you're saying that the Judge got off the bench, walked all the way around to the other side, squeezed behind that video machine that's there, behind the

clerk, opened the door and that's where he came out of?

A. Again, like I said, for whatever reason when I was coming and I saw you, I -- it felt as if you came out that door and that's what I was articulating.

Q. So is it fair to say that you're not sure where I came from, you weren't focused on that right away?

A. I would say you came out of there. As I recall it, it was that door. Now I don't know if you were conferencing and decided to go that way, I don't know. I don't know. I just know that when I looked, it seemed as if you were -- me looking forward down the hallway is as if you were coming out of that --

Q. Door?

A. Out of that door.

Q. Okay. Now, to come out of my private office, that's actually past that door?

A. Correct.

Q. So if you looked up, you could have seen me passing that door?

A. That door was open, so it could have been -- it could have been because that door was open.

Q. Was my office door open?

A. I couldn't tell.

Q. You were looking right at?

A. I was looking at you approach when I looked up.

Q. So you couldn't see anything beyond me?

A. I was focused on --

Q. On me?

A. On you.

Q. Because you knew that I would agitated because the calendar wasn't running properly?

A. I knew you were agitated.

Q. You knew that's why I was agitated?

A. Surmise maybe, I thought.

Q. Well isn't that why you didn't go into the courtroom to check on your court office?

A. Right.

Q. Because you knew what I was upset

about?

A. I surmised that it was something to do with Miguel.

Q. Now, up to that point, you said we had a pretty good relationship?

A. Yes.

Q. And it changed that day because I raised my voice to you?

A. Yes.

Q. Okay. Fair enough.

And you thought that -- well, I don't know what you thought. Can we agree that you knew why I would be upset?

A. Yes.

Q. And we can agree that the calendar was dragging that morning?

A. Yes.

Q. And we can agree that if it didn't get picked up, we probably wouldn't finish the calendar that morning?

A. I'm not sure.

Q. Well, do you know how many cases were on that morning?

A. I don't.

Q. Did you look?

A. I don't know.

Q. You don't know if you ever looked?

A. I don't know if I ever looked or how many cases were on that day.

Q. Wouldn't be important as a sergeant to know that?

A. All I recall is what transpired and that's it.

Q. Okay. So in your mind the Judge had no basis to be upset at all with the court officers?

A. I ensured --

Q. That's not my question. My question is, in your mind -- it's a "Yes" or "No" --

A. All right.

Q. In your mind, did the Judge have a basis to be upset with the court officers that morning?

A. No.

Q. He had no basis?

A. Not with the Court Officers.

Q. The delay was only attributable only to the litigants or the attorneys?

A. Correct.

Q. So -- okay. So we had an exchange in the hallway, lasted a matter of seconds?

A. Seconds.

Q. And again, I'm referring to Exhibit 5, which is a view of the hallways taken from the library?

A. Okay.

Q. So as you come -- as we're viewing the photograph from the library. We go down, there's a picture, something on the wall there between the two doorways?

A. Mm-hmm.

Q. And then you continue and there's a set of three windows, sidelights of a door?

A. Yes.

Q. And that's Miss Benton's office?

A. Correct.

Q. And this interaction between the two of us you say took place just beyond that, but not through the other doorway?

A. Correct.

Q. So I was coming toward you --

toward the library, you were coming toward my chambers?

A. Correct.

Q. And we were about two, three feet apart?

A. Correct.

Q. And you assumed a bladed stance?

A. Yes.

Q. Now, you had known me since 2009, correct?

A. Correct.

Q. You never had any issues with me?

A. No.

Q. We were friendly?

A. Yes.

Q. Did you ever learn that I had gotten into physical altercations with anybody?

A. No.

Q. You never spoken to me about being violent?

A. No.

Q. So as far as you knew, this was a guy that I was friendly with, did I have any -- were you aware at that time, had you

heard even rumors that I didn't think you were a good sergeant?

A. No.

Q. So you had no reason to be concerned about me prior to coming out of the library?

A. Correct.

Q. So you knew there might be an issue, you come out of the library, you come down the hall and we have an ugly exchange?

A. Yes.

Q. And that exchange lasted a matter of seconds, right?

A. Yes.

Q. I said to you, "We got to get this calendar moving." You said, "Judge, calm down, I'll get someone else in the courtroom." You turned around and walked back toward the library and I returned to the courtroom?

A. Yes.

Q. And you, in fact, put another court officer in the courtroom?

A. Yes.

Q. And then the calendar ran very

smoothly the rest of that day, didn't it?

A. I don't recall that, I don't.

Q. You don't recall? You didn't make note of how the rest of the calendar ran after I had challenged you with respect to your administration?

A. At that point I did not think about the calendar, that was the furthest from what I was thinking about.

Q. So at that time we had known each other for about four years, 2009 to 2013?

A. Yes.

Q. And never had a problem?

A. Correct.

Q. Been friendly?

A. Yes.

Q. You participated in the holiday parties that were put on in Family Court?

A. Yes.

Q. And the Administrative Assistants days, did all that?

A. Yes.

Q. And we all enjoyed ourselves?

A. Yes.

Q. So after this -- we have this

couple of second exchange, it was ugly, but it lasted a couple of seconds, right?

A. Yes.

Q. You had a gun, yes?

A. Yes.

Q. You had handcuffs?

A. Yes.

Q. Pepper spray?

A. Yes.

Q. A baton?

A. Yes.

Q. And you were afraid of a person in a robe?

A. Yes.

Q. You were?

A. Absolutely.

Q. Were you afraid physically?

A. No.

Q. You were afraid for your job?

A. I was afraid of how it would be construed or quite frankly, I was in shock. I don't know what other words to describe --

Q. You were in shock that somebody would question your procedures?

A. No, I was in shock of the way

that you were coming at me and I didn't know what to expect at that time. So I was more in shock in that regard.

Q. So, let's get out of February 2013?

A. Sure.

Q. Okay. By the way, was there anybody in the courtroom during that exchange?

A. I believe so.

Q. How would you know that?

A. I believe there was attorneys or case workers in the courtroom.

Q. How would you know that?

A. Because immediately after walking out of the library, I was approached by attorneys and case workers asking if everything was okay.

Q. How do you know they were in the courtroom?

So let me ask you this, Sergeant, based on your now 17 years of experience as a court officer --

A. Yes.

Q. -- when a judge second calls a

case and gets off the bench, what's the court officer in the courtroom's responsibility?

A. The courtroom.

Q. Clearing it? Letting people hangout in there?

A. It depends on what the judge -- sometimes the judge says, "Keep everybody in here" and leaves and then comes back in and we all rise and it depends.

Q. Do you know on February 25, 2013, what, if any instructions the Court gave?

A. I do not.

Q. Did you ever question Officer Diaz about what instructions the Court gave?

A. I don't recall.

Q. Did you ever listen to the transcript?

A. No.

Q. You didn't?

A. No.

Q. So as you sit here today, you still don't know what transpired inside the courtroom?

A. Correct.

Q. Other than what you heard on the mic?

A. Correct.

Q. Now, as a sergeant, those transcripts are available for you, correct?

A. I've never had a situation where I would inquire as to listen to an audio tape via a chief clerk. I would defer that to my superior.

Q. So you have no interest in knowing what transpired?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I left that to my supervisors to deal with and ascertain that information if they needed it. I wasn't going to go inquire for the audio tape or any of that. I articulated what happened and I summarized it.

Q. Did you speak to any of the other folks working at the mag to find out why cases were deemed ready when they weren't ready?

A. I was working the mag that morning.

Q. Alone?

A. No.

Q. Did you speak to any of the other officers?

A. We knew that there was an individual not responding to a case. And I started working the magnetometer station particularly on the times that Miguel worked in the courtroom to make sure that everything was okay as per our previous discussions and to protect Miguel.

Q. So who else was in the area that may have seen our interaction?

A. Stacy Benton was directly in front of me.

Q. Anybody else?

A. I'm not sure if Wendy Weiner was.

Q. Well, if you're not sure, why would you say Wendy Weiner?

A. Because I believe she was your secretary at the time and she would be sitting there.

Q. Well, was she sitting there all the time? I'm asking you, do you know whether she was there?

A. I believe she was.

Q. Based on what?

A. Conversations after the event transpired with like court staff that inquired what happened today.

Q. So other people told you that she may have been there?

A. I think she asked me.

Q. She asked you?

A. Again, I think.

Q. So you spoke with her about it?

A. I think so. She might have asked me or was there, I'm not sure.

Q. You're not sure if she was there?

A. I'm not sure.

Q. Okay. Because indeed you couldn't see where she would be sitting from where you were standing, correct?

A. I don't know if that photograph does enough justice, if I was standing where I was if I could see someone there or not. I'm not sure.

Q. Well, let's look at photo 3 again.

So you're telling me you couldn't

see my door, but you could see the secretary?

MS. TISHMAN: Excuse me, I'm sorry, photograph 3 is of the Judge's courtroom.

JUDGE MCGUIRE: Which one is this?

A. 5.

JUDGE MCGUIRE: Yes, 5, I apologize. Thank you very much, Miss Tishman, for picking that up.

Q. So looking at 5, you told us earlier you couldn't see my door. But now you're telling me looking at 5 you can see?

By the way, where does the secretary sit if she's at her desk?

A. She's in front of the computer screen that's right there at the desk.

Q. Not in view here, correct?

A. Correct. And I said I don't know if I was standing there -- actively standing there if I could be able to see past that corner to see her in the photo. But I was definitely aware of silhouette or I knew Stacy was standing there because through my

peripheral --

Q. Well, she was right between us, wasn't she?

A. Correct and I --

Q. So she wasn't in your peripheral, she was right in front of you?

MR. LEVINE: Can he answer the question?

A. She was to my right when I was looking at you and I could see her here. When I was coming straight to you, I didn't look to her in the office. I was looking at you and I remember her being there. And I almost felt as if someone was there, but again, like I said, I think so.

Q. But you don't know?

A. I don't know.

Q. Because you couldn't see my door and we could agree that that's right in front of you?

A. I could see your door.

Q. Was it open or closed?

THE REFEREE: He said he doesn't know, why can't we leave it at that? He doesn't know.

JUDGE MCGUIRE: Okay.

Q. So, do you know for a fact that there were attorneys in the courtroom?

A. I could not say for a fact.

Q. So you don't know?

A. I recall having conversations immediately with attorneys, but I don't want to say for a fact that they were in the courtroom.

Q. You said the attorneys could hear you -- hear us?

A. Yes.

Q. So if they were right outside the library they could hear us also, correct?

A. I know for a fact attorneys heard because Evelyn Grease told me attorneys --

JUDGE MCGUIRE: I will move to strike.

MR. LEVINE: You asked the question.

THE REFEREE: Well, overruled.

JUDGE MCGUIRE: I asked if he knew for a fact and he said, "Somebody else told me," that's hearsay.

THE REFEREE: That's his answer

to your question.

Q. So you know based only on what other people told you?

A. Correct.

THE REFEREE: But they didn't tell you that people were in the courtroom?

THE WITNESS: No, they said, "Are you okay? I heard what happened. What's going on?" A lot of people.

THE REFEREE: But nobody told you that the attorneys were in the courtroom.

THE WITNESS: Nobody told me that attorneys -- I want to say that it was the attorneys that came up to me that were in the courtroom. Without saying it was Attorney Rosenstein or attorney --

THE REFEREE: But the bottom line on this is you don't know whether attorneys were in the courtroom?

THE WITNESS: Okay, yes.

Q. So in your deposition when you said you know for a fact that attorneys were

in the courtroom, that's a mistake, correct?

MS. TISHMAN: I don't believe that's what he said at this deposition.

THE REFEREE: What's the page and line?

JUDGE MCGUIRE: I'm going to give it to you. Page 23.

THE REFEREE: It's line 18 and 19.

MS. TISHMAN: Okay.

JUDGE MCGUIRE: Mm-hmm.

THE REFEREE: You may proceed, Mr. McGuire.

Q. So when you say you knew for a fact the attorneys were in the courtroom, that was a mistake, correct?

A. At the time that I stated that, that's how I felt. That's the answer I gave.

Q. Again, we're back to your feeling. With all due respect, this is a serious --

MS. TISHMAN: Objection.

MR. LEVINE: Objection.

Q. And we're not dealing with your

feelings.

MS. TISHMAN: Objection.

MR. LEVINE: Objection.

THE REFEREE: Objection sustained.

Q. So Sergeant, currently, who are the court officers that are assigned to your command?

A. Court officer Agar, Court Officer Corra, Court Officer Iaredi, Court Officer Four, Court Officer Gatson, Court Officer Nober.

Q. Okay. So Court Officer Corra is Hispanic?

A. Yes.

Q. Has Court Officer Corra ever come to you to complain about Judge McGuire?

MR. LEVINE: Objection.

THE REFEREE: What's the relevance of this?

JUDGE MCGUIRE: Well, the relevance is that this witness testified about how court officers came to him and voiced concerns, they asked that on direct. I want to ascertain

who.

There was also a suggestion that the issue I had with Officer Diaz was because he's Latino.

THE REFEREE: I didn't hear that.

JUDGE MCGUIRE: Well, he said that the question was that I had a concern because I couldn't understand him.

THE REFEREE: I'm going to ask you to move on, I didn't hear any of this evidence.

JUDGE MCGUIRE: Fine. Fine. Okay.

THE REFEREE: Let me just make clear, is there any issue in this case about ethnic or racial bias?

MS. TISHMAN: No.

MR. LEVINE: No.

JUDGE MCGUIRE: Okay. Fine. How about gender bias?

MS. TISHMAN: It wasn't charged in the formal written complaint.

JUDGE MCGUIRE: Well, neither was the 150 people being detained, but we

got evidence of it out today.

THE REFEREE: Well, actually you got evidence of that.

JUDGE MCGUIRE: No, I didn't. Miss Tishman asked him the question of how many times has it happened? One to three times a month.

THE REFEREE: Look, it's almost a quarter after five. You have 15 minutes left, let's try to --

JUDGE MCGUIRE: Wrap up?

THE REFEREE: -- wrap up here.

Q. Now, you testified about an incident with Officer Downs?

A. Yes.

Q. And was there any record made of that incident?

A. No, I informed my Lieutenant about Brenda bringing it up to me, but she didn't want to make an issue of it. I wanted an inquiry made, I wanted to inquire and she, "No, he was probably having a bad day."

Q. When was it? Do you know if it was before you and I had our interaction?

A. Yes.

Q. It was before?

A. I think so, yes.

Q. So that was a time when you and I were getting along, correct?

A. Yeah.

Q. Would you say that we don't get along now?

A. I don't say that. I could only speak for myself, professional, "Good morning, your Honor." And I mean, so I don't --

Q. Right.

A. I avoid having conversation, but we are fine.

Q. Does that effect your ability to administer Family Court?

A. Absolutely not.

Q. So when you send officers around to, say, check the alarms in my office, there's always cooperation?

A. Absolutely.

Q. It's been cordial?

A. Yes.

Q. So, we were friendly before we

had a couple of second of interaction that was ugly and we've been cordial for the last six years?

A. Yes.

Q. And you never spoke to the Judge about that incident, about why he might have gotten upset?

A. The officer was adamant that she wanted to --

Q. I'm not talking about that officer. I'm talking about you, you never bothered to speak to Judge McGuire about this incident from 2013?

A. Correct.

Q. Do you know whether Judge McGuire generally has an open door policy?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. Do you know that?

A. No, I believe you have an open door policy.

Q. You've been down in my chambers, correct?

A. Absolutely.

Q. Stick your head in and say,

"Hello"?

A. Yeah.

Q. In fact, you've been in my courtroom, correct?

A. Correct.

Q. You've been in my courtroom for unusual incidents, correct?

A. Yes.

Q. In fact, we had an unusual incident a couple of weeks ago, correct?

A. Yes.

Q. Mr. Weiner?

A. Yes.

Q. Mr. Weiner was upset, correct?

A. Yes.

Q. And he got up to storm out of the courtroom, right?

MS. TISHMAN: Objection, this has nothing to do with what was on direct or anything that pertains to this case.

THE REFEREE: Overruled.

Q. Mr. Weiner got upset, correct?

A. Yes.

Q. And he stood up, correct?

A. Yes.

Q. But he didn't come toward the Judge, did he?

A. No.

Q. And he didn't come toward the clerks, correct?

A. No.

Q. In fact, he was announcing that he was leaving?

A. He was very agitated prior to coming in the courtroom, cursing outside. In fact, I almost arrested him outside the courtroom and he swore to me that he wouldn't. But I was worried that he was going to get up and approach his wife, I believe.

Q. So you've been in Family Court for more than ten years, correct?

A. Yes.

Q. Is it fair to say that Family Court is often packed with emotion?

A. A hundred percent.

Q. In fact, it's not uncommon to have people arrested in the waiting room?

A. Not at all.

Q. Because of their behavior in

there?

A. Correct.

Q. Wasn't there a situation where one of the officers actually got struck by somebody who had come out of one of the courtrooms not long ago?

A. Yes.

Q. And that person was arrested?

A. Correct.

Q. And so, that kind of goes with the territory, correct?

A. Absolutely.

Q. So in this case -- and judges are aware of that also, judges have been in Family Court for a long time, right?

A. Yes.

Q. They know that sometimes things get heated out in the hallway?

A. Yes.

Q. And sometimes they get heated in the parking lot?

A. Correct.

Q. Sometimes they get heated when they go home because they come back the next day for an order of protection?

A. Absolutely.

Q. It's not uncommon in Family Court?

A. Not at all.

Q. So this situation with Mr. Weiner, he got up and based on your training and experience you had to make a split second decision that this could get ugly quick?

A. Yes, given what was said on the record to her and outside, I just put my hand out to kind of guide him in the direction to slow down and that's when he turned and came at me and that's when everything went --

Q. Actually, you went to grab him, is that what happened?

A. I put my arm on his arm because I didn't know if he was going to go after his wife.

Q. The important thing is, based on all the information that you had, your training and experience, you knew that you needed to act quickly to diffuse the situation?

A. Absolutely.

Q. And it would be unfair for someone now to second guess your decision split second?

A. They can.

Q. But would it be unfair?

MR. LEVINE: Objection.

MS. TISHMAN: Objection.

THE REFEREE: Sustained.

Q. In fact, you and another officer wound up wresting him to the ground, correct?

A. Yes.

Q. Handcuffing him?

A. Yes.

Q. He was screaming that his shoulder was hurt?

THE REFEREE: I think we've had enough of this one, Judge McGuire, let's move on.

JUDGE MCGUIRE: Okay.

THE REFEREE: Make it ten minutes worth of relevant stuff, I want to go home tonight.

JUDGE MCGUIRE: Okay, thank you,

Judge.

Q. So, what did the Judge do while this was happening?

THE REFEREE: Sustained.

JUDGE MCGUIRE: Okay.

Q. Can we agree that when we had our ugly interaction, there was no physical interaction? You weren't shoved or kicked or punched?

A. Yes.

Q. I never shoved you?

A. No.

Q. I never gave you a shove out the door?

A. No.

Q. If somebody said that I did, that would be incorrect, correct?

A. Yes.

Q. Okay.

JUDGE MCGUIRE: Nothing further.

MS. TISHMAN: There's no redirect.

THE REFEREE: Okay, I'm happy to tell you, Sergeant, that you are excused.

(The witness exited the room.)

THE REFEREE: What is the plan for tomorrow?

MS. TISHMAN: Well, I had four witnesses scheduled, I canceled one of them based on what happened.

THE REFEREE: Does Judge McGuire know who they are?

MS. TISHMAN: Yes, last week I gave him a schedule of all the witnesses for this week. I will tell you who I canceled, Lieutenant McCabe. I was able to get someone on my staff to make a phone call and tell Lieutenant McCabe not to come down.

THE REFEREE: So we have three witnesses tomorrow?

MS. TISHMAN: We have three witnesses tomorrow.

THE REFEREE: Will that fill the day?

MS. TISHMAN: All I can do is, based on what happened today to --

THE REFEREE: Do you think it will fill the day, Judge McGuire?

JUDGE MCGUIRE: I think it will fill the day, yeah.

THE REFEREE: Going forward do you want to give Judge McGuire a confirmation of who the witnesses are going to be for the next day?

MS. TISHMAN: Yeah, I mean, based on what happened today, I am anticipating changing a bunch of the witnesses because today took so long, I don't want to have people come down a long distance to then be told that they have to come back as happened to Court Officer Diaz today, who now has to come back next week.

THE REFEREE: Okay.

MS. TISHMAN: So I am now scheduling less witnesses each day.

THE REFEREE: As we go forward it might get easier.

MR. LEVINE: I think so.

THE REFEREE: And I think that as a courtesy to the respondent, the more information he has so that he can prepare for cross, the more efficient

this proceeding will go.

MS. TISHMAN: I gave him last week witnesses for this whole week. The only difference is is that some of those witnesses I'm now telling to come the week after.

So, I know definitely for tomorrow, I need to call witnesses not that I'm changing their schedule to find out when to schedule them.

THE REFEREE: Is there anything else we need to discuss?

MS. TISHMAN: So the Judge knows just to make sure, it's going to be Brenda Downs, Casey Barnes and Ricky Pagan tomorrow.

JUDGE MCGUIRE: I don't think that they'll be nearly as long.

THE REFEREE: Okay. Anything else we need to discuss?

MS. TISHMAN: I don't think so at this point.

JUDGE MCGUIRE: Thank you.

THE REFEREE: We will go off the record until 10:00 a.m. tomorrow

morning.

JUDGE MCGUIRE: Thank you, sir.

THE REFEREE: Everyone.

MR. MAISONET: Off the record.

(TIME NOTED: 5:25 P.M.)

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CERTIFICATION

I, NICOLE LEBOVIC, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May 2019.

Nicole Lebovic

NICOLE LEBOVIC

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

a Judge of the County and Surrogate's Courts, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court, Sullivan County

---

61 Broadway
New York, New York

May 7, 2019
9:59 AM

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

HONORABLE MICHAEL F. MCGUIRE
Respondent
Pro se

Also Present:

MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Commission

	Direct	Cross	Redirect	Recross
Brenda Downs	346	376	X	X
Ricky Pagan	463	472	X	X
John Charles Garn	482	535	X	X

THE REFEREE: Good morning. Today is May 7, 2019. This is the continued hearing in the matter of Judge Michael F. McGuire.

Ms. Tishman, are you ready to proceed with your next witness?

MS. TISHMAN: Yes.

THE REFEREE: Please call the witness.

MS. TISHMAN: Before we do that, the respondent, the Judge, and us discussed an Exhibit IV-4. The Judge has agreed to accept that as a certified certification of a business records of the aided report for T[redacted]L[redacted]. I believe we have come to an agreement. The Judge has agreed to have that be admitted into evidence, right?

JUDGE MCGUIRE: That's correct. The one that I objected to is the one regarding Ms. R[redacted]. That's one --

THE REFEREE: IV-4 what?

MS. TISHMAN: IV -- IV-4.

THE REFEREE: I have that as admitted yesterday.

MS. TISHMAN: Then I was

incorrect. Then it was VII-3. I thought that was admitted.

THE REFEREE: VII-3 was also admitted yesterday.

MS. TISHMAN: Yes, that was my understanding that that --

JUDGE MCGUIRE: That would be the report as to R[redacted]?

MR. TISHMAN: Yes, I believe that was admitted in and there was question about L[redacted].

JUDGE MCGUIRE: The question I had was about R[redacted] because it contains hearsay. Why don't we deal with that -- are you dealing with R[redacted] this morning?

MS. TISHMAN: I think -- I'm sorry. If I could just look it up for one second this would be cleared up. Here, Judge (handing).

JUDGE MCGUIRE: Yes.

MS. TISHMAN: I think you might be mixed up a bit.

JUDGE MCGUIRE: Okay. That is certainly possible.

MS. TISHMAN: Here are the two

aided's side by side.

JUDGE MCGUIRE: Thank you. Okay. They are both fine. I don't know what my recollection was, but.

THE REFEREE: Those exhibits are still admitted?

JUDGE MCGUIRE: Correct.

THE REFEREE: Do you have a witness?

MS. TISHMAN: Yes, we will be calling Brenda Downs.

MS. PARTIDA: Witness entering.

THE REFEREE: Ms. Downs?

THE WITNESS: Yes.

THE REFEREE: Good morning.

THE WITNESS: Good morning.

THE REFEREE: A court reporter -- I am required to read this to you.

A court reporter who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone.

Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until the question is complete, answer each with words not a nod or a gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. Please turn off all cell phones and other electronic equipment.

Have you done that?

THE WITNESS: Yes, sir.

THE REFEREE: Would you please rise. Raise your right hand.

(The witness complied.)

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat. State your name and spell it for the record.

THE WITNESS: My name is Brenda Downs, B-R-E-N-D-A, D-O-W-N-S.

THE REFEREE: You may be seated.

THE WITNESS: Thank you.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Ms. Downs.

A. Good morning.

Q. Are you currently employed?

A. Yes.

Q. And where are you employed?

A. I am employed -- right now I am employed at the Sullivan County Supreme and County Courts.

Q. What is your title?

A. Court officer.

Q. How long have you been a court officer?

A. Approximately 13 years.

Q. How long have you been assigned to Sullivan County and Supreme Court?

A. A year and a half.

Q. And prior to being assigned to the county and supreme court, where were you assigned?

A. Sullivan County Family Court.

Q. And how long were you assigned to family court?

A. Approximately 11 years, maybe.

Q. When you were in family court what were your hours?

A. 8:30 to 4:30.

Q. When you were a court officer in family court was one of the judges Judge McGuire?

A. Yes.

Q. Were you ever assigned to be a court officer in Judge McGuire's court part?

A. Yes.

Q. Were you a court officer in Judge McGuire's part when he started in family court?

A. Yes.

Q. What time does Judge McGuire start his calendar?

A. 9 o'clock.

Q. Have you ever been assigned to the Judge's court part when cases were not ready at 9 o'clock?

A. Yes.

Q. What was, if any, reaction did the Judge have if cases weren't started at 9:00 a.m.?

A. He liked to start firmly at 9:00. If they were not ready at 9:00 we would advise him on which parties were present. Often times we would start the court case if not all the parties were there.

Q. What was the Judge's reaction if cases weren't ready to start at 9:00 a.m.?

A. He was agitated if the parties weren't on time.

THE REFEREE: I'm sorry. I'm not getting it. Could you speak a little closer to the microphone?

A. He was agitated if the parties were not on time.

Q. Now, were you ever assigned to work at the magnetometer?

A. Yes.

Q. How far is Judge McGuire's courtroom from the magnetometer?

A. If I were to guess, I would say 75 feet, something like that.

Q. Do you know Court Officer Miguel Diaz?

A. I do.

Q. Did you work with him in family

court?

A. I did.

Q. Drawing your attention to February 25, 2013. Were you working that day?

A. Yes.

Q. What was your assignment?

A. I was assigned to the magnetometer.

Q. Was Court Officer Diaz working that day?

A. Yes.

Q. What was his assignment?

A. He was assigned to Part 2, which is Judge McGuire's courtroom.

Q. What, if anything, happened that day?

A. I was sitting at the desk at the front entry post, which is the magnetometer. He came out of the courtroom. He was standing at the counter. He had looked visibly shaken, and he asked if somebody would cover his part. He said the Judge yelled at him, and he did not want to go back into the courtroom.

Q. When you say "he," who are you referring to?

A. Miguel Diaz, Officer Diaz.

Q. Can you describe Miguel Diaz's physical appearance when he came to the mag?

JUDGE MCGUIRE: Objection. Asked and answered.

THE REFEREE: Overruled.

Q. You can answer.

A. He was pale. He looked visibly shaken. Officer Diaz always works his part. He's never asked anybody to cover his part before. It was unusual for him.

Q. Did Officer Diaz go back to Judge McGuire's court part that day?

A. No, he did not.

Q. Did another court officer cover that part?

A. One of the other officers volunteered to cover.

Q. While posted -- assigned to work at the magnetometer, have you ever been able to hear what is happening in Judge McGuire's part?

A. You may not decipher the words,

but you can hear yelling.

Q. Can you describe for us what you heard?

A. I've heard the Judge's voice raised, yelling in the courtroom.

Q. When you heard the Judge's voice yelling in the courtroom, what did you do?

A. The first couple of times it alarmed us. We jumped up and ran towards the courtroom. I believe at least I stuck my head in the courtroom just to make sure the Judge was safe. That there wasn't a fight, an altercation. That the officer was safe.

Q. And when you put your head into the courtroom, what -- was everything okay?

A. Everything was okay.

Q. And about how often did this happen that you would hear yelling from the Judge's court part?

A. A couple times a month maybe.

Q. And about -- when you heard yelling from Judge McGuire's court part, who was yelling?

A. Judge McGuire.

Q. You said it happened once or twice a month. Over what time period?

A. Maybe two years, something like that.

Q. How often are you assigned to the magnetometer?

A. We rotate. I am there -- I am assigned there two tours, so it's basically twice a year. The rotation is -- it's six parts, so you're assigned twice to the magnetometer, then you are assigned to the three courtrooms and then surrogate's court, and then you go back to the magnetometer for two tours.

Q. So it would be -- and how long is a tour?

A. A month.

Q. So it would be about four months a year you are assigned to the mag?

A. Yes.

Q. When you heard Judge McGuire yelling in his courtroom, was the Judge's door to the courtroom open or closed?

A. Closed.

Q. How often did you run to the

courtroom when you heard Judge McGuire yell?
A. Probably once or maybe twice I would say when it first happened.
Q. And did it first happen when the Judge became a judge?
A. Yes.
Q. And then after those first few times when you ran to the Judge's courtroom when you heard him yelling, what would you do when you heard the Judge yelling from the courtroom?
A. We would usually go over to the door and just listen and make sure everything was all right by the tone.
Q. And did you ever -- was there ever an emergency that you needed to respond to when you heard this yelling?
JUDGE MCGUIRE: Objection.
MS. TISHMAN: Let me rephrase the question.
Q. When you went to the door and listened, was there anything happening in the courtroom, any emergency that you had to interfere in?
A. None that I recall.

Q. Now, were you ever in Judge McGuire's part, assigned to his part, when you heard him yelling at litigants?

A. Yes.

Q. Was there any specific issue that would set the Judge off?

A. Nothing I could put my finger on.

Q. How would the litigants respond when the Judge yelled?

JUDGE MCGUIRE: Objection.

THE REFEREE: What is your objection?

JUDGE MCGUIRE: The objection is it's too broad. He's talking about the litigants over one or two a month?

THE REFEREE: All of this testimony has been in general, so continue with the general.

A. They would get wide eyed. Probably sometimes they cried if he yelled.

Q. And about how -- when you were assigned to Judge McGuire's court part, how often would you hear him yell at litigants?

A. A couple of times a month, maybe twice.

Q. Twice what?

A. A month.

Q. And you were assigned to Judge McGuire's court part two months a year?

A. Two months a year, yes.

Q. Now --

MS. TISHMAN: Excuse me one second.

Q. Drawing your attention to December 18, 2013. Were you in Judge McGuire's courtroom when *R* [redacted] *v O* [redacted] was called?

A. Yes.

Q. Was defendant incarcerated when he was brought to the court?

A. Yes.

Q. Was he represented by counsel?

A. I don't recall. I don't believe so because he was answering his own questions.

Q. I am going to show you what is marked Exhibit 12-A.

JUDGE MCGUIRE: Judge, it's on the audio transcript, so I will stipulate that he did not have an attorney that day.

MS. TISHMAN: Okay.

THE REFEREE: So stipulated.

Q. What, if anything, happened that day?

A. He was brought in by the sheriff's department. The case began. At some point there was a back and forth between Mr. R[redacted] and Judge McGuire. And at the end of case I remember the Judge was asking him to make a decision one way or another whether he wanted the petition dismissed, or if he wanted to have another date in order to provide service for the respondent.

At some point at the end of the case the gentleman said that -- he said, "I know your son." And the Judge got very angry.

JUDGE MCGUIRE: Objection to my state of mind.

THE REFEREE: Sustained.

Just tell us what you observed.

A. He appeared agitated. He got red faced and his voice was raised. I believe he was pointing at the inmate, and he said,

"That man threatened my son. He threatened my family." At some point he stood up and he was yelling.

Q. Who stood up?

A. The Judge stood up and was yelling that the man had threatened his family.

Q. What exactly did Mr. R[redacted] say?

A. He said, "I know --

JUDGE MCGUIRE: Objection. You have the audio tape and the --

THE REFEREE: She can testify to her recollection.

A. He said, "I know your son." I believe he may have said something about --

JUDGE MCGUIRE: Objection to what the witness believes.

THE REFEREE: Just tell us what you recall.

A. Okay. I recall him saying, "I know your son."

MS. TISHMAN: With the Referee's permission, I would play an excerpt of this tape. It is Exhibit I-2. The transcript is

I-2A, page 6 through 8.

THE REFEREE: Dash 2A?

MS. TISHMAN: Excuse me?

THE REFEREE: The transcript is I-2A?

MS. TISHMAN: I-2A.

JUDGE MCGUIRE: Your Honor, I would object to only a part. If we are going to listen to the entire transcript, otherwise there's no context.

THE REFEREE: Well, on cross-examination you are free to play the rest, I guess.

JUDGE MCGUIRE: Okay.

MS. TISHMAN: So it's exhibit -- the tape is Exhibit I-2 and the transcript is I-2A starting on page 6.

We are going to go off the record when this is being played.

THE REFEREE: Do you know where in the transcript you are starting?

MS. TISHMAN: Page 6.

THE REFEREE: Line?

MS. TISHMAN: And the tape is from 11:19:40.

MS. PARTIDA: Are we ready?

THE REFEREE: Yes.

MR. MAISONET: Off the record.

(The audio was played.)

MR. MAISONET: On the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. Now, where was the Judge when Mr. R[redacted] said -- asked the Judge to recuse himself because he knew his son?

A. He was sitting on the bench.

Q. And where was Mr. R[redacted]?

A. He was sitting at the table in the courtroom.

Q. Now, after Mr. R[redacted] said -- asked the Judge to recuse himself and said he knew the Judge's son, can you describe what the Judge did?

JUDGE MCGUIRE: Your Honor, this is pure bolstering. You've heard the transcript. You have the transcript. The best evidence is in.

THE REFEREE: We don't have a video of Judge McGuire, do you?

JUDGE MCGUIRE: We don't have a

video, but the witness --

THE REFEREE: The witness has been asked what she observed.

JUDGE MCGUIRE: Okay.

THE REFEREE: So that objection is overruled.

A. This judge was sitting at the bench. He started to yell. He said that he thought that he was threatening his family. He thought he was threatening his son. And when the man asked him to recuse himself, he got angry. He stood up.

Q. Who got angry?

A. The Judge got angry and stood up and that's when he was pointing at him. His face was red and he was -- I'm sorry?

THE REFEREE: We have an objection. You have to stop to let me make a ruling.

THE WITNESS: Okay.

THE REFEREE: Do you want to restate your objection?

JUDGE MCGUIRE: She testified again about my state of mind that I was in.

THE REFEREE: Overruled.

Q. You can continue.

A. He stood up. His face was red and he was pointing that he threatened my family.

Q. When you say "he," who are you referring to?

A. The Judge was saying, "That man threatened my family. He threatened my son."

JUDGE MCGUIRE: Judge, again, asking again. There's a repeat.

THE REFEREE: Overruled.

Q. And you said the Judge was pointing. Who was he pointing at?

A. The Judge was pointing at the inmate.

Q. That's Mr. R[redacted]?

A. Yes.

Q. Was he pointing with one hand?

A. Yes.

Q. What was Mr. R[redacted]'s demeanor when the Judge yelled at him?

A. He looked confused.

Q. I want to draw your attention to January 28 of 2013. Were you involved in

the case *P*[redacted] *versus R*[redacted] which was being heard in Judge McGuire's part?

A. No.

Q. Were you assigned that day as a court officer?

A. I was.

Q. And where were you assigned?

A. I was at the magnetometer.

Q. And, what, if anything, happened?

A. There was an incident in the courtroom. The officer in the part radioed the sergeant who went into the courtroom.

Q. Which sergeant?

A. Sergeant Olivieri went into the Part 2, Judge's McGuire's courtroom.

Q. Okay. And then what happened?

A. Sergeant Olivieri radioed me at the magnetometer and asked me to dial 911 and order a bus, which is an ambulance.

Q. And did you do that?

A. I did.

Q. After you dialled 911, what, if anything, did you do?

A. After I called I went over to the courtroom door, opened the door, stuck my

head in and told the sergeant that the bus was on the way.

Q. What, if anything, did you see?

A. I saw a woman sitting at a table who appeared to have -- she appeared to be struggling to breathe. She was having some difficulty breathing.

Q. Did you notice anything else about her appearance?

A. She appeared upset.

Q. What about her appearance led you to believe she was upset?

A. She was shaking and crying.

Q. Did you have anything else to do with this woman?

A. No.

Q. Did there come a time that you ever learned her name?

A. I did.

Q. And what was that?

A. S[redacted] R[redacted].

Q. Have you ever had any negative interactions with Judge McGuire?

A. Yes.

Q. And when was that?

A. It was one of days I was working Judge McGuire's part, Part 2.

Q. When -- what year?

A. If I were to guess I would say around 2014, maybe.

Q. Can you tell us what happened?

A. We had a case in. There was a petitioner and respondent in the courtroom. The Judge was going to render his decision, so he called a 15-minute recess.

I cleared the courtroom and the Judge got off the bench and went through his chamber door. I went through the opposite door. There's two doors out of the courtroom towards the front of the courtroom.

Q. If I could stop you for one second. I will want to show you photograph I-PH-1, please.

MS. PARTIDA: (Handing).

Q. So what happened when the recess was called?

A. I cleared the courtroom.

Q. And then did the Judge leave the courtroom?

A. He did.

Q. And what door, in looking at PH-1, what door did the Judge leave from?

A. Facing the bench he left at the right door. That is the door directly into his chambers.

Q. And then what did you do?

A. I left the courtroom on the door on the left. That is the anteroom where the Judge's secretary sits.

Q. That's where that door leads?

A. Yes.

Q. And what happens when you get to the area where the Judge's secretary sits?

A. I was standing just beyond this door (indicating). There are two doors there. The one leads out of the courtroom and then there is a door directly to the right that leads to the Judge's chambers. Both doors were open and I was standing in that area.

Q. Were you standing by the Judge's confidential secretary's desk?

A. Yes.

MS. TISHMAN: I am going to ask

that the witness be shown PH-6.

MS. PARTIDA: (Handing).

Q. And do you see where you were standing in this picture?

A. I would have been standing right at the very bottom of the picture where you probably would not have seen me where I was standing. I was exactly outside his door, so I wasn't quite in front of her desk. Andrea was standing in front of the desk.

Q. When you say the "bottom of the picture," are you talking about the bottom right or left corner?

A. Probably right in the middle of the picture at the bottom.

Q. Where was the Judge when you were standing in that area?

A. The Judge was in his chambers at his desk.

Q. You mean his private office?

A. Correct.

Q. Was the Judge's office door open or closed?

A. The door was open.

Q. About how far were you from the

Judge's private office door?

A. I was standing right at the door, a couple of inches from the door jam.

Q. And then what happened?

A. The Judge was on the computer. Mary Grace Conneely is his law clerk. She was out that day. She was supposed to have typed up the decision and it was supposed to be on the computer. He was at his desk on his computer trying to locate the decision.

Q. And what happened then?

A. He seemed to be having trouble finding what he was looking for, so he was visibly getting agitated. He started twirling in the chair a little bit. He stood up. He was searching frantically on the computer and couldn't seem to find what he was looking for.

Q. And when you say "he," who are you referring to?

A. Judge McGuire.

Q. And then what happened?

A. Andrea was standing in front of the desk.

Q. And when you say "Andrea," who

are you referring to?
A. The Judge's court clerk.
Q. And what is her full name?
A. Andrea Rogers.
Q. And standing in front of what desk?
A. She was standing in front of Wendy Weiner's desk. Wendy was seated at that desk.
Q. Wendy Weiner is who?
A. The Judge's secretary.
Q. Private --
A. Judge McGuire's private secretary.
Q. And then what happened?
A. Andrea was talking to Wendy Weiner. I was standing next to Andrea. We were shoulder to shoulder. My left shoulder was directed towards the open door to the chambers, to the Judge's office.
Q. And then what happened?
A. Andrea was speaking. The Judge got up from his desk, abruptly walked across the office, looked me in the eye and grabbed the door and slammed it with as much force

as he could.

Q. And how far were you from the Judge when he looked you in the eye?

A. Maybe two feet.

Q. And how far were you from the door when he closed it?

A. When the door was shut about four or five inches.

Q. Did the Judge say anything to you before he slammed the door?

A. No.

Q. And then what happened?

A. Andrea turned her head towards the slammed door, said "What the fuck." And looked at Wendy. I looked at Wendy and I said, "I am going back out to the magnetometer. You can call my post when the Judge is ready."

Q. And when you went to the mag, what, if anything, did you do?

A. I reported it to my sergeant.

Q. And who is your sergeant?

A. Sergeant Olivieri.

Q. And did you make an official report?

A. No.

Q. Why not?

A. I didn't want to file a grievance. I -- I didn't want to file a grievance.

Q. Did the Judge ever say anything to you later about the incident?

A. No.

Q. Did he ever apologize to you?

A. No.

Q. How did you feel at the -- when the Judge slammed the door?

A. I was upset. I was in my 50's. That's the first time somebody slammed the door in my face. It's not a good feeling.

Q. Now, you mentioned Andrea Rogers?

A. Yes.

Q. And she was Judge McGuire's clerk at this point?

A. She was.

Q. Did you ever work in Judge McGuire's courtroom when Andrea Rogers was Judge McGuire's court clerk?

A. Yes.

Q. Can you describe the relationship

between Judge McGuire and Andrea Rogers? What you observed?

A. In the beginning they seemed to have a fairly good rapport. I know when the Judge first started she seemed to be very helpful because she had worked with the prior sitting judge, Judge Ledina. So she was very knowledgeable in her area of work.

Q. When you say "her," are you referring to Ms. Rogers?

A. Yes.

MS. TISHMAN: And Judge Ledina, for the record, is L-E-D-I-N-A.

Q. And then you can continue to describe their relationship.

A. The relationship just seemed to deteriorate. Andrea often piped up in court trying to offer assistance and the Judge would put his hand up to stop her or in some way trying to get her to stop talking or stop from contributing anything to the court case.

Q. Did you ever hear the Judge raise his voice to Ms. Rogers?

A. Yes.

Q. And how often did you hear that?

A. You heard it here and there. I can't say it was on a daily basis. Maybe a couple of times a week or month. It depends on, you know, the cases.

Q. And you said you saw the Judge raise his hand towards Mr. Rogers. Can you describe what you meant?

A. Well, he put his palm up to stop her.

Q. And his palm would be facing what?

A. Towards her.

Q. Was this done in the courtroom?

A. Yes.

Q. Were there other people in the courtroom at the time?

A. Yes.

Q. Litigants and attorneys?

A. Yes.

Q. And how did Ms. Rogers react?

A. She got upset. I saw her cry a few times.

Q. Does Ms. Rogers still work with Judge McGuire?

A. No.

Q. Does she still work in family court?

A. Yes.

Q. Who does she work with now?

A. Judge Meddaugh, M-E-D-D-A-U-G-H.

Q. Do you know Wendy Weiner?

A. Yes.

Q. Did she ever work with Judge McGuire?

A. Yes.

Q. And I think you said before she was at some point Judge McGuire's confidential secretary?

A. Yes.

Q. Drawing your attention to January 14, 2015. What, if anything, happened that day?

A. If it's the date I recall, I came in the building to do my sweep. I come in at 8:30 and we sweep the building, which is basically we just check the security in the building that the doors are locked and the windows are locked.

Q. So you are assigned to 8:30 a.m.?

A. Yes.

Q. And one of your assignments was to sweep the building?

A. Correct.

Q. And at that point when you were in family court, did you do that every morning?

A. Yes.

Q. What, if anything, did --

MS. TISHMAN: Excuse me. I withdraw that.

Q. As part of the sweep, did you also go into the area of Judge McGuire's chambers?

A. Yes.

Q. And on January 14, 2015, what, if anything, did you see when you went to Judge McGuire's chambers?

A. When I was completing my sweep, I usually come through the Judge's chambers at the end of the sweep because it is located near my locker room. When I came into where Wendy Weiner's desk is, I approached her desk, and she was sitting at the desk staring off to the left into space, and she

was crying. I said, "Good morning." And she didn't respond so I asked her if she was okay.

Q. And was Ms. Weiner's demeanor different than her normal demeanor when you have done your sweep in the past?

A. Yes.

Q. Did you have a conversation with Ms. Weiner?

A. Yes.

Q. And what was Ms. Weiner's demeanor when she was talking to you?

A. She was visibly upset. She was shaking. She was crying. She was wide eyed. She said to me, "I think my Judge --

JUDGE MCGUIRE: Objection.

THE REFEREE: Sustained.

Q. Without telling us what the conversation was?

A. Okay.

Q. Was Judge McGuire in chambers at that time?

A. No.

Q. Did there come a time that you left Judge McGuire's chambers?

A. Yes.

Q. And what did you do next?

A. I went out to the magnetometer and reported the incident to my sergeant.

Q. Is that Sergeant Olivieri?

A. Yes, it is.

Q. When you say you, "reported the incident," what are you referring to?

A. I reported that I encountered Ms. Weiner in the morning and she was upset because of an incident that happened between her and Judge McGuire.

MS. TISHMAN: I have nothing -- no more questions of this witness.

THE REFEREE: You may cross-examine.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Officer Downs, good morning.

A. Good morning, Judge.

Q. So I am going to ask you some questions. Most of them you will be able to answer with a yes or no. If I ask you something you don't understand, just let me know that and I will rephrase it. I don't

want to be confusing.

A. Okay.

Q. So let's start with the -- well, let's start at the end and work our way back.

A. Okay.

Q. So in -- now, you came down here at least once before and gave testimony, correct?

A. Yes.

Q. That was sometime in 2016?

A. Yes, May.

Q. May of 2016. Okay.

Now, prior to coming down in May of 2016 --

JUDGE MCGUIRE: Strike that.

Q. Before you came down in May of 2016, did you have an idea of why you were coming down here?

A. Yes.

Q. And from where did you gather that idea?

A. From at the courthouse. The IG came in and interviewed the employees.

Q. Okay. Okay. So did you speak

with the IG?

A. I did.

Q. Do you remember who that was that you spoke to?

A. I do not.

Q. Okay.

A. I know it was a gentleman, but I don't recall his name.

Q. Okay. Was it only one gentleman or were there multiple?

A. One.

Q. And did that take place in the court complex?

A. Yes.

Q. All right. Where in the court complex?

A. In one of the conference rooms.

Q. One of the conference rooms outside of courtroom two?

A. Correct, the third one.

Q. "The third one." Okay.

When you were speaking to the person from IG, were they taking any notes?

A. Yes.

JUDGE MCGUIRE: I call for

production of those notes.

MR. LEVINE: The IG's office has no connection to the Commission.

THE REFEREE: Do you have the notes?

MR. LEVINE: I don't have the notes.

JUDGE MCGUIRE: Did the Commission have any communication with the IG's office?

MR. LEVINE: We can discuss it outside the presence of the witness.

THE REFEREE: Do you want to excuse the witness?

MR. LEVINE: That is probably a good idea.

THE REFEREE: Ms. Downs, would you just step outside for a few minutes.

(The witness exited the hearing room.)

THE REFEREE: This is the IG of the Office of Court Administration?

MR. LEVINE. Correct.

MS. TISHMAN: Yes. I just am checking one thing.

THE REFEREE: Doesn't the IG then make a referral to the Commission?

MS. TISHMAN: Can I just -- I think this will clear it up. On the February 8, 2019 letter to Mr. Bonacic who was representing the Judge at that time, and CCed to, your Honor, there is a footnote two on page 7. We say on July 18, 2017 the Commission provided Respondent with a copy of the Unified Court System Office of the Inspector General's March 26, 2015 report regarding Judge Michael McGuire.

MR. LEVINE: We gave the report --

THE REFEREE: I'm sorry. I can't hear you.

MR. LEVINE: I'm sorry. The report that we received from the Inspector General, we turned it over to the Respondent.

THE REFEREE: And that was all you received?

MR. LEVINE: Yes.

THE REFEREE: From the office?

MS. TISHMAN: Yes.

THE REFEREE: From the Inspector General?

MS. TISHMAN: Yes, their official report. That was turned over to Respondent on July 18, 2017. It is noted in our February 8, 2019 letter.

JUDGE MCGUIRE: Okay. So I don't dispute that they did.

Do you have another copy of it that I can look at here?

MS. TISHMAN: I am sure I can get one.

JUDGE MCGUIRE: Okay.

We can bring the witness back and when you get it --

MS. TISHMAN: I am not sure if I am being asked to get it now before the witness is cross-examined?

THE REFEREE: Let me ask you, does that report reflect any communications the Inspector General had with Ms. Downs?

MS. TISHMAN: The report does reflect every person that the Inspector General interviewed, and I believe they did interview Ms. Downs.

THE REFEREE: How long will it take you to get it?

MS. TISHMAN: Not long, and I actually might have it in my file.

THE REFEREE: Okay. So let's do that now.

JUDGE MCGUIRE: Okay.

MS. TISHMAN: I need -- I do have it in my file, but it is marked up with my markings. I have to get a clean copy.

THE REFEREE: Okay. So let's go off the record for a minute or two.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: You are on the record.

THE REFEREE: Okay. The Commission has provided to Judge McGuire a copy of the March 26, 2015 confidential memorandum from the Inspector General that was previously provided to Judge McGuire's prior attorney. Judge McGuire has now had an opportunity to review it.

Are you ready for the witness?

JUDGE MCGUIRE: Yes. Just for

the record, I acknowledge receipt and I thank the Commission for the accomodation.

MS. TISHMAN: I just want to add one more thing. It was provided to Judge McGuire on July 18, 2017. And what was provided has some redactions on it, and those redactions were made by the Inspector General's Office, not by our office.

THE REFEREE: Okay. Thanks for that clarifications. Let's get the witness.

(The witness entered the room.)

THE REFEREE: Whenever you are ready, Judge McGuire, you may continue.

JUDGE MCGUIRE: All right.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Officer, thank you.

A. You're welcome.

Q. So you spoke to the Inspector General?

A. Yes.

Q. You spoke to the Inspector General. Did you speak with anybody else prior to coming down for your May 2016 interview here at the Commission?

A. Not that I recall, no.

Q. Okay. All right. Did you speak to your lieutenant, your sergeant, other than what you testified?

A. I remember just that I had an appointment because they had to.

Q. Oh, okay. But not about the substance of what you testified?

A. No.

Q. Okay. So you come down here. You gave testimony for a day or part of the day on March 16 of 2016?

A. Yes.

Q. And then from between May 16, 2016 and today, May 7, 2019, just about three years passed. Who, if anyone, have you spoken to about the substance of your testimony?

A. Nobody that I recall about the substance, no.

Q. Did you speak to Ms. Tishman?

A. Yes, yes.

Q. When did you speak with her?

A. I spoke with her on May the 16th when I came down here, and I spoke with her

about two, three weeks ago.

Q. And that was where?

A. She came to Sullivan County.

Q. Okay. And when you were speaking with her at that time, where did you speak with her?

A. At the courthouse.

Q. The county courthouse?

A. County courthouse, yes.

Q. Affectionately referred to as "On the hill?"

A. "On the hill."

Q. Okay. And where in the courthouse did you speak?

A. In the visiting judge chambers, the new one upstairs by the handicapped bathroom.

Q. Oh, okay. All right. Not in where my chambers are, on the other side?

A. Correct.

Q. Okay. So anybody else with -- in that room at the time?

A. Yes.

Q. Who else was there?

A. Christine.

Q. Okay. Was Christine taking notes?

A. No.

Q. Was Ms. Tishman taking notes?

A. No.

JUDGE MCGUIRE: Okay. I would call for production of the notes of that interview.

MS. TISHMAN: I wasn't taking notes. I was going through questions and I was writing additional questions.

JUDGE MCGUIRE: I think those are notes.

MR. LEVINE: It's a work product.

JUDGE MCGUIRE: She doesn't represent the witness.

MR. LEVINE: She was preparing the witness for testimony. It's what attorneys do. She was just writing additional questions to ask.

THE REFEREE: Do you have any notes that reflect the responses of Ms. Downs?

MS. TISHMAN: No.

JUDGE MCGUIRE: Okay.

Q. Was there any written correspondence with anyone about the substance of your testimony? I'm not talking about asking for leave to be here.

A. No.

Q. No notes, no emails?

A. I received a subpoena.

Q. Right. Okay. But you didn't get any emails from the Commission?

A. No, not that I recall.

Q. Okay. No letters?

A. The subpoena and then a letter with the date.

Q. With a date?

A. I have a copy of it.

Q. Okay. Did you submit any other information to the Commission?

A. No.

Q. Okay. So you had been a court officer now for about 13 years?

A. Yes.

Q. But you were with the court system before that?

A. Yes.

Q. Okay. In what capacity?

A. I was a court clerk in Delaware County.

Q. Delaware County?

A. Yes.

Q. Okay. Where your daughter-in-law works now?

A. Yes.

Q. All right. And for a period of time your daughter-in-law actually worked in Sullivan County Family Court?

A. She did.

Q. All right. Did you encourage her to take that job in Sullivan County?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. You didn't -- you discouraged her?

A. No, no. She makes whatever choices are right for her and her family.

THE REFEREE: Let's take a second here to get some rules. The problem is that you make an objection and it is hard to hear that you have made an objection, so maybe you should stand up and make your objection. When that happens, the witness will stop and

I will be able to make a ruling in time. Okay?

In other words, what happens is he makes an objection. You keep on talking and I don't even have a chance to do my job.

THE WITNESS: Oh, I apologize.

JUDGE MCGUIRE: Judge, I will cue in, and if he makes a objection I will stop.

MR. LEVINE: I will be loud.

MS. TISHMAN: He can be.

JUDGE MCGUIRE: Really?

THE REFEREE: Don't go there.

Let's go.

Q. So your daughter-in-law worked in family court in Sullivan County?

A. Yes.

Q. And did you know that she was going to be working before she worked there?

A. I knew that she was coming in for an interview.

Q. Do you know that she got offered a job?

A. Yes, when she was offered it I was told.

Q. And before she started?

A. Yes.

Q. Okay. So you knew that she would be working with Judge McGuire?

A. Yes, well, I didn't know where she would be working. I knew she would be working in family court.

Q. Okay. And you knew there were two judges in family court?

A. Correct.

Q. Judge McGuire?

A. Correct.

Q. And Judge Meddaugh?

A. Yes.

Q. So she would certainly be interacting with probably at least both?

A. Yes.

Q. Now, during your -- so your 13 years as a court officer, how long were you with the court system before you became a court officer?

A. Five and a half years.

Q. So you have got almost 19 years in?

A. Correct.

Q. All right. Do you have any

disciplinary history in that 18 years?

A. No.

Q. Any criminal history?

A. No.

Q. Okay. So not just Judge McGuire's calender, Judge --

JUDGE MCGUIRE: Well, strike that.

Q. Judge McGuire's calendar starts you said promptly at 9:00?

A. Correct.

Q. Does Judge Meddaugh's calendar start at 9:00 also?

A. Yes.

Q. Cases are scheduled?

A. They are scheduled for 9:00, yes.

Q. And Judge Lennon also?

A. Yes.

Q. They are scheduled at 9:00?

A. They are scheduled at 9:00.

Q. And Judge Lennon is less prompt about being ready to go at 9:00?

A. She is, yes.

Q. But Judge Meddaugh likes to get started at 9:00?

A. Around 9:00.

Q. And Judge McGuire likes to get started at?

A. Promptly at 9:00.

Q. So you said that sometimes people -- the Judge will call cases even though people are not there?

A. Correct.

Q. Is it fair to say that there is often more than one -- let me focus on arraignment dates. You have been gone 18 months, but you recall that Judge McGuire has his arraignment day on Monday?

A. Correct.

Q. And Judge Meddaugh has his arraignment day --

A. Tuesday.

Q. -- Tuesday?

Fair to say that those are the two busiest says in the courthouse?

A. Yes.

Q. Sometimes judges could have 80, 90, a 100 cases on?

A. Yes.

Q. All right. Now, going back

before April of 2011 --

JUDGE MCGUIRE: Strike that.

Q. The family court actually closes for lunch for an hour, correct?

A. Yes.

Q. From what time?

A. 12:30 to 1:30.

Q. Now, that is a relatively new development, correct?

A. Well, a couple of years.

Q. A couple of years?

A. Yes.

Q. April of 2011?

A. Right.

Q. Prior to that you were a court officer?

A. Yes.

Q. And sometimes if the judges were busy they would just work right through lunch?

A. Correct.

Q. And the result was that the court officers would continue to work?

A. Correct.

Q. And they would get overtime?

A. Correct.

Q. After 2011, the overtime was limited?

A. Correct.

Q. So if Judge McGuire has, say four or five cases on an arraignment calendar at 9:00, can we agree that Judge McGuire doesn't have a concern of which of the four or five of the 9 o'clock cases we start with?

MR. LEVINE: Objection to what is in his mind.

THE REFEREE: If she knows what his practice was.

JUDGE MCGUIRE: Let me rephrase the question.

Q. You have worked in Judge McGuire's part on arraignment days? I want to focus on those.

A. Yes.

Q. Is it fair to say that the protocol is that the 8:30 officers, there's two usually, correct?

A. Correct.

Q. And the 8:30 officers will open

the doors at about ten minutes to 9:00?

A. Correct.

Q. And they will start checking people in?

A. Correct.

Q. And then at 9:00 or a few minutes after 9:00 now the 9:00 group is there?

A. Correct.

Q. So you are at full staffing for the day at 9:00?

A. Correct.

Q. And customarily the officer who is assigned to the part will come back to chambers to let us know what cases are -- where we are?

A. Correct.

Q. Now, based on your experience working with Judge McGuire, is it fair to say he never expressed to you a particular need to start the five 9 o'clock cases with case one?

A. Correct.

Q. Whereas if case three had everybody there we would say let's bring in case three?

A. Correct.

Q. And if case one we were waiting for somebody we would wait?

A. Correct.

Q. And then if while case three is in, the people for case one arrive then we would flow right into that?

A. Yes.

Q. Fair to say the Judge would have no reaction as long as we were able to get started?

A. Yes.

Q. That's because particularly on arraignment dates sometimes it's hard to get them all in by 12:30?

A. Yes.

Q. And at 12:30 what happens?

A. We close.

Q. Right. Now that is different in county court?

A. Yes.

Q. In county court we do work right through sometimes?

A. Well, we make sure that everybody gets lunch and there is no overtime.

Q. Right, but the sergeant --

A. -- will be working, yes.

Q. So if hypothetically you were assigned to my courtroom which just happened to be courtroom two also on the hill, and we were going -- we had a hearing going on and we were running late, the sergeant would come in just rotate the officers out so that everybody got lunch?

A. If they wanted to, otherwise they take late lunch.

Q. Or they could take a late --

A. -- work the part.

Q. In other words, the sergeant would assess where we were and move staff accordingly to avoid overtime and keep the court functioning?

A. Yes.

Q. Now, that's not Sergeant Olivieri?

A. No.

Q. That's a different sergeant?

A. Yes.

Q. That's Sergeant --

A. Hamiel.

Q. Hamill, H-A-M-I-L-L?

A. E-L.

Q. E-L. All right. Now, so is it fair to say that if by 9:15, 9:20 we don't have all the attorneys and all the litigants for a particular case then the Judge will call it in?

A. Usually we were -- it was more like 9:03.

Q. So if there was only on case one, we would call that case in?

A. Yes, if it was only one case.

Q. If it was only one case?

A. Otherwise if there were multiple cases, whatever case was ready first would be what --

Q. We would start with that case?

A. Correct.

Q. And then we would flow right into all the other cases?

A. Correct.

Q. Now, if someone is not there and their case gets dismissed without prejudice and then they show up, what happens? They go to the mag?

A. They go the mag. They check in. We usually get radioed in the part that the parties showed up. We will ask you and they are usually directed to the window.

Q. If the case has already been dealt with?

A. Yes, if it has been called.

Q. Now, in your experience in family court is it uncommon for litigants to not show up at all?

A. No.

Q. Sometimes they just don't show up at all?

A. Correct.

Q. Now, let me understand a little bit about the protocol. So I want to focus on when you are at the mag --

A. Okay.

Q. -- or at the mag or at the x-ray machine.

A. Okay.

Q. Okay. So when you are out there, the court officer takes a case into Judge McGuire's part?

A. Okay.

Q. What, if anything, do the officers out at the desk -- well, I want to ask you. What, if anything, do you do to get the next case ready to go?

A. This officer sitting at the desk is checking parties in on the calendar. Once all the parties on a case have arrived normal procedure is to process them through to get them inside the courthouse, notify the officer working the part that you have all parties, and when that officer in the part is ready they will advise when to line it up on the door.

Q. Okay. So it's your understanding that the person in the courtroom will radio out to tell them when to cue that next case?

A. Correct.

Q. The people outside don't get the next case cued up?

A. Not regularly, because a case can be in 45 minutes so the parties can be standing a long time.

Q. All right. So do you generally keep the parties inside the court complex though so that they can easily move down to

the courtroom?

A. When they are getting closer to their -- yes.

Q. Okay. So what happens is the person inside would radio out and say we are getting close?

A. Correct.

Q. And then you move the litigants and the attorneys down?

A. Correct.

Q. And sometimes that is difficult because you have attorneys in three different courtrooms?

A. Absolutely.

Q. And many times we have the same attorneys that we need in multiple places?

A. Correct.

Q. So sometimes you will tell the person in the courtroom we don't have anything else ready?

A. Correct.

Q. And then they tell the Judge that?

A. Correct.

Q. And then often times the Judge

will just recess?

A. Yes.

Q. Now, you said sometimes we can go 45 minutes. That would be if there is a hearing though, correct?

A. It depends, yes. Some of the cases on arraignment day will run long, a little long.

Q. Sometimes particularly I tend to run a little longer than Judge Meddaugh?

A. Yes.

Q. That's okay.

A. Yes.

Q. I tend to be a little more wordy?

A. Yes.

Q. Is it fair to say that I will often project my voice in the courtroom maybe more than other judges?

A. Yes.

Q. But you have heard other judges in your 18 years raise their voice in court?

A. I can't recall.

Q. Judge LaBuda?

A. No.

Q. Okay. So --

A. I don't work with -- I mean I have only been here a year and a half, so I haven't had a lengthy experience with Judge LaBuda, but not while I have been there.

Q. Fair enough.

So when you met with Ms. Tishman in the visiting judge chambers?

A. Yes.

Q. Did she advise you to emphasize your emotions?

A. No, not to emphasize, no.

Q. Okay. Now, let's go back to February 2013, February 25th.

A. Okay.

Q. All right. You said that you were working at the desk.

A. Okay.

Q. Is that right?

A. Yes.

Q. You were working the desk.

Do you remember who else was at the desk with you?

A. I do not.

Q. So the person who is at the desk, what are their duties?

A. The person at the desk is the one checking litigants in, updating the calendar, updating the parts.

Q. And then the people go through the mag?

A. Yes.

Q. Now, to be clear the mag is a phone booth looking -- like they have at the airport?

A. Yes.

Q. And they go through?

A. Correct.

Q. And if they go through and the magnetometer beeps, what do you do?

A. The second officer would give you a hand scan.

Q. The second officer would be hand scanning?

A. Yes.

Q. So it wouldn't be the desk officer?

A. No, we always have two officers.

Q. So --

MS. TISHMAN: You have to tell us the page and the line.

JUDGE MCGUIRE: Page 13, line 23.

MS. TISHMAN: One second.

Q. Do you remember when you came down here about three years ago?

A. Yes.

Q. And you gave a deposition?

A. I do.

Q. In that deposition were you asked this question and did you have this answer in response to February 25, 2013, line 23. "Now where were you working?" "I was working at the desk. Actually I was the second officer, not at the desk. I was the second officer on post one on the magnetometer."

MR. LEVINE: Objection. I don't see where that --

THE REFEREE: Overruled.

Q. So three years ago you testified that you were the second officer and today you testified that you were the first officer at the desk?

A. It could have been. We don't necessarily sit at the desk all day. If I get up to hand scan somebody, somebody else

will jump at the desk. There's two officers. We rotate. So I could very well have been sitting at the desk or hand scanning.

Q. Okay. So --

A. Wherever.

Q. Okay. So you were doing both jobs that morning?

A. Yeah, when the people come in you just jump in whatever position to expedite getting them through.

Q. Okay. All right. So now, when Officer Diaz came back -- by the way, you testified that on a couple of occasions you have been able to hear the Judge's voice coming from courtroom two?

A. Yes.

Q. Now, on February 25, 2013, prior to Officer Diaz coming back, prior to that --

A. Yes.

Q. Okay. And he came out. Do you remember what time it was when he came out?

A. I don't recall. I believe it was in the morning, but I am not positive.

Q. Was it fairly early in the morning?

A. If I am correct, I believe it was in the morning because I think he had only been in the part a short time.

Q. Okay. Prior to him coming to you in the morning, you didn't hear anything coming from Judge McGuire's courtroom, did you?

A. I don't recall hearing anything.

Q. So you said that he didn't want to go back in the courtroom?

A. Correct.

Q. But he wasn't refusing to go back in the courtroom?

A. He said he did not want to go back in and he asked for somebody to cover him.

Q. And somebody else offered to cover?

A. Yes.

Q. Where was the sergeant when this decision was made by the officers to have someone else cover?

A. I don't recall him being at the

post. I don't know where he was.

Q. So the decision was made amongst the other officers?

A. Yes.

Q. The sergeant didn't direct somebody else to handle the post?

A. No, not at that time that I know of. He was not -- unless somebody spoke to him, I couldn't say.

Q. Do you recall hearing the Judge's voice at any other time that day?

A. No.

Q. And you were pretty much in the area of the mag that whole morning?

A. Yes.

Q. Whether you were at the desk or you stood and switched places with your partner?

A. Correct.

Q. You were in that general area all day. All right. And you said when Judge McGuire first started once or twice you would hear his voice and you would go down the hallway?

A. Yes.

Q. Poke your head in or listen?
A. Yes.
Q. And everything was fine?
A. Correct.
Q. Is it fair to say that you got to accept that sometimes you are going to hear his voice but it doesn't necessarily signal an emergency?
A. Right.
Q. And you said once or twice a month you could hear him?
A. I would say on the average, yes.
Q. Now that's not once or twice a month that people were removed in handcuffs? That is once or twice a month you would hear the Judge's voice?
A. Correct.
Q. Now, let's go to the day of this door slamming incident.
A. Okay.
Q. So it was actually a trial that was going on that day, correct?
A. It could have been.
Q. Well, does the Judge render decisions in other than trials?

A. No.

Q. You don't remember the exact sum and substance of what was going on in the courtroom?

A. I do not.

Q. Because that is not your responsibility?

A. Correct.

Q. Your responsibility is to maintain safety and order?

A. Yes.

Q. So the Judge took a recess?

A. Correct.

Q. He got off the bench?

A. Yes.

Q. Is it standard protocol that when a judge gets off the bench you clear the courtroom?

A. Yes.

Q. So --

A. For a recess. I'm sorry.

Q. For a recess?

A. For a recess.

Q. Okay. Okay. So if the judge says we are going to take a recess, the

judge gets off the bench, people aren't left to sit in the courtroom?

A. Correct.

Q. Because if there is people in the courtroom you have to stay in the courtroom?

A. Correct.

Q. So the Judge went to his desk?

A. Yes.

Q. And you said that you were standing outside Judge's chambers?

A. Yes.

Q. And you were having a -- you were engaged in a conversation with Andrea Rogers?

A. No, I was not.

Q. You were not. Andrea Rogers and Wendy Weiner were having a conversation?

A. Correct.

Q. And you weren't participating in that at all?

A. I was not.

Q. Okay. So you were just standing between the Judge's door and Wendy's desk?

A. Correct.

Q. In that area.

Do you know how far it is from the Judge's door to Wendy's desk?

A. Which point of her desk?

Q. The very front part?

A. The first corner?

Q. The first corner.

A. I would say two and a half feet, something like that.

Q. Would you be surprised to learn it was six feet?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. So were you near the front corner of her desk?

A. No.

Q. You weren't. All right. So you could look into the Judge's private office?

A. Yes.

Q. And you said he looked agitated that he couldn't find a decision?

A. Yes.

Q. That Mary Grace was supposed to have written?

A. Correct.

Q. You didn't testify you heard the Judge say anything?

A. I don't recall you saying anything.

Q. So how did you know that Mary Grace was supposed to have written the decision?

A. I don't recall.

Q. Well, you testified that -- testified here today that Mary Grace was supposed to have written the decision?

A. I don't recall. I may have been told that after the fact. I don't recall how.

Q. So you don't know what the Judge was looking for?

A. Just that it was a decision. Well, you said we were getting -- we were taking a recess.

Q. To render a decision?

A. To render a decision.

Q. And that was after we had taken testimony?

A. Correct.

Q. So the decision couldn't have

been written before the testimony was done?

A. I wouldn't know. That is not my area of expertise.

Q. Well, based on your 18 years of experience in the courtroom --

MR. LEVINE: Objection.

THE REFEREE: I will hear the question now.

Q. Based on your 18 years of experience in the courtroom, have you worked with different judges?

A. Yes.

Q. Have you seen judges process cases?

A. Yes.

Q. In fact, when you were a clerk, did judges file orders with you?

A. Yes.

Q. Decisions with you?

A. Correct.

Q. Were those decisions generally done before the trial?

A. Again, I don't know when the decisions were written. I really don't.

Q. So you don't know if they are

written before the trial or after the trial?

A. I do not know.

Q. Okay. Fair enough.

A. I don't write decisions. I have no idea.

Q. It's not a problem. If you don't know, you don't know.

A. Okay.

Q. All right. So you don't even then know what the Judge was doing?

A. I do not. I know what I saw.

Q. Okay. So you saw the Judge kind of frantic at the desk?

A. Yes.

Q. And he was looking for stuff?

A. Yes.

Q. But you don't know if Mary Grace had written it or not?

A. I recall being told that Mary Grace wrote a decision that you were looking for. I can't tell you where.

Q. You don't know who did?

A. I do not.

JUDGE MCGUIRE: All right. So I am going to ask that that testimony be

stricken because it is clearly hearsay.

MR. LEVINE: That was elicited to explain why she did what she did to understand the circumstances of what was there and it was not objected to when it came in initially.

JUDGE MCGUIRE: What did she do -- actually it was objected to. What did she do in response to knowing someone that wasn't there might have --

THE REFEREE: Well, here is how we are going to resolve that. I will accept that testimony for the fact that it was said to her, not to the fact that it was true if that is what you were looking for.

JUDGE MCGUIRE: Fair enough. Fair enough. All right.

Q. So you knew that we were taking a recess so that we would come back and the Judge would put a decision on the record?

A. Correct.

Q. You don't know what the Judge was doing?

A. No.

Q. So can we agree that in a short

period of time the Judge has to gather information about a case that he needs to concentrate to write?

MR. LEVINE: Objection. She is not a judge.

JUDGE MCGUIRE: She doesn't have to be a judge. That is common knowledge.

THE REFEREE: Overruled.

A. I would agree.

Q. Have you ever written anything?

A. Of course.

Q. That was not a trick question.

A. Okay.

Q. Have you ever sat down to write a letter to somebody?

A. Correct.

Q. And you sit down to write, you need to gather your thoughts?

A. Correct.

Q. And then you need to get them out on paper?

A. Correct.

Q. And those thoughts when you write a letter to someone is not a legal decision?

A. Right.

Q. It doesn't have to cite law? It is just you are writing a letter?

A. Right.

Q. Can we agree that if the Judge is busy trying to compile something of a legal nature that he may be wanting to concentrate on that?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. And so if there is noise in the outer office that could be distracting?

A. Yes.

Q. And so the Judge came and closed the door to give himself more quiet?

A. Okay.

Q. All right. Now, so, Officer, you knew Judge McGuire when -- before he was Judge McGuire?

A. Correct.

Q. When he was just Mike McGuire?

A. Correct.

Q. He was an attorney?

A. Yes.

Q. In fact, when you first came out

of the academy you were assigned to Sullivan County Family Court?

A. Yes.

Q. So fair to say that Mike McGuire was in court quite a bit?

A. Yes.

Q. Almost all day, every day?

A. You were frequently there, yes.

Q. And can we agree that in your experience when you worked in family court that there are some very difficult facts that we deal with?

A. Yes.

Q. Drugs?

A. Yes.

Q. Violence?

A. Yes.

Q. Homes that are deplorable?

A. Yes.

Q. Children that are abused and neglected?

A. Correct.

Q. So you had an opportunity to watch Judge McGuire work as an attorney?

A. Yes.

Q. Were your interactions with him -- well, describe what your interactions with Judge McGuire were like when he was an attorney?

A. They were favorable. You had a good rapport with the officers.

Q. And you in particular? I mean not different from other officers but.

A. Yes.

Q. Pleasant?

A. Yes.

Q. Was he rude?

A. No.

Q. Sometimes he might be focusing on dealing with a client or something and he might walk by without saying anything?

A. Maybe.

Q. But generally on a normal day he would walk in and give everybody a warm greeting?

A. Yes.

Q. So then he became a judge, right?

A. Yes.

Q. And we don't remember the exact date when this door closing incident

occurred, do you?

A. I don't recall, no.

Q. It wasn't something that you made any notes of?

A. No.

Q. It wasn't anything you made a report of?

A. No.

Q. In fact, you didn't because you thought, you know, maybe the Judge was having a bad day?

A. No, that wasn't my thought.

Q. That wasn't your thought?

A. No.

Q. Sergeant Olivieri asked you if you wanted to file a grievance?

A. Correct.

Q. A grievance because the Judge closed the door?

A. Correct.

Q. And you didn't?

A. No.

Q. You didn't think it was necessary?

A. I didn't think it would

accomplish anything.

Q. Well, here we are.

A. Hindsight.

Q. So --

A. And I don't mean to say that I would have. That is not what I am saying.

Q. I understand.

A. Okay.

Q. So for whatever -- now, I thought you testified that this might have happened sometime in 2014?

A. It could have been.

Q. Could it have been earlier? I am not trying to trick you. I am just trying to --

A. I don't know.

Q. Was it before the Officer Diaz incident?

A. I don't know.

Q. You don't know. Okay.

Let's set that point in time when the door closing incident occurred.

A. Okay.

Q. Let's go back to January -- I will say January 1, 2011, but I actually

didn't start until January 10, 2011, but we will go back to January 1, 2011 to define the period of time I am referring to.

A. Okay.

Q. So we established that prior to January 1, 2011, I was an attorney and we had a good relationship?

A. Yes.

Q. In fact, for a period of time you actually were out on a medical leave?

A. Correct.

Q. In fact, I believe you came back and Mike McGuire --

A. I'm sorry?

Q. When you came back?

A. Oh, when I came --

Q. When you came back from your medical leave?

A. Right.

Q. Yes.

A. I had breast cancer. I was out for seven months with chemo and radiation. That is where my memory has a little bit of fuzz. Okay.

Q. I didn't want to burden the

record with your personal information.

A. It's fine.

Q. And the Judge was very supportive of you when you came back?

A. Yes.

Q. So January 1, 2011 to the incident whenever that is?

A. Okay.

Q. You worked with the judge in his part a couple of times a year?

A. Correct.

Q. You also interacted with him most mornings?

A. Correct.

Q. When you would do your 8:30 sweep?

A. Correct.

Q. The Judge was there most mornings when you did your 8:30 sweep?

A. Yes.

Q. And how would you characterize the relationship then?

A. We had a good working relationship.

Q. Positive?

A. Yes.

Q. Okay. That you thought that you were on the A Team?

A. I thought I was.

Q. But somebody told you you weren't?

A. Correct.

Q. Who told you that?

A. My sergeant.

Q. Olivieri.

A. Correct. And the other officers joked about it.

Q. They joked about it?

A. Yes.

Q. Did you ever talk to me about it?

A. No.

Q. Did you ever ask me whether I had any particular issues with the way you conducted your professional business in my courtroom?

A. No.

Q. In fact, generally the rapport was very positive?

A. For the most part. It changed. Your demeanor towards me changed.

Q. It did?
A. Yes.
Q. Before the door closing incident?
A. No.
Q. After it?
A. Yes.
Q. Okay. In what way did it change?
A. When I came through and I did my morning sweep I would say good morning to you, and it used to be that you were warm and you would respond, and then it came a point where you were very cold and when you turned around and saw it was me your demeanor changed.
Q. Okay. Do you remember when that was?
A. Probably maybe about a year before I left family court, so two and a half years ago.
Q. So two and a half years ago from now would be sometime in 2016?
A. Probably.
Q. Or maybe 2015?
A. Yes, probably more like '16.
Q. Probably '16. Okay.

Now, you don't know, what, if anything, the Judge knew of this whole investigation at that time, correct?

A. No.

Q. You never spoke to the Judge about it?

A. No, I --

Q. You -- go ahead. You finish.

A. I had no idea why things changed. I mean everybody knew what was going on, but as far as you and I never knew what changed.

Q. Okay. "Everybody knew what was going on." Did I ever speak to you about anything?

A. No, no.

Q. So you never knew that -- what I knew or what I didn't know?

A. No, other than when IG came in it was common knowledge in the building.

Q. To who?

A. To the parties that worked in the building.

Q. Do you know whether IG spoke to me?

A. I do not.

Q. Do you know whether I was aware that they were there?

A. I do not.

Q. Do you know whether or not they selected a day based on when I would not be there?

A. I do not.

Q. Do you know whether or not I was there on the day they came?

A. I do not.

Q. How many days were they there?

A. It was more than one. It may have been two or three.

Q. In succession?

A. I don't recall. I only met with them once myself.

Q. Did you know that they there on successive days?

A. I knew they were there more than once in order to get through all the employees.

Q. But you don't know if it was Monday, Tuesday, Wednesday?

A. No, I don't.

Q. It might have been Monday and

then a month later another day?

A. Possibly.

Q. So you don't whether or not that was set up to have them arrive when the Judge would be away?

A. I don't.

Q. So it is certainly possible the Judge knew nothing about it?

A. It is.

Q. Now, you never had litigants make complaints to you about Judge McGuire, did you?

A. Not file. I heard verbal complaints.

Q. In the courtroom?

A. In the courtroom, coming in and out of the building.

Q. And those complaints were that people wanted another judge?

A. I heard that once or twice.

Q. Again, referring to your 2016 --

MR. LEVINE: Hold on. Page, line number, please?

Q. Referring to your May 2016 testimony.

A. Okay.

Q. Page 26, line 11. Were you asked this question and did you give this answer, "Did you ever have in your experience litigants talk to you about making complaints about Judge McGuire?" Answer, "No."

A. Not making complaints, no.

Q. Well, that was my question.

A. Oh, I'm sorry. I misunderstood. I thought you said complaining about you. I misunderstood.

Q. So when they would complain about me, what, if anything, would you do?

A. Nothing. You kind of appease them or brush it of. It's not my place.

Q. Did you ever direct them anywhere?

A. No, sometimes they just want to vent.

Q. Did you ever hear Judge McGuire yell at other court officers?

A. No.

Q. Were you ever made aware that Judge McGuire had a concern about radios

being too loud in family court?

A. I have heard that you don't like the radios loud in the courtroom.

Q. Particularly in family court or in county court?

A. This was when I was in family court.

Q. Is it fair to say that in family court there is much more communication than there is in county court?

A. Absolutely.

Q. Is it fair to say the acoustics, the size of the room in family court is smaller than it is in county court?

A. Yes.

Q. Okay. Did you ever hear Judge McGuire say anything bad about any of the other court officers?

A. In what way do you mean "bad?"

Q. Inappropriate?

A. I believe you may have said something about Jose.

Q. Officer Cora?

A. Correct.

Q. What did I say?

A. He has a tendency to be tardy.

Q. Okay.

A. And I know it frustrated you.

Q. Frustrated me because he wasn't ready to go at 9 o'clock?

A. Correct.

Q. And what time were we supposed to start?

A. At 9:00.

Q. And he wasn't ready at 9:00?

A. No, but the sergeant always sent somebody in to start the part.

Q. Okay. So other officers had to take up the slack because he was late?

A. Yes.

Q. Do you know whether or not the Judge ever made a formal complaint about any court officer?

A. No, not to my knowledge.

Q. All right. Now, you talked to Ms. Tishman --

JUDGE MCGUIRE: Judge, do you want to take a break. This would be a good time to take a ten-minute break.

THE REFEREE: How much more do

you have?

JUDGE MCGUIRE: Probably 15, 20 minutes tops.

THE REFEREE: Okay. I think we are going to give the court reporter a break.

Are you going to have any redirect; do you think?

MS. TISHMAN: I am not sure. If I do, one or two questions.

THE REFEREE: Why don't we take a break. We will finish this witness up. Do you need a break?

JUDGE MCGUIRE: I could use one for about five minutes.

THE REFEREE: Let's take a five minute -- a ten-minute break.

Off the record.

(A recess was taken.)

MS. PARTIDA: Witness entering.

THE REFEREE: On the record.

JUDGE MCGUIRE: Thank you for that break.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. All right. So Ms. Tishman asked you a little bit about my relationship with my former secretary, Ms. Weiner?

A. Correct.

Q. You said that in the beginning they had a good relationship?

A. Yes.

Q. Then it started to deteriorate over time?

A. It seemed to.

Q. How did you know that?

A. By the rapport between you.

Q. How much time did you spend back in our chambers area?

A. Not many, not much, no.

Q. A minute or less?

A. Well, a little more than that. In between cases I would be back there with you waiting.

Q. Okay. That two months a year?

A. Correct.

Q. Okay. When you were back there waiting generally I was in my office?

A. Yes.

Q. So there was no interaction?

A. No.

Q. So you really didn't have an opportunity to assess the nature of our relationship?

A. Correct.

Q. Now, you talked about this incident on January 14th of 2015?

A. Correct.

Q. You came in and said that Ms. Weiner was wide eyed?

A. Correct.

Q. And she -- I don't want you to tell us what you were told, but she told you some things?

A. Correct.

Q. About what had happened?

A. Correct.

Q. By the way, when you came back there, was the door to my inner officer, my private office, was that open or closed?

A. It was open.

Q. "Open."

Is that typical in the time that you spent working in family court while I was there that my door generally is open?

A. Sometimes it is open, sometimes closed.

Q. Sometimes if I am working on something I might close it?

A. Correct.

Q. To shelter some of ambient noise?

A. Correct.

Q. So based on what you were told, did you do any investigation to try to corroborate what you were told had occurred?

A. No.

Q. Do you know if anybody else did any investigation to corroborate it?

A. No.

Q. Did you have an opportunity to look at the Judge's office that day?

A. I could see the office from where I was standing.

Q. Well, when you walked out, reference Exhibit photo VI?

A. Okay.

Q. You were doing your security sweep, correct?

A. Correct.

Q. So is the Judge's inner offices

part of the security sweep?

A. Yes.

Q. There are windows in there?

A. Correct.

Q. There are doors in there?

A. Yes.

Q. And you have to make sure that they are secure?

A. Correct.

Q. So and you had done this security sweep many times?

A. Correct.

Q. So you didn't walk into the Judge's office?

A. Yes.

Q. You did?

A. Yes.

Q. Oh, okay. Okay. So you did. Did you walk into the Judge's office before you were -- spoke to Ms. Weiner or after?

A. I believe it was after.

Q. So fair to say I want to reference -- do you have photo VI?

A. I do.

Q. This is oriented looking out of

my private office?

A. Correct.

Q. Right. Down the hallway toward the library and then the chief clerk's office?

A. Correct.

Q. So when you came in on the morning of January 14th, did you come from, if you look at VI, from that file cabinet that is in the foreground or the background toward the copy machine and secretary's desk?

A. Yes.

Q. And Ms. Weiner was at her desk?

A. Correct.

Q. Okay. And you spoke to her for a while?

A. A couple of minutes.

Q. "A couple of minutes."

And you continued into the Judge's office?

A. Correct.

Q. Have you been in the Judge's office before?

A. Yes.

Q. How would you describe the Judge's office in general, the condition of it?

A. It is very well organized.

Q. The Judge keeps lots of files and papers on his desk?

A. No.

Q. On the floor around his desk?

A. No.

Q. On the wall unit?

A. No, on the credenza.

Q. On the credenza which is outside?

A. Correct.

Q. That is actually shown in VI, right?

A. Correct.

Q. So fair to say based on your experience that's where files that require the Judge's attention are left?

A. Correct.

Q. So when you looked into the Judge's office -- did you walk through it or just look in?

A. I walked through.

Q. You walked through because you

had to check the windows?

A. Correct.

Q. And the windows are at the far side opposite where the door is where VI is oriented?

A. Correct.

Q. So you walked all through the office?

A. Yes.

Q. And based on what you were told by Ms. Weiner, and I don't want us to tell us what she told you, did you find any corroboration for what she had said?

A. I did not see anything on the floor.

Q. No files?

A. No.

Q. No papers?

A. No.

Q. Anything on the desk?

A. That I can't recall.

Q. You can't recall.

So there was no files, no papers?

A. No, I would have recalled that. No.

Q. You would have recalled it why?

A. Because I would have had to step over them.

Q. And would that have been out of the ordinary for Judge McGuire's office?

A. Yes.

Q. So it would have stuck with you?

A. Correct.

Q. Okay. Now, let's talk about Andrea Rogers.

A. Okay.

Q. Andrea Rogers worked in Judge McGuire's part?

A. Yes.

Q. At the beginning?

A. Correct.

Q. The beginning of Judge McGuire's term?

A. Yes.

Q. That changed at some point?

A. Yes.

Q. Do you know why that changed?

A. I do not.

Q. Now, you said that Andrea Rogers cried a couple of times?

A. Yes, she did.
Q. In court?
A. I believe in court.
Q. In court?
A. I did see her cry.
Q. While litigants were in there she was crying?
A. Yes.
Q. Didn't she have an eye condition?
A. She did at one point.
Q. That's when you saw her tearing eye?
A. No.
Q. Did you make any notes of that?
A. No.
Q. Was that a unique occurrence?
A. I don't know.
Q. Well, in 18 years how often have clerks cried in your courtroom?
A. I have frequently seen women cry at work, yes.
Q. So it happens frequently. And I am not going to touch that with a ten-foot pole.
A. Yes.

Q. Okay. And you said you saw Judge McGuire put his hand up?

A. Correct.

Q. That happened a couple of times or constantly?

A. Not constantly.

Q. A couple of times?

A. Yes.

Q. Fair to say that the interaction between Judge McGuire and Ms. Rogers generally was normal?

A. I am -- however you determine what "normal" is. I don't know.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. Well, I mean generally speaking when you came out of the courtroom, did you ever report to someone you wouldn't believe how he is treating Andrea Rogers?

A. No.

Q. "No."

Was there anything that raised a concern for you?

A. No.

Q. Okay. So --

JUDGE MCGUIRE: Does she have V? Is this V?

MS. TISHMAN: That is not V.

JUDGE MCGUIRE: Which one is III?

MS. TISHMAN: III.

JUDGE MCGUIRE: III. Thank you. Let me just mark mine on the back.

Q. All right. So I am going to direct your attention to --

MS. TISHMAN: Give me a second. She doesn't have III.

JUDGE MCGUIRE: Oh, I'm sorry. Because I told you V.

MS. PARTIDA: (Handing).

Q. All right. So directing your attention to III, photo III.

A. Yes.

Q. We can agree that the Judge sits on the bench with the gold plates in front of it?

A. Yes.

Q. Between the two flags?

A. Yes.

Q. And the clerk sits as you are oriented in this photograph to the left?

A. Correct.

Q. And so when the clerk speaks to the Judge she is basically right close to him here?

A. Yes.

Q. And then the litigants are seated out in these four tables that are seen in the foreground?

A. Correct.

Q. And the attorneys with them also?

A. Correct.

Q. All right. So based on your experience in the courts that you have seen judges speak and listen to attorneys and litigants in the courtroom?

A. Yes.

Q. And have you seen attorneys make arguments in the courtroom?

A. Yes.

Q. And those arguments deal with issues of law sometimes?

A. Correct.

Q. Sometimes they deal with issues of fact?

A. Correct.

Q. Sometimes there are applications?
A. Correct.
Q. They may want visitation with a child?
A. Correct.
Q. Or issues of a child being removed?
A. Yes.
Q. Or sometimes there are reports that deal with mental health issues?
A. Correct.
Q. And there may be experts -- my word, experts that are giving the Court information?
A. Correct.
Q. About conditions in the child's home or in their foster home or in school?
A. Yes.
Q. That is all fairly common in family court?
A. Correct.
Q. Right?
A. Yes.
Q. And so if you were speaking what does this mean to you (indicating)?

A. To stop.

Q. Stop. Okay. Or hold on?

A. Correct.

Q. So if the Judge is listening to argument from counsel and the clerk is talking to him also and he says -- he puts his hand up, he is telling the clerk just to stop?

A. Correct.

MR. LEVINE: Let the record reflect that Judge McGuire put his left hand up.

JUDGE MCGUIRE: Yes, palm facing out.

Q. So as if I were sitting at the bench and put that out?

A. Correct.

Q. Now, have you ever had two people speak to you at once?

A. Yes.

Q. And have you had to say to one of them, hold on, I have got to listen to this person right now?

A. Yes.

Q. Is there anything wrong with

saying, hold on, I have to listen to this person?

MR. LEVINE: Objection --

THE REFEREE: Overruled.

Q. Anything wrong with that?

A. No.

Q. Anything rude about that?

A. I guess it depends on how you say it.

Q. Well, it doesn't say anything, just put your hand up?

A. Oh, right, right. In that sense, I guess.

Q. So isn't it reasonable that a judge in a courtroom has to process lots of information?

A. Yes.

Q. Particularly in family court?

A. Correct.

Q. Because sometimes you are dealing with multiple litigants?

A. Yes.

Q. You are dealing with children?

A. Yes.

Q. Different ages?

A. Yes.

Q. And different numbers of parents, grandparents?

A. Yes.

Q. Aunts, uncles?

A. Correct.

Q. With lots of information to process?

A. Yes.

Q. And an attorney only has to process one piece of information, their argument?

A. Right.

Q. But all the information is important, correct?

A. Yes.

Q. The clerk's information?

A. Yes.

Q. The attorney's information?

A. Yes.

Q. The litigant's information?

A. Yes.

Q. The court officer's information?

A. Yes.

Q. So can we agree that really the

judge that needs to be the traffic cop to control the flow?

A. Yes.

Q. Now, I want to speak to you a little bit about R[redacted] R[redacted].

A. Okay.

Q. Now, R[redacted] R[redacted] you testified this morning was brought in in handcuffs?

A. Correct.

Q. In an orange jumpsuit?

A. Yes.

Q. He was in the jail?

A. Yes.

Q. Brought in by two deputies?

A. Correct.

Q. Do you know why he was there?

A. No.

Q. Do you know anything about his criminal history?

A. No.

Q. Do you know whether or not a judge has access to that information?

A. No. I would assume you do, but I don't know that for sure.

Q. So -- well, let me ask you this:

Have you ever in your time as a court officer had experience to learn the character of certain litigants that come into the courtroom?

A. From them repeatedly coming in, yes.

Q. Yes. And in family court we see people come in lots of times?

A. Correct.

Q. And sometimes we know the people that are boisterous?

A. Correct.

Q. And sometimes we know the couples that don't get along at all?

A. Correct.

Q. And you kind of get a feel for that where you keep them separate?

A. Yes.

Q. In fact, you have had experience, haven't you, with people that mix it up in the waiting room?

A. Absolutely.

Q. Out in the parking lot?

A. Yes.

Q. You have had experience where

judges have ordered visitation and a person slams open a door and says you ain't getting the kid?

A. Yes.

Q. Running down to the day care center --

A. Yes.

Q. -- to get the kid and run out to the parking lot?

A. Correct.

Q. You have seen all that?

A. Yes.

Q. All right. That comes with your experience and information that you gather?

A. Correct.

Q. In fact, you have had experience where even the lieutenant will create a plan and disseminate a plan to the court officers when a particularly dangerous individual is coming into the courtroom?

A. Correct.

Q. In county court we have had gang members come in?

A. Correct.

Q. And they are concerned about

people that also may be in the courtroom?

A. Correct.

Q. In fact, just their mere presence can be intimidating?

A. True.

Q. So now, you didn't know anything about R[redacted] R[redacted] when he came in, right?

A. No.

Q. You didn't know that he was incarcerated for violating a court order?

A. No. That was brought up in court. That is all.

Q. Or for beating up his spouse?

A. Right.

Q. In front of the children?

A. Correct.

Q. And that he had multiple convictions for violating court orders?

A. Correct.

Q. And for domestic violence?

A. Correct.

Q. And that he was known to be affiliated with gangs?

A. Correct.

Q. Now, have you in your experience

seen people come into court and say, Judge, there is a conflict. You have to recuse yourself?

A. In my experience, no.

Q. Fair enough.

Now, Mr. R[redacted] had -- was that the first time he had ever been in court, or don't you know?

A. I don't recall.

Q. If I told you that he had been in court several times before --

MR. LEVINE: Objection.

THE REFEREE: Let's wait for the question.

Q. If I had told you that he had been in court several times before would that surprise you?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. No.

Q. So and would it surprise you to know that at none of those prior occasions had he mentioned anything about a --

MR. LEVINE: Objection. He is testifying. She said she didn't know how

many times he was in court. Yet, he is just repeating --

THE REFEREE: She is going to say she doesn't know, so there is not going to be any evidence that comes out of this.

A. I don't know.

Q. You don't know. Okay.

So when you have these circumstances where say the lieutenant puts you on notice that you have got potentially dangerous people in the courtroom, does he often put more than one court officer in?

A. Yes.

Q. In fact, when you have situations where a person has been a problem in the past, even in family court they will put two or sometimes three?

A. Correct.

Q. Sometimes two or three, plus jail deputies that are there?

A. True.

Q. To maintain decorum?

A. Correct.

Q. And in those situations you have to act quickly?

A. Correct.

Q. Because you don't want things to get out of control?

A. Correct.

Q. And so in circumstances where one of these maybe gang members were in county court, one of them stood up you might have an officer react to that right away?

A. Yes.

Q. Because you know what they are capable of?

A. Correct.

Q. And so you might have an elevated threat level?

A. Yes.

Q. And just to be clear, and the transcript speaks for itself, but based on your recollection, Mr. R[redacted] waited until after the Court made a decision before he first raised the issue of a recusal?

A. I believe so.

Q. You don't recall?

A. That's what I recall.

Q. You recall it was after the Judge had rendered a decision?

A. Yes, right.

Q. We heard the transcript. It was the case was dismissed without prejudice?

A. Yes.

JUDGE MCGUIRE: The transcript speaks for itself on the balance.

One second, Judge.

Q. By the way, in preparation for your testimony today, did Ms. Tishman or anybody else review the facts of any of these instances that you are testifying about?

A. Did she verbally go over my testimony?

Q. Yes.

A. No.

Q. Did you read anything in preparation?

A. I did.

Q. What did you read?

A. I read my deposition and the court case on R[redacted].

Q. You read the court case file?

A. The transcript.

Q. You read the transcript?

A. From the case, yes.

Q. Okay. And who provided that to you?

A. Ms. Tishman.

Q. So that was a written communication that she gave you?

A. Correct.

Q. So page 48, line 9, were you asked this question and did you give this answer, "Has the judge ever asked you to handcuff litigants and place them in a holding cell?" Answer, "Yes." Were you asked that question and gave that answer?

A. Yes.

JUDGE MCGUIRE: There is no inconsistency there. I am just trying to establish the orientation.

Q. Line 12, Question, "And what proceeded that?" Answer, "One incident was a young man that came in and at the end of his court case said to the Judge, "I know your son," and the Judge was irate and said, "Handcuff him. He threatened my family," and I was working the part that day." Did you -- were you asked that question and did

you give that answer?

A. I did.

Q. 17. "And did you handcuff that individual?" Answer, "Yes, I radioed out because they heard the noise. And I did not handcuff him myself. One of the officers, I believe, the sergeant came in also."

A. Correct.

Q. But you didn't handcuff him?

A. No.

Q. He was already handcuffed?

A. Correct.

Q. When he came in?

A. Correct.

Q. Because he was incarcerated?

A. Yes.

Q. Okay. Page 49 --

MR. LEVINE: -- prior instances. I am not understanding what the purpose of this question is.

JUDGE MCGUIRE: Yes, they are prior inconsistent statements.

THE REFEREE: So far I haven't seen anything any inconsistencies.

JUDGE MCGUIRE: Well, she said

that she handcuffed him, and now she says that he was handcuffed when he came in.

THE REFEREE: What is the next question?

Q. Page 49, line 1. "Did the Judge hold him in contempt? Did he say you're being held in contempt?" Line 3, Answer, "He said, "He threatened my family; if I remember correctly. The chief clerk and it may have been the deputy chief clerk reviewed the tape. The young man was held for a while, then brought back into the courtroom and released." That didn't happen, did it?

A. No, I had him confused with another litigant that I had handcuffed and brought into the attorney waiting room.

Q. So R[redacted] was not brought back in and released?

A. He was not released. He was brought back into the courtroom, but not released.

Q. But he wasn't released not because of anything the Judge did, he was already incarcerated?

A. He was already incarcerated.

JUDGE MCGUIRE: I may be done.

Thank you, Officer Downs.

I have nothing further.

THE REFEREE: Any redirect?

MS. TISHMAN: No.

THE REFEREE: Your testimony is appreciated. Thank you for coming in. You are excused.

THE WITNESS: Thank you.

(The witness exited the hearing room.)

THE REFEREE: So the question is: Do you want to call your next witness, or would you rather take a lunch break at this point?

MS. TISHMAN: I have two witnesses here. One is very short, five minutes for me. I am not sure --

THE REFEREE: Well, let's try to get that one done.

MS. TISHMAN: So we might --

THE REFEREE: Let's call the next witness.

MS. TISHMAN: Ricky Pagan.

THE REFEREE: Name?

MS. TISHMAN: Ricky Pagan, P-A-G-A-N.

MS. PARTIDA: Witness entering.

THE REFEREE: Mr. Pagan, I have a statement I need to read to you.

THE WITNESS: Yes.

THE REFEREE: A court reporter who will transcribe the proceeding is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment.

Have you done that?

THE WITNESS: Yes.

THE REFEREE: Would you please rise and raise your right hand.

(The witness complied.)

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat.

And state your full name and spell it for the record.

THE WITNESS: My name is Rick Pagan, R-I-C-K, P-A-G-A-N.

THE REFEREE: You may proceed.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Mr. Pagan.

A. Good afternoon.

Q. Are you currently employed?

A. Yes, I am.

Q. And where are you employed?

A. Formaggio Italian Cheese.

Q. And --

THE REFEREE: Could you speak

into the mike, please?

THE WITNESS: Sure.

Q. And what is your title with Formaggio Italian Cheese?

MS. TISHMAN: Let me just spell for the record, Formaggio, F-O-R-M-A-G-G-I-O.

Q. What is your title?

A. I am the senior vice president.

Q. How long have you worked with Formaggio?

A. 28 plus years.

Q. And how long have you been a senior vice president?

A. The past six or seven.

Q. And where is Formaggio located?

A. Hurleyville, New York.

Q. And Hurleyville, New York, what county is that?

A. Sullivan.

Q. And what county do you reside in? Not your address, what county?

A. Sullivan.

Q. And what town?

A. [redacted].

MS. TISHMAN: And for the record, it is two words, [redacted], next word, [redacted].

Q. Did there come a time that you bought property near your home in Loch Sheldrake?

A. Yes.

Q. What property was that?

A. The property behind my home.

Q. Was it land or just a house on it? What type of property was it?

A. It was just property. No house.

Q. And who was the seller?

A. Barbara Clarke.

Q. And was the property on the market?

A. It was going into foreclosure.

Q. And when you bought the property, were you represented?

A. Yes.

Q. And who represent you?

A. Mike McGuire.

Q. And was he a judge at the time he represented you?

A. No.

Q. And how did it come about Mike McGuire represented you?

A. I had known him for a little while.

Q. So you knew him from the community?

A. Yes, I knew him from the community.

Q. And did you pay Mike McGuire for his work?

A. No.

Q. And when you bought the property, do you remember what year you bought it?

A. I believe it started in about 2010.

Q. And what was the price of the property?

A. I believe it was around 3,000, which was back taxes.

Q. I am going to show you what is marked Commission Exhibit X, 10-38 (handing).

MS. TISHMAN: Mr. Arisohn, do you want me to have this sent up there?

THE REFEREE: Is it in evidence

already?

MS. TISHMAN: Yes.

JUDGE MCGUIRE: That's the deed or the mortgage?

MS. TISHMAN: X-38 is the deed.

JUDGE MCGUIRE: Thank you.

THE REFEREE: Okay. I have it.

Q. Mr. Pagan, I am showing you what has been admitted into evidence X-38.

MS. TISHMAN: I'm sorry. Judge McGuire, it's the mortgage.

JUDGE MCGUIRE: Okay. No problem.

Q. This is certified records. This is the mortgage. Can you tell us how the property -- how it was set up that you came to purchase it in 2010?

A. I requested the help of Mike McGuire in regards to trying to obtain this property. And he was the go between between Barbara Clarke and myself. And we paid the taxes and we created a mortgage to protect myself and the property.

Q. How much was the mortgage for?

A. I believe it was either $8,000 or

$10,000. I do not remember.

Q. If we could go to page 3 of the exhibit, which is the mortgage itself. Do you see there where it says $5,000?

A. I don't have my glasses. I am sorry.

THE REFEREE: It says $5,000.

Q. And who suggested that you mortgage -- that you set up the deal this way?

A. Mike McGuire.

Q. Now, did there come a time that you bought the property outright?

A. Yes.

Q. And when was that?

A. Either 2013 or 2014, a few years later.

Q. Did you speak to Mike McGuire about the property in 2013?

A. Yes.

Q. Was Mike McGuire a judge at that time?

A. I believe so.

Q. And what did you speak to him about?

A. How to go about finishing the deal.

Q. And what did Mike McGuire tell you?

A. I do not remember.

Q. Did he give you advice on how to finish the deal?

A. Of course, yes, he did give me advice on how to finish the deal.

Q. Did Mike McGuire help you with the final purchase?

A. Yes.

Q. And how did he help you?

A. By helping me finalize the deal between Barbara Clarke and myself.

Q. And what task did Mike McGuire do?

A. Pointed me in the right direction as to who to pay, what to pay and when to pay.

Q. And did Mike McGuire communicate with the seller?

A. Yes.

Q. And did he fill out paperwork?

A. I would believe so.

Q. Did he submit paperwork to the seller?

A. I would believe so.

Q. I am going to show you what is marked Commission's Exhibit X-39. This is admitted into evidence already. This is certified business records of the deed. Is this the paperwork for the actual purchase of the property?

A. Yes.

Q. On page 2 it says the record date was November 14, 2013. Does that refresh your recollection?

A. Yes.

Q. Is that the date?

A. Yes.

Q. If we can go down, do you see where it says party number 1 on the left hand side?

A. Of which page?

Q. The second page?

A. The second page. I'm sorry. I just don't have my glasses. Okay. I see it.

JUDGE MCGUIRE: I have an extra

pair of reading glasses; if it would help anybody?

THE WITNESS: That might help.

MS. PARTIDA: (Handing.)

THE WITNESS: Thank you.

Q. It's okay. It's in evidence. We don't need to do that.

A. No problem.

Q. On the second page, do you see where it says party one?

A. Yes.

Q. And what is said there?

A. Barbara Clarke.

Q. And party two?

A. Pagan, Ricky.

Q. And above where is says party one, it says "Received from," and what name is that?

A. McGuire.

Q. Now, were the documents filed in the court clerk's office?

A. Yes.

Q. And do you know how the documents got to the court clerk's office?

A. Either myself or I sent someone

to do it.

Q. When you spoke to -- in 2013 when you spoke to Judge McGuire, did you speak to him in person?

A. I might have.

Q. Did you speak to him by phone?

A. I do not recall if it was in person or by phone.

Q. But you somehow had a conversation?

A. We did communicate, yes.

Q. And that conversation was about having purchased the property?

A. Correct.

MS. TISHMAN: I have no further questions.

THE REFEREE: You may cross-examine.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Good afternoon.

A. Good afternoon.

Q. So I want to take you back to March of 2010.

A. Okay.

Q. You had a piece of property that was adjacent to your yard?

A. Correct.

Q. And you knew that that was going up for a tax auction?

A. Correct.

Q. So you went to the treasurer's office?

A. Correct.

Q. And you determined what the back taxes were?

A. That's correct.

Q. And you wanted this property?

A. That's correct.

Q. Because it was contiguous to yours?

A. Correct.

Q. So you paid the back taxes $5,000?

A. Correct.

Q. Then you came to Mick McGuire's office?

A. Okay. Yes.

Q. In Ferndale?

A. Yes; that's correct.

Q. You had been there before?

A. Yes.

Q. You explained to Mike McGuire what had happened?

A. Correct.

Q. And fair to say based on the discussion there was a concern that you just made a $5,000 gift on a piece of property you didn't own?

A. That is correct.

Q. Before you came to see Judge McGuire --

JUDGE MCGUIRE: Strike that.

Q. Before you came to see Mike McGuire it was still 2010, you had spoken to Barbara Clarke?

A. That is correct.

Q. And you had agreed of a purchase price of $8,000?

A. That is correct.

Q. So you went and paid $5,000 in good faith?

A. Correct.

Q. And when you came to Mike McGuire's office there was a concern that

you could pay the other 3,000 and she could say I am not giving you the deed until you pay me another 8,000?

A. That is correct.

Q. And so we set up a mortgage, correct?

A. Correct.

Q. That way if she didn't pay you or convey the property that you would have an avenue to get your 5,000 back?

A. Correct.

Q. And that was done in March or April of 2010? The mortgage is in evidence.

A. Correct.

Q. And Mike McGuire took care of that?

A. Correct.

Q. Can we agree that it was back in April of 2010 or March of 2010 when we had this discussion that the overall deal was structured? That there would be a mortgage, and then when you had the other $3,000 that that would be sent up and she would --

A. That is correct.

Q. -- sign the deed over?

A. That is correct.

Q. And if she didn't sign it over, then you have the security?

A. Correct.

Q. Now, at that time in April of 2010 you thought that you would have the other $3,000 relatively soon?

A. That is correct.

Q. Within the next month or two?

A. Correct.

Q. Well before, in fact, Judge McGuire -- Mike McGuire hadn't even been running for judge yet?

A. Correct.

Q. Okay. Well, as it turned out finances being what they were you didn't have the other $3,000?

A. Correct.

Q. And it went a while?

A. Correct.

Q. And fair to say that there was a conversation between us?

A. Yes.

Q. Where you learned that whenever you have the $3,000, we will just mail the

deed up and come back?

A. That is correct.

Q. And then go file it?

A. Correct.

Q. Now, so looking at Exhibit 39, which is the deed, as you sit here today, do you know of your first-hand knowledge when that deed was typed up?

A. In 2013.

Q. How do you know that that deed was typed up in 2013?

A. I am just looking at the date on the cover page here.

Q. Okay. So that's the date on the cover page.

JUDGE MCGUIRE: May I approach, your Honor?

THE REFEREE: Yes.

Q. Okay. I am referring to the deed itself that starts at page -- the third page. It's not all numbered. As you sit here today, do you have first-hand knowledge of when that document was typed up?

A. It says the 5th day of March 2013.

Q. But was that the date that it was typed up?

A. I do not know that.

Q. Okay. So the likelihood is the 5th day of March 2013 was entered on or about the 5th day of March 2013. Were you present when that date was inputted?

A. I do not believe so.

Q. So do you know when the balance of the document was typed up?

A. No, I do not.

Q. So fair to say it could have been typed up in March of 2013?

A. Yes.

Q. It could have been typed up the same time the mortgage was typed up?

A. Yes.

Q. In fact, since you had thought that you would be able to get this thing done pretty quickly, it would probably be reasonable to do all the documents at one time?

A. Sure. Correct.

Q. Now, ultimately you get word to now Judge McGuire that you have the other

$3,000?

A. Correct.

Q. You don't know, what, if anything, Judge McGuire did from that point forward to finish the deal?

A. No, I do not.

Q. In fact, it could have been somebody else that put the finishing touches on those documents?

A. Correct.

Q. It could have been a paralegal?

A. Correct.

Q. It could have been another lawyer?

A. Correct.

Q. So you don't know?

A. No, I do not.

Q. All you know is ultimately a bank check was sent to Binghamton and later on you were give those documents?

A. That is correct.

JUDGE MCGUIRE: Nothing further.

THE REFEREE: Redirect?

MS. TISHMAN: I have nothing further.

THE REFEREE: Thank you, sir, you are excused.

THE WITNESS: Thank you.

(The witness exited the hearing room.)

THE REFEREE: So I think at this point we will take our lunch break. We will resume at --

MS. TISHMAN: Ten to two?

THE REFEREE: Ten to two.

JUDGE MCGUIRE: Thank you, Judge.

THE REFEREE: Thank you, all.

Off the record.

(A recess was taken.)

MR. MAISONET: We are on the record.

THE REFEREE: Okay. Everybody ready?

MS. TISHMAN: Yes.

MR. MCGUIRE: Yes.

THE REFEREE: You can call your next witness, please.

MS. TISHMAN: The Commission calls K.C. Garn.

MS. PARTIDA: Witness entering.

THE REFEREE: Mr. Garn, have a seat, please.

(The witness complied.)

THE REFEREE: Mr. Garn, I have been asked to read this statement to you.

A court report who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until the question is completed and answer each question with words not a nod or gesture. Please refrain from creating excessive background as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment.

Please rise and raise your right hand.

(The witness complied.)

THE REFEREE: Do you swear or

affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat.

State your full name and spell it for the record.

THE WITNESS: Sure. My name is John Charles Garn, last name is spelled G-A-R-N.

THE REFEREE: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Mr. Garn.

A. Good afternoon.

Q. Are you currently employed?

A. I am.

Q. And where are you employed?

A. I work for the Sullivan Legal Aid Panel in Monticello, New York.

Q. And are you an attorney?

A. I am.

Q. And who do you represent as part of the Sullivan Legal Aid Panel?

A. I represent indigent people who have cases in family court in front of Judge Michael McGuire, and I have -- I am assigned to one criminal court in the western end of the county in the Town of Cochecton.

MS. TISHMAN: And that is spelled C-O-C-H-E-C-T-O-N.

Q. And how long have you been with the Sullivan Legal Aid Panel?

A. Since the 1st of March of 2010.

Q. And were you assigned to represent people as a part of the Sullivan Legal Aid Panel from the start of when Judge McGuire became a judge in January 2011?

A. Yes.

Q. Is there a conflict panel?

A. There is.

Q. Who is assigned to the family count conflict panel for Judge McGuire's part?

A. John Ferrara.

MS. TISHMAN: F-E-R-R-A-R-A.

Q. And is there a law guardian -- is there law guardian contract work?

A. Is there?

Q. Yes.

A. Yes.

Q. Who is assigned as the law guardian to Judge McGuire's courtroom?

A. There are many.

Q. Is Zachary Kelson one of the attorneys assigned as a law guardian to Judge McGuire's courtroom?

A. He is.

Q. Drawing your attention to December 2, 2014. Were you assigned to represent one of the parties in *F*[redacted] *versus K*[redacted]?

A. Yes, I was.

MS. TISHMAN: And F[redacted], F-[redacted], versus K[redacted], K[redacted].

Q. And who did you represent?

A. I represented N[redacted] K[redacted].

Q. And was this in family court?

A. It was.

Q. Is N[redacted] K[redacted] the mother of the child?

A. She was the mother of the child, yes.

Q. And who represented Mr. F[redacted]?

A. Mr. F[redacted] was represented by John Ferrara.

Q. And were the grandparents present in the courtroom on December 2, 2014?

A. They were.

Q. Were they represented?

A. No.

Q. Why were the grandparents involved?

A. I believe the grandparents had physical custody of the child.

Q. So the child had been living with the grandparents?

A. Yes, my client had been in jail for several months.

Q. And that was Ms. K[redacted]?

A. Yes.

Q. And about how old was the child?

A. A year.

Q. And why was the case on in court that day?

A. The father was petitioning to modify the terms of his visitation and/or to get custody of the child.

Q. And what happened in court that

day?

A. There was a discussion between the Judge and Mr. Ferrara about how parenting time or visitation with the child had gone between the father and the child. And my recollection is that it hadn't gone very well. There were times when the child was not provided to him and he complained about that. That was sort of the discussion.

Q. And who was to deliver the child to the father?

A. The grandparents.

Q. And the grand -- did the grandfather talk in -- make a statement in court that day?

A. Oh, he did.

Q. Did there come a time that the grandfather asked that he be relieved from delivering the child to the father?

A. He did.

Q. And then what happened at that point?

A. There was a further discussion and then the Judge ordered that the

grandparents turn the child over to the father immediately.

Q. When you say "Turn the child over," what do you mean?

A. Give him custody of the child.

Q. So the custody was at that point the Judge -- Judge McGuire changed the custody from the grandparents to the father?

A. He did, temporarily pending a trial.

Q. And Judge McGuire was presiding that day, correct?

A. He was.

Q. When Judge McGuire changed the custody for the grandparents to the father of the child, what happened?

A. The grandparents were quite upset. They spoke up. The grandmother said words to the effect that if anything happens to that child, or our child, or our grandchild, if anything happens to that child I will sue, or we will sue the county and we will sue you.

Q. And when she said, "We will sue you," who was she referring to?

A. She was talking to Judge McGuire.

Q. Was the grandmother represented at that moment?

A. She was not represented.

Q. What was Judge McGuire's reaction?

A. He ordered her to be placed in custody.

Q. What was the Judge's demeanor when he ordered the grandmother to be placed in custody?

A. He was angry.

JUDGE MCGUIRE: Objection.

THE REFEREE: What did you observe?

A. I observed the Judge raise his voice and order her to be taken into custody.

Q. And when you say "Taken into custody," what did that mean?

A. Placed in handcuffs.

Q. Was Ms. K[redacted] placed in handcuffs in the courtroom?

A. Yes.

Q. And what was Ms. K[redacted]'s

demeanor and tone when she said that she would sue the county and sue the Judge?

A. She was upset.

Q. And what was the volume of the Judge's voice when he ordered that Ms. K[redacted] be put in handcuffs?

JUDGE MCGUIRE: Judge, same objection. We have an audio of the transcript. The Court can make their own determination.

THE REFEREE: It is okay. Overruled.

A. He raised his voice.

Q. Did the Judge warn Ms. K[redacted] that her behavior was contemptuous?

A. No.

Q. Did the Judge ever point out to Ms. K[redacted] what was wrong with her behavior?

A. No.

Q. Did the Judge give Ms. K[redacted] an opportunity to be heard at that point?

A. No.

Q. Did the Judge give Ms. K[redacted] an opportunity to purge the contempt before

being handcuffed?

A. No.

Q. Did the Judge get Ms. K[redacted] an attorney prior to having her handcuffed?

A. No.

MS. TISHMAN: At this point, I would like to play a small excerpt of Exhibit VI-2. It can be found in transcript VI-2A, page 18, line 14.

JUDGE MCGUIRE: I note the objection; if we are going to play the transcript, then the testimony of the witness is bolstering.

THE REFEREE: That objection is overruled.

MS. TISHMAN: We will go off the record when the --

THE REFEREE: Just indicate to what page on the transcript you are going to play?

MS. TISHMAN: Page 18.

Starting about line 13.

THE REFEREE: So just for the record, we are going to play Exhibit VI-2. The transcript is Exhibit VI-2A.

MS. TISHMAN: That's correct.

And if we could go off the record.

THE REFEREE: Yes.

(The audio was played for the Court.)

MR. MAISONET: Back on the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. Did there come a time that the case was recalled?

A. Yes.

Q. About how much -- how long after the grandmother was taken out of the courtroom was the case recalled?

A. About an hour later.

Q. Now, when the grandmother was in the courtroom when she was ordered to be taken out of the courtroom, was she placed in handcuffs?

A. Yes.

Q. And was she placed in handcuffs behind her back or in front of her back?

A. I don't know.

Q. And when she left the courtroom, was she in handcuffs?

A. Yes.

Q. When the case was recalled, were you present in the courtroom?

A. Yes.

Q. And when the grandmother came back an hour later, did she -- was she handcuffed when she came back into the courtroom?

A. I don't recall.

Q. Did you in that hour between when she was taken out of the courtroom and when she came back into the courtroom, did you have any interaction with the grandmother?

A. No.

Q. And what happened when she was -- when the grandmother returned to the courtroom?

A. There was a discussion between she and the Judge about an attorney. I think she mentioned an attorney by the name Steve Vegliante.

Q. How do you spell that, please?

A. V-E-G-L-I-A-N-T-E, I believe.

And there was some discussion about whether he was practicing law at the time or not. That was someone that the grandmother knew. They had that discussion.

Q. And what was the grandmother's demeanor? What did you observe when she returned to the courtroom?

A. She was upset.

Q. And when you say that, what gave you the indication that she was upset?

A. She just appeared to me to be upset about what had happened to her. Okay? I don't know how to describe it any better.

Q. And at that second call of the case that day, did anything happen in relation to the grandfather?

A. Well, the grandfather -- the Judge at one point told the grandmother that he could send her to the Sullivan County jail for 30 days. The grandfather said, "Please, sir, don't do that." And then the Judge said to the grandfather, "Would you like to be held in contempt? Would you like to go to jail?" Words to that effect. He said no and that's what I remember.

MS. TISHMAN: I am going to now ask that we play an excerpt of Commission Exhibit VI-3. The transcript is VI-3A, page 1 to 2.

We will go off the record.

MR. MAISONET: We are off the record.

(The audio was played for the Court.)

MR. MAISONET: On the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. Mr. Garn, do you know where Ms. K[redacted] was taken when she left the courtroom in handcuffs?

A. I don't know.

Q. Drawing your attention to June 14, 2013. Were you assigned to represent one of the parties in *L*[redacted] *verus C*[redacted] *and B*[redacted]?

MR. TISHMAN: L[redacted], L-[redacted], C[redacted], C-[redacted] and B[redacted], B[redacted].

A. Yes, I was representing G[redacted] C[redacted].

MS. TISHMAN: Gi[redacted],
G-[redacted].

Q. And was that the father?

A. He was the father of the child, yes.

Q. Was T[redacted] L[redacted] represented that day?

A. No.

Q. Who presided over the case on June 14, 2013?

A. Judge McGuire did.

Q. And what happened that cay?

A. Well, the petitioner was seeking to change an order of guardianship and regain custody of the daughter. The child was 16, I believe. Her name was E[redacted]. And I believe the child was living with the mother. So the mother was petitioning to get custody back. The guardianship had been given to the child's older sister. That was the purpose of the proceeding.

Q. What, if anything, happened during that proceeding?

A. There was a discussion between the mother of the child, the petitioner

T[redacted] L[redacted] and the Judge about the child's scholastic difficulties. Apparently the child was having difficulty in the subject of math. I think she was a ninth grader.

The discussion centered around whether or not the mother was doing enough to help the child with math, whether the mother was getting a tutor or what have you.

Ultimately the mother said that she couldn't afford a tutor. The Judge asked her about the IEP or the individualized educational program that the child had, and whether or not, she, the mother had attended the meeting where that plan is discussed and the mother said that she appeared by telephone.

There was a further discussion about why she hadn't had any transportation. And she answered that she didn't have any transportation. Ultimately she was placed in custody.

Q. And who ordered that Ms. L[redacted] be placed in custody?

A. Judge McGuire did.

Q. What was the Judge's demeanor

towards Ms. L[redacted] when he ordered that she be put into custody?

A. He was angry.

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

A. He raised his voice.

MS. TISHMAN: With the Referee's permission, we would like to play Exhibit IV-2 and the transcript is IV-2A, page 4 to 7.

MS. TISHMAN: Can we go off the record.

MR. MAISONET: Off the record.

(The audio was played for the Court.)

MR. MAISONET: On the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. At anytime, Mr. Garn, did the Judge warn Ms. L[redacted] that her behavior was contemptuous?

A. No.

JUDGE MCGUIRE: Objection. The transcript speaks for itself.

THE REFEREE: Yes, on this we

have the transcript.

Q. Did the Judge make any attempt to get Ms. L[redacted] an attorney prior to putting her in handcuffs?

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

A. No.

Q. Did there come a time that the case was recalled?

A. Yes.

Q. And how much longer was it recalled?

A. It was about an hour.

Q. Who determine when the case would be recalled?

A. I don't know.

Q. When Ms. L[redacted] was ordered to be taken out of the courtroom, was she handcuffed in the courtroom?

A. I don't recall.

Q. Do you know where Ms. L[redacted] was taken when she left the courtroom?

A. I don't.

Q. Were you in the courtroom when Ms. L[redacted] came back?

A. Yes.

Q. When she came in the back -- came back to the courtroom, was she in handcuffs?

A. I don't recall.

Q. When she came back into the courtroom, had she been assigned an attorney?

A. No.

Q. And what happened when Ms. L[redacted] came back into the courtroom?

A. Well, the Judge explained to her that she needed to respect the Court and he explained the reasons why that was important and she was released from custody.

MS. TISHMAN: I am going to play a small portion of the transcript. The audio is VI-3 and the transcript is VI-3A, page 1 through 2.

We are off the record.

(The audio was played for the Court.)

MR. MAISONET: On the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. Drawing your attention to January

17, 2014. Were you assigned to represent one of the parties in *G*[redacted] *versus* *C*[redacted]?

MS. TISHMAN: *G*[redacted], G-[redacted], *versus* *C*[redacted], C-[redacted]

A. Yes, I represented C[redacted] C[redacted].

Q. C[redacted] is C-[redacted] -- give me one second. Do you think it is C-[redacted]?

A. That could be.

Q. And was she the mother?

A. She was the mother of the child, yes.

Q. And who represented Mr. G[redacted]?

A. John Ferrara.

Q. Why was the case on that day?

A. The father of the child had filed for custody. He petitioned family court for custody of his child.

Q. What happened briefly in court that day?

A. There was a discussion about my client's parenting time with the child.

There was a discussion about how it had gone. My client was essentially homeless. She had no telephone. And there was a discussion about her ability to keep the child overnight.

At that point she did not have the child overnights. There were a couple of days during the week when she would have the child. She didn't have the child at night because she did not have a crib or a Pack 'n Play.

Q. What is a Pack 'n Play?

A. Well, my recollection is that it is a small crib device that folds up and can be carried around with you.

Q. And who had custody of the child?

A. The father.

Q. And about how old was the child?

A. I think it was around six months old.

Q. And so there was some discussion about overnight visits. You can continue from there.

A. There was a discussion about overnight visits and the subject turned to

the Pack 'n Play itself which the father was in possession of. And the fact that the mother did not have a Pack 'n Play or crib was an impediment to her having the child overnight and that upset her.

It upset her because her view was that she had purchased the Pack 'n Play. I think she said it had cost her $150, and that she shouldn't have to buy another Pack 'n Play in order to keep her child overnight.

Q. And what happened?

A. Well, what happened was that Ms. C[redacted] at one point said, "This is a crock of shit." And at that point she was taken into custody.

Q. Was she immediately -- and who ordered that she be taken into custody?

A. Judge McGuire.

Q. And did Judge McGuire order she be taken into custody immediately after she said this was a of crock of shit?

A. Yes.

Q. And at that point had Ms. C[redacted] said any other curse words?

A. Up to that point?

Q. Yes.

A. No, up to that point she didn't have any other curse words.

Q. And what was Ms. Ch[redacted]'s tone when she said, "This is a crock of shit?"

A. Well, she was upset, obviously. She did not care for the way the proceeding was going.

Q. And Ms. C[redacted] was your client, right?

A. She was.

Q. Was Ms. C[redacted] handcuffed?

A. She was handcuffed, yes.

Q. And was she handcuffed in the courtroom?

A. Yes, she was.

Q. And was Judge McGuire present when she was handcuffed in the courtroom?

A. He was.

Q. And was she handcuffed in the front or the back?

A. I believe she was handcuffed in the back.

Q. And what was the Judge's demeanor

at the time when he ordered her to be handcuffed?

A. He was angry.

JUDGE MCGUIRE: Objection. Same objection.

THE REFEREE: What did you observe?

A. My best recollection is that the Judge raised his voice and he appeared angry to me.

Q. Did the Judge warn Ms. C[redacted] that her behavior was contemptuous before he ordered that she be handcuffed?

JUDGE MCGUIRE: Objection. We have the transcript.

THE REFEREE: Overruled.

Q. You may answer.

A. He did not.

Q. Did the Judge give Ms. C[redacted] an opportunity to be heard?

A. No.

Q. Did the Judge give you as her attorney an opportunity to be -- make a statement on her behalf before she was handcuffed?

A. No.

Q. Did the Judge give Ms. C[redacted] an opportunity to purge the contempt prior to her being handcuffed?

A. No.

Q. Now, what happened when Ms. C[redacted] left the courtroom? Did you stay in the courtroom?

A. No, I left the courtroom too.

Q. And where did you go?

A. I went to the area of the family court were the clerks work. And I spoke with the chief clerk. I bumped into her in the hallway.

Q. Who is that?

A. Pardon me?

Q. Who is that?

A. Christine Benson.

MS. TISHMAN: At this point we are going to play Commission V-2, and the transcript that is marked V-2A. I am sorry give me one second to get the exact page. It is going to be page 8. Starting with page 8.

We will go off the record.

MR. MAISONET: Off the record.

(The audio was played for the Court.)

MR. MAISONET: On the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. Mr. Garn, were you in the courtroom at the very end part when they are picking a date or had you left already?

A. I'm not sure.

Q. Now, you said that after Ms. C[redacted] left the courtroom in handcuffs you had left the courtroom also, and you ended up speaking to Ms. Benson?

A. Yes.

Q. And then what did you do?

A. I asked Ms. Benson if she could get that case recalled after I had an opportunity to talk to Ms. C[redacted].

Q. And then what did you do?

A. I then went to the conference room where Ms. C[redacted] was in custody and I sat and talked to her.

Q. And what room was that?

A. It's a small attorney conference

room off the waiting area of family court.

Q. How did you get from the courtroom to the attorney room? How did you walk? Just describe your path.

A. From where?

Q. From the courtroom to where you found Ms. C[redacted].

A. I just walked down the hallway. I went into the attorney conference room. I had to be let in by a court officer.

Q. Was the attorney conference room locked?

A. Yes.

MS. TISHMAN: Excuse me one second.

Q. Was Ms. C[redacted] in the conference room?

A. She was.

Q. And you said that door to that conference room was locked?

A. Yes.

Q. And where was Ms. C[redacted] in the conference room?

A. She was seated at the conference table facing the door.

Q. And was she handcuffed while she was in the conference room?

A. She was.

Q. Was she handcuffed in front of her or behind her?

A. Behind her.

Q. I am going to show you what is marked Commission's Exhibit PH-7. Is this the room where Ms. C[redacted] was?

A. Yes.

Q. Was there a court officer present in that room?

A. No.

Q. Was there a -- I see that in PH-7 there is some -- it looks like some windows?

A. Yes.

Q. And behind those windows, was there a court officer sitting there?

A. I don't know.

Q. What happened when you went in and spoke to Ms. C[redacted]?

A. I sat down next to her, and I started to talk to her about what we going to do to get her out of custody.

Q. And what was her -- can you

describe her physical condition when you went to talk to her while she was in that room and handcuffed?

A. She was crying and she was extremely upset.

Q. And then after you had a conversation with Ms. C[redacted], what happened next?

A. A little while later the case was recalled.

Q. About how long?

A. I think it was in the area of 15 to 20 minutes.

Q. Now, when you walked from Judge McGuire's courtroom to the room where Ms. C[redacted] was, did you have to go through the main waiting area by the magnetometers, the mags? I'm sorry. Magnetometer?

A. Yes.

Q. And were there people in that waiting area?

A. I don't recall.

Q. Now, did you accompany Ms. C[redacted] as she came from the attorney waiting room to Judge McGuire's part?

A. I think that I did.

Q. When she walked from the attorney waiting room to Judge McGuire's part, was the court officer with her?

A. Yes.

Q. Was she handcuffed?

A. Yes.

Q. And was she handcuffed in the front or in the back?

A. In the back.

Q. And when she walked from the attorney waiting room to Judge McGuire's court, did she have to pass through the waiting area?

A. Yes.

Q. Were there people there waiting in the chairs?

A. I don't recall.

Q. What happened when she was returned to the courtroom?

A. When she returned to the courtroom, the handcuffs were removed, and I apologized to the Judge for her behavior, and explained some of the reasons why I thought she had acted the way she did.

Q. Did you inform the Judge that Ms. C[redacted] was pregnant?

A. Yes.

Q. Did the Judge -- did there come a time that after you made your apology that the Judge spoke to Ms. C[redacted]?

A. He did.

Q. Did the Judge say anything about Ms. C[redacted]'s pregnancy?

A. Well, he noted that she was pregnant. He also noted that she was pregnant at a time when she had no visible means of support or a place to stay, but he pointed out that that was her right.

MS. TISHMAN: May I ask that we play Commission's Exhibit V-3 and that the transcript is V-3A. We are going to page 4, line 16.

We are going to go off the record.

MR. MAISONET: Off the record.

(The audio was played for the Court.)

MR. MAISONET: On the record.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. What was Ms. C[redacted]'s demeanor while you were speaking to the Judge?

A. She was still crying.

Q. What was Ms. C[redacted]'s demeanor when the Judge was speaking to her before the portion that we just regard?

A. My recollection is that she was crying.

Q. Drawing your attention to January 28, 2013. Were you assigned to represent one of the parties in the *M[redacted] P[redacted] versus S[redacted] P[redacted] and S[redacted] R[redacted]* case?

MS. TISHMAN: *M[redacted] P[redacted]*, P-[redacted], versus *S[redacted] P[redacted]*, P[redacted], and *S[redacted] R[redacted]*, R[redacted].

A. Yes, I represented S[redacted] R[redacted]

Q. And who was S[redacted] R[redacted]?

A. S[redacted] R[redacted] was the grandmother of a child that was the subject of the custody petition.

Q. And who represented M[redacted] P[redacted]?

A. John Ferrara.

Q. And was S[redacted] P[redacted] represented?

A. Yes, she was.

Q. Was that by Marsha Heller?

A. Yes.

MS. TISHMAN: H-E-L-L-E-R.

Q. And S[redacted] P[redacted], who is she in relationship to the child?

A. She was the mother of the child.

Q. And M[redacted] P[redacted], who was he in relationship to the child?

A. He was the father.

Q. And was the child in court that day?

A. Yes.

Q. And was the child represented?

A. Yes.

Q. And who represented that child?

A. Alexandra Bourne.

MS. TISHMAN: B-O-U-R-N-E.

Q. And about how old was the child at that time?

A. 10 or 11.

Q. Who presided in the case on that day, January 28, 2013?

A. Judge McGuire.

Q. I am now going to show you a picture, PH-1.

MS. PARTIDA: (Handing).

Q. If you could look at this PH-1, can you please tell me where you were sitting? I see that there are four tables here. Can you just tell us where you were? Where Ms. S[redacted] was and you were sitting?

A. Sure. We were at the table on the right that is nearest to the camera.

Q. Is there a sign on that table in this picture?

A. There is.

Q. What does that sign say?

A. It says Respondent Two.

Q. And where was the child sitting?

A. The child would have been sitting at the table on the left marked Law Guardian.

Q. Was that where the child's attorney was also?

A. Yes.

Q. And the table in front of where you were sitting with Ms. S[redacted] R[redacted], who was sitting there?

A. That would have been Marsha Heller and the mother of the child.

Q. And the table in front of where the child and her attorney were sitting, who was sitting there?

A. That would have been Mr. P[redacted] and his attorney.

Q. And why was the case on in court that day?

A. Mr. P[redacted], the petitioner, had recently been released from prison, and he was seeking to modify a prior order of the Court to give him weekends with the child.

Q. Who had physical custody of the child at that point?

A. The grandmother, my client S[redacted] R[redacted].

Q. And you said there was a discussion about weekend custody?

A. Weekend visitation, yes.

Q. I meant that. Thank you.

A. That's okay.

Q. And what did Mr. P[redacted] want?

A. Mr. P[redacted] wanted the child two weekends a month, every other weekend.

Q. And what was your client's position?

A. My client's position was that she wanted the child to stay with Mr. P[redacted] one weekend a month.

Q. And was the case resolved that day?

A. It was not.

Q. Was it adjourned?

A. It was adjourned and scheduled for trial.

Q. And was there -- did the Judge order -- make any decision or any order regarding custody in the interim between that date and the trial date?

A. Yes, he ordered that pending the trial that Mr. P[redacted] would have visitation with the child every other weekend.

Q. What was Ms. R[redacted]'s reaction?

A. She was upset.

Q. Now, did there come a time that the case was adjourned and it went off the record?

A. Yes.

Q. What, if anything, happened after the case was adjourned and it was off the record?

A. Well, I stood up and turned to walk out of the courtroom, and behind my back apparently S[redacted] R[redacted] said something to the child. I didn't hear what she said, but the next thing I knew Judge McGuire was yelling at my client, who was still seated at the table in that picture.

Q. And what was the volume of his voice, Judge McGuire's voice?

A. The volume was very high.

Q. And what was the tone of the voice?

A. The tone was anger.

Q. And what did Judge McGuire say to your client?

A. Well, as I turned around there was mention by the Judge of putting her in handcuffs, and then I sat down next to my client because I thought I can help her. The judge was screaming at her, and she was having trouble breathing and she was very upset. She was shaking.

Q. Was the child still in the courtroom as this was transpiring?

A. Certainly at the beginning. I

don't know what happened to the child after it began.

Q. After the case went off the record, and Judge McGuire started yelling at Ms. R[redacted], was the child in the courtroom?

A. Yes.

Q. Now, as a result of Ms. R[redacted]'s physical condition, was anything done?

A. Someone called the paramedics.

Q. Did you stay with Ms. R[redacted]?

A. I did. I stayed for a while with Ms. R[redacted] while she was being yelled at.

Q. And how long did Judge McGuire yell at Ms. R[redacted]?

A. I don't know.

Q. Were you present when the paramedics came?

A. Yes.

Q. About how long after Judge McGuire stated yelling at Ms. R[redacted] did the paramedics come?

A. I can't say. I don't know how long.

Q. When you saw Ms. R[redacted]'s condition, what did you think was happening?

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

A. I couldn't tell. I just knew that she was in great distress.

Q. When Ms. R[redacted] began to display shortness of breath and physical problems, what was the Judge doing?

A. He was yelling at her.

Q. Drawing your attention to March 5, 2013. Did you appear before Judge McGuire on the *Pa*[redacted] *versus P*[redacted] *R*[redacted] matter?

A. I did.

Q. Was there any discussion that day about what happened on January 28, 2013?

A. Yes, there was. I told the Judge that Ms. R[redacted] was sorry that she had spoken to the child, and I explained to him some of the reasons why I thought she might have done such a thing.

Q. Now, I want to draw your attention to November 7, 2014. Did you represent one of the parties in the *D*[redacted] *versus E*[redacted] *and F*[redacted] matter?

MS. TISHMAN: E[redacted],

E[redacted], F[redacted], F[redacted].

A. I did. I represented T[redacted] E[redacted].

Q. And what does "DFS" stand for?

A. Department of Family Services.

Q. And who was T[redacted] E[redacted] in this case?

A. She was a respondent in a neglect case.

Q. Was the Judge presiding over the case on November 7, 2014?

A. Yes.

Q. What was that case on for that day?

A. I believe it was on for trial.

Q. And during the 10:07 a.m. call, the second call of the case that day, what, if anything, happened?

A. Well, the trial was underway. At some point I was standing up and cross-examining a child protective services caseworker. At one point the Judge spoke to Ms. E[redacted] and said that she was close to being put in handcuffs.

Q. Had Ms. E[redacted] said anything

prior to the Judge saying that he was going to put Ms. E[redacted] in handcuffs?

A. Not that I was aware of.

Q. Where was Ms. E[redacted] at that time?

A. She was seated at the table.

Q. If you can look at Commission PH-1, what table was she seated at?

A. She would have been at the Respondent Number 1 table in the front right.

Q. Did the Judge tell Ms. E[redacted] what conduct she felt -- he felt was disruptive?

A. No.

Q. Did you see Ms. E[redacted] doing anything during the proceeding to disrupt the proceeding?

A. No?

Q. Had the Judge in this proceeding, the 10:07 a.m. proceeding, or the first call of this case, warned Ms. E[redacted] about her conduct or anything that he felt was improper?

A. No.

Q. Was Ms. E[redacted] addressing the Court prior to being threatened with handcuffs?

A. Not that I heard.

Q. I want to draw your attention to August 21, 2014. Did you represent one of the parties in *V*[redacted] *v G*[redacted]?

MS. TISHMAN: *V*[redacted], V-[redacted], *v G*[redacted], G-[redacted].

A. Yes, I represented A[redacted] G[redacted].

Q. And who represented Mr. V[redacted]?

A. Lauren Mastandrea.

MS. TISHMAN: M-A-S-T-A-N-D-R-E-A.

Q. Was Judge McGuire presiding over the case on this day?

A. Yes.

Q. And why was it in court that day?

A. The father, Mr. V[redacted] had petitioned for custody of his kids.

Q. And where was Mr. V[redacted] residing?

A. In Sullivan County. I believe in L[redacted] M[redacted].

Q. And at the point where was

Ms. G[redacted] residing?

A. She resided in Los Angeles.

Q. And where were the kids?

A. They were with her.

Q. Was it in court that day for a *Tropea* hearing?

A. Yes.

Q. Did I pronounce it right?

A. I think so.

MS. TISHMAN: And *Tropea*, T-R-O-P-E-A.

Q. And if you could explain to us what a *Tropea* hearing is?

A. Well, that would be a hearing on the issue of relocation. And the hearing would be to determine whether there were any factors that would show that the best interest of the children were to be -- that they be relocated to another jurisdiction.

Ms. G[redacted] was residing in L[redacted] A[redacted]. She had moved there in January of that year. And she was seeking to keep custody of her children and reside in California.

MS. TISHMAN: Just give my one

second.

Q. Now, did there come a time that Ms. V[redacted]'s testimony was concluded that morning?

A. Yes.

Q. And what happened when the testimony was concluded?

A. When the testimony was concluded the Judge asked for an attorneys conference. We went into chambers and had a conference, or we may have stayed in the courtroom and had a conference.

MS. TISHMAN: I just want the record to reflect that --

Q. Do you remember whether the conference was on the record or off the record?

A. I don't remember at that time whether it was or not.

Q. I am going to show you what is marked Commission Exhibit --

MS. TISHMAN: Give me one second.

Q. VII-7A and VII-6A.

MS. PARTIDA: (handing).

Q. Now, if you can look at Exhibit

VII-6A. That is a transcript of August 21, 2014, 9:23 a.m.

A. Okay.

Q. Was this proceeding on the record?

A. Yes.

Q. If you can look at page 23, please?

A. Okay.

Q. Is this the point where the petitioner was trying to leave the courtroom? Line 19, page 23.

A. Yes.

Q. And did the case continue to be on the record then?

A. Yes.

Q. Now, what did the Judge in that conference that was on the record in the 9:23 proceeding, what did the Judge say about Ms. G[redacted]'s testimony? What, if anything, did the Judge say about Ms. G[redacted]'s testimony?

A. Well, he said many things about her testimony, but primarily that he found that her testimony was not credible.

Q. Did he tell the parties that he didn't even need to hear cross-examination?

A. He did.

Q. And what was the Judge's tone when he was describing Ms. V[redacted]'s testimony?

A. His tone was that he found her to be completely and totally unbelievable.

Q. Now, I want to go to Commission's --

THE REFEREE: I'm sorry. That was his ruling. That was his finding. That was not his tone. What was his tone?

THE WITNESS: I don't really remember exactly what his tone was. He just had no use for her testimony. That's it.

Q. We can go to Commission's Exhibit VI-A, page 28.

THE REFEREE: The same exhibit we are on?

MS. TISHMAN: VI-A. Oh, I'm sorry. VII-6A.

Q. Did Judge make comments about Ms. G[redacted] having a boyfriend?

A. He did.

Q. Is that on page 28, lines 16 to 18 of Exhibit VII-6A?

A. Yes.

Q. And had there been any testimony about Ms. G[redacted] having a boyfriend?

A. No.

Q. Had there been any discussion off the record about Ms. G[redacted] having a boyfriend?

A. No.

Q. Was the case recessed?

A. Yes.

Q. What happened after that recess?

A. After the recess when the case was recalled, the father's attorney made an application to dismiss or an application for a directed verdict. And Judge McGuire ruled that Ms. G[redacted] had to return the children to Sullivan County within 48 hours.

Q. Did the Judge issue an opinion from the bench?

A. He did.

Q. Now, I want to go to Commission's Exhibit VII-7A, page 7.

MS. TISHMAN: Is everyone there?

Q. If you could read to yourself, page 7, lines 7 through 23, or you can start on line 4 with the sentence saying "If at that point," to line 23.

THE REFEREE: I am sorry. Looking at VII-7A?

MS. TISHMAN: Yes, page 7.

THE REFEREE: Page 7, line what?

MS. TISHMAN: Lines 4 through 11.

THE REFEREE: Line 4 that starts, "When I take it in the light most favorable to her?"

MS. TISHMAN: I am sorry. VII-A is the transcript that is 9:58 a.m.

THE REFEREE: Yes.

MS. TISHMAN: And page 7, the sentence stating, "It's at that point," on January 15th in the testimony starting on line --

THE REFEREE: Not on my page 7.

MS. TISHMAN: What?

THE REFEREE: Not on my page 7. Oh, it's at line 2. I see it. Okay.

MS. TISHMAN: Give me one second. Something is wrong with my copy.

JUDGE MCGUIRE: Can we take a brief -- about two minutes?

THE REFEREE: How much longer are you going to be on this?

MS. TISHMAN: About ten minutes.

THE REFEREE: All right. Let's take our afternoon break at this point. Ten minutes.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Is the witness coming in?

MS. TISHMAN: Yes.

MS. PARTIDA: Witness entering.

DIRECT-EXAMINATION

BY MS. TISHMAN:

Q. If we can go to Commission's Exhibit VII-7A, page 7, lines 2 through 9. If you could read that to yourself starting with the sentence on line 2, "It's at that point." Have you finished reading?

A. I have.

Q. And was there any evidence that the mother's plan was to move out to

California and not to tell the father?

A. No.

Q. Was there any plan that the mother was to grab the children and flee to California?

A. No.

Q. Now, we are going to page 8, lines 8 through 11. If you can read that to yourself starting with the sentence, "Clearly."

A. Which page?

Q. Page 8.

A. Which line?

Q. Line 8 to 11.

A. Thank you.

Q. Have you finished?

A. Yes.

Q. Was there any evidence that the mother moved to California because she wanted out of the marriage?

A. No.

Q. And was there any evidence that she was in another relationship?

A. No.

Q. Now, if we can go to page 8,

again, lines 12 through 18. And let know me know when you finish reading that.

JUDGE MCGUIRE: What lines?

MS. TISHMAN: 12 through 18.

Q. Have you finished reading that?

A. I have.

Q. Now, at this point the Judge says reading on page 8, line 12, "I am going to throw you out and put you in handcuffs in three seconds. All right." Who was the Judge speaking to?

A. He was speaking to my client's mother who was in the back of the courtroom.

Q. And then the Judge says, "So you can either walk out or get thrown out if I have to look at another outrageous expression from you. Clear?" Had you seen Ms. V[redacted]'s mother doing anything?

A. No, she was behind me.

Q. Where was Ms. G[redacted]'s mother sitting?

A. She was sitting in the rear of courtroom in the chair.

Q. Did Ms. G[redacted]'s mother say anything out loud in the courtroom?

A. Not that I heard.

Q. And what was the Judge's demeanor, the volume of his voice when he was speaking to Ms. G[redacted] at that point?

A. I think he had raised the volume of his voice.

Q. Now we are going to page 8, line 19 through 24. Have you finished reading that?

A. Yes.

Q. And was there any evidence that the mother moved to California planning on getting a divorce?

A. No.

Q. Now, was the Judge's decision appealed?

A. Yes.

Q. And what happened during that appeal?

JUDGE MCGUIRE: Objection.

MS. TISHMAN: I withdraw that question.

Q. What court was it appealed to?

A. The Appellate Division, Third Department.

Q. And did the Appellate Division, Third Department issue a decision?

A. They did.

Q. And did they affirm or reverse Judge McGuire's ruling?

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

JUDGE MCGUIRE: How can this witness testify to that? The decision is in evidence, your Honor.

THE REFEREE: Overruled.

Q. You can answer.

A. They reversed the decision and set it back for a new trial.

Q. And did they send it back to Judge McGuire?

A. No.

Q. And did they in the decision note that it should not be sent back to Judge McGuire?

A. They did.

Q. Did they say why?

JUDGE MCGUIRE: Objection.

THE REFEREE: Overruled.

A. They said that from the

transcript in their opinion he had shown disdain for Ms. G[redacted]to such an extent that he should not hear the case any further.

Q. Had you ever been before Judge McGuire when Zachary Kelson has appeared in court?

A. Yes.

Q. And what role has Mr. Kelson taken when he has appeared in court in front of Judge McGuire?

A. He appears as an attorney for a child.

Q. Now I am asking about family court. I am sorry. I should have been more specific. I asked the question: Have you ever been before Judge McGuire when Zachary Kelson has appeared in family court in front of Judge McGuire?

A. Yes.

Q. And when he has appeared in family court in front of Judge McGuire is it as a law guardian?

A. Yes.

Q. And was a record ever made about the relationship between Zachary Kelson and

the Judge during those proceedings when you were present and they were both there?

A. Not that I'm aware of.

Q. Have you ever heard of a record being made about their relationship?

A. No.

MS. TISHMAN: I have no further questions.

THE REFEREE: Cross-examination.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Mr. Garn, good afternoon.

A. Good afternoon.

Q. So I am going to ask you a series of questions. Most of them can be answered with a yes or no. If you need me to explain a question or rephrase a question, just let me know and I will be happy to do that.

A. Okay.

Q. You have been working in family court since March 1 of 2010, correct?

A. That's correct.

Q. Prior to that, were you practicing law?

A. Yes, sir.

Q. Where were you practicing?

A. You mean the whole thing?

Q. Sure.

A. Well, I was a Legal Aid attorney for seven and a half years starting in 1978. I then went to the District Attorney's Office and became a chief assistant there. I was there for about five and a half years. Then I was a clerk to a county court judge for three years, two months and eight days, and then I went to work back in the District Attorney's Office again for about another 15 years.

Q. So in total you have got close to 40 years?

A. I have got over 40.

Q. "Over 40." So, in fact, you and I first met when we both worked in the DA's office, correct?

A. That is correct.

Q. And, what, if anything, did you observe about me as a young ADA, well, not so young, but inexperienced ADA?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. What did I observe about you?
Q. Yes.
A. You worked hard, showed up.
Q. Early?
A. Early, showed up early, stayed late.
Q. "Stayed late."
Worked on cases even when they were not necessarily assigned to me I offered to help?
MR. LEVINE: Objection.
THE REFEREE: Overruled.
A. You offered to help.
Q. To learn?
A. Sure.
Q. Now, you have over 40 years of experience and then you retired from the DA's Office?
A. I did.
Q. And then you got a contract with the Sullivan Legal Aid Panel?
A. I did.
Q. And you worked primarily in family court?
A. Yes, sir.

Q. Although you have the Town of Cochecton's Criminal Court?

A. That's right.

Q. So had you appeared in family court prior to March 1 of 2010?

A. Yes.

Q. You had.

And that was in what capacity?

A. As a Legal Aid attorney for the seven and a half years from 1978 until 1985. In change I appeared there probably one day a week.

Q. So you had experience in family court even that predate your March 1, 2010?

A. Correct.

Q. And now for the last just over nine years you have worked almost exclusively in family court?

A. Yes, sir.

Q. So the types of cases that we deal with in family court include custody?

A. Yes.

Q. Visitation?

A. Right.

Q. Grandparent visitation?

A. Yes.
Q. Child support?
A. I don't work in the child support unit.
Q. We do confirmation hearings though?
A. Willful confirmations.
Q. Willful?
A. Yes.
Q. And people who are found that have willfully failed to comply with a lawful order they are confronted with what possible sanctions?
A. What are they?
Q. Right.
A. Up to six months in jail.
Q. And we deal with abuse cases?
A. Yes.
Q. Neglect cases?
A. Yes.
Q. So we run the gamut?
A. That's right.
Q. Is it fair to say, not in a disparaging way at all, but that many of the folks that we deal with in family court are

perhaps less sophisticated than folks you see in supreme court?

A. That's fair.

Q. If fact, a very high percentage of them are indigent, in fact, they qualify for assigned counsel?

A. That's fair. I don't know what the percentages are.

Q. Okay. And the cases that you have been involved with since March of 2010, a large percentage of those included Mr. Ferrara?

A. Yes.

Q. So both folks had assigned counsel?

A. Yes.

Q. And over the last eight plus years, eight and a half years you have appeared almost exclusively in family court before Judge McGuire?

A. That's correct.

Q. Did you estimate how many cases? How many appearances you have made over that time?

A. How many times I have appeared?

Q. Right.

A. Hundreds, if not thousands of times.

Q. And some of the issues that are dealt with, is it fairly common to deal with incarcerated parents?

A. Yes.

Q. Drug issues?

A. Yes.

Q. Domestic violence?

A. Yes.

Q. Relocation of parents and children?

A. Yes.

Q. Fairly common?

A. Yes.

Q. Now, is it also --

JUDGE MCGUIRE: Strike that.

Q. Is it not uncommon for you to have a difficult time communicating with your clients? I am not talking about language. I am talking about getting in contact with them or they with you?

A. Are you asking if that is unusual?

Q. Correct.

A. No, it is not unusual.

Q. It's not unusual. So very -- I don't want to put words in your mouth. It's not unusual for you to go appearance to appearance without these folks contacting you?

A. That's true.

Q. Would it be fair -- prior to January 2011, I had the position that Mr. Ferrara has now?

A. That's correct.

Q. I represented indigent clients through the conflict panel?

A. That's correct.

Q. In fact, for roughly that year, ten months, you and I appeared in many, many cases together?

A. True.

Q. It is fair to say that it is not uncommon for clients to treat you as their attorney with, perhaps, less respect than a private attorney would get?

A. I suppose.

Q. Have you ever heard a client say

well, you're just a Legal Aid lawyer?

A. I have.

Q. Have you ever heard a client say I want a real lawyer?

A. Not recently, but I have heard that.

Q. And, in fact, even when you were in the District Attorney's Office you may have heard people express that?

A. Oh, yes.

Q. And that directed at somebody with over 40 years of experience?

THE REFEREE: Is that a question?

JUDGE MCGUIRE: Yes.

Q. They directed those statements to you and your 40 years of experience?

A. Yes.

Q. Now, during the time that we were in the District Attorney's Office together, did you ever hear anyone yell or raise their voice in that office?

A. Yes.

Q. Did you ever hear me yell or raise my voice in that office?

A. I don't recall.

Q. In your 40 years or more of practice, other than in my court, have you heard other judges raise their voice?

A. I have.

Q. Now, before coming here today, what, if anything, did you read in preparation for your testimony?

A. I read the transcripts of these proceedings.

Q. And you received them from whom?

A. I was shown them a couple of weeks ago in my office from Ms. Tishman.

Q. Okay. So she provided you with them.

A. Well, she brought them with her. I didn't get to keep them.

Q. Oh, okay.

A. And then when I got here today there was a folder with all the transcripts in it in the conference room where I was so I got to read them again.

Q. You got a chance to read them?

A. I did.

Q. And you said you met with Ms. Tishman?

A. I did.

Q. How many times have you met with Ms. Tishman?

A. I met her twice.

Q. And they were when you were down here to give a deposition at one point?

A. Yes, sir.

Q. That was in 2016?

A. '16 May.

Q. May of '16. And did you speak with Ms. Tishman prior to your time you were down here in May of 2016?

A. Only over the telephone to make arrangements.

Q. To come down?

A. Yes.

Q. Did you speak with anybody on behalf of the Commission prior to coming down here in May of 2016 regarding the substance of your testimony?

A. No.

Q. Did you speak with anyone regarding the substance of your testimony that you gave today, and presumably in 2016, did you speak with anyone prior to the day

you came down here?

A. You mean today?

Q. No, in 2016.

A. Oh, did I speak to anybody?

Q. Right.

A. Anybody from the Commission or anybody, anybody?

Q. Anybody, anybody?

A. No, I didn't talk to anyone about that, no.

Q. And prior to coming down today --

JUDGE MCGUIRE: Strike that.

Q. Between May of 2016 and today, have you spoken to anyone about the sum and substance of what you testified about?

A. Just Ms. Tishman, I spoke to her. You mean about the sum and substance of what I'm saying? No, I only discussed that in May of '16, and then a couple of weeks ago when she was at my office.

Q. So you met with her at your office?

A. I did.

Q. Was anybody else present for that meeting?

A. Yes, there was a young lady with her.

Q. All right. And did anybody take notes during that meeting?

A. Not that I recall.

Q. All right. Has there been any other communication or correspondence between yourself and Ms. Tishman or anyone else associated with the Commission?

A. I just got a letter advising when to come down and then a subpoena. That's all I have gotten.

Q. Okay. So other than planning, nothing to do with the substance of your testimony?

A. Correct.

Q. I want to go to December 2, 2024 --

MR. LEVINE: Objection. You said the year 2024.

JUDGE MCGUIRE: I did?

THE REFEREE: Yes.

JUDGE MCGUIRE: I may want to go to that.

THE REFEREE: I don't.

JUDGE MCGUIRE: Maybe it will be a nice day.

THE REFEREE: December 2.

Q. 2014.

A. Okay.

Q. That was the *K*[redacted] matter?

A. Yes, sir.

Q. Now, is it fair to say that in family court when dealing with matters of custody, relocation, abuse, neglect that the best interest of the child is the standard by which family court cases are determined?

A. That's fair.

Q. And is it fair to say that the law generally recognizes that it is in the best interest of a child to have a meaningful relationship with each parent?

A. Yes.

Q. And is it fair to say that the law favors a child being raised by their parents?

A. Yes.

Q. In fact, is it fair to say that the law provides that there must be some showing of extraordinary circumstances for

anyone other than a parent to raise the child?

A. Yes.

Q. Now, in the *K*[redacted] matter there was no order of custody to the grandparents, correct?

A. I don't recall.

Q. The mother was living with the grandparents?

A. I believe she was, yes.

Q. And she was incarcerated?

A. She had recently been incarcerated for about seven months.

Q. So when she was incarcerated the child stayed where the child was living?

A. Right.

Q. With the grandparents?

A. Right.

Q. And fair to say that the child up until the time the mother was incarcerated had a regular relationship with the father?

A. I'm not sure.

Q. All right. And, again, you don't know whether there was any order of access to the father?

A. I don't.

Q. Now, December 2, 2014, was not the first day that that particular case was in court, correct?

A. Yes.

Q. And, indeed, on the prior occasion, the Court left the child with the grandfather?

A. Yes.

Q. And, in fact, the mother had strenuously objected to the grandmother having any role with the child?

A. I don't recall that.

Q. Okay. And the Court ordered access to the father?

A. Okay. Yes.

Q. So going off of that case for just a moment. Is it uncommon in family court for litigants to not comply with orders of visitation?

A. Is it uncommon, no, it is not uncommon.

Q. We see it frequently?

A. We do.

Q. In fact, very often telephone

contact becomes very difficult?

A. Yes.

Q. And absent a showing to the contrary, that lack of access to parent is contrary to the child's best interest?

A. Yes.

Q. In fact, the law very strenuously protects the right of the child to have a relationship with each parent?

A. Yes.

Q. Is it fair to say that it is not at all uncommon for the parents to not be in an agreement with respect to visitation?

A. That was a negative there.

JUDGE MCGUIRE: Let me rephrase. Let me rephrase it.

Q. Can we agree that it is not uncommon for parents to be at odds regarding visitation?

A. We can agree.

Q. In fact, frequently in family court parents are at odds on visitation?

A. Correct.

Q. In fact, sometimes frequently --

JUDGE MCGUIRE: Strike that.

Q. Frequently one parent or the other would like the other parent to have no access?

A. True.

Q. Sometimes they want only supervised access?

A. True.

Q. Sometimes they want only day visits?

A. That's right.

Q. Sometimes they want day visits in a public place?

A. Yes.

Q. Frequently they don't the children to be exposed to the other parent's spouse or significant other?

A. True.

Q. That happens. In fact, it happens frequently?

A. Yes.

Q. So is it fair to say that as an advocate for one of the parents, primarily you are an advocate for one of the parents?

A. Primarily.

Q. You have done some work as an

attorney for the child?
A. I have.
Q. Are you still on the panel?
A. I am not.
Q. So you are not doing attorney for the child work anymore?
A. No, sir.
Q. So you are exclusively an advocate for the parent?
A. Yes.
Q. Is it fair to say that in the early appearances on a particular case depending on where the child is living when we come into court, that your role as an advocate for the parent who doesn't have the child is to get access?
A. Yes.
Q. And frequently your desire to get access is to maximize that access?
A. Yes.
Q. Because maximizing access to each parent, absent other facts, is consistent with the child's best interest?
A. Yes.
Q. Now, when a case is brought in

family court, it is common -- that is a positive. Is it common that the parent who has the child is keeping the child from the other parent?

A. It happens.

Q. "It happens."

Does it happen frequently?

A. I'm not sure.

Q. Can't quantify?

A. I can't.

Q. But it happens?

A. Yes.

Q. So it becomes sometimes more urgent at that time for the Court to make a determination of whether or not access can be achieved?

A. Yes.

Q. In the short term, in other words, it is not uncommon for the Court to issue a temporary order of access?

A. Yes.

Q. In fact, it frequently happens at a first appearance?

A. Yes.

Q. In fact, sometimes it happens

even when people come in for an arraignment before the attorneys are even present?

A. Yes.

Q. And that is done to avoid alienating the child from one parent or another?

A. Yes.

Q. Has it been your experience over say the last nine years that children have taken a position they don't want to see the other parent?

A. Have I seen that, yes.

Q. Okay. And have you seen cases where one parent will accuse the other parent of poisoning the child against them?

A. Yes.

Q. And that poisoning of a child, allegedly, has to be addressed fairly early in the case?

A. It should.

Q. In an effort to maximize access between each parent and the child?

A. Yes.

Q. So going back to December 2 of 2014. In the *K*[redacted] matter, parties had

been in court prior to December 2, 2014, correct?

A. Yes.

Q. And on December 2 of 2014, the Court opened the proceeding by inquiring how had the visits gone?

A. Yes.

Q. And, in fact, the visits had not gone well or at all?

A. They hadn't gone entirely well.

Q. And, in fact, several of the days that dad was supposed to have the child, dad didn't get the child?

A. Yes.

Q. Yet, that is not uncommon in family court for us to be confronted with that fact?

A. True.

Q. And the grandparents and the dad lived in the same general area, the same town?

A. I believe so.

Q. Is it uncommon in family court to have transportation be an impediment to access?

A. It's not uncommon.

Q. In fact, it's quite common?

A. Yes.

Q. Because one party or the other doesn't drive?

A. Correct.

Q. Doesn't have a car?

A. Right.

Q. The subway system in Sullivan County, is that reliable?

A. Not as far as I know.

Q. There are cabs?

A. Yes.

Q. In the villages, but if they live in one of the western -- far western part of the county even taxis are a little bit more difficult to come by?

A. That's right.

Q. So without a car you are pretty well stranded?

A. Yes.

Q. In fact, there are cases in Sullivan County where the children live in Sullivan County and one of the parents maybe lives in New York City?

A. True.

Q. And there are impediments, costs to get the child down to the city?

A. That's right.

Q. One parent doesn't drive. The other one has to go to the expense of taking public transportation to Sullivan County and then returning with the child then returning the child? It could eat up most of a weekend?

A. That's right.

Q. So that's another impediment that we deal with?

A. That's right.

Q. All right. So in the *K*[redacted] matter we established that things had not gone well, and, in fact, the grandfather wanted to no longer bring the child to the father?

A. That's what he said.

Q. "That's what he said."

And the Court to that point had not made any findings that the father -- access by the father would be contrary to the child's best interest?

A. Correct.

Q. And as we know from the *V*[redacted]*v* *G*[redacted] Appellate Division decision, we know that Courts should strive to be sure that there is access to each of the parents?

A. Right.

Q. In fact, in *V*[redacted] *v* *G*[redacted], the Appellate Division took exception to the fact that the Court did not make arrangements for the mother to have access?

A. That's right.

Q. That was because the mother lived in California. Alternate weekends probably not practical with one family in New York and the other in California?

A. Right.

Q. In fact, in that case the Court had advised the mother to bring an application for access?

A. Yes.

Q. So in the *K*[redacted] matter, the grandparents without an order did not want the father to have access?

A. That's right.

Q. And the Court temporarily sent

the child to the father?

A. That's right.

Q. The mother was incarcerated? That wasn't an option?

A. That's right.

Q. The father was not incarcerated, correct?

A. That is correct.

Q. And the father up to the point of litigation was seeing the child regularly?

A. That's right.

Q. It was apparently an issue between the grandparents and the father?

A. Yes.

Q. So the Court changed custody to the father, temporarily until we could have a full hearing?

A. Yes.

Q. And the Court scheduled the matter for trial?

A. That's right.

Q. And the grandmother objected to that?

A. She did.

Q. And, in fact, the grandmother

told the Judge that she would sue the county and the Judge personally if anything happened to the child?

A. That's what she said.

Q. Well, is it a fair interpretation of those words that the grandmother wanted to convince the Judge not to send the child to the father?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

You may answer.

A. Is it a fair interpretation that the grandmother wanted what?

Q. That the grandmother wanted the Court to not send the child to the father?

THE REFEREE: That wasn't your question.

JUDGE MCGUIRE: Oh, okay. Please strike the question then, and I will rephase it.

Q. Is it a fair interpretation of the grandmother's statement, "If anything happens to the child, I will sue the county and you personally?" Okay. That's the statement?

A. That's the statement, yes.

Q. Is it a fair interpretation of that statement that the grandmother did not want the child to go to the father?

A. That was pretty clear.

Q. The grandmother -- neither the grandmother nor the grandfather wanted the child to go to the father?

A. That is correct.

Q. And you have been practicing for over 40 years?

A. That's right.

Q. You have lots of life experience?

A. A couple.

Q. Can we agree that a statement like that made by the grandmother could be interpreted as her attempt to intimidate the Court into changing its order?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I don't know if that is a fair interpretation.

Q. Well, when somebody says -- well, let me ask you this: In nine years of practice in family court, had you ever other

than the *K*[redacted] case, ever heard anybody threaten to sue a judge personally other than Ms. K[redacted]

A. No.

Q. So that was the only time?

A. As far as I recall, yes.

Q. So is it fair to say that people don't like to be sued?

A. That's a fair statement.

Q. Is it fair to say that a lawsuit can be a traumatic experience for somebody?

A. It can.

Q. Is it fair to say that if somebody threatens to sue you for doing something that may give you pause to maybe think about not doing it?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Under some circumstances.

Q. So telling somebody that I'm going to sue you if something happens, but she didn't say that when the child was with the grandfather --

MR. LEVINE: Objection. He is testifying. I know he is entitled to

leeway, Judge. But honestly, he is asking his opinion. He is just doing it through a question. I think if he wants to ask nicely he can. I sat here for 45 minutes listening to this when he is just asking his opinion through lieu of a question. I know you are giving him leeway, but he should be treated like any other attorney notwithstanding that he is representing himself.

JUDGE MCGUIRE: It's cross.

THE REFEREE: This is cross-examination.

MR. LEVINE: I understand that, but he is testifying. He is not asking -- he is asking his opinion about things that have nothing to do with this particular matter.

THE REFEREE: I disagree.

MR. LEVINE: I just note my objection.

THE REFEREE: Overruled.

Q. So that we can move on. The grandmother made that statement only after the Court changed custody to the father?

A. Yes.

Q. She didn't make that statement when the child was with the grandfather?

A. Well, the child was still with the grandfather.

Q. Well, physically?

A. Yes.

Q. Well, prior to the Court changing custody and directing that the child be turned over to the father, the grandmother had not suggested that if anything happens to the child in my home I am going to sue the Court?

A. She had not said that before.

Q. So the statement was made in relation to the decision that the Court made?

A. Yes.

Q. It was a statement of objection to the decision?

A. Yes.

Q. But it was a statement beyond mere objection, but of something unpleasant is going to happen to you as a result of your decision?

A. Yes.

Q. Now, the K[redacted]'s have been in court since December 2, 2014, correct?

A. Yes.

Q. In fact, several times?

A. I believe so.

Q. In fact, they have two children who have their own children, a son and a daughter?

A. Okay.

Q. And currently both the son's children and the daughter's children are in the custody of the grandparents?

A. I wouldn't know.

Q. You don't know?

A. No.

Q. Do you currently represent the mother?

A. N[redacted] K[redacted]?

Q. Yes.

A. No, I haven't represented her since that day.

Q. Since 2014?

A. Yes.

Q. Okay. Now, in that *K*[redacted] case, the Judge had Ms. K[redacted], the grandmother,

not your client, the grandmother taken out of the courtroom?

A. Yes.

Q. And then he brought her back in you said about an hour later?

A. Yes, sir.

Q. He specifically did not hold her in contempt, correct?

A. Correct.

Q. In fact, he sent her home?

A. Correct.

Q. In fact, the grandparents asked for access to the child?

A. I believe so.

Q. And the Court had them file a petition?

A. Yes.

Q. And that would give the Court jurisdiction over that issue?

A. Yes.

JUDGE MCGUIRE: Do you remember which exhibit was for the --

MS. TISHMAN: IV-2.

JUDGE MCGUIRE: That's the second call or the first call?

MR. LEVINE: The first call.

JUDGE MCGUIRE: So the second call would be?

MS. TISHMAN: IV-3.

JUDGE MCGUIRE: Can we get the audio for IV-3? Do you remember where you cut the last one off?

MS. PARTIDA: *IV-3*. Are you going to want me to play it?

JUDGE MCGUIRE: Yes, please.

I am going to play an excerpt from IV-3. We will go off the record while that is played. I would like to pick it up right from when Ms. C[redacted] brought -- Ms. L[redacted] is brought back into court. The Court says, "I've made good use of the time." I don't know if you have a cue mark for where you stopped it the last time.

We are off the record.

(The audio was played for the Court.)

MR. MAISONET: On the record.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. You were present in the courtroom

on June 14, 2013?

A. I was.

Q. And in the first excerpt that we heard earlier where Ms. L[redacted] was removed from the courtroom the issue was addressing the academic needs of this 16 year old child?

A. Yes.

Q. And when the mom was brought back in, what was the demeanor of the Judge when she was brought back in?

A. Relatively calm.

Q. And we agree that the Judge in the time she was removed had built a plan to assist the child academically?

A. Yes.

Q. Can we agree that 16 year olds failing classes creates a problem for them?

A. Yes.

Q. In fact, failing to classes at 16 leads to dropping out at 16?

A. It can.

Q. Dropping out at 16 is not a good thing?

A. No.

Q. Now, the Judge referenced -- we heard a voice on there, Mr. Jones. Do you remember who Mr. Jones was?

A. Yes, I do.

Q. What was his role?

A. I think we was either a preventive worker or a CPS worker.

Q. He worked for the Department of Family Services?

A. That's correct.

Q. All right. So you will recall in the earlier excerpt that we heard the Judge asked whether or not the mother had worked with Mr. Jones so that she could attend the child's CSE meeting, Committee on Special Education meeting, in person?

A. That's right.

Q. And the mother said she didn't think transportation was available that day?

A. That's right.

Q. So fair to say transportation was an issue in this case?

A. That's right.

Q. And the mother lived in [redacted]?

A. I don't recall where she lived.

Q. Well, the transcript will reflect that she said she lived in [redacted].

A. Okay.

Q. Are you familiar with [redacted]?

A. I am.

Q. The subway system in [redacted], how does that run?

A. They don't have such a thing there.

Q. There's no mass transit?

A. No, sir.

Q. So [redacted] is one of those areas where if you are living out there and you don't have transportation it's a problem?

A. That's right.

Q. And it's a problem that can manifest itself in limiting the ability to meet the needs of the child?

A. It can.

Q. So the Court directed Mr. Jones to facilitate certain things to happened, correct?

A. Yes.

Q. Transportation primarily?

A. Yes.

Q. And who is the L[redacted] A[redacted] that is referred to?

A. I am not sure.

Q. All right. So she has some role and the transcript talks about Liberty School District. She has some role at Liberty?

A. Yes.

Q. If I said that she was the Director of Guidance, would you have any reason to dispute that?

A. No, sir.

MS. TISHMAN: Objection.

THE REFEREE: Overruled.

Q. And Ms. F[redacted], who is Ms. F[redacted]? Are you familiar with her?

A. I believe she is a school psychologist.

JUDGE MCGUIRE: F[redacted].

A[redacted] is A[redacted]

Q. So she's a counsellor or a psychologist of some sort at [redacted] [redacted]?

A. Yes.

Q. And so in addition to addressing the child's academic needs, the Judge was making sure that her psychological needs were being met as well?

A. Yes.

Q. And then the specter of summer school likewise was to ensure that the child's academic needs would be met?

A. Yes.

Q. And the Court had put in place a mechanism to ensure that that would happen?

A. Yes.

Q. And that the mother's transportation issues would be alleviated?

A. Yes.

Q. Now, that appearance was in June of 2013. Now, I want to talk about the time period December 2014 to -- well, let's say last Friday, May 3, 2019.

A. December of 2014 until last Friday?

Q. Right.

A. Okay.

Q. All right. You continue to

appear in family court?

A. I have.

Q. And you continue to appear in my court?

A. Yes, sir.

Q. The type of issue that we heard played out in the *L[redacted] versus C[redacted] and B[redacted]* case, is that a unique issue in family court?

A. Not really.

Q. 16 year olds that are failing school?

A. Not really.

Q. Parents that are not able or understanding the need to address those issues?

A. Right.

Q. Have you seen a change -- now, we see two appearances. We see the first one where the Judge has Ms. L[redacted] removed, and then we have the second one where the Judge calmly lays out a plan to address the child's needs.

A. Okay.

Q. And those both occurred on the

same day --

MS. TISHMAN: Objection. He is testifying that the Judge calmly laid out plans.

THE REFEREE: That was the witness's testimony as well. Relatively calm was the word.

JUDGE MCGUIRE: Look at the transcript. The Court will make their own decision -- own determination.

Q. All right. Now, between December of 2014 and May of 2019, I believe you testified that we have dealt with that similar issue, academics and children?

A. We have.

Q. And issues of transportation?

A. Yes.

Q. Have you seen a change in the way the Judge has addressed those situations?

A. Change?

Q. A change? Has the Judge's style changed at all since December of 2014?

A. The style of addressing those kinds of problems?

Q. Well, let's take the first part

where the Court had the mother removed.

A. Okay.

Q. Has that part of the Judge's approach changed?

A. You mean the removing someone in handcuffs?

Q. Correct.

A. Since then I have not seen that since then.

Q. Hasn't happened. So that's nearly five years?

A. Yes.

Q. Four and a half years?

A. Yes.

Q. But the Judge's approach to trying to solve family problems has that changed?

A. No.

Q. Would you say that the Judge is very much involved in trying to address particular problems, like, academics on the spot?

A. When that comes up, yes.

Q. In other words, if that had not been addressed June 14th, the next

appearance may have been when it would be too late to address it?

A. Okay.

Q. Because maybe summer school had already started? Maybe the child wouldn't have had tutoring?

A. Okay.

Q. Because part of that plan as we heard was to get some tutoring set up for her, right?

A. Yes.

Q. So is that in your nine years of experience, eight and a half years of experience with Judge McGuire, it that typical style of Judge McGuire to identify problems and try to formulate plans to address them?

A. Yes.

Q. Now, in your experience in family court, particularly with respect to allegations of neglect, have you had occasion to see where people were -- amongst the allegations are that the child had an inappropriate place to sleep?

A. Yes.

Q. And have you seen situations where infants were sleeping with their parents?

A. Yes.

Q. And we can agree that that's potentially harmful to a child?

A. Possibly.

Q. An adult can roll over on top of a child?

A. True.

Q. That would be not good for the child?

A. True.

Q. Particularly if the child couldn't breathe. Children can fall out of beds?

A. True.

Q. We have seen situations where children were sleeping on a bare floor?

A. Yes.

Q. We have seen situations where children were exposed to animal feces in the home?

A. Yes.

Q. In their bedding?

A. Yes.

Q. Urine in their bedding?

A. Yes.

Q. We have had situations --

JUDGE MCGUIRE: Strike that.

Q. Have you had situations where children's medication was not provided at an exchange?

A. Yes.

Q. One parent has the child and the medicine. The child goes without the medicine?

A. Yes.

Q. Can we agree that a child that doesn't get their medication is at risk for whatever the medication was addressing?

A. We agree.

Q. And so we can agree then that having an appropriate place for a child to sleep is fundamental to a child's having overnight visits with somebody?

A. It is.

Q. And we can agree that when a child's bed, a Pack 'n Play is purchased, it is purchased for the child and not the

parent?

A. Okay.

Q. Well, have you ever known an adult to sleep in a Pack 'n Play?

A. No.

Q. So is it fair that if a child is sleeping in one place six nights a week and one place one night a week that that bed should be with the child?

A. Yes.

Q. Now, January 17, 2014, the C[redacted] matter. That wasn't the first day that that case was in either, was it?

A. No.

Q. I fact, we had set up visits three days a week for the mother in Ellenville, correct?

A. Yes.

Q. And the dad lived in Monticello or in Sullivan County; if you recall?

A. I don't.

Q. Do you remember how the child was getting to Ellenville for the visits?

A. I think sometimes she had a cousin that was going to work. She would

ride with him.

Q. Well, isn't that how she got from her home in Kerhonkson in Ellenville?

A. Yes.

Q. How did the child get from dad's home in Sullivan County to Ellenville?

A. Oh, I'm not sure.

Q. Okay. So on January 17, 2014, you read the transcript of that, correct?

A. Yes.

Q. There was a discussion by Mr. Ferrara on behalf of the father expressing the hardship to the father related to his having to do the driving?

A. Okay.

Q. And it was three days a week?

A. Okay.

Q. Now, you can check the transcript; if you want. I believe just for expediency we can assume that the father lived in Monticello.

A. Okay.

Q. How far a ride is it from Monticello to Ellenville? Are you familiar with that?

A. I am. Well, it's 15 minutes or so from Monticello down to Woodsborough, 11 miles up to Ellenville, 30 minutes.

Q. 30 minutes?

A. Yes.

Q. And the mother was getting visits three hours a day, three days a week?

A. Something like that.

Q. "Something like that."

So dad was doing all the transportation of the child to the mother?

A. Okay.

Q. Do you recall; if you don't you can check the transcript, do you recall whether or not the mother was providing any support, financial support to the father?

A. She was not.

Q. And do recall what the father's financial situation was?

A. He was dependant upon relatives and friends for support.

Q. Indeed, he had assigned counsel also?

A. He did.

Q. So fair to say both were indigent

as it is defined?

A. Fair.

Q. And so the father was assuming essentially all of the cost of caring for this child?

A. Okay.

Q. And prior to January 17, 2014, can we agree that the Court had advised the mother that she needed to get some kind of bedding for the child?

A. Yes.

Q. In fact, in the transcript of the January 14, 2017 proceeding, the Court even suggested certain agencies that may provide a bed free for the child?

A. Yes.

Q. Now, January 28, 2013. That is the *P*[redacted] matter?

A. Yes.

Q. You represented Ms. R[redacted]?

A. I do.

Q. And the child was in court that day?

A. Yes.

Q. Represented by Alexandra Bourne?

A. Yes.

JUDGE MCGUIRE: B-O-U-R-N-E.

Q. And the child was sitting at the table with her attorney?

A. Correct.

Q. Now, are children typically in court?

A. No.

Q. Do you know why that is?

A. Do I know why?

Q. Yes.

A. It's not a good idea.

Q. Why?

A. Well, they shouldn't be part of the proceedings.

Q. The ideals of family court is to keep the proceedings invisible to the child?

A. Yes.

Q. Because there are things discussed that the child doesn't need to be aware of?

A. That's correct.

Q. All right. Now, in that proceeding on January 28, 2013, the father had recently been released from the

Department of Corrections?

A. That's correct.

Q. And he was living in [redacted] [redacted]?

A. Yes.

Q. And he was living with his in-laws?

A. In-laws or the girlfriend.

Q. Or girlfriend's parents?

A. Mn-hmm.

Q. And the father expressed that they did not want their address to be disclosed?

A. That's correct.

Q. And the grandmother was not happy about that?

A. That's correct. She wanted to know where the child was.

Q. Was going to be.

And is it uncommon in family court for addresses to be maintained as confidential?

A. It is not uncommon.

Q. In fact, it is quite common that one address or other is confidential?

A. Yes.

Q. So now prior to January 28, 2013, again, you can refresh your recollection; if you need, was the father seeing the child at all?

A. Yes, he was.

Q. He was seeing her in the afternoons?

A. Yes.

Q. Picking her up from school or after school and doing homework and whatnot?

A. Yes.

Q. And the father expressed some concerns about the child's academics; do you recall that?

A. I don't know if he expressed that concern in 2013, or whether that was the following year.

Q. Okay. All right. Fair enough.

A. That case continued on and it was an issue over academics, but I don't think at the time that occurred.

Q. Okay. So the father now coming in. He is out of prison, and he is seeing the child and building the relationship now wants to have a more meaningful relationship

with his daughter; fair to say?
A. Fair.
Q. He wants to have the child for whole weekends?
A. True.
Q. Saturday to Sunday?
A. That's right.
Q. And is it fair to say that the mantra; if you will, in family court is that we keep the proceeding invisible from the child?
A. True.
Q. In fact, we have a standard addendum that goes with each order in family court which directs the parties not to discuss the litigation with the child?
A. Yes.
Q. And not to make any disparaging comments about the other parent or where they are living or who they are living with?
A. That's right.
Q. And we call that the Children's Bill of Rights?
A. Yes.
Q. Because fundamentally a child

does not need to know those things?

A. Yes.

Q. And we want to foster a meaningful relationship between the father and the mother and the child?

A. Correct.

Q. Now, while the father was incarcerated the child was living with the grandmother?

A. That's correct.

Q. And the mother for whatever reason did not have custody of the child either?

A. She was a drug addict. She couldn't have custody.

Q. She couldn't have custody because she was a drug addict, correct?

A. Right.

Q. So dad now comes into court and he wants overnight visits. Fair to say that the Court asked the attorney for the child, Ms. Bourne, what her position was on that?

A. I believe so.

Q. It is fair to say that the Court actually gave Ms. Bourne time to go and

speak with her client outside of the courtroom?

A. Yes.

Q. Have a confidential discussion with her client?

A. Yes.

Q. And when she returned, and it is in the transcript, is it fair to say that Ms. Bourne announced her client wanted alternate weekends with her father?

A. I believe so.

Q. So there was an offer; if you will, and it is in the transcript, there was an offer of alternate weekends to dad with some -- a couple of days after school for a couple of hours to spend time?

A. Yes.

Q. And you had an opportunity to consult with your client, Ms. R[redacted] about that proposal?

A. Yes.

Q. And she was not pleased with that proposal?

A. No, she was not in agreement.

Q. She wanted what?

A. She was willing to give him one weekend a month and then some other times during the month as well.

Q. Some other further and different?

A. Yes.

Q. And so the only way then to resolve the matter was with a trial?

A. That's right.

Q. Because there was not a meeting of the minds on the settlement?

A. That's true.

Q. In fact, the father had come in asking for custody?

A. That's true.

Q. But he was willing to settle for alternate weekends and some other times?

A. That's right.

Q. All right. So I don't want to know what you disclosed to your client, but fair to say, Ms. R[redacted] was wanting to take the matter to trial over one weekend a month?

A. That's right.

Q. Saturday to Sunday?

A. That's right.

Q. And so the Court set the matter for trial?

A. You did.

Q. Which is the only thing a Court can do at that point?

A. Correct.

Q. And on the way out your attention was not to your client walking out, your attention was to gathering your papers and maybe your next case that you had on?

A. Fair statement.

Q. It is not uncommon you have multiple cases on in a particular day?

A. Not uncommon.

Q. All right. So the grandmother said something to the child?

A. She did.

Q. In fact, the child's attorney reacted to that?

A. I don't know.

Q. And then the Court reacted to the child's attorney's outburst?

A. The Court reacted to --

Q. You don't know what stimulus?

A. I don't know what stimulus.

Q. So you are not aware of the stimulus that the Court reacted to?

A. No, not specifically.

Q. All right. Now, on March 5 of 2013, the case came back?

A. Yes.

Q. And on the record you expressed your client's regret for the incident that occurred at the end of court that day in January?

A. I did.

Q. And the Court on that day, March 5th, what was the demeanor of the Court that day?

A. The Court's demeanor was fine.

Q. "Fine." Okay.

And we were ready to move forward?

A. Yes.

Q. And the grandmother by then between January 28th and March 5 of 2013, we had followed an alternate weekend schedule?

A. That's right.

Q. Because that's the temporary order the Court had set?

A. That's right.

Q. In fact, on March 5th, your client was amenable, agreeable to the alternate weekends?

A. That's right.

Q. Presumably things had gone well between January and March?

A. Presumably.

Q. So whatever issues the grandmother had in January were not exacerbated by the temporary order, they were alleviated by the temporary order?

A. Yes.

Q. But the father on that day didn't want to settle?

A. At one point.

Q. "At one point."

But ultimately the case did settle?

A. Yes.

Q. Now, let's talk about *D*[redacted] *versus* *E*[redacted], November 7, 2014.

A. Okay.

Q. Now, were you involved in the *E*[redacted] matter from the very start?

A. I was.

Q. All right. How would you characterize the behavior of your client, Ms. E[redacted], in and around the time the case started?

A. She was a difficult client.

THE REFEREE: I'm sorry. I didn't hear that.

THE WITNESS: She was a difficult client.

Q. Fair to say that she got herself arrested during the early stages of that proceeding?

A. Well, I think part of the neglect case was that she punched the child protective services caseworker when she came to the house.

Q. She punched her when they came to the house to do a safety check on the children?

A. That's right.

Q. She denied her access and then punched her and was arrested?

A. Yes.

Q. And on another occasion, do you

recall the Court having to issue an Amber Alert?

A. Yes.

Q. Why was that?

A. She and the father didn't appear. They were --

Q. They were gone?

A. They were gone.

Q. DFS had gone to their residence and they were gone?

A. That's right.

Q. And drug issues in that case?

A. Yes, sir, there were.

Q. Both the mother and the father?

A. Yes, sir.

Q. In fact, the father wound up being incarcerated in federal court for a while, correct?

A. That's right.

Q. And he would appear in subsequent proceedings by phone because of his drug charge?

A. Yes.

Q. And the mother -- well, what happened with the mother? How many children

did they have?

A. Well, he and she had I believe two.

Q. And she had other children from a prior relationship?

A. She had three others.

Q. So in total we are dealing with five children?

A. Five children, three different fathers.

Q. Okay. And one of the children went in the custody of his father?

A. Yes.

Q. G[redacted]?

A. Yes.

Q. What happened to the other children? Who had them?

A. Three of the other children were in the custody of the great-grandmother, Ms. B[redacted].

Q. And where were the other two?

A. T[redacted] had one of them.

Q. T[redacted] had one that was born after?

A. She had one. Three were with the great-grandmother and the other one was with

Mr. G[redacted].

MS. TISHMAN: Just for the record, G[redacted] is G[redacted].

JUDGE MCGUIRE: Thank you.

Q. So they were with the great-grandmother. Where was the great-grandmother living?

A. We[redacted] R[redacted] in C[redacted], New York.

Q. In C[redacted]. And then at some point the great-grandmother moved?

A. Yes, she moved to Me[redacted].

Q. M[redacted] up outside the C[redacted] D[redacted], the C[redacted] P[redacted] area?

A. Right.

Q. And at that time, can we agree that your client was considering relocating up there?

A. She was.

Q. But what happened to your client between 2014 and say 2016 or '17?

A. She entered a drug rehabilitation program long term.

Q. Right away or did it take some time?

A. Oh, no, that took some time. She completed that program successfully after a year. She was living with the city in a half-way house for a time after that, got a job and she moved back to Sullivan County.

Q. And when she was in Sullivan County, she made application for access to the children?

A. She did.

Q. That were in the C[redacted] P[redacted] area?

A. She did.

Q. Up in the C[redacted] D[redacted]?

A. That's right.

Q. What, if anything, did the Court do in terms of that access?

A. Granted her access.

Q. What was the grandmother's position on that access?

A. She wasn't happy with it.

Q. "Wasn't happy."

Now, on November 7 of 2014, do you have the photograph? You do. So looking at photograph one on November 7, 2014 was the trial of the neglect

proceeding?

A. Yes.

Q. Can we agree that you were seated at the front Respondent's table?

A. Yes, sir.

Q. And that the father was seated at the Respondent Number 2 table?

A. Yes, sir.

Q. And you were engaged in an examination of a witness on the witness stand?

A. That's correct.

Q. The witness stand is located as viewed from that photograph to the right of the Judge's bench?

A. Yes.

Q. So you could not see your client while you were engaged in the direct-examination?

A. I could see her. I just couldn't see what she was doing.

Q. So did you see her turn around and talk to Mr. F[redacted]?

A. No.

Q. You're not saying she didn't do

it, you just didn't see her?

A. I didn't see it.

Q. And the Court aware of this history, because we have said that they had a history. They were difficult were your words. Reacted by telling her essentially to knock it off?

A. Whatever the words were.

Q. "You are 30 second away from being put in handcuffs?"

A. Yes.

Q. Did Ms. E[redacted]ever speak to you about that? I don't want to know what you said, but did she ever speak to you about it?

A. Not that I recollect.

Q. So fair to stay that the Court took a hardline on that case?

A. Fair to say.

Q. In terms of Mr. F[redacted]'s access?

A. Fair to say.

Q. Ms. E[redacted]'s drug issues?

A. Yes.

Q. Mr. F[redacted]'s drug issues?

A. Yes.

Q. Ms. E[redacted]'s violence issues?

A. Yes.

Q. So tell us, where is Ms. E[redacted] today?

A. Where is she?

Q. I mean in general. I don't know that you have her --

A. She is living with -- she has two of her children with her.

Q. Those were returned by the Court, at least one of them?

A. One of them was returned by the family court. The other one she had most of the time anyway.

Q. The judge in family court that returned that child was Judge McGuire?

A. That's correct.

Q. And that was at a recently completed proceeding?

A. That's correct.

Q. Did the Judge appear to have any vendetta against Ms. E[redacted]?

A. No.

Q. So this person who the Judge had

to issue an Amber Alert for, who punched a DFS worker, who wasn't going to drug rehab, ultimately she turned her life around?

A. She did.

Q. And now does she have a job?

A. She does.

Q. She is a manager of a local McDonald's?

A. That's right.

Q. And she now has two of her children back?

A. That's right.

Q. And the other three are subject of litigation in Saratoga County?

A. I think there's two still in litigation in Saratoga County.

Q. "In Saratoga County."

Now, let's talk about *V*[redacted] *and* *G*[redacted].

A. Okay.

Q. Now, that matter was on August 24th for a trial, correct?

A. I think it was the 21st.

Q. The 21st of August. Okay. The issue was that the mother was living in

California and the dad was living in Sullivan County?

A. That was the issue.

Q. The mother had been living in California since January?

A. Yes, the middle of January, I believe.

Q. Do you recall how it was that she came to move to California?

A. Well, according to the testimony it was the plan for both of them to go to California.

Q. The family was to go?

A. Yes, but she was supposed to go first. She did and she moved in with an aunt or someone in R[redacted] C[redacted], L[redacted] A[redacted]area and dad was supposed to follow and then --

Q. A couple of months later, correct?

A. A few months later. And then a couple of months later in March when he said he was going to go the relationship broke down and they weren't speaking, so he filed for custody.

Q. And she filed for custody in California also?

A. She did.

Q. And she filed for divorce in California?

A. I don't know about that.

Q. Fair enough.

So the home state of the children at the time the father filed was what state?

A. New York State.

Q. In fact, we held a dual conference with the California and the New York Judge, correct?

A. I wasn't part of that.

Q. Okay. Fair enough.

So were you involved in the case prior to August 21, 2014?

A. Yes.

Q. And were you aware that a court order had been set down giving the father visitation with the children?

A. I was. I was part of the negotiations to establish what the parameters would be.

Q. Great. So how was that

visitation going to take place?

A. The father was to fly out to Los Angeles on the 10th of July and fly back with the children on the 11th of July, and he could keep them in the State of New York no later than the 28th of August.

Q. So he would have them for a little more than half the summer?

A. Yes.

Q. So did the father fly to California?

A. As far as I know he did.

Q. And did he fly back with the children?

A. He did not.

Q. What happened when he got to California?

A. Well, as far as I know, when he got to California he was unable to rent a car. The reasons for that had something to do with insurance or something to do with his credit card. I'm not sure.

But he got to the Los Angeles airport, could not rent a car and so he called Ms. G[redacted] apparently to ask to have

the children brought there. I believe she lived about 45 minutes away.

There was apparently an inability to transport the children to the airport, and so the father left and came back home without the kids.

Q. Was there any testimony that there had been any cohabiting between January when the mother left in March?

A. Any cohabiting?

Q. Between the mother the father?

A. No.

Q. The father stayed in New York?

A. Yes.

Q. And the plan was that he was going to join the family in March?

A. That's right.

Q. And when he called to say I'm coming out, the testimony was that -- you have got the transcript, that the house is too small. You can't come out?

A. Something along those lines, yes.

Q. But it was the same house that they knew they were going to when mom left?

A. Apparently.

Q. And so the mother had left New York with the children, correct?

A. Correct.

Q. The family planned that dad would join a couple of months later. When it came time for dad to join mom said don't come out. She had the children in California. She filed for custody in California. We set up an order of access to the dad, and the dad got from New York to LAX, and the mother couldn't get the children from her home about 45 minutes to LAX?

A. That is my understanding.

Q. The father flew all the way back to New York and did not see the children?

A. That's correct.

Q. And in sum and substance that is what the testimony was?

A. Yes, sir.

Q. I don't want to revisit the testimony, but the issue in a relocation case pursuant to the matter of *T[redacted] versus T[redacted]*, T-[redacted]. This is a Third Department case that went to the Court of Appeals, Syracuse area. As a family court

practitioner, what are the issues that the Court must consider in a relocation case?

A. The Court has to consider whether the relocation is in the best interest of the children. It has to take into account the disruption the relocation would have between the children and the parent who is not relocating but staying where he is.

That is the primary thing. The Court also has to look at the circumstances of the move, the reasons for the move.

Q. Is there family in the area?

A. All of that stuff.

Q. All that stuff?

A. Yes.

Q. But is it viewed not through the eyes of the parent, but through the eyes of the child's best interest?

A. That's correct.

Q. Indeed, when the case was brought, the childrens' home state was New York?

A. That's right.

Q. So the relocation that the Court had to consider was New York to California,

correct?

A. That is correct.

Q. Not California to New York?

A. No.

Q. What was the evidence that it was in the childrens' best interest to stay in California?

A. Well, that evidence was provided by Ms. G[redacted] in her testimony. It would have included better economic opportunities for her.

Q. Had she availed herself of any economic opportunities between January and August?

A. I think she was on welfare. So there hadn't been any particular benefit that I would establish.

Q. And the Court, in fact, found that her testimony was not credible?

A. That was the finding.

Q. Who is the fact finder in a family court matter?

A. The judge.

Q. And whose role is it to establish the credibility of witnesses?

A. It is the judge's responsibility.

Q. And is the credibility of a witness a factor to be considered by the Court in making a determination of what the facts are?

A. Yes, sir.

Q. In fact, one of the *T*[redacted] factors that is considered is a determination of which parent would be likely to foster a meaningful relationship with the other parent?

A. That would be correct, yes.

Q. And the mother had already demonstrated multiple occasions an unwillingness to foster a relationship with the father?

A. That was the finding.

Q. Well, there was certainly evidence to support that finding?

A. There was evidence.

Q. It could be contrary, but there was evidence?

A. That's right.

Q. Do you know whether the father participated in the Appellate Division case?

A. I have no idea.

Q. Do you know whether the attorney for the child participated?

A. I have no idea.

Q. Do you recall in the off the record, on the record conference that we had without the litigants in the courtroom, whether -- what position the attorney for the child took?

A. The attorney for the child --

Q. For the children?

A. For the children, there were two young children. The attorney for the child took the position that the children should be returned immediately.

Q. To the dad?

A. Yes.

Q. In fact, the attorney for the children couldn't even meet with her clients because they weren't brought to New York?

A. They were not brought to New York.

Q. In fact, the mother had previously been told to bring the children when she came for trial.

A. That I don't recall.

Q. Okay. Now, in the nine years that you have been practicing since March of 2010, you often have multiple cases on in a day.

A. I do.

Q. And you often have to balance lots of clients?

A. I do.

Q. All right. Now, who is responsible for cuing up the cases that are about to be brought into court?

A. Who is responsible?

Q. Yes. I mean how does it work mechanically?

A. There's a court calendar that is at the desk out by the court officers. The calendar is -- I assume someone in the courtroom, a court clerk calls them and says please line up such and such a case. They call over the loud speaker system the names of the parties and tell them what courtroom to go to whether it is courtroom one or two or three.

Q. So the cases are lined up outside

the courtroom. And we will talk about just your cases which are always in courtroom two?

A. Yes.

Q. They are lined up while the prior case is being dealt with?

A. That's correct.

Q. So that they are cued up so that when one case leaves the next case comes in?

A. Correct.

Q. And the people that mechanically get that line up to happen are whom?

A. The court officers, the uniformed court officers.

Q. "The court officers."

Now, we spoke about -- I didn't count them, but let's say a half a dozen cases where people were either admonished or screamed at, removed from the courtroom, right?

A. Yes, we did.

Q. About a half a dozen cases?

A. Yes, we did.

Q. Now, you have been in court for maybe a thousand or more, maybe thousands of

cases --

A. It's possible.

Q. -- before Judge McGuire?

A. Yes.

Q. Are there any other times when you are aware of that the Judge had people taken into custody other than in a willful child support issue?

A. You mean other than the ones I have talked about?

Q. Right.

A. No, I am not aware of any others.

Q. Or that the Judge yelled at people? Are you aware of any others?

A. Yelling at a court officer once. I remember that.

Q. Okay. And that was Mr. Diaz?

A. Yes.

Q. Officer Diaz?

A. Yes.

Q. All right. And that was telling him to have his sergeant come back and see him?

A. Yes.

Q. So no others?

A. No.

Q. And I asked you before, but I will follow it up now, from December of 2014 until May of 2019, has the Judge's demeanor changed?

A. Yes.

Q. And it has changed how?

A. Well, there is no more screaming and yelling.

Q. So there is more talking?

A. Yes.

Q. Fair to say the judge has evolved in that manner?

A. You could say that.

Q. So over a period of four years we had six or seven incidences, correct?

A. Whatever it was, yes.

Q. And over the last four and a half to five years there have been none?

A. That I know of.

JUDGE MCGUIRE: Nothing further, your Honor.

THE REFEREE: Thank you.

Any redirect?

MS. TISHMAN: No.

THE REFEREE: Mr. Garn, thank you very much. You are excused.

THE WITNESS: Thank you.

THE REFEREE:

(The witness exited the hearing room.)

THE REFEREE: I gather that is it for today?

MS. TISHMAN: Yes, but I would like to talk a little bit about tomorrow.

THE REFEREE: Do you want to be on the record for this?

MS. TISHMAN: No, we don't need to be.

THE REFEREE: We are off the record. We will reconvene tomorrow at 10 a.m.

MR. MAISONET: Off the record.

(TIME NOTED: 4:50 P.M.)

CERTIFICATION

I, DEIRDRE PLEVRITIS, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May 2019.

Deirdre Plevritis

DEIRDRE PLEVRITIS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant To Section 44, subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE

A Judge/Justice of the Surrogate Court Sullivan County.

61 Broadway
New York, New York

May 8, 2019
10:04 A.M.

Before:
MARK ARISOHN, ESQ.
Referee

Present:
For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

MICHAEL F. MCGUIRE, ESQ.
PRO SE

Also Present:
MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Commission

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Eileen E. Moore	X	X
Philip Moore	X	X

THE REFEREE: Good morning everyone.

Today is May 8, 2019. Are we ready to proceed?

MS. TISHMAN: Yes. We will be calling Zachary Kelson.

(The witness enters the room.)

THE REFEREE: Good morning. Have a seat, Mr. Kelson.

THE WITNESS: Thank you.

THE REFEREE: I have been asked to read this statement to each witness.

THE WITNESS: Yes, sir.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly and clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until

the question is completed and answer each question with words, not a nod or gesture.

Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment.

Is that okay?

THE WITNESS: Yes, sir.

THE REFEREE: Would you please rise and raise your right hand.

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Would you please state your full name and spell it for the record.

THE WITNESS: Zachary D. Kelson, Z-A-C-H-A-R-Y, middle initial D. Kelson, K-E-L-S-O-N.

THE REFEREE: You may be seated.

THE WITNESS: Thank you.

THE REFEREE: You may proceed.

THE WITNESS: Your Honor, the microphone is faced this way -- they are talking, can I turn that way? Do you want me to turn towards you?

THE REFEREE: You can turn towards the questioner, but try to get closer to the microphone, if you can.

THE WITNESS: Can I move the microphone a little bit?

THE REFEREE: Yes.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Mr. Kelson.

A. Good morning, Ms. Tishman.

Q. Are you currently employed?

A. I am.

Q. Where are you employed?

A. I am self-employed as an attorney in Monticello, New York.

Q. Do you have your own office?

A. I do. I maintain an office for the practice of law at [redacted]. I also have a satellite office in W[redacted], located at

[redacted].

Q. Can you spell [redacted], for the record?

A. Sure. [redacted].

Q. Do you, as part of your practice, do you maintain emails pertaining to your work?

A. Yes.

Q. What county do you practice in?

A. I practice in several counties.

Q. Do you practice in Sullivan County?

A. Yes.

Q. Are you on any panels in Sullivan County?

A. No.

Q. Do you have any contract work in Sullivan County?

A. No.

Q. Are you an Attorney for the Child in Sullivan County?

A. Yes, I believe that the panel is set up by the Appellant Division, their department, not locally, that is why I answered the question the way I did.

Q. Is the Attorney for the Child a panel?

A. Yes, set up by the 3rd Department.

Q. And it is also known, or did it used to be known as being a law guardian?

A. Yes.

Q. When did you start on the Attorney for the Child panel?

A. Well, when I started it was law guardian, of course. I am going to say shortly after Judge Meddaugh was sworn in. I am going to guess, although I know I am not supposed to, probably some time in the early nineties.

MS. TISHMAN: Judge Meddaugh is spelled, M-E-D-D-A-U-G-H.

Q. As an Attorney for the Child, do you work in any specific courthouse -- is that Family Court?

A. Not only family court.

Q. What other courts, besides family court?

A. Well, there are supreme court, county surrogates court, but very rarely.

It's basically family court and supreme court.

Q. Have you appeared in family court as a Law Guardian/Attorney for the Child, when Judge McGuire was presiding?

A. Yes.

Q. Have you practiced in Sullivan Family Court in a case being presided over by Judge McGuire?

A. Yes.

Q. Have you practiced in Sullivan Supreme Court in cases being presided over by Judge McGuire?

A. I am not sure I understand the question. Can you repeat that?

Q. Have you been an attorney, representing the litigant, in Sullivan supreme court and the case was presided over by Judge McGuire?

A. Yes.

Q. Have you been an attorney representing one of the litigants in Sullivan Surrogate Court --

A. Yes.

Q. -- when the case was being

presided over by Judge McGuire?

A. Yes. Sorry for cutting you off.

Q. Did you know Judge McGuire before he became judge?

A. Yes.

Q. How long have you known him?

A. I don't know exactly, but I believe I became acquainted with him when he was in the district attorney's office.

Q. About how long ago was that?

A. I don't remember. It would be before he was elected, that's for sure.

Q. He started as a sitting judge in January 2011, right?

A. If you say so. I didn't prepare myself for when he was elected.

Q. Did you ever socialize with Judge McGuire, aside from professional meetings or dinners?

A. No.

Q. Since becoming a judge, have you ever had lunch with Judge McGuire, outside of professional events?

A. Yes.

Q. About how often a month would you

have lunch with Judge McGuire?

A. I can't say.

THE REFEREE: Can we get some time frame on this?

Q. Did you have lunch with Judge McGuire in 2011?

A. I don't have any independent recollection of when I have had lunch with the judge. I can tell you prior to these -- the beginnings of these proceedings, we did, on occasion, eat at the same table and have lunch. I can't tell you exactly how many times because honestly, I didn't keep records.

Q. Did that happen through the course of the judge being a judge, from the time he was a judge, until you said, the time that these proceedings started?

A. Well, I am not exactly sure when these proceedings started, but I know there came a point in time when I did not have lunch with him anymore.

Q. Did you start having lunch with him when he started sitting as a judge?

A. There were a few occasions, yes.

Q. Did that continue as the years went by until recently?

A. It's hard to quantify. I know that for the first several years there were occasions where we would be in the same restaurant and either there would be no table available for me to sit separately or for the judge to sit separately. We would ask each other if we could join them. There were a couple, I would say two or three occasions, to the best of my memory, where we might have prearranged to meet at Brother Bruno's, which is where I commonly ate on occasion, when I did eat lunch.

Q. There were times when you arranged lunch with Judge McGuire, to meet him for lunch, while Judge McGuire was a judge?

A. Yes, although, when we had those lunches there were no pending trials, matters on which I was on trial with the judge.

Q. Did Judge McGuire attend any of your family events?

A. Yes.

Q. What family event was that?

A. A party after my son's Bar Mitzvah in, I think, 2015.

Q. I am going to show you what is marked as XI-28.

THE WITNESS: For the Court's information, I do have a visual disability, so I have to kind of remove my glasses and look at the document carefully.

THE REFEREE: Sure.

Q. Can you look at Commission Exhibit XI-28 and let us know when you are finished reviewing it.

A. Okay. I finished reviewing it.

Q. Do you recognize this document?

A. I recognize a portion of the document.

Q. What do you recognize it to be?

A. It appears to be a check, however, it's redacted. There is certain information redacted.

Q. Is that the bottom where the bank account number would be?

A. I would assume so.

Q. In your experience of writing checks, is that where the bank account number is?

A. Yes.

Q. Did your son receive this check on the time of his Bar Mitzvah?

A. No.

Q. Did the --

A. The judge did not attend the Bar Mitzvah. The question was at the Bar Mitzvah.

Q. I said at the time of the Bar Mitzvah.

A. The party that Judge McGuire attended, for probably twenty minutes, was after the Bar Mitzvah and in the evening, is my recollection.

Q. Did your son receive this check in celebration of him becoming Bar Mitzvah'd?

A. Yes.

MS. TISHMAN: I am going to move this into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: The Exhibit is

received.

(Commission Exhibit XI-28 was received in evidence, as indicated.)

THE WITNESS: Do you want me to give it to the stenographer?

MS. TISHMAN: No, leave it there.

THE REFEREE: Just give me one second here. Exhibit XI-28 is received.

Q. Did you contribute to Judge McGuire's election campaign in 2010?

A. Yes. Probably 95 percent of the lawyers in Sullivan County did too.

Q. Did you contribute?

A. Yes.

Q. Do you remember how much you contributed?

A. No, I don't.

Q. I am going to show you what will be marked for identification as XI-55.

JUDGE MCGUIRE: There is a new problem presented by this.

THE REFEREE: Just one second. Has this been marked already? Is this in the book.

MS. TISHMAN: It is just to

refresh his recollection.

JUDGE MCGUIRE: This is the problem. I am not allowed to know who contributed or how much they contributed. It is a completely separate and distinct violation of the Code of Conduct if I am aware of that.

What I would ask, Mr. Kelson has already acknowledged that he contributed. If the Court wants to review that document to know the amount, I have no problem with that, it's somewhat of an in camera, but it's improper for me to know, moving forward from today, if I were to continue on the bench, who contributed and how much.

Ms. Tishman puts me in an untenable position.

THE REFEREE: That is an interesting point. Does the amount of the contribution make a difference?

MS. TISHMAN: No, we can move on.

THE REFEREE: We agree that there was a contribution, but the amount is irrelevant, correct?

MS. TISHMAN: Yes.

THE WITNESS: Well, the --

THE REFEREE: There is no question, sir.

Q. After Judge McGuire became a judge, did you ever email the judge?

A. Yes.

Q. Did you contact Judge McGuire on the email address JudgeMcGuire@[redacted]?

A. Yes.

Q. Have you contacted the Judge on his cell phone number ([redacted]) [redacted]-8568?

A. I believe so.

Q. Have you contacted him on his cell phone number, on his cell phone?

A. I'm sorry?

Q. Have you contacted the Judge on his cell phone?

THE REFEREE: Can we have a time frame on that?

Q. After he became a judge, did you contact him on his cell phone?

A. Yes.

Q. When you say I believe so, is that that you are not sure the exact number?

A. No, I was thinking about the answer, but I believe the answer is yes.

Q. That the number you contacted him on was ([redacted]) [redacted]-8568.

A. Do you have anything that would refresh my recollection? I don't remember the number off-hand?

JUDGE MCGUIRE: Judge, I can move this along and stipulate that is my phone number.

THE REFEREE: The point is that he emailed Judge McGuire on Judge McGuire's personal email account and telephoned Judge McGuire's personal cell phone number; is that the point?

MS. TISHMAN: I would like the stipulation to be put in that that's his cell phone number.

THE REFEREE: Is that what --

JUDGE MCGUIRE: So stipulated.

Q. In 2012, did it come to your attention that the Judge's son, W[redacted] M[redacted], had been arrested?

A. Yes.

Q. How did you learn that?

A. I believe the Judge indicated to me something crazy happened to his son and I asked him what, and he then told me what had occurred.

Q. You said you believe that's what happened --

A. Yes.

Q. Is that what happened?

A. That's the way I characterize my language. I am sorry. I am not guessing and I am not assuming.

Q. If you know the answer, if you can tell us that --

A. I will try.

Q. Did you speak to the judge in person?

A. Yes, I think so.

Q. What exactly did the judge say to you?

A. The judge told me, and in sum and substance recognizing this was probably seven or eight years ago, I don't remember the exact date, that his son, who was attending Oneonta -- the State University of

Oneonta, had been arrested for unlawful possession of marijuana, which is a violation. He told me that he thought there was a problem because although he had questioned his son up and down and he indicated he was not involved with the use or possession of marijuana that -- and he'd never been arrested or convicted before of any crime -- that the district attorney's office apparently took the position that he was not entitled to an adjournment in contemplation of a dismissal or a dismissal in the interest of justice, as provided for by Criminal Procedure Law. If you want I brought the Criminal Procedure Law that I looked at when I was told this by the judge.

Q. And --

A. Which mandates that on a first offense, that the Court upon the request of the defendant, must either dismiss the case or in the interest of justice adjourn the matter in contemplation of dismissal.

Q. My question was what was your conversation was with Judge McGuire?

A. That's what the conversation

entailed.

Q. Let me ask you did you get involved, in any way, in the matter?

A. I don't know that I can answer the question the way you asked it, the word involved.

Q. After the judge spoke to you about his son, W[redacted] M[redacted], what, if anything, did you do?

A. I decided I was going to call the district attorney's office, because I couldn't believe -- I thought we were on another planet, to be honest. So, I called the district attorney's office and indicated I was not representing Mr. M[redacted] but could I -- could you forward on papers to me. His father is a judge and felt uncomfortable communicating directly with the Court, with the district attorney's office, at that time and could you send me the papers so that I can give them to Judge McGuire.

Q. Did Judge McGuire know that you were contacting the district attorney's office?

A. No, not until after the fact.

Q. After you contacted the district attorney's office, did you tell Judge McGuire that you had contacted them?

A. Yes, I did, and I believe I emailed him also.

Q. Who did you speak to at the district attorney's office?

A. Michael Getman, G-E-T-M-A-N.

Q. What is his title?

A. I believe he is the prosecutor for the -- I don't know if he was an ADA for the City. Whether he was characterized as an ADA for the county or whether he was the city prosecutor. I am not sure what his specific affiliation was.

Q. I want to show you what is marked Exhibit X1-1. It's a November 21st through 23, 2012 email exchange.

A. Okay. I reviewed the document.

Q. And do you recognize this document?

A. Yes, I do recognize it.

Q. What is it?

A. It's a chain of emails.

Q. Who is the chain between?

A. Judge and myself.

Q. If we look at this, is your email address on it?

A. Yes.

Q. Is that ZacharyKelson@[redacted]?

A. Yes.

Q. Is the judge's email address on this, JudgeMcguire@[redacted]?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Was this saved on your email server?

A. Yes -- well, no. I don't know about server, but it was saved in the emails that I maintain.

MS. TISHMAN: I ask that this be entered into Evidence as Commission X1-1.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-1 is received.

(Commission Exhibit XI-1 is marked in evidence, as indicated.)

Q. What do these emails pertain to?

A. Well, they -- well, there is several subjects.

One of them is just is an email to the judge concerning a decision I read on the Appellant's Division website and then the remainder of it deals with Judge McGuire's son.

Q. If I can draw your attention to November 21, 2012 at 4:25 p.m. email, it's the middle of page one.

A. Yes.

Q. Is that an email from Judge McGuire to you?

A. Yes.

Q. It says, "Thank you. M.G. sent this to me earlier today. Anything with the guy in Oneonta?"

When it refers to the guy in Oneonta, who did you think the judge was referring to?

A. I am presuming Mr. Getman.

Q. The initials M.G., do you know what that was?

A. Mary Grace.

Q. What is that?

A. Mary Grace was formerly his law clerk. I am sorry, Mary Grace Conneely, C-O-N-N-E-E-L-Y.

Q. Going down to the next email, November 22, 2012, 10:49 a.m. Did you respond to Judge McGuire's email?

A. Yes, I did.

Q. Did you give him an update about what was going on in the case?

A. No.

Q. Did you state, "Nothing from Oneonta?"

A. Yes.

Q. Wasn't that an update about what was happening in Oneonta?

A. No.

Q. Did you contact Mr. Getman in Oneonta after you sent this email?

A. Yes.

Q. Can you describe what happened?

A. Well, there were -- I think he had sent me some documents. I don't recall specific documents, but they related to the case and some information about the underlying issues in this arrest.

Q. I am going to show you what is marked XI-2.

A. Okay. I looked it over.

Q. Do you recognize this email exchange?

A. Yes.

Q. Do you recognize the addresses on this email exchange?

A. Yes.

Q. Is it your address?

A. Yes.

Q. Is it Judge McGuire's address?

A. Yes.

Q. Is it an address for the Oneonta City prosecutor?

A. Yes.

MS. TISHMAN: For the record, Oneonta is spelled, O-N-E-O-N-T-A.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Was that email saved by you?

A. Yes.

MS. TISHMAN: I'd like to move this into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-2 is received.

(Commission Exhibit XI-2 was marked in evidence, as indicated.)

Q. Going to the November 20, 2:23 p.m. email on page one. This was an email --

A. Sorry, what time?

Q. 2:23 p.m., the first email.

A. Thank you.

Q. Page one. Is this an email from you to the Oneonta City Prosecutor?

A. Yes.

Q. Did you blind copy Judge McGuire on it?

A. I believe I did, yes.

Q. Did you?

A. Yes.

Q. Did the judge, at this point, Judge McGuire, tell you not to copy him on any emails in the future?

A. No, no.

Q. I am now going to go further down the page to November 21, 2012 at 4:28 p.m.,

still on page one, do you see that?
A. Yes.
Q. Is this the judge's response to your earlier email that you just reviewed?
A. Yes.
Q. Did the judge give his opinion to the strengths of the case?
A. You are asking me to give you a conclusion. I think the document kind of speaks for itself. Whatever it says, it says.
Q. The judge stated that, "I can't retain these charges, as there is no presumption of possession even in a car or a house, much less in an open parking lot." Is that talking about the legal issues in the case?
A. I don't want to come to any conclusion, other than whatever he said in the document he said in the document.
Q. Is that what you understood it to be?
A. I don't understand what the question is. Can you repeat the question.
Q. When you read this email, the

4:28 p.m. email and the judge said what I just read to you, was it your understanding that the judge was giving his legal opinion about the strength of the case?

JUDGE MCGUIRE: Objection.

Relevance?

The email is what it is.

THE REFEREE: Overruled.

A. I don't know if I can answer this question. I think he was saying that, exactly what he said there. I mean, I don't -- it's just two lawyers talking. I don't think that he was rendering legal opinion or that I was rendering legal opinions. I think the bottom line is both of us couldn't believe that a UPM wasn't ACD'd.

Q. You said there were two lawyers talking, two lawyers talking about legal issues pertaining to a case?

A. Two lawyers just talking about -- well, when I say two lawyers, one was a judge obviously and one was -- but he was not acting as a judge when he was talking to me.

Q. And talking about the legal issue

in the case, right?

A. I don't even think it was legal issues. I think it was what planet is Oneonta on that a UPM is not an ACD. That is what this was all about. Apparently Oneonta didn't feel -- the City Court in Oneonta, both the judge and the prosecutor felt that the law, which is very clear and unequivocal, didn't apply to them, which I was just astounded, absolutely astounded.

Q. That wasn't my question.

I am now going to draw your attention to the bottom of page one, going to page 2, November 27, 2012, 1:41 p.m. email.

A. From Getman.

Q. I was going to ask who is that email from?

A. From Mr. Getman.

Q. He says, "I haven't heard from the UPD officer yet," what does UPD mean?

A. I'm not sure, but -- I don't know what the specific initials are, but I believe it's probably University Police Department. My recollection was that the incident in question, the appearance tickets

were issued by a university police, Oneonta University police officer or a security officer. I am not sure what he is called.

Q. Did you forward the email from Mr. Getman to the judge?

A. If I can just have a moment. Yes.

Q. If we can go to the bottom of page 2, November 27, 2012 the 10:06 email.

A. Yes.

Q. Is that an email from Judge McGuire to you?

A. Yes.

Q. Is the judge using the email address JudgeMcGuire@[redacted]?

A. Yes.

Q. That is the email address he used in all the emails that we talked about?

A. Yes and I believe all the emails you will ask me about in the future.

Q. Okay. So, I don't have to answer the question again?

A. That's up to Judge McGuire. I am just telling you that these are all the emails I supplied to you, obviously and to the best of my recollection that's exactly

correct that they are all either from me or from JudgeMcGuire.net, as you said, plus Mr. Getman.

Q. In this email the judge is telling you what happened in court when his son appeared, right?

A. Yes.

Q. Then the judge is, on the next page, outlining in steps, he has a one and a two, the legal issues that are involved in this case?

A. I'm sorry, the question was? The email says what it says. You are asking me to interpret what the email says.

Q. Did you take it, when you read this email, that the judge was discussing with you the legal issues in this case?

A. No, he was telling me what his thoughts were on it. He wasn't discussing it with me.

Q. He was telling you his thoughts about the legal issues in the case?

A. It appears that's correct, yes.

Q. Was there a discussion about how to deal with the next appearance?

A. Was there a discussion, no.
Q. In this email?
A. Yes.
Q. There was a discussion about how to deal with the next appearance?
A. Yes.
Q. Was there a discussion that -- it says, "We need to have one of us file a Notice of Appearance." What did you take the word "we" to mean?
A. Him or myself.
Q. Him being Judge McGuire?
A. Yes.
Q. Now, if we could --
A. But, I did not file the Notice of Appearance, obviously.
Q. If we can continue to page 3 and go to the 6:42 a.m., November 28, 2012 --
A. Yes.
Q. -- at 6:42 a.m.
A. Yes.
Q. Is that an email from you to Judge McGuire?
A. Yes.
Q. It says, "I will find you

tomorrow and we will talk." Did you talk to the judge after sending this email?

A. I don't have a specific recollection of that. We may not have.

Q. The next email right under it, that's 9:34 p.m., is the judge telling you his schedule and when he would be free to talk to you?

A. Is there a question?

Q. Yes.

A. What's the question? You read -- what was the question? I am sorry.

Q. You don't remember talking to the judge after you received -- you sent this the 6:42 a.m. --

A. No.

Q. -- email and you received the 9:42 email?

A. No, I don't.

Q. On the bottom of that page, November 29, 2012 at 6:42 there is an email from you to Judge McGuire and it says, "Okay, I think I have someone to cover the case."

Did you get someone to cover the

case?

A. No.

Q. If we can look at the attachment to this email --

A. Yes.

Q. -- the last page?

A. Yes.

Q. What is this?

A. It is an appearance ticket from SUNY Oneonta PD.

Q. And is this the attachment that went with the November 27th, 1:49 email on page 2?

A. Yes.

Q. Where did you get this appearance ticket from?

A. The judge may have given it to me. In fact, I am sure he did give it to me.

Q. I am going to show you what is marked Commission XI-3. Let me know when you have finished reviewing it.

A. Okay.

Q. Do you recognize this?

A. Yes.

Q. Is this email that exchanged between you and the judge and Mr. Getman?

A. Yes and no. It's an email exchange between myself and Judge McGuire. A separate email exchange back and forth with Mr. Getman, but Mr. McGuire was not part of the exchange between myself and Mr. Getman.

Q. Did you send and/or receive the emails in this email exchange?

A. Yes.

Q. Was this email saved by you?

A. Yes.

MS. TISHMAN: I want to introduce this into evidence as Commission Exhibit XI-3.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-3 is received.

(Commission Exhibit XI-3 was marked in evidence, as indicated.)

Q. If we can go to the middle of page two, it's the November 28, 2012, 22:15 email.

A. November, what date?

Q. Page two.

A. What date?

Q. Middle of page two, November 28, 2012, 22:15 email?

A. That's actually not an email that was sent to me. That was a -- Getman sent that to me, that was from the officer, apparently the arresting officer to Getman, which Getman apparently sent it to me.

Q. Is the arresting officer is that Mark Cardinali?

A. That's the name that's on there, yes.

Q. C-A-R-D-I-N-A-L-I.

I'd like you to give your attention to further up on that same page, the top of page two, the November 30, 2012, 2:11 p.m. email?

A. Yes.

Q. Is that an email from you to Mr. Getman?

A. Yes.

Q. You are discussing ACD's?

A. No, I said, "Maybe I am from another planet, but isn't Mr. M[redacted]

entitled to an ACD, as it is his first offense. Please advise. I just -- you are trying to characterize what it says. It says what it says.

Q. Had you and the judge discussed asking the prosecutor for an ACD prior to this November 30, 2012 email?

A. No. I didn't need to discuss it with the judge.

It was a matter of law that he was entitled to it and there was no discussion to be had about it. Judge McGuire may have expressed his opinion about it, but I think both of us were just again flabbergasted that a UPM wasn't an automatic ACD and that's why I asked Mr. Getman and the response was, "Not in our court. We don't interpret the statute that way." And I brought the statute with me today if you want to introduce it as evidence.

Q. You already told us that --

A. Okay.

Q. -- and I will --

A. I just couldn't believe it.

Q. -- if I need to use that statute, I will let you know?

A. Okay.

THE REFEREE: Mr. Kelson, we would do a lot better if you would just listen to the question and answer the question and please don't argue with the attorney.

THE WITNESS: I just --

THE REFEREE: Please --

THE WITNESS: It's being characterized --

THE REFEREE: -- just don't argue. I am here to make rulings not you and if there are Rulings necessary we have a very capable attorney/judge who can stand up and make an objection.

THE WITNESS: I apologize.

THE REFEREE: Your role is to answer the questions, not to argue.

Q. Were these emails between and you Mr. Getman forwarded to the judge?

A. Yes.

Q. I want to draw your attention to page one, the top of page one, December 3, 2012, 3:53 a.m. email. This was an email

from the judge to you, Judge McGuire to you, right?

A. Yes.

Q. How did the judge know about the discussions with Mr. Getman?

A. Are you referring to my many emails with Mr. Getman? How did he know that?

Q. In this email, the judge sent to you, he's talking about Mr. Getman and his position and I am asking how did the judge know about what you had discussed with Mr. Getman?

A. I probably forwarded the email to him, Mr. Getman's response and the documents from the prosecutor -- sorry, the arresting officer.

Q. In this email was there discussions about who would appear in court on W[redacted] Mc[redacted]'s behalf?

A. Which email are we referring to, the December 3rd --

Q. Page one --

A. -- the 3:53?

Q. -- December 3rd, 3:53 a.m.

A. I believe the email says that Judge McGuire was going to submit -- submitted a Notice of Appearance, an Affirmation of Actual Engagement.

Q. That the judge was?

A. Yes.

Q. Did the judge thank you for help in this matter?

A. Yes.

Q. Now, going to --

A. If I can just -- I'm sorry -- it says, I am just reading it, there was going to be a Notice of Appearance an Affirmation of Actual Engagement to the case, between my brother and I will handle it. We will handle it. I am sorry. I just want to clarify it.

Q. Going to page three of this Exhibit.

A. Yes.

Q. The top, December 3, 2012, 10:46 a.m.

A. Yes.

Q. You state that you felt that you had failed Judge McGuire. Why did you feel that you failed him?

A. As I testified before, I read the statute and the statute was clear and unequivocal and I thought a simple phone call to find out was there some extenuating circumstance that would prohibit the use of the Criminal Procedure Law, automatic ACD, and there wasn't any apparently, so I just didn't know why -- I felt that he should have given it to him and a simple phone call should have done that as it is with 99 percent of the cases of UPM, on first offense. I felt that I failed to make sure the kid got an ACD and it's commonly offered in most courts, even without counsel, just so you know.

Q. I am going to draw your attention to page 3, the bottom, December 3, 2012 at 6:48 p.m.

A. Yes.

Q. It's from Judge McGuire to you?

A. Yes.

Q. That's in response to the 10:46 a.m. email that we just talked about?

A. Yes.

Q. Did the judge state to you, "Your

great and wonderful friend," right?

A. That's what it says, yes.

Q. On the next line it says, "Missed you at Brother Bruno's today." What is Brother Bruno's?

A. That's a restaurant in Monticello, actually the Town of Thompson, that is in Monticello.

Q. Was that one of the restaurants where you have had lunch with Judge McGuire?

A. I have had lunch with Judge McGuire at Brother Bruno's.

Q. May I ask you to look at what is marked Exhibit XI-4. Let me know when you have finished looking at it.

A. Okay.

Q. Do you recognize this?

A. Yes.

Q. Is this an email exchange between you and the judge?

A. Yes.

Q. Do you recognize the email addresses pertaining to you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Was this saved by you?

A. Yes.

MS. TISHMAN: I am going to move this into evidence XI-4.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-4 is received.

(Commission Exhibit XI-4 was marked in evidence, as indicated.)

Q. If we can go to the top of page one, the email February 26, 2013 at 5:42 p.m. This is an email from you to Judge McGuire. You state, "How did it go?" What were you referring to?

A. The case involving his son.

Q. What specifically were you referring to?

A. How did it go.

Q. Did something happen --

A. I don't --

Q. -- that you were asking about how it went?

A. Well, he obviously went to court. I am asking how it went.

Q. When you say, "How did it go?" You were referring to Judge McGuire's appearance in court?

A. Well, I shouldn't say that. I don't know whether it was Judge McGuire or his brother, but how did the case go involving his son.

Q. Then at 3:48 a.m. on February 27, 2013, is that Judge McGuire's response to your question?

A. Yes.

Q. Did the judge ever talk about whether it was proper for him, as a sitting judge, to represent his son in this manner?

A. No.

Q. During the course in this case did you appear as a law guardian in Family Court when Judge McGuire was presiding?

A. When you refer to this case, which case are you --

Q. During the course of the P[redacted] V. W[redacted] M[redacted] case, did you appear as a law guardian in Family Court when Judge

McGuire was presiding?
A. I don't have a specific recollection. I appeared on many law guardian cases in different cases over the years, but I would presume that I did.
Q. Were you a law guardian in 2012?
A. Yes.
Q. Were you appearing in 2012 in family court in front of Judge McGuire?
A. Yes.
Q. Were you a law guardian in 2013?
A. Yes.
Q. Were you appearing in 2013 as a law guardian in front of Judge McGuire?
A. Yes.
Q. During the course of this case did you appear representing any parties in supreme court cases when Judge McGuire was presiding?
A. I don't have a specific recollection. Do you have anything that could refresh my recollection, you know, we are talking about -- you are asking about dates that occurred six years ago.
Q. Did you appear in supreme court

in 2012?

A. Yes.

Q. Did you appear in supreme court in 2013?

A. Yes.

Q. Do you know Tina McTighe?

A. Yes.

Q. Going back one second. In 2012 did you appear in supreme court in cases where Judge McGuire was presiding?

A. I am going to presume, yes. If you have anything that could refresh my recollection because it was seven years ago, six or seven years ago. Do you have a specific case that -- with an index number might help because the index number usually has the year?

Q. Okay. We will move on and --

A. I am sorry. I am trying to help, I just -- it was a while ago.

Q. That's fine.

Do you know Tina McTighe?

A. Yes, I do.

Q. Were you involved in a traffic ticket that she received in 2012?

A. Yes.

Q. Was that a speeding ticket in Schoharie County? S-C-H-O-H-A-R-I-E.

A. Schoharie County. You have to be upstate to know this. Yes.

Q. How did it come about you represented Ms. McTighe?

A. I think either the judge or his wife indicated that she got a ticket in Schoharie County. I actually knew Tina McTighe before I was involved in a will in a Surrogate's Court matter with her. I knew that she lived in Rock Hill. I learned, I didn't know this at the time that I represented her, that she was friendly with Judge McGuire's wife and --

Q. How did it come to your attention that she had a speeding ticket?

A. I think the judge either emailed me or told me about it some place. I am not sure exactly where.

Q. After you had a discussion with Judge McGuire about the speeding ticket in Schoharie County, did you represent Ms. McTighe?

A. I appeared, yes. I put a Notice of Appearance in, I believe.

Q. And --

A. Actually, I may have referred it to an attorney to handle, sorry.

Q. I am going to show you what is marked for identification as Exhibit XI-6.

A. Yes.

Q. Do you recognize this?

A. Yes, I do.

Q. Is your email address on this two-page document?

A. Yes. Actually on the first page only, sorry.

Q. Is Judge McGuire's email address on the first page of this document?

A. It is.

Q. Is Corrine McGuire's email address on this document?

A. It is.

Q. Did you send and/or receive the emails in this chain?

A. Yes.

Q. Was it saved on your email?

A. Yes.

MS. TISHMAN: I am going to mark it into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Let the record reflect that Judge McGuire said, "No objection," so, Exhibit XI-6 is received.

(Commission Exhibit XI-6 was marked in evidence, as indicated.)

Q. Now, going to the October 11, 20 --

THE REFEREE: Can we just identify that Corrine McGuire, I assume, is --

MS. TISHMAN: I was just going to do that.

Q. October 11, 2012, a 9:06 a.m. email. There is an email address for Corrine McGuire. Who is Corrine McGuire?

A. Judge McGuire's wife.

Q. Does the email pertain to Tina McTighe?

A. Yes.

Q. This is an email from you to Corrine McGuire, CC'd to the judge, right?

A. The top part is, yes.

Q. It says, "Please have Tina sign this." What are you referring to?

A. The waiver that's attached.

Q. Is this waiver the waiver that you sent to Corrine McGuire to Judge McGuire?

A. Yes.

Q. This waiver has to do with the waiver of the right to be present during a pretrial and trial proceedings?

A. Yes, it's the common method of when people are appearing on non-misdemeanor traffic tickets or they are just violations, that they authorize an attorney to appear on their behalf so that the client didn't have to come to court on a pretrial conference.

Q. Why did you attach this document to your email?

A. So that it could be signed. I knew that Corrine was friends with her. I knew that she was going to get it signed and get it back to me so that the attorney handling the matter, in the town of Richmondville, I believe, would have the

waiver when he had the pretrial conference scheduled.

Q. The next email had the name John Lindsay?

A. Yes.

Q. Who is John Lindsay?

A. He is an attorney who I did work with. If he had tickets I would cover them for him and vice versa, so --

Q. When you are talking about tickets, you are talking about?

A. Traffic tickets, sorry.

Q. After you sent this the email, did the judge ask you not to send him any emails or talk to him about the McTighe case?

A. No, there was no reason to do so.

Q. I am going to show you what is marked as Commission XI-7.

A. Okay.

Q. Do you recognize this document?

A. I do.

Q. Are these emails between you and Judge McGuire?

A. Yes, but there is also an email

to Corrine McGuire, copied to Judge McGuire.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Were these emails saved by you?

A. Yes.

MS. TISHMAN: I am going to ask that XI-7 be admitted into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-7 is received.

(Commission Exhibit XI-7 was marked in evidence, as indicated.)

Q. We can go to page one, the top of page one, October 12, 2012 at 7:32 a.m. It's an email from you to Judge McGuire. What did you mean when you said, "Okay, I would run her license?"

A. I will run her license.

Q. What does that mean?

A. I have a DMV account. I do have a substantial practice in traffic tickets. I have a New York State DMV account that as long as I have the name and/or date of birth and/or driver's license ID I can check to

see what the defendant's license is like and it's important when you negotiate with the prosecutor or district attorney, depending on the circumstances, what the record looks like.

Q. When you sent this to Judge McGuire, is the email above that, the October 13, 2012, 4:42 a.m. email, is that Judge McGuire's response?

A. I am not sure it's a response to that, but it could very well be.

THE REFEREE: I am sorry, how can that be a response if that's three hours earlier?

MS. TISHMAN: One is October 12th and one is October 13th.

THE REFEREE: Okay. I see.

Q. Why did you tell Judge McGuire that you were going to run Tina McTighe's, run her license?

A. Because that's what lawyers that handle traffic tickets do.

Q. But why were you telling specifically Judge McGuire?

A. He had sent -- he or his wife

sent me a ticket and I was just letting him know I was going to be taking care of the things that need to be taken care of when one represents a defendant.

Q. Did Judge McGuire ever tell you not to inform him or not to keep him updated on Tina McTighe?

A. No, I don't believe there is any need for him to say that.

Q. If you go to page two, October 13, 2012, 5:27 a.m. This is an email from you to Judge McGuire. Is this your updating after you ran the license, the DMV check?

A. Yes.

Q. This is your updating to Judge McGuire?

A. No, I am just telling him that she had two points on her license, yes, and that his wife dropped off the waiver yesterday.

Q. Whose wife was that?

A. Mr. McGuire's wife.

Q. Did you get a response from the judge? Let me make this easier, page three at 5:31 a.m., the October 13, 2012 --

A. Yes.

Q. Is Judge McGuire suggesting what he would like the disposition to be?

A. No, he is asking me. He is not suggesting it. I mean you're -- anybody who does traffic tickets doesn't have to suggest to another lawyer who does traffics how to get dispositions.

MS. TISHMAN: I would ask that he answer my questions and I would ask the referee to instruct the witness to answer my questions.

THE REFEREE: I have already. I will do it again.

THE WITNESS: Yes, sir.

THE REFEREE: You know better.

THE WITNESS: Okay.

A. Can you repeat the question, please.

Q. Page two, the 5:31 a.m. email. Is the judge telling what he thinks should be the outcome of this case?

A. No, he is asking me if he can get -- if I can get a 1201A.

Q. A 1201A is?

A. A no points parking violation, with a fine, generally.

Q. If we can go to page one, October 12th. At the bottom of page one, sorry. The October 11th, 9:07 a.m. email. Sorry, just give me one second. If we can go to page one, the middle of page one, the email from Mike McGuire to you October 12, 2012 at 3:45?

A. 3:44.37.

Q. A.m.

A. Okay.

Q. The judge says, "Thank you. I'll get that done for you within the next couple of days." What was the judge referring to?

A. The waiver.

Q. To get that signed?

A. Yes.

Q. Now I am going to show you what was marked Exhibit XI-8.

A. Okay. I reviewed the document.

Q. Do you recognize it?

A. Yes.

Q. Do you recognize the email address within this document?

A. Yes, I do.

Q. Are they your email address and Judge McGuire's email address?

A. Yes, yes they are.

Q. Did you send and/or receive the emails in the email chain?

A. I did.

Q. Was this saved by you?

A. Yes.

MS. TISHMAN: I am going to move this into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-8 is received.

(Commission Exhibit XI-8 for was marked in evidence, as indicated.)

Q. If we can go to the email on the first page, November 7, 2012, 6:09 p.m. Is this an email about the disposition that was received in this case?

A. Yes.

Q. You referred to, "Can you have Inky print out the fine notice." Who is Inky?

A. That's the judge's wife. One of

her nicknames.

THE REPORTER: Can you spell that?

THE WITNESS: I-N-K-Y.

Q. It's the judge's wife's nickname?

A. A nickname that I was aware of that she uses.

JUDGE MCGUIRE: I will stipulate to that.

Q. That's Corrine?

A. Yes.

Q. Did you ask the judge to do something regarding this case?

A. Yes, I asked -- yes, I did.

Q. What did you ask him to do?

A. Print out the fine notice and make sure that Tina takes care of the fine.

Q. Was the fine notice attached to this document?

A. It was.

Q. Did the judge tell you he couldn't do that?

A. I don't believe he was required to do that, but no, he didn't.

Q. Can you just answer my question please.

A. No, he did not.

Q. If we can go to page 3 of this document. There is only one email. The email on this page from November 8, 2012 at 3:43 a.m. Is this the judge's response to you?

A. Yes.

Q. Did the judge say he would take care of what you requested?

A. Yes, and he thanked me.

MS. TISHMAN: I just got word, and I think this would be a good time to take a break.

THE REFEREE: I understand what you are talking about, so we can set up the equipment for the witness we are going to take out of order, correct?

MS. TISHMAN: Yes.

THE REFEREE: If that is okay with Judge McGuire?

JUDGE MCGUIRE: Of course.

THE REFEREE: We can go off the record.

(A recess was taken.)

THE REFEREE: On the record.

We have set up a Skype system so

that we can take the testimony of the next two witnesses, out of order via Skype. As I understand it, this procedure has been consented to by Judge McGuire.

JUDGE MCGUIRE: Correct.

THE REFEREE: Ms. Tishman, you may proceed.

Before we do that, let me deal with the witness. Is your name Eileen Moore?

THE WITNESS: Yes, it is.

THE REFEREE: Can you hear me?

THE WITNESS: Yes.

THE REFEREE: My name is Mark Arisohn. I am the referee in this matter. If there are any objections to your testimony I will be making rulings.

I want to let you know that your testimony is going to be transcribed by a court reporter and also digitally recorded and then the proceedings will be transcribed, so there will be a record of your testimony.

Please speak slowly and clearly, directly into the microphone and refrain

from moving away from the microphone and talking over other speakers. In other words, wait for the question to be asked before you answer. Make sure you answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise, as it becomes amplified on the recording.

If you have any cell phones or other electronics, please, turn them off.

Have you heard me?

THE WITNESS: Yes.

THE REFEREE: Can you stand up and raise your right hand.

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are going to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please sit down and state your full name and spell it for the record.

THE WITNESS: Eileen E. Moore, E-I-L-E-E-N E. M-O-O-R-E.

THE REFEREE: Thank you. Ms. Tishman, you may proceed.

MS. TISHMAN: Thank you. I just need one second.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Ms. Moore.

A. Good morning.

Q. Are you retired? Are you working at this time?

A. No.

Q. Where do you currently reside?

A. [redacted]

Q. [redacted] is [redacted]?

A. No.

Q. Can you spell it for us?

A. [redacted].

Q. When did you move into your current residence?

A. April 9, 2015.

Q. When was the closing?

A. I am not sure.

Q. Do you recall, was it in 2015 or 2014?

A. I believe it was 2014.

Q. Was it the fall of 2014?

A. Yes.

Q. Who did you buy the property from?

A. It was in foreclosure.

Q. What county were you living in prior to moving to your current property?

A. Ulster.

Q. Is that the same county as your current property?

A. Yes.

Q. How did you find your current property?

A. My daughter found it.

Q. Why did you want to move to your current home?

A. Because I could no longer go up and down stairs.

Q. Who did you contact to put in a bid for the property?

A. My daughter did it.

Q. Is your daughter's first name H[redacted]?

A. Yes.

Q. Did you work with a real estate broker?

A. She did all the work.

THE REFEREE: Can you clarify who the "she" is?

THE WITNESS: She is my daughter, H[redacted] DePew.

Q. How do you spell her last name?

A. D-E-P-E-W.

Q. Is she married?

A. Yes, she is.

Q. What is her husband's name?

A. Christopher.

Q. That's Chris DePew?

A. Yes.

Q. Where is Chris employed?

A. Sullivan County Community College.

Q. What is his title?

A. Athletic Director and Dean of Students.

Q. Do you know Michael McGuire?

A. Yes, I do.

Q. How do you know Michael McGuire?

A. Through my son-in-law,

Christopher DePew.

Q. Are Christopher and Michael friends?

A. Yes, I believe so.

Q. Have you met Michael in person?

A. Yes, I have.

Q. Have you ever socialized with him?

A. What do you mean by socialized?

Q. Have you ever seen him -- well let me ask you this, do you ever go to Sullivan County Community College --

A. Yes.

Q. -- where your son-in-law works?

A. Yes.

Q. Do you attend athletic events there?

A. Yes.

Q. Are they basketball games?

A. Yes.

Q. Have you ever seen Michael McGuire at those basketball games?

A. Yes.

Q. Is Michael McGuire involved in the basketball games in any way?

A. What do you mean by involved?

Q. Did he announce the basketball games at Sullivan County Community College?

A. Yes.

Q. When you were at the basketball games, did you ever speak to Michael McGuire?

A. Yes, sometimes, not all the time.

Q. Going back to the property at [redacted], did you hire an attorney?

A. No.

Q. Did there come a time that an attorney helped in the purchase of the home at [redacted]?

A. What do you mean did an attorney help?

Q. Was there ever an attorney that help you and your husband purchase that house?

A. We never met with an attorney.

Q. Do you know what was the name -- I understand you didn't meet with an attorney, was there an attorney helping with the purchase of the house?

A. I believe so.

Q. Who was that?

A. Kenneth McGuire.

Q. Did you ever speak to Ken McGuire by telephone?

A. No.

Q. Did you ever meet with Ken McGuire?

A. No.

Q. Do you know Ken McGuire's relationship to Michael McGuire?

A. No. I believe it's his brother.

Q. Had it come to your attention that Ken was the attorney on the purchase of the house?

A. I believe so.

Q. How did you learn that Ken McGuire was the person helping with the purchase of the house?

A. I have no idea.

Q. Did you ever meet Michael McGuire in person about the sale of the property?

A. What do you mean by sale of the property?

Q. Did Michael McGuire ever come to your house?

A. Yes, he did.

Q. Was that in 2014?

A. I believe so.

Q. Was that having to do with the purchase of your current home?

A. He brought paperwork for us to sign for the lawyer.

Q. Did Michael McGuire come into your home?

A. Yes.

Q. Did you meet with him in your house?

A. Yes.

Q. Who else was present besides Michael McGuire?

A. Myself, my husband, Philip.

Q. Did you, Philip and Michael McGuire sit at like a dining room table at your house?

A. Yes.

Q. When Michael McGuire came to your house, what did he say to you?

A. I don't remember. It was five years ago. I don't remember what he said to us five years ago.

Q. I am going to show you what has been marked into evidence as X-18.

THE REFEREE: 10 dash?

MS. TISHMAN: 18.

THE WITNESS: This has EXX-18.

Q. If you can look at this, is this a residential contract of sale?

A. That's what it says.

Q. If you look at the last page, does it have your signature on it?

A. Yes.

Q. Is this the document that Michael McGuire brought to your house when he came and visited?

A. I assume so. My signature is here. I assume this was the paper that was brought to us.

Q. When Michael McGuire came to your house, he did bring papers that were related to the purchase of the house at [redacted] right?

A. Yes.

Q. Did he explain the paperwork to you? I didn't hear your answer.

A. Yes.

Q. Did you have to sign that paperwork?

A. Yes, my signature is on this paperwork.

Q. You are referring to X-18, right?

A. Yes.

Q. Did Michael McGuire tell you where to sign the document?

A. Yes.

Q. Did he wait for your to sign the document?

A. Yes.

Q. Did he take the document with him when he left?

A. I believe so. I'm not sure. Like I said, it's five years ago.

Q. Who gave you updates about what was going on with the purchase of the house?

A. My daughter.

Q. That was Heather?

A. Yes.

Q. Did Ken McGuire ever give you updates about the purchase of the house?

A. I did not speak to Ken McGuire.

Q. I am asking you whether Ken

McGuire ever gave you updates?

A. I said I did not speak to Ken McGuire.

Q. I am sorry I misunderstood what you said. Did you use a title company in this case?

A. Yes.

Q. Was that All County Title company?

A. Yes, All County Abstract.

Q. How did you get their name?

A. I guess through the lawyer, Mr. McGuire, Ken McGuire.

Q. You never spoke to him, did you?

A. No, I didn't.

MS. TISHMAN: Ms. Moore, I have no questions for you, but now Judge McGuire might be asking you some questions.

THE REFEREE: You may cross.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Ms. Moore, good morning.

A. Good morning.

Q. Back in 2014 your family decided to sell the home that you had been in for 40

years plus?

A. Yes.

Q. Your daughter was primarily helping you with that, Heather?

A. Yes.

Q. Heather, and maybe to a lesser extent, Chris?

A. Yes.

Q. Heather works for the State of New York, correct?

A. Yes.

Q. She does contracts with Corrections?

A. She does.

Q. Do you recall having a conversation with Heather where it was expressed that you didn't really think you needed a lawyer to do this job, to complete this sale?

A. Correct.

Q. You really thought that with Heather and her expertise you could get it done?

A. Yes.

Q. Do you remember after one of the

basketball games we had a discussion?

A. Yes.

Q. And I said to you that I could not do the transaction for you?

A. Correct.

Q. And that if you wanted to proceed without a lawyer, you should make sure you get a title, correct?

A. Correct.

Q. And a survey?

A. Yes.

Q. And a home inspection?

A. Yes.

Q. You did not get a survey, did you?

A. I am not sure. I don't know. I think we did. I am not sure.

Q. Then I suggested you should have some attorney take a look at the contract?

A. Yes.

Q. Because it was a foreclosure?

A. Correct.

Q. I didn't give you any legal advice on that contract, did I?

A. No, you didn't.

Q. And Heather asked if my brother would be able to do that?

A. Correct.

Q. She was aware that my brother was also an attorney?

A. Yes.

Q. And we agreed to do that?

A. Yes.

Q. Do you know how my brother got the contracts?

A. No, I do not.

Q. Ultimately, I stopped by your home with an envelope with multiple copies of the contract?

A. Yes.

Q. You opened the envelope, or actually your husband did?

A. Yes.

Q. Took them out and they were all marked from my brother with "sign here, sign here, sign here?"

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Do you remember there were little stickers on it that indicated where they

should be signed or initialed?

A. Yes, there were.

Q. Do you remember we sat at your table --

A. Yes.

Q. -- in the kitchen in your old house?

A. Yes.

Q. You just had a knee replacement done?

A. I was waiting for a knee replacement, yes. I was in a wheelchair.

Q. You were waiting and you were in a wheelchair?

A. Yes.

Q. I knew you were in a wheelchair?

A. Yes, you did.

Q. We had talked about it?

A. Yes.

Q. I agreed I would come by with the contract?

A. Yes.

Q. And I did that?

A. Yes, you did.

Q. Did I give you any legal advice,

with respect to the contract?

A. No, you did not.

Q. I told you to sign them and indicated where you had to sign them?

A. Yes, that's right.

Q. You don't have any recollection what happened to the packet containing the contracts thereafter?

A. No.

JUDGE MCGUIRE: Nothing further.

MS. TISHMAN: I have no other questions.

THE REFEREE: Ms. Moore, you are excused. Thank you.

THE WITNESS: Thank you.

(The witness exited the room.)

(The witness entered the room.)

THE REFEREE: We have Philip Moore now?

THE WITNESS: Yes, I can hear you.

THE REFEREE: My name is Mark Arisohn and I am the referee assigned to this case to make a report regarding the matter. Okay?

THE WITNESS: Okay.

THE REFEREE: I want to let you know that a court reporter will transcribe your testimony and she is sitting next to me. In addition, these proceedings are going to be recorded and after all of that a transcript is going to be made of your testimony. Do you understand that?

THE WITNESS: Not really, but whatever you got to do.

THE REFEREE: Okay. I want to ask you that when you speak, you speak slowly and clearly, directly into the microphone in front of you and refrain from moving away from the microphone and talking over any speakers, so that if somebody is asking you a question, wait until the question is finished before you answer.

Okay?

THE WITNESS: Okay.

THE REFEREE: Answer each question with words, not a nod or a gesture and if you have any cell phones or any other electronic

equipment, please turn those off, okay?

THE WITNESS: You got it.

THE REFEREE: Would you please rise and raise your right hand.

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: To the best of my ability.

THE REFEREE: That's all we ask. Please sit down and state your full name and spell it for the record.

THE WITNESS: Philip Moore, Philip with one "l", M-O-O-R-E.

THE REFEREE: You may proceed, Ms. Tishman.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Mr. Moore. Are you currently retired?

A. Yes.

Q. What type of work did you do before you retired?

A. I was always a line worker.

Q. Where do you currently live?

A. [redacted].

Q. What county is that in?

A. Ulster County.

Q. When did you move into your current house?

A. I guess it would be four years ago.

Q. Was the closing of your current house, the purchase of it, in 2014?

A. I am not sure when the closing was. I think that's when it was. I am not positive.

Q. Was this a sale from a property from a foreclosure?

A. Yes.

Q. What county were you living in prior to moving to your current property?

A. Ulster.

Q. How do you find out about the property at [redacted]?

A. From my daughter.

Q. What is your daughter's name?

A. Heather.

Q. Why did you want to move?
A. My wife was in a wheelchair and we were in a two-story house and we wanted to get on one floor.
Q. Is your current residence on one floor?
A. Yes.
Q. Who did you contact to put in a bid for the property?
A. That would be my daughter.
Q. Your daughter Heather took care of that?
A. Yup.
Q. Did you work with a real estate broker?
A. Excuse me?
Q. Did you work with a real estate broker?
A. Heather took care of all that.
Q. Is Heather married?
A. Yes.
Q. What is her husband's name?
A. Chris.
Q. Is the last name DePew?
A. Yes.

Q. Is he Dean of Students and Athletic Director of the Sullivan County Community College?

A. Yes.

Q. Do you know Judge Michael McGuire?

A. Try that one more time.

Q. Do you know Michael McGuire?

A. Yes.

Q. Have you ever met him in person?

A. Yes.

Q. Did you ever attend basketball games at Sullivan County Community College?

A. Yes.

Q. Did you ever see Michael McGuire at those basketball games?

A. Yes.

Q. Did Michael McGuire announce the games at the college?

A. Yes.

Q. Did you speak to Michael McGuire when you attended those basketball games?

A. Yes, a few times.

Q. Did you have an attorney handling the purchase of your house at [redacted]

[redacted]?

A. Heather took care of all of that.

Q. Sorry, I didn't hear you?

A. My daughter took care of all that.

Q. Heather?

A. Yes.

Q. Did you ever speak to somebody named Ken McGuire?

A. Not really, because he took care of -- he took care of our thing. I didn't really speak to him. I would not know him if I fell over him, to tell you the truth.

Q. Did you ever meet Ken McGuire?

A. No.

Q. Did you ever speak to him in person?

A. Try again?

Q. Did you ever speak to Ken McGuire in person?

A. No, not that I know of.

Q. Did you ever speak to Ken McGuire by telephone?

A. Not that I know of.

Q. Did Michael McGuire ever come to

your old house and bring paperwork regarding the purchase of your current property?

A. Yes.

Q. When he came to your old house, did he come into the house?

A. Yes.

Q. Who was there?

A. Just my wife and I.

Q. That's Eileen Moore?

A. Yes.

Q. When Michael McGuire came into the house did you all sit together at a kitchen table or a dining room table?

A. Yes.

Q. What happened when Michael McGuire came to your house.

A. Just -- we had to sign some papers, that's all.

Q. Did he explain the paperwork to you?

A. Yes, from what I understood, but you know, he did explain. My wife understood it more than I did.

Q. Did he show you where to sign the paperwork?

A. Did you say where to sign it?

Q. Yes, did he show you where to sign the paperwork?

A. Yes, otherwise we would not have known where to sign the paperwork, really.

Q. Did he take the paperwork with him when he left?

A. Yes.

Q. I am going to show you what is marked Commission's Exhibit X-18.

Q. And you look at X-18?

This is a residential contract of sale. If we look at the last page of this, is your signature on this?

A. Yes.

Q. Is this the document that Michael McGuire brought to your house, your old house?

A. Yes, he brought a bunch of them, you know, and we just signed them all, that's all.

Q. Was this, this X-18, one of the documents he brought with him?

A. Must be because I signed it.

Q. Who gave you updates about what

was going on in the house?

A. What do you mean, what was going on in the house? I don't understand.

Q. I didn't ask a very good question. Let me ask it again.

Did Heather update you about what was happening with the purchase of your house?

A. Yes.

Q. Was she the person that you spoke to about the purchase?

A. Yes.

Q. I did not hear an answer.

A. Yes.

MS. TISHMAN: I have nothing further.

Mr. Moore you have to wait because Michael McGuire wants to ask you some questions.

THE WITNESS: Okay.

THE REFEREE: You may proceed.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Mr. Moore, good morning. We are still -- it is still morning. I don't want to say we are still in morning, it is still

morning.

You have known me through Chris and Heather?

A. Exactly.

Q. You have known me with the basketball games?

A. Yes.

Q. In fact you hear my annoying voice at the basketball games all the time, don't you?

A. It is very annoying, but I do like it.

Q. Thank you. You had your old house, you raised your family in the old house, correct?

A. Exactly.

Q. You were there 40 plus years?

A. Yes, over 50.

Q. Then it became just too much going up and down the stairs for your wife?

A. Yes, it was, yup.

Q. Heather found this house and it was a foreclosure?

A. Exactly, yes.

Q. It was a house you were familiar

with because it was right up the road from your house?

A. That's right.

Q. You've seen it before, you recall having a conversation with Heather and myself after one of the basketball games, I believe it was 2014, where they asked if you could do this deal without a lawyer?

A. Yes.

Q. This was going to be a cash deal, correct?

A. Right.

Q. You were not getting a mortgage. You don't have a mortgage on the house, correct?

A. No.

Q. Heather is quite sophisticated in dealing with the legal process from her job with the State?

A. Yes. Thank God she is, yes.

Q. The objective was to do this without a lawyer, correct, the purchase of the new house?

A. That's right.

Q. Do you remember that I said,

"Well you want to make sure you get a good title report if you are going to do that," right?

A. Yes.

Q. And that you should have the home inspected?

A. Correct.

JUDGE MCGUIRE: Am I speaking too loud for the machine?

THE REFEREE: No.

Q. Do you recall I said that you should probably get a survey also?

A. I believe so.

Q. You didn't get a survey, did you?

A. No.

Q. I told you I couldn't represent you because my job didn't allow me to do that kind of work?

A. Exactly.

Q. I suggested, because it was a foreclosure that you should have an attorney take a look at the contract?

A. Yes.

Q. Do you recall, during that conversation, I was asked if my brother

would be willing to do that?

A. Yes.

Q. I said that I thought that he would?

A. Yes, that's right.

Q. You didn't pay me anything for that, correct?

A. No.

Q. And you didn't pay my brother anything, correct?

A. No.

Q. At some point later on your wife was in a wheelchair, correct?

A. Yes.

Q. Because of our association with the games and Chris and Heather --

A. Yes.

Q. -- we were friendly?

A. Yes.

Q. And I was aware that your wife was in a wheelchair because we had discussed that?

A. Yes.

Q. I agreed to stop by the house with the contracts?

A. Yes.

Q. Do you know how I got the contracts?

A. I think you got them from your brother.

Q. Do you know how he got them?

A. Excuse me?

Q. Do you know how my brother got the contracts?

A. How it got to him?

Q. How they got to him, to my brother, if you don't know you don't know?

A. I really don't know.

Q. That's fine. If that's the answer, that's fine.

A. All right.

Q. I came to the house, it was summertime?

A. Correct.

Q. You invited me in and we walked in the hallway of your old house and we went to sit in the kitchen?

A. Yes.

Q. You wheeled your wife into the kitchen?

A. Exactly.

Q. I gave you an envelope and you opened it up and there were documents inside.

A. Many documents.

Q. Do you remember if those documents had, "sign here" stickers on them?

A. I don't remember.

Q. Okay. All right. Fair enough. Then you signed the documents?

A. Yes.

Q. All right, and other than pointing out where you had to sign, I didn't give you any other legal advice, correct?

A. No, no.

Q. Ultimately, you took ownership of the house that you are in now?

A. That is right.

Q. Several months later you moved in?

A. Yes.

Q. You didn't move in right away because it was wintertime and it was easier to move in the spring?

A. Right, that is correct.

Q. Between that day in the summer, when I brought you the contracts until you moved in, did you and I have any other discussions about the legal aspects of your purchasing a new house?

A. I don't believe so, no.

JUDGE MCGUIRE: I have nothing further.

THE REFEREE: Any redirect?

MS. TISHMAN: No.

THE REFEREE: Thank you. Your testimony is finished.

MS. TISHMAN: Thank you.

We are going to go off the record now.

THE REFEREE: Yes, off the record.

(A discussion was held off the record.)

MR. MAISONET: On the record.

(The witness enters the room.)

THE REFEREE: Sorry for the interruption, Mr. Kelson, we had to take a few witnesses out of turn, but we are ready to proceed with you again.

THE WITNESS: Thank you.

THE REFEREE: Ms. Tishman, you may proceed.

MS. TISHMAN: Thank you.

CONTINUED DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Mr. Kelson, did you represent Jerry Fernandez in the case of the County of Sullivan versus the Estate of Lydia Fernandez?

A. I did.

Q. How did it come about that you represented Jerry Fernandez?

A. I had represented Jerry previously. Judge McGuire contacted me and indicated Jerry was trying to reach out to me and could I help him out.

Q. Can you tell us what Judge McGuire said to you?

A. He indicated that he was being sued by the county for his mother's debts.

Q. Who was being sued?

A. Mr. Fernandez.

Q. Did the judge ask if you could help Mr. Fernandez?

A. Yes, I indicated I represented him previously. Apparently, I believe what the judge said was he was trying to reach out to me, and I always had trouble reaching Jerry directly.

Q. Did you end up representing Mr. Fernandez?

A. Yes, I did.

Q. Did you represent him through the entire case of the County of Sullivan versus the Estate of Lydia Fernandez?

A. Yes, it was a Justice Court case. It was, I believe, one appearance and a stipulation and the case was concluded.

Q. Who is Lydia Fernandez?

A. To the best of my knowledge, that's Mr. Fernandez's mother and she was deceased, I believe, at the time this was going on.

Q. I want to show you what is marked Exhibit XI-10. Please review this and let me know when you are finished reviewing it.

A. Okay. I have reviewed it.

Q. Do you recognize it?

A. I do.

Q. Is this an email exchange between you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Were they saved by you?

A. Yes.

MS. TISHMAN: I want to introduced this into evidence, Commission XI-10.

JUDGE MCGUIRE: No objection.

THE REFEREE: There being no objection Exhibit XI-10 is received.

(Commission Exhibit XI-10 was marked in evidence, as indicated.)

Q. I want to draw you attention to page one, April 19, 2012 at 4:44 p.m. Did you attach a document to this email?

A. Yes.

Q. What was it?

A. It was the Stipulation of Settlement with respect to the Fernandez case that was entered into on behalf of Mr. Fernandez and the county.

Q. Is that the following pages after the first page of the Commission's XI-10?

A. No, it's after the letter to Mr. Fernandez, which is the second page. It would be the fourth page, actually, of the Exhibit. I am referring to the Exhibit. It's behind the letter that I sent.

Q. Did you attach the letter you sent to Mr. Fernandez, page two and three of Exhibit XI-10, in the letter that you sent to Judge McGuire, the letters dated April 19, 2012?

A. Yes.

Q. Going to page three, four and five, did you also attach a Stipulation of Settlement?

A. Yes.

Q. Then, going to the second email on page one, the April 19, 2012 email, 7:35 p.m. Is this Judge McGuire's response to your 4:44 p.m. email?

A. Yes.

Q. The judge thanks you for your work, right?

A. Yes.

Q. You had appeared in Liberty court

on behalf of Mr. Fernandez?

A. I appeared in Liberty court on behalf of the Estate of Lydia Fernandez and Jerry Fernandez.

I am just referring to the stipulation.

Q. In the 7:35 p.m. email, on page one, the Judge tells you how much he appreciates your friendship and your lunches together, right?

A. Friendship, yes. Literally I am going to read the email, "Our lunch breaks," not lunches.

Q. I am going ask you to look at Commission Exhibit XI-11.

A. Okay. I reviewed the document.

Q. Do you recognize it?

A. Yes.

Q. Are these emails between you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Have you saved these emails?

A. Yes.

MS. TISHMAN: I am going to ask that this document be moved into evidence, Commission XI-11.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-11 is received.

(Commission Exhibit XI-11 was marked in evidence, as indicated.)

Q. I am going to ask you to go to the page one January 21, 2014, 1:37 p.m. email. This is an email from you to Judge McGuire, right?

A. Yes.

Q. You asked that Judge McGuire, "kindly review the attached," what are you referring to?

A. The document that was attached to the email.

Q. Is that the document at the end of Commission Exhibit XI-11?

A. Are you referring to the January 21, 2014 letter to Jerry Fernandez?

Q. Yes.

A. Yes.

Q. Attached to that letter, that you

sent on January 21, 2014 to Jerry Fernandez, had you attached a notice from M.L. Zager, Z-A-G-E-R?

A. Yes.

Q. The last page, the January 23, 2014 letter, that's a letter from you to Mr. Zager?

A. Actually, it's Zager, it is M.L. Zager, P.C. It is a law firm. Mr. Zager is no longer involved in the law firm, but it is a collection law firm. It was addressed to an account representative, not an attorney, an account representative.

Q. Did you also forward that letter to Judge McGuire?

A. Yes.

Q. Is that part of the -- on page two of the January 23, 2014 at 1:58 p.m. email; is that what was attached?

A. 1:58.

Q. Page two?

A. Yes, yes it was.

Q. On the top email on page one, January 21, 2014, 11:37 p.m., did you ask Judge McGuire to do anything on your

behalf -- 11:37 p.m.?

A. Yes.

Q. What did you ask him to do?

A. I asked him to get in touch with Jerry. Jerry didn't have a cell phone. Didn't respond to mail. I know he worked, I don't know if he was an owner, but he was an owner of a restaurant in which I knew the judge ate frequently at. He was the best person to say, hey could you call Kelson, he needs you to.

Q. In the next email, 3:45 a.m. on January 22, 2014, did the judge agree to contact Jerry on your behalf?

A. Well, he said he would contact Jerry. He would get in contact with Jerry, yes.

Q. That is in reference to the prior email where you asked him to get in contact with Jerry?

A. Yes, he hadn't made -- he had a couple more payments left. He hadn't made the payment. I wrote to him and he didn't respond and rather then having a judgment against him, I knew the judge would be able

to see him a lot easier than I could find him.

Q. You said that Jerry had -- was in a restaurant?

A. Yes, he was in the restaurant business, a restaurant called Mr. G's or Mr. B's. I can't remember which one it is. It's in Liberty.

Q. You knew that Jerry worked at that -- owned that restaurant?

A. I don't know if he owned it, but he certainly was the manager or worked there, yes.

Q. You could have gone by that restaurant?

A. No, I couldn't, no.

Q. Was there something preventing you from going by that restaurant?

A. Yes, my daily activities. The restaurant wasn't always opened during the day and I wasn't going there at night.

Q. You could have gone in there, but you chose not to?

A. No, no. Judge McGuire indicated that he could get in touch with him. There

was no need to.

Q. Did the judge ever ask you to get in touch with Jerry yourself?

A. No, because I told him I couldn't get in touch with him, that was the problem.

Q. That wasn't my question.

A. Okay.

Q. Did the judge ever ask you to get in touch with Jerry yourself?

A. Did he specifically ask me that, no. Although I did write to him. When you say get in touch, I did write to him, but he did not respond.

Q. Did the judge ever tell you to get in touch with Jerry yourself?

A. No.

Q. Did the judge ever tell you to stop contacting him about this case?

A. No.

Q. Again, we are going to the bottom of page one, January 21st, 11:38 a.m. I am sorry, January 22nd 11:38 a.m. Did you again ask Judge McGuire to contact Jerry?

A. Yes.

Q. On page two did you get an email back at 3:45 a.m. on January 23, 2014, with the judge saying he would contact Jerry?

A. Yes.

Q. We can go to page three at the bottom. On page three, the July 2, 2014, 2:26 p.m.

A. Sorry, 2:26?

Q. 2:26 p.m., July 2, 2014. Did you again ask Judge McGuire to contact Jerry?

A. I asked him, to remind him, yes.

Q. Did Judge McGuire agree to do that?

A. Yes.

Q. That was in the next email, 5:56 a.m. on July 3, 2014?

A. Yes.

Q. I am going to ask that the witness be shown Commission Exhibit XI-12.

A. Okay. I reviewed the document.

Q. Do you recognize this email exchange?

A. I do.

Q. Do the emails in this email exchange pertain to you and Judge McGuire?

A. They pertain to a couple different things. They pertain to, I guess, Jerry Fernandez.

Q. Are the emails your email and Judge McGuire's email?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Did you save these emails?

A. I did.

MS. TISHMAN: I am going to ask that this be marked into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit XI-12 is received.

(Commission Exhibit XI-12 was marked in evidence, as indicated.)

Q. If we can go to the first page, July 29, 2014 at 1:45 p.m. That's an email from you to the judge?

A. Yes.

Q. Did you again ask Judge McGuire to get in touch with Jerry on your behalf?

A. I asked him to remind him he

needs to take care of the balance. I guess he hadn't made his July payment.

Q. You asked Judge McGuire to contact Jerry Fernandez about this?

A. Yes.

Q. This was a matter where you were representing Jerry Fernandez?

A. Yes.

Q. The next email the judge said that he would take care of it the first thing in the morning, that was his response, right?

A. Yes, on July 30th at 2 -- July 29th, yes, the next day apparently.

Q. I am going to show you what was marked Commission X-13.

A. Okay, I reviewed the document.

Q. Do you recognize the email addresses in this document?

A. Yes.

Q. Are they your email address and Judge McGuire's email address?

A. Yes.

Q. Did you send and/or receive the email in this document?

A. The emails?

Q. Yes.

A. Yes.

Q. Did you save these emails?

A. Yes.

MS. TISHMAN: I will ask these be marked into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit X-13 is received.

(Commission Exhibit X-13 was marked in evidence, as indicated.)

Q. If you could look at page one, October 1, 2014 at 4:45 p.m. In this request are you asking Judge McGuire to do anything on your behalf?

A. Yes, to reach him.

Q. To reach who?

A. Mr. Fernandez.

Q. Did the judge agree?

A. Yes.

Q. On page two, May 28, 2015 at 11:37 a.m., did the judge report to you about his conversation with Mr. Fernandez?

A. Not specifically.

Q. Did he tell you that Mr. Fernandez was going to pay what he owed?

A. No, he said, "Will be paid by Friday and be done. Not a problem. Thank you for following up."

Q. That "will be paid by Friday," that refers to the payment that Mr. Fernandez owed in this lawsuit?

A. I am presuming, yes, that's what it was.

Q. You are presuming or you know that this is what you were referring to in this exchange?

A. I didn't write the email, Judge McGuire wrote the email. I want to be clear. You are asking me what Judge McGuire wrote and I am telling you that it said, "Will be paid by Friday and be done. Not a problem. Thank you --

Q. That's attached to --

A. May I finish my answer?

Q. Go ahead.

A. I presume he contacted Mr. Fernandez and that Mr. Fernandez will pay

it, pay the balance, but he didn't specifically say that Mr. Fernandez would pay it in the email. I am presuming that's what happened.

Q. Did Judge McGuire thank you for your work?

A. He thanked me for following up.

Q. Let me ask you this; in 2014 were you making appearances as a law guardian in front of Judge McGuire?

A. Yes.

Q. In 2012 were you making appearances as a law guardian in front of Judge McGuire where --

A. Yes. I am sorry.

Q. In cases where Judge McGuire was residing?

A. In?

Q. In 20 --

A. As a law guardian?

Q. As a law guardian?

A. Yes.

Q. Did you represent Jerry Fernandez in the case of Eye Physicians of Orange County versus Gerardo Fernandez?

A. You are referring to the matter in the Town of Goshen, correct?

Q. Give me one second, please.

A. Okay.

Q. I am going to show you what was marked already into evidence Exhibit XI-14.

MS. PARTIDA: 14 or 14A?

MS. TISHMAN: Both.

Q. Did you represent Jerry Fernandez in the case Eye Physicians of Orange County versus Gerardo Fernandez?

A. Can I review the document first?

Q. Of course.

A. Yes, I served a special Notice of Appearance at the Town Justice Court Town of Goshen.

Q. How did it come about that you represented Jerry Fernandez?

A. I believe Judge McGuire asked me if I could represent him because he was getting into trouble with payment of a bill.

Q. Do you believe Judge McGuire asked you, or did Judge McGuire ask you?

A. He did. I don't know if he verbally did or whether he did an email, but

I believe it was an email.

Q. Did Judge McGuire ask you to represent Jerry in this matter?

A. He asked if I would represent him, yes.

Q. Did you represent Jerry Fernandez throughout the entire length of this matter?

A. Yes, as I indicated before I represented him three years before that also.

Q. You have in front of you what's already been entered into evidence as Exhibit XI-14A.

A. Yes.

Q. This letter is an October 28, 2014 letter that you wrote to Judge Thomas Cione?

A. C-I-O-N-E?

Q. C-I-O-N-E.

A. Yes.

Q. The Town Judge, Town of Goshen and it's regarding Eye Physicians of Orange County, P.C. Versus Gerardo Fernandez. This is your letter, right?

A. Yes, it is.

Q. If you can look at the second sentence of this letter, did you inform the judge, Judge Cione, that you could not appear on behalf of Jerry Fernandez because you were appearing in front of Michael McGuire in Family Court in Sullivan county?

A. Yes.

Q. It says that you, "retained last night," was that on October 27, 2014?

A. I don't recall. I presume it was on or about that time.

Q. Who retained you?

A. Mr. Fernandez.

Q. Were you paid by Mr. Fernandez?

A. No, I was not.

Q. Did you speak to Judge McGuire about the conflict of the dates of you appearing before him in family court and you appearing in the Town of Goshen prior to sending this letter?

A. I am not sure that I under -- can you repeat that question? I think I missed it.

Q. In Exhibit XI-14A --

A. Yes.

Q. -- you stated in that letter to the Judge of the Town of Goshen that you could not appear because you were retained to appear in front of Judge McGuire, Sullivan County Family Court. Had you spoke to Judge McGuire about the fact you had two engagements at the same time prior to sending the letter to the judge in the Town of Goshen?

A. No.

Q. You refer in this first paragraph of Commission's XI-14A, that you would be appearing in the Matter of Sullivan County DFS versus C. That is DFS versus C[redacted], C[redacted], isn't that?

A. No, it says D[redacted] versus C in the letter.

Q. I understand what it says in the letter. That wasn't my question. Does that refer to D[redacted] versus C[redacted]?

A. It may have. I don't have a specific recollection.

Q. I will now show you what is marked for identification Exhibit X-15.

A. Do you want me to review it?

Q. Yes, please.

A. Okay I reviewed it.

Q. Is this a series of emails between you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Were they saved by you?

A. Yes.

MS. TISHMAN: I would like to introduce this now into evidence as Commission Exhibit X-15.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit X-15 is received.

(Commission Exhibit X-15 was marked in evidence, as indicated.)

Q. If we could look at page one, the top, October 27, 2014 at 1:09 p.m. This is an email from Judge McGuire to you, there is an attachment it says, "Zach, this is the summons I told you about with respect to Jerry." Was a summons attached to this email?

A. I am sorry. You were -- you were asking me about this email, was the summons attached? Yes, the summons was probably attached. Let me look at the document and I will tell you in a minute.

The document attached to this appears to be the document that was attached. Of course you redacted information from there, I assume the Commission redacted some information under the defendant's name.

Q. Yes, personal information has been redacted, like address.

A. Other than the redaction, yes I believe that's the document.

Q. That is page five of that document. Did Judge McGuire send you the summons?

A. Yes, he emailed it to me, correct.

Q. The summons was sent the afternoon before you sent the letter to Judge Cione that we saw as Commission XI-14A?

A. Yes.

Q. If we can look at the October 28,

2014, page one, 10:58 a.m. email.

A. Yes.

Q. It says -- it's from you to Judge McGuire, right.

A. Yes.

Q. It says, "For your FYI." What does that stand for? Is that for your information?

A. Yes.

Q. If we look on page two, it appears there was an attachment to that email; what was the attachment?

A. The letter to the Court with a special Notice of Appearance.

Q. Was that the letter that we looked at as Commission Exhibit XI-14A?

A. Yes.

Q. It's the letter and then in addition to that it's your special Notice of Appearance?

A. No, it's the same -- 14A is the same thing. It's the letter and the special Notice of Appearance.

Q. You forwarded that letter to Judge McGuire?

A. Yes, I did and the special Notice of Appearance.

Q. You forwarded that letter to Judge McGuire the same date that you sent it to the court? They were both October 28, 2014, right?

A. Yes, well, I shouldn't say that. I don't believe it was before I sent it to the court.

Q. I said on the same day as you sent it to the court?

A. Yes.

Q. If we can go to page 2, October 30, 2014 at 2:45 p.m.

Q. In this email did you inform the judge about the status of this case?

A. Yes.

Q. Did the judge ask you to do this?

A. No.

Q. Did the judge tell you not to do this?

A. No.

Q. Did you ask the judge to get in touch with Mr. Fernandez?

A. Yes, to let him know it was

settled.

Q. In December -- going down December 8, 2014 at 1:45 p.m. Is that an email from you to the judge?

A. Yes.

Q. Did you send your letter to Mr. Greher?

A. Greher, G-R-E-H-E-R, Greher.

Q. For the judge's approval before sending it out?

A. No.

Q. Well, what was attached to this email?

A. A letter to Warren -- my letter to Warren Greher.

Q. Is that the December 8, 2014 letter that is at the very end of this Exhibit?

A. Yes.

Q. You forwarded that to Judge McGuire?

A. Yes, I forwarded him a copy via PDF.

Q. Did you forward a copy of -- the last page of this Exhibit is a check, did

you forward that also?

A. If I can just take a moment to review this. Yes, I think I did. I am pretty sure I did.

Q. Did you ask Judge McGuire to get you Jerry's email address?

A. Yes.

Q. Did the judge do that?

A. I don't recall. Let me rephrase that. I don't have any indication in my file that he was able to do that.

Q. Do you have any indication in your file that he wasn't?

A. No.

Q. We are going to look at the Commission Exhibit X-16.

Q. Let me know when you have finished reviewing it.

A. Okay, I reviewed the documents.

Q. Are these emails between you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Did you save these emails?

A. Yes.

MS. TISHMAN: We would like to have this marked into Evidence X-16.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit X-16 is received.

(Commission Exhibit X-16 was marked in evidence.)

Q. If we can look at the October 30, 2014 email at 4:45 p.m. it's in the middle of page one?

A. Okay.

Q. Is that an email from Judge McGuire?

A. What time was it?

Q. 4:44 p.m.

A. Yes.

Q. What was this email about?

A. I believe it was in response to my previous email that the matter had been settled with Jerry paying $100 a month until the balance was paid in full.

Q. Judge McGuire suggested you all have dinner at Jerry's restaurant?

A. Yes.

Q. Was that to thank you for your work?

A. I am going to guess that's what it was. I don't know that for a fact.

Q. That's how you took it?

A. Yes.

Q. You answered the email right above that?

A. Yes.

Q. 10/30/2014?

A. Yes.

Q. You state, "Only if you, Inky and the kids join us. Inky, before you said was Corrine McGuire?

A. Correct.

Q. The kids, are you referring to Judge McGuire's children?

A. Yup and probably my child too.

Q. Then the email above that, October 31, 2014 at 3:59 p.m., that's from Judge McGuire to you?

A. Yes.

Q. Does Judge McGuire say that he is going to set a date, that you should set a

date for the dinner?

A. Yes.

Q. The dinner was going to be at Jerry's restaurant?

A. Yes.

Q. Did you ever do dinner?

A. No.

Q. I am going to show you what is marked XI-17.

A. Okay.

Q. Is this email between you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the email in this email chain?

A. Yes.

Q. Was this saved by you?

A. It was.

MS. TISHMAN: I am going to ask that this be marked into evidence XI-17.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-17 is received.

(Commission Exhibit XI-17 was marked in evidence, as indicated.)

Q. If you can look at the first email on page one, May 26, 2015 at 11:07 a.m. Did you attach anything to this email?

A. I did.

Q. What did you attach?

A. The document behind it.

Q. Which is the May 20, 2015 letter from you -

A. No, to me from Mr. Greher, yes.

Q. In your email you say "M2," what is M2?

A. There are two judges in family court, Sullivan County Family Court, who have the initials M.M. One is Mark Meddaugh, Michael McGuire. It is common practice for attorneys and clerks to refer to him M2 because it is Michael F. McGuire, there is only two "M's" in it and for Mark M. Meddaugh, M-E-D-D-A-U-G-H, it's Mark M. Meddaugh, he is M3 or M cubed.

Q. That is a nickname that you use for Judge McGuire?

A. It's not a nickname. It's what the courts, what the court clerks, what the attorneys that are giving things to the

clerk to do or to give to the judge for signature, that's what they call them.

Q. I am going to show you what is marked Commission XI-18. Would you please review it and let me know when you finished.

A. It is okay if I just refer to the previous email for dates and continuity, the previous Exhibit?

Q. I asked you to review this one?

A. Okay, then I won't.

Okay.

Q. Is this emails between you and Judge McGuire?

A. The first email is, yes.

Q. The other email is between you and a Francis Clemente?

A. She is an attorney and AFC.

Q. What is AFC?

A. Attorney for the Child.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Did you save this email?

A. Yes.

MS. TISHMAN: May I ask that this

be introduced into evidence as Commission Exhibit XI-18.

JUDGE MCGUIRE: No objection.

THE REFEREE: Commission XI-18 is received.

(Commission Exhibit XI-18 was marked in evidence, as indicated.)

Q. Did you ask the judge to do something on your behalf in relationship to this case?

A. You are referring to the Jerry Fernandez case for the Eye matter.

Q. Yes, the Eye Physicians.

A. Yes.

Q. In the next email, 5:34 a.m., did the judge agree to do that?

A. Yes, he said it wasn't a problem. It was not a problem.

Q. This is the Eye Physician of Orange County versus case?

A. Yes, chronologically, that would fit into that.

Q. I am now going to show you what is marked Commission XI-19. Tell me when you reviewed it.

A. Okay, I reviewed it.

Q. Are these emails between you and Judge McGuire?

A. The first two are, the third is a forward of a message from somebody else.

Q. That was a message about scholarship recital, right?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. Yes.

Q. Did you save this email?

A. Yes.

MS. TISHMAN: I would like to mark it into evidence as Commission XI-19.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-19 is received.

(Commission Exhibit XI-19 was marked in evidence, as indicated.)

Q. On the top email, May 28, 2015 at 11:37 a.m. I am looking at that email and that's from Michael McGuire to you. In it it says, "I need to see if you can contact Warren for him." Who is Warren?

A. Warren Greher?

Q. That's the other side?

A. Yes, I think you asked me questions about the previous email. I think these might be kind of backwards, but yes, the answer is yes.

Q. It says, "I need to see if you can contact Warren for him and just set up a payment plan. He wants to make good but he has huge debt from when we was diagnosed with MRSA last year," and then the sentence goes on. Is the judge telling you, suggesting what steps he wants you to take in the Eye Physicians of Orange County case?

A. He is asking me to help Jerry, which is what I testified to previously, that I sent a Notice of Appearance. That we resolved the matter by him paying the $100 a month.

Q. The judge is asking you to set the payment plan?

A. He suggested that's one of the things that can be done, yes.

Q. Did you represent Lindsay Amoroso?

A. I did.

Q. What type of case was that?

A. Traffic ticket.

Q. How did it come about that you represented Lindsay Amoroso?

A. On one of the few occasions where I actually scheduled and had lunch with Judge McGuire, as we were leaving the pizzeria during our 40 minute lunch, he said, "Do you know of anybody who handles tickets in the Town of Plattekill in Orange -- Ulster County?" I said, "I can. What do you got?" He told me that a close friend of his son's who had actually saved his son or pulled him out of a fire in a house or a dorm, I am not sure exactly what it was, had gotten a ticket for driving 13 or 14 miles over the limit. I said, "I can take care of it. Should I do it pro bono as a good deed or can I charge her?" The judge indicated, whatever you would like to do, it's up to you.

Q. Did the judge talk to you at all about the -- did the judge say to you that he had information about the case and would

forward it to you?
A. I think he was going to -- I think he was going to just get me the ticket or get me a copy of the ticket and then I would take it from there.
Q. Did the judge say anything about paperwork having to do with a waiver?
A. At some point there was a discussion about a waiver and I indicated that I prepared my own waivers and in fact prepared a waiver and sent it to the client.
Q. Did the judge also say to you that he had also prepared a waiver?
A. I don't know if he prepared it, but I know there was a waiver that existed, was used, and I said that's not the form generally that I use and I don't recall which one ended up in the court, but I prepared one --
Q. Did you -- I am sorry to interrupt you.
A. That's all right. I had prepared one and sent it to the client also.
Q. Did Judge McGuire send you the waiver that he had?

A. I believe he did.

Q. Did you review that waiver?

A. I did.

Q. Did you decide that you would use that waiver?

A. I don't really recall. It was probably seven years ago, or eight years ago. I don't remember exactly and I know you have some documents that clear that up, but I don't really remember.

Q. I am going to going to show you what's been accepted into evidence as Commission Exhibit XI-20A. This is part of the certified court file. If you could look at those documents, please. Let me know when you are finished.

A. I am looking at them.

Q. Was this a waiver you prepared?

A. No.

Q. Was this the waiver that the judge gave you?

A. I don't remember if this is the one, but it's part of the court file, it's most likely that it was.

Q. I am going to show you what was

marked Commission Exhibit XI-21. Please tell me when you reviewed it.

A. Okay.

Q. Is this emails between you and Judge McGuire?

A. They are.

Q. Did you send and/or receive the emails in this email chain?

A. I did.

Q. Did you save these emails?

A. Yes.

MS. TISHMAN: I would ask these be received into evidence as Commission XI-21.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-21 is received.

(Commission Exhibit XI-21 was marked in evidence, as indicated date.)

Q. If you can go to page one, August 8, 2011, 4:12 p.m. email. This is an email from you to Judge McGuire, right?

A. Yes.

Q. You had an attachment, what did you attach?

A. The waiver that I prepared.

Q. Is that on page three of this document?

A. It appears that's what it is, yes.

Q. Is that the waiver that was attached to the --

A. Yes.

Q. -- document?

A. Yes, it appears to be the waiver that I or my secretary prepared. Yes, it's my form and my format, correct.

Q. Had you spoken to the judge about this waiver prior to sending this email?

A. I don't really recall.

Q. On the next email, page one August 9, 2011 at 5:06 a.m.

A. Yes.

Q. Well, in the first email, 4:12 p.m., you asked the judge to get you Ms. Amoroso's email address, right?

A. Yes.

Q. Then the 5:06 a.m. email, the judge agrees to do that, right?

A. No, he indicated that Corrine is going to get the email address for me.

Q. Now, on the bottom of the page, the August 9, 2011, 12:31 p.m. email.

A. Yes.

Q. It's from you to the judge, right?

A. Yes.

Q. It says, "I spoke to my brother Todd." That is your brother?

A. That is correct.

Q. Is he also an attorney?

A. He is.

Q. Are you here reporting back what you had heard back from your brother Todd about the Amoroso matter?

A. Yes, it appears that's what it was. I may have had independent recollection because I've been in front of that prosecutor also, but I believe my brother did indicate that he didn't think there would be a problem getting a parking ticket, especially since it was a relatively low speed, in traffic ticket circuit.

Q. Did the judge respond to your email?

A. He did.

Q. Did he, page two, August 10, 2011, 5:07 a.m., did he suggest what he was hoping the fine would be?

A. Yes, a low fine.

Q. After you agreed to handle the case, what did you do?

A. Sent a Notice of Appearance to the court, letter to the court, asking that the matter be considered for pretrial conference, which is my ordinary custom and practice in traffic tickets, the general area in which I practice.

Q. Was the case set for a pretrial conference?

A. It was.

Q. Did you appear?

A. I did not.

Q. Who appeared?

A. My brother.

Q. Is that Todd Kelson?

A. It is.

Q. I am going to show you what is marked XI-22.

A. Okay.

Q. This an email exchange between

you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email exchange?

A. Yes.

Q. Did you save these emails?

A. Yes.

MS. TISHMAN: I'd like to introduce this into evidence as XI-22.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-22 is received.

(Commission Exhibit XI-22 was marked in evidence, as indicated.)

Q. The first email, November 30, 2011, 11:03 a.m., were you telling the judge what was going on in the Amoroso matter?

A. No, not specifically. I believe the inquiry was, was there a pretrial scheduled yet and my response was, "I called the court and it hasn't been scheduled yet. They are backed up."

Q. Did the judge respond to your email?

A. Yes.

Q. Did he say that --

A. He said, "Okay, great. Just let me know if you need anything."

Q. I am going to show you what was marked Commission XI-23. Please let me know after you reviewed it.

A. Okay.

Q. Do you recognize the emails in this email exchange as being those belonging to you and Judge McGuire?

A. I do.

Q. Did you send and/or receive the email in this email chain?

A. I did.

Q. Were these saved by you?

A. Yes.

MS. TISHMAN: I want to introduce this into evidence as XI-23.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-23 is received.

(Commission Exhibit XI-23 was marked in evidence, as indicated.)

Q. Going to the first page, April 2, 2012 at 11:21 a.m., it says, "Please see the attached." What did you attach?

A. I am going to have to look at the

document -- oh, it was a letter to Lindsay Amoroso, letting her know that a pretrial had been scheduled for June 18th at 7:30 p.m.

Q. Was it also the Pretrial Notice from the court?

A. No -- actually, yes, it was. I just had to look at the letter.

Q. Then, the next email, the April 3, 2012 at 8:15 p.m., it's from Judge McGuire to you. It says, "Zach, that looks great. Thank you." Is that in reference to the attachment that you had sent to Judge McGuire?

A. It appears that it is.

Q. I am going to show you what is marked Commission XI-24.

A. Okay.

Q. Is that an email exchange between you and Judge McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email exchange?

A. I did.

Q. Did you save this email?

A. Yes.

MS. TISHMAN: I'd ask that this be introduced into evidence as Commission Exhibit XI-24.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-24 is received.

(Commission Exhibit XI-24 was marked in evidence, as indicated.)

MS. TISHMAN: It was marked into evidence? I am sorry. I lost my train of thought.

THE REFEREE: Received.

Q. Did this email discuss the final disposition of the case?

A. Yes.

Q. What was that?

A. Parked on pavement, no points, with a fine of $40.

Q. If you could look again to Exhibit XI-23, 8:15 p.m. on page one April 3, 2012 email.

A. Yes.

Q. Refers to a trial notice for John Clemons. What does this refer to?

A. I have no idea. Probably a

traffic ticket. John Clemons was a personal acquaintance of mine, as was his wife, but I never got a Trial Notice and I don't believe I ever handled the matter, to the best of my knowledge.

Q. That email was from Judge McGuire to you?

A. Yes.

MS. TISHMAN: It is five to one. I am about to move to a new case. Do you want to take a break now?

THE REFEREE: Let's break for lunch. Tell me how much more you have with this witness.

MS. TISHMAN: Forty-five minutes.

THE REFEREE: Forty-five?

MS. TISHMAN: Maybe half an hour. We are almost through entering Exhibits.

THE REFEREE: Assuming we start at 2:00 and she finishes her direct at 2:30 and we sit until 5:30, do you have more than three hours of cross?

JUDGE MCGUIRE: I don't think so.

THE REFEREE: You don't think so?

JUDGE MCGUIRE: I don't think so.

THE REFEREE: The likelihood is that Mr. Kelson will be finished today?

JUDGE MCGUIRE: Correct.

THE REFEREE: Let's break for lunch, 2:00.

MR. MAISONET: Off the record.

(A lunch recess was taken.)

THE REFEREE: Back on the record.

I've been asked to put on the record my recollection of what happened earlier today regarding the premises at which the Skype transmission was made. Where was that located?

JUDGE MCGUIRE: That was at Mr. And Mrs. Moore's house.

MS. TISHMAN: [redacted]

THE REFEREE: The Commission had sent a technical person to that location to set up the Skype and present at that location was this technical person, whose name was what?

MR. LEVINE: Drew Zagami.

THE REFEREE: Who is an employee

of the Commission?

MR. LEVINE: Correct.

MS. TISHMAN: Z-A-G-A-M-I.

THE REFEREE: And Mr. and Mrs. Moore and then we learned that Judge McGuire had also sent an investigator whose name was who?

JUDGE MCGUIRE: Peter Scalia, S-C-A-L-I-A.

THE REFEREE: He is employed by?

JUDGE MCGUIRE: He is retired.

MR. LEVINE: Retired from where?

JUDGE MCGUIRE: He was a New York State Trooper.

THE REFEREE: Judge McGuire sent Mr. Scalia to also be present and it was raised by the Commission that there was some concern about confidentiality and after some discussion Judge McGuire agreed that Mr. Scalia would leave and I think that was pursuant to what he understood was going to be my ruling. Is that stated?

JUDGE MCGUIRE: Yes.

THE REFEREE: As a result of that,

I think Judge McGuire has withdrawn his request to have Mr. Scalia present.

JUDGE MCGUIRE: I have.

MR. LEVINE: Thank you, Mr. Arisohn.

THE REFEREE: We can resume with Mr. Kelson.

(The witness entered the room.)

THE WITNESS: Good afternoon.

THE REFEREE: Welcome back, Mr. Kelson.

THE WITNESS: Thank you.

THE REFEREE: Mr. Kelson, you are still under oath.

Ms. Tishman, you may proceed.

FURTHER DIRECT EXAMINATION

BY MS. TISHMAN:

Q. In 2013 did you represent Willie Williams on two traffic tickets?

A. I did.

Q. How did it come about that you represented Mr. Williams?

A. I believe, to the best of my recollection, Judge McGuire indicated that he had someone that he was acquainted with

while he was employed at Sullivan County Community College and that he had two somewhat minor tickets while he was in Connecticut and would I be willing to assist that particular person and I agreed to do so.

Q. Was this conversation with Judge McGuire in person?

A. I don't really recall, to be honest with you. Do you have something that can refresh my recollection? I don't recall it. This had to be seven or eight years ago.

Q. There was a conversation between you and Judge McGuire?

A. I don't know if it was a conversation or an email, but one or the other.

Q. I am going to show you now what is marked XI-26.

MS. PARTIDA: 26 or 25?

MS. TISHMAN: 26.

Q. If you can review that and let us know when you reviewed it.

A. Okay, I reviewed it.

Q. Does this email pertain to an

email exchange between you and Judge McGuire?

A. Yes, it does. It also includes a forward of an email that I wrote to the client advising him that the tickets were disposed of in a favorable manner.

Q. Did you send and/or receive the emails in this email chain?

A. I did.

Q. Did you save this email?

A. I did.

MS. TISHMAN: I'd like to mark this into evidence Commission Exhibit XI-26.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-26 is received.

(Commission Exhibit XI-26 was marked in evidence, as indicated.)

Q. Did you represent Mr. Williams through the entirety of the traffic tickets?

A. Yes.

Q. If you look at Exhibit XI-26, you received a letter, an email, from Mr. Williams?

A. Yes.

Q. It was to thank you for your services?

A. Yes.

Q. Did you forward that to Judge McGuire?

A. Good question. I am not sure if I sent him, Judge McGuire, the email from Willie. I am not sure that I did, but I know that I did send him, of course, a copy of the email that advised the client as to the disposition of the case.

Q. If you look at May 21, 2013 at 8:31 p.m., on page one. It's from you to Judge McGuire, and you state, "Nice," and right under it says forwarded message. Had you forwarded the message from Willie Williams?

A. I am not sure. It looks like I did. I can't say for certain, but it's more than reasonably probable that I did.

Q. Did the --

A. Pardon me. Just the way that the email is set up and you and I discussed this previously, sometimes the chains are very odd the way they are printed out. I am

going to say there is a very, very high probability that I did.

Q. Did the judge respond to your email at 3:45 a.m. on May 23rd?

A. He did.

Q. During the course of this case were you appearing as a law guardian in Family Court over cases where Judge McGuire presided?

A. Yes.

Q. Did you receive a fee to represent Willie Williams?

A. I'm not sure if that's privileged or not, but the answer, I am going to answer anyway, the answer is no.

Q. Did you receive a fee for representing Tina McTighe?

A. No.

Q. Did you receive a fee for representing Jerry Fernandez in his two cases?

A. No.

Q. Did you receive a fee for representing Lindsay Amoroso?

A. No. I am following what the Chief

Judge says to do, which is to give pro bono to those who need it.

Q. Did you receive a fee for your work in the W[redacted]M[redacted] matter?

A. No, I didn't perform any services that were valuable. Excuse me, I didn't perform any services which required the payment of a fee.

Q. Why didn't you receive a fee in any of these cases that were referred to you by Judge McGuire?

A. I chose to represent these clients free of charge and pro bono, based upon circumstances and if you would like, I can describe these circumstances.

Q. No, that's okay.

In all the cases that I mentioned, W[redacted] M[redacted], Tina McTighe, the two Jerry Fernandez cases and the Willie Williams and the Lindsay Amoroso case, were you appearing during the time of those cases as law guardian in Family Court in cases where Judge McGuire was presiding?

A. Other than the W[redacted] M[redacted] case, in which I did not appear, the answer

is yes. I was -- I was -- of course I am taking a position that I did not represent that person. I was merely seeking ministerial information. That being said, the answer to your question is yes.

Q. When you were getting ministerial information on W[redacted] M[redacted], were you appearing in Family Court as a law guardian on cases where Judge McGuire was presiding?

A. Yes.

Q. Did you represent Lori Shepish, S-H-E-P-I-S-H, in 2015?

A. I did.

Q. What type of case was that?

A. A closing.

Q. How did it come about that you represented Ms. Shepish?

A. Lori Shepish contacted me and asked me if I would represent her.

Q. Did you have contact with the judge about Ms. Shepish?

A. Only after the matter was concluded.

Q. I am going to show you what is marked Commission XI-27. Let me know when

you reviewed it.

A. Okay.

Can I correct my answer? I didn't give the right answer.

Q. No, let me know when you reviewed it.

A. Okay. Okay I reviewed it.

Q. Are these a series of emails between you and Judge McGuire?

A. Yes, but they also included emails to the client, specifically.

Q. Did you send and/or receive the emails in this email chain?

A. I did.

Q. Were they saved by you?

A. They were.

MS. TISHMAN: I am going to ask that Commission Exhibit XI-27 be entered into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: XI-27 is received.

(Commission Exhibit XI-27 was marked in evidence, as indicated.)

Q. If you can look at page one, March 12, 2015 at 4:35 p.m.?

A. Yes.

Q. Were you paid for this matter?

A. I was.

Q. Did you blind copy Michael McGuire with this email?

A. I did and I would like to correct my previous answer.

Q. Okay.

A. Okay. I did in fact copy him when she called me and retained me.

Q. Why did you copy Judge McGuire?

A. She had indicated that the judge gave her my name and maybe other names and that she wanted to know if I could represent her in a closing. There were a couple of minor issues with respect to a divorce and getting some problems getting cleaned up with title, but that was basically the sum and substance of it. Other than that, it was a relatively run-of-the-mill closing.

Q. At this time, in 2015, were you appearing as a law guardian in front of Judge McGuire in family court?

A. Yes.

Q. If we can look on top of page

three, Commission Exhibit XI-27, 11:38 a.m. email?

A. Right.

Q. This was exchanged from you to Judge McGuire?

A. Yes.

Q. Did you thank Judge McGuire for referring the case to you?

A. I did.

JUDGE MCGUIRE: Is that the May 28, 2015?

MS. TISHMAN: It's Commission Exhibit XI-27, page three top, May 28, 2015 at 11:38 a.m.

Q. Did you represent one of the parties in the Massey versus Board of Elections case?

A. You mean Massey, M-A-S-S-E-Y, yes.

Q. Yes?

A. Yes.

Q. Who did you represent.

A. I believe William.

Ms. Tishman: That is O-R-E-S-T-A-N-O.

Q. Is he also known by the name of Bill James?

A. He is.

Q. What court was this case in?

A. I believe supreme.

Q. Do you believe or do you know?

A. I believe it was supreme court.

Q. Was this case assigned to Judge McGuire?

A. No.

Q. Who was the case assigned to?

A. It was an elections case, therefore it went to whoever was designated as the duty judge.

Q. Was that Judge McGuire in this case?

A. Yes, it is.

Q. I am going to show you what is Commission -- already in evidence, XI-29A and B.

A. Which one do you want me to look at first?

Q. 29A.

A. At first, okay.

Q. Are these your objections in

point of law and verified answer?

A. Yes, except for the redaction of an address of the petitioner apparently.

Q. Did you submit these papers in supreme court on this matter?

A. I did that day that it was returnable.

Q. That was January 24, 2014?

A. To the best of my recollection, yes.

Q. Isn't that the date on the document?

A. Yes.

Q. Judge McGuire was presiding over the case at that time?

A. He was.

Q. If you can look at Exhibit XI-29B?

A. Okay.

Q. This is already into evidence, a transcript of January 24, 2014 appearances in Massey versus Sullivan county Board of Elections. Did you appear that day?

A. I did.

Q. Who presided?

A. Judge McGuire.

Q. Was the case on in court that day?

A. It was a elections case, which the Village of Monticello determined to reduce the amount of polling places for elections. The petitioner filed an Order to Show Cause by assessment of laches to require that there be more positions open, more election places open. They sued the County Board of Elections, the Village of Monticello -- actually, they didn't sue the Village of Monticello and that's basically what the case was about.

Q. I asked why it was on that day. Was it on that day for an Order to Show Cause?

A. Yes, it appears that the petitioner filed an Order to Show Cause. My recollection is that Judge Meddaugh might have signed the order, may have signed the Order to Show Cause, either because Judge McGuire was unavailable or because, for whatever reason, the clerk directs them where to submit it, but that --

Q. Was there arguments submitted that day on the Order to Show Cause?

A. There were.

Q. Did you speak during the proceeding?

A. Absolutely.

Q. Did the judge make a decision on the record that day?

A. He did, after taking a break, several hour break he directed the parties and their attorneys to come back several hours later and then he dictated a determination upon the record.

Q. He denied the application, right?

A. Yes.

Q. At this time you were representing Jerry Fernandez the Eye Physician of Orange County versus Gerardo Fernandez matter?

A. I don't have the ability to cross the dates, but if you say that's what it was.

Q. I will show you --

A. Can I finish what I'm saying?

Q. Sorry.

A. If the documents that have been entered into evidence confirm that, then yes, absolutely. If you want to just give me a second to compare some of the dates, I am happy to do so. It was --

Q. I will show you what has been marked Commission XI-14A. You have that sir.

A. Okay. May I take a moment look at it?

Q. You may.

A. Thank you. 14A, this was the Orange County Physicians -- Eye Physicians.

Q. What date was it?

A. It appears this was in January of 2014 and the Eye Physicians was in October, so, the answer is --

Q. That's when it started.

We will show you 11 -- Commission Exhibits X-15 through 19.

A. Do I have them here?

MS. PARTIDA: You have them.

THE WITNESS: If I can just take a minute to look at these.

A. It's kind of hard to tell from this. Well, the Eye Physicians ss clearly in

October of 2014.

Q. And it continued for a while, didn't it?

A. Well, the Stipulation of Settlement was rendered fairly quickly after that. It was certainly before January 28th of 2014.

Q. You were working on the case after that and you were sending emails back and forth to Judge McGuire, after October of 2014.

A. But the first case was Rochelle Massey matter was January 24, 2014. Okay, that was January.

Q. Okay.

A. Sorry if I am a little confused, but it doesn't seem like those dates match.

Q. Were you having lunch with Judge McGuire in 2013, 2014?

A. Possibly, I didn't keep -- as I said, I didn't keep a diary of it. It's possible. I certainly didn't have lunch with him during the time that we had a trial or we had a proceeding, such as the election proceeding.

Q. At the time you were involved in the Massey versus Board of Elections cases, were you also representing Jerry Fernandez in the County of Sullivan versus the Estate of Lydia Fernandez?

A. I'd have to look. I don't know if I still have the Exhibit.

Q. Let me ask you --

A. If you want to give me dates that's fine. I don't remember the dates. This was January 24, 2014. I am not sure of the Liberty hearing.

Q. Let me ask you this, did the judge in the Massey versus Board of Elections matter, did the judge ever tell the parties about the nature of your relationship during the course of the case?

A. Well, the transcript, I suppose, speaks for itself, but the answer is no and none was required, in my opinion.

Q. There were other times -- besides the transcript on the record, were there off-the-record meetings?

A. No, everything was on the record.

Q. The judge never told the party

about the nature of your relationship, your's and -- the relationship between you and him, to any of the parties, either on or off the record?

A. No, again, my answer would be the same. None was required because the relationship didn't require disclosure, nor was the matter ignored.

Q. That's not the answer to my question.

A. Sorry.

Q. My question is, did the judge make a record of the nature of your relationship or didn't he?

A. I've haven't read the transcript, but I presume no, because it wasn't required. You're assuming it was and I don't assume that.

THE REFEREE: Mr. Kelson, you would do yourself and Judge McGuire a big favor by simply answering the questions and I'll tell you, I've been keeping my mouth shut this entire time, but your credibility is at issue in this case, because you are a witness and

I'm going to have to make certain findings about your credibility, so why don't you think about that before you start doing things other than answering the question.

THE WITNESS: Yes, sir.

Q. Did the judge tell the parties about the nature of your relationship during the course of the Massey case?

A. No.

Q. Did the judge tell the parties you were representing, for free, people that he referred to you at the time that the case was pending?

A. No -- well I am not sure. Can you ask that question again.

Q. Did the judge tell the parties that you were representing, on his behalf, representing people he referred to you at the same time the case was pending?

A. The answer is no, but I am not sure that the dates match what you're talking about. In other words, you have asked me about all these cases and not all of these cases occurred either before or after, to the best of my recollection, so

I'm just saying.

Q. And my question is just, was a record made?

A. No.

Q. Did the judge make a record about the communications that you had regarding the cases that he referred to you?

A. No.

Q. Did you make a record of your relationship?

A. No.

Q. Did you represent one of the parties in FIA Card Services versus Fishbain, F-I-S-H-B-A-I-N?

A. Yes.

Q. Who did you represent?

A. Sara Fishbain.

Q. What court was that case assigned to?

A. Supreme Court Sullivan County.

Q. Who presided over the case?

A. There was no -- when you say presided can you clarify that? It was assigned to Judge McGuire, if that's your question.

Q. Did you submit an answer to the complaint in this case?

A. I did, but that was prior to Judge McGuire being assigned.

Q. I am going to ask you to look at, what's already marked into evidence, Commission XI-30A, B, C, D, E and F. If you can look at first, XI-30A, did you submit --

A. Pardon me. Do you want me to look at all of these or do you want to do one at a time?

Q. Let's just do 30A.

A. Okay, so 30A.

Q. Did you submit this answer to the complaint?

A. Yes, I filed -- I served it upon the plaintiff's attorneys and filed it with the Sullivan County clerks.

Q. It became part of the court file, right?

A. I don't know whether it became part of the court file, but the county clerk maintains it's own file. The court may -- may maintain copies of documents.

Q. I am looking at XI-30B.

A. You said?

Q. Yes. Did you file this Notice of Motion to Amend?

A. No, I did not.

Q. Was it filed by the other side?

A. Yes.

Q. Were you sent it? On the back of page two it says "Zachary Kelson."

A. Yes, I was.

Q. On the bottom of this --

A. Actually, can I correct you? The document that I have doesn't say that, but maybe there is just a page missing from it, if you want --

Q. I am looking at page two.

A. Page two, oh, there was a motion, sorry. Yes, the answer is yes.

Q. On the bottom of the first page, does it say it was filed in Sullivan County Clerk's office 10/24/2014?

A. Yes, yes, it does.

Q. Was Judge McGuire assigned to the case at that point?

A. I am not sure. He could have been. Actually if I can take a look at the

motion? I believe, to the best of -- knowing how the process works in Sullivan County, that the motion would have been made and it would have been served on me. It would have been RJI form filed at the same time, so at the time the motion was made it is unlikely that the judge was assigned. After the motion was made and the RJI was filed, it appears that he was then assigned after that.

Q. Can you look at XI-30C, already in evidence. Is that a letter from Judge McGuire to Timothy Rooney, R-O-O-N-E-Y?

A. Yes.

Q. Are you CC'd in that letter?

A. I am.

Q. Did Judge McGuire sign this letter?

A. I don't know if it was his signature or his stamp signature, one or the other, yes.

Q. If we can look at 11-30D.

A. Yes, okay.

Q. This is a two-page order. Is this an order from Judge McGuire in the FIA

Card Services versus Fishbain Matter?

A. Yes, and the order was signed without opposition by the defendant. In fact I advised --

Q. It was signed by Judge McGuire?

A. Yes and for the record when Mr. Rooney made the motion he had already called me and I told him I had no objection to the Exhibit coming in.

Q. That wasn't my question.

A. Okay.

Q. Looking at XI-30E, already in evidence, was this a letter from Judge McGuire to you and Mr. Rooney?

A. Yes.

Q. Does it have attached to this letter Judge McGuire's decision and order?

A. Yes, it does.

Q. If we can look at XI-30F.

A. Can I just have a second to look?

Q. Is this a judgment by Judge McGuire?

A. Yes, we didn't submit any opposition, because we had no defense to the case.

Q. Did you receive this judgment, a copy of this judgment?

A. Yes.

Q. At any point did Judge McGuire make a record about the nature of your relationship during the course of the FIA matter?

A. Not to my knowledge.

Q. Did you hear him make a record to the parties?

A. I don't believe that we ever appeared in front of him, so the answer is no.

Q. Did he, in any way, inform the parties by email, by letter, in a conference, off the record about the relationship between you and him?

A. Not to my knowledge.

Q. Did you ever represent one of the parties in the case Miller versus Assessor of the Town of Liberty?

A. Yes.

Q. Who did you represent?

A. The petitioner.

Q. As in Mr. Miller?

A. Yes, there were a bunch of -- all the tax foreclosure proceedings that you are going to talk about are Mr. Miller and/or his related real estate holdings.

Q. Were there two cases named Miller versus Assessors of the Town of Liberty, one in 2013 and one in 2014?

A. Yes.

Q. Was Judge McGuire assigned to these two cases?

A. He was.

Q. I want to show you Exhibit XI-31A, already admitted into evidence. And 31B, already admitted into evidence. We will go 31A first.

A. Give me a second to look at it. I have 31A. Do you want me to look at 31B?

Q. No, we will talk about 31A. Did you file this Notice of Petition?

A. Yes, it's not the whole petition. It's only missing the appraisals, which were attached to the document.

Q. Did you ever appear before Judge McGuire in this matter?

A. No, I didn't.

Q. Did you meet with anyone on the judge's staff about this matter?

A. I did.

Q. Who was that?

A. Mary Grace Conneely.

Q. Was there a conference held in front of Mary Grace Conneely?

A. Yes, on the return of the petition, which was September 9th, it may have not been that day, but close by, the law clerk held a conference, just for a scheduling order.

Q. Was anything signed at the end of the conference?

A. I don't recall. I think there was a scheduling order.

Q. Who is Mary Grace Conneely, was that the judge's law clerk at the time?

A. Yes.

Q. If we can look at XI-31B, was this form written during the conference?

A. May I take a look for a second?

Q. Of course.

A. Okay, I looked at it.

Q. Was this a document drafted

during the conference?
A. It was a fill in the blank form and then the law clerk asked us to consent to it stipulated on September 9th, which as I said, was the return date of the first Notice of Petition.
Q. Is your name on it; on page one?
A. Yes, it is.
Q. Did you sign this on page three?
A. Yes, September 9, 2013.
Q. Is the judge's signature on this document?
A. Yes, it occurred after that, I am sure.
Q. Is the judge's signature on that document?
A. It appears that is his signature. I am not an expert, but it looks like it.
Q. Did the judge tell the parties about the nature of your relationship during the course of the 2013 Miller versus the Center of the Town of Liberty case?
A. No.
Q. Did Mary Grace Conneely ever make a representation of the nature of the

relationship between you and the judge?

A. Not to my knowledge.

Q. We can look at Miller versus the Center of the Town of Liberty, the 2014 case, did you represent one of the parties in this case?

A. I did.

Q. Who did you represent?

A. Mr. Miller.

Q. Who was it assigned to; what judge?

A. Because it was a related action, it would have been to Judge McGuire.

Q. And --

A. It was a continuation of the 2013 one. You had to file it in order to protect the interest of the assessment.

Q. I am going for show you what's marked Commission Exhibit XI-32B.

A. Okay.

Q. Did you file this Notice of Petition?

A. I did.

Q. Was the judge assigned to the case?

A. Was Judge McGuire, yes.

Q. Did you appear before Judge McGuire?

A. No.

Q. Did you appear before his law clerk, Mary Grace Conneely?

A. To the best of my recollection, yes.

Q. Was the case resolved?

A. No, to the best of my knowledge, it's not resolved today.

Q. It's still pending before Judge McGuire?

A. It is my understanding, sorry for the term, that Mr. Miller obtained different counsel. I don't know whether -- I heard it was resolved, but I have not received anything.

Q. When were you no longer on the case?

A. Probably two or three years ago, but I am not -- there is no substitution of counsel, that I know of.

Q. From when you filed the Notice of Petition in July 2014 to some time in 2016

you were on the case?
A. To the best of my recollection, yes, that is correct.
Q. Did the judge tell the parties about the nature and make a record about the nature of your relationship during the course of the case?
A. No.
Q. Did Mary Grace Conneely make a record during any of the conferences about your relationship with the judge?
A. Well, I already answered for the first one that we had in 2013. For the 2014 I am not sure that we ever had a conference, a story you don't want to hear, but to the best of my knowledge no statement was made, in writing or oral regarding that.
Q. You said that you were off the case in 2016 and another attorney took over, but there --
A. I -- what happened is Mr. Miller sold his properties and he used a different lawyer. I had heard that it had gotten resolved perhaps with a future assessment change, but I don't know any details. I am

not even sure if it was even 2016, but it was some time ago.

Q. Did you represent one of the parties in the 2 Sullivan Street versus the Center of the Town of Liberty case?

A. I did.

Q. Was that heard in Sullivan County Supreme Court?

A. Yes.

Q. Was that assigned to Judge McGuire?

A. It was.

Q. I am going to show you Exhibit XI-33A and 33B, already in evidence. You can look at 33A first. Did you file this Notice of Petition --

A. Yes.

Q. -- in July 2013?

A. Yes, and as I said before these are related entities, there is no appraisal attached to it, but other than that, it's mine and I did file it.

Q. Did you ever conference the case with the judge's law clerk?

A. Yes.

Q. If we can look at Exhibit XI-33B, already in evidence. Was this form filled out during the conference with Mary Grace Conneely?

A. Yes. Just for the record these were all done -- all the ones we are going to talk about were all done during the time because they were all Mr. Miller's entities, so all these conferences were one conference in which they filled out three or four, except for the second year you are talking about, but they were at the same time. Yes, the answer is yes.

Q. Except the second year I'm talking about, you're talking about the --

A. The second -- the one that was done in 2014.

Q. That's the Miller --

A. Correct.

Q. -- the 2014 Miller case?

A. Yes.

Q. If we can look at XI-33B, is your name on that document?

A. Yes, it is.

Q. Did you sign it?

A. I did.

Q. Under your signature, lower down, did Judge McGuire signed it?

A. Yes, after -- it would have been signed after the parties signed it.

Q. Did the judge, at any time, tell the parties the nature of your relationship during the course of the 2 Sullivan Street cases?

A. No.

Q. Did Mary Grace Conneely make a record of the relationship during the conference, or at any time, about the 2 Sullivan cases?

A. No.

Q. Did you represent one of the parties in the Sam's Towing Recovery versus the Center of the Town of Liberty matter?

A. Yes.

Q. Who did you represent?

A. Sam's.

Q. Was this case assigned to Judge McGuire?

A. Yes.

Q. I am going to show you what is

marked Commission Exhibit 11-34A and 34B, already marked into evidence. If you can look at Commission 11-34A, did you file this Notice of Petition in July 2013?

A. Yes, with the same answers that I gave you before with respect to all of the appraisals not being attached.

Q. Did you conference this case with Mary Grace Conneely?

A. Yes.

Q. Looking at 34B, 11-34B already in evidence, was this document filled out during the conference?

A. Yes.

Q. Did you sign -- is your name on the first page?

A. Yes, it is.

Q. Did you sign this document on page three?

A. Yes.

Q. Under your signature did Judge McGuire sign it?

A. Yes, after the conference.

Q. Did he sign it in your presence?

A. No.

Q. Did the judge tell the parties about the nature of your relationship during the course of this case?

A. No.

Q. Did Mary Grace Conneely ever make record of your relationship with Judge McGuire?

A. Not to my knowledge, no.

Q. Were you involved in a D[redacted] versus F[redacted] P[redacted] matter?

A. Yes.

Q. What was your involvement?

A. I was the attorney for the child.

Q. Was that held in Sullivan Family Court?

A. It was?

Q. Did Judge McGuire preside over it?

A. Yes.

Q. I am going to show you what is marked 35A, 35B and 35C, they are all in evidence.

Q. If we can go to 35A first?

A. Yes.

Q. Is this the order appointing you

attorney for the child?

A. Yes.

Q. Who signed the order?

A. I do not know. The custom and practice of the Sullivan County Family Court is the clerks sign it, the attorney have a stamp, and generally stamp it.

Q. At the bottom of this page, 11-35A, does it say Honorable Michael F. McGuire?

A. It does.

Q. Is there a signature above that?

A. It appears to be a signature, yes. Not a very clear one, but it could be photocopied.

JUDGE MCGUIRE: I will stipulate that I signed that order. It's already in evidence.

THE REFEREE: Thank you.

Q. I am going to show you what was marked 11-35B, do you have this in front of you?

A. I do.

Q. Is that an order directing temporary removal of a child?

A. Yes.

Q. On the last page, did the judge sign that?

A. He did.

Q. Are you CC'd on it?

A. I am.

Q. How long were you involved in this case?

A. I don't really know, until the child -- I don't remember. A number of years, I believe.

Q. Was that until 2015?

A. My recollection is, and I can't give the exact date, but I believe both parents surrendered their rights to free the child for adoption, thus freeing the child for adoption.

Q. I am going to show you what's marked for identification 11-36.

A. Yes.

Q. Do you have that in front of you?

A. I do.

Q. Is this an mail between you and Judge McGuire?

A. It is.

Q. Did you send and/or receive the emails in this email chain?

A. I did.

Q. Did you maintain this email?

JUDGE MCGUIRE: What was it?

MS. TISHMAN: 11-36.

Q. Did you maintain this email?

A. Sorry, did I?

Q. Maintain, save this email?

A. Yes, I did.

MS. TISHMAN: I ask that this be entered into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: 11-36 is received.

(Commission Exhibit 11-36 was marked in evidence, as indicated.)

Q. If we can look at this email, please, does this email pertain to the case D[redacted] versus P[redacted] F[redacted]?

A. Yes, a concluded case at the time.

Q. Is this email between you and Judge McGuire -- let me look at the email mid-page May 4, 2016 at 6:33 p.m.

A. 6:23 p.m.?

Q. 6:33 p.m.

A. Okay, yes, I'm sorry. I was looking at the 6:23.

Q. That is from you to Judge McGuire?

A. Yes.

Q. The subject is "Forwarded D[redacted] versus P[redacted] F[redacted]?"

A. Yes.

Q. You were informing -- you forwarded this email that you received from Colleen Cunningham?

A. No, it's an email that I sent to Colleen Cunningham.

Q. Who is Colleen Cunningham?

A. She is the Department of Family Services attorney who was on -- assigned on that matter during the neglect or abuse case.

Q. You forwarded the email you had sent to Colleen Cunningham?

A. Yes.

Q. And then Judge McGuire responded to your email?

A. He did.

Q. Did you CC Colleen Cunningham on the email you sent to the judge?

A. No, but I advised her that I did send that to the judge.

Q. Not in writing?

A. No.

Q. Did the judge, when he responded to you on May 5, 2016 at 4:30 in the morning, did he CC Colleen Cunningham in his email in response to you?

A. No, it does not appear that he did.

Q. Did the judge tell the parties about the nature of your relationship during the course of the D[redacted] versus P[redacted] F[redacted] matter?

A. No.

Q. Did you represent a party in the D[redacted] versus C[redacted] matter?

A. Yes.

Q. Were you the law guardian in that case?

A. Yes.

Q. I am going to show you what is marked 37A, B, F, G and H. These are all in

evidence. Would you please look at 11-37A?

A. Yes.

Q. Was this the order appointing you as law guardian?

A. Yes, it is.

Q. On the bottom does it say "Honorable Michael McGuire?"

A. It does.

Q. Does it have his signature?

A. It appears that is his signature, yes.

JUDGE MCGUIRE: I'll stipulate.

Q. 11-37D is this an order temporarily removing the child?

A. Yes.

Q. On the last page, was this signed by Judge McGuire?

A. Yes.

Q. Is it CC'd to you?

A. Yes, it is.

Q. If we can go then to 37F.

Q. This is a judicial subpoena?

A. Yes.

Q. Did you issue this subpoena?

A. I did, but because it was

directed to a county officer it needed to be so ordered on notice to all the other parties, which it was.

Q. Did you sign the judicial subpoena?

A. I signed the judicial subpoena, but it was so ordered by Judge McGuire.

Q. Judge McGuire so ordered it under your signature?

A. Yes, he did.

Q. If we can look at 37G. Is that another judicial subpoena in the D[redacted] versus C[redacted] case?

A. Yes, I am looking at the two subpoenas. If you don't mind for a second I want to see the difference.

Yes, the second one, you are looking at 37G, right? That was the judicial subpoena duces tecum.

Q. Did you sign that?

A. I did and I know that the court basically decided the motion for the judicial subpoena duces tecum, crossed it out so that it was really -- the result was identical of 37F.

Q. Was there a -- did Judge McGuire sign it under your signature?

A. Yes, he did.

Q. Did you appear in front of Judge McGuire to ask him to sign this subpoena?

A. I don't think so. I think I probably either submitted a letter or submitted it to the court clerk and asked that they be signed on notice. I don't recall exactly, but I would not have brought it directly to the judge.

Q. I am going to show you what's marked as Commission 11-37H.

A. Okay, there is your answer.

MS. TISHMAN: This is already in evidence, I believe. Can I just check, Mr. Arisohn, 37H?

THE REFEREE: Yes.

Q. Is this an email from you to Christina Benson?

A. Yes, it is.

Q. Does it have to do with the D[redacted] versus C[redacted] matter?

A. It does.

Q. Did you request that she pass on

to Judge McGuire a report?

A. Yes, I did.

Q. How long were you involved in the case?

A. I am still involved in the case.

Q. It is still pending in front of Judge McGuire?

A. The child had been freed for adoption, but has not unfortunately been adopted. There is a potential adoption, but it has not occurred.

Q. Is the case still pending in front of Judge McGuire?

A. Yes, for permanency purposes.

Q. I am drawing your attention to Exhibit 38A. I am going to ask you this, did you appear in front of Judge McGuire in this case?

A. In the C[redacted] matter, yes.

Q. Did you appear on the record in front of Judge McGuire?

A. Yes.

Q. Did you address the court during this appearance?

A. If I can take a look. I am not

sure. I mean, I was present pretty much for almost every appearance. I might have had somebody cover for me here and there. I want to see what date this was and what this was about.

Can I have a moment to review this transcript?

THE REFEREE: Yes.

Q. If we can look at page three, the bottom of the page 3, does that have your name?

A. Can I review the transcript for a minute?

Q. If you look on the bottom of page three of the transcript.

A. Okay.

Q. Line 25.

A. Yes.

Q. Isn't that you talking into page four of this transcript?

A. Now I remember what this was, yes.

Q. Did you talk during this proceeding?

A. Yes.

Q. Judge McGuire was presiding?

A. He was.

Q. Did the judge tell the parties about the nature of your relationship during the course of the case?

A. No.

Q. Was any record made about the nature of your relationship?

A. Not to my knowledge.

Q. Were there other cases aside from these two where you appeared as a law guardian in front of Judge McGuire?

A. Yes.

Q. When you appeared as a law guardian did the judge ever make a record of your relationship with him?

A. No.

Q. Did you ever make a record of your relationship --

A. No.

Q. -- with him?

A. No.

Q. When you appeared in surrogate court, in front of Judge McGuire, did you ever make a record of your relationship with

him?

A. No.

JUDGE MCGUIRE: Judge, I am going to object to the surrogate court, because I don't know what, if any, cases Mr. Kelson had in surrogate's court, pre 2018. Surrogate's court works in a rather unique way, if I may?

MS. TISHMAN: I would ask Mr. Kelson.

Q. Did you appear in surrogate's court in front of Judge McGuire from 2011 to 2015?

A. It's very possible that I did.

Q. Did Judge McGuire ever make a record of his relationship with you?

JUDGE MCGUIRE: I don't know how I can shadowbox this, because I don't have a case.

THE REFEREE: I don't know what words you are mincing here, but there are matters in surrogates courts.

MS. TISHMAN: I don't want the judge to testify right now.

JUDGE MCGUIRE: I am going to

suggest the witness leave so I can clarify the situation.

THE REFEREE: Why don't you make your record and leave out surrogate's court for the time being.

MS. TISHMAN: Okay.

Q. When you appeared in supreme court, in front of Judge McGuire, did the judge ever make a record of your relationship with him?

JUDGE MCGUIRE: Objection. Asked and answered.

THE REFEREE: Overruled. You may answer.

A. Other -- I am not sure -- to be clear, I think that with respect to the supreme court cases, and this is only dealing with supreme court cases, to the best of my recollection, and again we are going back nine years now or eight years. I don't think there are any other cases. I did not do a lot of supreme court work.

Q. In any case that Judge McGuire was assigned to did Mary Grace Conneely make a record of your relationship with the

judge?

A. No.

MS. TISHMAN: I have no further questions of this witness, except for surrogate's court.

THE REFEREE: We will leave out surrogate's court for the time being and see if we can get that resolved.

MS. TISHMAN: Okay.

THE REFEREE: Before the end of today.

MS. TISHMAN: Okay.

THE REFEREE: Do you want to take a break or do you want to start?

JUDGE MCGUIRE: Let's take our break.

THE REFEREE: Let's take our break and we will start at 3:00.

MR. MAISONET: Off the record.

(A recess was taken.)

THE REFEREE: Judge McGuire, you may proceed.

JUDGE MCGUIRE: Thank you.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Mr. Kelson, during the break you exchanged a comment with me that you were hoping to make the 5:15?

A. Yes, back to Beacon.

Q. And I asked where you took the train from?

A. And I said, "Beacon." And you said, "It only took an hour and you said from Bloominberg?" So, from Beacon.

Q. That was the full extent of any communication that we had, whatsoever?

A. Yes, I avoided going to the bathroom when you were there too.

Q. Mr. Kelson, I am going to ask you a series of questions and the majority of them you will be able to answer with a yes or no. If there is something that I ask you that you don't understand, just let me know and I will rephrase it. Okay?

A. Yes.

Q. Mr. Kelson, you are an attorney practicing in Monticello?

A. Yes.

Q. Your office is in Monticello?

A. Yes, sir.

Q. Your main office, you have a satellite office in Wurtsboro?

A. Yes, sir.

Q. You practice though in several counties?

A. That is correct.

Q. In fact, one of the areas of your practice is in traffic tickets?

A. Yes, substantial.

Q. That you have a network that virtually covers the entire state?

A. That is correct.

Q. You do quite a number of them?

A. Yes.

Q. In fact, when Judge McGuire was practicing, he was just Mike McGuire. He would occasionally reach out to you, find out if you knew somebody that handled tickets in, let's say, Syracuse or Rochester or different areas of the state?

A. Yes.

Q. Judge McGuire was aware you had this network of attorneys around that covered various speeding tickets?

A. Yes.

Q. How many years have you been practicing?

A. Thirty-six.

Q. Thirty-six years, all of that have been in Monticello?

A. No, two years on 189 Montague Street, in Brooklyn.

Q. Your brother Todd, how long has he been practicing?

A. He would be three years younger than I, so it would be 33 for him, math.

Q. You said that you testified on direct that you appear in family court?

A. Yes.

Q. And would it be accurate to say that your representation in family court is limited to representing children?

A. Substantially, if you want I can give a percent, but that's not the question.

I can't do that.

Q. Have you ever appeared before Judge McGuire as other than an attorney for the child in family court?

A. Once that I can recall and it was the Hanson case.

Q. The Hanson case?

A. Doreen Hanson.

Q. You represented the aunts?

A. Yes.

Q. That were taking custody of a child whose mother was serving a very long prison sentence?

A. That's correct.

Q. For beating that child to within literal minutes of his life?

A. Yes.

Q. The child had already been placed by the court with the aunt on a temporary basis?

A. Yes, that might have been before I was retained for representation.

Q. Before you were involved?

A. Yes.

Q. The issue which you represented them was that they were going to relocate to the State to Texas?

A. Yes, and one parent was about to go to jail for a long time and the other one was already in jail.

Q. Originally, the children were

placed under Article 10, with the aunts up in Malone?

A. Yes.

Q. You were seeking an Article 6 placement, so that they could relocate?

A. Yes.

Q. What is the difference in an Article 10 placement and an Article 6 placement?

A. An Article 10 placement is the Department of Family Services placing a child in some type of foster care or foster home. It is always preferred to be a relative, but can be a non-relative and frequently is. An Article 6 placement where some of the blood relationship, or a guardian, makes an application to have the child placed directly with them, so that they have custody or guardianship not -- most of the time not under the Office of -- the Sullivan County Department of Family Services.

Q. Is it fair to say that in an Article 10 placement there has already been a background search done on the potential

custodian?

A. Yes.

Q. That's done by the state agency?

A. Well, to clarify every order that emanates from family court now is required to have such a search, whether it's from an Article 6 or an Article 10. So, if they were on the, you know, the suspected hotline abuse, where people can report incidents of neglect or abuse, the court is mandated, and I know all the court clerks all do this, they check those situations.

Q. In the course of representing the aunt in the Hanson case, did you have an opportunity to look into how the children, it was two children, correct?

A. That is correct.

Q. How the children were doing living with the aunts?

A. They were doing --- yes, I did. They were doing great.

Q. When they went to the aunt, at least one of them, was not doing so well?

A. The one child, who I believe was found at the bus station, had intestines

hanging out of his body.

Q. In fact, in an earlier placement --

MR. LEVINE: I am going to October to the relevancy of this.

THE REFEREE: Sustained.

Q. Let's talk about our social relationship. Can you compare and contrast the Sullivan County Bar with the Brooklyn bar that you were part of?

A. They are very different.

Q. In what ways?

A. Well, although we have a lot of lawyers in Sullivan County per capita compared to Brooklyn or any place down here, it's very different. Everybody knows everybody. A lot of people are related to everybody. We see each at the gas station. We see each other at a restaurant that may have seven tables. We don't run away, the other way when we have that. When there is a birth, a death, a good event or a bad event, generally we are there for one another unless we have a problem with a particular attorney, but that's generally

how it works in a small community.

Q. Is it fair to say that you knew me when I was a practicing attorney?

A. Yes, I did.

Q. You knew me when I was in the district attorney's office?

A. Yes, I did.

Q. You knew me even before that?

A. I knew of you. I am not sure -- you know what, I did know you, you are right, now that I think about it, from the baseball, from when we play the Cougars.

Q. In fact, we started out as adversaries in a particular action?

A. We did, which was somewhat to my chagrin.

Q. You represented the seller of my house?

A. That's correct.

Q. That was our first interaction?

A. And I told you, you didn't know what the heck you were doing.

Q. Probably still correct on that one.

Can you estimate, best that you can,

if you can, in the areas of criminal law and family law about how many practitioners are there in Sullivan County?

A. I'd say no more than 35. I know that in family court there is a general amount of people who are doing law guardian work and petitioner/respondent work. That's going to be 20 to 25, our max.

Q. In Monticello, in proximity to the courthouse, how many different eateries are there?

A. Two or three.

Q. Two or three?

A. Yes.

Q. We talked about Brother Bruno's. You talked about, with Ms. Tishman, Brother Bruno's. Was that one of those few restaurants in the Monticello area?

A. Yes, it's one of the few places -- I didn't always eat lunch but when I did I usually go for a slice of pizza and when I did that was pretty crowded.

Q. Was it uncommon to see other lawyers in there?

A. It wasn't uncommon to see other

lawyers, other judges, other judge's law clerks, other appellant division judges, pretty much anybody who ate lunch was at some point in that restaurant.

Q. Is it fair to say that if you take out fast food chains, Brother Bruno's is one of the few places for a business person to go and have a sit down lunch?

A. Yes, at the time we are talking about, yes, sure.

Q. These lunches that we focused on, can you estimate that they occurred weekly?

A. No.

Q. Monthly?

A. No.

Q. Couple times a year?

A. Yes, two, three, four times a year and, you know, it's just a question of did I run into you? Did I contact you? It was really far and few between, it was not anything regular, that's for sure.

Q. On occasion, you would walk in and I would already be sitting there eating?

A. Yes.

Q. Other occasions I would walk in

and you would be sitting there eating?

A. Yes.

Q. On occasions you would walk in and I would be sitting there with other people?

A. Yes.

Q. Sometimes my wife?

A. Yes.

Q. Sometimes another judge?

A. Yes.

Q. Sometimes somebody who was not part of the legal community?

A. Yes.

Q. It's not uncommon to see people there?

A. No, it's not.

Q. When we would share a lunch table together, did you ever pay for my lunch?

A. No.

Q. Is it true I always insisted that we continued to pay separately?

A. Yes.

Q. Even on those few occasions when we might arrange to go there?

A. Yes.

Q. It's always separate?

A. Yes.

Q. Typically, what would we discuss at these lunches?

A. How are the kids doing? How is your wife? How is your respected spouses? We really didn't have a lot of time because your lunch hour, if you were in family court, was 12:30 to 1:30 and you never got there at 12:30 because you never got done in family court at 12:30 and you always had to be back for either county court by 1:30 or most likely, more often than not, family court by 1:30 and it was kind of a pain in the neck, but you would sometimes insist that if people were late they should not be late, especially when you -- in the beginning when you started to practice, everybody had to be there ten minutes before to make sure that -- as soon as the calendar was full -- as soon as those door opened, your case was started.

There wasn't even an hour's worth of -- maybe it was forty minutes at the most.

Q. There was testimony illicited on

direct that you might have contributed to my campaign?

A. I heard that testimony.

Q. It came from you?

A. Part of it did, yes.

Q. I don't want to know how much and I don't want to know who, have you contributed to other campaigns?

A. Yes and can I tell you I could never tell you how much I contributed because that is prohibited for you to know.

Q. Did I ever make inquiry about whether you have every contributed to my campaign?

A. No, you knew we supported you, that's for sure. Like I said, 95 percent of the Board did.

Q. Supported me morally?

A. Yes.

Q. I don't know financially. Have you or I, prior to today, ever had any discussions about financial contributions to my campaign?

A. No.

Q. Anybody else's campaign?

A. No, actually perhaps when Burton Ledina -- we had a discussion about that.

Q. At that time I wasn't the judge?

A. No, you were not.

Q. At that time I contributed to Burton Ledina's campaign?

A. I believe you did.

Q. I never discussed it with Burton Ledina, did I?

A. No.

Q. Who is Burton Ledina to you?

A. He is my former partner and my brother-in-law.

Q. Do you recall who swore me in when had I took office.

A. Burton Ledina.

Q. Present that day was also an appellant division judge?

A. Yes, Anthony Kane.

Q. Then I selected Judge Ledina?

A. Yes.

Q. When I practiced in family court, primarily, do you know who I practiced in front of?

A. I don't know if you were a legal

aid or conflict. I know you had private cases, primarily Judge Ledina.

Q. Judge Ledina.

A. Yes.

Q. Judge Ledina and I, fair to say, had a collegial relationship?

A. Yes.

Q. In fact, I spoke at his retirement dinner, didn't I?

A. Yes.

Q. When I took office in January of 2011, you occasionally came down to chambers?

A. Yes. That changed when they changed the policy, I mean, a lot of lawyers would come down and see you and Wendy or Mary Grace, or anybody else that was there. That policy changed. Now you have to make an appointment and you have to be led back there. I am not sure why, but when I first started and as it was when Judge Ledina was there, any lawyer that was in family court could walk into the back ask the clerk, ask the secretary, for something or ask for some information, as well as law clerks.

Q. You came down to chambers occasionally?

A. Yeah, sure.

Q. Were there occasions when you would come down to see someone other than me?

A. Yes.

Q. In fact, who, if anyone else, would you go down to see?

A. Well, sometimes I would go down to see Mary Grace. We were acquainted with each other or I would go see your secretary at that time.

Q. Ms. Wiener?

A. Yes.

Q. You were familiar with Ms. Wiener?

A. Yes, in fact, I was the one who suggested that you hire her.

Q. You recommended her to me?

A. I did.

Q. You had a close relationship with her -- or relationship?

A. I had a relationship. I am not sure I would characterize it as a close one.

I did her legal work before she worked for you and I did her husband, Dave Wiener's, legal work as well.

Q. On those occasions where you would come by, even informally, to say hello, did Ms. Wiener ever discuss legal issues with you, legal issues pending before Judge McGuire?

A. I don't think so. I think they were her own legal issues that she wanted to talk about.

Q. Do you recall the time period between November 2010 and January of 2011?

A. Generally, yes.

Q. That was a time period between my election and my assuming the bench?

A. Yes.

Q. Do you remember you and I having some general discussions about my accounts receivables?

A. Yes, I do.

Q. What, if any, friendly advice did you give me?

A. I told you that my mentor, Carl P. Goldstein, told me that if you're owed

money, and you didn't do anything wrong, you should collect it. That means if you have to sue a client, if you don't think that there was a problem, that you might have done something right or wrong, that you should always try to collect your money because it gets around to people that you don't have to pay. And that's just a business model that I subscribe to.

MS. TISHMAN: For the record, can you spell the name you used.

THE WITNESS: Carl P. Goldstein, G-O-L-D-S-T-E-I-N.

Q. Did you and I have subsequent discussions about that issue?

A. Yes.

Q. Prior to me taking the bench?

A. Yes.

Q. Is it fair to say that I rejected that friendly advice?

A. Yes, I am not sure why, but I think, you know, I know you didn't want to do that. You had a lot of stuff to do and you were moving forward basically. That was my recollection of what you were doing.

Q. I basically walked away from my receivables?

A. That's what I believe to be the case.

Q. I want to go back to the time period pre January 2011. You and I occasionally had real estate transactions together?

A. We did, not a lot though.

Q. Not a lot. You did some bank work?

A. Yes, that is correct.

Q. What, if any, involvement did Corrine McGuire have in those?

A. Well, she was your "paralegal/secretary" for the substantial portion of the time that I was dealing with you. As I said before, you were not the most astute real estate attorney, at least when we first started, but Corrine knew what to do and how to do it. So, generally it was my secretary communicating with Corrine or it's -- I didn't really deal with Corrine, but my secretary at the time did.

Q. That would be Kathleen?

A. That is correct, Kathleen Burley.

Q. Is it fair to say that firms that handle real estate matters, at least in Sullivan County and Orange County, that you are familiar with, primarily use a paralegal to do the work-up on the transactions?

A. If they know what they are doing, yes.

Q. Indeed, sometimes the paralegal even covers the closing?

A. Yes, that would not be my custom and practice, but yes, that's possible.

Q. You are aware then, from your own experience, that Corrine McGuire was familiar with the process?

A. Yes, I am.

Q. Let's talk about, segway from lunch into -- do you recall one of the occasions that we shared lunch? I don't know whether it was scheduled or not, but we shared lunch.

THE WITNESS: Can I have a moment to get water? Thank you.

Q. One of the occasions when he had lunch, is it fair to say that when I got

there I was maybe mildly agitated?

A. I am not sure what incident you're referring to.

Q. Around the time when the Oneonta issue came up?

A. Yes.

Q. Do you recall us having a discussion about that, in general?

A. Yes.

Q. Do you recall that I was mildly annoyed at my son?

A. Yes.

Q. We had a discussion about the circumstances that he found himself in?

A. Yes.

Q. I shared with you the facts, as I understood them, from my son?

A. You did.

Q. And I was concerned about my son, because it's my son and it related to drugs?

A. Yes.

Q. One of my concerns was his ability to continue living in the dormitory?

A. It was.

Q. How far is Oneonta from Liberty?

A. Two hours, I am not quite sure. I think it's about two hours. I was there once.

Q. A long commute?

A. Yes.

Q. You were there not related to anything for W[redacted] M[redacted]?

A. No, I handled something twenty years ago, a criminal matter, in court there.

Q. You had referenced Section 156 of the Criminal Procedure Law when Ms. Tishman was examining you?

A. I did.

Q. In sum and substance, if Ms. Tishman wants to put the statute in we can, but in sum and substance, based on your 36 years of experience, what does 170.56 of the Criminal Procedure Law provide?

A. Well, if I can just say, I don't do felonies anymore, but I do quite a bit of the unlawful possession of marijuana, what we call UPM and the section you are referring to requires that if the defendant, if they haven't been convicted of certain

offenses, which Mr. M[redacted] apparently had not, we are talking about your son, that the court must either dismiss the case outright in the interest of justice or must grant an ACD. It's not discretionary, unless certain elements are met that would deprive that person the right to have an ACD or dismissal in the interest in the furtherance of justice. It does not require the consent of the district attorney's office and it says "shall, the judge shall."

Q. Do you recall that I related to you that I had just spoken to my son just prior to me coming to lunch?

A. Yes, you did.

Q. And that he had reported to me that -- or I reported to you that he reported to me --

A. I think what --

Q. -- not for the facts to be established that he had been to court once on this matter already?

A. Yes.

Q. What, if any, recollection do you have of my relating to you what occurred in

court?

A. Well, the first thing you told me was that you questioned him upside and down. I think that was reflected in some email that might have been presented into evidence, because as you -- as an experienced attorney, as somebody who is experienced as an attorney previously knows, you have to make your own independent inquiry. You indicated what when he appeared in court they weren't offering him an ACD. They weren't offering him a dismissal in the interest of justice and that's what you -- I couldn't -- that was just completely crazy.

Q. So, as we had that discussion, what, if anything, did you offer?

A. I said I am going to call the district attorney's office and find out, maybe there is some confusion here, let me get the papers for you and see why this hasn't been done. I didn't say I was going to appear on your son's behalf because I knew I wasn't going to do that, but I said I would do that and I didn't really ask you, I just told you I was going to do it.

Q. You didn't receive any money for that?

Ms. Tishman asked you that.

A. No.

Q. Did you have any expectation they would effect any case that was before me?

A. No, I mean over the times that I've appeared in front of you, up to today, there have been decisions that have been favorable and there have been decisions that have been unfavorable. Most of the time when I am law guardian and I am representing the interest of children, I can tell you that I have had some unfavorable decisions from you as law guardian in a grant parental decision, which I disagreed with you. This is how it works. You are the judge, I am just the litigant -- attorney for litigant.

Q. Your father-in-law is a retired judge?

A. Yes.

Q. You practiced in Sullivan county for 30 years.

A. Yes, 34, 35, yes.

Q. Is that type of a collegial

relationship common in Sullivan County?

A. Yes, I mean, it's like saying if you have got a friend who is a judge, or you know somebody whose a judge and they get a flat tire on the side of the road, you're not allowed to go help.

It's the kind of thing where we all know each other, not that we know each other's business, but we are a little bit more open with each other because it's a small community. Those -- and I would say that 99 percent of the people that appeared in all these cases that Ms. Tishman referred to knows that I know Judge McGuire personally and that so did the other judges, some of the other lawyers, so it's not like I had some special relationship with you. Everybody has a special relationship with everybody in Sullivan County. It may not be to the same level and I understand that's something that the Hearing Officer will have to decide, but we are all close.

Q. In your experience as a practicing attorney in Sullivan County, can we agree that it's not uncommon for adversaries in their particular case to have

a collegial relationship?

A. It's not uncommon. If I could just recall a particular incident. Your present law clerk, when she first started practicing in family court --

THE REFEREE: Can we have her name?

THE WITNESS: Hanna Prall, P-R-A-L-L.

A. -- had never been in family court before and she was substituting for someone and she had a trial and we were her adversaries. All the lawyers that were involved in the case were commonly in family court and we felt bad for her, so we took her in the other room and told her what questions to ask so she would feel comfortable. So she wouldn't have this terrible experience for her first trial in family court.

We knew what the outcome was going to be because of the facts, but this is the kind of thing we do for each other. It may be appropriate, it may be inappropriate, but nobody wants to see somebody hurt or slammed

the first time they come into court, or the second time they come into court.

There are times when that's not appropriate, but more often than not, it is.

Q. You got information from the prosecutor in Oneonta?

A. Yes, I did.

Q. You passed that onto me?

A. I did.

Q. Now, did you get any information that I couldn't have gotten myself?

A. No. You could have gotten anything that I got. I just was getting that information and supplying it to you and hoping that the guy would figure out that it's an automatic ACD.

Q. Is it fair to say that I didn't call because I wanted to stay out of this case?

A. Correct.

MR. LEVINE: Objection.

Q. Well, I had told you that?

A. You did.

Q. Ultimately I did represent my son?

A. Yes.
Q. I haven't hidden that?
A. You did not.
Q. I've admitted it all along?
A. Yes.
Q. That was in Otsego County, correct?
A. Yes.
Q. That's where Oneonta is?
A. Yes.
JUDGE MCGUIRE: O-T-S-E-G-O.
THE REPORTER: Thank you.
Q. Cooperstown being the county.
Let's talk about Tina McTighe. Do you know Tina Mctighe's relationship with my wife?
A. Yes, I think they went to school together.
Q. They grew up together?
A. Yes, they were friends.
Q. She was my maid -- the maid of honor at my wedding?
A. I believe that's the case.
Q. She got a ticket in Ulster County?

A. Yes, Town of Plattekill.

THE REPORTER: What was the town?

THE WITNESS: Plattekill.

A. I think it was the Town of Plattekill.

Q. No, no, no. That might have been Schoharie, Richmondville?

A. Oh, Tina McTighe, Richmondville, yes. I am sorry. Richmondville, yes. I am sorry. Schoharie or Albany area is my recollection.

Q. It was actually Mrs. McGuire that contacted you about her?

A. Originally, yes. Now that I think about it, I think she came to the office.

Q. To find out if you knew somebody up in Richmondville?

A. Yes.

Q. It's not a secret in Sullivan that you have this network across the whole State?

A. Yeah, I do hundreds of tickets a year, wherever they might be.

Q. Statewide?

A. Yes.

Q. You copied Judge McGuire on several emails?

A. I did.

Q. Did Judge McGuire ever ask you to copy?

A. No.

Q. Did Judge McGuire ever try to influence the matter in which you handled the ticket?

A. No and frankly there was no need to do that, these were all slam dunk. What we call "dead body appearances." They were easy.

Q. Did Judge McGuire ever express to you that he had an expectation regarding your fee?

A. No.

Q. Did Judge McGuire ever express to you that he wanted a referral fee?

A. No. I am at the stage of my life, I mean, I am practicing 36 years, I am going to be 62 this summer, where I do what I want to do for whom I want to do that. There are some people that I charge and some people that I don't charge and it's my decision,

it's not your decision. Not what you tell me. Not what Corrine McGuire tells me or anybody else, other than my wife.

Q. Let me ask you as if you were on direct. What, if any, role did Judge McGuire play in the Tina McTighe case?

A. Well, when you say role, other than some basic communications about a waiver, none whatsoever. I mean, I forwarded up to a lawyer, who I had a working relationship with who was happy to take care of a slam dunk ticket, basically.

Q. It is fair to say that those emails that are in evidence were more of a courtesy than an expectation?

A. Yes, just letting you know, hey, we are taking care of it. I wasn't asking you for anything. I wasn't asking your advice. Wasn't asking for influence or anything else. And any claim that you were going to influence a ticket for an automatic parking ticket is just silly.

Troopers, when you have these pretrial conferences, troopers aren't there. There are probably -- 99 times out of a 100 the

prosecutor has never seen the ticket and they are just looking at a court sheet of what the charge is and how he or she is going to dispose of it. They are private attorneys, at least in the counties that I am dealing with, Sullivan, Orange and Ulster. In other counties there are DA's, but most of the time it's private attorneys that are handling these things.

Q. In fact, Judge McGuire never asked you to report back on how a case went?

A. No.

Q. We have several emails for each of the cases that are in order, that are in evidence. Other than the emails, from time to time do we exchange personal conversation face-to-face?

A. Yes.

Q. During any of these face-to-face conversations, did Judge McGuire ever ask you to do these cases for free?

A. No.

Q. Did he ever attempt to influence you with respect to your fee?

A. Absolutely not.

Q. In fact, with respect to Ms.

Amoroso, you asked the question and what was the answer from Judge McGuire?

A. Whatever you like to do Zach. If you want to charge fine, if you don't want to charge, that's fine too.

Frankly, I want to go back to what I said on direct from when Tishman asked me, I probably volunteered it, but we are asked -- we are told to do pro bono. I mean, we are told to do -- and I will use this term "mitzvah," you know, good deeds and sometimes I want to do a good deed. And I don't think that -- I recognize that the Commission is telling me that this wasn't a good deed or it was wrong, but basically it was a good deed.

JUDGE MCGUIRE: That can be stricken. Was that going to be your objection?

MR. LEVINE: I object to the answer being --

JUDGE MCGUIRE: We can strike that part.

THE REFEREE: I'd leave it in.

Q. During any personal communication did Judge McGuire ever attempt to influence

the manner in which you undertook?

A. No.

Q. Did you and Judge McGuire ever have any communication that suggested that there would be a quid pro quo in exchange of you handling these cases?

A. If there was I would not have done it and there wasn't.

Q. We had a ticket in Schoharie County and we had a ticket for Ms. Amoroso, that was in Ulster County, Town of Plattekill?

A. Yes.

Q. Then there was a ticket for Willie Williams, that was in Fallsburg?

A. Yes, sir there were actually two, although I must say that I might have thought there was only one and when we went to the pretrial there may have been two. I don't recall. That happens sometimes.

Q. Did you ever appear on a ticket, that came to you by way of Judge McGuire, that was before Judge Bauman in the Town of Liberty?

A. I don't think so. To the best of

my knowledge, no.

Q. Judge Rourke?

A. No.

Q. Between 2011 and 2015 did you handle hundreds of tickets in the Town of Liberty?

A. Probably.

Q. Of those hundreds, how many, if any, had any relationship to Judge McGuire?

A. None, and in fact when I was first examined. I started to look through my files to make sure that I could provide all the information that was requested and I didn't see anything from Liberty. I looked through all those files.

Q. How about Lumberland?

A. I don't -- I think I have been in Lumberland four times in 35 years and I certainly didn't have any matter that related to you or that you asked me to assist or someone said that you asked me to assist.

Q. If somebody had said that you handled hundreds of tickets that came to you through Judge McGuire in Lumberland, would

that be accurate?

A. It would be completely inaccurate. In fact, I think I had one and it was someone who was a client of mine from the Town of Mount Hope, so I know exactly what it was and they don't meet that often in Lumberland. They don't have that many tickets in Lumberland. There are town cops that don't issue a lot of tickets and there are a couple of state troopers that pass through once in a while because they live down there. Other than that, it's a low volume court. It could never be hundreds of tickets in Lumberland unless Woodstock invaded them.

Q. And Woodstock, just for the record, didn't happen in the Town of Lumberland?

A. No, that was in the Town of Bethel.

Q. Are you familiar with a Town Court Judge named Anthony Laruffa?

A. I am.

Q. Do you know what town he sits in?

THE WITNESS: L-A-R-U-F-F-A.

Q. Do you know what town he sits in Highlands?

A. Town of Highlands.

Q. Have you handled hundreds of traffic tickets in the Town of Highlands between 2011 and today?

A. No. I did two evictions there in the last two years. One in front of Laruffa and one in front of you, Judge. Probably before that time, the last time I handled a traffic ticket down there was probably 1985 and it was one ticket.

Q. Have you handled any matter before Judge Laruffa that Judge McGuire had any relationship to whatsoever?

A. No.

Q. That includes somebody coming into your office and asking, do you know Judge McGuire? Did anybody ever come into your office to retain you and ask you --

A. No.

Q. -- do you know Judge McGuire?

A. No.

Q. If somebody said that you had handled hundreds of tickets with Judge

McGuire in the Town of Highlands, that would be incorrect?

A. That would be false, yes.

Q. Let's talk about Jerry Fernandez. Jerry managed a restaurant in Liberty called Mr. G's?

A. Yes.

Q. Do you know what the ownership structure of Mr. G's is?

A. I think --

Q. Not think, do you know?

A. No.

Q. Do you know of Judge McGuire's relationship with Mr. Fernandez?

A. I think you're friends with him and you eat there.

Q. Well, when they were open.

A. Right. I don't think I've been there more than once, ever.

Q. You have represented Mr. Fernandez prior to the two cases we dealt with today?

A. Yes, I did on, I think, two occasions long before I knew you.

Q. And I think that you testified earlier that at times you were frustrated by the responses you would get from Jerry?

A. Or no response, yes.

Q. Often no response?

A. Often no response. He was not a responsive person. You could email him, cell phone, when he had a phone, which I could never get him on. It was either disconnected or he never answered. It was difficult, to say the least.

Q. When you represented Mr. Fernandez in the Town of Liberty, that was the case involving his mom, Lydia Fernandez?

A. Yes.

Q. There is communication that you and I had about Jerry trying to get a hold of you --

A. Yes.

Q. -- and that the two of you just were not connecting?

A. Yes.

Q. You appeared in the Town of Liberty for Jerry Fernandez?

A. Yes, on one occasion.

Q. On one occasion and a stipulation was entered into at that time?

A. Yes, it was.

Q. Based on your 36 years of practicing law, when a stipulation is entered what is the status of the case?

A. It's disposed of and it was filed with the courts, is my recollection.

Q. Fair to say, closed and no longer pending?

A. Correct.

Q. Within a course of one appearance the case was closed and no longer pending?

A. Correct.

Q. It was settled for the amount they were asking for?

A. Yes.

Q. Jerry just needed to have a structured payment, so that he could pay it off?

A. Yes.

Q. In the case of the Town of Goshen, that was handled by Mr. Grier, that was Eye Associates?

A. Yes.

Q. Again, is it fair to say that you and Jerry just were not connecting for whatever reason?

A. Correct and by the time the matter was returnable and I discovered that the court had no jurisdiction, because Mr. Fernandez didn't live in the Town of Goshen, nor did he conduct business there, I needed to get a Notice of Appearance in order to protect his interests.

Q. There, because it was in the nature of small claims, the action had to be brought where?

A. Well, it had to be brought in the Town of Liberty or it should be in county court or the Supreme Court in Sullivan County.

Q. In the --

A. Or Orange County.

Q. The residence of the defendant?

A. Correct.

Q. That's the jurisdictional basis in a small claims action?

A. Yes.

Q. He was sued there?

A. Yes. That is why I made the special Notice of Appearance, which no longer exists by law, but those of us older lawyers still do that when we are raising a jurisdictional objection.

Q. The matter could have been resolved just by saying no jurisdiction?

A. Correct.

Q. But then, based on your training and experience, what likely would have happened when that was dismissed in Goshen?

A. It would have commenced another action --

Q. In Liberty?

A. -- in the appropriate jurisdiction.

Q. And in fact, in that case also, it was ultimately settled?

A. Yes.

Q. Before it even went to court?

A. Correct. It never went to court because, I don't remember exactly what the court document shows on the Exhibit, but if the court didn't have jurisdiction -- if the court didn't have jurisdiction there is

nothing to decide.

Those of us who do these kinds of cases know that it's expedited if there is an amount due at all and if there is an ability to pay to resolve these matters by stipulation, rather than wasting everybody's time.

Q. So, that was also resolved by stipulation?

A. Yes.

Q. It was resolved, fair to say, in one phone call?

A. Yes, it was in fact, one phone call.

Q. It was resolved for the amount that Mr. Grier was suing for?

A. Correct.

Q. And Mr. Fernandez then had to make payments each week or each month?

A. I think it was each month, yes.

Q. What was the status of the case once the stipulation was entered?

A. Well, that's hard to say. The answer is the court never had jurisdiction, so there was no case pending in that court.

Q. There was never a case pending?

A. Right, but if you take the position that there was a case pending, I suppose it was when the stipulation was entered into, unless there was a default and some other relief was requested back in whatever court it was going to be in.

Q. So, when those subsequent communications were entered into, between you and I, where you couldn't get a hold of Jerry, he missed a payment. Was there an action pending at that time?

A. No.

Q. Would that be analogous to you telling me make sure Jerry pays the electric bill?

A. No.

Q. It was an obligation that he had?

A. Right.

Q. And he needed to be reminded?

A. Yes.

Q. Based on your experience with him, as good of a soul that he may be, he was not great about record keeping?

A. And hard to find, that was the other part.

Q. And often hard to find.

When you were representing Mr. Fernandez, did Judge McGuire ever speak to you about a fee arraingement with Mr. Fernandez?

A. No.

Q. Did Judge McGuire ever ask you for anything of value in exchange for helping Mr. Fernandez?

A. No.

Q. Was there any discussion, of any nature, about a quid pro quo?

A. No, that would never happen.

Q. Did Judge McGuire ever ask you to give me periodic updates?

A. No.

Q. In fact, the periodic updates would have been as simple as, I had a phone call, the case is over.

A. Yes or the guy -- he missed a payment, can you tell him to make the payment.

Q. Well, then there is no case pending?

A. Correct, correct.

Q. It's just a matter of telling my

friend to pay his bills.

A. Yes, or to contact me for that matter and in fact that's what had happened and he brought in some cash and I put it in my escrow account and then wrote the check for whatever it was. That might have been for the first one with the county, I'm not sure. Whatever it was, the bottom line was to get the thing over with.

Q. Fair to say, neither of those cases required a great deal of legal action?

A. No.

Q. There was a bill and he agreed to pay it over time?

A. Yes.

Q. Now, Lindsay Amoroso is a little bit different.

MR. LEVINE: Is that a question?

MS. TISHMAN: Is that a statement?

THE REFEREE: It's an introduction to the next question.

Q. Do you recall me discussing with you specifically the case about Lindsay Amoroso?

A. Yes.

Q. What, if anything, did I tell you about Ms. Amoroso's relationship with my son?

A. You told me in sum and substance that she saved his life. That your son was in -- I think it was across the river, it is my recollection, but I could be wrong about that. There was a fire, wherever your son was living and Lindsay pulled him out of the fire and saved his life.

Q. If fact, she went back into a burning building to get him out?

A. That's what you told me.

Q. He was at Westchester Medical Center Burn Unit for a period of time?

A. That is correct.

Q. Do you remember where Lindsay was going when she got this ticket in Plattekill?

A. She might have been going to the hospital. I don't remember specifically, but that seems to ring a bell.

Q. This wasn't my son's girlfriend?

A. No.

Q. This was somebody he worked with?

A. Yes.

Q. Is it fair to say I specifically told you charge her or don't charge her?

A. Yes, absolutely. I -- actually I asked the question because of the nature of the situation.

Q. When an attorney that had my background speaks to an attorney with your experience and we talk about a speeding ticket, what is the natural thing we always ask?

A. Should you charge or should I not charge or how much is the fee?

Q. We are talking about what outcome we are looking for?

A. Oh, generally I ask, if it was for speed, how many miles over the limit was it?

Q. And can we get a 1201A?

A. Yes or even better.

Q. Why do we want a 1201A? Why is that the magic word in speeding tickets?

A. Well, there are two reasons. Number one, certain moving violations have

points and if you have enough points you can have you ever license suspended or you can have a civil penalty in addition to whatever penalty the court poses.

A 1201A is a parked on the side of the pavement. It doesn't result in any abstract on your license. Won't effect your insurance. Won't effect your insurance rates or anything that has to do with DMV. It's generally, my position when clients hire me or ask me to do work is, I am less concerned about the fines and more concerned about no points and if you are driving under a certain amount, depending on the court, generally the de rigeur, R-I-G-E-U-R, is for that type of case.

Q. Is mentioning the 1201A, is that some unique legal concept?

A. No, pretty much anybody that does anything about traffic is going to say that.

Q. Was that something that you don't ordinarily think of when you get a traffic ticket?

A. It's quite the opposite.

Q. So, for --

A. It's what I always aim for.

Q. So, for the judge in an email exchange to say, "Can you get a 1201A?" What significance to someone of your experience in handling traffic tickets?

A. None.

Q. None.

Was there anything about that representation where the judge attempted to use the prestige of his office to secure some special outcome?

A. No. As I stated before, the prosecutor up there was John Sisty, doesn't talk to troopers about these cases. Doesn't talk to cops about these cases and based on the fact that, I believe, it was only 14 miles over the limit, it was a pretty easy parked on pavement. It didn't require Peter Gross to handle it.

Q. Fair to say even the person that literally saved his son's life, the judge still wouldn't use the prestige of his office to try to secure some benefit?

MR. LEVINE: Objection.

Q. Well, did he ask you to?

A. Can I answer the question?

THE REFEREE: Can I hear the question again? I am sorry.

Q. Even where the person is credited with saving his son's life, the judge did not attempt to use the prestige of his office to garner personal benefits?

THE REFEREE: What's the objection.

MR. LEVINE: I will withdraw.

A. The answer is no and as long as I know you, that would not be something you would ever do.

Q. Willie Williams?

A. Yes.

Q. There were no email exchanges that we had with Willie Williams. Do you remember specifically whether it was the judge that contacted you about him or whether Mr. Williams contacted you directly?

A. I really don't remember. It was like a bunch of years ago.

Q. It somehow became known that Willie Williams played basketball at Sullivan?

A. Yes.

Q. And that he knew the judge and the judge knew him?

A. From your work at the college, yes.

Q. Did the judge contact you at some point looking for some special accommodation because he knew Mr. Williams?

A. No. Really it was my home court and I knew exactly when I got the tickets, what I was going to get before I put my Notice of Appearance in and not because of anything unusual, improper, inappropriate or improper, but because it's my backyard and I do a lot of tickets in Fallsburg and I knew exactly what was going to happen.

Q. Did the judge take any position with respect to a fee for Mr. Williams?

A. No.

Q. Did the judge ask you to work for free?

A. No.

Q. Did the judge ask you to provide any referral fee to the judge?

A. Never, never and -- number one, it would be inappropriate and number two

you never would do that. You never did do that.

I also might add it is highly likely that when I got these tickets, that I had five, six or seven other tickets on in Fallsburg and so the amount of effort required to dispose of the case was probably about five minutes. When I say five minutes, the secretary -- and I know I did not even prepare the Notice of Appearance and letter, my secretary did it and it went out and we went to court and within twenty seconds of getting there that ticket was over.

Q. Is it fair to say that Williams then sent you an email after the case as over?

A. He did.

Q. In fact, that email is in evidence?

A. It is.

Q. That email thanked you for helping him?

A. Yes.

Q. Did that email refer to Judge McGuire?

A. No.

Q. Did it, in any way, suggest that Judge McGuire had used any inappropriate influence in the case?

A. Fallsburg -- well, in any place, but especially Fallsburg, it's unnecessary. It wouldn't have been required.

Q. You forwarded that email to the judge with the word, "nice?"

A. Yes, he sent me a nice -- he sent me a nice thank you and that's sometimes the best feeling you can get when you help somebody.

Q. The judge's response was, "He's a nice guy."

A. Yes, he was having trouble paying the fine and actually, he had some bail because he hadn't appeared in court previously and I arranged to get a lost bail affidavit, which I think it's somewhere in some of the Exhibits, and so he can sign that and apply that towards the fine.

Q. And the judge's thank you because he was a nice person, not the judge was a nice person, but Mr. Williams, said thank you for helping him?

A. Yes.

Q. Does that gratuity extended from Judge McGuire go beyond the mere words of "thank you?"

A. No.

Q. Did you have any expectation that you would garner special favor with Judge McGuire as a result of it?

A. No.

Q. Lori Shepish, do you know what her relationship is with my wife?

A. I think it was either her hairdresser or your hairdresser. I hope I didn't misspeak, but that was my recollection.

Q. She was a hairdresser?

A. Yes.

A. I don't have --

Q. My wife primarily uses a hairdresser.

A. Okay.

Q. She retained you?

A. She did.

Q. For money?

A. She did.

Q. Did you have any discussions with her of how she came to retain you?

A. I think that, as I testified on direct, I think that she said that either you -- I think that you had suggested that I could represent her.

Q. Along with anybody else?

A. I think she said she had given a couple other -- that you had given a couple other names, Cliff Gordan and -- I am trying to remember.

Q. Eric Groper?

A. It could have been Eric Groper, those are basically three people who did real estate. Generally, that's what would happen.

Q. It's fair to say, that again, in Sullivan County there are not thousands of real estate attorneys?

A. There is a lot of real estate attorneys, but the question is do you want to, you know, recommend a real estate attorney that's going to embarrass you and the answer is no.

Q. When we would have lunch, what if

any discussions did we have about cases pending in Sullivan County anywhere?

A. Really none. Sometimes you would tell me that you were going back to do a jury charge, or whatever, and I would say what kind of case is it and you would say murder-three or whatever, but beyond that, I don't know the names of cases. I stayed out of County Court with serious felonies anyway. During your time, I never appeared in felony criminal cases. I know that for a fact.

Q. Did we discuss legal issues related to any case pending anywhere in Sullivan County?

A. No.

Q. Can you describe for the court please, how supreme court matters are handled in Sullivan County and if it's different in other counties?

A. Well, it's different in other counties, that's for sure. Generally what happens is, unless it's a special proceeding, a court won't be assigned or a particular judge won't be assigned and there

is two parts, there is a part one and a part two and that may have changed recently, also.

Part one is the judge will generally be assigned after a request from judicial intervention is filed and it goes on what we call "the wheel." The wheel is -- there is only one supreme court judge, there are several acting supremes. It get assigned to a judge and that judge may or may not schedule a preliminary conference.

Q. The custom and practice in Sullivan County, based on your 33 years of experience, who conducts the conferences?

A. The initial conference is almost always the law clerk or the law secretary.

Q. Is it uncommon, in Sullivan County, not to deal with the judge directly, until the case is trial ready?

A. Yes, that is correct.

Q. Is it fair to say that the law clerks will act much in the same way as a federal magistrate would act in ushering the case through discovery?

A. Yes.

Q. In fact, fair to say that in Sullivan County, the judge that handles the case through discovery may not be the judge that winds up trying the case?

A. That's why I said part two. I know they are changing that now. Part one was you handle the case up to trial Note of Issue and then there may be a judge assigned to settlement conference and then the part two judge is the one who will actually be assigned and there is a rotating schedule, usually prepared by the Chief Judge of the District, the Administrative Judge of the District consulting with all the judges about their availability and their vacations and that is where it happens.

Q. There is officially a trial judge that handles any trials that come up during a particular term.

A. Frequently, and sometimes that varies, but generally that is the custom and practice.

Q. When you are in the discovery phase, is the judge generally making any decisions, other than discovery decisions?

A. No, not unless someone makes a motion and the parties cannot get the cooperation of the other side.

Q. Is the judge assessing the credibility of anybody?

A. Not unless there is a motion for summary judgement or some other issue.

Q. In the case of Massey versus the Board of Elections, you said that Judge McGuire was the duty judge?

A. Yes.

Q. Which means in an Election Law case -- Election Law cases take precedence over all other cases?

A. They do.

Q. Because time is of the essence?

A. It is.

Q. And often the issues have to be dealt with immediately?

A. Yes.

Q. Because the harm of not dealing with them immediately would be irrebuttable?

A. Yes.

Q. In that case Massey was seeking more polling places added?

A. Yes.

Q. You made an appearance on behalf of Bill James. What was Bill James role in this case, was he the person who established how many polls?

A. No, he was the Chairman of the Town Counsel Democratic Committee, which by the way, I am a republican, but I happen to know Bill. Bill asked me to represent him in this proceeding.

Q. You came and represented him as the chairman of the committee?

A. Yes.

Q. Did it matter to the committee how many polling places there were?

A. No.

Q. Does the committee have to set up the polling places?

A. No. I think the issue was, it may have been a primary issue, which was why he was named.

Q. Again, regardless of whether -- by the way, there was one polling place established for the village?

A. Yes.

Q. And Ms. Massey wanted two?

A. Yes.

Q. In fact the two were separated by a mile or less?

A. Yes.

Q. The second place you wanted was a mile from the first place?

A. Yes. The place that the Board of Elections selected or the village has selected was the Monticello firehouse, which had plenty of places for polling. I think the testimony came out, or at least in the decision, that Massey really didn't have standing because she lived a mile away, she could get to the polling place.

Q. Did the judge have an opportunity to assess the credibility of anybody in that case?

A. No, it was a decision -- my recollection was the decision was based on standing. It had nothing to do with credibility. There were no affidavits submitted. There were objections to Point in Law. There was no testimony, to the best of my recollection there was no testimony.

The court made oral argument inquiry. You had oral argument and that's all and you read the papers.

Q. It was decided on the law?

A. Correct.

Q. Was the case brought up to the Appellant Division?

A. I don't think it was.

Q. Nobody questioned the outcome of that case?

A. No. Nobody filed a Notice of Appeal.

Q. That would have been heard right away in the Appellant Division?

A. Yes, within a couple of days.

Q. The case of Miller versus Liberty, 2013, 2 Sullivan Street versus the Town of Liberty, 2013 and Sam's Towing versus the Town of Liberty, what is the similarity, if any, between those three cases?

A. Well, the principal of all of those entities is Jeff Miller, who is also grieving his house.

Q. This involved multiple pieces of

property that were all owned by Mr. Miller?

A. Yes, and the idea is, when you do these things there is a time limit, they have to be filed by the first day of August and it they are not filed, you lose. It was easier to bring them all at once. There had to be separate petitions because -- for each parcel actually, and if they were separate "beneficial owners," but the party of interest was Jeff Miller.

Q. Fair to say those three cases together related to the property and operation of one business in the Town of Liberty?

A. Yes. The first time I appeared in front of your law clerk, for the return date of it, both Mr. Garigliano, who represented Town of Liberty on it, said this is what it is and Mr. Garigliano told the court clerk that we will work it out amongst themselves. We don't really need court intervention and that's exactly what we thought was going to happen and I had a number of conversations with Mr. Garigliano in which he made some proposals in the case

that never got settled, but not due to the Town of Liberty's failure to make a reasonable proposal.

Q. Was there ever a record made of any proceedings in that court?

A. There weren't any, other than the preliminary conference, there was never a second conference. In fact, it was kind of ironic, Walter Garigliano, who is a really competent attorney, really didn't want to waste his time in court. He told Ms. Conneely he was never coming back and she was somewhat taken aback by it and I just didn't say a word, but he was never coming back because he figured that he would resolve it with me.

Q. These preliminary conference orders that we -- a couple of them went into evidence, the information that's included on them would include the discovery schedule?

A. Yes.

Q. Primarily the discovery schedule and further conference, compliance conferences?

A. Right, we basically -- both Mr.

Garigliano and I told Ms. Heeley we do not need that order in and she said we have to give it to you and that's how it ended up.

Q. Is it fair to classify that as a pro forma order?

A. Absolutely.

Q. It was entered into on consent?

A. Yes.

Q. There was no discretion according to the court?

A. Correct. I think it's actually statutory, it's under the uniform rules for these types of proceeding, that you have to do that, so we did it and that was it.

Q. What made it different was that the statutory rules were applied to the calendar to come up with dates?

A. Yes.

Q. During the time you were involved in those cases they never actually appeared before Judge McGuire?

A. No.

Q. Judge McGuire never participated in any of the conferences?

A. No, there was no correspondence

from either litigant's counsel to you or vice versa, other than that which is going to be introduced into evidence with respect to the Preliminary Conference Order.

Q. As far as you know Judge McGuire didn't even have any active knowledge of what was happening with the case?

A. I would say you probably didn't.

Q. During the time that you had those cases, they were not on the trial ready calendar?

A. No, they couldn't have been because the appraisals were never filed, nor was any other request for judicial intervention or any help from the court ever inquired by either party.

Q. The Miller versus Town of Liberty, 2014, how was that different from Miller versus Liberty, 2013?

A. It was the exact same thing, it's just that Walter Garigliano -- we hadn't been able to resolve -- finally resolve the case, so in order to protect the client's interest I had to file the petition. The client, I believe, was looking to sell the

property so he told me not to file the other ones because he didn't want a reduction in those values because it might effect his ability to sell the property at a higher amount.

Q. In these Tax Cert case -- these were Tax Cert cases?

A. Yes, Tax Certiorari.

Q. In these Tax Cert cases what is the petitioner looking for?

A. Reduction in his assessed evaluation.

Q. They want to devalue their own property?

A. No, they want to pay less taxes. In Liberty, that's a substantial -- especially in the Village of Liberty that is a substantial amount of money.

Q. Taxes are related to the assessment?

A. Correct.

Q. They are based on the assessment?

A. Per thousand, yes.

Q. Fair to say that you had to file in 2014 because although you were still

negotiating 2013, if you didn't file in '14 you would lose the opportunity to challenge the assessment --

A. Correct.

Q. -- for the year?

A. Correct. I considered it a pro forma application.

MS. TISHMAN: There was no question in front of the witness.

Q. Was that a pro forma application?

A. Yes, that's what I considered it.

Q. By the way you have appeared in Family Court in Sullivan County on several occasions?

A. Yes.

Q. You know how the microphones are laid out on the tables?

A. Yes.

Q. You have one microphone on each table?

A. Yes.

Q. And you have at each table for the petitioner, the respondent, the second respondent and the Attorney for the Child, there may be multiple people sitting at the

table with one microphone.

A. Yes. I can tell you that yesterday I was in Family Court with Judge Meddaugh and there were 12 attorneys in the courtroom representing various attorneys.

Q. The only person who gets their own microphone is who?

A. The judge.

Q. That microphone is close to the judge?

A. Right.

Q. Right in front of him?

A. It is.

Q. There is one right under their mouth?

A. Yes.

Q. Have you ever listed to a transcript of a Family Court proceeding.

A. Yes, I have.

Q. Is it fair to say that the judge's voice is always easy to detect?

MR. LEVINE: I am going to object to the relevancy of this and he is not an expert on this.

THE REFEREE: Sustained.

Q. In D[redacted] versus P[redacted], you represented the child in that matter?

A. I did.

Q. That was a case of severe abuse?

A. The child -- yes.

Q. The child had suffered a serious head trauma?

A. Yes and the respondent father had killed another child in Sullivan County in the same general manner.

Q. Do you recall the mother and father in that case?

A. I do.

Q. Would it be cruel to describe each of them as challenged mentally?

A. I think that would be accurate.

Q. This father that had killed one child and had seriously injured this other child, an application was made by the Department of Family Services?

A. Yes.

Q. The Department of Family Services advocated that that child's safety was paramount?

A. They did.

Q. And that the court had to make a determination whether the child would be at imminent risk if he was maintained with the parent.

A. I think that was a given because my recollection is the child was hospitalized at Westchester Medical Center. The parents weren't even doing what they were supposed to do and if the Department didn't step in the child would be dead.

Q. The child was in Intensive Care Unit at Westchester Medical Center?

A. He was.

Q. Was the removal virtually self-evident?

A. It was. There was really nothing -- the parents didn't really -- my recollection -- didn't object because what were they going to object to? The child was hospitalized. The child was never coming home.

Q. Were each of the parents represented by counsel?

A. They were.

Q. The Department was represented by

counsel?

A. They were.

Q. You represented the child?

A. I did.

Q. Did anybody object to the removal of that child?

A. No.

Q. All parties were essentially in agreement that this child had to be cared for by someone?

A. Yes.

Q. Ultimately, that child was voluntarily surrendered?

A. Yes.

Q. What does it mean when a child is voluntarily surrendered?

A. It means both of the parents, whether they are birth parents or adoptive parents, surrender their right to be parents and they surrender what is involved in that and either they surrender them to the County, the Department of Family Services or to some other agency or entity, depending on where you are. It is a little different in New York City.

Q. Each of the parents, when they go through the judicial surrender, are represented by counsel?

A. Not only are they represented by counsel, but they are given a cooling off period and I know your custom and practice is to go up and down with them several times about the import of what's happening is and giving them a right at any time to stop and say no.

Q. Did you participate in each of the two judicial surrender proceedings?

A. Yes, I did.

Q. When the parents came into court they were prepared to surrender?

A. Yes.

Q. That decision had been made before it even came to court?

A. Correct. They actually executed documents with the Department, but the custom and practice of the statute requires that they reexecute such documents from the court.

Q. So that the court can ensure their waiver was knowing and intelligent and

voluntary?

A. Correct.

Q. And so that the court can ensure that they are not essentially selling their child?

A. Correct.

Q. In that case each of the parties were represented by counsel.

A. They were.

Q. Each of the parties surrendered their parental rights?

A. They did.

Q. Thereafter, once parental rights are terminated, what happens to the child?

A. Well, generally the child goes into the care and custody of the Department of Family Services, assuming that the child is healthy and is returning to a place they can evolve, wherever that may be. The next step is to free the child for adoption. That is why we have permanency hearings.

Q. What is a permanency hearing?

A. Permanency hearing is something that occurs generally every six months, unless something else has happened recently

without getting into the details, in which the Department of Family Services is required to provide a report to the court to all parties of interest, which could be the parents, if there are still parents, as well as the Attorney for the Child and any other interested party, to report how the child is doing. What are the goals? Is the goal to return the child to the parents? Is the goal to free the child for adoption? Is the goal to place the child with some family member? All those things and are there any services that are required.

For example, as law guardian or Attorney for the Child, some of the things that I always look for are, especially the younger child, has the child been tested for audio? Has the child been tested to see if they need glasses? Are there dental issues? All the basics. Is the child doing well in school? Are there any medical issues? Are there developmental delays? All those things and that comes into a permanency hearing report to figure out what, if anything, we need to do.

I can say that there have been

times, where if your Honor has been present, where I criticize the Department for not doing what they are supposed to do because it was in my client's best interest to make sure that you knew about it.

Q. The role of the Attorney For the Child, in these permanency hearings, is making sure the child's needs are being met?

A. Correct.

Q. So the child doesn't get lost in the system.

A. And sometimes they do.

Q. In fact, there was a time that we didn't have permanency hearings, correct?

A. That is correct.

Q. That was a time when many children were lost in the system?

A. Yes.

Q. And harmed in the system?

A. Yes.

Q. The Attorney For the Child in the case of a judicial surrender is really making sure the child is having their needs met?

A. Yes.

Q. Based on your experience is it Judge McGuire's practice to make sure these child's needs are met?

A. Yes.

Q. And to hold the Department accountable to ensure that it's met?

A. I have actually seen you where children's needs have not been met and the Department has fallen down, of you contacting all parties present, with attorneys present, contacting the Committee for Family Services to resolve issues that need to get resolved, because they were such immediate instances. Again, that was with everybody in the courtroom and everybody consenting to that and I found that to be an extremely helpful thing that helped the child.

Q. In the P[redacted] case, after the judicial surrender was completed, did the Department object to providing care for the child?

A. No.

Q. There may have been certain issues that you raised that he get checked

for glasses?

A. Right.

Q. Was there any opposition to checking the child's eyes?

A. Nobody objected. I am just doing my job. The answer is that's my job, so even if someone doesn't agree with my view of it they know I am doing my job to protect the child. I don't get paid a lot of money to do this.

Q. Even if you and the judge had an inappropriate relationship what, if any, effect could there have been on a case like P[redacted].

A. None.

Q. None. C[redacted], now C[redacted] is not yet adopted?

A. Correct.

Q. That case is still pending?

A. It is.

Q. Is there an adversarial proceeding pending now?

A. No.

Q. What stage are we at with C[redacted]?

A. We have an agency that the county has contracted with called, Kid's Peace, and the caseworker is absolutely the most super person and so into this child who has been through a trauma that nobody should have to endure.

We thought we had foster parents who were to adopt the child and then the child, allegedly, sexually acted out. Probably, if he did, it was a result of the trauma that he observed as a young child.

Q. How old is E[redacted] C[redacted]?

A. I think he is 10 or 11 now.

Q. How long has he been removed? How long have you been representing him?

A. Six, seven years probably. I am guessing.

Q. He was probably three or four?

A. He was three or four when he saw his mother, her boyfriend and his Uncle Matt shoot up and die of a heroin overdose in a hotel room.

Q. In his presence?

A. Correct. In fact, those were the subpoenas that were shown to me before,

those were for that case.

Q. And that subpoena was denied for documents?

A. Right, but the reason the subpoena, which I asked for a subpoena, is because the Department in that particular case knew that this was going on and didn't do anything about it, so I wanted to prove my case to protect the child and have the child removed from the parent's household.

Q. The father, E[redacted] C[redacted]'s dad, what was his status?

A. He had traumatic brain injury. He was not prepared to do anything at this point. He was not involved in that original incident that we talked about.

He was separated and he recognized that he was never going to be able to care for the child. He executed a judicial surrender where he could see the child on a regular basis, unless he failed to visit on those regular basis and in fact, he did fail. He no longer, I believe, has any right to his child.

Q. In fact, he is a drug addict?

A. Correct.

Q. And was in a Methadone program for several years?

A. He was.

Q. And never got himself clean, although he had access to the child --

A. He did.

Q. -- he was not able to care for them, because of the traumatic brain injury?

A. Of course.

Q. And the mother, what is the mother's drug situation?

A. The mother -- I am going to estimate three years worth of permanency hearings, in which the court gave her the opportunity to go to inpatient to get cleaned up and she never did. As a result of that, the Department changed -- asked for the goal to be changed to free the child for adoption. The child was freed for adoption. Mom executed a conditional surrender that she be able to visit with the child and ironically, she's now clean and visiting the child. So, on that end it's a bad result, but it could be worse.

Q. Did your advocacy result in the

parent's parental rights being terminated?

A. No.

Q. That was a decision that they presumably made with their attorney?

A. Yes, it was absolutely voluntarily.

Q. Each was represented by counsel?

A. Competent counsel.

Q. You were present for the proceedings when the parental rights were terminated?

A. I was.

Q. Did anybody object to the parental rights being terminated?

A. No.

Q. Did anybody express that it was other than in the child's best interest that this child be cleared for adoption?

A. No.

Q. In fact, the childhood trauma has manifested itself in more problems for this child?

A. Yes.

Q. This was a child that watched an uncle die of a heroin overdose?

A. Yes, and other things.

Q. In fact we may not ever know all the things that child has seen?

A. Correct.

Q. By the way, when is the last time you visited me in chambers?

A. When you say visited, we were in chambers for a matter about a month ago with all counsel.

Q. With all counsel?

A. Where we left the courtroom because you had suggested that there was a way to dispose of a case, which made sense, of somebody who wanted to move to Maine on a case. Other than that, I am going to guess at least three or four years. Since the policy changed about anybody being able to come into the back of the Family Court area, towards your chambers or towards Judge Meddaugh's chambers.

Q. Other than the two or three tickets we went through with Ms. Tishman, are you aware of any other traffic tickets that you participated in through Judge McGuire?

A. No, as I said before in the emails, there was an email about a gentleman from Liberty having a ticket but I never heard from that. It's somebody who you and I both know, a mutual acquaintance, and the person never contacted me and I don't believe I ever did anything about it. I think I actually, you know, I called them and they said that they were taking care of it themselves. That's my recollection.

JUDGE MCGUIRE: If I may just have a minute?

Q. Since Judge McGuire took the bench, what if any financial arraignments have there been between you and Judge McGuire?

A. There have never been any.

Q. When we go to lunch, Judge McGuire pays his bill?

A. Yes.

Q. Mr. Kelson pays his bill or washes dishes?

A. Yes, that is correct.

Q. Are you familiar with my former secretary, Wendy Weiner?

A. I am.

Q. Are you familiar with her within the community?

A. I am.

Q. How do you know her within the community?

A. A number of years ago I used --

MR. LEVINE: I am going to object to the question.

THE REFEREE: I don't know where he is going with this.

JUDGE MCGUIRE: Judge, it saves all of us -- I will proceed as direct. It saves all of us having to call Mr. Kelson back later.

THE REFEREE: I don't know what you are going to ask him about her.

JUDGE MCGUIRE: Well, we know she is going to testify next week and I have maybe two or three questions to ask about his familiarity with her because there is --

THE REFEREE: You are going to ask him about her reputation in the community?

JUDGE MCGUIRE: Correct.

THE REFEREE: For what?

JUDGE MCGUIRE: Truth and veracity.

THE REFEREE: That is sustained.

JUDGE MCGUIRE: Then I have no further questions.

THE REFEREE: Do you want to take a break and have Mr. Kelson wait in the hall and we can take up the other issue?

JUDGE MCGUIRE: Yes, yes.

THE REFEREE: You may exit and wait for us to call you back.

(The witness exited the room.)

THE REFEREE: We know that Mr. Kelson appeared before Judge McGuire in Family Court regularly and we know Mr. Kelson appeared before Judge McGuire in supreme court on the occasions that we heard about and I don't think we heard about any occasion when he appeared before Judge McGuire in Surrogate's Court. So is that something you are proceeding on?

MS. TISHMAN: I believe the

witness said he appeared in Surrogate's.

THE REFEREE: We do not know when or what matters?

MS. TISHMAN: No, I have nothing specific.

THE REFEREE: Is this something that you want to leave in the case or can we just exclude this from the case?

MR. LEVINE: We can exclude this. We just have a brief redirect.

THE REFEREE: Let's bring him back.

(The witness entered the room.)

REDIRECT EXAMINATION

BY MS. TISHMAN:

Q. You were asked a lot of questions about your relationship with Judge McGuire. Did Judge McGuire ever disqualify himself in the Massey versus Sullivan County Board of Elections Case?

A. No.

JUDGE MCGUIRE: Objection. It was asked and answered on direct.

THE REFEREE: It was not asked or

answered. Overruled.

Q. Did Judge McGuire ever disqualify himself in the FIA Card Services Case?

A. No.

Q. Did Judge McGuire every disqualify himself in the two Miller cases versus Liberty cases?

A. No.

Q. Did Judge McGuire every disqualify himself in the two Sullivan Street versus Liberty cases?

A. No.

Q. Did Judge McGuire every disqualify himself in the Sam's Towing versus Liberty case?

A. No.

Q. Did Judge McGuire ever disqualify himself in the D[redacted] versus Matter of P[redacted] case?

A. No.

Q. Did McGuire ever disqualify himself in the D[redacted] versus C[redacted] court case?

A. No.

Q. Did Judge McGuire ever disqualify

himself in any Family Court matter when you were appearing?

A. Can I -- I am not sure I can answer a yes or no. Can I try?

With respect to any of the cases you mentioned and my work as law guardian, the answer would be no. I can't say for sure that there may have been -- I believe that there were other cases that may have been assigned to Judge McGuire in which he may have recused himself, not based on anything you brought out in testimony.

I can't say -- I would not know if he recused himself, period. When the case is assigned, like for example a supreme court case, if he recuses himself, that doesn't mean that we as lawyers know that it's been recused, other than it is transferred to another judge. For the most part, the answer is no.

Q. Do you know of him ever disqualifying himself in any Family Court matter, where you were not the law guardian?

A. No.

Q. Do you know if Judge McGuire ever disqualified himself at any supreme court

matter where you represented one of the parties?

A. No.

MS. TISHMAN: Nothing further.

JUDGE MCGUIRE: Very briefly.

RECROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. You were asked about the FIA versus Fishbain case?

A. Yes.

Q. How was that case resolved?

MR. LEVINE: Objection. That's beyond the scope of redirect.

JUDGE MCGUIRE: No, he asked if I disqualified myself and the answer was no.

THE REFEREE: I will let you have two questions here.

JUDGE MCGUIRE: Very good. Thank you.

Q. Has that case resolved?

A. Since the attorney was a nice guy, I told him to make your motion, I am not opposing it and you rendered a decision, apparently, you rendered a decision granting them judgment.

Q. Have you seen the decision?

A. I have, yes.

Q. Is your appearance noted on the decision?

A. No, it's not.

Q. You never appeared in the summary judgment motion?

A. Correct, because I didn't have a defense and I told the attorney that I wasn't going to oppose the motion.

Q. That's the only part of the case that Judge McGuire actually handled?

A. Correct.

THE REFEREE: Anything else?

MS. TISHMAN: No.

THE REFEREE: Anything else, sir?

(The witness exited the room.)

THE REFEREE: We are done for the day, I gather.

MS. TISHMAN: As I said this morning we are having Jared Heart and Sarah Katzman.

THE REFEREE: Do you think that will fill the day?

MS. TISHMAN: I think it will

fill most of it and if we have extra space I could get Ethan Beckett here. I will have him on call.

THE REFEREE: With that we will say goodnight and we will see each other tomorrow morning at 10:00.

(TIME NOTED: 4:31 P.M.)

Exhibits

Commission		ID	EV
XI-28	Check from Bat Mitvah		628
XI-1	Email		636
XI-2	Email		640
XI-3	Email		649
X1-4	Email		657
XI-6	Email		663
XI-7	Email		666
XI-8	Email		671
XI-10	Email		709
XI-11	Email		712
XI-12	Email		718
X-13	Email		720
X-15	Email		727
XI-17	Email		735
XI-18	Email		738
XI-19	Email		739
XI-21	Email		744
XI-22	Email		748
XI-23	Email		749
XI-24	Email		751
XI-26	Email		757
XI-27	Email		762
11-36	Email		793

CERTIFICATION

I, CHRISTINE SOCCI, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes of the hearing held on May 8, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2019.

_____

CHRISTINE SOCCI

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant:
To Section 44, subdivision 4, of the
Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

a Judge/Justice of the Supreme Court
Queens County.

---

61 Broadway
New York, New York

May 9, 2019
9:59 AM

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Senior Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

MICHAEL F. MCGUIRE, ESQ.
PRO SE

Also Present:

MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Commission	Direct	Cross
Jared Hart, Esq.	901	928
Sarah Katzman	972	991

THE REFEREE: Good morning, everybody. Today is May 9, 2019. This is the continued hearing in the matter of Judge Michael F. McGuire. Are we ready for the next witness?

MS. TISHMAN: Yes. The next witness is Jared Hart.

THE REFEREE: Please call your next witness.

MS. PARTIDA: Witness entering.

THE REFEREE: Mr. Hart --

THE WITNESS: How are you?

THE REFEREE: -- please have a seat. I have been asked to read an introductory statement to you.

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away

from the microphone and talking over other speakers. Please refrain from responding until a question is completed, and answer each question with words, not with a nod or a gesture.

THE WITNESS: Okay.

THE REFEREE: Please refrain from creating excessive background noise as it becomes amplified on the recording. Please turn off any cell phones or any other electronic equipment. Okay?

THE WITNESS: Okay.

THE REFEREE: Would you please rise and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE REFEREE: Would you please have a seat. State your full name and spell it for the record.

THE WITNESS: Jared Hart, H-A-R-T.

THE REFEREE: And Jared?

THE WITNESS: J-A-R-E-D.

THE REFEREE: Thank you. You may proceed, Ms. Tishman.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Mr. Hart.

A. Good morning.

Q. Are you currently employed?

A. Yes.

Q. And where are you employed?

A. I'm self-employed.

Q. And are you an attorney?

A. Yes.

Q. What type of employment? You say self-employed. What type of --

A. Well, I have my own office and I also subcontract with the Sullivan County Legal Aid Panel to handle some public defender work.

Q. As part of the subcontract, what courts do you practice in?

A. I practice in three local justice courts in the County, Taniman, King,

Rockland and Highland.

Q. So it's in Sullivan County?

A. Yes.

Q. Rockland County?

A. No. They're townships within Sullivan County.

Q. Oh, I see.

A. Yeah.

Q. And for you -- you said you are a sole practitioner?

A. Yes.

Q. As a sole practitioner, what county is your office located in?

A. Sullivan County.

Q. And where are most of your cases? What county?

A. Sullivan County.

Q. Now, how long have you been a sole practitioner?

A. Since 2012.

Q. And prior to being a sole practitioner, where did you work?

A. The Sullivan County District Attorney's Office.

Q. And how long were you in the

Sullivan County District Attorney's Office?

A. Approximately two years and eight, nine months.

Q. And what time period was that?

A. It was from the beginning of 2010 until the late fall of 2012.

Q. And did you go to the Sullivan County District Attorney's Office directly from law school?

A. No, but I -- for six months I worked at a civil firm and then I got sworn in and then I went to the DA's Office so practicing I started at the DA's Office.

Q. So once you were sworn in --

A. Correct.

Q. -- as an attorney, you started at the District Attorney's Office?

A. Yes.

Q. And prior to having your own practice, did you work with any other -- and after you were in the DA's Office, did you work with any other attorneys?

A. So when I left the DA's Office, I partnered up with another lawyer in the county and we -- we had a private practice,

and I also worked under his corporation, which handled assigned legal cases as well, both criminal and family court, that was not the Sullivan County Legal Aid Panel, it was called the Sullivan County Conflicts Legal Aid Panel, they're similar entities, but that's where I was for a period of time before I left him.

Q. And what's that practitioner's name?

A. Joel Proyect.

Q. P-R-O-Y-E-C-T?

A. Yes, correct.

Q. And how long were you associated with Mr. Proyect?

A. From the end of 2012 until Christmas of 2016.

Q. Have you ever appeared before Judge McGuire in Family Court?

A. Yes.

Q. Have you ever appeared before Judge McGuire in County Court?

A. Yes.

Q. Have you ever appeared before Judge McGuire in Supreme Court?

A. Yes.

Q. Did you represent N[redacted] G[redacted], G-[redacted], N[redacted], N[redacted] -- did you represent N[redacted] G[redacted] in 2013 in County Court?

A. Yes.

Q. Was that an assigned case?

A. Yes. It was part of the Conflict Panel.

Q. And were you working with Joel Proyect at that point?

A. Yes.

Q. And can you just briefly describe what that case was about?

A. She had been arrested on a felony for, I believe it was, a stolen credit card of some sort. It was grand larceny. The case originated in the local court where we had appeared on her behalf, and then eventually we entered into a Drug Court contract with DA's Office and of course with approval by the Court in County Court, by which, if she were to successfully complete Drug Court, she would receive the benefit of a misdemeanor and probation. If she was to

fail Drug Court, the felony plea would stick, she'd be convicted and she'd be sentenced, I believe, to state prison.

Q. And what was the promise of the sentence?

A. If she failed or --

Q. Yes.

A. I believe it was one and a third to four.

Q. And was part of the Drug Court agreement that Ms. G[redacted] enter into an inpatient treatment?

A. Yes. It's standard, yeah. But it --

Q. Continue.

A. It wouldn't be necessarily inpatient. It would be whatever treatment was recommended because she is on a term of supervision. So if it's inpatient, outpatient, whatever is recommended, she has to abide by all the conditions.

Q. And if she was successful in completing the conditions, she received petit larceny and three years probation?

A. That's correct.

Q. Now, drawing your attention to August 28, 2013, did you appear before Judge McGuire in the *P*[redacted] *v G*[redacted] case?

A. Yes.

Q. I want to show you what's been entered into evidence as Commission Exhibit II-2, and that's an August 28, 2013 transcript. And what court was this case heard in?

A. The Sullivan County Court.

Q. So it was County Court?

A. Yes.

Q. Is that where all the criminal matters are heard?

A. On the felony level.

Q. I am just waiting to make sure everyone has the exhibit.

A. Oh, okay.

Q. Now, who did you represent on August 28, 2013?

A. Ms. G[redacted].

Q. And did anyone appear from the DA's Office?

A. Yes. It's Robert Zangla, Assistant District Attorney.

Q. And was he the District Attorney of Sullivan County at that time?

A. He was the Assistant District Attorney, but he was the one assigned prosecuting the case or covering calendar. I don't remember why exactly he appeared specifically.

Q. And why was the case on the calendar that day?

A. She had violated the terms and conditions of her Drug Court contract, so we were there to, essentially, sentence her in accordance with the failure of the Drug Court contract.

Q. And that was an agreed-upon sentence of one and a third --

A. Yes. It's right in the contract. It's not an open-ended sentence. It's agreed upon.

Q. So there is a contract that's signed by the defendant --

A. Yes.

Q. -- and all the parties?

A. Yes.

Q. And I want to draw your attention

to page four of Exhibit Commission Exhibit II-2. And if you could read to yourself lines 15 to 25, and let me know when you're finished.

A. I've read it.

Q. Now, who was presiding in court that day?

A. Judge McGuire.

Q. Now, you finished reading page four, line 15 to 25?

A. Yes.

Q. And what was the Judge's demeanor during this interaction?

A. Well, I mean at the beginning of the interaction, it was -- it was cordial, anything you want me to know. I mean, he was cordial. He was asking the defendant if she wanted to say anything. She had responded to him and she did say something, and I guess at that point I would classify a little bit maybe condescending or sarcastic towards her.

Q. Who was condescending and sarcastic?

A. The judge.

Q. And are you referring to page four, line 15, "The Court: Anything you want me to know before I sentence you? The Defendant: I tried the Drug Court thing and -- The Court: Just too much work." Is that the point?

A. No. From line 15 to 18, the judge was cordial. He simply asked her if there was anything she wants to tell him. It was when she responded thereafter that it changed.

Q. And if we can go to page five, line nine through page six, line 11.

A. Okay.

Q. And during this interaction that I asked you to read, what was the judge's demeanor?

A. Very condescending.

Q. And what was the volume of his voice?

A. It was -- he was not shouting. It was -- it was relatively, I guess the word, normal at that point.

Q. And on page six, line 10 through 11, it notes "the defendant shakes head

negatively." What was Ms. G[redacted]'s demeanor at this point?

A. Well, at that point -- at that point she was actually kind of looking off to the -- at some point it was the ceiling, sometimes it was the floor, throughout the initial stages of this, but at that specific point she was kind of looking out and she -- she was actually starting to cry a little bit, and I was actually whispering to her at that time because I just didn't want her to speak because she was getting upset at that point.

Q. And what led you to believe that she was getting upset?

A. Well, I've been dealing with her for a while so I knew her, but she was physically -- her face -- she was starting to tear up. She wasn't openly -- you couldn't really see the tears, but I could see them. I could -- because I was next to her, and I could see she was getting very upset at that moment.

Q. And if we go to page six, line 15 to page eight, line 25, can you read that to

yourself please?

A. Okay.

Q. And you have read to page eight?

A. Oh, I thought you said seven 25. I'm sorry.

Q. Page six, line 15 to page eight, line 25.

A. Okay.

Q. What was the judge's demeanor during this part of the transcript?

A. He was -- he was -- again, he was not -- he was not shouting at this point or anything like that. He was, essentially, being pretty stern, I guess is what I would say, and kind of -- lecture is not the appropriate word, but it was similar to somebody lecturing an individual about what they should or should not be doing with their life. It was more matter-of-factly telling her what's noted in the transcript.

Q. And before you used the word condescending. At this time period was the judge talking to Ms. G[redacted] in a condescending manner?

A. Well, certainly. I mean, the

entire thing was condescending about the person she is and what the choices she's made. So I guess the answer is yes.

Q. And what was Ms. G[redacted]'s demeanor when the judge said, on line six, page -- I mean page six, line 15 through 19, "You know, this may be one of the saddest cases there are, not for you because you have chosen to throw your life away. That's your decision to do." What was Ms. G[redacted]'s demeanor during this time?

A. She was still upset at this point, but she was -- she was still upset, but she was just -- she was just standing there. You know, I know the one part said she was shaking her head negatively. She kind of did that throughout the entire process.

Q. And you said that she -- before you said that she had tears in her eyes?

A. She did.

Q. At this point, was that continuing?

A. Yes.

Q. And was she crying at this point?

A. At all times she -- I mean, you'd have to classify crying. At all times I would consider it crying, but she was not openly balling in court. She was tightlipped, tearing, red-faced. She had -- I guess that would be her version of crying.

Q. And on page eight, line 21 through 24 where the judge says "this is a conscious decision on your part to abandon your children or be totally self-absorbed in your own world," what was Ms. G[redacted]'s demeanor at that point?

A. The same. In fact, she was actually -- during this portion of the sentencing, this was actually when she started to get a little agitated. Not in an aggressive way but in a disagreeing type of way. In fact, that's when I really started to whisper to her not to say anything, "don't react".

Q. And why did you say that?

A. Well, I was concerned because I actually had prepped her for the sentencing prior to this just to "be calm" and "don't say anything" because I was concerned

because of the comments about her children, and I knew that that was a soft spot for her. It had been in the past in dealing with her case. So I -- I knew that, that, because of my relationship with her, that this was going to -- she was going to be very upset.

Q. And why didn't you want her to say anything?

A. Because I didn't want anything worse to happen to her than being sentenced to up to four years in prison that day. It was an agreed-upon situation. It was not open-ended. There was no need for argument. It was a simple didn't comply with the Drug Court contract, everybody knew it, she admitted it. It was a simple sentencing. I didn't need any explanation from her to be put on the record.

Q. So it was an agreed-upon sentence, it was a contract?

A. Correct.

Q. So everybody was coming in knowing what the sentence was?

A. Yes.

Q. And the sentence just would have been applied --

A. Yes.

Q. -- at that point? Was it obvious that Ms. G[redacted] was getting upset?

A. Yes.

Q. Now --

MR. MCGUIRE: Objection. Obvious to who?

THE REFEREE: Obvious to who?

A. Myself.

Q. Page nine, line five through 10, can you read that to yourself? Let me know when you have finished.

A. Okay.

Q. Now, what was the judge's demeanor when he was talking on page nine, line five through nine?

A. He was not -- it was not shouting or anything at this point. He was -- it was still the same as I said earlier. He was just still somewhat condescending and sarcastic and, for lack of a better word, a little bit of lecturing.

Q. And then after the judge says

that -- uses the word "pathetic" in relationship to Ms. G[redacted], the record says that Ms. G[redacted] said "that's your opinion." What was Ms. G[redacted]'s demeanor at that point?

A. She did not yell that. She -- she said that pretty matter-of-factly. She was still upset. She was still being emotional. She --

Q. And when Ms. G[redacted], up to this point, when she was talking in court, what was her -- the volume of her voice?

A. It was not high.

Q. You said before that when she said "that's your opinion," she said matter-of-fact. Was that how she had answered all the previous questions or when she spoke in court prior to that point?

A. I would have to go back to look at every answer to remember all of them, but I believe up until this point it was all pretty matter-of-factly, yes.

Q. Now, if we can go to page nine, line 11 to 24, will you read that, and let us know when you finished.

A. Okay.

Q. Now, in the first part, when the court was talking in line 11 through 19, what was the court's demeanor?

A. The judge's voice got a little higher at this point. Again, he was not shouting, though, but it was a little louder, and this -- this portion is when I would consider he started to get a little -- very condescending and kind of degrading a little bit. This is the portion that, that she then started responding in an agitated way.

Q. When you said that -- who were you referring to when you said that he became degrading and very condescending? Who was using that?

A. The judge.

Q. And you said that his voice became louder at this point?

A. Louder than what it was, but I would not classify it as shouting.

Q. Now, line 20 to 24, the defendant is speaking then. What was the defendant's demeanor at that point, or Ms. G[redacted] I

should say?

A. She was very agitated at this point. Still crying, but she was -- she was agitated.

Q. At this point when you say crying, did she have tears in her eyes like you described before or were tears coming down her face?

A. I don't even remember if they were coming down her face. They were still in her eyes.

Q. And when you say she started to become agitated -- I withdraw that. When Ms. G[redacted] was talking, line 20 to 24, what was the volume of her voice?

A. It was -- it was getting louder. It was somewhat matching the court's. Portions during this part, though, she -- she was kind of talking to two people at once, both the court and myself. So in terms of her demeanor and her emotions, I mean, she was going back and forth with her head to kind of address us both, because I was also whispering to her "just relax, calm down" so --

Q. Now, on line 24 and line 25, the court cuts -- Ms. G[redacted] is talking and then the court cuts her off. And what happened at this point?

A. Can you -- I don't know what you are asking.

Q. Page nine --

A. Right.

Q. -- line 24, the defendant's talking, right?

A. Right.

Q. And then line 25, the court has cutoff Ms. G[redacted] in the middle of what she's saying?

A. Right.

Q. And then if we go to page 10, Ms. G[redacted] continues. Who is she talking to then?

A. Well, on the top of page 10 she turned to me, and that's -- and she made that comment.

Q. And was she talking to you at that point?

A. She was looking and speaking towards me, so I considered her talking to

me. What I am trying to explain is that prior -- this whole back and forth, she was both addressing the court and me. At the top of page 10, yes, she was looking at me and was addressing me at that point, but she was responding to the court in the fact that she wasn't going to sit there and listen to it anymore, and the court said "no. Yes, you are," which she then responded and looked at me and was somewhat addressing everybody but looking at me saying, you know, "can I get out of this courtroom."

Q. Who was saying that?

A. Ms. G[redacted]

Q. And what did Ms. Go[redacted] want?

A. She just wanted to be sentenced and leave the courtroom.

Q. And on page 10, line five, who are you talking to?

A. Ms. G[redacted]. That's the one part in the transcript that I guess they heard me speaking to her.

Q. And page 10, line six through seven, who is Ms. G[redacted] talking to?

A. Me.

Q. And what was her demeanor at that point?

A. She was agitated.

Q. Was she still crying?

A. Yes, and I say that because she was crying the entire time, even when we left and I went out into the hallway with her, she still cried so she never had stopped.

Q. Now, on page 10, line nine through 14, can you read that to yourself?

A. Okay.

Q. And what was the judge's demeanor at that point?

A. He was speaking normally and it was just matter-of-fact.

Q. Here he sentenced her to 30 days judicial contempt?

A. Yes.

Q. And what was his -- what was Ms. G[redacted]'s demeanor when the judge was talking?

A. She -- she was actually -- she was looking at me at that time and she was basically -- I don't remember what she was

doing. She -- she -- I don't remember, quite frankly.

Q. And what happened after the judge said that he was going to give Ms. G[redacted] 30 days judicial contempt?

A. Nothing. We literally were right out of the courtroom. The guards took her right out. It was --

Q. And had Ms. G[redacted] entered the courtroom from custody?

A. Yes.

Q. Now, was sentence imposed that day?

A. Not pursuant to the Drug Court contract, no.

Q. So was there another day set up to sentence Ms. G[redacted]?

A. Yes. It was, I think, September.

Q. If we look at page 10, it says -- it gives the date the 24th?

A. Yeah. Yes.

Q. And was Ms. G[redacted] sentenced to 30 days judicial contempt?

A. Yes.

Q. And prior to sentencing

Ms. G[redacted] to 30 days judicial contempt, did the judge warn Ms. G[redacted] that her behavior was contemptuous?

A. No.

Q. Did he tell Ms. G[redacted] what she was doing wrong?

A. No.

Q. Did he give you an opportunity to talk to Ms. G[redacted] about her behavior?

A. No.

Q. Did the judge give Ms. G[redacted] an opportunity to be heard?

A. Not on the contempt, no.

Q. And did the judge allow you or Ms. G[redacted] a chance to apologize for the behavior he sentenced her to contempt to?

A. No.

Q. Did the judge give Ms. G[redacted] an opportunity to purge the contempt at this point?

A. No.

Q. And Ms. G[redacted] was incarcerated on that contempt?

A. Yes.

Q. Drawing your attention to

September 24, 2013, was the case *P*[redacted] *v* *G*[redacted]on in the court before Judge McGuire?

A. Yes.

Q. And were you present?

A. I was not handling that that day. Mr. Proyect was. I don't remember if I was in the courtroom or not. I don't remember that.

Q. Have you appeared before Judge McGuire on other cases?

A. Yes. Hundreds at this point.

Q. Have you appeared in front of him on County Court cases?

A. Yes.

Q. And have you -- well, we went before what courts you have seen him. Have you -- withdraw that.

You testified before that you've appeared in County Court and in Family Court in front of Judge McGuire?

A. Yes.

Q. And have you ever seen him talk to defendants in a condescending way like you described in the *P*[redacted] *v* *G*[redacted]

matter in other cases?

MR. MCGUIRE: Judge, I am going to continue to object because we are just contaminating a record right here with things that we don't even know what case he may be responding to, referring to.

THE REFEREE: Well, I don't know what you mean by continue to object.

MR. MCGUIRE: Well, okay, I apologize.

THE REFEREE: If you have an objection to that question, what is it?

MR. MCGUIRE: All right. So as an analog to a criminal matter, there would be *ventimiglia* issues where prior bad acts would be coming in. They are, essentially, questioning witness after witness about have you ever been, have you ever heard, without any reference to cases. We don't know, they could all be referring to the same case, and yet there's going to be a perception in the record that this is more broad than the 13 charges we already have.

THE REFEREE: Well, I think you can deal with that on cross-examination, so objection --

MR. MCGUIRE: I don't know how to do it on cross-examination because they're not giving me any dates or times or cases.

THE REFEREE: Objection overruled.

Q. You can answer the question.

THE REFEREE: Can we have the question again so he has it in mind?

Q. You described Judge McGuire talking to Ms. G[redacted] in a condescending, degrading manner. Have you ever heard Judge McGuire talk to other litigants in this manner?

A. Yes.

MS. TISHMAN: I have no further questions.

THE REFEREE: You may cross-examine.

MR. MCGUIRE: Thank you. The charge with the September 24 proceeding is in evidence?

MS. TISHMAN: Yes. I think it's III.

CROSS-EXAMINATION

BY MR. MCGUIRE:

Q. Mr. Hart, good morning.

A. Good morning, Your Honor.

Q. So I am going to ask you a series of questions. For the most part, they can be answered yes or no. If I ask a question you don't understand, let me know that and I will try to rephrase it so that you do understand it.

A. Yes.

Q. All right. So I want to get started at the end and then I'll go back to the beginning.

A. Okay.

Q. So Ms. G[redacted] ultimately was sentenced to state prison?

A. Yes.

Q. One and a third to four?

A. Yes.

Q. Did she serve even one second longer time of incarceration because of the events of August 28th?

A. I don't know that.

Q. Well, you were an Assistant District Attorney for a period of time?

A. Yes.

Q. And you were a -- you are still a practicing attorney?

A. Yes.

Q. In both criminal law and family law?

A. Yes.

Q. So are you familiar with the law of merger of sentences?

A. Yes.

Q. Explain what that is.

A. The local time would merge with the state time.

Q. So any local time would merge with state time?

A. Generally, yes.

Q. And on the end of the proceeding on August 28th, was the grand larceny charge still open?

A. Yes, it would have been open.

Q. It was still open. She wasn't sentenced?

A. Correct.

Q. And so she had come in, she was remanded on the grand larceny charge?

A. That's correct.

Q. And what, if anything, based on your training and experience, was occurring with respect to credit for the time she was serving on the grand larceny charge?

A. She was still accruing it.

Q. So she was getting credit --

A. Yes.

Q. -- for any time that she served?

A. Yes.

Q. On August 28th when we were court, did the judge revoke her bail? Did he ROR her on the grand larceny charge?

A. No.

Q. So when she went back to the jail, she was still getting credit for that time?

A. That's correct.

Q. So when she went to state prison, based on your training and experience, they would calculate all the time she had served on the grand larceny?

A. Presumably, yes, that's correct.

Q. Well, you have practiced in criminal law for a number of years, you advise clients all the time. Is that the way time is computed?

A. Well, what the problem is, DOCs would calculate the time. The question on the contempt, though, is there is a -- and that's why I can't answer you 100 percent accurately is because sometimes contempt charges could potentially run consecutive. And I don't know, without seeing her time calculation sheet that DOCs gave her when she went down to the intake facility, as to her max date that she would do. So I don't know for sure, but based upon your questioning, I am agreeing with you that yes, the local time would have merged. I am just not 100 percent clear in terms of the contempt because on occasions they could run consecutive.

Q. Well, it would have to run consecutive to the grand larceny, correct?

A. That would be correct.

Q. Which would mean if she was

remanded on the grand larceny, that time doesn't stop running?

A. That's correct.

Q. So even if it was to run consecutive, when she went to state prison, it would, by operation of law, merge?

A. Yes. I am not disagreeing with you on that.

Q. So she likely didn't serve one minute?

A. Likely correct.

Q. All right. Now, let's go back to the beginning.

A. Okay.

Q. So for a period of time when you left the District Attorney's Office, you worked with the Conflict Panel?

A. Yes.

Q. And you worked in Family Court?

A. Yes.

Q. You worked fairly extensively in Family Court?

A. Yes. For about a year and a half I did, correct.

Q. And that was primarily in front

of Judge Meddaugh?

A. Yes.

Q. And you were representing indigent clients in Family Court before Judge Meddaugh?

A. Yes.

Q. And what kind of cases did you handle in front of Judge Meddaugh?

A. Custody, enforcement petitions, violation petitions, and generally article 10 proceedings.

Q. Article 10 being neglects and abuses?

A. Yes.

Q. And crossing all of the cases in Family Court -- by the way, did you represent Ms. G[redacted] in Family Court?

A. No, I don't believe so.

Q. But you know that she has a Family Court history?

A. I believe -- from speaking to her back then, I believe that I was well aware of it. I don't know the stages of it at that point, but I do know she did.

Q. Well, she had two children at

that time?
A. Correct. Yes.
Q. And they were both being cared for by whom?
A. I don't remember that.
Q. All right. So I want to cross through all of your Family Court proceedings. Can you tell me how frequently is drug abuse at the heart of a Family Court proceeding?
A. It's very common.
Q. Very common. And in how about in custody matters?
A. Yes, it's very common, and particularly amongst the indigent clients it's common.
Q. Well, those are the ones you were representing?
A. At the time, right.
Q. And what effect, if any, does that drug abuse have on the outcome of the custody case?
A. It's a compelling factor incto whether or not they are going to end up having their kids or not.

Q. And in an article 10 case, how frequently is drug abuse a part of the article 10 cases, that's custody -- that's abuse and neglect cases?

A. Most of the time.

Q. Most of the time.

A. Right.

Q. Can we agree that that's unfortunately a very prevalent problem, generally, today?

A. Yes.

Q. And as you said, maybe more prevalent amongst the indigent?

A. Yes.

Q. And can we agree that in article 10 cases where one or both parents are involved with drugs. What happens, if anything, to the children?

A. They would end up in foster care or with somebody else. They wouldn't end up with the parents.

Q. Often not with the parents?

A. Correct.

Q. Now, based on your training and experience and your experience in Family

Court, can we agree that there is a presumption that children should be raised by their parents?

A. Yes.

Q. But for circumstances that make that impractical?

A. Yes.

Q. Incarceration?

A. Yes.

Q. Drug treatment, death?

A. Yes.

Q. Can we agree that, taking just Sullivan County now, you are involved in the community? Like your wife is a practicing attorney in the community?

A. Yes.

Q. Who works for the Department of Family Services?

A. Yes.

Q. Can we agree, just in general knowledge, that drug abuse deaths are relatively prevalent now?

A. Yes.

Q. In fact, we're even starting to see prosecutions of drug dealers for

homicides?

MR. LEVINE: Objection.

A. That's correct.

MR. LEVINE: It's going beyond the field of where we started.

MR. MCGUIRE: This is cross.

THE REFEREE: Let's hear the next question. You are pretty far afield.

Q. So we can agree that drugs create a multifaceted problem in the community?

A. Yes.

Q. And that includes death? Yes?

A. Yes.

Q. Children being in the care of other people?

A. Yes.

Q. Now, in your experience working in Family Court, have you had occasion to deal with a case where the child in the case was an infant?

A. Yes.

MR. LEVINE: Objection.

THE REFEREE: Where are we going with this?

MR. MCGUIRE: Well, Judge, we had

direct testimony about the court's response. I want to set a foundation for the court's response to Ms. G[redacted] and it is cross, and I am not limited by their direct in cross.

THE REFEREE: Okay. Overruled.

Q. So if have we had cases in Family Court -- have you had cases in Family Court where the subject child was an infant?

A. Yes.

Q. And have you had experiences in Family Court where that infant was born addicted to drugs?

A. Yes.

Q. And based on your experience, where did that addiction come from?

A. Typically it would be the mother.

Q. And can we agree that those children often spend a fair amount of time in the intensive care unit?

MR. LEVINE: I am going to object. This was a grand larceny case, and that's what it was about. Now we were talking about generally how things

work in Family Court, which this was not.

MR. MCGUIRE: No. This was a Drug Court case.

THE REFEREE: Well, I think what the point is, is that in the transcript that we looked at, the judge was reacting to the history of this mother with her two children.

MR. MCGUIRE: Correct.

MS. TISHMAN: But we haven't gotten to that.

THE REFEREE: Sorry?

MS. TISHMAN: That's not what's being asked about.

THE REFEREE: Well, I think he is asking general questions which might implicate his state of mind.

Q. So we can agree that those children often wind up in a neonatal ICU?

A. Yes.

Q. And spend some portion of the first days of their life in that?

A. Yes.

Q. Now, before you came here to

testify today, who, if anyone, did you speak to about your testimony?

A. Just Ms. -- I met with Ms. Tishman.

Q. When was that?

A. It was before I went on vacation. Sometime in April she came up to Sullivan County.

Q. Recently?

A. Yes.

Q. Obviously -- I'm referring, not back in 2013?

A. No.

Q. So recently. And did you ever come down here prior to today? I don't mean New York City in general. I mean this office.

A. No.

Q. All right. And when you spoke with Ms. Tishman, where were you?

A. She came to my office.

Q. In Sullivan County?

A. Yes.

Q. So you met in your office or your conference room?

A. Yes.

Q. And was anyone else with Ms. Tishman?

A. Her -- I guess her investigator, whatever her name is. Sorry.

Q. All right. So --

MS. TISHMAN: I would just like the record to reflect that Mr. Hart was pointing to Christina Partida, P-A-R-T-I-D-A.

Q. And so were you all sitting around a table or across a desk?

A. Yes. At my table.

Q. Table. And was anybody taking notes?

A. I don't believe so. I was not. I don't believe they were.

THE REFEREE: That was "I don't believe so"?

THE WITNESS: Yes, correct.

Q. So let's go back into Family Court for just a minute.

A. Okay.

Q. When you are handling clients who have drug issues, as a practicing attorney,

what do you generally try to advise them? And I don't want to talk about any specific clients. That's why I am saying generally.

A. It depends on the case. Obviously my first goal is always to get them help, get them treatment, get them on doing the right thing so there is a pathway back to the children. The difficulty is when they have a corresponding criminal cases, you would like to know where that case is going before you can setup something else. And it depends on the person. Some are very vulnerable and some are very defined. It depends.

Q. Is it fair to say that early on in these cases -- and the reason I am sticking in Family Court because, can we agree that often the first intervention, if you will, within the Unified Court System is in Family Court?

A. Yeah, I mean, if there's kids, absolutely. Of course.

Q. So can we agree that the system, the court, Department of Family Services, the attorneys, overwhelmingly try to push

treatment and health?

A. Yes.

Q. In fact, so much so that in an abuse and neglect case, the goal is always return to parent for the first year --

A. Yes.

Q. -- to allow that treatment to occur?

A. Yes.

Q. And can we agree that very often, particularly initially, the client, the litigant is reticent to treatment?

A. Yes.

Q. They don't want to go to treatment?

A. Correct.

Q. They sometimes think they don't need treatment?

A. That's correct.

Q. They try to go to one-night-a-week outpatient?

A. Correct.

Q. And typically they continue to relapse?

A. Yes.

Q. So in your experience in Family Court, can we agree that the judges often continue to push treatment?

A. Yes.

Q. And give people multiple times to push treatment?

A. Yes.

Q. And we agree that the addiction cycle contemplates relapses?

A. Yes.

Q. And that often people are dealing with lots of other issues?

A. Yes.

Q. And that's keeping the drug addiction going?

A. Yes.

Q. Can we agree that at times, from the judge's perspective, it takes tough love, essentially, to get people moving toward treatment?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Can we agree that at times, in your experience, the judges have to maintain a commitment to treatment even if the

parents don't want to go?

A. Yes, I agree with that.

Q. Can we agree in general -- you have been a District Attorney -- Assistant District Attorney. You have been a District Attorney, you have been a private practitioner, you have represented indigent clients, you have represented non-indigent clients. Can we agree that the philosophy of the entire system is to promote treatment over incarceration?

A. Yes.

Q. Now, Ms. G[redacted] was originally convicted of grand larceny?

A. Correct.

Q. It's a felony?

A. Yes.

Q. Now, based on your training and experience, aside from incarceration, when you have a client who comes to you, charged with a felony, can we agree that you prefer to get them a misdemeanor or a violation?

A. That's correct.

Q. Are there impacts on a individual's life who is convicted of a

felony rather than a misdemeanor?

A. Yes.

Q. Like what, for instance?

A. Well, you want me to list them all?

Q. What's that?

A. You want me to list --

Q. Just give us a flavor.

A. Voting, guns, public office. If it was --

Q. Certain licenses?

A. Correct.

Q. Professional licenses that are issued by the state?

A. Yes.

Q. Nursing, CNA, any of those?

A. Yes.

Q. Can't have them with a felony conviction?

A. That's correct.

Q. Which means that even once they come out of incarceration, their ability to be self-supporting is limited?

A. That's correct.

Q. We agree that that's the whole

premise of Drug Court?

A. Yes.

Q. Can we agree that Drug Court clients at times are not smooth cases?

A. Correct.

Q. So with Ms. G[redacted], she had been given an opportunity -- she had pled to a grand larceny third? Yes?

A. I thought it was a fourth, but I'm not --

Q. Okay, grand larceny fourth. And she was given an opportunity to have that reduced to a misdemeanor?

A. Yes.

Q. Now, we can agree that that's a good outcome for her?

A. Yes.

Q. She was also given an opportunity to at least start to overcome her drug addiction?

A. Correct.

Q. And we can agree that that drug addiction had been at the heart of -- you said you represented her for a while -- at the heart --

A. Yes.

Q. -- of many of her problems?

A. I would say 90 percent of them, yes.

Q. The larcenies to support the drug habit?

A. Yes.

Q. The drug possessions to support the drug habit, all connected?

A. Correct.

Q. So she went to Drug Court and she went to treatment, right, and she didn't think it worked for her?

A. That's correct. She kept failing.

Q. And typically a long-term treatment program is how long?

A. Depends on the provider. Tip -- they should be at least six months, but anymore -- they call anything more than 30 days, they are calling it long-term.

Q. And that's been a change over the recent times, correct?

A. Right.

Q. In the not too distant past it

was 12 to 18 months?

A. Correct.

Q. And now it's being limited?

A. Correct.

Q. So we can agree that at the time of her arrest, her children were not living with her?

A. I don't know -- I don't remember that, whether or not that's true.

Q. Well, at the time of her incarceration they weren't living with her?

A. That's correct.

Q. And we can agree that the court had benefit of a presentence investigation?

A. Yes.

Q. And a presentence investigation gave the court lots of information?

A. Yes.

Q. So wasn't it, in fact, true that one of her children had been born positive for marijuana in her system?

A. I believe that is true. I have not reviewed the PSI since then because I haven't had access to it, but I believe that is true.

Q. Well, she confirms in the transcript --

A. She does.

Q. -- that it was her son?

A. Correct.

Q. Is that -- I am going to get personal now, but you have got two young children?

A. Correct.

Q. So can we agree that it's not a good idea to have your child born positive for marijuana?

A. We can agree.

Q. We can agree that Ms. G[redacted] had an opportunity for Drug Court?

A. Yes.

Q. And by her actions, she was not successful?

A. Yes.

Q. Now, we can also agree that the final determination on sentencing is the judge's?

A. Yes.

Q. The judge doesn't have to go along with the agreement?

A. Correct.

Q. But if he doesn't go or she doesn't go along, then the person's plea gets taken back?

A. Correct.

Q. You restore all the rights they waived in consideration of the agreement?

A. Correct.

Q. Based on your experience in the District Attorney's Office and as a private attorney, have you had cases where somebody came for sentencing and sentencing was adjourned to allow the person to go to treatment?

A. Yes.

Q. That happens quite frequently?

A. Yes.

Q. And if they do well in treatment, they maybe get a better deal?

A. Yes.

Q. And if they don't do well, we come back and often give them another chance at treatment?

A. Yes.

Q. Can we agree that if she went to

prison, she would not be there for her children for four years, up to four years?

A. Correct.

Q. Because she would be incarcerated. And if she went to treatment, though, and even got that first six months under her belt and started that journey one step at a time, she might be able to be there for her children within six, seven, eight months?

A. Correct.

Q. And we agree that that's better for the children? To be with a parent?

A. To be with a parent, yes.

Q. Is it condescending to point out to somebody that choosing to leave their children for four years is not a good idea?

A. I -- I would say you have to rephrase the question, because to somebody -- it's very generalized. The problem is that somebody like Ms. G[redacted] who is very vulnerable to begin with and has been in and out of the system, they won't take that as advice. They will take it as a personal shot. That's the problem.

Q. Well, that's part of the --

A. I understand what you are saying and I agree, but the -- taking the individual itself, therein lies the problem.

Q. That's part of the addiction cycle, isn't it?

A. Yes.

Q. Can we agree that to break that cycle sometimes takes an intervention?

A. Correct.

Q. You have to confront the person with reality?

A. Correct.

Q. Because often their view of reality is distorted?

A. Correct.

Q. So was it true that if she was sentenced to state prison that day, she would be incarcerated for up to four years?

A. Yes.

Q. And, therefore, not taking care of -- not being there with her children, whether she's living with them or not?

A. Yes.

Q. And if they were going to visit

her, they would visit her in a correctional facility?

A. Yes.

Q. Can we agree that those are not the most warm and friendly places?

A. Yes.

Q. In your experience as an Assistant District Attorney and as an attorney, can we agree that it's not uncommon, not uncommon for a person who is addicted to drugs to continue to deny their problem?

A. It's not uncommon.

Q. Not uncommon, okay. Is it true that she was 27 years old when she was sentenced?

A. I don't remember exactly, but I believe she was roughly that age, correct.

Q. True that she had a criminal history that included 21 arrests?

A. I know she had a lengthy criminal history.

Q. And we agree that most of those, maybe 100 percent but certainly you said 90 percent so I will adopt your answer, were

related to her drug addiction?

A. Correct.

Q. And they included larcenies, which is not uncommon with a person that's got a drug addiction?

A. Yes.

Q. Can we agree that she was placed on probation twice?

A. Yes.

Q. And that she was unsuccessful on probation twice?

A. Yes.

Q. And that she was violated on probation twice?

A. Yes.

Q. Because she tested positive for drugs?

A. I believe that's why she was violated. I am not positive, but I believe so.

Q. So if the court pointed that out and it's factually accurate, that's reality?

A. Correct.

Q. It may be accepted as or seen as condescending through the eyes of a drug

addict but the court is stating facts?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. When she was initially arrested on the grand larceny, was she incarcerated or was she placed in the Alternative to Incarceration Program?

A. I believe she was released to ATI. I don't know how long she did, but I believe she was released to ATI.

Q. So she was given another opportunity to remain at liberty?

A. Correct.

Q. Not in liberty but at liberty.

A. Correct.

Q. And she was rearrested again while she was on ATI?

A. I believe so, but I am not positive.

Q. And she had some evaluations as part of the Drug Court program?

A. Yes.

Q. And she admitted that she used heroin?

A. Yes.

Q. And that during the process she tested positive for heroin?

A. Yes.

Q. And Suboxone?

A. Yes.

Q. What's Suboxone?

A. Prescription heroin.

Q. It's used in medically assisted cases --

A. Correct.

Q. -- to take down the cravings?

A. Correct, yes.

Q. And help people get over it?

A. It's supposed to wean you off heroin.

Q. Based on your experience with Ms. G[redacted], was she in a medically managed program?

A. I don't know that. I believe she had a prescription for it. I don't know how long that prescription lasted for or not. She never denied her drug use.

Q. She also tested positive for marijuana?

A. Yes.

Q. And cocaine?

A. Yes.

Q. She was admitted to the Recovery Center?

A. Yes.

Q. And the Recovery Center is what?

A. Well, she --

Q. Well, now it's called Catholic Charities.

A. Right. She was admitted to I believe their crisis and then their inpatient. I don't know how long they recommended for her to be there. That can range. But it's an inpatient rehabilitation center.

Q. And it's an intermediate program?

A. Correct.

Q. It's not a long-term or a short-term?

A. Correct.

Q. And she left there against medical orders?

A. Correct.

Q. Was it consistent with her children's best interest that she continue

to use drugs?

A. No.

Q. Can we agree that the court's comments that we went over were consistent with an intervention of sorts?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Can we agree that the court's comments that you have reviewed, although you said they were condescending, your client may have interpreted them as condescending, were based in the facts of her life?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. There was -- yes, there was factual comments made. Correct.

Q. So I think you have -- do you have the transcript still?

A. I have it, yes, Exhibit II.

Q. During the 30-day interim between August 28th and September 24th, so a little less than 30 days, during that interim did you have an opportunity to speak to your client?

A. I did.

Q. I am not asking if you did. I'm saying could you have?

A. Oh, yes.

Q. And, presumably, Mr. Proyect could have also?

A. Correct.

Q. And you could have spoken to the ADAs?

A. Yes.

Q. And you could have asked that the matter be conferenced with the court?

A. Yes.

Q. And the specter of having her give treatment another try, potentially, was still on the table?

A. I would say no.

Q. It was not?

A. No.

Q. And why is that?

A. Because we were there specifically on the 28th for her to, essentially, go away. There was a very clear understanding on her part and with the DA's Office that Drug Court was not working

and there was no more chances. Now, the court had not been involved with telling us there's no more chances, but that was the understanding. So we were -- there was no more specter of going back into Drug Court. That was done.

Q. I am not talking about Drug Court. You said a few minutes ago that you have seen occasions, I think you said that it was frequently, that judges will adjourn sentencing to let treatment be tried?

A. Yes.

Q. So as her attorney, you could have certainly attempted to address that in that 30-day interim?

A. I could have, but she didn't want that.

Q. I respect that.

A. But I understand that, yes, it could have happened.

Q. Could it have happened if she was already in the Department of Corrections' care?

A. No.

Q. So in a manner, the judge kind of

left that door opened a crack that maybe --

MR. LEVINE: Objection.

Q. -- by keeping her local rather than putting her in Corrections?

THE REFEREE: Overruled.

A. I guess it's possible, yes.

Q. Well, it left open the possibility that that could happen?

A. Yes.

Q. And then she came in on September 24th and you were not there and she was sentenced to one and a third to four?

A. Correct.

Q. And that transcript is in evidence. I won't belabor the record with that transcript because you were not there.

A. Right.

THE REFEREE: Just for the record, that transcript is Exhibit II-3.

Q. And you said that Ms. G[redacted]'s children were a soft spot for her?

A. Yes.

Q. What do you mean by that?

A. She would -- I mean, she talked

about them a lot. That was her focus. And she -- originally she wanted to do Drug Court so she didn't go away, so she wouldn't be incarcerated because of the kids. So a lot of her focus was about the kids and being there for them. That's why I say it was a soft spot, because when we went for the -- when we were getting ready for the sentencing on August 28th for the one and a third to four, prior to that she was pretty upset that she was going away because she wouldn't be there anymore for the kids, and she realized that she could not complete Drug Court and wasn't even going to try to keep going in and out, getting remanded, getting out, getting remanded, getting out. She wanted to get it done with so she could at least get home sooner to the kids. That's -- that's what I meant.

Q. So she was, fair to say, frustrated and torn?

A. Yes.

Q. She was aware that she had not been there for her children the way she would want to be?

A. In my opinion, yes.

Q. She loves her children, based on what you --

A. Yes. Based on what I knew, I believe she did.

Q. And she wanted to be there for her -- for them?

A. I believe so, yes.

Q. But she couldn't conquer this drug problem?

A. Correct.

Q. What was the plan, if any, for conquering it over four years in state prison?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I don't know that.

Q. Well, did you talk to her about that?

A. Well, we went over exactly what -- particularly we went over what would happen when she was released and be on parole, she would have to follow parole conditions and drug and alcohol conditions and meet treatment and you have to do it

eventually if you ever want to put this behind you. So we had that conversation, but what her plan was once she -- her first day in, I don't know.

Q. Did you talk to her about CSAC?

A. We did.

Q. Willard?

A. We talked about Shock, not Willard.

Q. So you talked to her about opportunities to maybe pull herself together?

A. Yes.

Q. Shock being a military boot camp --

A. Correct.

Q. -- type of a situation? Discipline oriented situation?

A. Correct.

Q. And that's a Department of Corrections program?

A. Yes.

Q. Have you ever known anyone that went there?

A. Yes.

Q. Have they ever told you about it?

A. Yes.

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Now, you said that you have appeared in front of Judge McGuire on hundreds of occasions?

A. I'd say -- I mean, it's been -- since Your Honor took the bench, I was practicing and you have been my judge most of the time I have been a lawyer. So, yeah, I would say hundreds of occasions.

Q. And the matter of *S[redacted]-S[redacted]*, you were involved in that case?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

MR. MCGUIRE: Quick. It won't take long.

A. Yes.

Q. *S[redacted]-S[redacted]*. And I don't want to know any client confidences, of course, but the overall setup of that case is what? There's a couple of children, teenagers?

A. Yes.

Q. And what happened to them? They

had to be removed?

A. They did, yes.

MS. TISHMAN: Excuse me. I just ask that the name be spelled for the record.

MR. MCGUIRE: Sure.

Q. I believe it's S-[redacted] --

A. Yes.

Q. -- dash or hyphen Soto, S[redacted].

The children had to be removed?

A. Yes, they did.

Q. And court held several conferences in that matter, correct?

A. Several, yes.

Q. And fair to say, working with the attorneys to try to come up with a plan because these teenage children were very unhappy in foster care?

A. That's correct.

Q. And there were issues with both the mom and the dad?

A. Yes.

Q. And we worked very hard to get the children back into a family setting?

A. Yes.

Q. And ultimately we got them placed with their grandmother?

A. That's correct.

Q. And ultimately now mom is going to be moving to be closer to their grandmother?

A. Hopefully, yes.

Q. Hopefully. And dad also got himself together?

A. Yes.

Q. He's got a ways to go but he's got his own home?

A. Yes.

Q. How would you classify the court's involvement in that case?

A. It's a good example of a case. Very involved. It was an article 10 and we, in fact, had more conferences on that case than I've ever had on an article 10, so I would say very involved.

Q. And how would you classify the court's demeanor in that case?

A. Fine. If that's the right way to classify it, fine.

Q. Concerned?

A. Yes.

Q. Involved?

A. Yes.

Q. Compassionate?

A. Yes. Actually, on this case, yes.

Q. Based on your experience of hundreds of cases, is the *S*[redacted]-*S*[redacted] case an accurate reflection of how the judge conducts business in his court?

A. If depends on the case. Depends on the case.

Q. So some cases require a different approach?

A. Correct.

Q. And some cases -- in this case, in that case, the judge took one approach?

A. Correct.

Q. In G[redacted], the judge took a different approach?

A. Correct.

Q. Can we agree, in both cases the judge was looking for the best interests of the children?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. In each case, the judge was aiming for the children's best interest?

A. I can say definitively in the *S*[redacted]-*S*[redacted] case, absolutely. In the *G*[redacted] case, I was not involved in the Family Court matter so I don't know, but based upon the transcripts and the comments about the kids, I don't disagree that her being in state prison would not be in their best interest, but I don't know what the court's intent was on that.

MR. MCGUIRE: Fair enough. Your Honor, I have nothing further.

THE REFEREE: Any redirect?

MS. TISHMAN: I have nothing.

THE REFEREE: Mr. Hart, thank you. You are excused.

THE WITNESS: Thank you, Your Honor.

THE REFEREE: Let's take our morning break and then you will call your next witness, Sarah Katzman.

MS. TISHMAN: Exactly.

THE REFEREE: Off the record, 10

minutes.

(A recess was taken.)

THE REFEREE: You may proceed with your next witness please.

MS. TISHMAN: The Commission calls Sarah Katzman.

MS. PARTIDA: Witness entering.

THE REFEREE: Hello, Ms. Katzman. Please have a seat. I have been asked to read you some introductory instructions.

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until the question is completed and

answer each question with words, not a nod or a gesture.

THE WITNESS: Okay.

THE REFEREE: Please refrain from creating excessive background noise as it becomes amplified on the recording. And if you have any cell phones or other electronic equipment, please turn them off.

Would you please rise and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes, I do.

THE REFEREE: Would you please have a seat. State your full name and spell it for the record.

THE WITNESS: Sarah Katzman. S-A-R-A-H, Katzman, K-A-T-Z-M-A-N.

THE REFEREE: You may proceed, Ms. Tishman.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Ms. Katzman.

A. Good morning.

Q. Are you currently employed?

A. Yes, I am.

Q. And where are you employed?

A. Sullivan Supreme and County Court in Monticello.

Q. And what's your title?

A. Chief Clerk.

Q. And you're Chief Clerk of Supreme Court --

A. Of Supreme and County.

Q. In Sullivan County?

A. Yes.

Q. And how long have you been Chief Clerk?

A. Since -- Chief Clerk, 2011.

Q. And prior to being Chief Clerk, did you work in Sullivan County?

A. Yes.

Q. And can you tell us what you did?

A. I worked in the Court Clerk's Office from 1989 to present. We did clerking for the court, paperwork, taking in

motions, doing trials, etcetera.
Q. And prior to becoming the Chief Clerk, what was your position?
A. Deputy.
Q. Deputy Chief Clerk?
A. Chief Clerk, yes.
Q. And how long were you Deputy Chief Clerk?
A. I became Deputy in 1997.
Q. So from 1997 until 2011 you were Deputy Chief Clerk?
A. From 1997 until 2011, that's correct.
Q. And does Judge McGuire sit in County Court?
A. Yes, he does.
Q. And how long has he been a County Court judge?
A. Since he was elected in 2010, began his term in 2011.
Q. And how often does Judge McGuire sit in County Court?
A. He comes up usually one day a week, and sometimes, if there's hearings or other appearances that are required, there

may be another afternoon or a morning, depending on his schedule.

Q. And is there a court clerk in the courtroom when Judge McGuire presides in County Court?

A. In County Court, yes, there is.

Q. And who is that presently?

A. Presently I have assigned Tara Hirsch.

Q. And can you spell her name?

A. Tara, T-A-R-A, Hirsch, H-I-R-S-C-H.

Q. And prior to Tara Hirsch being Judge McGuire's county clerk -- I mean Judge McGuire's Court Clerk in County Court, who was the court clerk?

A. Ann Schelhorn also went up to court with the judge, and I did too. I mean, I did from the beginning in 2011 until probably the middle of 2015.

Q. So you acted -- well, first let's spell Ms. Schelhorn's last name.

A. S-C-H-E-L-H-O-R-N.

Q. So there was a time period where you acted as the court clerk in County Court

when Judge McGuire was presiding?
A. Yes. In the beginning -- his beginning of terms.
Q. And how long did you act as the court clerk in Judge McGuire's courtroom in County Court?
A. From 2011 through, probably, middle or spring of 2015.
Q. And when you acted as the court clerk in County Court for Judge McGuire, what were your responsibilities?
A. Well, we took court clerk minutes, we had the files, we made sure everything was in order for his court. We had forms, different things for different sentencings that were in the court. Anything that we needed really for the Clerk's Office.
Q. Does Judge McGuire sit in Supreme Court?
A. Yes, he does.
Q. And when did he become a Supreme Court judge?
A. I believe he had to be in two years. So it would be 2013 we started

assigning cases.

Q. What do you mean when you say he had to be "in two years"?

A. I think they held off two years before they allowed me to assign cases for the judge in Supreme Court.

Q. So two years after he served --

A. Took office.

Q. -- his term?

A. Yes.

Q. And how often does Judge McGuire sit in Supreme Court?

A. Well, depending on, on if he has a trial or something like that, he would come up to us. Conferences are being done every Monday down in his office chambers.

Q. And is there a court clerk assigned to his Supreme Court?

A. No. I have various clerks in the office and sometimes they rotate depending on, you know, what the other judges' schedules are.

Q. Have you ever had to reach out to Judge McGuire about court business when he wasn't in court?

A. Possibly when we needed him for an arraignment or if there was a grand jury report.

Q. Have you ever called Judge McGuire on his personal cell phone about court business?

A. Only a couple of times I think we called -- I called when I needed the judge to come up for a grand jury report. It would have been his term of grand jury.

Q. And when you called the judge on his personal cell phone number, did you ever reach his voicemail?

A. Yes. A couple of times.

Q. And can you tell us what his voicemail said?

A. It said "you have reached the office of Michael F. McGuire -- law office of Michael F. McGuire."

Q. Now, were you Judge McGuire's -- I withdraw that. Were you in the courtroom and acting as the court clerk when the case *P*[redacted] *v G*[redacted] was heard?

A. Yes, I was.

Q. Now, I am going to show you what

is marked Commission Exhibit II-2. And this is the August 28, 2013 transcript in the case *P[redacted] v G[redacted]*. Were you the court clerk on this day?

A. Yes, I was.

Q. And what was this case about?

A. Originally I believe she was in Drug Court and didn't succeed and it was back on the regular calendar in County Court. On this date it was on for a sentencing, on August 28, 2013.

Q. And I am going to --

MS. TISHMAN: Give me one second.

Q. I am going to draw your attention to page four, if you can look at page four, line 15 through page six, and read that to yourself, line 11.

A. 15 to --

Q. Page four, line 15 to page six, line 11.

A. Okay. Okay.

Q. And you read to page six?

A. Page -- oh, two pages. I only went halfway. I'm sorry.

Q. Page six, line 11.

A. Okay. Okay.

Q. And what was the judge's demeanor like during this time, the part that I asked you to read?

A. Well, the judge is aggressive when he asks questions to the Defendant, and in that manner, sometimes the judge would ask the questions that would need an answer back, and sometimes that answer may not necessarily be the greatest for the Defendant when she answered.

Q. And what was the judge's tone when he spoke?

A. I would say his tone was critical of the Defendant and negative.

Q. Now, I am going to ask you to read from page eight, line 21 to page 10.

A. Okay.

Q. What was the judge's demeanor like during this period that I asked you to read?

A. Well, the judge wasn't being very nice about her, her history, and almost to the point where he was bating her to respond --

MR. MCGUIRE: Objection. Calls for her interpretation of my state of mind.

THE REFEREE: Overruled. You may continue.

Q. And what was the volume of the judge's voice?

A. Well, the judge always spoke in a very loud tone. He seemed a little irritated with the Defendant and annoyed of her bad lifestyle.

Q. In this case, when you say that the judge spoke in a loud tone, was his voice louder than his normal courtroom voice?

A. At times. Sometimes when he was talking, it would elevate, yes.

Q. And what was Ms. G[redacted]'s demeanor during this appearance?

A. She was a bit argumentative, I think, back to him because of what he had stated. She was upset because he was not really being -- saying nice things, so she just wanted to get it over with and continue. She was there for a sentencing.

He was a little bit condescending to her.

Q. And did there come a time where the judge ordered Ms. G[redacted] to 30 days judicial contempt?

A. Yes, he did.

Q. And prior to sentencing Ms. G[redacted] to 30 days judicial contempt, did the judge tell her what behavior he found she was doing that was improper?

A. No, I don't believe he actually said anything before. He did say that this is what I'm going to do and continued then to sentence her to 30 days contempt.

Q. And was Ms. G[redacted] sentenced to 30 days for judicial contempt?

A. Yes.

Q. Did you fill out some paperwork --

A. Yes, I did.

Q. -- pertaining to that?

A. Yes.

Q. I am going to show you what's marked Commission Exhibit I-A -- Exhibit II-1a. Sorry.

A. Yes.

MS. PARTIDA: I think I gave you B by accident. Thank you.

Q. And what is this?

A. This is a sentencing commitment that our office draws up for the Sullivan County jail to commit her for the 30 days, and it's signed by me.

Q. And is this for the judicial contempt?

A. Yes, it is.

MS. TISHMAN: Just give me one second please.

THE WITNESS: Sure.

Q. Do you know Wendy Weiner?

A. Yes, I do.

Q. And in 2014, where did she work?

A. She worked for the -- she worked for the judge in the beginning part of his term. There came a time when she came up to us -- you said -- what date did you say?

Q. Up until 2014 --

A. Yes.

Q. -- who did she work for?

A. She worked for Judge McGuire.

Q. Now, I want to draw your

attention to January 14, 2015. Were you clerking for Judge McGuire that day?

A. Yes.

Q. And was Judge McGuire presiding over court that day?

A. Yes. He had Criminal County Court.

Q. Did you speak to the judge in the morning before court started?

A. Yes, I did.

Q. Can you tell us about that conversation?

A. Well, I went into his office and he said that he had had a problem with his computer and that it had crashed and that he was not going to be able to have his notes that he normally had for court, and he had contacted, I think, the tech people from the county to see if they could assist him, so he was going to be up there without the notes. I told him that I would make sure I had the files and paperwork in the court in case he needed it.

Q. Prior to January 14, 2015, did you speak to Ms. Weiner by telephone about

work issues?
A. Prior to?
Q. Yeah, January 14, 2015.
A. Sure. We would always -- she would call me if she had any questions on calendars or information on dates.
Q. And did your contact with Ms. Weiner by telephone about court matters change after January 14, 2015?
A. Yes.
Q. And can you describe how?
A. She contacted me to ask me to -- any time we had court, if I would copy the minutes and send it down to her. I also -- we have a calendar every day that we would write on if we were up in court, and she asked to have that calendar also sent down. So whatever minutes I had in the calendar itself.
Q. And was this different than before January 14, 2015?
A. Yes. I didn't have to do that prior to that.
Q. After January 14, 2015, did there come a time that Ms. Weiner changed her

position?
A. Yes.
Q. And can you describe what happened?
A. I got a telephone call one afternoon, probably around -- late afternoon, around 4 o'clock, from my District under Judge Breslin, the District Executive, I guess, Beth Diebel --
Q. Excuse me one second. Judge Breslin, B-R-E-S-L-I-N, and Beth Diebel, D-I-E-B-E-L. I'm sorry to interrupt you.
A. It's okay.
Q. So when did you get this phone call from Beth Diebel?
A. It was an afternoon. I don't remember the date, but it was around 4 o'clock, and she asked me if -- that they were going to remove Wendy from Judge McGuire's chambers and they were going to send her up to the library and would I be willing to supervise her while she was transferred there.
Q. And you said you don't remember the exact date. Do you remember what month

it was?
A. It was probably in like March.
Q. 2015?
A. Yes.
Q. And how long after the phone call from Beth Diebel was Ms. Weiner transferred?
A. Well, she told me at that phone call that she was going to come in the next day around 8:30, but then she called me back around 5 o'clock on that same day that she originally called me and told me that she had to talk to the union rep and that Wendy would not be in that next day and she would contact me the following day.
Q. And you refer to "she." Who are you talking about?
A. Beth Diebel, I'm sorry.
Q. And that's who you had that conversation --
A. Yes.
Q. -- with?
A. Yes.
Q. And did there come a time that Ms. Weiner came up to the County Clerk Supreme Court?

A. Yes.

Q. And did you supervise her?

A. Yes.

Q. And what was Ms. Weiner's duties when she came to County Supreme Court?

A. She was told to organize in the library, do the supplements in the library, clean it up a little bit because nobody had been in previously.

Q. And how long did Ms. Weiner work in the library?

A. Up until the time she became Deputy at Surrogate Court, which, I am going to say, a year.

Q. And did you supervise her during that year?

A. Yes, I did.

Q. And can you describe her work for us?

A. She came in on time, she did what I asked her to do, she seemed to be organized, she cleaned up the library. I gave her work to do, told her how to do it. She did it. I was happy with it.

Q. Do you keep records of -- if a

judge is on vacation, do you have to keep records?

A. It's -- we'll write it in the diary when the judge is out on vacation.

Q. I am going to show you what's been marked Commission Exhibit X-36.

MS. TISHMAN: Is everyone there?

MR. MCGUIRE: No.

MS. TISHMAN: Do you have it, Judge?

MR. MCGUIRE: I do.

Q. If you can look at Exhibit X-36, is this an e-mail where you -- do you recognize e-mail addresses on this e-mail?

A. Yes, I do.

Q. Well, do you recognize the participants in this e-mail exchange?

A. Yes.

Q. And are you one of the participants in this e-mail exchange?

A. I am.

Q. And you know the senders and recipients?

A. Yes, I do.

Q. And you received this e-mail?

A. From Wendy.

Q. And --

MS. TISHMAN: I am going to ask that this be admitted into evidence.

MR. MCGUIRE: Objection.

THE REFEREE: Exhibit X-36 is received.

(Commission Exhibit X-36 is received in evidence)

Q. Do judges ever ask you not to assign cases to them when there is a conflict with an attorney?

A. Yes.

Q. Has Judge McGuire ever made this request?

A. Yes.

Q. Did Judge McGuire ever ask you to not to assign him cases where Zachary Kelson represented one of the parties?

A. Zachary Kelson? I don't remember on Kelson. We do have a list that I go by in the office when -- each and every time I assign cases.

MS. TISHMAN: I have no other questions.

THE REFEREE: Judge, you may cross.

MR. MCGUIRE: Thank you.

Cross-Examination

By MR. MCGUIRE:

Q. Good morning.

A. Good morning, Judge.

Q. So, Ms. Katzman, I am going to ask you some questions. The majority of them you will be able to answer with a yes or no.

A. Okay.

Q. If you don't understand one of my questions or I confuse you, just let me know and I will try to rephrase it for you.

A. Okay.

Q. Okay?

A. Okay.

MR. MCGUIRE: I am not moving these in, but I am going to mark them for ID.

MS. TISHMAN: Do you have copies for us?

MR. MCGUIRE: I got them from you.

MS. TISHMAN: But to provide them to the Referee so he can follow along.

MR. MCGUIRE: No. They are my only copy. They are not going into evidence anyway. Show this to the witness.

MS. PARTIDA: Sure.

(Respondent's Exhibit B was marked for identification)

Q. I show you what's been marked as Respondent's Exhibit B for identification. Do you recognize this document?

THE REFEREE: Do I have this?

MR. MCGUIRE: No, Judge. It's not going into evidence. I will be happy to show it to you just --

A. It doesn't look like anything from our office.

Q. You have never seen those before?

A. I think I have seen it and I think I got it on an e-mail or somebody sent it to me.

Q. Do you know who sent it to you?

A. I -- I would say, Judge, it had to have come from your chambers, because

that's what it looks like to me.
Q. Those are personal notes?
A. Yeah. Yeah.
Q. Those are not kept in the court file?
A. No.
Q. Those wouldn't be in the court file for cases?
A. No. No, it would not.
Q. Did you provide those to the Commission?
A. It may have been something that inquiry was made and I asked for if there was any notes or anything of what had happened on a certain day, and it probably was sent up to me at that time. I don't really remember, to tell you the truth, but --
Q. Okay, that's fine. So you think there might have been an e-mail request for notes?
A. I don't know if it was an e-mail request or telephone request. Somebody may have inquired as to what happened. Because sometimes you would have conferences down in

Family Court chambers there --

Q. Right.

A. -- and sometimes we may not have heard what the result or the status was of that and maybe we asked, inquiry was made.

Q. And so inquiry, you think, was made and then chambers sent them up to you?

A. Yes. It's -- probably. That's the only way that --

Q. Do you know whether the judge approved those to go out?

A. I have no idea.

Q. Those are the judge's private notes, right?

A. It looks like it, yes.

Q. Judge LaBuda keep private notes?

A. I don't know. I mean, if he's written something -- if he's written something, usually he writes it on a pad.

Q. And do those get filed in the Clerk's Office?

A. No. No, we don't. No.

Q. So you have been a clerk since 1989?

A. Yes.

Q. You worked with Lilly --

A. Yes.

Q. -- who started in 1854? So can you explain, for the record, how Supreme Court cases are handled in Sullivan County?

A. Supreme Court cases, when they come in to the County Clerk's Office and then sent up to us, we have an IAS system with percentages that goes to each of the judges.

Q. Let me --

A. Is that what you mean?

Q. Let me clarify.

A. Okay.

Q. Let me clarify.

A. Okay, sorry.

Q. I am not talking about clerk's procedures. For example, on Friday mornings now I have a criminal calendar?

A. Yes.

Q. And your office prepares a calendar --

A. Yes.

Q. -- right? Karen and Tara --

A. And Tara.

Q. -- and Brittany work together and we create a calendar?

A. That's correct.

Q. And then at some point the judge shows up, about 8:00, 8:15, go into the little office there --

A. Yes.

Q. -- and then litigants arrive, the jail arrives, attorneys arrive, and the judge takes the bench and cases are called, one, two, three, right?

A. Yes.

Q. That's the criminal calendar?

A. Right.

Q. Is that how Supreme Court works in Sullivan County?

A. No, not necessarily. If you happen to have a Supreme Court case that's on, they usually sometimes put it on the criminal calendar and it's called during that time.

Q. But that's when it's on for like an order to show cause?

A. Correct.

Q. I am talking about the garden

variety slip and fall, contract case that's in the midst of litigation. Do we have a calendar call for those?

A. No, we don't, really. Your law clerk conferences the calendar usually on Monday with Supreme Court down by you, and then after that we get a status of what transpired.

Q. So that's done with the law clerk, in my case now Hannah Prall, P-R-A-L-L?

A. Right. Right.

Q. And is that consistent with how Judge Schick handles his calendar?

A. Judge Schick does have a calendar every single day.

Q. Well, he has twice the number of cases?

A. Right. Exactly.

Q. So Judge Schick takes the bench every day and they call *Jones versus Smith* and the attorneys come up to the bench and --

A. If he does it -- if he does it in court. He may just hold a conference in his

office in chambers, and if something needs to be on the record, then they call --

Q. Okay. I am not talking about putting things on the record, settlements. I am talking about Judge Schick today. He's got people lined up outside his office and they are brought into his chambers?

A. Yes.

Q. And Claire Sullivan, C-L-A-I-R-E, Sullivan, S-U-V-L-L-I-V-A-N, will conference with the attorneys?

A. Yes, that's correct.

Q. The clients often are not there, except in a matrimonial?

A. Right.

Q. And then his chambers will send a note?

A. Yes.

Q. Judge Meddaugh, Sandy Heck do the same thing?

A. Yes.

MR. MCGUIRE: S-A-N-D-Y H-E-C-K.

Q. So that's the custom and practice in Sullivan County is that Supreme Court cases by and large are handled in chambers

until they are ready for trial?

A. Right. Or if there's an appearance that needs to go on, you know --

Q. An order to show cause?

A. -- as necessary. Right.

Q. But that's rare? That's not the norm?

A. Right.

Q. And up until the last year, a judge would control a case, monitor a case through discovery, and then when it was put on the trial calendar, it was often a different judge who had the trial term, correct?

A. Yes.

Q. So very often, case could be pending, *Jones versus Smith*, before Judge Meddaugh but Judge McGuire would try it?

A. Uh-huh.

Q. Judge Meddaugh would handle all the motions and whatnot and then it would go to Judge McGuire for trial or to Judge Schick or Judge LaBuda?

A. Right.

Q. Right?

A. I mean, now everybody pretty much keeps their own cases that they have if it goes to trial.

Q. And that was a decision that the judges made --

A. Right.

Q. -- right? The judges got together. There was no OCA change, the judges --

A. Right.

Q. -- got together and decided it's just easier, in conjunction with the Clerk's Office?

A. Yes, that's correct.

Q. Because we were familiar with the cases?

A. Yes.

Q. But is it fair to say that's only within the last year --

A. Yes.

Q. -- 2018 and '19?

A. Yes.

Q. Now, can we agree that at times in the criminal calendar I've had 30, 35 percent of the criminal calendar?

A. Yes.

Q. Because Judge LaBuda when he's out --

A. Yes, you would get --

Q. -- I have gotten more?

A. More.

Q. And I have taken that on?

A. Yes.

Q. And you say I come up one day a week?

A. The majority --

Q. Generally.

A. -- generally, yes.

Q. Stepping out of the ordinary, of the extraordinary. The ordinary is I've got a calendar every Friday morning?

A. Yes.

Q. And generally those calendars are pretty full --

A. They are.

Q. -- in one week?

A. They are.

THE REFEREE: Listen, you have got to stop talking over each other. So ask a question and then we'll get an

answer and then you will ask another question and then we will get another answer.

Q. Generally those calendars are pretty full?

A. Yes, they are.

Q. Judge LaBuda would have a calendar every day?

A. Yes.

Q. And I have got to get almost the same number of cases in in one day?

A. Correct.

Q. And so it's important to start right at 9 o'clock?

A. Yes, it is.

Q. So that we can get finished in time for the staff to all have their lunch?

A. Yes.

Q. Before the afternoon starts?

A. Yes.

Q. In fact, that was a dictate back in 2011 when you first became a clerk --

A. Yes, it was.

Q. -- that we had to cut down overtime?

A. Right. Everybody needed an hour.

Q. Without incurring overtime?

A. Correct.

Q. So there became somewhat more of an emphasis on getting the calendar done during those constraints, within those constraints?

A. Yes.

Q. So Judge McGuire starts his calendar at 9:00?

A. You do.

Q. Judge LaBuda starts his calendar at what time?

A. 10:00, give or take.

Q. Give or take. Fair to say Judge LaBuda is often less punctual?

A. Yes.

Q. Fair to say that in years it's not uncommon for lawyers and litigants and clerks to be waiting for Judge LaBuda to arrive?

A. Sometimes.

Q. I mean no disparity to Judge LaBuda.

A. Sometimes, yes.

Q. So Judge McGuire, when he took the bench in 2011, he wanted to commit to 9 o'clock?

A. Yes. Yes.

Q. Now, we don't have total control of when the calendar starts, correct?

A. No. Sometimes there's hiccups.

Q. The jail?

A. The jail.

Q. The jail isn't part of the Unified Court System and they have got their own protocol and lock-downs and whatnot?

A. Yes.

Q. And transports to other courts?

A. That's correct.

Q. So sometimes they're not ready?

A. That -- that is correct. Sometimes they can't come over if they have both you and Judge LaBuda at the same time.

Q. Right. They can just have a crew to come over one and --

A. Sometimes, yes.

Q. And is it fair to say, when that happens, we just deal with it?

A. Yes. As best we can.

Q. Me, the judge, may be happy about it but that's the reality we deal with?

A. Yes.

Q. And the clerks are always up there at 9:00?

A. Yes.

Q. Tara or Karen or Ann or yourself?

A. Yes, yes.

Q. The DA's Office?

THE REFEREE: You are getting back into you answering while he's talking. If we want to have a transcript of this proceeding, then don't do it that way. If you don't want to have a transcript of this proceeding, continue doing it the way you are doing it.

Q. So the clerks are always there at 9:00?

A. Yes, they are.

Q. And the District Attorney's Office, generally?

A. Somewhat, yes.

Q. They sometimes have to be called?

A. Right.

THE REFEREE: See, the problem is you are having a conversation with her instead of asking her questions. So if you would start forming your questions as questions instead of making believe we are sitting in a living room having a conversation, the record will be easier.

MR. MCGUIRE: Okay. I apologize.

Q. Fair to say that often the District Attorney's Office has to be called to get them upstairs by 9:00?

A. Yes. Yes, that's true.

Q. And in County Court, the judge waits in his office?

A. Yes. When everybody is usually ready, the security will, excuse me, will come in to get you to say that court's ready.

Q. Okay. And sometimes that's 9:05 or 9:15, 9:20?

A. Yes, that's correct.

Q. Because of all the moving parts that have to be coordinated?

A. Yes.

Q. And Judge McGuire just deals with that?

A. Yes. Well, I mean, you want to start at 9 o'clock or 9:05, but sometimes there's things that happen that we try our best.

Q. And they're often beyond anybody's individual control? In other words, you don't control the jail?

A. Correct.

Q. I don't control the DA's Office?

A. Correct.

Q. You don't control the DA's Office?

A. Correct.

Q. So we all try to make it all come together?

A. Yes.

Q. Now, Judge McGuire, fair to say, has a voice that projects?

A. Yes, he does.

Q. Microphone's usually not necessary?

A. No.

Q. And when he projects his voice,

it's able to fill up the courtroom?

A. Yes.

Q. Our courtrooms have very high ceilings?

A. Yes.

Q. And they're fairly large?

A. Correct.

Q. Other people use microphones?

A. Yes.

Q. Judge McGuire doesn't?

A. Well, the microphone is there but it's really not necessary to hear you.

Q. Not necessary, okay. So when Judge McGuire is speaking in court, his voice projects, but that's not necessarily indicative of anger?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Fair to say the judge projects his voice even having normal conversation?

A. Yes.

Q. And Ms. Tishman asked you about recusal. In your experience, do attorneys often make application for recusal?

A. Sometimes attorneys will make

that application. It would go before the judge of that case and we would wait until we heard an answer from chambers.

Q. Okay. So sometimes the attorneys make application?

A. Yes.

Q. And sometimes the judges do it on their own?

A. Correct. If there is a conflict.

Q. Happens both ways?

A. Yes.

Q. Now, does -- other than January 14, 2015 -- I am not talking about that day yet --

A. Okay.

Q. -- does Judge McGuire generally use the court's paper file in court?

A. No.

Q. What does the judge typically do?

A. He -- you use your own computer or laptop that's setup in the courtroom.

Q. And I have notes on that?

A. Yes.

Q. Do I keep notes during court on that?

A. Yes, you do.

Q. And those notes don't get turned over to the Clerk's Office?

A. No.

Q. The clerk keeps their own notes?

A. Correct.

Q. And do you know where Judge McGuire keeps the notes that he keeps, where he stores them?

A. I have no idea.

Q. But he's keeping them on a computer?

A. I mean, it's on the computer but -- on your laptop or -- the network, yes.

Q. On the network. Now, does the judge still use a laptop in the courtroom?

A. Yes, you still use -- no. They have a computer in there. I'm sorry. It changed.

Q. OCA installed computers --

A. Yes.

Q. -- in all three of our courtrooms?

A. Yes.

Q. So that a judge uses those?

A. Yes.

Q. So to be clear, the judge is keeping his notes on a office-accorded administration computer?

A. Yes. Now, yes.

Q. Saving them on a network drive?

A. Yes. I am going to say yes. I -- you know, I'm sure you are saving them on their drive.

THE REFEREE: Well, do you know?

Q. Do you know?

A. I don't know. I mean, you know, I really don't.

THE REFEREE: So then you should say you don't know.

A. Okay. No, I don't know.

Q. And you don't expect the judge to share those notes with you or your clerk?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I guess it would be up to you if you --

Q. That's not my question.

A. Okay

Q. My question is: Do you expect the judge to share the notes with you?

A. No.

Q. You keep your own notes?

A. Yeah.

Q. Okay. Now, during the time period January 2011 through January 2015, you were working -- well, you were obviously working as the Chief Clerk but you were also in court with Judge McGuire?

A. Yes.

Q. And how frequently would Ms. Weiner come to court?

A. I don't remember if she actually would come up and -- into the courtroom you are talking?

Q. Correct.

A. Is that your question?

Q. For the calendars, yes.

A. I don't think she came up that much into the court.

Q. We can agree that it was rare?

A. Yes.

Q. And at times, if there was oral argument, Ms. Kamillee would come up?

A. Yes.

Q. Or Hannah Prall would come up?

A. Yes.

Q. But other than that, generally the court attorneys didn't come either?

A. No.

Q. Now, referring again to Exhibit II-2a.

MS. PARTIDA: Exhibit II-2a?

MR. MCGUIRE: Correct.

THE REFEREE: Exhibit II-2a or Exhibit X-2a?

MR. MCGUIRE: The transcript of G[redacted]. Exhibit X-2a --

MS. PARTIDA: This is Exhibit II-2.

MR. MCGUIRE: Exhibit II-2, I'm sorry, Exhibit II-2.

THE REFEREE: Okay.

Q. So page eight, line 21 through page 10, Ms. Tishman asked you some questions about that section.

A. Line 21?

Q. Page eight, line 21 to page 10.

A. Okay.

Q. Do you remember looking that over?

A. Yes.

Q. Do you remember, you said the judge said some things that were not nice?

A. Uh-huh.

Q. Direct me in that area to what was said that was not nice.

A. Well, you were stating that she was abandoning her children and to be self-absorbed in her own world. I mean, it's not nice things. It was probably true. Of course, she had done --

Q. So it's not --

THE REFEREE: Let her finish her answer.

Q. So it's not pleasant?

A. No, it's not pleasant. No, it wasn't pleasant.

Q. But it was based on information that the judge had available?

A. Yes.

Q. Do you have any reason to believe that there was any factual inaccuracies in that transcript?

A. Not that I know of, no.

Q. Now, you recalled that the judge's demeanor when he was dealing with Ms. G[redacted] was, I think you used the word, agitated. Do you agree with that?

A. Yes. I think that you were aggravated or agitated of her lifestyle that she chose. In essence.

Q. Or perhaps she was choosing prison over treatment?

MR. LEVINE: Objection.

THE REFEREE: Put it in the form of a question please.

Q. Is it a fair interpretation of what you read that the judge was frustrated about her decision to go to prison rather than treatment?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. We're done with that transcript for now.

A. Okay.

Q. Do you recall the judge's demeanor on the case after G[redacted] that

day?

A. I don't remember the next case that you had.

Q. Do you remember the case before?

A. No, because we probably had a big calendar that day.

Q. So --

A. And sometimes they skip around from, you know, from one to the other.

Q. Right. The cases aren't necessarily called number one, number two, number three, number four?

A. Right.

Q. Is it fair to say that your primary focus when you are in court is handling the multitude of paperwork that you have to deal with?

A. Yes, that's correct.

Q. You have got to get notes down?

A. Yes.

Q. You have got to get remand orders done?

A. Yes.

Q. You have got to get bail orders done?

A. Yes.

Q. It's a tremendous amount of work that the clerks have to do?

A. There's a lot of papers.

Q. And is it fair to say that the attorneys that are in court are more focused on their client?

MR. LEVINE: Objection.

THE REFEREE: More focused on their client than who or what?

Q. Than you are. Than you would be. The attorney standing next to the client would be more focused on the client than you would be?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes. I mean, we would be looking at the Defendant. If I wasn't doing the paperwork, I would be looking at the Defendant when I was in court.

Q. Is it fair to say that in your experience with Judge McGuire, he may use inflection to emphasize points in court?

A. Yes.

Q. And when we use inflection, our

voice goes up?

A. It does.

Q. Volume goes up?

A. Volume does go up.

Q. Now, we talked about January 14, 2015. Actually, we didn't talk about it. You and Ms. Tishman talked about it --

A. Right.

Q. -- right? And you said that you came up -- I will let you get your water.

THE WITNESS: I am just trying to get it open. I'm sorry.

MS. TISHMAN: Press the middle button.

MR. MCGUIRE: But now screw the top back on.

THE WITNESS: Thank you. Okay.

Q. So it's not uncommon for you to come back into my little office before calendar?

A. Yes. Sometimes to just check with you in the morning before we go in or telling you we're almost ready or we're waiting for somebody.

Q. Or updating me on issues --

A. Yes.

Q. -- that are going on? Maybe waiting for a federal transport or something like that?

A. Yes.

Q. So you came in in the morning of January 14th?

A. Yes.

Q. Probably just before 9:00?

A. Around then, yes.

Q. Had anyone that day, prior to you seeing me, alerted you that you needed to see me?

A. No. No.

Q. It was just in your normal course?

A. Right.

Q. Do you remember how busy a calendar we had that morning?

A. I think we had a full page.

Q. So if I was to say we had about 14 cases on, would that --

A. Be about right. It might have even had Supreme also.

Q. And there may have been some

sentencings on?

A. Yes.

Q. And what's an SCI plea?

A. Superior Court Information.

Q. What is that?

A. It's a plea that a Defendant takes. They are not indicted so they have agreed upon the charges and they take the plea to those charges.

Q. So the SCI itself is a document?

A. Yes.

Q. That alleges certain crime or crimes?

A. Yes.

Q. It also has attached to it waivers of trial and indictment?

A. Yes.

Q. And appeal?

A. Yes.

Q. Since 2011 when Judge McGuire took the bench, what has been his practice with respect to Superior Court Informations and the paperwork that goes along with them?

MR. LEVINE: Objection to relevancy.

THE REFEREE: What's the relevancy of this?

MR. MCGUIRE: It goes to the judge's pretrial preparation, which is at the very heart of the January 14th incident that Ms. Katzman testified about.

THE REFEREE: I am not sure I understand it, but I will let you ask a few questions. Overruled.

Q. Does Judge LaBuda ask for the SCIs in advance so he can review them?

MR. LEVINE: Objection to what Judge LaBuda does.

MR. MCGUIRE: She's the Chief Clerk.

THE REFEREE: Sustained. It doesn't matter what he does.

Q. Does Judge McGuire ask for the Superior Court Informations in advance?

A. Yes, he does.

Q. Is that consistent with custom and practice in County Court over the last 30 years?

A. It's individual. For you, you

always required it like a week or more in advance so that you could prepare before coming to court for the plea.

Q. So when you say "prepare," so that I could have reviewed the document?

A. Exactly.

Q. And reviewed what the plea offer is going to be?

A. Correct.

Q. So that I would know when I get into court what was going to happen in court?

A. Yes.

Q. Now, when someone is on for sentencing, there is a presentence report that's done?

A. Yes.

Q. And we agree that Judge McGuire asks to review those prior to the calendar beginning?

A. Yes.

Q. Is that consistent with custom and practice over the last 30 years, in your experience?

A. Not everybody prepares to read it

prior. Some read it when they are in the courtroom. But many do prepare and read it prior to.

Q. Many of the judges?

A. Many of the judges, I'm sorry.

Q. Okay. And does Judge McGuire ever ask for the presentence investigation report in court?

A. No, because I think you would have everything, you know, scanned in.

Q. In my notes?

A. In the notes, correct.

Q. But I often will quote from it from my notes?

A. Yes.

Q. So if we had this calendar on January 14, 2015 and it had all this work that had been done in advance, how did you interpret Judge McGuire's comment when you said that he wouldn't have his notes that day?

A. Well, you weren't able to review anything that was on the computer because you didn't have it. That's why I said I would have the files, paper form in the

court.

Q. So is it fair to say we had a normal discussion about I'm going to need paper today?

A. Yes.

Q. And my demeanor when we were having that discussion?

A. I think you were irritated because of what happened with the computer. You were annoyed you didn't have it, but our conversation was fine.

Q. Maybe concerned?

A. Yeah.

Q. I had lost all my work?

A. Uh-huh.

Q. And you know that I rely on that work?

A. Yes.

Q. So that would be a concern?

MS. TISHMAN: Objection.

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. So, Ms. Katzman, you rely on paper, correct?

A. Yes.

Q. So you need to have the paper files?

A. Yes.

Q. If somebody removed all the paper files from your office one night, would that create a concern for you?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Is it fair to say that a presentence -- I'm sorry.

A. That's okay.

Q. Is it fair to say a presentence report is required in every felony case?

A. Yes.

Q. And is it fair to say that the judge is to review that prior to administering sentence?

A. Yes, they usually do.

Q. And fair to say that -- have you ever read one of the PSIs?

A. Sure.

Q. So there is a lot of information in the PSI?

A. Yes.

Q. There is a statement from the

Defendant?

A. Yes.

Q. There is a synopsis of their legal history?

A. Correct.

Q. There is a synopsis of their educational background?

A. Yes.

Q. There is a synopsis of their family background?

A. Yes.

Q. Their work history?

A. Yes.

Q. Their drug and alcohol history?

A. Yes.

Q. And based on your training and experience, before an individual is sentenced, the judge needs to review that?

A. Yes.

Q. Because sentence should be tied to that history?

A. Right.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. That's why a judge reviews it?

A. Correct.

Q. And is it fair to say that sometimes the information in those PSIs, presentence investigation, is less than flattering?

A. Yes.

Q. But the judge is still required to review it?

A. Correct.

Q. Still required to rely on it in making a final determination on sentence?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. So sometimes a judge's comments at sentencing may not be flattering but they may be factually accurate?

A. Yes.

Q. Now, you testified that Ms. G[redacted] was sentenced to 30 days for judicial contempt?

A. Yes.

Q. And a remand was done for that?

A. Yes.

Q. And that sentencing on the grand larceny was put off for about a month?

A. Right. About three weeks.

Q. Right. And then she ultimately went to state prison?

A. Yes, she did.

Q. Do you know -- if you know, do you know how local time is computed when an inmate is sent to state prison?

A. No.

Q. You don't, okay. Had you ever been in court when a person pled guilty to a Superior Court Information?

A. Yes.

Q. And have you ever been in court when a person pled guilty to a Superior Court Information when they would receive what, in court jargon is called, a split bid?

MR. LEVINE: Objection to the relevance.

THE REFEREE: Overruled.

A. Yes.

Q. And what is a split bid?

A. Six months and say five and a

half -- five years probation.

Q. And have you ever been in court when it's announced that the person will complete their six months prior to sentencing?

A. Yes.

Q. And what, if anything, is done when that situation occurs?

A. Sometimes they put off the final sentencing until she -- the time is finished. Do I understand the question?

Q. That's not my question. The person comes into court, pleads guilty.

A. Yes.

Q. Sentencing is put off for about 12 weeks.

A. Okay, yes.

Q. Yes? Is that right?

A. Yes, for the probation.

Q. So at week eight the person has now served the equivalent of their six months?

A. Okay. They can be brought over to the court and be released.

Q. And that's typically what we do?

A. Yes.

Q. We don't have them stay in jail extra time?

A. Not normally, no.

Q. We typically release them on their own recognizance?

A. Yes.

Q. Now, do you remember being in court on January 26, 2012?

A. I may have.

Q. The case of the *People of the State of New York versus Dwight Coombe*?

MR. LEVINE: Objection to the relevancy.

THE REFEREE: What's the relevance of this, Judge McGuire?

MR. MCGUIRE: Well it -- again, all of the testimony that's been elicited about have you seen any other times when the judge raised his voice, could you talk about any other times when the judge raised his voice, and we have no case, no nothing. This is a case where there was an allegation that I addressed an attorney improperly and

then addressed it again subsequently, and it might be illustrative to the fact finder if the fact finder -- because I am concerned about this general impression that the Commission is attempting to create that they have five or six incidents over nine years, but we certainly know there was a lot more, we just haven't charged them, and that concerns me. It's like propensity evidence coming in in a trial.

THE REFEREE: I can assure you that it is not my intention to find that you have misbehaved in every single one of your cases. Okay?

MR. MCGUIRE: Well, my question is that if the fact finder is going to stay to the actual charges and not have propensity evidence effect the fact finder, then I have no problem with that. I certainly trust that.

THE REFEREE: Well, I am not going to indicate what my current thinking is on the case because we haven't finished hearing the case.

MR. MCGUIRE: Correct.

THE REFEREE: But I'm going to -- are you going to make an objection to this?

MR. LEVINE: I was just going to say, we didn't elicit any information with this witness with respect to this and --

THE REFEREE: You can pick out any number of different of your cases and use it to illustrate a point that what the Commission is alleging in one of these charges didn't happen in that case. If that's what you are doing here, I am going to sustain that objection.

MR. MCGUIRE: Okay. Well, my only objective is to establish that we have six or eight incidents out of 45,000 appearances and that the six or eight --

THE REFEREE: I understand that. But one appearance is not going to change any of that so I don't think what you are doing here is relevant.

MR. MCGUIRE: Except for, Judge, in this case there's been lots of testimony elicited, and I suspect there will be more testimony elicited, well, did the judge ever apologize, did the judge ever talk to you. And this is a case where I was given bad information and then subsequently, after I had an interaction, I was told that the information that the person gave me was incorrect.

THE REFEREE: So here's what we are going to do. I assume you are going to testify in this case?

MR. MCGUIRE: Ultimately, yes.

THE REFEREE: You can decide what instances of your conduct you would like to bring out.

MR. MCGUIRE: Fair enough.

THE REFEREE: Instead of bringing it out through this witness.

MR. MCGUIRE: Fair enough. In that case, just give me one minute.

Q. Ms. Katzman, how would you characterize -- did I startle you?

A. No, that's okay.

Q. How would you characterize the working relationship between Judge McGuire and Sarah Katzman?

A. I have an okay working relationship with you. You have always been courteous and we get along.

Q. And have any of your staff members ever complained about working with Judge McGuire?

A. No.

Q. They may have complained that court takes too long?

A. Yes.

Q. Did Ms. Weiner ever send you an e-mail warning you that the judge was in a bad mood?

A. I don't think I ever got an e-mail like that from Wendy.

Q. And other than complaining that Judge McGuire took too long to take a plea, did attorneys come to you to complain about Judge McGuire?

MR. LEVINE: I am going to object.

THE REFEREE: Overruled.

A. Just that it may have taken a long time up in court.

Q. And do you recall, back in 2012, 2013 we had several pleas of guilty returned by the Appellate Division?

A. Yes.

Q. Because certain issues were not addressed on the record?

A. Yes.

Q. And so Judge McGuire started to address all of the Appellate Division's concerns on the record?

A. Yes.

Q. And that took longer?

A. It did.

Q. Do you know what an IVD Court is?

A. Domestic violence.

Q. Integrated Domestic Violence?

A. Yes.

Q. And do you know how they're setup?

A. No.

Q. We don't have one in Sullivan County?

A. No.

Q. Now, in Supreme Court in Sullivan County, if a Family Court judge has handled custody and then there is a divorce filed, is there a custom and practice for the way that's done?

A. Normally if a judge has that in Family Court, they do put it on the RJI that I receive and I usually assign it to the same judge.

Q. Is it fair to say when Judge McGuire took the bench, he endeavored to have the same policy between Family Court and Criminal Court?

A. Yes. A lot of times.

Q. Where a child abuse case also spawned a criminal case, Judge McGuire let you know that?

A. Yes, he did.

Q. In your opinion as the Chief Clerk, was Judge McGuire ever inappropriate with you in demanding cases be placed on his calendar?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. There were times that you said that you wanted that case because you knew about it, but sometimes something may have come to County Court that the other judge may have heard, heard it and it may not have gotten assigned to you.

Q. My question was: Was Judge McGuire inappropriate in mentioning it to you?

MR. LEVINE: Objection what inappropriate means.

MR. MCGUIRE: Well, in her mind.

THE REFEREE: She can answer if she can.

A. I guess not, no.

Q. He asked you and you --

A. Yes.

Q. -- made a decision yes or no?

A. Yes.

MR. MCGUIRE: I have nothing further.

THE REFEREE: Anything further?

MS. TISHMAN: No.

THE REFEREE: Thanks, Ms. Katzman, for your testimony. You

are excused.

THE WITNESS: Thank you.

THE REFEREE: So we will take our lunch break, but give me a sense of what we've got this afternoon, if anything.

MS. TISHMAN: Well, as you know, I had other witnesses scheduled today and I changed everything around. So the only person I can have is Ethan Beckett this afternoon.

THE REFEREE: So how long will it take to get him over here?

MS. TISHMAN: I told him that I would contact him over our lunch break. I told him our lunch break was at 1:00. He can definitely be here by 2:00, maybe earlier, but I am not positive.

THE REFEREE: We will break until 2:00 just to give him a chance. Let's go off the record. We will break until 2:00.

(A recess was taken.)

THE REFEREE: Okay. It's almost 2 o'clock, and I understand there is a

change in plan.

MR. LEVINE: Yes. Mr. Arisohn, we apologize for the inconvenience, Judge, but we have decided, upon reflection, not to call Mr. Beckett. We believe that the limited purpose to which we were going to call him, we have other evidence to establish that. And, therefore, while we apologize for anything today, we don't feel he is necessary for us to establish our burden of proof.

THE REFEREE: Okay. And I gather that there's nothing else that you have to put on today?

MR. LEVINE: Unfortunately, not. But tomorrow we will have --

MS. TISHMAN: Not tomorrow.

MR. MCGUIRE: Tomorrow you will, but I won't be here.

MR. LEVINE: Monday -- we are endeavoring, for the remainder of next week, to hopefully finish our case and have witnesses for the entire day for each of those days.

THE REFEREE: Okay. So I guess there is nothing we can do about it, and we will adjourn until 10:00 a.m. Monday morning.

MR. MCGUIRE: All to their respective trains.

THE REFEREE: Anything else that we can do today?

MS. TISHMAN: No. But I want to say something when we go off the record.

THE REFEREE: Go ahead. Off the record. Monday morning at 10:00 a.m.

(A recess was taken.)

THE REFEREE: So after some discussion off the record, we decided that it would be useful to spend sometime this afternoon, instead of doing nothing, to play some of the recordings that would otherwise come in at some later date but we don't need a witness for. Is that right?

MS. TISHMAN: Yes.

THE REFEREE: So which one are we going to listen to first?

MS. TISHMAN: Already in evidence is Exhibit III-2, which is the audio that we are going to be playing, and the transcript is Exhibit III-2a, and it's page 18, line seven.

THE REFEREE: This is the case of *Z*[redacted] --

MS. TISHMAN: *Z*[redacted] *versus F*[redacted], Z[redacted] *versus F*[redacted], F-[redacted].

THE REFEREE: And the page again? I'm sorry.

MS. TISHMAN: 18, line seven. And then we are going to go off the record.

(The audio was played.)

THE REFEREE: Let's go back on the record. We have played Exhibit III-2. Do we have another one to play?

MS. TISHMAN: Yes. We are playing Exhibit III-3. And it's the same case, *Z*[redacted] *versus F*[redacted]. And the transcript is Exhibit III-3a, starting on page one. It is the same date.

THE REFEREE: Off the record.

(The audio was played.)

MR. MAISONET: On the record.

THE REFEREE: So we have now listened to the section of the Exhibit III-3?

MS. TISHMAN: Yes. And I just want to make, for the record, that the first tape that we listened to, which was Exhibit III-2, concluded at 10:16:04. Well, no. It concluded -- excuse me. I'm sorry. The Exhibit Commission Exhibit III-2 concluded at 10:16 in the morning of October 3, 2012, and Commission Exhibit III-3, the same date, October 3, 2012, commenced at 11:58 in the morning.

THE REFEREE: So I am seeing 11:58 on the transcript of Exhibit III-a, but where are you getting the time for --

MS. TISHMAN: On Exhibit II itself.

THE REFEREE: On the disk?

MS. TISHMAN: On the disk.

THE REFEREE: Okay. Which is in evidence?

MS. TISHMAN: Which is in evidence as Exhibit III-2.

THE REFEREE: So give me those times again. I'm sorry.

MS. TISHMAN: Commission Exhibit III-2 starts at 10:03, concludes at 10:16.

THE REFEREE: And Exhibit III-3?

MS. TISHMAN: Commission Exhibit III-3 commences at 11:58 a.m.

THE REFEREE: So am I to draw the inference that she had been in custody from 11:16 a.m. to 11:58 a.m.?

MS. TISHMAN: Yes.

THE REFEREE: Anything else for today?

MS. TISHMAN: Yes. We are going to go to the case *M*[redacted] *versus H*[redacted] that is charge nine. Are we still on the record?

MR. MAISONET: Yes.

MS. TISHMAN: Just give me one second. This is charge nine and the

Exhibit is Exhibit IX-2, is the certified audio, and the transcript is Exhibit IX-2a, and it's the proceeding of *M*[redacted] *versus H*[redacted] on March 10, 2014. The transcript, which is Exhibit IX-2a, is page 11, line six.

MR. MAISONET: Off the record.

(The audio was played.)

MR. MAISONET: On the record.

THE REFEREE: Okay. We have listened to Exhibit IX-2.

MS. TISHMAN: Right. At this point that's it. I did this on the fly, so it might up come up there was more that I missed but --

THE REFEREE: All right. Well, at least we made some use of our time. We are going to go off the record right now and reconvene Monday at 10:00. Okay?

MS. TISHMAN: Yes.

THE REFEREE: Have a good weekend, everybody.

(TIME NOTED: 11:21 A.M.)

INDEX TO EXHIBITS

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CERTIFICATION

I, STEFANIE KRUT, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 9, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June 2019.

STEFANIE KRUT

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

a Judge of the County and Surrogate's Courts, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court, Sullivan County.

---

61 Broadway
New York, New York

May 13, 2019
10:30 AM

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

Pamela Tishman, Esq.
Principal Attorney

Mark Levine
Deputy Administrator

For the Respondent

Michael F. McGuire,
Pro Se

Also Present:
MICHAEL MAISONET
Senior Court Clerk

Christina Partido

INDEX OF WITNESSES

For the Commission

	Direct	Cross	Redirect	Recross
John Ferrara	1048	1073	1129	X
Andrea Rogers	1132	1169	1244	X

THE REFEREE: Good morning, everybody. Today is May 13, 2019. This is the continuation of the hearing in the matter of Judge Michael F. McGuire. Are we ready to proceed with today's witness?

MS. TISHMAN: Yes, we are, but before I call the first witness, I just want to make a record that there were two things left out of the Commission bench book that was provided to the parties that I want to introduce into evidence. I have copies for everyone and it will be introduced as Exhibit I, 3D and 3E.

THE REFEREE: Okay.

MS. TISHMAN: These can be added to Exhibit I after 3C. These are admissions. We gave notice of this on page 14 of the February 8, 2019 letter. That was the letter, discovery letter that was sent to the Judge's prior attorney and a CC to Referee Arisohn. I would like to admit these into evidence.

THE REFEREE: I am looking at the table of the exhibits.

MS. TISHMAN: It's Charge One.

THE REFEREE: It's Charge One, so Exhibit I-3D and E.

MS. TISHMAN: Exactly.

THE REFEREE: Any objection, Judge McGuire?

JUDGE McGUIRE: No.

THE REFEREE: So Exhibits I-3D and 3E are received.

(Comission Exhibits I-3D and 3E were marked in evidence, as indicated.)

MS. TISHMAN: So just for the record, the index to the bench books, that are attached to the bench books, these aren't listed on them.

THE REFEREE: Just add it to my copy.

MS. TISHMAN: Thank you.

THE REFEREE: With that, are you ready to call the next witness?

MS. TISHMAN: I am.

THE REFEREE: Please do.

MS. TISHMAN: The next witness is

John Ferrara.

MS. PARTIDO: Witness entering.

THE REFEREE: Good morning, Mr. Ferrara.

THE WITNESS: Good morning.

THE REFEREE: I am the Referee in this matter. You can stay seated for a second. I have been asked to read this script to you, sort of instructions:

A Court Reporter who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly, and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until a question is completed and answer each with words, not a nod or a gesture.

Please refrain from creating

excessive background noise as it becomes amplified on the recording, and if you have any cell phone or other electronic equipment, please turn it off.

THE WITNESS: It's off.

THE REFEREE: Would you please rise, sir, and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat. State your full name and spell it for the record.

THE WITNESS: John Ferrara, F E R R A R A.

THE REFEREE: Ms. Tishman, you may proceed.

DIRECT EXAMINATION

BY MS. TISHMAN

Q. Good morning, Mr. Ferrara.

A. Good morning, Ms. Tishman.

Q. Are you currently employed?

A. Yes.

Q. Where are you employed?

A. I am self-employed.

Q. Self-employed as what?

A. As an attorney.

Q. So you are a sole practitioner?

A. Correct.

Q. Do you have any contract employment?

A. Yes.

Q. What contract employment do you have?

A. I have a contract with the Sullivan County Conflict Panel.

Q. What does that mean?

A. The Conflict Panel is a corporation that provides representation within Sullivan County for indigents after Legal Aid is conflicted out. So if there was a family court case, a mother and father who were litigating against each other, they were both indigent, Legal Aid would represent one and then the Conflict Panel would represent the other.

Q. And how long have you been on the

Conflict Panel?

A. Since January of 2011.

Q. Do you handle -- as an attorney on the Conflict Panel, are you assigned to a specific courtroom?

A. Yes.

Q. What courtroom?

A. I have presently 4 small justice courts that I do criminal work in. They don't meet very often. The bulk of my work is in Part 2 of the Family Court in front of Judge McGuire.

Q. And that is Family Court in Sullivan County?

A. That is correct.

Q. Has that been true since January 1st, 2011, that the bulk of your work is in front of Judge McGuire for the Conflict Panel?

A. Correct.

Q. Drawing your attention to January 17, 2014, were you assigned to represent one of the parties in G[redacted] versus C[redacted]?

MS. TISHMAN: Spelled for the record: G [redacted] versus C [redacted]

[redacted].

A. Correct.

Q. Who did you represent?

A. I represented Mr. G[redacted].

Q. And who represented Ms. C[redacted]?

A. Mr. Garn.

Q. What issues were discussed on January 17, 2014?

A. We started the proceeding with Mr. G[redacted] having the child, who was young, the bulk of the time. I believe that Ms. C[redacted] was getting parenting time 3 days a week for about 8 hours, it might have been 2 days a week, but something like that. There were issues between these parties of transportation, trying to get them back and forth and then ultimately sleeping arrangements.

Q. About how old was the child?

A. Approximately 6 months. Very young, very young.

Q. What, if anything, happened at the end of that proceeding?

A. At the end of that proceeding the mother, represented by Mr. Garn, was

handcuffed and taken out of the proceeding.

Q. What happened prior to Ms. C[redacted] being handcuffed?

A. There was a conversation about a Pack 'N Play and Judge McGuire wanted the mother to -- or said he wanted the mother to purchase her own sleeping arrangement, whether it be a Pack 'N Play or something else.

The mother said something to the effect -- there was a dispute over who bought the Pack 'N Play. The mother was adamant that she bought the Pack 'N Play. She wanted the Pack 'N Play either returned to her or whatever, she didn't want to purchase another one.

She cursed and Judge McGuire asked the court officers to -- I don't remember the exact words, but it was clear they were to handcuff her.

Q. Handcuff who?

A. Ms. C[redacted].

Q. Do you remember exactly what Ms. C[redacted] said?

A. I don't remember exactly what she

said. The curse word was S H I T.

Q. What was the Judge's reaction when Ms. C[redacted] used the word "shit"?

A. He directed the court officer to take her out of here. I don't know if he said handcuffed, but that's what happened.

Q. I show you what is marked Commission Exhibit -- give me one second, V-2A. If you can look at page 8 through 10 and read it to yourself.

A. Okay.

(Witness reading document.)

Q. After Ms. C[redacted] said, on page 8, line 16 through 17, "That's a crock of shit to me, honestly," how did the Judge respond?

A. The next words were: "I will tell you what, take her into custody now."

Q. What was the Judge's demeanor at that point?

A. I remember him being loud. I would say stern, for sure.

Q. And was Ms. C[redacted] handcuffed in front of the Judge?

A. Yes.

Q. And she was handcuffed in the courtroom?

A. Yes.

Q. And how many curse words did Ms. C[redacted] utter prior to the Judge ordering her to be handcuffed?

A. From the transcript I could see it's just one. My recollection of that, I am relying on the transcript.

Q. Did the Judge warn Ms. C[redacted] that her behavior was contemptuous?

A. No.

Q. Did he ever tell her what he felt that she had done wrong?

A. No.

Q. Did the Judge give Ms. C[redacted] an opportunity to be heard before he ordered to put her in handcuffs?

A. No.

Q. Did the Judge give Mr. Garn an opportunity to make a record before he ordered Ms. C[redacted] to be handcuffed?

A. No.

Q. Did the Judge give Ms. C[redacted] an opportunity to purge the contempt order

before he ordered her to be put in handcuffs?

A. No.

Q. Did there come a time that Ms. C[redacted] was escorted out of the courtroom?

A. Yes.

Q. Who escorted her out of the courtroom?

A. It had to be the court officer, I don't have a clear recollection.

Q. Did you remain in the courtroom?

A. Yes.

Q. What happened when you remained in the courtroom?

A. There was a brief conversation about bringing her back in, letting her cool off, and then, as I recall it, no one said the words "purge the contempt." That's pretty much how I would interpret it.

Q. Who initiated the conversation about the time that she would have to remain in custody?

A. I think it was me.

Q. If we can go to page 10 of Commission Exhibit IIA. If you could read

that to yourself, lines 10 through 14.

(Witness reading document.)

A. Yes.

Q. Does that refresh your recollection of who initiated the conversation about how long she would have to be in custody?

A. Me.

Q. The question was: Did that refresh your recollection?

A. Yes.

Q. Who initiated the conversation?

A. Me.

Q. What was the Judge's response?

A. The words are, "Yes, we will let her cool, calm down a bit."

Q. Why did you initiate that conversation?

A. I did not think she should have been handcuffed. I didn't think -- I didn't think she did anything that horrible that required that action.

Q. Did there come a time that you left the courtroom?

A. Yes.

Q. And what happened when you left the courtroom?

A. My recollection is that I had a conversation with Mr. Garn. My recollection is that what you saw on page 10 of the transcript is essentially what took place outside of the courtroom, in front of Mr. Garn.

Q. I just want to clear that up.

So what we saw on page 10 of the transcript, you said it was repetition, I'm not sure I heard it?

A. There may have been confusion. I apologize. Before I listened to these tapes, before I read the transcript, my recollection of what happened outside the courtroom was a little different than what is in the transcript. My recollection was that this conversation of bringing the mother back into the courtroom took place outside of the courtroom, not on the record. Obviously, I am looking at the transcript and obviously my recollection is not as clear as I would like.

So it's possible that there was a

second conversation with Mr. Garn and I am remembering that. It's also possible that I am just confused and the transcript of what I said in the courtroom is what I am recalling.

In any event, what definitely happened was that Mr. Garn went and spoke with his client, who was taken into what I will call a holding room in the Family Court and then shortly after that, we went back into the courtroom.

Q. I am going to show you what is marked PH7, if you could look at that, please?

A. Yes.

Q. You referred to the holding room. Is this the room that you were referring to?

A. Yes.

Q. And was the case second called that day?

A. It was.

Q. Drawing your attention to December 2nd, 2014, were you assigned to represent one of the parties in the F[redacted] versus K[redacted] case?

MS. TISHMAN: F [redacted]

K[redacted] K [redacted]

A. Yes. I was assigned to represent Mr. K[redacted].

Q. Were the grandparents present in the courtroom?

A. The maternal grandparents were, yes.

Q. Were they represented?

A. No, they were not.

Q. Why were the parents in the courtroom, why were they involved in the case?

A. You mean the grandparents?

Q. I am sorry, the grandparents?

A. The grandparents had -- whether they had it legally or de facto, they were the people who were raising the child -- up to this point anyway.

Q. About how old was the child?

A. Young, but I couldn't give you an age.

Q. And what issues were discussed in court that day? Why was the case on in court?

A. The case was on that day -- it doesn't, I don't believe it was the first time it was on in that proceeding. It was on that day for a conference, I believe, and the father was trying to get specified parenting time when he would have the child.

Q. What happened towards the end of the court proceeding?

A. At the end of the court proceeding the Judge had temporarily switched custody of the child from the grandparents to the father. The grandmother, my characterization, became upset and said some words about suing the county and suing the Judge. The Judge stated or asked, "Are you threatening the Judge?"

And, then, the grandmother was again handcuffed.

MS. TISHMAN: With the Court's permission I am going to play a section of the tape in G[redacted] versus C[redacted], and that is Exhibit II and IIA.

THE REFEREE: Roman Numeral II.

MS. TISHMAN: I am sorry, give me one second.

It's Roman Numeral VI, Charge 2 and 2A, and it's the F[redacted] versus K[redacted] case.

THE REFEREE: So Exhibit VI-2.

MS. TISHMAN: And the transcript is Exhibit VI-2A. We are looking at page 18.

THE REFEREE: Page what?

MS. TISHMAN: 18.

We will go off the record when we listen to the audio.

THE REFEREE: Off the record.

(Tape played.)

THE REFEREE: On the record.

BY MS. TISHMAN

Q. Was Ms. K[redacted] represented at that time?

A. No, she was not.

Q. And did the Judge get her an attorney prior to having her taken into custody?

A. No.

Q. Was the grandfather represented

at that time?

A. No.

Q. Did the Judge warn Ms. K[redacted] that her behavior was contemptuous before ordering that she be handcuffed?

A. No.

Q. Did the Judge give Ms. K[redacted] an opportunity to be heard before ordering she be handcuffed?

A. No.

Q. Was the case second called that day?

A. Yes.

Q. Do you remember what happened during the second call?

A. I remember that the grandmother was released.

MS. TISHMAN: I am going to play now for the record Commission Exhibit VII-3 and we are going to look at the transcript VII-3A, page 1.

THE REFEREE: VI or VII.

MS. TISHMAN: VI, thank you.

THE REFEREE: Exhibit VI-3?

MS. TISHMAN: Exactly.

It's going to be played. We are going to go off record and VI-3A is the transcript, starting on page 1.

THE REFEREE: Off the record.

(Tape played.)

THE REFEREE: Back on the record.

BY MS. TISHMAN

Q. Mr. Ferrara, had Mr. K[redacted], the grandfather, done anything but say, "Please don't do that, sir, I'm sorry," to the Court? Had he done anything else before the Judge threatened him, to hold him in for 30 days?

A. No.

Q. Drawing your attention to January 28, 2013, were you assigned to represent one of the parties in M[redacted] P[redacted] versus S[redacted] P[redacted] and S[redacted] R[redacted]?

A. Yes.

Q. Who did you represent?

A. Mr. P[redacted].

Q. Who represented the grandmother, S[redacted] R[redacted]?

A. Marcia Heller.

Q. Did she represent the

grandmother?

A. I am sorry, I misspoke, Mr. Garn represented. I apologize for that.

Q. Who represented grandmother, S[redacted] R[redacted]?

A. The grandmother was represented by Mr. Garn.

Q. Who represented the mother, S[redacted] P[redacted]?

A. Marcia Heller represented the mother.

MS. TISHMAN: For the record, M[redacted] Pagan, P[redacted] S[redacted] P[redacted] S[redacted] R[redacted], R[redacted]; and the name K.C. Garn, initial K, initial C, and that's G A R N. And Marcia Heller is H E L L E R.

What was the case in court that day?

A. Mr. P[redacted] was seeking, as I recall it, every other weekend parenting time with the child.

Q. And who had the child been living with?

A. The grandmother.

Q. And Mr. P[redacted] had recently gotten out of prison?

A. That's correct.

Q. Now, was the child in the courtroom that day?

A. Yes.

Q. About how old was the child?

A. Best I can recollect, 13 or 14. I could be off a little bit.

Q. Who represented the child?

A. Alexander Bourne, B O U R N E.

Q. Who presided over the case on January 28, 2013?

A. Judge McGuire.

Q. I am going to show you what is marked PH1.

MS. TISHMAN: B O U R N E.

Q. Do you have in front of you PH1?

A. I do.

Q. Now, whose courtroom is this?

A. This would be Judge McGuire's courtroom, Courtroom Number 2.

Q. And that day, what table -- we see 4 tables, what table were you sitting at?

A. I was seated at -- looking at the bench, I was seated at the front left table.

Q. And the table behind that on the left side, who was sitting there?

A. That would be where Mr. Bourne and the child were seated.

Q. I see a little plaque on that. It says "Law Guardian"?

A. That's correct. That is usually where the attorney who represents the child sits.

Q. On the front table, on the right-hand side, who was sitting there?

A. The front right was the mother and Ms. Heller.

Q. And the table right behind that, I think there's a plaque that says "Respondent 2," who was sitting there?

A. Mr. Garn and the grandmother, and if I could, generally speaking, the lawyers sit closest to the aisle. I don't know why, but we always do.

Q. Now you said that there was discussion about visitation that day?

A. Yes.

Q. And how was the case resolved that day?

I withdraw that. You represented --

A. Mr. P[redacted].

Q. What was he seeking?

A. He was really seeking every other weekend parenting time, at that time.

Q. What was the grandmother's position?

A. She wanted it to be once a month visitation for a weekend, one weekend a month, I guess I should say.

Q. And was the case resolved that day?

A. Not finally, no.

Q. Was it set down for trial?

A. Yes.

Q. Was a temporary order issued that day?

A. Yes.

Q. What was that?

A. Temporarily the child would go with the dad every other weekend.

Q. Which is what the father was

advocating?

A. Yes.

Q. And the grandmother had wanted less time?

A. Correct.

Q. When the case was adjourned and it went off the record, what, if anything, happened?

A. Well, my attention was forward. It really wasn't forward, I should say I was putting stuff into my briefcase, but I was looking forward, and then I heard the Judge yelling at -- well, I believe the grandmother, and then I can't recall if it was in the courtroom or just outside the courtroom, the grandmother gasping for air and eventually the court officers assisted her in a side room and I think it was a mobile medic, but an ambulance came to the courthouse.

Q. When you were in the courtroom and you heard the Judge yelling at the grandmother, Ms. R[redacted], what did you hear the Judge saying?

A. I cannot recall the words. I

can't, I can only characterize or give you a best sum and substance, I couldn't do anything better than that.

Q. What do you remember?

A. In sum and substance, it was something about the grandmother either signaling or mouthing something to the child in the courtroom.

Q. The Judge, you said, was yelling at Ms. R[redacted]?

A. I would say it was yelling, yes.

Q. And was the child in the courtroom?

A. Yes. The child had been in the courtroom.

Q. What was the Judge's tone of his voice?

A. I think I characterized it before as angry. I will stay with that.

Q. Now, you said that the grandmother was gasping for air?

A. Yes.

Q. Was this -- did this start prior to the Judge yelling at her or after?

A. After.

Q. And do you remember, where was the grandmother when you noticed she was starting to gasp for air?

A. I could not tell you for certain if it was in the courtroom or whether it was outside the courtroom, I just don't recollect well enough to tell you that.

Q. Besides gasping for air, was there anything else that you noticed about Ms. R[redacted]'s physical condition?

A. I only know she was seated in the side room and being attended to first by court officers and then by medical personnel, ambulance personnel.

Q. Was the grandmother crying when you saw her?

A. Yes, when I saw her after.

Q. After the Judge yelled at her, was the grandmother crying?

A. Yes.

Q. Was the child present when the grandmother was gasping for air and crying?

A. I have no specific recollection of where the child was when we went outside the courtroom. I can describe the

geography, but I don't recollect specifically where she was.

Q. Is there anything I can show you that can refresh your recollection?

A. If I previously testified and it's in the transcript, I will look at it. I don't know if it will refresh my recollection.

Q. I am going to show you --

MS. TISHMAN: I am going to mark this as Commission Exhibit for identification VII-2C.

(Commission Exhibit VII-2C was marked for identification, as indicated.)

Q. This is a testimony from July 1, 2016, your testimony at the Commission. If you can go to page 16, and starting at line 12 to page 17?

(Witness reading document.)

A. Yes.

Q. Does that refresh your recollection if the child was there when the grandmother was crying?

Judge McGUIRE: Just a point of

clarification, we are taking about in the room or in the hallway? I thought you said the grandmother was in a side room, I thought that's what you said.

THE REFEREE: Let me ask you this: Having read that transcript, does that refresh your recollection about the whereabouts of the child?

THE WITNESS: Not really, no.

THE REFEREE: Next question.

Q. Were you present when the medics arrived?

A. Yes, I saw the medics.

Q. Was Ms. R[redacted] still having problems breathing at that time?

A. I wasn't close enough to know for certain.

Q. Do you know Zachary Kelson?

A. I do.

Q. Does he have any contract work in Sullivan County?

A. I don't know of any.

Q. Has he ever acted as a law guardian?

A. Yes.

Q. Has he acted as a law guardian in Judge McGuire's part while you have been there representing a party?

A. Yes.

Q. And while you were in the courtroom in front of Judge McGuire and Zachary Kelson appeared in Family Court as a law guardian, was a record ever made about the relationship between Mr. Kelson and the Judge?

A. No.

Q. Did the Judge ever disqualify himself on a case where Zachary Kelson appeared in Family Court while you were also in the courtroom?

A. I don't recall such a thing. Over 9 years there were a lot of cases, but I don't recall one.

MS. TISHMAN: I have no further questions of this witness.

THE REFEREE: Judge McGuire, you may cross-examine.

CROSS-EXAMINATION

BY Judge MCQUIRE:

Q. Mr. Ferrara, good morning.

A. Good morning, your Honor.

Q. So we heard about 3 cases --

A. Right.

Q. -- spanning 9 years?

A. Yes.

Q. How many cases would you estimate, how many times have you appeared? Because we didn't hear transcripts of full cases, we heard portions of appearances.

A. Correct.

Q. How many cases would you estimate that you have appeared or how many appearances have you made?

A. In front of your Honor?

Q. In front of me?

A. It might be 1,000.

Q. It might be more?

A. I couldn't tell you, but it's certainly a large number.

Q. Over 9 years?

A. Correct.

Q. So before you got the contract for the Conflict Panel, you had done other work in Family Court?

A. Yes.

Q. You certainly were not a rooky to the Family Courtroom?

A. That's correct.

Q. What kind of cases do we deal with in Family Court?

A. A large number of them are custody or parenting disputes. We, on the Conflict Panel, deal with a large number of neglect and abuse cases. Sometimes, very rarely me, but sometimes there will be child support cases, where there is a possibility that the person would go to jail if they are not paying child support and then I would get assigned a week later, as a conflict case, or possibly go to jail, I should say.

The Family Court deals with other cases, but as a conflict lawyer I usually do not get involved in juvenile delinquency or persons in need of supervision cases.

Q. The juvenile delinquency cases, you have handled those.

A. I have handled them in the past when I was on the law guardian panel. I am not on that panel any longer.

Q. Because by definition the

respondents in those cases are juveniles?

A. Correct.

Q. And so they would be represented because they're under 18 by the -- common problems, the law guardian panel?

A. Correct.

Q. Now called attorneys for the child?

A. Correct.

Q. Appropriately.

So now how long have you been practicing law?

A. I was admitted in the spring of 1984. I really didn't start practicing until the fall of 1985.

Q. So just about 35 years?

A. Correct.

Q. And you also have clients that are retained?

A. Correct.

Q. That pay you?

A. Correct.

Q. They hire you privately?

A. Yes.

Q. Is there often a difference in

the relationship between the client and the attorney, between a retained client and an assigned client?

A. I would say that while it's not something that you would want to happen, it does happen.

Q. Is it fair to say it's often not from the attorney to the client, but from the client to the attorney?

A. I think so, yes.

Q. You don't treat your assigned clients any different than you do your retained clients?

A. I try not to.

Q. You try not to. What are some of the difficulties that you encounter with assigned clients?

A. Well, certainly, the major difference is poverty. That would be the difference. Usually -- I should take that back, but often times poverty is linked to education, status in various ways, and that then also causes problems for the person.

Q. How does it manifest itself in terms of your practice and preparation for a

case?

A. It's hard to characterize in one lump sum because different people are different. I have had indigent clients who are very astute and able to help me quite a bit in preparing, but I would say the higher percentage of the indigent clients are not able to help me as much.

Q. When we are dealing with Family Court now -- strike that.

Have you also handled cases in Supreme Court?

A. Yes.

Q. And retained cases in County Court?

A. Yes.

Q. Now, would would it be fair to say that there is a certain animosity or anger that is self-evident between litigants in Family Court?

A. Often times, yes.

Q. Often. Would you say, other than in matrimonials, it's more so than say between the District Attorney and the defendant in a criminal case?

A. Yes. I would say so. I mean, there's a lot of animosity sometimes between the District Attorney and the litigant. The Family Court tends to have a lot of that.

Q. What is the overall most critical governing principle in your mind, as a 35 year practitioner, in adjudicating Family Court cases?

A. Well, the objective is, of course, to do what is right for the child, best interest of the child.

Q. So the best interest of the child is where most of those cases go. That's where we attempt to go?

A. That's the objective.

Q. Now, when you said we have custody cases, within the rubric of custody cases, we have custody modification cases.

A. Correct.

Q. What is the standard in those cases? What are we looking to do?

A. Well, the standard is the burden of proof is on the party that is seeking to change the order, and the burden of proof is phrased differently by different Appellate

Division cases, but it is essentially so that there has been substantial changes in circumstances since the last order and that the order needs to be changed to achieve the best interest of the child.

Q. In order to maintain the child's best interest?

A. Correct.

Q. In your experience as a practitioner, have you had occasion where you have had to bring a violation petition?

A. Oh, yes.

Q. What's involved in a violation? Why would a violation petition be brought?

A. Well, there's an allegation that there is a Court order and that the other side is not complying with the Court order and willfully not complying with the Court order.

Q. And it has to be a clear, unequivocal provision of that order in order to maintain a violation; correct?

A. In order to achieve it. To file it, not necessarily.

Q. To prevail?

A. Yes.

Q. So we have got these Court orders that are laid out in such a way as to promote the child's best interest?

A. Correct.

Q. In fact, if the Court order has been entered, in your experience, have you been in Judge McGuire's court when an original custody was entered into?

A. Yes.

Q. Is it fair to say that the Judge always asks the litigants whether or not this order is, in their mind, consistent with the child's best interest?

A. Yes.

Q. He goes through that in a colloquy between the Court and the litigant?

A. Correct.

Q. So, is it fair to say, then, that presumptively that order that is entered into, the original custody order on that day, everyone agrees is consistent with the child's best interest?

A. Correct.

Q. So, then, is it fair to say that

willfully failing to follow that order would be contrary to the child's best interest?

A. I think by definition, yes.

Q. You have spoke a little bit with Ms. Tishman about the matters of G[redacted] and C[redacted], June 17, 2014; correct?

A. Correct.

Q. Now, Mr. Ferrara, have you had experience -- you said you handled neglect and abuses?

A. Correct, as well.

Q. Do you recall a neglect case where the failure of the parent or guardian to provide appropriate sleeping arrangements for the child was the subject of the neglect?

A. Yes.

Q. And have you seen circumstances where children have actually been removed from a parent because of the sleeping arrangements that the child had or the lack thereof?

A. I can recall specifically one. I am not saying that it's only one, but I can recall specifically one.

Q. And can we agree that it is in a child's best interest to have proper accommodations to sleep?

A. I would say that would almost always be true.

Q. And we can agree that there's a certain spectrum upon which that can happen?

A. Correct.

Q. Children that are appropriate of age can certainly sleep on an air mattress on the floor?

A. Correct.

Q. And you have seen Judge McGuire direct overnight visitation for parents, knowing in advance that the child would sleep on an air mattress?

A. Yes.

Q. In fact, the Judge has even suggested it from time to time?

A. Yes.

Q. But there would be more of a concern about a child sharing, especially a young child, less than a year, sharing a bed with a parent or another adult?

A. Yes.

Q. And there is a very real fear of the child being injured in that situation?

A. I would have that fear, I know that you expressed it.

Q. I have expressed that in court?

A. Yes.

Q. A child could fall out of bed. A child could be rolled over on top of. Pillows could end up on top of the child?

A. I haven't thought about that, but yes.

Q. So is it fair to say, even as a practicing attorney representing clients, that you have made arguments before Judge McGuire in support of overnight contact not taking place because the other parent didn't have appropriate sleeping arrangements for the child?

A. As I sit here, I can't recall one, but I can't imagine I did not.

Q. You have heard those arguments made in Family Court?

A. Certainly.

Q. Whether you made them or your adversary made them?

A. That's correct.

Q. Can we agree that -- and you do quite a bit of appellate work as well?

A. Yes.

Q. Can we agree, based on your 35 years of experience both in trial courts, in appellate courts and reviewing cases, even if you didn't handle them, right up to the Court of Appeals, that it is generally in the child's best interest to maximize their relationship and their time with each parent?

A. Generally, yes.

Q. Unless there is some reason that they can't have access to their parent. Maybe the parent is incarcerated?

A. Yes.

Q. Maybe there is an order of protection?

A. Yes.

Q. Maybe the parent is in a drug rehab center?

A. Yes.

Q. Or is homeless?

A. Yes.

Q. Other than that, is it fair to say that Judge McGuire generally tries to maximize time that the child has with the parent?

A. Correct.

Q. Now, in the case of G[redacted] and C[redacted], you represented Mr. G[redacted]?

A. Correct.

Q. Mr. G[redacted] lived in Monticello, somewhere in Sullivan County?

A. I don't recall where he lived.

Q. Somewhere in Sullivan County, because the case was being heard in Sullivan County?

A. Yes.

Q. And Ms. C[redacted] lived in Ulster County?

A. That's correct, yes.

Q. In the Kerhonkson area?

A. Yes. I am basing that on reading the transcripts. I don't recollect it from years ago.

Q. And the parenting time was taking place in the Ellenville area?

A. Correct.

Q. Is it fair to characterize at that time that Ms. C[redacted] was basically homeless? She wasn't living on the street but she did not have a home that was her own is the way I am defining that.

A. I don't recall that for sure. It wouldn't be consistent with other facts that I know, but I don't recall that specifically.

Q. Is it fair to say that the parents together made the decision that Mr. G[redacted] would have the child principally?

A. Yes.

Q. And is it fair to say that that was because Ms. C[redacted], at that time, her circumstances were not consistent with the child's best interests for housing?

A. I know that they reached that conclusion. Whether they really considered best interests or other considerations, I wouldn't know.

Q. But that was the parent's decision?

A. That's correct.

Q. And there was some discussion on

January 17th that the mother had purchased the child's bed?

A. The Pack 'N Play.

Q. Which was the Pack 'N Play?

A. Right.

Q. Which maybe isn't what you may see with other indigent clients, but it's certainly appropriate and safe for a baby to sleep in a Pack 'N Play?

A. I think, given their poverty, that's what they could do. It certainly wasn't neglectful.

Q. And the court didn't take any exception to that?

A. Yes.

Q. In fact, the child, even with the father, was sleeping in his Pack 'N Play?

A. Correct.

Q. That was purchased by some mechanism between the parents?

A. Correct.

Q. The mother said that she had purchased it?

A. Correct.

Q. So prior to January 17, 2014

there had been an arrangement where the mother had time with the child three times a week for a period of hours?

A. Correct.

Q. But not overnight?

A. Correct.

Q. The child was getting there by virtue of your client, Mr. G[redacted] driving the child down?

A. Yes.

Q. Is it fair to say that on January 17, 2014, your client, through you, expressed that that was creating some bit of a financial hardship for him?

A. Correct.

Q. He also was indigent?

A. Correct.

Q. So driving from Sullivan County, almost any point in Sullivan County to Ellenville and back three times a week, can be costly?

A. Yes.

Q. And he had expressed that?

A. Very much so, yes.

Q. He was also living with family,

if you recall?

A. I don't recall that.

Q. But he qualified for your services so he was, by definition of the Court of Appeals, indigent?

A. Yes. I mean, I think that both of these people were on the low scale of indigence.

Q. Just to be clear, when a person is assigned counsel, the court or the legal aid panel has an obligation to review their financial circumstances?

A. Correct.

Q. We are not using the same definition as the poverty definition that the Federal Government uses?

A. Right. I think at some point after these cases there has been more clarification, but I mean these people were poor.

Q. They were on the poor end of that scale?

A. That's correct.

Q. So the father had the child with him, is it fair to say, 7 nights a week?

A. At that time, yes. Even when we went into court, yes.

Q. When we walked in on January 17th, the father had the child with him 7 nights a week?

A. Correct.

Q. And the mother was not able -- I am not casting aspersions on her, but she was simply not able to provide any financial contribution to the child?

A. I think that's fair to say, yes.

Q. And, in fact, the father had even limited means and was relying on family to help?

A. Again, I don't specifically recall that, but it's very consistent with everything else that I know.

Q. So although there was a dispute over what was paid for the Pack 'N Play, there was no dispute that it was, in fact, the child's bed?

A. That's correct.

Q. That's where the child slept every night?

A. Correct.

Q. Now, have you had experience in Family Court where items such as clothing, medicine, nebulizers are shared between parents?

A. Yes.

Q. Have you experienced circumstances where the child is exchanged but the medication or the clothing is not?

A. Certainly I have heard that allegation frequently.

Q. That can be a concern that a child wouldn't be getting medication, for example?

A. Correct.

Q. Or if it's an inhaler, they would be without an inhaler?

A. That's correct.

Q. That's contrary to the child's best interest?

A. I would say so, yes.

Q. Is it fair to say that before Judge McGuire took the bench, he had the same position you have now?

A. That's correct, with respect to the Conflict Panel?

Q. That's correct. He was not sitting in the witness chair?

A. Yes.

Q. With respect to the Conflict Panel, you actually -- Judge McGuire relinquished that contract because he was elected to the bench?

A. That's correct.

Q. And you were then hired by the Contract Panel to fill that minor void?

A. Correct.

Q. So is it fair to say, based on your own experiences, that Judge McQuire probably had similar experiences representing the law?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. So, we know that it is not uncommon, where items are supposed to be exchanged, that they are not exchanged?

A. That's correct.

Q. And they are often items that are important for the child to have?

A. Yes.

Q. So when we're talking about

something as fundamental as a bed that the child sleeps in, although a simple solution would be to transfer the Pack 'N Play with the child, is it fair to say that, given your own experience, that that could create a problem if the Pack 'N Play wasn't exchanged?

A. Yes.

Q. In fact, the child would go 1 to 6 nights potentially with no bed?

A. Potentially, yes.

Q. Or your client would have to do more driving to get it?

A. They would have to come up with some solution; that might be one.

Q. Does it also frequently occur that there becomes a tug of war over property?

A. I think that's a fair way to characterize it.

Q. Would it shock you if the mother got this Pack 'N Play back and then refused to give it back to the father? Would that be something that would shock you?

A. It would not shock me.

Q. Now you said that you often or you have had occasion to file violations in Family Court?

A. Correct.

Q. Have you had the experience where you have represented a client, and I will stick with through the Conflict Panel, where you have represented a client and in the middle of a case had to file a violation?

A. Yes.

Q. In other words, you're in court on one day, is it a typical that the Judge will set a temporary order early on in the case?

A. Yes.

Q. Trying to define the status quo?

A. Well, certainly, I don't know -- certainly doing something, setting when each parent is to have the child.

Q. I will withdraw that.

Setting some kind of framework so that the child will have some appropriate relationship with each parent?

A. Correct.

Q. Sometimes that's day visits?

A. Correct.

Q. Sometimes that is supervised visits?

A. Correct.

Q. Sometimes that is supervised by an agency?

A. Correct.

Q. Sometimes it's supervised by a family member?

A. Correct.

Q. But is it fair to say that at very early stages of the case, oral argument would be made, and the Court, often in cooperation with the attorneys, will develop a temporary order?

A. Correct.

Q. Would you say that that's really the norm in your experience, in Judge McGuire's part?

A. Correct.

Q. And you have had experience where working in front of Judge McGuire, that you have had to file violations?

A. Yes.

Q. Because those temporary orders

are not followed?

A. Well, these would be the -- I don't know if they're warranted, but those were the allegations.

Q. Do you, as an attorney practicing for 35 years, communicate with your client and elect to file an action?

A. Yes.

Q. And obviously the ultimate arbiter of that or the ultimate fact finder is the Judge?

A. Yes.

Q. But as an officer of the court you are not bringing a frivolous suit?

A. Yes.

Q. If a person has willfully failed to comply with a Court order, what are the remedies available to the Court?

A. Well, the most extreme is incarceration. There are certainly lesser remedies. I have seen, I guess I don't recall especially with the Conflict Panel any attorneys' fees being awarded, because by definition there were none incurred, but there are lesser remedies.

Q. Is it fair to say in your experience with Judge McGuire that we tried to remedy the wrong, short of incarceration?

A. In these willful violations?

Q. Yes.

A. Yes.

Q. Can you remember a time when a person in a willful violation of a custody order before Judge McGuire was incarcerated for 6 months?

A. For 6 months, for certain, no. I can't recall such an occasion.

Q. Is it fair to say that those violations are often part of almost what is expected in some of these cases?

A. We would hope not, but it happens frequently.

Q. So we talked about visitation, but can we agree that sometimes these violations deal with telephone calls?

A. Yes.

Q. Something as simple as calling and the other side doesn't answer the phone?

A. Yes.

Q. Or they have -- the phone number

is a bad phone number?

A. Probably. I don't recall a specific occasion, but I can't imagine that -- I imagine that that is very true.

Q. Sometimes that temporary order, all it gives is the ability to speak to the children by telephone?

A. Correct.

Q. And even that often doesn't happen?

A. Allegedly. I don't know.

Q. Allegedly, we come back and have to deal with that?

A. Right.

Q. Well, let me put it this way: You've had clients come to you and made allegations to you that those phone calls didn't happen?

A. Oh, yes.

Q. You have prepared petitions?

A. I probably have. Sometimes the clients prepare them. The Conflict Panel clients sometimes prepare them before I even know about them.

Q. And those are signed under oath?

A. Correct.

Q. So when they are prepared by you, you're counseling the client: Is this what happened?

A. Right, and then I sign the certification.

Q. And then you sign the certification. So, obviously, you are not the ultimate arbiter, but you have a good-faith basis to believe that that order was violated?

A. Correct.

Q. That's telephone calls with visitations.

MR. LEVINE: Objection?

THE REFEREE: Sustained.

Q. That's with telephone calls?

A. Correct.

Q. Now we are talking about parenting time. You've had experiences where that didn't happen when it was supposed to -- allegedly didn't happen?

A. Yes.

Q. And can we agree that there is a whole host of reasons why that may not

happen?

A. Certainly.

Q. The child is sick?

A. Yes.

Q. The child was at somebody else's house?

A. Yes, I suppose.

Q. At times, do parents or grandparents and parents, people who are exchanging, do they have a preset exchange point in time?

MR. LEVINE: Objection.

THE REFEREE: Sustained. This is getting really far afield.

Q. In the G[redacted] versus C[redacted] case, the impediment in the Judge's conversations, the expressed impediment was the lack of an appropriate place for the child to sleep?

A. Yes.

Q. But for that, everybody was in agreement that a 24-hour period would resolve a whole host of the issues?

A. Yes.

Q. In fact, it would give less

milage that your client had to drive?

A. Correct.

Q. And it would give the child more time with the mother?

A. I don't know. I think if we were going from 3 8-hour periods to 1 24-hour period, but whatever the record says.

Q. And part of that would be sleeping, presumably?

A. Yes.

Q. So it might give the mother less time?

A. It depends on how you define time.

Q. At the end of that day, January 17, 2014, the Judge modified the order in response to the father's financial issues?

A. I think that's correct, yes.

Q. And we went to 2 6-hour days, if you recall?

A. I don't remember specifically, but it certainly -- the order speaks for itself.

Q. Again, when Ms. C[redacted] was brought back in, the Court did not pursue

contempt?

A. That's correct.

Q. Did not make a finding of contempt?

A. Yes.

Q. She was already represented by counsel?

A. Correct.

Q. You say that the Judge was loud and stern with her?

A. I would say, yes.

Q. Now in the matter of F[redacted] versus K[redacted], that was December 17, 2014?

A. Yes.

Q. Do you remember that?

A. Yes.

Q. Do you remember where the mother was or what the mother's circumstances were at the time, on December 17, 2014?

A. I know she had been in jail; whether she was still in jail, I don't recall.

Q. Prior to that, prior to her incarceration, she had been living with her parents?

A. Correct. And the maternal grandparents were in the courtroom.

Q. The child was living with them?

A. Yes.

Q. And the father had parenting time?

A. I think so. I couldn't say that for certain, but I think so.

Q. And, indeed, December 17, 2014 was not the first time we were in on that round of litigation?

A. I think you are correct, yes.

Q. In fact, there had been a temporary order of access?

A. Okay.

Q. Yes?

A. I think so. I am almost positive yes, but I don't remember 100 percent.

Q. That order, if you recall, provided the grandfather was to deliver the child?

A. I don't recall.

Q. You don't recall, okay.

Do you recall on December 17, 2014 that the grandfather wanted to be

relieved of the burden of delivering the child?

A. I think that's correct, yes.

Q. We just heard it on the tape.

A. I still think that was correct.

Q. The grandfather was somewhat in the same position as your client was in G[redacted]. He wanted to be relieved of doing all the transportation?

A. Yes.

Q. But the best interests of the child dictated that the child have access to the parents.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes, I would say that that's true.

Q. So just as Mr. G[redacted] had to do the transportation, Mr. K[redacted] had to do it?

A. Yes, I guess so.

Q. Mr. G[redacted] had to because Ms. C[redacted] had no transportation?

A. Right.

Q. And Ms. K[redacted] had to because

Mr. F[redacted] had no transportation?

A. Right. I know he was living with his aunt, so there may have been some ability to contribute. I don't remember what that was.

Q. You had an opportunity to review the transcript of December 17, 2014?

A. I have.

Q. Do you recall any issues being raised by any of the attorneys that there was an impediment to the father having access to the child?

A. We raised that. We said that there were impediments, yes.

Q. Those impediments were -- and you had the mother?

A. No. In which case are we talking?

Q. I am talking about K[redacted].

A. No, I represented A[redacted] F[redacted].

Q. You advocated on behalf of your client for access to the father?

A. He was the father.

Q. And you wanted him to have access to his, I believe it was child, at that

time?

A. Yes.

Q. And do you recall any opposition to the father having access, other than from the grandparents?

A. I don't recall if the mother had any opposition. She may have, I don't recall it.

Q. And ultimately the Judge gave the father temporary custody at that time?

A. Correct.

Q. For one month?

A. Approximately a month.

Q. Because we were coming back January 15th for trial?

A. Correct.

Q. Ultimately, when we came back on January 15th, the case was resolved?

A. Correct.

Q. It was resolved with the K[redacted]'s having physical custody?

A. Correct.

Q. And your client, the father, having regular parenting time?

A. Correct.

Q. Overnight?

A. Correct.

Q. Unsupervised?

A. Correct.

Q. On December 17th, Mr. K[redacted] favored no access to your client?

A. I think that is fair, yes.

Q. By January 15, there was a lessening of hostilities and the parties got together and settled the case?

A. Yes.

Q. Is that uncommon in Family Court?

A. No, it's not uncommon.

Q. Where there has been a breakthrough in some of the animosity to get to the best interests of the child?

A. Yes, I would say that happens.

Q. Now, you've been in court other than in the F[redacted] versus K[redacted] matter where the Judge has changed physical custody?

A. Yes.

Q. Is it fair to say when that happens not all parties are happy with that?

A. I think that's fair to say. Yes.

Q. And the response that we heard from the grandmother, we heard it play, was in response to the court taking that action, changing custody temporarily?

A. Yes.

Q. And is it fair to say that the grandmother's response was to threaten that she would sue the Judge personally?

A. I mean, I don't know that she knew the difference between personally or in some capacity, but I don't think she said the word personally, but she certainly said she would sue the county and the Judge.

Q. We can agree the county had not done anything?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. But she specifically said she would sue the municipal entity and the Judge?

A. Right.

Q. That was in response to the Judge changing custody?

A. Correct.

THE REFEREE: Judge McGuire, I am

looking for a good time to take a morning break. Would this be a good time?

JUDGE McGUIRE: This is a good time to take a break. I am just about to go on to another topic.

(A recess was taken.)

THE REFEREE: Judge McGuire, please proceed.

JUDGE McGUIRE: Thank you, your Honor.

BY JUDGE McGUIRE:

Q. Mr. Ferrara, I want to take you back to January 20, 2013. That was the matter of P[redacted] versus R[redacted] and R[redacted].

A. Yes, sir that was.

Q. That was the first appearance on that round of litigation?

A. Yes.

Q. And just so that we are clear, when I keep talking about rounds of litigation, is it uncommon in Family Court for the particular family to come back to Family Court several times?

A. Not uncommon.

Q. In that case, your client, Mr. P[redacted], had been incarcerated in state prison?

A. Correct.

Q. And the prior round of litigation was trying to get him access while he was in state prison?

A. Correct.

Q. And for a while his wife or fiance, I don't remember what their relationship was, was bringing the child up?

A. Yes.

Q. He was in Green Haven, I believe?

A. I couldn't recall what prison. It was close to where we were.

Q. And, so, he was maintaining some kind of a relationship?

A. Yes.

Q. As of when we came in on January 28, 2013, he was already out?

A. Correct.

Q. He was living in the Pine Bush School District?

A. I don't recall where he was living. The child was going to Pine Bush

schools; he wasn't far away.

Q. So the child was living with the grandmother?

A. Correct.

Q. In the Pine Bush school district?

A. Correct.

Q. And the father was living with, I will refer to them as his in-laws. I don't remember if they were married or not, do you remember that?

A. I think he was married. I remember him calling her his wife. That's my recollection.

Q. He was living with his in-laws?

A. Yes. At that time, yes.

Q. And as of when we came in on January 28th, and I want to define the time period, from the time he was released until January 28th, that interim, he was seeing his daughter?

A. Yes. It was very briefly, but he had only been released very briefly, too.

Q. Right. He was seeing her afternoons, after school?

A. I think that's correct. I

thought he saw her on a weekend too, but it wasn't a lot, but he saw her.

Q. He wanted something more regular?

A. Yes.

Q. From that same time period that I defined, release from incarceration up until January 28, 2013, up to that point, is it fair to say the grandmother was basically dictating when he would see the child?

A. I think that would be his perspective. I don't know that it would be hers.

Q. Fair enough.

And so when he filed that petition that got us into court on January 28, 2013, he wanted a more regular period of contact with his daughter?

A. Correct.

Q. He wanted to develop a relationship with his daughter?

A. I think from his perspective he had a relationship, but he wanted a better relationship.

Q. He wanted to build it?

A. Correct.

Q. The petition actually was a petition for custody?

A. Correct.

Q. But, in essence, he really was looking for parenting time?

A. At that time, yes. His target really was every other weekend.

Q. Because that became significant after January 28th, if you recall?

A. After January 28th he did want much more time than that, but --

Q. In fact, when we came back he actually wanted custody?

A. I know at some point he did. I don't recall when he really, truly changed his objective.

Q. Okay. So we are in court on January 28, 2013, and there was a general discussion about an alternate weekend?

A. Yes.

Q. Is it fair to say, based on your 35 years of experience, that's a garden variety order. That's not uncommon, alternate weekends?

A. I would say that's not uncommon.

Q. Often it's more than that?

A. Yes. I think, I am hesitant to agree with "garden variety" since there are so many variations, but many, many orders have a parent having a child every other weekend.

Q. Alternate weekends.

So the grandmother, I think you testified, wanted him to have only one weekend?

A. That's correct.

Q. And the father wanted two weekends?

A. Yes.

Q. Now, as of the time -- I want to be very specific now -- as of the time we came into court on January 28, 2013, do you recall what, if any, input the attorney for the child made with respect to a resolution of this matter?

A. Before we came into court?

Q. Right, as we came into court.

A. At some point in the proceeding she was in agreement with every other weekend.

Q. In fact, she actually left the courtroom to speak with her clients for a while?

A. Correct.

Q. We second called it, so she could speak with her client. Mr. Bourne could speak with her client?

A. Correct.

Q. Which is the child.

Is it fair to say that in those types of proceedings, custody modifications, that it's unique to have a ten-year-old child in the courtroom?

A. Yes. It's very unique. I don't recall her age as 10, but whatever the age is, it's unique to have a child in the courtroom, period.

Q. Period. It's something that the Court, this Court generally disfavors?

A. Yes, I think so.

Q. And in some proceedings the children have to be in the courtroom; permanency hearings, for example?

A. Yes. There are proceedings where they are in the courtroom, but it's very

unusual in a custody case.

Q. So Ms. Bourne was given an opportunity to speak with her client and she came back in, and it's in the transcript, which is in evidence, she announced on the record that her client favored an alternate weekend?

A. Yes.

Q. And the grandmother stuck with she wanted one weekend?

A. Yes.

Q. So we did not have a meeting of the minds?

A. Yes.

Q. So the only thing the Court could do there is set it down for trial?

A. Correct.

Q. Grandmother wanted to know where the father was living?

A. Yes.

Q. And is that something that, again, typically we share that information?

A. Typically, yes.

Q. But because the parents have a right to know where the child is going to be

staying?

A. Correct.

Q. And who they are going to be staying with?

A. Yes.

Q. In fact, we have created a behavioral addendum that is very common?

A. Correct.

Q. That provides that the parents are entitled to have that information?

A. Yes.

Q. Is there also a situation in Family Court where there is a confidentiality order?

A. Yes.

Q. What are those?

A. If a parent wishes to keep his or her address confidential, usually around domestic violence issues but not necessarily, then they fill out this form.

It's routinely granted, I don't think I remember ever seeing it denied, and then the clerk of the court becomes the place where that parent would be served. So that parent has to keep an address available

to the clerk so that papers could be forwarded from the clerk when service happens to the parent.

Q. So in that case, P[redacted] versus R[redacted], what, if any, response did your client, through you, make with respect to the grandmother's request for his address?

A. He did not want to give his address. He used that his in-laws didn't want him to give out the address and it had to do with some kind of -- I am trying to remember what's in the transcript. The transcript is in evidence, you know exactly what it was, but I think it was some kind of shooting of a child or another person in the family, but whatever it says in the transcript is more accurate than my memory.

Q. So, there was a dispute then over that. When I say dispute, I am not talking about a violent dispute, there was a dispute within the proceeding.

A. Correct.

Q. I just touched on the behavioral addendum, sometimes we call it the Children's Bill of Rights?

A. Right.

Q. And can we agree that -- well, I want to agree. Can you describe in general terms what the Children's Bill of Rights is?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. It's a one-page document, when it's single spaced, that outlines 12 or 13 different form orders that parents are supposed to abide by, many of them very, very difficult to enforce because there really are no witnesses to whether or not the parent violates it; but I call it to my clients as aspirational, it's what they should do to be good parents in a situation where the parties are separated.

Q. And amongst the provisions, and I will be very brief on this, each parent has full access to medical and educational records?

A. Yes.

Q. We do that because sometimes a parent blocks the other parent's access from speaking to the school or doctor?

A. Correct.

Q. There should be no smoking around the child?

A. Correct.

Q. There should be no drugs or alcohol around the child?

A. Correct.

Q. These are the types of aspirational things, that each parent should have the same set rules in the house?

A. Right.

Q. And support one another's discipline?

A. Correct.

Q. And amongst other provisions, there should be no discussion of the litigation with the child?

A. Correct.

Q. But the child is a party to the litigation, a quasi party?

A. Correct.

Q. Why don't they want the parents speaking to the child about the -- why would that order be in it?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I suppose my understanding --

Q. I am asking from your perspective as a practitioner.

A. -- is that it is those conversations quickly evolve into parents telling the child something about the other parent from their view that is less than favorable and would tend to make the child uncomfortable or might even give information that really shouldn't be shared. You had an affair and you did something along those lines, and since these are very partisan cases, people, parents, sometimes just don't put limitations on what they say about the other parent and it can hurt the child's relationship with that parent.

Q. Is it fair to say that in Family Court we try to keep these proceedings invisible to the child?

A. Yes. To the degree you can. I mean, to a point. As a lawyer for the child, I don't think it's completely invisible, I think that's hard to say, but certainly the more acrimonious allegations should be kept away from the child.

Q. We don't want to try to pressure the child to choose one parent over another?

A. I think that's fair to say.

Q. You don't have the children testify in court, generally?

A. We just did one, but it's a very, very bad idea, in my opinion.

Q. So at the end of those proceedings on January 28th, 2013, do you recall the grandmother going over to the child?

A. No. I didn't see what happened.

Q. And do you recall the child's attorney reacting to anything?

A. No.

Q. And you said that you had a recollection, in sum and substance, of the Court's admonition to the grandmother?

A. Correct.

Q. And it related to inappropriate comments to the child?

A. Yes, in sum and substance. I have no idea what words were said.

Q. I see we focused in your testimony on 3 cases; correct?

A. Correct.

Q. The most recent of which that we focused on was December 17th, 2014?

A. Correct.

Q. That's about 4-and-a-half years ago?

A. Correct.

Q. You said you maybe made 1,000 appearances before Judge McGuire?

A. Correct.

Q. That's over 8-and-a-half years?

A. Correct.

Q. How many appearances per week, if you know, on average?

A. Probably between -- depending on the week, some are much more busy than others, but I mean it's been upwards to 10. There are weeks where there aren't any, but it's usually 4 or 5, I would say, would be the average.

Q. So even 5 a week would be more than 100 a year?

A. I guess so. Sometimes there would be vacation schedules, so that would come down a little.

Q. We could agree that 100 a year for 9 years would be 900?

A. Correct.

Q. So maybe it's been more than 1,000 appearances?

A. It's possible. I have never kept any kind of records.

Q. In fact, you have made appearances in County Court representing clients in criminal proceedings?

A. Yes.

Q. We have not heard anything that's postdated December 2014.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Correct.

Q. Correct.

A. Not of my testimony, no.

Q. Not of your testimony?

A. Yes.

Q. So we can agree that the 3 cases we heard were occurring the first 4 years of Judge McGuire's time on the bench?

A. Yes.

Q. What, if any, experiences have

you had that would give you concern, as a practicing attorney, over the last 4-and-a-half years?

THE REFEREE: Objection sustained. Rephrase that.

Q. We heard about 3 people that were placed in custody?

A. Yes.

Q. Can we agree that the circumstances, not the custody, the circumstances that led to that, cursing, disputing an order, making inappropriate comments to the Judge, those circumstances, can we agree that those circumstances have occurred since 2014?

A. Yes, I think that's fair.

Q. How, if at all, has the Court's approach to those changed?

A. Certainly, I don't recall any other times when the person was incarcerated -- incarcerated is the wrong word because I don't recall them being incarcerated on these occasions, but handcuffed.

Q. Detained?

A. Detained, yes.

Q. That hasn't happened?

A. I don't recall that.

Q. How about loud admonishments, such that we experienced with Ms. R[redacted]?

A. Nothing comes to mind at this moment in this courtroom. Sometimes voices go up. I can't remember specifically, but I am a little uncomfortable saying your voice never went up since then.

Q. In fact, just last week your voice went up in addressing a client?

A. Oh, yes.

Q. That was speaking and you didn't want him speaking?

A. Yes. He was on the telephone and I needed to get his attention.

Q. Is it fair to say sometimes, particularly in Family Court, there's a need to get attention?

A. Certainly, I guess the answer is yes.

Q. Do you remember the case of Sandra Hanson?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

JUDGE McGUIRE: It's cross.

THE REFEREE: What is this about?

JUDGE McGUIRE: It's about an incident that took place in the courtroom --

THE REFEREE: We know that he has had thousands of cases with you.

JUDGE McGUIRE: This is the last case I am going to go through.

THE REFEREE: Tell me what the point is.

JUDGE McGUIRE: The point is he testified about it in his deposition, that I had expressed concern, got loud with another attorney because of the conditions that this child was being cared for by the Department. Now if that's not going to be raised at any other time, then I won't have to go into that, but I don't want to have to go into it with another witness and then I have to bring Mr. Ferrara back.

THE REFEREE: I get it.

What is the answer to that?

MS. TISHMAN: We are not going

into that.

JUDGE McGUIRE: Your Honor, I believe, I am done, if I can just have a minute.

Yes, I am, your Honor. I have nothing further for this witness.

THE REFEREE: Any redirect?

MS. TISHMAN: I just have one question.

REDIRECT EXAMINATION

BY MS. TISHMAN:

Q. Mr. Ferrara, I am going to show you Commission Exhibit II and 2A. I am sorry, that is VI-2 and 2A?

This is the Exhibit II, VI-2 is the certification of the audio recording in F[redacted] versus K[redacted]. What is the date on that certification of the recording?

A. It looks like it's January 9, 2019, if I am looking at it correctly; is that what you are asking me for?

Q. The date if you can look in the middle, it says, "Enclosed are copies of audio recordings in the following manner."

A. The date of the recording is

December 2, 2014.

Q. Before, when the Judge was questioning you, the question said that the date was December 17, 2014; the correct date is December 2, 2014?

A. To be completely honest, I wouldn't remember the date. I take at faith that the documents are correct.

JUDGE McGUIRE: I will stipulate as to whatever the document says. I don't have firsthand recollection of the date specifically.

THE REFEREE: So stipulated.

MS. TISHMAN: I have nothing further.

THE REFEREE: Mr. Ferrara, you are excused. Thank you for your testimony.

THE WITNESS: Thank you, your Honor.

THE REFEREE: You may call your next witness.

MS. TISHMAN: We are calling Andrea Rogers.

MS. PARTIDO: The witness is

entering.

THE REFEREE: Ms. Rogers, please have a seat.

THE WITNESS: Good afternoon.

THE REFEREE: My name is Mark Arisohn. I am the Referee in this matter. I have been asked to read a brief introductory statement to you.

A Court Reporter who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed and answer each question with words, not a nod or gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. Please

turn off cell phones or any other electronic equipment.

Okay?

THE WITNESS: Yes.

THE REFEREE: Please rise and raise your right hand.

Do you swear or affirm under the penalties of perjury the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I swear.

THE REFEREE: Please have a seat.

State your full name and spell it for the record.

THE WITNESS: Andrea Rogers. First name spelled as well? A N D R E A, Rogers, R O G E R S.

Q. Ms. Tishman, you may proceed

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Ms. Rogers.

A. Hi.

Q. Are you currently employed?

A. I am.

Q. Where are you employed?

A. I am employed in Family Court in Sullivan County.

Q. What is your title?

A. I am a court assistant.

Q. How long have you been a court assistant?

A. 21 years.

Q. How long have you worked in Family Court in Sullivan County?

A. 21 years.

Q. Now, can you tell us, as a court assistant, what your responsibilities are?

A. I work with the Judge. Anything the Judge does, we go into the court, and it goes into court. The main thing is the court records, the recordings, the diary and the court work that is ordered from the Judge, and then that's done outside of court.

Q. Are you assigned to a specific Judge?

A. Yes.

Q. Who are you currently assigned to?

A. Judge Meddaugh.

MS. TISHMAN: That's spelled M E D D A U G H.

A. Correct.

Q. And how long have you been assigned to Judge Meddaugh?

A. Almost 5 years.

Q. When did you start with Judge Meddaugh?

A. 2014.

Q. Was that the beginning, middle end of --

A. January.

Q. Have you ever clerked in Judge McGuire's Family Court part?

A. I did.

Q. And you were a court assistant and you were assigned to Judge McGuire's part?

A. Yes.

Q. How long were you assigned to Judge McGuire's Family Court part?

A. 3 years.

Q. What were those years?

A. When he first took office, which I think was 2011, until I switched and went

to Judge Meddaugh.

Q. That was through December of 2013?

A. Correct.

Q. Prior to Judge McGuire becoming a Judge in 2011, were you assigned as a court assistant to a different Judge?

A. I was.

Q. Who was that?

A. Judge Ledina.

Q. L E D I N A?

A. Correct.

Q. How long did you work for Judge Ledina?

A. 13 years.

Q. Now, in Judge McGuire's courtroom, when you worked for him, did you have a desk?

A. In the courtroom?

Q. Yes.

A. Yes.

Q. I am going to show you what is marked PH3?

A. Okay.

Q. I am sorry, give me one second.

Looking at PH3, do you see where you sit, where you sat in the courtroom when you clerked for Judge McGuire?

A. Yes.

Q. And can you tell us where your desk was? Just describe it from the picture.

A. Certainly.

The Judge's bench is the higher bench, and directly looking at the picture to the left of the bench is the court assistant's desk.

Q. And we see like a chair with a white sweater. Is that where your desk had been?

A. Yes.

Q. And so you are on the level lower than the Judge?

A. Yes.

Q. Do you face the Judge?

A. You can. It swivels, the desk goes around so you could face the Judge or you could turn and face more towards the litigants.

Q. During court proceedings in

Family Court, can you describe the interaction between the Judge and the court assistant?

A. Typically the Judge runs all of the court proceedings except the court assistant is the assistant and may have questions pertaining to if we have noticed things in the file, if information in the file is not accurate or up to date, we try to reach people by telephone or send mail. We have gotten mail sent back, and those would be notations; that would be for the court assistant to -- well, both the Judge and the court assistant have it, but if the Judge hasn't noticed it or addressed it, the court assistant might ask: Can we get an accurate address? We need an up-to-date a phone number, things like that.

So there's interaction if there are orders being ordered, things might need more clarification or specificity.

Q. Like what type?

A. Dates, times, places, transportation.

Q. What kind of orders?

A. It could be an order of protection. It could be a temporary order of visitation. There could be orders for mental health, for people to go to mental health we need to tell them where and how.

Q. Are those orders handed out to the parties in the courtroom?

A. If they're done, they can be handed out in the courtroom, probably just minutes after they leave because we usually take a copy of it.

Q. And do you work under -- I withdraw that.

Does the clerk take note of the court activity file?

A. Yes.

Q. Can you tell us what that is?

A. We work with a program called UCMS, Unified Court Medicine System, something like that, and that is mostly a realtime program, where the court assistant goes into what's called court activity. So we go into a court activity and it's the note-taking process so that others in the court can see what has been done, staff,

judges, other courts. And that stays with the file in the computer, in the court activity.

Q. And are you required to take these notes as part of your responsibilities?

A. Yes.

Q. Do you take those notes simultaneously to when things are happening?

A. Yes.

Q. Now, when you worked with Judge McGuire, you said you worked for him for 3 years?

A. Yes.

Q. Can you tell us how the Judge treated you while you were his court assistant, how he treated you in court?

A. He had more occasions of being very condescending. When he began his term as Judge, he made it clear --

Q. Do you want to take a break?

A. He made it clear that the court was going to run differently than it had run with Judge Ledina because --

THE REFEREE: I'm sorry. You are

going to have to take a few seconds and gather yourself so we can get some testimony that we can understand. So please just sit there and gather yourself. Maybe some water.

(Pause.)

A. He had said that he was going to make sure that the court didn't run the same way that it ran when I worked with Judge Ledina. He was going to be in control of the court and not that I disagreed, because he was the Judge. So Judge Ledina was retiring. He was retiring. He was 70. He had occasions of missed instances on the bench. He occasionally would fall asleep and, you know, as the court assistant you are listening on a trial and it would become silent in the courtroom.

Q. Can I draw your attention to how -- my question was: How did Judge McGuire treat you while you were a court assistant in his courtroom?

A. He was very condescending. He did not want me to interrupt him when he was on the bench, even if there were questions

that I might have with regard to what was happening, what needed to be clarified. It was always specific to the case and information required with what we had in front of us, and he would not be -- he was not very nice. If I asked a question, he would hold his hand up to tell me to stop.

MS. TISHMAN: I would like the record to reflect that the witness held her right hand up, extended from her body with the palm out towards the air.

A. I was there, so it would be toward me.

Q. So the palm was towards you?

A. Yes, because this is where he would sit and I would sit there and he would be like "no."

MS. TISHMAN: The record is reflecting the witness is showing that she sat to the right of the Judge, and the Judge's palm would be facing where Ms. Rogers sat.

A. Correct, that's correct.

So it was a lot of instances where it was difficult to communicate when

we were in court trying to -- trying to work with him, and the efforts were not fruitful.

Q. You said that the Judge was condescending to you. What was the volume of his voice when he talked to you?

A. Not always a volume. Sometimes he would be loud; loud and just not very -- often it would be a normal volume, "not now" or just maybe like slightly raised.

It was never not to the clerk, but not as loud as he would get to the litigants. To the litigants it would be outright yelling.

Q. You said that the Judge would put up his hand, his palm towards you. How often would this happen?

A. Frequently.

Q. And let's take in -- in a court proceeding, in a court calendar day, would it happen every court calendar day or how often?

A. Yes. It happened at least once every arraignment day. Those are the faster moving cases that you would need information. They're in, they're out. So I

would say at the very beginning it would happen probably every arraignment calendar, he would not let me finish or not answer a question.

Q. Did you see the Judge ever -- I withdraw that.

While you were talking or asking a question to the Judge, did you ever see him make any facial expressions?

A. He was -- well, I know of one time that we were -- I was asking or needed to ask a question and I just happened to keep looking at him because I was lower and it was directly related to me, so I don't know how many times it happened, but in direct relation to me, when he turned back towards the litigants and the attorneys in the courtroom, he was rolling his eyes as if to tell everybody in the courtroom he was annoyed.

JUDGE McGUIRE: Objection.

THE REFEREE: Don't assume what was in the Judge's mind. Just tell what you observed. Sustained.

A. He rolled his eyes visibly to

everyone in front of him. He wasn't completely turned and I could see that he did an eye rolling because I had questioned something.

Q. When you say you questioned something, because you asked a question about what was going on in court?

A. Yes.

Q. When the Judge put up his hand towards you, were there litigants and attorneys in the courtroom?

A. Yes.

Q. When you said the Judge spoke to you in a condescending manner, were there litigants and attorneys in the courtroom?

A. Yes.

Q. What was the nature of the type of questions that you were asking when the Judge would put up his hand towards you?

A. Most often, questions that we would have had were relating to the file or the people that were there that could answer a personal question about their addresses or their phone numbers. If he was ordering, for example, an order of protection, it

might have been about the times or the direction of visitation or is somebody getting custody, and he might say: No, I didn't say they were getting custody. That kind of thing.

Q. Now, I asked you before how often the Judge raised his hand towards you. What I am asking you now is how often did the Judge speak to you in a condescending manner?

A. Frequently. Enough to make me bring it to my supervisor's attention.

Q. Who is your supervisor?

A. Christina Benson.

Q. When you say frequently, did it happen every calendar day that you worked as the Judge's court assistant?

A. I don't know if I could say it happened every day. We had different calendars throughout the week, but at least a couple of times a week.

Q. Did you ever try to gather information from the Judge after a case was called, after a case had been finished?

A. And left?

Q. Yes.

A. Yes.

Q. What happened then?

A. There wasn't a lot of time, so it wasn't always -- it wasn't usually something that would be helpful. Thinking that he didn't want to answer the question while they were there, but it wasn't helpful because another case would normally be ushered right in.

Q. Did you ever try to gather the information you needed from the Judge after court?

A. Sometimes.

Q. What was the Judge's response?

A. He would answer as best he could.

Q. Would he become annoyed at you for asking that question?

JUDGE McGUIRE: Objection, leading.

THE REFEREE: Overruled.

A. You know, it depended. You know, I was imposing. So, you know, it was something that we had already addressed and it was important, so it was uncomfortable

for me, that I knew I was asking questions still, for something that would have been addressed earlier -- could have been addressed earlier, but it hadn't been.

And, then, it just got to the point where because I felt uncomfortable, I knew that it was not the best situation, I would take my questions to my supervisor, to Christina Benson, and she would ask him questions.

Q. And how often did you talk to Christina Benson? And that's B E N S O N, Christina, C H R I S T I N A -- how often did you talk to Christina Benson about the issues between you and Judge McGuire.

A. Regularly.

Q. When you say regularly, what do you mean?

A. Probably frequently. I can't give it a number, but it was just very difficult to communicate with the Judge. There were time frames that needed to be adhered to for certain types of cases, and although I would try to guide in a direction of: Do you want to set a trial date or a

fact-finding date? The Judge would say, "Set it down for a conference."

So we would conference and conference and conference and you might get where you don't realize you are only conferencing; you have 40-plus cases or whatever doing the same thing, that you could lose sight of the time frames. And I would get asked: Why are you not scheduling for the trials, and I would say because I asked him if he wants to schedule it for a trial and he would say no, he wants to schedule it for a conference.

Q. So did you speak to Ms. Benson on a regular basis about your interaction with the Judge?

A. Yes.

Q. Did you ever have any of these issues that you had with Judge McGuire with Judge Ledina?

A. No.

Q. Have you ever had any of these issues you had with Judge McGuire with Judge Meddaugh?

A. No, and with Judge Meddaugh he is

starting to not hear so well, so you even have to say it louder.

Q. Now, was there ever an incident in the courtroom involving your computer when you worked with Judge McGuire?

A. Yes.

Q. Could you tell us what happened?

A. Certainly. We close the facility so everybody leaves their desks for lunch between 12:30 and 1:30, and you have your computer set up and ready to go when you are working on it, and when you come back to your computer normally, it's just a simple sign back in.

When I came back from lunch, when I came back from lunch one time the computer was completely off, and I have no idea why. It could have been something done, it could have been a glitch or a surge.

Q. When you say the computer was off, what do you mean?

A. Like off. Like you needed to push the button to restart completely, which means all of the programs have to start booting back up again.

Q. Was Judge McGuire present in the courtroom at this time?

A. Yes, because it was 1:30 and we were anticipating starting the 1:30 calendar.

Q. What was the Judge's reaction when you had to reboot the computer?

A. Well, he was very angry that it was not up.

JUDGE McGUIRE: Objection.

THE REFEREE: What is the objection?

JUDGE McGUIRE: She can't testify to my state of mind.

THE REFEREE: Just tell us what you saw.

A. He was hanging over my desk and he was like looking over, trying to see what I was doing and asking very loudly, "Why isn't it on? What is wrong? Why is the computer not up? How long is this going to take? Why is it shut down, did you shut it down?"

And I was like answering his questions at the same time that I was trying

to reboot the computer and it was just me and him, so --

Q. What was the volume of the Judge's voice when he was asking you --

A. He was loud.

Q. Please let me finish the question.

What was the volume of the Judge's voice when he was asking you these questions?

A. He was loud.

Q. Was it louder than his normal voice?

A. Yes.

Q. Would you consider it yelling?

A. Yes.

Q. What was the tone he was speaking to you in?

A. He was nasty. It was just not very nice. He was just like very -- it's hard to describe without actually doing it.

It was loud and it was very -- you could see that he was visibly upset by it, that it was taking some time.

Q. I want to draw your attention to

December 18, 2013. Were you the court clerk when the case O[redacted] versus R[redacted] was called?

MS. TISHMAN: O[redacted], O[redacted]; R[redacted], R[redacted]

A. Well, I was always the clerk, so I am going to say yes.

Q. And what happened that day?

A. O[redacted] and R[redacted].

Q. R[redacted]?

A. That's the gentlemen that was in jail?

Q. I am going to show you what is marked Commission Exhibit I-1A.

A. Thank you.

Q. And if you could look at this, please?

A. Yes.

Q. And what is this? This document is already in evidence, but can you tell us what this document is?

A. This is a copy of a court sheet.

Q. Is this the court activity sheet that you were talking about before that you fill out?

A. Yes.

Q. And if you could read this to yourself?

A. Okay.

(Witness reviewing document.)

Q. Can you tell us what happened in court that day?

A. Mr. R[redacted] had filed but had not -- the other -- Mr. R[redacted] was the petitioner, but he didn't get the petition served on the other party so the respondent wasn't there.

Q. Were you present in court this day?

A. Yes, I was.

Q. I am going to play a small excerpt of this audio. It's Exhibit I-2 with the transcript I-2A?

The transcript will be from 6 to 8.

THE REFEREE: We are off the record.

(Tape played.)

THE REFEREE: On the record.

BY MS. TISHMAN:

Q. Do you need a minute, Ms. Rogers?
A. Okay.
(Pause.)
Q. Are you okay now?
A. Okay.
Q. The portion of the tape that we just played the audio, were you in the courtroom at that time?
A. Yes.
Q. And when Mr. R[redacted] said, "I know your son, can you recuse yourself," where was he?
A. He was in the courtroom. He was at the petitioner's table.
Q. And where was the Judge?
A. On the bench, at his space.
Q. Was the Judge -- what was the Judge doing?
A. He was sitting there.
Q. When the Judge asked, "Are you threatening my son?" Tell us about what the Judge was doing.
A. At some point he got up and he was more aggressive, I guess you could say.
Q. When you say "he," who are you

referring to?

A. The Judge. The Judge was more aggressive. The petitioner was questioning, trying to get answers as to -- you know, it's a layman's kind of a court, so people don't understand when they come.

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Ms. Rogers --

A. I'm sorry.

THE REFEREE: Ms. Tishman, we have the transcript and we have the tape. I don't understand the purpose of these questions.

MS. TISHMAN: I am asking what is not on the transcript, your Honor.

THE REFEREE: Which is what?

Q. Which is when the Judge said to Mr. R[redacted], bring him back here, you've got 30 days judicial contempt, where was the Judge at that point?

A. He was on the bench.

Q. And you said there came a time when the Judge stood?

A. Yes.

Q. When the Judge stood, can you describe for us what his demeanor was?

JUDGE McGUIRE: Objection. Demeanor we laid it out three times now.

THE REFEREE: We don't have the video, so she is going to testify as to what she saw.

Q. Exactly, can you describe what you saw?

A. I guess the best way to describe it is imposing.

Q. Did you notice any physical condition of the Judge at that time?

A. Physically himself? He was yelling and he was motioning almost in a threatening manner, like in a threatening manner.

JUDGE McGUIRE: Objection. You can't know what it was. Not a conclusion.

THE REFEREE: Yes, just tell us what you saw?

A. He was lunging forward. He was like moving forward, directing with his

hands and motioning that he wanted the officers to bring the gentleman back in.

Q. What did the Judge's face look like at that time?

A. Like when you are yelling, you get redder in the face, that kind of thing. And he was threatening. He was imposing.

JUDGE McGUIRE: Objection.

THE REFEREE: Overruled.

A. Motioning in a way to get people to move the man back in.

JUDGE McGUIRE: Move to strike the word "threatening."

THE REFEREE: Overruled.

Q. I am going to show you Exhibit I-1B. What is this?

A. It's an order.

Q. And what is this order for?

A. This order is directing for judicial contempt, that Mr. R[redacted] was to be sentenced for an additional 30 days over and above what his sentence already was?

Q. Did you draft this order?

A. I did.

Q. Did the Judge sign it?

A. He did.

Q. Do you know Court Officer Miguel Diaz?

A. I do.

Q. While you were the Judge's court assistant, did Miguel Diaz ever work in the Judge's part?

A. He did.

Q. What was the Judge's demeanor towards Court Officer Miguel Diaz?

JUDGE McGUIRE: Can we get a date?

THE REFEREE: Yes.

Q. During the time period you worked for the Judge from 2011 to 2013, can you describe how the Judge treated Court Officer Miguel Diaz?

JUDGE McGUIRE: It's a 3-year gap.

THE REFEREE: Well, let's see what she says. Can you be specific?

A. The officers rotated 4 weeks at a time in and out of the courtrooms and other duties. So Miguel was assigned to the courtroom for Judge McGuire, it would be

about a 4-week term, and anytime that Miguel was assigned to Judge McGuire, he was not treated very well.

Q. When you say "he," who are you referring to?

A. Judge McGuire did not treat officer Diaz well.

Q. That's a conclusion. Can we get some facts here.

A. I can give examples.

THE REFEREE: Let's hear it.

A. There were occasions that the Judge would discuss with me off the record that Officer Diaz was not fast enough; that Officer Diaz didn't round people up; that Judge McGuire was going to have to talk to either the sergeant or the lieutenant to have Officer Diaz not assigned to his court, that he is supposed to line people -- Officer Diaz was supposed to line people up outside and when Officer Diaz goes to bring them in, they are not all gathered and they don't come in together.

Q. I want to draw your attention now to February 25, 2013, and that was the D[redacted]

versus E[redacted] matter. Were you in the Judge's part as a court assistant that day?

A. Probably. E[redacted], yes. The E[redacted]'s were a piece of work most of the time.

Q. Was Court Officer Diaz the court officer that day?

A. I wouldn't know off the top of my head, but there is a possibility.

JUDGE McGUIRE: Judge, I can stipulate we dealt with that date quite a bit, quite a date.

THE REFEREE: So stipulated.

He is stipulating that Diaz was in the room.

JUDGE McGUIRE: I am stipulating that Diaz was in the courtroom. We had testimony from various people.

Q. And I am moving to, do you remember when D[redacted] versus E[redacted] was called on February 25, 2013?

A. Not out of the clear blue. E[redacted] came in frequently.

Q. Then, I am going to play for you E[redacted] Charge 8, and give me one second.

So Exhibit VIII-3.

THE REFEREE: Off the record.

(Tape played.)

THE REFEREE: On the record.

BY MS. TISHMAN:

Q. Does that refresh your recollection of the D[redacted] versus E[redacted] matter?

A. It refreshes my recollection, but not so much with the matter of the case but the matter of the Judge needing to see the Sergeant with regard to Miguel.

Q. What happened after the Judge told Court Officer Diaz that he wanted to see the Sergeant?

A. Officer Diaz went out the back door of the courtroom, obviously to tell the Sergeant, and the Judge got off the bench and went into his Chambers. And the next thing I know, I got up because I was there and I was milling around doing whatever, but the doors were open. His door was here and the court door was here, they are perpendicular to each other.

So the next thing you knew, you could see down the hall, it's a fairly long hall that is attached.

Q. I am going to stop you one second. If you could look at the photograph PH3?

A. Certainly.

Q. What door did the Judge leave the courtroom by?

A. He left by the door to the right of his bench.

Q. In the picture showing the right?

A. Yes.

Q. You said the door was open; what door were you talking about?

A. The door behind the court assistant to the left of the bench was open and that's the door, that perpendicular was the door to the Judge's Chambers. They are right on top of each other.

Q. Did you leave your desk?

A. Yes.

Q. Where did you go?

A. I was still milling around in the area, but kind of in the doorway as well. The Judge had gone behind, so I looked into his office where he was and he had taken off his robe and --

Q. What did you observe?

A. I am not a hundred percent sure, he took off his robe several times, these things happen, but this is very significant. The Sergeant came down the hall from the other end to come into Judge's chambers and as you can see, the Sergeant is walking down one side, the Judge from his chambers could see him and started charging at him.

Q. Charging at who?

A. At the Serge.

Q. When you say "Serge," who that?

A. Sergent Olivieri.

Q. When you say that the Judge was charging towards Sergeant Olivieri, can you describe what you meaning by that?

A. Not running, but walking quite rapidly toward him; very aggressive, almost like on a charge, like he was going to hit him is what I thought, and as he was going towards him, he was shouting about Miguel, and he can't be in the court and he doesn't do what he is supposed to do.

It was quite chaotic.

The Serge put his hands up, like

to back up, to slow him down, and backed himself up to put more distance and was trying to be calming: "What is happening? What's going on?"

Q. Who said that?

A. The Serge. It did calm Judge McGuire enough that nobody went to blows. This is an armed man, don't forget.

Q. Who is an armed man?

A. The Serge. It was scary.

Q. I want the record to reflect that when you are talking about the Sergeant, you had both your hands up around shoulder height, with your palms facing out and were Sergeant Olivieri's palms facing towards the Judge?

A. Yes.

Q. Do you know Wendy Wiener?

A. Yes.

Q. Did she ever work for Judge McGuire?

A. Yes, she was the secretary.

Q. What was Judge McGuire's demeanor towards Wendy Wiener, what did you observe?

A. He ran hot and cold. He was nice

to her on some days and some days he was not nice to her.

Q. When you say "not nice," what do you mean?

A. Regarding he would be -- he would yell at her frequently. She didn't get a call through fast enough; she wasn't moving her work off her desk. It could be any number of things.

Q. And after you worked -- you currently work for Judge Meddaugh; right?

A. Yes.

Q. How did it come about that you transferred from Judge McGuire to Judge Meddaugh?

A. Well, I mentioned that I had gone frequently to my supervisor to see if we could resolve the lack of communication and I had finally, I don't remember when it was, but the straw that broke the camel's back for me was Judge McGuire took a call from his wife in his chambers. I was sitting at my desk.

Q. I am not stopping your answer. I just don't want you to bring out hearsay.

A. I heard it. Is it hearsay? The Judge was on the call.

Q. Continue.

A. The gist of it was that there were some personal issues that were happening in Judge McGuire's --

MR. LEVINE: Objection.

THE REFEREE: Tell us what you heard.

A. I overheard two phone calls. The first call he had taken was from whomever, he mentioned her name. So it was from his wife. I could hear everything because the doors were next to each other and both doors were open. He was yelling at her because they were working on getting --

Q. There came time that you transferred to Judge Meddaugh, was that a result of your conversation with Christina Benson about what was occurring between you and Judge McGuire?

A. Yes. This particular incident though was literally the icing on the cake, I went down and said: "Something needs to be done."

Q. Without going into the incident and what happened, that's why you transferred?

A. It was not immediately, but they were working on it, yes.

MS. TISHMAN: I have no further questions for this witness?

THE REFEREE: We are going to take our lunch break, before we do that and so that I don't forget, I do have a question for you about the R[redacted] transcript. Give that back to her.

MS. TISHMAN: Yes. That's I-2A.

THE WITNESS: The court sheet. I have the court sheet in front of me.

MS. TISHMAN: No, no.

You are talking about the transcript of the audio?

THE REFEREE: Yes, the transcript that we just listened to.

MS. TISHMAN: I-2A.

THE REFEREE: Thank you.

Could you look at that transcript, and turn to page 7.

On line 22, where it says Court

Officer saying, "You are disrespecting the Judge right now." Is that you speaking?

THE WITNESS: No, that was one of the court officers.

THE REFEREE: Not you?

THE WITNESS: Not me. I am not a court officer. The Court Officer said to the litigant: "You are disrespecting the Judge right now."

THE REFEREE: Okay. That was my question. Thank you.

We are going to take a lunch break until 2:00.

(A luncheon recess was taken.)

THE REFEREE: Welcome back, everybody. Are we prepared to proceed?

MR. LEVINE: Yes, we are getting the witness.

THE REFEREE: Getting the witness back on stand. Off the record.

(Off the record.)

MS. PARTIDO: Witness entering.

THE REFEREE: Welcome back, Ms. Rogers.

THE WITNESS: Thank you.

THE REFEREE: Are you finished with the direct?

MS. TISHMAN: Yes, I had finished.

THE REFEREE: You may cross-examine.

CROSS-EXAMINATION

BY JUDGE McGUIRE:

Q. Ms. Rogers, good afternoon.

A. Hi, Judge.

Q. I am going to ask you a series of questions. The majority of them you will be able to answer with a "yes" or "no." If at some point I ask you a question that you don't understand, I have no interest in confusing you, so if you can't answer it the way I ask it, just tell me and I will rephrase it; okay?

A. Yes.

Q. So just to get started, who have you spoken to about the substance of the testimony that you gave today?

A. I spoke to the attorney.

Q. Ms. Tishman?

A. Correct.

Q. When did you speak with her?

A. On a couple of occasions. I think it was prelim a few years ago.

Q. That's before you came down for your deposition in 2016?

A. No, that would have been then, the deposition.

Q. So prior to -- June 28, 2016 was the date that you were here to give your deposition?

A. Yes.

Q. Prior to that, had you spoken to Ms. Tishman?

A. No, I don't believe I did.

Q. Did you speak to anybody else?

A. No.

Q. About the sum and substance of your testimony here today?

A. No.

Q. At any time?

A. Prior to then, no.

Q. Prior to then, okay; prior to then?

A. No.

Q. After then, not including that day?

A. Well, I have talked to my family but no, not anybody about the sum and substance of the testimony.

Q. You never spoke to anybody from the union?

A. I did, but I think that was prior to going to Ms. Tishman and that was --

Q. So that would be prior to June 28, 2016?

A. Yes, I'm sorry. They came to the court though. Yes, that's true.

THE REFEREE: Let me stop you both. You are going to have a question and an answer. You know, both of you, you can't talk over each other because that way we will not get a transcript, we will get hodgepodge.

A. Yes, it was an initial investigation, somebody had come to the court. We spoke and then there was the investigation where I came here, which is the deposition and I believe that was the only time.

Q. So the people that came to the court, were they your union?

A. I'm not sure, they might have been related to the union. I am really not sure. I don't remember.

Q. Do you remember who it was that you spoke to?

A. Today?

Q. No, no.

A. I don't remember his name.

Q. And today you have a union representative with you?

A. I do, but it was just to drive me; because of my injury I can't drive in New York.

Q. Did you speak with that union representative at all about the substance of your testimony?

A. No.

Q. Have you ever been the subject of a disciplinary proceeding related to your employment?

A. No.

Q. And do you have any criminal record?

A. No.

Q. Now, our history actually predates January 2011; correct?

A. Correct.

Q. I practiced in the court before Judge Ledina?

A. Correct.

Q. And you were his court assistant?

A. Yes.

Q. I actually represented you?

A. Yes.

Q. Now, you actually consulted me a couple of times where there was no representation; I mean there was no case?

A. Yes.

Q. Regarding a matrimonial, potentially?

A. Yes.

Q. I spent 5 or 6 hours with you in my office?

A. I don't think it was that long, but we spent some time together.

Q. Much of a day?

A. A couple of hours, 2 or 3.

Q. There was no charge for that?

A. No.

Q. And one Super Bowl Sunday you called me to meet you at the Fallsburg Police Station?

A. Yes. I didn't associate it with Super Bowl Sunday, but okay, I believe him.

MR. LEVINE: Objection. I am not sure where this is going, but if it's something that has to do with a client-attorney relationship, I am not sure that he can --

JUDGE McGUIRE: Hold on a second, I am not going there.

MR. LEVINE: I withdraw the objection.

Q. So I came down and met you at the Fallsburg Police Station?

A. Yes.

Q. You were at that point just being interviewed?

A. Yes.

Q. It was about something unrelated to the courts?

A. Yes.

Q. I spent several hours there that

day?

A. A couple of hours again, yes.

Q. And I didn't charge you for that?

A. No.

Q. Then you asked me to help out your daughter at one point?

A. Yes.

Q. Lindsey?

A. Yes.

Q. And also Lindsey's friend Jen who is almost like a stepdaughter to you?

A. Yes.

Q. I represented them?

A. Yes.

Q. And didn't charge them?

A. Correct.

Q. Now, so is it fair to say that we had a casual friendship?

A. At least, yes.

Q. When you needed me I was there for you?

A. Correct.

Q. So you worked in Judge Ledina's court for 13 years?

A. Yes.

Q. And Judge Ledina reached mandatory retirement age?

A. Yes.

Q. So you had worked with me for about 5 or 6 years while Judge Ledina was on the bench?

A. Probably.

Q. As an attorney?

A. Yes.

Q. I was the conflict attorney?

A. Counsel, yes.

Q. So I appeared many times, hundreds?

A. Yes.

Q. And is it fair to say that Judge Ledina's personality is different than mine?

A. Yes.

Q. Judge Ledina at the time that -- by the time he retired, had an extensive judicial career?

A. Yes.

Q. He had been a Family Court and Acting Supreme Court Justice for about 15 year?

A. Yes.

Q. Before that he was a town or village Judge?

A. Yes.

Q. Now, at one point you said that you basically trained me. What did you mean by that?

A. When you became the conflict attorney for the courtroom, for Judge Ledina, for either part it would have been the same. There were certain expectations between the Judge and the counsel that was assigned to the courtroom, how you would obtain assignments, when you would be expected, where we would we leave the assignments of counsel for you, phone calls -- not phone calls, things like that.

So we expressed to you how we normally run, having an attorney out of the Conflict Panel and out of the Legal Aid panel and how they would come into the court. And I think you also had become attorney for children assignments and how you would get those assignments. They would just be sent to you and not necessarily phone calls ahead of them, and would that be

okay? I brought you onboard with what the expectations of the court would be.

Q. So you gave me an orientation to Judge Ledina's part?

A. Correct. Well, either that would have been.

Q. Well, that's where I was going to be. I was not the conflict attorney for Judge Meddough's part?

A. No, you were the attorney for children in Judge Ledina's court.

Q. You don't know whether I met with the Chief Clerk Ms. Emerson at that time, right?

A. I don't.

THE REFEREE: Ms. Rogers can you please move the microphone closer to you.

Q. So in November of 2010, I was the selected candidate to replace Judge Ledina?

A. Right.

Q. And you had a, is it fair to say you were comfortable with the way Judge Ledina ran the court?

A. Yes.

Q. And you had a fair amount, he delegated to you a fair amount of responsibility for the operations of the court?

A. Yes.

Q. And you were comfortable with that?

A. Yes.

Q. You had, at that time, 13 years of experience. You were comfortable with that?

A. Yes.

Q. To be clear, you didn't write decisions?

A. Oh, no.

Q. There was a clear line?

A. Absolutely.

Q. But in terms of the operating day to day, he deferred to you on a lot of things?

A. Yes.

Q. That was his style?

A. Yes.

Q. And is it fair to say that, well -- strike that.

At one point you said that Judge Ledina trusted you?

A. Yes.

Q. What did you mean by that?

A. Well, the work, anything that was delegated to be done from the courtroom that was court work would not be micromanaged or he wouldn't question me after and say, "Did you get that done?" It was just assumed I had a job to do and it was done. He trusted that it would get done.

Q. He had 13 years to raise that comfort level?

A. Yes.

Q. But ultimately he was responsible for what got done?

A. Yes.

Q. So we can agree that in 2011 I didn't have 13 years of experience?

A. Not as a Judge, as an attorney.

Q. Well, I mean the work that you do that the Judge is ultimately responsible for is work as a Judge, not as an attorney?

A. Yes.

Q. So when I started I had no

experience as a Judge?

A. Right.

Q. So I didn't have the benefit of 13 years of reviewing your work?

A. Not 13.

Q. Well, I didn't have the benefit of even one day, did I?

A. As an attorney you would review files and you knew which files I worked on and what was done and how they were done. There were orders.

Q. But I didn't order it.

A. Sure you did. We talked about things like that.

Q. I didn't know who drafted orders?

A. Yes, if they were litigants that were unrepresented, it was known that the court assistant drafted orders.

Q. Known by who?

A. Known by the attorneys.

Q. How do you know that?

A. Because it's just a known fact.

Q. By who?

A. By any of the attorneys.

Q. Does Ms. Tishman know that?

A. Any of the attorneys that practiced in the court knew that. Like, for example, there were litigants and they had a custody order and they had come in previously, an attorney comes on board now after the second time or a modification, the attorney would have an opportunity to review the files. Well, obviously, they were there without any attorneys, they came as pro se litigants. So the attorney would know that many of the orders or they would ask, we would have a conversation, who did what orders.

Q. Did you and I specifically have that conversation?

A. We had conversations about who had done some orders, not specifically cases, but it was told to you by me that sometimes when they are not represented that obviously we would do the quick orders if the litigants had come in and agreed to. It's not an order that would necessarily go to the Judge to do a decision and order.

Q. You're saying that you and I had a discussion that when somebody came in

unrepresented, that you just did the order?

A. It wasn't a blanket conversation like that. It was whenever -- if you would review a file and you happened to be back behind us, you may have had questions and I would go through the file with you and say: This is an order that the Court did.

Q. How often did that happen?

A. A few times when you started. Then I would just -- I said to you, that would be the case. When a litigant didn't have representation, frequently the court clerk would do the order.

Q. How would I know what the order was? How would I know if that was a correct representation of what the Judge had decided?

MR. LEVINE: Objection as to how.

THE REFEREE: Sustained.

Q. I wasn't in court when the person first came in; correct?

THE WITNESS: Am I answering?

THE REFEREE: Yes.

A. No, you would not have been in the court when the person first came in.

Q. So without listening to the transcript, I wouldn't know what Judge Ledina had decided?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. I wouldn't know whether or not what's reflected in the order was accurate.

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. So take us through how those first unrepresented appearances happened?

A. Certainly. They could come into the court a couple of different ways. One way, people would do what we called a walk-in. It's an emergency. The petition would be filed at the front desk. The petition would be accepted and brought to a Judge to review, to see if they need to come into court as an emergency basis. They are unrepresented and there is no other party. It's just the petitioner and the Judge would hear whatever it is. Those are typically orders of protection. They feel endangered.

Q. Stop right there. You just said a word -- the orders of protection are

generated through UCMS; a correct?

A. Yes.

Q. And then there is often certain provisions that are in there, for example, access?

A. Yes.

Q. Or no access?

A. Yes.

Q. Or telephone contact allowed?

A. Correct.

Q. And is it the court assistant that decides whether or not there is going to be those provisions in the order of protection?

A. The Judge, and that goes in the court assistants notes that go into the UCMS computer. We take notes. That's one part of the file, the notes from the court proceedings. Just like every other proceeding, they are recorded and then the court assistant takes the notes and based on the testimony, the Judge would make a decision from the bench. They would order a temporary order, and that would be referenced in the notes: Temporary order,

issue an order of protection, and then it would go from there, whatever the terms and conditions.

Q. Judge Ledina would defer to you to prepare that order?

A. That's the procedure. The clerk does prepare that order.

Q. But the Judge dictates the provisions in the order?

A. Yes.

Q. As an attorney coming in on the case, all I would have is the order and the petition?

A. Yes.

Q. The court notes don't come to me?

A. No.

Q. The transcript doesn't come to me?

A. No.

Q. So you said that Judge McGuire did not like the idea that Judge Ledina trusted you?

MR. LEVINE: Objection.

THE REFEREE: What is the objection.

MR. LEVINE: That isn't what the testimony was.

THE REFEREE: She can respond.

Q. Do you believe that Judge McGuire did not like the idea that Judge Ledina trusted you?

A. I think that's only part of it.

Q. I am just asking you that question, that isolated question. Did you believe that Judge McGuire did not like the fact that Judge Ledina trusted you?

A. I can't answer that.

Q. As you sit here today, do you believe that?

A. There is more to it. I believe that you didn't like that he trusted me to the extent that he did not micro manage and knew that the orders were going to be done.

Q. So you think that I was critical of Judge Ledina?

A. I think you were critical of me.

Q. So what gave you the idea that I did not like the idea that Judge Ledina trusted you?

MR. LEVINE: Objection to the

form of the question.

THE REFEREE: Sustained. She didn't accept that as a premises.

JUDGE McGUIRE: She just did.

THE REFEREE: Not that way.

JUDGE McGUIRE: We can have it read back. I believe that's what she just said.

THE REFEREE: She added more to it than that.

JUDGE McGUIRE: Can I get the last question read back?

(Last question read back by the reporter.)

JUDGE McGUIRE: The one before, what gave her the idea that I was -- that I didn't like the fact that Judge led Ledina deferred to her?

THE REFEREE: Can you answer that question? If you can, you can answer it.

A. Well, to the extent that we had an early conversation when you took the position of Judge, you said to me directly that the courtroom wasn't going to run the

same way it was run when Judge Ledina was Judge?

Q. I am a different Judge.

A. Yes.

Q. My personality is different. I have a different style.

In fact, on January 1, 2011, I didn't have a judicial title yet.

A. No.

Q. But I wanted to make some changes?

MR. LEVINE: Objection.

THE REFEREE: What is the objection?

Q. The question is: Your understanding was I wanted to make some changes?

A. I would assume so, based on the conversation about not doing the same thing that Judge Ledina did.

Q. So I was going to make some changes.

A. You never said you were going to make some changes. I just inferred.

Q. Well, if I am going to do things

differently --

A. Right, I inferred. You didn't come right out and say I am going to make some changes.

Q. If things are going to be done differently, that means some changes are going to be made?

MR. LEVINE: Objection. Can he just ask questions instead of arguing with the witness?

THE REFEREE: Sustained. Let's not argue with the witness.

Q. What did you interpret I was going to do things differently to mean?

A. That's what I interpreted. I said you didn't come and say: We are going to make changes in the courtroom, I am not going to do X, Y and Z and you are going to do A, B and C. We never had that conversation. You just said that the way Judge Ledina ran the courtroom was not going to be the same way that you were going to do things and I inferred from that that there were going to be changes. You weren't specific as to what they would be.

Q. I was not specific on what the changes would be?

A. Yes.

Q. Now, you said that Judge Ledina didn't micro manage you?

A. Correct.

Q. What did you mean by that?

A. What I said previously. He allowed me to -- he would make orders. The attorneys or the litigants would agree to certain aspects of the case moving forward. Mental health, if that were the case, there would be orders that would go out. Some orders went out by signature that was stamped because the Judge did not need to review common orders. They were just stamped and sent out.

So he wasn't concerned that they were going to be incorrect, obviously.

Q. Now, I am starting to understand.

A. Okay.

Q. So my orders don't go out stamped?

A. Your bench orders go out stamped sometimes.

Q. Which orders of mine go out stamped?

A. Mental health orders can go out stamped. SCADAS orders can go out stamped, S C A D A S.

Q. Sullivan County Alcohol and Drug Abuse Services.

A. I could have done that.

Q. Those are actually forms.

A. They are bench orders. They are preprinted, yes. They are forms that we made up as orders.

Q. The only thing that goes into them is the names of the litigants though.

A. Right.

Q. There is no special provision in it?

A. No. Well, it depends.

Q. What different information goes into them?

A. It could have, you know, put specifically that we are looking for certain information.

Q. Like what information?

A. Interview with the idea for a

parent visitation, you know, would that be deemed appropriate? It depends on the order.

Q. Those are the psychological orders.

A. Those can go out stamped also.

Q. I am not saying what they can. You are saying that when you clerked for me that you sent orders out that I had not reviewed.

A. Orders that the Judge would send out without review, SCADAS, mental health.

Q. I am not talking about the Judges, I am only talking about me?

A. Okay.

Q. Isn't it true that when there is a SCADAS evaluation order that the form order is handed to the Judge right in court?

A. Not always. If we can, certainly. It's not always.

Q. What would stop you from doing it?

A. Well it could be by request of an attorney that just comes in on a letter and it says: We think these people need to go

for mental health evaluations, would you go ahead and issue that and the Judge will give you back the letter and say: Go ahead and order mental health. That is an order that is not being done in court. That's an order that's coming via letter.

So the order would be done. If the Judge isn't there, it would be done. The paperwork would be processed and we would stamp it and send it on its way. Then the Judge would get to sign it, either depending on the Judge, later or whenever they deem.

Q. But the Judge has authorized that?

A. Of course.

Q. You don't just do those orders on your own?

A. No.

Q. Just to wrap up this segment, so you believe the fact that -- well, strike that.

I am going to go back to this micro managing. What did you mean by Judge McGuire was micro managing you? What did

you mean by that?

A. I don't think I said specifically you were micro managing me, did I?

Q. Well, do you believe that Judge McGuire was micro managing you?

A. You were difficult to communicate with. So I don't know how to answer.

Q. All right.

A. It's a vague question. I'm sorry, I just can't.

Q. You said that Judge Ledina would not micro manage you?

A. Right.

Q. Is there a reasonable inference that Judge Ledina would micro manage you?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Do you believe that Judge McGuire micro managed you?

A. I don't even know how to answer that.

In the same context of those kinds of orders, no?

Q. So do you believe in any context Judge McGuire micro managed you?

A. There were occasions that there was like an order would be necessary and I would put in the information that started to come from the bench, whatever was said initially when there would be changes, but they weren't changes that came from the bench necessarily, it is just that you did not like the wording.

Q. I just want you to define what some of these terms mean.

A. Right.

Q. So I understand mechanically there would be an order that would develop through the course of a proceeding?

A. Yes.

Q. And then you would, from your notes and from having heard the proceeding and based on your years of experience, would draft a form order?

A. Or an order of protection is more where it came from.

Q. Okay. An Order of Protection?

A. Yes.

Q. And then you would hand it to Judge McGuire to review and sign?

A. Yes.

Q. And looking at that moment in time, where it would be handed to the Judge to review and sign, how, if at all, was Judge Ledina's approach different from Judge McGuire?

A. He would review the order and sign it and the wording was appropriate and there were occasions that if there was an order of protection for -- the biggest issue with the order of protection is that any kind of changes that you would have required, especially early on, were changes that promulgated form to some degree. So certain wording could not be changed or modified and that was something that was explained a number of times in the beginning.

Q. For example, what words did I cross out that could not be changed in the computer?

A. Well, I don't know off the top. There was like the section of like permitting somebody to enter a home. It's got like kinky wording in there that you are

allowed to do it, and it has to be filled in. So you are allowing so and so to go to the residence and it's on a particular day and time. That box actually has to have something in it, and then it says to pick up their belongings and whatever, and there has to be something in that box as well.

It's not as specific when you order it from the bench to say: They can pick up their toothbrush and their pants. It's something that is more generic, like they can pick up their personal belongings. So the form would come out printing because that secondary box starts out with the wording that says they will pick up their personal belongings, including their personal belongings.

So in the beginning it was like I had to explain that we can't take out the wording of "personal belongings." So in order to get around that, you would need to either be very specific or there has to be something there. So that's how we would leave it.

Eventually it was acceptable, but

it was a couple of times you would ask: Shouldn't we change the wording this should not be here twice, however that --

Q. So you said a couple of times and then I understood?

A. Right.

Q. Do practicing attorneys get trained on UCMS?

A. No.

Q. So when I started I would have no idea what the limitations of UCMS were?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Have you ever been aware of practicing attorneys being trained on UCMS?

A. No.

Q. So the first couple that I did would have been my first experience with UCMS?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. They had always been issued the same way, whether it was you or Judge Ledina. Just you were more aware of it because now you were reading through them,

but they had always been the same standard.

Q. I was responsible for them, then?

A. Yes.

Q. I was responsible for their enforcement?

A. Yes.

Q. I was responsible because often with respect to getting personal belongings, a law enforcement officer accompanies people?

A. If ordered.

Q. If ordered. What is a 99 paragraph?

A. Other.

Q. What does that mean?

A. You can put anything you want in it.

Q. So I could have put in toothbrush and pants in the 99 order?

A. You could have put toothbrush and pants in the order that says permit return of belongings.

Q. I can put anything I want in?

A. Correct.

Q. So we can agree then that the

first couple, I had to get accustomed to what the limitations were?

A. Yes.

Q. And you believe that that was micro managing you?

A. Well, I was your clerk. I explained to you that that's the way they went. After the first time, I explained it a couple of other times. So I guess the learning curve was just a little bit different than maybe what I expected.

Q. I am still trying to understand this micro-managing thing.

You would have expected me to just sign these orders the way you prepared them?

A. Well, you signed other orders without really reviewing them, so I just --

Q. I am not talking about other orders. I am talking about orders of protection that could have people incarcerated for 4 years in state prison. That's what I am talking about.

A. All right.

Q. So it's your position that it was

micro managing because --

A. Well, you were inconsistent.

Q. -- I wanted to make sure that the wording was something that I was comfortable with?

A. Okay.

THE REFEREE: I don't know what that means. Say "yes" or "no."

A. No. I don't think it was micro managing because you wanted to be careful with the wording. The answer is no.

Q. It was appropriate?

A. It was appropriate one or two times.

Q. Particularly for a Judge that was just first on the bench?

A. Who had been practicing for 5 years; who had read these. It was appropriate for the first 1 or 2 times, whether it was 5 or 6 or 10 and --

Q. What if it was 150?

A. That's what I said. The learning curve was different.

Q. What if your son Jonathan was the 150th person that got arrested for violating

an order of protection; would that have concerned you?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. That's not my question. My question was --

MR. LEVINE: Objection.

A. Yes, anybody who was arrested would have concerned me.

Q. So the Judge was just being meticulous?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I would give it a different word, but okay.

Q. Go ahead. Give me your word?

A. Extreme.

Q. Extreme?

A. Yes.

Q. So if it was your son being arrested for violating an order of protection, would you want that Judge to have been extreme?

MS. TISHMAN: Objection.

THE REFEREE: Overruled.

A. It doesn't --

Q. That's not my question.

A. Then I can't answer that question.

Q. Would you want the Judge to be explicit if somebody could wind up in prison for 4 years because of it?

A. Yes, but that was not --

Q. That was your answer to my question. Thank you.

A. You're welcome.

Q. When you said the Judge was condescending to you, was the extreme review of orders part of that being condescending?

A. No.

Q. That was not?

A. No, not at all.

Q. That didn't make you uncomfortable at all?

A. Not at all.

Q. Now, let's set up a Family Court proceeding. Judge McGuire is on the bench, yes?

A. Yes, okay.

We are setting it up from where?

Q. How about we start from the bench?

A. From the bench, you already entered the courtroom.

THE REFEREE: Let's try to have a question and an answer.

Q. Judge McGuire is on the bench.

A. Okay.

Q. The clerk is to my right?

A. Yes.

Q. We have a petitioner and a respondent?

A. Yes.

Q. Sometimes a second respondent?

A. Sometimes.

Q. An attorney for the child?

A. If we are at the attorney phase, yes.

Q. Sometimes we have multiple attorneys for children.

A. Correct.

Q. We may have a representative there from one of the agencies, Department of Family Services.

A. Okay.

Q. Or Kids Peace or one of the others?

A. Yes.

Q. And the attorneys are filtering information toward the Judge.

A. Yes.

Q. And the agencies may be filtering information toward the Judge, yes?

A. Okay, yes.

Q. You have been in court for 21 years. Is that typical of what you see?

A. That's one of the small components, but, yes.

Q. Well, taking aside the walk in, attorneys have been assigned?

A. Okay.

Q. People come in.

A. Right.

Q. There's going to be at least 5 people in the courtroom?

A. That's good, yes, I agree.

Q. And there could be more?

A. Correct.

Q. And it's not uncommon for any of the 5 to speak?

A. Correct.

Q. The Judge has to process that information.

A. Okay.

Q. No?

A. It's not a question, I don't know.

Q. Does the Judge have to process information from the 5 or more people that are in the courtroom?

A. Certainly, yes.

Q. Does the Judge have to formulate decisions based on the information he gets?

A. Depending on the phase, yes, of the proceeding.

Q. Well, at what phase of the proceeding would a Judge not be asked to formulate an opinion or a decision?

A. When they're just reiterating what they have done, who has contacted whom.

Q. In those circumstances, orders don't need to be modified?

A. Not at that second, no. It could morph into needing modification.

Q. Morph during the course of that

proceeding?

A. Correct.

Q. A Judge has to listen to that information?

A. Yes.

Q. Now parents come to court?

A. Yes.

Q. They want to be heard?

A. Yes.

Q. They have their position on how the case should go forward?

A. Probably.

Q. Well, have you ever known a parent that was in court that didn't have an interest in the case?

A. No.

Q. So when you said "probably," you meant "yes"?

A. Okay. I don't know if I should be answering. I don't know if you're actually questioning me or am I just agreeing with what you are saying.

THE REFEREE: I have mentioned this to you before, Judge. You are making a declarative statement to which

if the witness is a very savvy witness, understands that it is a question, but the format of what you are saying to her is not in the form of a question. So if you could endeavor to ask your questions in the form of a question instead of a declaratory statement that she has to agree with or disagree with, I think the witness would be better able to respond.

THE WITNESS: Thank you.

Q. Parents come into court.

THE REFEREE: Again, you are making that --

A. Yes.

Q. Do parents come to court?

A. Yes.

Q. Do parents have an interest in what's happening in court?

A. Yes.

Q. Do parents want to be heard when they come to court?

A. Yes.

Q. Do parents even have attorneys who want to be heard when they are in court?

A. Yes.

Q. Is it the Judge's role to listen to them?

A. Yes.

Q. Is it the Judge's role to process the information that he is receiving from them?

A. Yes.

Q. Is that the most important thing that goes on in a proceeding?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I don't know. Is it the most important? I don't know. It would depend on the proceeding.

Q. So based on your 21 years of experience, can you tell me what kind of a proceeding would the most important aspect be other than what the litigants have to say?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Have you ever been a litigant in a proceeding?

A. Yes.

Q. In Family Court?

A. Oh, yes.

Q. Have you had an interest in what was said in court?

A. Yes.

Q. What was said in court would have an effect on your children?

A. Yes.

Q. Would it have an effect on you?

A. Yes.

Q. Would it have an effect on the children's father?

A. Yes.

Q. So you were principally concerned with having the ability to be heard?

A. I had an attorney.

MR. LEVINE: Objection to the personal case that the witness personally had.

THE REFEREE: It's okay. I will overrule that.

MR. LEVINE: That's what he is asking about.

JUDGE McGUIRE: It's all right, I am not going to ask the facts of the

case.

Q. Did you have an attorney?

A. Yes.

Q. Did you speak through the attorney?

A. Yes, the attorney spoke for me, exactly, okay.

Q. Did your attorney speak for you?

A. Nicer than I would have said things, but yes.

Q. So you had maybe more emotion than even your attorney?

A. Well, I think that's typical.

Q. So to you, your primary interest was having your voice heard?

MR. LEVINE: Objection to her individual case. She can talk about what she does in court.

THE REFEREE: Overruled.

A. No.

Q. You did not want to have your voice heard?

A. I wanted the fairest outcome for my child.

Q. Even if it was inconsistent with

your opinion?

A. The outcome for my child would not have been inconsistent.

MR. LEVINE: Objection to this line.

THE REFEREE: Let's move on to something else.

Q. So during the time that the Judge was listening to that, you wanted him paying attention to you, didn't you?

MR. LEVINE: Objection.

THE REFEREE: Sustained. Move on to something else, please.

A. No.

Q. So you take offense the Judge put his hands up asking you to stop?

MR. LEVINE: Are we talking in general?

JUDGE McGUIRE: When she was working for me. We had testimony about that.

Q. This was offensive to you?

A. Yes.

Q. That the Judge was listening to litigants rather than you at the moment?

A. I never interjected when there was anything happening that was of importance. It was at a lull. There was quiet for a second and waiting, I would interject. Like a conversation, so people stopped talking and when there was a lull in the conversation I would say, "Judge, and they would all hear me, so they would not start speaking.

Q. Objection to what they heard.

MR. LEVINE: That was the question that was asked, your Honor.

A. I said Judge so everybody heard, so nobody would continue. Then I would try to ask my question pertaining to whatever we were in the middle of, and that's when you wouldn't --

Q. So, in your mind, that was a lull?

A. Yes.

Q. When the Judge wasn't having to process any information?

MR. LEVINE: Objection. That's not what she said.

THE REFEREE: I am sorry?

MR. LEVINE: I withdraw that.

Q. In your mind, you would interject at times -- strike that. Let me rephrase that.

Is it true that you would interject at a time when in your mind the Judge had no other information to process?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. But you don't know what was going on in the Judge's mind, correct?

A. I was multi-tasking, I figured you could too. I was doing everything at the desk.

Q. That's an answer; try my question.

MR. LEVINE: Objection to the comments.

THE REFEREE: I have 3 people speaking at the same time now. If you are going to make an objection, you have to do it before the question and answer comes out.

MR. LEVINE: If he wants to ask a

question, he can, but not have an argument with the witness. That's what I was trying to get out.

THE REFEREE: Let's strike the last question and answer and try it again.

Q. So you believe that you were multi tasking, so the Judge should multi-task?

A. I believe he could take a half a second to hear a question, yes. I was listening to the same information the Judge was listening to, so I was taking notes that were pertinent to the case and making sure that whatever was going to be necessary was getting into the notes, which was all of the pertinent information.

So if there was a lull I knew I could interject and it was not going to disrupt or sway -- my mind could switch to something else in that second, knowing that I needed to get other information out or get information from the Judge. I would interject, that's what I was trying --

Q. What kind of information would

you have to get?

A. Like at the end or whatever, of a case where we were mailing orders and we don't have a good mailing address. Do we have phone numbers? We need a phone number because we couldn't get ahold of somebody for something.

If it was specific to an order and you were ordering visitation on Saturdays, they would, the attorneys would get into a routine of were they going to visit every Saturday, I would suggest other times. You didn't want me to disrupt, you know, what --

Q. I didn't want you to disrupt what?

A. Anything that you were thinking about, obviously.

Q. Maybe at that moment?

A. When I needed to know if there was going to be something in the order of protection, we needed to know, because the next case would be ready to come in and I was expected to do the order of protection and wouldn't have an opportunity without it

being possibly more of an inconvenience to you.

Q. So you are talking about after the case was over and everybody had left?

A. No. I am talking about when the case was there. Notes go into the computer when people are in the courtroom. So if you are ordering an order of protection and something is not specific, they're just bantering or setting a date, it's just minor stuff that's happening, I would go back to the order and I would realize right away that there is some specificity that is necessary so that there is no confusion. That was only if there was an order.

There weren't a whole lot of times where an interjection was necessary.

Q. So there wasn't a whole lot of times that I asked you to hold on a minute?

A. It was like daily. It was like we had 30 cases on the calendar, so it was at least once a day.

Q. So one out of 30, I might ask you to hold on a second?

A. That was once a day.

Q. Once out of 30 I might ask you to hold on a second?

A. On a heavier day it might be more. In the beginning it was more. After we had some conversations it became less.

Q. What was it, once a day?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Some days it could have been 10 times, some times it was one.

Q. Ten times in one day?

A. It could be.

Q. What day was it ten times?

A. If it was a heavy day, if you were not in a good mood, you wouldn't let me talk to you at all. That was No rhyme or reason for it.

Q. Did you ever make any formal complaints about this contact?

A. Not in writing, but I went to my supervisor all the time.

Q. Did you speak to the union about it?

A. I did not.

Q. Is it fair to say this is a style

difference between Judge Ledina and Judge McGuire.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. No.

Q. You believe that you knew better how the court should run better than the Judge did?

A. I knew what information was missing and then I was asking for direction.

Q. And you're saying that you didn't ever get that direction?

A. No. I would need to get it later or do an order without it, that could be a problem that could have needed to be amended, which it ended up being amended anyway, most likely.

Q. You said the Judge was extreme in reviewing the orders; correct?

A. But you wouldn't catch it either. If it says Saturday and Saturday was the day of visiting, you wouldn't necessary think: Oh, well, we didn't put in times for Saturday.

Q. Hold on. You said a few minutes

ago I was extreme. Now you are saying --

A. It says Saturday, the order would say Saturday so that would be within your specifications. So that would meet your qualifications. However, it wouldn't necessarily have times, which I would want, to make it more exact. So that we know what happens, they call and the police would say: Well are you supposed to be visiting from noon to 4:00 or is it from midnight to midnight.

Q. So I never put times?

A. That's not what I said. I said that would be something that I would interject, do we have times?

Q. When?

A. When what?

Q. When would you interject?

A. That's what I would try to interject, but you didn't want me to interject, you would put your hand up.

Often the question came out, just like when you're an attorney, the question comes out and people hear it; the answer comes, but not because you have directed the

answer. So all questions would go through the Judge. I can turn to the litigants or to the attorneys and say to the attorneys: I need the addresses or I need times, are you putting times?

As a deference to the Judge, we always direct all questions to the Judge and he is supposed to direct the courtroom, then the Judge would turn to the attorneys and say: Attorneys, do we have times, et cetera. So instead they hear you, because they are, 3 steps away from you.

So I am saying to you, even though it's like I am saying it to the attorneys: Do you want to put times for a Saturday visit? The answer would come without you necessarily providing me with your undivided attention.

Sometimes the questioning was not necessarily that you had to address it, it was just enough to get it out so that you knew that other information needed to be forthcoming.

Q. Is that your role as a court assistant, to structure the orders?

A. I don't know about structuring the orders, but if there is something missing --

Q. Hold on.

MR. LEVINE: He asked the question.

JUDGE McGUIRE: It calls for a "yes" or "no," is that your role?

Q. Is it your role to be sure that an order is complete?

A. Yes, I believe it is my role to be sure.

Q. Based on what?

A. Based on what you said earlier is that you want to be sure that somebody is not going to go to jail for something that is not done correctly.

Q. But who is signing the order?

A. The Judge, but I wouldn't put something out to the public that I was not sure was accurate and allow my Judge to sign something that was a misrepresentation or an incomplete representation, if his intent was to have something more specific. So I would --

Q. The Judge does not need your permission to sign anything; does he?

A. No, but I would bring to their attention: Did you want? Would you prefer? Should I put? Do we have a time? Do you want a time? Are there visits? Is there a pickup? Is there a drop off?

Q. That's what you did with Judge Ledina?

A. And I have continued to do that with Judge Meddaugh.

Q. But that's not the way I ran my courtroom?

A. Which was worrisome.

Q. That's a "yes" or "no." That's not the way I ran my courtroom?

A. It depended on the day, to be perfectly honest. Some days I would do and I would ask you those types of questions and you would have that conversation and we would end having an order fixed.

Q. It just wasn't --

THE REFEREE: Just a minute. She's in the middle of her answer.

A. Some days you would just not

respond and be unapproachable.

Q. I had an open door in my office, correct?

A. You had an open door in your office.

Q. Did I ever direct you not to step into my office?

A. No.

Q. Did I ever deny an opportunity for you to come and speak to me at my desk?

A. Other than the times that you have slammed the door in our faces, no.

Q. Whose face?

A. Mine and the officers.

Q. When was that?

A. You were in your office.

Q. What was I doing?

A. You were trying to write some order but they were questioning how long it was going to take and we stuck our heads in to say: "Judge, do you have a time frame?" And you jumped up and ran to the door and slammed it.

Q. You didn't stick your head in, you were having a conversation with 3 other

people by Wendy's desk; isn't that a correct?

A. That was not correct. I was in the doorway and I was having a conversation with one other person. He came to ask if you knew how long you were going to be, and he was standing next to me and I just turned because I was standing in that doorway and I said, "Judge, do you have" --

Q. The door hit you?

A. It did not.

Q. It did not.

MR. LEVINE: Objection.

THE REFEREE: Folks. This is beginning to sound like Family Court here. So I would appreciate it again, Judge, if you would ask a question and let the witness finish her answer before you interject and let her understand what you're thinking during the middle of her answer.

Q. Were you ever spoken to by your supervisor about complaints the Judge had made about you?

A. I don't believe that there were

complaints.

THE REFEREE: That wasn't the question.

A. No.

Q. You testified on direct that at times you disagreed with the Judge's decision to schedule conferences rather than trials?

MR. LEVINE: Objection. I don't recall that.

THE REFEREE: I can't hear you when you are sitting.

MR. LEVINE: Objection, I don't recall that that was the testimony.

THE REFEREE: Again, the record will say whether it was or it wasn't, and the witness can answer the question. That was not a proper objection.

A. It was not that I disagreed. I didn't say I disagreed. It was there was a movement of cases through the court and conferences were the typical way you moved cases, but we had time constraints and needed to schedule things for trials, et

cetera.

Q. But that was more my style.

MR. LEVINE: Objection. That's a question?

Q. Was that more my style?

A. Conferences, yes, but not to the exclusion of scheduling a trial. I had suggested, can we schedule a trial or fact finding in addition to, and you said no, just schedule for conference.

Q. This incident with the computer, do you remember your computer was turned off, somehow went off during lunch?

A. Yes.

Q. You said that I was standing over you yelling at you?

A. Well, yes. Yelling: Why is it not on? What do you mean it's not on? Why isn't it coming on? What's going on? What's the problem? Why did it go off? Who turned it off?

Nobody turned it off.

Q. So trying to ascertain what was going on.

A. Very loudly, yes.

Q. So I yelled at you or my voice was loud?

A. Is there a difference? It was me and you in the courtroom and you were yelling.

Q. Did you interpret that as yelling at you?

A. Well, you were saying: "Why is it taking so long?" I would assume that was at me. Yes, you were yelling at me.

Q. Page 21 line 16.

A. Am I supposed to look?

Q. No, when you gave your deposition in June of --

MS. PARTIDO: I am going to give it to --

THE REFEREE: Just a second, please.

Q. When you gave your testimony on June 28, 2016, were you asked this question and did you give this answer:

"So you said that Judge McGuire was condescending and you said he was sarcastic. Did he ever raise his voice to you?"

Answer: "He had, but more in line with he never actually yelled at me. Well, there was yelling, just, it's hard to explain. There was definite -- Oh my God, I am doing it again."

So we read that question and did you give that answer?

A. In writing I am going to go with yes. I was going to say I did say it was hard to explain. There was yelling.

MR. LEVINE: If you go further, there is an explanation for this.

THE REFEREE: You have a redirect. That's what that is for.

Q. December 13, 2013, Mr. R[redacted]. Remember, we heard that?

A. Yes.

Q. Do you recall Mr. R[redacted] having been in court prior to December 13, 2013?

A. Not specifically.

Q. But in your experience it's not uncommon that people are frequently in the same Family Court?

A. Exactly.

Q. So you are not familiar with Mr.

R[redacted]?

A. As a history with Mr. R[redacted], not where I could just put my fingers on it. If I touched the file and reviewed it, I am sure it will all come flooding back.

Q. Fair enough.

So in the segment of the transcript that we listened to, Mr. R[redacted] stated that he knew my son?

A. Correct.

Q. And that he wanted a different Judge?

A. Correct.

Q. But the case had already been dismissed?

A. Am I answering this question?

Q. Had the case -- I stand corrected. Had the case already been dismissed?

A. Pursuant to your directive, yes.

Q. Who else, if anyone, can dismiss a case?

A. Well, you asked him if he wanted a new date or dismissed and he said he wanted a new date and then you dismissed it.

I don't know how to answer. He didn't want it dismissed, he wanted a new date.

Q. Well, the transcript will speak for itself, but he raised that issue after the case was concluded for that day. Is that correct?

A. No. He had asked you for a new date prior to it being concluded and then you concluded it.

Q. So I am referring to when he asked for a new Judge and said that he knew my son.

A. Right.

Q. That was after the case had been concluded for that day; correct?

A. No. He had said that he wanted you to recuse yourself prior to that.

Q. Prior to the case being dismissed?

A. Yes.

Q. He did?

A. Yes, I believe he did. And then you got angry and then it exploded.

Q. Do we have a transcript of that?

A. You were still asking him if he

wanted a new --

Q. There is no question.

MS. TISHMAN: What are you asking?

THE WITNESS: About the R[redacted]

MS. TISHMAN: I-2A.

Q. I am showing you the transcript of the R[redacted] case, page 7, line 1 is where I want you to start, and just read down page 7.

A. But it was before this when you were asking him about --

Q. I am just asking you to read from page 7, line one?

MR. LEVINE: You are asking her to read it out loud or to herself.

JUDGE McGUIRE: No, read it to herself.

(Witness reviewing document.)

A. I believe that it was --

Q. I didn't ask you a question.

A. I am sorry. I thought you wanted me to continue.

Q. When you read it, just look up.

A. I am done.

Q. So what came first? The case being dismissed or Mr. R[redacted] asking for a different Judge?

A. I believe this was his second request after the case was dismissed for a different Judge.

Q. Do you think before it was dismissed he asked for another Judge?

A. Correct.

Q. I am going to ask you to take a look at the entire transcript and show me where is the first time he asks for a different Judge?

A. Okay, I am done.

Q. Just give me a page number?

A. It isn't -- that was the first time. I misunderstood. He was asking you to explain certain things.

Q. That's fine.

So the first time he asks for a new Judge was after the case was dismissed?

A. Yes.

Q. Not when he first came in?

A. Not when he first came in.

Q. You don't know anything about Mr.

R[redacted]?

A. Not specific.

Q. You don't know anything about his criminal history?

A. No.

Q. Now, was Mr. R[redacted] incarcerated when he was brought in that day?

A. Yes.

Q. Now, Ms. Tishman asked you about Officer Diaz, do you remember that?

A. Yes.

Q. You said that the Judge did not treat him well. Do you remember that?

A. Yes.

Q. Then you said, when she asked you what -- Ms. Tishman asked what you meant by that, you said that he had discussions with me off the record. Do you remember that?

A. Yes.

Q. And do you remember that the Judge was concerned that he was not fast enough?

A. Yes.

Q. And that Judge was going to talk to the Sergeant and the Lieutenant about

Officer Diaz?

A. Yes.

Q. Now, who are, if you know, Officer Diaz's supervisors?

A. I wouldn't know specifically.

Q. So that's the extent of the Judge not treating him well?

A. You just said that you were going to talk to the supervisors. No, you yelled at him all the time.

Q. All the time?

A. Well, frequently. You yelled at him frequently. If the cases weren't ready, if they weren't on the door, why was he not bringing them in. If he brought in some of them and the attorneys disappeared, you would yell at him to get them out. You just yelled at him.

Q. The Judge had concerns about his ability to move cases?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. The Judge expressed to you that he had concerns about his ability to move cases?

A. It was not any different than any other officer.

Q. It was not?

A. It was not.

Q. Now, February 28, 2013, the day that Judge McGuire asked Officer Diaz to have the Sergeant come in?

A. Yes.

Q. Now, you --

MS. TISHMAN: I just want to correct the record, the date was February 25th, not the 28th.

JUDGE McGUIRE: I stand corrected. Thank you.

MS. TISHMAN: I am sorry to interrupt.

Q. '13?

A. Yes.

Q. February 25, 2013, that is the day the E[redacted] case was coming in?

A. Yes.

Q. You said that the Judge went into his Chambers?

A. Yes.

Q. How did I get into my Chambers

from the bench?

A. You got up off bench and went to your left, to the door that leads into your Chambers, which would come around and your bench back here, that wall is part of your Chambers and the door for the clerk is here.

Q. So I didn't go out the clerk's door?

A. No, you can't get out the clerk's door, it's blocked.

Q. It's blocked?

A. By the bench. By the bench, it goes to the wall.

Q. You said the Judge took his robe off?

A. I wasn't sure. I was not sure if you took your robe off. I know you were hightailing it down the hall.

Q. The Judge and the Sergeant ultimately met up?

A. Yes, like two trains.

Q. And you could see the Judge and the Sergeant when they were interacting?

A. Well, I could see, I was in the doorway so I could see the Sergeant and I

stayed in the doorway because you were flying through your office, so I knew not to get in your way and I could see the Serge coming down the hall and I could see until you passed me, and I could see the Sergeant's hands up going, "Woe, what is going on?"

Q. Did you see the interaction between the Judge and the Sergeant?

A. I would think, yes, that was seeing the interaction, yes.

Q. Where within the Judge's Chambers were they?

A. They weren't in the Judge's Chambers. You had come out of your Chambers.

Q. Out of my private office?

A. Past the clerk's desk and partially past right around where the secretary's desk was and that's kind of where you met. So it's the clerk's desk, the wall, and on that wall is the secretary's desk, so that was the length. So you were coming one end and he was coming the other and you met somewhere around the

secretary's desk, the part that is against the wall. It's like a narrow path between the door and the credenza and the desk.

Q. I am going to make it easier for you.

A. Good idea. I could draw pictures but I don't have crayons.

THE REFEREE: He is going to show you a photograph?

Q. I am going to show you Exhibit PH6 in evidence.

A. Okay.

Q. Could you point so the referee can see it?

A. So this is the court door. This is the Judge's door. The Judge is walking through. Here is the credenza, here is the secretary's desk. They met like somewhere in this general area.

Q. In the area?

A. But I could see the Serge walking down the hall, coming one way as the Judge was coming up the other, so as they met in this area, is where the Serge, he was going very quickly, like he was in attack mode

almost, and put his hands up, "Woe, what is going on?" And he diffused it obviously because nobody had any issues after that and then his hands came down and the Judge visibly calmed down. Then he had a conversation with the Serge.

Q. Where did that conversation --

MS. TISHMAN: Can we just have the record, the witness was pointing to certain parts on the picture, if we can just put that into the record.

THE REFEREE: Sure.

A. It's probably around and about the end of the secretary's desk, in that central area.

Q. So if you're walking -- I will use words that you understand but others may not, but just for direction. If you are walking from the chief clerk's office?

A. Which is far into the hall, coming towards your Chambers.

Q. Coming towards my office, my inner office. The Sergeant had passed through the first doorway that is visible on that picture?

A. Yes.

Q. And he passed the copy machine?

A. Yes, I believe so.

Q. And after the copy machine is the court attorney's office?

A. Well, it's kind of right in front of this whole general area. There's like the desk, the edge of the desk, the middle area, and that's the attorney's office. It's like in this middle area.

Q. So the Judge and the Sergeant were between the desk and the credenza?

A. I didn't take measurements, but in that general vicinity, correct.

Q. I am not asking for measurements. That's fine.

A. It could have been a foot further this way or further that way, but in that general area.

Q. Past the copy machine though?

A. Probably this side of the --

Q. Closer to my office?

A. I think so, yes. The copy machine is literally at the doorway, so you could have been on top of the copy machine.

It's all right there.

Q. So you said that the situation got diffused and everybody calmed down fairly quickly?

A. Yes.

Q. And then, where did you go from there, do you recall?

A. I don't, because I opened the door so I could have gone back to my desk in the outer area.

Q. So you would have had to walk past Sergeant and myself?

A. Yes, or I think you went into your office, at that point.

Q. The Sergeant and I went into my office?

A. Correct.

Q. Then we were out of your sight?

A. Yes.

Q. And out of your auditory?

A. Yes.

JUDGE McGUIRE: I have nothing further of this witness.

THE REFEREE: Thank you. Any redirect?

MS. TISHMAN: Yes. I have one thing.

REDIRECT EXAMINATION

BY MS. TISHMAN:

Q. Ms. Rogers, on cross, do you recall Judge McGuire asking you about prior statements that you made on June 28, 2016?

A. Yes.

Q. And I am now going to direct your attention to your statements on that day, page 30, line 8, and do you recall being asked the following questions and giving the following answers, page 30, line 8:

Question: "Came back from what?"

Answer: "Came back from lunch, I am sorry, and it's 1:30 and I get back in the courtroom, and we had discussed before, he starts promptly. He starts promptly at 9:00, starts promptly at 1:30. So the cases were ready to come back in and I went to my desk. I was on time, ready to go except I had no computer. I had to restart my computer and he literally hovered over me: 'Well, why isn't this working? What's the matter? How come it's not started up?

What's going on here?'

'I can't make it work any faster. I don't know why it's not working. I was not here. I came back, this is --'

"And it's everybody who works on computers knows it has its own boot-up process and we boot up the entire program. The UCMS program has to boot up, and the FTR has to boot up. Everything has to start up. So they all have their own boot-up process."

Question: "And how long does this take?"

Answer: "5, 6, 7 minutes."

Question: "Go on."

Answer: "And so --"

Question: "So it was not like an hour?"

Answer: "Oh, no, no, no, 5, 6, 7 -- he was hovering over, like I said. I faced him, so his bench is here and he was literally like hanging over, 'Well, what's taking it so long. Why isn't it starting?' And it was just a constant barrage"

Question: "What was the volume of his voice?"

Answer: "Loud. Loud."

Question: "Was he yelling?"

Answer: "Yes, he was yelling. Correct"

Were you asked those questions and did you give those answers?

A. I did.

MS. TISHMAN: I have nothing further.

THE REFEREE: Ms. Rogers, you are excused. Thank you for your testimony.

THE WITNESS: Thank you.

THE REFEREE: I gather we are done for today?

MS. TISHMAN: Yes, we are.

THE REFEREE: What have we got tomorrow.

MS. TISHMAN: Tomorrow is Mary Grace Camille is testifying and Jeff Tollinger.

THE REFEREE: And is that going to be a full day?

MS. TISHMAN: I am basing this on what Judge McGuire has told us the length of his cross of the different

witnesses would be.

THE REFEREE: It's unfortunate, because as of now it's 3:25, so we are basically wasting an hour and a half today.

JUDGE McGUIRE: It's frustrating, but I think the problem is trying -- it's not casting aspersions on the Judge at all. It's difficult when you travel and the distance, to have someone come and not get to them. So we have been trying to have -- we have 3 witnesses coming up, I think, on Thursday.

MS. TISHMAN: Originally I had another witness scheduled for tomorrow, but Judge McGuire e-mailed me and told me he thought the length of his cross of Mary Grace Camille, that it did not make sense to bring that witness down, so I changed the schedule.

THE REFEREE: Well, we will do the best we can.

We will adjourn for the day and we will reconvene tomorrow morning at

10:00 a.m.

Thank you.

(Time noted: 3:30 p.m.)

EXHIBITS

Commission			ID	EV
I-3D and	E	Bench book		1046
VII-2C		Testimony from 7/1/16		1071

CERTIFICATION

I, MONIQUE CABRERA, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 13, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of June 2019.

Monique Cabrera

MONIQUE CABRERA

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding pursuant to Section 44, Subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

Judge of the County and Surrogates Court and Acting Judge of the Family Court and an Acting Justice of the Supreme Court Sullivan County.

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61 Broadway
New York, New York

May 14, 2019
10:00 a.m.

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

JUDGE MICHAEL F. MCGUIRE
Pro Se

Also Present:

MICHAEL MAISONET
Senior Court Clerk and FTR Operator

INDEX OF WITNESSES

For the Commission

	Direct	Cross
Mary Grace Conneely	1253	1287
	Redirect	Recross
	1359	1361
Edward J. Dolfinger	Direct	Cross
	1369	1390
	Redirect	Recross
	X	X

MR. MAISONET: We are on the record.

THE REFEREE: Good morning, everybody. Today is May 14, 2019, and this is the continued hearing In the Matter of Judge Michael F. McGuire.

Is the Commission ready to proceed?

MS. TISHMAN: Yes.

THE REFEREE: Would you call your next witness.

MS. TISHMAN: Yes, but before I do that I'm just going to add a document to -- for evidence and enter into the bench book.

Exhibit XI-40 has already been entered into evidence and it is the certified court file for *Dean v Boyes*. We had put it into the bench book and it's, of course, just the certification and not the whole court file.

It is in volume six of it and we had entered two documents that had to do with that court file. I am now putting another document in and that

will be XI-40C and volume six is where you can find this. And I'm asking that this also be marked into evidence.

THE REFEREE: So let me just make sure I'm doing this right here because I have XI -- exhibit charge XI.

MS. TISHMAN: XI-40 is the certification of *Dean v Boyes*.

THE REFEREE: 40?

MS. TISHMAN: Are you in volume six or volume five?

THE REFEREE: I'm in volume --

MS. TISHMAN: XI continues over two volumes. So it's volume six, XI-40 is the certification for the Sullivan County Supreme Court file in *Dean v Boyes*.

XI-40A and 40B already put into evidence are documents from that court file. I'm now adding XI-40C, which is another document from the certified court file.

THE REFEREE: Okay. Any objection?

JUDGE MCGUIRE: No objection.

THE REFEREE: So Exhibit XI-40C is admitted.

(Commission Exhibit XI-40C was marked in evidence, as indicated.)

MS. TISHMAN: Thank you.

THE REFEREE: Just give me a second to mark that, please.

Okay. You may proceed with your next witness.

MS. TISHMAN: The Commission calls Mary Grace Conneely.

THE REFEREE: Just so the record is a little clearer than it was, X-1 -- when Tishman says, "X1," she means Roman numeral 11.

(The witness entered the room.)

MS. PARTIDA: Witness entering.

THE REFEREE: Miss Conneely, good morning. My name is Mark Arisohn, I'm the referee in this matter.

MS. CONNEELY: Good morning.

THE REFEREE: And I've been asked to read to you an introductory statement that has some instructions for you.

MS. CONNEELY: All right, mm-hmm.

THE REFEREE: The court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed.

In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until a question is completed and answer each question with words, not a nod or a gesture.

Please refrain from creating excessive background noise, as it becomes amplified on the recording.

If you have any cell phones or electronic equipment, please turn them off.

MS. CONNEELY: I don't.

THE REFEREE: Please rise and

raise your right hand.

Do you swear or affirm under the penalties of perjury that the testimony you're about to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat and spell -- state and spell your name for the record.

THE WITNESS: Mary Grace Conneely -- C-O-N-N-E-E-L-Y.

THE REFEREE: You may proceed.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Miss Conneely.

A. Good morning.

Q. Are you currently employed?

A. No, I am not.

Q. Are you retired?

A. Yes, ma'am.

Q. When did you retire?

A. In December of 2016.

Q. Before you retired, where were you working?

A. I worked as a judicial law clerk for the Honorable Michael F. McGuire.

Q. How long did you work for Judge McGuire?

A. From January 2011 to my date of retirement, December 2016.

Q. As a law clerk for Judge McGuire, what were your responsibilities?

A. I conferenced. I drafted and wrote decisions. I drafted legal memoranda on issues of law. I handled daily issues that came up in the office.

Q. And when you say you conferenced, what do you mean by that?

A. Well, when attorneys came in, I would conference on legal matters for cases that we had pending before the Court.

Q. And where were these conferences held?

A. In a small conference/library area that we had within the Family Court complex that we sat.

Q. And the cases you conferenced, what Court were they from?

A. Well, for the first two years we

only did county court work. So we did Surrogates Court, criminal cases, Family Court work.

After two years, then we started doing Supreme Court work. So I did all of those.

Q. When you worked for Judge McGuire, who was his confidential secretary?

A. Wendy Weiner.

Q. Was she his secretary for the entire time that you worked for Judge McGuire?

A. No.

Q. And about what time -- do you remember when Wendy Weiner left as the confidential secretary for Judge McGuire?

A. You know, I can't say. Maybe 2015, I'm not really sure of the date.

Q. And after Miss Weiner, who was the Judge's confidential secretary?

A. Brittany Benton.

Q. And is Brittany Benton related to any other employee in Family Court?

A. Yes.

Q. And who is that?

A. She's the niece of Stacy Benton.

Q. Who is Stacy Benton?

A. She's the deputy clerk of Family Court.

Q. And prior to working for Judge McGuire, where did you work?

A. I was a judicial law clerk for several judges prior to that.

Q. When did you start working as a law clerk?

A. January of 1996 I started with Judge Kane.

Q. And that's K-A-N-E?

A. K-A-N-E, Anthony Kane.

Q. And after you retired and you left as Judge McGuire's law clerk, who replaced you?

A. Hannah Prall.

Q. And is that P-R-A-L-L?

A. P-R-A-L-L.

Q. Did Miss Prall has a relationship with any of the Family Court staff prior to becoming Judge McGuire's law clerk?

A. I think she was fairly friendly with the chief clerk of Family Court.

Q. Is that Christina Benson?

A. Yes.

Q. Now, I'm going to show you what is marked PH-5?

A. Mm-hmm.

Q. Also -- I'm sorry, PH-4. I meant PH-6. I'm sorry, if you can look at PH-5?

A. Yes.

Q. Do you see the room where you conferenced cases?

A. Yes, it is --

Q. If you can explain to us?

A. It's the first door on the right-hand-side, you see the stack of books slightly inside the door, that's the conference room.

Q. And can you see in this picture Judge McGuire's chambers?

A. Yes, if you look straight ahead from that door where the brass plaque is, that would be Judge McGuire's chambers.

Q. Can you see where your office is?

A. No, you cannot see that from here.

Q. If you can look at PH-6?

A. Yes.

Q. And what is that a picture of?

A. This is a picture of -- this the secretary's detective right immediately outside the courtroom and Judge McGuire's chambers.

Q. Could you see your office in picture PH-6?

A. My office is immediately to the right, that door that's ajar, underneath the clock.

Q. Is that the first door we see prior to the copy machine?

A. Yes, that's correct.

Q. And on the left of PH-6, the bottom left corner we see a desk, whose desk is that?

A. That is the desk for the secretary of Judge McGuire.

Q. When you worked for Judge McGuire, did you ever call him on his personal phone?

A. His personnel cell phone? His cell phone? Yes.

Q. And when you called him, did you

ever receive a voicemail message?
A. Yes.
Q. What was that message?
A. To the best of my recollection it said, "You have reached the Law Office of Michael F. McGuire and leave a message" or whatever the general greeting would be.
Q. And this was while Judge McGuire was a judge?
A. Yes.
Q. Did you ever discuss with Judge McGuire the law surrounding judicial contempt?
A. I could have. I did so much research and memoranda for the Judge that it could very well possibly be, but I can't tell you with certainty.
Q. Were you working for Judge McGuire when he presided over the *Dean v Boyes* matter?
A. Yes, I was.
Q. And what court was that case?
A. In Supreme Court.
Q. When was the Judge assigned that case?

A. Probably was quite soon after we assumed Supreme Court duties. So it would have to be two years after we were in office. So I would say it would have to be around -- I'm just guessing -- but probably around 2013, somewhere around there.

Q. And that was a Supreme Court case?

A. Yes, it was.

Q. And who represented *Dean* in that matter?

A. I believe Henri Shawn's office, if I'm not mistaken.

Q. And who represented *Boyes* in that matter?

A. I think it was John Janusas. I'm not sure. I think it might have been John Janusas, Brian Walk's office, I think.

Q. J-A-N-U-S-A-S?

A. Yes.

Q. And I'm going to show you Exhibit XI-45. And if you can look at this and see if it refreshes your recollection of who represented the parties?

A. Yes, it does.

Q. Who represented Mr. Dean?

A. John -- Mr. Dean was Shawn Law Offices. And John Janusas represented the Boyes.

Q. I'm now going to show you what is marked Commission Roman numeral 40A.

THE REFEREE: Roman numeral?

MS. TISHMAN: I'm sorry, Roman numeral XI-40A.

Q. Does this refresh your recollection? Read it to yourself and let me know when you're finished.

JUDGE MCGUIRE: Are you refreshing her recollection with that?

Q. Does this refresh your recollection when the case was assigned to Judge McGuire?

A. Yes.

Q. When was that?

A. Well, it was early 2013, somewhere. I don't know if it was exactly the February date -- the date the letter was dated, but near enough.

Q. And briefly, can you tell us what the case was about?

A. If I can recall correctly, the Deans -- it was a partition case. The Deans and the Boyes owned property and there was maple syruping done on it and I guess there was some family animosity. I'm not exactly sure what led up to the partition action, but it --

Q. When you say, "Partition action," what do you mean by that?

A. Well, they both were arguing about the property and they both wanted parcels of property, which I think they would inherit. I'm not exactly sure right now. To tell you the truth, I don't remember at all. I'd have to read the case, but it was all co-owned by them, I believe.

Q. So the case was about how to divide the property?

A. Right, that's correct.

Q. And prior to the case coming from Judge McGuire, do you know Shawn Boyes?

A. Professionally? Yes.

Q. And what type of work does Shawn Boyes do?

A. Both he and his partner, Boyes

and Torrens, they do construction work.

Q. Torrens is T-O-R-R-E-N-S?

A. Yes, that's correct.

Q. And what's the name of the firm?

A. Boyes and Torrens.

Q. Boy and Torrens Constructions?

A. Yes, I always referred to them as "Boyes and Torrens," but I'm sure it's more formal.

MS. TISHMAN: And for the record, Dean is D-E-A-N and Boyes is B-O-Y-E-S.

Q. Did you ever hire the construction company, Boyes and Torrens to do work on your residential home?

A. Yes, I did.

Q. How long did Shawn Boyes -- Boyes and Torrens work on your home?

A. I can't even tell you. I'm always doing construction work on my house.

They're worked on many projects. They did a bathroom renovation for me. And then they did a kitchen renovation for me, put on a porch, put my roof on, put windows in. I mean, I had them working on my house -- on and off, but for several years.

Q. While Judge McGuire was presiding over the *Dean v Boyes* case, was Boyes and Torrens Construction Company doing contracting work on your house?

A. I don't recall, but I'm sure they probably were because it looks to me -- if I can recall correctly, that was probably about the time I was doing my kitchen renovation, if I'm not mistaken.

Q. I'm going to show you what is marked Roman numeral XI-46 and if you can look -- if you can look through these documents and tell me when you've completed looking through them?

A. I'm finished.

Q. Do you recognize these documents?

A. Yes.

Q. What do you recognize them to be?

A. They are checks that -- from my husband and mine bank account, payments to Boyes and Torrens for construction work and it looks like it was the kitchen, so.

Q. And the first two pages of these documents?

A. Were proposals for the said work.

Q. And did you receive the proposals as part of the work that Boys and Torrens did for you on your residential house?

A. Yes.

Q. And are those checks from your joint account with your husband?

A. Are?

Q. Are the checks from your account with your husband?

A. Yes, yes, they are.

Q. And did you sign these checks?

A. Yes, I did.

MS. TISHMAN: I ask that these -- Commission Exhibit XI-46 be admitted into evidence.

JUDGE MCGUIRE: No objection.

THE REFEREE: Exhibit Roman numeral XI-46 is admitted.

(Commission Exhibit XI-46 was marked in evidence, as indicated.)

Q. Now, if we can look at the first page of Roman numeral XI-46?

A. Mm-hmm.

Q. Now, this proposal, this first one is dated, July 13, 2013, was Judge

McGuire presiding over the *Dean v Boyes* case at this time?

A. Well, apparently he was since we assumed the case, I believe, in February of 2013 and this was in July, so yes.

Q. And in the second proposal, which is dated, August 20, 2013, does this list work that was proposed to be done in your house?

A. Yes.

Q. And at this time, was Judge McGuire presiding over the *Dean v Boyes* matter?

A. I believe so. That case, if I'm not mistaken, went on for quite sometime.

Q. Now, if we can look at the checks that are here?

A. Mm-hmm.

Q. And if you can look at all the checks, there are six checks?

A. Mm-hmm.

Q. Are these checks paid to the order of Boyes and Torrens?

A. Yes, that's correct.

Q. And when you wrote these checks

and signed these checks, was the *Dean v Boyes* matter -- was Judge McGuire presiding over the *Dean v Boyes* matter?

A. I would say yes based on the paperwork in front of me.

Q. Now, you said the *Dean v Boyes* matter took a while?

A. Yes.

Q. And did Judge McGuire preside over it for a number of years?

A. I really can't say how long. I don't think we were working on it when I retired. So, I'm not exactly sure when the case ended.

Q. Did you ever speak to the Judge regarding the work that the Boyes were conducting on your house?

A. Yes.

Q. And did you specifically tell the judge that the Boyes Construction Company was working at your house at the time that Judge McGuire was presiding over the *Dean v Boyes* case?

A. Yes.

Q. And can you describe the

conversation that you had with the Judge?

A. I just told him that he was aware of the fact that Boyes and Torrens were doing construction work on my house and they had been doing work for me for a while.

Q. Did you tell Judge McGuire that Boyes and Dean -- that Boyes and Torrens Construction Company was currently doing work on your home?

A. Yes.

Q. How often did you have a conversation with the Judge about this?

A. Well, I mean, you know, it wasn't something that was discussed every day, it was just -- and then the Judge -- I mean, I told him about it and unless there was something else that would come up that would require me to address the situation again.

Q. When you told the judge that Boyes and Torrens Construction were currently working at your house, what was the Judge's response?

A. I believe he said he was disclosing or would disclose it to the parties and did so.

Q. Were you present when the Judge made a disclosure to the parties about the --

A. No.

Q. If I can finish the question.

A. I'm sorry, I apologize.

Q. Were you present when the Judge made disclosure to the parties about the work that was being done by Boyes and Torrens on your house?

A. No.

Q. Did you ever preside over a conference with the parties in the Boyes and Deans matter?

A. Yes.

Q. I'm going to show you what is marked Roman numeral XI-40C. If you can look at this, please.

A. Yes.

Q. When you finish reviewing it, please let me know?

A. Yes, I'm finished.

Q. And this is a February 14, 2013, letter from Wendy Weiner to the parties about -- pertaining to the *Deans v Boyes*

case?

A. Yes, that's correct.

Q. And does this letter talk about a conference that they will be having in front of you?

A. Yes.

Q. And did you have that conference?

A. I assume so, yes.

Q. Did you ever go on to the site, the land itself that was part of the disagreement, the property, did you ever go on a site visit with the parties?

A. Yes, I did.

Q. And who was present during that site visit?

A. If I can recall correctly, the Deans were there, the Boyes were there and Tom Cradan, who is an attorney with Henri Shawn's office was there, and myself.

MS. TISHMAN: C-R-A-D-A-N.

Q. When you went on the site visit, did you speak to the parties?

A. We -- both Tom Cradan and myself surveyed the land with the parties and just to see exactly what their issue was with

respect to dividing the property.
Q. And was Shawn Boyes there?
A. Yes, he was.
Q. And did you have conversations with Shawn Boyes during the site visit?
A. By himself?
Q. Yeah?
A. Well, I had conversations with all of them. Tom Cradan and I were together the entire time, so we had conversations with both parties.
Q. Were you asking both parties and both sides questions about the property?
A. Yes, I was.
Q. Now, did the Judge ever instruct you not to participate in the site visit?
A. No.
Q. Did the Judge ever instruct you not to participate in any conferences with the parties?
A. No.
Q. Now, did the Judge issue a decision about the division of the property?
A. Yes.
Q. I'm going to show you what's

marked Roman numeral XI-40B.

A. Thank you.

Q. If you can take a look at this and let me know when you're finished?

A. I'm finished.

Q. Was this decision issued by the Judge?

A. Yes, it was.

Q. And what's -- is the date of this decision April 24, 2014?

A. Yes.

Q. And were the Boyes and Torrens Construction Company still doing work on your house at that time?

A. I couldn't tell you offhand. If you showed me something -- I'm sure they probably were working on something, but I can't tell you exactly.

Q. If you could look again to Commission Exhibit Roman numeral XI-46 and if you could look at the last page, the last check?

A. Yes.

Q. And the date of that check was June 25, 2014?

A. 2014, yes.

Q. So does that refresh your memory about whether the Boyes and Torrens Construction Company was still working on your house at the time that the decision was issued, Exhibit Roman numeral XI-40B?

A. I believe so. They came back to do some rectifying work that needed to be done.

Q. Now, after the decision was issued, did you hear from the Deans' attorney?

A. Yes, I did.

Q. Can you tell us what happened?

A. I believe -- I recall very clearly, he called my office and the Judge was sitting in chambers with me.

Q. When you say, "He called your office," who are you referring to?

A. Henri Shawn.

MS. TISHMAN: And it's H-E-N-R-I -- Shawn -- S-H-A-W-N.

Q. And he called on the telephone?

A. Yes, that's correct.

Q. And where were you?

A. I was sitting in my office and having a conversation with the Judge at the time on another case, I believe.

Q. So the Judge was sitting in your office also?

A. Yes.

Q. And describe what happened?

A. Mr. Shawn just called and said -- you know, he was concerned because he found out or learned that I was -- I had Shawn and -- Shawn Boyes and his partner, Keith Torrens, working for me.

And I said, "Well, I know that." And I said, "I had told the Judge that." And I said the Judge was right there. In fact, I think -- I believe I put him on speakerphone. I'm not positive.

But I said, "The Judge is sitting right here and the Judge was aware of the work situation and my relationship -- my work relationship with them doing construction."

Q. And it was discussed about that the Boyes and Torrens were currently doing work for you.

A. Well, if they were at that time, yes. As I said, I'm sure they were working.

Q. And what did the Judge say during the conversation that you were having with Mr. Shawn?

A. The Judge didn't say anything. He just concurrently was nodding his head as if to agree with me that he had told the parties that Boyes and Torrens had done work for me.

Q. And that they were currently doing work for you?

A. I believe so, yes.

Q. Now I'm going to show you what is marked Commission Exhibit Roman Numeral XI-41, 42 and 43.

A. Thank you.

Yes.

Q. Is Commission Exhibit XI-41, 42, 43 parts of the same motion?

A. It appears to be, yes.

Q. Who made this motion?

A. Henri Shawn from -- who are the plaintiff's attorneys.

Q. So they represented the Deans?

A. Yes.

Q. And what is the motion requesting? What's it for?

A. They're asking to leave for -- to reargue the April 24, 2014 decision that we did and vacating that decision and either disqualifying the Judge or recusing him based on the appearance of impropriety.

Q. And was part of that request based on the fact that Boyes and Torrens were doing work at your house?

A. Uh?

Q. Well, if we can look at Roman numeral number XI-43, page 8, paragraph 11 and 12?

A. Yes, I see that.

Q. Was that one of the allegations?

A. Yes, it was.

Q. After the motion came into the chambers, you received the motion, did there come a time that you spoke to the Judge about the motion?

A. Oh, I'm sure I did. We spoke about all the motions.

Q. Can you describe the conversation

you had with the Judge about this motion?

A. No. I mean, I don't recall. I couldn't.

Q. I'm going to show you what I will mark for identification as Commission Exhibit Roman numeral XI-55.

(Commission Exhibit XI-55 was marked for identification.)

MS. TISHMAN: I just want to make sure that number hasn't been used already.

JUDGE MCGUIRE: Is that a new document that's not in the book?

MS. TISHMAN: Yes, I'm refreshing the witness' memory.

JUDGE MCGUIRE: I don't know what it is, can you explain what it is?

MR. LEVINE: Yes.

MS. TISHMAN: Do you need a copy?

JUDGE MCGUIRE: Oh, I'm got it.

Q. Could you go to page 146 of this transcript?

JUDGE MCGUIRE: Which transcript? Is it her deposition transcript?

MR. LEVINE: Yeah.

JUDGE MCGUIRE: Okay.

Q. I'm going to show you what is marked for identification, Commission Exhibit Roman numeral XI-55 and if you could look on page 146 and read that to yourself, starting on line five.

A. Yes, I read it.

Q. Does this refresh your recollection about whether you had a conversation with the Judge about Boyes and Torrens doing work on your residential property after the motion came in to have the Judge disqualified?

A. I probably did speak to him about it, but -- I'm sure I did, if that's what I said then, you know.

Q. So does this refresh your recollection?

A. Yes, mm-hmm.

Q. Now, what was the Judge's response when you spoke to him?

A. I can't -- you know, it would be unfair for me to tell you what his response was because to tell you the truth, I don't remember. I mean, I'm sure -- I can't say

what his response was because I really don't remember.

I do remember though that we talked -- if I might add, we did talk about the decision because we both decided to send the decision up to a floating law clerk at the time to draft the decision so that there would be no hint of impropriety and be -- if something like that came up.

But we felt that it was best that a fresh eye take a look at the paperwork and do the decision.

THE REFEREE: Which decision are you talking about?

THE WITNESS: The decision and order that they were asking to --

THE REFEREE: On this motion?

THE WITNESS: No, not on this motion. The original decision that they were seeking leave to reargue, the April 24th decision.

Q. Was that decision, Commission Exhibit XI-40B, if you look at that?

A. Yes, that's correct.

Q. Now, had you spoken to -- when

you spoke to the Judge about the fact that the Boyes and Torrens Construction Company was continuing to do work on your house during the course of the *Deans v Boyes* case, what was the judge's reaction each time you spoke to him?

A. Basically he said -- he told me that he had advised them of same and secondly, that there were so few construction companies in Sullivan County that, I mean, there aren't many people to use in Sullivan County if you know my county, so.

Q. But you said that the Judge advised you that he had told the parties -- that the Boyes and Torrens Construction Company was continuing to do work on your house?

A. Yes, was working on my home.

Q. He told you that he had advised them?

A. Yes.

Q. Did the Judge issue a decision on the motion that we just looked at, Commission Exhibit XI-41, 42, 43 -- well,

let me do this --

A. I'm sure we did.

Q. I'm going to show you Commission Exhibit XI-44. This is an October 23, 2014, decision?

A. Yes.

Q. And is this the decision on the motion, among other things, requesting the Judge be disqualified or recuse himself?

A. Yes, that's correct.

Q. And what was the decision?

A. Well, we essentially denied it and we set forth reasons for it.

Q. And the Judge signed that decision?

A. Yes.

Q. Now, drawing your attention -- before you said that Wendy Weiner was the Judge's secretary?

A. Yes, that's correct.

Q. While you were working for Judge McGuire?

A. Yes, that's correct.

Q. And I want to draw your attention to January 14, 2015, there was an incident

between the Judge and Miss Weiner, were you in the office when that incident occurred?

A. No, I was not.

Q. And you -- why weren't you there?

A. I believe I had an eye doctor's appointment, which I used to try to make as early as possible so that I can go back into the office.

Q. Can you describe the relationship between the Judge and Miss Weiner after the January 14, 2015, incident?

A. It was a bit tense.

Q. And what was the communication like between the two of them?

A. I would say that they would communicate out of necessity and I don't have any other way of explaining it.

Q. Had the Judge stopped talking to Miss Weiner?

A. Well, I don't think he stopped talking to her.

Q. I'm going to --

A. He might have. You know, I have to be honest, when I'm in my office and I was working, I really didn't spend much time

-- he might have stopped talking to her, but I don't know.

Q. I am going to ask you to look at what is marked Commission Exhibit XI-55 and if you can look at page 95?

A. Yes.

Q. And read from 95, line -- about 22 to 97, line 21?

A. Okay, I see that.

Q. If you can read that whole thing, please.

A. Out loud you mean?

Q. No, to yourself.

A. All right, I read it.

Q. You've read to page 97?

A. Oh, to 97? I'm sorry.

Yes.

Q. Does that refresh your recollection about the relationship between the Judge and Miss Weiner after the January 14, 2015, incident?

A. Yes.

Q. Can you tell us what the relationship was like between the Judge and Miss Weiner?

A. It was basically very -- it was just very formal and he spoke to her out of necessity and that was basically -- you know, I mean, it was -- you know, I don't know how best to describe it. They didn't really converse with each other much after that incident.

Q. Was that different than the way the Judge and Miss Weiner conversed prior to the January 14, 2015, incident?

A. Yes.

Q. Did Zachary Kelson ever conference Supreme Court cases with you?

A. Yes.

Q. And were those conferences done in the library --

A. Yes.

Q. -- that we talked about?

A. Yes.

Q. And in any of these cases, did the Judge ask that you inform the parties about the nature of his relationship with Mr. Kelson?

A. No.

Q. Did the Judge ever ask you to

inform -- did Mr. Kelson ever -- did you ever conference cases with Mr. Kelson on other matters besides Supreme Court matters?

A. I may have. You know, he covered -- I think he covered Surrogates Court and some others. So, I have to go through my notes, but I'm sure I probably had him on other matters besides Supreme.

Q. On any cases where you conferenced a matter with Mr. Kelson, did the Judge ask you to inform the parties of his relationship with Mr. Kelson?

A. No.

Q. Has the Judge ever asked that certain lawyers not be assigned -- that he not be assigned cases for certain lawyers representing a party?

A. He may have, but -- you know, I can't recall right now. He might have because of some kind of conflict, but -- you know, I can't name people.

Q. Did the Judge ever ask you tell a court clerk, either Supreme or Family Court, not to assign him cases where Mr. Kelson was representing a party?

A. No.

Q. Did the Judge ever tell you to send cases back to the court clerk's office if Mr. Kelson represented one of the parties?

A. No, I don't recall.

MS. TISHMAN: I have no further questions for this witness.

THE REFEREE: I'd just like to clear something up.

Regarding the *Dean v Boyes* matter?

THE WITNESS: Yes.

THE REFEREE: I think you testified that on one occasion you had sent or a decision that was supposed to be made was sent to another clerk?

THE WITNESS: The final decision in this partition action.

MR. REFEREE: So there were several decisions made in this case, correct?

THE WITNESS: Yes.

THE REFEREE: Was that the only decision that was sent to another

clerk?

THE WITNESS: Yes, the final decision was sent to another clerk, to the floating law clerk.

THE REFEREE: Okay. You may cross-examine.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Good morning.

A. Good morning.

Q. So what year did you graduate law school?

A. I graduated in 1992, June of 1992.

Q. And you took the bar in July of '92?

A. That's correct.

Q. And you would have then been admitted in November roughly?

A. No, I was admitted the following June, of 1993, June of 1993.

Q. So after being admitted, where were you working?

A. I worked for three years for Ingber and Lagarenne, which it was

originally Ingber and Lagarenne and then it turned out to be Jack Ingber's office since the partners split.

Q. And you worked there doing what type of work?

A. General practice.

Q. And trial work?

A. No, no trial work.

Q. So transactional work primarily?

A. Yes.

Q. And then you left then and went to work for Judge Kane?

A. That's correct.

Q. So you worked for Judge Kane, you said you started in '96?

A. Yes, that's correct.

Q. And you stayed with Judge Kane until?

A. I think it was January of 2003, if I'm not mistaken.

Q. By that time he was now an Associate Justice of the Appellate Division?

A. That's correct.

Q. And then you left the court system for a brief while and then returned

to work for Judge Clemente?
A. Yes, that's correct.
Q. And you worked for Judge Clemente during what years?
A. It would have to be I think August of 2003 to his retirement in December of -- I want to say -- 2005, I believe. I think it was 2005.
MS. TISHMAN: And C-L-E-M-E-N-T-E. Kane I believe you already had -- K-A-N-E.
Q. And then after Judge Clemente retired, you said around 2005, where did your career take you next?
A. Judge Clemente had asked Judge Sackett if he would like to come up to Sullivan County and Judge Sackett -- Robert Sackett did and asked me to stay on with him.
Q. So you were there with Judge Sackett from?
A. 2006, I believe he started, through -- I was there through 2010.
Q. December of 2010?
A. Yes, that's correct.

Q. And then when you left in December of 2010, that's when you came to work for Judge McGuire?

A. Yes, that's correct.

Q. Now, prior -- prior to -- strike that.

At some point in the Fall of 2010, did you advise Judge Sackett that you were coming to come work for Judge McGuire?

A. Yes, I did.

Q. Prior to you advising him of that, were you aware that Judge Sackett's term in Sullivan County was going to be ended?

A. It wasn't going to be ending. He wanted to go back down to the Bronx, so he -- his wife didn't particularly like Sullivan County and they were going to go down to the Bronx. So, I -- he asked me if I would be interested in going down to the Bronx and I said no.

Q. So you were aware when you made the decision to go to work for Judge McGuire that Judge Sackett was going back to the Bronx?

A. At some point, yes.

Q. So at the time you decided to work for Judge McGuire you were aware of that already?

A. Well, he hadn't said anything definitive to me, but I was pretty sure -- I mean, he was leaning in that direction. His wife hated it up there in Sullivan County, so. And he was only going to stay another couple of months, so.

Q. When you worked for Judge Kane, was it uncommon for Judge Kane to ask you to do some personal errands for him?

A. No, it wasn't uncommon.

Q. What types of things would Judge Kane have you do?

MR. LEVINE: Objection.

THE REFEREE: What's the relevance of this?

JUDGE MCGUIRE: The relevance is subject to connection, your Honor.

THE REFEREE: Are you representing that it will be connected and it is relevant?

JUDGE MCGUIRE: Absolutely. As

an officer of the court I'm telling you that it absolutely will be connected.

THE REFEREE: Overruled.

A. Sometimes he would ask me if I was going to the dry cleaner, would I pick up his dry cleaning, things like that.

Q. Walk his dog?

A. Not walk his dog, no. He left his dog in my office though and I had to take the dog to the Brockford Kennel, I think.

Q. So you had to bring the dog to the kennel?

A. Right.

Q. Do you know Ann Kazansky?

A. Yes, I do.

Q. That's K-A-Z-A-N-S-K-I?

A. S-K-Y.

Q. S-K-Y. How do you know Miss Kazansky?

A. Well, she worked -- first of all, she worked in Ingber and Lagarenne's office for Lawrence Lagarenne as a legal secretary when I was there.

And then she was hired by Judge

Clemente to be his secretary before I even started working for him.

Q. So you worked with her both at Mr. Lagarenne's office as well as with Judge Clemente?

A. Yes. Oh, and in Judge Sackett, I'm sorry, she continued on with Judge Sackett.

Q. And then Sarah Kells?

A. Was a secretary for Judge Sackett. She started -- she was hired when Judge -- when Ann Kazansky left the office.

Q. So could you describe for the Court, please, how Supreme Court matters are handled in Sullivan County?

A. Well, the judge's are assigned a caseload and we put them on the docket and we bring them in for -- unless we've gotten them midway through their discovery or whatever, you know, wherever they were at in litigation, we would put them on our docket and our calendar and bring them in for a preliminary conference and see whether we can resolve it and see what the issues were.

And then we would just continue

to bring them in, you know, for standards and goals. There would be motions due, so we would do motions on them. But that's basically until it went to trial and then it would be assigned to a trial judge to handle the trial.

Q. So prior to trial in a typical case, not one where preliminary relief was required, prior to trial, how much, if any, contact would the attorneys or litigants have with the judge in the Supreme Court matter?

A. Well, it depends. Sometimes a lot, sometimes not so much. Some judges like to conference their own cases. Sometimes there would be so many cases that if there was an over lapse, the law clerks would conference them and the judges would conference them. And some judges don't particularly like to conference at all or aren't available, so the law clerks conference in a majority of the cases.

Q. So prior to coming to work for Judge McGuire, you worked for Judge Clemente?

A. Yes.

Q. And he was sitting only in Supreme Court?

A. Yes, that's correct.

Q. And you worked for Judge Sackett?

A. Yes.

Q. And he sat only in Supreme Court?

A. Yes, that's correct.

Q. And you worked for Judge Kane?

A. Yes.

Q. And he worked only in Supreme Court?

A. Supreme and then I worked for him for six months at the Appellate Division.

Q. Correct. Correct. Thank you.

Now, and then when you came to work for Judge McGuire, Judge McGuire had Family Court?

A. Yes.

Q. And did he also have Surrogates Court?

A. Yes, that's correct.

Q. And did he also have County Criminal Court?

A. Yes, that's correct.

Q. So would it be accurate to say that Judge McGuire spent more hours on the bench than, say, your other experiences with judges?

A. Yes, I would say so. Yes, that's correct.

Q. So with respect to Supreme Court cases before Judge McGuire, how were they handled pretrial?

A. Pretty much the same that I had been handling them with the other judges, we would either conference -- sometimes Judge McGuire would conference, but most times I would conference the Supreme Court cases.

Q. Would it be accurate to say that it was much more frequent that you conferenced than that Judge McGuire did?

A. With Supreme Court cases?

Q. With Supreme Court cases?

A. Yes.

Q. And that, being familiar with the chambers that we had, that was partly a function of the varied load that Judge McGuire had?

A. Yes, that's correct.

Q. You said a few minutes ago that when a case is trial ready -- as of the time you retired, when a case was trial ready, it sometimes or often -- I'm going to ask you to quantify it, would go to a different judge for trial?

A. Yes.

Q. How would that work?

A. Well, we have an IAS system and in Sullivan, I don't know if it's the same in other districts, but we had trial terms. So, no matter of the case was ours or not ours, if the trial date fell outside of our trial term and fell within the trial term of another judge, then that judge would then do the trial for that particular case.

Q. So you were with Judge McGuire for about three years of the time that he has Supreme Court work?

A. Yes, I'd say approximately from 2013 to 2016.

Q. Right.

A. Right.

Q. Do you specifically recall any Supreme Court case that Judge McGuire tried

during that time?

A. Specific? No, but I'm sure Judge McGuire tried several Supreme Court cases. I would have to look at the case names to see whether or not there was a trial during that time period. I'm sure there were, but.

Q. When you say you're sure there were, do you remember what kinds of cases they were?

A. We just got the gamut of cases. There were personal injury, there were property cases. There were cases involving real estate.

Q. But can you specifically remember, even without a name, a case that went to trial where Judge McGuire presided over the trial?

A. I believe it might have been the Woodstone case that went to trial, if I'm not mistaken, Woodstone Development Corporation. I know that rings a bell with me because we did a lot of work on that.

It's been a while. It's been several years and I can't recall off the top of my head.

Q. And that was a case that involved an easement?

A. Yes, that's correct, in a gated community.

Q. In a gated community.

Now, Mr. Kelson didn't represent either of the parties in that case?

A. No, no.

Q. And then do you recall a trial involving the horsemen?

A. Yes. Yes. The Monticello Raceway, yes, that was another trial.

Q. Do you recall who represented?

A. One of the attorneys I believe was Marvin Newberg. I don't recall now. I would have to --

Q. Do you recall whether or not Mr. Kelson represented anyone in that case?

A. No. No, I don't.

Q. Now, Miss Weiner was the Judge's secretary during most of the time that you were there?

A. Yes, that's correct.

Q. She was there until Spring of 2015?

A. Yes.

Q. Do you recall speaking to the Judge about concerns you had with respect to her proficiency?

A. Yes, I did.

Q. With respect to what areas?

A. She used to leave her desk quite often without letting us know where she was and she just wasn't very good at filing things and keeping things in order.

Q. What about her writing skills?

A. Her writing skills were very poor. I used to wind up writing most of the correspondence for her.

Q. Even simple form letters?

A. Yes, that's correct.

Q. And do you recall advising the Judge that she was receiving gifts from law firms?

A. I might have if she had mentioned it to me, but I may have.

Q. Flower baskets?

A. I may have. If she had mentioned something to me, I may have.

THE REFEREE: Do you recall?

THE WITNESS: No, it's been so long ago that --

Q. Okay. Do you need a break?

A. No, I'm fine.

THE REFEREE: We will take a break around 11:30.

JUDGE MCGUIRE: Well, I heard her sighing.

THE WITNESS: No, I was in the car this morning for a long time, so.

THE REFEREE: What's happening here.

MR. LEVINE: This is a document that seems to be a performance review of Miss Weiner, so we're just unclear why it's being presented to this witness, so we are going to object to it.

THE REFEREE: I have no idea.

MR. LEVINE: Neither do we.

THE REFEREE: So let's find out.

JUDGE MCGUIRE: I want to show this to the witness.

THE REFEREE: What is it marked?

JUDGE MCGUIRE: I did.

THE REFEREE: What is it?

JUDGE MCGUIRE: It's Respondent's C.

THE REFEREE: For identification?

JUDGE MCGUIRE: For identification.

(Respondent Exhibit C was marked for identification.)

THE REFEREE: Is there a question?

Q. I'm showing you what's been marked Respondent's C for identification, I just want you to take a look at that document.

MR. LEVINE: What's the reason for him showing the document?

THE REFEREE: Well, let's find out. It's not in evidence. He's not going to ask her to read it. Lets's find out.

JUDGE MCGUIRE: Correct, she's reading it to herself.

THE REFEREE: And then read it into evidence?

JUDGE MCGUIRE: No, I will not,

but I believe this may already be in evidence.

MS. TISHMAN: No, it's not.

JUDGE MCGUIRE: Okay.

Q. Had you seen that document prior to today?

A. I very well may have.

Q. Do you recall the Judge sharing it with you for comment?

A. The Judge very well may have, but you know, as I said, I can't say with certainty either yes or no. But if I was his confidant, I'm sure it was probably shown to me at some point.

THE REFEREE: So is that something you recall or are you surmising?

THE WITNESS: No, I don't recall.

THE REFEREE: Look, you know better than that. So, I want to know what you know, what you heard, what you saw, what you said, what you might have heard other people say, especially Judge McGuire, but don't speculate as to what may have occurred or must have

occurred or could have occurred.

THE WITNESS: I don't specifically remember seeing that document.

THE REFEREE: Then that's what your testimony is.

THE WITNESS: Okay.

Q. When you were in your office in Judge McGuire's chambers, could you often hear proceedings in Family Court?

A. Yes.

Q. Did you often hear Judge McGuire's voice elevated?

A. Yes.

Q. Did you ever speak to Judge McGuire about that conduct?

A. No, I did not.

Q. Were you ever concerned about that conduct?

A. In what way concerned? I mean, I used to close my door many times because of the loudness, but.

Q. Well, when you came to work for Judge McGuire you had been a clerk for about 14 years?

A. Mm-hmm.

Q. And you had clerked at the Appellate Division even?

A. Yes, that's correct.

Q. So Judge McGuire had no experience as a judge when he started?

A. That's correct.

Q. But you knew him as an attorney?

A. Yes, that's correct.

Q. Did you ever have concerns about Judge McGuire's behavior in the courtroom?

A. To the extent that his vice was raised at times, yes, but no, I never said anything to him about it.

Q. And you were Judge McGuire's attorney, essentially?

A. Yes, that's correct.

Q. And you had known Judge McGuire for a number of years?

A. Yes, that's correct.

Q. When did you first meet Judge McGuire?

A. It had to be -- I don't recall, but I had several years prior. I don't exactly know what date it was, but I believe

it was when you were working at the college, Sullivan County Community College.

Q. Anybody else you know work at the college at that time?

A. Yes, my husband.

Q. He was the dean of students, correct?

A. Yes, that's correct.

Q. And Judge McGuire at that time was the athletic director at the college?

A. Yes, I believe he had just been hired as the athletic director.

Q. And at that time, 1989 to 1992, you were where?

A. I was at law school.

Q. You were in Syracuse?

A. Yes, that's correct.

Q. All right. And then is it fair to say as Judge McGuire became an attorney, we had a collegial relationship?

A. Yes, we did.

Q. Probably Judge McGuire spoke to your husband more than you, would you agree with that?

A. I would say so, yes.

Q. But we had a collegial relationship?

A. Yes.

Q. And I would stop in to chambers where you were working just to say hello from time to time?

A. Yes, that's correct.

Q. And do you recall having a conversation with Judge McGuire when he was considering running for Judge Ledina's seat?

A. Yes.

Q. And do you recall that you encouraged him to run for that seat?

A. Yes, I did.

Q. And, in fact, a year earlier you had encouraged him to run for district attorney?

A. Yes, I thought he would be a good candidate.

Q. And, in fact, and your husband were actively involved in my announcement?

A. Yes, we were there, we were present at your announcement.

Q. So having this -- now, after Judge McGuire was elected in November of

2010, do you recall him coming to speak with you in Judge Sackett's chambers?

A. Yes, I do.

Q. And do you recall Judge McGuire asking you to be his court attorney?

A. Yes, I do.

Q. Do you recall that Judge McGuire was anxious to have you come onboard?

MR. LEVINE: Objection.

THE COURT: Sustained.

Q. Do you recall that your experience was a topic that we had discussed?

A. Yes.

Q. Do you know Andrea Rogers?

A. Yes, I know of her.

Q. And as of the time you retired in December of 2016, do you know where she was employed?

A. She was employed with Family Court.

Q. What, if any, role did she play in Judge McGuire's courtroom early on in Judge McGuire's tenure in Family Court?

A. If I can recall correctly, she

was one of the clerks for the court.

Q. Court assistant?

A. Right.

Q. Did you ever hear Judge McGuire yell at Andrea Rogers?

A. No.

Q. Now, I want to focus on the time period 2013 until the time that you retired in 2016?

A. Yes.

Q. Would it be fair to say that the majority of your time was spent on Supreme Court matters?

A. I would say probably 50 percent Supreme Court and then 50 percent other matters; Family Court, Criminal, Surrogates.

Q. So --

A. Or maybe 60/40, somewhere around there, but I think that was a fair enough split.

Q. So Supreme Court was alone at least as demanding as the other three court together?

A. Yes.

Q. And you worked for Judge McGuire

for five years?
A. Yes.
Q. January 2011 until?
A. 2016.
Q. Sic years?
A. Almost six years, it would be six years in January.
Q. And could you describe during that time the way the office, the chambers were set up -- strike that.
Is it fair to say that Judge McGuire spent a considerable amount of time on the bench?
A. Yes.
Q. Or even out of the building in different courthouses?
A. Yes, that's correct.
Q. So is it also fair to say that you worked very closely with Miss Weiner?
A. Yes, I did.
Q. And if you can quantify it, can we agree that you probably worked with her more than the Judge did?
A. I probably worked with her on certain projects more so than Judge McGuire

did.

Q. So, do you know whether Judge McGuire had her doing drafting for the Judge's letters?

A. Yes.

Q. Decisions?

A. No, not decisions.

Q. Decisions were done how?

A. I would draft decisions for the Judge's review and then we would discuss them and change whatever needed to be changed. And that's how decisions were drafted.

Q. Did the Judge ever draft decisions himself?

A. Yes.

Q. And do you know whether they were given to Miss Weiner to type or would the Judge do that himself?

A. Well, the Judge usually did most of his work on his computer. I don't know if he gave anything to Miss Weiner.

Q. During the time that you were the Judge's law clerk for those six years, did you ever receive complaints from litigants?

A. With respect to?

Q. The Judge's conduct?

A. I would hear comments, but not complaints, not formal complaints.

Q. Did you ever discuss those comments with the Judge?

A. No.

Q. And you were the Judge's attorney?

MR. LEVINE: Objection, not the Judge's attorney.

THE REFEREE: We understand what he means, courtroom attorney.

JUDGE MCGUIRE: Thank you.

A. If there was a problem, I would discuss it with you. But otherwise, if it was just mere somebody complaining, then no, I didn't think it was --

Q. So based on your experience that you had in the court system, there was nothing that rose to the level that you felt the Judge needed to be --

A. No. And if there were, I would have advised you as such.

Q. What about attorneys, you had

collegial relationships with attorneys, correct?

A. Yes.

Q. Several of the attorneys?

A. Mm-hmm.

Q. Did any of the attorneys ever voice complaints about Judge McGuire's conduct in the courtroom?

A. No, not that I recall.

Q. I want to take you to the time period in February of 2013, you were the Judge's court attorney at this time?

A. Yes, that's correct.

Q. Do you remember an incident involving R[redacted] R[redacted] in Family Court?

A. No, I don't.

Q. Do you remember an incident in which the Judge was concerned that a litigant had threatened his son?

A. Yes.

Q. And you were not in the courtroom for that?

A. No.

Q. Do you recall engaging in any discussions with any court officers about

that?

MR. LEVINE: Objection to the hearsay.

JUDGE MCGUIRE: I'm just asking did she have discussions, I'm not asking what was said.

THE REFEREE: Overruled.

A. I remember you being at my office door and one of the court officers was there and you explained to them about what had occurred.

Q. Do you remember which court officer -- well, let me strike that.

Do you remember if it was one of the court officer administrators, either the Lieutenant or the Sergeant?

A. I believe -- I think it might have been Lieutenant McCabe.

Q. Do you remember Sergeant Olivieri came down to talk about that incident?

A. I don't remember.

JUDGE MCGUIRE: XI-55 is the transcript of her deposition?

MS. PARTIDA: I believe she has that.

Q. I'm going to ask that you direct your attention to page 49?

A. Yes.

Q. Starting at page -- excuse me, page 49, starting at line 17?

A. Yes.

Q. And continue on to page 50, to line 10?

A. Mm-hmm, all right.

Q. Does that refresh your recollection?

A. Yes.

Q. Who was it that came down to speak?

A. It was obviously not McCabe, it was Sergeant Olivieri.

Q. And that was in December of 2013, correct?

A. I believe so.

Q. Do you remember Sergeant Olivieri talking in or just outside your office?

A. Yes.

Q. How would you describe Judge McGuire's demeanor when they were having that discussion?

A. I remember Judge McGuire was very concerned because he had felt that the litigant had possibly threatened his son.

Q. And do you recall what, if any, information was being gathered?

A. I think names and addresses of Judge McGuire's family members and their present locations.

Q. Did Judge McGuire -- strike that.

Did Judge McGuire frequently just not show up at work?

A. No.

Q. How would you describe Judge McGuire's involvement in the courthouse?

A. He was a workaholic.

Q. So your hours were from 8:00 until 4:00?

A. 4:00, 4:30, 5:00, you know, whenever -- if something needed -- I stated later.

Q. Whatever work needed to be done --

A. Yes.

Q. -- you did?

A. Yes.

Q. In fact, you even brought work home from time to time?

A. Yes, that's correct.

Q. Did Judge McGuire ever direct you to work on a weekend?

A. No.

Q. Did Judge McGuire ever direct you to work into the evening?

A. No, not unless something had to be done for the next day or some decision what had to be done.

Q. And that was a decision that you made as a professional?

A. Sure, yes.

Q. Because that's what your work ethic was?

A. Yes.

Q. When you arrived at 8:00, was Judge McGuire frequently there before you arrived?

A. Yes, most times he was there.

Q. And when you would leave at 4:00, was he generally still there when you left?

A. Yes, he was.

Q. Now, Miss Tishman asked you about

Judge McGuire's interaction with Wendy post 2015?

A. Yes.

Q. And you said that it was tense, chilled?

A. Yes, that's correct.

Q. Between January of 2015 and April 1st of 2015, did you at any time become concerned that the work of chambers was not being done?

A. You mean the secretarial work for the chambers?

Q. The amalgam of the entire chambers; your work, the judge's work, the secretary's work?

A. I mean, outside of some of the issues with Wendy and her work, no, I had no issue with the job being done.

Q. But there continued to be some issues with Wendy's work?

A. Yes.

Q. But cases were being processed?

A. Yes.

Q. Decisions were going out?

A. Yes.

Q. Calendars were being prepared?

A. Yes.

Q. What was missing was any informal social interaction?

A. Yes, I would say so.

Q. Prior to January of 2015, was it typical for Judge McGuire to communicate by email?

A. Yes.

Q. Even though our offices literally touched each other?

A. Yes, that's correct.

Q. And was it typical for Judge McGuire to send emails at hours other than between 8:00 and 4:00?

A. Yes.

Q. In fact, was it typical that Judge McGuire would plan his day early in the day?

A. Yes, that's correct.

Q. And he would often respond to your emails early in the morning?

A. Yes.

Q. Or late at night?

A. Yes.

Q. And when a decision was drafted, what, if anything, would you do with that decision draft?

A. Well, I would send it by email to the Judge for his review and then if there was any issue, he would send me back a responsive email or tell me that it was fine to go out. And then I would send it by email to Wendy and Wendy would then send it out.

Q. So our desks collectively were within 30 feet of each other?

A. Yes.

Q. And we continued to communicate by email?

A. Yes, that's correct.

Q. And did that ever cause you discomfort?

A. No.

Q. And do you know -- if you know -- strike that.

Would it be custom and practice that Judge McGuire would often copy you and Wendy on emails to each other?

A. I believe so. I think I received

several emails that were copied to both of us.

Q. So between January of 2015 -- specifically January 14, 2015, and March 31st of 2015 -- did that email communication continue?

A. To the best of my recollection, it did.

Q. Well, decisions were still reviewed?

A. Yes.

Q. Decisions were still prepared to go out?

A. Correct.

Q. And decisions continued to go out?

A. Right.

THE REFEREE: Is this a good time for a break?

JUDGE MCGUIRE: Sure.

THE REFEREE: Would you step out?

THE WITNESS: Yes.

THE REFEREE: Before we take a break I just want to address some things with the lawyers.

(The witness exited the room.)

THE REFEREE: So what I want to address is getting back to this *Dean against Boyes* matter, are there going to be other witnesses on that?

MS. TISHMAN: No.

THE REFEREE: So what concerns me about this and, you know, I'm sorry for raising this, but maybe it could be cleared up with this witness, is whether or not there was disclosure to the parties about the construction work that was being done for Miss Conneely and her husband.

And I believe the testimony was that the Judge had told her that there had been such disclosure, but that she had never heard it. Was that right?

MS. TISHMAN: Yes.

THE REFEREE: And yet, in the Judge's decision, which is I think Roman numeral XI-44 on page 5, the decision states, "The parties were also informed that Shawn Boyes as part of Boyes and Torrens had been employed by

the Judge's law clerk and her husband to perform work at the Conneely home. Judge McGuire made it quite clear to the parties that neither of these facts would impact his ability to render an impartial decision and there's no basis for recusal."

So my question is, is there going to be any evidence to show that that statement and that decision is not correct?

MS. TISHMAN: If you look at Exhibit Roman numeral XI, I just have to find it, if you can give me a second, the right number, XI-45.

THE REFEREE: The transcript?

MS. TISHMAN: Yes.

THE REFEREE: Page?

MS. TISHMAN: Page 2 through 3, line 7. Specifically line 15 where the Judge says, "This is work that was done more than a year ago."

THE REFEREE: In any event, I don't want to go through this now, but whatever information I am going to get

on this issue is contained in this transcript?

MS. TISHMAN: Yes, though there might be some admissions that were also entered.

THE REFEREE: All right. I just want to reflect that, not that that's of any great concern. If there was anything else to be brought out from this witness, I want that to be clear.

MS. TISHMAN: Okay.

THE REFEREE: Okay, let's have our break, ten minutes, please.

JUDGE MCGUIRE: Thank you.

MR. MAISONET: Off the record.

(A brief recess was taken.)

MR. MAISONET: On the record.

(The witness entered the room.)

MS. PARTIDA: Witness entering.

THE REFEREE: You may proceed, Judge McGuire.

JUDGE MCGUIRE: Thank you, your Honor.

Q. So when we broke we were talking about Judge McGuire's interaction with Wendy

Weiner post January 14, 2015. Now, prior to January 14, 2015, can you describe Judge McGuire's interaction with Miss Weiner?

A. It would be best described as a typical office situation. He would -- Judge McGuire would give Wendy Weiner -- Miss Weiner directions and instructions to do things and she would respond. And I mean, it was a fairly typical office interaction.

Q. Was it -- would it be common for the Judge to just engage in small talk? Social talk?

A. Sometimes, yes.

Q. For brief periods? Longer periods? Hour or more?

A. No, I would say brief periods.

Q. So, how would you describe the nature of the relationship between Miss Weiner and Judge McGuire pre January 14, 2015?

A. Professional, but friendly, cordial I should say.

Q. Are you aware of any social interaction outside of work?

A. No, I'm not.

Q. In fact, there was no social interaction with you either?

A. I believe the Judge's son, when we first started working, graduated from high school and we were both invited. But other than that, I don't recall any other social interaction.

Q. Other than the Judge's son's graduation party?

A. Yes.

Q. That was it?

A. Yes.

Q. We didn't go out to lunch together?

A. No.

Q. Out to dinner together --

A. No.

Q. -- on weekends?

A. No.

Q. Did Miss Weiner complain to you about the Judge's demands on her?

MR. LEVINE: Objection to the hearsay.

JUDGE MCGUIRE: I'm just asking whether she did or not.

MS. TISHMAN: We are still waiting for the connection for the first thing.

THE REFEREE: That objection is overruled.

A. With respect to -- I think the pistol permits that was basically, she had a very hard time doing that because apparently it was on a Saturday, I think, if I can recall.

Q. So she expressed that to you?

A. Yes.

Q. What, if any, discussion did you have with the Judge regarding her participation in that process?

A. Well, I told her that if she had a problem with it, then she should discuss it with the Judge directly.

Q. Did you come to the Judge with that?

A. Yes.

Q. Do you know whether she did?

A. No, I don't know.

Q. Now, there was an issue about the filing system in chambers, do you recall

that?

A. Yes.

Q. And what was the issue?

A. If I can remember correctly, she filed by -- I don't know how she filed, but I know it wasn't alphabetical, so we could never find the files. I think it was by index number, I dont know.

It was some kind of strange system, but it wasn't a system that was easily -- it wouldn't make you trying to find a file very easy.

Q. In fact, it was by appearance date?

A. Well, then it was by appearance date. I don't know. I don't remember.

Q. Do you recall?

A. No, I don't remember what it was by, but I do remember it was difficult to find files.

Q. Do you recall the Judge being concerned that he was in on a Saturday and couldn't find the files he needed?

A. No, but I know we were both concerned when we couldn't find files.

Q. So, do you recall the Judge asking Miss Weiner to rearrange the files?

A. Yes, I do.

Q. And what was her response?

A. She said no.

Q. Did the Judge ever speak to Wendy in a condescending manner during the time that you were there?

THE REFEREE: You mean that she heard?

JUDGE MCGUIRE: That she heard.

A. No, I can't recall any specific instance.

Q. Is it fair to say that you, from 8:00 to 4:00, were pretty much in your office the whole day?

A. Yes, I would say that's a very fair statement.

Q. You didn't typically go out to lunch?

A. No, I did not. And if I did, I went outside of the building.

Q. So typically you were a fixed point?

A. Yes.

Q. As opposed to the Judge that was on the run often?

A. Yes.

Q. Did you ever hear Judge McGuire yell at Wendy?

A. I heard several times you were upset with her. As far as yelling very -- a pronounced yelling? No, but there were times when you were upset with her.

Q. So I want to now go to January 15th -- January 14, 2015. Now, you said you had a doctor's appointment that morning?

A. Yeah, I believe so because I only had eye doctor appointments and I believe that was an early -- I used to try to make them very early.

Q. And you told the judge in advance that you were going to be in a little bit late that day?

A. Yes.

Q. And the Judge had no problem with that?

A. Right, that's correct.

Q. And when you got to court, you

found that Wendy was a little bit upset?
A. Yes, she was visibly upset.
Q. But she was not crying?
A. No, not when I arrived at court, no.
Q. Did she tell you that her son had gotten injured?
MR. LEVINE: Objection.
THE REFEREE: Overruled.
A. She had told me at some point, yes, that her son had been injured.
Q. Was it in a school bus accident?
A. Yes, I believe so.
Q. Now, did Wendy also describe for you an interaction that she had with Judge McGuire early that morning?
A. Yes, she did.
Q. And when you walked in to your office, you came through the Judge's courtroom?
A. Yes, that's correct.
Q. And the Judge's door -- was the Judge's door open to his private office?
A. I believe so.
Q. Can you describe how Judge

McGuire maintains his office?

A. It's pristine. There is not a pen or pencil out of order.

Q. And on this morning, did you observe anything out of the ordinary in Judge McGuire's office?

A. I can't recall, but no. I don't even remember looking in your office, to tell you the truth.

Q. At any time, did Judge McGuire tell you to give Miss Weiner a message that she was not to leave her desk even if there was a fire?

A. No, I do not remember that.

Q. On January 15, 2015, at about 10:00 in the morning, did Judge McGuire ask you to come into his office with Wendy?

A. I don't know what date it was or time it was, but I do remember you asking us to come into the office.

Q. And on that occasion, did Judge McGuire apologize for any disruption he may have caused the day before?

A. Again, I don't remember the words, but I do know that the incident was

-- there was some discussion about the incident.

Q. Do you remember --

THE REFEREE: So wait, so that answer will be stricken as not responsive to the question. Can you repeat the question?

JUDGE MCGUIRE: Okay.

Q. Do you recall Judge McGuire in sum and substance apologizing for any disruption caused on January 14th?

A. I don't remember.

Q. You don't remember that?

A. No, I remember going into your office. I don't remember the sum and substance of the conversation.

Q. Do you recall when Miss Weiner was transferred out of chambers?

A. Yes, I do recall that.

Q. What do you recall about that?

A. I just remember she was gone. She was gone one day and it was -- it was I think the beginning of April. And I called up to the Third Department to ask what was going on and they said she was being

reassigned and we were left without a secretary.

Q. Did you ever hear Judge McGuire speak rudely to people in chambers?

A. No, I did not.

Q. How did Judge McGuire treat you?

A. With a lot of respect.

Q. Did he ever yell at you?

A. No, he did not.

Q. Was he ever rude to you?

A. No.

Q. Was he ever demeaning to you?

A. No, he was not.

Q. Could you describe how Judge McGuire would respond to you when we were discussing a decision?

A. Judge McGuire would listen to what I had to say, the position I thought that we should adopt in drafting a decision and then we would discuss it. If there were any differences, we would argue back and forth, play devil's advocate.

And basically, I would go back and draft the decision. And I would advise the Judge if he thought after reading it, we

should go one way or another, I would certainly make the necessary revisions.

Q. Do you recall ever your advising Judge McGuire that we should be recused on a particular case?

A. I don't recall specific cases.

Q. Do you recall ever -- even if you don't remember a specific case -- advising Judge McGuire that we should be recused on any case?

A. I believe we spoke -- I spoke about recusing on certain issues. I asked whether or not we should recuse ourself on certain things.

Q. Do you recall ever advising Judge McGuire that we should be recused on a particular case?

A. I can't remember.

Q. Do you recall Judge McGuire ever overruling you where you believed we should be recused on a case?

A. I don't recall.

Q. You said that on occasion with other judges they would ask you to do personal errands for them or favors, help

them out?
A. Judge Kane did, yes.
Q. But not Judge Clemente?
A. No.
Q. Not Judge Sackett?
A. No.
Q. Did Judge McGuire ever ask you to do those types of things?
A. No.
Q. Ever ask you to go get him lunch ever?
A. No.
Q. Did he ever ask you to go to the post office for him?
A. No.
Q. Ever ask you to get stamps for him?
A. No.
Q. Ever ask you to go to the bank for him?
A. No.
Q. He did make use of you as a notary on a couple of occasions?
A. That's correct.
Q. Generally things for his mom and

dad?

A. Yes.

Q. Do you recall Judge McGuire asking Wendy to do those types of personal errands for him?

A. No, I don't recall.

Q. Are you aware of any instances of Judge McGuire continuing to practice law after January 1, 2011?

A. No, I remember some people calling up and asking for you that had been prior clients, but I don't know the sum and substance of what that would have been.

Q. Are you aware of real estate closings taking place in chambers?

A. No.

Q. How about in the library?

A. No.

Q. Are you familiar with the Judge's brother?

A. Yes, I am.

Q. Do you know if he's an attorney?

A. Yes, I believe so, yes.

Q. And did he ever come to chambers?

A. Yes.

Q. Early in 2011 and 2012, would it be frequently?

A. I know it was quite often.

Q. Do you know?

A. I don't know the time periods, but it was quite often.

Q. Do you know what brought him to Sullivan County?

A. I believe he was handling some cases that you might have referred to him.

Q. Do you know George Matisko?

A. By phone, yes.

Q. Are you aware of Judge McGuire engaging in the practice of law with respect to George Matisko after January of 2015?

A. No.

Q. Did Miss Weiner ever speak to you about doing private legal work for Mr. Matisko?

A. No.

Q. Did Miss Weiner ever speak to you about the Judge doing private legal work?

A. Yes.

Q. What, if anything, did she tell you?

MR. LEVINE: Objection.

JUDGE MCGUIRE: I'm not bringing it in for the truth of the matter, certainly. I'm bringing it in for the effect that it had on Miss Conneely. I'm bringing it in for non-hearsay purposes.

MR. LEVINE: I don't see what the relevance of that is.

JUDGE MCGUIRE: Okay, I'll withdrawal that. I'll withdraw. I'll withdraw.

Q. So after Miss Weiner, she told you that she spoke to you about Judge McGuire doing private legal work?

A. Yes.

Q. What, if anything, did you do?

A. I think this was after I retired. I don't think we had a conversation while I was working.

Q. Okay.

A. No. I mean, I wasn't aware of anything. I think it was after I retired. You know, I don't remember.

Q. So, you were still working for

Judge McGuire when Miss Weiner transferred out?

A. Yes, that's correct.

Q. So during the time -- let me focus my question. During the time that both you and she were employed in Judge McGuire's chambers, did Miss Weiner ever discuss with the Judge doing private legal work?

A. No.

Q. You're familiar with Zachary Kelson?

A. Yes, I am.

Q. Were you ever aware -- did you ever hear Mr. Kelson ask the Judge about taking care of tickets for him?

A. No.

Q. Now, let's talk about the *Dean v Boyes* case?

A. Yes.

Q. And I want to show you Roman numeral XI-45?

A. Yes.

Q. Do you have that?

A. Yes.

Q. Is that a transcript of a proceeding on an Order to Show Cause?

JUDGE MCGUIRE: 45 is the transcript.

A. Yes, it is, Order to Show Cause conference.

Q. I'd like you to read that document, it's in evidence, beginning on page 2 and continuing over to page 4 and just look up when you're done?

A. Through page 3, you said?

Q. Four, I think the top of page 4?

A. Yes, I'm finished.

Q. All right.

How would you characterize, as an attorney and as a court attorney for 20 years, the statement by the Judge?

MR. LEVINE: Objection.

THE REFEREE: Overruled. Which statement?

JUDGE MCGUIRE: The statement that she just read starting on page 2 and going to page 4.

MR. LEVINE: That's a vague question. What is he asking, the legal

effect? Whether she understands what it means?

THE REFEREE: Can you rephrase it? Characterize it in what way?

Q. With respect to -- focusing on issues that would give rise to a recusal, the statement by the Court, is that addressing the recusal concerns?

A. Partially.

Q. Okay. In what way?

A. Well, I see that you addressed the issue with your work with I believe Mr. Boyes' mother, your mother I believe it is, excuse me. But they were still working for me I believe at the time that this case was conferenced in front of us.

Q. But you didn't tell me that at the time?

A. No, that's not true. I did tell you that they were working for me. They were working for me for several years on and off and they were working for me on my kitchen at this time. I believe I just finished my bathroom and they started working on my kitchen. There was a period

of time between the two, but they were working on my kitchen.

Q. So do you recall getting a motion from Mr. Shawn that accused you of impropriety?

A. Yes, I believe that's the same motion that we saw the leave to reargue.

Q. And the impropriety that was raised in there was the fact that Boyes and Torrens was doing work for you during this proceeding?

A. That's correct.

Q. And in fact, they included a photograph in that motion of your home?

A. Yes.

Q. And you took exception to the photograph based on the landscaping, correct?

A. That I knew, yes, definitely because they had finished working I believe in May and I don't know when that photograph -- but I remember it only because of the landscaping we had done at the time.

Q. And the Judge and yourself discussed that motion?

A. That's correct.

Q. And you told the judge that that photograph was an old photograph?

A. No, I said I don't know when the photograph was taken, but I knew when it had to be because I only dated it from the landscaping around my dive way because I had just had the landscaping redone.

It might have been an old photograph, but I remember that I only remembered dating it because of the landscaping. That's how I could tell when that photograph was taken.

Q. What was your reaction to being accused of impropriety?

A. I was horrified. It was worse than anything I could have recalled. I mean, it was just terrible.

Q. Was there impropriety?

A. No, there was not.

Q. At the time the case was pending, was Boyes and Torrens doing any major work for you?

A. I'm sure they were. I'm sure they were working on my kitchen at that

time, the checks were indicative of that.

THE REFEREE: I'm confused. Then why wasn't that an impropriety?

THE WITNESS: I had told the Judge that. I explained to the Judge that they were working for me and we discussed it. He said, "It's a small community, there's very few contractors that were here."

The Judge told me that he had advised them of the same and they continued on. They continued with the case and made no objections.

THE REFEREE: Well, take a look at the transcript in front of you, page 3, line 15.

THE WITNESS: They did work for me in here, but they were doing work for me at the same time, too. I was not in court when this took place.

THE REFEREE: I want this record to be very clear. So, page 3, line 15 where Judge McGuire says, "This is work that was done more than a year ago," that was incorrect?

THE WITNESS: Yeah, I don't know what they were talking about, what kind of work was done. But I know that they worked on my bathrooms and then they worked for me on my kitchen.

And then they had to come back because there was a problem with one of the -- a steel beam had to be inserted in my kitchen because everything was shifting.

THE REFEREE: So at the time this case was pending, they were still working for you?

THE WITNESS: They were working on and off for me, yes, on various projects.

THE REFEREE: And you're saying there was no impropriety because why?

THE WITNESS: I advised the Judge that they were working on my case and what should we do. And he said I advised them -- I'll advise them in court that they are still working for you and no one complained about it. No one complaint about it in court.

THE REFEREE: Well, after the time of this transcript, which is February 13, 2013, are you aware of any other disclosures?

THE WITNESS: Not, I'm not aware of it, but I just assumed that everyone knew.

And then when Henri Shawn called me that day in my office, the Judge was standing right there and I said to him, I said, "The Judge knew about it, the Judge knew they were working for me."

But I had no personal relationship with either one of these contractors, so I didn't even deal with them. I didn't deal with them. I only made checks out to them, but.

THE REFEREE: I'm sorry, you may proceed.

JUDGE MCGUIRE: Thank you, sir.

Q. 55, XI-55, page 146, do you have page 146?

A. Yes, mm-hmm.

Q. So, line 8, were you asked this question and did you give this answer?

The question is, "At this conversation" -- referring to the conversation with the Judge after the motion received?

A. Yes.

Q. "After you got the motion, did you tell the Judge that" -- "That" being work was being done?

"Answer: Well, I don't even know if they were working for me then. When that photograph was taken, I don't think they were working for me?"

"Well" -- "Question: Well" -- line 13, "because I can tell from the planting and I have to go back because I had landscaping done after everything was done.

"Question: Okay. But we know that the motion was filed in 2014, August of 2014?

"Answer: And I don't think they were doing any work for me at that point. They might have been doing touchups, but I don't think they were doing any major construction work for me. They might have been dropping off something, but they

weren't doing major construction for me."

Do you remember being asked those questions and giving those answers?

A. Yes, I do and I still to this day don't remember whether they were doing work for me at that time, unless I looked at checks. And I know if -- because my kitchen was finished by then.

Q. Now, the checks that you were shown by Miss Tishman?

A. Yes.

Q. You didn't show those to the Judge, did you?

A. Well, no, I didn't show you checks.

Q. You showed the Judge checks that you sent to Boyes and Torrens?

A. No, I said I did not show you checks.

Q. Okay, you didn't.

What about the work contract, did you show those to the Judge?

A. No, I did not. You mean the proposals they gave to me? No, I did not.

Q. And you said that there was a

complaint made to the grievance committee?

A. Yes, Michael Dean did. He lodged a complaint against me.

Q. What was the nature of the complaint?

A. That there was impropriety because of my work relationship with Boyes and Torrens.

Q. Did you meet with the grievance committee over this?

A. No, they didn't even -- they asked me for a response. I gave them I think a response, I don't know what I did at that point, but they said there wasn't anything to open up a complaint about.

And I expressed that to you at that time, that I got that complaint. I told you about that.

Q. And in fact, at that time we recused ourselves on any case involving Mr. Shawn?

A. That's correct.

Q. You discussed that with me?

A. That's correct.

Q. And I concurred?

A. Right.

Q. Now, you worked for several Supreme Court judges, including the Appellate Division?

A. Yes, that's correct.

Q. And how would you characterize yourself in terms of your ethics?

A. I think I have very high ethics.

Q. Did you ever specifically tell Judge McGuire that we had to be recused on *Boyes v Dean -- Dean v Boyes*?

A. No, but I did advise Judge McGuire that they were working for me. And I left it up to him. I said, "I think that's something that should be addressed to them."

Q. So 20 years as a Court attorney and you never advised Judge McGuire that there should be a recusal based on one of the litigant's contracting company doing work for?

A. No because I believe at the time --

Q. "No" is sufficient, that is the answer.

And in fact, you drafted a decision that raised the issue of recusal, correct?

A. Yes, that's correct.

Q. And you didn't dispute the conclusions in that decision?

A. No, I did not. And we discussed the decision before I even drafted it.

Q. Now, you retired in 2016?

A. That's correct.

Q. Are you aware of Judge McGuire ever being at your home between 2011 and 2016?

A. No, not that I can recall.

Q. You didn't -- we didn't socialize?

A. No.

Q. I didn't meet your husband over there as far as you know?

A. No, unless I was at work and I wasn't there.

Q. Is it fair that most of the construction work that was done at your house was done during business hours?

A. That's correct.

Q. And who, if anybody, was at your home during business hour?

A. My husband maybe, but they had a key to the house, so they would come and go. I think Keith Torrens did most of the construction work.

Q. In fact, you had very little contact with Mr. Boyes?

A. That's correct.

Q. Most of your contact was with Mr. Torrens?

A. 90 percent of my contact was with Mr. Torrens.

Q. And 90 percent of that was done during the day when you were at work?

A. That's correct. If they had a problem, they would call me, but other than that.

Q. So much of the work that was done was done while you weren't there?

A. That's correct.

Q. And when proposals were submitted to you, they were submitted by whom, Boyes or Torrens?

A. Well, sometimes -- I can't recall

correctly now all of them, but sometimes Keith would bring them over, sometimes I guess Mr. Boyes would bring them over for me to look at.

And when I got home I would take a look at them and write a check and then he would come over and pick the check up.

Q. Was there any change in your relationship with them after 2013 with respect to proposals and checks?

A. No, none at all.

Q. Did you pay for all the work that was done?

A. Yes, I did, I paid for everything.

Q. You were asked about going to visit the property that was part of the *Dean v Boyes* case?

A. That's correct.

Q. And how did that examination of the property come to pass, who asked for it?

A. I think the parties asked for us to take a look or we decided, I really don't know. I can't answer that. I don't remember correctly.

Q. Now, you retired, again, on December 31, 2016?

A. That's correct.

Q. And Judge McGuire and yourself have maintained a cordial relationship since then?

A. Yes, that's correct.

Q. We've communicated from time to time?

A. Yes.

Q. Exchanged holiday greetings?

A. Mm-hmm.

Q. In fact, on one occasion I asked you to give me an opinion on a medical malpractice issue?

A. That's correct.

Q. Remember I was preparing for a trial and you had lots of experience with medical malpractice?

A. Yes, that's correct.

Q. And I had never tried a medical malpractice case?

A. That's correct.

Q. So there was a procedural issue that I asked if you would give me your

opinion on it?
A. Yes, that's correct.
Q. And you were happy to do that?
A. Yes, that's correct.
Q. Do you recall that at one point while you worked for Judge McGuire you had inquired about becoming a trustee at the college?
A. Yes, that's correct.
Q. Was the Judge supportive of that application?
A. Yes.
Q. And you also ran for Judge in the town of Neversink?
A. That's correct.
Q. Now, the Judge didn't participate in your campaign at all?
A. No.
Q. Didn't contribute to your campaign?
A. No, I had no campaign really.
Q. But was the Judge supportive emotionally of that?
A. Yes.
Q. In fact, is it true that when the

college was in the market for a president you suggested that the Judge would make a good college president?

A. I don't recall that conversation, but.

Q. You don't recall it?

A. No.

Q. Okay.

JUDGE MCGUIRE: Your Honor, no further questions for this witness.

MS. TISHMAN: Can we have a brief two-minute break to confer?

THE REFEREE: Should we go off the record?

MS. TISHMAN: Yes.

THE REFEREE: Off the record, five-minute break.

MR. LEVINE: Perfect, thank you.

MR. MAISONET: Off the record.

(A brief recess was taken.)

MR. MAISONET: We are on the record.

JUDGE MCGUIRE: Thank you, your Honor. I thank the Court for the accommodation. I left two questions

out.

Q. Ms. Conneely, You've maintained a friendship with Wendy Weiner even after you retired?

A. That's correct.

Q. You stayed in contact with her?

A. Yes.

Q. And in fact, you've been supportive of her in current litigation that she has going on?

A. Yes.

Q. You've appeared in court, not as her attorney, but just as a friend?

A. I've appeared with her, not in court. I think there was one court appearance that we were at, but I was only in the background as a friend, that's correct.

Q. You weren't her attorney?

A. No.

Q. You went to the courthouse with her?

A. Yes, that's correct.

Q. For support as a friend?

A. Right.

JUDGE MCGUIRE: Now, nothing further.

MS. TISHMAN: I have a few questions.

THE WITNESS: Sure.

REDIRECT EXAMINATION

BY MS. TISHMAN:

Q. Miss Conneely?

A. Yes.

Q. You were asked on cross-examination by the Judge about the information you shared with the Judge concerning the work being done by Boyes and Torrens during the time that the *Dean v Boyes* case was being heard. At the time of the transcript, Commission Exhibit Roman numeral XI-45?

A. Yes.

Q. Do you have that in front of you?

A. Yeah, 45, yes.

Q. On page 3, when the Judge made the record that -- line 15 -- "This is work that was done more than a year ago," at that time, work on your house was still being done; is that correct?

A. I would have to look at checks because I don't recall.

Q. Why don't you look at the --

A. Oh, I have the checks here.

Q. What is marked as Commission Exhibit number --

THE REFEREE: It's 46.

Q. Thank you, Commission Exhibit 46?

A. I see that, thank you.

Q. If you can review those?

A. It looks like work started -- perhaps it -- well, I probably gave a first check, a down payment, but then it probably started like the latter part of April, May, June.

Q. So in 2013, you had been in contact with Boyes and Torrens Construction about work being done in your house?

A. Yes, that's corrects.

Q. And work -- you paid them for work that was being done or was going to be done in the future, you paid for that in 2013?

A. Yes, that's correct.

Q. And then work was conducted on

your house?

A. Yes.

Q. After you received those proposals and you received the check?

A. Yes, that's correct.

Q. And you shared that information with Judge McGuire?

A. That they were working for me, yes.

Q. At that time?

A. Yes.

Q. When *Dean v Boyes* was presented?

A. Yes.

Q. And when you said you discharged your ethical obligations when you testified to that earlier, did you mean that you did so by sharing with Judge McGuire that Boyes was continuing to do work on your property?

A. Yes.

MS. TISHMAN: I have nothing further.

RECROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. So you continued to do work on that case though?

A. Yes, we both continued to work on the case, yes, that's correct.

Q. You continued to conduct conferences?

A. Yes.

Q. You went to the site visit?

A. Yes.

Q. You helped draft decisions?

A. Yes, except for the final one when we decided we would send it up to --

Q. But you worked on that? You worked not on the final one, but worked on the other decisions?

A. Right.

Q. You never told the Judge, "I'm not going to do any work on this, I'm conflicted"?

A. No, I did not.

JUDGE MCGUIRE: Thank you, nothing further.

MS. TISHMAN: That's it.

THE REFEREE: So I just want to keep this clear again. So I want you to look at the checks, Exhibit 46, do you have those in front of you?

THE WITNESS: Yes, I do.

THE REFEREE: So the first check we have is April 29th, is that 2013?

THE WITNESS: Yes, I believe it does, it looks like 2013.

THE REFEREE: And that's -- that date is after the date of the transcript in Exhibit 45, correct?

THE WITNESS: Yes.

THE REFEREE: As a matter of fact, all these checks are after the date in the transcript of Exhibit 45?

THE WITNESS: Yes.

THE REFEREE: And does that indicate to you that during this entire period from the first check here, April of 2013, through the last check, which is June 25, 2014, that work was ongoing?

THE WITNESS: I don't think that entire period, no, not that whole year and a half.

THE REFEREE: But during that period of time, work was being done from time to time on and off?

THE WITNESS: Yes, that's correct.

THE REFEREE: And it's your position that you disclosed that to Judge McGuire?

THE WITNESS: Yes, I did.

THE REFEREE: During that period of time?

THE WITNESS: Yes, I did.

THE REFEREE: As that work was being done?

THE WITNESS: Yes. And in fact, I brought in material that I was using for my kitchen and I had it out in my office at that time and we were commenting on how good the tile looked with the stone I was picking for my countertop.

THE REFEREE: That was while the kitchen work?

THE WITNESS: Yeah, my kitchen work.

THE REFEREE: And it was the kitchen work that was being done while you --

THE WITNESS: I believe so. I think I had my bathroom done first and then I had my kitchen done after that.

THE REFEREE: The kitchen was being done during the pendency of the *Dean v Boyes* case?

THE WITNESS: Yeah, the kitchen work started after they had come in and the work started before -- around the same time. I'm not exactly sure, but I had my kitchen work done in 2013.

THE REFEREE: Well, let me ask you to look at that last check, June 25, 2014 --

THE WITNESS: Right.

THE REFEREE: -- for $7,000, right?

THE WITNESS: Right.

THE REFEREE: And the note on the check says, "Kitchen"?

THE WITNESS: Yes, that was -- they had to put a steel beam -- they came back in and had to put a steel beam in the house after -- this was a while after the kitchen was finished.

They had to put a steel beam in the house because the house was shifting because they had taken out, I guess, a load-bearing wall or whatever. I don't understand that that much, but.

THE REFEREE: Anything further from anybody?

JUDGE MCGUIRE: No.

MS. TISHMAN: No.

THE REFEREE: Miss Conneely, thank you for your testimony, you're excused.

THE WITNESS: Thank you.

(The witness exited the room.)

THE REFEREE: So, up to you, do you want to start the next witness or do you want to break for lunch?

MS. TISHMAN: I think I can finish the next witness by 1:00, so I think it makes more sense to maybe break for lunch and then --

THE REFEREE: So why don't we break for lunch and come back at --

MS. TISHMAN: In an hour?

THE REFEREE: Come back at 1:30;

is that good?

MS. TISHMAN: Yes.

THE REFEREE: Off the record.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: We are back on the record.

THE REFEREE: Okay. Do we have another witness?

MS. TISHMAN: Yes, Commission calls Jeffrey Dolfinger.

(The witness entered the room.)

MS. PARTIDA: Witness entering.

THE REFEREE: Please have a seat. Good afternoon, my name is Mark Arisohn. I'm the referee in this matter and I've been asked to read a short statement of instructions for you. Okay?

MR. DOLFINGER: Okay.

THE REFEREE: The court reporter, who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be

transcribed.

In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone.

Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until a question is completed and answer each question with words, not a nod or gesture.

Please refrain from creating excessive background noise, as it becomes amplified on the recording. And if you have any cell phones or other electronic equipment, please turn them off. Okay?

MR. DOLFINGER: Okay.

THE REFEREE: Please rise and raise your right hand.

Sir, do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but

the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat, state and spell your full name.

THE WITNESS: Edward Jeffrey Dolfinger -- D-O-L-F-I-N-G-E-R.

THE REFEREE: You may proceed, Miss Tishman.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Mr. Dolfinger.

A. Good afternoon.

Q. You just stated for the record that your name is Edward Jeffrey Dolfinger, how are you known by?

A. I'm known as Jeff.

Q. And are you currently employed?

A. I am self employed.

Q. And tell us what you do?

A. I'm a real state broker in Poughkeepsie, New York. I own a company called, "24/7 Realty."

Q. How long have you owned that company?

A. I've owned that company since 2001.

Q. What type of real estate do you do?

A. 99 percent is residential real estate transaction.

Q. And what type of residential real estate transactions --

A. I meet --

Q. If you can just wait until I finish my question.

What type of real estate transactions do you specialize in?

A. The sale of bank foreclosed properties.

Q. And in 2014 were you involved in the purchase of a house, [redacted]?

A. I was.

Q. What was your involvement?

A. I represented the bank, PennyMac loan services, as their listing broker.

MS. TISHMAN: And that's PennyMac, for the record -- capital P-E-N-N-Y -- capital M-A-C.

Q. That's one word, right?
A. Correct.
Q. And so, you were the listing broker for PennyMac?
A. I was.
Q. And who was the buyer of the property?
A. A gentleman named Phil and his wife.
Q. And was that Phillip Moore?
A. Phillip Moore, correct.
Q. And his wife, is her name Eileen?
A. Eileen Moore, correct.
Q. Do you know how they became interested in the house?
A. Yes, I was friends with a neighbor of theres and I had been discussing the home with the friend of mine, who discussed it with them and put us in contact with each other.
Q. And were you contacted by someone from the Moores?
A. I was contacted by Phillip Moore's daughter, Heather.
Q. And when was the house sold?

A. Fall of 2014.

Q. Now, was PennyMac represented by an attorney?

A. They were.

Q. What attorney -- what law firm was that?

A. My memory is telling me -- I'm drawing a blank right now, but I dealt with Mary Ann Schultz and she was I believe Frenkel Lambert.

MS. TISHMAN: And for the record Mary Ann Schultz, Schultz is S-C-H-U-L-T-Z and Frenkel Lambert is F-R-E-N-K-E-L -- Lambert -- L-A-M-B-E-R-T.

Q. Were you in contact with PennyMac directly?

A. Yes.

Q. And who were you in contact with?

A. Stephanie Sheng.

MS. TISHMAN: And that's S-H-E-N-G.

Q. Did you communicate by email with Mary Ann Schultz?

A. Yes.

Q. Let me rephrase that. Did you communicate by email with Mary Ann Schultz about the purchase of the house at [redacted]?

A. Yes.

Q. And did you communicate by email with Stephanie Sheng about the house at [redacted]

A. Yes.

Q. And did you communicate with a representative for Eileen and Phillip Moore about the purchase of the house at [redacted]?

A. Yes.

Q. And what email address was used to communicate with the Moores, the person who represented them?

A. It's a weird email address. Pronunciated it's obieinky@[redacted]. I don't remember the spelling without a piece of paper in front of me.

Q. Was there another email address used also?

A. Yeah, there eventually became an email address. It was Judge McGuire at

something.com.

Q. And Eileen and Phillip Moore, who was -- well, I withdraw that.

What happens after there's an accepted offer in a foreclosure -- the sale of a foreclosure property?

A. I send a request to the seller's counsel -- in this case it was May Ann Schultz -- to prepare contracts and to send them to the purchasers' lawyer if they have a lawyer.

Q. And at that time is contact information requested from the purchasers' attorney?

A. Yes, the contact information, if buyers have an agent, it's requested from the buyers' agent, which would include the buyers' attorney's full contact information; name, address, email, phone, fax number.

If they're not represented by a buyers' agent. In this case Heather gave me -- their daughter, the Moore's daughter gave me the information of who to contact.

Q. Now, I'm going to show you what is marked Commission Exhibit Roman numeral

XI-22 and this has already been accepted into evidence.

Now, did you receive that email?

A. I did.

Q. And is that your email address, Jeff.Dolfinger@[redacted]

A. Yes, it is.

Q. And that's how you go by, the name of Jeff, right?

A. Correct.

Q. Now, it also -- by your name it says, "Lauren" -- has an email address, "LaurenBertsche@[redacted]" --

MS. TISHMAN: And it's L-A-U-R-E-N-B-E-R-T-S-C-H-E, one word.

Q. Who is this email address to?

A. My former assistant.

Q. Now, it's from Mary Ann Schultz, is that the person from the law firm that you told us about?

A. Correct.

Q. And that's the law firm that was representing PennyMac?

A. Correct.

Q. Now, there's a CC here and that

CC, is that the email that you were referring to previously?

A. It is, correct.

Q. And obieinky@[redacted]?

A. Yes.

Q. And who is obieinky, who does that email relate?

A. My understanding, at that time, that was Ken McGuire's email address.

Q. Was that an email address for someone representing the buyers?

A. Correct, the buyers' lawyer.

Q. Do you know exactly who that email address was to?

A. At the time it was given to me, there was a name given to me because I would give the name to Mary Ann to prepare contracts.

Q. And what is this email about?

A. The contract is either expired or expiring and we are trying to get the purchasers to sign an extension addendum.

Q. And what's that mean?

A. Contracts are valid, at least in my clients' minds, once they expire on a

certain date, so they prepare an extension addendum to deliver to the purchasers to sign it to extend the terms of the contract.

Q. So the contract date was coming up and you had to extend the date?

A. Correct.

Q. Now I'm going to show you what is marked Commission Exhibit Roman numeral X-26. And if you can look at this email chain, it is four pages. Let me know when you've reviewed it?

A. Okay.

Q. If we can go to the last page of that email, so that's page four 4. And go to the 8:55 p.m. email on August 25, 2014, who is this email -- what's the email address on this?

A. JudgeMcGuire@[redacted].

Q. Had you had any -- had you received, prior to this date, any emails from this email address?

A. I had not.

Q. Can you tell us what preceded this email -- well, let me ask you this first, what was this email about?

A. I had forwarded -- based on the previous exhibit, I had forwarded the extension addendum to Heather, the Moore's daughter, in an effort to get them to sign it so they wouldn't lose the property and the house wouldn't fall out of contract. And in response to me doing that, I received an email.

Q. What did you do when you received this email?

A. I responded.

Q. And prior to this email, had you -- going to Exhibit Roman numeral X-22 -- had your contact with the Moores been to the email address obieinky@[redacted]?

A. Correct.

Q. And when you saw this email address, JudgeMcGuire@[redacted], what, if anything, did do you?

A. Well, I responded in kind and the first thing I thought was, "Wait a minute, who am I dealing with?" It says, "Michael McGuire." It's signed, "Ken McGuire." So I started to wonder, "Am I dealing with a judge or am I dealing with a lawyer" because

those are two different things to me.

Q. So what did you do?

A. Google.

Q. What did you Google?

A. I Googled, "Is Mike McGuire a judge?" Or "Is Ken McGuire a judge?" I started questioning who was -- who I was dealing with at the time, I didn't know who I was dealing with.

Q. Now, if we can go to the August 25, 2014, email, 10:18 a.m., it's the bottom of page 3, continue to page 4?

A. Okay.

Q. Is that the email that you sent in response to the 8:55 p.m. email on page 4 of this exhibit?

A. It is.

Q. And what email address did you send it to, did you send it to Michael McGuire?

A. To Michael McGuire, yes.

Q. And what was your -- at this point, what was your response? What were you trying to show through what you said on the 10:18 p.m. email?

A. Well, I was trying to say that one, I didn't think I was doing wrong. And two, I knew my job in relationship to the transaction based on my history as a broker and I was just trying to get the transaction closed.

Q. Now I'm going to go to page 3, the August 26, 2014, 3:47 a.m. email, did you receive this email?

A. I did.

Q. What email address did you receive it from?

A. JudgeMcGuire@[redacted].

Q. What is -- during this email -- I withdraw that.

Now, at the bottom of this email, if we can look at the second to last sentence where it says, "It's quite simple," do you see that sentence?

A. Yes.

Q. I'll read it into the record.

"It's quite simple, get the house ready for the inspection and stay out of the legal end of this transaction, that will be accomplished by the attorneys. I'm

directing that you cease and desist from making any of your crude comments to my clients. If they persist, I will not have option, but to take action against you."

What did you take that sentence to mean?

A. Not to communicate with Heather.

Q. And when it says that they will take action against you, what did you --

A. I really didn't know what he meant because I didn't think I had done anything wrong.

Q. Now, if we look back on page 4 to the 8:55 p.m. email, the email address says, "JudgeMcGuire@[redacted]," but is there a salutation at the bottom of the email?

A. There is.

Q. What is the salutation?

A. "Ken McGuire."

Q. And if we look at the 3:47 a.m. email, if there a salutation from Ken McGuire on that email?

A. There was not.

Q. Now, what was going on, what was the issue that was being discussed in the

three emails that we've looked at so far?
A. My client had failed to get the house de-winterized. Meaning, turning on the heat and getting the water up and running so the system could be tested so that the buyer could proceed with inspections.
Q. But on the 3:47 email on page 3 where it states, "I'm directing that you cease and desist from making any of your crude comments to my clients," do you know what was being referred to?
A. It took me a while to figure it out, but I guess at one point I had made a comment to the Moores' daughter, Heather, that their lawyer should learn to use email.
Q. What, if anything, did you do after you read this email on August 26, 2014 -- read the August 26, 2014, 3:47 a.m. email?
A. I reached out to Mary Ann Schultz.
Q. How did you reach out to her?
A. By email.
Q. Why did you reach out to her?

A. Because I, one, didn't know if I was doing anything wrong and two, I didn't know if I was dealing with Ken McGuire the lawyer or a judge and what the difference was and what it meant to me.

Q. Now, I am going to go to the second page of this email chain, the middle of the second page, the August 26, 2014, email. There's not a time stamp on this.

You wrote this email?

A. I did.

Q. You sent this email?

A. I did.

Q. What's this email about?

A. In a way I'm being snarky back, but I'm also trying to calm him down and make him understand I'm just trying to get the job done and we're all trying to get this house sold to his clients.

Q. And if we can go to page 1, the first page, please. And the bottom of the first page, August 26, 2014, at 7:49 a.m., did you receive this email?

A. I did.

Q. What email address was it sent

from?

A. JudgeMcGuire@[redacted].

Q. And what's it referring to?

A. We are just bantering back -- we're just arguing like kids about whether he thinks I'm breaking a rule or not and telling me to stay out of his client's business.

Q. And does this have to do about the addendum regarding the inspection?

A. It does, it has to deal with the addendum.

Q. And the inspection had not been completed?

A. It had not.

Q. And that's why you needed an addendum?

A. Correct.

Q. Now, if we can go to the first page, the August 26, 2014, the 8:19 a.m. email. Is this from you, you sent this email?

A. You're looking at --

Q. Middle of the page, it says, "From: Jeffrey Dolfinger; Sent: Tuesday,

August 26,2014 at 8:19 a.m. to JudgeMcGuire@[redacted]"?

A. I'm not -- okay, I do see it.

Q. You sent this email?

A. Yes.

Q. And you sent it to the JudgeMcGuire@[redacted] email?

A. Yes.

Q. And what are you, at this point, telling the buyer?

A. Well, I'm emailing JudgeMcGuire@V[redacted] saying that I will advise my client of your position. I don't know if they will allow the buyers to stay in contract, we have to sign the addendum. Because a lot of times my clients don't really care what somebody wants, they just kind of do what they do and I agreed to not get in the middle.

Q. Now, between the time that you received the August 26, 2014, email at 3:47 a.m. on page 3, you said that you spoke to Mary Ann Schultz, did you speak to her soon after that you read that email?

A. I wouldn't have called her at

3:40 in the morning.
Q. Well, did you read it at 3:40 in the morning?
A. I believe I did read it at 3:40 in the morning.
Q. But did you speak to her the next morning?
A. The next morning I probably emailed her. I don't know that I spoke to her that early.
Q. But you communicated with her the next morning?
A. Correct.
Q. Now, if we can look on the first page of Exhibit Roman numeral X-26, the first -- the email on August 26, 2014, at 8:19 a.m., that email is from Mary Ann Schultz?
A. It is.
Q. And that email is to you?
A. It is.
Q. And what was Mary Ann Schultz referring to?
A. She was referring to the situation, the string of emails below,

telling me that she and Mr. McGuire had spoken. And we had a strong enough business relationship at that time that I knew that that meant for me to -- it was done. Whatever was going on was resolved.

Q. And had Mary Ann Schultz spoken to Mr. McGuire based on your conversation or your communication with her after the August 26, 2014, 3:47 a.m. email?

JUDGE MCGUIRE: Objection.

THE REFEREE: What's the objection?

JUDGE MCGUIRE: She's asking Mr. Dolfinger to testify what caused Miss Schultz and Mr. McGuire to have a conversation.

THE REFEREE: Sustained.

Q. Was the email that you received at 8:19 a.m. on August 26, 2014, it's on page 1 of Commission Exhibit Roman numeral X-26, after the communication that you had with Mary Ann Schultz about the 3:47 a.m. email?

A. It was, correct.

Q. Now I'm going to show you what is

marked Commission Exhibit Roman numeral X-27. Do you recognize this?

A. I do.

Q. Do you recognize -- is this an email that you sent?

A. It is.

Q. Does it have your email address on it?

A. It does.

Q. Was it sent to Mr. Michael McGuire?

A. It was.

Q. And did you send this email?

A. I did.

MS. TISHMAN: I'd like to mark this into evidence, Commission Exhibit Roman number X-27.

JUDGE MCGUIRE: No objection.

THE REFEREE: Roman numeral X-27 is received.

(Commission Exhibit X-27 was marked in evidence, as indicated.)

Q. What's this email about?

A. I was perplexed all night as to where I was crude or crass or whatever term

was used in the email or where I misspoke to his client, so I had to dig through things. And I had found an email or something where I had said to Heather, "Learn to use email," which I had described earlier.

Q. Now, the second to last paragraph you say, "I am, as have always been, aware of your position with respect to the law," what did you mean by that?

A. I was pretty sure at that point in time I was dealing with not Ken McGuire, but Judge McGuire, so I had a different take on things. I banter with lawyers every day in my business, I don't banter with judges.

Q. Did you ever receive an email with an email address that identified Ken McGuire?

A. No.

Q. The only two email addresses that you received emails from representing the buyer was JudgeMcGuire@[redacted] and obieinky@y[redacted]?

A. Yes, correct.

Q. Did you ever speak to Ken McGuire?

A. I don't have any recollection.

MS. TISHMAN: I have nothing further for this witness.

THE REFEREE: You may cross-examine, sir.

JUDGE MCGUIRE: Thank you.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Mr. Dolfinger, good afternoon.

A. Good afternoon.

Q. Have we ever met?

A. No.

Q. Do you know who I am?

A. No.

Q. So you're not aware of you and I ever having spoken before?

A. I don't have a recollection if I did speak with you.

Q. Well, my name is Mike McGuire. Okay? And I'm going to ask you some questions and majority of them will be able to be answered with a "Yes" or "No."

If you don'ts understand something I ask, just let me know and I will go back over it again. Okay?

A. Sure.

Q. Okay. Now, so we can agree that you and I never spoke?

A. To my --

Q. As far as you know?

MR. LEVINE: Could we just ask that it be in question form?

THE REFEREE: He understands that.

Just try to ask questions.

Q. Can we agree that you and I, to your knowledge, have never spoken before today?

A. Correct.

Q. And is it fair to say that your concern -- you had a concern at one point, "Am I dealing with a lawyer or am I dealing with a judge?"

A. Yes.

Q. Now, you have had your real estate practice in Poughkeepsie?

A. Correct.

Q. Do you know whether or not there are any judges that practice law, if you're aware?

A. Not that I'm aware of.

Q. Okay, fair enough.

And so you had some confusion because you get an email from JudgeMcGuire@[redacted], it's captioned, "Michael McGuire" and it's signed, "Ken McGuire"?

A. Correct.

Q. Now, you're Edward Jeffrey Dolfinger?

A. Correct.

Q. So is it fair to say that part of that confusion came from your own name, is Mike and Ken the same person?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. No, I mean, there was genuine confusion because it was written two or three different ways in a series of e-mails.

Q. Okay. But at some point did you wonder whether Mike and Ken were the same person?

A. I did.

Q. Okay, fair enough.

And you said you did a Google

search?

A. I believe I did, yes.

Q. Well, do you believe you did or you did?

A. No, I did.

Q. That's fine. As long as you're not on a jury, you could do that.

And did you find that there was a lawyer, Ken McGuire?

A. I didn't find anything.

Q. You didn't find nothing?

A. I didn't find anything.

Q. Did you find that there was a judge, Mike McGuire?

A. I didn't fine anything.

Q. Nothing on either name?

A. No, I didn't find anything.

Q. Now, you went through a series of emails with Miss Tishman, is it fair to characterize that grouping of e-mails all had to deal with one primary issue?

A. Yes.

Q. They all had to do with getting an extension -- an addendum to the contract signed, which would extend the permissible

closing date?

A. Yes.

Q. That was the issue?

A. Yes.

Q. And that was your concern?

A. One of them.

Q. Well, you wanted to -- you wanted to preserve the deal for the Moores?

A. And my clients.

Q. And your clients.

Now, you said your primary work is in foreclosures?

A. Yes.

Q. And -- but it's not exclusive?

A. Correct.

Q. Can we agree that foreclosures are a different animal?

A. Definitely.

Q. Banks -- is it true that one of the things that differentiates them is that banks generally don't negotiate?

A. Correct.

Q. And is it also true that banks often want to get a deal closed quickly?

A. Correct.

Q. Is it also true that the contracts of sale are not negotiable?

A. Correct.

Q. So once the buyer signs the contract they're bound, correct?

A. Correct.

Q. And they're bound -- is it true that they're bound to a closing date?

A. Correct.

Q. And as compared to non-foreclosures -- you said you do primarily foreclosures, but you do others?

A. Correct.

Q. Non-foreclosures, would it be fair to characterize them as more relaxed?

A. Very, a lot more relaxed.

Q. I think at one point you had testified that buying a foreclosure is like buying a house with a gun to your head?

A. Correct.

Q. And that's been your experience as a realtor?

A. This is my experience.

Q. Okay. So, the issue as you understood it with the extension and the

Moores not signing had to do with getting in to get the house inspected?

A. Repeat that?

Q. Getting the addendum signed was important to you?

A. Honestly? No.

Q. You didn't care?

A. I'm going to sell the house to somebody, sir, so it was important to them and it was important to my client.

Q. So when I asked you before, "Was your concern to preserve the deal for the Moores?" You said, "Yes, and my client"?

A. And my client, but not to me personally.

Q. It didn't matter to you?

A. No.

Q. Because you were going to get paid eventually any way?

A. Correct.

Q. And your real concern is getting paid?

A. No because it's a non-issue. I'm going to get paid any way, so I don't have a concern about that.

Q. Okay. So, can we agree that in that series of email that you went through with Miss Tishman, the reluctance to sign the addendum dealt with the home inspection?

A. Correct.

Q. That's all I'm trying to get at?

A. That wasn't clear.

MR. LEVINE: I request that you just ask the question as opposed to having a discussion.

Q. Again, if I ask a question that's not clear, just let me know and I'll rephrase it for you. Okay?

Are home inspections based on your experience routinely done with residential real estate transactions?

A. Yes.

Q. And in a foreclosure contract, is the home inspection something that's provided for in your experience?

A. Depends on the client.

Q. Well, how much work have you done for PennyMac?

A. Fair amount up until that point.

Q. You haven't done much after that?

A. Clients come and go, so it's the ebb and flow of business.

Q. Okay, fair number.

So, in your experience with PennyMac, is a home inspection a provision that's provided for in the contract?

A. I don't remember.

Q. Okay, fair enough.

Now, you had said you were dealing with Mary Ann Schultz?

A. Yes.

Q. Do you know what her title is with PennyMac or with Frenkel Lambert?

A. She's a paralegal with them.

Q. So she's not an attorney?

A. No.

Q. She's a paralegal?

A. Correct.

Q. In your experience in real estate, is it common that paralegals handle much of the work in a real estate transaction?

A. It is.

Q. So paralegals handle much of the transaction in your experience, yes?

A. Yes.

Q. And the home inspections, based on your experience, who does those, is it lawyers? Is it paralegals?

A. The home inspector.

Q. A home inspector. And again, based on your training and experience, what's their formal training to do that?

A. They are licensed by the State if somebody hired them.

Q. Okay. Okay.

And is it -- do you ever represent the buyers?

A. I do.

Q. So, you have been around for some home inspections, have you been around for some home inspections?

A. Of course.

Q. When they do a home inspection, are they testing all the systems?

A. Correct.

Q. In other words, they want to make sure the heat works?

A. Yes.

Q. And that the water works?

A. Yes.

Q. Do they want to make sure the hot water works?

A. Yes.

Q. And they'll check the foundation?

A. Correct.

Q. And the roof?

A. Correct.

Q. And is it fair to say that that home inspection becomes more critical when we're dealing with a foreclosure?

A. No, it's the same.

Q. So have you had experiences with other than foreclosures where a defect was discovered maybe during the walkthrough or right after the closing?

A. I mean, defects will always discovered after a closing. It's kind of routine in residential real estate. During a home inspection? No, nothing.

Q. Have you had experience where after the closing in a non-foreclosure that there has been something -- a defect discovered after the closing?

A. Sure.

Q. Have you had the experience that from time to time the buyers and sellers will get together and make an accommodation even though the closing is over?

A. Never.

Q. Never?

A. Never.

Q. Now, did the Moores ultimately buy that house?

A. They did.

Q. At [redacted]?

A. They did.

Q. In Napanoch?

A. They did.

Q. Typically when you do a residential real estate transaction, you attend the closing not a foreclosure?

A. I almost never attend closings.

Q. Really. So, you get paid by whom?

A. If it's a foreclosure?

Q. No.

A. In a regular transaction?

Q. Yes.

A. I'm getting paid by one of the

attorneys at the closing. I usually pick my check up after or have them mail it to me.

Q. So you don't attend the closing?

A. Most of the times I do not. I have, but most of the times I do not.

Q. Fair enough.

So, did you attend the closing on the Moores' transaction?

A. Absolutely not.

Q. Do you know or whether or not there was a closing statement prepared for the Moores' closing?

A. I'm sure there was.

Q. Have you seen it?

A. No, I have not seen it.

Q. What's a HUD-1?

A. That's what we used to use as a closing statement.

Q. And you said, "Used to"?

A. Yeah.

Q. When -- was that what was used in 2014?

A. Yes.

Q. So do you know whether or not one of those was prepared for Moores'

transaction?

A. It would have had to be under the law at that time.

Q. Did you see it?

A. I did not -- well, I can't answer that question whether I did or didn't, I don't remember.

Q. Do you know who prepared it?

A. Mary Ann Schultz would have prepared it initially and then there may have been adjustments to it, which would be typical.

Q. So that would be the paralegal for Frenkel Lambert?

A. Correct.

Q. Was there a title report prepared?

A. I'm sure.

Q. Do you know who prepared that?

A. I do not.

Q. Do you know if there was a title company used?

A. I'm sure there was.

Q. But you don't know who it was?

A. No.

Q. Well, the Moores owned the house, as far as you know, today?

A. I honestly don't know.

Q. The Moores bought the house at least in 2014?

A. Correct.

Q. Were you paid?

A. Yes.

Q. So, PennyMac was paid also?

A. Yes.

Q. Do you know how PennyMac got the money?

A. I know they were wired funds from Mary Ann Schultz at Frenkel Lambert.

Q. So Frenkel Lambert got the closing proceeds and they would then wire it to PennyMac?

A. Correct.

Q. So you don't know how Frenkel Lambert got them?

A. Honestly? No.

Q. If you don't know, you don't know, it's fine.

Have you spoken to the Moores since they closed on this house?

A. Yes.

Q. Do you know if they were at the closing?

A. I don't know.

Q. Miss Tishman asked you about an email, which is X-27?

A. Okay.

Q. And that was an email that you wrote?

A. Yes, sir.

Q. And that dealt with, in your mind, that a comment had been made about email?

A. Yes, sir.

Q. Were you aware, in 2014, of whether or not -- strike that.

As you sit here today, have you ever received an email captioned, "Ken McGuire versus Mike McGuire" -- have you ever received an email that was stamped from Ken McGuire?

A. I don't believe so, no.

Q. So at some point you had a discussion with Heather prior to the Moores purchasing the house?

A. Yes.

Q. And during that discussion, you told her that this was a foreclosure?

A. Yes.

Q. And did you tell her that they are tricky, in your experience?

A. Yes.

Q. And did you recommend to her they use an attorney familiar with foreclosures?

A. I did.

Q. And was part of your rationale that the contract is really a critical part of the foreclosure purchase?

A. Correct.

JUDGE MCGUIRE: Thank you, your Honor, nothing further on this witness.

THE REFEREE: Any redirect?

MS. TISHMAN: No.

THE REFEREE: Mr. Dolfinger, you're excused, thank you.

(The witness exited the room.)

THE REFEREE: So I want the record to reflect it's 2:20, which means that we've gone from 10:00 this morning to 12:30, which is two and a

half hours and 40 minutes now. So we did a total of three hours and ten minutes today of work, which is not great.

MR. LEVINE: We regret that, but we're doing the best we can.

JUDGE MCGUIRE: I join that.

THE REFEREE: What do we got tomorrow?

MR. LEVINE: Wendy Weiner.

MS. TISHMAN: Wendy Weiner.

THE REFEREE: And who is coming after Wendy Weiner?

JUDGE MCGUIRE: She should take the whole day, I would think.

THE REFEREE: How long is the direct going to be?

MS. TISHMAN: The direct is -- I can look it up. It's not that long.

THE REFEREE: Approximately?

MS. TISHMAN: An hour.

THE REFEREE: So you're going to take from 11:00 to 5:00 tomorrow with Wendy Weiner?

I'm asking this because maybe we

can get another witness.

JUDGE MCGUIRE: Well, they can certainly bring another witness down. We expect -- I mean -- and I understand a deposition is different, but her deposition was two days.

THE REFEREE: But they just said they're going to do a direct of an hour.

JUDGE MCGUIRE: I understand. Our cross, I suspect, will be several hours.

THE REFEREE: So that will take you to lunch?

MS. TISHMAN: If you give me one second, I don't have my notes for Miss Weiner. I can just check and I can tell you how long it will be.

THE REFEREE: Okay, so we will continue this discussion off the record.

Let's go off the record.

MR. LEVINE: If you don't mind, sir, the other thing is is we wanted to ask a few questions, maybe when Miss

Tishman comes back.

Respondent kindly gave us a list of his witnesses and I had some questions just not to delay things, about the relevancy of whether he is offering them as proof. We can wait, but I just didn't know if they were character witnesses or fact witnesses and rather than slow down the proceedings.

THE REFEREE: Okay, let's do that.

MR. LEVINE: I don't know if you want to wait for her?

THE REFEREE: Yes, let's deal with one think at a time. You need to go and get your notes, how long will you be?

MS. TISHMAN: A minute.

THE REFEREE: Let's not go off the record, just use up some blank tape or cyberspace, whatever it is.

MS. TISHMAN: Okay. I just grabbed my file.

THE REFEREE: Do you want to do

this on the record or off?

Are we off or on?

MR. MAISONET: We're off.

MR. LEVINE: We could do this on the record since we're going to morph into --

THE REFEREE: Okay, let's go back on.

MR. MAISONET: On the record.

MS. TISHMAN: I was able just to grab my file. Miss Weiner, the witness for tomorrow, I think I under estimated the time when I made the record before about an hour, I probably will be closer to an hour and a half. I don't know how. You never know how it's going to go.

THE REFEREE: Okay, that will take us to our morning break and then the cross will start at approximately, say, quarter of 12.

And do you think that you will take the whole day or not?

JUDGE MCGUIRE: Well, we'll go certainly into the afternoon. Again,

you never know how it goes, but I would say we are going to take probably three hours or more.

THE REFEREE: Who's the witness after Weiner?

JUDGE MCGUIRE: I did not plan anyone because Judge McGuire had said that --

THE REFEREE: I understand, but who is the next witness after Weiner?

MS. TISHMAN: The next day, on Thursday, I have three witnesses; Kevin McCabe, Miguel Diaz and Connie Van Keuren.

THE REFEREE: And is any one of those going to be an hour's worth, both cross and direct?

MS. TISHMAN: Connie Van Keuren is the shortest, I would think, of all of those. She's the one that I had originally planned to come now and I switched. I could see if she's available tomorrow, but I would also like to have a guarantee that we will stay until she's done because if she

does come down, it's a two-and-a-half-hour drive.

THE REFEREE: Yeah, I see the problem.

MS. TISHMAN: I don't know what to say.

THE REFEREE: Okay. I guess we will just continue doing the best we can.

MS. TISHMAN: My concern is -- originally, like I said, I had Connie Van Keuren as a third witness today. Judge McGuire thought that his cross of Mary Grace Conneely would go longer and he made a suggestion to me, it was a suggestion, but I followed it, that I switch her to Thursday, May 16th, which I did.

And we think we will finish all three witnesses that day?

JUDGE MCGUIRE: Oh, absolutely.

THE REFEREE: So tomorrow we have Wendy Weiner and the cross is going to be done by your colleague?

JUDGE MCGUIRE: Correct.

THE REFEREE: What's his first name?

JUDGE MCGUIRE: Benjamin Osterer -- O-S-T-E-R-E-R.

THE REFEREE: And is he going to be on his own or are you going to be feeding him questions?

JUDGE MCGUIRE: He's going to be completely on his own.

THE REFEREE: Okay. Let's proceed tomorrow as planned and let's just hope that the waste of time isn't going to bite us in the end.

MR. LEVINE: That's what we aspire for.

THE REFEREE: At the end, I should have said.

MR. LEVINE: While we have a moment, if it would be okay with Mr. Arisohn?

JUDGE MCGUIRE: Sure.

MR. LEVINE: We were just going through the list of witnesses that Judge McGuire had provided to us and just want to get a sense of whether

they were fact witnesses or character witnesses or a combination thereof.

So, for Friday, there's listed Tina Benson?

JUDGE MCGUIRE: She's a fact witness.

THE REFEREE: That's Christina Benson I assume?

JUDGE MCGUIRE: Christina Benson.

MR. LEVINE: And then there's Hannah Prall?

JUDGE MCGUIRE: Prall -- P-R-A-L-L -- she's both because --

THE REFEREE: We've heard her name.

MR. LEVINE: I understand we've heard her name, but my question would be --

MS. TISHMAN: But she's a current employee.

MR. LEVINE: I'm just going to say, just for orderly purposes, she's your current court attorney, none of the charges relate to anything within the time period from which she was

employed, so I'm just curious, her testimony would be to character?

JUDGE MCGUIRE: It's going to be both because she also was an attorney for the child back from 2011 forward and was in court many times in some of those cases.

MR. LEVINE: And then there's Melinda Sheridan?

JUDGE MCGUIRE: She's a fact witness. She was the court clerk that came in after Andrea Rogers.

MR. LEVINE: You mean --

THE REFEREE: Court assistant?

JUDGE MCGUIRE: For me. Well, her name's Melinda Sheridan.

THE REFEREE: Court assistant?

JUDGE MCGUIRE: Yes.

MR. LEVINE: Okay, she succeeded her?

JUDGE MCGUIRE: Correct.

MR. LEVINE: Understood. And then for Monday, there's somebody named Tara Hirsch?

JUDGE MCGUIRE: Tara Hirsch is

primarily a character witness. She'll be very short. She is my court assistant in County Court, but she was also -- she works for Sarah Katzman. She -- they'll will be some fact issues because there were issues when Sarah Katzman testified about preparing the calendar and the like, but -- and she'll be very brief. My direct of her will probably be 30 minutes or less. She will be very brief.

MR. LEVINE: Okay. And then Judge Meddaugh?

JUDGE MCGUIRE: Judge Meddaugh is both a fact witness, primarily a character witness.

MR. LEVINE: And the fact witness?

JUDGE MCGUIRE: Part of it is is he's the presiding judge of Family Court and we've had six cases put in that were Family Court cases and court officer issues.

He's also Wendy Weiner's Godfather, very, very close with her.

So there's going to be some fact, but primarily character. He's worked with me for many years.

MR. LEVINE: Okay. At the appropriate time I may have some questions depending how it comes out.

THE REFEREE: You may have what?

MR. LEVINE: I may have some objections depending how it comes out. For example, if he's going to ask Judge Meddaugh his opinion about whether he thinks it was legally permissible to do something.

JUDGE MCGUIRE: Oh, I would never do that. That's not his role.

MR. LEVINE: That's what I'm saying.

JUDGE MCGUIRE: Those objections we will deal with as they come because that's inappropriate.

MR. LEVINE: Steve DeCarlo?

JUDGE MCGUIRE: Steve DeCarlo was the title agent on the case that Mr. Dolfinger testified about.

He too will probably be just as

long as Mr. Dolfinger was.

MR. LEVINE: Okay, gotcha.

And there will be just your wife and you?

JUDGE MCGUIRE: And Brittany Benton is on there also.

MS. TISHMAN: No, she's not.

JUDGE MCGUIRE: Brittany Benton is not on there? I apologize.

MS. TISHMAN: What day?

JUDGE MCGUIRE: Probably Friday.

THE REFEREE: This is a lot better than the original list. How many were on there, like 7,000?

JUDGE MCGUIRE: 93. Every one of them said they are willing to come.

THE REFEREE: 93 witnesses.

MS. TISHMAN: Brittany --

JUDGE MCGUIRE: Brittany will come on Friday.

MS. TISHMAN: Brittany Benton?

JUDGE MCGUIRE: Brittany is 99 percent character, she's my current secretary.

MR. LEVINE: All right. And if

there's any reciprocal discovery, that you happened to have via the witnesses?

JUDGE MCGUIRE: There's no statements from them. There's no -- nobody spoke with them about this.

MS. TISHMAN: I'm not sure -- in looking at this list, I'm not sure how long your directs are. I don't anticipate that my cross is going to be long with any of these witnesses.

So, I just know we were concerned about filling the days. So you have four on May 17th?

JUDGE MCGUIRE: On Friday.

MS. TISHMAN: Right. And three on Monday?

JUDGE MCGUIRE: Correct.

MS. TISHMAN: I don't know if that's going to be a very light day, that Monday or not.

JUDGE MCGUIRE: Then, if Monday is light, although that will be unfortunate, it would then be Corinne, my wife, who from me will be relatively brief, if I can keep my wife brief.

And then I'm ready to testify after that, so obviously I'm here and Ben will be here and we'll just go right through the end of the day.

THE REFEREE: So Osterer is going to question you?

JUDGE MCGUIRE: Ben is going to be here Monday, Tuesday and until we're done.

THE REFEREE: And Osterer is going to question you?

JUDGE MCGUIRE: Correct.

THE REFEREE: And he's going to question your wife?

JUDGE MCGUIRE: And he's going to question Judge Meddaugh and the people on Monday and possibly on Friday. He's got a federal conflict that he's trying to get out of so he can be here.

MS. TISHMAN: He's going to be here this coming Thursday?

JUDGE MCGUIRE: He will not be here Thursday.

MR. LEVINE: Just so -- you don't have to tell me, but will he be doing

all the witnesses?

JUDGE MCGUIRE: He will be doing all the witnesses.

MR. LEVINE: Whenever he's here?

JUDGE MCGUIRE: Whenever he's here I will be sitting in the seat to my right and though I may be taking notes and passing him notes, it will be strictly client --

THE REFEREE: Okay. Anything else for today?

MR. LEVINE: I won't be making objections to anything.

THE REFEREE: Okay. Then we will resume the hearing tomorrow morning at 10:00 a.m.

JUDGE MCGUIRE: Thank you.

THE REFEREE: See you then. Have a good evening.

Off the record.

JUDGE MCGUIRE: Thank you.

MR. LEVINE: Thank you.

MS. TISHMAN: Thank you.

MR. MAISONET: Off the record.

(TIME NOTED: 2:32 P.M.)

EXHIBITS

	Commission	ID	EV
X-27	August 26, 2014, 7:59 a.m. email from Jeff Dolfinger relating to the Moore property		1388
XI-40C	Certification of *Dean v Boyes*		1251
XI-46	Checks and proposals regarding work conducted by Boyes & Torrens Construction, Inc. for Mary Ann Conneely		1265
XI-55	Mary Ann Conneely's deposition transcript		1277

	Respondent	ID	EV
C	Document	1302	

CERTIFICATION

I, NICOLE LEBOVIC, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 14, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of June 2019.

Nicole Lebovic

NICOLE LEBOVIC

STATE OF NEW YORK COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant To Section 44, Subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE

A Judge/Justice of the Surrogate Court Sullivan County.

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61 Broadway
New York, New York

May 15, 2019
10:03 A.M.

Before:
MARK ARISOHN, ESQ.
Referee

Present:
For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent
BENJAMIN OSTRER, ESQ.
Attorney for the Respondent
[redacted]

Also Present:
MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Commission

	Direct	Cross	Voir Dire
Wendy Weiner	1484, 1499, 1507	1529, 1619	1483, 1496, 1500, 1525

THE REFEREE: Good morning, everybody.

Today is May 15, 2019. This is the continuation of the hearing in the matter of Judge Michael F. McGuire. This morning we have a new face on respondent's side. Would you please identify yourself for the record?

MR. OSTRER: Yes, your Honor. Benjamin Ostrer, [redacted], assisting Judge McGuire.

THE REFEREE: Thank you.

Anything to discuss before we proceed?

MR. LEVINE: We are ready to proceed.

MR. OSTRER: I wanted to make one inquiry, your Honor. I was provided with a multitude of papers by Judge McGuire, but I did not see the originating complaint that was filed that brought about this proceeding. I didn't know if there was a formal complaint filed or a complaint

initiated by the Board.

MR. LEVINE: The accusatory instrument was the former written complaint, which is here.

If you are asking for other written documentation, that was provided to respondent long ago when he initiated the proceedings, but they are not in evidence here.

THE REFEREE: This sort of came up earlier. There is a letter that Ms. Tishman wrote to Mr. Bonacheck, dated July 18, 2017, that included a copy of the confidential memorandum from the Inspector General of the Office of Court Administration that includes summaries of interviews there were taken by the Office of Court Administration, and it suggests that there was an originating complaint by Wendy Weiner. Do you have that document?

MR. OSTRER: No.

THE REFEREE: Well, Judge McGuire has it.

MR. OSTRER: We have the IG report, but the originating complaint, we do not have an originating complaint from Wendy Weiner.

MR. LEVINE: First of all, this is a completely untimely application. Second of all, at the time when Judge McGuire came in to testify, way back when, we provided him with whatever complaints that we had in this case. We turned over all of our witness statements, all Brady material, anything exculpatory. Any piece of documentation that relates to any witness who came to testify here, today and in this proceeding, has been provided.

THE REFEREE: Mr. Levine, I don't think that's what is at issue. What is at issue, I think, is that Mr. Ostrer is saying that he has this confidential report that was provided by Ms. Tishman on July 18, 2017. The confidential report suggests, although it doesn't say, that there was an originating

complaint by Wendy Weiner, and I suppose if there is some document that reflects an originating complaint by Wendy Weiner, that is what he is asking about.

MR. LEVINE: We don't have that. What you are reading from is from the Office of Inspector General of the Court System, not from the commission of Judicial Conduct. It is a completely separate entity to us. We do not have that.

THE REFEREE: Okay.

MR. OSTRER: Your Honor, the issue is that statutorily, either the commission can file a complaint, or an individual can file a complaint, but there is mandatory language in Section 44, that in either case, a copy of the complaint shall be served upon the judge at the time of such notification.

THE REFEREE: That has been done.

MR. OSTRER: The originating complaint, pursuant to which the

investigation proceeded, has not been provided.

MR. LEVINE: It has been provided. It was the administrator's complaint that was issued. Secondly, if you are trying to file a motion to dismiss, the time has passed. Third of all, we already provided that to counsel at the time, before he came in to testify in 2015 or '16 any accusatory instrument -- or 2017, all of the initial complaints that we had in this matter were provided to Judge McGuire's counsel.

THE REFEREE: Let me speak. If there was an originating written complaint by Wendy Weiner to the Office of Court Administration that led to the Office of Court Administration Inspector General doing an investigation, Commission is saying they don't have that. If Judge McGuire wanted to try to get that, there has been plenty of time before today for that to have been done either by

request or by subpoena.

I don't know what I am supposed to do here today, moments before Wendy Weiner takes the stand.

MR. OSTRER: Ms. Weiner is going to testify. If she filed a complaint, it would be relevant to any examination of her and the statute is mandatory that a copy of the complaint shall be served upon the judge.

THE REFEREE: Doesn't that statute refer to the complaint that was served upon the judge that was filed --

MR. OSTRER: No, it's the originating complaint. It's what gives the commission the authority to investigate.

MR. LEVINE: Mr. Ostrer, what I am saying is that the complaint that you are talking about is an administrator's complaint that was filed in this matter, okay -- which initiated and started these proceedings. Okay? Those complaints, which I think one was based upon the

Inspector General's report, which was provided to counsel, that's what initiated these proceedings.

What you are talking about, whatever internal documentation was done with the Office of Inspector General, has nothing to do with us. We don't have it. We turned over everything that we had, including the things that gave us jurisdiction initially, years ago, when we started this.

MR. OSTRER: The point I am trying to make -- and I apologize if I am not being clear -- is that the original authority, pursuant to Section 44, stems or descends from a complaint. The investigation by the IG references a complaint by Wendy Weiner, which I assume was the originating complaint. The IG would not be investigating in the absence of a complaint and if it was a commission, it says the Commission may add its own motion into this initiated investigation and then

shall filed a written complaint signed by the commission.

MR. LEVINE: Which we did.

MR. OSTRER: But you did not initiate it --

THE REFEREE: Can I see the section you are talking about?

So, I am looking at Section 44 of the New York Judiciary Law, paragraph 1 of Section 44 talks about how a case is commenced upon an investigation and it talks about a complaint -- not by the commission administrator but by somebody complaining about a judge, shall be in writing and signed by the complainant.

MR. LEVINE: There is more to it than that. We also have the authority -- the commission authorized administrator's complaint in this matter.

THE REFEREE: I understand that, but if there was a complaint that was in writing, let's assume that just for the sake of argument I don't know this

is the case, let's assume that this proceeding was commenced by the making of some kind of a complaint by Wendy Weiner. Let's assume that to be true. If she filed, with the commission a complaint that was in writing, and I don't know that she did --

MR. LEVINE: We would have turned it over as a witness statement and we would have --

THE REFEREE: Let me finish my statement, Mr. Levine.

MR. LEVINE: I apologize.

THE REFEREE: If a complaint, in writing, signed by the complainant, was in fact filed by Wendy Weiner, I am going to assume that that would have been turned over. The fact that such was not turned over indicates to me that there was no such written complaint filed by Wendy Weiner with the commission that started the investigation of Judge McGuire.

MR. LEVINE: That's correct.

THE REFEREE: Is that true?

MR. LEVINE: Yes, it is.

THE REFEREE: There being no such complaint, signed by Wendy Weiner, there was nothing to turn over. Now, if Wendy Weiner made a complaint to some other agency and did its own investigation and made a referral to the commission, you have that document that was made in referral to the commission. If there was a complaint that Wendy Weiner filed with the Office of Court Administration or the Sullivan County Bar Association, or some other entity, I suppose during the course of preparation for this case, you could have made inquiries about that and served subpoenas to try to get it, but I think we are way down the road for that at this point. I don't think what you are looking at in Section 44 has any application to what you are talking about unless there was a complaint signed by Wendy Weiner and filed with the commission to start this proceeding.

People come out of the elevator on the 12th floor here and say. "I have a complaint against the judge," and I assume there is some kind of a procedure for them to fill out a document and file it. If that had been done that would have been turned over here; is that correct?

MR. LEVINE: Yes.

MR. OSTRER: However, I believe, your Honor, in the alternative, in the absence of a complaint from Wendy Weiner, which we now know was not filed, that the commission issued a complaint and that is where they derive their investigative authority is after the complaint is issued and served upon the judge.

In this case the investigation proceeded anything that was filed by the commission.

THE REFEREE: Okay. Now we are talking about Section 2. Paragraph 2 of Section 44 says, "The Commission on its own motion, initiate an

investigation of a judge with respect to qualifications, conduct, fitness to perform or the performance of his official duties prior to initiating any such investigation, the commission shall file, as part of its record, a written complaint signed by the administrator of the commission which complaint shall serve as the basis for such investigation."

MR. OSTRER: In this case, your Honor, if the document that they are pointing to is their initiating document, their investigation preceded the complaint in violation of the statute.

THE REFEREE: Mr. Levine, was there such a --

MR. LEVINE: There was an administrator's complaint filed in this case and that was provided to the respondent.

THE REFEREE: That's the statement that has the charges in it?

MR. LEVINE: No.

THE REFEREE: No.

MR. LEVINE: When an investigation is initiated, it can be done in two ways. First, as you indicated, the written complaint that is in writing, issued by the complainant. Secondly, the Commission on its own, can authorize an administrator's complaint.

THE REFEREE: Okay.

MR. LEVINE: Which is what happened in this matter. Prior to the time that respondent came to give his testimony before the commission in 2017, that information was provided to him.

THE REFEREE: That information or that administrator's complaint?

MR. LEVINE: That administrator's complaint.

THE REFEREE: Okay, so you have it.

MR. OSTRER: I am not certain as to which document that Mr. Levine is referring to, but I believe the investigation preceded the filing of

the complaint.

MR. LEVINE: Which complaint?

MR. OSTRER: The complaint that -- the administrator's complaint.

MR. LEVINE: It did not. What I am saying to you, if you wanted to make that argument, you could have made it years ago. The bottom line is, you did not. The administrator's complaint was filed. If you want to see it, I will show it to you. I am not hiding anything. He has it and he has had it for years, as has his counsel. Here we are, at the hearing and that's not the -- and any issue with it has been waived. If you wanted to file a notice to dismiss, you had 45 days after the complaint was filed.

MR. OSTRER: Jurisdiction was never waived.

MR. LEVINE: No, that's not jurisdiction.

THE REFEREE: Do you need to see this administrator's complaint?

MR. OSTRER: I would like to.

THE REFEREE: Off the record.

(A recess was taken.)

THE REFEREE: Back on the record. Mr. Levine?

MR. LEVINE: On April 18, 2017, in advance of Judge McGuire's deposition, we provided him with copies of all the complaints in this matter and we will provide them again. This administrator's complaint is June 30, 2015. I have copies to give to counsel.

There was then an additional administrator's complaint initiated in this matter on August 13, 2015, that was also included in that document. I will give a copy to counsel and a copy to Mr. Arisohn. And there was a third administrator's complaint issued in this matter on November 5th. It was authorized November 5th, signed December 4th.

MS. TISHMAN: What year?

MR. LEVINE: 2015. And there was a fifth administrator's complaint that

was authorized on August 11, 2016, signed September 2, 2016.

Copies are being given to counsel. In addition, so the record is clear, there is also the April 18, 2017 letter that was provided to respondent in advance of his testimony before the commission, which I am giving to counsel. It says on page three that enclosed are copies of the complaint.

THE REFEREE: I have four administrator's complaints?

MR. LEVINE: Those are the administrator's complaints issued in this matter.

THE REFEREE: Anything else.

MR. OSTRER: No, your Honor.

THE REFEREE: Let's call the witness.

MS. TISHMAN: The commission calls Wendy Weiner.

(The witness entered the room.)

THE REFEREE: Good morning.

THE WITNESS: Good morning.

THE REFEREE: Please have a seat.

THE WITNESS: Thank you.

THE REFEREE: My name is Mark Arisohn and I have been asked to read an introductory statement to give you some instructions.

A court reporter, who will transcribe the proceedings, is present.

In addition, these proceedings are being digitally recorded. The proceedings will be transcribed.

In order to facilitate a clear and accurate record, please speak slowly, clearly, and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed, and answer each question with words, not a nod or a gesture.

Please refrain from creating excessive background noise, as it becomes amplified on the recording.

Please turn off cell phones or other electronic equipment. Okay?

THE WITNESS: Okay.

THE REFEREE: Would you please rise and raise your right hand?

THE REFEREE: Do you swear or affirm, under the penalties of perjury, that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

THE REFEREE: Would you please have a seat and state and spell your full name for the record.

THE WITNESS: My name is Wendy Weiner.

Wendy, W-E-N-D-Y. Weiner, W-E-I-N-E-R.

THE REFEREE: If you could move the microphone a little bit closer to you so we can hear you better.

THE WITNESS: Is that better?

THE REFEREE: Yes.

Ms. Tishman, you may proceed.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Ms. Weiner, good morning.

A. Good morning.

Q. Are you currently employed?

A. Yes, I am.

Q. Where are you employed?

A. Sullivan County Surrogate's Court.

Q. What is your current title?

A. I am deputy chief clerk.

Q. How long have you worked at the Sullivan County Surrogate's Court?

A. I have been there since March 2015 -- no June 2015.

Q. Prior to being assigned as deputy chief clerk to the Surrogate's court, where were you assigned?

A. I was assigned as secretary to the Honorable Michael McGuire.

Q. How long did you work with Judge McGuire?

A. He took the bench in January of 2011, and I was removed in March of 2015.

Q. Between March 2015 and June 2015, were you working for Sullivan County OCA?

A. Yes.

Q. Where were you assigned between

March 2015 and June 2015?

A. In the law library for Sullivan County.

Q. When you were Judge McGuire's confidential secretary, who was the court attorney?

A. Mary Grace Conneely.

Q. What were your duties as confidential secretary to Judge McGuire?

A. I prepared paperwork, tracked the calendar.

Pretty much whatever he asked me to do, I did.

Q. What were your general hours?

A. I was eight to four.

Q. I want TO draw your attention to January 14, 2015. Were you working for Judge McGuire that day?

A. Yes.

Q. What time did you arrive at work that day?

A. Approximately 7:30 in the morning.

Q. Was Judge McGuire present when you arrived?

A. I don't remember.

Q. Did there ever come a time that you spoke to Judge McGuire that morning?

A. Yes.

Q. Where did you speak to the judge?

A. The judge came out of his office and said we had a problem.

Q. The judge was in his office?

A. Yes.

Q. About what time was that?

A. He came at about ten to eight.

Q. Where did this conversation occur?

A. In front of my desk.

Q. Can you tell us about the conversation you had with Judge McGuire at that time, what was said?

A. I don't remember, other than him saying, "We have a problem."

Q. Then what happened?

A. I went into his office to see what the problem was. I must have followed him into his office.

Q. When you went into Judge McGuire's private office, did Judge McGuire

go into his private office also?

A. Yes, I followed him in.

Q. What happened when you were in Judge McGuire's private office?

A. He was complaining he had a problem with the computers, but I really couldn't understand what he had a problem with.

Q. Can you tell us what Judge McGuire said and what you said? Tell us more about the conversation.

A. Judge McGuire was agitated and upset because something wasn't working right for him. He had a problem. He had to be in criminal court, I believe. He made a special criminal court calendar at 8:00 in the morning and he was obviously trying to access something.

Q. Access something from what?

A. Access something from the computer, so I am usually pretty good with computers and I could fix things, so --

MR. OSTRER: I am going to object as not responsive to the question.

THE REFEREE: Overruled.

MS. TISHMAN: You can continue.

A. I followed him into chambers, and I honestly -- he was very upset and agitated, and I couldn't figure out what he really needed, and based upon the fact that I couldn't figure out what was really wrong or what the problem was, he became more agitated with me.

Q. When you say "really agitated," can you describe what you mean?

A. He was red-faced. He was shouting about the computers, that he needed to access something. I believe the drive was corrupt, but I couldn't figure out if it was his personal computer, the computer for -- his private computer or the UPMS computer that we have. There was a need to print out his notes that he always does before he went to court, and he had to be at court at 8:00 in the morning.

Q. What was the judge's volume -- the volume of the judge's voice at this time?

A. At this time it was very loud, and it grew more intense as I could not

figure out what he needed.

Q. What was the tone he was using when he spoke to you?

A. We didn't have much conversation because Judge McGuire -- maybe this is the problem Judge McGuire was agitated; he was upset. He was trying to figure out something with the computer and it got to the point where he was shouting that he needed somebody from the computer people -- for them to fix the problem. We were there before eight in the morning. Nobody is going to be present from our office, from IT Department, and when I explained that to him, he said he wanted a person named April to come in, who was obviously from the IT for the county.

Q. Then what happened?

A. At one point he just started getting crazy. He at one point took the computer jump drive, which he had in his hand, and he threw it across the desk.

Q. Where was Judge McGuire standing when he took the jump drive and threw it across the desk?

A. By the two computers making his way towards me.

Q. When you say "by the two computers," what side of the desk was he standing on?

A. We were behind the desk.

Q. On the side where he sits?

A. Yes.

Q. Were you next to him when he threw the jump drive?

A. I was at the end corner of the desk.

Q. When Judge McGuire threw the jump drive, what direction did he throw it in?

A. In my direction.

Q. What happened then?

A. He turned and started coming my way, and at that point, I think he totally seen red and lost it.

Q. Why do you say that?

A. Because he was shouting at that point in decibels, he was very loud and his mannerisms. His hands were going. He was shouting. He wants April. He wants April now. I started backing away at that point.

I was scared, to be honest. I was shaking and I was scared.

Q. You were backing away towards what?

A. Backing away towards the door. I don't know what he was capable of at that point. He honestly saw red. He totally snapped.

Q. Then what happened?

A. Then I was backing my way around the desk. I had brought files and when I came, they were on his desk.

Q. Excuse me. Sorry. I am going to interrupt you. What files were those?

A. They were files we keep for preparation for court, county and supreme.

Q. Were they the files pertaining to the court processes of that day?

A. I don't remember if the county criminal were there, but the county supreme were definitely there because the folders were red in color.

Q. Why had you brought them into Judge McGuire's office?

A. If he couldn't access his

computer in preparation for the day's work, I thought he could look through the files for materials to review for preparation.

Q. What happened when you brought the files into Judge McGuire's office?

A. I laid them on the desk.

Q. Whose desk?

A. His desk.

Q. "His" being?

A. Judge McGuire.

Q. As you were backing out of the office, after the judge threw the jump drive, what happened?

A. He started having a complete tantrum. He was yelling and screaming repetitively that he needed April or somebody to fix the computer, and he reached, out and what really started getting crazy is that he reached and he took the files that were on the desk; he threw them, as I was backing out the door, across the desk and onto the floor. And it didn't stop there because he came around the desk in a tantrum of rage, and he was kicking the files and the paperwork all over the place.

Q. This happened in Judge McGuire's private area?

A. This all happened in Judge McGuire's chambers.

Q. His private area?

A. Yes.

Q. Where were you at that time Judge McGuire threw files?

A. When he was throwing the files I was making my way around the desk and he picked them up and tossed them. After he started tossing them I was making my way out the door as he came around the door and he started picking them up. As he advanced, I retreated.

Q. You were making your way to the door that leads to the area where you sit?

A. Yes, I retreated to my desk area.

Q. Then what happened next?

A. He was still, from within his office, yelling that he wanted April and he wanted her now, and I was shaking. I couldn't even think straight at that point and I left the building to see if I could find April because she worked in IT for the

county. They are not county computers, but that's his friend and he wanted me to see if she was in.

Q. You left chambers area?

A. I left chambers.

Q. When you left chambers area, was Judge McGuire still in chambers?

A. Yes.

Q. When you left, what was Judge McGuire doing?

A. He was still having his tantrum yelling and screaming that he wants April or somebody to fix his computer.

Q. You left chambers. Did there ever come a time you returned to chambers?

A. Yes.

Q. About what time was that?

A. I don't remember the time.

Q. About how long after you left chambers did you return to chambers?

A. It couldn't have been more than ten minutes. I walked out into the county government building. I spoke to the Sheriff Brian, who was sitting at the desk, to see if I could obtain the number to call up to

the county office to call IT to see who was available.

Q. Would there be anything that would refresh your recollection about the time that you returned to chambers?

A. If I can read my transcript.

Q. I am going to show you the testimony from your appearance at the commission, October 19, 2015.

MS. TISHMAN: I will mark this for identification.

(Commission Exhibit VIII-5 was marked for identification, as indicated.)

MR. OSTRER: Before it's shown to the witness, I don't know if it's appropriate to use prior testimony to refresh someone's recollection.

THE REFEREE: Overruled. You can refresh somebody's recollection with anything.

Q. If you could look on page 19 and read it to yourself.

MR. OSTRER: Which date is that?

MS. TISHMAN: October 19, 2015.

THE REFEREE: To be clear here, we don't want you to read that and parrot what it says there. I don't know what it says there. The idea here is to read it and see if it refreshes your recollection, and if you now have a recollection, which you didn't have minutes ago, then you can testify what your current recollection is, but I do not want you to read what you previously testified. Do you understand the difference?

THE WITNESS: I understand the difference.

THE REFEREE: Okay.

THE WITNESS: Thank you.

Q. You can start on page 19, reading to line 24. Have you finished reading that section?

A. Can you restate the lines?

Q. Page 19, line 19 through 24.

A. Yes.

Q. Does that refresh your recollection of the time that you returned to chambers?

A. It does.

Q. What time was that?

A. Quarter after, twenty after eight.

Q. When you came back to chambers, was the judge still in his chambers?

A. No.

Q. When you came back to chambers did you look into the judge's office?

A. That, I don't remember.

Q. Did you see the files that had been on the floor? Were they still on the floor when you returned to chambers?

A. They were picked up and left on a credenza. They had footprints on them.

Q. After you returned to chambers, did anyone come into chambers and speak to you?

A. I was spoken to by a number of people.

Q. Did you have a conversation, after you came back to chambers, with Court Officer Downs?

A. Yes.

Q. Later on did you have a

conversation with Sergeant Oliveri?

A. Yes.

Q. Was Mary Grace Conneely present at the time the incident happened with Judge McGuire?

A. No, she had a doctor's appointment that morning.

Q. When you came back to chambers, Judge McGuire wasn't there any longer. Can you describe what you did when you got back to chambers?

A. When I got back to chambers -- it's been so long, I can't tell you in detail.

Q. Let me give a more specific question.

Did you leave that morning to go to a doctor's appointment for your son?

A. I did.

Q. Do you remember around what time you left?

A. I am going to say, like maybe, 10:15, 10:30. His appointment was -- I really don't remember the time.

Q. It was in the morning?

A. Definitely in the morning.

Q. Did you return to chambers after you had been at the doctor with your son?

A. Yes, I did.

Q. Did you receive a call, that day, from anyone from the Third Judicial District?

A. Yes.

Q. Who did you receive a call from?

A. Beth Diebel.

MS. TISHMAN: D-I-E-B-E-L.

Q. Is she the district executive for the Third Judicial District?

A. Yes.

Q. What if anything did you do as a result of the call?

A. She informed me that --

MR. OSTRER: Objection.

THE REFEREE: Sustained.

Q. Without telling us the nature of the conversation --

A. Okay.

Q. -- after you spoke to Ms. Diebel, did you stay at work?

A. I stayed at work.

Q. Did you speak to Ms. Diebel again that day.

A. Yes.

Q. Did you have any interaction with the judge, any discussions with the judge, about what had happened early in the morning the day of the incident?

A. No.

Q. Did you have a conversation with the judge about what happened on January 14, 2015, at any time?

A. No.

Q. Did you have a conversation with the judge where you and Ms. Conneely were in his office and you spoke to him about -- he spoke to you? What happened on January 14th?

MR. OSTRER: Leading.

THE REFEREE: Overruled.

A. Are you speaking on the date of the accident or subsequent?

Q. I am speaking subsequent.

A. The only other conversation I had with Judge McGuire regarding anything from the time of the incident was a couple weeks

later. I don't know the date. He asked me and Mary Grace into his office. He sat us both down. He had papers on his desk. He was looking down and he said, "I've been informed some of my actions might have offended you. For that I am sorry." I went to say something to him. He put his hand up, and he said, "That is all, you are dismissed." And Mary Grace stayed (indicating).

MS. TISHMAN: I want the record to reflect that when the witness said that the judge put his hand up, she outstretched her right hand with her palm facing out.

Q. Was Judge McGuire's palm facing you?

A. Yes.

Q. What was your relationship like with Judge McGuire after the January 14, 2015 incident?

A. He never spoke to me again. There was no relationship from that point on.

Q. How did you communicate if it

wasn't verbally? Was there any communication to you?

A. If there was, it was in an email form or directed through an email.

Q. Was that different to how you communicated prior to January 14, 2015?

A. Absolutely.

Q. Prior to January 14, 2015, had you had verbal conversation with the judge?

A. Yes.

Q. After January 14, 2015 that stopped?

A. He never spoke to me and stayed behind closed doors.

THE REFEREE: I didn't hear that last part.

THE WITNESS: He never spoke to me again and he stayed behind closed doors. He kept the door closed.

Q. Which door?

A. The door to his office.

Q. Prior to January 14, 2015, was his door usually open or closed?

A. The door was usually open.

Q. Did there ever come a time when you no longer worked for Judge McGuire?

A. Yes.

Q. You said before it was in March 2015?

A. Yes.

Q. How did it come about that you learned that your position was being changed?

A. I received a call from the district office.

Q. Was that with Beth Diebel.

A. I believe it was Beth Diebel?

Q. Did anything precipitate the call from Ms. Diebel?

A. Yes.

Q. What was that? Without telling us what she said.

A. Can you ask the question again?

Q. Do you know what precipitated you changing your position in March 2015?

A. I am not sure how to answer without telling you what she said to me. So she was very strict in what she said. It was two or three lines and that was it.

THE REFEREE: Do you know why your position changed?

THE WITNESS: Yes.

THE REFEREE: Was that as a result of somebody telling you something?

THE WITNESS: It was a result of the IG's report coming back. They had deemed that there was harassment, they told me, from the district office, and therefore, I had to pack everything up and be out of the office by 4:00 in the afternoon. It might have been 12:00, but I had to be out X amount of hours and I had to pack my stuff and go.

THE REFEREE: Who told you that?

THE WITNESS: Beth Diebel, from the district office.

MR. OSTRER: Move to strike.

THE REFEREE: Let's just approve that's what she was told. I am not going to accept that for the truth of what Ms. Diebel said. It doesn't matter whether it was true or not.

That's what she was told, right?

THE WITNESS: That's what I was told.

Q. Were you told where to report?

A. Yes.

Q. When was that?

A. I was told I was to report the next morning to the Sullivan County Law Library, and I would be under the directive of Sarah Katzman, who was our chief clerk of supreme court.

Q. Prior to the January 14, 2015 incident, what was your relationship like with Judge McGuire?

A. Prior to the incident?

Q. Yes.

A. I don't know how to answer that question.

Q. Let me ask you this then. What was his demeanor like when he spoke to you prior to January 14, 2015?

A. His demeanor was passive-aggressive. At one point he could cut you down with words and make you feel like you are two inches tall, and the next

minute, he will tell you, "Thank you for all of your good work."

Q. You said Judge McGuire would cut you down with words. What was the tone he would use when he was speaking to you?

A. If he wasn't happy with you, it was very curt and rude and a very scolding tone.

Q. What was the volume of his voice when he spoke to you at those times?

A. It was always much louder, showing his disapproval.

Q. Was it louder than his normal speaking voice?

A. Yes.

Q. Did Judge McGuire ever talk to you in a condescending manner?

A. Yes.

Q. Did he ever talk to you in any derogatory manner?

A. You would have to define "derogatory" for me.

Q. Do you know Andrea Rogers?

A. Yes, I do.

Q. Was she ever Judge McGuire's

court assistant?

A. Yes, she was.

Q. What was the judge's relationship like with Andrea Rogers?

A. It was very volatile.

Q. What do you mean when you say "volatile"?

A. They didn't get along. She actually, to be honest, came out of the courtroom crying one day. I mean, there was issues.

Q. Do you know Court Officer Miguel Diaz?

A. I do.

Q. Do you know Sergeant Oliveri?

A. I do.

Q. I want to draw your attention to February 15, 2013, were working that day?

A. I was.

Q. What, if anything, happened?

A. That day Judge McGuire was agitated in the courtroom. We could hear that he was carrying on, yelling and screaming, either at a litigant or attorney.

MR. OSTRER: Can we affix a date or time?

THE REFEREE: February 15, 2013.

MS. TISHMAN: February 25th.

THE REFEREE: February 25, 2013. Sorry.

A. At one point Judge McGuire came full throttle, barreling out of the door from the courtroom, into chambers, in front of my desk.

Q. There are two doors that lead out of chambers, right?

A. Right.

Q. Which of those two doors did he come out of?

A. He came out of the door -- if you are looking at the bench, he came out the door into my office, which was the one on the left-hand side.

Q. I am going to show you Commission's PH1.

If you can look at that, you see the judge's bench?

A. Yes.

Q. There are two doors surrounding

the bench. Which door did he come out of?

A. The door on the left.

Q. The left of the bench as we are looking at the picture?

A. Yes.

Q. Where does that lead?

A. It leads to chambers and comes out to the front of his other door and my desk.

Q. What did you observe when Judge McGuire came out of the courtroom?

A. He was not happy. He came out full throttle.

Q. What do you mean?

A. At a full pace, dead-on walk out of the door. Straight across, right in front of my desk, non-stop. At the same time, Sergeant Oliveri was coming up the hallway, I am assuming to diffuse whatever was going on.

MR. OSTRER: Objection.

THE REFEREE: Don't assume.

Q. Where did you see Sergeant Oliveri coming from?

A. Sergeant Oliveri was coming up

the hallway into chambers.

Q. I am going to show you what was marked Commission PH5 and Commission PH6.

A. Okay.

Q. If you can look at PH5, is this the hallway that you were talking about?

A. Yes, it is.

Q. If you look at PH6, do you see your desk in there?

A. I do.

Q. Is that on the lower, left corner?

A. Yes, it is.

Q. Where was Sergeant Oliveri? Where was he coming from?

A. He was making his way up the hallway.

Q. Towards?

A. My desk.

Q. Where was Judge McGuire at that point?

A. Making his way the opposite direction down the hallway.

Q. What did you observe?

A. They intercepted right at the

opening, and as the judge was going, Sergeant Oliveri was coming and the judge actually reached out and like shoved him with both hands, pushed him towards the wall and Oliveri went, "Woah judge," because he was trying not the touch the judge and put his hands up. There were some words and Sergeant Oliveri kept going.

Q. When the judge left the courtroom and was walking towards Sergeant Oliveri, did you hear the judge say anything?

A. No, he was just focusing on whatever was happening. He came right out and was on a full throttle march.

THE REFEREE: You. Are saying there was actual physical contact between the judge and Sergeant Oliveri?

THE WITNESS: Absolutely. Absolutely, yes.

Q. Do you know George Matisko?

A. Yes.

Q. I want to draw your attention to 2011, when you started working with the judge. Did the judge ever talk to you about

George Matisko?

A. When he first started working? I don't know how to answer that question.

Q. Let me rephrase. Did the judge ever talk to you about -- have a conversation with you, about George Matisko?

A. Yes.

Q. Can you describe the conversation?

A. At one point he asked me -- George had -- I believe it was a car accident and he had some paperwork and he asked me if I could deal with negotiating a settlement on it for a nuisance-value offer.

Q. Who asked you that?

A. Judge McGuire.

Q. He asked you to negotiate on behalf of George Matisko?

A. He asked me to do it for him.

Q. For who?

A. George Matisko.

Q. You said the judge asked you to negotiate a settlement. Specifically, what were you being asked to do?

A. I was asked to settle a case that

he had.

Q. After the judge spoke to you, what did you do?

A. I did as he asked. I called the adjuster.

Q. Who was the adjuster that you called?

A. I believe his first name was Ira. I don't remember his second name.

Q. What company did he work with?

A. I am unsure. I believe it was Progressive. I know I am not supposed to say I believe.

Q. Did you talk to Ira at Progressive about George Matisko?

A. I did.

Q. Prior to talking to the adjuster at Progressive Insurance, had you had a conversation with the judge about the phone call you were going to make?

A. Yes, he directed that I do it. He indicated that my background of personal injury -- is what I did before I started working with the judge. He said he didn't have that background, so if I could handle

it for him, he would appreciate it, so I did.

Q. You said you had a background with personal injury. What are you referring to?

A. I worked for 20 years for a personal injury law firm, Jacoby & Meyers, Finkelstein & Partners.

Q. The judge knew that you were going to call Progressive Insurance?

A. Yes.

Q. When you spoke to Progressive Insurance, what did you discuss with them?

A. That they already had the medical. They claimed there was no injury and that they would give him a $1,000 nuisance-value offer.

Q. After you spoke to Progressive Insurance, when they told you they would give George Matisko $1,000, did you report back to the judge?

A. I did. The judge had to indicate whether we would accept that offer or not.

Q. Can you describe that conversation with the judge?

A. I told him I reached out to the adjuster. They were offering $1,000 to settle George's case, and he said that George would pretty much take anything and to tell them you accept.

Q. What did you do after the conversation with the judge?

A. I spoke again with the adjuster and indicated we would accept the offer and the insurance carrier asked that I draft a release of settlement.

Q. The conversation that you had with the adjuster with Progressive Insurance, did you have those conversation during business hours?

A. Yes.

Q. After you spoke to the adjuster at Progressive Insurance he told you to draft what?

A. A release of settlement.

Q. After the insurance adjuster told you to draft a release of settlement, did you have another conversation with the judge?

A. I believe I let him know that's

what they asked me to do, so that's what I did.

MR. OSTRER: Objection to what she believed.

THE REFEREE: Tell us what you heard and what you said and what you observed.

Q. After you spoke to the Progressive Insurance and they told you to draft a release, did you report back to the judge about the conversation with the Progressive Insurance?

A. I did.

Q. What, if anything, did the judge say?

A. To draft the release and I even asked if he had something since I didn't have any form releases from my old job.

Q. You asked who if he had something?

A. Judge McGuire, if he had a form.

Q. Was a release drafted?

A. Yes.

Q. Who drafted the release?

A. I did.

Q. Did you draft it during business hours?

A. I did.

Q. What did you do with the draft release once you drafted it?

A. I sent it to the insurance company.

Q. Prior to sending it to the insurance company, did you show it to Judge McGuire?

A. That, I honestly don't remember.

Q. I am going to show you what is in evidence, X-15.

MS. TISHMAN: Does everyone have the document?

Q. If you can look at X-15, it's already in evidence and if you can look in the middle of the page, the November 30, 2011 email at 2:13 p.m. Is this an email that you sent?

A. Yes, it is.

Q. Is it from your office email account?

A. Yes, it is.

Q. It says

wweiner@[redacted];

is that your --

A. Yes.

Q. -- job email?

A. Yes.

Q. Who did you send it to?

A. I sent it to Ira Saffron.

Q. Was that the person you were in contact with at Progressive?

A. Yes, it is.

Q. Your email says, "Attached is a copy of a release for your review and approval." Had you attached a draft release to that email?

A. Yes, I did.

Q. Did you get a response from Ira Saffron?

Let me draw your attention to the first email on Commission Exhibit X-15 on 11/30/2011, 2:25 p.m.

Is this an email that Ira Saffron sent you?

A. Yes, it is.

Q. What was in this email? Did Ira Saffron make suggestions about the release?

A. Can you repeat the question?

Q. Did Ira Saffron, in his email, make suggestions about how to improve the release?

A. Yes, he indicated I should do a couple corrections before it was signed.

Q. In the middle of the page, there is some handwriting. Is that your handwriting?

A. Yes, it is.

Q. Can you tell us what that is?

A. It is me leaving Judge McGuire a note that George will be in tomorrow, to look for him regarding the release.

Q. Is that referring to George Matisko?

A. Yes.

Q. Was that post-it attached to this email?

A. Yes and probably the finalized -- the final release.

Q. Had you left the email and the final release for Judge McGuire?

A. Yes, I left the email and the release on his desk with a note.

Q. What did you do as a result of the email from Ira Saffron?

A. I made the appropriate corrections.

Q. The appropriate corrections to the release, that is?

A. Yes.

Q. I am going to show you what is marked Commission Exhibit X-10. This is in evidence.

This is a December 23, 2011 letter to Ira Saffron. Did you write this letter?

A. I did.

Q. Did you send this letter to Mr. Saffron?

A. Yes, I did.

Q. Prior to drafting this letter did you speak to the judge about the letter you were going to send to Mr. Saffron?

A. I believe the package was -- the package was put together with everything when George actually came into the office.

Q. Did you show Judge McGuire the letter, Commission Exhibit X-10, prior to

sending it to Ira Saffron?

A. I can't say for certain. I don't remember.

Q. Attached to this letter is a document.

What is that?

A. It is the release.

Q. Is the release signed? Who signed it?

A. Yes, it's signed by George Matisko.

Q. Is it notarized?

A. Yes.

Q. Who notarized it?

A. I notarized it.

Q. Where was the document signed and notarized?

A. He came into our chambers.

Q. Who came into your chambers?

A. George Matisko.

Q. Was the judge present when George Matisko came into the chambers?

A. I didn't know George so, yes.

Q. Was this the first time you met George Matisko?

A. Yes.

Q. Was the judge present when George Matisko signed the release?

A. Yes.

Q. Was this during business hours?

A. Yes.

Q. Prior to sending this letter -- December 23, 2011 letter -- Commission X-10 -- prior to sending out this letter and the release, did the judge know you were going to send it?

MR. OSTRER: Objection.

THE REFEREE: Sustained. Strike it.

Q. Had you told the judge you were going to send out the letter and the release?

MR. OSTRER: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. I am going to show you what is marked Commission Exhibit X-11. Sorry, I have to go back to Exhibit X-10 for a second. Do you still have that in front of you?

A. I do now.

Q. On the top of letter, it has Judge McGuire's name and under, it has an address [redacted]. Whose address is that?

A. Judge McGuire's.

Q. Is that his home address?

A. No, that's his office address.

Q. I am now going to go to Commission's Exhibit X --

THE REFEREE: I have a question about this. Why did you put that name and address on the top of the letter instead of your own?

THE WITNESS: Because I used that for most of the stuff that was personal coming through our office as opposed to official court business.

THE REFEREE: Was that your idea or Judge McGuire's idea?

THE WITNESS: I can't answer that. By this time, it was something that was established.

I was following.

Q. You put on Commission Exhibit

X-10 [redacted], you said that was Judge McGuire's office?

A. Office.

Q. Who told you that was Judge McGuire's office address?

A. There was a lot of stuff going through chambers that had this address on it, from the judge himself, so it was that, his email and also his office up in Farmdale information I had as part of my record.

Q. Going to Commission Exhibit X-11. That is a January 25, 2012 letter, did you draft this letter?

A. Yes.

Q. Prior to drafting this letter did you have a conversation with the judge that led you to draft this letter?

A. Yes.

Q. Can you tell us about that conversation?

A. The judge indicated that Mr. Matisko and him didn't receive the settlement check, so he asked if I could get a new one issued.

Q. Is that the letter you wrote?

A. As a result, I drafted this letter asking -- I called first, right -- yes. I called first to let them know we never received the draft check because there is an X amount of time that it's supposed to be received. That time had expired. We assumed the check was lost or misplaced, so we called to issue another one.

Q. Did Judge McGuire know you were sending this letter?

A. Yes.

Q. Did you draft this letter during your business hours?

A. Yes, it was faxed out of chambers too. It was cut off at the top.

MR. OSTRER: Not Responsive to the question.

THE REFEREE: Strike it.

Q. On the top of Commission X-II is there a fax indication?

A. There is a fax indication, page one.

Q. Does it say where it's faxed from?

A. You can see McGuire, Honorable

McGuire on the top part. You can make that much out. Time, 10:20 and the date was -- it looks like you can see the date too up there, 2012 at 10:20.

Q. I want to show you what was marked Commission Exhibit X-12. This check, did you ever, at the time it was issued, did you ever see his?

A. I've never seen this check before.

Q. Now I am going to show you what is marked Commission Exhibit X-37. This email, do you recognize it?

A. I do.

Q. Did you send this email?

A. I did send this email.

Q. Who did you send it to?

A. I sent it to the judge.

Q. That's Judge McGuire?

A. Yes.

Q. Was it through your office email address to the judge's office email address?

A. Yes.

Q. What is this email pertaining to?

A. The people had telephoned his

office when he was in Florida on vacation, and there was a closing that Mr.-- Judge McGuire had handled and they were looking for some sort of paperwork because there was a penalty occurring because the check wasn't received with regard to some of the paperwork with the closing.

MS. TISHMAN: I want to mark this Exhibit into evidence Commission X-37.

THE REFEREE: This wasn't in evidence already?

MS. TISHMAN: Not by my record.

MR. OSTRER: Which number?

MS. TISHMAN: X-37.

THE REFEREE: Any objection?

MR. OSTRER: May I inquire?

THE REFEREE: You may inquire.

MR. OSTRER: Voir dire on this Exhibit?

THE REFEREE: Sure.

VOIR DIRE EXAMINATION

BY MR. OSTRER:

Q. Did you copy Judge McGuire on this email?

A. I sent the email to Judge

McGuire.

Q. This was an email you issued to Judge McGuire?

A. Yes, I received the phone call in chambers.

Q. That was after receiving a phone call from --

A. Eileen, the wife.

Q. Was that a phone message that was left for you or a call that --

A. I personally spoke to them.

MR. OSTRER: I will leave it for cross.

No objection.

THE REFEREE: Exhibit X-37 is received.

(Commission Exhibit X-37 was marked in evidence, as indicated.)

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Do you know Christopher Lockwood?

A. Yes.

Q. Did the judge ever speak to you about Christopher Lockwood?

A. Yes.

Q. Could you describe that conversation?

A. He presented me with a ticket that the gentleman received.

Q. Which gentleman?

A. Christopher Lockwood.

Q. What you say "ticket," what kind of ticket?

A. I honestly don't remember. I believe -- I am not supposed to say "I believe" -- but a traffic ticket.

Q. I am going to show you what was marked into evidence X-40E. We are looking at Commission Exhibit X-40E. This is an August 5, 2011 letter. Did you draft this letter?

A. Yes, I did.

Q. Can you tell us, when you had a conversation with Judge McGuire about Christopher Lockwood, what did he tell you? What was the conversation about?

A. The original conversation was that the gentleman had got a ticket, and I needed to send the information up to Connie Vancuren?

Q. Who is Connie Vancuren?

A. She was a friend of his up at the Liberty Justice Court.

Q. What information did you need to send?

A. This traffic ticket.

Q. Looking at Commission's Exhibit X-40E, did you draft this letter?

A. I did draft this letter.

Q. The heading of the letter, does it have Judge McGuire's address on it?

A. It has his office address again.

Q. What is attached to this letter?

A. A copy of the traffic ticket that Christopher Lockwood --

Q. Is that a copy --

A. It's an application to amend traffic infraction.

Q. Did you send this application to amend traffic infraction along with the August 5, 2011 letter?

A. Yes.

Q. Prior to sending this letter, had you spoken to the judge about the application to amend the traffic infraction?

A. Yes.

Q. Can you tell us that conversation?

A. There was a problem with the actual application, so we needed to have additional information added, and I am not very good with criminal law, so I needed his direction. I didn't know what to do with it.

Q. Did you speak to the judge about that application?

A. Yes.

Q. Did the judge give you advice how to fill it out?

A. He actually completed what was missing from the application.

Q. Did the judge know that you were sending this August 5, 2011 letter with the application to amend the traffic infraction to Connie Vancuren?

A. Yes.

Q. When you spoke to the judge about the Christopher Lockwood matter, was this during business hours?

A. Yes.

Q. When the judge helped with you

filling out the application to amend the traffic infraction, was that during business hours?

A. Yes.

Q. When you sent the letter to amend the traffic infraction, did you send it during business hours?

A. Yes.

Q. How was this sent to the Town of Liberty?

A. It was mailed with the original paper ticket.

Q. When you worked for Judge McGuire, was he responsible for issuing pistol permits?

A. Yes.

Q. Did you ever help the judge in his interviews for people applying for pistol permits?

A. Yes.

Q. Can you describe what Judge McGuire did to issue pistol permits, the process?

A. The process was we received files from the County Clerk's Office from the

Pistol Permit Department. I brought them into chambers. The judge, in the beginning, reviewed and created certain items, within the like bullets, for him to know in the files. Later on, I created that for him. We also called and we scheduled the parties to come in.

Q. Who called to schedule?

A. I called to schedule the parties to come in based upon the judge gave the times and dates. I would call and schedule the people to come in, and in advance I would type up their approval letters, and then after they were approved, I would also, for the county clerk, do the scheduling for them to come in.

Q. Did the judge personally meet the applicants for pistol permits?

A. Yes, I believe it's a requirement.

Q. Were you present when the judge met with the applicants issuing pistol permits?

A. He had me present as part of the interview, yes.

Q. Did you ever go over the documents that had to do with the issuing of the pistol permits prior to the time of the interview to go over them with the judge?

A. Only if there was a problem that I saw raised in them.

Q. What was the judge's demeanor towards you when you worked with the judge on gathering the documents to get required interviews with the pistol permits?

A. The judge's demeanor is the same depending on his mood for the day.

Q. Let me ask you this. Did the judge ever call you names while you were working on pistol permit interviews?

A. He got upset with me one day with the pistol permits. I was trying to make a correction on something.

It might have been an order or preparing them, but they were on the credenza. He was looking at them with me and I wasn't getting some of the paperwork right. He got very frustrated with me and at one point he even called me stupid.

MR. OSTRER: Can we affix a date?

Q. When did this happen?

A. I don't know the exact date.

Q. Were you doing pistol permits with him the entire time that you worked for him?

A. Yes.

MS. TISHMAN: I'm sorry. If I can have one moment. I need one more minute.

Q. When you first started doing pistol permits with the judge, where were they held?

A. They were originally held in the library in family court.

Q. Were they held someplace else after they were held in the library?

A. He scheduled them at the Monticello Elks Lodge.

Q. When the judge said to you -- used the words "You were stupid," was this when the pistol permits were being handled in the library in the courthouse or after when they were being handled in the Elks Lodge?

MR. OSTRER: Objection. She said

she didn't remember.

THE WITNESS: Honestly, I am going to say, I don't actually remember.

MR. OSTRER: I will withdraw the objection.

THE REFEREE: Thank you.

Q. In 2013 did the judge issue pistol permits?

A. Yes.

Q. Where were those interviews?

A. By 2013 we were in the Monticello Elks Lodge.

Q. Why was the location changed?

A. The judge didn't want to hold them during his typical day. He didn't want them to interfere with family court schedule, his court calendar.

Q. Whose idea was it to change the location to the Elks Lodge?

A. Judge McGuire.

Q. Why was the Elks Lodge chosen?

A. The judge had -- had given me the Elks Lodge with an indication they could get community service credits, and his logic was never given to me.

Q. The judge gave you the information about the Elks Lodge?

A. Yes.

Q. What, if anything, did he tell you to do?

A. We would be holding our pistol permit reviews there and he gave me the name of -- which he introduced me to Mike Gagliardi, who was a member of the Elks, so I could reach out to him for scheduling.

MS. TISHMAN: G-A-G-L-I-A-R-D-I.

Q. Did you know Mike Gagliardi before this?

A. I did not know Mike Gagliardi before this.

Q. At the time was the judge a member of the Monticello Elks Lodge?

A. I do not believe he was a member of the Monticello Elks.

Q. At the time were you a member --

A. No.

Q. Let me finish my question at the time were you a member of the Monticello Elks Lodge?

A. No.

Q. Were with a member of any Elks Lodge at that time?

A. No.

Q. What day of the week was the interviews in the Elks Lodge handled?

A. On weekends -- on Saturdays was a majority of them.

Q. What were your responsibilities prior to the Saturday interviews?

A. The scheduling and the preparation of the files.

Q. Can you describe what steps you had to take?

A. I contacted all the people with the date and time. Made sure they were available or I put them on for a different date. I reviewed the files and created his bullet point list that he wanted, and I also drafted and prepared -- one copy for the file and one copy for the person being interviewed -- an approval letter if Judge McGuire, after the interview, actually approved the application.

Q. I am going to show you what is marked for identification Commission's

Exhibit XII-1.

If you can look through this Exhibit XII-1; do you recognize what is in this Exhibit?

A. Yes.

Q. What is it?

A. His pistol permit interview schedule.

Q. Did you draft these documents?

A. Yes.

Q. What year are these documents for?

A. 2013 looks like for the year 2013.

Q. Did you draft these documents as part of your regular course of business?

A. Yes, and the calendars were -- it was considered the calendar for scheduling, and they were usually -- they were circulated, the ones for family court were.

Q. Were the schedules routinely made and kept as part of the course of business?

A. For every interview we did, one of these schedules were created.

Q. Were the schedules drafted at or

near the time of the interviews?

A. They were drafted usually a couple days before.

MS. TISHMAN: I am going to ask that Commission XII-1 be entered into evidence.

THE REFEREE: Any objection?

MR. OSTRER: May I inquire?

THE REFEREE: Okay.

VOIR DIRE EXAMINATION

BY MR. OSTRER:

Q. If I understand correctly, you created the document.

A. Yes, it's the calendar for the people that are appearing and the times they are appearing.

Q. Does Judge McGuire have any role in the preparation of the document, XII-1?

A. I am not really sure what you are asking by that question. Does he physically type it into the computer? No.

Q. This is a document that you type into the computer.

A. When I get confirmation that they are appearing at the time that Judge McGuire

indicated, I put it on a list so that we know that the people are appearing.

Q. Is there a reason you print on the chambers' letterhead instead of blank paper?

A. Because, for the family court appearances they are circulated as a calendar for the date and time. It is also wrapped to the top of the files left for his review before he goes, so he knows who's appearing as he goes through them.

Q. Within Exhibit XII-1, there is scheduling for the Monticello Elks Lodge?

A. Yes.

Q. That's not calendared in the court; is it?

THE REFEREE: Which page is it?

A. It's also given to the Pistol Permit Department, also, so they know the parties appearing based on what they sent to chambers for scheduling and tracking. There could be 50 files in chambers and we are only interviewing 30. It's a way of providing information not only to -- not only for our purposes, but for the court

itself.

Q. Who else do you share the document?

A. It gets -- if we are holding them in-house, it's family court and we would circulate any other normal calendar. If it is at the Elks Lodge, probably only Ginny and Barb, at the time, would get a copy.

Q. Would they get the copy of the family court log also?

A. Ginny and Barb were the pistol permit clerks, so they would not, but the family court would get that because it pertains to them. Yes -- excuse me. I misunderstood your question. If it was being done in family court, they would get cc'd on it too.

Q. They would get them regardless?

A. Right, because they get the phone calls like I do. Where is the Elks Club? Where do I have to be? They are aware of who is being scheduled.

Q. This document is prepared as a schedule and you provide that also to the pistol permit clerks.

A. Yes.

MR. OSTRER: Without objection.

THE REFEREE: Exhibit XII-1 is received.

(Commission Exhibit XII-1 was marked in evidence, as indicated.)

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. I am now going to show you what is marked Commission Exhibit XII-2.

If you look through these documents, do you recognize these?

A. Yes, it's the 2014 scheduling of the pistol permit interviews.

Q. Did you draft these documents?

A. I did.

Q. Did you draft these schedules as part of the regular course of business?

A. Yes.

Q. Were the schedules routinely made and kept as part of the course of business?

A. Yes.

Q. Was it kept by the Pistol Permit Department, like you mentioned before?

A. I don't know what they did with

the information once you gave it to them.

Q. Did you send it to them?

A. Yes.

Q. Was the schedule drafted at or near the time of the interviews?

A. Yes.

MS. TISHMAN: I am going to ask these be marked into evidence.

THE REFEREE: Any objection?

VOIR DIRE EXAMINATION

BY MR. OSTRER:

Q. Do you know if the family court maintains a copy of Exhibit XII-2.

A. I am not sure what they do with the calendar in family court when they were circulated for scheduling.

Q. After the interview, did you keep a copy?

A. I would shred all the paperwork when I am done.

Q. The pistol permit interview schedule is shredded after the interviews take place?

A. Yes, the working papers that I have are shredded.

Q. You do not know what is done with the pistol permit interview schedule once you send them to the clerks or to the family court?

A. No, I do not know what they do with it.

Q. You don't know if they maintain it in the course of their business, do you?

A. No, I am just required to send it for any appearances that Judge McGuire is doing or calendering he is doing in family court; they are required to receive a calendar. That is his calendar.

Q. You never compared this to something in the file that you maintained?

A. This is from the file I maintain.

Q. I thought you said you shredded it after you were done with it?

A. I shred all the working papers that I go over, is what I said.

Q. You do not shred this document?

A. The original document is created in Word, and it is in a Word folder. They are printed and they are circulated and they are also taken to the Elks Lodge. Any

paperwork with information concerning the pistol permit upon return that is not needed is shredded as excess paperwork.

Q. Is the interview schedule shredded as excess paperwork?

A. The printed-out one is, yes.

Q. This is produced from a file on a computer?

A. I am not really sure where it's produced from, but I would say it's a copy out of a Word folder.

Q. Did you retrieve copies to provide them to the commission?

A. Most likely I did, yes, yes.

Q. How did you go about retrieving the copies that you provided to the commission?

A. I probably had them printed out of Word.

Q. This is on a computer in Judge McGuire's office?

A. It is on a computer that is maintained in my jump drive at the deputy chief clerk's office, from when I worked in Judge McGuire's office. I had my own

personal drive.
Q. This document is produced from your own personal drive, not from a court file?
A. It was a drive that I had in chambers.
Q. Is there any way of determining whether the document has been altered or changed since it was originally created?
A. There is PDF copies in there too and they can't be altered or changed.
Q. When you say PDF?
A. They are put into PDF also because that's the form that they are emailed with so no one can make alterations or changes to the document.
Q. You're the one that would have converted it to a PDF, correct?
A. Of course.
Q. And saved it to a thumb drive or a --
A. It's saved to the chamber drive, under -- it was in the G drive.
Q. This document that's being offered into evidence is something you

produced from your thumb drive, not from --

A. I did not produce it from a thumb drive. It was produced by the drive at the court. It is still in the drive at the court.

Q. You had access as the deputy surrogate's clerk to --

A. Yes, the drive that I have --

Q. -- Judge McGuire?

A. Yes, I am still -- I can still access my drive and a lot of the work product that I did when I was in chambers.

Q. This was stored in your file?

A. It was stored in the drive that was given to me by the Office of Court Administration, yes.

Q. The Office of Court Administration gave you --

A. I have a drive, yes.

Q. They gave you a drive?

A. Yes, Mary Grace had one, I had one, and the judge has a personal drive and we had a drive for chambers.

Q. You copied documents to that drive, including these pistol permits?

A. I did a lot of my work in that drive, yes.

Q. That is not what I am asking, Ms. Weiner, I am sorry. The original of this document -- if I were to ask to compare this to the original, the original no longer exists?

A. No, the original is still on the computer, on the drive, which I still have access to.

Q. It's your drive?

A. It is not a jump drive. We are given drives; they're named when you go in. For example, in Surrogate's Court, it's K drive that we all share. In chambers, it's G drive that we all share. Then, we all had our own individual drive in OCA computers. Mary Grace, she could put her work product in. Wendy Weiner, she could put her work product in.

When I went from chambers and I went up to surrogate's court, my drive came with me and the information that I did and the work that I did is still all in those drives. If you want to compare, we can go

to the computer.

Q. I am just inquiring as to whether there are check marks that appear at least on the family court library interview for January 16th, which is part of --

A. The check marks are done instead of numbering.

Q. When you say "check mark" --

A. Instead of a numbering, I do a bullet. It's just my style. It doesn't mean anything in particular.

Q. That's not a code for the Office of Court Administration, that is your own personal code.

A. What do you mean by code?

Q. What does that mean?

A. Instead of a numeral 1, 2, 3, 4, 5, I use check marks. It makes it easier, when somebody calls and cancels, to remove them.

Q. Do you know when the documents that are composed in Exhibit XII-2 were prepared?

A. I do not.

MR. OSTRER: Without objection.

THE REFEREE: Exhibit XII-2 is received.

(Commission's Exhibit XII-2 was marked in evidence, as indicated.)

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. If we can go to Exhibit XII-1, can you look at the document, please?

We see that the first three pages, February 11, 2013 --

A. Excuse me. XII-1? What's the number?

Q. XII-1, pertaining to 2013.

A. Sorry. I didn't see the -- what page are we going to?

Q. The first three pages, those pertain to interviews that were held in the family court library?

A. Yes.

Q. Then, after those, that is when things switched to the Monticello Elks Lodge?

MR. OSTRER: That's not my Exhibit.

A. On March 8, 2014 we have it

scheduled in the month of --

Q. March --

A. Wait. Are we looking at XIII? Hold on.

Q. XII-1.

A. I am on two.

THE REFEREE: These documents are in evidence.

Q. Did you attend the pistol permit interviews at the Elks Lodge in 2014?

A. Yes.

Q. What day of the week were they held again? What day of the week?

A. Elks was Saturday.

Q. How did it come about that you helped on Saturdays?

A. I was required to be there.

Q. Who required you to be there.

A. Judge McGuire.

Q. Tell us about the conversation that you had with Judge McGuire about the pistol permit interviews at the Elks Lodge?

A. The conversation was a directive, that he decided to hold them at the Elks Lodge and I am required to be there.

Q. Did the judge tell you you were required to be there?

A. Yes.

Q. What did you need to do prior to the Saturday date to prepare for the interviews?

A. I had to make sure that the day that the judge picked for his availability -- that the Elks was available. I had to reach out to Mike Gagliardi, and when he said it was okay, Mike would then put it on the Elks Lodge calendar and he would -- Mike Gagliardi would actually meet us over there and make sure the place was set up for interviews.

Q. What would you have to do physically?

What were your duties prior to the Saturday date?

A. I would have to call everyone, get confirmation that they could come for scheduling, and then I would review the files. I would prepare the standard letters for approval and his little review sheets that he had.

Q. On Saturday, what time did the interviews start?

A. The interviews on Saturdays, it fluctuated, 9 a.m., 10 a.m., some are 8 a.m.

Q. Did you --

MR. OSTRER: The record should reflect that the witness is looking at the Exhibit.

THE WITNESS: Well, I don't know. It was different on each day.

THE REFEREE: Do you recall the time on Saturdays that these interviews would --

THE WITNESS: Well, they weren't always the same time. Sometimes --

THE REFEREE: Sometimes they started at eight, sometimes nine, sometimes --

THE WITNESS: Sometimes ten. It depended on Mike Gagliardi's schedule. He had to meet us there too, to open the Elks Lodge to let us in, and he also helped us set up.

Q. On Saturdays, prior to going to the Elks Lodge, did you have to do anything

in preparation for that day's interviews?

A. I would have to go to our office and get the files and I would have to bring them over to the Elks Lodge. I had a sign-up sheet there. I had it set up for everybody when they came in to sign up, and then I would set everything else up that we needed.

Q. When you say that you had to go to the office to pick up files, what files are you referring to?

A. The pistol permit files.

Q. Did the judge accompany you to the office to get the files?

A. No.

Q. What happened when you got to the Elks Lodge?

A. The interviews were held upstairs at the Elks Lodge and I brought all the files upstairs.

Q. What did you do during the time that the judge was doing interviews at the Elks Lodge?

A. I was actually part of the whole process. We would call them; he would

interview them. I would give him a file that he was interviewing; I would provide it to him. When he was done and he had it signed, I would give the next one. The person he just interviewed would come back to my desk. I would give them their approval letter and I had a sheet that the pistol permit clerks would give me which had open dates for the people to come in to pick up their pistol permits, and then I would schedule the people in the spots for the pistol permit clerks.

Q. Was this the same in both 2013 and 2014, when the judge conducted pistol permit interviews at the Elks Lodge?

A. Yes.

Q. Did you always pick up files both in 2013 and 2014 --

A. Yes.

Q. -- for the interviews at the Elks Lodge?

A. Yes.

Q. What would happen after the interviews were completed?

A. I would take all the files back

to the office.

Q. Did you take all the files back to the office in 2013 and 2014 --

A. Yes.

Q. -- when they were held at the Elks Lodge?

A. Yes.

Q. Did you receive any compensation for your time at work on Saturdays?

A. No.

Q. Did you receive overtime?

A. No.

Q. Did you receive compensation time?

A. No.

Q. Let me ask you this. Before when you picked up the files, where were the files located?

A. I usually left them on the credenza in case the judge wanted to review them.

Q. They were in Judge McGuire's chambers in family court?

A. No, they were in the credenza in chambers. We had a credenza.

Q. In family court?

A. In the family court, yes.

Q. How far is the family court building from the Elks lodge?

A. Two blocks, a block.

Q. I have another question. Sorry. When you worked on Saturdays about how many hours would you work in 2013 and 2014?

A. If we had a -- which we often did -- sometimes we had 30 people -- we would be there until lunchtime, 12:00.

Q. On days when you helped on Saturdays with the pistol permits at the Elks Lodge, had you also worked your regular schedule Monday through Friday?

A. Yes.

Q. I want to draw your attention to what is marked Commission Exhibit XII-1A. This pertains to an interview held on September 7, 2013, interview schedule -- it says that this interview schedule --

THE REFEREE: This is not in evidence yet, is it?

MS. TISHMAN: Yes, because Commission Exhibit XII-1 is in evidence

and this is just a section of that.

MR. OSTRER: It was not offered.

MS. TISHMAN: It is part of XII-1? It has already been entered in evidence.

THE REFEREE: Give me a second. As part of Exhibit XII-1, there is a schedule for September 7th consisting of two pages. Are you representing that Exhibit XII-1A is a copy of the first page of what's contained in Exhibit XII-1?

MS. TISHMAN: I think it's a copy of both pages.

THE REFEREE: I only have one page.

MR. OSTRER: I only have one page in my book.

MS. TISHMAN: That was a clerical mistake. Let's use Exhibit XII-1.

THE WITNESS: Are we looking at this?

THE REFEREE: You can show her XII-1 and turn to the schedule, September 7, 2013.

THE WITNESS: Turn to what days?

MS. TISHMAN: September 7th.

THE REFEREE: September 7, 2013.

THE WITNESS: Okay.

Q. This pistol permit interview schedule, the location says the Villa Roma in Callicoon.

What is the Villa Roma?

MS. TISHMAN: Let me spell it for the record. V-I-L-L-A, first word, R-O-M-A.

Q. What is the Villa Roma?

A. The Villa Roma is a resort hotel in Catskills.

Q. Callicoon, how far away is that from Monticello?

A. Thirty to forty minutes.

Q. September 7, 2013, what day of the week was that?

A. A Saturday.

Q. Why were the interviews held at the Villa Roma that day?

A. Because that evening was "Sullivan County Friends of the NRA" dinner.

Q. So why was it held that day?

A. We held the interview before the dinner. Judge McGuire had hoped that the people would come out and maybe support the dinner.

MR. OSTRER: Objection.

THE REFEREE: Don't tell us what he hoped.

A. He indicated that people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits.

Q. How did you find out that the pistol permit interviews on September 7, 2013 were going to be held at the Villa Roma?

A. Judge McGuire came out and said he had an idea, and the idea was to hold them out at the Villa Roma. He also made all of the arrangements for it to be held out there. I did not make any phone calls or anything in regards to that place.

Q. You said "NRA dinner." What does "NRA" stand for?

A. The National Rifleman's Association.

Q. Can you describe exactly what the judge said to you?

A. He indicated he wanted to hold them out there since he would be out there and that there was hopes that maybe since people were out there getting their pistol license, that maybe they would support the dinner. And there were raffles and games to win guns and that they might be enticed to go to the dinner.

Q. It shows on this document, the September 7, 2013 pistol permit interview schedule, the time was 4:30 p.m. Why was that time chosen?

A. The dinner, I think, started at five.

Q. Did the judge --

A. -- or the --

Q. -- require you to help out at the event?

MR. OSTRER: I don't think she was finished with her answer.

MS. TISHMAN: I am sorry.

A. The doors -- I am going to rephrase. The doors open at four usually for

the dinner, and the dinner was actually at six. The raffles and stuff were between four and six.

Q. Did the judge require you help at the event?

A. Yes.

Q. What did he tell you about setting up the interview for that day?

A. That we were to call the people like we normally do to schedule and let people know there was also -- the reason we were holding them out at the Villa Roma was that the dinner was out there in case they were interested.

Q. Did you speak to the applicants on the phone regarding whether they were available to appear that day?

A. Yes.

Q. Did the judge give you any instructions about what you should say to the applicants on the phone?

A. What I just said that, you know, if they had a problem with it being out there, the reason we were holding it out there was because of the dinner and that

they were more than welcome to partake if they were interested.

Q. What were your responsibilities in the time leading up to the interviews at the Villa Roma?

A. It was the same responsibility. The only thing I did not do for this was the actual location and scheduling of where this was held.

Q. You didn't do anything with scheduling?

A. I did the actual scheduling, but with Mike Gagliardi, I would call and say we were going to be at the Elks Lodge located here. The Villa Roma is a large hotel. I didn't do any confirmation that we could use the room or where it would be or anything along those lines for this.

I was just told that we were scheduling there at 4:30.

Q. Where in the Villa Roma were the interviews held?

A. When I got there, we held them in the bar where the golf -- I guess where the -- there is a golf course and then there is,

like a little bar -- bar and tables. I guess it's the bar area of a golf club.

Q. Is that where the judge interviewed the pistol permit applicants?

A. Yes.

Q. Were there people, who were not being interviewed for pistol permits, in that bar area while the interviews were going on?

A. They were patrons that came in the bar that came off the golf course.

Q. On the day of the event, what were your responsibilities?

A. For the event, you are talking now?

Q. Yes, the day of the event.

A. I was required to be there because Judge McGuire, he signs -- actually, at the dinner, he would actually sign -- the people who were actually taking pistols home, he would sign the actual pistol permit approval paperwork right at the -- the pistols -- in order for someone to pick up their pistol has to have an addendum signed acknowledging that they can have it. Part of

our dinner is that if the judges sign that, people can actually take their winnings home with them, so the judges come to the dinner and sign them.

Q. The day of the event itself, before you got to the Villa Roma, did you need to do anything pertaining to the interviews before you arrived at the Villa Roma that day?

A. I had to stop and get the files.

Q. Where were the files?

A. In the office.

Q. That was in the family court building?

A. In the family court building.

Q. Did you bring the files with you to the Villa Roma?

A. Yes, I did.

Q. After the event was all over, what happened to the files?

A. I took them -- I don't remember. I don't. I think I took them home with me. It was late.

MR. OSTRER: Objection.

THE REFEREE: Do you recall that?

THE WITNESS: I know I took them with me I can't recollect if I stopped in the office. I am 100 percent positive I took them home with me.

Q. Was it your responsibility to be the custodian of the files after the event ended?

A. It was my responsibility, yes.

Q. Did you attend the dinner?

A. Yes, I did.

Q. Why?

A. Judge McGuire required me to attend the dinner and my husband attended it with me.

Q. Did you have to pay for the dinner?

A. I did have to pay.

Q. How much was it?

A. $150.

Q. Did the judge attend the dinner?

A. Yes, he did.

Q. You talked about signing paperwork during the dinner. Did the judge sign transfer papers that night?

A. Yes, he did.

Q. Did you receive compensation for your time that you spent working at this event?

A. No.

Q. Did you receive overtime?

A. No.

Q. Did you receive compensation time?

A. No.

Q. The week before and the week after, did you work your normal work hours?

A. Yes.

Q. Drawing you attention to Commission Exhibit XIII-1.

THE REFEREE: Can I just ask how much more do you have on your direct?

MS. TISHMAN: Four questions.

Q. XIII-1, do you recognize this?

A. Yes.

Q. In this email exchange, are you the recipient --

A. Yes.

Q. -- or the sender of this email?

A. Yes.

Q. The other party of the email, do

you know who that email address is from?

A. Yes.

Q. Who is that?

A. Judge McGuire's wife.

Q. That's the obinkey@[redacted]?

A. They call her "Inkey," yes.

Q. Who do they call "Inkey?"

A. His wife, Corrine.

Q. That's Corrine McGuire?

A. Yes.

Q. Did you send and/or receive the emails in this email chain?

A. I did.

MS. TISHMAN: I am going to ask this be marked into evidence as Commission Exhibit XIII-1.

MR. OSTRER: May I inquire?

THE REFEREE: Okay.

VOIR DIRE EXAMINATION

BY MR. OSTRER:

Q. This was an instruction you received from Mrs. McGuire?

A. Yes.

Q. Do you know if judgemcguire@[redacted] was directed to

Mrs. McGuire's account?

MR. LEVINE: Objection.

THE REFEREE: I don't understand.

Q. The new email is judgemcguire@[redacted], whether that was an email of Mrs. McGuire or an email that Judge McGuire set up? Do you know whose email account is judgemcguire@[redacted], as you sit here today?

A. It's Judge McGuire's. It's the one they use from the office that was still operating.

Q. Was --

A. I was given that email address, not only by this email, but also personally by Mr. McGuire.

Q. I am asking you about the document.

MR. LEVINE: Mr. Arisohn, I am requesting that what he is asking is going, not to the admissibility of the client, but to something else. Clearly, she identified the email address. She is on the chain. She has identified

everybody who was there and when it was sent.

These other questions are for cross-examination.

THE REFEREE: You may proceed.

MR. LEVINE: That motion is overruled, I guess.

THE REFEREE: Overruled.

Q. Do you know whose account the judgemcguire@[redacted] was?

THE REFEREE: She answered that already.

Q. On what did you rely to say that?

A. Judge McGuire also gave me his email and he put it in our personal Rolodex to be used. It was his personal account. When personal clients called in, that was the number they could use -- or email that they could use.

MR. OSTRER: Thank you.

Without objection then.

THE REFEREE: Exhibit XIII-1 is received in evidence.

(Commission Exhibit XIII-1 was marked in evidence, as indicated.)

MS. TISHMAN: I have no further questions for this witness.

THE REFEREE: We will take our morning break until 12:30. Then I would like you to tell me whether you want to start your cross at 12:30 or we can start a lunch break now and reconvene at 1:15.

MR. OSTRER: Whatever is best use of your time, your Honor. We can start at 12:30.

THE REFEREE: We can ask the court reporter.

THE REPORTER: It does not matter to me.

THE REFEREE: Let's take a ten-minute break, and we will have a half hour of cross.

(A recess was taken.)

MR. LEVINE: Judge, in our haste to obtain the administrator's complaint and the stuff related to Ms. Weiner, there was another complaint that was turned over, completely not related to Ms. Wiener's, that we provided to

Judge McGuire on April 17, 2017. For what it's worth, I wanted to make sure that you had it.

This was again unrelated to Miss Weiner, but just so the record is complete.

THE REFEREE: This was previously provided?

MR. LEVINE: Yes, on April 18, 2017.

(The witness entered the room.)

THE REFEREE: You may proceed, Mr. Ostrer.

MR. OSTRER: Thank you very much, your Honor.

THE REFEREE: Mr. Ostrer, as we get closer to 1:00, you can tell me when you are at a good time to stop.

MR. OSTRER: Thank you. I will.

CROSS-EXAMINATION

BY MR. OSTRER:

Q. Good afternoon. Is it Winer or Weiner?

A. It's Weiner.

Q. Ms. Weiner, prior to coming here

today, did, you have an opportunity to review any documents or materials?

A. The only time I reviewed any of the materials was when I met with Ms. Tishman.

Q. When would that have been?

A. I met with her on -- I don't not the exact date.

I don't remember. It was a couple weeks ago in preparation of today.

Q. During the month of May or --

A. Yeah, May -- no, excuse me. We are in May. It was in April. Do you want me to check my phone calendar?

I can tell you the exact date, if that's acceptable. I don't remember.

Q. It was one meeting?

A. It was one meeting in preparation of what I could expect today.

Q. Was there a time that you provided a statement under oath in 2015 for the commission?

A. Yes.

Q. Did that occur on one or more than one occasions?

A. More than one occasion.

Q. Were you provided with a copy of the transcript of your sworn statement?

A. No.

Q. Were you ever asked to read it and correct it for accuracy?

A. No.

Q. When you appeared at the commission -- and I believe the first occasion where a sworn statement as taken was September 1, 2015 -- were you trying your best to be truthful and accurate?

A. Yes.

Q. You also gave a sworn statement on, I believe it was, October 19th or 17th -- October 19, 2015; do you recall that?

A. Yes.

Q. Did you attempt to be truthful and accurate in response to questions that were posed to you on that date?

A. Yes.

Q. Did you meet with representatives of the IG office?

A. Prior to this you mean?

Q. Yes, ma'am.

A. Yes.

Q. Was that on or about February 4, 2015 when you were interviewed by a representative of the IG's office?

A. I do not know the date.

Q. Was it prior to the time you met with representatives of the commission?

A. Yes.

Q. Did you also file a complaint alleging inappropriate conduct towards you by Judge McGuire?

A. No.

Q. Do you recall signing a workplace violence incident report?

A. An incident report?

Q. Yes.

A. Not a complaint? There is a difference between a complaint and an incident report.

THE REFEREE: Let me just say, don't argue with the question. Just answer his question.

A. My apologies, Counsel.

Q. Did you file a supporting statement for workplace violence complaint

with respect to an incident that occurred on January 14, 2015, if you recall?

A. I don't recall.

Q. Do you recall completing a workplace violence incident report form?

A. I don't recall.

Q. Did you review a document entitled "Workplace Violence Incident Report Form" prior to coming here to testify, at any time, subsequent to January 14, 2015?

A. Can you repeat the question?

Q. I can try. Do you recall reviewing, at any time, a supporting statement for workplace violence complaint prior to coming here to testify?

A. No.

Q. Do you recall signing such a form?

A. No.

Q. Do you recall meeting with CSEA representatives and preparing an incident report about the occurrences you testified to on direct of January 14, 2015?

A. I don't have any recollection.

Q. We can probably come back to that

later.

Isn't it true, ma'am, that pistol permit paperwork is a county clerk record?

A. I don't know how to answer that question.

Q. Can you give it a try? Why is it that you don't know how to answer the question?

A. Because there is paperwork generated by our office, which would be our work product, and there is paperwork generated by their office, which would be their work product.

Q. Isn't it true that the pistol permit file is maintained by the county clerk in each of the counties outside of the five boroughs and Nassau and Suffolk County?

A. The physical files are -- I can only speak as to Sullivan County, to begin with. The physical -- actual physical file is maintained, yes, by the Pistol Permit Department for the county.

Q. That would be the county clerk's office?

A. That would be the county clerk's

office.

Q. Not the supreme court office; would you agree with me on that?

A. I guess so.

Q. Not the county court clerk's office; would you agree with me on that?

A. Yes.

Q. Pistol permits are a function of the county clerk, isn't that true?

A. Well, then, you know, Judge McGuire is a judge of the county, I mean --

MR. OSTRER: Move to strike as not responsive to the question.

THE REFEREE: I didn't hear an answer.

You can finish your answer.

THE WITNESS: Can you repeat the question?

MR. OSTRER: I would have to ask the court reporter.

(The requested portion was read by the reporter.)

A. The answer is yes.

Q. In connection, do you have a permit?

A. I do have a permit.

Q. When you obtained your permit, you filed an application with what office?

A. With the county clerk.

Q. You were thereafter interviewed by the sheriff's department; isn't that correct?

A. No, that is not correct.

Q. Where was your background check done?

A. The background check is done by the sheriff's department.

Q. Were you interviewed in connection with the background check of the sheriff's department?

A. Was I interviewed like another applicant, yes, I was.

Q. Is the sheriff in any way involved in the functioning of the supreme court or the county court, to your knowledge?

A. What was the question?

Q. Is the sheriff in any way involved in the functions of the supreme court or the county court?

THE WITNESS: Do I get to say anything here?

THE REFEREE: You just get to answer the questions.

THE WITNESS: I am confused.

THE REFEREE: If you don't understand the question, you can tell Mr. Ostrer that you don't understand the question.

A. I don't know the answer to the question. I don't have the knowledge to answer the questions you are asking me.

THE REFEREE: Saying you don't know is a perfectly fine answer, if that's true.

A. I don't know.

Q. When did you get your pistol permit?

A. I don't know.

Q. How long ago?

A. I don't know.

Q. As you sit here today, you have no recollection about when you first got a license to carry a handgun in the State of New York?

A. No, I do not.
Q. Were you a teenager?
A. No.
Q. Were you an adult?
A. Yes.
Q. Were you married?
A. Yes.
Q. Had you had children?
A. Yes.
Q. You do know -- you could affix a time, an approximate time, when you got your pistol permit?
A. Absolutely, but I can't give you a year.
Q. Can you give me maybe a five-year window of when you got your pistol permit?
A. I can give you a window. The window was when I worked for Judge McGuire.
Q. Between 2011 and 2015, you obtained a pistol permit?
A. Yes.
Q. Going through normal channels, you filed an application with the county clerk?
A. Yes.

Q. You were interviewed by the sheriff's department in connection with a background check?

A. No.

Q. Who were you interviewed by?

A. Again, Judge McGuire.

Q. Judge McGuire interviewed you?

A. Yes, he did.

Q. He did not perform your background check, however, did he?

A. Background checks are performed by the sheriff's department.

Q. In connection with the background check with the sheriff's department, is it your testimony you had no contact with the sheriff, no oral, verbal contact, with the sheriff?

A. No.

Q. Then you had an interview. One of the last steps of the process of getting your license is an interview with a judge; is that correct?

A. Yes.

Q. That interview was conducted by?

A. Judge McGuire.

Q. Then you received your license?

A. Yes.

Q. Who did you receive your license from?

A. The physical license is issued through the county clerk's office.

Q. Do you know, as you sit here today, if the county court or the supreme court maintain any pistol permit license files?

A. No, I don't know.

Q. Do you know if the judge, Judge McGuire, in conducting the interview of a prospective pistol permit licensee is acting as a functionary of the court or of the county clerk's office?

A. I don't know the answer.

Q. Fair statement. What papers do you forward to the county clerk's office after Judge McGuire completes an interview?

A. The files themselves go back.

Q. Is a file maintained -- is a copy of file maintained by you or your office?

A. Is it maintained in our office, a copy? No.

Q. There is a court clerk for the supreme court, correct? A chief clerk, Ms. Katzman?

A. Ms. Katzman.

Q. Does Ms. Katzman get any of the documents, other than notice of scheduling, relating to a pistol permit?

A. Not that I am aware of.

Q. Does the clerk of family court get any documents relating to the pistol permit, other than notice that the judge may be conducting interviews on a particular date and time?

A. Not that I am aware of.

Q. You have talked about the event at the Villa Roma in response to some questions from Ms. Tishman, correct?

A. Yes.

Q. Directing your attention to the event in 2013, had you attended "Friends of the NRA" dinners prior to 2013?

A. If Judge McGuire went in 2012 I attended at that time also.

Q. Did he sign any permits --

A. Yes.

Q. -- in 2012?

A. I think Judge McGuire signed all the permits after coming on the bench.

Q. Do you know if Judge LaBuda attended the dinner?

A. Yes.

Q. He is a judge of the county court?

A. Absolutely.

Q. He would sign permits and additions to permits at the "Friends of NRA" dinner; isn't that correct?

A. Yes.

Q. What year were you the dinner chair or co-chair for the "Friends of the NRA" dinner?

A. I can't give you that date.

Q. Have you served as a dinner chair or co-Chair of the "Friends of NRA" dinner?

A. Probably 2016, 2017.

Q. Didn't you also serve as a member of the dinner committee in 2013?

A. No.

Q. You brought your husband to the dinner in 2013?

A. Yes, I did.

Q. Did you bring your husband to the dinner in 2016?

A. My husband has been at all the dinners.

Q. 2017?

A. Yes.

Q. As a member of the dinner committee, did you have to pay for your ticket?

A. I paid for my picket when I worked with Judge McGuire.

Q. That's not what I asked you. I asked you --

A. You need to be more clear. I don't understand the question.

Q. I will endeavor to be more clear. When you were a member of the dinner committee, did you pay for tickets?

A. Yes, I did.

Q. You paid for ticket to the events on numerous occasions; you would agree with me on that?

A. Yes, I did.

Q. When did you become a member of

the Friends of the NRA of Sullivan County?

A. I don't know the exact date.

Q. Before or after you obtained your pistol permit?

A. I don't know the answer to that.

Q. You don't recall if you joined the "Friends of the NRA" of Sullivan County before or after you obtained your pistol permit; is that your testimony.

A. That is my testimony. I do not know.

Q. Your husband was a police officer?

A. Yes.

Q. Was he a member of the organization Friends of the NRA?

A. He joined probably 20-something, after I did.

Q. What's 20-something? That means 20 in single digits or 20 in double digits?

A. I don't know the answer.

Q. Have those dinners always been held at the Villa Roma, to your knowledge?

A. They always were all at the Villa Roma.

Q. It's an annual event?

A. It is.

Q. How did you become aware that the cost of the dinner, to provide the dinner to the attendees, was $30?

A. I don't think I said it was $30.

Q. Isn't the cost of the dinner $30, and everything beyond that $30 is considered a donation to the organization?

A. No.

Q. When you were head of the dinner committee, did you negotiate with the Villa Roma over the price of the dinner?

A. No.

MR. OSTRER: Sorry, Judge.

I just dropped my papers and shuffled them.

Q. Do you recall Senator Bonacic being present at the time Judge McGuire, in your presence, conducted interviews?

A. No.

Q. Do you know who Senator John Bonacic is?

A. Honestly, I don't.

Q. You don't know Senator Bonacic?

A. If he was standing in this room, I couldn't pick him out.

Q. You don't know whether he was there or not --

A. No.

Q. -- because you don't know who he is.

You did on direct examination refer to it as: "Our dinner." Do you recall that?

A. No.

Q. Didn't you refer to it as "your dinner" as a member of the organization?

A. If you say so.

Q. You would agree with me that Sullivan County is a blue-color county?

A. I would not like to comment on that. I don't have any opinions along that line, to be honest.

Q. You called it a "redneck county," didn't you, ma'am?

A. I am not sure what you are referring to, sir.

Q. Do you recall, during your interview, referring to Sullivan County as a

"redneck county?" Yes or no?

A. No.

Q. Is there difficulty on the part of some of the pistol permit license applicants to get to court during the traditional nine-to-five business day because of their work schedules?

A. I would not know that.

Q. When you speak to the people on the phone trying to schedule their appointment, is it your testimony that you don't recall people saying, "I can't leave work isn't there some other time I can come for my interview with Judge McGuire?"

A. When it comes to their pistol permit, not everyone will be there every time the judge directs. They will be there three hours before waiting, not to miss the interview, because that is how important it is to them.

Q. Nobody ever said to you, in the numerous phone calls that you had, that their work conflicted with the appointment?

A. If there was a conflict with the appointment, we would pick a different date

for them and accommodate them.
Q. Wasn't the scheduling of appointments on Saturday at the Elks Club in part an accommodation for the applicant so they didn't have to miss work in order to attend their interview with the judge?
A. Not to my knowledge.
Q. This was only to the judge's convenience to work on Saturdays; is that what you understand?
A. I don't know. I don't know. I don't know.
Q. Did people thank you for accommodating them by holding interviews on a non-workday while you were there?
A. I don't remember.
Q. You don't recall a single individual expressing gratitude for having their interview scheduled on a non-workday?
A. No.
Q. We can agree that court isn't in session on a weekend except for an urgent application; is that correct?
A. Yes.
Q. Are you aware of search warrant

applications being brought to Judge McGuire's home on a weekend or at odd hours when the courthouse is closed?

A. I am aware of that.

Q. Judge McGuire is on call 24/7; isn't that correct?

A. Yes.

Q. As a Superior Court Judge of the State of New York, correct?

A. I guess so.

Q. Are you called out when the judge has to sign a search warrant?

A. No, I just receive the phone calls.

Q. That's because you are his confidential secretary; isn't that correct?

A. Yes, and because he left it with all the police departments.

Q. You actually authorized him to share your phone number with people; isn't that correct?

A. No.

Q. You never sent him a text authorizing him to give your number?

A. Not that I recall.

Q. Did you review your text message exchanges with Judge McGuire prior to coming here to testify?

A. I don't even have any messages to review.

Q. You didn't save the messages between you and Judge McGuire?

A. Why would I?

Q. It might refresh your recollection to some of the matters ongoing?

A. It's four years later. I probably don't even have the phone I text messaged him with. It was probably a phone that got run over on Mother's Day four years ago.

Q. Do you recall -- this is page 134 of which date?

JUDGE MCGUIRE: October.

MR. LEVINE: Can we have a line?

MR. OSTRER: Page 134 beginning -- I'll start line 8.

Q. Do you recall being asked these questions and giving these answers?

"Is it they raised money there?"

Referring to the dinner.

"Yeah, they raised that year -- they raised probably 28 to $30,000 that night."

MR. LEVINE: Objection to the connection between what we heard. Is this a prior inconsistent statement? I'm not sure why we --

MR. OSTRER: I'll withdraw.

Q. Did you know how much money was earned at the dinner in 2013?

A. I don't know. I wasn't involved in the dinner in 2013. Do you recall being asked this question?

"Is it they raised money there?

"Yeah, that year they raised probably 28 to $30,000 that night." On what did you rely to give that answer to that question regarding the 2013 dinner?

A. Does it say it's the 2013 dinner in my testimony? I was not involved in the Sullivan County Friends of the NRA in 2013.

Q. That's why I'm asking you.

A. They publish it in the Democrat and the newspaper, so I do have knowledge, like everybody else, what the foundation

raised, as well as the judge, when the information was reported back.

Q. When you say it was a fundraiser, this line 13:

"They weren't seeking donations; they were charging for the event. There was no request for donations, were there?

"No, your dinner is your donation. I mean they only charge $30 for the dinner, and the cheapest ticket you can get for the dinner" --

MR. LEVINE: I mean, I am going to object.

-- $55 so that's the automatic donation right there."

MR. LEVINE: Can I just raise an objection? If you don't mind. I mean if he wants to ask any question, he can, that's related to this, but it seems like he is trying to impeach the witness.

THE REFEREE: There has been testimony about $50 and cost and so forth, so I'll let him do it.

MR. LEVINE: By asking for prior

testimony --

THE REFEREE: I'll let him do it. Overruled.

A. I don't know what the context of all this is about. I don't know how to give you the proper answers.

Q. Ma'am, do you recall being interviewed by commission personnel under oath?

A. I do recall, yes.

Q. Do you recall saying, "They only charge $30 for the dinner?"

A. No, I don't recall saying that.

Q. On what did you rely, to swear under oath, that "They only charged $30 for the dinner?"

MR. LEVINE: Objection.

THE REFEREE: Sustained.

MR. OSTRER: This would be a decent break point.

THE REFEREE: It is five after one. Why don't we break until 2:10.

Off the record.

(A recess was taken.)

THE REFEREE: Welcome back.

You may proceed, Mr. Ostrer.

MR. OSTRER: Thank you your Honor.

Q. May I direct your attention back to the event at Villa Roma? Isn't it true that the interviews took place in the afternoon at 1:30 or 2:00?

A. Not to my recollection.

Q. Do you recall, when you were interviewed under oath, stating that, "I think the doors opened" -- reading from page 125, line 14.

MS. TISHMAN: Which one?

MR. OSTRER: September 1st.

Q. "I think the doors opened at 4-4:30 and the interviews were around 1:30 or 2:00." Do you recall making that statement under oath?

A. I do not.

Q. Do you recall that you were asked about the people coming off the golf course and you said, "Yes" --

MR. LEVINE: Hold on. It's the same --

MR. OSTRER: Page 126, line 15.

Q. "Yes, there were people who came off of the golf course because it was tee time. You're getting to about 2:00-3:00. They have done their thing and they were actually at the bar drinking." Isn't that what occurred about the time you were doing your interviews between 1:30 -- when you started your interviews at 1:30 or 2:00?

A. I don't recall.

Q. I believe on direct you testified you started the interviews at 4:30?

A. I don't remember my questioning. It's been four years, three years. I don't remember exactly what I said.

Q. This morning, in response to Ms. Tishman's question, didn't you say that the interviews started at 4-4:30?

A. I was reading from the schedule and that's what it indicated.

Q. Would it be fair to say that, as you sit here today, you have no actual memory of when the interviews started and in response to your questions on direct, you were reading from a document?

A. I was, yes.

Q. It did not refresh your recollection; it substituted for your recollection. Would you agree with me on that?

MR. LEVINE: Objection?

THE REFEREE: Overruled.

A. Can you state the question again?

THE REFEREE: I think we get the point.

MR. OSTRER: You get the point. Thank you, your Honor.

Q. You told the commission that you had court papers with you at the time of the Villa Roma event. Can you describe what court papers you had?

A. I am assuming I am referring to the pistol permits. I would not have any other court paper with me other than what I considered the pistol applications.

Q. We went over that that was an application thats is filed with the county clerk, correct?

A. Yes, we went over that.

Q. Beyond what we already discussed,

where there any other classification of papers that you would call "court papers?"

A. Not that I recall.

Q. Who is Jim Hemmer? If I am pronouncing that name correctly.

THE REPORTER: Can you spell that name, please?

MR. OSTRER: H-E-M-M-E-R.

A. He is a employee at the county.

Q. Is he a personal friend of yours?

A. Yes, he is.

Q. Close personal friend?

A. Yes.

Q. Did he transport you here today or travel to this proceeding with you here today?

A. Yes, he did.

Q. Is he an officer of the Friends of the NRA?

A. As of 2014, he is the chairman of the NRA.

Q. How about the organization Friends of the NRA?

A. That's the organization.

Q. Did he work on the events, the

NRA events, with you?

A. When I joined, I worked with him.

Q. Do you know if Mr. Hemmer worked on the 2013 dinner that you attended at the request of Judge McGuire?

A. I am not sure. Mike Gagliardi was the head of the Friends Foundation at that time.

Q. Is that the same Mr. Gagliardi who was involved with the Elks Lodge?

A. Yes.

Q. You said you became a member of the Elks also?

A. Yes.

Q. When did you become a member of the Elks?

A. I don't know the exact date.

Q. Was it before or after interviews were scheduled for pistol permits at the Elks Lodge in Monticello?

A. I believe I was already as a deputy chief clerk of the court.

Q. On what do you rely for that belief?

A. I am just assuming. That's my

guess. I wasn't a member of the Elks when we were doing the pistol permits.

Q. Do you know if the judge was a member of the Elks?

A. I don't believe he was a -- he wasn't a member of the Monticello. I believe he was a member of the Liberty Elks Lodge.

Q. Do you recall disagreeing with the judge on consideration of pistol permits?

A. No.

Q. Did you feel that he unnecessarily inquired of applicants concerning prior criminal history, such as DWIs?

A. No, it's not my place.

Q. Did you observe the judge being condescending to pistol permit applicants?

A. Yes.

Q. Was that at the Villa Roma or some other place?

A. At the Elks Lodge.

Q. Can you describe how the judge was condescending to people at the Elks Lodge?

A. It was usually people who had a prior and it was in their records. He made them feel small. He questioned them like cross-examination.

Q. You felt he was being condescending because somebody seeking to carry a handgun was being probed about prior criminal history?

A. Yes, that's my feeling.

Q. You disagreed with him asking such questions and told him so; isn't that correct?

A. No.

Q. Did you take offense when the judge suggested to a pistol permit applicant that they seek counseling before he would grant them theirpermit?

A. No, it's not my business what the judge does.

Q. Page 110?

MS. TISHMAN: Which --

MR. OSTRER: September 1st.

Q. "Well, he will make them go to counseling before he will even review the thing.

The thing was from twenty years ago. The guy made a mistake. He is a CDL operator. Just give him his license." Do you recall making that statement under oath when being interviewed, here at the commission, on September 1, 2015?

A. I don't recall making the statement, but that was Judge McGuire's policy.

Q. You felt he should just give them a license?

A. I don't remember saying that.

Q. Did you take issue with Judge McGuire because he was requiring people to seek counseling or to explain criminal convictions before he would sign-off on their pistol permit?

A. No, I am not the judge.

Q. So when you said, "You know, you got a couple DWIs, well he will make them go to counseling before he will review the thing." You were denigrating Judge McGuire at that time when you were being interviewed, weren't you?

MR. LEVINE: Objection.

A. I was just stating policy.

THE REFEREE: Sustained.

THE REFEREE: Strike that answer.

A. Judge McGuire had a policy he followed with certain applicants. That was the reason for doing the review of the applications.

Q. Judge McGuire sat in a variety of courts; isn't that correct?

A. Yes, he was a multibench judge.

Q. He did surrogate's calendar?

A. Yes.

Q. Between 2011 and January 14, 2015, did you handle the surrogate's calendar?

A. I filled in at his direction. Mary Grace was also appointed the surrogate upon the passing of Luanne Herring.

Q. That is not what I am asking you. Was it part of your duties to serve as --

A. I served at the judge's discretion and that's what I was directed to do and that's what I did.

Q. When did that occur?

A. The exact dates, I do not know.

Q. Do you know how long into his term it was before Judge McGuire assumed duties in the surrogate's court?

A. He assumed the duties of surrogate's court with the passing of the Chief Clerk Luanne Herring. Mary Grace was appointed the surrogate, acting surrogate.

Q. Mary Grace Conneely?

A. Yes, his court attorney.

Q. Became the acting surrogate clerk or the acting surrogate?

A. The acting surrogate, there was an order appointing her acting surrogate.

Q. That was while she was serving as principal law assistant to the judge.

A. Yes, that's what the state had done. The order was issued.

Q. When did Luanne pass, if you know?

A. I don't know.

Q. Judge McGuire was a pallbearer at Luanne's funeral, if you know?

A. I don't remember.

Q. It would be some time after Luanne passed that Judge McGuire assumed

duties?

A. I didn't say Judge McGuire assumed duties. Mary Grace assumed duties, but he directed I assist. He also directed I assist when she was ill. She had cancer and it's a two-person office.

Q. That was because you were the confidential secretary to the judge.

A. It's because that's what he directed me to do.

Q. The judge is also an elected county court judge; is that correct?

A. Yes.

Q. Did he have a county court calendar?

A. He has always had a county court calendar, depending on the day.

Q. He presides over criminal cases in addition to the surrogate's work?

A. Yes.

Q. Explain to me, if Mary Grace Conneely was the acting surrogate, did Judge McGuire have any surrogate duties?

A. I am assuming he had the same surrogate duties he had when he came on the

bench.

Q. Do you believe he was functioning as surrogate -- you were his first confidential secretary, correct?

A. I am his secretary, yes.

Q. When you entered, that was your first job in the court system, correct?

A. Yes, it was.

Q. That was Judge McGuire's chambers?

A. Yes, it was.

Q. It is your recollection that he was handling surrogate matters from the early stages of his judicial career?

A. Yes, he was surrogate, county, and he got family, and he had to wait a year before he got supreme.

Q. You believe he was assigned acting supreme court in a year?

A. I believe that's what the law is.

Q. Do you know, from working in his chambers, whether there were supreme court duties assigned one year into his term?

A. It was a year after. It was a year.

Q. Could it have been two years?

A. I don't know the answer to that.

Q. Was Judge McGuire handling 50 percent of the family court calendar?

A. I am not sure what the caseloads Judge McGuire were handling.

Q. Isn't it true that Judge McGuire had 80 percent of the surrogate's court calendar?

A. Yes.

Q. Isn't it true that he had 20 or 25 percent of the county court calendar?

A. I don't know what his percentages were for county.

Q. Do you recall page 108?

MS. TISHMAN: Can you tell us a line?

MR. OSTRER: Yes, line 7.

MS. TISHMAN: Which transcript?

MR. OSTRER: September 1st.

Q. "Yeah, he -- Judge McGuire -- wanted to.

His big thing was to always to be kept busy. He took 50 percent of the family court load from Judge Meddaugh. Judge

Meddaugh had 17 percent of supreme and 50 percent of family court. He took that. He took 80 percent of surrogate. He took 20 percent of county. He took all county civil and then after his one year, he took another 17 or 18 percent with supreme. He overloaded himself with proceedings." Do you recall making that statement when you gave a statement under oath on September 1, 2015?

A. I don't recall. I just don't know.

Q. You didn't make up the numbers?

A. No, it doesn't sound like I did. It's actually printed. Supreme is definitely record, the percentage, in a thing we get once a year. I just don't recall, to be honest.

Q. You believe he overloaded himself?

THE REFEREE: She just said she doesn't recall.

Q. Do you believe he overloaded himself, as you sit here today?

A. I don't know what to tell you.

Q. In the context of doing civil

supreme work, surrogate's work, Judge McGuire was also doing pistol permits; is that correct?

A. Yes.

Q. Isn't it true that Judge LaBuda was the only other officer, pursuant to penal law, who had been assigned to review the pistol permits?

A. I know he is the only other judge, as a county judge, but I don't know penal law or anything like that.

Q. Do you know how the -- in terms of volume of pistol permits you shared with us and the schedule of the numbers of people who apply for pistol permits, how that was shared between Judge LaBuda and Judge McGuire?

A. I believe that became 50/50. Judge LaBuda was handling them all. Then Judge McGuire came on the bench and they split them 50/50.

Q. Do you recall when was your last day as confidential secretary for Judge McGuire?

A. Judge McGuire, no, I do not.

Q. Wasn't it March 31, 2015?

A. I don't remember the day.

Q. Did you communicate with Judge McGuire by text?

A. On my last day? I am not sure what you are asking me.

Q. During your engagement in the chambers of Judge McGuire, did you communicate with him by text message from time to time?

A. I don't know what time -- you mean since -- I mean there was text communication as part -- I don't know what time frame you are asking. Can you rephrase the question?

Q. In 2011, when you initiated your work in the judge's chambers, did you communicate by text message at that time?

A. I am going to say probably. I don't have a recollection of any specific test messages. I know I spoke to him on his cell phone and things like that. I know there was email communication. I just don't have any particular memory of text communication.

MR. OSTRER: May I have this marked, your Honor?

THE REFEREE: What is this being marked as?

MR. OSTRER: "D" for David.

(Respondent's Exhibit D was marked for identification, as indicated.)

Q. I will ask you to take a look at what's been marked D for "David" and see if that refreshes your recollection as to your last date in of work in the chambers of Judge McGuire.

A. I don't know if this is my last date that I was in chambers. I told you I didn't remember.

Q. Do you believe you were still working for the judge on March 31, 2015?

A. I thought I was removed before the end of the month.

Q. Can you explain the email exchange at 9:54 a.m.?

MR. LEVINE: Objection.

THE REFEREE: This is not in evidence.

Q. Do you believe you exchanged text messages with the judge on March 31, 2015?

A. This is absolutely not mine.

Q. How do you know that?

A. I had no communication with Judge McGuire, concerning anything, after he refused to talk to me after the incident in January 2014.

Q. Do you recall on March 6th having a text exchange with the judge?

A. I can recollect maybe one time he was looking for me and I was actually not in the office. I was out of the office either with the -- what do you call the attorney general? The IG's office and he actually had reached out to me when I was with them and they told me issued respond to him and that's the only time I can recollect, as I'm thinking about this, is that time period.

Q. You were at the IG's office for an interview on February 4th.

A. Then that was not the email that I received or the text message.

Q. It's your belief that you did not send or receive text messages on March 31st

through March 6th?

A. It's not to my recollection that we had any communication. This has -- doesn't have on the top, like it should, for a standard thing for my name and other things. My name is kind of plopped on the middle there for an email or a text communication.

Q. I confess to you I am a little clumsy in copying --

A. I don't know how you get a name in the middle of the text messages. It should be at the top and when the text message is printed, it should go from there.

Q. Well, if you take a screenshot, sometimes that occurs.

MR. LEVINE: Objection.

A. That does not occur in a screen shot.

THE REFEREE: This document is not in evidence. We don't need to debate it.

Q. Do you recall advising the judge, at any time, that "Carol needs to speak with you and your mailbox is full?"

A. I don't know who Carol is.

Q. Do you know somebody you refer to as "Mamma Carol?"

A. I would assume that is Carol you are speaking of Carol from Last Licks.

Q. Do you recall texting the judge in March of 2015 about a message he had from Carol from Last Licks?

A. No.

Q. Do you recall ever texting the judge at hours outside of the 8 a.m. to 4 p.m. window?

A. Absolutely, when the judge reached out to me. He would reach out at all hours. He had no social filters in regards to that.

Q. Isn't it true you texted him at 5:05 in the morning to let him know you will not be in today on August 7, 2014?

A. Was I calling out of work? I don't know. I don't have no recollection of it.

Q. Do you recall texting him, "I've been up all night sick. I will not be in today. Text or call if you need anything,"

at 5:05 a.m. on August 7, 2014?

A. I have no recollection of that.

Q. Do you recall texting the judge at 9:10 p.m., initiating an exchange, asking him if he is still up?

A. Is that reason because the state police were looking for him for a warrant and they were calling my phone at all hours of the night, which would happen?

Q. Do you recall advising the judge that Daniel Decker called, "Jackie fell and broke her collarbone requiring surgery. She has a trial with Meddaugh tomorrow?"

A. I don't recall, but that is my job. People call me because he gave them my number all the time, so they reached out to me on my personal phone and at home. It was horrible. I can't control what people do.

Q. You were texting him after hours and at five in the morning; do you agree with me on that?

A. I have no recollection of any of the texts or communication for me to agree with you on anything. When were they; 2011, 2012? I mean, I can't even tell you.

Q. August of 2014 and March of 2015.

A. I don't remember. I just don't remember.

Q. Directing your attention to January 14, 2015. I believe you said you arrived at work some time before 8:00 a.m.Do you recall what time you arrived?

A. I believe I stated I arrived around 7:30.

Q. Judge McGuire arrived about what time?

A. I do not know what time Judge McGuire arrived.

Q. Was he there already?

A. I do not remember.

Q. Do you recall being interviewed by representatives of the Inspector General of Unified Court System and telling them -- this would be -- that you arrived at your office at 7:30 and Judge McGuire arrived at 7:50?

A. I don't remember.

Q. And that the judge was scheduled to be on the bench at what time?

A. He had an 8:30 criminal calendar.

Q. At what time was it that you recall that he came out of his office and described, "We have a problem."

A. About ten to eight.

Q. Ten minutes to eight or ten minutes after eight?

A. Ten minutes to eight.

Q. Do you recall telling the investigators from the Inspector General's Office that at approximately 8:10 a.m. Judge McGuire exited his office? Not ten minutes to eight, but ten minutes after eight.

A. Is that exited, and, left to go to his county clerk calendar, or is that exited my office?

Q. Exited his office and said, "We have a problem," at 8:10 a.m.?

A. I do not remember.

Q. Do you recall signing a statement in connection with a workplace violence incident report with respect to the event of January 14, 2014?

A. I don't recall.

MR. OSTRER: I had them copied over the break, judge, I apologize.

THE REFEREE: That is Exhibit E. Do you have one for me?

MR. OSTRER: Judge, I did have.

MR. LEVINE: We will gladly make another copy for you, if that's okay, Counsel?

MR. OSTRER: And one for you too. I apologize. May I approach, your Honor?

THE REFEREE: Me? Yes, of course. This is Exhibit E?

MR. OSTRER: A copy of E, yes, your Honor.

MR. LEVINE: Can we have one quick second to review, if you don't mind?

MS. TISHMAN: We are ready.

MR. OSTRER: Your Honor, may I proceed?

THE REFEREE: Yes, please.

Q. Does that refresh your recollection that you filed a workplace violence incident report form and a supporting statement of workplace violence complaint with respect to the events of

January 14, 2015?

A. I did not file a complaint. I have in front of me the workplace violence incident report. The troubling part is it doesn't help me with my recollection because it's not dated as to when I signed it. I don't know if this was something done that the court officers did with me, or is it something -- did we get this from the -- can you help refresh my memory? Is this from the IG's office? I am not sure. It has the date of the incident. It has my signature on it, but it doesn't indicate when it was done. I am just looking for that recollection to help me.

Q. Do you have any recollection of filing a workplace violence incident report form with the CSEA?

A. I believe that the union -- I don't have any recollection, other than the fact the union wanted a statement because it was like a workers' comp incident, but the union wanted a statement and I am assuming that this is the incident report that -- CSEA did this with me.

Q. Do you recognize the signature at the bottom of the second page?

A. Yes, the signature is my signature.

Q. Do you recall reading and signing a copy, or the original, of the document you have before you, which I believe we marked as E for identification?

A. I honestly don't have recollection of the document.

Q. As you sit here today, you have no memory of providing information and signing a document with your union?

A. No, it was all a very trying time, that's why I asked when it was prepared. Maybe that would help me.

Q. Do you know if you informed people from your union that, at approximately 8:10 a.m., Judge McGuire came out of his office in an agitated state yelling that we had a computer problem? Do you recall?

A. I can't recall meeting with the union.

Q. You do not recall meeting with

the union?

A. I believe on the day of the incident the president of the union wasn't in town. I am not -- they were present when I was at the IG's office. I just can't -- I can't put it -- honestly, I can't put a -- I won't refute to you that I did sign this. It was a statement. I just don't remember everything that's been done on the statement.

Q. Do you have any recollection of whether you left the office to go and saw Officer Dylan and returned to chambers at about 8:25 a.m.?

A. Brian?

Q. Dylan.

A. I didn't know his last name. Sorry.

Q. Do you recall that?

A. Do I recall, in general, going out? Yes, I left the building and went and saw Brian, yes. He works for the sheriff's department, yes.

Q. Can you explain why both the inspector general's report and the report or

a document that you signed each expressed that the incident happened at 8:10, not at 7:50?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. How long did it take for the judge to perform the acts that you described. Coming out and saying, "We have a problem." You leaving the office and returning with files. Him kicking the files around, I believe, as you described, and you leaving when you saw the deputy sheriff. How long --

MR. LEVINE: Objection to the clarity of the question.

MR. OSTRER: I will rephrase it, Mr. Levine.

Q. I believe you said Judge McGuire came out of his office, in an agitated state, saying, "We have a problem," with his computer. How long was it before you exited from his presence and returned with his files -- with the files from court?

A. I don't know.

Q. Was it five minutes?

A. I don't know.

Q. But you remember leaving the judge's presence?

A. Yes.

Q. You followed him back into his office and then you exited his office?

A. Yes.

Q. You then collected certain files?

A. I took the files with me off the credenza when I walked into the office.

Q. The files had already been prepared for court?

A. They are always prepared for court and left on the credenza.

Q. Were the files for court that day the files that you retrieved from the credenza?

A. Yes.

Q. You brought them into Judge McGuire's office?

A. Yes.

Q. You put them down?

A. On his desk.

Q. That's when you alleged that he knocked them off the desk and started

kicking them?

A. There was time in between.

Q. How much time in between?

A. I don't know the answer to that.

Q. Were you sitting at your desk, at any time, between the time he came out of his office and said, "We have a problem," and the time he was kicking the files around the office, as you allege?

A. Can you repeat that?

Q. Did you take a seat at your desk, at any time, between the time Judge McGuire came out of his office announcing, "We have a problem," and when you left the office after he was kicking the files around?

A. Not to my recollection.

Q. When he was kicking the files, you exited the office and went into the building looking for April; is that what you remember?

A. I was on my way out when he started kicking the files. It was like a tornado in the office.

Q. At no time, from the time Judge McGuire said, "We have a problem," to the

time you headed to the deputy sheriff and April did you assume a position at your desk?

A. Not that I recall?

Q. This was a pretty traumatic event. Are you having any problem with your memory about what occurred on the morning of January 14, 2015?

A. I think my statement is pretty much are clear. It's an anxiety thing when somebody yells and screams at you; you get nervous and scared. You don't remember everything.

Q. Would you remember that you left the office after 8:00?

A. I can't tell you times. I was scared. I was shaking. I can't tell you I looked at a clock to say, "Oh my God, it's 8:00. I am leaving the office."

Q. Is it fair to say you didn't go to look for April until after 8:00 because people don't arrive at work until after 8:00?

A. Some people do come into the office before 8:00.

I didn't know how to get a hold of MIS unless I left the building to go where MIS is located.

Q. Actually, you don't have to go outside to get to where MIS is located, do you, to get to the family court building?

A. Well, I have to leave the building to go through a breezeway. I don't have to physically go outside the building.

Q. The part of the building where the family court is connected by a breezeway to the county building?

A. Yes.

Q. Even in winter you don't have to put a coat on; you can walk from one end to the other, and there is no restraint until you get to the security at family court, correct?

A. Yes.

Q. Ms. Weiner, you have before you what's been marked Respondent's F, for "Frank." Do you see that document?

A. Absolutely.

Q. Did you produce any emails for the commission?

A. I don't know. I don't have any recollection of, honestly, what I provided and didn't to the commission.

Q. Do you recall --

A. I did provide stuff. I just don't -- I can't tell you what I did or didn't.

Q. Do you recall sending an email to Judge McGuire at 8:12 a.m. on January 14, 2015?

A. This is the date of the incident, right? Yes.

Q. It appears so.

A. I didn't have any recollection of this email, no.

Q. Do you recall sending him an email about the S[redacted] versus B[redacted] case in response to his email of earlier that morning?

A. I don't know. I honestly don't have any recollection of this at all.

Q. On the morning of January 14, 2015, did you send an email to Judge McGuire at 8:12 a.m.?

A. According to this, I did.

Q. When you arrived that morning,

isn't it true that you had messages from Judge McGuire about things for the day?

A. I have no idea.

Q. Well, can you explain to me in the choreography of the events in the morning of January 14, 2015, when it was that you emailed Judge McGuire about the S[redacted] versus B[redacted] case?

A. I guess I answered him at 8:12 a.m.

Q. Was that before or after he was kicking the files around the office like a tornado?

A. Well, it had to be after.

THE REFEREE: Are you introducing this document?

MR. OSTRER: I will offer it.

THE REFEREE: Any objection?

MR. LEVINE: We have a objection.

THE REFEREE: What is the objection?

MR. LEVINE: She didn't recall whether she wrote this or not.

THE REFEREE: Is that your only objection?

MR. LEVINE: It's my only objection.

THE REFEREE: Is that your email address?

THE WITNESS: It just has Wendy Weiner on it. It doesn't have state email on it. It doesn't say like the other ones, ww@[redacted] to identify it.

THE REFEREE: What does this Bates stamp at the bottom indicate?

MR. OSTRER: It was produced to us by the petitioner.

THE REFEREE: By the commission?

MR. OSTRER: By the commission.

THE REFEREE: Where did this come from?

MS. TISHMAN: I don't --

MR. LEVINE: We will let it in.

THE REFEREE: Exhibit F is received.

(Respondent's Exhibit F was marked in evidence, as indicated.)

Q. Ms. Winer --

THE REFEREE: I think she said

Weiner.

THE WITNESS: Weiner. Thank you.

MR. OSTRER: I apologize sincerely. You should see what they do to my name.

THE WITNESS: I know.

Q. As I understood it, you left the office and at least informed some people that you didn't return until 8:25 a.m. on the morning of January 14th; do you recall that?

A. I guess it seems -- I don't recall, to be honest with you, anything.

Q. You were nervous and shaking?

A. So I can't tell you; that's my whole thing. I was very upset. I can't tell you what I did. I couldn't even think straight.

Q. Were you able to think straight enough, after the tornado in the office, to compose and send an email to the judge?

A. This email was not composed after the judge had the tornado in the office. I left from the office and I went into the county building to look for April. The

times might be off. It definitely started before 8:00.

When it all came to an end, I cannot tell you.

Q. When did you return to your desk to hit the send button for an email?

A. I have no recollection.

Q. Were you at your desk before the incident occurred or did you send the email after the incident occurred?

A. This would have had to have been sent after the incident occurred.

Q. You would have --

A. Come back.

Q. I thought, when you came back, you went to Judge Meddaugh's office and spoke with Judge Meddaugh's secretary. Isn't that what you told --

A. I don't have a recollection of who I spoke with.

I was very upset that day. It's all kind of blurry if you want to know the truth.

Q. What I would like to know, when, in the continuum of the events of January

14th, you were able to sit down at your desk and send an email to Judge McGuire about this S[redacted] versus B[redacted] case?

A. I don't know how to answer that. I have no recollection of this email, and you are making me do times, and I have no recollection of absolute times.

Q. Well --

A. You know, I put my kid on the bus at 7:30 in the morning. I drive and I land at work at 7:30 in the morning. I know I am there at 7:30. It wasn't too long after I was there that everything started. I am sorry I can't give you an exact time.

Q. Was your memory of the event clearer in 2015 than it is today?

A. I am sure that my recollection was better back when it happened as opposed to today.

Q. When you said in your -- in a report to your union that it happened at 8:10 and when you said to the inspector general that it happened at 8:10, did you know you had sent an email at 8:12?

A. Probably, if I knew what I was

doing, I probably would have been more accurate, but honestly I couldn't remember. I am telling you I was shaking. I was scared. I was shaking. Things don't process clearly after someone yells and screams at you. You know, you are trying five minutes here, five minutes there. I don't know. I was upset, thoroughly upset.

Q. But you do recall Judge McGuire needed to be up the hill at 8:30 on the morning of January 14th?

A. He had a criminal calendar. It was outside the normal schedule day, 8:30, yes.

Q. He had a meeting with some litigants before the start of calendar at 9:00, correct?

A. He had an arraignment or two.

Q. Now the county building and the family court annex is at the bottom of Landfield Avenue, correct? You come down the hill from the courthouse to get to the county building on the front. On the back, you could use -- what's that High Street when you come in?

A. Your roads are a little confused, but I get the concept.

Q. I rely on the GPS all the time.

A. Why don't you just tell me -- your roads are not really where they are.

Q. Do you have leave the family court in the annex and --

A. Travel two blocks up to the courthouse.

Q. Would the judge normally drive or walk?

A. He drives and always arrives earlier.

Q. If he was due there at 8:30 on January 14th, do you have any conception, as you sit here today, what time he would have left chambers on the morning of January 14th?

A. No, I can't speculate.

Q. It would be before 8:30, certainly?

A. I am sure.

Q. If he was in your presence at 8:12, you would have told him about the S[redacted] versus B[redacted] file, wouldn't you?

A. Are you kidding me? I don't walk in there at 8:12 or at any time after this incident.

Q. So --

A. But you do see how everything is blocked, right? In the messages, right? I need to respond, right?

Q. You do need to respond when a file can't be found would you agree with me on that? You had a disagreement with the judge about the filing system?

A. What?

Q. Didn't you have a disagreement with the judge about the filing system?

A. What filing system are you talking about?

Q. In your office. You filed by court date and he wanted to file alphabetically.

A. I file the way they set me up to file. Mary Grace actually set up the system.

Q. You spoke to Mary Grace about that?

About the filing system?

A. Yes, when I came into the office, I didn't have experience and Mary Grace had all of the experience, so we set up the files where she could manage them along with me.

Q. You and Mary Grace were on the same page when it came to the filing system at your office; is that your testimony?

A. I assume so. I guess so, yes.

Q. The request you received from the judge was an email he sent to you at 5:18 in the morning, if you would take a look at Exhibit F.

A. You do know what he means by "our system," right? He doesn't mean the file cabinets.

Q. I would like to you answer my question, if you don't mind.

A. Okay.

Q. He was bringing to your attention an issue regarding a file; do you recall that?

A. I don't recall the email at all.

Q. The tornado that took place when the judge was allegedly kicking the files

all over the office, did that occur before you sent the email at 8:12 a.m.?

A. Yes.

Q. The tornado was before the 8:12 email?

A. Yes, yes.

Q. Did you see the judge pick up the files?

A. No.

Q. Did you send the email before or after you went to look for April?

A. I don't know because I have no recollection of sending the email.

Q. You would certainly agree with me that you couldn't have sent the email while you were on your excursion to find April and interacted with the deputy; you would agree with me on that?

A. Absolutely.

Q. Do you know who cleaned up this alleged mess in the judge's office?

A. No, because I didn't witness it being picked up.

Q. Do you know when it was picked up?

A. The exact time, no.

Q. When you returned to the office after seeing -- after looking for April and seeing the deputy and saw Judge Meddaugh's secretary, what did you do next?

A. I suspect I came and sat at my desk and tried to compose myself to start my day.

Q. When did Brenda Downs come into your office?

A. I don't know the exact time on Brenda.

Q. Did Brenda Downs come into your office?

A. Yes, she did.

Q. That was after the judge left?

A. I don't recall.

Q. Was it before or after the judge's office, the mess was -- the alleged mess was cleaned up?

A. I don't recall.

Q. Did you see anybody enter or leave the judge's office after you returned from seeing Ms. Griese and the --

A. I don't recall.

Q. -- the deputy?

A. I don't recall.

Q. You don't remember if anybody came in the office and walked past you --

A. No.

Q. -- into the judge's office?

A. No, I don't recall. I don't remember.

Q. Mary Grace wasn't there that morning because she had a doctor's appointment, correct?

A. I believe that is correct.

Q. She didn't get in until --

A. I don't know.

Q. -- ten or after.

A. I don't know.

Q. You don't remember when Mary Grace came?

A. No, I don't.

Q. I thought you spoke to Mary Grace about the incident that morning when Mary Grace arrived?

A. It doesn't mean I know what time she came in. I had a million people pulling at me all morning long. I have no idea on

times.

Q. When was it that you left to attend to your child?

A. I can't even give you the accurate time because I can't remember. I know it was before lunch sometime. I don't know.

Q. Wasn't it at the lunch hour that you left?

A. No, it was not at the lunch hour that I left.

Q. About 11:45?

A. I don't recall. I don't want to give inaccurate information. I can't tell you exactly. You want me to read something to refresh my memory, I'll go there. I just don't remember.

Q. Do you recall seeing Judge McGuire later in the morning of January 14th?

A. I think he was coming in when I was going out.

Q. He was done with the county court calendar and returning to chambers?

A. I think he had county and

supreme. I think I passed him through the doorway.

Q. You interacted; you crisscrossed with him then?

A. I believe so.

Q. Isn't that when he was very nice to you and asked you about your son's condition? Isn't that what you told the investigator from IG's office?

A. I don't recall.

Q. Do you recall telling the investigators from the IG's office that later that morning you saw Judge McGuire and he was very nice and asked you about your son's condition? Do you recall?

A. That is when we passed in hallway?

Q. Well, you --

A. Is that when?

Q. You told me -- you told us -- that when you saw Judge McGuire later in the morning was when you crisscrossed; did you see him some other time later that morning?

A. No.

Q. You didn't go up the hill to the

court?

A. No.

Q. You were busy and upset, correct?

A. Yes.

Q. You don't remember what time you left to attend to your son, but you remember intersecting with the judge?

A. I did intersect with the judge.

Q. The judge's remarks to you, you took to be very nice and he asked you about your son?

A. He also didn't know what was going on at the time either.

MR. OSTRER: Move to strike as not 0responsive.

THE REFEREE: Strike the answer.

Q. Do you recall later on the morning of January 14, 2015, that you characterized the judge as being very nice and asking about your son's condition?

A. I really don't remember.

Q. Do you remember being interviewed by representatives of the inspector general's office on February 4, 2015 and telling them words to that effect?

A. I don't recall what I did and said at my statement back then.

Q. Have you reviewed your statement to the IG at any time?

A. I don't think I've ever seen the statement that I made to the IG's office.

Q. Do you recall Judge McGurk -

A. Judge McGuire.

Q. -- I apologize -- Judge McGuire being nice to you and inquiring about your son the next time he saw you after this tornado in the office?

A. Can you just repeat that again? I'm sorry.

Q. Do you recall that the next time you saw the judge, after the incident you alleged occurred in the office, that he was very nice to you and inquired about your son?

A. I don't remember having a conversation with him.

I don't remember what I testified to.

Q. When you were meeting with the inspector general on February 4th, you were

attempting to be truthful and accurate; would that be a fair statement?

A. I was.

Q. You also believe or you told the inspector general that Ms. Griese didn't hear anything that occurred in the office that you alleged occurred between you and the judge?

A. You said -- say that again. I am sorry.

Q. Ms. Griese -- If I am pronouncing the name right --

A. She did not.

Q. -- if Ms. Griese, she didn't hear anything that transpired between you and the judge at around the 8 a.m. hour.

A. I am lost on what we are referring to. Sorry.

Q. Whether Ms. Griese heard --

A. Whom am I telling that to? Is that what you said is in my statement? I am confused. I am sorry.

THE REFEREE: He is asking whether you told that to the inspector general.

Q. Did you tell them that Ms. Griese did not hear the commotion?

A. I remember asking her if she heard anything and she said no. I don't know what is in my statement. I haven't seen it.

Q. After you saw Ms. Griese, did you tell the inspector general that promptly thereafter you went into the judge's office and found that the files had been cleaned up?

A. I do not remember saying I ever went into the judge's office.

Q. Do you recall telling the inspector general that Ms. Griese gave you a hug?

A. No, I don't remember that either.

Q. Nor you don't recall telling them you had observed promptly after coming back from seeing -- looking for April, seeing the --

A. Evelyn?

Q. -- seeing Evelyn Griese, that you looked into the judge's office and the files were picked up?

A. I don't remember going into his office at all and I don't -- I don't remember testifying to anything. I have seen the statement. I don't know what I said.

Q. Was it after you saw Ms. Griese that you saw Brenda Downs?

A. Brenda Downs came into my office, yes.

Q. Do you know if Brenda Downs had a chance to look into the judge's office?

A. I don't know what Brenda Downs's actions were.

Q. You don't recall what she did when she came in?

A. No.

Q. Do you recall leaving the court campus, the county building on the morning of January 14th at 9:30 to pick your son up from the doctor?

A. I told you; I don't remember the time.

Q. Do you recall page 25, September 1st?

MS. TISHMAN: Can you give the

line and which transcript it's from?

MR. OSTRER: September 1, page 25, line 8.

Q. "Yeah, so OCA was already on the phone.

Beth Dieble was already on the phone and the one piece of the puzzle that you are missing is, when I came in in the morning. I had to take my kid to the doctor's and I had to leave at, like, 9:30 to pick him up at the doctor's because my mother had taken him."

MS. TISHMAN: What page are you on? I don't -- that's not from September 1st.

MR. OSTRER: My mistake. It would be October 19th.

Q. Do you recall making that statement, under oath, to the commission on October 19, 2015?

A. I don't recall.

Q. Does that refresh your recollection to what you did on the morning of January 14, 2015?

A. I did leave to go get my son, but

the doctor's office didn't open until ten, so I am a little confused at the time. Maybe I messed that up. I don't know.

THE REFEREE: The question was, what was read to you, does that refresh your recollection? That's a yes or no?

THE WITNESS: I guess, yes.

Q. Do you recall, when you were giving your statement on October 19, 2015, telling Mr. Levine and Mr. Davis that Brenda Downs came into the office at about twenty after eight?

A. I don't really recall any of my statement, but Brenda did come into the office and I don't know what time that was.

MR. OSTRER: This is October 19th, page 20.

Q. Do you recall giving this answer, "My mistake was -- is that Brenda Downs is" --

MS. TISHMAN: Excuse me. What line?

MR. OSTRER: Line 21.

Q. -- "Brenda Downs is our court officer.

She comes in at eight and she changes in the back because she is a female and that's where the room is for the female officers, and it was her job -- Dee does the hill; she does ours -- to do her rounds in the morning. She came upon me probably around twenty after eight when I came back, not minutes after I had come back." Do you recall giving that answer to a question posed to you --

A. I don't recall --

Q. -- here at the commission.

A. -- but that refreshes my recollection. I mean, it sounds like what happened. I don't know what to tell you.

Q. How long was it that you were doing -- did it take you to leave chambers, go look for April, interact with the deputy sheriff --

A. I never went --

Q. -- see Ms. Griese and come back to your office to meet -- where Ms. Downs encountered you?

A. I never went to look for April. I want you to understand that. Okay? I saw

Brian, and Brian called up to IT. I am sure that's somewhere in my statement too.

Again, I can't tell you time because I was so upset. I cannot tell you time. I can tell you what happened, but I just cannot tell you. I was so shaken. I can't tell you 8:00 I was down -- at 8:05 I was dialing April and 9:00 I was back in the office. I don't remember.

Q. We know you were back in the office at --

A. It's been a long time.

Q. -- at 8:12, correct?

A. If this email is correct, I guess I was.

Q. Then you were inaccurate in saying that, "Not minutes after I had come back, she came across me." Ms. Downs at twenty to eight -- twenty after eight.

MR. LEVINE: Objection. It is unclear what he is reading.

THE REFEREE: Sustained.

THE WITNESS: He is jumping around between different reports.

MR. OSTRER: 20 to 21.

MS. TISHMAN: Which one?

MR. OSTRER: October 19th.

Q. "She came upon me about twenty after eight, when I came back, not minutes after I had come back and she came across me and I was in the state that she knew there wasn't something wrong.

I wasn't composed enough." Does that refresh your recollection concerning the choreography of events on January 14, 2015, at approximately 8:30 in the morning?

A. I guess.

Q. Does that also inform you that Judge McGuire had left chambers prior to twenty after eight?

A. It doesn't inform me of anything. It is what it is. Respectfully, the situation happened the way it happened. I can't tell you if it's five after, ten after. It unfolded the way it unfolded. That is, you know, I have my recollection of it and you can read the statement and I -- you know, it is what it is.

Q. Did you tell anybody from the Inspector General's Office not to rely upon

the times of the event you shared with them because you were shaken?

A. I didn't even get to read my report from the inspector general or my statement or have that kind of conversation with anybody in regards to that report. I am assuming that report was written as a result of my interview because I have never read any statement from the inspector general.

Q. Isn't it true that you walked out of the office at 8:15?

A. I can't testify to time. I don't know how many times and different ways I have to tell you. I cannot testify to the exact time. I was upset.

Q. Didn't you testify to time, under oath, on October 19, 2015?

A. I don't recall.

Q. Do you recall being asked this question and giving these answers, page 17, October 19, 2015?

"QUESTION: Can you go to the" -- excuse me --

"QUESTION: Okay, so you left. Then where did you go?"

"ANSWER: "I walked out. The family court annex is off the government center and that's where MIS is, so I walked into the main lobby.

"QUESTION: What time is this about, if you can remember? Still early in the morning?"

"ANSWER: Yeah, probably about 8:15."

Do you recall stating --

A. I don't recall.

Q. -- that the events were concluded and you had left chambers by 8:15 in the morning?

A. I don't recall leaving chambers at 8:15 in the morning and making those statements.

Q. Do you recall when whether Judge McGuire left the office to go up the hill before or after you left the office to go look for MIS?

A. I believe I indicated I did not know when Mr. -- Judge McGuire left the building.

MR. LEVINE: Can I request we

take a break fairly soon?

THE REFEREE: I am waiting until quarter of, unless Mr. Ostrer is going on to another topic.

MR. OSTRER: No, I am still on this topic.

Q. Again, back to the timeline. Were you in chambers with Judge McGuire, at any time, subsequent to him going up the hill for calendar sometime before 8:30 a.m. on January 14, 2015?

A. Can you repeat the question?

Q. Were you in chambers with Judge McGuire at any time subsequent to him leaving to go up the hill for the 8:30 county court calendar on January 14, 2015?

A. You're asking me?

Q. If you were both at the chambers at the same time --

A. After the incident?

Q. -- at any time after the tornado?

A. After the incident, not to my recollection.

Q. Do you recall telling the inspector general that Judge McGuire went to

lunch at 11:45?

A. I don't recall what I told the inspector general.

Q. Did you leave a note on the judge's desk to call Judge Thomas Breslin on the morning of January 14, 2015?

A. I did not leave a note for the judge to call Breslin, that I am aware of. I have no recollection of that. That's the proper answer. I have no recollection of that.

Q. Were you told to leave a message for Judge McGuire to call Judge Breslin, by anyone?

A. I don't have recollection.

Q. Did you speak to Ms. Diebel?

A. I did speak to Ms. Diebel in the morning.

Q. Did Ms. Diebel instruct you to leave a message for Judge McGuire to call Judge Breslin?

A. I am not sure where that message came from, if it was Mary Grace had gotten it or if it was when I spoke with Beth Diebel. I don't remember. I vaguely recall

that there was something that the judge wanted him to call.

Q. You have no recollection of anybody sharing with you the necessity of informing the judge to call --

A. I just can't remember where it came.

Q. -- Breslin's chambers?

A. I mean, I know the judge was looking for him, but I just don't recall how it filtered into --

Q. Isn't it true you left a message for Judge McGuire to call Judge Breslin just before left chambers --

A. Was that --

Q. -- at around 11:45 in the morning?

A. For clarification, are you talking telephone?

Are you talking sticky note? Are you talking email? I mean --

Q. A note.

A. A physical, handwritten note?

Q. A note. Did you leave a note?

A. I am asking an email? Was it an

email generated note.

Q. Any one of those. Why don't you tell me what you left, if anything?

A. I am asking so I can have memory, sir. I am trying to recollect.

THE REFEREE: You know what? At this point I want to take a break, and I want you both to cool down. You are going to start asking legitimate questions and you are going to start answering questions without giving lectures.

Before we go off of record, please let the witness be excused and I want to take up something with counsel.

(The witness exited the room.)

THE REFEREE: I am trying to figure out whether we are going to get this done today. If we stop at 5:00, you are not going to be finished?

MS. TISHMAN: We can go later than five.

THE REFEREE: How much longer do you have?

MR. OSTRER: There is the Oliveri

incident. There is Lockwood and the $1,000 check.

THE REFEREE: So --

MR. OSTRER: I am challenged with her memory.

THE REFEREE: There are ways to ask questions about prior inconsistent statements and there are other ways of doing it and you have chosen a certain way of doing it, and that's your prerogative.

If we take awe break between now and five minutes of four, how much cross do you think you have?

MR. OSTRER: I'll try to hurry it up.

THE REFEREE: I am not asking you to hurry it up. I don't want you to hurry it up. I'd like to know how much more you think you have.

MR. OSTRER: It's hard. I never guess right. I think I'll fill the day. I don't think I would finish before five. I might -- if I get certain answers, I move right on.

THE REFEREE: What kind of redirect are you going to have?

MS. TISHMAN: At this point, I am not going to have redirect. I can't say after.

THE REFEREE: I understand.

MS. TISHMAN: We can go past five.

THE REFEREE: What I don't want to do is have you rush to finish the cross. This is an important cross and if you can finish your cross by quarter after five, great. If you cannot, we will have to bring her back.

MR. OSTRER: Thank you.

THE REFEREE: There is nothing else I can say about it.

MR. OSTRER: We would be bringing her back tomorrow or Friday?

MS. TISHMAN: We have three witnesses scheduled for tomorrow already. It would be difficult to reschedule. These are witnesses I rescheduled four or five times already.

THE REFEREE: Let's see where we are at --

MR. OSTRER: I'll try to be done at quarter to five.

THE REFEREE: Let's see where we are at quarter to five.

Let's take a five-minute break.

(A recess was taken.)

THE REFEREE: Welcome back.

(The witness entered the room.)

THE REFEREE: Let's proceed, sir.

CROSS-EXAMINATION

BY JUDGE MCGUIRE:

Q. Ma'am, did you record what had occurred on January 15th -- january 14, 2015, in a journal, promptly after the incident?

A. I kept a diary after the incident, yes.

Q. Did you write down everything, dates, times and exactly what went on?

A. I don't recall what is in that journal.

Q. Page 11, October 19, 2015.

MS. TISHMAN: What line?

MR. OSTRER: Three.

Q. "At this point, I couldn't tell

you. I did write down everything in a little journal afterwards and I have the dates and times and exactly what went on and what I told the IG because that's when I read to them also." When you reported --

THE REFEREE: Is there a question after that statement?

MR. OSTRER: The answer goes on. I can read the entire --

THE REFEREE: Did you give that statement in your testimony to the commission?

THE WITNESS: I don't know. I didn't --

I don't know. I haven't seen --

THE REFEREE: You don't know. Next question.

Q. Do you recall reading from your journal when you were interviewed by the IG?

A. I don't know.

Q. When you say you don't know, does that mean you may have; you just have no recollection?

A. I don't know.

Q. The incident involving Court

Officer Oliveri, I'd like to direct your attention to that. I believe on direct you said you saw the judge shove Mr. Oliveri?

A. That is my recollection.

Q. Where were you seated or situated when you observed that alleged interaction between the judge and Mr. Oliveri?

A. I was in my desk area.

Q. Where did the alleged shoving take place?

A. Right at the opening, from the copy machine on the right, the wall on the left and it was right as the two met.

Q. As you recall, it was a pretty harsh shove, or was it they just brushed up against one another?

A. Oliveri put his hand up and went, "Woah, Judge," and he went back a little bit and the judge's hands were out going forward. So that's how I recall it.

Q. Do you recall him putting both hands on Mr. Oliveri's shoulders?

A. That is my recollection.

Q. Have you ever talked to Mr. Oliveri about the incident?

A. I didn't talk to Mr. Oliveri about the incident.

Q. Have you ever checked with Mr. Oliveri to see if your recollection was accurate?

A. No, I never discussed it with Mr. Oliveri.

Q. Did you ever write anything down about what you observed with respect to the alleged shove and push the judge gave to Mr. Oliveri?

A. I don't know.

Q. Did you see the judge knock Mr. Oliveri back?

A. Can you restate that question? I mean, I told you what he did.

Q. Was it a hard push or a soft push?

A. I couldn't gear that from where I am. I don't know how to respond to that.

Q. Do you recall being asked this question and giving this answer -- and forgive me. It's page 84, line seven through nine.

MR. OSTRER: Which transcript?

MR. OSTRER: I have to guess.

MS. TISHMAN: It's transcript October 19, 2015.

Q. Do you recall being asked this question and giving this answer by Mr. Levine, "When you saw the judge push, was it a hard push a soft push or -- " Answer, "It was a hard push. Knocked him back actually."

A. Well you refreshed my recollection, yes. Does that constitute a hard push, a soft push? I don't know how to answer that question.

THE REFEREE: Stick with me here.

THE WITNESS: Help me.

THE REFEREE: The question was, Do you recall being asked that question and giving that answer?

THE WITNESS: I don't recall. Sorry.

Q. Do you recall describing to the commission your initial months in the chambers of Judge McGuire?

A. No I don't recall.

Q. Do you recall telling the

commission that you spent your first three months -- that it was good behavior and you described it like a honeymoon; do you recall that?

A. I don't recall.

Q. Page 58, September 1st, line 16. "In general I have always had these feelings with him. It's not anything new. They developed in the first -- I had a honeymoon period with him for maybe three months."

MR. LEVINE: That is not the right transcript.

MS. TISHMAN: This is not the right page or transcript. I can't find it on the September 1st.

MR. OSTRER: All right. Let's try October 19th then.

THE REFEREE: It's a good thing there aren't five transcripts.

MR. OSTRER: What?

THE REFEREE: It's a good thing there aren't five transcripts.

MS. TISHMAN: I found it in the October 19th transcript.

MR. OSTRER: October 19th, page

58, line 16.

Q. "In general I always had these feelings with him. It's not anything new. They developed in the first -- I had a honeymoon period with him for maybe three months where it was good behavior, get to know -- get to know you. After the third month, his personality and his demands for me, having to be present with the pistols, everything was a directive with him. There was no discussion. I was told and I did what I was told."

THE REFEREE: The question is, do you remember being asked that question and giving that answer?

THE WITNESS: I don't remember.

Q. Do you also remember whether you advised the commission that you spent your first six or seven months in chambers crying and going home at night in tears because the judge was mean to you?

A. I don't recall giving that testimony.

MR. OSTRER: I believe this is October 19th, page 50.

THE REFEREE: What confuses me, Mr. Ostrer, is you are asking her whether she said that to the commission?

MR. OSTRER: Yes.

THE REFEREE: Now, you are reading, what you said apparently from the transcript, which is not an inconsistent statement with whether or not she recalls saying that to the commission.

MR. OSTRER: Does it refresh her recollection then, Judge?

THE REFEREE: The way to do that would be to show her the transcript and see if it refreshes her recollection.

MR. OSTRER: Can we have a copy of the transcript that we can provide to the witness?

MS. TISHMAN: The October 19th transcript was marked as an Exhibit for identification earlier today as Exhibit VIII-5.

Is it in front of you? This might be in front of the witness.

THE WITNESS: Look what I got.

THE REFEREE: If you direct her to a particular page and line and have her read it to herself and ask her if it refreshes her recollection.

Q. Ma'am, would you turn to page 50 of the transcript? Directing your attention to the answer, which begins on line 10 to line 13. Does that refresh your recollection as to conditions in chambers during your first months as the confidential secretary to Judge McGuire?

THE WITNESS: You don't want me to be argumentative, but I don't know if I am in the right place. It says nothing about three month. It talks about six or seven months. It's different than what he is putting forward. Do I --

THE REFEREE: Read the lines that he directed you to read and answer whether or not it refreshes your recollection.

Q. As to the conditions in chambers in the first month that you were employed?

A. Yes, it refreshes my recollection.

Q. With your memory refreshed, was there a honeymoon period where you got along well with the judge?

MS. TISHMAN: Objection. That's not what was presented to her as to what she just read.

THE REFEREE: Well, now it's cross-examination and he can ask her that question. Is her recollection refreshed?

THE WITNESS: That's not here though.

THE REFEREE: Forget what's there. Your recollection is now refreshed. He is asking a question. Put aside the transcript and with your refreshed recollection, see if what he told you was accurate.

THE WITNESS: Okay.

Q. Was there a honeymoon period where you got along well with the judge when you first entered his employ?

THE WITNESS: Does anybody see

what I am seeing, or am I just confused?

Am I having a moment here? This one thing doesn't talk about that.

THE REFEREE: Let me try this.

MS. TISHMAN: Let me double-check.

MR. OSTRER: No, she has the right page.

THE REFEREE: Let me see the transcripts.

THE WITNESS: It didn't say anything about a honeymoon.

THE REFEREE: What line are you referring to?

MR. OSTRER: The, "crying in the first six months in chambers" is page 15, line 10.

If she didn't recall the honeymoon, your Honor, I am going to refer her to page 58, line 16.

THE REFEREE: That's a different page.

MR. LEVINE: That's a different page.

In other words, he asked the question and I think that was where

the confusion was.

THE WITNESS: I thought he was referring to that to refresh my memory. I am sorry. I got confused. My apologies.

THE REFEREE: I am going to give this back to the witness.

THE WITNESS: Thank you.

THE REFEREE: Read to yourself line 15, starting on page 58.

Having read that --

THE WITNESS: Having read that.

THE REFEREE: -- is your memory now refreshed --

THE WITNESS: My memory is now refreshed.

THE REFEREE: -- that you had a honeymoon period?

THE WITNESS: Yes.

THE REFEREE: Next question.

Q. Were you exaggerating the troubling conditions in chambers when you spoke with the commission on October 19, 2015?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Just a couple of clean-up questions on your search for April. I believe you told me a little while ago that you didn't go looking for April?

A. I went out for clarification. Because of the hour it was before 8:00 and the building people aren't in usually by eight, until 8 in the county. I went to the sheriff to try to obtain a number because I didn't even know where MIS was. Brian had called up to see if anybody was in MIS and I believe Bob or Robert or someone by that name answered the phone and said April was not in. I didn't physically go to the office. Brian called up.

Q. When you went to the lobby looking for April?

A. I went to the lobby to get a number from Brian.

He is the sheriff, but he also has an information booth and connection to everybody because I didn't have a way to reach anybody in MIS, so he assisted me in that endeavor.

Q. By the way, ma'am, the diary that you kept, did that include the event of January 14th?

A. I don't recall.

Q. What did you do with that diary.

THE WITNESS: Can we go off the record?

THE REFEREE: No.

A. The diary and all the paperwork concerning this proceeding was removed from my home by my husband.

Q. When did that occur?

A. In June of 20 -- what are we in now '19, '18.

Q. Last year?

A. Yes.

Q. You never provided your diary to anyone to review?

A. No, and I do not have it to review before this proceeding or to produce it.

Q. It's gone?

A. Yes.

Q. You alleged your husband took it?

A. He has it.

Q. Did you file a police report regarding it?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. You can't file a police report against your husband who is your spouse, and I am going through a divorce. He cleaned out the house including the paperwork that pertained to Judge McGuire.

Q. You didn't file a police report regarding the papers that were taken?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. My attorney told me it's marital property.

Q. You don't have to tell us what your attorney told you. At no time prior to the time you alleged your husband took the diary did you share that diary with anyone else; is that your testimony?

A. I don't have any recollection who I shared the diary with.

Q. Did you permit anybody to copy the dates, times, and places that you recorded in your diary about the events of

January 14, 2015?

A. Not to my recollection.

Q. Did you tell the investigators from the IG's office -- you did tell the investigators from the IG's office about your diary, correct?

A. That is correct.

Q. Did you produce the diary?

A. I believe at my first interview I had it on me or my second. My recollection on that is unclear. I know I brought it with me.

Q. Did you ever produce it to the commission?

A. I have no recollection?

Q. Did you inform the commission that you had a diary, at any time during your statements or interviews by the commission, that confirmed the dates, times, and events of January 14, 2015?

A. I don't have any recollection with regard to the commission.

Q. You don't recall whether you did or didn't tell them about it?

A. The commission, no, I do not.

Q. Didn't you testify to the commission that you had the diary?

A. I told you, I didn't recollect.

Q. You were keeping track of the judge's -- of event in the judge's life subsequent to your statement -- your last statement here to the commission on October 19, 2015?

A. No.

Q. Did you obtain a copy of an accident report involving the judge's son and forward it to the commission?

A. No.

Q. Did you call the commission and advise them about the judge's son's traffic accident?

A. No.

Q. You have no recollection of that?

A. I didn't call the commission to inform them of any motor vehicle accident concerning his son.

Q. Did you speak with Pamela Tishman on December 27, 2016 and January 4, 2017 and inform them that on November 14, 2016, the judge's son was involved in an accident

while riding a motorcycle?

A. I don't recall that conversation or those dates.

Q. Do you recall, as you sit here today, speaking to Ms. Tishman at any time about the judge's son being in a motorcycle accident?

A. I had many conversations with Ms. Tishman. My recollection, I don't recall whether that was ever a topic of conversation between me and her. I honestly don't remember.

Q. Do you recall speaking to Ms. Tishman about the judge's actions at the State Police barracks in Liberty after -- what you believe to be the judge's actions at the State police barracks in Liberty after his son was involved in a serious motorcycle accident?

A. I don't recall.

Q. Do you recall telling representatives of the commission that Paul McGuire, after having been involved in the accident, was never tested for alcohol or controlled substances and attributing that

to some influence that the judge had exerted?

A. How would I even know any of this information?

THE REFEREE: That's not the question.

A. No, I don't recall having this conversation.

Q. You never said that?

A. I am sorry.

Q. Did you ever tell Ms. Tishman that Paul McGuire was ticketed for driving out of class? Do you remember that, ma'am?

A. No, I don't recall having these conversations.

Is this the -- his children have had multiple accidents.

THE REFEREE: There is no question.

THE WITNESS: I just need the dates.

THE REFEREE: There is no question pending.

Q. Do you recall receiving a call at the surrogate's court, in October 2016, from

a Sandra and reporting that event to Ms. Tishman of the commission?

A. I honestly don't recall. There is so many conversations.

Q. Do you recall providing Ms. Tishman with Sandra's phone number, the woman who you spoke with in surrogate's court, who was looking for Judge McGuire?

A. I don't recall.

Q. Do you recall advising the commission that Judge McGuire was involved in a ticket-fixing activity in Sullivan County?

A. I only testified to what they asked me for. I didn't have any conversation with Ms. Tishman concerning ticket fixing. I don't even know what constitutes ticket fixing.

Q. Do you recall sharing with the commission that Judge McGuire knew every state trooper in the Liberty barracks and would fix tickets by making phone calls?

A. I have no recollection of these conversations.

Q. Do you have any knowledge of

that?

A. I mean, I just discussed certain things, but to what you are stating, I have no recollection, those particulars.

Q. You worked for the Finkelstein law firm?

A. Jacoby & Meyers, Finkelstein and Partners, yes.

Q. That was which office?

A. I worked out of the Newburgh office.

Q. Who did you report to?

A. I was more towards management. I really worked with a bunch of attorneys.

Q. Who did you report to in your job at Finkelstein & Partners, Jacoby & Meyers?

A. Sandra Veringa.

THE REPORTER: What was that?

THE WITNESS: Sandy Veringa, V-E-R-I-N-G-A.

Q. Did you earn referral fees while working at Finkelstein, Jacoby & Meyers?

A. No, we had profit sharing.

Q. When you say you had profit sharing, is that the money that you are

presently due from Finkelstein & Partners, Jacoby & Meyers?

A. I am not due any money from them.

Q. Didn't you report you were due $47,000 from Finkelstein & Partners, Jacoby & Meyers, after you left as an asset of your's; do you recall that?

A. No.

Q. Did you receive any referral fees for business you directed to Finkelstein & Partners, Jacoby & Meyers, at any time?

A. No.

Q. What were your duties at Finkelstein & Partners, Jacoby & Meyers during your 20 years there?

A. I was a litigation paralegal.

Q. As a litigation paralegal, you had never previously prepared a release before you came to work at Judge McGuire's chambers?

A. No, it was not part of my function. I actually got the release from their office as a favor from my girlfriend.

Q. What sort of litigation was it that you were a paralegal for?

A. I was case manager. I did everything and I managed the files except go to the trial and take deposition.

Q. You were unfamiliar with the form of a release?

A. We have a whole closing department that did releases and settlements.

Q. With respect to the event you testified to about Mr. Matisko, directing your attention to that. Do you recall interacting with Mr. Matisko?

A. In regards to the release?

Q. In regards to the negotiation of the settlement on his behalf?

A. I dealt with Judge McGuire with regard to all that.

Q. Do you recall that you rejected a $500 offer on behalf of Mr. Matisko?

A. I don't have this recollection.

Q. Do you recall telling the commission there was a $500 offer and you rejected it?

A. I don't have the recollection of rejecting conversation.

MR. OSTRER: I want to mark this to refresh her recollection.

MS. TISHMAN: What are we marking?

MR. OSTRER: Page 71 of the September 1st examination.

MS. TISHMAN: Respondent's G?

MR. OSTRER: G, I think.

MS. TISHMAN: Yes. Are you putting the one thing in?

MR. OSTRER: Just the one page I am marking.

MS. TISHMAN: Just the one page?

MR. OSTRER: I mean, I could have her look at the book.

MS. TISHMAN: We have the other one.

MR. OSTRER: We don't have the book from September 1st.

MS. TISHMAN: I am sorry again. What page?

THE WITNESS: Page 71, line 10.

THE REFEREE: Read it to yourself.

Q. Take a look at that and see if it

refreshes your recollection whether you rejected a $500 offer.

A. Yes, as part of the negotiations.

Q. You were negotiating with the adjuster and you threatened to file a lawsuit, correct?

A. No.

MS. TISHMAN: Where are we?

MR. OSTRER: Same page, same Exhibit G.

MS. TISHMAN: I'm sorry. You have to give me the page number again.

JUDGE MCGUIRE: Page 71.

MS. TISHMAN: I need a line.

JUDGE MCGUIRE: Line 10.

MR. OSTRER: Read the next three lines below to line 13.

A. My recollection, after reading this, still didn't indicate that I threatened to file a lawsuit unless I am missing it.

Q. Do you recall, ma'am, being asked this question and giving this answer?

MR. LEVINE: Hold on.

MR. OSTRER: Page 71.

THE WITNESS: Am I not understanding? I am sorry.

MR. OSTRER: I want to read the answer.

THE REFEREE: What is that inconsistent with?

MR. LEVINE: She said she didn't recall.

How can there be any consistency?

Q. Did you tell the commission --

MR. LEVINE: Objection.

MR. OSTRER: It is in her sworn --

MR. LEVINE: He's reading exactly what she said she doesn't recall.

MR. LEVINE: Whether she recalls it or not, she gave a sworn statement.

MS. TISHMAN: That doesn't --

MR. LEVINE: That doesn't make the testimony. It's a prior inconsistent statement to affect her credibility.

THE REFEREE: Correct. You can try to impeach her with her prior inconsistent statement or see if it refreshes her recollection, which

she has already said it doesn't.

Q. Do you recall being asked this question --

MR. LEVINE: She just.

THE REFEREE: There is no inconsistent statement.

Q. Isn't it true you told the commission, "The $500 offer was totally unacceptable and I will file a lawsuit and blah, blah, blah, and they turned around and gave me $1,000?"

MR. LEVINE: Objection.

THE REFEREE: Sustained. Don't answer it.

Q. As you sit here today, you have no recollection of making a demand for $1,000?

MR. LEVINE: Objection.

THE REFEREE: That's a different question. You may answer.

A. I made a demand and that's what the adjuster offered me was $1,000.

Q. Do you recall telling the commission under oath that you had told the adjuster, "I'd file a lawsuit?"

MR. LEVINE: Objection.

A. I don't recall.

Q. Do you recall what Mr. Metisko looked like?

A. I know what Mr. Matisko looks like.

Q. Matisko, you met him?

A. On more than one occasion.

Q. Now, did you have a signature stamp for Judge McGuire?

A. We had two signature stamps.

Q. Did you also have a PDF insert of his signature that you could put into correspondence?

A. No.

MR. OSTRER: Can I have the witness shown Exhibit 12 and 13?

JUDGE MCGUIRE: XV-12 -- I think it's XV-12.

MS. TISHMAN: It's not. I'll tell you what Exhibit it is if you show me what you want.

That's Exhibit X-12, and the other one is X-11.

It's 12 and 11.

THE WITNESS: 12 and 11?

MS. TISHMAN: It is 11 and 12.

Q. Ma'am, if you would take a look at the Exhibit X-11, a letter, a letter you prepared. I believe you testified earlier that you addressed it to Ira Saffron at Progressive Insurance; do you see that?

A. I do.

Q. The signature that appears above Michael F. McGuire, Esquire, could you tell me how that came to be inserted in the letter?

A. Sure, for clarity, it's not a PDF signature, like you do for a signature statement, but it is a WordPerfect where all you do is you have the person's name and you italicize it and usually we highlight it in blue, so it looks like a signature.

Q. It was not actually an autograph signature of Michael F. McGuire; it was something that you inserted by using a certain formatting tool in the WordPerfect word-processing software?

A. Yes, you are correct.

Q. Was this letter prepared on

preprinted letterhead, or did you create a letterhead?

A. Good question. That one is probably one that I prepared.

Q. Is that why there is no phone number on the letterhead?

A. I copied this from the letterhead that he had originally, so I just kind of formatted it from one he had.

Q. You didn't included a phone number; is that correct?

A. That is correct.

Q. Is there a reason you didn't present this letter to Judge McGuire for him to autograph?

A. He is usually a very busy man. He knew I was doing it, so I just did it.

Q. Was there a reason you didn't present it to him to sign?

A. No, this was standard operating procedure. This was what I was asked to do. I did it. He didn't require me to show him anything.

Q. Looking at the check, which is Exhibit X-12. Did you provide Mr. Merisko

with that check -- Matisko --
A. No.
Q. -- with that check?
A. No.
Q. You did not. Did you affix a signature stamp of Judge McGuire's on that check?
A. Absolutely not.
Q. Do you have a stamp at your office of a character signature similar to what appears on the check?
A. We have a signature that he signed that had been reproduced into a stamp. That is his signature.
Q. In connection with this check, do you know who --
A. I never saw this check before, so I can't testify to what the signature is in regards to.
Q. You don't know --
A. I have no idea.
Q. You don't recognize either signature on the back of that check?
A. I never seen the check before.
Q. I am not asking that. I am

asking if you recognize the two endorsements that appear on the back of the check?

A. The one looks like Judge McGuire's because that's his scribble. The other one, I wouldn't know because I never seen George Matisko's signature.

Q. When you say, "It looks like a scribble," is there a stamp in chambers that approximates what you are seeing on the back of this check?

A. Without seeing the stamp, I don't want to testify to that.

Q. In the four and a half years you worked in chambers, did you gain any familiarity with the --

A. It looks like Judge McGuire's signature.

Q. Does it look like the stamp signature?

A. No, it's too small to be the stamp.

Q. Just going back to X-XII.

A. That is the letter; am I correct?

MR. OSTRER: This was already in evidence?

JUDGE MCGUIRE: Correct.

Q. Do you recall advising Ira Saffron that you misplaced the check and that's why you needed a new check?

A. I never told him that I misplaced the check.

Q. Can you read from the document, that is in evidence -- the content in your message following "Dear Ira?"

A. Right, "As per your conversation with my secretary" -- I wrote it as it was Judge McGuire -- "this letter is confirm that I reviewed the settlement check in the above matter," meaning Mr. McGuire, "approximately a week ago," as he indicated to me, "and have since misplaced the check." That's what Judge McGuire told me.

He asked me if I would reach out to get another check. "Could you kindly stop payment on the check and reissue a new check in the amount of $1,000?"

Q. After you sent this letter, did you take any further action with respect to Mr. Matisko's --

A. Nope, never heard anything more

about it.

Q. I believe you, in response to some questions from Ms. Tishman, spoke about a ticket for a Mr. Lockwood; do you recall that?

A. Yes, sir.

Q. Did you ever meet Mr. Lockwood?

A. No, not that I can remember or that I recollect.

Q. Do you recall telling the commission that you received a ticket -- that Mr. Lockwood's ticket was given to you by the gentleman?

A. I don't have recollection of the conversation with the commission.

Q. Do you remember what Mr. Lockwood looked like?

A. I don't believe -- I don't have any recollection.

Q. You don't know what he looked like?

A. I don't know if I ever met him. I don't remember. Do you want to refresh me?

Q. Page 36, transcript of September 1st?

A. Is that the one I have here?

MS. TISHMAN: Is she looking at this?

MR. OSTRER: She is not looking at it.

MS. TISHMAN: What line?

MR. OSTRER: 20 to end of the page.

I'll start at 15 -- 16 to the end of the of page.

"QUESTION: And it's regarding P[redacted] versus C[redacted] L[redacted]; do you know who that is?

"ANSWER: Yes.

"QUESTION: Who was that?

"ANSWER: I don't know him personally, but it's someone that came in to seek Judge McGuire's assistance with a ticket.

"QUESTION: And how do you know that he did that?

"ANSWER: The paperwork that you are looking at, I actually physically typed up.

"QUESTION: I see. Did you ever --

"ANSWER: And the ticket itself was actually given to me by the gentleman when he came in."

Q. Do you recall being asked that question and giving that answer under oath on September 1, 2016?

A. Even though you refreshed my recollection, I just don't recall that, to be honest with you.

Q. You have no memory of Mr. Lockwood coming into chambers, handing you the ticket, and asking you to take care of it?

A. There were just so many people that I just can't put a face down.

Q. Isn't it because that ticket was filed with the Local Justice Court in 2009, approximately two years prior to correspondence that you --

A. I believe it's an amended that we had there, and it came back with Connie and I remember this -- there was something wrong or missing that had to be filled in.

Q. That was an affidavit that had to be amended or updated?

A. Again, I am not good with criminal paperwork, still not. I hate to tell you, it's not it my forte?

Q. It's your testimony, though, that when you said, "The ticket itself was actually given to me," you were referring to an affidavit?

A. Yeah, the piece of paper, if I can have a moment? I believe I have it, right? This piece of paper --

Application to amend the traffic infraction is what we are discussing, correct.

Q. I am asking you what item --

A. This piece of paper?

Q. -- the gentleman gave you, whether it was a ticket or the affidavit. Or not?

A. I don't recollect testifying to receiving --

Q. The letter that you issued on August 5, 2011, you were transmitting a document that was dated February 1, 2011, for Christopher Lockwood?

A. Correct.

Q. When was the ticket, or any other document, given to you by Lockwood?

A. I don't recall.

Q. Here again, the letter that you sent to the Town of Liberty Justice Court included a signature that you created in WordPerfect?

A. Correct.

Q. This related to a ticket. I believe it's in evidence as Exhibit --

JUDGE MCGUIRE: 40, 9-40.

MS. TISHMAN: I think it's 10.

THE WITNESS: 10-40B.

MS. TISHMAN: You are referring to 10-40?

MR. LEVINE: 40E.

MS. TISHMAN: Counsel, you are referring to 10-40, right?

MR. OSTRER: I believe it's something 40.

JUDGE MCGUIRE: That's what I just took out of the book, 10-40. I bet you have the other tabs there.

Q. Ma'am, do you know when the Lockwood ticket was actually answered?

Wasn't it prior to Judge McGuire ascending to the bench?

A. I have no knowledge of that.

Q. You prepared a letter, inserted Judge McGuire's signature by WordPerfect, and mailed the document to the court; is that what you did?

A. That appears to be correct.

Q. Did you speak to anyone at the court?

A. I spoke to Connie Vancuren.

Q. When did you speak to her, before or after you mailed the letter in August?

A. I believe before I mailed it because Judge McGuire gave it to me and it was missing some stuff and I didn't know what to do with it and he told me to call Connie. He is friends with her, too, up there, so we had a conversation. Some stuff had to be filled out. I didn't have the knowledge of filling it out, and the judge filled it out.

Q. This was a refiling the document --

A. I am assuming it was a refiling

from the court.

Q. Do you know when the original document was filed --

A. I have no information to that.

Q. -- whether it was before or after?

A. I wasn't part of that or privy to it.

Q. Do you know how the enclosure of your letter of August 5, 2011, came into your possession?

A. Judge McGuire gave me the paperwork.

Q. Do you know when?

A. I don't have any recollection of the exact date and time, place. He handed it to me when I was sitting at my desk.

Q. You made no record of it?

A. I probably kept a copy of it, so if I had a problem again. I would refer to it, which I did with many things, not knowing criminal practice.

MR. OSTRER: Nothing further.

THE REFEREE: Any redirect?

MS. TISHMAN: No redirect.

THE REFEREE: You are excused.

(The witness exited the room.)

THE REFEREE: We have nothing further for today, correct?

MR. LEVINE: No.

THE REFEREE: Anything else to discuss today? Hearing nothing, we will adjourn until 10:00 a.m. tomorrow morning.

(TIME NOTED: 4:58 P.M.)

Exhibits

Commission		ID	EVD
III-5	Transcript	1471	
X-37	Email		1484
XII-1	Pistol Permit Schedule		1499
XII-2	Pistol Permit Schedule		1507
XIII-1	Email		1527

Respondent		ID	EVD
D	Email	1570	
F	Email		1588

CERTIFICATION

I, CHRISTINE SOCCI, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 15, 2019.

IN WITNESS WHEREOF, I have herunto set my hand this 7th day of June, 2019.

_____

CHRISTINE SOCCI

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant:
To Section 44, subdivision 4, of the
Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

a Judge/Justice of the Supreme Court
Queens County.

---

61 Broadway
New York, New York

May 16, 2019
9:54 AM

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Senior Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

MICHAEL F. MCGUIRE, ESQ.
PRO SE

Also Present:

MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Commission

	Direct	Cross	Redirect	Recross
Miguel Diaz	1669	1686	X	X
Kevin McCabe	1728	1740	1787	1787
Connie Van Keuren	1792	1810	1832	1833

MR. MAISONET: We are on the record.

THE REFEREE: Good morning, everybody. Today is May 16th, 2019, and this is the continued hearing in the matter of Judge Michael F. McGuire.

Judge McGuire, you have an application?

MR. MCGUIRE: I do, Your Honor. We had previously asked for production of the audio tapes of the various depositions that were done. Counsel opposed that and we had the transcripts and we moved forward, respected that. In light of Ms. Weiner's testimony yesterday, I would renew an application to have the audio disk of her testimony. Because of her lack of memory, it really affected our ability to confront her with whether inconsistent statements -- she really didn't remember much of anything on cross-examination. That audio transcript, because of that, and now it gets to a missing -- to an absent

witness, potentially could be admissible, or at least parts of it could potentially be admissible, and it really is material to our ability to defend against really a central witness in this case.

In the alternative, and I'm not suggesting that the Commission agree to this, but if they would agree to stipulating her transcript in, then potentially that would remedy the situation also.

There are also several documents that were provided to us from the Commission, as part of discovery, that referenced information that Ms. Weiner had provided, subsequent to her deposition. Again, she didn't even recall making those statements, and I certainly don't cast any aspersions on Ms. Tishman or Mr. Levine that she didn't, but, again, it completely prevented us from being able to confront her. And certainly the court is the ultimate judge of credibility,

but where somebody repeatedly says "I don't recall," even when recollection is attempted to be refreshed with a sworn statement, she still doesn't recall, then perhaps there's a memory issue, which would enable us to use that prior sworn statement. So I would ask, again, for production.

THE REFEREE: Okay. Mr. Levine.

MR. LEVINE: Using the order in which Judge McGuire brought them up. With respect to the witness's prior testimony that was held before the Commission, as we know, from the three-plus hour opportunity that was full and unfettered to cross-examine the witness, Counsel, he was here yesterday, had every opportunity to confront that witness with testimony. That indeed happened. The method and manner by which Counsel chose to do that was apparently at his own discretion, but there's not a question here as to whether there's an error or anything that would need to transcribe

improperly. It is common and, obviously an argument could be made, if a witness doesn't recall, they don't recall. But to admit the documents into evidence, we would oppose that, and I see no basis in law to permit that under these circumstances.

With respect to, again, the lack of recollection from the witness, certainly the witness could have been shown documents, as opposed to having them read to them. And, ultimately, all of these things go to credibility of this witness, and that is a matter for you to decide and, you know, to allow in, at this time, extrinsic evidence would violate the collateral evidence rule, and would also -- they're not even put in for credibility but for lack of recollection. The witness doesn't recall. That's the argument that he's making here, and that's not going to make her recollection any better or worse by trying to put in these documents at

this time.

THE REFEREE: Let me ask you, Mr. Levine, was there anything that occurred during the testimony of Ms. Weiner that gave the Commission attorneys any reason to believe that she was testifying falsely here yesterday?

MR. LEVINE: No.

THE REFEREE: So let me respond to the two points. So with respect to the prior -- the transcripts and the witness's prior statements, I thought that Mr. Ostrer's use of those was particularly -- I put this kindly -- was particularly ineffective and there are ways to use prior statements and witnesses, and for whatever reason he chose to do it the way he did it, but by asking a witness whether she recalled making certain statements at a prior testimony is not the way one would, generally, use a prior inconsistent statement. So he certainly had the opportunity to

confront her with prior inconsistent statements and he chose not to do it. That certainly is not going to make those transcripts something that should be received into evidence; the transcripts or the recordings.

With respect to the document that he asked her about, Ms. Weiner about, whether she provided those to Commission Counsel, you know, again, he could have used those -- I guess, he was looking at e-mails, or I don't know what he was looking at, but he never showed the documents to the witness, so I don't understand why he did it that way, but that's the way he did it. And, you know, you may have other opportunities, you know. In the course of your case, I don't know. But I don't see that what developed yesterday, other than the witness testifying repeatedly that she didn't recall, which she testified to previously, and that she didn't recall whether or not she had sent certain

documents to Ms. Tishman, the record is what it is. It's that she didn't recall. And that was certainly brought out on cross-examination. Whatever I choose to make of that, I'll make of it.

MR. MCGUIRE: So even for us to have a copy of the audio, I don't see the prejudice to the Commission if we have the audio transcript. We have the written transcript. There's no prejudice if we get the audio transcript.

THE REFEREE: Well, I'm going to leave it up to them, if they want to give it to you, they can give it to you. I think that if it was some legitimate question as to the accuracy of the transcript, that would certainly raise a different question, but the fact that the witness didn't recall making certain statements in the transcript doesn't make the transcript admissible and it certainly doesn't make the audio admissible, so I don't

see the connection.

MR. MCGUIRE: Thank you.

THE REFEREE: Anything else? No.

Okay. Do we have another witness to proceed with this morning?

MS. TISHMAN: Yes, we're calling Court Officer Miguel Diaz.

MS. PARTIDA: Witness entering.

THE REFEREE: Mr. Diaz, good morning. Have a seat, please.

THE WITNESS: Good morning.

THE REFEREE: My name is Mark Arisohn, and I was appointed by the Commission on Judicial Conduct to be the referee in this matter. And I've been asked to read you an introductory statement which will give you some direction. Okay?

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a

clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Refrain -- please, refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment. Okay?

Would you please rise and raise your right hand.

Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat and state and spell your name for the record.

THE WITNESS: Miguel Angel Diaz.

THE REFEREE: Spell it, please.

THE WITNESS: M-I-G-U-E-L A-N-G-E-L D-I-A-Z.

THE REFEREE: Thank you, sir.

Ms. Tishman, you may proceed.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Mr. Diaz.

A. Good morning.

Q. I should say, Officer Diaz. Are you currently employed?

A. Yes.

Q. And where are you employed?

A. Sullivan the third JD in Sullivan County.

Q. And what is your title, what do you?

A. Court officer.

Q. And what court are you currently assigned to?

A. Supreme Court.

Q. How long have you been assigned to Supreme Court?

A. I've been there for, like, three year now.

Q. And prior to being assigned as a court officer to Supreme Court, where were you assigned?

A. I was in Family Court.

Q. And was that Family Court in Sullivan County?

A. Yes.

Q. And how long were you in Family Court in Sullivan County?

A. About five years.

Q. And prior to your five years in Family Court in Sullivan County, were you a court officer prior to that?

A. Yes.

Q. Where were you assigned then?

A. I was two year in Kingston, and before that, I was five year in the Bronx.

Q. And Kingston's in Ulster County?

A. Yes.

Q. While you were a court officer in Family Court in Sullivan County, were you ever assigned to be a court officer in Judge McGuire's court part?

A. Yes.

Q. And how was it -- I withdraw

that.

When you were in Family Court, did your assignments change on a regular basis?

A. Yes.

Q. And how often were you assigned to a specific location?

A. We usually work for four weeks and do the rotation.

Q. So when you were assigned to Judge McGuire's court part, you'd be assigned there for four weeks?

A. Yes.

Q. Now, I want to draw your attention to February 25, 2013. Were you assigned to Judge McGuire's part when the case *D*[redacted] *versus E*[redacted] was called? That is also -- let me start again.

Drawing your attention to February 25, 2013, were you assigned to Judge McGuire's part when the case *DFS versus E*[redacted] was called?

A. Yes.

Q. Now, is that case also known as *H*[redacted] *versus E*[redacted]?

A. I do not recall.

Q. Now, when you were assigned to Judge McGuire's part, when *D*[redacted] *versus E*[redacted] was called, were there other court officers assigned to that part at the same time?

A. No.

Q. And what, if anything, happened when the case was called?

A. The *E*[redacted] case? I was in the courtroom during the second case of that day, and I called post one to call the people from *E*[redacted] case to my door. When the --

Q. Now, *E*[redacted] -- the *E*[redacted] case -- what case was that of the day?

A. The *E*[redacted] case, I believe it was the third case of that day.

Q. So during -- you said that during the second case you made a call?

A. Yes, we -- I used to do that. When I bring the case in, I call for the next case. And when the case come out then I go to the door and bring the people in according to who is in the calendar.

Q. So during the second case of

February 25, 2013, it was when the second case was going on that you -- or was almost over that you called for the people from *D*[redacted] *versus E*[redacted] to come to the courtroom?

A. Yeah, I called them to post one to send them to my door and they stay outside until I open the door.

Q. And when you say you called, how do you call post one?

A. I call post one using my radio.

Q. And are you wearing the radio?

A. Yes.

Q. And where are you wearing it? How do you wear it?

A. I have it -- I wear it on my left side and I had a mic close to my ear because sometimes I don't hear it too good, so sometimes I put it up or down.

MS. TISHMAN: I would like the record to reflect that the witness was pointing to his left hip where he kept the radio and his left shoulder where he kept the mic.

Q. Now, so you mentioned post one, that you called post one.

A. Yeah.

Q. What is post one?

A. Post one is the entrance where the people come in and they check in and they know who is here and who is not.

Q. Is that where the mag is?

A. Yes.

Q. Now -- so then what happened?

A. Once I call in the case finish, I tell everybody to step out and then start getting everybody else inside from the *E*[redacted] case.

Q. So once the second case of the day was finished --

A. Yes.

Q. -- you told people to leave?

A. Yes.

Q. And then -- so continue with what you were saying.

A. Yes. The people were coming in, I was missing some people so I called post one to call the *E*[redacted] case again. And while I was waiting there for them to come in, then the judge say something like second call, call the sergeant to my door, to my

chamber, so I get everybody out and I told it -- I believe I told the sergeant over the radio that the Judge McGuire wanted to see him in his chamber.

Q. So what was happening when the judge said to you to get the sergeant to go to your chamber. What was happening in the courtroom, what was going on?

A. Some people on -- most of -- the attorneys were in there but now the people were there for the Respondent and the litigants, the people that are part of the case from the public. So I called post one to call the case again because I was missing some and I believe they told me in the radio or they might have said, because they can see from me from the mag, maybe they had said to me, they're coming through the door, through the mag. So I was waiting there when the Judge McGuire told me to -- to call the sergeant to his chamber.

Q. And so you were waiting at the door?

A. At the door, yes.

Q. And was the door open -- door to

the courtroom open or closed?
A. Open, out.
Q. And when the judge told you to second call the case and have the sergeant come to his chambers, what was the volume of the judge's voice?
A. It was loud.
Q. Was it louder than his normal courtroom voice?
A. Yes.
Q. And what was his tone?
A. I believe angry.
Q. Did it sound to you --
MR. MCGUIRE: Objection.
Q. -- like the judge was angry?
A. Yes.
MR. MCGUIRE: Objection.
THE REFEREE: Objection overruled.
Q. Now, when the judge said this to you, were there other people in the courtroom?
A. Yes.
Q. So after you told everyone to leave the courtroom, what happened?

A. I went to the entrance where the magnetometer is because that's usually where we stay when we are not in a part.

Q. So you went to the entrance --

A. Entrance.

Q. -- where the mag is?

A. Yes.

Q. And did you -- were there other court officers there --

A. Yes.

Q. -- at the mag? And did you see any of the inter -- well, I withdraw that.

You say that you called Sergeant Oliveri on the radio?

A. I don't remember how, if I went to the mag and told him. I believe I told him over the radio --

MR. MCGUIRE: Objection.

A. -- because --

MR. MCGUIRE: Either he remembers, he doesn't remember.

THE REFEREE: Yeah, don't guess and don't surmise. If you remember something, tell us what you recall and if you don't remember, tell us you

don't recall.

A. Correct.

MS. TISHMAN: Sorry.

Q. Somehow you contacted Sergeant Oliveri?

A. Yes.

Q. And you told Sergeant Oliveri that the judge wanted to see him?

A. Yes.

Q. Now, when you went to the -- after you left the courtroom you said that you went to the mag.

A. Yes.

Q. Did you see any of the interaction between the judge and Sergeant Oliveri?

A. No.

Q. Did you go back to Judge McGuire's court part that day after this, after what happened in *D*[redacted] *versus E*[redacted]?

A. No.

Q. Why not?

A. I believe the sergeant sent somebody else because the situation that was there, and I was not feeling too good that

day because the situation that happened.

Q. Now, were you assigned to Judge McGuire's court part on June 29, 2012 when the case *D[redacted] versus N[redacted]* was called?

A. Yes.

Q. And what, if anything, happened?

A. That was the day when I was communicating with a radio with the -- my lieutenant and I believe they called that somebody was coming to participate in the courtroom as part of the case, so I was at the door talking on the radio and I was waiting for somebody. So the judge told me to close the door and I was trying to say that the lieutenant was coming because he was coming to see what I needed, and McGuire, Judge McGuire said "close the door," so I closed the door and I was going to say to him on the radio to disregard and then Judge McGuire said, "don't transmit over the radio." So what I did when I hear the judge -- the lieutenant was coming at the door, I told him over the door "I talk to you later".

Q. Now, so in the -- when D[redacted]versus

N[redacted] case, you got a radio transmission that there were more people to come into that case?

A. Yes.

Q. And who did you get a radio transmission from?

A. From post one. Post one.

Q. Which is the mag?

A. Yes.

Q. And then -- so after you got this radio transmission that there were more people that need to enter the courtroom for the D[redacted] versus N[redacted] case, what did you do?

A. I went to the door, I open it so I was waiting for them to come.

Q. And when you say you went to the door, what door did you go to?

A. The front door of the courtroom.

Q. The courtroom -- the door that leads into the courtroom?

A. Correct. Courtroom Number 2.

Q. And you -- where were you standing?

A. I just was -- I was standing right by the door with the door open, I stay

where I can I see the judge on my right side and on my left I can see the mag, if people are coming in.

Q. Now, so you're holding the door open --

A. Yes.

Q. -- so that the people can enter who needed to be there for the *D*[redacted] *versus* *N*[redacted] case?

A. Yes.

Q. And then as you're holding the door open, what happened at that point?

A. At that point was when Judge McGuire told me to close the door, to keep them out, close the door.

Q. To keep who out?

A. The people that were coming. That's what I believe.

Q. So to keep the people who were coming in for the *D*[redacted] *versus* *N*[redacted] case?

A. Correct.

THE REFEREE: So wait, wait, wait, wait. So you're saying that Judge McGuire told you to close the door.

THE WITNESS: Yes.

THE REFEREE: Did he also tell you to keep the people who were coming out?

THE WITNESS: Because they were coming from-

THE REFEREE: Just answer my question. Did Judge McGuire tell you to keep the people out?

THE WITNESS: I believe, yes.

THE REFEREE: Okay.

Q. Well, why don't we do this. Why don't we listen to the tape at this point. This is a tape we have not listened to before.

THE REFEREE: What is this exhibit?

MS. TISHMAN: It is Exhibit VIII-2, the transcript is marked Exhibit VIII-2a. We're going to page one.

And when we're ready, we will go off the record.

THE REFEREE: Yes.

MR. MAISONET: Off the record.

(The audio was played.)

MR. MAISONET: We are on the record.

Q. Officer Diaz, that was a recording of *D*[redacted] *versus N*[redacted], what you described to us?

A. Yes.

Q. Had there been any other incident with the judge similar to these two incidents, *D*[redacted] *versus N*[redacted] and *D*[redacted] *versus E*[redacted]?

A. There was few other occasion. There was one -- that was the first one, where we were alone in the courtroom and the judge told me I was too slow, that I needed to speed up the process bringing the people in. And when he said it, he was loud and angry tone.

Q. And was there any other incident?

A. There was a few that I don't remember, exactly. There was one where he wanted me to bring a defendant that was in jail and when he said it, I thought it was the case, that he was calling the case so I started getting everybody in and he said,

"Diaz, I want the Defendant." So I pulled everybody out and I brought the Defendant that was in jail by himself.

Q. Now, drawing your attention to January 28, 2013, were you working in Judge McGuire's part when a *P*[redacted] *versus R*[redacted] *and R*[redacted] was called?

A. Yes.

Q. And after the case was concluded and it was off the record, what, if anything, happened?

A. They were talking that somebody for one of the litigant was influenced one child, so the judge say you are going to the jail, you might go to the jail. And that person, it was a female, she, I believe, she panic and she could not breathe, so the judge went to the back and we called 911 for the EMS.

Q. And when the judge told the person that they might go to jail, who was the judge speaking to?

A. To the -- to R[redacted] that was the -- R[redacted].

Q. R[redacted] you said?

A. R[redacted], yes.

Q. What was the volume of the judge's voice when he told Ms. R[redacted] that she was going might go to jail?

A. I do not remember.

Q. And after the judge told Ms. R[redacted] that she was going -- might go to jail?

A. I do not remember.

Q. And after the judge told Ms. R[redacted] that she might be going to jail, what happened? What was -- what happened next?

A. She could not breathe and the judge went to the back, to the chamber and I got everybody out and the sergeant came and later on the EMS came.

Q. Now, when the judge said to Ms. R[redacted] that she might go to jail -- well, I withdraw that.

During the course of this case, was the child in the courtroom?

A. I believe so.

Q. Do you believe so or you remember whether the child was in the courtroom?

A. I do not remember.

Q. Okay.

MS. TISHMAN: I have no further questions of this witness.

THE REFEREE: Cross-examination.

CROSS-EXAMINATION

BY MR. MCGUIRE:

Q. Mr. Diaz, good morning.

A. Good morning.

Q. So, Officer Diaz, you said that when you bring a case in, you radio to have the next case -- my words not yours -- staged or cued up on the door?

A. Yes.

Q. That's your -- when you worked in Family Court -- and in the Bronx were you in Family Court?

A. No.

Q. But in Ulster County, you were in Family Court?

A. Yes.

Q. So you did three years in Ulster County and then you were in Family Court in Sullivan County for five years.

A. I did two year in Kingston, Ulster County two years. Then I went to Sullivan County and they sent me for Family

Court, I was there for five years.

Q. So you did two years in Ulster County Family Court?

A. When I was in Ulster County, I was in all three places.

Q. Oh, okay.

A. Supreme, the City Court and Family Court.

Q. So you had some Family Court experience in Kingston?

A. Yes.

Q. And in Sullivan County, you were the first five years in Family Court?

A. Yes.

Q. So I just want to understand the procedure. When you're working -- strike that.

In Sullivan County Family Court, are there officers assigned to each of the three courtrooms?

A. Yes.

Q. So one to Judge McGuire? Yes?

A. Yes.

Q. And is one officer assigned to Judge Meadow?

A. Yes.

Q. And one officer to support Magistrate Linen?

A. Yes.

Q. And then what are the other officers assigned to, if there are any other officers, in Family Court?

A. We have two more officers assigned at the mag, at the entrance.

Q. Okay. Now, so you have five court officers in total?

A. Yes.

Q. And in addition to that, are there other personnel who may not be technically court officers that are part of the court officer's detail? In other words, is there a sergeant there?

A. We had a sergeant, yes.

Q. And is there a lieutenant there?

A. The lieutenant is not there all the time, just pass by.

Q. No, no, I understand that. Maybe I didn't ask the question clearly and I apologize.

A. Okay.

Q. The lieutenant is responsible for all of the courts in -- all of the Superior Courts in Sullivan County?

A. Yes.

Q. And his office is actually upstairs in the government center; is that correct?

A. Yes.

Q. So he will come by Family Court, from time to time?

A. Yes.

Q. And he'll also come by Supreme and County Court from time to time?

A. Correct.

Q. But the sergeant is there pretty much all the time?

A. Yes.

Q. So I want to understand the procedure. So let's say, hypothetically, you're assigned to Judge McGuire's courtroom, that's courtroom two, correct?

A. Okay. Yes.

Q. Yes? Okay. So you take a group of litigants and attorneys into the courtroom for, say, the first case of the

day.
A. Correct.
Q. Now, when you take them into the courtroom, do you radio out right then as they're coming into the courtroom to line up the next case?
A. Once they sit down they come through the door, I tend to call post one to align the next case.
Q. To give them the maximum amount of time to get that case lined up; is that correct?
A. Yes. Yeah.
Q. So when you call out to post one, who's responsible for getting the next case lined up?
A. Post one.
Q. I don't know who that would be though.
A. Whoever is outside the post one will call on the speaker and tell them to wait at the door.
Q. Okay. All right. So I'm not asking for names, and again, maybe the question was unartfully drawn. The officers

who are assigned to post one, the two officers at the mag, they're the ones that would -- if I'm correct -- that would facilitate getting those people to your door?

A. Yes.

Q. Okay. Now, you have worked in County court and Family Court and in Supreme Court and in City Court, correct?

A. In Kingston.

Q. I understand. Well, you've worked in Supreme and County Court in Sullivan County, correct?

A. Correct.

Q. And you've worked in City Court in Kingston?

A. Correct.

Q. And in Supreme and County Court in Kingston?

A. Correct.

Q. And you have also worked in Family Court in Kingston?

A. Correct.

Q. Now in County Court, when we have a calendar, is it fair to say that all of

the cases and all of the litigants and all of the attorneys assemble at one time?

A. In County Court?

Q. County Court.

A. We have a courtroom where everybody just go in.

Q. Okay. So say a nine o'clock calendar for Judge McGuire. If there's 10 cases on the calendar, excluding the jail because we understand they may not bring all 10 litigants over, all 10 defendants over. But the attorneys and spectators are all in the court at that time when we start at 9:00?

A. Correct. Whoever is in the court, in the building, just go in -- in the courtroom.

Q. Right. The doors to those courtrooms are pretty much always open, people can come and go throughout the calendar?

A. Correct. They are unlocked, so they can go in and out.

Q. Now, is that different in Family Court?

A. Family Court we usually leave it locked.

Q. So that once the door is closed, people can't come from outside in?

A. Correct. Post one calls the officer and says somebody is coming into your courtroom, then the officer go to the door and open and see who's coming.

Q. Okay. But people can't just walk in and out? They can walk out, I suppose.

A. Yes, they can walk out but they can not come in.

Q. Because the door is locked?

A. Correct.

Q. Now based on your training and experience -- by the way, you graduated from the court officer's academy?

A. 2003.

Q. 2003. Okay. So based on your training and experience, do you know why Family Court is different then, say, County Court?

A. My belief is that because family sometime are sensitive situation, we close the door so people that are not related to

that case don't go in there.

Q. And is it fair to say that sometimes in Family Court, we deal with issues relating to children?

A. Correct.

Q. Sometimes we're dealing with issues related to children that have been abused; is that correct?

A. Correct.

Q. And sometimes that could be even sexual abuse of a child?

A. Correct.

Q. I want to take you back to February 25, 2013, that was the *D*[redacted] *versus* *E*[redacted] case?

A. Correct.

MR. MCGUIRE: And, Your Honor, just for the record, I will stipulate that there was also cases captioned *H*[redacted] *versus* *E*[redacted]. I think Ms. Tishman had raised that. That's very common in Family Court.

THE REFEREE: Okay.

MR. MCGUIRE: *H*[redacted] *E*[redacted] are the parents. D[redacted] was bringing an

abuse or a neglect case. That's why it's in the old captions.

THE REFEREE: Very well.

Q. So that was the third case in that day, correct?

A. Correct.

Q. So the second case went out.

A. Correct.

Q. You had previously -- strike that?

Had you previously --

THE REFEREE: Ask them in question form. You're about to do it. Good.

Q. Had you previously called to have the third case, which we know was the *E*[redacted] case --

A. Yes.

Q. -- posted on your door?

A. Yes.

Q. You had called?

A. Yes.

Q. Had you received any radio transmission telling you that there was an impediment to having the *E*[redacted] case on your

door?

A. I do not recall.

Q. Well, if there was an -- if -- hypothetically, if you called to have the third case put on your door, if there was an attorney or a litigant that was not yet checked in, would you typically get a transmission saying that case isn't ready yet?

A. Correct. When somebody is missing from the case, they usually tell the officer.

Q. Right. So that you can monitor the calendar, correct?

A. Correct.

Q. So if you get such a transmission telling you that either one of the attorneys, or one of the litigants, is not present or in another courtroom, would you call that case in next?

A. For Judge McGuire part, we do because Judge McGuire wants the case even if not everybody's there. For Judge Meadow, we wait until everybody is in before calling the case.

Q. Now, on February 25, 2013, do you remember if that was a busy calendar or not, a full calendar?

A. I do not remember. I only remember that on Tuesday -- on Monday are the busy calendar where you have many cases.

Q. Okay. So isn't it accurate that if a case is not ready, meaning everybody available, don't you typically tell the judge I don't have any cases that are ready and then get direction from the judge?

A. For Judge McGuire part, we've been instructed to call a case even if nobody -- if not everybody's there. There are occasions where we tell the judge McGuire that the people are missing and the judge say call a different one and other occasion he say just call the case anyway.

Q. Okay. So even Judge Meddaugh will call a case if not everyone is there, if a period of time has passed?

A. Correct. Usually 20 to 30 minutes after, if there is no other case ready, there's nothing else, he say call the case anyway. But if the other cases are

ready, we tend to call those cases first.

Q. In your experience, working in Judge McGuire's part, is it fair to say that on the Monday calendar he normally will have four to five cases scheduled for each half hour block?

A. Correct.

Q. And so if *E*[redacted] was the third case that day, can we agree that there was likely other 9 o'clock cases that were still there?

A. It is possible.

Q. Okay. So if you open, if you have not received any transmission telling you that a case is not ready, and my definition of ready is everybody is assembled, do you assume that when you open the door everybody for that case will be there?

MR. LEVINE: Objection to the form of the question.

THE REFEREE: Overruled.

A. When we call the case at the beginning of the one that is inside, depending how long is the case that is ion there, people on the other side of the door,

sometimes they have to use the bathroom or use the cell phone and they go outside the mag, the entrance.

Q. That's not my question. Let me rephrase it. He was right, maybe it was in artful.

My question is: If you have not received a transmission telling you that a case is not ready after you called for the case. Following me?

A. Okay.

Q. Would you assume that when you open the door that that next case would be ready to come in?

A. Correct. Once we tell post one that we need case four or case five at the door, we assume that they send everybody to the door.

Q. Okay. And now to follow up when you're in the courtroom and you assume that the case is on the door, would you know from inside the courtroom whether somebody ran to the bathroom?

A. No.

Q. Would you know if somebody ran to

do -- to use their cell phone?

A. No.

Q. Who, if anyone, amongst the court officer staff, would know that?

A. Do not know because at the entrance we don't pay attention. Once we send the party to the doors, we disregard that case and pay attention to all the call from the other part to assemble all the cases.

Q. So you're saying that nobody outside the courtroom is paying attention to see if once they stage a case people leave?

A. Correct.

Q. When they stage a case, do they tell the people to wait there, that you're the next case in?

A. Correct.

Q. Now, when you worked in Ulster County Family Court, the layout of that courthouse was different than Sullivan County's courthouse, correct?

A. A little bit similar.

Q. Well, Sullivan County Court, Family Court -- Family Court I'm talking

about. When people walk in the mag, from the mag are all the courtrooms on the same floor as the mag?

A. Correct.

Q. Is that the case in Ulster County?

A. We had Ulster County two levels.

Q. So what's on the second level?

A. We had two courtrooms in the second level.

Q. And those are the Family Court judges' courtrooms?

A. Correct.

Q. And the support magistrates are downstairs?

A. Correct.

Q. And just to be fair, they're no longer using that courthouse, but when you worked there, that was the courthouse?

A. Yes.

Q. And the mag was where?

A. At the entrance.

Q. And waiting room was where?

A. There was in the first floor and in the second floor.

Q. There's a waiting room on the second floor?

A. The second floor, the people that -- there was some chairs where they could wait there.

Q. Just in the hallway?

A. Yes.

Q. So in Ulster County, it's a longer walk to get the people from the waiting room up to the courtrooms, correct?

A. Correct.

Q. Did you follow the same procedure in Ulster County, if you recall?

A. My memory is that it's similar.

Q. Okay. Okay. So similar being when you would go in the court with one case, you'd radio down to the mag to have the other case brought upstairs?

A. Correct. Similar.

Q. People had to walk up a staircase?

A. Yes.

Q. Or take an elevator?

A. Correct.

Q. There is an elevator in that

building, right?

A. No.

Q. I didn't seem to remember. I never used it, so, okay.

All right. Now on -- we're still on the February 25, 2013 incident. Okay?

A. Okay.

Q. And you said after I asked you to second call the *E*[redacted] matter you went out to the mag?

A. Yes.

Q. And so you were speaking with the other court officers that were at the mag?

A. Correct.

Q. Do you remember if the sergeant was there when -- strike that.

Was the sergeant there when you got to the mag?

A. I do not recall.

Q. Okay. Fair enough. Did you speak with the sergeant when you went out to the mag?

A. I'm a you sure I talked to him before or after he went to the back to your chamber.

Q. Okay. But you don't recall if it was before or after?

A. Correct. It's possible I told him over the radio to go to your chamber or when I went to the entrance, I told him in person to go to your chamber.

Q. Okay. And in response to Ms. Tishman's question, you said that you did not finish out that calendar in Judge McGuire's part?

A. Correct.

Q. And do you know why you didn't finish out the calendar? And let me rephrase that.

Did one of your fellow officers volunteer to cover your calendar or did Sergeant Oliveri make a direction that there be a change?

A. My recollection is that the sergeant sent somebody else there.

Q. Okay. Now, June 29, 2012, that was the *D*[redacted] *versus N*[redacted] case?

A. Okay.

Q. That's the tape that we just heard. Okay?

A. Yes.

Q. And you had a chance to listen to the tape?

A. Yes.

Q. The parts that were played here?

A. Yes.

Q. All right. Now you heard the judge say that we were there for a 1028 hearing?

A. I did not pay attention.

Q. To the tape?

A. To the case, the numbers and the case.

Q. Okay. All right. So you don't recall?

A. I don't recall because I usually did not pay attention what was saying.

Q. Okay. Do you know what a 1028 hearing is from your time in Family Court?

A. Not from anybody, no.

Q. All right. Do you remember whether or not there was a child in the courtroom that day?

A. No, I don't remember.

Q. Did you continue in Judge

McGuire's part that day?

A. I believe so.

Q. Do you recall -- now, sometimes in Family Court we have trials or take testimony. Do you agree with that?

A. Yes.

Q. And other times we have -- do you agree that we have more of just a traditional calendar or a conference?

A. Yes.

Q. So sometimes we have witnesses on the stand, correct?

A. Correct.

Q. And sometimes there are no witnesses on the stand.

A. Correct.

Q. Okay. Do you recall that day of the *N*[redacted] matter whether or not we had any witnesses on the stand? And I'm referring, specifically, to the *N*[redacted] matter.

A. No, I don't recall.

Q. Do you recall whether or not a child testified that day in the *N*[redacted] matter?

A. I don't remember any child

testifying that day.

Q. Is it that you don't remember or that you don't think a child testified?

A. My memory is that a child didn't testify that day. That's my memory.

Q. That's your memory?

A. Yes.

MR. MCGUIRE: Do we have that transcript?

MS. PARTIDA: Yes.

MR. MCGUIRE: So Exhibit VIII-1.

MS. PARTIDA: Is it Exhibit VIII-2a?

MR. MCGUIRE: I'm sorry. It may be -- it's 2a, yes. I'll get the number system down within the next week, I promise.

Could you show that to the witness please, Exhibit VIII-2a?

Q. So Officer Diaz, I'd like you to start at page 6, line 21. And I would like you to read to page 7 line 24.

MR. LEVINE: To himself?

MR. MCGUIRE: To himself, yes, yes. Thank you.

A. Okay. I read 6 and 7.

Q. Does that refresh your recollection with respect to whether or not we had witnesses giving testimony? Does this refresh your recollection?

A. No.

Q. It doesn't refresh your recollection. Okay. Now I want to go to January 28, 2013.

A. Okay.

Q. Do you recall whether or not you were assigned to the judge's court on that day?

A. Yes.

Q. And how is it that you recall that?

A. I remember the incident about the person that could not breathe.

Q. Oh, okay.

A. And I read some papers.

Q. Okay. So what papers did you read?

A. The transcript.

Q. The transcript of what?

A. Of that day.

Q. Of that day? Okay.

A. Yes.

Q. Is there anything in the transcript that you read about the person not being able to breathe?

A. That come from the memory of that day.

Q. Okay. So you read the transcript?

A. Correct.

Q. And that refreshed your recollection of the entire proceeding that day?

A. From the recollection, the breathing, I remember independently of what I read.

Q. So I just want to be clear that you've read the transcript, correct?

A. Correct.

Q. There's nothing in the transcript that refers to a person having difficulty breathing; is that correct?

A. I don't remember reading that from the papers.

Q. Okay. So is it fair to say that

when you read the papers, that triggered your memory of the entire proceeding?

A. That gave me the day. I did not know what day was it.

Q. I see. Okay. Okay. So you read the transcript of that proceeding?

A. Not completely but I did read some.

Q. So what parts of it did you read?

A. At the beginning, I believe, on the date and the day.

Q. You read the beginning and the date?

A. And the date.

Q. And I just want to understand, when did you agreed that transcript?

A. I believe it was last month when they went to Sullivan County to talk to us.

Q. Who went to Sullivan County?

A. The attorney.

Q. Oh, Ms. Tishman?

A. Yes.

Q. Okay. Had you -- well, did you meet with Ms. Tishman?

A. Yes.

Q. Was anybody else with her?

A. When we were talking there, no.

Q. So where were you when you were talking to Ms. Tishman?

A. We were in the visiting room for the judge, close to the bathroom in the second floor in County Court.

Q. For my reference, near where my little office is in County Court?

A. It's by courtroom number three.

Q. Okay.

A. They have a handicap bathroom and they sit, a room for visiting judge.

Q. Okay.

A. When the other one is full, we put the extra judge in that little one.

Q. So it's a little room?

A. Yes.

Q. The one that used to be for the court attendants?

A. Yes. Yes.

Q. So that's where you met with Ms. Tishman?

A. Yes.

Q. And she was alone?

A. Where I was talking to her. There was another person but she was outside.

Q. Fair enough. Did Ms. Tishman take any notes when you were talking to her?

A. I didn't notice.

Q. Okay. And she brought you a transcript of the proceedings to read?

A. There was some papers I read.

Q. Did Ms. Tishman give them to you or did she bring them with her, if you recall?

A. She had one that I read that was from my -- from my disposition.

Q. When you came down here back in 2016?

A. Yes.

Q. In January of '16?

A. Yes.

Q. So you read that?

A. Yes.

Q. Did you read anything else?

A. I believe I saw the 911 report from the person that could not breathe.

Q. The aided report?

A. Yes.

Q. The one that the court officers complete?

A. Yes. I believe I saw that one that day.

Q. Okay. So -- and we know that that incident took place more than five years ago.

A. Correct.

Q. January 28, 2013.

A. Yes.

Q. In fact, it was more than six years ago.

A. Correct.

Q. So you've seen a lot of cases in six years?

A. Yes.

Q. So without having something to trigger your memory, the dates certainly could have escaped you, is that fair to say?

A. The date for that incident for I didn't remember. I remember the incident clearly though.

Q. Okay. Fair enough. Fair enough.

So the incident that you

remember, and I just want to define it. The incident that you remember is the person having difficulty breathing?

A. Correct.

Q. And having to have an ambulance come?

A. Correct.

Q. Did she go out in the ambulance or did she go home on her own?

A. I read in the report that she declined to go.

Q. All right. I believe that report is in evidence. Okay.

So that's the incident that you recall. Do you recall anything else about that appearance when that woman Ms. R[redacted] was in court, do you remember anything else about it?

A. What I remember was that she was -- I believe, they were saying that she was trying to influence the child.

Q. Who was saying that?

A. I do not remember who said it but when somebody told the judge, the judge say somebody's going to jail, you are going to

jail. That's when she panic and could not breathe.

Q. But the judge didn't order her taken into custody at that moment?

A. No.

Q. Okay. Do you remember if there was a child in the courtroom that day?

A. That I don't remember.

Q. Do you remember whether there was an attorney for the child in the courtroom that day?

A. I believe so, yes. That I remember.

Q. Do you remember the attorney for the child saying anything to Ms. R[redacted]?

A. No, I do not.

Q. Do you remember when during the proceeding that interchange with the judge and Ms. R[redacted], where the judge said you may go to jail or something like that, do you remember when that was; at the beginning, the middle or the end?

A. At the end.

Q. At the end?

A. Yes.

Q. In fact, it came at a time, correct, when people were actually walking out of the courtroom, if you remember?

A. My memory is that everybody was still in the tables sitting down because I told everybody to step out.

Q. Okay. So if you told them to step out, then that's what triggers in your mind that it was at the end? Well, let me rephrase the question.

When do you tell people to step out of the courtroom?

A. When the case finish.

Q. So you said you just remembered that you had told the people to step out.

A. Correct.

Q. So at what point of the proceedings would that have been?

A. At the end.

Q. At the end. All right. Where was Ms. R[redacted] seated during the proceedings?

A. She was -- she was in the second table for the Respondent.

Q. Okay.

A. That is the one facing the judge,

it's the one on the right on the back.

Q. So as you're looking at the bench.

A. Looking at the bench. There's four tables; one for the Petitioner, one for the Respondent, there's one in the back that's for the child attorney, and the one in the back the for second Petitioner. She was in the back.

Q. So for the record, Officer Diaz has described that there are four tables in the courtroom and using his left hand facing the bench, the front left is the Petitioner?

A. Correct.

Q. The front right is the Respondent?

A. Respondent.

Q. The rear left is the child?

A. Child attorneys.

Q. Child attorneys. Right.

A. Yes.

Q. And rear right is the second Respondent.

A. Yes. She was there in that corner.

Q. She was in the back right table?

A. Yes.

Q. Okay. And have you ever been in Family Court when the children have been in court?

A. Yes.

Q. And if the children are in court, where would the children be seated?

A. Most of the time they sit down with their attorney for the child.

Q. So that would be at the rear left table, as you're looking at the bench?

A. Yes. Sometimes they are sitting down in the back chairs.

Q. Okay. So, hypothetically, if the child was there, she would have been seated at the table next to Ms. R[redacted]?

A. My memory, from that day, is that the table, there's two chair and she was sitting down in the second one.

Q. The one closest to the wall?

A. To the wall, yes. That's my memory.

Q. That's where Ms. R[redacted] was seated?

A. Correct.

Q. My question is: If the child was there, where would the child have been seated?

A. It would be with the attorney in the table.

Q. So is it fair to say that if the child was there, she would have been at the table next to Ms. R[redacted]?

A. It's possible. It's possible.

Q. Okay. Okay. And you said that you don't recall what the judge's volume was when he spoke to Ms. R[redacted] that day.

A. Correct.

Q. Okay. So February 28, 2013 you handled the first couple of cases, and then another court officer filled in for you the rest of the day?

A. February?

Q. February 28, 2013. And just to refresh your recollection, that was the day when I -- when Judge McGuire said he wanted to see the sergeant.

A. Isn't that February 25th?

MR. MCGUIRE: Is it?

MS. TISHMAN: Yes.

MR. MCGUIRE: Okay. You've refreshed my recollection.

Q. February 25, 2013. Okay. So that was the day that you didn't finish Judge McGuire's calendar?

A. Correct.

Q. Have you worked with Judge McGuire since then in the past six years?

A. Yes.

Q. Have you worked with Judge McGuire in Family Court?

A. Yes.

Q. Have you worked with Judge McGuire in County Court?

A. Yes.

Q. Have you, in fact, worked with Judge McGuire on criminal jury trials?

A. I believe so.

Q. And you have worked with Judge McGuire on selecting grand jury?

A. I believe so.

Q. How are the assignments done in County Court?

A. We have rotation through.

Q. Is it the same one-month

rotation?
A. Correct.
Q. So you'd be upstairs assigned to Judge McGuire's part for a whole month?
A. Correct.
Q. And then you would rotate to Judge LaBuda's part?
A. We would go to Judge LaBuda first and stay there for two turn, and then go to visiting judge and you are a visiting judge.
Q. So it would be two months with Judge LaBuda, then one month with Judge McGuire?
A. Correct.
Q. Or the visiting judge?
A. Correct.
Q. And then downstairs, what posts are there downstairs?
A. Post one is two terms there, too.
Q. Two terms there. And then Judge Schick, Justice Schick, does he have a term also?
A. Judge Schick have one after the visiting judge.
Q. So you rotate Judge LaBuda two

months?

A. Yes.

Q. Judge McGuire one month?

A. Yes.

Q. Judge Schick one month?

A. Yes.

Q. And then the two mag posts?

A. Correct.

Q. So in the last six years, you have worked with Judge McGuire?

A. Correct.

Q. Have any of your terms where you were supposed to work with Judge McGuire, were there occasions when you didn't work with Judge McGuire?

A. When I was in Family Court, after February 25th, the sergeant sent other people to take my part in locations for a while. After that, they stopped sending somebody else.

Q. So you did work with Judge McGuire in Family Court?

A. Yes.

Q. And certainly in County Court you have?

A. Yes.

Q. Okay. Could you describe between February 25, 2013 and May 3, 2019, that six-year block. Okay. You understand where I'm focusing?

A. Could you repeat.

Q. Sure. Sure. I want -- my question goes from February 25, 2013, the day that I asked to see the sergeant, all the way until the last day that I was there, which was May 3, 2019 just a couple of weeks ago.

A. Okay.

Q. And that was the day we finished the jury trial.

A. Correct.

Q. All right. How -- could you describe how your interactions with Judge McGuire have been during that six-year period?

A. Okay.

Q. Just okay?

A. Yes.

Q. Any problems?

A. No.

Q. Would you characterize it as a normal interaction?

A. Yes.

Q. Judge McGuire has greeted you when he comes in in the morning?

A. Sometimes.

Q. If he sees you?

A. Yes.

Q. If he doesn't see you, he doesn't greet you?

A. Correct.

Q. Are you aware that Judge McGuire has asked that you not work with him, in that time period?

A. I believe after the incident that the sergeant switch me for a few sometime, nobody had told me anything about.

Q. And, in fact, you have worked with me?

A. Yes.

Q. And we've had a normal, cordial relationship?

A. Correct.

Q. Okay. As you sit here today, May 16, 2019, do you have any concerns about

working with Judge McGuire?

A. No.

MR. MCGUIRE: If I can have one minute, please, Your Honor.

THE REFEREE: Yes.

MR. MCGUIRE: Thank you, Your Honor. I have nothing further for this witness.

THE REFEREE: Any redirect?

MS. TISHMAN: No.

THE REFEREE: Thank you, Mr. Diaz. You're excused.

THE WITNESS: Thank you.

THE REFEREE: So let me ask you this: How long is your direct on the next witness?

MS. TISHMAN: I'm sorry? I didn't hear you.

THE REFEREE: How long is your direct on the next witness?

MS. TISHMAN: Very short.

THE REFEREE: Do you want to do that and then take a morning break or should we take a morning break first?

MS. TISHMAN: Maybe take a break

first.

THE REFEREE: So let's break until about 20 after. Off the record.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: You may call your next witness.

MS. TISHMAN: The Commission calls Kevin McCabe.

MS. PARTIDA: Witness entering.

THE REFEREE: Good morning, sir. Please have a seat. My name is Mark Arisohn. I've been appointed by the Commission as the referee in this matter, and I've been asked to read an introductory statement to you to give you some instruction.

THE WITNESS: Very good.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a

clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please, refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment. Okay?

THE WITNESS: Okay.

THE REFEREE: Ready?

THE WITNESS: Yes.

THE REFEREE: Please rise and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE REFEREE: Please have a seat. State and spell your full name for the

record, please.

THE WITNESS: My name is Kevin McCabe. First name K-E-V-I-N, last name McCabe, M-C, capital C-A-B-E.

THE REFEREE: Ms. Tishman, you may proceed.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Lieutenant McCabe.

A. Good morning, Counselor.

Q. Are you currently employed?

A. Yes.

Q. And where are you employed?

A. By the New York State Courts.

Q. And what's your title?

A. New York State Court Officer Lieutenant.

Q. And how long have you been a lieutenant?

A. It'll be 25 years this November.

Q. Where are you currently assigned?

A. Third Judicial District Sullivan County.

Q. And before you were a lieutenant,

what was -- were you a court officer?
A. I was a sergeant before lieutenant. Before sergeant I, was a senior court officer. Before senior court officer, I was a court officer.
Q. So how long have you been either a court officer and -- with all the different titles that you have had?
A. I've been in the court officer titles for, like I said, it'll be 25 years in November.
Q. How long have you been a lieutenant?
A. 15 years.
Q. Where are you currently assigned?
A. Sullivan County.
Q. And what are your responsibilities as a lieutenant in Sullivan County?
A. I oversee the security operations, the court officers within Sullivan County.
Q. Is that all the court officers in the whole county?
A. Yes.

Q. Is Judge McGuire one of the judges in Sullivan County?

A. Yes.

Q. And do the court officers that you supervise, are they assigned to him?

A. Several are, yes. They all are from time to time.

Q. And Judge McGuire sits in Family Court and County Court and Supreme Court?

A. And Surrogate Court, also.

Q. So he sits in the other courts I mentioned?

A. Yes.

Q. Now, I want to bring your attention to 2012. Was there an incident between you and Judge McGuire?

A. Yes.

Q. Can you tell us what happened?

A. I had gotten a notice that the judge wanted to see me. I went into the chambers to see him and the judge was a little bit annoyed about cases not being brought in on a timely basis.

Q. So you said you went into the judge's chambers?

A. Correct.

Q. And you spoke to Judge McGuire?

A. Yes.

Q. And when you spoke to Judge McGuire, where did that conversation occur?

A. In the chambers.

Q. Was it in Judge McGuire's private office?

A. Yes.

Q. And where was the judge when you were speaking to him?

A. He was behind his desk.

Q. And where were you?

A. In front of the desk.

Q. And was Judge McGuire sitting or standing?

A. Standing.

Q. And can you tell us exactly what Judge McGuire said to you?

A. The judge was saying that he wanted his cases brought in precisely at nine o'clock, not 9:01, not 9:02; nine o'clock.

Q. And about what time did you have the conversation with the judge?

A. I believe it was shortly after nine o'clock.

Q. And what was the judge's demeanor when he was talking to you?

A. The judge seemed annoyed.

Q. What was the volume of his voice?

A. Raised.

Q. And was it louder than his normal speaking voice?

A. Yes.

Q. And what, if anything, was the judge doing, physically, doing when he spoke to you?

A. He pointed his finger on the desk when he was emphasizing not 9:01, not 9:02, nine o'clock.

MS. TISHMAN: I'd like the record to reflect that the witness had his right finger out touching -- pounding the desk.

Q. And was the judge -- and about how many times did the judge pound the desk with his right finger?

A. Three or four, maybe.

Q. Was that the right index finger?

A. Yes, I believe so.

Q. And was he doing that as he was telling you that he wanted cases in at nine o'clock not 9:01 not 9:02?

A. Correct.

Q. And how did you respond?

A. I believe that we had the cases in there at nine o'clock and I was telling the judge, I said, "judge, I believe the case was on your door at nine o'clock. We make every effort to get the cases to you promptly on time" and I did go back after the conversation with the judge and I did take a look at the cameras, and according to the cameras, it was nine o'clock. It might have been like nine o'clock and 20 or 30 seconds but it was nine o'clock.

Q. And after you told the judge that it was your belief that cases were coming at nine o'clock that day, what was the judge's response?

A. He said "not according to his watch, it was 9:01 or 9:02."

Q. And then how did you respond?

A. I just said, "judge, I believe

we're making every effort to get the cases to you on time. We're getting the cases in, and I believe on this particular day the case was in on your door at nine o'clock."

Q. And what was your -- sorry.

A. The officer was -- sorry.

Q. No, continue, I interrupted you.

A. I could see the officer was -- I could see the officer communicating into the part at nine o'clock with people on the door.

Q. And what was the judge's response?

A. I think he felt it was 9:01 or 9:02.

Q. And what was the judge's -- the volume of his voice during this part of the conversation?

A. It was raised. It's -- the judge seemed annoyed.

Q. And when you say that his voice was raised, was it louder than his normal speaking voice?

A. Yes.

Q. And what was the tone that he

used?

A. I would say annoyed.

Q. And what was your response -- I'm sorry. I withdraw that. And then what happened?

A. That was it. It was pretty much -- we were, you know, the conversation went on. The judge was still insistent that we were being late. I did make a phone call up to my chief, let her know what was going on and stuff like that. She had asked me "are you getting the cases in on time," and I said, "yeah, judge -- yes, chief, we're getting the cases in on time."

Q. What was your response to the conversation?

A. With Chief Jordan?

Q. No. With Judge McGuire.

A. It was pretty much left that I'll do my best to get the cases in there at nine o'clock and that was it.

Q. And while the judge was talking to you, was he standing or sitting?

A. Standing.

MR. MCGUIRE: Objection. Asked

and answered.

THE REFEREE: Sustained. Strike it.

A. Standing.

Q. Was the judge standing the entire that you had -- during the conversation?

A. Can you repeat the question, please?

Q. Yes. Was the judge standing during the entire time of the conversation?

A. Yes.

Q. And about how many times did the judge pound his desk with his finger?

MR. MCGUIRE: Objection. Asked and answered.

THE REFEREE: Sustained.

Q. Drawing your attention to December 18, 2013, did there come a time you learned that something had happened during between -- during the proceeding in *R*[redacted] *versus O*[redacted]?

A. Yes.

Q. And what happened?

A. I was told that the -- Judge McGuire felt that a threat was made against

him and his son.

Q. So what did you do?

A. I went downstairs and I spoke with the judge. The judge said that Mr. R[redacted] had made a statement that he knows Judge McGuire's son and the judge felt threatened by it.

Q. And what was the judge's demeanor, at that point, when you spoke to him?

A. I would say that the judge seemed concerned.

Q. And what was the level of his voice?

A. It was a little -- it sounded like a concerned tone.

Q. Was his voice raised?

A. No.

Q. And what did you do?

A. I got a little bit of -- I made a notification to my chief immediately because whenever there's a potential judicial threat, that's what we're instructed to do. I notified Chief Jordan, then I did a little bit of background investigation on it. I

got some information about Mr. R[redacted], about the -- why he was incarcerated. I also had the opportunity to hear the tape, the audio recording inside the -- that's taken inside the courtroom.

MS. TISHMAN: Give me one second. Excuse me.

Q. And you listened to the tape of the proceeding?

A. Yes.

Q. And after you listened to the tape, what did you do?

A. I summarized all the events into an e-mail and I sent it up to Chief Jordan.

Q. That is J-O-R-D-A-N?

A. Yes, correct.

Q. And then what happened pertaining to this matter?

A. The Chief then forwarded it on to the Judicial Threat Assessment Unit.

Q. And was there ever a conclusion made about this?

A. Yes. At the time, the Judicial Threat Unit was headed up by --

MR. MCGUIRE: Objection.

THE REFEREE: What's the objection?

MR. MCGUIRE: Hearsay.

THE REFEREE: Let me hear the question again.

Q. Did there come a time that you learned how this was resolved?

MR. MCGUIRE: I'll withdraw the objection to that question. Maybe the next question.

A. Yes.

THE REFEREE: That's a yes or no.

A. Yes.

Q. And what did you learn?

MR. MCGUIRE: Objection.

THE REFEREE: Sustained.

Q. Was it determined that there was a judicial threat?

MR. MCGUIRE: Objection.

THE REFEREE: Sustained.

MS. TISHMAN: Okay. I have no further questions for this witness.

THE REFEREE: You may cross-examine.

MR. MCGUIRE: Thank you, Your

Honor.

CROSS-EXAMINATION

BY MR. MCGUIRE:

Q. Lieutenant, good morning.

A. Good morning, Judge.

Q. Lieutenant, we've worked together for the past eight and a half years?

A. Yes, Judge.

Q. Officially as judge and lieutenant?

A. I believe you took office in January of '11. Yeah.

Q. Okay. So it would be eight and almost a half?

A. Eight and a half, yeah.

Q. And before that, you were familiar with me as a practicing attorney?

A. Yes.

Q. And as an Assistant District Attorney?

A. I don't remember you as an ADA, Judge. I remember you as an attorney.

Q. Okay. And could you generally characterize the relationship or association that we had over that period of ten years or

so?

A. The overwhelming -- my overall characterization of our relationship is professional and pleasant.

Q. Now, I want to go to that 2012 incident. Would it be fair to say that from the time Judge McGuire first came on the bench, January of '11, that he was, and had expressed to you, his concern about cases getting started right at nine o'clock?

A. I don't -- I don't recall anything specifically about cases getting started right at nine o'clock. I know that you wanted the cases in as soon as -- as soon as possible.

Q. Right. And in April of 2011, there was somewhat of a major change from an administrative point within the court system, correct?

A. That's correct.

Q. And what, if anything, occurred in April of 2011 that changed your operations, as well as the judge's operations?

A. In April of '11, it was decided

that the courts would be closed for lunch hours. It was decided that the courts would not work past five o'clock, unless there was extraordinary circumstances, and they really put a budgetary strain on overtime -- not a budgetary strain, but, yeah, I guess that's the best way I could put it.

Q. Well, can we agree that the State's budget that year, which started April of 2011, contained a major cut to the judicial systems's budget?

A. Absolutely.

Q. And many people lost their jobs?

A. Yes. I won't say many but I know of several that did.

Q. There were jobs that were cut?

A. That's correct, Judge.

Q. You said not go past 5:00. Actually, isn't it correct, that we were to be done with our proceedings by 4:30?

A. That's when the Administrative Judge wanted all parts to be down by 4:30.

Q. And that was Judge Ceresia at the time?

A. Correct.

Q. He was the Administrative Judge of the Third Judicial District?

A. Correct.

Q. C-E-R-E-S-I-A?

A. Yes.

Q. Spelling was not my one of my stronger points.

Okay. So prior to that change in April 2011, was it uncommon for the morning calendar to stretch beyond 12:30?

A. It was -- it was common to extend past 12:30, sure.

Q. And sorry I stepped on you again. I'm sorry. And, in fact, prior to Judge Ceresia's directive, it was common for overtime to be paid?

A. Yes.

Q. Quite a bit of overtime?

A. I would say that the officers probably averaged about maybe 100, 120 hours a year or something like that.

Q. That's a significant amount of money across the whole state?

A. Absolutely.

Q. Can we agree that on an

arraignment calendar -- are you familiar with when Judge Meddaugh has his a arraignment calendar, his heavy calendar?

A. It's usually on Tuesdays.

Q. And Judge McGuire?

A. I think it's on Wednesdays, isn't it, Judge?

Q. Or Monday?

A. Or Monday. Okay. You're right, your right. Sorry. Sorry.

Q. Okay. So can we agree that on those arraignment days that the Court's pretty busy?

A. Yes.

Q. It's not uncommon for us to have 20 or 30 cases in each the morning and the afternoon session on those days?

A. Sure.

Q. There are times when we have documents of 100 cases?

A. I've seen calendars that numbered that many. Some of the cases, though, were multiple dockets though.

Q. Correct.

A. And stuff like that, yeah.

Q. So 100 cases may be only 35 or 40 actual cases coming in?

A. Correct.

Q. So can we agree that if those dockets routinely would go past 12:30 in the past, that we had to all be very tight on time?

A. It seemed like the courts wanted us to do a lot more with less time.

Q. And in your 25 years of experience, doing more with less is not uncommon, correct?

A. It became very common after 2011.

Q. Right. So we can agree that this directive came form Judge Ceresia and Judge Coccoma?

A. Yes.

Q. And you were made aware of it through your chain of command?

A. Correct.

Q. Chief Jordan at the time?

A. Correct.

Q. Do you have reason to believe that the judges were also made aware of that through their chain of command?

A. I know that Judge Ceresia went around and spoke with all the judges individually.

Q. In fact, at that time, isn't it correct that we had to get approval from Judge Coccoma?

MR. MCGUIRE: C-A-C-O-M-A. No?

MR. LEVINE: It's C-O-C-C-O-M-A.

MR. MCGUIRE: C-O-C-C-O-M-A.

Thank you for the assist. Mr. Levine gets the assist on that.

A. I believe, originally, the request went up to the district office and I believe that somebody in Judge Coccoma's office initially had to approve the overtime. A short time later, I believe that the approval process ended at the district office.

Q. And can we agree, also, that so critical was this that at about 12:20 in the daytime, in the morning, or in the afternoon, 12:20, you actually will survey the courts to see where we're at?

A. Absolutely. I still do it to this day.

Q. And at about 4:20, you do the same thing?

A. Yeah. Shortly after 4:00, I'm getting statuses on all my parts, yeah.

Q. Lieutenant, would it be a fair statement if I were refer to your court officers as trained professionals?

A. Yes.

Q. And do they undergo an academy?

A. Yes.

Q. And in addition to the academy, do they undergo inservice training?

A. Yes.

Q. And, in fact, is it one of your responsibilities to see to it that the officers are all current in their inservice training?

A. Yes.

Q. And amongst the inservice training, would be their firearms qualifications?

A. Yes. I don't do the actual firearms qualifications, but I ensure that they've attended the range, they've successfully passed and they have gotten

their re qualify indication certificate.
Q. So as the lieutenant, you are responsible for the operation of the Superior Court's, the security operation. Superior Courts in Sullivan County?
A. Yes.
Q. And are you still assigned to Ulster County as well?
A. No.
Q. You were for a while; you had two counties?
A. Correct.
Q. But now you're just Sullivan County?
A. Correct.
Q. Is it fair to say that the court officer structure is somewhat of a paramilitary structure?
A. Yes, that would be a fair statement.
Q. You refer to rank?
A. Correct.
Q. Lieutenant, captains, sergeants?
A. Correct.
Q. And you're dealing statewide with

safety of courts?
A. I deal with the safety of courts in Sullivan County in the Third Judicial District.
Q. Poorly way to word the question?
A. Okay.
Q. The court officers, in general, are dealing with courts all across the state?
A. Oh, yes. Yes.
Q. Now, Lieutenant, you have a key to all of the courts?
A. Yes.
Q. So if you wanted to access Judge Meddaugh's courtroom, you could just use your key and just come in?
A. Yes.
Q. And, in fact, you frequently do that?
A. Yeas.
Q. Again, in your supervisory capacity?
A. Yes.
Q. You'll come into County Court and see how things are going?

A. Yes.

Q. Lieutenant, has there been occasions in the last -- and I'm focusing on eight and a half years because that's the length of time that I've been on the bench.

A. Okay.

Q. So during the time I've been on the bench, have there been times when you and I have had to speak because of an -- I'll use my words -- an elevated threat level for certain litigants coming into the courthouse?

A. Yes.

Q. We've dealt with jury trials that involve Blood gang members?

A. Yes.

Q. And during that time you and I have spoken?

A. Yes.

Q. To come up with a plan?

A. Yes.

Q. Would you characterize me as cooperative with that, with those plans?

A. Yes.

Q. Have you, generally, or always,

found that Judge McGuire has deferred to you on issues of court security?

A. Yes.

Q. And other than that day on February 12th -- February of 2012, you have -- well, even on that day, you felt comfortable coming into my office?

A. Yes.

Q. And in fact do you recall one particular incident where a baby bag was left in the Family Court?

A. Are you talking about the time that the bag was left outside in the hallway, the backpack?

Q. Actually, I'm not even sure where it was left but the result was the courts were cleared?

A. Yes. I remember that incident.

Q. And you made the call to clear the courts?

A. Yes.

Q. Based on the information that you had?

A. Yes.

Q. So the courts were cleared for

about 45 minutes or so?

A. I was thinking about an hour but 45 minutes to an hour, something like that.

Q. I'll adopt yours because you were on the scene. I was outside.

A. Right. Right.

Q. So the judges were outside?

A. Correct.

Q. The Support Magistrate, was she outside?

A. I believe so.

Q. And all of the staff was outside?

A. Yes.

Q. And was emergency intervention brought in, law enforcement?

A. The sheriff's department arrived. I remember that it was ascertained very quickly who owned the bag. The sheriff -- one of the sheriff's deputies, or it might have been the corporal, recognized the individual and they were able to contact that person and get them down to the court facility.

Q. Is it fair to say it turned out to be a diaper bag?

A. It turned -- yeah, it turned out to be a nonthreatening item.

Q. And it was left by a grandfather?

A. It was left by a young guy who was actually a -- I think, it was a father or uncle or something like that.

Q. Okay. But there was no threat?

A. No.

Q. But you didn't know that when you were presented with this package in the area?

A. I had a backpack that was a couple of feet away from the outside entranceway to Family Court, that's what I had.

Q. And so you acted on your training, your experience and your instincts?

A. Yes.

Q. And acted to protect everybody?

A. Yes.

Q. Now, following that incident, did you receive any, have any negative interactions with the judge -- with Judge McGuire because of that incident?

A. No. No.

Q. In fact, can we agree that Judge McGuire commended you that you acted appropriately?

A. You were appreciative, as most of the -- as most of the staff was.

Q. Sure. But, in fact, can we agree that Judge McGuire went out of his way to make sure that he let you know that I appreciated it?

A. You made it -- yeah, your compliments were noted.

Q. Now, Lieutenant, I want to understand the process by which cases are lined up and moved into Family Court, Family Court?

A. Okay.

Q. All right. Is there an official protocol for how that is done?

A. There's a process. I won't call it an official protocol but there's a routine, a process that we do everyday.

Q. Are officers trained to undertake that particular process?

A. Yes.

Q. Is that process different from courthouse to courthouse or is it a statewide process?

A. In my experience, for Family Court, it's pretty much a standardized practice. But depending on the building, depending on the amount of judges, the physical layout of the building, it can vary a little bit.

Q. Okay. And we can agree that it's different in Family Court than, say, County Court?

A. Yes.

Q. In Family Court, is it true that we have one case in at a time?

A. Yes.

Q. And in County Court, typically, we have a whole calendar?

A. Correct.

Q. And can we agree that each of those systems pose unique challenges for court security?

A. Yes.

Q. So understanding that there is variations from courthouse to courthouse,

what's the general procedure that's used in Family Court, based on your 25 years of experience?

A. In the Family Court in Sullivan County, the way cases are lined up is that people enter into the facility, they're stopped. They come to the security desk or the calendar desk, you can call it. The court uses or asks, hi, you know, how are you today, what's your purpose in the building today and they'll say I have a case on. Okay. In front of what judge. The officer working the calendar desk will check people in, you know, Respondent, Petitioner, attorneys, case workers, whatever it might be. When the cases are ready, the officer at the calendar desk will notify the officer in the courtroom that we have a case ready. And on a very regular basis, also, the officer working in the courtroom, will come outside and get an update on the calendars. If we have a ten o'clock case and it's 10:15 and let's say we're missing Attorney Smith, you know, an inquiry will be made about have you seen Attorney Smith. They'll try to

keep up to date with what the readiness of each case is. And if a case comes ready during the course of the day, you know, during the course, you'll hear over the radio we have all parties on case number 14 for Part II. And this way the officer in Part II will check it ready so he can inform the judge of what's going on with the calendar.

Q. So it's part of that procedure -- is it part of that procedure that there's constant communication between the officer in the courtroom and the officers out at the mag?

A. Correct.

Q. And then there's also, in your experience, and based on how you train your officers, also constant updates being fed to the judge about what's ready and what's not?

A. Correct. It wouldn't the updates wouldn't come, like, during the middle of the case. Like, let's say, for example, the officer now knows case number 14 and number 7 are ready. When the case that's in front of the judge ends, the officer will tell the

judge, "judge we have cases 7 and 14 ready and the judge will say bring in 7" or whatever.

Q. In fact, often, isn't it true, that judge will just say, bring in the next case?

A. Correct.

Q. Whatever you have ready?

A. Right.

Q. In your experience with Judge McGuire, are you aware that he's required case two to follow case one and case three to follow case two?

A. I don't believe that there's a rigid procedure like that. I think it's more or less whatever you have ready bring it in.

Q. So what, if any, role do the officers at the mag play in staging or queuing subsequent cases?

A. Like when the officer in the part says lineup number seven, the officer on the mag post will go over the loud speaker and say, all parties on number seven go to courtroom two. And this way the officer in

the part should know I have all my participants in this case on the door, so that when the case inside the courtroom ends he or she can exit the courtroom and then bring the next case right in.

Q. Now, that staging, can we agree, became more critical after April of 2011?

A. It's always been critical but for the -- for the case of moving the cases along, I guess it would have been we were looking to do more at the time.

Q. So if we have 30 cases on in a calendar segment, and we lose two minutes between each case, we lose 60 minutes in that session?

A. If that's the math, yes, Judge.

Q. 30 times two?

A. Sure.

Q. So it is critical?

A. Oh, sure, it's critical to move the cases along.

Q. And it's also critical for the judges within the cases to move them in and out?

A. Yes.

Q. Because the judges could lose time as well?

A. Correct.

Q. Now, I want to take you back to February 25, 2013. At that time, you were the lieutenant assigned to supervise the courts in Sullivan County?

A. Correct.

Q. And you may also have been in Ulster County at that time. I don't remember when you had both.

A. Yeah, I don't -- I know I was still the lieutenant in Sullivan. I might have had joint duties at that time.

Q. You were certainly the lieutenant?

A. Yes.

Q. At some point, did you receive a report that there was an interaction between the sergeant and the judge?

A. Sergeant Oliveri and yourself, yes, sir.

Q. And that interaction, based on the information that you have available, dealt with moving of cases, generally?

A. Generally -- I think it had more to do with the fact -- I remember -- my recollection says it had to do with the fact that he didn't want Officer Diaz in the courtroom.

Q. And do you recall a reason for that, what the concern, if any, I had was?

A. I know that you weren't happy with Officer Diaz's performance in the courtroom.

Q. Okay. So the sergeant called. Did he send an e-mail, did he report to you somehow that we had had that interaction?

A. I believe it was an e-mail.

Q. Now, do you remember if you were physically in Sullivan County at the time?

A. I believe I was. I believe, I was.

Q. And did the e-mail that you received cause you to take any action?

A. I believe I sent the e-mail up to Chief Jordan and then we -- I believe we were already working with Officer Diaz to make sure that there was no deficiencies with Officer Diaz and we continued to work

along those lines. We monitored his performance in the courtroom, we monitored his performance outside of the courtroom to make sure communications were going well.

Q. And that was in response to discussions that you had with the administrative -- the management team, if you will, within the Family Court?

A. It had to do with speaking with Chief Jordan at the time and working with Christina Benson and that.

Q. And Judge Meddaugh?

A. Judge Meddaugh, sure.

Q. And myself?

A. Sure.

Q. To -- the concern led to you working to remedy Officer Diaz and work with him?

A. We first wanted to see if there was, in fact, a problem with Officer Diaz. I know that you weren't happy with Officer Diaz's performance. I did speak with the Support Magistrate Linen, and I did speak with Judge Meddaugh. Both Judge Meddaugh and Magistrate Linen, had no issues with

Officer Diaz's performance. They said Officer Diaz was fine.

Q. Okay. So would you describe -- did you ultimately speak to Sergeant Oliveri after you got that e-mail?

A. Yes.

Q. Would you describe him as not happy?

A. Yes.

Q. Would you say that he was a little bit annoyed?

A. Yes.

Q. But would you say -- also, would you agree that he was neither shaken nor worried?

A. Yeah, I don't believe he was shaken by the incident. I don't believe he was -- I think he was -- he felt that this shouldn't have happened between you and he.

Q. Okay.

A. That's how he felt. He like he was wronged.

Q. Fair enough. Now that was February of 2013.

A. I believe so, yes.

Q. And we're now in May of 2019.

A. Yes.

Q. So Lieutenant, between February of 2013 and May of 2019, what assignment, if any, has Sergeant Oliveri maintained?

A. He's still in Sullivan County Family Court. He's still the sergeant there.

Q. And so, fair to say that he is working with Judge Linen, Judge Meddaugh and Judge McGuire on a daily basis?

A. Yes.

Q. And Ms. Benson, the Chief Clerk?

A. Yes.

Q. And between February 2013 and May of 2019, has there been occasions where you have had to intercede between Judge McGuire and Sergeant Oliveri?

A. No.

Q. Now as the lieutenant, in a paramilitary organization, would concerns of the sergeant be fed up to you?

A. Yes.

Q. Because within your hierarchy, you're also working with a whole separate

hierarchy; is that correct?

A. It's a pyramid, Judge, yes.

Q. Well, you've got the court officers pyramid. And within that has to fit the judge's pyramid?

A. Sure.

Q. And within that has to fit the clerk's pyramid?

A. Right.

Q. So we have three pyramids.

A. Absolutely.

Q. So where there is an issue with a judge, is it fair to say that that would filter from court officer to sergeant to lieutenant to captain or chief?

A. Yes.

Q. So has any information filtered to you since February of 2013 regarding issues between Sergeant Oliveri and Judge McGuire?

A. Between Sergeant Oliveri and Judge McGuire, no.

Q. And based on your 25 years as an administrator and working with the Sullivan County Courts daily, has the courts

continued to function within normal limits during that time, from your perspective?

A. Yes.

Q. And following the interaction between Judge McGuire and Sergeant Oliveri, you came to speak with Judge McGuire. Do you recall if you did or not?

A. I don't recall that we had the conversation about that, Judge, no.

Q. Okay, fine. So, Lieutenant, again, staying on the issue of the procedural structure. You said the courts are open, for business open, 9:00 to 4:30, with a one-hour break for lunch?

A. We're open 8:50 to 12:30 and then from 1:30 -- we close the doors -- we close the doors at 4:30 but we're there until 5:00.

Q. So, again, I apologize. My question was in artful. The business of the court.

A. Uh-huh.

Q. In other words, litigants seeing judges or going to the window. That is operational from 9:00 until 4:30?

A. Correct. The intake window isn't staffed until nine o'clock.

Q. Right. And then there's the one-hour break from 12:30 to 1:30, correct?

A. Correct.

Q. And the court is actually locked down at that time?

A. Correct. Unless we have a judge still sitting on the bench sitting doing work.

Q. And that would require approval from the district office?

A. Yes. But if I can do it with, let's say, for example, we have a full staff of court officers, if we have only one or two judges working or if I can reassign officers from County and Supreme, I will do that to avoid the overtime. But if it's unavoidable, I'll submit an application for overtime and it'll be approved.

Q. In fact, generally, isn't it true that the Chief Clerk will also do that?

A. The Chief Clerk will do it for her staff. I do it for my staff.

Q. So you do, as an administrator,

try to flex time, if possible?

A. Absolutely.

Q. So on occasion, if we're going to be five or 10 minutes over, can we agree that the judges will agree to start the 1:30 calendar 10, 15 minutes later?

A. Sure. We can do that. We'll stagger the lunches but we, generally, try to keep the buildings open. You know, the doors will open up at 1:30 but we'll also have -- maybe that part won't start until quarter of two, or something like that. On rare occasions, in the past, the Chief Clerk might have said don't open the doors until quarter to two but that practice has stopped. It's now -- we open the doors when we're supposed to and stuff.

Q. So as an administrator you're able to work within a reasonable delay?

A. Yes.

Q. So you said you that the doors -- you start letting people in at about 8:50?

A. 8:50 is when the doors are unlocked.

Q. And what, if any, court security

staff would be in at 8:50, how many? I don't need the names of the people.

A. There's three people assigned to the 8:30 to 4:30 slot. If one of them is on vacation or a sick leave day or a training day, we'll go with two. If I have less than two, then I'll see if I can pull an officer from the Supreme and County Court to open up down in Family Court. But there will never be less than two officers there when the doors are unlocked.

Q. And it's based, again, on your training, experience and protocol, it is safe to have people in the complex with just the two officers there?

A. Two officers and there's no parts working, yeah. That's acceptable.

Q. And the sergeant is 8:30 to 4:30, also?

A. That's correct.

Q. So that would give you a third person?

A. Well, the sergeant is the third person. There's two officers and the sergeant.

Q. So there's three total?
A. Yes.
Q. All right. Now, they actually come in at 8:30?
A. Correct.
Q. So what, if anything, are they doing between 8:30 and 8:50, that 20 minutes?
A. They have to calibrate the magnetometer. They have to do a security sweep of the building and get the calendars all prepared. That type of activity.
Q. Prep work?
A. Prep work, yes.
Q. And then, so they're ready to go at 8:50?
A. At 8:50 they're ready to go.
Q. And there is -- is it fair to say that there's often people already lined up at the door at 8:50?
A. There's people outside the doors at 8:50, yes.
Q. So they can use that 10 minutes to bring in the first couple of cases of people first and get them ready to go?

A. They can start processing people through the magnetometers. They can start signing people in, correct.

Q. On busy days, is it also correct that you will jump in and help out?

A. I used to do that on a much more frequent basis, but in recent years, our staffing levels have come up so me being down there in the mornings isn't as frequent as it used to be. I used be down there almost on a daily basis but now not so much anymore.

Q. So since Judge McGuire's been in the back, there's been changes that I'm just not aware of?

A. Oh, no. I'm down -- I just -- it used to be like I used to be down there to do the mags. But since the staffing levels have increased, I'm not there as often as I used to be to do magnetometer work.

Q. So what I'm suggest is that that may have been change since Mike McGuire became Judge McGuire become Judge McGuire, back nine years ago?

A. Yes. Yeah.

Q. You were there more frequently?

A. Absolutely.

Q. But you do go down from time to time and jump in, if you need to?

A. I'm down there on a daily basis. Several times a day I'm down there. But as far as me doing the magnetometer or doing the calendar desk, it's not necessary because our staffing levels have improved.

Q. Can we agree that Judge Meddaugh also has emphasized getting cases started as close to nine o'clock as possible?

A. The judges -- yes, Judge Meddaugh has emphasized getting the cases as close as possible to 9:00, 9:05 or 9:10.

Q. And Judge Linen is more comfortable with getting a little later start?

A. Yeah.

Q. All right. When's the last time Judge McGuire contacted you regarding the time cases start coming in?

A. Oh, it's been years, Judge. Years. I can't give you a date specific but you haven't been -- you haven't had any

issues with the time that the court starts in a long time.

Q. So, again, as the administrator, if you know, is it accurate to say that the officer assigned to Judge McGuire's part will come back and brief the judge at nine o'clock and where we're at?

A. The officer should be back to brief the judges as close to 9:00 as possible. The calendar -- the officers who are doing the calendar, should be going back and keeping the judges informed about what cases are ready, who we're waiting on, if there's a particular attorney. Maybe a litigant called up and notified the court that they're having childcare issues or car, whatever the situation might be.

Q. Has it come to your attention, in the last several years, that Judge McGuire has taken exception to any court officer when they've reported that at nine o'clock we don't have any cases ready?

A. No. Not in quite sometime, Judge.

Q. And you became aware at some

point that there was an incident that involved Officer Downs. Did you become aware of that at some point?

A. There was an incident reported to me years ago. Was it the incident you're referring to of slamming the door or something like that?

Q. Right.

A. Yeah, that became -- I was notified of that.

Q. And did you form any opinion with respect to whether or not that was directed at an officer?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Officer Downs came to me. She didn't come to me in a manner of a complaint. She came to me in a matter of, you know, matter of fact way. She was a little bit taken back by it, she was a little bit surprised by it and I did mention it to Chief Jordan at the time. And because there was no official complaint or anything like that, it was just -- nothing was ever official was ever filed or anything like

that but I understand that Officer Downs felt a little bit.

MR. LEVINE: Objection to the hearsay.

MR. MCGUIRE: Well, just based on what was reported to him as an administrator.

A. It seemed like Officer Downs --

THE REFEREE: Overruled. You may answer.

A. Is it seemed like Officer Downs was taken back by that act.

Q. Did you look into the act -- strike that.

What, if anything, did you do after speaking with Officer Downs?

A. I mentioned it to Chief Jordan. And like I said, it wasn't an official complaint, nor did I get the inclination that it was an official complaint. I thought it was more just the judge was upset, he slammed the door and I was right near the door. Something like that.

Q. Other than that incident, have you been made aware of any issues between

Judge McGuire and any other court officer?

A. No, just the incident with Sergeant Oliveri. The incident with Officer Downs. And that was just about it. And the incident that I had with not 9:01 not 9:02. Yeah.

Q. I want to take you to January 14, 2015. On or about that day, did you become aware that there was an alleged incident between the judge, Judge McGuire and his secretary?

A. I don't recall the exact date but I do remember that there was an alleged incident between yourself and your secretary, Wendy Weiner.

Q. And what, if any, investigation or action did you take as the lieutenant?

A. I believe on that day I was assigned to Ulster County and I got an e-mail from Sergeant Oliveri. And I also followed up with a phone call to Sergeant Oliveri and then I think I inquired is Wendy all right and everything like that. And then I forwarded the e-mail up almost immediately to Chief Jordan.

Q. Did you do any physical investigation, speak to witnesses?

A. No.

Q. Did you go and look at the scene of the alleged incident?

A. No.

Q. Take any photographs?

A. No.

Q. Interview any of the officers that may have been on the scene at or near the time?

A. No.

Q. So let's talk about R[redacted] R[redacted]. Okay?

A. Okay.

Q. And you remember that the judge had -- it was reported to you.

A. Yes.

Q. Not going by the operation of the mind of the judge.

It was reported to you that the judge had a concern about a threat?

A. Yes.

Q. And you said you listened to the taped transcript of that appearance?

A. Yes.

Q. And you heard in that tape Mr. R[redacted] say, "I know your son"?

A. Yes.

Q. Do you remember when within the span of the proceeding that was said by Mr. R[redacted]?

A. It was at the end of the proceeding.

Q. Had the case already been decided?

A. I believe so.

Q. It had been dismissed?

A. I don't know the action that was taken on the case, but I believe the case had concluded.

Q. Okay. And Mr. R[redacted] raised that after the case had concluded?

A. Yes. I believe he wanted you to recuse yourself, Judge.

Q. At least that's what he said?

A. Yes.

Q. But he didn't say that when he first came in?

A. I didn't hear the beginning of

the tape. I only heard the part where the alleged threat was made.

Q. So as a law enforcement officer with 25 years of experience, you didn't want to listen to the whole tape?

A. It's not that I didn't want to it's just that the investigation would have been done by the Threat Assessment Unit.

Q. I see. And you, in fact, sent that to the Threat Assessment Unit?

A. I made them aware that it existed.

Q. Now, as part of the judge's concern, you actually gathered information about the addresses of each of the children, the judge's children?

A. No. Oh, oh, your children. Yes, sir.

Q. The judge's children?

A. Not the addresses, but I got the locations where they lived. One of your sons, I believe, lived in Massachusetts and worked there. Another son was going to school in Oneonta and your youngest son was still local in the local schools.

Q. And, in fact, at some point that day, or soon thereafter, you actually came and spoke to the judge?

A. Yes.

Q. And I think you testified in response to Ms. Tishman that the judge was concerned?

A. Yes.

Q. But not aggravated or loud?

A. No.

Q. And is it true that you actually offered the judge additional protection for his children if he wanted it?

A. I asked a question if you wanted any additional security measures taken initially. Yes.

Q. And the judge said that's okay?

A. I believe so, yes.

Q. You said you did some investigation into R[redacted] R[redacted].

A. I just found out why he was being held at the Sullivan County jail and I got the file number on the case and stuff like that. I learned that he was incarcerated at the Sullivan County jail because of a TOP

that you had -- that he had violated back in maybe June or July or something like that.

Q. So he was being held on a charge of criminal contempt?

A. Yes.

Q. And it was my order of protection that had been violated?

A. That's my understanding, yes.

Q. So fair to assume if there was an order of protection, that Mr. R[redacted] had been before the judge previously?

A. Correct.

Q. Now did you get his entire -- strike that.

Who, if anyone, else did you speak to when Mr. R[redacted]?

A. I spoke to Christina Benson. I spoke to the officers. I spoke to Chief Jordan. And I also I believe I spoke -- maybe not spoke but I cc'd an e-mail to Captain Rodriguez, I believe. But I definitely spoke with Chief Jordan who forwarded it to the Judicial Threat Assessment Unit.

Q. Do you recall when the trial

involving the *P*[redacted] *versus D*[redacted] *G*[redacted] was held at the Sullivan County courthouse?

A. Yes. I remember it vaguely.

Q. D[redacted] G[redacted].

A. Uh-huh.

Q. Do you remember that that was a case that involved a gang war between Bloods and Crypts?

A. It was a gang related case, correct.

Q. And, in fact, you counseled the judge that we needed to take extra precautions in who would come in and out of the courtroom, on the day of sentencing I'm talking about?

A. The courtroom's an open courtroom. I can't allow or don't allow anybody to come in or out of the courtroom.

Q. But we had extra people on?

A. We had extra officers available, yes.

Q. Right. That's what I'm referring to.

A. Yeah, okay. We did have extra officers up there.

Q. And, in fact, the jury we had moved in and out by the sheriff?

A. I believe that was the case where we actually had the jurors meeting down in Family Court, they were getting processed through Family Court and then we were delivering the jurors up to the courthouse via the sheriff's van.

Q. So is it the mere association with the gangs that gave you pause to take extra steps to secure everybody?

A. I think there was a -- if I recall correctly there was an incident where one of the jurors became concerned about their safety and that concern was delivered to a court officer who, in turn, referred it to you. And at that time I believe it was your decision that we're going to keep these jurors separated so that they have no interaction with any of Mr. Grey's associates or family members.

Q. And that decision was made after consultation with you?

A. Correct.

Q. And the sergeant -- not the

sergeant, the sheriff?

A. The sheriff. I remember Sheriff Schiff being in the room and I believe Undersheriff Chaboty was in the room.

Q. Were you aware of Mr. R[redacted]'s affiliation with the Bloods?

A. No.

Q. Are you aware of Mr. R[redacted]'s past criminal history, other than what he was being held on there?

A. No.

Q. If you were aware that a particular gang member had suggested something about a judge's family, would that give you more concern regarding the threat?

A. Yes.

Q. Do you know whether or not the judge was familiar with Mr. R[redacted]'s associations and criminal history at the time?

A. No, I don't.

Q. Did you ever ask the judge about his familiarity with Mr. R[redacted]?

A. No, I don't. I believe you did say that Mr. R[redacted] does know your son,

they used to go to school together or something like that, I believe. That's my recollection that your son and Mr. R[redacted] did know each other from school.

Q. Sullivan County are small schools.

A. Yeah. The county, everybody knows everybody there.

Q. Doesn't mean they're friends because they go to school there?

A. Right, absolutely.

Q. Have you ever become aware of litigates coming to you to complain about Judge McGuire?

A. No. No litigate has ever come to me and complained about you, Judge.

Q. Have attorneys come to you to complain about Judge McGuire?

A. No.

Q. Other than the incidents that we've spoken about, the interaction with Sergeant Oliveri, Officer Downs' concerns, Officer Diaz, other than those, have there been any other incidents where court officers have brought concerns to you

regarding working with Judge McGuire?

A. The Wendy Weiner incident.

Q. But she's not a court officer.

A. No. No, no complaints, Judge.

Q. As we sit here today, May 16 of 2019, are there any officers under your command who have expressed a reluctance to work with Judge McGuire?

A. No.

Q. Could you capture, please, for the court, your overall impressions of working with Judge McGuire over the past eight and a half years?

A. As I said before, Judge, my overall experiences with you have been professional and pleasant.

MR. MCGUIRE: One minute, please, Your Honor. Thank you, Lieutenant. Your Honor, I have nothing further of this witness.

MS. TISHMAN: We need to confer one second.

THE REFEREE: Okay.

Any redirect?

MS. TISHMAN: Yes, just one or

two questions.

REDIRECT EXAMINATION

BY MS. TISHMAN:

Q. Lieutenant McCabe, on cross you were asked questions about the investigation you took after the *R*[redacted] case was heard.

After listening to the tape of the proceeding, did you make a conclusion about whether there was a judicial threat?

A. My own opinion was that Mr. R[redacted] was just asking the judge to recuse himself. I didn't get the impression that a threat was made but that was only just from what I heard.

MS. TISHMAN: That's it.

RECROSS-EXAMINATION

BY MR. MCGUIRE:

Q. And Lieutenant, you formed that opinion without knowing much or anything about Mr. R[redacted] background.

A. Yes.

MR. MCGUIRE: Nothing further.

MR. LEVINE: I argue, Your Honor, that he -- the judge has opened the door to what the result was from that

threat assessment and he's dropped these little hints left and right, and I believe that based on the questioning he's done on cross, we have the right to elicit what the finding was with respect to whether there was a judicial threat.

MR. MCGUIRE: It's still hearsay.

THE REFEREE: What does that have to do with whether or not it's hearsay.

MR. LEVINE: Well, what I'm saying to you is that it's to complete the narrative. He's brought out information that also is hearsay, and with respect to the background of Mr. R[redacted], there's no information. What he's saying that asking the question. I'm just saying, to complete the narrative, I think that the door is open to that result. If it's hanging out there if there's something else there --

THE REFEREE: You know, frankly, I find whatever they found would be irrelevant to my consideration anyway.

MR. LEVINE: Okay. In that case, we withdraw the application.

THE REFEREE: Anything else?

MS. TISHMAN: No.

THE REFEREE: So Lieutenant McCabe, you're excused. Thank you for coming.

THE WITNESS: Yes. Thank you.

THE REFEREE: So it's 12:30. Do you want to take lunch now or call the next witness?

MS. TISHMAN: I'd like to take lunch, but I think the witness really just arrived this second so he probably needs to -- he's been driving for hours.

THE REFEREE: Okay. Let's break until 1:30. Off the record.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Ready to proceed, everybody?

MS. TISHMAN: Yes.

THE REFEREE: Please call your

next witness.

MS. TISHMAN: The Commission calls Connie Van Keuren.

MS. PARTIDA: Witness entering.

THE REFEREE: Please have a seat.

THE WITNESS: Okay.

THE REFEREE: Good afternoon.

THE WITNESS: Good afternoon.

THE REFEREE: My name is Mark Arisohn. I'm the referee in this matter.

THE WITNESS: Okay.

THE REFEREE: I've been asked to read a short statement to you, which will contain some introductions and instructions.

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the

microphone. Refrain from moving away from the microphone and talking over other speakers. Please, refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment. Okay?

THE WITNESS: Okay.

THE REFEREE: Please rise and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you're about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE REFEREE: Please have a seat. State and spell your full name for the record.

THE WITNESS: Connie Van Keuren. And you said spell?

THE REFEREE: Yes, please.

THE WITNESS:

C-O-N-N-I-E V-A-N K-E-U-R-E-N.

THE REFEREE: Thank you.

Ms. Tishman, you may proceed.

MS. TISHMAN: Thank you.

DIRECT EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Ms. Van Keuren.

A. Good afternoon.

Q. Are you currently employed?

A. No. Oh, yes sorry. I'm a substitute teacher at the Liberty Central School District.

Q. How long have you been a substitute teacher?

A. About a year.

Q. Did you ever work for Liberty Town Court?

A. Yes.

Q. And how long did you work for the Liberty Town Court?

A. Approximately, ten years.

Q. And what was your title when you worked for the Liberty Town Court?

A. Court clerk.

Q. And when did you stop working for Liberty Town Court?

A. It was November 18, exact 2015, about there.

Q. You don't have to give me the exact date but I was wondering about what year it was?

A. 2015.

Q. Now, when you worked as a court clerk in Liberty Town Court, can you tell us your responsibilities.

A. I was the vehicle and traffic court clerk.

Q. And what were your responsibilities as the vehicle and traffic court clerk?

A. Scheduling pretrial conferences, scheduling trial conferences. I did the bail book. Trying to think of everything I did. So basically, anything to do with vehicle and traffic tickets.

Q. Now do you know Michael McGuire?

A. Yes.

Q. And when Michael McGuire -- did you know Michael McGuire prior to him

becoming a judge?

A. Yes.

Q. What town does he reside in?

A. Liberty.

Q. And prior to becoming a judge, did Judge McGuire represent people in Liberty when he was in private practice?

A. Yes.

Q. And did you deal with him when you were a court clerk?

A. Yes.

Q. Drawing your attention to *P*[redacted] *versus C*[redacted] *L*[redacted], did you work in the Liberty clerk's office at the time that case was pending?

A. Yes.

Q. What type of case was it?

A. Vehicle and traffic ticket.

Q. I'm going to show you what is marked Commission Exhibit X-40a?

MS. PARTIDA: Exhibit 40a.

MS. TISHMAN: Exhibit 40a. Thank you.

Q. Is this the ticket in the *Lockwood* matter?

A. Yes.

Q. And what day was the ticket issued?

A. June 6, 2010.

Q. And was *Lockwood*, at that time, in 2010, represented by an attorney?

A. Yes.

Q. And who was that?

A. Michael McGuire.

Q. I'm going to show you what is now marked as Commission Exhibit X-40b. And this is a June 19, 2010 letter. Did you as Court Clerk of Liberty Town Court, receive this letter Exhibit X-40b?

A. Yes.

Q. And does this pertain to the *Christopher Lockwood* case?

A. Yes.

Q. And is this a Notice of Appearance for Michael McGuire?

A. Yes.

Q. And after you received this letter from Michael McGuire, attached to it is there a Notice of Appearance?

A. Yes.

Q. And after you received this Notice of Appearance from Michael McGuire, what did you do?

A. In the computer we add the attorney and then when I schedule the pretrial conference, the letter will go to the attorney.

Q. And did you make any notation on Commission Exhibit X-40a that Mr. *Lockwood* was represented?

A. Yes. There is an A in the top left corner that lets everyone in the courtroom know that there is an attorney on the file.

Q. Now, I'm going to show you what has been marked Commission Exhibit X-40c. If you could look at this, it's a January 4, 2011 letter. Did you prepare this letter?

A. Yes.

Q. And did you send this letter out?

A. Yes.

Q. And who was it sent to?

A. Michael McGuire.

Q. And what address was that?

A. [redacted],

[redacted].

Q. And is that the same address that is on the Notice of Appearance Commission Exhibit X-40b?

A. Yes.

Q. Now, what is this letter pertaining to?

A. This is the pretrial conference letter that goes out to either the Defendant or the attorney.

Q. Now, above the date on the top left corner, it says "HJB". What does that refer to?

A. That's the initials of the judge for Harold J. Bauman.

Q. And that's B-A-U-M-A-N?

A. Yes.

Q. Now was a pretrial conference set for Mr. Lockwood's case?

A. Yes.

Q. And what date was that?

A. 2/28/2011.

Q. Did you ever personally speak to Judge McGuire about this case?

A. Yes.

Q. And who initiated the call?

A. I did.

Q. And why did you initiate the call?

A. Because there was a no show for 2/28/11.

Q. And where did you call judge -- or what number did you use to get in touch with Judge McGuire?

A. His chambers.

Q. And how did you know to call the judge's chambers?

A. Because I know him personally.

Q. And when you called Judge McGuire's chambers, who answered the phone?

A. I don't remember her name. It would be his secretary, but I don't remember her name. I'm sorry.

Q. Okay. I'm going to be showing you what is marked Exhibit X-40 -- I'm sorry. It's going to be marked Exhibit X-48.

(Commission Exhibit X-48 was marked for identification, as indicated)

MR. MCGUIRE: Is that to refresh her recollection as to who answered?

Q. Is there anything that would refresh your recollection as to who you spoke to when you called chambers?

A. The secretary's name, you mean?

Q. Yes.

MR. MCGUIRE: We can stipulate to that, if you want.

A. I'm guessing Cindy, but I can't remember it.

Q. Well, we'll show you what is marked Commission Exhibit X-40a. And if you can read page 15, line 7 through 10.

THE REFEREE: Read it to yourself, please.

A. Mary Grace.

Q. Are you on page 15?

A. Yeah.

Q. Line 7?

MR. MCGUIRE: We can stipulate to who the secretary was. I don't think that that's a big mystery.

THE REFEREE: That's not really an issue, is it?

Q. Did you speak to Wendy Weiner?

A. Yes. Thank you.

Q. Can you describe the conversation you had with Wendy Weiner?

A. I don't remember the whole conversation. I just wanted to speak to Mr. McGuire about the ticket.

Q. And did you leave a message?

A. Yes, I did.

Q. And did you ask that the judge call you back?

A. Yes, I did.

Q. And what happened next?

A. He called me back.

Q. And can you describe that conversation?

A. I asked him what would happen with the ticket because since he couldn't represent the client anymore -- the Defendant, I apologize -- what we would do from there and he told me that that's when Kenneth McGuire would take over as attorney.

Q. After you left the message with Wendy Weiner, did Ken McGuire return your phone call?

A. No.

Q. The only person you heard from was Judge McGuire?

A. That one time, yes.

Q. And did you ever receive a notice of appearance from Ken McGuire?

A. Can I refer back to the exhibits?

Q. Yes. Why don't we show you Commission Exhibit X-40, which is the entire court file.

A. Exhibit -- is there an Exhibit on this?

Q. No. I'll move on.

A. Okay.

Q. Drawing your attention to Exhibit X-40d, which you will be handed right now.

A. Oh.

Q. Did the court receive this February 1, 2011 letter?

A. Yes.

Q. And whose name is on the letterhead?

A. Michael McGuire.

Q. And I would like you to compare Commission Exhibit X-40b and V-40d. Is the

same letterhead used in both?

A. Yes.

Q. Now, this letter is addressed to Kenneth Klein. Who is Kenneth Klein?

A. He is the town attorney and the town prosecutor.

Q. Of what town?

A. Liberty.

Q. Now, this letter on -- the February 1, 2011 letter, Commission Exhibit X-40d. It refers to an Application to Amend Traffic Infraction. What is an Application to Amend Traffic Infraction?

A. That is used when attorneys or college students or people that are disabled that aren't able to appear in court, the ADA's office started using that for people who couldn't appear in court, so that they, too, can get an offer like a college student.

Q. And it talks in this letter about a driving abstract. What's a driving abstract?

A. It's a history of your driving record. If you've had speeding tickets, if

you've been suspended. If you have just any type of violation.

Q. And when you got this letter, this February 1, 2011 Commission Exhibit X-40d, what did you do with the letter?

A. I just put it in the file.

Q. So do you maintain files for every traffic ticket that you -- that is pending in court?

A. Yes.

Q. Now, I'm going to draw your attention to what has been marked into evidence Commission Exhibit X-40e and if you can just look at the document?

A. Yes.

Q. Did the court receive this letter and the attachment?

A. Yes.

Q. And the letterhead says -- well, who is this letter from?

A. Michael McGuire.

Q. Now, this letter talks about properly executed Application to Amend Traffic Infraction, what does that mean?

A. That it was filled out properly.

Q. Had there been a problem with the original submission, which is referred to in Commission Exhibit X-40d?

A. Well, my thought would be is usually when I would send out applications for a second time, it could be because I didn't receive the first one.

Q. So let's look at Commission Exhibit X-40e, attached to that is a document. That's the Application to Amend the Traffic Infraction?

A. Yes.

Q. And can you tell us, explain to us the first section. On the left-hand side is Section 1. Who fills that out?

A. The defendant or the attorney.

Q. And after that's filled out, what happens after Section 1 is filled out?

A. It is either mailed -- well, I wouldn't usually mail to the court, the Liberty Town Court. And then Mr. Klein, which he's the town attorney, town prosecutor, he would fill in Section 2 with an offer and then...

Q. And then what would happen after

Mr. Klein filled out Section 2?

A. Then I would send it to the defendant or the attorney.

Q. And then you would send it back to the defendant or attorney?

A. Yes.

Q. And when you send it back to the defendant or attorney, only section one, section two is filled out, usually?

A. Yes.

Q. And then what would happen?

A. The defendant or the attorney would fill in section three or section four. Section three would be if they're accepting the offer. And section four is if they're not accepting the offer and they want a trial.

Q. Now, looking at this Application to Amend Traffic Infraction, which is attached to Commission Exhibit X-40e section one and section three have the same date on this traffic infraction. What happened with this traffic infraction -- this Application to Amend Traffic Infraction?

A. That would refer back to the

letter from February 1, 2011 saying that I probably didn't receive the original one and/or the original was lost by -- from me sending it to the attorney or the defendant. That would happen often, so this one is referring back to the February date.

Q. So the date of February 1, 201 refers to the date in the letter of Commission Exhibit X-40d?

A. Yes.

Q. And it's your understanding that somehow along the way the Application to Amend the Traffic Infraction, between mailing back and forth, somehow got lost?

A. Yes.

Q. And when that happens, what do you do?

A. I usually send the application with a note saying please redo, or if someone has called me, a defendant, I usually put the sticky note and tell them to fill in section one and section three and send it back and then I have Mr. Klein fill in section two again.

Q. So when you send out a new one

when you haven't gotten it -- well, I withdraw that.

First of all, let me ask you, do you keep a record about the application to amend the traffic infractions?

A. Yes.

Q. And do you keep a record whether you're received them or whether they're out, things sent for mail for signatures.

A. Yes, we keep notes on the file.

Q. And in this case you -- when you sent out a second one, you said that you made a note that they should fill out section one and section three -- well, I withdraw that.

When you sent this out the second time, was any part of the Application to Amend the Traffic Infraction filled in when you sent it a second time?

A. Are you asking if I filling anything in?

Q. Was anything in the form filled out when it was sent a second time?

A. No.

Q. Now when you sent it the second

time, does Mr. Klein fill out section two?

A. When it comes back.

Q. But in this case with Mr. Lockwood when it was sent out again, you said that you told the parties to fill out section one and section three together?

A. Yes.

Q. And when they received it, prior to filling out section one and section two, had Mr. Klein already filled out what the offer was?

A. The original one that was sent out, yes.

Q. And then -- now drawing your attention -- give me one second. And did you receive back the Application to Amend the Traffic Infraction with the February 1, 2011 date?

A. Sorry. Can you say that again.

Q. The court received that, right?

A. The original one?

Q. No, this one that's in front of you that's part of Commission --

A. Yes.

Q. -- Exhibit X-40e?

A. Okay. Yes.

Q. Now I'm going to show you what is marked Exhibit X-40f. Exhibit X-40f. And if you can look at this, who prepared this letter?

A. I did.

Q. And who was it sent to?

A. Michael McGuire.

Q. Is that the same address from all the other documents were sent to?

A. Yes.

Q. Do you ever verbally speak to Ken McGuire about the case?

A. No.

Q. Did Ken McGuire ever appear in court on the case?

A. No.

Q. Did you ever get an address for Ken McGuire?

A. No.

MS. TISHMAN: I have no further questions.

THE REFEREE: You may cross-examine.

MR. MCGUIRE: Commission Exhibit

X-40b is missing from my book, so that's something -- I don't need it now -- at some point.

MS. TISHMAN: Okay. Sorry about that.

MR. MCGUIRE: No, no, no, it's no problem.

MS. TISHMAN: Do you want a copy right now to work with? Here's a copy.

MR. MCGUIRE: Okay, thank you.

CROSS-EXAMINATION

BY MR. MCGUIRE:

Q. Good afternoon.

A. Good afternoon.

Q. Now, I just wanted to be clear. You and I have known each other a long time?

A. Yes.

Q. And your son, Cory, played baseball for me?

A. Yes.

Q. And so we've -- and our son, my son K[redacted] and Cory were friends through high school?

A. Yes.

Q. Now have -- just to be clear,

I've never approached you attempting to influence your testimony in this matter?

A. Absolutely not.

Q. The only time we spoke about it I said just tell the truth?

A. Yes.

Q. Okay. So this matter of the ticket with Mr. Lockwood, we agree that the ticket was issued in June of 2010.

A. Yes.

Q. Now, is the Town of Liberty Court a very busy court?

A. Yes.

Q. Would it be normal, based on your experience as the VTL clerk, vehicle and traffic court, VTL clerk, that it would take from June of 2010 until February of 2011 to have a conference scheduled?

A. Absolutely, yes.

Q. That's how long it would take?

A. Yes.

Q. Okay. Now, in the time that you were a clerk in Liberty, is it fair to say that there were some local attorneys that appeared with certain amount of regularity?

A. Yes.

Q. And those local attorneys presumably would have been familiar with Mr. Klein?

A. Yes.

Q. So is it fair to say that in some occasions, before the case actually came into court, there had been communication with Mr. Klein?

A. Yes.

Q. Okay. And there are two judges in the Town of Liberty -- well, there are now, but at that time there were two judges?

A. Yes.

Q. And that's Judge Bauman?

A. Yes.

Q. And, at that time, Judge Rourke?

A. Right.

Q. So do you know when Judge McGuire went from Michael McGuire to Judge McGuire, do you know what the date was?

A. Was it January 1, 2011?

Q. January 1, 2011.

A. '11. Yeah.

Q. So this ticket that Mr. Lockwood

had gotten was pending several months before Michael McGuire became Judge McGuire?

A. Yes.

Q. And do you know what, if any, discussions Michael McGuire had with Ken Klein, prior to January 1, 2011?

A. I don't remember any conversations.

Q. Well, you don't work -- Ken Klein doesn't work in your office?

A. No.

Q. So is it fair to say that -- that an attorney could call Ken Klein at his office?

A. Absolutely.

Q. And his office was in Jefferson?

A. Jefferson.

Q. So you don't know whether or not Michael McGuire spoke to Ken Klein about this pre January 1?

A. No.

Q. Just to be clear, you have never actually been to my chambers?

A. No.

Q. As you sit here today, are you

aware of Judge McGuire designating after January 1, 2011, whether or not Judge McGuire spoke to Judge Bauman about this case?

A. No.

Q. Are you aware of whether or not Judge McGuire spoke to Judge Bauman about any case?

A. No.

Q. And Judge Bauman was the judge that was assigned to this case?

A. Yes.

Q. What, if any, role did Judge McGuire have in Judge Bauman being assigned this case?

MR. LEVINE: Objection.

THE REFEREE: What's the objection?

MR. LEVINE: Never mind. I'll withdraw it.

THE REFEREE: Objection withdrawn. You may answer.

A. Can you say that again. I'm sorry.

Q. Sure. What, if any, role did

Judge McGuire play in having Judge Bauman assigned this case?

A. Oh, no.

Q. None?

A. None. I can pick the judge, too, because I -- whatever date I schedule them on, I can change judges, judges.

Q. So that HBC -- that HBC that appears on the ticket I think you have in front of you, that's the --

A. The judge.

Q. Okay.

A. The HJB?

Q. HJB, Harold J. Bauman?

A. Yes. That's the judge who is on the case.

Q. And you made that determination?

A. Yes.

Q. Did Judge McGuire ever call you to ask that it be assigned to Judge Bauman?

A. No.

Q. Did Michael McGuire ever call you to ask that it be assigned to Judge Bauman?

A. No.

Q. That's an internal control?

A. Yes.

Q. At the time this ticket -- strike that.

As of January 1, 2011, is this the only traffic matter that was pending in the Town of Liberty Court that Michael McGuire had been associated with?

A. Yes, as far as I know, it was the only one.

Q. In your experience, as the Chief Clerk for Vehicle and Traffic law, is it uncommon for one attorney to cover cases for another attorney?

A. Is it uncommon? No.

Q. So sometimes you would have John Doe as the attorney of record but Sam Smith would show up and finish the ticket?

A. Yes.

Q. Okay. You wouldn't get a new notice of appearance from Sam Smith?

A. No. I would have an attorney appear in court the day of the court and it not be the attorney that's on file.

Q. That was not uncommon?

A. No.

Q. So you say that on January 4, 2011 a notice of conference was sent out to Michael McGuire?

A. Yes.

Q. And it was sent out to the address that you had for Michael McGuire?

A. Yes.

Q. And it's scheduled -- the conference on February 28, 2011?

A. Yes.

Q. We can agree that February 1, 2011 is before February 28, 2011?

A. Yes.

Q. And so then, at some point, you received a letter on Michael McGuire's letterhead signed by Kenneth McGuire and that letter is dated February 1, 2011?

A. Yes.

Q. And that letter, for the record, is Exhibit X-40. And this letter is sent to Ken Klein, correct?

A. Yes.

Q. And he is the town prosecutor?

A. Yes.

Q. And the letter says "Pursuant to

various e-mails." Is e-mail a way that attorneys communicate with one another?

A. Sorry. Say that again.

Q. Do attorneys communicate by e-mail, if you know?

A. Yes.

Q. "So pursuant to various e-mails, I've enclosed here with a completed application to amend the traffic infraction, along with a copy of Mr. Lockwood's drive abstract."

A. Yes.

Q. In your experience at the Town of Liberty Court, are those the documents that are typically sent in to resolve a case?

A. Yes.

Q. And the Application to Amend the Traffic Infraction, where do those come from? Would attorneys have access to those or would those have to come from the court?

A. No, they're on the internet.

Q. So attorneys can access them on the internet?

A. Yes.

Q. And attorneys that handle traffic

infractions would know that?

A. Yes.

Q. So the letter goes on to say, "You will recall that this matter is going to be adjourned for six weeks affording the opportunity to complete a defensive driving class."

A. Yes.

Q. Whereupon the amended -- the charge will be amended to 1201A would be entered.

A. Okay, yeah.

Q. That's what the letter says.

A. Yeah.

Q. Is amending the traffic --a speeding ticket to a 1201A, is that something that fairly common, based on your experience?

A. Yes, it is.

Q. What's the significance of 1201A?

A. Parking ticket.

Q. It's a parking ticket. And it carries how many points?

A. Zero.

Q. Based on your experience as the

Chief VTL Clerk, is that what people are concerned about in court is getting points on their license?

A. Yes.

Q. Because that effects their insurance; is that true?

A. Yes.

Q. So, again, in your experience, 1201A is fairly common?

A. Yes.

Q. And this was a ticket for going how much over the speed limit?

A. It was 75 in a 55.

Q. All right. And, again, in your experience, having handled thousands of these tickets over ten years?

A. Yes.

Q. Would you say you've handled thousands?

A. Oh, yes. Yes.

Q. That resolution 1201A for that ticket was not uncommon?

A. No.

Q. So on February 1, 2011, according to this letter, there was this completed

application.

A. Yes.

Q. And that would have then gone -- it was mailed to Mr. Klein -- presumably Mr. Klein would have then filled in section two?

A. Yes.

Q. And then, presumably, Mr. Klein would turn that to either the judge or maybe more appropriately the clerk to give to the judge?

A. I would give it to the judge for the fine.

Q. Okay. All right. So it would go to you, the clerk?

A. Yes.

Q. From Mr. Klein?

A. Yes.

Q. To go to Judge Bauman to set the fine?

A. Yes.

Q. All right. And in your experience, is $150 fine on that parking ticket, is that kind of -- is that standard?

A. Standard.

Q. Is that particularly low fine for that offense?

A. No. It's the highest you can go in a parking ticket.

Q. So that's the highest fine you can get?

A. Yes, uh-huh.

Q. And then, apparently, in August there was some additional work that had to be done on this, an amended -- a second amended application had to be completed for some reason?

A. Yes.

Q. Back in February of 2011, was Mr. Klein appearing regularly in Town Court?

A. Yes.

Q. In fact, he's the town attorney?

A. Yes.

Q. So he was in the town office building regularly?

A. He was there, I think, four days a week -- a month, if I remember correctly. I think it was Tuesdays and Thursdays. Tuesdays would be for Judge Bauman and Thursdays would be for Judge Rourke, and it

would be the second and fourth Tuesday and Thursday of the month.

Q. Okay. So did Mr. Klein ever come to you and say, hey, I got this letter from Ken McGuire but there's no application to amend with it. It says it's supposed to be included there?

A. I don't remember.

Q. Okay. Well, if Mr. Klein had come to you, say February 5th or 6th, you wouldn't have waited until August to send a new one out?

A. Could be.

Q. It could be?

A. Yeah.

Q. So it's possible that in February, early February you learned that a letter that said it had an enclosure didn't have an enclosure and you would still wait until August to deal with it?

A. Yes.

Q. So at some point in August, I think August 5th, you -- and this amended infraction Exhibit X-40e had to be completed.

A. Yes.

Q. Correct?

A. Uh-huh.

Q. Do you remember how Judge McGuire or Michael McGuire or Ken McGuire got this document?

A. I would have sent it out.

Q. Is there a letter in the file that says you sent it out?

A. No.

Q. So you don't recall?

A. No, I don't recall.

Q. Do you recall whether you sent it to Ken or Michael?

A. No, I don't recall.

Q. And then, ultimately, you get it back on a letter that's captioned Michael McGuire?

A. Yes.

Q. Now I want to show you Exhibit X-40e. You have it there?

A. I have it.

Q. That signatures that appears there, does that appear to be Michael McGuire's signature?

THE REFEREE: If she knows.

Q. If you know.

A. If I know? It looks like a stamp.

Q. Okay.

A. I wouldn't know your signature.

Q. Okay. So let's take a look at Exhibit X-40b.

MS. TISHMAN: I'm sorry, did you say b or d?

Q. B as in boy. I think you have it up there.

A. Yes.

Q. That's the Notice of Appearance?

A. Yes.

Q. Compare that signature with the signature on Exhibit X-40e. You're not an expert, but to you, as a layperson --

MR. LEVINE: Objection.

Q. -- does it appear to be the same?

THE REFEREE: Overruled. You may answer.

Q. Does it appear to be the same?

A. The one -- the Exhibit 40b.

Q. I just want to know if it appears

to be the same.

A. Oh, no.

Q. And as you said, Exhibit X-40e appears to be a stamp of some sort. That's what it appears to be to you?

A. Appears to be, yes.

Q. And that letterhead Exhibit X-40e, is that the same as the letterhead that Michael McGuire sent other correspondence back in June?

A. No.

Q. Is that the same letterhead?

A. No.

Q. No, okay. After becoming a judge -- so after January 1, 2011 -- did Judge McGuire ever call you for any purpose?

A. Mike McGuire called -- returned my call when I called to speak with Michael about the ticket.

Q. In February?

A. Yes.

Q. As you recall?

A. Yeah.

Q. Or sometime after when no one showed up on the February 28th date?

A. Yes.

Q. Other than that, has Michael McGuire ever called you at the Town of Liberty Court for any reason --

A. Not that I remember.

Q. -- since becoming a judge?

A. Not that I remember.

Q. All right. Did you ever receive any faxes or other tickets from Michael McGuire, other than this *Lockwood* matter?

A. No.

Q. Did Judge McGuire ever tell you that he had a ticket he had an interest in and another attorney was going to be appearing?

A. Not that I remember.

Q. Okay. Did any other attorney ever tell you they were appearing on a ticket on behalf Michael McGuire?

A. Not that I remember.

Q. Other than leaving a message with Wendy Weiner about this *Lockwood* matter, did you have any other discussions with Wendy Weiner?

A. I don't remember that.

Q. Well, how many times did you call chambers?

A. I feel like the only time I called was the first time about resolving the ticket.

Q. Okay. Okay. Directing your attention, again, to Exhibit X-40e, as in Edward, on the second page. Was section two completed by Mr. Klein?

A. Yes.

Q. Was that completed prior to August 6, 2011 when the letter was -- that's the date I'm using as the date on this letter.

A. Yeah.

Q. Was it completed prior to or after or if you don't know you don't know?

A. I don't know because he didn't date it.

Q. Okay. And when the one time you spoke to Judge McGuire he told you that Ken McGuire was going to finish up the matter, correct?

A. Yes.

Q. During that conversation, did

Judge McGuire suggest to you any specific resolution of the case?

A. Not that I remember.

Q. Did Judge McGuire ask you to talk to the judge?

A. No.

Q. So, again, referring to Exhibit X-40e the second page, assuming Mr. Klein -- for the moment assuming -- Mr. Klein had that completed prior to August 5, 2011, then the only thing remaining would be for the Defendant to either accept it or reject that offer?

A. Yes.

Q. And if he filled it out after August 5, 2011, the only thing remaining would be for the judge to impose a fine?

A. Yes.

Q. And the fine imposed was the maximum fine?

A. Oh, yes.

Q. After you spoke with Judge McGuire on or after February 28, 2011, when you called his chambers and you were notified that Ken McGuire was going to be

finish the matter, was -- did Ken McGuire's name replace Michael McGuire's name in the computer at the Town of Liberty Court?

A. I didn't change it in the computer.

Q. And that would explain why future letters were generated to Michael McGuire?

A. Yes.

Q. Michael McGuire never asked you to keep his name and address in?

A. No.

Q. In fact, he told you that it was Ken McGuire?

A. Yes.

Q. Okay. And you don't remember speaking with Ms. Weiner in July or August, you're confident that it was back closer to February 28 of 2011?

A. Yes. I don't remember calling her in July or August.

Q. You recall that it was closer to when that date was missed, February 28th?

A. Yes.

Q. Okay. Do you have -- I believe you have Exhibit X-40f.

MR. LEVINE: She does?

MR. MCGUIRE: Yeah.

A. Yes.

Q. That document, that's computer generated?

A. Yes.

Q. So, again, had you changed the name of the attorney back in February, that document would have gone to a different attorney?

A. Yes.

Q. The fact that that went to Michael McGuire, Esquire had nothing to do with any influence that Michael McGuire was exerting on this case?

A. Correct.

Q. At any time after January 1, 2011, did Judge McGuire attempt to use the fact that he was a County Court judge to influence anything you did in the Liberty Town Court?

A. No.

MR. MCGUIRE: Thank you, Ms. Van Keuren. Your Honor, I have nothing further for this witness.

THE REFEREE: Redirect?

MS. TISHMAN: Yes.

REDIRECT EXAMINATION

BY MS. TISHMAN:

Q. Ms. Van Keuren, if you can look at Commission Exhibit X-40c. Do you have that?

A. Yes.

Q. Now, that letter is dated January 4, 2011?

A. Yes.

Q. And you sent it to Michael McGuire at 111 [redacted] [redacted]?

A. Yes.

Q. After you sent that letter to that address, did you ever hear from Michael McGuire telling you to change the address?

A. No.

Q. Were you ever given a new address of where things should be sent regarding the *Christopher Lockwood* case?

A. No.

Q. Were you ever given an address for Ken McGuire?

A. I don't see one.

MS. TISHMAN: I have nothing further.

THE WITNESS: Okay.

RECROSS-EXAMINATION

BY MR. MCGUIRE:

Q. After sending the January 4, 2011, there was -- strike everything I just said.

Exhibit X-40c is a Notice of Conference, correct?

A. Yes. Pretrial.

Q. And that Pretrial Conference was scheduled for February 28?

A. Yes.

Q. 2011?

A. Yes.

Q. And, in fact, Mr. Klein as the prosecutor received a letter on or about February 1, 2011; Exhibit X-40 -- help me out here.

MR. LEVINE: I object to this as being beyond the scope of our redirect.

THE REFEREE: It's all right. Overruled.

MS. TISHMAN: Exhibit X-40d.

Q. Exhibit X-40d.

A. Okay. That's dated February 1st, yes.

Q. Now, when you spoke to Judge McGuire sometime after February 28th and he told you Ken McGuire was going to be taking over the case, do you remember that?

A. Yes.

Q. Did Judge McGuire refuse to give you the address for Ken McGuire?

A. No.

Q. Is it possible that that was just a ministerial error that none of us picked up, neither of us picked up on?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

MR. MCGUIRE: Nothing further.

THE REFEREE: Anything else?

MS. TISHMAN: No.

THE REFEREE: Ms. Van Keuren, you are excused. Thank you.

So that's it for today, 2:35 in the afternoon. So another day of two and a half hours wasted but according

to what we discussed earlier, we're going to finish on time.

MR. MCGUIRE: We will.

THE REFEREE: So hopefully we'll be okay.

Any other witnesses?

MS. TISHMAN: No. The Commission rests its case.

THE REFEREE: Anything else we need to discuss today?

MR. MCGUIRE: I'll reserve on motions.

THE REFEREE: Okay. So we will see you tomorrow morning at 10:00 a.m. Off the record.

MR. MCGUIRE: Thank you, Your Honor.

MR. MAISONET: Off the record.

(TIME NOTED: 2:34 PM)

INDEX TO EXHIBITS.

For the Commission	INT. IN EVD.
X-48 Document.	1798

CERTIFICATION

I, STEFANIE KRUT, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 16, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June 2019.

Stefanie Krut

STEFANIE KRUT

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant To Section 44, Subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE

A Judge/Justice of the Surrogate Court Sullivan County.

---

61 Broadway
New York, New York

May 17, 2019
10:10 A.M.

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

HONORABLE MICHAEL F. MCGUIRE
PRO SE

Also Present:

MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Respondent

	Direct	Cross	Redirect	Recross
Christina Benson	1838	1987	X	X
Brittany Benton	1900	1937	1938	X
Hannah Rose Prall	1942	X	X	X

THE REFEREE: Good morning. Today it is May 17, 2019. This is the continuation of the hearing in the matter of Michael F. McGuire.

Judge McGuire, are you ready to proceed with your case?

JUDGE MCGUIRE: I am, your Honor.

(The witness entered the room.)

THE REFEREE: Please have a seat.

THE WITNESS: Good morning.

THE REFEREE: Good morning. My name is Mark Arisohn. I am the referee in this matter and I have been asked to read to you a short statement which will give you instruction and direction. Okay?

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into

the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until the question is completed and answer each question with a word, not a nod or gesture. Please refrain from creating excessive background noise, at it becomes amplified on the recording.

Please turn off cell phones and other electronic equipment.

Okay?

THE WITNESS: Yes.

THE REFEREE: Please rise and raise your right hand.

Do you swear or affirm, under the penalties of perjury, that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I swear.

THE REFEREE: Please state and spell your full name for the record.

THE WITNESS: Christina Benson. C-H-R-I-S-T-I-N-A B-E-N-S-O-N.

THE REFEREE: Judge McGuire, you may proceed.

JUDGE MCGUIRE: Thank you.

DIRECT EXAMINATION

BY JUDGE MCGUIRE:

Q. Ms. Benson, by whom are you currently employed?

A. New York State Unified Court System.

Q. In what capacity are you employed by the Unified Court System?

A. I am chief clerk of the family court in Sullivan County.

Q. Before obtaining the title of chief clerk what, if any, positions did you hold within the Unified Court System?

A. I was confidential secretary to Judge Meddaugh. I started in '92 with the court system. I was confidential secretary to Judge Meddaugh and then I became deputy chief clerk for 10 years and I have been chief clerk for 10 years.

Q. You have been with the court system since 1992?

A. Right.

Q. I want to take you back to 2011, you were chief clerk in the Sullivan County family court in 2011?

A. I was.

Q. That was the time that Judge McGuire took the bench?

A. It is.

Q. What, if any, staffing arrangements did you set up to service Judge McGuire's calendar and courtroom?

A. As my role as chief clerk I need to make sure that there is a court assistant for each of our judges and for each of our court magistrates and with a new judge coming in I just had to make sure the courtroom was staffed with a court system.

Q. In addition to court clerks are there also court officers that work in the courtroom?

A. There are.

Q. What, if any, role do the court officers play in expediting or implementing a calendar?

A. The court officers make sure that all the people that come through family

court go through security and that they are checked in. For each one of their cases they have a calendar that is prepared by my office staff and each case is numbered and they would make sure they get the litigants and attorneys, who are supposed to be present on that case, ready and prepared to go into the courtroom.

Q. They would stage the cases before they go in?

A. There are court officers that work in the courtroom and then there are court officers that work at the mag and at the door, you know, letting people in.

What normally happens is there is some communication going on between the court officers in the courtroom with the court officers who are outside the courtroom telling them what case -- asking them to get the next case ready and they might tell them what case that is, from the courtroom to the outside of the courtroom.

Q. With respect to the court assistant, what, if any, role do they play in the courtroom?

A. A court assistant's job is to run the FTR, which is the recording equipment because we do not have stenographers in family court. We record all of the proceedings in family court so they run the FTR. We keep a log book of beginning and end times of all the proceedings. They also have to take court notes. They would have to run the diary. Any -- any realtime orders that need to be done would be created by the court assistant or handed out to staff in the back office to have that done. That's kind of in sum and substance.

Q. After a proceeding is completed or more accurately after a calendar is complete what, if anything, -- what, if any, role would the court assistant, that was in the courtroom, play in facilitating further work?

A. The court assistant is also responsible for completing any work on those files that have been on the calendar for that day. They may prepare orders. They may -- it may simply be that it needs to go in the order to be submitted draw because an

attorney is going to submit an order. They have to make some phone calls to different agencies that we may deal with if we are looking for reports that have not been submitted. They get the file ready for the next court appearance.

Q. In addition to the folks that are in the courtroom what, if any, role does the balance of your staff play in preparing the judge's calendars?

A. So -- can I just kind of give you a structure of how the --

Q. Sure.

A. So, there are 25 people employed in family court in Sullivan county. That includes chamber staff, we have two judges, Judge McGuire, Judge Meddaugh. Their chamber staff -- they each have two chamber staff. Then we have a support magistrate and then our court officers and my back office.

In the back office there are people who prepare court calendars. They do docketing. They do intake at the front desk. I have a court assistant, as I said, for my support magistrate, for each of my

judges and then there are people who support them in the back office. They may get calendars ready, or they may open up filings, or help somebody at the front desk, or be answering questions on the telephone.

Q. Is it fair to say there is a whole array of services that the court staff performs in order to have cases ready when they are back in court?

A. Correct.

Q. Okay.

A. Correct.

JUDGE MCGUIRE: Just for the stenographer, I don't remember if we spelled Judge Meddaugh's name for you yesterday.

THE REPORTER: Yes, you did.

JUDGE MCGUIRE: Linen is L-I-N-E-N.

THE REPORTER: Thank you.

Q. Can you describe for the court what is meant by the term "arraignment day?"

A. An arraignment day customarily is the first appearance, so a petition comes in and it gets docketed.

An order to show cause gets served on the petitioner and the respondent. It's the first time the petitioner and the respondent are in court. The judge makes sure that both parties have copies of the petition and that the petition has been served properly, reads them their rights with regard to representation. Those arraignment days can have anywhere from 40 dockets on the calendar to 120 dockets on the calendar depending on what type of day that is.

Q. Would it be fair to say that arraignment day is typically a large number of cases that are in court for a relatively short amount of time?

A. Correct.

Q. If it is, in fact, specific, when is Judge McGuire's arraignment day?

A. Our schedules work that Judge McGuire's arraignment day is on Monday, Judge Meddaugh's is on Tuesday and the court magistrate has arraignment day on Monday, Tuesday and Wednesday morning.

Q. Is there a specific reason that

the arraignment days are spread out that way?

A. It is done that way because arraignment days are -- are typically very busy days. We have a lot of people who come into family court on those days and we have to -- for security purposes it is safer to not have arraignment days for both judges on the same day and we also would not have the capacity to accommodate that many -- in our waiting room -- that many people on a particular arraignment day if they were on the same day.

Q. How is the workload, of the total family court workload, divided between Judge McGuire and Judge Meddaugh?

A. When I do scheduling I put one on this pile and one on that pile. It's fifty-fifty.

Q. Judge McGuire and Judge Meddaugh split approximately fifty-fifty even?

A. They do. They do.

Q. Who is it, if you know, if anyone, makes the determination of those percentages of workload?

A. I do all the scheduling. I do all the scheduling for the court. I have to make sure I am assigning cases appropriately and obviously some cases come in multiple times so it could be a modification or violation. Then I would give more new cases to the other judge.

Q. In addition to the family court workload what, if any, additional load does Judge Meddaugh have?

A. Judge Meddaugh is the family court judge and he is an acting supreme court judge.

Q. In addition to Judge McGuire's 50 percent of the family court workload what, if any, additional workload does Judge McGuire have?

A. He does family court, supreme court, criminal court, surrogates court and both judges are also back up for Ulster County as necessary and Albany if necessary.

Q. You testified a few minutes ago that Judge McGuire's arraignment day, his busy day, in family court is Monday. When, if you know, is his busy day in criminal

court?

A. Friday morning.

THE REFEREE: When you say criminal court, are you talking about county court?

JUDGE MCGUIRE: County court, yes.

THE WITNESS: Yes.

Q. What about surrogate court? How is that scheduled?

A. Surrogate court, I am not that familiar with. I think it's scheduled once a month or once every other week. It might be twice a month.

Q. In addition to the family court, county court, surrogate court and supreme court workloads that you described what, if any, additional obligations does Judge McGuire have as a county court judge?

A. So, Judge McGuire also handles pistol permits for the county and as part of his county court or county judge responsibilities, if there are arraignments that need to happen, if there are arrests on warrants or arrests done throughout the day, we can get phone calls that those need to be

taken care of.

Q. What, if any, role does Judge McGuire play in the youth court.

A. Judge McGuire is the judge for the youth part, which started in October 2018. He is -- that court is housed in family court and Judge McGuire is the judge for that.

Q. What, if any, role or responsibility does Judge McGuire have with respect to county court tax foreclosures?

A. I don't know. Sorry.

Q. As the chief clerk of the family court what, if any, role do you play in terms of annual performance reviews for members of your staff?

A. Generally, my -- I do the direct performance evaluation for my deputy and my deputy does the paperwork for the performance evaluations for the rest of the staff and then I sit and go over them with each of the staff members.

Q. Is there a specific format for your staff evaluations that you must follow?

A. There is.

Q. What, if any, responsibility would the judge have for staff evaluations?

A. Judges do performance evaluations. I am not sure that they do them once a year, but I think they do, and they are usually done in letter form.

Q. They don't follow the same format?

A. They do not. Not in my experience anyway.

Q. What, if any, staff specifically reports to the judge?

A. Chambers staff, their secretary and their law clerk.

Q. Then the family court staff all reports to you?

A. Correct.

Q. Or our deputy?

A. Correct.

Q. The court officers, do they report to you?

A. The court officers have their own hierarchy and they report to -- so they have a lieutenant and sergeant in-house and that's who they report to. I have a

relationship with my court officers where I can also talk to them if there are specific protocol that need to be to followed or whatever. They don't report to me but I still am a supervisor.

Q. Hypothetically, if a judge had a concern about a particular court clerk or court assistant who, if anyone, would the judge within the organization address that to?

A. With me.

Q. If the judge had an issue with a court officer who, if anyone, would the judge discuss that with?

A. With me.

Q. A court officer?

A. Yes.

Q. In addition to the court officers, we also, from time to time have to work with the sheriff's office, correct?

A. Yes.

Q. What, if any, role does the sheriff's office play in family court operation?

A. The sheriff's office would

bring -- all of our juvenile cases that are in placement, the sheriff's office would transport those juveniles. They may transport PINS cases if they are in placement. Any warrants on adults that need to be executed, the sheriff's office would do any of those arrests and bring them to family court. In youth part, generally, what I have been seeing, is the sheriff's office is also doing most of those arrests and bringing us most of those proceedings.

Q. In addition to the juveniles and the youth, the sheriff's office would also bring litigants to court from time to time?

A. Correct. If we had warrants outstanding on adults, they would do that as well and if they were already in jail, they would transport those.

Q. Or hypothetically if there was a custody modification proceeding and the person was incarcerated --

A. Right.

Q. They would --

A. Right. If they were in jail, yes.

Q. Within your organizational

structure do you permit judges to establish their own courtroom protocol to be followed by your staff?

A. The judge runs the courtroom because obviously it's his order and, you know, it's his case. With regard to policy and procedure, that's something that is established by OCA and my responsibility to follow. Internally each court has there own protocol and since staff reports to chief clerk, I give them direction on how to run a courtroom or do their -- perform their task in a courtroom. I am not sure if I am answering your question.

Q. If a judge wanted something done a certain way would he address that right away with his court assistant or direct it to you?

A. During the pendency of the case, while they are working together, judges and court assistants establish a rapport and they do speak to each other about how they want the courtroom to be run.

Q. I want to take you back to January 2011, when Judge McGuire first took

the bench. Did you meet with Judge McGuire to discuss protocol policies and procedures for family court?

A. I can't specifically remember, but I am sure we had those discussions as time evolved.

Q. In your capacity as chief clerk for the Sullivan County family court do you on occasion meet with chief clerks from around the state or around the judicial district?

A. Yes, we do.

Q. At these meetings do you share information regarding policies and procedures?

A. Yes, we do.

Q. We have a Unified Court System. Ms. Benson, the system policies or procedures that you employee in the Sullivan County family court, are they consistent across the state or are they specific to your court?

A. As I just said, we have protocol from OCA how every court is supposed to run, but each court obviously runs a little

different depending on who is managing that court. We all have different managing skills and we have different managing styles so there are probably some differences -- there are definitely differences in each court throughout the State of New York.

Q. Are you familiar with a software application called UCMS?

A. Universal Case Management, that is the program that is used by family court throughout the State of New York.

Q. There are certain standards that apply to using that software?

A. Correct.

Q. What, if any, information about a case would be contained within a UCMS system?

A. UCMS is very comprehensive and it has all the pedigree information about every litigant, every participant in that case, every interested party that would be in that case would be contained in UCMS. Obviously, the data in that docket -- docket being a particular case -- is only as good as the information we receive on the petition or

the information sheet, but yeah, that is pretty comprehensive.

Q. When a new judge takes the bench in family court, do you meet with that judge to go over UCMS and what's in it and how to use it?

A. You have a little overview. I think that when we first went live with judges we didn't give them too much leeway in UCMS because we didn't want them getting two modules that could be altered just by accident, but yes, I did go over how the program works.

Q. Judges could look up information about cases?

A. Yes.

Q. Is that information that is shared with attorneys; the inner workings of UCMS?

A. No.

Q. With respect to your court collection what, if any, legal training do they have?

A. They don't have any legal training.

Q. They are not lawyers?

A. They are not lawyers.

Q. In court you said they would take notes?

A. Yes, they are supposed to take notes regarding what is transpiring during the proceeding.

Q. When a judge issues an order from a bench who, if anyone, would produce that to a written document?

A. Family court is a largely pro se court, so it's generally the court assistant doing the order or, if she needs to, hand it out to one of the other staff.

Q. When there are attorneys who, if anyone, would do the orders?

A. The attorneys would submit when possible.

Q. I want to deal first with an order that's prepared by an attorney. When that is done what is the procedure that's followed to ultimately bring the order to be executed by the judge?

A. An attorney has twenty days to submit the order. We have a process by where

we have a tracking system where we put the files so that we know when the orders are due. The orders come in and then they have a settlement date on them and they go into another tracking system and when that tracking date comes up, those orders come out. If there is a requirement that a registry check gets done on any custody orders, we would check to make sure that was done within 90 days and if it was, it gets submitted to the judge for signature.

Q. Ultimately, the judgment order is reviewed by the judge?

A. Correct.

Q. When that protocol is followed, based on your own experience of over 20 years in family court, does the judge from time to time make changes to that order?

A. Yes.

Q. What would prompt the judge to change an order at that stage?

A. Generally speaking, the judge's review the court notes that the court assistant has taken and they keep their own notes -- obviously if it's during a trial --

and they review those notes, compare them to the order that is submitted and if they see a discrepancy they would make a change.

Q. In those circumstances, where an order is prepared by a court clerk what, if any, protocol is followed in that instance?

A. So, if the court assistant is preparing the order, they generally prepare the order and then they leave it in a folder for signature for either judge to please return to them. When it's done, the judge follows the same procedure. He will review the court assistant's notes, his own notes, and if there is any changes that need to be made he would make them and return it to the court assistant or he will sign it as his and then they will be responsible for sending it out.

Q. Is it part of standard operating protocols for clerks to take it upon themselves to stamp an order without providing it to the judge for review?

A. No, no one can use the judge's stamp unless they come and talk to me about it. I am the only one that will approve

that. There are form orders that we do such as mental health and status and law guardian orders. Those form orders, I will allow them to be stamp before they are originally signed and be sent out.

Q. That is to facilitate movement of cases --

A. Correct.

Q. -- if the judge is not available at the time?

A. Correct.

Q. In the ordinary course, even those pro forma orders are signed by the judge?

A. Yes, they all get signed by the judge eventually. It's whether or not they go out with a stamp on them, prior to your signature.

Q. How is it that attorneys for children are assigned to a particular case?

A. At the judge's directive from the court appearance, he advised the count assistant and litigants, whether or not he is going to assign an attorney for the child and it's up to the court assistant to do

that assignment. The way we do it in the family court in Sullivan County is we have a law guardian -- an attorney for the child list and it's just a rolling assignment, so if I was working on a case and I was just in the "B" attorneys and just used the last attorney in "B" I would go to "C" and use the next attorney and so on and so forth.

Q. Do either of the judges have any direct input, under ordinary circumstances, regarding who is appointed as attorney for the child?

A. They do not.

Q. That selection is undertaken under your direction?

A. It is -- well -- yes.

Q. Once an attorney for the child is selected what, if any, orders are produced?

A. A attorney for the child order.

Q. Who, if you know, who would generate that order?

A. It would be whoever is doing the assignment, so it could be the court assistant, but it also could be any of the other back office staff.

Q. These orders assigning attorneys for the child, are there any unique provisions included in those orders or are they all essentially the same?

A. It's the form generated through UCMS and they all say the same thing.

Q. Those are also ultimately given to the judge to sign?

A. Correct.

Q. Those are not routinely stamped?

A. Those can be routinely stamped.

Q. The original goes to the judge?

A. Correct. There is usually a "sign here" sticky put on it and left for the judge.

Q. You said that very often in family court we are dealing with pro se litigants?

A. Yes.

Q. Litigants typically come to common parlor at the front window --

A. Yes.

Q. -- and they will fill out a petition?

A. Yes.

Q. These are preprinted petitions that we give out?

A. Yes.

Q. That's because we deal with lots of pro se litigants?

A. Yes.

Q. When a case is filed what, if anything, is generated in order to actually start this service process and the litigation process?

A. On order to show cause or a summons.

Q. These orders to show cause they, from time to time, can include temporary relief?

A. They can.

Q. Typically in family court what type of temporary relief may we see in an order to show cause?

A. Temporary custody or a child cannot be removed from the jurisdiction of the court or from the State of New York; those types of things.

Q. In the absence of any temporary relief what, if any, information would be

contained in that order to show cause?

A. If there is no temporary relief, then it's the general information of the return date, when the paperwork needs to be served by and it would have the judge's signature.

Q. Absent temporary relief, those are largely pro forma?

A. Yes.

Q. Although they are pro forma, are they still given to the judge for signature?

A. They are.

Q. Is there anything different done if there is temporary relief included?

A. Well, the temporary relief would be in the order to show cause and then it would be shown to the judge for signature.

Q. Is it fair to say that in family court that a certain percentage of cases come in by way of application for emergency relief?

A. They do.

Q. We call them walk-ins?

A. Right.

Q. What, if any, protocol is

followed in an emergency case.

A. In an emergency case the petitioner comes in through the front desk. It's something that I review. If I have to take the litigant's signature I would sign the document, stamp it in. The file would be pulled so the judge would have whatever reference he would need to review it. It gets given to either judge and they decide whether or not it is in fact temporary -- an emergency application.

Q. From time to time there is immediate relief issued in that circumstance?

A. Yes.

Q. When that occurs, when there is emergency relief given, and you said custody or an order of protection, who, if anyone, generates those orders?

A. We have different types of emergency applications, right, so it can with be a custody situation. Generally, it's a domestic violence situation so they are asking for an order of protection and that order of protection is either generated

by the court assistant or back office staff.
Q. Are those orders generally created out of UCMS?
A. They are.
Q. Some of them are handwritten?
A. Well, if it's an order to show cause with temporary relief, we can handwrite the order to show cause and put -- handwrite the temporary relief in. If it's temporary order of protection that's generated at UCMS.
Q. Within the computer program, the UCMS, is there an opportunity in an order of protection for a judge to include some of his own specific provisions?
A. There is very limited spots in an Order of Protection to do that, but there are places for that to happen, yes.
Q. For example, a judge could set visitation schedules --
A. Yes.
Q. -- or allow somebody to go to the house to get personal belongings, or something like that?
A. Yes.

Q. If a judge has some of these specific provisions who, if anyone, would input that data?

A. The court assistant or the back office staff.

Q. Whoever is preparing the order?

A. Yes.

Q. Not the judge?

A. Yes. You mean type it into the form?

Q. Correct.

A. Whoever is preparing the order.

Q. What, if any, instructions do you provide to your staff regarding the production and issuing of these orders?

A. When I am training my staff, when they are new, I train them on UCMS and how to generate these orders.

Q. When those orders are prepared, a document -- is that presented to the judge for review and signature like any other order?

A. Yes.

Q. In your experience, twenty-years as an administrator in the family court

system, have you ever known judges to make changes to those orders before signing them?

A. All the time, particularly on emergency orders.

Q. As chief clerk would it concern you to find out a judge was editing and order before it was signed?

A. No.

Q. In fact is it routine that that's done?

A. It is.

Q. In fact, Ms. Benton, is it fair to say from time to time you have actually been the person who drafted an order?

A. Yes.

Q. Have you had experiences where a judge has edited language that you put in?

A. Yes.

Q. Does that concern you if a judge does that?

A. No.

Q. In fact, you seek input from the judge?

A. Well, I would hope they're reviewing the orders.

Q. You were the chief clerk from the time Judge McGuire took the bench?

A. Yes.

Q. Can you describe what, if anything, you observed from Judge McGuire when he first took the bench in 2011?

A. For instance?

THE REFEREE: Regarding what?

Q. Regarding the judge's management of his cases and courtroom.

A. I can say that you were very organized and thorough and disciplined. I don't know exactly what it is --

Q. Okay. We will --

A. Enthusiastic.

Q. We will drill down on some of that.

At some point did you become aware that Judge McGuire would have somebody removed from a courtroom and held for a period of time?

A. Occasionally.

Q. With the exception of R[redacted] R[redacted] did you become aware of any other instance where a judge actually made a contempt

finding against an individual?

A. I have no recollection of that. I would say probably not but I don't know.

Q. In those situations where the judge would have somebody removed, based on your experience, what, if anything, would happen after they were removed?

A. I would -- after that happened they would just be brought back in court. I wasn't clerking in court and if I was made aware of it I was made aware through my security, if it is something they thought I should know.

Q. Outside of court proceedings, but still focused around chambers and the court complex, what, if anything, did you observe with respect to Judge McGuire's demeanor relating to his interaction with staff?

A. I don't know specifically what you are asking, but I didn't --

Q. Let me withdraw the question and ask it this way. Did you have an opportunity to observe Judge McGuire interacting with family court staff, court officers and the litigants?

A. I did.

Q. Did you ever observe anything that concerned you with respect to the manner in which he dealt with them?

MR. LEVINE: Objection.

THE REFEREE: Grounds?

MR. LEVINE: The form of the question.

THE REFEREE: I'm sorry?

MR. LEVINE: The form of the question.

THE REFEREE: I'll rephrase it.

Q. You had a opportunity to observe?

A. Yes.

Q. What, if any, concerns did you have based on your observation of Judge McGuire's interaction with your staff?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I am finding it difficult to answer the question. I don't know I had any concerns.

Q. You had no concerns?

A. No, not based on just my observations.

Q. Starting in 2011 Judge McGuire's court assistant was Andrea Rogers?

A. Correct.

Q. Ultimately a decision was made to change the court assistant assignments?

A. Yes.

Q. Who, if anyone, made that ultimate decision?

A. I did.

Q. Before that change was made what, if any, discussions did you have with Judge McGuire regarding Ms. Rogers's performance?

A. I have had discussions with you regarding Andrea would interrupt during court proceedings and you felt -- I think that there was -- based on my conversations with both of you there was a personality conflict between the two of you.

Q. You spoke to Ms. Rogers also?

A. Correct.

Q. You spoke to the judge?

A. Yes.

Q. Based on your twenty-years experience you assessed it as a personality glitch?

A. I did.

Q. You were chief clerk when Judge Ledina was still on the bench?

A. Yes.

Q. You had an opportunity to be in court with Judge Ledina?

A. I did.

Q. Could you compare for the court the courtroom styles and personalities between Judge McGuire and Judge Ledina?

A. They were polar opposite. Judge Ledina is a very easygoing, quite, soft-spoken judge and you are a very hands-on, prepared, involved, not soft-spoken judge.

Q. Ultimately --

A. Not bad or worse, just different.

Q. Ultimately a decision was made to rearrange the courtroom staff and you made that decision?

A. Yes.

Q. At some point did you call Ms. Rogers into your office to let her know you were going to make that change?

A. I did.

Q. What, if any, reaction did you get from Ms. Rogers in response to the news that she would be in Judge Meddaugh's courtroom?

MR. LEVINE: Objection to the hearsay.

THE REFEREE: Overruled.

A. There came a time where I had the opportunity to make a change in the courtroom and I knew that she was -- she had expressed that she was not happy clerking in the courtroom, so when I had this opportunity I was making a change and she became upset and started crying and didn't want to move out of the courtroom, which was confusing to me.

Q. As chief clerk have you ever become aware of a litigant making a formal compliant to you about Judge McGuire?

A. Not that I recall.

Q. Judge Meddaugh is the elected family court judge, correct?

A. Correct.

Q. He is the presiding judge of the family court?

A. Correct.

Q. At any point have you had brought to Judge Meddaugh concerns regarding Judge McGuire's courtroom performance?

A. No.

Q. Who, if anyone, took Ms. Rogers's place in Judge McGuire's courtroom, after the assignments were switched?

A. My deputy chief clerk, Stacy Benton.

Q. How long did Stacy Benton work in Judge McGuire's courtroom?

A. I think it was a little over a year.

Q. You and Ms. Benton communicate daily?

A. Yes.

Q. What, if any, concerns came to your attention by Ms. Benton during the time she worked with Judge McGuire?

MR. LEVINE: Objection.

THE REFEREE: What is the objection?

MR. LEVINE: Hearsay.

THE REFEREE: Overruled.

MR. LEVINE: And the relevance.

THE REFEREE: Overruled.

A. With regards to concerns from any of the court assistants, it's usually just a scheduling thing, you know, we need to have cases in within three days and if a person isn't in placement -- like that kind of thing.

Other than that, I don't recall any.

Q. What, if any, complaints did you receive from Ms. Benton regarding her treatment by Judge McGuire?

A. I didn't receive any.

Q. What, if any, complaints did you receive from Ms. Benton regarding her ability to communicate with Judge McGuire in the courtroom?

A. None.

Q. You explained the calendar and that they are prepared. From time to time are there court notes put on the calendar?

A. Yes.

Q. What would be the purpose of the notes on calendar?

A. We pull scheduling notes on the calendar if we need to let the judges know something in particular, like, for instance, if a litigant is not going to appear personally and they are going to appear by telephone, we would put that on the calendar so the court officers know and the judge knows. If a case has a temporary order of protection in place, we would put the date that the temporary order of protection expires, so that if the case gets scheduled out the court assistant and the judge would know that temporary order of protection might be extended.

Q. From time to time would it be appropriate to make a court note if you needed pedigree information about one of the litigants?

A. Right, if we don't have an accurate address or an accurate phone number that is put on a scheduling note so that we can check to update the address.

Q. Generally when that information is there, that information is gathered while the folks are in court?

A. Yes.

Q. Either from the court assistant of the judge ad litem?

A. Yes.

Q. Did Ms. Benton ever come to you with concerns she wasn't able to obtain that information?

A. No.

Q. I am not asking for specific words, just whether or not you ever received calls from members of law enforcement raising concerns about their ability to enforce Judge McGuire's orders?

A. Not that I recall.

Q. Who, if anyone, took Ms. Benton's place in Judge McGuire's courtroom?

A. Melinda Sheridan. I believe she started in 2014, but I am not positive.

Q. Approximately, how long was Ms. Sheridan there?

A. Three years, maybe a little more. I don't even know if that long. Sorry. I don't recall.

Q. Did Ms. Sheridan, at any time, come to you with complaints about her

treatment by Judge McGuire?

A. No.

Q. What, if any, information did you receive during the time that Ms. Sheridan was in Judge McGuire's courtroom regarding her inability to communicate with the judge in court?

A. None.

Q. Again, with respect to those court notes, any issue getting that information that you needed; that pedigree information?

A. No.

Q. Again, any issues from law enforcement regarding enforcement of Judge McGuire's orders?

A. No.

Q. At some point did Ms. Sheridan leave the Sullivan County Family Court?

A. She did.

Q. Do you know what the circumstances were that she left?

A. Another position came up that was one mile away from her home and she took a position closer to home.

Q. Who, if anyone, took Ms. Sheridan's place in Judge McGuire's courtroom after she left to take that assignment?

A. I am not sure if Stacy went in for a little bit again, or Judy Yates went in to clerk for you.

Q. Ultimately Judy Yates --

A. Right.

Q. -- was and still is assigned to Judge McGuire's court?

A. Yes.

Q. If you recall, how long has Judy Yates been in there?

A. She has been in with you for at least a year. I am assuming it's longer. I don't have the date in my head.

Q. At least a year?

A. Yes.

Q. Again, did you ever become aware with of any concerns by Ms. Yates regarding her treatment by Judge McGuire?

A. I have not, no.

Q. What, if any, information has come to you with respect to Ms. Yates's

inability to communicate with the judge in court?

A. None.

Q. What, if any, information has come to you with respect to Ms. Yates ability to gather that information from the court notes?

A. None.

Q. Any complaints from the law enforcement regarding enforcement of orders?

A. No.

Q. From time to time have you served as the court assistant in Judge McGuire's courtroom?

A. I have.

Q. Have you had any concerns about how Judge McGuire has treated You in the courtroom?

A. No.

Q. What, if any, concerns have you had regarding your ability to communicate with the judge in court?

A. None.

Q. Any issues with respect to your ability to gather information from

litigants?

A. No, no problem.

Q. Any concerns about the enforcement of orders?

A. No.

Q. Ms. Benson, what is standards and goals?

A. Standards and goals are the times in which cases are to be disposed of from the service to the conclusion of the case.

Q. Who promulgates the standards and goals? Is that something that is generated locally?

A. That's OCA.

Q. OCA. Are there periodic reports generated regarding standards and goals?

A. Yes, there are. I prepare statistics. I work on statistics every term and prepare a standards and goals report for each judge, every term.

Q. There are 13 terms in a year?

A. Yes.

Q. Are you familiar with Judge McGuire's statistics over the past four years regarding standards and goals?

A. I am familiar because I've done them. I don't know that I recall them all.

Q. There are 13 a year?

A. Yes.

Q. What, if any, reports did you get as the chief clerk looking at statistics over the entire district -- the judicial district?

A. I can -- for our district I get them from -- Judge McGinty sends out for the whole district -- the standards and goals reports and the statistics.

JUDGE MCGUIRE: That is M-C-G-I-N-T-Y.

Q. What, if any, role does Judge McGinty have within the family court?

A. He is the supervising judge for our district for family court.

Q. What, if any, information can you share regarding Judge McGuire's statistics as compared to other judges in the 3rd Judicial District?

A. I can't compare them but I can tell you, generally speaking, you do not have more than one or two days over

standards and goals, if you have any.

Q. In addition to standards and goals are there other time constraints within which certain cases need to be heard in family court?

A. Sure.

Q. For example, juvenile delinquent cases have their own time constraints?

A. Yes, depending on whether a child is in placement, there are time restraints for fact-finding for dispositional hearings. When there is a neglect proceeding there are time constraints with regard to permanency hearings and things of that nature.

Q. During the time that Judge McGuire has been family court judge have you had occasion to have cases dismissed because Judge McGuire failed to comply with any of the time constraints?

A. No.

Q. Over the past eight-and-a-half years have you had occasion to address courtroom procedures and protocol with Judge McGuire?

A. I have.

Q. On those occasions can you describe how receptive, if at all, Judge McGuire was to your suggestions?

A. In my opinion it's an evolution, right. As new judges start they have an idea of how things should operate. I've had this experience with more than one judge and it evolves. I've had those conversations and they have been received better as time passes.

Q. Over that eight-and-a-half year period have you been able to work collaboratively with Judge McGuire to develop solutions --

A. Yes.

Q. -- to any concerns he made?

A. Yes. Yes.

Q. I want to take you back to April of 2011. At that time what, if anything, changed with respect to the family court fiscal budget?

A. So, I think there was some financial crisis with the judiciary during that period of time and we were not able to hire staff. I think there may have been a

hiring freeze during that period of time and to control some expenditures I believe that is when protocols came out for overtime.

Q. Procedurally what, if any, changes had to be made within the family court schedule to accommodate those?

A. I believe what happened is there may have been an email that went around statewide with request for suggestions districtwide and then within the district they sent out emails to the chief clerks asking for suggestions. What we did here in Sullivan County is we closed from 12:30 to 1:30 for lunch and we had to have all cases concluded by 4:30 in the courtroom so we did not incur any overtime.

Q. Prior to, the court was open from 9 until 5?

A. Correct.

Q. Did that result in overtime being charged?

A. Frequently.

Q. As of April 2011, if overtime was necessary is that a decision that you have the ability, as a chief clerk, to approve?

A. No, I had to get approval from my district office.

Q. Is it fair to say that after April 2011 there was a increased emphasis placed on judges getting calendars completed on time?

A. Yes.

Q. When that occurred --

A. If you didn't get the morning calendar done those people would have to come back in the afternoon. There was a push to get the morning calendar done by the end of morning and same for the afternoon.

Q. That occurred just three months into Judge McGuire's tenure?

A. Yes.

Q. Are you aware -- I believe you might have said earlier -- are you aware that Judge McGuire is also responsible for handling handgun applications?

A. Yes.

Q. Do you remember when it was that Judge McGuire first started handling handgun license applications?

A. I don't.

Q. Do you know whether Judge Ledina also handle handgun license applications?

A. I believe he did, yes.

Q. When a handgun license is applied for, the applicant ultimately has an interview with the judge?

A. Yes.

Q. You are familiar with that?

A. Yes.

Q. How are those interviews currently scheduled?

A. I don't know if it's a phone call or a letter. It's either a phone call or letter to the applicant.

Q. Where are they scheduled? Where are they held?

A. They happen in family court. Our library is customarily used for those.

Q. Prior to December of 2014, do you know how they were scheduled at that time?

A. I do not. I don't know how they were scheduled, either by phone call or a letter.

Q. At some point Brittany Benton, B-R-I-T-T-A-N-Y B-E-N-T-O-N, became Judge

McGuire's confidential secretary?

A. Yes.

Q. That was August 2015?

A. Correct.

Q. What, if any, discussions did you have with Ms. Benton about carving out time in Judge McGuire's calendar for these interviews?

MR. LEVINE: Objection. Hearsay.

JUDGE MCGUIRE: I am asking what discussion she had. Discussions Ms. Benson had, not Ms. Benton.

THE REFEREE: Overruled.

MR. LEVINE: It's still hearsay.

JUDGE MCGUIRE: It's not hearsay for Ms. Benson.

THE REFEREE: Overruled.

A. If she needed to schedule something we keep a red book in family court. Each judge has their own red book and the court magistrate has her own red book. When either of the judge's secretary need to schedule something in supreme court or county, or any of the other hats that they wear, they would come in and they would

discuss it with me and see if then he could use a particular morning or afternoon to schedule, based on whatever was already in the book.

Q. The main structure of the judge's calendar would be within that red book?

A. Correct.

Q. You keep possession of that red book, unless it's in court?

A. That's correct.

Q. At some point you spoke to Ms. Benton about -- Brittany Benton -- about carving out time?

A. Yes.

Q. She started in August 2015. Have you had similar discussions with her predecessor?

A. I don't recall.

Q. What is the county court youth court?

A. It's new legislation where a criminal case against a 16-year-old can be brought to youth court and diverted to family court.

Q. That was part of the Raise the

Age legislation?

A. It is.

Q. And the initiative that the court system went through over the past two years?

A. Yes.

Q. What, if any, role did Judge McGuire play with respect to implementing that youth court?

A. He was present at all the development meetings that we needed to go to in order to come up with protocol for Sullivan County For that court.

Q. I want to focus your attention to January 14, 2015. Were you working on that day?

A. I don't know. Sorry.

Q. At some point did you receive a report regarding an incident involving Judge McGuire and Ms. Wiener?

A. Yes.

Q. After receiving that report what, if anything, did you do?

A. I spoke with Ms. Wiener and I spoke with you -- or Judge McGuire -- and I also spoke with the IT department.

Q. Based on your experience of having worked with Judge McGuire for several years what, if any, observations have you made with respect to Judge McGuire's practice of note-taking on the bench?

A. You take copious notes and you are very diligent on your note-taking on any kind of case you are working on.

Q. Do you know where those notes are stored or what he stores them on?

A. I'm not familiar with the program.

Q. Are they taken by hand?

A. No, they are typed.

THE REFEREE: I think what he is trying to get at is are they typed into his computer?

THE WITNESS: They are computer-generated, yes.

JUDGE MCGUIRE: Thank you.

Q. At some point have you encouraged the judge to keep his notes in the UCMS system?

A. I have.

Q. That system would accommodate

what court cases?

A. Family court.

Q. If he had county court he would not be able to keep those notes in UCMS?

A. Correct.

Q. In surrogate court he would not be able to do that?

A. No.

Q. And supreme court?

A. No.

Q. If a judge keeps personal notes in UCMS who, if anyone, would have access to those?

A. If you take personal notes in UCMS only the judge has access to those.

Q. Do those notes become part of the court file?

A. No, they are the judge's notes.

Q. Do they become part of the record of that case?

A. They do not.

Q. As chief clerk, without the judge's permission, would you have access to those?

A. I do not.

Q. Do you recall the occasions where there was this incident involving Judge McGuire and Ms. Wiener?

A. Yes.

JUDGE MCGUIRE: Can we stipulate that was January 14, 2015?

MS. TISHMAN: No problem.

Q. That was January 14, 2015. At some point did you speak with Judge McGuire that day?

A. I did.

Q. After speaking to him -- I don't want you to tell us what he said -- after speaking to him did you form an opinion as to what it was that upset him earlier that day?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. At some point did you learn that Judge McGuire had a problem with his software?

A. I did.

Q. After learning there was an issue with his software what, if anything, did you do?

A. I contacted our IT department to explain what the problem was and see if they could do anything to resolve it.

Q. Did you work with them to get that resolved?

A. By phone we had several conversations, and I don't know how many days or how long it took to resolve the issue. I do know on that day they were starting to resolve the issue and some of your notes were able to be retrieved.

Q. The IT department, they are able to remote into each of our computers?

A. They are.

Q. Is that what the representative of IT was able to do?

A. I believe.

Q. That software ultimately was able to be -- the data was retrieved?

A. Yes.

Q. By the end of the day a lot of it had --

A. Yes.

Q. Some of it had?

A. Yes.

Q. Do you know whether or not Judge McGuire continues to use that database program today?

A. I do not.

Q. Ms. Benton, do you recall when, if at all, the court system switched from WordPerfect to Word Microsoft package?

A. We're not fully switched to Word. They would like us to. Some of us use Word and some of us are still in WordPerfect. It's happening. It's coming down the pike.

We are not all there yet.

Q. Do you remember when the transition started?

A. Probably two years ago. It might have been longer. I think a lot of the UCMS forms may be in Word at this point.

Q. Over the past eight-and-a-half years, since Judge McGuire took the bench, have you ever observed him yell at a member of your staff?

A. I have not.

Q. Have you ever observed Judge McGuire address a member of your staff in a condescending manner?

A. I have not.

Q. Over the past eight-and-a-half years, at any point, has Judge McGuire raised concerns with you regarding Officer Diaz's ability to handle busy calendars?

A. He has, yes.

Q. What, if anything, did you do in response?

A. I have met with my lieutenant and my sergeant on more than one occasion. It was my suggestion that we assign specific officers to specific courtrooms. They indicated that was not possible. That was fine. Then I suggested they do maybe more training, but then at another time, another conversation was maybe on a arraignment days we should not put -- we should put our stronger officers, you know? There are some people who have different working skills and some of them are stronger than others. On busy days maybe that would be a way to resolve the problem.

Q. Can you describe, please, your impression formed generally of Judge McGuire after working with him for the last

eight-and-a-half years?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Could you describe what, if any, changes you observed in Judge McGuire's courtroom demeanor over the last eight-and-a-half years?

A. You are a very dedicated judge who truly cares about the children of the County of the Sullivan. I think that as any person starting a new job is, I think that you came in thinking that you might be able to solve and change the world and you figured out that's not as easy as you thought it might be, and you still have that passion and that wish to help the children of the county. You have just learned to do that within the confines of the protocols in the office of which we work.

JUDGE MCGUIRE: I have nothing further for this witness.

THE REFEREE: Any cross?

MS. TISHMAN: Just one second.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Ms. Benson.

A. Hi.

Q. Were you ever told by Judge McGuire that you should not assign any case to him if Zachary Kelson was involved as an attorney or law guardian?

A. No.

MS. TISHMAN: Nothing further.

THE REFEREE: Any redirect?

JUDGE MCGUIRE: No.

THE REFEREE: You are excused. Thanks for coming.

(The witness exited the room.)

MS. TISHMAN: Can we direct that the witnesses do not speak?

THE REFEREE: Don't communicate.

Do you want to call our next witness now or do you want a morning break?

JUDGE MCGUIRE: I can go either way. I am going to probably be 45 minutes or so.

THE REFEREE: Let's take a break. Off the record.

(A recess was taken.)

THE REFEREE: Please call your next witness.

JUDGE MCGUIRE: Brittany Benton.

(The witness entered the room.)

THE REFEREE: Good morning, Ms. Benton.

My name is Mark Arisohn. I have been appointed by the Commission to be the referee in this matter.

I was asked to read a brief statement to you to give you some directions and information.

A court reporter who will transcribe the proceeding is present.

In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until the question is completed and

answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording.

Please turn off all electronic equipment. Okay?

THE WITNESS: Yes.

THE REFEREE: Please stand and raise your right hand.

Do you swear or affirm under the penalties of perjury the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a sear. State and spell your full name for the record.

THE WITNESS: Brittany Benton, B-R-I-T-T-A-N-Y B-E-N-T-O-N.

THE REFEREE: Judge McGuire, please proceed.

JUDGE MCGUIRE: Thank you.

DIRECT EXAMINATION

BY JUDGE MCGUIRE:

Q. Ms. Benton, where are you

currently employed?
A. For the Office of Court Administration.
Q. In what capacity are you employed by the Office of Court Administration?
A. Confidential secretary to the judge.
Q. How long have you been Judge McGuire's secretary?
A. Since August 2015.
Q. Prior to coming to work for Judge McGuire by who, if anyone, were you employed.
A. I worked for Key Bank -- well, First Niagara Bank -- First Niagara Bank.
Q. The bank went through some iterations, but it was always in the same building?
A. Yes.
Q. In what capacity were you employed at the bank?
A. I went through a few positions, but I left there as a customer experience associates.
Q. Did you know Judge McGuire

personally before you were hired as his secretary?

A. No.

Q. You have relatives that are employed in the Unified Court System?

A. I do.

Q. Who?

A. Stacy Benton.

Q. What, if any, relationship do you have with Stacy Benton?

A. She is my aunt.

Q. She is your dad's sister?

A. Correct.

Q. Prior to applying to be Judge McGuire's secretary did you speak to your aunt about what the job would entail?

A. I did.

Q. Based upon your discussion what, if any, expectations did you have with respect to what your responsibilities would be?

A. I -- just a normal secretary position, scheduling matters, sending out letters, answering phones. Being there to make your life easier, organized.

Q. Your aunt is currently the deputy clerk of the family court.

A. She is.

Q. Prior to that did she have the same position you current have only with Judge Meddaugh?

A. She did.

Q. Did you have any concerns prior to going to work for Judge McGuire?

MR. LEVINE: Objection.

A. No.

THE REFEREE: Overruled.

A. No concerns. Just about leaving a job I was, you know, comfortable and going to a new career, new job.

Q. You started in August of 2015, since that time you have continuously been employed in Judge McGuire chambers?

A. Correct.

Q. Can you describe for the court please the nature of your interaction with Judge McGuire on a day-to-day basis?

A. Always very positive.

MR. LEVINE: Objection to the answer.

THE REFEREE: Why don't you rephrase the question.

Q. In a typical day do you have opportunity to interact with Judge McGuire?

A. Yes.

Q. How does that come about in the ordinary course of the day?

A. I walk in, first thing in the morning, "Good morning, Judge." "Good morning, how was your weekend?" Pleasant conversation. Any concerns we might need to address from the prior day or going forward that day. Events that are coming on the calendar, changes.

Q. Is it fair to say that our ability to communicate face to face is at times limited because of the judge's bench responsibilities?

A. Yes.

Q. Since coming to work in August of 2015 you developed a routine, in the office, in the chambers?

A. Yes.

Q. What are your responsibilities in chambers today?

A. Typically answering the phone, monitoring chamber's emails, sending out decisions and orders, court correspondence, response to attorneys and litigants. I also handle the scheduling, so that's supreme conferences, county court conferences.

Q. You said a few minutes ago you and Judge McGuire don't get a lot of time during the day for face-to-face interaction?

A. Correct.

Q. What percentage of Judge McGuire's time is actually spent in court on the bench.

A. Generally 75 percent or more of the time.

Q. As part of responsibilities do coordinate and schedule appointments for Judge McGuire to interview handgun license applicants?

A. Yes.

Q. As part of this process do you conduct a preliminary review of the applicant's file?

A. I do.

Q. In reviewing the file what, if

anything, are you looking for?

A. I normally check to see if there is a rap sheet in the file. If that person has a felony conviction, put it to the side. If there is any mental health concerns in the file I set it to the side and I leave it on the credenza with a note this person is barred from a pistol license.

Q. A felony conviction would be a bar?

A. Yes.

Q. And a mental health treatment would be a potential bar?

A. Yes.

Q. You look for those bars?

A. Yes.

Q. Then those that don't have an absolute bar what, if anything, is done with those files?

A. I schedule them for an interview with you, with the judge.

Q. How do you go about doing the scheduling those interviews?

A. I either send out letter by mail, but lately you have been switching to

emails -- that applications go out by email -- so I send out emails to the applicant letting them know the date and time to come and meet with the judge.

Q. How do you create the time in the judge's day to do these interviews?

A. I get the judge's diary and I look for time, any time I can fit in a handful of applicants. I fit them in during the day, the court day.

Q. Since you have you have been there, since August 2015, has Judge McGuire interviewed applicants?

A. Yes.

Q. Where do those interview take place?

A. In the family court annex.

Q. What, if any, role do you play in the interview itself?

A. None.

Q. This handgun -- the handgun license application process, what office, if any, are you working with on these handgun license applicants?

A. The county clerk, Sullivan County

Clerk.

Q. And what, if any, role does the supreme or county clerk play in the handgun license process?

A. None.

Q. These handgun license applications or the files, are they assigned an index number?

A. No.

Q. Are handgun license files maintained by the court clerk?

A. No.

Q. After the interview, if the judge determines that the person should be awarded a handgun license who, if anyone, if you know, issues the license?

A. The pistol clerk at the county clerk office.

Q. Who, if anyone, will schedule the appointment for the applicant to meet with the county clerk or pistol clerk?

A. The judge schedules them during the interview or sometimes that day doesn't work and the applicant is asked to call the county clerk's office and make that

appointment for whenever is convenient.
Q. When you have a group of applicants do you get appointment dates from the county clerk?
A. Yes.
Q. If those dates don't work then the folks can call?
A. Yes.
Q. I want to be clear. You say Judge McGuire is able to handle both the interview and scheduling the appointments?
A. Yes.
Q. Who, if anyone else, assists Judge McGuire in those interviews?
A. Other than the court officer standing in the room, no one.
Q. Has Judge McGuire ever directed you to assist him with those interviews?
A. No.
Q. When you get a file, the file comes from the county clerk?
A. Correct.
Q. We get it at what point of the application process?
A. Once all of the documents are in

the file. So, the application, the background check that comes back, all of the questionnaires from references. The police agencies do their checks as well. The file gets prepared at the clerk's office once its got all the documents.

Q. The only thing remaining then is the interview with the judge?

A. Yes.

Q. How quickly do you try, if you set a goal for yourself, to get a particular application to have an applicant to have an interview with the judge? How long do files languish in our office?

A. I try to keep it within a minimum of a few weeks, depending on schedules and whether the judge is on trials or -- if I can't fit it in then I try some other time the following week.

Q. Have you generally been able to get these scheduled within the demand of the judge's various courts?

A. Yes.

Q. How often, if ever, has Judge McGuire required you to attend an NRA

function?

A. Never.

Q. How often, if ever, has Judge McGuire directed you to attend any particular function?

A. Never.

Q. Have you ever known Judge McGuire to actively promote the NRA or any other organization?

A. No.

Q. In which courts does Judge McGuire sit?

A. Family court, supreme court, surrogate court and county court.

Q. He misses the court of claims?

A. Yes.

Q. What, if any, involvement do you have in preparing Judge McGuire's family court calendar?

A. I generally don't handle any family court scheduling.

Q. What, if any, involvement do you have if preparing Judge McGuire's county court calendar?

A. County court varies. I work with

the court clerk's office a lot to coordinate when we would schedule arraignments or ajournments, trials. I work with them, you know, on most occasions.

Q. Can you describe for the court what, if anything, is involved in preparing the judge's county court calendar?

A. With regard to gathering documents?

Q. Yes.

A. I work with the court clerk's office to make sure we have everything in the file that we need; an indictment, and SCI, a PSI, and reports that the judge may need to review to be ready to go that morning.

Q. SCI is the superior court information. A PSI is a presentence investigation. An indictment is an indictment. You gather those documents?

A. Yes.

Q. You also have to be aware of the length of the calendar?

A. Yes.

Q. Are there time constraints that

certain items must be brought in?

A. Yes.

Q. When you gather these documents what, if anything, do you do with them?

A. I save them in our county court, in our files, our electronic files.

Q. Paper files?

A. No.

Q. Just describe generally how the electronic files are set up.

A. The court clerk's office will scan the document, let's say the indictment, they will scan the indictment to chambers and I save it into a file, so P[redacted] verses --

Q. J[redacted]?

A. J[redacted]. The indictment will get saved into P[redacted] versus J[redacted]. I can send the judge an email and say this matter is on the calendar and we are all set. All the documents are on file.

Q. Why is it that Judge McGuire needs those document in advance?

A. So he can prepare.

Q. From time to time does there need

to be changes made to the county court calendar?

A. Yes.

Q. If there is to be a change what, if anything, do you do?

A. Again, I work with the court clerk's office. I will look at the case and see where we are on standards and goals and I will ask for the reason why they need the judgment. Generally you differ to Tara and I to find if that is okay, we give the adjournment, but we try to keep it to one, you know, as we go along with the case.

Q. You mention standards and goals?

A. Yes.

Q. What are standards and goals?

A. It's the tracking. It's how we track the case and, you know, if a case is say an indictment from the time of arraignment has six months to be disposed of. It needs to be resolved.

Q. Completely?

A. Completely.

Q. That includes time for discovery, time for motions. This all has to be

completely resolved in six months?
A. Yes.
Q. Who, if anyone in chambers keeps track of standards and goals for county court?
A. I do. At chambers we keep track and I know the judge keeps his own records of standards and goals.
Q. How many county court cases currently do we have over standards and goals?
A. None.
Q. What role, if any, do you play in putting together the judge's surrogate court calendar?
A. Generally, I play a limited role with the surrogate court calendar. There are times that attorney conferences are scheduled in chambers. I will schedule that and work with the chief clerk, let her know when and what the outcome was and what the next appearance is. I generally don't handle the every month calendar.
Q. What role, if any, do you play in putting together the judge's supreme court

calendar?

A. Supreme court calendar, the case comes in and I schedule them before a law clerk and she usually brings them up to the pretrial point. At that point they get scheduled before Judge McGuire to do the pretrial and handle the trial if necessary.

Q. That's another part and piece of time you have to carve into Judge McGuire's calendar?

A. Yes.

Q. Who, if anyone, in chambers tracks standards and goals for supreme court?

A. I do and Hanna does.

Q. Do you know what the current percentage of the cases that Judge McGuire carries over standards and goals in supreme court?

A. Currently three percent.

Q. Have you had a chance to review reports on standards and goals periodically?

A. Yes.

Q. Do we actually get reports from the Office of Court Administration?

A. We do.

Q. Standards and goals are actually part of the Chief Judge's excellent initiative, correct?

A. Correct.

Q. Do you know, based upon your review of policy and procedures and the excellent initiative, what is the acceptable percentage of cases over standards and goals?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Seven percent or less.

Q. We are currently at three percent?

A. Yes.

Q. You have been working for Judge McGuire just shy of four years?

A. Correct.

Q. Where is your desk be related to the judge's family court courtroom?

A. Right outside the courtroom door.

Q. How would you describe the soundproofing effectiveness between the rooms in chambers?

A. It's not very soundproof.

Q. Would you agree the walls are paper thin?

A. Yes.

Q. In fact is it common for folks to be able to have conversations between rooms without screaming?

A. Yes.

Q. When you are at your desk what, if any, parts of family court proceedings are you able to hear?

A. So, it varies. There are times I can hear an attorney talking, a litigant talking, the door opening and closing. I can hear your voice, the clerk.

Q. During the past three and a half years, almost four years you worked for Judge McGuire, has there ever been a time you were afraid of Judge McGuire?

A. Never.

Q. How often, if ever, since working for Judge McGuire have you found yourself shaking in fear?

A. Never.

Q. How often, if ever, has Judge

McGuire yelled at your?

A. Never.

Q. Over the last three-and-a-half years has there been any occasions where you were alarmed by something your heard in Judge McGuire's courtroom?

A. Yes.

Q. What types of things have alarmed you coming from Judge McGuire courtroom?

A. I've heard -- I mean it's a high emotion court. You can hear crying sometimes. You can hear, you know, people getting loud in the courtroom. It varies, I mean, depending on the case.

Q. It's an emotionally charged court?

A. Yes.

Q. How often, if ever, have you heard Judge McGuire demean litigants?

A. Never.

Q. How often, if ever, have you heard Judge McGuire demean attorneys?

A. Never.

Q. How often, if ever, have you heard Judge McGuire yell or scream at anyone

in family court?
A. Never.
Q. What time does Judge McGuire start his family court calendar?
A. 9:00.
Q. Have there been occasions over the last three- and-a-half years that the morning calendar has not been ready to stare promptly at nine a.m.?
A. Yes.
Q. Have there been occasions that his afternoon calendar has not been ready to start promptly at 1:30?
A. Yes.
Q. On those occasions when the calendar has not been ready to start on time what, if anything, have you observed of Judge McGuire's demeanor?
A. He always remained calm towards the court officer, "Okay when the attorney gets here, when the litigant gets here, bring them in whenever they are ready. Give them a few minutes."
Q. Have you had an opportunity to see Judge McGuire interact with other court

employees over the last three- and-a-half years?

A. Yes.

Q. During that time have you seen Judge McGuire address a court employee in a condescending manner?

A. No.

Q. Have you seen Judge McGuire yell at a county court employee?

A. No.

Q. Has Judge McGuire ever yelled at you?

A. No.

Q. Has Judge McGuire ever yelled at Ms. Prall --

A. No.

Q. -- in your presence?

A. No.

Q. Has Judge McGuire ever addressed you in a condescending manner?

A. No.

Q. Have you ever hear Judge McGuire address Ms. Prall in a condescending manner?

A. No.

Q. Where is Ms. Prall's office in

relation to your desk?

A. It's a couple feet away.

Q. What is Judge McGuire's demeanor when he interacts with you?

A. Calm, professional.

Q. On a typical workday what are your hours?

A. Nine to five.

Q. How often, if at all, has Judge McGuire required you to work on weekends?

A. Never.

Q. How often, if at all, has Judge McGuire required you to work beyond five?

A. Never.

Q. How often, if at all, has Judge McGuire required you to come in before 9:00 a.m.?

A. Never.

Q. Other than when it's snowing?

A. Never.

Q. Does Judge McGuire communicate with you using email?

A. Yes.

Q. Does Judge McGuire communicate with you by means of text message?

A. Yes.

Q. Are those acceptable modes of communication in your mind?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Yes.

Q. At times does Judge McGuire send you emails outside of the normal workday?

A. Yes.

Q. On those occasions, when you receive an emails after hours or before hours, other than between nine and five, have you ever interpreted one of those emails as a demand for you to come into work early or stay late?

A. Never.

Q. Judge McGuire also communicates with you by text?

A. Yes.

Q. Sometimes are those texts sent outside of the nine to five workday?

A. Yes.

Q. What, if any, offense have you taken?

A. I don't find them offensive.

Q. Have you ever felt fear or intimidation as a result of Judge McGuire's communicate with you outside of the normal workday?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Can you repeat.

Q. Have you ever felt fear or intimidated as a result of Judge McGuire communicating with you outside of the normal nine to five?

A. No.

Q. Have you ever asked Judge McGuire not to communicate with you other than nine to five?

A. No.

Q. Have you ever believed that your job would be in jeopardy if you refused to accept text messages from Judge McGuire?

A. No.

Q. What, if any, social interaction have you had with Judge McGuire, outside of the normal workday?

A. For birthdays, go out to lunch. Occasionally we have lunch together. We went

to a baseball game a couple summers ago.
Q. What, if any, personal errands has Judge McGuire asked you to perform for him?
A. None.
Q. Have you ever had to pick up his dry cleaning or laundry?
A. No.
Q. Have you ever gone to the bank for him?
A. No.
Q. Have you ever gone to get stamps for him?
A. No.
Q. Has he ever directed you to wait on a Motor Vehicle Department line?
A. Directed me, no.
Q. Has Judge McGuire ever directed you to get lunch for him?
A. No.
Q. What policy, if any, does Judge McGuire have regarding annual leave?
A. As long as we ask in advance and put it on the calendar it always approved.
Q. Has Judge McGuire ever denied you

annual leave when you requested it?
A. No.
Q. During the time you have worked for Judge McGuire have you ever received a phone call from a former client --
A. Yes.
Q. -- of Judge McGuire's?
A. Yes.
Q. What, if any, policy is in place regarding Judge McGuire's taking phone calls from other than immediate family?
A. I will answer the call, get the person's name, the reason for their call. If it's somebody other than family, most of the time they will say I am his former client. I shut it down. I say the judge can't speak to you. They say I am sorry most of the time they understand but sometimes they don't and that's the end of the call.
Q. Have you ever known Judge McGuire to undertake any private legal work during the time that you worked for him?
A. No.
Q. Have you ever observed Judge

McGuire speaking to anyone about taking care of traffic tickets in other courts?

A. No.

Q. Have you ever seen Judge McGuire work on real estate tax action during the time you worked for him?

A. No.

Q. What percentage of the workday are you aware of where Judge McGuire is or what he is working on at that particular time?

A. All day, 100 percent of the time.

Q. How often, if at all, does Judge McGuire wok in his private office with the door closed.

A. Very rarely. In the morning sometimes the door will be closed when you come in, but usually within five minutes of -- five after nine he is opening the door. Generally it's always open.

Q. Have you ever known Judge McGuire to throw things around his office?

A. No.

Q. Can you describe the condition that Judge McGuire's office is maintained

in.

A. Pristine.

Q. During the time that you worked for Judge McGuire have you seen him receive or attempt to receive gifts at the courthouse?

A. At times, yes.

Q. Can you describe that for the court, how that happens?

A. There have been times court officers will say someone is here with a package for Judge McGuire. I go out see what the package might be. Sometimes it's people dropping off court documents, that's one thing. There have been times where people try to deliver gifts and I tell them that we can't accept them and I turn them away.

Q. What types of gifts?

A. Sometimes around the holiday there will be matzo dropped off or baked goods. There have been times where Formaggio has tried to deliver cheese to chambers.

Q. Those have been rejected?

A. Yes.

Q. Without the judge knowing about it?

A. Yes.

Q. How about sushi?

A. Sushi, that was also rejected.

Q. Is it accurate to describe you as the gatekeeper to the judge?

A. Yes.

Q. When, if ever, was that part of your responsibilities, was gatekeeping part of your responsibilities disclosed to you?

A. Day one.

Q. Have you ever been aware of state troopers meeting with Judge McGuire?

A. Yes.

Q. On those occasions have you always been aware of the purpose of the meeting?

A. Yes.

Q. Indeed have you generally set up the meeting?

A. Yes.

Q. For what reason, if any, would Judge McGuire meet in chambers with a district attorney or a member of law

enforcement?

A. Search warrants, return on those search warrants, emergency blood draw applications or a wire tap.

Q. In the course of your normal day from time to time did you need to be away from your desk?

A. Yes.

Q. On those occasions, when you need to be away from your desk what, if any, procedures are in place?

A. I will tell Hanna, or if Hanna is not available I will tell somebody from family court that I am going to step away so that the phones can be covered, if somebody needs something they know where I am.

Q. If Judge McGuire is away from his desk and he is not on the bench what, if any, information will he provide to you?

A. What time he is leaving, where he is going and what time he is coming back.

Q. Have there been occasions you expect Judge McGuire to be at the courthouse and he never showed up?

A. No.

Q. Were you working for Judge McGuire on November 14, 2016, the day of his son's crash?

A. I was.

Q. On that day the judge had to leave early he when he received word, correct?

A. Yes.

Q. You are aware at some point his son was hospitalized?

A. Yes.

Q. In relation to his son's stay at Westchester Medical Center when, if at all, did Judge McGuire return to the bench and resume his obligation in relation to his son being hospitalized?

A. I don't remember.

Q. Do you remember whether or not Judge McGuire returned to work while his son was still hospitalized?

A. Yes.

Q. What, if any, communication did you receive from Judge McGuire while he was out dealing with his son's life threatening injuries?

A. Emails, we received emails.

Q. Test message?

A. Yes.

Q. Phone calls?

A. Yes.

Q. When Judge McGuire is away on vacation what, if any, communications do you have with him during his vacations?

A. Email, text message communication.

Q. Regular?

A. Yes.

Q. Within the operation of chambers is it fair to say there are numerous documents that Judge McGuire needs to review and sign?

A. Yes.

Q. Now some three-and-a-half years you worked with Judge McGuire what, if any, policy is maintained with respect to the reviewing and signing of documents?

A. The files or whatever documents get placed on his credenza for his review.

Q. Do you have a signature stamp for Judge McGuire?

A. I do.

Q. What, if any, protocol is in place with respect to stamping documents with the judge's signature?

A. Nothing gets stamped without an okay from the judge.

Q. Can you describe what, if anything, Judge McGuire does to prepare for his calendar?

A. He reviews documents, reviews prior appearances for that case. He keeps his set of notes.

Q. Does Judge McGuire keep notes on each appearance before him?

A. Yes.

Q. Where does he keep his notes?

A. In chamber's drive on the computer.

Q. It's on the main drive?

A. Yes.

Q. That's a drive that's accessible by whom?

A. Everyone in chambers.

Q. Three of us?

A. Yes.

Q. Are you familiar with the judge's access database?

A. I am.

Q. What, in any, information does the judge maintain on that database?

A. Lots of information, case names, indictment number or case number, family file number, their next appearance, the nature of the cast. It's just a ton --

Q. Synopsis of pleadings?

A. Yes.

Q. Notes from appearances?

A. Yes.

Q. How far back, if you know, does that database track the cases?

A. Forever.

Q. Back to January 2011?

A. Yes.

Q. Have you ever had the opportunity to observe Judge McGuire work on a decision?

A. Yes.

Q. Is he generally able to do that on his own?

A. Yes.

Q. Other than family court, when

cases are assigned to Judge McGuire chambers, who within chambers is generally the first person to become familiar with the case that's been assigned?

A. The law clerk, well, it comes to me first.

Q. You're the first person?

A. Yes.

Q. If a new supreme court case comes it gets delivered to you?

A. Yes.

Q. If a county court indictment gets assigned to Judge McGuire, that word would come to you?

A. Yes.

Q. What, if any, procedure is in place to review cases prior to taking any action to determine whether or not there is a need for a recusal or a discloser?

A. If we get the request to judicial intervention, I review the names, the parties involved in the case, I will ask the judge if he is familiar with either of the parties I also ask Hannah if she has a conference with either of them before I

schedule them to come in for conference.

Q. Have there been occasions since you worked for Judge McGuire that cases have been assigned to Judge McGuire that he is not been able to preside over?

A. Yes.

Q. Have you ever had occasions to suggest to Judge McGuire that there is a potential conflict with one or more of the litigants, or attorneys, or witnesses?

A. Yes.

Q. Such that Judge McGuire should recuse or disclose?

A. Yes.

Q. What, if anything, is done under those circumstances?

A. I will send a letter to the chief clerk letting them know there is a conflict and the case must be assigned to another justice.

Q. Has the judge ever insisted on keeping the case even after there is a conflict that has been identified?

A. No.

Q. Could you please describe, based

on three- and-a-half years experience, the nature of your experience working for Judge McGuire?

A. I can't say enough good things about Judge McGuire. I enjoy my job. I enjoy coming to work. We get along great. We have a wonderful chambers.

JUDGE MCGUIRE: Thank you. Your Honor, I have nothing further for this witness.

THE REFEREE: Any cross.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Ms. Benton.

A. Good afternoon.

Q. You were just questioned by Judge McGuire, correct?

A. Yes.

Q. He is your boss, right?

A. He is.

Q. He hired you, right?

A. He did.

Q. He can fire you, right?

A. He can.

MS. TISHMAN: I have nothing

further.

REDIRECT EXAMINATION

BY JUDGE MCGUIRE:

Q. Ms. Benton, before you testified here today you and Judge McGuire had a discussion about your testimony?

MR. LEVINE: Objection. Beyond the scope of redirect.

THE REFEREE: I don't know that's true.

Overruled.

A. Yes.

Q. What if anything did Judge McGuire tell you about his expectation about your testimony?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. You and Judge McGuire had a discussions about your testimony?

A. Yes.

Q. Based on that discussion, did you in your mind form an opinion on what was expected of you today?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Ms. Benton, what, if any, concerns did you have in testifying today regarding the stability of your employment?

A. Can you repeat?

Q. Ms. Tishman said to you that I hired you and I could fire you, so you came here to testify today. In testifying today, what, if any, concerns did you have that you may be hired or fired based on the nature of your testimony?

A. I mean -- can you rephrase?

Q. Are you concerned that if you don't testify a certain way you can be fired?

A. No.

Q. Why aren't you concerned about that?

A. I am just here to tell you how I interact with Judge McGuire and how chambers run and how we do our job.

Q. If you were to say something unfavorable to Judge McGuire would you, in your mind, be fearful it would cost you your job?

A. No.

JUDGE MCGUIRE: Nothing further.

THE REFEREE: Nothing further from anybody?

JUDGE MCGUIRE: No.

MS. TISHMAN: No.

THE REFEREE: Ms. Benton, you are excused.

(The witness exited the room.)

THE REFEREE: You may call your next witness.

JUDGE MCGUIRE: Can I run out for one minute?

THE REFEREE: Yes.

(A recess was taken.)

(The witness entered the room.)

THE REFEREE: Good afternoon. Have a seat, please.

THE WITNESS: Good afternoon.

THE REFEREE: My name is Mark Arisohn. I have been appointed by the Commission to be referee in this matter and I've been asked to read a short statement to you, which will give you some direction and instructions..

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise as it becomes amplified on a recording.

Please turn off cell phones or other electronic equipment. Okay?

WITNESS: Yes.

THE REFEREE: Please stand and raise your right hand.

Do you swear or affirm under the penalties of perjury the testimony you

are about to give is the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

THE REFEREE: Please have a seat and state your full name for the record.

THE WITNESS: Hanna Rose Prall, H-A-N-N-A-H R-O-S-E P-R-A-L-L.

THE REFEREE: Judge McGuire, please proceed.

DIRECT EXAMINATION

BY JUDGE MCGUIRE:

Q. Ms. Prall, good afternoon. By whom are you currently employed?

A. The Office of Court Administration, New York City.

Q. In what capacity are you employed by the Office of Court Administration?

A. My title is Principal Court Attorney.

Q. To whom are you the Principal Court Attorney?

A. You, Judge McGuire.

Q. All right. How long have you been Judge McGuire's court attorney?

A. Since January 2017.

Q. Prior to becoming Judge McGuire's Principal Court Attorney, what, if any, positions have you held prior to becoming Judge McGuire's Principal Court Attorney?

A. So, before coming to work for you I had my own private practice for about seven and a half years and than prior to that I worked for John Kelly, as his associate, for about year and a half and prior to that I volunteered at Legal Aid Society in Orange County for two months.

Q. What, if any, leadership positions have you held within Bar Association?

A. I was the president of the Woman's Bar of Orange and Sullivan county for a year.

Q. Within the scope of your own private practice what types of cases did you handle?

A. In my own private practice I practiced in family court, so the full -- of cases there, so neglect, abuse, custody, PINS, juvenile delinquency proceedings.

Mostly I represented children. From time to time I represented petitioner or respondent there too. Criminal, to begin with, in my own private practice, I did criminal defense so I would do misdemeanor representation, felonies, violation of the probation hearings, so town and village court, county court. Then I would also do post-conviction motions as well for defendants.

About two years prior to working or you, I had a contact with the Sullivan County District Attorney's Office to do appellant work so I stopped taking criminal defense work at that time. I did all the post-conviction motions and the appellant work for two years. Then supreme cases I did some matrimonial work, mostly representing children in matrimonial cases. Also, I worked on foreclosures, guardianship proceedings under Article 81, they were mostly Part 36 assignments. I would also do some surrogates which was ancillary to mostly supreme court work.

Q. Have you ever been the subject of a discipline proceeding?

A. No.

Q. Prior to applying to work for Judge McGuire what, if any, position have you a applied for within the Unified Court System?

A. I did apply to be the Chief Clerk of Surrogate's Court. I am not sure when that position was. It was a couple years before I applied to work for you.

Q. At the time you applied to work for Judge McGuire you had a private practice that was successful?

A. Yes, I would say so.

Q. Why were you seeking employment in the Unified Court System?

A. A court job is a good job to have especially in the attorney series. My son, at the time, he was going to be going into kindergarten in the fall of 2017, so I had in my mind that either I would be looking to take home more work in the private practice field or maybe looking for a full-time position. The benefits of taking a full-time position is regular hours. I don't have to worry about billing clients. I get

regular paychecks, benefits, paid time off, paid sick leave.

Q. Are you currently related to anyone else that's employed in the Unified Court System?

A. No.

Q. Your family is where?

A. My family is in the United Kingdom. My husband's family all live out of state.

Q. Are you able to vote in New York State?

A. No.

Q. Why not?

A. I am a permanent resident. I don't have the privilege of voting.

Q. Before applying for the position with Judge McGuire did you have a social friendship with anyone else employed in the Unified Court System?

A. It's a small community, so yes. In 2011 when I was pregnant the court staff and attorneys had a baby shower for me and I also had become friendly with Tina Benton, Christina Benton, the chief clerk of family

court, through practicing there.
Q. You practiced in family court as well as in criminal court, correct?
A. Yes.
Q. Primarily what types of litigants did you represent in family court?
A. Children, primarily.
Q. You were an attorney for the child?
A. I was, yes.
Q. In criminal court were you ever an assistant district attorney?
A. No, because I am not a citizen you can't hold that.
Q. Is it fair to say your criminal work was on the defense side?
A. It was, except for the last two years, then I was on the people's side.
Q. You had contract to do appellant work?
A. Yes, correct.
Q. What experience, if any, did you have prior to coming to work for Judge McGuire in terms of surrogate court?
A. So my experience was more when I

was working for John Kelly, he did probate guardianship cases. It was -- that was primarily my experience then and then when I had my own private practice the issue would come up that were ancillary to my work in the supreme court or sometimes it would come up in other cases, you know, there would be and estate involved in a guardianship proceeding under Article 81 in supreme court and there could be an estate involved.

Q. Were you also a guardian ad litem in surrogate's court from time to time?

A. I never was appointed as guardian ad litem in surrogate court.

Q. Did you do court reviews for guardianship for surrogate's court?

A. No, I was on list and took the training, but I was never appointed?

Q. When you had come to work for Judge McGuire, is it fair to say you had experience that touched each of the areas that we were going to be dealing with in chambers?

A. Yes, I think that's fair to say.

Q. You came to work for Judge

McGuire in January 2017. You have been with him now for just over two years, approaching two and a half years?

A. Yes.

Q. In this time that you worked for Judge McGuire have there been occasions when you had some prior association with one or more litigants that were now appearing before Judge McGuire?

A. As their attorney, yes.

Q. For example there were cases where you had represented the children --

A. Yes.

Q. -- in a case?

A. Yes. I had a lot of cases in Sullivan County Family Court both before yourself and Judge Meddaugh, yes. There were cases that were coming before you.

Q. Some of those cases, although they had a new attorney for the child, the family files continued to appear before Judge McGuire?

A. Unfortunately, yes. That sometimes happens when you have a case, it ends and comes back for whatever reason.

Q. When those situations come up what, if anything, would you do?

A. So, if I became aware of it I would email you and let you know that I was the attorney for the child on this case and you would then make a decision whether you were just going to handle the case on your own or rescues from the case depending on -- I guess -- I presume that was depending on the complexity of the case and whether you needed my assistance.

Q. Your assistance?

A. Yes.

Q. In some occasions we have kept the cases?

A. Yes.

Q. What, if any, precautions have been put in place to ensure that you have no association with that case?

A. You would discuss it no further with me and it would all be taken care of and I would know nothing about it. There would be no decision that I could find on the chamber's files. I remember recently it happened with an objection case that

typically an objection in the family court. The appellant process from the surrogate court decision so, the objection comes to my office and I saw it was a file I was familiar with the child and I alerted the chief clerk and you to that and I presume you took care of decision and I didn't see anything more of it.

Q. On those cases you don't do any research for the judge.

A. No.

Q. You don't do any drafting for the judge?

A. No.

Q. The judge doesn't discuss the facts with you?

A. No, there is a wall.

Q. Kind of like the Great Wall of China?

A. Yes.

Q. When other cases come into chambers now, other than family court cases, what, if anything, is done to confirm whether or not there are any grounds for either a recusal or disclosure?

A. Usually Brittany will get the case. It comes in paper form, I mean, it's a motion with an RJI or a request for a preliminary conference and then she will tell me the names of it and then she will confirm there is no conflict for me and then she will discuss the same with you. I've seen her do that.

Q. Brittany then is the initial filter?

A. Yes, the paperwork comes through the internal mail, that's how we get cases right now until we go to E-filing. Yes, she gets the paperwork from the internal mail from the court clerk and she look at the name of the cases, tells me -- tells me what kind of cases they are and then she does the same with you.

Q. Those discussions take place prior to anything being done on the file?

A. Yes, prior to even conference being scheduled, yes.

Q. With respect to supreme court matters, in the ordinary course how are supreme court matters handled in Sullivan

County?

A. In Sullivan County they're primarily handled by the court attorney in conference and when they get to the trial stage, by the judge.

Q. At what point would the judge touch those cases for the first time?

A. Usually at the pretrial conference -- well, prior to that so he can familiarize himself with the pretrial conference -- a couple of weeks before the pretrial conference to prepare.

Q. In your experience with Judge McGuire he does not, unless there is some issues we need to discuss, he doesn't get involved in those cases at all personally --

A. No.

Q. -- until pretrial conference?

A. No. Usually, unless when -- usually if there is no issue with a case then no it would just come, you know, I would discuss it with you prior to the pretrial that we are going for schedule the pretrial and this is what it's about and you would take it from there and I usually sit

in the pretrial conferences with you too.

Q. Did there come a time recently when Judge McGuire broke his hand?

A. Yes.

Q. While his hand was healing was there a case that came in where the expert was the doctor that treated Judge McGuire?

A. Yes.

Q. What, if anything, did Judge McGuire do at the pretrial conference before going into the pretrial conference.

A. He made a disclosure to both attorneys. You made a disclosure to both attorneys and gave -- I thing the expert was for the plaintiff and you said this person treated me and you said for how long and both attorneys said it would not be issue.

Q. In the time you have been working with Judge McGuire have you had occasion to recommended to the judge that chambers be recuse from hearing a particular case?

A. Yes.

Q. In those situations what, if any, steps has Judge McGuire taken regarding your recommendations.

A. You recused yourself immediately.

Q. Has there ever been a case, since you have been working for Judge McGuire, where you recommended recusal or discloser and Judge McGuire has not followed through with your recommendations?

A. No.

Q. Does it happen from time to time that supreme court causes will settle when the cases are still in that conference and discovery stage?

A. Yes.

Q. Prior to a pretrial conference?

A. Yes, a lot of them do that.

Q. If that occurs typically what contact would Judge McGuire have had with that case?

A. Only what I told him about it in conversation, that would be it.

Q. Is this format the court attorneys conferencing cases and managing discovery, that format, is consistent based on your familiarity with Sullivan County practice? Would each of the judges that handle supreme court matters in Sullivan

County?

A. Yes, so before I worked for you I did appear per diem for other attorneys on supreme court conferences. Before Judge LaBuda's court attorney, that's what she did also before Judge Meddaugh's law clerk and also before your previous law clerk.

Q. Based on your experience with this procedure in Sullivan County and your experience practicing in other counties is that consistent in other counties that we have other cases handled by the law clerk primarily?

A. I can only speak for Orange County --

Q. Okay.

A. -- because it's the only other place I practiced prior to working for you. No, typically in Orange County at the time, this was probably eight years ago when I was at Orange County Supreme Court, it was handled by the judge in a court room. I think it was -- what do you call that -- cattle call where everyone was there. Everyone can listen in. Occasionally you

would go into chambers, but I believe the court attorney was in the court room but it was the judge conducting the conference.

Q. Are those judges in Orang County typically only sitting in supreme court?

A. Yes, they have supreme court judges there that just sit in supreme court.

Q. They don't have obligations in family court, surrogate court and other courts?

A. Not that I am aware of.

Q. When a preliminary conference is held what, if any, orders are generated?

A. For every preliminary conference we generate a order, now if the case it on track and there is no particular issue we have a form we fill other with the attorneys. If there is specific unique facts in that case that require something more then a letter order is generated after the conference.

Q. The provisions of those orders, how are they generally arrived at?

A. On consent of the party.

Q. Often the two attorneys will come

in having greed already on a discover schedule?

A. Often, yes.

Q. In those preliminary conference orders, are those signed personally by Judge McGuire?

A. Yes, for the most part.

Q. If Judge McGuire is on the bench what, if any, authority do you have with respect to the preliminary conference order?

A. You have given me permission to stamp them if you're not available then I leave -- I copy it. The original, that has the attorney's signature on it and then leave the original with your signature for filing.

Q. The original still would have my personal signature on it?

A. Yes, you have the opportunity to review it.

Q. Based on your experience working with Judge McGuire what, if any, policy does he have on documents that go out containing what is attributed to be his signature.

A. That you review them first.

Q. Are they generally signed or stamped?

A. Signed.

Q. Does chambers have a signature stamp for Judge McGuire?

A. Yes, we have one.

Q. When, if at all, is that used?

A. For example, if you're away then we will scan what we want to send -- what we are hoping to send out prior to your return and if you approve it we will stamp it.

Q. It's emailed to me first?

A. Yes.

Q. I review it and then I approve it being stamped?

A. Yes.

Q. Is there any other times, other than preliminary conference orders, that i have given authority, blanket authority to use my signature stamp?

A. I believe with the pistol permanent amendment but, for the most part?

Q. An amendment is when somebody comes in to add or remove a gun from their license?

A. Yes.

Q. The people are usually there in person?

A. Yes, they are usually waiting to go pick up, yes.

Q. On those, I've given Ms. Benton authority to stamp them?

A. Yes.

Q. Could you please describe in a typical day, typical week, what percentage of Judge McGuire's time is spent in court verses his desk?

A. You're on the bench most of the time so percentage, you're on the bench every Monday, all day. Friday you're in county for the morning and often family court in the afternoon. I mean, there are some weeks you're on the bench 100 percent of the time and other weeks if a trial settle you have more time. Certainly you are on the bench more than you're not.

Q. Fair to say that we don't have an opportunity in a typical day to spend a lot of face to face time?

A. No, we communicate a lot by

email.

Q. How often, if ever, has Judge McGuire required you to come into work on a weekend or holiday?

A. You never have.

Q. What are your standard weekday hours? What time do you arrive? What time do you go home?

A. My standard hours are nine to five. I like to come in early and I usually leave by five.

Q. How often, if ever, would Judge McGuire require you to come in early or stay late?

A. Never, in fact, you sometimes said are you going to go home. You have come to my door and said, "Are you going to leave? You should go home."

Q. You said earlier you have a seven-year-old son?

A. Yes.

Q. Can you describe what, if any, accommodation Judge McGuire has made if an occasion arises where you have an issue with your son and you have to leave early or stay

late?

A. You have always accommodated me, in fact, you tried to get me to leave sooner, you have been over accommodating for me leaving if I have to.

Q. When Judge McGuire has a morning calendar, what time does that start?

A. Nine am.

Q. If he has an afternoon calendar what time does that start?

A. 1:30.

Q. Based on your two-and-a-half years experience and your observations, generally speaking is Judge McGuire ready to start at 9:00 or 1:30?

A. Yes.

Q. What expectation, if any, has he expressed to you with respect to calendar starting on time?

A. He would like them to start on time.

Q. Have you had occasions to be aware over the past two-and-a-half years of calendar that have not started on time?

A. Yes.

Q. When those occasions arise what, if anything have you observed with respect to Judge McGuire's demeanor?

A. Nothing that particularly sticks out.

Q. If cases, if the calendar is not ready to start at nine what, if anything, have you observed Judge McGuire do?

A. Well, you either talk to me because maybe I need to talk to you about a case, so I'll use that time or you go to your desk and you're at your computer, so I presume you are working.

Q. I want to talk to you about your work with Judge McGuire. Can you describe how decisions get drafted in chambers?

A. Yes. We discuss the motion the case and the decisions in it. Drafts get done. We correspond by email. A lot of the times by email because you are on the bench and I am working when you're on the bench and then you respond to me. We might discuss it in person. That is how we go about it.

Q. Is it uncommon for you to get

responses to your he emails, other than between nine and five?

A. You often respond outside of the working hours because you're on the bench when I am sending the emails so -- maybe I misunderstood the question.

Q. Often my response to you will be later than five or earlier than nine?

A. Yes and sometimes -- I mean, yes, often it's early in the morning, but you will often tell me that you were going to respond. I will say I sent you such and such to look at and you will say okay, I will look at that in the morning.

Q. Have there been occasions where you have become concerned because Judge McGuire has not responded timely to a draft?

A. No.

Q. Have there come occasions when there have been legal issues presented in a motion or a decision that you had to discuss with Judge McGuire?

A. Yes.

Q. Can you describe, please, how that takes place?

A. So, I come into your office and tell you what the issue is and we flesh it out and you ask me questions and I answer them and we go back and forth discussing it.

Q. When we are engaged in those conversations, how would you describe Judge McGuire's demeanor?

A. Open and responsive to my questions, helpful.

Q. Have you had occasions where Judge McGuire has reviewed decisions and made changes to them?

A. Yes.

Q. Or suggestions?

A. Yes, and sometimes I actually ask you to -- sometimes if I can't quite find the right words I say do you have a suggestion, but yes, you make changes.

Q. Has Judge McGuire ever adjusted a decision depending on who the attorney is?

A. No, often you don't -- you don't know who necessarily the attorneys are. I often leave that to last to type in because that's the easiest part of writing a decision of type you have the caption of the

case, the draft of the decision and often I put the return date and the -- after.

Q. You said that Judge McGuire will often be personally involved in the case for the first time at the pretrial conference stage?

A. Yes.

Q. That case may have been pending for several months or longer?

A. Yes.

Q. What, if anything, would Judge McGuire do in terms of preparing for that pretrial conference?

A. You liked having the file of the pleadings. You also request that the party send a statement of facts and then every conference I hold I make notes. We also prepare a document that has all of my notes and we often discuss it with me.

Q. Have you had occasion to join Judge McGuire at a pretrial conference?

A. Yes, I usually join you at a pretrial conference.

Q. What, if anything, have you observed with respect to Judge McGuire's

ability to communicate with the attorneys based on the fact and status of the case?

A. You are always well prepared. Sometimes you know more about the case than the attorney that appears before you and they say that to you.

Q. I want to go back to the time you were practicing law, prior to taking the position with Judge McGuire -- you are still practicing law -- prior to working with Judge McGuire, would you from time to time appear before him?

A. Yes.

Q. Can you describe please based on your observation of Judge McGuire his courtroom style and demeanor?

A. Well, you run a timely courtroom. I always found that very helpful as a solo practitioner. You were always prepared. You were authoritative in the courtroom, but also very -- there was always good morning, how are you?

Q. Since going to work for Judge McGuire can you describe how the nature of how he interacts personally with you?

A. Well, your friendly with me. You are always appropriate.

Q. Have you ever observed Judge McGuire yelling at chamber staff?

A. No.

Q. Have you had opportunity to observe Judge McGuire interacting with court employees?

A. Yes.

Q. Can you describe those observations? How does Judge McGuire treat court employees?

A. You treat them well.

Q. Have you ever heard Judge McGuire yell at a court employee?

A. No.

Q. Have you ever heard Judge McGuire address a court employee using derogatory terms?

A. No, never.

Q. Have you ever heard Judge McGuire address a member of the chamber staff using derogatory terms?

A. No.

Q. Have you ever heard Judge McGuire

speak about a litigant using derogatory terms, other than with respect, to the particular facts of the case?

A. No.

Q. With respect to that, from time to time, will Judge McGuire describe with you the fact of a particular case that he is working on?

A. Yes, you do.

Q. Is it fair to say that at times the facts of some of the cases are less than flattering regarding circumstances of the litigants?

A. Yes, unfortunately, because of the subject matter often in family court, yes they are.

Q. On those occasions, when he may discuss cases with you, is the purpose of that discussion to address some issues in the case?

A. Yes, often you do that. We just recently had one where there was an issue with a temporary order of protection and it would be fact specific based on the case law, so you needed to explain the facts so

that would we could research the issue in order to hopefully come to the right outcome in the case.

Q. Have you ever heard Judge McGuire speak to the chamber staff in a condescending manner?

A. No.

Q. Have you ever heard Judge McGuire address court officers in a condescending manner?

A. No.

Q. Have you ever heard Judge McGuire address court employees in a condescending manner?

A. No.

Q. Other than describing the facts of a particular case have you ever heard Judge McGuire address or speak of litigants in a condescending manner?

A. No.

Q. Have you had occasions during your time working for Judge McGuire to review his court notes?

A. Yes.

Q. For what reason would you need to

review Judge McGuire's court notes?

A. To assist me in writing a decision. Often you are on the bench, for example what's common in county criminal cases will have a motion and you will conduct a hearing so I will need to look at your notes to see what happened in that hearing to help me assist in drafting that decision.

Q. Sometimes, particularly in county court cases, there will be video statements that are part of it?

A. Right, yes there are.

Q. What, if any, custom and practice does Judge McGuire employee with respect to anyone in chambers viewing those videos?

A. Well, it's confidential. I keep them in my office and I review them.

Q. After you reviews them what, if any, feedback do you give to Judge McGuire?

A. I usually give you a memo. I write an email usually and tell you a break down of exactly what happened in the video and I highlight any issue that I think --

Q. Any legal issue?

A. Yes, for example, you know, maybe they're discussing the defendant's criminal history and you are going to rule in the -- that's not going to come in, so I will make a notation of what time it starts, what time it comes to an end so you can say that's going to be taken out. I guess redacted would be the word.

Q. You said you had an opportunity to review Judge McGuire's notes, how would you describe the completeness of those notes?

A. They're very thorough notes. They greatly assist me in knowing what's going on in a case because not only are they thorough of what's happened that day, but there is usually a history and breakdown of what's happened in the case, so.

Q. Could you describe for the court please, what is meant by standards and goals?

A. These are from -- well, they're from the chief justice of the court, the initiative and basically -- I guess you would call them a bench mark of how long we

have to, from start to finish, complete a case.

Q. Have you had occasion to review Judge McGuire's statistics in supreme court over the past several years?

A. Yes.

Q. Can you describe please how, if at all, Judge McGuire's statistics have changed over the two and a half years you have been working with him?

A. I do this every term, the 13 terms in a year. I like to keep a check on it since beginning to work for you in January 2013. I believe the first two terms we were fifteen percent, which was over what they wanted you to be at seven percent. The second and third term we were at seven and since then we have been under that, we have been getting four percent, one percent, two percent, three percent, always underneath the seven percent.

Q. Where are we currently?

A. I believe three percent. We have three cases over standards and goals and 101 cases pending.

Q. Are you familiar with Judge McGuire's standards and goals in county court?

A. Yes.

Q. Can you describe, please, how chambers had performed with respect to standards and goals in county court?

A. Excellently. I think we only had one case over standards and goals in the last two and a half years that I've been there. That was Mr. James and I think you had permission. The administrative judge knew about that.

That was a complex case it was -- he had a federal case pending, so he had had a plea agreement worked out but he couldn't take the plea there was some complexity, I think, in the federal case and he couldn't plea it in county court.

Q. We were on hold because of the federal litigation going on?

A. Yes.

Q. Since coming to work for Judge McGuire have you had occasions to request annual leave?

A. Yes.

Q. What, if any, procedure does Judge McGuire follow regarding annual leave?

A. You make the request in advance and I then I always made it writing to you by email.

Q. Have you had a situation where a request for annual leave had been denied?

A. Never.

Q. Has there been occasion when you had to ask for time off on short notice to address a family issue?

A. Yes.

Q. What, if any, reaction had you gotten from Judge McGuire under those circumstances?

A. You have given me permission to take the leave and depending on what it's for, you also followed up to see if my son is okay or if I need any additional time.

Q. What, if any, personal errands had you been called upon by Judge McGuire to run?

A. None.

Q. Have you ever been aware of Judge

McGuire engaging in private legal work during the time you worked for him as a judge?

A. No.

Q. Have there been occasions where you answered telephones in chamber?

A. Yes.

Q. Have there been occasions where the caller in the other line has asked to talk to speak to Judge McGuire?

A. Yes.

Q. What, if any, protocol is in place when somebody asks to speak with the judge?

A. They were not going to talk to you, so I ask what they want to talk about and they try to say it's personal and I would say, well you still need to tell me what it's about and then I don't put them through and I let you know they called to let you know the -- that someone tried to call, but I wasn't going to let them talk to you.

Q. When you provided those messages to the judge what, if any, response have you

gotten from him?

A. Thank you for letting me know and you did the right thing?

Q. Is it fair to say that other than immediate family, Judge McGuire calls are completely screened out?

A. Yes.

Q. Have you been aware of gifts that have been delivered to chambers for Judge McGuire or for chambers?

A. No.

Q. Do you know what, if any, protocol is in place in chambers if someone should attempt to provide a gift?

A. They get refused.

Q. Where?

A. They should get refused before they even come back to chambers they --

Q. Have there been times during the time that you worked for Judge McGuire that he has taken annual leave?

A. Yes.

Q. Have you been in chambers while Judge McGuire is away on annual leave?

A. Yes.

Q. During those occasions when Judge McGuire is away on annual leave what, if any, contact would you have with him?

A. You often email to let us know what you are doing for the day in case we have anything we need to contact you about and then sometimes you send a text message as well.

Q. Have you had occasion to contact Judge McGuire when he has been on annual leave?

A. Yes.

Q. What, if any, response do you get from him?

A. You usually respond quite quickly with the answer I need or sometimes you will say that you will call.

Q. Now when you are away on annual leave, has Judge McGuire required you to take work along with you when you're out of chambers?

A. No.

Q. Could you please describe your experience working with Judge McGuire over the last two and a half years?

MR. LEVINE: Objection.

THE REFEREE: Regarding what?

JUDGE MCGUIRE: Just overall.

MR. LEVINE: Objection.

THE REFEREE: What's the objection.

MR. LEVINE: We have had a million questions about every single aspect of this. It seems to be repetitive. Asked and answered.

THE REFEREE: Overruled. You can answer.

A. It's been an excellent experience. I would probably go so far to say it's probably one of the best jobs I've had. You are great to work for. When you interviewed me you told me you wanted me to speak to you like your equal and I've never felt not like your equal and I will say what I think in a case and I have a different mind than you. I found it intellectually a great job to have. Personally a great job to have. I haven't got anything bad to say about working for you.

JUDGE MCGUIRE: Thank you, your

Honor. I have nothing further.

THE REFEREE: Cross.

MS. TISHMAN: I have no questions.

THE REFEREE: Thank you for coming. You are excused.

THE WITNESS: Thank you.

(The witness exited the room.)

THE REFEREE: Judge McGuire, do you have anything further today?

JUDGE MCGUIRE: I don't, Judge.

THE REFEREE: That is what we expected.

For the record, it is almost 1:00. We will adjourn now until Monday morning at 10:00 a.m.

I wish everybody a good weekend.

(TIME NOTED: 12:53 P.M.)

CERTIFICATION

I, CHRISTINE SOCCI, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, taken in the matter held on May 17, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand the 14th day of June 2019.

Christine Socci

CHRISTINE SOCCI

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE,

a Judge of the County and Surrogate's Courts, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court, Sullivan County

---

61 Broadway
New York, New York

May 20, 2019
10:00 AM

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

BENJAMIN OSTRER, ESQ.
111 [redacted]

Also Present:
HONORABLE MICHAEL F. MCGUIRE
Respondent
MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

For the Commission

	Direct	Cross	Redirect	Recros
Judge Mark Meddaugh	1991	X	X	X
Tara Hirsch	2009	2038	2039	X
Corinne McGuire	2042	2103	2157	X
Judge Michael F. McGuire	2178	X	X	X

MR. MAISONET: We are on the record.

THE REFEREE: Good morning, everybody.

Today is May 20, 2019. This is the continued hearing in the matter of Michael McGuire.

Welcome back, Mr. Ostrer.

MR. OSTRER: Thank you, your Honor.

THE REFEREE: Are we ready to proceed?

MR. OSTRER: Yes, your Honor. Your Honor, I did have an application to make. We overlooked in subpoenaing our next witness Judge Mark Meddaugh of the Sullivan Family Court, Acting Supreme Court Justice to submit our subpoena to you.

I believe the rule provides as Mr. Levine correctly pointed out to me that the subpoena must be authorized by, your Honor.

THE REFEREE: Okay.

MR. OSTRER: So he is here. He did bring with him the subpoena that

had been previously served upon him by Judge McGuire, but I would request because I believe it would be a defective subpoena to ask that you countersign.

THE REFEREE: I would be happy to do it.

MR. OSTRER: I have both, your Honor, the newly drafted subpoena and a copy of the one that was served.

MR. LEVINE: We have no objection. We will take a copy.

THE REFEREE: Hand it up.

MR. OSTRER: (Handing).

THE REFEREE: Okay. I have signed it.

MR. OSTRER: Thank you very much.

THE REFEREE: Sure (handing).

So your next witness.

MS. TISHMAN: Well, before we -- do you have anything else?

MR. OSTRER: I did. Your Honor, I know this may have been addressed in my absence on Friday, but -- and I know that Judge McGuire may have made this

request concerning the audio tape of the interviews of Wendy Weiner.

JUDGE MCGUIRE: Weiner.

MR. OSTRER: Weiner.

There are numerous entries in both the September 1 transcript and the October 19 transcript that contain three dots and a question mark appearing on page 10, page 12, page 14 of the October 19 transcript. The names that are phonetically spelled at page 133 of the September 1 transcript, page 19 of the October 19 transcript. There are also notations of unintelligible statements by the witness at page 5, page 57, page 94, page 116, page 122 and page 147 of the transcripts that were provided to respondent.

Also, we believe that the tape recording since it was not simultaneously taken by a stenographer, but it was the tape that was stenographically -- that was subsequently prepared by a

stenographer, that the tape itself would be the best evidence of what the witness had said, and also may provide or may have provided the witness whose memory on cross-examination could not even be refreshed in reading the typed lines of the transcript, a better opportunity to provide more clarity to her testimony had she been able to -- had we been able to confront her with her spoken word.

For those reasons, I am renewing the request that the Commission provide the respondent with the audiotape of the October 19, 2015 interview and the September 1, 2015 interview, and any other recordings which may have been made that could have been utilized to refresh her recollection.

That would be my second request this morning.

THE REFEREE: Before I ask Mr. Levine to respond I will give you my thoughts on this. The transcript that you are talking about was produced

when?

MS. TISHMAN: During discovery, which would have been February of this year.

THE REFEREE: So --

MS. TISHMAN: February 8, 2019.

THE REFEREE: So more than three months ago, and if there was those dots and unintelligibles and question marks were in the transcript then too, so if there were issues it seems to me that those issues could have been raised then. That is point number 1.

Point number 2 is that I don't know from what you said to me whether those dots and unintelligibles and question marks are on lines that are in anyway relevant to what you questioned her about last week or not, so in a vacuum very hard for me to connect those dots, so to speak.

And finally, I mean even if you got the transcript at this point, what -- I mean the tape at this point, what would you do with it?

MR. OSTRER: There are -- our case is not concluded, so there are certain uses that might be made of the tape.

THE REFEREE: For example?

MR. OSTRER: Well, we would have the prerogative of recalling Ms. Weiner, if we so desire based upon what we heard, and there is no way of knowing if the -- and I certainly don't mean to slight a stenographer, but a stenographer is listening to a tape, whether the stenographer, particularly when people are speaking over one another was able to discern what was actually said, so there is no way to compare the oral statement, which I submit would be the best evidence of what she said with the transcript.

THE REFEREE: Since the transcript is not as such admissible there is the best evidence or not the best evidence. It doesn't seem to matter to me anyway.

Mr. Levine, do you have a

response?

MR. LEVINE: I will rely primarily, Mr. Arisohn, on what you said. I think the application has already been made once by Judge McGuire. You gave an elaborate explanation as to why it was denied. I believe that for the reasons you state it is untimely. That it is insufficient specific. I don't see any admissibility even before we turned it over so.

THE REFEREE: I am going to deny the application without prejudice. I mean if you want to come back and show me the particular ellipsis is substantially germane to what we are doing here, or a particular question or unintelligible has any relevance to what we are doing here, I will reconsider this.

MR. OSTRER: Thank you. I will use the lunch break for that purpose, your Honor.

THE REFEREE: Okay.

MS. TISHMAN: We just have a slight, small housekeeping matter. A document relates to present insurance which respondent consented admitted into evidence has slight clerical errors in it. So here is the correct version. It was provided in its correct form during discovery on March 12, 2019.

THE REFEREE: To what?

MS. TISHMAN: It was provided in its correct form during discovery in our March 12th, 2019 letter with Bates number 01290.

THE REFEREE: I am not following. Is this a replacement exhibit?

MS. TISHMAN: Yes, X-13. There was a slight clerical error.

THE REFEREE: X-13?

MS. TISHMAN: Yes.

MR. OSTRER: Your Honor, I suggest that we mark it as A. Something has already been marked into evidence for the purpose of the hearing. I don't think we should --

THE REFEREE: I think that is a fine idea.

MS. TISHMAN: So it will be X-13A.

THE REFEREE: Yes. What is the error?

MS. TISHMAN: The one that was put into the bench books had something redacted that should not have been redacted. The original did not have a redaction on it.

THE REFEREE: Okay. Any objection?

MR. OSTRER: None, your Honor.

THE REFEREE: So Exhibit X-13A is received.

(Previous corrected document X-13 referred to was received and marked Commission's Exhibit X-13A in evidence.)

THE REFEREE: If we are ready to proceed, you may call your next witness, Mr. Ostrer.

MR. OSTRER: Thank you. May I leave the courtroom to get the witness?

MR. LEVINE: We can get the witness for you.

MR. OSTRER: I need to serve him first.

(The witness entered the hearing room.)

THE WITNESS: Morning.

THE REFEREE: Morning, Judge. My name is Mark Arisohn. I have been appointed by the Commission on Judicial Conduct to be the hearing referee in this matter. I have been also asked to read a statement of instructions to most witnesses, but in light of what I understand is, your Honor's, long service on the bench I am going to depart from that and simply ask you to rise and raise your right hand.

(The witness complied.)

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I swear.

THE REFEREE: Would you please have a seat.

(The witness complied.)

THE REFEREE: State and spell your full name for the record.

THE WITNESS: My name is Mark Meddaugh, M-E-D-D-A-U-G-H, last name. My first name is Mark.

THE REFEREE: Mr. Ostrer, you may proceed.

MR. OSTRER: Thank you, Judge

DIRECT-EXAMINATION

BY MR. OSTRER:

Q. Good morning, your Honor.

A. Morning.

Q. Your Honor, can you state your current position?

A. Family court judge, plus a full-time acting supreme court.

Q. And for how long have you held the position of family court judge in Sullivan County?

A. Since 1993.

Q. And did you provide any judicial service or magistrate service to the court

system prior to being elected family court judge?

A. Yes, back then we were hearing examiners.

Q. When did you become a hearing examiner?

A. October of 1985. I maintained that position until I was elected family court judge.

Q. And that would be in 1993?

A. I was elected to start serving in 1993.

Q. Actually the campaign would have been in 1992?

A. 1992.

Q. I take it you have been reelected on at least two occasions?

A. Yes, this is my third term.

Q. Now, have you held any offices within the State Family Court Judge Association?

A. I was president.

Q. And when did --

A. I don't know what year it was.

Q. Did you serve on any panels for

the Third Judicial Department?

A. I am a Chairperson of the advisory committee for the Office of Attorney for the Children. On the statewide level I am on the advisory committee on judicial ethics.

Q. Do you have any other public service?

A. A lot at the fire department. I guess that's the big one, volunteer fire department.

Q. You were the chief?

A. I was president for a number of years. I made it up to captain and it was too much work. I decided not to go on.

Q. Can you describe for the Court the community in which you serve as a judge, Sullivan County community?

A. Well, it's a very diverse community. We have gone through a lot of growing pains. We just opened a casino last year and now a water park. We have a large Orthodox population that is purchasing large tracks of land and putting large developments in.

We are really rural. The other end of the county is a lot of second home people, a lot of people who used to work in the City and now can do everything on the internet. We have a large population.

Q. Can you share with the Court if you are aware of the year-round population for the County, the resident population base?

A. That's in flux also because of I think we have the lowest unemployment rate in the state now because this last month because of the casino and the water park. We have a large Orthodox population that lives up with us throughout the entire year.

But a lot of people, they work for the municipalities, they work for the schools, they work for the hospitals, a lot of public service in Sullivan County.

Q. In your activities in the community -- well --

MR. OSTRER: Withdrawn.

Q. Do you frequently interact with people who appear before you when you are out in the community, say shopping or the

like?

A. Well, we really only have two grocery stores in Sullivan County, so -- big ones I should say, ShopRite and Walmart. There is always somebody that is in there working, or someone in there that is shopping that has appeared before you.

Q. And how about your interactions with the legal community, the attorneys that appear before you, do you see them on a frequent basis?

A. Generally not. Bar association meetings, things like that. I really don't socialize with anyone.

Q. You are not permitted?

A. Right.

Q. Now, can you describe the court area where you sit or where chambers are located?

A. Well, we have two courtrooms, plus a small courtroom for the support magistrate. Then we each occupy an office, our clerks have an office, our secretaries have an office and right down the hall from Judge McGuire's courtroom.

Q. What proximity does your courtroom and chambers have to the courtroom and chambers that are occupied by Judge McGuire?

A. Well, it is just right down the hall. It is not that far.

Q. When you say just down the hall?

A. Well, it's down the hall, plus there's a couple of rooms in between our chambers -- my courtroom and his courtroom, plus a hallway.

Q. Now, in your -- to coming into your courtroom, would somebody have to pass through security?

A. Yes.

Q. Would that be the same security that serves Judge McGuire's courtroom?

A. Yes.

Q. Would the court officers who man the security area entering to the two family court magistrates room be the same for both the people attending your court proceedings as Judge McGuire's?

A. Yes, the same court officers.

Q. Do the court officers rotate in

an out of your courtroom as well as Judge McGuire's courtroom?

A. Yes, they do.

Q. So they would during the course of a morning calendar say, would you have a court officer in your courtroom who had been in Judge McGuire's courtroom?

A. Well, what I think they try to do is monthly assignments, so I have one court officer for the entire month, but there are so many vacations and sick days so you get a good variety. I think that is how they do it.

Q. In terms of the -- is there an inventory or a census of court officers who would serve in the Sullivan County Court during a particular term or month?

A. Yes.

Q. How many different court officers would you say you would interact with during a months' proceedings during an assignment?

A. Well, I would interact with every one of them eventually. I say good morning and everything like that. Some are assigned to the magnetometer so they never float in

and out. They are always coming around. They have to do the security checks. They have to make sure the windows are closed for lunch, make sure they are closed for the day.

Q. And there are superior officers there, lieutenants or sergeants in the command?

A. There's a sergeant there full time and a lieutenant who floats between surrogate's court, our court and the other courthouse.

Q. Now, you also said you serve as an acting supreme court judge?

A. Yes.

Q. Do you have to travel -- do you know what travelling up the hill is?

A. Yes, travel up the hill.

Q. What is travelling up the hill?

A. It's a ten-minute walk at most. It's only two blocks away.

Q. Do you also sit up the hill, or do you handle your supreme court proceedings in your courtroom?

A. All the jury trials I have to do

in the other courthouse. We don't have it -- we tried doing a jury by us, but it just didn't work, so I do all of my jury trials up there, but everything else, for the nonjury trials, the matrimonial I do all by my -- in family court.

Q. Now, have you ever -- do you know Wendy Weiner?

A. Yes.

Q. And who is Wendy Weiner?

A. She was my flower girl at my wedding.

Q. So you have known her quite a while?

A. I have known her family, her parents for a long time.

Q. The Gallagher's?

A. The Gallagher's, right.

Q. So you have known her since she was a child?

A. Yes, a baby.

Q. And I believe you -- she assisted you in one or more of your campaigns?

A. Yes, one the campaigns she was, like, a co-chair of the campaign.

Q. Did you at any time encourage her to seek a job within the court system?

A. Yes, she was -- where she was working was transitioning, so I said if you want to apply, apply.

Q. When you say it "was transitioning," what do you mean?

A. I think she said a lot of the stuff, the legal research and stuff was being outsourced to wherever.

Q. So it was just making a change?

A. Yes, she just wanted to make a change.

Q. Did you in anyway inform her concerning opportunities as -- for applications for chief clerk or deputy chief clerk in Sullivan County Court?

A. Yes.

Q. You did?

A. Yes.

Q. How about for the position in Judge McGuire's chambers?

A. I don't know -- I don't recall any conversation I had with her about it, but I know the Judge asked me about her.

That's all I can really recall.
Q. You recommended her for the position?
A. Yes, I thought, you know, she had a lot of experience in the legal profession. She did a lot of work for the office that she was working for.
Q. And did there come a time that you learned about any --
MR. OSTRER: Withdrawn.
Q. Did you ever hear any yelling or screaming or loud noises coming in from -- emanating from Judge McGuire's chambers?
A. No.
Q. How about from his courtroom?
A. No.
Q. Were you ever informed by anybody -- and you are the most senior judge --
A. Correct.
Q. -- in terms of tenure service in Sullivan County presently?
A. On the supreme court bench.
Q. Was it ever brought to your attention that Judge McGuire was misbehaving

in terms of his court proceedings?

A. His court proceedings, I don't recall anybody saying anything. Wendy Weiner had a regular conversation with my secretary.

Q. Was anything brought to your attention?

A. No, that I can recall.

Q. Now, and you -- did you serve as mentor to any newly elected judges?

A. Yes, and Judge McGuire was elected and I was assigned as the mentor.

Q. Who assigned you as the mentor?

A. The administrative judge.

Q. Did there come a time, or were there any occasions in which you had to counsel Judge McGuire about any of his activities?

A. If he had a question, I spoke to him about it.

Q. Now, did you ever need to counsel him regarding his conduct?

A. I never did, no.

Q. Were you ever made aware that -- by Ms. Weiner or her parents that she was

going home daily from chambers crying?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. No.

Q. In the first six or seven months that Judge McGuire was on the bench you were his mentor; is that fair to say?

A. Yes.

Q. During those first six or seven months were you aware of any or any difficulties that Wendy was alleged to have been having brought to you attention?

A. Only what she shared with my secretary Evelyn.

Q. Do you know when that was that she shared anything with Evelyn? Would that be January of 2015?

A. I don't -- whenever she started, because, you know, Evelyn is sort of the senior secretary also. She is always giving out advice to help people.

Q. Was anything that Evelyn shared with you, did you find necessary to take any action upon it?

A. I didn't take any action on

anything that was said to me.
Q. With respect to Judge McGuire?
A. Right.
Q. How long has Evelyn worked in your chambers?
A. A long time.
Q. Ten years?
A. Ten years. I think she just had her tenth anniversary.
Q. Were -- are you familiar with the -- did you have any -- was anything brought to your attention concerning events that were alleged to have occurred on January 14, 2015 between Wendy Weiner and Judge McGuire?
A. Like I had mentioned, the only thing that was brought to my attention was what Evelyn told me.
Q. Now, are there -- now, do you have occasion to pass through Judge McGuire's chambers?
A. No, I pass though his courtroom every day. It is the quickest way in and out to the parking lot. I pass right by his door every morning and night too.

Q. So in terms of close being down the hall to rather -- you are in rather close proximity less than 50, 60 feet from one --

MR. LEVINE: Objection. Leading.

THE REFEREE: Why don't you just tell us how far the offices are apart, to the best of your recollection?

THE WITNESS: It is probably about 125, 150 foot. It's just down one hallway and a right hand turn.

Q. Now, what time did you arrive at work?

A. Generally I try to be there by 7:30.

Q. And do you encounter Judge McGuire at that hour?

A. No.

Q. Okay. When do you generally see Judge McGuire?

A. Generally probably not until the after the morning calendars are done.

Q. Okay. So you would go from your chambers to your courtroom. He would go from his chambers to his courtroom and you

would see one another after the calender?

A. Right. I mean he may come down to speak to our chief clerk or walk past the office, but once we get in the courtroom for the day you are sort of stuck there.

Q. Do you know approximately -- have you seen him, or have you arrived together with him in court simultaneously?

A. I imagine we have. I don't recollect an occasion when we did that.

MR. OSTRER: Excuse me.

Q. Do you communicate with your staff by email?

A. Sometimes, yes.

Q. Text?

A. Very few texts.

Q. But you do from time to time communicate by text?

A. Yes, I would think so. Well, I texted my secretary today that I was here.

MR. OSTRER: Nothing further, your Honor.

Thank you very much.

THE REFEREE: Any cross?

MS. TISHMAN: No questions.

THE REFEREE: Thank you, Judge. You are excused.

THE WITNESS: I think you need a copy of this.

MR. OSTRER: Yes, we do.

Do we need one for the Court, your Honor, since you signed it?

THE REFEREE: I don't.

THE WITNESS: Thank you.

(The witness exited the hearing room.)

MR. OSTRER: Thank you, your Honor. Safe travels.

THE REFEREE: Please call your next witness.

MR. OSTRER: Yes, Ms. Tara Hirsch. She is in the waiting room.

MS. PARTIDA: Witness entering.

THE REFEREE: Please have a seat.

Good morning.

THE WITNESS: Good morning.

THE REFEREE: My name is Mark Arisohn. I have been appointed by the Commission on Judicial Conduct to be the hearing officer in this case.

THE WITNESS: Okay.

THE REFEREE: I have been asked to read a brief statement to you which will contain some direction and information.

A court officer who will transcribe the proceedings is present -- I'm sorry.

Strike that.

A court reporter who will transcribe the proceedings is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed, and answer each question with words, not a nod or gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment.

Okay?

THE WITNESS: Okay.

THE REFEREE: Please rise and raise your right.

(The witness complied.)

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat.

(The witness complied.)

THE REFEREE: State and spell your full name for the record, please.

THE WITNESS: Tara, T-A-R-A, Hirsch, H-I-R-S-C-H.

THE REFEREE: You may proceed, Mr. Ostrer.

MR. OSTRER: Thank you, your Honor.

DIRECT-EXAMINATION

BY MR. OSTRER:

Q. Good morning, Ms. Hirsch.

A. Good morning.

Q. Can you tell us how you are

currently employed?
A. I am employed as a court clerk for the New York State Court System in --
Q. And where -- I'm sorry. I didn't mean to interrupt you.
A. Sullivan Supreme and County Court.
Q. Where is that located?
A. In Monticello, New York.
Q. And how long have you been so employed?
A. Total for 14 years, as a court clerk only for the last about six months.
Q. Prior to being a court clerk, what position did you hold?
A. I was a court assistant.
Q. What -- can you describe for us what a court assistant is?
A. We handle -- for me, I am assigned to the criminal part, so I handle all of the criminal filings for Sullivan County Court. I prepare calendars. I schedule everything for criminal court. I data enter all of the information. I am in the courtroom with the judges during court.

Our court is very small, so there is one -- myself handing the criminal case load, and I have one person who helps me part time. She is also assigned to do supreme court work, so I pretty much handle anything that has to do with felony cases coming into county court.

Q. And that would be for which judges?

A. I clerk for Judge McGuire and Judge LaBuda and Judge Schick if he handles any criminal court.

Q. And can you tell us over what period of time did you perform the duties you have just described?

A. I have been working in the court system in that office for 13 and a half years, and I have worked in -- been in the criminal part the entire time in some capacity. I didn't start going into the courtroom. I started out as a senior court office assistant. In that position you don't go into the courtroom, but I have basically been doing everything else since 2010.

Q. So when did you start your courtroom duties?

A. Occasionally, I would go into the courtroom to fill in for someone else probably about 2006 to 2007, but on a regular basis where I was going to court just about every single day, 2009, 2008 around there.

Q. So you were performing those duties during the time period where Judge Burton Ladino was one of the elected county court judges?

A. Yes.

Q. Now, and you would have been there from the inception of Judge McGuire's term?

A. Yes.

Q. Now, did Judge Ladino carry a criminal calendar?

A. He did, but it was minimal.

Q. When you say "minimal," could you compare it to the calendar that Judge McGuire carried, say after he became county court judge in January of 2011?

A. Judge Ladino only handled

criminal cases where Judge LaBuda recused himself, so he wouldn't have I would say a set case load, but only a couple of criminal cases per year, so he really didn't have a steady calendar, say, like, every week the way that Judge McGuire does.

Q. And where were Judge Ladino's chambers located?

A. Judge Ladino's chambers were located in the family court annex, the government center.

Q. Do you know the expression, "Up the hill?"

A. Yes.

Q. What is the expression -- what does "Up the hill" indicate?

A. The courthouse that my office is in at 414 Broadway sits kind of on top of the hill and the government center is down the hill on North Street. People say that they are going up the hill that is to the courthouse where you go down the hill to family court.

Q. Where are county court proceedings held?

A. County court proceedings are normally held in the Sullivan County Courthouse at 414 Broadway.

Q. When you say generally, are there proceedings that take place in the family court?

A. Well, now, if we have race for age cases they are held in family court at the inception, but generally almost all the proceedings would be held at the courthouse.

Q. Are you present when Judge McGuire presides over a criminal calendar?

A. Yes.

Q. And that takes place where?

A. At the courthouse at 414 Broadway.

Q. Is there any other staff that will attend court sessions, county court sessions with Judge McGuire?

A. Do you mean like court officers and?

Q. You could describe that. That would be fine.

A. So normally there are two court officers assigned to a part for each judge.

So there would be the court officers, there were district attorneys, or other attorneys, but normally from our office it would generally just be one court clerk.

Q. Currently that would be you?

A. Yes, unless I am out.

Q. You did describe that another clerk may cover you, or you may cover for another clerk?

A. Yes, once in a while.

Q. And so do you have an office or a desk?

A. A desk.

Q. Where is your desk located?

A. My desk is in the court clerk's office on the main floor. When you walk in there is the front counter, and then two desks in that office area and just beyond that there is another office area, and I am one of the two desks.

Q. That would be up the hill or in the annex?

A. Up the hill.

Q. Now, as a result of where you are situated, do you have occasion to

communicate with Judge McGuire by a variety of means?

A. Yes.

Q. Can you describe for us how -- what means you use to communicate with Judge McGuire about court matters?

A. Mainly by email. If it is not, because his chambers are down the hill, and we don't have the opportunity so much to interact face to face except for on Friday's when we have calendar, so we email a lot to get what we need.

Q. Phone?

A. Phone occasionally, but generally email.

Q. Text?

A. Once in a while.

Q. Do you both initiate and respond to texts or can you explain how that?

A. You know, we don't really text very often as a means of communication. A couple of times, like, if the Judge had doctor appointments and he was running a little bit late for calendar, normally just about nine-ish, he may send a text to say he

was on his way, just so that we weren't all sitting and waiting.

And then maybe once or twice if we had an arraignment come up that they needed a judge to handle an arraignment I may text him, but that is I wouldn't say our primary means of communicating. It would be by email.

Q. Now, I am just going to ask you a few questions regarding pistol permits. Are you familiar with what a pistol permit is?

A. Yes.

Q. What is a pistol permit?

A. A license you would go before a judge to get a licence to carry a handgun.

Q. Can you tell me, what, if any, filing system you maintain in your capacity as a clerk of the county court with respect to pistol permits, if any?

A. We don't maintain any kind of files for pistol permits. Those are held and kept by the county clerk.

Q. And as a clerk of the county court, are you involved in any way in scheduling pistol permit interviews?

A. No.

Q. Do you keep any record of pistol permit interviews?

A. No.

Q. Are there any records that you're aware of with respect to pistol permits that are maintained in the county count offices, the county court clerk offices?

A. None that I am aware of, no.

Q. Are you -- do you at all handle the background checks conducted by the sheriff?

A. No.

Q. Now, in your tenure in the court, have you interacted with court officers assigned to the Sullivan County Superior Court?

A. Yes.

Q. Over what period of time would you say you have interacted with court officers?

A. Over my entire career.

Q. How has -- and could you describe the relationship between court officers and court personnel like yourself, is it a

collegial atmosphere?

A. Yes, I would say it is friendly.

Q. Share birthday wishes and the like?

A. Yes.

Q. Get to know one another?

A. Yes.

Q. So not a very anonymous place if you are in the court system?

A. No. You try to take your birthday off.

Q. What?

A. You try to take your birthday off.

Q. Why is that?

A. You don't want everyone singing happy birthday to you.

Q. Now, during your tenure, were you ever alerted or become aware of Judge McGuire mistreating a court officer?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I had heard, but all --

THE REFEREE: I'm sorry?

A. I had heard things, but all

hearsay. Nothing that I had heard, witnessed myself personally.

Q. So have you ever observed Judge McGuire strike or shove anyone in the court?

A. Never.

Q. Yell at any court personnel?

A. No.

Q. Disrespect any court personnel by addressing them in a condensing or disrespectful nature?

A. No.

Q. Now, you said you have a calendar on Friday's?

A. Yes.

Q. Is that on a weekly basis when court is in session?

A. Yes.

Q. Defendants are brought into court or appear voluntarily?

A. Both.

Q. Are they produced -- where is the jail in relationship to the courthouse?

A. The jail is right next door to the courthouse currently. There is actually a door -- a doorway that the jail officers

will bring the inmates in a side door. They don't ever have to actually leave. They don't go out in front of the jail. They just come in to the courthouse through a side door that leads directly into the courthouse.

Q. In Sullivan County, do the sheriffs actually come into the courtroom with people in custody?

A. Yes, they do.

Q. So they are not turned over to the court officers?

A. That's correct. They are in the sheriff's custody the entire time.

Q. Now, with respect to the proceedings in county court, did you have any practice with Judge McGuire in terms of getting him, let's say SCI paperwork?

A. So any of the documents -- when an SCI is first scheduled, I send an email out to all the parties letting them know the dates that the case will appear on the calendar. That it has been assigned to Judge McGuire, and we forward a proposed superior court information for the rap sheet

and an outline of the proposed disposition. I generally say as soon as possible. I don't want to give them an exact date, but we like to have it about a week in advance and everyone can.

Q. Why is that that you need it a week in advance?

A. So it can be reviewed if there are any mistakes in the document. A lot of times they paste a template for a document. They cut and paste it. It could have different names in different spots, but also if it is a proposed disposition, and that way the Court can review what the disposition is to decide if they are going to go along with it.

Q. When you say, "The Court," that would be?

A. Not me, the judge.

Q. It would be Judge McGuire.

So is that an important duty to get the paperwork in advance of the court appearance so Judge McGuire can review it?

A. I think it is so he can prepare.

Q. And you say an SCI is superior

court information. Can you explain how it differs from an indictment; if you know?

A. If you are waiving your right to appear before a grand jury.

Q. So these are generally -- are they generally cases that are going to plead?

A. Yes, you are agreeing that you are going to plead to a set charge, whatever charge or charges that are listed in the superior court information. Occasionally we have defendants that plead not guilty, and we proceed that way, but 99 percent of the time the person is expecting to plead guilt.

Q. And after a plea of guilty or a conviction after a trial, are you familiar with what a PSI is?

A. Yes, it is a pre-sentencing investigation report.

Q. Can you explain what in Judge McGuire's court the choreography is for handling PSI paperwork?

A. So I prepare a PSI order for the probation department, which I send them and I give it a return date about a week in

advance of the sentencing date. I let the probation department know that I want it by this date, and the sentencing date is a week to follow, so when they send the report to me I can either forward it on to Judge McGuire, or his secretary and it can be reviewed by the Judge prior to sentencing.

Q. And is it the practice during your tenure working with Judge McGuire that he requires that the PSI be provided to him prior to sentencing date?

A. Yes.

Q. And how is it that you, I believe you said you email?

A. Yes.

Q. Do you email directly to Judge McGuire pre-sentence investigation reports?

A. I usually email directly to Judge McGuire and also to Brittney Benton, his secretary that way I know somebody has it.

Q. And during your tenure when you say Brittney as his secretary, anybody who had held that position prior to her, would you have emailed to Wendy Weiner?

A. Yes, yes.

Q. And that would be simultaneous with emailing Judge McGuire?

A. Yes.

Q. Are there a variety of email accounts that you would direct paperwork to?

A. There's also a McGuire's Chamber main email box that I do use occasionally. It's not the email address that I use all the time.

Q. Do you communicate with defense counsel about scheduling matters via email?

A. Yes.

Q. Or via text?

A. Occasionally I do for attorneys that practice constantly, for instance, like, Legal Aid. That's right across the street. Sometimes if I am not at my computer station and I know that an arraignment is going to happen, and I am trying to get everything coordinated and together, I may text the attorney instead of emailing, because I am not at my computer.

Q. Now, is there any -- do you have any issues in terms of reaching Judge McGuire based upon the amount of time that

he actually spends on the bench in courtrooms?

A. No.

Q. How do you overcome the fact that he is on the bench?

A. If he's on the bench and I need to contact him?

Q. Yes, say he is presiding in family court and you need him for a county court matter?

A. If it were an emergency that I needed him to see a note immediately, then I would ask -- I would call down to the court officer's main desk and ask them to pass a note or have his secretary if she is able to, you know, pass him a note.

Q. Now, do you communicate with any court personnel by cell phone, by calling their cell phones?

A. Not often.

Q. Do you have, say Brittney's cell phone?

A. I do.

Q. Did you have Wendy's cell phone number?

A. I don't believe I ever did.

Q. So the Judge never provided you with Wendy's cell phone to call her?

A. No, and I have Brittney's cell phone number from Brittney directly.

Q. Now, do -- in terms of the manner in which Judge McGuire handled his criminal calendar, are there any differences between his custom and practice and that of Judge Ladino that you are aware of?

A. I don't recall ever being in court with Judge Ladino. I am familiar with Judge Ladino. And I was working in that office when Judge Ladino was still sitting on the bench, but I don't recall ever having clerked while Judge Ladino was handling a case.

Q. And he was the elected county court judge from sometime in the '90's until 2010?

A. Yes.

Q. Now, in terms of your personal interaction with Judge McGuire, have you -- has he ever spoken to you in a condescending manner?

A. No.

Q. Has he ever disrespected you?

A. No.

Q. Has he ever thrown files?

A. No.

Q. Has he ever acted in a manner unbecoming of a gentleman?

A. Never.

Q. Now, when you are present in court, county court, for instance, where are you? Do you have an assigned place? Where are you situated?

A. I do. I sit to the Judge's left. I have my desk to the left.

Q. That little small desk?

A. The teeny tiny stuck in the corner.

Q. So you would be to the left hand side of the Judge beneath the bench?

A. Yes.

Q. That would be in courtroom two?

A. In courtroom two.

Q. That would be the courtroom that Judge McGuire would most often occupy?

A. Most of the time.

Q. He would sometimes sit in the other courtrooms?

A. If there were any other calendars going on, occasionally I would ask Judge McGuire if we could use courtroom one because the desk is bigger. If we have a lot of sentencings, it's a lot of paperwork, so I may ask if we could use the other courtroom just so that I have more room to spread my papers out.

Q. Would you --

MR. OSTRER: Withdrawn.

Q. Now, while your -- and you have been -- do you take notes?

A. Yes.

Q. Or memorandum while you are in court?

A. Yes, we keep clerk's minutes.

Q. What are "clerk's minutes?" Can you describe those?

A. Where the stenographer is writing down every single word of what is being said, we kind of take down the highlights so that you can -- you don't have to produce a transcript to kind of get an idea of what

happened in court, who the parties were that were present and who the stenographer was. That way if we need to get a transcript we can easily request that and just kind of highlights of what happened.

Q. Would those clerk's notes contain reminders for you if there was any follow up or any tasks you needed to do?

A. Yes, I mean I always have, like, the adjourn date, and if I don't have an adjourn date I will make a note on my minutes, clerk to follow up with adjourn date, or, you know, whatever it is. If a hearing needed to be scheduled. If it is, obviously, if it was something more important that happened, such as a plea or a sentencing you would have all of that information on the sheet as well.

Q. Would you present paperwork from time to time to Judge McGuire?

A. Yes.

Q. What sort of paperwork would you present to Judge McGuire?

A. Orders, 730 orders for mental health examinations, orders to produce,

sentencing documents that he needs to sign for a DNA sample. The judges need to sign those. All kinds of orders.

Q. Did Judge McGuire review the orders that you prepared?

A. Yes.

Q. Did he from time to time edit or modify of correct?

A. Yes.

Q. Did you take any offense at the fact that the Judge was correcting or modifying your orders, the orders that you prepared?

MR. LEVINE: Objection.

THE REFEREE: I'm sorry?

MR. LEVINE: I am objecting to the question.

THE REFEREE: What ground?

MR. LEVINE: Well, it's irrelevant that her personal opinion that she would be objecting to if he made an edit.

THE REFEREE: Overruled.

A. I wasn't offended by it, no.

Q. Now, when you communicated with

Judge McGuire by email, would you have -- were there occasions when you received emails with instructions of things he would like you to do?

A. Yes.

Q. Was it of any -- did it matter when the email was issued?

A. No.

Q. Did you -- were you able to access your court emails outside of being up the hill at your desk?

A. I can if I want to, yes.

Q. Would you from time to time?

A. Occasionally I do.

Q. And what were your general hours of work?

A. I work Monday through Friday, 9:00 to 5:00.

Q. And you said Judge McGuire gets on the bench close to 9:00?

A. Yes.

Q. Is there a reason you try to start close to 9:00, the criminal court proceedings?

A. Because of overtime issues we

need to be done and break for lunch. It's not at a definite time, but a lot of times Judge McGuire would have a family court calendar in the afternoon at 1:30, so we wanted to be done by 12:30, so that way he would have -- everyone would have an hour for lunch, and we weren't incurring overtime.

Q. So that made it important to get started early because there may be an afternoon calendar?

A. Yes.

Q. Now, in addition to county court and family court work, are you aware of any other courts in which Judge McGuire served as a superior court judge?

A. In supreme court.

Q. Where would that take place if he had a supreme court case?

A. I think that it is almost always at the courthouse up on the hill, but I do know they handle things. They will have conferences in chambers, but I don't know for sure. That could just be with the law clerk, so I can't speak about that, but we

do hold supreme court cases at the same time as the criminal calendar. Usually if we do that, the court officers will call the supreme court case first before we start the criminal calendar.

Q. So the supreme court calendar would likely be called in conjunction with the county court calendar?

A. Yes.

Q. Who would have the responsibility of providing the Judge with the files and documentation relative to the supreme court calendar?

A. Judge McGuire's supreme court clerk is Victoria Fuller, who also works in my office, so I don't know what the set up is if she scans documents to Judge McGuire. I don't really have any knowledge, so I don't really want to say anything about that, but --

Q. So -- I didn't mean to interrupt you. I apologize.

A. I do clerk most of the time if there are supreme court cases on his criminal calendar, or not on his criminal

calendar, but at the same time I will clerk for the supreme court case just because I am going to move into the criminal calendar, so I will handle the case in court.

Q. And that is not -- so that would be sort of outside your normal job description?

A. Yes.

Q. Have you ever had any issues with the fact that you were asked to handle supreme court work?

A. No.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. Not with Judge McGuire. Maybe with my office with scheduling, but otherwise, no.

Q. Now, do you know Wendy Weiner?

A. Yes.

Q. How do you know her?

A. She was Judge McGuire's secretary prior to Brittney Benton.

Q. Is that how you met her through work at the courthouse?

A. Yes.

Q. How often would you see Wendy?

A. I didn't see her physically very often. Maybe just a couple of times I actually saw her.

Q. Did you speak to her?

A. Yes.

Q. How often would you speak to her?

A. I would say several times a week, pretty regularly. I generally am in contact with all the judges' secretaries on a daily basis.

Q. And at anytime did Ms. Weiner bring to your attention that she was being mistreated in anyway?

A. No.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Q. By anyone?

A. No.

Q. By Judge McGuire?

A. No.

Q. Now, just another question or two, Ms. Hirsch.

So you first began working with Judge McGuire almost from his first day on

the bench?

A. I did. I wasn't his primary clerk from the very beginning, but I had worked with him the entire time because our office is so small.

Q. How would you describe your overall working relationship with Judge McGuire?

A. I prefer to work with Judge McGuire probably over any of the other judges.

Q. Why is that?

A. It is easy to schedule things with him. It is easy to contact him. He is very considerate. You know, we have calendars on Friday, but if I ever wanted to take a Friday off, he would move the calendar because I had a difficult time getting a Friday off. So for me, that was excellent. I like the way that he runs the courtroom. He is always prepared and he treats us really well.

Q. When you say "us," who are you referring to?

A. I mean any of the other staff in

our office that fills in for me if I am not there. He is -- I think that he great to work with. I get the impression -- I don't know if I can say that, but based on emails that he has included Brittney and myself and other members of our staff on, he is always very positive and grateful for the work that we do, and we put a lot of effort into our jobs.

MR. LEVINE: Objection.

THE REFEREE: Overruled.

Next question.

MR. OSTRER: Thank you very much, Ms. Hirsch.

THE REFEREE: Any cross?

MS. TISHMAN: I just have one or two questions.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Ms. Hirsch.

A. Good morning.

Q. You testified that you were not Judge McGuire's primary clerk from the time that he started as a judge?

A. Right.

Q. And Sarah Katzman was Judge McGuire's court clerk until the summer of 2016, right?

A. I think that I may have started before that.

Q. You start in 2016 then?

A. I thought that I started clerking for Judge McGuire primarily in May of 2015.

Q. Prior to 2015, you weren't Judge McGuire's primary clerk?

A. I wasn't the primary clerk, but I did have occasion to clerk for him.

Q. So Sarah Katzman was his primary clerk until least 2015?

A. Unless there was a trial, I didn't handle trials.

MS. TISHMAN: I have nothing further.

THE REFEREE: Anything else?

MR. OSTRER: Just one question.

REDIRECT-EXAMINATION

BY MR. OSTRER:

Q. Were you ever interviewed by the Inspector General --

MR. LEVINE: Objection.

THE REFEREE: Sustained.

MR. OSTRER: I will withdraw. Sorry.

THE REFEREE: You may be excused, Ms. Hirsch. Thanks for coming.

(The witness exited the hearing room.)

THE REFEREE: Please call your next witness.

MR. OSTRER: Can we take a one-minute break?

MR. OSTRER: If you want to have our morning break now, we can do that too.

MR. OSTRER: That would be great, yes, Judge.

THE REFEREE: It's 10 after, 12 after, let's break until 11:20.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: We are on the record.

THE REFEREE: Okay. Let's wait a second for Ms. Tishman to join us.

Please be seated.

Mr. Ostrer.

MR. OSTRER: Corrine McGuire, your Honor.

MS. PARTIDA: Witness entering.

THE REFEREE: Good morning, Ms. McGuire. My name is Mark Arisohn. I have been appointed by the Commission on Judicial Conduct to hear and report on this case. I have been asked to read a brief statement to you, which will give you some information and some direction.

A court reporter who will transcribe the proceedings is present, in addition these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until the question is completed, and answer each question with words, not a nod or gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. Please turn of cell phones and other

electronic equipment.

Okay?

THE WITNESS: Yes, sir.

THE REFEREE: Would you please rise and raise your right hand.

(The witness complied.)

THE REFEREE: Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE REFEREE: Please have a seat.

(The witness complied.)

THE REFEREE: And state and spell your full name for the record.

THE WITNESS: Corinne McGuire.

THE REFEREE: Spell it, please.

THE WITNESS: C-O-R-I-N-N-E, M-C-G-U-I-R-E.

THE REFEREE: You may proceed, Mr. Ostrer.

MR. OSTRER: Thank you.

DIRECT EXAMINATION

BY MR. OSTRER:

Q. Good morning, Ms. McGuire.

A. Good morning.

Q. For the record, how are you related to Judge McGuire?

A. I am his wife.

THE REFEREE: Could you move the mike a little closer to you?

THE WITNESS: Sure.

Q. For how long have you been married to Mr. McGuire, Judge McGuire?

A. 20 years.

Q. Do you have any children?

A. We do.

Q. Who are they?

A. K[redacted] M[redacted], W[redacted] M[redacted], those are my stepsons and C[redacted] M[redacted] is mine and Michael's son.

Q. How are you presently employed?

A. I at the moment am not.

Q. Can you tell the Court what your educational background is?

A. Sure. I went to Cortland, SUNY Cortland to receive my bachelors in science and education for physical education K through 12. I worked at Sullivan -- oh,

just my education. I worked and then --

Q. You can give us your --

A. I started teaching at Sullivan County Community after college.

Q. What did you teach?

A. Physical education, wellness, lifetime sports wellness.

Q. And for how long were you so engaged?

A. Up until I believe 1997.

Q. Did there come a time that you worked for your husband or worked with your husband, I should say?

A. Yes.

Q. Okay. And in what capacity did you work with your husband?

A. When I came to the college in Sullivan County Community College, he was the athletic director, and I taught classes there, and I eventually became assistant athletic director.

Q. And did you have after you meeting then Mr. McGuire, did you have any business relationship other than the college with him?

A. Worked with him?

Q. Yes.

A. Yes. Sorry. Yes, we from there he was the commissioner of a baseball league. I think it was called the Northeast Baseball League. He was the executive director, and I after the college I went to work with him, and I was the assistant executive director to the Northeast League.

Q. Approximately when was that?

A. 1997 to probably 2000.

Q. And did there come a time that you married?

A. Yes.

Q. When was that?

A. November 14, 1997; correct me if I am wrong?

MR. OSTRER: You better get that right.

Q. And subsequent to your marriage to then Mr. McGuire, do you know if he attended law school?

A. Yes, he did.

Q. And when; if you know, was it that he was attending law school?

A. He attended law school after he left the college and while he was working for the baseball league.

Q. And did there come a time that he was admitted to practice?

A. Yes, I believe it was 2001.

Q. And do you know where he went to work after he was admitted to practice?

A. The Sullivan County DA's Office.

Q. And do you know for how long he was so employed?

A. From 2001 till he opened up probably 2004.

Q. When you say "opened up," is that a private practice you are referring to?

A. Yes, a private practice.

Q. Did you have any role in the opening of his office for private practice after he left the District Attorney's Office?

A. I did.

Q. Okay. Could you describe what you did?

A. What didn't I do? Actually I set up the entire office. I ordered furniture.

It was a very big office, so there was several rooms. There was three bathrooms. I think eight rooms all together, so there was a lot of furnishing to do, setting up files, ordering letterhead, fax machine, phones, et cetera.

Q. When you say "phones," did you arrange for phone service at your husband's law office?

A. I did.

Q. Did you obtain the number from the phone company?

A. I did. They offered -- they offered a few numbers that we could have that were attached to the building, but, yes I did.

Q. And did there come a time when you actually worked on a part-time basis in your husband's law practice?

A. Yes, after I set up the office I was a full-time ski coach, and I also owned my own landscaping business.

Q. With the ski coaching and the landscaping business, did you perform any tasks or duties connected with your

husband's law office?

A. I did. I would come in occasionally and help the office with the phone calls, answer the phones initially.

Q. And was your -- can you describe your husband's practice? Was it a law firm? Was it a solo practice? Did he have other attorneys working in the practice?

A. No, it was a sole practice.

Q. And would that be for -- for what period of time was it a solo practice?

A. The entire time.

Q. So that would be from 2004 until he became a judge?

A. Until he became a judge, yes.

Q. And did there come a time were you worked full time in your husband's law office?

A. Yes.

Q. When did that commence that you began to work full time?

A. It was after the summer of 2005, of '6, because my landscaping company after fall clean-ups I -- the office was getting pretty busy, so we decided or I decided that

going there would be a better choice. That was hard work the landscaping for one woman. Yes, I did end up going, I believe in the fall.

Q. Now, did there come a time that your husband transitioned from private practice to his position on the bench as a county court judge?

A. Yes.

Q. When was that?

A. That was January 1, 2011.

Q. And was there -- can you tell us were you involved in any way activities of closing the office?

A. Absolutely.

Q. And where was the office located?

A. [redacted]

Q. Was that --

A. [redacted]. Sorry.

Q. Was that the only office that your husband maintained for the practice of law?

A. Yes, sir.

Q. Did he have any other offices anywhere in the county or anywhere else?

A. No.

Q. And when you -- can you tell us what duties you were performing prior to your husband's election in connection with the law office?

A. It -- it quickly escalated from me answering phone calls to correspondence, client intake, my main -- my main expertise I would say was real estate transactions. I did waivers. You know, clients would come in I would do the intake most of the time because he would be in court, answering the phones, sending out bills, accounts payable, account receivable, mail, copies.

Q. And could you describe the process, if any, that was undertaken by you in connection with the closing of your husband's law office? Let's deal with, what, if anything, did you have to do with his files?

A. Okay. So it was -- I did in it stages really, but his files -- so the files he -- when -- so when he was elected, he was elected in November, and we had about a month to get hundreds of files in places

where we would hope they would find homes.

So we made a lot of phone calls. We made a lot of phone calls, called clients, had them try to come and pick up their files, let them know that he had won. Most people knew that he had become a judge, so a lot of people called us. We did change business -- change attorney forms, mailings. After some trials if they were closed, I would write big closed on them and file them, but I was preparing them to get ready for storing them.

Q. Was there a process of putting files in storage?

A. Yes.

Q. Client files?

A. Yes.

Q. Okay. And how about -- can you describe what tasks you undertook in connection with the storage of client files?

A. We -- we had a -- well, our lease ran until I believe the end of February or March. I was able to secure a storage space in the office building with the files to put in the boxes. We would catalog them and put

them in order, and then put them in boxes in a storage that didn't have electric or lights, but they were being stored several hundred file boxes stacked to the ceiling.

Q. What was the reason you stored the files instead of either giving them to the client or destroying them?

A. Yes, I -- believe me, I wish people would have called us for all the files so we didn't have to store them, but some people we couldn't get in touch with, so we stored them.

Q. And what, if anything, did you do with respect to the forwarding or the receipt of mail directed to your husband's law office after January 1, 2011?

A. Well, I was still in the office doing work and sending out letters and correspondence for January into February and possibly March. So when anything would come in I still had the -- our mailbox that was near the office.

Once I knew I was closing, obviously, I was trying to close down the office and closing it down, securing and

packing everything up, I secured a post office box for the mail to go there.

Q. Where was that post office box?

A. That was straight across the street from our office in Ferndale.

Q. And so did you arrange for the forwarding of the mail from the 111 office to a post office box?

A. I did. I am not so sure we had to even have it forwarded. We -- I -- the postmaster knew me. I was there almost every single day, so they knew that we -- and I just opened it up and it went there. I don't recall actually setting up a forwarding address.

Q. So can you describe -- so you knew the postmaster on a first name basis?

A. I did.

Q. And the mailman who delivered the mail to the office?

A. I did, yes.

Q. And when you opened this post office box, was it a combination post office box, a key post office box? How did you access the post office box?

A. It was a key.

Q. And who had keys to the post office box?

A. I did.

Q. Did anyone else have a key?

A. No.

Q. So after your husband went on the bench, and you received -- you would receive mail addressed to the law practice?

A. Yes.

Q. And can you describe some of the mail that you received that was addressed to the law practice after January 1, 2011?

A. A lot of it was deeds, old deeds that would come in, things from clerks, not the county court, but courts would come in, maybe with, you know, with filings. Sometime requests for wills that Mr. McGuire had done. It was an array of different items.

Q. Did you receive any decisions for any cases that your husband had tried or handled prior to January 1, 2011 which arrived after he was on the bench?

A. Yes, I did.

Q. And what would you do with those decisions once they -- you found them in that post office box?

A. I would mail them to the respective clients.

Q. And did you receive requests for files or documents from your husband's former clients after January 1, 2011?

A. Yes.

Q. And how would you respond to those requests?

A. I would do what they asked. If they needed a file I would -- sometimes, unfortunately at night if I had to go pull a file it was dark, and I would go in with a flashlight and I would find the file and I would pull it.

And it was -- if they had left a phone call, I would call them if they were in the area they could come pick it up, or I would mail it, or if they needed something out of it if they didn't want the whole entire file I would forward it to them.

Q. And how many files would you say you designated for storage in closing your

husband's law office, client files?

A. Hundreds.

Q. Do you know if any correspondence was issued to clients informing them of what was happening with their files?

A. I am sorry. Could you repeat the question?

Q. Was any notice sent to clients of the law practice advising them of the closing of the practice or matters related thereto?

A. Yes. Yes, there were some, but they didn't respond. They didn't come and pick up their files. A lot of it was phone calls. I did a lot of phone calls personally. I know Michael did a lot of phone calls prior to him leaving the law office.

Q. And did the law office have a phone number?

A. Yes.

Q. What was the phone number of the law office?

A. [redacted].

Q. And that was the number that you

had acquired back in 2004?

A. 2004, yes.

Q. Can you tell us, what, if anything, you did with respect -- and who was the carrier for that number? Who was the phone carrier?

A. It was Verizon at the time, I believe.

Q. And can you tell me what did you do with respect to the [redacted] phone number after the office closed?

A. I kept it open. I kept it active while I was still working in the office. Once I was trying to wind down and close up the entire office, I had called the business division to Verizon asking them to -- we didn't want it a business number. I just wanted a resident if we could bring it to our home, and they said, "Absolutely, you can do that, but it would be a resident account." I said, "Perfect. That's what we wanted."

Q. Why did you find it necessary to retain the [redacted] number?

A. So people could call us for their

files.

Q. Did there come a time that you transferred the [redacted] phone number from the office at 111 in Ferndale to your home?

A. Yes.

Q. And who accomplished that request with the phone company?

A. I did. Sorry.

Q. Okay. And if someone were to call that number, let's say, in April or May of 2011, where would the phone ring?

A. The phone would ring in our den with the answering machine that I had taken from the office and hooked it to the same phone line in our den.

Q. So was there, other than the answering machine, were there any other phones --

A. No.

Q. -- connected to the [redacted]?

A. No.

Q. And who would check the messages that were left on that answer machine?

A. I would.

Q. Would you or anyone else respond

to those messages?
A. I would. Again, it was -- it started off we -- I was pretty busy. Originally there was a few calls coming in and eventually there was -- it went to one every then two months and eventually it died down but.
Q. Did there come a time that that number was terminated or disconnected?
A. Yes.
Q. When was that?
A. That was -- well, the answering machine, I don't remember if it broke or what happened. We did switch to an internet based phone because we were paying over, like, a hundred dollars a month for the phone line, which was -- nobody was calling anymore, so we switched to, I believe to a company named Magic Jack.
Q. This was again to facil -- to make it --
MR. OSTRER: Withdrawn.
Q. And what was the purpose in continuing to maintain the phone number with Magic Jack?

A. Because if anybody needed to call or needed their files I -- they needed to find me or their files so.

Q. Now, in connection with the move or the closing of the office, did you communicate with people via email?

A. Yes.

Q. Okay. And did the office have email accounts while you were located at the 111 location in Ferndale?

A. Yes.

Q. Can you describe for us what happened to those email accounts once you moved -- removed the [redacted] phone number, forwarded that to your house?

A. Okay. So when [redacted] was the business number, when I tried to move it to the home they said that was a business account. That we had an email that was Mr. McGuire's email, but it was usually open. It was an Outlook account, but it was -- I am sorry. Did you ask me the email address?

Q. Yes.

A. The email address was

Mike-law@[redacted]. That was his email in the office connected to the one computer with the phone line. When I called to have the accounted switched from a business account they said, "Well, that's a business account. You are going to lose every email. You are going to lose your email account. That's it. It has to be changed and you are going to lose all your emails." I said, "Okay." It didn't really matter because we were not practicing -- we -- he was not practicing anymore so I didn't think that was a big deal.

Q. So did you, in fact, lose the email that was affiliated with the phone number at the 111 location when you forwarded the phone to your house?

A. Yes, we did.

Q. Now, in forwarding the phone to your house, did you create email account or accounts?

A. I did.

Q. What email account or accounts did you establish when you moved the 6800 number from the law office to your

residence?

A. JudgeMcGuire@[redacted].

Q. And who had access to that email account?

A. I did.

Q. Did anyone else?

A. Mr. McGuire.

Q. And did you include that email address on any stationary?

A. No.

Q. Did you create any stationary after abandoning the Mike-law email account?

A. No.

Q. Did you publish that email account anywhere after you established it?

A. No.

Q. And who picked the moniker "Judge McGuire" for the email account?

A. I did.

Q. And why did you do so? Why did you select that moniker or identity for the email account?

A. I didn't give it a thought.

Q. Had you seen any other emails from a similar variety?

A. Yes, when I was so -- can I go back a little bit for closing of the law practice?

Q. You have to answer the question.

A. Okay. Answer the question. I had seen -- in our doing, we -- I did a swearing in ceremony. I invited a lot of people via email. Through the mail I sent out invitations. And it was -- I had seen other emails from other judges. So I just really didn't give it a thought.

Q. Do you recall any of the emails that you had seen before you created the Judge McGuire email account?

A. Yes.

Q. Which ones, if any, do you remember?

A. There was an honorable -- there was an HonorableKarenPeters@[redacted]. There was a JudgeLabuda@[redacted]. There was a few from town and villages. They responded through -- for the closing, for the swearing in ceremony, but I had seen them years prior to that so, yes, I saw.

Q. Now, in the course of closing up

the practice and scheduling the swearing in and the like, you were communicating with a variety of people via email?

A. I did.

Q. Now, you previously said deeds would come in and you worked in real estate, Ms. McGuire. What was the turn around time for a recorded document to go from, say the title company at a closing to the county clerk's office and finally find its way back to the return and record to person?

A. Months, sometimes a year.

Q. After your husband went on the bench, did you, in fact, receive recorded documents, continue to receive recorded documents for various county clerk offices, including the Sullivan County Clerk?

A. I did.

Q. And over what period of time did that occur that you received recorded documents -- the original recorded documents back from the county clerks?

A. For months.

Q. And what would you do with those documents when you received them?

A. I would forward them to the respective clients.

Q. And that would be with a letter? Would you forward it with a letter or any form of correspondence?

A. Yes.

Q. And who would issue the letter or the correspondence?

A. I would.

Q. Would you issue it in your name or the name of the law practice? How would you accomplish that task?

A. Over the years I had templates set up for correspondence, so I would have that letter preloaded and just print it out and sign it.

Q. And did you -- did the law practice maintain the original or copies of wills for clients?

A. We did.

Q. And for what period of time up to the present day have you received requests for either original wills or copies of wills?

A. Not very often, but not now, but

we did.

Q. And how about for documents in your client files? Did you receive requests from clients for documents within their files, surveys, other materials such as that?

A. Yes.

Q. How do those requests -- how do you receive or field those requests? How did they reach you?

A. Mostly it was by mail.

Q. Would you get sometimes a phone call or phone message at the 6800 number?

A. Oh, yes, at the beginning I would, yes.

Q. Now, did there come a time that you --

MR. OSTRER: Withdrawn.

Q. Are you aware -- did the law practice you worked in with your husband advertise in the phone book?

A. Yes.

Q. And did you advertise in -- when I say "you," I am talking about the McGuire Law Office in the Yellow Pages?

A. Yes.

Q. Did you take any steps to attempt to delist the law office from the Yellow Pages?

A. Relentlessly, yes.

Q. When; if you recall, did that occur, or was it an ongoing process?

A. It was an ongoing process. I originally started by phone calls, several phone calls. After a while because we would continue to get billed, and I would see the name and then they printed our address.

Q. Okay. And what was the issue about your address? What was the problem with the phone company printing your address?

A. Well, I felt for safety reasons and security reason I didn't want the phone number to be tied to our home address. I mean I figured now if anybody could look at something they could probably find us now, but back then I did not want our home address to be listed under the 6800 number.

Q. And you said you called representatives of the phone company?

A. I did.

(Documents referred to received and marked as Respondent's Exhibit H, for identification.)

Q. I am going to hand you what has been pre-marked as Respondent's Exhibit H for Harry (handing).

A. Um-hmm.

Q. You have to say yes.

A. Yes.

Q. Now, can you describe the documents that you have in your hand? Are these records that you found or located?

A. Yes.

Q. And when did you find or locate the records you have in your hand that are now marked as H for identification?

A. Last week, last -- maybe, Thursday or Friday.

Q. And where did you locate these records?

A. In our old files.

Q. Now --

A. Our office files. Sorry.

Q. And where are those files

located?

A. Some are in the basement and some are in our attic.

Q. Now, did the phone company cooperate with you in your request to delist the McGuire -- the Michael McGuire Law Office from the Yellow Pages in Verizon phone book?

A. No.

Q. Did they require -- did they ask for letters to be forwarded to them?

A. At first -- at first, when I made the phone calls they didn't request, but I asked them what --

MR. LEVINE: I am going to object to the hearsay being elicited for the truth of the matter asserted. There is no exception.

THE REFEREE: That is sustained.

Q. Did you send a letter to the phone company in or about February of 2011 requesting a delisting?

A. Yes, but I also called them --

MR. LEVINE: I am going to object to the letter as well to the extent that it

be admitted only because it's a prior consistent statement. It buttress the testimony that is here.

THE REFEREE: Well, I haven't heard it being offered yet, so we will deal with that, if and when, it is.

Q. Do you recognize the first page of Exhibit H?

A. I do.

Q. Do you recognize the handwriting that appears on the first page of Exhibit H?

A. Yes.

Q. Whose handwriting is it?

A. Mine.

Q. And did you -- what did you do with the first page of Exhibit H?

A. I faxed it with a letter, along with a letter that is dated May 1st behind it that says --

Q. Well, you can't read from --

A. Okay.

Q. But so and you faxed the first page as well as the letter on May 1st --

A. Correct.

Q. -- a handwritten letter?

Had you communicated in writing with the phone company prior to that date in an effort to close -- delist the phone number?

A. I did.

Q. Do you recall when?

A. February 19, 2011.

Q. Well, if you are using the document to refresh your recollection, Ms. McGuire, we have to make that -- if you don't remember the date I -- do you remember the date?

A. I do remember the dates, yes, I do. However, I asked them --

Q. When was it that you wrote to delist the Michael McGuire phone number, if, at anytime, prior to the May 1st fax?

A. February 19, 2011. That was because I called them and I asked them what they needed to cancel this because I was frustrated. So they told me that I had to --

MR. LEVINE: Objection.

A. -- send them a letter.

THE REFEREE: Sustained.

Strike that last part of the answer.

Q. Without saying what they told you, after you spoke to them what did you do next? What did you do next?

A. I wrote a letter.

Q. Do you know when you wrote the letter without looking at the document? Do you know when you wrote the letter?

A. On or before February 19, 2011.

Q. Is there anything that might refresh your recollection as to when you wrote the letter?

A. I spoke to them on the phone.

Q. Now, within Exhibit H is there anything that might refresh your recollection as to when you wrote the letter?

A. Yes, there's a letter here saying February 19, 2011.

Q. Does that refresh your recollection as to when you wrote the letter?

A. Yes.

Q. And after you wrote the letter on

February 19th, without reading from the letter, can you tell us what it was you advised the phone company? If you need to refer to the document to refresh your recollection, please look at it, set it aside and then answer the question. It is a document that is not in evidence, but you are free to look at it.

A. Okay.

Q. You are refreshing your recollection. Is your memory refreshed?

A. It is.

Q. What was the -- what did you convey to the phone company in or about February of 2011?

A. After I spoke to the phone company, they told me I had --

MR. LEVINE: Objection.

A. I am so sorry.

Q. Without saying what they told you. Just what you did, Ms. McGuire?

A. I am so sorry.

Q. It's not easy so.

A. I am sorry.

Q. Just what you told the phone

company?

A. I believe -- I believe I told them that we could not have our listing. We could not practice law. My husband was elected a judge, and we needed this listing out of the phone book and it needed to be cancelled.

Q. Did they cancel it in response to your phone calls or your letter of February 2011?

A. No.

Q. Did you write to them, again, in 2011, and if you don't remember, feel free to look at Exhibit H and see if that refreshes your recollection as to whether you did or didn't write to them subsequent to February of 2011?

A. I had my husband write the letter.

Q. What was the purpose of that letter?

A. Because I felt like they weren't listening to me.

Q. When was that letter, the letter subsequent to February of 2011 issued?

A. I faxed something to --

Q. You can take your time and look through the document.

A. Mm-hmm. I faxed them another letter on May 6th and referenced the February 19th letter. That is because they still hadn't cancelled it.

Q. Did you after the May 21st letter, did you continue to communicate with representatives of the phone company in an effort to terminate the Yellow Pages listing for your husband's law practice?

A. I did.

Q. And looking at the document, does that refresh your recollection as to when you wrote -- when a letter was sent to them after May of 2011?

A. Yes, I also sent a fax on April 28 of 2011, crossing out their advertising notes for us to advertise asking them to please cancel and also referenced the previous letter from February 19th.

Q. Who or what is Super Media; if you know?

A. That is the advertising company

that handles the Yellow Pages.
Q. Who is Yellow Book Mid Atlantic? If you need to look at the document to refresh your recollection, please do so. Look at it. Take your time.
A. That's another phone book.
Q. Did you attempted to cancel the listing in the Yellow Book?
A. Yes.
Q. Did the Yellow Book publish a phone directory in print or online or both; if you know?
A. Both, I believe both.
Q. And did there come a time that you forwarded a sworn statement of your husband to Super Media in an effort to close the phone listing?
A. I did.
Q. Can you tell me, what, if any, action the phone company took with respect to removing the listing after those efforts that you just described?
A. We were no longer billed.
Q. Do you know if they actually --
MR. OSTRER: Withdrawn.

Q. Do you know if the listing continued to appear in any of the publications of either Verizon or Yellow Book?

A. No.

THE REFEREE: That's a no, you don't know, or no, it did not?

A. No, I do not know.

MR. OSTRER: Excuse me one second, your Honor.

Ms. McGuire, we can put Exhibit H aside for the moment.

(The witness complied.)

Q. Now, you mentioned that you were not billed by was that by Yellow Book or Verizon or both?

A. I think both.

Q. Now, when you were closing the office and packing up the files and the like, did you come into contact with Wendy Weiner?

A. Yes.

Q. Can you describe any interaction you had with Wendy Weiner at the time you were closing the office without saying what

she said to you? How did you first encounter her during the packing up the files?

A. She came to the office.

Q. On how many occasions did Wendy Weiner come to the office at Ferndale?

A. Once.

Q. And for how long was she there?

A. Ten minutes.

Q. Did she at anytime assist in the packing of the files?

A. No.

Q. Did she at anytime create an inventory of your -- of the law office files?

A. No.

Q. Did she work or well, you said she was only there approximately ten minutes?

A. Yes.

Q. And that was on one occasion?

A. Yes.

Q. After -- now, you talked about retrieving files and the like?

A. Mm-hmm.

Q. You have to say yes.

A. Yes.

Q. Okay. Now, you handled the billing and accounts receivable and payable for the office?

A. Yes.

Q. Did you issue any bills to clients after December 31st, well, after the first week of January 2011?

A. Yes.

Q. When was last time you sent a bill or statement to a client?

A. January.

Q. Of?

A. 2011.

Q. And that was -- was that for work performed before or after January 1, 2011?

A. Before.

Q. And do you know -- do you handle the family finances?

A. No.

Q. You do retrieve the mail from the post office box?

A. Yes.

Q. Are you aware of any legal fees

earned by your husband subsequent to January 1 of 2011?

THE REFEREE: What do you mean by "earned?"

Q. Received, paid. Do you recall being paid or any legal services performed by your husband subsequent to January 1, 2011?

A. No.

Q. And did that -- how about for work performed prior to January 1, 2011, do you recall receiving any payment after January 1, 2011 for those invoices that you mailed out in January?

A. Not a one.

Q. Now, were there active files, cases that were still ongoing at the time you were closing the office at the end of -- in December of 2010 through early part of 2011?

A. Yes.

Q. I believe you mentioned something about consents to change attorney. Were there such documents that were executed?

A. Yes.

Q. And that would be by the -- can you tell me -- well, was your husband -- was it necessary for Judge McGuire to sign those documents?

A. No.

Q. Who signed those documents on behalf of the office?

A. I did.

Q. And were there clients whose work was ongoing that did not obtain a new attorney?

A. Yes.

Q. And who is Ken McGuire?

A. Michael's brother.

Q. Is -- what is Ken McGuire's profession; if you know?

A. He's an attorney.

Q. Did you interact with Ken McGuire concerning any of the files at -- for which a new local attorney had not been obtained?

A. I did.

Q. Can you explain in general terms what services Ken McGuire was providing?

A. Mostly we had some orphan files that were kind of ongoing for a long period

of time, but they really had made no payments, I had asked Kenny if he could take them, and they -- we really hadn't been paid. I basically said to him that you are probably not going to get paid a lot on these, but he offered and he said he would take them.

Q. And the clients agreed to Ken --

A. Yes.

Q. -- picking up the files.

And could you tell me what type of -- were there any matrimonial files?

A. Yes.

Q. Were there any vehicle and traffic files?

A. Yes.

Q. Were there any real estate matters?

A. I don't recall.

Q. And did you physically provide Ken McGuire with the client files?

A. I would or I would leave it for him if he was coming this way, our way on other cases, but yes.

Q. But the file would be given to

him?
A. Yes.
Q. Did -- after he -- after Ken McGuire received the file, did you continue to have client contact?
A. No.
Q. Now, when you said you would leave the file for Ken to come by, where would you leave the file?
A. I had a tray for Kenny in the den. And some people -- some people actually requested and ask if they -- if Ken could take over the file. We would do the consent and Kenny would take it. But I would -- he comes down. He had other cases in Sullivan County, so he would come and stop by. I would leave a tray for him and he would come and pick it up.
Q. So he maintained a practice -- he had a practice of law in the Albany area?
A. In Troy, yes, Brunswick, New York.
Q. But he also practiced in Sullivan County?
A. Yes.

Q. Now, did you communicate with your brother-in-law by email?

A. No.

Q. And why was that?

A. Because Ken didn't have an email.

Q. So what was your principal means of communicating with Ken McGuire?

A. A phone call.

Q. Now, did you -- after Ken McGuire assumed responsibility for a file, were you involved in anyway in billing for the attorney time connected with that representation?

A. No.

Q. Did you pursue collection of any past due balances on any of the files that were transferred to Ken McGuire?

A. No.

Q. So what happened to the balances due to the office, if any, for the files that were transferred to Ken McGuire?

A. I don't think he received -- I don't think he received anything from our files. I'm not sure though.

Q. Now --

MR. OSTRER: Withdrawn.

THE REFEREE: How much more do you have on direct?

MR. OSTRER: I good bit.

THE REFEREE: Meaning what?

MR. OSTRER: Another hour.

THE REFEREE: Okay. Let's take a lunch break.

Is this a good time?

MR. OSTRER: This is a good breaking time.

THE REFEREE: We will resume at 1:30.

Off the record.

MR. MAISONET: We are off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Welcome back, everybody.

Whenever you are ready to proceed, Mr. Ostrer, you may.

MR. OSTRER: Thank you.

DIRECT EXAMINATION

BY MR. OSTER:

Q. Good afternoon, Ms. McGuire.

A. Good afternoon.

Q. Ms. McGuire, do you recall an individual by the name of Ricky Pagan?

A. Yes.

Q. And who is Ricky Pagan?

A. He was a friend of ours, an acquaintance.

Q. Did he have any -- did he have a client relationship with your husband's law practice?

A. Yes.

Q. Can you describe the nature of matter that -- any matter which was pending at the time your --

MR. OSTRER: Withdrawn.

Q. Can you describe the nature of the matter that Mr. Pagan had with your husband's law practice?

A. It was a real estate transaction.

Q. And did you personally work on that transaction?

A. Not when -- not in the office when the office was open, no.

Q. And did there come a time that

you retrieved Mr. Pagan's file?

A. Yes.

Q. Can you talk about the circumstances of doing so or retrieving that file?

A. Mr. Pagan contacted us that he had, if I remember, the rest of the money for the transaction. I went, pulled the file. The work had already been done on file. There was a two part RPT form. It was pre-filled out, so I put in the date and sent it to a woman named, I believe Barbara Clarke in Binghamton.

Q. Who was the person in Binghamton that you transmitted the documents to?

A. I don't recall.

Q. Do you know what her involvement was in the transaction; if you know?

A. I don't remember. I remember I forwarded the documents that were pre-filled out. I filled in the date and I mailed them to her. What I had been doing in the past.

Q. Did you receive any instruction from your husband with respect to the transmittal of those documents?

A. No.

Q. Who requested that you send the documents to Binghamton; if anyone?

A. Mr. Pagan.

Q. Do you know in or about when those activities occurred that you retrieved the file and mailed them to someone in Binghamton? Was it before or after your husband became a judge?

A. It was after. I don't recall the date specifically.

Q. So other than inserting a date and mailing it to Binghamton, did you have any further connection to the document, the RPT and the other paperwork?

A. No.

Q. And do you know what happened to those documents after you mailed them to Binghamton?

A. No, I do not.

Q. Now, did you see the documents -- were those documents ultimately recorded with the Sullivan County Clerk; if you know?

A. I believe so.

Q. Did you -- well --

MR. OSTRER: Withdrawn.

Q. Now, do you know who was responsible -- did you participate in anyway of the recording of the documents at the Sullivan County Clerk's Office?

A. No.

Q. Do you know how they came to be recorded at the Sullivan County Clerk's Office?

A. I do not.

Q. Now, do you know a Phillip -- do you know Phillip and Eileen Moore?

A. Yes.

Q. And who are Phillip and Eileen Moore?

A. They were Chris Depew's in-laws.

Q. Who is Chris Depew -- and could you before we, could you spell Depew for the?

A. Sure, D-E-P-E-W, Chris Depew.

Q. And who is Chris Depew?

A. He was my -- he was the athletic director for the college when I worked at the college after the law practice was.

Q. Was he -- did you know him

socially or only through the college? Describe your relationship with Mr. Depew.

A. He was the athletic director for several years at the Sullivan Community College. So we had -- we went to the basketball games. He was --

Q. You say "we," who are you referring to?

A. My husband and I.

Q. And over what period of time was it that you came to know Chris Depew?

A. I'm sorry. Can you?

Q. What period of time? When did you meet him, you know?

A. 1998, maybe.

Q. So you were acquainted with him prior to your husband becoming a lawyer?

A. Yes.

Q. And certainly becoming a judge?

A. Yes.

Q. Do you know -- did you provide any assistance to Mr. or Mrs. Moore in connection with a real estate transaction?

A. I did.

Q. Can you tell us what it was that

you did to assist or guide Mr. and Mrs. Moore?

A. They really -- I ordered -- I receive a contract for -- it was a foreclosure. They were purchasing a property, and they really didn't want an attorney, and I received the contracts and ordered a title for them.

Q. When you say you received contracts and ordered a title, how did you receive the contracts?

A. Email.

Q. To what email account; if you remember?

A. It was my email.

Q. What is your email?

A. My email is O-B -- Obieinky@[redacted]. It's O-B-I-E-I-N-K-Y@[redacted].com.

Q. After you received the contracts at the O-B-I-E-I-N-K-Y@[redacted] email account, what did you do with the contracts; if anything?

A. Oh, I am sorry. I printed them. I had done real estate transactions before.

I printed them. I made four copies. I put them in a manilla envelope and since they weren't -- had an attorney, they said, "Listen, doesn't Kenny practice law?" You know, with a foreclosure I told them it was probably better to have someone look over the contract, so they had asked me if Kenny would do it. I said, "Absolutely." So I printed four copies of the contract, put them in a manilla envelope and gave them to my husband.

Q. Why did you give them to your husband?

A. Because he goes up to his brother's house to work on motorcycles, so I gave him the contracts to give to Kenny to go up to Albany to give to him.

Q. Did you have anything further to do with respect to the Moore's transaction; if you recall?

A. Like I said, I ordered -- I don't know the time that I ordered the title, but I ordered the title. I ordered the title.

Q. Did you, for instance, transmit a down payment or a signed contact, or take

any further steps with respect to the Moore's contract after putting them in that manilla envelope and sending them up to your brother-in-law?

A. No.

Q. Did your brother-in-law communicate with you about the status of the transaction?

A. No.

Q. Now, other than carrying the copies of the contracts to Ken McGuire, are you aware of any actions that your husband took with respect to the Moore transaction?

A. No.

Q. Now, do you remember which title agency it was that you placed the title order with or the title search with?

A. All County Title Company.

Q. And how did you accomplish that task; if you recall?

A. I don't recall.

Q. Now, do you know a Tina McTighe or McTighe?

A. Yes.

Q. I am very good at mispronouncing

people's names.
A. McTighe.
Q. "McTighe."
And how do you know Tina McTighe?
A. Tina McTighe is my best childhood friend since we were about five.
Q. And at some point did Ms. McTighe consult you about a traffic ticket that she had?
A. Yup, yes, yes.
Q. Without saying what she said to you after she consulted you about her traffic ticket, what did you say or do?
A. I asked -- can I say --
Q. You can say what you said or did. You can't say what someone else said.
A. Okay. I asked her why she wouldn't use the attorney she had used before for her older son, which was Zac Kelson.
Q. Without saying what Ms. McTighe said to you, what did you tell her next; if anything?
A. Since I had -- I have always had -- I have a lot of templates on my

computer. I did a waiver for her and told her that she should give it to Zac Kelson.

Q. And why did you say she could give it to Zac Kelson?

A. Because I told her that because a network of attorneys. It was Schoharie County. It wasn't in Sullivan County, so when she had asked me why she wasn't going to pursue it, I told her -- can I say that? I am sorry. I told her that she can use Zac Kelson because he has a network all over the State, because we had done a lot of tickets with him when we had the law practice. So I knew that, so she said okay.

Q. Continue.

A. So I proceeded to give her the waiver and she got it to Zac.

Q. And after, did you consult with your husband in anyway with respect to Ms. McTighe's Schoharie County traffic ticket?

A. No.

Q. Did your husband review what you identified as a waiver?

A. I have no idea.

Q. Did you show it to him?

A. No.

Q. Were you ever informed as to the outcome of the ticket or whether --

MR. OSTRER: Withdrawn.

Q. Did you ever learn the outcome of the ticket without saying what the outcome was?

A. I did.

Q. And who did you learn it from without saying what the outcome was, if any?

A. Zac and Tina both.

Q. Now, were you paid anything for those services?

A. No.

Q. Do you recall if you were paid, or for the work that was done that you undertook on behalf of the Moore's, Mr. Depew's in-laws?

A. No.

Q. You don't recall or you weren't paid?

A. No, I was not paid.

Q. Now, do you know a person named Lori Shepish?

A. Yes.

Q. Am I butchering that name too?

A. Shepish.

Q. How do you know her?

A. She was my hairdresser and a friend.

Q. At some point did you become aware that she was selling her house or moving out of town?

A. Yes.

Q. Did she -- did you take any steps or provide any advise to her in connection with her plans to move from Sullivan County?

A. She was selling her house. She asked me if I knew of any attorneys. I gave her a couple of names.

Q. Was Mr. Kelson one of those names?

A. Yes.

Q. What other names; if you recall, did you give her?

A. Jeffrey Ahlback that was downstairs from us. He did some real estate transactions and I don't recall who else.

Q. Now, did you ever -- did you

speak to Mr. -- to either Mr. Ahlback or Mr. Kelson about Lori Shepish's transaction?

A. No.

Q. Did you order title or take any steps in connection, any steps to assist other than providing her with names of attorneys?

A. No.

Q. Do you recall if you received any compensation as a result of the information that you shared with Ms. Shepish?

A. No.

Q. Did you -- well, she was your hairdresser, so did you know if she actually sold her house and moved out of town?

A. Yes. I miss her.

Q. Now, aside from Moore and Shepish and your childhood friend, were you -- Tina McTighe, were you contacted by other people after your husband went on the bench about legal work or lawyers or advice; to the best of your knowledge?

A. Not really, no.

Q. Did you know Lindsey Amoroso?

A. Yes.

Q. Who is Lindsey Amoroso?

A. She saved my oldest -- our oldest son from a house fire in, I believe 2011.

Q. Did you provide any advice to Lindsey Amoroso?

A. No. I knew she got -- she got a speeding ticket coming to visit K[redacted] in the hospital. I did know that.

Q. Did you take any steps with respect to Lindsey's ticket, prepare an affidavit or send her to an attorney, any steps that you described you did for other people; if you recall?

A. Again, I remember the ticket being out of the area, so I may -- I possibly could have given her Zac's name.

Q. The email account, the Judge McGuire email account --

A. Yes.

Q. -- was that -- where did you access that account from? How did you view the emails; if any, that came in on that account?

A. The Michael McGuire -- the Mike-Law@[redacted] or the Judge McGuire?

Q. Judge McGuire.

A. It could be either one of them. Okay. They were set up in -- back in our office we had one computer that was hooked to a cable with the internet. It was pre-Wi-Fi. So it was on Outlook, so it was open. So if -- if while Mike was practicing when it was Mike-law@[redacted], I could check the emails, deal with anything that I possibly could deal with and read them and respond if I had to, and the Judge McGuire was on the den computer, because it was the same. We brought the computer over. It was in the den. It was again on Outlook.

Q. And it was open. Did you need a password to access the account?

A. No.

Q. So it was available?

A. It was.

Q. Did your brother-in-law use that account at anytime you know?

A. Yes.

Q. On those occasions did your brother-in-law stay at your home on occasion?

A. Yes.

Q. For prior court appearances?

A. Yes.

Q. Or for family visits?

A. Sometimes both, sometimes one, sometimes the other.

MR. OSTRER: Can this be marked?

MS. TISHMAN: It will be marked as?

MR. OSTRER: As V.

MS. TISHMAN: And given to her?

MR. OSTRER: If you would.

MS. PARTIDA: (Handing).

MS. TISHMAN: She has --

MR. OSTRER: Just to refresh her recollection.

MS. TISHMAN: She said she didn't need --

THE REFEREE: Let's use the one we have in evidence.

Please retrieve that exhibit.

MR. OSTRER: Yes.

THE REFEREE: Thank you.

THE WITNESS: (Handing).

THE REFEREE: And this time you

will see whether she has any recollection that she needs to be refreshed or refreshing.

MR. OSTRER: Yes. Let me ask that question. We may not need the exhibit, your Honor.

Q. Ms. McGuire --

A. Yes.

Q. -- just a short while ago, I asked you if you had any communication or email communication concerning the Tina McTighe tickets?

A. Yes.

Q. Do you recall receiving or viewing any emails with respect to the Tina McTighe traffic ticket?

A. I do.

Q. Could you tell us in what context did you receive emails or viewed emails in connection with the Tina McTighe ticket?

A. I remember seeing an email that said it was taken care of and I will keep you updated first, and then it was taken care of. I think I said thank you. I think I responded thank you.

MR. OSTRER: Your Honor, nothing further.

THE REFEREE: Thank you.

Any cross?

MS. TISHMAN: Yes, but I need five minutes.

THE REFEREE: Off the record for five minutes.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Please proceed, Ms. Tishman.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Ms. McGuire.

A. Good afternoon.

Q. Your email address was Obieinky@[redacted], right?

A. Yes.

Q. And "Obie" refers to your horse, right?

A. Correct.

Q. And "Inky" is your nickname?

A. Mm-hmm. Yes.

Q. And the office address for Judge McGuire's law firm was [redacted]?

A. [redacted], yes.

Q. And the office phone number was [redacted]?

A. Yes.

Q. And the Judge's sister sometimes helped in that office, right?

A. Yes.

Q. And that's Maryanne Schares?

A. Yes.

Q. S-C-H-A-R-E-S?

A. Yes.

Q. After the Judge was elected you opened a P.O. Box. That is P.O. Box [redacted]?

A. In [redacted], New York.

Q. The address is [redacted], not [redacted]?

A. Yes.

Q. And that mail sent to [redacted], right?

A. I am not sure. At the beginning it was either forwarded, or it just went -- the guy -- the postmaster was the same guy, so when I went to the P.O. Box, because I was at the post office every day.

Q. So can you just answer my question with a yes or no?

A. Yes, I am not sure if I forwarded, or we just opened up the P.O. box.

Q. When you opened up the P.O. box, and your office was closed, if a letter came to [redacted] it would end up in the P.O. box, right?

A. Correct.

Q. And then there came a time where letters from the P.O. box [redacted] were forwarded to your home at [redacted], right?

A. I am not -- I don't -- I am not sure.

Q. The letters that went to your P.O. Box, were they ever forwarded to your home address?

A. I don't know.

Q. Now, after Judge McGuire became a Judge he still maintained his office phone number, right?

A. Yes.

Q. And again, that was the [redacted] number?

A. Yes.

Q. When someone called the law firm and no one was able to answer the phone, it would go to voice mail?

A. To an answering machine, yes.

Q. Which is voice mail? They would hear a voice mail? They would hear a message, right?

A. Yes.

Q. After you husband became a judge, he still had the same voice mail message that had been used prior to him becoming a judge; is that correct?

A. Yes.

Q. So when after Judge McGuire became a judge when someone called the office number, they would receive the message you have reached the law office of Michael McGuire, something to the effect,

there is no one available to take your call right now. If you leave your name and your number and a message we will get back to you?

A. That was on the answering machine, yes.

Q. And that was on the answering machine even after Judge McGuire became a judge?

A. I believe so.

Q. And it is your husband's voice on the answering machine, right?

A. Yes.

Q. Now, your husband's cell number is [redacted]?

A. Yes.

Q. And you have your own cell phone number, right?

A. Right, correct.

Q. It's a different number than your husband's?

A. Correct, one number off.

Q. But it is different than your husband's number; is that right?

A. Yes, 8567.

Q. If you could answer my questions, if it's a yes or no question, answer it yes or no?

A. Okay.

Q. Starting in 2011, your husband's email address was changed to JudgeMcGuire@[redacted]; isn't that correct?

A. Can you repeat that again?

Q. Starting in 2011, you changed your husband's email -- your husband's email address was changed to JudgeMcGuire@[redacted]; isn't that correct?

A. From Judge -- yes.

Q. And that email address was used from 2011 to 2015, correct?

A. Mike-law@[redacted] or Judge -- I am sorry.

Q. After your husband became a judge, he used the email address JudgeMcGuire@[redacted]; is that correct?

A. Yes.

Q. That email address was used until 2015; isn't that true?

A. I don't know the exact date.

Q. Do you -- I am not asking for an exact date. It was in the year -- it was used to about 2015?

A. I know we changed it, so I don't know when that date was.

Q. It was used for a number of years, wasn't it?

A. Yes. Thank you.

Q. And after -- you testified that you set up the email address, but you told Judge McGuire what the email address was that you had set up; didn't you?

A. Yes.

Q. And he never told you to change that email address? That he couldn't use it; did he?

A. No.

Q. And he used that email address to communicate with people; didn't he?

A. Yes.

Q. And you even told Ms. Weiner that she should give out the JudgeMcGuire@[redacted] email to old clients, acquaintances or attorneys; didn't

you?

A. I said if anything calls or asks she can give it them, yes.

Q. You sent an email to Ms. Weiner with the email address of JudgeMcGuire@[redacted]?

A. Yes.

Q. And you told Ms. Weiner that if people called for the Judge that she should give out that email address?

A. Yes.

Q. And that included that even if old clients called asking for Judge McGuire that she should give out that email address?

A. Yes, because I was waiting for --

Q. It's yes or no question I asked, so I appreciate you answer yes.

MR. OSTRER: Objection. She interrupted the witness.

THE REFEREE: You can bring out anything else you like on proper redirect.

MR. OSTRER: I just think it is more appropriate to strike the answer than to interrupt the answer.

THE REFEREE: You can ask your

next question.

Overruled.

Q. You testified that only you and Judge McGuire had the ability to send emails from that email address, JudgeMcGuire@[redacted]?

A. No.

Q. You testified that you sent emails that Judge -- from that email address JudgeMcGuire@[redacted]?

A. Yes, I did.

Q. And Judge McGuire sent emails from that email address, JudgeMcGuire@[redacted]?

A. Yes.

Q. And you continued to use the law firm fax machine after Judge McGuire became a judge; isn't that correct?

A. Yes.

Q. It had the stamp on it McGuire Law; didn't it?

A. I have no idea. No.

Q. I am going to show you what is Respondent's H.

THE REFEREE: For identification.

MS. TISHMAN: For identification.

Q. I am going to show you what is been marked Commission Exhibit X-1C.

MR. OSTRER: What is that, Ms. Tishman?

MS. TISHMAN: X-1C.

THE REFEREE: It's in evidence?

MS. TISHMAN: Yes.

Q. If you can look at that and look at the top of that and read it. Does that refresh your recollection of whether things that were faxed from your -- from by Judge McGuire or yourself had the fax moniker McGuire Law?

MR. OSTRER: Objection.

THE REFEREE: Overruled.

A. No, until you pointed it out I never saw it. I didn't know that, no. Until you just -- I mean I see the 6800 would have been the fax number, but I didn't -- I know I wasn't aware of that.

Q. On Commission Exhibit X-1C, the number [redacted] is the fax number that was associated with Judge McGuire's law practice?

A. Yes.

Q. And next to that it says "McGuire Law?"

THE REFEREE: She doesn't have to read it. It is in evidence.

Q. Now, Ken McGuire's law firm office is in [redacted], right?

A. Correct.

Q. It is [redacted]?

A. Yes.

Q. And the law office has a telephone number, doesn't it?

A. Yes.

Q. And that is [redacted]?

A. I don't know it offhand, but.

Q. It does have a phone number?

A. It does. I am sure it does, yes.

Q. Ken McGuire -- so Ken McGuire's law firm has an address of [redacted], right?

A. Yes.

Q. And it has a telephone number associated with the law firm, right?

A. Yes.

Q. And Ken McGuire has a cell phone number, doesn't he?

A. Yes.

Q. Now, when Judge McGuire was elected to be judge, he never sat you down and talked to you as you were closing up the office about what you could and could not do; did he?

A. No.

Q. You never received any special training on how to close the office; did you?

A. No.

Q. Did Judge McGuire ever suggest that you -- Judge never suggested that you receive any special training about how to close the office; did he?

A. No.

Q. And you communicated with the Judge about the steps you were taking when you closed the office; didn't you?

A. No.

Q. So from the time Judge McGuire was elected to the time you closed the office, you never once communicate or asked

him any questions about how to close the office?

MR. OSTRER: Objection.

THE REFEREE: On what ground?

MR. OSTRER: Argumentative given prior question.

THE REFEREE: Overruled.

A. No, I didn't ask. I told him what I was doing, like, moving files. I had set up the office so.

Q. So you told Judge McGuire the steps you were taking to close the office?

A. In passing that I was storing files, yes.

Q. And he would talk to you about and -- did he give you advice or tell you things to do or not to do?

A. No.

Q. You spoke to Judge McGuire when you got correspondence about cases that he had worked on. You spoke when you got these correspondence when you took steps with it; didn't you?

A. Yes.

Q. And Judge McGuire would tell you

what he thought should be done based on what the correspondence was; didn't he?

A. Very rarely.

Q. But on some occasions he did; didn't he?

A. If I needed to send a correspondence that I didn't know what to do, I would have the template and I would send it, but that is to that extent.

Q. Before you sent out the correspondence, you would talk to Judge McGuire about what you were sending out?

A. No, sometimes I would actually ask Kenny.

Q. And sometimes you would ask Judge McGuire; didn't you?

A. Rarely.

Q. But you sometimes asked Judge McGuire; didn't you?

A. Yes, rarely.

Q. When you got deeds you talked about, any deeds and documents from the County, you would mention to Judge McGuire that you had received these deeds?

A. No.

Q. Never? You would never tell him when you got deeds from the County?

A. No.

Q. So you took it upon yourself to send them out?

A. Yes.

Q. You are not a lawyer; are you?

A. No.

Q. You spoke to Judge McGuire before you sent files to a new attorney; didn't you?

A. No.

Q. So you would send out files to new attorneys without running it by Judge McGuire?

A. No.

Q. So you would run it by Judge McGuire?

A. Oh, no, no. I am sorry. Can you ask the question, again? I am sorry.

Q. Before you sent files to a new attorney, you would talk to Judge McGuire about what you were doing?

A. No.

Q. So you did it all on your own

without any guidance?

MR. OSTRER: Objection.

Q. You can answer. There is no objection in front of you.

MR. OSTRER: There is an objection.

THE REFEREE: What is the objection?

MR. OSTRER: Again, it is argumentative, your Honor, based upon the prior question.

THE REFEREE: Overruled.

You may answer.

A. If the client sent something or called and said they had another attorney, I didn't have to.

Q. But cases where the client didn't call you and tell you the name of the attorney, when you were referring cases out to attorneys, you spoke to the Judge prior to referring them to a new attorney; didn't you?

A. No.

Q. So you did it on your own? You would refer cases out to other lawyers

totally on your own?

MR. OSTRER: Objection, your Honor, to the term "refer."

A. Right.

THE REFEREE: Sustained.

Q. So you would send cases to a new attorney totally on your own without getting any -- without talking to Judge McGuire about it?

A. Yes, I would prepare the file, and I would send it to them, or I would deliver it to them or they would pick it up if I was going in the County, or if Kenny were to get them, I would give them to him, or if the client wanted to personally give them to the attorney I would give them to the clients, so no.

THE REFEREE: So can I clarify this? Are you asking about cases in which the client did not ask that a particular file be sent to a particular attorney?

MS. TISHMAN: Yes.

THE REFEREE: Maybe you misunderstood the question?

THE WITNESS: I think I did.

THE REFEREE: So the question is with respect to files that were sent to attorneys that were not selected by the client, how did that happen?

THE WITNESS: I don't -- that I don't remember, because either it was the client would call.

THE REFEREE: Yes.

THE WITNESS: And say we have retrained the new attorney.

THE REFEREE: Okay.

THE WITNESS: Can you please send the file to them, so that is what I did. If they didn't call, the file stayed until someone else would call and I go in storage and get it and get it to the client.

THE REFEREE: So was there ever a time that you, yourself, selected an attorney to send the file to without hearing from a client?

THE WITNESS: Never. No, not me, not Mr. McGuire, only from a client, or his brother did take on -- prior to closing the office Mr. McGuire had done a very good job with forwarding the clients or referring the

cases out before he was elected judge.

So there wasn't a lot, but the ones that were from his brother, which were the, like I said, the orphan files. The ones that we really couldn't put a name to. Those were the ones that I gave to his brother.

THE REFEREE: So the ones that you gave to his brother were files that the client did not say send the file to the brother?

THE WITNESS: No, they did. Mr. McGuire had talked to them because they didn't have any money, and he said my brother might be able to do it. You know, again, I tried to do as much work on the files as I possibly could before I sent them to his brother, but his brother would take them over so.

THE REFEREE: So the files that you sent to Ken McGuire were files that Michael McGuire told you to send to his brother?

THE WITNESS: Yes, prior to him becoming a judge.

THE REFEREE: Okay.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. After Michael McGuire became a judge, he talked to you about there were other cases that he asked you to send to his brother, right?

A. The only one was the Moore's where he said -- we did discuss that Kenny was going to be doing the contract because they didn't really want an attorney, so he did the contracts with the Moore's. That is one, yes, I can remember.

Q. And cases that were sent to Zac Kelson after Judge McGuire became a judge, the Judge spoke to you about those cases; didn't he?

A. No.

Q. So Judge -- and did you speak to Judge McGuire at all about the cases that were sent to Zac Kelson after Judge became?

A. No.

Q. So you didn't speak to him about that at all?

A. No, I spoke to Zac.

Q. Now, you spoke to your husband when you were having problems with Super Media and Yellow Book about advertisement?

A. Yes, after I was frustrated that I couldn't --

Q. If you could answer my questions yes or no? I would appreciate it because it is yes or no.

A. I'm sorry.

Q. And during that time the Judge drafted and sent some letters; didn't he?

A. Yes, I asked him to.

Q. And you talked to him about it. You asked him to draft letters. He then drafted those letters?

A. I started one of the letters. There was a few of them, so without them in front of me, but I started a few of them, sent them, called them, faxed them, then they sent a letter back, a correspondence saying that my request had been denied, and that they needed a personal letter from Mr. McGuire.

Q. So you talked to the Judge about this, right?

A. Yes.

Q. And then the Judge drafted letters?

MR. OSTRER: Asked and answered.

A. One.

THE REFEREE: Overruled.

Q. The Judge drafted letters, and they were sent to Yellow Book or Super Media, right?

A. I think it was the same letter that I copied, changed the address and sent.

Q. The Judge signed those letters though; didn't he?

A. I don't know.

Q. I would like to show the witness Respondent's H.

THE REFEREE: Okay. This is Respondent's H for identification the witness is looking at.

Is there a particular page?

Q. Towards the end there is a February 19, 2011 letter; do you see that?

A. Towards the end, yes.

Q. Judge McGuire drafted this letter; didn't he? The February 19, 2011

letter?

A. I understand, but there's another letter that --

Q. I said to Yellow Book.

A. I started to write it and he finished it.

Q. And Judge McGuire signed it?

A. Yes.

Q. And then you faxed this letter; didn't you?

A. Yes, several times.

Q. And the letter was faxed on McGuire Law fax that we saw before a copy of?

A. Yes.

Q. And the letter, the February 19, 2011 letter that you started and Judge McGuire finished and signed, that is on Judge McGuire attorney and counselor at law letterhead; isn't it?

A. Yes.

Q. Now, the May 21, 2011 letter to Super Media --

A. Yes.

Q. -- Judge McGuire drafted this

letter, right?

A. I don't believe so.

Q. You drafted it? Who drafted it?

A. I took the letter from February 19th. This was my common practice with -- if he would write a letter, I would take it, because I had it on my template and I would essentially write the same letter or redo it.

Q. Okay. So the February 19, 2011 letter says, "Pursuant to our recent conversation --

MR. OSTRER: Objection.

THE REFEREE: Excuse me. This is not in evidence.

Q. Did Judge McGuire sign this letter?

A. I don't remember.

Q. So looking at it, is that Judge McGuire's signature?

A. On his behalf I sign his name sometimes; if he knew.

Q. And you drafted this letter on Judge McGuire's letterhead?

A. I did.

Q. And he knew -- you said you sometimes signed his name if he knew, so he knew about this letter?

A. He knew about this, yes.

Q. And there's another May 21, 2011 letter to Yellow Book?

A. No, there's only one.

Q. There is one to Super Media that we were talking about before, and then there's another one to Yellow Book, correct?

A. Correct.

Q. And this letter, again, you drafted?

A. Correct.

Q. And did Judge McGuire sign it?

A. I don't -- I really don't remember.

Q. But he knew it was being drafted and sent out?

A. I told him the frustrations that they weren't cancelling anything, so, yes, probably, yes.

Q. And that is also on Judge McGuire's attorney counselor at law letterhead?

A. What was loaded in the printer, yes.

Q. Well, that is what it is on, right?

A. Yes.

Q. Have you ever changed paper in a printer?

A. When I was out, yes.

Q. Do you know how to change paper and put in different paper in the printer?

A. Yes.

Q. Now, the affirmation as in Respondent's H?

A. Yes.

Q. That affirmation Judge McGuire drafted, right?

A. Yes, because they denied all my requests.

Q. You did not draft that because you are not an attorney, right?

A. No, I did not draft the affirmation.

Q. And Judge McGuire signed it, right?

A. Yes.

Q. And these documents were faxed using the McGuire Law fax number?

A. Yes, the fax -- and fax number is wrong because, obviously, that was a stamp that was put on at the beginning when I opened, but this was actually from my home.

Q. But the fax machine that you used still had a fax that said McGuire Law, right?

A. Now that you pointed that to my attention, yes.

Q. And you took no steps to change the fax machine so it would no longer say McGuire Law; did you?

A. No, I didn't know that.

Q. You stated that you continued to use McGuire Law letterhead. Did you take any steps to get rid of that letterhead?

A. Yes, I only used initially for when I was sending out the correspondence or client files, and then once I ran out of it, because I was trying to the use it up. It was gone.

Q. So you continued using until there was none left; is that correct?

A. I don't know how I stopped using it, but it wasn't for long after.

Q. And you continued using the law firm letterhead for a year or so; didn't you?

A. I don't know.

Q. Well, did you stop using it in the first couple of months after Judge McGuire became a judge?

A. When I ran out, I stopped using it. I didn't write that -- I don't know the date, ma'am. I'm sorry.

Q. And you made no effort when Judge McGuire became a judge to get rid of all that letterhead, shred it and get rid of it; did you?

A. No.

Q. And Judge McGuire knew that you were using that letterhead when you were communicating to people about the business; didn't he?

A. Not all the time.

Q. But he did some of the time know that you were using that letterhead?

A. Yes.

Q. I am going to show you what is marked Commission Exhibit X-3A (handing). Can I take back H?

A. Sure (handing).

Q. Now, this relates to a traffic ticket you received in May 2010, right?

A. Yes.

Q. And when you received the ticket, your husband represented you; didn't he?

A. Yes.

Q. Now, this letter is dated July 25, 2011. It is on the Michael McGuire Law Firm letterhead; isn't it?

A. Yes.

Q. So at that time you were still using the Michael McGuire Law Firm letterhead, right?

A. Well, I wasn't using -- I mean, I -- this is -- I haven't seen this letter.

Q. Well, at the bottom -- the letterhead was used in this letter, right?

A. Yes.

Q. And this was the letterhead that was used during the practice when Judge McGuire was practicing law before he became

a judge?

A. Yes, ma'am.

Q. At the bottom of the letter it says, "Respond at [redacted]." That is your home address, right?

A. Yes.

Q. And then it has a phone number. Is that Judge McGuire's cell phone number?

A. Yes.

Q. This ticket was ultimately dismissed; wasn't it?

A. Yes.

Q. Now, in 2010, were you helping out with Judge McGuire's law firm practice?

A. Yes.

Q. And you knew the Judge was representing a George Matisko, 2010 in a personal injury case?

A. I don't think I knew it at the time.

Q. Did you do any -- help the Judge at all in any work he did in the George Matisko case within 2010 before he became a judge?

A. I may have set up the file. I

don't recall. I don't recall.
Q. You talked about knowing Chris Depew?
A. Yes.
Q. And he was a friend of yours and Judge McGuire's, right?
A. Yes.
Q. And he is Eileen and Phillip Moore's son-in-law, correct?
A. Correct.
Q. Do the Moore's live in Napanoch, Ellenville that area?
A. Yes, Napanoch.
Q. And that's about a 40-minute drive from your house, 40 minutes?
A. Yes, probably.
Q. And Troy, New York is a much farther drive to Napanoch, Ellenville than from your house, right?
A. Yes.
Q. It takes about two hours to drive to Napanoch from Troy, New York?
A. Yes, I guess. I don't know.
Q. Now, you were involved in the purchase of the home that the Moore's

purchased their home, right?

A. I ordered title.

Q. You spoke to the Moore's about the purchase of their house?

A. No.

Q. You spoke to Chris Depew about the purchase of their home?

A. No.

Q. Did you speak to Heather Depew about the purchase of their home?

A. I may have, yes.

Q. So if you didn't speak to the Moore's, you didn't speak to Chris Depew, then how did it come to your attention that they were selling their house?

A. I -- I --

MR. OSTRER: Objection as to form.

THE REFEREE: Overruled.

A. I think I was at either a basketball game at the college, or maybe Heather called me. I don't remember how I learned of that.

Q. Judge McGuire knew that the Moore's were purchasing a home; didn't he?

A. Yes.

Q. And you had spoken to Judge McGuire about the purchase of that house; didn't you?

A. No.

Q. You never once spoke to Judge McGuire about the Moore's purchasing a house a Napanoch, not once?

A. When I handed him the contracts to give to his brother, I did, yes.

Q. And prior to that you never mentioned to your husband that you were helping the Moore's with the purchase of their home?

A. No, I wasn't helping them.

Q. Well, didn't you give the seller your email address?

A. For the contracts.

Q. You gave the seller your email address the Obieinky@[redacted]?

A. Actually I think I gave it to Heather and I think Heather gave it to him.

Q. But you had contact with the seller on your email address Obieinky@[redacted].com?

A. Yes, after the contracts, yes.

Q. There was a back and forth with the sellers; wasn't there?

A. I think one or two communications.

Q. And during that time when you were communicating with the sellers, you spoke to your husband about the purchase about what was going on; didn't you?

A. No.

Q. You never spoke to your husband at all about it?

A. No.

Q. When you said -- when the sellers contacted you on Obieinky@[redacted], did you tell them not to contact you?

A. No.

Q. Did you tell them that you are involved with this sale at all?

A. No.

Q. You responded to the emails that they sent you; didn't you?

A. I said, "Thank you very much."

Q. That's all you said, "Thank you very much?"

A. Yes, I believe I said thank you or thank you and an addendum. I don't remember what else I wrote.

Q. You gave the sellers the email address JudgeMcGuire@[redacted] as a contact number later on; didn't you?

A. No.

Q. You never gave them that as a contact number?

A. No.

Q. I am going to show you what is marked Commission Exhibit X-19 in evidence.

MS. PARTIDA: (Handing).

Q. This is a July 28, 2014 email, 11:50 a.m. This was sent to your email address Obieinky@[redacted], right?

A. Yes.

Q. It says here that, "The contracts for sale is attached." You printed that contract for sale; didn't you?

A. I did.

Q. Did you -- when Maryanne Schultz emailed you with a contract of sale, did you email her back and say, I'm not handling this matter. Please don't email me anymore?

A. No.

Q. Did you give her the name of the person who was handling the matter?

MR. OSTRER: Objection. It assumes a fact not in evidence that there was a person handling the matter.

THE REFEREE: Overruled.

Q. You can answer.

A. Can you ask the question, again?

Q. Did you give her an email of someone she could contact instead of you who was helping the Moore's?

A. The only one that would have been Kenny.

Q. Did you email her back and say stop contacting me, don't use my email address, you need to contact Ken McGuire? You never did that; did you?

A. No. I printed them and gave them to Kenny. Kenny didn't have an email --

Q. My question was: Did you ever email Maryanne Schultz back and say do not contact me. I have nothing to do with this matter?

MR. OSTRER: Objection.

THE REFEREE: Overruled.

A. I -- Kenny was doing the contract. I knew that. I was going -- I ordered the title so.

Q. That wasn't my question though.

A. Okay.

Q. Did you send an email back to Maryanne Schultz telling her not to email you?

A. No.

Q. Did you send an email to Maryanne Schultz at this time telling her who -- that Ken McGuire was involved in the case?

A. I don't remember.

Q. You never sent an email telling her that Ken McGuire was involved; did you?

MR. OSTRER: Objection.

THE REFEREE: Sustained.

Q. So you printed the contract and you gave it to Judge McGuire, right?

A. Yes.

Q. And Judge McGuire brought it to the Moore's house; didn't he?

A. No.

Q. Judge McGuire did not bring the

contract to the Moore's house?

A. No, because when you print the contract, you give it to the attorney to review, so I gave it to him to give to his brother to give to the Moore's.

Q. But you gave the contract to your husband?

A. To give to his brother in a manilla envelope.

Q. And at some point you learned that Judge McGuire went to the Moore's house with the contract to have them sign?

A. No.

Q. Once the Moore's signed the contract, you mailed it to the seller; didn't you?

A. I don't -- I don't recall. No, I know I did not mail it to -- I did not mail it.

Q. I will show you what is marked Commission Exhibit X-20 (handing). It is in evidence.

Now, this email was sent to you, right?

A. Yes.

Q. It wasn't sent to Ken McGuire; was it? Did you --

A. I'm sorry. I was reading it.

Q. Did you answer the me?

A. Pardon me?

Q. Did you answer the question?

MR. OSTRER: She is reviewing the document.

A. Could you repeat that, please?

Q. Exhibit X-20 was sent to your email address at Obieinky@[redacted]?

A. Yes.

Q. And that is dated August 12, 2014, correct?

A. Yes.

Q. When we looked at before Commission X-19, that is dated July 28, 2014, right?

A. Yes.

Q. So between the July 28, 2014 time of Commission X-19 and the August 12, 2014 Commission X-20, you didn't take any steps to ensure that the seller did not contact you?

MR. OSTRER: Objection as to

form.

THE REFEREE: Overruled.

A. No.

Q. So on August 12, 2014, the seller still thought you were the contact person for this case?

MR. OSTRER: Objection.

THE REFEREE: Sustained.

A. Yes.

THE REFEREE: Strike the answer.

Q. On August 12, 2014, Commission Exhibit X-20, you were -- your email address was still the contact email address, correct?

A. Yes.

Q. And at this point you did not talk to Maryanne Schultz and tell her not to contact you further; did you?

A. No.

Q. Now, on Commission Exhibit X-20, it states that, "Attached please find the fully executed contract for my client." You printed out that contract; didn't you?

A. I don't know.

Q. Well, you said that Ken McGuire

doesn't have an email address, right?

A. Correct.

Q. So and this was not sent to Ken McGuire, right, because he doesn't have an email address?

A. Correct.

Q. So you're the only person who could have printed out this fully executed contract, correct?

MR. OSTRER: Objection.

THE REFEREE: Sustained.

MR. OSTRER: You don't have to answer.

Q. Now I show you what is marked Commission Exhibit X-21.

MS. PARTIDA: (Handing).

Q. This is another email from August 12, 2014. You are emailed on -- your email appears on this email, correct?

A. Yes.

Q. And your email address is the only email address that has anything to do with people associated with the Moore's, correct?

A. Yes.

Q. And here they have, "Attached please find the closing extension to be signed by the purchasers." You printed that closing extension; didn't you?

A. At some point I called Kenny, because once I saw a few things going on, he did say he was coming down to -- I can't remember if it was a motorcycle race or car race. He was coming down, so he would review, so I don't know if I printed them out, but I know he was coming to review things.

Q. And you talked to your husband when you were getting these emails on August 12 asking you to have documents signed by the purchasers? You talked to your husband about what was going on with the Moore's case; didn't you?

A. No, I was really speaking to Kenny.

Q. You didn't speak at all, you never mentioned anything to your husband about the Moore's?

A. Not really, no.

Q. So you talked to him about the

Moore's, but just not about legal matters?

A. No, I may have said that they were buying a house or in passing, but, no, not on legal matters.

Q. I am going to show you what is marked Commission Exhibit X-25.

MS. PARTIDA: (Handing).

Q. If you can look at Commission Exhibit X-25 that is in evidence. This is an August 26, 2014 email and it is sent to your email address, right?

A. Yes.

Q. So still in August, end of August, you were receiving emails about the Moore's, correct?

A. Yes.

Q. I am going to show you what is marked Commission Exhibit X-23 that is in evidence.

MS. PARTIDA: (Handing).

Q. This email is from it says from Michael McGuire, JudgeMcGuire@[redacted]. Did you draft this email?

A. No.

Q. You didn't draft it. Did you

review this email before it was sent out?

A. I spoke to Kenny regarding it, signing the addendum because he didn't want -- he didn't want them to signed the addendum because the house wasn't ready and couldn't get inspected, because there was no -- it needed to be winterized, so I spoke to Kenny regarding this.

Q. And the last paragraph that is Judge McGuire's cell phone number; isn't that?

A. Yes.

THE REFEREE: Sorry. Which number?

MS. TISHMAN: [redacted] in the last paragraph.

Q. Now I am going to show you what is marked Commission Exhibit X-24.

MS. PARTIDA: (Handing).

Q. Review it and tell me when you are finished reviewing it.

A. Okay.

Q. You didn't draft this -- did you -- you didn't draft this email; did you?

A. No.

Q. Now, in the second photograph there is a phone number. That is your -- that is Judge McGuire's cell phone number; isn't that?

A. Yes.

Q. In the last paragraph, there is a phone number. That is Judge McGuire's cell phone number; isn't it?

A. Yes, and I told Kenny that they can contact me if they need, but that's not.

Q. Now I am going to show you what is marked Commission Exhibit X-28.

MS. PARTIDA: (Handing).

Q. If you can -- I want to draw your attention to the first page, the middle of the first page. The September 3, 2014 email, 10:33 a.m. Let me know when you find that?

MR. OSTRER: Ms. Tishman, what is the date, again?

MS. TISHMAN: September 3, 2014, 10:33 a.m.

A. Okay.

Q. Do you see that it is from JudgeMcGuire@[redacted] to Maryanne

Schultz?

A. Yes.

Q. And that email says that, "I am on vacation from September 16th to September 24th." You were on vacation -- you and your husband were on vacation during that time period; weren't you?

A. I don't remember.

Q. Now, you know -- your -- Judge McGuire know that --

MS. TISHMAN: I withdraw that.

Q. I am going to draw your attention to Commission Exhibit X-32.

MS. PARTIDA: (Handing).

Q. Let me know when you are finished reviewing it.

A. Okay.

Q. At 10:37 a.m. you sent an email to Maryanne Schultz, correct?

A. Yes.

Q. And in that email, do you tell her to stop contacting you?

A. No.

Q. That email was in response to her email at 8:15 a.m. the day before where she

says, "Dear Mr. McGuire, attached please find fully executed extension to 9-9-14." In the Commission Exhibit X-32 that you have in front of you there is an email at 8:15 a.m. in the middle of that document from Maryanne Schultz. Do you see that?

A. Mm-hmm. Yes.

Q. And your response on August 28, 2014 at 10:37 that is in response to that email that you received from Maryanne Schultz?

A. Right, but I don't -- where is the email from August 27th? Do I have that here?

Q. You have it. It is right in X-32.

A. Okay. Thank you.

Q. Do you see it now?

A. Mm-hmm. Yes.

Q. And between receiving Maryanne's email from Maryanne Schultz on August 27, 2014 at 8:15 a.m. and responding on August 28th at 10:37 a.m., you spoke to your husband about what you had -- the email you had received from Maryanne Schultz; didn't

you?

A. No, I spoke to Ken.

Q. But you responded?

A. Yes. Kenny had left at that point. He was down at our house and he had already left, so he told me that if I hear anything else he gave me instructions for what they had done. I -- they -- they went at it for awhile, and then they seemed to have rectified it, so, yes, once I heard back there was.

Q. Now, Commission Exhibit X-33.

MS. PARTIDA: (Handing).

A. Yes.

Q. And that is an email that you sent, right?

A. Yes.

Q. Now, you arranged for All County Abstract Company to act as the title company in this matter, the Moore matter, correct?

A. To do the title, yes.

Q. And when Judge McGuire was in private practice he used All County as the abstract company almost exclusively; didn't he?

A. Yes.

Q. And you contacted either Robin DeCarlo or Steve DeCarlo, D-E, capital C, A-R-L-O about doing the title search for the Moore's property?

A. Yes.

Q. And before you contacted them you had talked to your husband about using them for the title company, correct?

A. No.

Q. You had given the DeCarlo's your email address as a contact address for the Moore's property to contact you at, correct?

A. No.

Q. I am going to show you what is marked Commission Exhibit X-35.

MS. PARTIDA: (Handing).

A. Okay.

Q. Your email address is on this email from Robin DeCarlo, correct?

A. Correct.

Q. And you were the point person, the contact person? You gave them your email address, correct?

A. She may have had it, but Kenny

didn't have one, so I don't know if I gave it to her, or I mean I think she had it originally.

Q. Now, you helped Judge McGuire when he was in practice with the Ricky Pagan sale of the property, the property that Ricky Pagan wanted to buy?

A. Did I help when he was in office?

Q. In private practice?

A. No, I didn't help him with the Pagan file. He handled that.

Q. And when Ricky Pagan -- when the Judge was -- when your husband became a judge, Ricky Pagan completed the sale of the -- the purchase of the property, right?

A. Correct.

Q. And documents were sent to the seller of the property, correct?

A. Correct.

Q. And a cover letter was sent with those documents; weren't they?

A. Yes.

Q. And your husband signed that cover letter; didn't he?

A. No.

Q. You spoke to your husband about that cover letter; didn't you?

A. No.

Q. So you sent a cover letter with legal documents on your own?

A. The legal documents were already done. When I pulled the file, everything was already done and had been filled out in -- I don't want to -- say 2010, but they had been already been filled out. The transaction paperwork was already done. When Ricky got the money, I pulled the file, pulled out the documents, changed the date, sent the cover letter and sent it to Ms. Barbara Clarke.

Q. And the cover letter was -- before you sent the cover letter, you told your husband that Ricky Pagan had the money and was able to purchase the property; didn't you?

A. I did not, no. No.

Q. Now, when Ms. Shepish spoke to you about the property she wanted to buy -- she spoke to you about the property she wanted to buy; didn't she?

A. No.

Q. She didn't speak to you at all about the real estate matter?

A. She was selling property.

Q. I am sorry.

A. Okay.

Q. But she spoke to you about the property she was going to sell?

A. Yes.

Q. And you mentioned this to your husband; didn't you?

A. No.

Q. You didn't mention it to your husband at all?

A. No.

Q. Did your husband mention to you that he spoke to Zachary Kelson about this matter?

A. No.

Q. I am going to show you what is marked Commission's -- well, let me ask you this first: Tina McTighe, you said that she is a very close friend of yours?

A. Yes, my best friend.

Q. And she received a traffic

ticket, right?

A. Yes.

Q. And I am going to show you what is marked as Commission's Exhibit XI-6.

MS. PARTIDA: (Handing).

A. Okay.

Q. Now, this email was sent to Judge McGuire -- was CCed to Judge McGuire and sent to you.

MR. OSTRER: This is XI-6?

MS. TISHMAN: Yes.

MR. OSTRER: I might have grabbed the wrong exhibit. Bear with we a moment.

Maybe we could take a break now, Judge?

THE REFEREE: How much more do you have?

MS. TISHMAN: Not much.

THE REFEREE: Let's keep going.

MR. OSTRER: For XI-6?

MS. TISHMAN: Right. In evidence. The second page of the exhibit.

Q. You received this email; didn't you?

A. Yes.

Q. And you spoke to your husband about this after both you and him received the email?

A. No.

Q. So both you and your husband received this email, but you never mentioned anything about the attachment, the waiver of right to be present to your husband?

A. No, because I had already sent Tina or given Tina a waiver which she had signed, and I believe I called Zac and asked him why.

Q. You dropped off the waiver? You had Tina sign the waiver; didn't you?

A. Yes.

Q. And then you dropped it off at Zac Kelson's office; didn't you?

A. I don't remember if she did or I did.

Q. You have been married to Judge McGuire for long time?

A. Yes.

Q. 20 years, you said?

A. Yes.

Q. You don't want anything bad to

happen to him, do you?

A. No.

MS. TISHMAN: I have nothing further.

THE REFEREE: We will take our break now. Come back at 3:30, please.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Mr. Ostrer, please continue.

MR. OSTRER: Thank you, your Honor.

Do you have H?

MS. PARTIDA: Would you like me to give it to her?

MR. OSTRER: Yes, if you would.

MS. PARTIDA: (Handing).

MR. OSTRER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. OSTRER:

Q. Ms. McGuire, within Exhibit H, take a look at the letter dated June 12, 2011 addressed to Super Media. You just had

that before you.
A. Yes.
Q. Now, the -- is that one of the letters that you found last Thursday or Friday?
A. Yes.
Q. Do you recall preparing that letter or a letter similar to it?
A. Yes.
Q. Do you know, who, if anyone, created that letter that you saw on the June 12th letter.
A. Me or my husband.
Q. And is that the letter Ms. Tishman asked you about an affirmation that was prepared and transmitted to the Yellow Pages companies, the advertisement companies?
A. Yes.
Q. Did you transmit that affirmation to the companies or Super Media?
A. I did. It was a direct response to being denied from their letter dated May 31st.
Q. Now, did -- if you look at --

were one of the things that were requested by Super Media a sworn statement?

A. Yes.

Q. And they also requested other materials which you in connection with that, the closing of that account and the removal of the advertising from the Yellow Pages directory?

A. Yes.

Q. And --

MR. OSTRER: Withdrawn.

Q. Did at anytime the phone company request that you write to them on the letterhead of the advertisee?

MR. LEVINE: Objection.

MR. OSTRER: I will withdraw. It was a bad question anyway.

Q. Now, did you ever receive any further communication from either Yellow Book or Super Media after the letter that was mailed on June 12th?

A. No, we stopped getting billed and no more communication.

Q. Did they, in fact, was it your understanding that they would, in fact,

remove your advertisement from the phone book?

A. Yes.

Q. Did you in anyway request that the phone book continue to list you husband as an attorney with a particular phone number?

A. I am sorry. Can you ask that again?

Q. Did you request the phone company continue any sort of listing on behalf of your husband?

A. Absolutely not.

Q. Was there -- did you subsequently learn of phone book listings, including your home address?

A. Eventually.

Q. And did you take any steps or object to that?

A. No.

Q. Now --

A. I rarely look at the phone book. I don't know who does anymore.

Q. Now --

THE REFEREE: So Let me get that

last part straight. So after the advertisements that you were going back and forth it was removed, there was a subsequent listing in the phone book with Michael McGuire, attorney-at-law at your home address?

THE WITNESS: I don't believe so. I didn't -- I never looked in the phone books again. Only until --

THE REFEREE: I think I may have misunderstood that last question.

MR. OSTRER: It was an awkward question anyway, Judge.

THE WITNESS: Yes, sorry.

THE REFEREE: Do you want to clear that up for me?

MR. OSTRER: Yes.

Q. Did you want your residence address identified in the phone book?

A. Absolutely not.

Q. Why not?

A. Because he was a judge and he takes in family court I know it probably can get a little heated, and I was worried and the court officers said, you know, do we

have a security system. I was afraid to have my home address.

THE REFEREE: All right. We get it.

A. I was afraid to have my home address --

THE REFEREE: We get it. We get it. Understood.

Q. Now, June 12th, when you wrote to enclosing the affirmation to Super Media, was your husband's law firm letterhead used in June of 2011?

A. No.

Q. Do you know if you still had letterhead identifying the old law practice at the Ferndale address, at the street address in Ferndale in June of 2011?

A. I don't believe so.

Q. But as you sit here today, do you know when exactly it was that the letterhead identifying the suite number in Ferndale was exhausted or disposed of?

A. I do not.

Q. Now --

THE REFEREE: Are you finished

with Exhibit H now?

MR. OSTRER: Yes, Judge.

THE REFEREE: So let me ask everybody. We have been back and forth and over these documents every which way and they still remain for identification. Is there an objection to putting them into evidence?

MR. LEVINE: Well, aside from the fact that we just got them today.

THE REFEREE: I understand that.

MR. LEVINE: No objection.

MR. OSTRER: I'm not offering them.

THE REFEREE: Okay.

MR. OSTRER: I can take it back from the witness.

THE WITNESS: (Handing).

THE REFEREE: So just so everyone is clear then, the way the record stands is that Ms. McGuire's testimony about these documents is what I have got, not what is contained in the documents?

MR. LEVINE: Well, I will move them in. I have no problem with that. And

some of these documents we can get in another way.

MR. OSTRER: We are going to put the whole exhibit in, your Honor.

THE REFEREE: I'm concerned that there has been an overlapping of using this document to refresh your witness's recollection and the witness simply reading from the document. You have done so much of that that it seems to me to be appropriate at this point to put the whole batch of documents into evidence.

MR. OSTRER: Then we will do that, your Honor.

THE REFEREE: Respondent's Exhibit H is received.

(Respondent's Exhibit H, previously marked for identification, was received in evidence.)

Q. Now, Ms. McGuire, Ms. Tishman asked you if you received any special training regarding the closing of the law practice. Do you recall that question?

A. Yes.

Q. And I believe you said you

hadn't?

A. Correct.

Q. Do you know if your husband received any special training or instruction from anyone, even attending judge school regarding what needs to be done to close down a solo practice by a lawyer, such as your husband?

A. No.

Q. Do you know if he was provided with, or did you see any documents issued by the Office of Court Administration or any other agency provided to a new judge about what to do in closing down a solo practice?

A. No.

Q. Do you recall your husband attending judge school?

MR. LEVINE: Objection, Judge.

A. I do.

MR. LEVINE: He is impeaching his own witness.

THE REFEREE: This is a different question.

MR. LEVINE: It's going back to the judge school. That was the premise of

the first two questions.
Q. Did your husband --
THE REFEREE: Overruled.
Q. -- attend judge school?
A. Yes.
Q. Do you know where it was?
A. At the Judge's Institute in White Plains.
Q. Do you know for how long?
A. One week.
Q. Now, how old is your youngest?
A. 20.
Q. How old was he and what grade was he in in September of 2014?
MR. LEVINE: Objection. To the relevance --
MR. OSTRER: Subject to connection, Judge.
A. He was in ninth grade at the time.
THE REFEREE: We have to get this to be proper redirect.
Q. Okay. You were asked about a vacation on September 16 to 24 in September of 2014?

A. Yes.

Q. Did you arrange -- were you on vacation in September of 2014 at the beginning of the school year?

A. I don't think so, because my son would have been in school. I don't believe so, but I don't remember.

Q. Do you know your brother-in-law's vacation schedule?

A. No.

Q. Do you know if he -- you mentioned motorcycles. Does he have any hobbies and the like?

A. Yes, he races motorcycles and cars.

Q. Do you know when the Eastern States was held in 2014?

A. That is the culmination of the car racing schedule, so, yes, it could have been in September.

THE REFEREE: Do you know that or are you --

THE WITNESS: No, I do not know that, but it could have been.

Q. You don't know?

A. No, I don't know.

Q. Now, Ms. Tishman asked you about the fax machine.

A. Yes.

Q. And the fax machine had been maintained at the suite in Ferndale; is that -- did I understand your testimony correctly?

A. Until we, yes, until we closed the office and then it came to our home.

Q. When was the office closed? When were you out of the space and into the storage?

A. February.

Q. Okay. So after February you brought the fax machine home?

A. Yes.

Q. Was it connected at home?

A. Yes.

Q. Did you continue to use the fax number that you had from Ferndale?

A. No.

Q. Did you get a new fax number?

A. No.

Q. Okay. So how was the fax machine

utilized when you moved it to your home?
A. I plugged it into my home number.
Q. And that was for the -- when you say, "Plugged it into your home number?"
A. I would physically take the plug for the phone when I had to use the fax and plug it into the back of the fax machine.
Q. Did you ever change the fax number on?
A. No.
Q. And if somebody were to fax to your old fax number, did that forward anywhere or was it a deceased line, so to speak?
A. Yes, that number was gone. It would come -- if I have someone to fax me, I would had to give them my home number.
Q. And then plug in the fax machine?
A. Yes.
Q. So did you do anything to modify the fax machine from the time you removed it till -- from the office in the suite at 111 and brought it home?
A. No.
Q. And the -- was there any first

name, as Ms. Tishman refreshed your recollection about the ribbon that appeared on the fax?

A. Yes.

Q. Did you use that fax to assist your brother-in-law?

A. Yes.

Q. Was there any first name, either Ken or Corinne or Michael attached to the fax ribbon?

A. I didn't even know it was there until today, no.

Q. Now, you also had an additional email address?

A. Yes.

Q. Okay. Do you remember what your email address was in addition to the O-B-I-E-I-N-K-Y@Y[redacted]?

A. Cmcguireski at -- I don't even remember it. Sorry.

Q. So you did have another email account?

A. Yes. [redacted].

MR. OSTRER: Maybe if we can give the witness --

A. Cmcguireski@[redacted]. Sorry.

Q. Did you use that email in addition to the other emails you testified to on cross-examination?

A. Yes.

Q. Did your husband have access to that email account, the ski?

A. No.

Q. And did your husband have access to your O-B-I-E-I-N-K-Y@[redacted] email address?

A. No.

Q. Now, you -- what was your cell phone number in or about 2011?

A. [redacted].

Q. And does your -- did your brother-in-law -- and that is one number, one digit distinct for your husband's?

A. Yes.

Q. Do you know; if you know, why your brother-in-law inserted your husband's email in the communications?

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. Now, Ms. Tishman asked you about

Exhibit X-32.

MR. OSTRER: Can you provide that for the witness?

MS. PARTIDA: (Handing).

Q. Ms. McGuire --

A. Yes.

Q. -- Ms. Tishman asked you with respect to the -- that two word email response that you sent on August 28, 2014 at 10:37 a.m. --

A. Yes.

Q. -- if you spoke to your husband before responding to the August 27, 2014 at 8:15 a.m. of Maryanne Schultz; do you recall that?

A. Yes.

Q. Do you know what time it was that you opened or read the email from Maryanne Schultz?

A. No.

Q. Is there anything on X-32 which would refresh your recollection when the email was actually seen by you?

A. No, just the time.

Q. Does the fact that you responded

to it by reading it on your iPhone or that your response was sent from my iPhone on August 28, 2014 at 10:37 a.m. indicate anything to you?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. That I would have seen it from my iPhone and responded immediately and not waited to wait get home to my computer.

Q. Now, with respect to X-20.

MS. TISHMAN: I'm sorry. What number?

MR. OSTRER: X-20.

THE REFEREE: X-1?

MR. OSTRER: X-20, your Honor.

MS. PARTIDA: (Handing).

Q. Do you recall ever seeing a $13,000 down payment check in connection with the Moore transaction?

A. No.

Q. Do you know who the down payment check was given to for the transmittal to Maryanne Schultz?

A. I do not.

Q. Do you know who obtained the down

payment check?
A. No.
Q. Or whose check it was?
A. No.
Q. Or how it was transmitted to Maryanne Schultz, this law firm?
A. No.
Q. Now, so in your experience in terms of transmitting a signed contract to a seller's attorney, when would the down payment check be sent to a seller's attorney?
A. With the contracts.
Q. Did you ever observe your brother-in-law using or creating emails at your home?
A. Yes.
Q. Can you describe the circumstances where you observed him doing that?
A. When he came down and the emails started to come in regarding the addendum, and when I called him he said I will be there and I will deal with it. He sat down and emailed a few emails. Again, he stayed

overnight, so I don't know how many, and I didn't really see him until he told me that --

MR. LEVINE: Objection.

THE REFEREE: Sustained.

Q. You can't say what he said. You can only say what you saw him doing.

A. Okay. He sat down and wrote emails regarding the addendums. It was a contract issue for the Moore's. I asked him --

MR. OSTRER: There is no question pending, ma'am.

THE WITNESS: Sorry.

MR. OSTRER: I just wanted to go through and see.

Q. For the DeCarlo's --

A. Yes.

Q. -- did you receive any payment or compensation for any of the activities you did from them, from Mr. and Mrs. DeCarlo?

A. No.

Q. And did you receive any compensation for any of the work you did on behalf of the Moore's?

A. No.

MR. OSTRER: Nothing further.

Thank you.

MS. TISHMAN: Nothing.

THE REFEREE: Thank you, Ms. McGuire. You are excused. Thank you very much.

THE WITNESS: Thank you.

MS. PARTIDA: You can follow me.

(The witness exited the hearing room.)

MR. OSTRER: Judge, can I get five minutes before we start the next witness just to clean things up here?

THE REFEREE: Five minutes.

Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: Are you ready to call the next witness?

MR. OSTRER: Your Honor, before I do, as a matter of scheduling, I do not have Mr. DeCarlo here who we anticipated presenting today. He ran into car trouble, as we previously advised. He will be coming

tomorrow morning along with Ms. Sheridan.

I would like with the consent of the Commission, if we commence Judge McGuire's testimony today, that we can break with his direct, take the other witnesses and continue with him so we don't inconvenience the witnesses.

THE REFEREE: I think that is the way to proceed.

MS. TISHMAN: No objection.

MR. OSTRER: And we have also, I believe while we were on the break I asked if there was any prohibition against my communication with Judge McGuire during the recess, and I was informed that the Commission had no objection, and, your Honor, permitted me.

THE REFEREE: Just not while he in is on cross-examination, which hasn't started yet.

THE REFEREE: Okay.

MR. OSTRER: Yes, your Honor. Thank you.

THE REFEREE: So I gather you are calling Judge McGuire to the stand?

MR. OSTRER: Judge Michael McGuire.

THE REFEREE: I am going to skip the preliminaries since you have heard them all.

THE WITNESS: Okay.

THE REFEREE: Sir, do you swear of affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Can we have your name for the record.

THE WITNESS: Michael F. McGuire, M-C, capital G, U-I-R-E.

THE REFEREE: You may proceed.

MR OSTRER: Thank you.

DIRECT EXAMINATION

BY MR. OSTRER:

Q. Good afternoon, Judge.

A. Good afternoon.

Q. Judge, where do you presently reside?

A. I live [redacted].

New York.

Q. Can you spell [redacted] for the court reporter.

A. [redacted].

THE REFEREE: Mike, move that mike back a little.

THE WITNESS: Back away from me?

THE REFEREE: Yes.

THE WITNESS: Okay. I have never been accused of needing a mike.

Q. And can you tell us about your educational background?

A. I received a bachelor's degree from Manhattan College in 1981, then went to -- taught --

Q. In what field?

A. In physical education and sport science athletic training. I taught for a year at a high school. Actually I worked at New York Athletic Club for half the year and then went to school -- went to teach at a high school.

Q. Confine yourself to the education.

A. Education. Thank you.

In 1983 I received a masters of acts from the University of Northern Iowa in biomechanics and in 2001 I received a juris doctorate from Pace School of Law.

Q. And can you tell us in after receiving your JD from Pace, were you admitted to practice in any jurisdictions?

A. I was admitted to practice initially in the Third Department in the Courts of New York State, and subsequently was admitted in the Federal Courts in New York State in the Northern District and the Southern District.

Q. Can you tell us a little bit about your work experience?

A. In law?

Q. Or following your graduation from college.

A. So after college, as I said, I worked for New York Athletic Club down here in Manhattan for about six months, and then took a job teaching. I was a -- I had a permanent substitute position. Then I was a graduate --

Q. What school district?

A. At the Ramapo School District at Spring Valley High School where I coached track, then after that I went to the University of Northern Iowa. I was the athletic trainer for women's basketball, football and women's softball, and then took a job for a short period of time at the University of Iowa as an assistant with the football program for about three-quarters of the season, for somebody, again, that was out. It was Anna May Crowley who was out with a -- having had a heart attack, so they needed someone to fill in.

Then I started as head athletic trainer at Saint Thomas Aquinas College in Rockland County. I kept that position for three years. I also was assistant baseball coach there. And in 1986 I started as the athletic director of physical education at Mount Saint Mary College where I also started the baseball program, stayed there as coach of baseball and athletic director until 1990 when I became director of athletics at Sullivan County Community College.

While I was at Sullivan, I continued to coach baseball at Mount Saint Mary until 1995. In 1995, I stopped coaching at Mount Saint Mary and took a job coaching in the minor league in the Northeast League with the Sullivan Mountain Lions. I kept that job for one year, and then in 1996 became the executive director of the Northeast League and kept that job until 2001 when they moved the league office to Durham, North Carolina, and I couldn't move with the league because of family issues, and I then went to work at the Sullivan County District Attorney's Office.

Q. And tell us about, a little bit about your legal employment following -- even following your graduation from law school.

A. So after graduation -- prior to -- well, prior to graduation the last semester I did an externship at the District Attorney's Office were I worked on virtually everything from disorderly conduct to homicides.

I actually did it backwards. My

first day on the job was a homicide scene was what they sent me down to work with the investigators on that. Then I left -- I stopped that in May, studied for the Bar, May, June and July.

And was hired -- I was hired the middle of August of 2001 to work on a judicial practice order, but I was stir crazy after about a week and a half at home, so I literally showed up at the DA's office, camped out in the library and did whatever they needed done, shadowed attorneys and whatnot.

I became a full-time ADA, as I said, in the middle of August of 2001 on a judicial practice order and was admitted in January of 2002.

Q. And you did previously say you were admitted in the Third Department. And you -- who was the District Attorney at the time of your appointment?

A. Stephen Lungen, S-T-E-P-H-E-N, L-U-N-G-E-N.

Q. And did you hold any particular positions during your tenure at the Sullivan

County District Attorney's Office?

A. The way Mr. Lungen had the office set up there were no chiefs or bureau heads. It was just eight assistant district attorneys and a DA. We were assigned to town and village courts. And no matter what came up in the town and village court you handled it from town and village court right through felonies, so I wound up trying a number of felonies, vehicular homicides, homicides, rapes, sex abuse cases, drug cases, everything.

Q. So in relationship to even -- you said there were eight assistant district attorneys. Is that the full complement of the DA's Office during your service?

A. Yes.

Q. Mr. Lungen, plus eight?

A. Mr. Lungen, plus eight. And Mr. Lungen actually tried some cases, but very few. The higher profile cases he would be involved with, but for the most part it was just the eight of us trying cases.

Q. All eight would handle cases from inception to conclusion based upon which

justice court it came through?

A. Correct. I could try an unlawful possession of marijuana one day and the next day pick a jury in a major drug case.

Q. And did there come a time that you left the employ of the Sullivan County District Attorney's Office?

A. I left the employ on December 3, 2004, because frankly we couldn't afford to live on $36,000, which was what the salary was.

Q. And where did you go after you left the office in early December of 2004?

A. So I opened an office on [redacted], [redacted] And so I opened a basic general practice.

Q. Can you tell me what did you undergo any --

MR. OSTRER: Withdrawn.

Q. Did you -- you say a general practice of law. Did you concentrate in any particular areas?

A. So when I left I had a contract. It certainly was scary to leave a place

where you had at least some salary and health benefits to go to being completely on your own.

I had a bit of a parachute, because I was able to enter into a contract with the conflict Legal Aid Office, where I had -- was assigned to represent indigent clients in family court, so the main focus of my practice became criminal law and family law, and the majority of my time was spent in family law.

Q. And how long did you maintain your office at 111?

A. We closed the office -- I left the office on December 31st at about 11:50 p.m. We worked right through to then. Our lease ran until June of that year. I had in advanced negotiated between November and December, negotiated with the landlord to cut in half the remaining time, so instead of paying January to June, I only had to pay January, February and March. We actually had the lease paid through March, but as of December 31st at 11:45 I was done.

Q. Now, prior to your successful

campaign to be elected to the county court of Sullivan County, had you sought any other elected office?

A. I did. I ran in 2009 for District Attorney. Mr. Lungen had been District Attorney for about 30 years, and he was retiring, so the seat was open. I ran for District Attorney in 2009, but we didn't get beyond the convection, because Mr. Farrell, who is now the District Attorney now running for County Court Judge as District Attorney, he prevailed in the convention and that was the end of that run.

Q. And so you ran against Jim Farrell for District Attorney?

A. I ran against him for the republican and conservative nomination.

Q. Had you served with Mr. Farrell prior to your attempt to secure the republican and conservative nomination as District Attorney in Sullivan County?

A. Right. Mr. Farrell had been an assistant district attorney when I was in the DA's Office. When I left, he continued there, so Mr. Lungen threw his support

behind the person that had stayed with him. I respected that.

Q. Now, did you hold any other elected positions or municipal positions?

A. I was the -- I was a member of the School Board of the Liberty Central School District, and had been elected within the school board to be vice president of the school board.

Q. During what period of time did you serve on the local school board?

A. I am going to say 2003 until 2001. My term would have ended in June or May of 2011. No, June 30 of 2011. It is July to June, but I had to resigned because I was elected and took the bench, so as of January 1, 2011 I had resigned.

Q. From your position at the school board?

A. With the school board, yes.

Q. Now, tell us about your family. I know you were here when your wife testified. Tell us about --

A. So Corinne is my wife. We got married --

MR. OSTRER: You better get this right, Judge.

A. November 14, 1998 when I was in law school. We have -- I had two sons K[redacted] and W[redacted] from my first marriage. K[redacted] is born in [redacted]. W[redacted] was born [redacted] and C[redacted] was born in [redacted].

Q. In your private law practice, can you describe who -- well, starting in 2004 who was in your employ?

A. So in 2004, it was just myself. Corinne was coaching skiing. She also had a landscaping business, but she didn't do snow removal, so she was -- just coached skiing in the winter.

It was a family ordeal. My mother would answer the phones when I was out in court. And then later on as we got busier, things got a little bit better, Corinne was able to come in to the office and help out. As we continued to get busier my sister came in and she helped out as well. It really got down to being just Corinne and I for the most part.

Q. Can you provide us with -- for the record purposes, your mother's name?

A. My mother is Anne McGuire. My father is Kenneth McGuire.

Q. He didn't work at the law office?

A. He would come -- we would forward the calls to my mother's house, but on occasion people were coming to drop things off. They would come up and dad would sit and read the paper, whatever, while mom was there. He didn't send mom up alone.

Q. And your sister's name?

A. Maryanne Schares, S-C-H-A-R-E-S.

Q. For what period of time did your sister assist you in your practice?

A. My sister came in in the summer of 2010, kind of in the middle of the campaign. She had been helping out with the campaign, and then I was getting busier with the campaign. The office was still busy, so she started coming into the office. Then she went on the payroll. I am going to estimate it was right around the 4th of July, that period early July of 2010.

She stayed on the payroll until

probably February. We were completely out of the office before the lease ended, but probably February or early March she came off the payroll.

Q. So your sister was present to assist from the summer of 2010, and she assisted your wife in packing up and closing up the office?

A. Right, she assisted -- my wife was running the campaign, so we needed somebody else to help with the office, and then we were successful she stayed and helped us close up.

Q. Now, do you have any siblings?

A. I do. I have my oldest brother Ken. We have heard a little bit about him. Ken McGuire is an attorney. My -- I have another, Pat, who teaches in the school district out in Colorado where they had the shooting a couple of weeks ago. And my sister Maryanne.

Q. Now, did Ken precede you in pursuit of a law career, or did he follow you?

A. No, he preceded me. Ken is ten

years older than me. He will turn 70 in September. He graduated from law school. We have done about everything in ten-year increments. He graduated, I believe in around '89 or '90. We went to the same law school.

Q. Where does Ken maintain -- Ken was admitted to practice?

A. Correct.

Q. Are you aware of where he is admitted?

A. He is admitted -- at the time he was admitted in the Second Department because he lived in Spring Valley in Rockland County at the time. He was admitted in the Second Department.

He is now living in the Third Department. So he is admitted in several federal courts around the country as well because the bulk of his practice is product liability, defense work in the motor sports industry. He has represented Nascar and USAC and several of the manufacturers of various components.

Q. Does he have a -- where does he

maintain his office?

A. His office is actually on his property. He has got an office in his house at [redacted] which is really in the [redacted], but it is a [redacted] mailing address.

Q. So he doesn't maintain an office in the business district?

A. He does not because the overwhelming majority of his clients come by telephone and referral through the motor sports industry.

Q. And I just want to ask you about your training to be a judge. Can you tell us did you attend judge school?

A. So during the campaign, myself, and Corinne and our treasurer, a woman named Christie Adams, A-D-A-M-S, we were required to take a three-hour program that dealt with judicial campaign ethics and dealt with finances, the aspects of how you could refer to yourself in an ad, what you could do and what you could not do in a campaign.

Then when we were successful and we won the election from January 2, 2011,

which was a Monday until that Friday, we were at -- I was at the judicial institute in White Plains where we had the new judges' school program.

Q. And as part of that new judges' school program, did you receive any instruction with respect to the closure of your law practice?

A. I did not.

Q. Did you receive any written materials published by the facility or Office of Court Administration providing guidance in the closure of your law practice?

A. I did not.

Q. Did you receive any information concerning rules of conduct with respect to the handing of files upon the closure of your practice?

A. The only guidance I had was the rules of professional responsibility that talked about how long I had to retrain files, so I knew I had to retain my files for at least seven years.

Q. As you sit here today, have you

destroyed or disposed of any of the files left in your possession as of December 31 -- from December 31, 2010 to today?

A. I have not destroyed them. At one point our storage unit had a water leak and some of the boxes that they were stored in took on water, so some of the paper was destroyed, but we still have the boxes and the paper. We didn't throw anything away, but I don't know if they would even be legible right now.

Q. But you maintained the files in storage since closing your law office?

A. We have. First, we had a room in the building where we were at. It was actually one of our former rooms that was a storage room. We were able to rent that.

Ultimately they rented that space, so we had to move them out. I am going to say probably around 2015. It was probably winter of '15. We had to move them out. We got a shed on our property. They are stored in a loft in that shed, some in our attic, some in my father's garage. They are a little bit spread around.

Q. In terms of your status as an attorney when you were sworn in as a County Court Judge for Sullivan County, do you know what your status was as a attorney?

A. My understanding is I become -- have the status of a retired judge. I have to complete my bi-annual registration every two years --

THE REFEREE: You said "retired judge." You mean --

THE WITNESS: A retired attorney. I apologize. Thank you.

A. As a retired attorney. I have to complete the bi-annual registration. I don't pay a fee. I do maintain CLE's, because through the judicial institute for the most part, we are able to get plenty of CLE's, so I can keep track of those. That is my statues, retired.

Q. Now, as a retired attorney, did you receive any instruction or guidance from the Office of Court Administration, from the New York State Bar concerning the closure of your solo law practice?

A. I did not.

Q. At the judicial institute, were there any classes offered concerning the closure of a practice by -- of any sort, a multi-lawyer practice, a solo practice, large firm practice?

A. There was no specific session. There was one session in judicial ethics that was given by Gerald Stern and it touched on a number of different things, but not on closing a solo practice.

Q. Now, who was your -- you were here when Judge Meddaugh testified?

A. Yes.

Q. Was he your mentor judge?

A. Yes, Judge Ceresia issued a -- it was a memo. It wasn't technically an order.

Q. Can you spell Ceresia?

A. C-E-R-E-S-I-A.

Q. And who is Judge Ceresia?

A. Judge Ceresia was the administrative judge with the Third Judicial District.

Q. Is that where Sullivan County is?

A. Sullivan County is in the Third Judicial District, the seven county district

that goes from Albany and Rensselaer down to Sullivan County through Columbia, Greene, Schoharie, Ulster and Sullivan. So he issued a directive that Judge Meddaugh would be my mentoring judge.

Q. Now, as your mentoring judge, do you know -- did Judge Meddaugh provide you with any advise or guidance concerning closure of a practice?

A. He did not.

Q. Are you aware if Judge Meddaugh was ever a solo practitioner?

A. He was not.

Q. What was -- were you told what the mentor judge was available to provide to you?

A. So after the election sometime between November 10 and December 31, Judge Meddaugh and I met, and he gave me an orientation; if you will, to the family court where I would be. We talked about caseloads. We talked about his experiences. He told me to be careful about burn out. He told me not to come in to work too early and stay too late because you get burned out,

and if there is ever anything that I -- any questions that I ever had that I should feel free to come down. His door would always be open to me. It was somewhat of a welcome to the club type of an orientation.

Q. And did you -- and for what period of time did he serve as -- formally serve as a mentor?

A. Well, I don't know that it actually had -- the letter that we got appointing him didn't have a sunset provision, but I have always seen Judge Meddaugh as a mentor. He is at the other end of the hallway from me. We speak daily. I felt very comfortable and open popping into this office, and he has felt comfortable popping into my office when he had some criminal law issues in, maybe a juvenile delinquency proceeding and he has had questions. He has popped into my office. We have got an excellent working relationship.

Q. Now, at what point in time; if ever, did Judge Meddaugh suggest to you the name of Wendy Weiner?

A. So to create a context; if I can, my wife was doing other things. He suggested Wendy Weiner's name to me when it became apparent that my first choice, which was my sister I then learned I couldn't hire someone that was related to me.

So he said -- his name was on her application, resume as a reference, so I mentioned her to him. He thought that she would be a good candidate.

Q. How was it that you came to understand that you could not hire your sister?

A. So initially I got a call from a logistics person -- his first name is Mickey and his last name is escaping me right now, who works in the Third Judicial District. And he said to me I think the day after election day, "You need to hire a court attorney, and you need to hire a secretary." I said, "Do I have to work off any lists or anything?" He said, "No, hire anybody you want."

Obviously, the court attorney has to be an attorney. Mary Grace was my

selection there because she had so such experience in supreme court. So my sister did not have a job once we were closing the office. She needed benefits and I thought it would be an excellent opportunity for her, so I put her name in.

And literally within hours of putting her name -- actually I put her name in and she went to meet with Ms. Benson to start to fill out paperwork with Christina Benson.

Q. Who is Christina Benson?

A. She is the chief clerk of the family court. She was coordinating getting paperwork done for my chambers.

Q. So even though you were elected to the county court you were dealing with family court?

A. Because my chambers were going to be in family court and half of -- I was going to have 50 percent of the family court load. We knew that.

Q. How many elected family court judges are there in Sullivan County?

A. One.

Q. And that is Judge Meddaugh?

A. Judge Meddaugh.

Q. And the calendar is such that a second judge was required?

A. A second judge is required. My understanding is there is not enough -- the docket isn't big enough to justify a second full-time family court judge, so which is very common in the upstate counties, there is multi-hat, multi-bench judges. It would be uncommon in upstate New York for a judge not to be a multi-hat judge.

THE REFEREE: So how does that work? So you get elected to the county court?

THE WITNESS: Yes, sir.

Q. And then you get appointed to the family court as an acting family court judge?

A. Correct. The administrative judge every November comes out with work assignments and you have got a full-time family court judge. We don't have enough criminal load to justify a second county court judge. We don't have enough family

court load to justify another full time, so you have a multi -- so you get an elected county court judge.

Actually I am elected to be accurate to county court and surrogate. Judge LaBuda is also county court and surrogate, so by election you are the surrogate, because you can't have acting surrogates, and then by work distribution you become -- I become an acting family court judge and now ultimately an acting supreme court judge.

THE REFEREE: That is by appointment?

THE WITNESS: Correct. By appointment of -- actually the appointment by Judge Coccoma -- well, it's not Judge Coccoma anymore. I believe he is retiring, but we get it from our administrative judge.

Q. Spell Coccoma.

A. I tried that last week and messed it up.

MR. LEVINE: It is C-O-C-C-O-M-A.

THE WITNESS: Thank you.

MR. OSTRER: Thanks for that.

THE WITNESS: Mr. Levine gets an assist on that.

MR. OSTRER: Can you just read back my last question before the Judge's?

(Requested testimony was read.)

Q. Now, directing your attention back to your introduction to Wendy Weiner. How did you -- did you speak to Judge Meddaugh before you interviewed Wendy?

A. I don't --

Q. About Wendy?

A. I don't remember what the chronology was. Corinne was coordinating bringing people in for interviews. We interviewed at least three people, plus my sister for that position. So I don't remember the chronology of whether we interviewed her first and then I spoke to Judge Meddaugh or whether I spoke to him first.

Q. And did you interview Ms. Weiner?

A. I did.

Q. And where did that take place?

A. That took place in my office -- in my office at [redacted] In my

private office in there, there was a couch and a couple of chairs, so Corinne and I both interviewed her.

Q. And when did you -- at that point in time had you already offered a position to Mary Grace Conneely?

A. I interviewed two people for that position.

Q. The position being the court attorney?

A. The court attorney.

But I had pretty much had focused on Mary Grace because she had expressed that she wanted to come work for me because Judge Sackett, we weren't sure if he was going to be going back to New York City or not.

And she had 20 years of experience. She had been at the appellant division. She has had real strengths in areas that I didn't have a whole lot of experience in Article 78's, personal injury, which I had no experience in, so I thought that we would compliment each other very well.

So we interviewed the two people.

Mary Grace being one of them, and then for a secretary, I believe it was four that we interviewed.

Q. Now, Mary Grace, in addition to her experience with Judge Sackett, do you know if she worked for any other -- she had any other judicial appointments with judge's chambers prior to Judge Sackett?

A. She did. She was principal law clerk to Judge Kane when he was a supreme court judge in Sullivan Court. She may have started when he was a county court judge, but she stayed with him. And then when he was appointed to the appellant division in the Third Department, she went to the appellant division.

Then she left while he was still at the appellant division. He was getting close to mandatory retirement age, so she left. She went and practiced for a very brief time, a matter of months. And the then she had an opening with Judge Clemente, C-L-E-M-E-N-T-E, who was actually a Brooklyn based supreme court judge who had gotten transferred by OCA, by some mechanism that I

am not really aware of he wound up sitting in Sullivan County.

Q. So Judge Clemente wasn't elected in the Third Department, but he was assigned by OCA to sit?

A. Correct.

Q. Would the same hold true for Judge Sackett?

A. Judge Sackett was either elected or appointed. I believe Judge Sackett was actually appointed in the Bronx. And then he -- Judge Sackett had a vacation home in Sullivan as did Judge Clemente, and the two of them were friendly.

Judge Clemente was happy to go up because he was getting close to retirement age as well, and then Judge Sackett was happy as well, so they both sat up there.

Q. Were they the only resident supreme court judges during their tenure there?

A. They were, because Judge Kane, whose office was still in the building was in the appellant division, so he was not handling any trial court work, although his

chambers were still in the building at 414 Broadway.

Q. That is up the hill?

A. That's up the hill.

Q. So in interviewing Ms. Weiner for the position as your -- what position were you interviewing her for?

A. Confidential secretary.

Q. And did you receive any instruction or advice as to what a confidential secretary was permitted to do or not to do?

A. Well, my understanding -- the answer to that question is yes, some.

Q. And where did you get that information about what your confidential secretary would be permitted or prohibited from doing?

A. It came from a couple of sources. The ethics lecture that we had in judge school talked about what things we could do and not do, be involved in fundraising activities, be involved in political activities. Those types of things, practice law.

And it was my understanding that chamber staff were held basically to the same standards. However, they could elected office. If she wanted to run for office, she could, but my understanding was that that should not be encouraged.

And certainly I would have to stay out of it if they did, because Mary Grace wound up running for office. She ran for a town judge in the Town of Neversink. I had to be very, very careful. I didn't even go into the Town of Neversink that year, that campaign season.

Q. But in terms of hours of attendance in chambers or work rules and the like, did you receive any instruction on guidance concerning either your principal court attorney or your confidential secretary --

A. When --

Q. -- upon arriving at the bench?

A. When I met with Christina Benson she said that it is a 40-hour work week. They, you know, however you set the hours is fine as long as it is eight hours a day.

They get an hour break for lunch. Vacation days are set by contract for them. I think it is one day for every pay period they work, so a year they would have 25-vacation days. They get their health benefits.

I didn't really get into much of that intricate stuff because she would give them that orientation when she was hired.

Q. In terms of were you required to make any reports concerning your chamber staff attendance off hours, tardy arrivals, early departures, any of that sort?

A. No, other than I approved their -- at least the Third Judicial District uses the chronos system, so every other Thursday I have to go in and approve that they have either been at work full time or took vacation, annual leave or sick leave.

Q. Are you responsible for maintaining a day-to-day record of the attendance of your office staff, and by that I am speaking of Mary Grace Conneely and when you first took the bench Wendy Weiner?

A. Not a day-to-day. They go in and

complete their chronos day to day. In other words, if they take an hour off, or they take a certain number of hours off they would input, and then it would be every other Thursday afternoon I would go in and check it and approve it.

Q. So it was on the honor system for the employee, chambers employees?

A. Correct.

Q. And what would you have before you to verify whether it was accurate or not if, say you were on trail?

A. Well, if I was on trial or on the bench, it would be completely the honor system. The reality is there was -- they don't swipe in or punch in and out, so I could only rely on what they told me. They left at 3:00. They left at 4:00. They are professionals. I treated them as professionals as long as they were getting their job done.

Q. Was there any forms or documents that you were required to maintain to audit when an employee came or left?

A. No.

Q. If you were to allow an employee off for a day, say a Friday on a particular time, how would you account for that?

A. Well, if they took it as annual leave I would account for it that way. If I gave them a day because maybe they were flexing their time, maybe we were on trial and they had worked over, then I would just reflect their time and give them a day off for it. It didn't happen often, but it did happen.

Q. So there were occasions where Wendy Weiner, for instance, you were here when she testified about the NRA dinner. Did she take time off while she was engaged in your chambers to work on the NRA dinner?

A. She did.

Q. Did you -- was that during normal work hours, or was it just after hours?

A. So it's -- it was hard to separate it, because one of things that she was doing, which was somewhat of a concern to me was she was in 2013, she was coordinating the silent auction.

So she was gathering prizes for

the silent auction. Essentially soliciting donations, which was troubling to me when I learned that. She never actually came out and told me. I came in one day and there were several items on my table. And I asked what these are, and she told me these are gifts -- these are items for the silent auction.

She would work, you know, lunch hours, mornings, evenings. Jim Hemmer was the president of The Friends of the NRA. He was the maintenance supervisor assigned to the building, so he would be down in my office, in chambers all time.

Now, if he is down there to fix an air conditioning unit, and he's also talking to Wendy, to be frank, I wasn't sitting monitoring their conversations, but there came a point where I was aware in 2013 she was involved in that function.

Q. Now --

MR. OSTRER: Judge, this would be a good time.

THE REFEREE: Okay. Are you going to come back to this, because I

thought I heard you say that Wendy Weiner took time off to make up for the time that she worked on the NRA dinner?

THE WITNESS: No, no, no. When we would have the pistol permit interviews on Saturdays, she would take time off on Friday to compensate her for the time she was going to be working on Saturday.

With the NRA dinner it was -- to use a legal term, inexorably intertwined, because the person that was organizing the dinner was the maintenance supervisor of my building, so he was there. I am on the bench. They are having discussions and whatnot.

And then at lunch time or mornings, on her way in or in the evenings or on weekends, I came to learn in late August, early September of 2013, that she was out soliciting prizes for the penny social -- for the silent auction.

And I said something to her. I said, "You really can't be involved in fundraising activities." And now she is the fundraising chair for that organization.

THE REFEREE: I assume this will be taken up on cross and we will see what develops.

MR. OSTRER: Yes.

THE REFEREE: So this is a good place to stop?

MR. OSTRER: Yes, your Honor.

THE REFEREE: So --

MS. TISHMAN: We are stopping now? I thought we were going to 5:30?

THE REFEREE: I think we will stop now.

If this is a good place?

MR OSTRER: It is a good place. I need to be some place at 7:00 p.m.

THE REFEREE: Okay. We will resume tomorrow morning at 10:00 a.m. promptly. Have a good evening.

JUDGE MCGUIRE: I except that we will have two witnesses ready to go at 10:00. I really expect that they will be brief. Probably before lunch we will be able to be back to me. I would say well before lunch.

MR. LEVINE: Anything to discuss

before we go off the record?

MR. OSTRER: No, your Honor.

THE REFEREE: Off the record.

MR. MAISONET: Off the record.

(TIME NOTED: 4:56 P.M.)

EXHIBITS

COMMISSION	ID	EV
X-13A Previously corrected Document X-13	11	

Respondent	ID	EV
H Documents	89	185

CERTIFICATION

I, DEIRDRE PLEVRITIS, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 20, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June 2019.

Deirdre Plevritis

DEIRDRE PLEVRITIS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant To Section 44, subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE

a Judge/Justice of the Supreme Court Queens County

61 Broadway
New York, New York

May 21, 2019
9:48 AM

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

OSTRER & ASSOCIATES, P.C.
[redacted]
BY: BENJAMIN OSTRER, ESQ.

Also Present:
JUDGE MICHAEL F. MCGUIRE
MICHAEL MAISONET
Senior Court Clerk

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THE REFEREE: Good morning, everybody. Today is May 21, 2019. This is the continuation of the hearing In The Matter of Judge Michael F. McGuire. We're going to take a witness out of turn, I understand, Mr. Ostrer.

MR. OSTRER: Yes, and --

THE REFEREE: Please call the witness.

MR. OSTRER: Melinda Sheridan.

MS. PARTIDA: Witness entering.

THE REFEREE: Good morning. Please have a seat. My name is Mark Arisohn. I've been appointed by the Commission on Judicial Conduct as the referee in this matter, and I've been asked to read a statement to you which will give you some instruction --

THE WITNESS: Okay.

THE REFEREE: -- and information. A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to

facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please, refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment. Okay?

THE WITNESS: Okay.

THE REFEREE: Please rise and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE REFEREE: Please have a seat, and state and spell your name for the record.

THE WITNESS: Melinda Sheridan,

M-E-L-I-N-D-A S-H-E-R-I-D-A-N.

THE REFEREE: Mr. Ostrer, please proceed.

MR. OSTRER: Thank you.

DIRECT EXAMINATION

BY MR. OSTRER:

Q. Good morning, Ms. Sheridan.

A. Good morning.

Q. Can you please -- how are you currently employed, ma'am?

A. With the Unified Court System.

Q. Where --

THE REFEREE: Can you move the microphone closer to you? That's great. Thank you.

A. So the Unified Court System up in Ulster Family Court.

Q. How long have you been so assigned?

A. In Ulster, I've been there almost two years, but I've been with the court system for almost five now.

Q. And what is your title?

A. I'm a court clerk.

Q. And where are you -- what is your

post presently? Are you assigned to a particular judge, are you --

A. Ulster Family Court, I'm assigned to the Honorable Keri Savona.

Q. Could you, please, spell Savona?

A. S-A-V-O-N-A.

Q. Thanks. Now, prior to your service with the New York State court system, can you tell us how you were employed?

A. I was employed by IBM for 28 years.

Q. In what capacity?

A. As a -- through the secretarial ranks and the last 10 years I was an HR administrator.

Q. What does an HR administrator do?

A. Basically on-boarding and off-boarding employees separating from the company, doing compensation, doing bonuses, anything that's HR related to employees.

Q. And did there come a time when you changed careers, so to speak?

A. Yes.

Q. And when did that occur?

A. That occurred in July of 2014 when I was resourced from IBM and --

Q. What do you mean by "resourced"?

A. They did employee cuts. They sent a lot of their work overseas so we were resourced out.

Q. And what sort of career change did you make?

A. I then started working for the Middletown City School District in the administrative offices.

Q. And for how long were you employed at the Middletown City School District?

A. One year.

Q. And that would be in when, what calendar year?

A. That would be 2014.

Q. So the 2013 --

A. 2013-2014 --

Q. -- school year?

A. -- school year, correct.

Q. Where did you go employment-wise from there?

A. To the Unified Court System,

October of 2014.

Q. And can you tell us how that -- what position did you obtain with the Unified Court System?

A. Court assistant.

Q. And can you describe for us what a court assistant is?

A. A court assistant is a person who can either do back office work or can go into the courtroom and clerk for judges.

Q. And did you -- when did you commence those duties?

A. October of 2014 I started in Sullivan Family Court.

Q. And were you assigned to a particular judge in October of 2014?

A. Yes. I was told I would be assigned to Judge McGuire.

Q. And did you, in fact, assume a position in the Family Court presided over by Judge McGuire?

A. Yes.

Q. And can you describe your general duties upon commencement of your work in Judge McGuire's court?

A. After about a month of training with the deputy, I was then in Judge McGuire's courtroom full-time as his clerk taking the notes, doing the orders, scheduling the diary, scheduling cases.

Q. Now, directing you to your training period, who were you trained by?

A. Most specifically with the Deputy Chief Clerk Stacey Benton, and then I shadowed the other court assistants for Judge Meddaugh in the courtroom.

Q. And who was that?

A. That was Andrea Rogers.

Q. Now, in your interactions with Ms. Benton, Ms. Rogers, were you alerted to any special conditions that you might encounter working in -- not for the truth -- but just for whether she was so informed?

MR. LEVINE: Objection to the question not being clear and to the possible hearsay that's being elicited.

THE REFEREE: Rephrase it, please.

Q. During your training, were you -- did -- were you made aware of any particular

unique conditions in Judge McGuire's court?

A. Can I ask what kind of unique conditions? I'm not --

Q. Any unique condition?

A. Well, we were trying to be a paperless court. But anything -- no. I would have to say no, nothing special or unique.

Q. And were you an in-room, in-courtroom assistant, out-of-courtroom assistant or both?

A. Both.

Q. And can you tell us what your out-of-courtroom duties as a court assistant were when you were working in Judge McGuire's court?

A. I would do the orders. I would do the assigning of attorneys for the children. I would do anything that was case related that had happened that day in court.

Q. And for what period of time were you the court assistant for Judge McGuire, commencing in October of 2024 and what was your exit date?

THE REFEREE: 2014?

Q. 2014.

A. 2014 through May of 2017.

Q. And what you've just testified to about the orders, assigning attorneys for the children and such, is that activities that you would have done throughout the 31 months or so?

A. Yes.

Q. And can you tell us what the choreography of the orders you would prepare would be? What would you do with them after you drafted them?

A. I would attach them to the hard copy files and put them in the back chambers on the credenza for the judge to review and sign.

Q. Did you utilize any particular software or drafting materials to prepare your orders and assignments?

A. We did our orders using UCMS.

Q. What is UCMS?

A. Unified Court Management System, which generates the different types of forms used. It's -- they have templates of forms, and then from that form you would then put

in the required information that you needed. So it was a template and then you would add to it.

Q. And where would you get the information to add to your template?

A. It would be what happened in court that day, my court notes, the recording of the proceedings.

Q. So you would listen to recordings?

A. Occasionally, if I had questions and my notes weren't clear.

Q. And would these orders also include orders of protection?

A. Yes.

Q. And what would happen with the orders after you delivered them to the judge's office?

A. Judge would review them, sign them, and then they would be given to a court assistant or one of the clerks there and they would be distributed and mailed out.

Q. Were your orders ever modified, corrected or changed by Judge McGuire?

A. Yes.

Q. How often?

A. Often enough, I would have to say. I didn't come from a court background or a legal background, so my wording needed some work, but for the most part --

Q. So the judge would read your orders --

A. Yes.

Q. -- or make corrections --

A. Absolutely. Or if I had a question about wording, I would put a little note on my -- on the order and it would go back to chambers and then the judge would answer it or make the correction.

Q. Now, with your -- with respect to your in-court duties, can you describe them for us?

A. In court, I would bring the courtroom up in the morning, test the recording devices. I would then -- once court started, I would do the diary, do the scheduling, take the notes, start and stop the recorder. Different things like that.

Q. So you actually operated the

recorder --

A. Yes.

Q. -- during proceedings?

A. Correct.

Q. Now, in addition to Judge McGuire, are there any other Family Court judges or magistrates in Sullivan County --

A. Yes.

Q. -- while you were there?

A. Yes.

Q. And who would they be?

A. Judge Meddaugh and Support Magistrate Linen.

Q. And could you tell us -- could you describe for us the physical location of Judge McGuire's courtroom and chambers?

A. Sure. So it was a small courthouse, court place, but it was -- there was -- Judge McGuire's chambers were set aside in the back, separate. Down the hallway then would be Judge Meddaugh's chambers, and then on the opposite side, down the hallway would be support magistrate's chambers.

Q. Was there a common security

portal to both Family Court courtrooms?

A. At the front of the building there would be the mag and the court officers would be out there and then they would come into the courtrooms.

Q. And as the operator of the recording device, would you be in the courtroom for the entirety of proceedings --

A. Yes.

Q. -- during a particular day?

A. Yes.

Q. Now, did you have anything to do with the preparation of the calendar or docket?

A. Yes.

Q. And can you explain what tasks you would undertake with respect to that?

A. So with the preparation, we used hardcopy files. So prior to the following court date when the cases would be coming in, we would go through, or I would go through the case file, making sure that anything that had to be done prior was done. And then making sure that any orders had been done, any type of assignments had been

done, any reports that were received, and that would be prep work the night before for the next court day.

Q. And did you have an assigned desk or work area?

A. Yes.

Q. And where was that located, with respect to the judge's office and courtroom?

A. Separate from the courtroom, down the hallway, there was an open area that the clerks and the court assistants sat in.

Q. And so you sat in a pool area. Who else occupied that space with you --

A. The other --

Q. -- during your two and a half years?

A. The other court assistants.

Q. Who would that be?

A. Andrea Rogers and two of the 12s. I don't know their titles, but two of our 12 staff, grade 12.

Q. And that would be grade 12s?

A. Correct.

Q. And who would they be during your tenure?

A. That would be Judy Yates and Karen Benson.

Q. And where was that, your location where your desk was, with respect to Judge Meddaugh's courtroom?

A. Down the hall.

Q. So beyond Judge Meddaugh's courtroom?

A. Yes.

Q. In relationship to Judge McGuire's courtroom?

A. Correct. Judge McGuire's was the farther courtroom, Judge Meddaugh's was closer.

Q. Was nearest to your pool area?

A. Correct.

Q. Were you able to hear things that were transpiring down the hall?

A. Not necessarily, no.

Q. Now, you said you took notes in the courtroom.

A. Yes.

Q. Did you observe the judge doing so?

A. Yes.

Q. And how -- from what vantage point were you that you observed the judge keeping notes?

A. My desk was adjacent to the bench, so Judge McGuire would be facing forward into the courtroom and I was side, by the bench. My desk was sideways.

Q. And what time would you -- was there a starting time for Family Court activities during your tenure with Judge McGuire?

A. Yes. 9:00 a.m.

Q. And what time would you arrive to be prepared to start at 9:00 a.m.?

A. 8:45.

Q. And was that a fixed starting time that you could expect each day?

A. For myself, yes, but we technically start at 9:00 a.m.

Q. And when you say "start at 9:00 a.m.," what starts at 9:00 a.m.?

A. Court.

Q. So you need to have the recorder, the court officer in the courtroom, and the like before you can call your first case?

A. Correct.

Q. How promptly during your tenure, after the nine o'clock hour did court start in Judge McGuire's courtroom?

A. Promptly at 9:00.

Q. And can you tell me, what was the -- did you have a, say, busiest day of the week?

A. We did. That would be Mondays, our arraignment day.

Q. And how many dockets would you address on a typical arraignment day during your tenure with Judge McGuire?

A. 60 to 70, sometimes on a really tight day, 80.

Q. And by dockets, that wouldn't mean 80 cases, would it?

A. No, it would not. It would be 80 dockets but it could be several different family files to a docket.

Q. So 40 cases for a --

A. Average.

Q. And would that include conferences?

A. Yes.

Q. Would that include, you said, arraignments?

A. Yes.

Q. And what is an arraignment?

A. An arraignment is a first appearance by Respondents and Petitioners.

Q. And would all Respondents and Petitioners be represented by counsel?

A. Not always.

Q. Would there be a difference in how the case would proceed if the parties appeared with counsel or without counsel?

A. The case -- if they appeared with counsel, it would probably take a little bit more time. If they appeared without counsel, they would be given the right to counsel and then we would have to schedule for --

THE REFEREE: Mr. Ostrer, I'm sorry to interrupt, but I'm finding a lot of this to be extremely repetitive. We've had more than -- more than once, more than three times, and I just hope that you get to something that's more germane to what we're doing, instead of

just rehashing stuff we've had over and over and over again.

Q. How would you describe your interaction with Judge McGuire between October of 2014 and May of 2017?

MR. LEVINE: Objection.

THE REFEREE: Interaction in what way?

Q. Interpersonal, how did the judge treat you?

A. Very well. I had no issues.

Q. Did he ever demean you?

A. No.

Q. Did he ever yell at you?

A. No.

Q. Did you ever observe him mistreating a court officer?

A. No.

Q. Mistreating an attorney?

A. No.

Q. Did you ever see him speak condescendingly to anyone outside of the courtroom?

A. No.

Q. How would you describe his

interaction with litigants?
A. Fine. Respectful. No issues.
Q. Now, in terms of the assignment of attorneys for the children, how was that accomplished?
A. I, as the court assistant, would pick the attorney for the child.
Q. And where would you pick him or her from?
A. From a list.
Q. And how was that list managed or maintained, if at all?
A. It was maintained by the clerk and we would randomly select an attorney for the child based on how often -- how often we used an attorney for the child, availability. That was usually the criteria. Type of case.
Q. Did Judge McGuire communicate with you by e-mail?
A. Not a lot but some.
Q. Text?
A. No.
Q. Do you know who Wendy Weiner is?
A. Yes.

Q. And who is Wendy Weiner?

A. She is -- she was Judge McGuire's legal secretary.

Q. And was she his confidential secretary in October of 2014 when you commenced work?

A. Yes.

Q. Did you interact with her from time to time?

A. Rarely. But if I were to go back into chambers, it would be a hello, how are you kind of deal.

Q. Were you functioning as the judge's court assistant in January of 2015?

A. Yes.

Q. Did you become aware of an alleged incident -- did you hear anything unusual on the morning of January 14, 2015?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I did not.

Q. Now, in terms of the orders that were -- you handled that were issued by the judge --

A. Yes.

Q. -- can you tell me when, if ever -- and those would include orders to show cause?

A. Yes.

Q. And they would include the other orders that you've described, orders of protection, orders appointing counsel and orders with respect to disposition of cases?

A. Yes.

Q. Did you use a stamp to affix the judge's signature to orders?

A. No.

Q. Were there occasions when you would be instructed to use a stamp by someone other than the judge?

A. Rarely, but there were some times if the judge was not there, say, we would stamp an order for an attorney for the child. But that would not be done without the permission of either the deputy or the chief clerk.

Q. So it would not be in communication with the judge, but it would be as a result of direction you received from either the deputy or chief clerk of the

court?
A. As far as I recall, yes.
Q. Can you describe, since you operated the recording system, how the microphone is situated at the bench?
MR. LEVINE: Objection to the relevancy.
THE REFEREE: Overruled.
A. It sits right in -- we didn't have mics like these. We had regular, the older type mic, and it would be directly in front of the judge on the bench. I did not have a mic on my desk.
Q. And how about the size of the courtroom compared to the room we're situated in now?
A. Slightly larger than this, but not by much.
Q. And so the judge would be speaking in close proximity to the microphone?
A. Yes.
Q. And was that important for the recording system to accurately record?
A. Yes.

Q. And are there frequently -- with what frequency would there be unintelligible --

A. Infrequent because we would have to listen with earplugs. So if there was going to be an issue, I would be hearing it realtime.

Q. So you're monitoring?

THE REFEREE: Is that an answer?

A. Yes.

MR. OSTRER: I thought it was.

THE REFEREE: I didn't hear an answer.

A. Yes.

Q. And could you describe your overall experience working with Judge McGuire?

MR. LEVINE: Objection.

THE REFEREE: Overruled.

A. I did not have any problems with Judge McGuire. We had --

MR. LEVINE: Your Honor, her own personal experience is irrelevant. She can testify about what she heard, now she's giving her own opinion. This is

totally outside of what's permissible here and this -- you have asked every question about his demeanor, what she -- now she's giving her own personal opinion and I think it's improper and beyond the scope of what's allowed.

MR. OSTRER: Based upon the examination of Wendy Weiner on direct, I believe it's relative and probative.

THE REFEREE: I'll allow it.

A. Repeat the question for me, please.

THE REFEREE: Just describe your overall experience with Judge McGuire.

A. No problem.

THE REFEREE: Fine. Next question.

A. We had a very good relationship.

MR. OSTRER: Thank you very much, Ms. Sheridan.

THE WITNESS: You're welcome.

THE REFEREE: Any cross?

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Good morning, Ms. Sheridan. On direct examination you said that the judge was fine and respectful to litigants, correct?

A. Correct. As far as I recall.

Q. But you were present when the judge yelled at litigants, weren't you?

A. When he raised his voice; at times, yes.

Q. And that was louder than his normal courtroom voice, right?

A. Amplified by the mic, yes.

Q. Well --

A. It was louder.

Q. Yes. And you were also present when the judge threatened to put people in handcuffs, weren't you?

A. I'm trying to remember now. There might have been -- if I recall, and I don't recall it fully, truthfully, there might have been one instance.

Q. And you were present when the judge ordered litigants to be taken -- to be taken into custody in handcuffs and removed from the courtroom --

A. Yes.

Q. -- weren't you?

A. Yes.

MS. TISHMAN: I have nothing further.

THE REFEREE: Anything else?

MR. OSTRER: No redirect.

THE REFEREE: You are excused, Ms. Sheridan. Thank you very much. Please call your next witness.

JUDGE MCGUIRE: Judge, I just need a minute because he had not yet arrived when we came in, so just give me one minute.

THE REFEREE: Okay.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

MS. TISHMAN: You are handling this witness?

JUDGE MCGUIRE: I am.

MS. PARTIDA: Witness entering.

THE WITNESS: Thank you.

THE REFEREE: Please have a seat, sir. My name is Mark Arisohn and I've

been appointed by the Commission on Judicial Conduct as the referee in this matter, and I've been asked to read you an instructional statement.

THE WITNESS: Okay.

THE REFEREE: A court reporter, who will transcribe the proceedings, is present. In addition, these proceedings are being digitally recorded. The proceedings will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers.

Please, refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise, as it becomes amplified on the recording. Please turn off cell phones and other electronic equipment. Okay?

THE WITNESS: Yes.

THE REFEREE: Please rise and raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony that you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE REFEREE: Please have a seat. State and spell your full name for the record.

THE WITNESS: My name is Steven De Carlo. S-T-E-V-E-N D-E capital C-A-R-L-O.

THE REFEREE: You may proceed, Judge McGuire.

DIRECT EXAMINATION

BY JUDGE MCGUIRE:

Q. Mr. De Carlo, by whom are you currently employed?

A. All County Title and Escrow.

Q. And in what capacity are you employed by All County Title and Escrow?

A. I'm the president.

Q. How long have you been the president of All County?

A. Since 2000.

Q. And are you familiar with Mike McGuire?

A. I am.

Q. And were you familiar with him as a practicing attorney?

A. Yes.

Q. And when Mike McGuire was a practicing attorney, did he use your company for real estate transactions that he was involved with?

A. He did.

Q. And since becoming County Court Judge in Sullivan County, have you had contact with Judge McGuire about any real estate transactions that he was involved with?

A. No.

Q. I want to direct your attention to the summer of 2014. At that time, were you the president of All County Title and Escrow?

A. Yes.

Q. And at some point did you receive a request to prepare a title report for a

property at [redacted]?

A. Yes.

Q. If you recall, who was purchasing that home?

A. Moore, Phillip.

Q. Phillip and his wife?

A. Yes, his wife, Eileen.

Q. Now, in the normal course of your business as a title company, how do you typically become involved in transactions?

A. We will get an order generally by e-mail, sometimes by phone from a purchaser individually or a purchaser's attorney or possibly a bank or a broker.

Q. All right. So in the case of the Moores' purchase, did an attorney contact you to order title?

A. No.

Q. And how, if at all, did you become involved in that transaction?

A. That transaction was ordered by Corinne McGuire on behalf --

Q. And prior to receiving the call from Corinne McGuire, were you familiar with

her?

A. Yes.

Q. And do you know what, if any, role she played when Mike McGuire in his law office with respect to real estate transactions?

A. Yes. She was his paralegal.

Q. All right. Now, Mr. De Carlo, would it be fair to say, based on your training, your experience in the area, in areas of New York State and, in fact, in areas of the country, is it becoming common for real estate transactions to be completed without an attorney?

MR. LEVINE: Objection.

THE REFEREE: Do you know the answer to that question; around the country?

THE WITNESS: I know it from my perspective.

THE REFEREE: Which is?

THE WITNESS: Which is it has become more and more common for people to not use attorneys.

THE REFEREE: In what location?

THE WITNESS: Well, I serve New York.

JUDGE MCGUIRE: I can limit the question to New York, Your Honor.

THE REFEREE: Okay. Objection overruled.

Q. So with respect to New York State, is it uncommon for folks to proceed without having an attorney?

A. It is not uncommon. It's a growing segment, actually.

Q. All right. So when this title for the Moores' transaction was ordered what, if anything, did you do next?

A. I prepared a title report and I would put it together, send it out to the parties, respective parties.

Q. And in this case, did you have an opportunity to review the title report for the Moores?

A. Yes, I did. I review all the title reports.

Q. And, in fact, you actually sign-off on them?

A. Correct.

Q. And when the title report was prepared, was it given to you to review?

A. Yes.

Q. And were there any -- from the perspective of title, were there any issues with the report?

A. No. There really was a very clean title, and there was an oil and gas lease, if I recall, if I remember.

Q. After reviewing the title, what, if anything, did you do next?

A. It would be sent out to the respective parties', respective parties' secretaries.

Q. And, at some point, once title is done, is it typical that the case -- that the matter, transaction is now ready to close?

A. Yes.

Q. And to be clear, and I don't want to belabor time, so for a little bit of latitude, closing means the actual transaction is completed?

A. Correct.

Q. Money goes from one party to

another and a deed goes from the seller to the buyer?

A. Yes.

Q. All right. So at some point, did you have some communication with Corinne McGuire regarding how the closing was going to be setup?

A. Yes.

Q. All right. And what, if any, discussions did you have? Just for this -- his state of mind, not for the truth of the matter asserted.

MR. LEVINE: Objection. For his state of mind? I don't understand.

THE REFEREE: What's the relevance of his state of mind?

JUDGE MCGUIRE: Well, the relevance is how the case got from him having a title report on his desk to closing. There's got to be money available for the closing to fund the transaction. So let me withdraw that question and ask a different question.

Q. At some point, did the funds go into your escrow account?

A. Yes.

Q. And do you know how that occurred?

A. Yes.

Q. And how was that?

A. It was wired into our account by the Moores.

Q. And after you had the money in your account, what, if anything, did you do next?

A. We waited for the day of the closing in order to receive the deed and make sure that it was in acceptable format. Then we would then write the check or checks that needed to be cut.

Q. Was there anyone from the seller -- the seller was a bank in this case?

A. Right.

Q. Was there anyone from the seller bank present for the closing?

A. No.

Q. All right. So what, if any, involvement did Michael McGuire have in this transaction?

A. None.

Q. Did Judge McGuire ever contact your office regarding the Moores' transaction?

A. No.

Q. Did Judge McGuire draft any documents or submit any documents to you in conjunction with the document transaction?

MR. LEVINE: He asked if the judge drafted documents. How could he know that?

THE REFEREE: If he knows.

Q. If you know.

A. No.

Q. Did Judge McGuire ever come to your office to review documents?

A. No.

Q. So at some point you receive documents from the bank?

A. Yes.

Q. In a real estate transaction, would the buyer typically bring any documents to the closing?

A. No.

Q. Those would be provided by the

seller?

A. Yes.

Q. In this case, it was a bank?

A. Yes.

Q. And how, if you know, did your office receive those documents?

A. Overnight.

Q. So are those documents the types of things that you need to review before issuing a title policy?

A. Yes.

Q. And at some point the closing took place?

A. Yes, it did.

Q. And where did it take place?

A. My office.

Q. And did Judge McGuire play any role in the closing of title?

A. No.

Q. Was there any money paid to Judge McGuire in connection with this transaction?

A. No.

Q. Was there a HUD prepared in this?

A. Yes.

Q. And if there is money paid -- in

your experience, you've handled thousands of transactions?

A. Yes.

Q. And you review the HUD?

A. Yes.

Q. Are attorney's fees noted on the HUD?

A. Yes.

Q. And the HUD is a federal document that's filed with the federal government?

A. Yes.

Q. And it's signed by the people responsible for the closing?

MR. LEVINE: Objection. Leading

JUDGE MCGUIRE: I'm trying to move through some of the easy stuff, Judge.

THE REFEREE: I'll allow it.

A. Yes

JUDGE MCGUIRE: I apologize.

Q. In this transaction with the Moores, was there any fees noted on the HUD paid to Judge McGuire?

A. No.

Q. Were there any attorney fees paid

on behalf of the buyer recorded on the HUD?

A. No.

Q. So as you sit here today, as the person who actually completed the title transfer, your company issued a title policy?

A. Yes.

Q. Recorded deeds?

A. Yes.

Q. Recorded the RP5217?

A. Yes.

Q. And the TP534?

A. Yes.

Q. Are you aware of any legal aspect of this transaction that Judge McGuire was involved with?

A. No.

MR. MCGUIRE: All right. I have nothing further for this witness.

THE REFEREE: Any cross?

MR. OSTRER: 584.

JUDGE MCGUIRE: TP584,

MR. OSTRER: Rather than 34.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Mr. De Carlo, you said the closing occurred in your office?

A. Yes.

Q. And there was no one from the seller present?

A. No.

Q. The Moores were present?

A. Yes.

Q. Corinne McGuire was present?

A. No.

Q. Corinne McGuire is the person that you spoke to about getting -- who started the process for the title search, correct?

A. Yes.

MS. TISHMAN: Okay. I have nothing further.

THE REFEREE: Anything else?

JUDGE MCGUIRE: Nothing.

THE REFEREE: You're excused, sir. Thank you for coming in.

THE WITNESS: Okay.

MR. OSTRER: Your Honor, if we can take five minutes and we will resume with Judge McGuire.

THE REFEREE: If we take a five-minute break, then we're going to go directly to 12:25.

JUDGE MCGUIRE: That's fine. I just want to use the restroom.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: We are on the record.

THE REFEREE: Mr. Ostrer, please proceed with the continued direct examination of Judge McGuire. Judge McGuire, you may resume the stand, and I remind you you're still under oath.

THE WITNESS: Thank you, Your Honor.

MR. OSTRER: Your Honor, I just need to check the room to see if I left something there. I had an outline that would -- that would make things easier.

THE REFEREE: Okay. Look for it over lunch break. Let's move onto something else that you can start with.

MR. OSTRER: Okay. Will do, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. OSTRER:

MS. PARTIDA: Counsel, am I showing this to him now?

MR. OSTRER: Yes, if you would kindly show it to the witness.

THE WITNESS: Thank you.

Q. Judge McGuire, you have before you what's been previously marked as Respondent's Exhibit I for identification?

A. Yes, I do.

Q. Do you recognize that document?

A. I do.

Q. And can you tell me what that document represents?

A. This is a compilation of all text message communications between myself and Wendy Weiner.

Q. How were the text messages retrieved?

A. When I was meeting with counsel, we were able to view the text messages on my phone, and from my phone we were able to print them out using software in counsel's office.

Q. And have you compared the contents of Exhibit I with the native text messages on your cell phone?

A. I have.

Q. And does it fairly and accurately reflect the messages that were exchanged between you and Wendy Weiner?

A. It does.

MR. OSTRER: I provided a copy to counsel.

MR. LEVINE: Which we got yesterday.

THE REFEREE: I don't have a copy.

MR. LEVINE: By the way, for what it's worth, we filed a request for reciprocal discovery and we got this yesterday, so it's untimely. I also have other objections to this document.

THE REFEREE: I don't have the document.

MR. OSTRER: Well, I provided --

MS. TISHMAN: I think I have an extra copy in my office. I'll go run and get it.

MS. PARTIDA: Here you go.

THE REFEREE: So let me understand this: So Exhibit I for identification is a compilation of all text messages between Judge McGuire and Wendy Weiner that were still on Judge McGuire's cell phone?

MR. OSTRER: Yes, Your Honor.

THE REFEREE: As of when?

MR. OSTRER: As of Wednesday evening of last week.

THE REFEREE: And when did Wendy Weiner testify here?

MS. TISHMAN: She testified last Thursday.

MR. OSTRER: No. Excuse me, it was Sunday, Your Honor. He was in New York City. We didn't meet at my office until Sunday.

THE REFEREE: So two days ago?

MS. TISHMAN: Which Sunday?

MR. OSTRER: This past Sunday is when we retrieved the text messages. The issue came up during her testimony.

THE REFEREE: What issue?

MR. OSTRER: When I probed her about when she last communicated with the judge and whether she spoke to the judge during March and up to March 31st, which she didn't recall. I then asked the judge after her testimony if he had the text messages. He didn't believe he had the text messages. I then examined his phone and found the text messages.

THE REFEREE: So let me ask: Mr. Levine, are you --

MR. LEVINE: I'm posing an objection because he could have confronted the witness with this information. It was there. Also, I don't see the probative value of this, not to mention the fact that when you look through this, it's unclear -- it's not a business record, for sure. And it seems like a compilation of things that don't necessarily have phone numbers that are attributed to it. And if this is designed to impeach Wendy Weiner, she could have been impeached

with the information. She could have been confronted with the information. And to just put in what I think is extrinsic evidence in an attempt to impeach somebody else would violate the collateral evidence rule, among other things.

THE REFEREE: Well, I don't know about the collateral evidence rule, but my concern on this is that there's a reason for reciprocal discovery, and the reason for reciprocal discovery prior to the start of the proceeding is that had the Commission had this document prior to their examination of Wendy Weiner, I suppose there might be things in here that could have been relevant to that direct examination. Now we're at this stage of the proceeding and I'm concerned that that -- that they're springing this document, you know, at this late date is problematic.

MR. OSTRER: Your Honor, there would have been no need to resort to

even look -- for me to even look at Judge McGuire's phone if --

THE REFEREE: Are there particular messages? I mean, there are a lot of irrelevant messages in here.

MR. OSTRER: There are some messages that show that there were communications initiated by Ms. Weiner early in the morning to Judge McGuire. There are transmittals in the evening where she's asking him if he's still awake. And there are communications on March 31, 2015, and the tenor of the communications were not indicative of a strained relationship. That would be -- they're all not necessary but I wanted to provide Petitioner with all of them. And, in fact, some of them that were cut off, we produced the page because you have to take a screen shot and then e-mail it. It's a cumbersome process and I wasn't aware of their existence until I probed the judge about it and looked at his phone.

THE REFEREE: Yeah, but the judge

was represented by prior counsel and the judge was representing himself for a period of time, and it's inconceivable to me, knowing that Wendy Weiner was an important witness in this case, that there wasn't some effort previously to look at these text messages.

MR. OSTRER: Well, Your Honor, I grant you that and there are several other investigative steps that perhaps prior counsel should have undertaken and didn't with respect to Facebook posts and the like that might have refreshed Ms. Weiner's memory, as would have the tape recording, which the Petitioner has resisted repeatedly from providing, which might have refreshed her recollection, which was rather spotty on cross-examination. So in response to her failure to record texting, we looked for the text messages. They would otherwise not be relevant or probative.

THE REFEREE: How could you say

that? If you were going to cross-examine a witness about text messages and you had all of the text messages, wouldn't you want to have this information to cross-examine her with?

MR. OSTRER: Sure. I would have loved to have it, Judge, but I didn't have it. Had I had it, you know I certainly would have inquired about it. I didn't save it for my client's direct examination. I would have utilized it. I think that's the best evidence that I didn't have them.

THE REFEREE: I'm not questioning the fact that you didn't have them. I'm questioning why didn't you have them.

MR. OSTRER: Well, why didn't the Commission have her text messages?

THE REFEREE: I don't know that she had text messages. She said -- she testified, I think, she didn't even have the same telephone. Isn't that what she testified to?

MR. LEVINE: That's right.

THE REFEREE: I'm torn as to what to do here. You know, I try to bend over backwards to give the judge every opportunity to put in evidence, but this sounds to me like this is highly prejudicial to the Commission. Is that your position?

MR. LEVINE: Yes, absolutely. I mean, with all respect, we're getting, like, sandbagged here. The witness isn't here. They knew -- they asked questions about texting. They could have checked the judge's phone, but they didn't. And now here is the judge testifying, long after the witness is finished, and now we have no way to --

THE REFEREE: I will not allow this into evidence. I'll allow you to use the document to refresh the judge's recollection, if you do it appropriate -- properly. So Exhibit I for identification is not permitted into evidence.

Q. Judge McGuire, did you

communicate with Wendy Weiner via text message?

A. I did.

Q. And were those exchanges initiated by you in all instances?

A. No.

Q. Did Ms. Weiner initiate exchanges?

A. She did.

Q. And were there times where Ms. Weiner -- when was the last communication via text that you had with Ms. Weiner?

A. The last one was March 31st, 2015.

Q. Was Ms. Weiner still assigned to your chambers --

A. She was.

Q. -- on March 31, 2015?

A. She was.

Q. And do you recall when her last day in service at your chambers was?

A. March 31, 2015.

Q. And did you communicate with Ms. Weiner regarding court matters via text

on March 31st, 2015?

A. I did.

Q. And do you recall what that related to?

A. I don't recall as I sit here today what it related to.

Q. If you were to refer -- is there anything that might refresh your recollection as to the subject matter of your communication with Wendy Weiner on March 31, 2015?

A. The compilation of text messages.

MR. OSTRER: May the witness review?

Q. See if that refreshes your recollection.

THE REFEREE: Don't read it into the record. Tell me what page you're reviewing. Are these in chronological order?

MR. OSTRER: They are, Your Honor. Now, for the court's benefit, there are some pages that duplicate, because a message would have been cut off in the screen-shotting of it. So

on some occasions you'll see messages that repeat twice, but they're configured differently on the page.

Q. All right. Now, has that refreshed your recollection, Your Honor?

A. It has.

Q. And what did you communicate with Ms. Weiner about on March 31, 2015?

A. I asked her to e-mail an order to show cause that was on a Supreme Court matter that was for oral argument the next day. And I also asked her -- I had a pistol permit interview the next day, and I asked her who that was.

Q. Now, were there times that Ms. Weiner would alert you to the fact that she would be coming to work late or not coming to work where you received that information via text?

A. Yes.

Q. And do you recall the time of day that you would receive such messages?

A. Generally, between 5:30 and 7:00 in the morning.

Q. And were there times that

Ms. Weiner would initiate communication with you after normal court hours?

A. She would.

Q. And what hour of the day or night would she initiate communication after court hours?

A. Well into the evening. 9:30, ten o'clock.

Q. Now, what were Ms. Weiner's scheduled hours, if any, while she was employed in your chambers as your confidential secretary?

A. When we started, her hours were 8:00 to 4:00. I attempted to change that in February or early March to 9:00 to 5:00 in order to facilitate better communications between us. That did not happen, so it's remained as 8:00 to 4:00.

Q. And were there occasions where, due to family events or the like, Ms. Weiner would advise you that she wasn't coming to work?

A. It was quite common that she would alert me that she was going to be there late or that she would have to leave

early because -- usually it dealt with responsibilities for two fairly young school age children.

Q. And did you accommodate those needs for Ms. Weiner?

A. 100 percent of the time.

Q. And do you know of any bus schedule or other personal items that Ms. Weiner needed to accommodate?

A. Yes. Her children went to a private school called The Home Instead School and they were bussed through by the Monticello School District, so generally they would get a bus from the Monticello bus stop, go to the school and then transfer to a bus to the private school. From time to time, she would have to drive them to school -- based on what she told me, she would have to drive them all the way to school, and the Homestead School from the courthouse is about 45 minutes away.

Q. Did you have any fixed manner in which you accommodated for any of that missed time on Ms. Weiner's part?

A. Generally, my policy in chambers

is I treat the people that work for me as professionals, and I recognize that they have young children. I went through a period of time when I had young children and where you've got to take your children to the doctor, you've got to get them to school or pick them up from school. My policy even today is that I am very accommodating of that.

Q. Now, did --

THE REFEREE: I think the implication of the question was did you ask Ms. Weiner to make up the time that she missed because of your accommodating her regarding her children.

THE WITNESS: My policy really is that they are professionals and they get their work done. There are going to be times when --

THE REFEREE: That wasn't the question.

THE WITNESS: Okay.

THE REFEREE: The question is: She missed time because she needed to

take her children to school or pick up her children from school, did you ask her to make up that time?

THE WITNESS: I didn't track it day-to-day. I tracked it over the course of someone working for me. There would be times where they had to stay until 5:30. There were times when I needed them to come in a half hour early. They would do that. There were times when they had to leave the half hour early. I did not track it day-to-day. I just treated them like professionals. Didn't mean they could go home at noon to do nothing, but where they had something came up, it was a full day, they would take a personal day, or if it was a half a day, they'd take hours. But if it was 30 minutes, if it was 20 minutes, it was to be 20 minutes late because the school was on a delayed start, I didn't track those things and I don't today track those things. They're professionals and I believe over the

course of a year the court system comes out way ahead.

THE REFEREE: Okay. I got it.

Q. Now, at any time did you provide Ms. Weiner with permission or consent to retrieve an accident report?

A. I did not.

Q. And was your son involved in an accident?

A. November 14, 2016.

Q. And was Ms. Weiner attached to your chambers at that time?

A. She was not.

Q. And do you know how Ms. Weiner would have come into possession of an accident report relating to your son's mishap in 2016?

A. I am not aware of any way she would have had lawful access.

Q. Well, when was the first time you saw the accident report with respect to your son's mishap in 2016?

A. It was after he came home from the rehab hospital, which was December 23rd or 24th.

Q. Did you view the accident report more recently in any other compilation of documents?

A. I did.

Q. And where did you find that accident report?

A. It was provided as part of the discovery materials that I received from the Commission.

Q. Had you provided that accident report to the Commission in reciprocal discovery?

A. I had not.

Q. Now, I would like to direct your attention to the winding down of your practice, if I may. Can you tell me, when was it that you were elected to serve as the Sullivan County Court judge and Surrogate?

A. I believe November 8, 2010 was Election Day.

Q. And had you been -- were you opposed or unopposed in that election?

A. I was opposed.

Q. So did you take any steps to wind down your practice prior to Election Day?

A. I did not.

Q. And subsequent to Election Day, can you describe the -- any steps that you took with respect to closing out cases?

A. So from November 8 until December 31st, we worked on several parallel tracks. I needed to continue to earn a living because I wouldn't get a check from the court system until the end of January. I had numerous files that were open. We worked very hard conferencing cases, getting cases pushed up on trial calendars to close out as many cases as we possibly could.

Q. Did the bench in Sullivan County and elsewhere accommodate you in that respect?

A. They did.

Q. And were you able to close out files between -- during the post election period?

A. We closed out quite a number of them.

Q. Now, were there files that were transferred to a new attorney if you could not close them out?

A. There were certainly several that were transferred to various attorneys. I actually conferenced with clients and attorneys that were going to be taking over their cases that the clients had selected. I conferenced on December 30, 2010 with John Ferrara who was going to be taking -- assuming my contract with the Conflict Defenders. So there was probably 50 or more files open. I went through each one of those and shared my notes with him on each of those, and that's how we endeavored to resolve those matters that were pending.

Q. And were there any, for lack of a better word, orphan files or stray files that neither a lawyer picked up or that had been closed?

A. So when we got elected, we did not -- well, we met with our assigned clients, but we knew that the pathway for them was going to be through the Conflict Defender's office, there would be a new attorney. So that was relatively easy. We prepared substitutions of counsel. I spoke with the director of the Conflict Defender's

office, they told me who the new contractor was going to be, at some point early in December. And so Mr. Ferrara and I were able to talk about that. That was simple.

With the other clients, it was a matter of bringing them in. Many of them were aware that I was running right from the time that they retained me and we would meet with them and encourage them to -- to --

MR. LEVINE: Excuse me.

Mr. Arisohn, may I be excused for one moment?

MS. TISHMAN: We can continue.

THE REFEREE: Sure. You may continue.

A. So the -- the retained cases, criminal and civil, were a little bit more difficult.

Q. How were they different in terms of retained civil cases?

A. Okay. So retained civil cases, people had to -- they knew I was going to be -- that I was closing the office and they were advised that they needed to get an attorney.

Q. Well, you said "they knew." Had you informed any clients who may not have been following the news?

A. We met with every client that we were retained on and reviewed with them that the office would be closing, and inevitably, they would say, 'who should we retain, who should we go hire" and we never --

Q. Was it your practice that you adopted for clients who did not have an attorney in mind when you met with them?

A. If I did not have an attorney in mind, we would share with them attorneys from the Orange and Sullivan County bars who handled those types of cases.

Q. And after this entire process, were there files of clients who did not have the resources to retain new counsel?

A. So we're in a --

THE REFEREE: Yes or no, Judge.

A. Yes. Yes.

Q. And what happened with those clients who were unable to retain new counsel?

A. We met with the clients, told

them they'd have to retain new counsel and we were -- I was aware that they had no assets, they were almost all matrimonial actions, so they were stuck in a dilemma. They owed my firm, in some cases, $10,000 or more. I was doing their matrimonial. Their homes were often in foreclose, they had no assets. I -- I knew that they would not be able to retain other counsel.

Q. And what did you do with respect to those, for lack of a better word, orphan clients?

A. So on December 30, 2010, about four o'clock in the afternoon, I sat down in my reference room with my brother Ken and basically asked him if he would take those five or six cases on on a pro bono basis because these people could not retain new counsel.

Q. And do you recall the names of the litigants that your brother assumed on a --

A. I remember some of them. P[redacted] P-[redacted], P[redacted] P-[redacted].

Q. What type of matter was P[redacted]?

A. These were all matrimonials. M[redacted] K[redacted] was another matrimonial. Ms. C[redacted], C-[redacted], is another matrimonial. The five or six of them were all matrimonials, and then there was one with a very small water company that they also had no assets and they were being sued by their accountant.

Q. And those files, were -- those are the files that you recall giving or that your brother assumed responsibility for?

A. December 30th at 4:00 p.m., and I remember that because it was after my swearing in ceremony. We went back to my office and I spoke with my brother and he agreed to take those on, essentially, on a pro bono basis.

Q. Did he enter appearances on behalf of those otherwise orphan clients?

A. Each and every one of them.

Q. Now, can you -- and that was an -- withdrawn.

Now, in the water company case, did you provide your brother with the file?

A. I did.

Q. And do you know the type of work your brother had to perform on behalf of that water company?

A. The case actually went to trial.

Q. Before?

A. Judge Meddaugh.

Q. And do you know the outcomes of any of the matrimonials that you transferred to your brother?

A. I do not.

Q. Now, I believe we went over your lease issues. Can you tell us what role you had with respect to any legal advertising you were doing?

A. So the only legal advertising that we did was in the Yellow Pages. We never advertised, that I was aware of, online. We never solicited any ads online. I've never been on Facebook, so there's nothing on Facebook. The only thing we had in terms of legal advertising -- we didn't have any billboards, we didn't have any radio spots. We didn't do any of that. It's a small community and word of mouth is

what fueled our business, so the only thing we had was listings in the Yellow Pages.

Q. And did you assist -- you were here during your wife's testimony. Did you assist your wife in the effort to cancel the Yellow Page advertising?

A. I did.

Q. And you saw the exhibits introduced by Petitioner, letters which are now in evidence as Respondent's Exhibit H, written to the phone company on your office --

THE REFEREE: No, no. Respondent's Exhibit H I don't think is in evidence.

MR. LEVINE: I think it is.

THE REFEREE: Oh, it is in evidence?

MS. TISHMAN: It was put in evidence late yesterday.

MR. OSTRER: We did it at the end of the day, Your Honor.

THE REFEREE: Yes, thank you. Sorry. I take it back.

Q. Within Exhibit H there were --

MR. OSTRER: You know what, why don't we just give it to the witness.

MS. PARTIDA: Here you go, Judge.

THE WITNESS: Thank you so much.

Q. Now, Judge McGuire, did your wife have your permission -- withdrawn.

Do you recall communications that were issued to the phone company in an effort to cancel the Yellow Page listing?

A. I did. We actually started prior to January 1, 2011. The phonebook was already out as of June, so they weren't going to pull back the phonebooks that were out. What I was attempting to do was have the balance of the contract vacated because I would get no further benefit, and otherwise I would have to pay close to $200 a month until June and, frankly, I was trying to avoid having to pay that money, so we reached out to them soon after Election Day.

Q. And after the initiation of the communication that is embodied in Exhibit H, did you enter into any contract with any phonebook publication company pursuant to

which you requested or understood that your name and phone number would be listed?

A. I did not.

Q. So subsequent to your -- would the last contract that you entered for any attorney advertising be the one that's -- would be the contracts that you attempted to cancel through the communications that appear in Exhibit H?

A. That would be correct.

Q. Now, did you assist your wife in any way in the communication with the phone company?

A. I did.

Q. Now, directing your attention to the June 12, 2011 letter and affirmation.

A. Okay.

Q. Did you prepare the affirmation?

A. I did.

Q. And did you sign the affirmation?

A. I did.

Q. And the cover letter that is connected or attached to the -- it speaks of transmitting the affirmation to the phone company. Did you have any hand in the

preparation of that letter?

A. I did.

Q. And did you sign that letter?

A. I did.

Q. And did you use your old office letterhead to transmit that to the phone company?

A. I did not.

Q. Had your office letterhead been employed in earlier communications with the phone company?

A. It had.

Q. Is there a reason that your office letterhead was used in an attempt to cancel your office's, your former law office's advertising?

A. There is.

Q. And what is that reason?

A. It was our understanding that they required a written explanation for why you were cancelling a contract for a book that was already printed and presumably you were already getting a benefit from and they required that to be on the letterhead of the company.

Q. Now --

THE REFEREE: So you're testifying that the reason the prior letter, which is May 21, 2011, was on your office letterhead is because that was required by the telephone company?

THE WITNESS: It was my understanding, yes, that they said "send us a letter on your letterhead."

THE REFEREE: I thought yesterday we heard testimony that that letterhead was used because your wife wanted to use it up.

THE WITNESS: Well, that was my wife's testimony.

THE REFEREE: Okay.

THE WITNESS: And I don't like to disagree with my wife, but, in this case, that was my understanding. I don't know what her understanding is.

THE REFEREE: Where did you get that understanding from?

THE WITNESS: From communications that I had with Yellow Book, probably pre-2011 and slightly after. We were

both dealing with this issue because it was $200 a month we were paying.

THE REFEREE: Okay. You may proceed.

Q. Now, with respect to office mail, did you have any hand in the redirection of mail that would have been directed to your law practice?

A. Not specifically, no.

Q. How about changing the mike-law e-mail account?

A. I did not.

Q. How about the voicemail message that was on the answering machine that your wife brought home?

A. I had recorded it probably in 2004.

Q. And do you recall what that voice message stated in 2004 and after?

A. "You've reached the office of Michael McGuire. We're not available to take your call right now but your call is very important to us. If you leave your name, your number and a message when you hear the tone --

Q. Slow. Slow.

A. -- I will return your call as soon as possible."

Q. And is that the -- do you know when that message was rendered extinct?

A. It became extinct when we changed from a Verizon based line to an internet based phone because they had voicemail similar to what a cell phone has that's part of their system.

Q. And do you know -- do you recall when that was?

A. 2016. Somewhat of a guess.

Q. Oh, by the way, directing your attention back to the letters that were issued on your letterhead, do you recall any part of the message that you were conveying to both entities concerning the viability or existence of your personal law practice? These would be the letters in --

A. So the sum and --

Q. -- May.

A. The sum and substance of our message to them from November of 2010 was that I was not permitted to practice law

anymore, I believe in some of them we actually cited sections of the law that said I wasn't permitted to practice law, and because of that there could be no further benefit post December 31, 2010.

Q. Now, with respect to reporting the telephone number that would be the 6800 phone number, were you involved in the decision to retain that number as a working number?

A. That was -- the answer is yes, that was part of the overall plan for winding down the practice that my wife and I spoke about soon after November 2010.

Q. And why would you, as a solo practitioner closing your office, need to maintain your old office phone number?

A. There's two reasons. One is an intrinsic reason that we had a sense of loyalty and responsibility to our clients, our former clients, and from time to time they would call, given we were a general practice, and say "do you have the closing statement from our real estate transaction, we need it for our tax returns." "Do you

have a copy of the deed," whatever. "A copy of my judgment of divorce." So it was quite common that we would get those calls. And under the state of the law, I'm obligated to store the files for at least seven years. Well, if I store the files and they have no way to contact me, I send people on a scavenger hunt which may well have them show up at the court where I didn't want them or show up on my doorstep where I didn't want them. So the easiest thing to do was leave the phone number and address intact so that people would -- could pick up the phone ten years later and dial a number. We had wills that we had stored. So people were going to have to contact us into the future.

Q. Would that be original wills?

A. Yes.

Q. And did you in any way attempt to provide those wills to other counsel or to have the clients retrieve the wills?

A. We sent letters -- we didn't have -- we didn't have a huge estate practice. We had maybe 50 wills in our safe when we closed. We sent letters to each and

every person there and in some cases they said "we'll come and pick it up" and they did. In some cases they called us after January 1st and said we are -- "we're in Florida for the winter and we'll pick them up when we come back." In some cases, other attorneys, they've said to us forward them onto another attorney.

Q. And was that -- were those tasks that you accomplished or did someone else accomplish those tasks, if you know?

A. Generally, it fell on my wife.

Q. Now, how about the package and storage of files and the like; did you have any role in that process?

A. When I walked out of the office on December 31st at 11:45 p.m., the next time I went in the office was to retrieve a file that we had gotten a message that people wanted, and that was several months later. I played no role whatsoever in packing up the office. In fact, the week that most of it was done, I was in judge school.

Q. Now, you went to judicial

training.

A. I did.

Q. For, you said, that was one week?

A. Correct.

Q. And I believe yesterday we went over whether there was any training on closing a practice?

A. Yes.

Q. Was there any training on dealing with contemptuous litigants?

A. There was not.

Q. Was there any training at the judicial conference that you attended regarding how you discharged your functions in connection with Section 750 of the judiciary law?

A. There was not, not in 2011.

Q. When was the first time that you were involved in any training, instruction or program of the Office of Court Administration relating to policy, best policies or practices dealing with contemptuous persons before you?

A. In June of 2017, Mr. Tembeckjian presented a one-hour overview of the

Commission on Judicial Conduct to the County Court Judge's Association in Cooperstown, New York. That --

THE REFEREE: I'm sorry, when was that?

A. The first week of June 2017. That -- in the context of that, he talked about Article Section 750 of the judiciary law.

Q. And did you attend any Office of Court Administration sponsored training with respect to dealing with contemptuous persons subsequent to Mr. Tembeckjian's lecture?

A. Yes. In July of 2018 at the Judicial Summer Institute at the Doral Arrowwood in Westchester County.

Q. And are you familiar with the 12-step process or 12-step contempt program?

A. I am now.

Q. And what is the 12-step program?

A. According to the program, it was a two-hour program that we had at the Judicial Summer Institute, there's a 12-step procedure that must be followed in order to -- in order to utilize the summary

contempt procedure from Section 750 of the judiciary law.

Q. Now, had you any experience with, during your service, as an Assistant District Attorney or in private practice, with summary contempt proceedings?

A. I had.

Q. And can you describe that for the court?

A. Well, it really goes back to law school when, in trial advocacy, they counseled us about controlling yourself and your clients because you could have somebody removed in a heartbeat and put in jail for 30 days. In the District Attorney's Office, I actually observed it happen on a couple of occasions that people were removed from County Court for insulant behavior.

Q. And do you remember before which judge or judges you saw litigants removed from court for summary contempt?

A. Yes.

Q. And would that be in Sullivan County Court or another court?

A. Sullivan County Court.

Q. And do you know which particular judge, if any?

A. I do.

Q. And could you share that with us?

A. Judge LaBuda.

Q. Do you know if, at that time when you were serving as an Assistant District Attorney, if any of the steps outlined in the 12-step process were utilized?

A. They were not.

Q. And do you presently employ the 12-step program?

A. I've completely evolved, so I would employ it if I felt it was necessary. I have not had to. I've not -- I've not been confronted -- I've been confronted with insulant behavior but I've addressed it in different ways.

Q. Is that part of the 12-step program?

A. Yeah. I mean, the first step is to take a break, warn the person, it goes on from there. Warn them several times.

Q. Now, is that -- is there a statutory requirement that you warn somebody

who, for instance, addresses the court in -- with expletives, that you must warn them before you find them in contempt?

A. The statute, in sum and substance, says that if someone is discourteous or disrupts the proceedings, they can be held in summary -- it's a summary proceeding, if it's done in the judge's presence.

Q. Now, do you recall a litigant named *R*[redacted]?

A. I do.

Q. And who was -- and what do you recall about the *R*[redacted] matter?

A. So Mr. R[redacted] appeared in Family Court. I was familiar with him also from Criminal Court. He appeared several times. He -- ultimately we issued an order of protection in favor of the mother of his children who he had beaten up. Mr. R[redacted] also was very heavily tied to the Bloods.

Q. And what is the Bloods?

A. The Bloods is a street gang that is prevalent in a particular neighborhood, Evergreen Estates in Monticello.

Q. And what occurred involving Mr. R[redacted] was this in Family Court?

A. It was.

Q. And could you tell us what transpired in terms of your interaction with Mr. R[redacted]?

A. So --

Q. And when was the *R*[redacted] matter before you, if you recall?

A. I believe it was December 2014, but I don't have clear recollection. It's in the record, so if we can refer to the transcript, we can get the exact date and I don't have to guess.

MS. PARTIDA: The *R*[redacted] transcript?

MR. OSTRER: Yes.

MS. TISHMAN: It is Exhibit I-2a.

A. So having had my recollection refreshed, it's December 18, 2013.

Q. And you have had an opportunity to listen to the tape of those proceedings at some time?

A. I have.

Q. And when was that, the tape

recording of the *R*[redacted] matter, brought to your attention?

A. The tape recording was brought to my attention in April of 2017.

Q. Was that after the Charges and Specifications in this matter?

A. It was when the initial, what we now know was a complaint, was served on me. I don't remember if I got served at home or at the office, but that's when it was served on me.

Q. Prior, between December of 2013 and 2017, had your interaction with Mr. R[redacted] been brought to your attention in the context of any counseling or any instruction you received from any of the members of the judiciary?

A. No.

Q. And do you recall what occurred with -- involving Mr. R[redacted] which led to him being held in contempt?

A. I do. So Mr. R[redacted] had filed a petition seeking to modify a prior order of custody that was entered into sometime prior to December of 2013. He came into court and

he had not served the mother of his children.

Q. Let me interrupt you for a moment. Was he at liberty or in custody?

A. He was in custody.

Q. So he was already either being held on bail or serving a sentence?

A. He was being -- my understanding, he was being held on bail at that time because of an alleged violation of the order of protection that we had issued sometime prior to December 2013.

Q. So it was an alleged violation of a court order?

A. Correct.

Q. And do you know if any -- now, was the contempt proceeding, with respect to the order of protection, before you or before another judge?

A. It was before another judge.

Q. Do you know before who or whom it was pending?

A. I do not know. It could have been a felony, it could have been a misdemeanor. I don't know.

Q. But suffice to say he was brought to your courtroom by sheriff's deputies?

A. He was.

Q. And go on, what occurred thereafter?

A. So he had -- he had filed to modify, came in a time previous to December of 2013 and he had not served but he had also not satisfied conditions precedent necessary to modify the court order of custody, which included that he had to have a mental health evaluation, had to engage in domestic violence intervention counseling and had to have a drug and alcohol evaluation. So when he came in on December 18, 2013, I again asked him if he had served the mother of his children, I believe her name was O[redacted], and he said that he had not because he was incarcerated and couldn't. And I asked if he had satisfied any of the conditions, and he said he had not because he was incarcerated.

We went through a colloquy, which is in evidence, where I asked him, essentially, "do you want to withdraw this

petition and re-file it when you're not incarcerated and you can take care of these issues, or do you want me to give you another date because I can't do anything because the Respondent hasn't been served? I don't have any authority to do anything." And I asked him that a couple of times, and ultimately when I asked him, he said "why do I have to have domestic violence counseling, I wasn't convicted of domestic violence." That didn't matter to me. With that I dismissed his petition without prejudice.

After dismissing the petition without prejudice, after he had appeared in front of me several times before, after I had issued an order of protection, which I believe was August before, he then, for the very first time, says "I know your son." That concerned me.

Q. And what happened after that?

A. Well, when he said he knows my son, I took that to be a message -- I interpreted it as a message from him that he or his friends could get to my son.

Q. So you interpreted that as being

a threat --

A. I did.

Q. -- to the bench?

A. I did. And still do.

Q. And what steps did you take following receipt of what you perceived to be a threat?

A. I had the deputies who were leading him out bring him back and --

Q. So this remark about knowing your son was while he was being escorted out of the courtroom?

A. Correct.

Q. Is that captured on the tape that's in evidence?

A. It is.

Q. And you instructed the court officer -- was it the court officers or the deputies removing him from the courtroom?

A. Deputies.

Q. And was he brought back before you?

A. He was.

Q. And what happened next?

A. I held him in contempt for making

a judicial threat and I spoke to the lieutenant because I really believed that there was a threat, and my children didn't all live with me and I was concerned for their safety.

Q. Now, did you have any further conversation after advising Mr. R[redacted] that he was in contempt with -- in Mr. R[redacted]'s presence?

A. With Mr. R[redacted], I did not.

Q. Did you direct any other comments to Mr. R[redacted]?

A. I did not.

Q. Now, did you sentence him to a particular period?

A. I did.

Q. What period was that?

A. 30 days.

Q. And is that the maximum period that you understood you could sentence somebody under the judiciary law Section 750?

A. It is.

Q. Now, subsequent to that, did you prepare or cause your chambers to prepare a

mandate of commitment?

A. We did.

Q. Did you ever provide it to the jail?

A. A mandate of commitment was prepared. I can only go by custom and practice that it was probably faxed to the jail by the court assistant.

Q. Now, do you recall a litigant named G[redacted]?

A. I do.

Q. And who was Mr. or Ms. G[redacted]?

A. [redacted]G[redacted] was a litigant in County Court who had been in Drug Court and was unsuccessful in Drug Court.

Q. What is Drug Court?

A. So where an individual is accused of committing a crime and there is a belief by the district attorney and the judge and the defense attorney that drugs played a role in their criminal activity, they are allowed to enter into an agreement where they go into treatment, and the benefit for completing that treatment is that, generally, the felony will be reduced to a

misdemeanor so they would not be saddled with a felony conviction. In addition to that, it's a treatment court, so they actually meet with the judge, with the treatment team. It's no longer an adversary position. They meet with the treatment team weekly or biweekly.

Q. Does the presiding judge on the criminal case of a defendant who is being, let's say, safety valved to the treatment court, is he or she required to approve that transfer?

A. They are.

Q. And had you approved the transfer of Ms. G[redacted]'s case to treatment court?

A. I don't have specific recollection, but the fact that she was in the treatment court, I would have had to have.

Q. And you said that that provides a defendant an opportunity to avoid a felony conviction?

A. Correct.

Q. Does a defendant enter a plea to the felony before entering the treatment

court program?

A. They do. And there's a contract that they enter into as well.

Q. And is the sentencing adjourned to permit the defendant to demonstrate that he or she is worthy of the vacate of their felony plea and the substitution of a misdemeanor or violation plea?

A. It is.

Q. And is the discretion on the vacate of the felony plea and the imposition of either a misdemeanor or violation plea within the discretion of the presiding Superior Court judge?

A. Ultimately the presiding judge makes the determination, ultimately.

Q. Now, were there any special issues involving Ms. G[redacted] that you were aware of in or about August 28, 2013?

A. Well, I was aware that she had several children that had been -- two children, two children that had been removed by Family Court action. They were both being cared for by the maternal grandmother. One of the two had been born positive for

drugs, and Ms. G[redacted] was actively using drugs during the latter stages of her pregnancy.

Q. Did you enter into an exchange with Ms. G[redacted]?

A. I did.

Q. Have you reviewed the tape recording of those proceedings on August 28, 2013?

A. That was a County Court proceeding so there was no tape recording. There was a certified transcript that is in evidence here, and Mr. Hart has also testified about it.

Q. Now, have you reviewed that transcript, Judge?

A. I have.

Q. And does that transcript reflect what transpired, at least verbally?

A. It does.

Q. Were there any gestures, movements, any actions taken, demonstrative actions taken by Ms. G[redacted] when she was in your courtroom?

A. There were.

Q. Did she act out in any way?

A. She did.

Q. And can you describe for the record how Ms. G[redacted]acted out during your verbal -- during the activities which are captured in the transcript?

A. So there was quite a bit of body language that suggested very clearly to me that she was not happy that the court was concerned that she was choosing to go to prison rather than to treatment and, frankly, I was hoping that I could entice her back into treatment rather than to prison because she had two children that deserved to have their mother there.

Q. Now, had you encountered defendants who had stumbled, maybe took steps backwards after signing their Drug Court agreements that you were able to maintain in the program?

A. Whether it was Drug Court agreements or otherwise, we deal with drugs at the heart of a huge percentage of cases we handle in both Family Court and County Court.

Q. And are there occasions where you are forced to incarcerate defendants to encourage them to find a way into the treatment modality rather than the punitive incarceration modality?

A. Absolutely.

Q. And has, in your experience, the incarceration of an individual caused them to, for lack of a better word, see the light?

A. They often reflect and come back a week or two later and hopefully are willing to try treatment.

Q. Now, in terms of how Ms. G[redacted] behaved, do you recall her -- what action she took in your presence?

A. Yeah. She -- she cursed. She said "let's get this fucking over with."

Q. Was that in the presence of the court and the public?

A. It was.

Q. Was it in the presence of other defendants?

A. It was.

Q. Now, in the County Court in

Sullivan County, where do the defendants sit for a -- the incarcerated defendants sit for a calendar?

A. So this was in courtroom one, which is our ceremonial courtroom. It's got, for lack of a better term, church pews and then there's a front rail. There is one pew in front of the rail. So from that seat to the defense table is probably a matter of a couple feet. It's literally right behind the defense table.

Q. And is that bench filled with the incarcerated defendants when you would do your calendar in County Court?

A. Typically it is, yes.

Q. And if a defendant's case is completed, does he remain in the courtroom to observe the further proceedings or is he removed from the courtroom and taken through the side door?

A. No. They all come in together and they all go out together.

Q. So the entire panel of incarcerated defendants who come to court would be there for the -- until the last

incarcerated defendant was dealt with?

A. Correct.

Q. Where would any defendants who were at liberty be situated?

A. So I described the church pews and then the rail. They would be on the back side of the rail opposite where the defense and the prosecution tables are.

Q. Was Ms. G[redacted] in custody or at liberty when she was brought into your courtroom -- into courtroom one on August 28, 2013?

A. She was in custody.

Q. And so then when she addressed you by saying that she wanted to get out of the fucking courtroom -- pardon me -- was that in the presence of other incarcerated defendants?

A. It was.

Q. Now, do you have -- in the County Court, is there anyplace where you can send a defendant in the Sullivan County Court to reflect upon what they've done?

A. No.

Q. Where do you seat them after

they've insulted the court?

A. We seat them right back on the bench with the other inmates because they're brought in by a sheriff's detail, which is usually two or three deputies. So any time any of them come in, the deputies come in with them and leave with them.

Q. Now, did you know that she was going to -- what was her tone of voice when she stated to you "just sentence me so I can get out of the f'ing courtroom"?

A. She was annoyed.

Q. It was certainly audible to you on the bench?

A. Oh, absolutely.

Q. It was captured by the stenographer?

A. It was.

Q. Was it audible to the other defendants who were in courtroom one on that day?

A. Well, the other defendants would have been geographically much closer to her than I was.

Q. Now, before she left court that

day, did you address her again?

A. I did not.

Q. Were you attempting to -- in dealing with her on that morning of August 28, 2013, what was your initial goal?

A. So when you sit in Family Court and County Court and Surrogate Court, the scourge of drugs is very, very real. There is a general reluctance to treatment and a general denial of a problem. I've dealt with many parents that have overdosed. In fact, just Friday or Saturday morning when I went into chambers, there was a letter that another parent had overdosed and died, and so the child was now going to be placed for adoption. So every focus I have with these drug cases is to tug these people into treatment and get them to try to get their lives back in order for the good of them, but, more importantly, for the good of their children. That's my focus 100 percent.

Q. And when you questioned Ms. G[redacted] about whether she thought she was being a good mother, or words to that effect, what were you attempting to do?

A. It's in the nature of an intervention. I was trying to have reality come into the situation. She's spent most of the children's lives away from them. They were born addicted to drugs. They spent the first month of their lives in the neonatal ICU and they had been cared for by her mother while Ms. G[redacted] continued to use drugs. So the hope is that there is an intervention there and that you can open their eyes, and maybe, just maybe they will try treatment because I see too many of them die.

Q. Now, as you sit here today, do you know if, as a result of the contempt, Ms. G[redacted] served any additional time beyond her felony sentence?

A. She did not serve one extra minute because of the contempt. All of her local time merged into her state prison sentence.

Q. Now, are you familiar with a matter of *Z*[redacted] *versus F*[redacted]? *Z*[redacted]?

A. *Z*[redacted] *versus F*[redacted].

Q. I'm terrible with those names.

A. Yes. Uh-huh.

Q. Were you in court on that matter on October 3, 2012?

A. I was.

Q. And do you recall what occurred with Ms. Z[redacted]?

A. If I could see the transcript to just refresh my recollection on that.

Q. Yes.

MS. TISHMAN: Do you know the number?

MR. OSTRER: I don't, no.

MS. TISHMAN: You have the index.

MR. OSTRER: I'm sorry, I don't. It's charge three so it would be three something.

MS. TISHMAN: But which one? There are different audios.

MR. OSTRER: Just the typed transcript.

MS. TISHMAN: I thought there were two.

MS. PARTIDA: There's one that begins at 10:03 a.m.

MR. OSTRER: Let's give him both.

MS. TISHMAN: You have an index over there for these things.

MR. OSTRER: I wasn't aware. I'll get it and get this out of your way.

THE REFEREE: Can we just know what document you're looking at?

A. I'm looking at Exhibit III-2a and Exhibit III-3a.

MR. OSTRER: And I believe that was the *D*[redacted] *versus*, is that *F*[redacted]?

A. Correct. It's *Z*[redacted] *versus* *F*[redacted].

Q. *Z*[redacted] *versus* *F*[redacted].

A. Okay.

Q. Do you recall what occurred -- you know you're being accused of being discourteous towards a litigant and improperly directing her to be removed from a courtroom on October 3, 2012.

A. I am aware of that.

Q. Can you explain the circumstances under which you directed the litigant to be removed from your courtroom?

A. So again, the circumstances that

she was removed was that she was being discourteous and showing general disrespect to the court.

Q. And did the litigant subsequently apologize?

A. She did.

Q. And do you recall which courtroom that matter was?

A. So that matter was in Family Court in courtroom two and it was a matter -- you want me to go into it?

Q. I don't believe that is --

A. Okay.

Q. So now, in Family Court, are there other litigants or spectators present, generally?

A. No.

Q. In County Court, where we dealt with the -- where you dealt with the *G*[redacted] matter, there would be numerous other defendants and people present?

A. Yes.

Q. Now, the configuration of the Sullivan County courthouse up the hill, is there any holding area where defendants can

be held prior to being called into the courtroom?

A. There is not. There is a side room that would state prisoners, we put them, but it's really just -- it's just a conference room. It's not a secured room at all.

Q. But the litigants, particularly those who are on the calendar that day, it's necessary to maintain them in the courtroom throughout the proceedings?

A. Correct.

Q. Now, are you familiar with the matter of *L[redacted] v C[redacted] and B[redacted]*?

A. I am.

Q. And are you aware of the fact that you're accused of being discourteous to Ms. L[redacted] and directing that she be removed from the courtroom?

A. I am.

Q. And where did that proceeding take place?

A. Courtroom two in Family Court.

Q. Were you able to listen to the tape of that proceeding?

A. I was.

Q. And when was the first time that you became aware that there was an issue with respect to your treatment of a litigant in that proceeding?

A. On or about April 17, 2017.

Q. And had you been counseled at any time by any superior judge concerning your conduct between June 14, 2013, when the matter is alleged to have occurred, and April of 2017?

A. I was not.

Q. Now, did that case involve the custody of a 16-year-old?

A. It did.

Q. Was the 16-year-old represented in that proceeding, if you recall?

A. She was.

Q. And do you recall whether Ms. L[redacted], the litigant, was represented by counsel or not?

A. I don't specifically recall. If I had the transcript, it would refresh my recollection.

MR. OSTRER: Could we show the

transcript? I guess it's 4 dash --

THE WITNESS: So it would be Exhibit IV-2.

MR. OSTRER: Perhaps Exhibit IV-2.

THE WITNESS: Thank you.

A. I do not believe Ms. L[redacted] was represented that day.

Q. Did you, in fact, lecture her in a loud voice concerning her daughter's math grades?

A. I did lecture her.

Q. And what was the purpose in you doing so?

A. So it's very common in Family Court, not to be demeaning, but that people who are raising children, and it's not always parents, are not always as attentive to the children's needs as they need to be, and general -- very often that's why they're in Family Court. This was a neglect proceeding. This child had been living with her father. We transferred custody to the mother as part of the proceedings, the neglect proceedings. And the child was

failing school and the mother was not really taking any steps to address the fact that the child was failing, I think in this case it was math. She was not meeting with the schools. She had attended the CSE meeting by telephone. She just wasn't taking the steps that a parent needed to take to understand how important it was for her 15, almost 16-year-old daughter with a very high dropout rate that we deal in Sullivan County, was on the verge of being -- potentially dropping out of the school or being a high risk to dropout.

Q. Now, the case *L*[redacted] *v. C*[redacted]. Was *C*[redacted] addressed by K.C. Garn?

A. Correct.

Q. And was Mr. Garn present in the courtroom?

A. He was.

Q. Now, was Ms. L[redacted] removed from the courtroom?

A. I have to refresh my recollection. I believe -- yes, she was.

MS. TISHMAN: Just what document were you using?

THE WITNESS: I'm sorry. I apologize. So this is Exhibit IV-2a.

A. She was removed.

Q. Now, we spoke about a mandate of commitment.

A. Yes.

Q. Do you know what that is?

A. Yes.

Q. You did not issue a mandate of commitment from Ms. L[redacted]?

A. I did not.

Q. And without a mandate of commitment, what happens with a contempt finding?

A. There is no contempt proceeding.

Q. And do you recall if the *L*[redacted] matter ever returned to your court, if the case returned before you?

A. It did.

Q. And was Ms. L[redacted] present?

A. She was.

Q. And was the case litigated to conclusion?

A. It was.

Q. Were there any other incidents

regarding Mrs. L[redacted]'s conduct at future proceedings?

A. There were not.

Q. By future proceedings, I mean proceedings after June of 2013.

A. There were not. And the program we put in place allowed the child to pass all her classes.

Q. And what program was that that you put in place subsequent to June 14 of 2013?

A. So when Ms. L[redacted] was removed, I directed the Department of Family Services to get on the phone with the Liberty School District and get lined up tutoring, counseling and transportation for this child who was living outside the district because she had been removed from her father. And when Ms. L[redacted]was returned, and this is on the transcript, I lay out the plan that we put in place. We had spoken with the guidance office -- when I say "we," Department of Family Services had spoken with the guidance office and set up a guidance counselor meeting with the mother.

We had set up counseling for the child, psychological counseling for the child. We had set up tutoring for the child, and the issue was transportation because Ms. L[redacted] didn't have the ability, that was the pinch point, was Ms. L[redacted] couldn't get to the school as often as she needed to, so we set up transportation through preventive services to facilitate Ms. L[redacted] being able to get to the school to meet with teachers, meet with guidance counselors, meet with counselors.

Q. So these calls and arrangements were initiated by the court during the period of time that Ms. L[redacted] had been removed from the courtroom?

A. Correct. I directed Department of Family Services to get a plan pulled together.

Q. And you informed her of this plan when you returned her to the courtroom?

A. I did. It's clear in the transcript, the recording that we played, that I laid out the entire plan including the belief that the child would have to

transfer to a different school district the following year. And we put a plan in place so that that transition would be smooth because, in my experience, they're not -- they're rarely smooth.

Q. Now, I direct your attention to a matter *G*[redacted] *versus C*[redacted]. Are you aware that you have been accused of being discourteous to Ms. C[redacted] and improperly directing that she be removed from the courtroom on January 17, 2014?

A. I am.

Q. And are you familiar with the circumstances of that proceeding?

A. I am.

Q. And where did that proceeding take place on January 17, 2014?

A. Courtroom two, in the Family Court in Sullivan County.

Q. Now, on a particular day in your service in the Family Court, this would typically be Mondays to Thursdays?

A. Correct. We do permanency hearings on Friday afternoons.

Q. And that would be after your

County Court calendar on Friday morning?

A. Correct.

Q. Now, so during the three and a half days that are devoted to your regular Family Court calendar, on average how many cases would you handle in a day?

A. If it's a Monday, cases, not dockets, 50 to 60. If it's another day during the week and it's a trial and we've got a trial going on, we may handle a trial plus eight or 10 other cases during breaks and whatnot. So that would be Tuesday, Wednesday, Thursday are typically trial days.

Q. And how often are you on trial in Family Court?

A. In Family Court --

Q. In or about 2014.

A. In Family Court, we typically have anywhere from five to eight trials per week.

Q. Now, they would not be tried from -- to conclusion?

A. No. They're tried in half or full-day increments. If we know in

scheduling that it's going to be a long trial, we might get two days in succession, but it's impossible to carve out, say, a whole week. So there may be a half a day and then three weeks later another half a day and then a week later maybe a full day, so they're scattered. That's the way Family Court scheduling goes.

Q. As you sit here today, how many ongoing trials might you have in Family Court?

A. I can tell you right now I have 13 cases that trials have been started and now, of course, we had to adjourn them for the month. So when I go back in June, I've got -- June and July, I've got 13 cases that have already started and probably several others.

Q. Trials that have started?

A. Trials that have started.

Q. Is that common, that you would have a dozen or so trials ongoing at any given time?

A. Yeah, that's what you deal with.

Q. Now, in the C[redacted] matter, did

you express some concerns about the child's sleeping arrangements?

A. I did.

Q. And what was your concerns about the child's sleeping arrangement?

A. So the mother was basically homeless and had asked the father to take custody of the child. The mother was basically couch surfing from friend's house to friend's house and she wound up with some relatives in Kerhonkson, New York and the father was driving the child three days a week to see the mother. The mother wanted overnight visits and, again, one of the issues that we deal with all the time is adequate sleeping arrangements for a child. This was a baby, this was a six, seven-month-old baby and we have had countless neglects where parents are sleeping with the baby in the bed. We've had countless cases where children have fallen out of bed and wound up with head injuries. We've had cases where children have been suffocated in bed. I had a case as an assistant district attorney where a

child died when they were suffocated with a pillow. So I'm very sensitive to having adequate sleeping arrangements.

Q. And what was the issue with sleeping arrangements to facilitate the mother's visitation with the six or seven-month-old child?

A. So I told the mother that, in a previous appearance, that we had no problem. I had no problem with her having overnights, no problem with her as a mother, but she had to demonstrate that there was adequate sleeping accommodations and she indicated that she understood that. When we came back, transcript picks up, I ask her "did you get a place for the child to sleep?" And in sum and substance, the transcript is in evidence, so is the tape, she responds, essentially, that the Pack and Play that the child sleeps in she paid for and so she should have the Pack and Play back.

Q. And at what point in time did she refer to the -- did she state to the court words to the effect that "it was a crock of shit"?

A. Well, she took the position -- she, not her attorney -- she was arguing over her attorney that --

Q. And who was her attorney at that proceeding?

A. K.C. Garn. She was taking the position over the attorney's voice that the father should give her the Pack and Play, and the court's position was the Pack and Play was bought for the child. The child sleeps in it seven nights a week. It is not at all uncommon, after all my years in Family Court, that even parents that are sharing medication, the medication doesn't show up when the child is exchanged, and with transportation issues, children go days without medication. It's a real problem. I was not comfortable sharing the bed. I encouraged the mother to buy a Pack and Play. We had given her information of agencies that might be able to give her a Pack and Play, maybe family or friends may have one. It wasn't that I was holding out because she was indigent. I was holding out because the child had to be safe.

Q. And after her "crock of shit" comment, did she describe the proceedings as "bullshit" in your presence?

A. She did.

Q. And at that point in time, did you take any action?

A. I did. I had her removed.

Q. And did you ultimately issue a commitment order or hold her in contempt?

A. I did not.

Q. Did she subsequently appear before you?

A. She did.

Q. And were those proceedings litigated to conclusion?

A. They were.

Q. Was there any application by either Mr. Garn or the attorney for G[redacted] to have the proceeding brought before Judge Meddaugh?

A. There was not.

Q. Do you know what ultimately occurred with respect to the mother's visitation with the infant?

A. We changed the visitation to --

because the father also was not -- he was also indigent and driving three times a day [sic] about 35 miles each way, he was complaining that he couldn't afford to do it. So we brought it down to two days a week and the father continued to do the transportation. I don't recall, as I sit here today, how the case ultimately resolved.

Q. Now --

THE REFEREE: If you are going to move onto another matter, let's take our lunch break now.

MR. OSTRER: Yes.

THE REFEREE: And we will resume at 1:30. Off the record.

(A recess was taken.)

MR. MAISONET: We are on the record.

THE REFEREE: Welcome back, everybody. You may proceed, Mr. Ostrer.

MR. OSTRER: Thank you.

THE REFEREE: You are still under oath, Judge.

THE WITNESS: Yes, sir. Thank you.

Q. Judge, you're familiar with a matter *F[redacted] versus K[redacted]* [sic] --

A. *K[redacted]*.

Q. -- which events that transpired on December 2, 2014 that underlie charge number six contained in the Charges and Specifications which bring us here today?

A. I am.

Q. And could you describe what you recall as being the events of that day? First, where did that appearance take place?

A. Courtroom two in Family Court in Sullivan County.

Q. And was that part of your daily calendar on that day?

A. It was.

Q. And as to the other cases that we addressed that we spoke about that took place in courtroom two, were they regularly calendared matters?

A. They were.

Q. And were the parties represented by counsel, if you recall?

A. The parents, to the best of my recall, were represented by counsel. The grandparents were not. Just the grandfather was a party to the action. The grandmother was not a party to the action.

Q. Was the grandmother present at any point in time in the courtroom?

A. She was. She was sitting in the row of seats that are lined up along the back wall of the courtroom.

Q. Now, the way your courtroom is configured, there are four attorney tables?

A. That's correct.

Q. Configured sort of in a rectangle; two and two?

A. They are two by two, correct.

Q. And then at the rear wall of your courtroom, there's a row of seats?

A. There's a row of seats, not unlike this courtroom here, where you have the tables here, there's a row of seats. I've never counted them. There's probably about eight to 12 seats in the back, whatever would fit along the back wall.

Q. And did an issue come up

regarding a -- it was a 13 month or so child?

A. It was a young child. I don't recall the exact age of the child. The child had been living with the maternal grandparents and the mother. The mother became incarcerated and the father, at that time, was receiving supervised visitation, supervised by the paternal grandparents, as I recall, but it was supervised visitation. The maternal grandfather was to deliver the child to the father for his periodic parenting time. It was an issue when we came to court that morning that the maternal grandfather was not bringing the child in accordance with the schedule to see the father. So the child was being denied an opportunity to spend appropriate time with his father.

Q. And was that the subject matter of the denial of parenting time between the father and the infant addressed during the course of the court proceedings?

A. It was.

Q. And were you able to listen to

the tape of those proceedings?

A. I was.

Q. And do the taped proceedings -- does the tape of that proceedings -- withdrawn.

Did there come a point in time where you experienced some difficulty with the maternal grandmother?

A. Yes.

Q. And can you describe what form of difficulties you encountered?

A. So the grandfather, maternal grandfather had voiced objection to continuing to have to transport the child. Without the grandfather doing the transportation, there was no way for the father to see the child because the father lived a distance away. As I recall, the father lived in [redacted]. The grandparents lived in the western part of Sullivan County.

Q. Is there any public transportation between Middletown and Monticello?

A. No.

Q. Liberty?

A. Well, there is a bus, but they're not in that area. They're down in Eldred area.

Q. And Eldred being in the southwest corner of Sullivan County?

A. Correct, on the Delaware River.

Q. So almost on the Pennsylvania border?

A. Correct.

Q. And so the only means of effecting transportation would be by automobile?

A. Yes.

Q. And what occurred next?

A. So after a break, a brief break, everyone stayed in the courtroom, I determined that the child would live with the father. The father had a superior right to access to the grandparents, so I determined the child would go and live with the father since the mother was now incarcerated.

Q. Had the father's residence and location been vetted?

A. Yes. He lived with the grandparents.

Q. With the paternal grandparents?

A. Correct.

Q. So was the living arrangements with the father substantially equivalent to those which the child enjoyed with the maternal grandparents?

A. Yes.

Q. And what was the response to your voicing a transfer of custody to the father?

A. The grandfather voiced his objection to that determination and that was, again, going to be a temporary order for the interim between that date and the trial date, which had already been set or was being set. That was the brief pause we had. The grandmother, from the back of the courtroom, got up and, in sum and substance, it's on the transcript, said "if anything happens to this child, I'm going to sue the county and I'm going to sue you, Judge."

Q. And did you respond to that threat?

A. I did.

Q. And what did you do?

A. I had the grandmother removed from the courtroom.

Q. Do you know where she was placed after she was removed from the courtroom?

A. I don't -- I would only know by custom and practice.

Q. Well, did she leave the courtroom in the company of her husband?

A. She did not.

Q. She left with the company of a court officer?

A. She did.

Q. And did she return to the courtroom later on December 2, 2014?

A. She did.

Q. And can you describe the conditions of what occurred after she returned to the courtroom?

A. She was -- she expressed remorse and, again, it's all on the tape, she explained that the child is their life, the child's very important and they're only looking out for the best interest of the child. I reminded her that it is not their

child, the child is the mother's and the father's and that the child has a right to a relationship with the mother and the father, and we would sort that issue out on the trial date. With that, I explained to her that there was no reason to detain her any further and that she would be released.

Q. Did you advise the maternal grandparents, which would include the grandmother, of their right to petition for access?

A. I did. I did.

Q. And was that subsequent to her returning to court after threatening the court?

A. It was. I explained to the grandparents that there was no application and that they could certainly file to get access to the child.

Q. Did the matter -- did the case appear before you subsequent to December 2, 2014?

A. It did.

Q. And was the grandmother or the maternal grandmother or grandfather present?

A. They were.

Q. Are you aware of any incident or threats or any recurrence of the behaviors you described that occurred on December 2, 2014?

A. They've been in since then more than a dozen times and there's been no repeat whatsoever. The court actually has an excellent relationship with them today.

Q. Now, are you familiar with a matter *P*[redacted] *v R*[redacted] *and R*[redacted], which underlies charge seven in the Charges and Specifications, events which alleged to have taken place on January 28, 2013?

A. I am.

Q. And can you tell us what you recall occurred with respect to that matter?

A. So, again, these cases have a chain life. Prior to that day, the father had been incarcerated in state prison and we had dealt with several issues of getting the child up to state prison, I believe he was in Greenhaven, to have the child and the father visit.

Q. Let me interrupt you. Is that a

matter that your court addresses, facilitating visitation between children and incarcerated parents?

A. Regularly.

Q. And did that occur in this matter, that you had been involved in arranging a schedule of visitation for the child with an incarcerated parent?

A. There were several rounds of litigation during the time that Mr. P[redacted] was incarcerated, all aimed at getting the child, his daughter, to be able to spend time with him.

Q. Do you recall the approximate age of the child?

A. As I recall, she was 10 to 12 years old. Middle school age.

Q. On January 28, 2013, do you recall any -- the issues that are alleged in charge seven?

A. Yes. That was the first appearance or a first appearance with counsel and the father who had been released from incarceration for some period of probably months, had been seeing the child

after school for a couple of hours, a couple of days a week. The father lived in the same school district as the grandmother, who had custody. The mother was a drug addict and was basically out of the picture. So the father now wanted to have a more --

Q. When you say the grandparents, this would be the maternal grandparents or the paternal grandparents?

A. It was the maternal grandmother. Ms. R[redacted] is the maternal grandmother. So the dad wanted to have a more regular, meaningful relationship and wanted overnight visits with the child.

Q. What occurred during that appearance? And, again, this was in courtroom two again?

A. Courtroom two. So the father is seated, as I view it from the bench, the front right table. The grandmother, Ms. R[redacted], is at the front left table as that's viewed from the bench. The child, very unique, was in that court that day and she was seated behind the father at the attorney for the child table.

Q. With her counsel?

A. With her counsel, Ms. Bourne. We were talking about access and Ms. Bourne had not yet had an opportunity to speak with the child in much detail about what the child would prefer going forward in terms of access.

Q. And you were aware of that because?

A. I was aware of that because there was an exchange. I asked the -- Mr. Ferrara, who was the father, Mr. P[redacted]'s attorney, "what is your client looking for?" I asked Mr. Garn, who was Ms. R[redacted]'s attorney, what his client was looking for. And then I asked Ms. Bourne, "what's your client looking for?" Ms. Bourne wasn't sure, so she asked if she could have a few minutes to speak with her client. So we did, we took a break for five minutes or so, she went outside. While she was outside, we had an informal discussion; the grandmother was okay with overnights, what was the grandmother comfortable with. It became apparent that the -- oh, no, excuse me. The

father was looking for alternate weekends. That's what it was. We hadn't yet gotten any input from the grandmother. When the child came back, Ms. Bourne, the attorney for the child, reported that her client would be comfortable and would like to have every other weekend, alternate weekends with her dad from Saturday to Sunday.

I turned to Mr. Garn and asked, essentially, "what's your client's position?" He spoke to his client and his client -- and then he reported that his client would be comfortable with one weekend a month. So we had no meeting of the minds. We had to set the matter for trial because there was -- the father wanted alternate weekends and the child -- the grandmother wanted one weekend. So we basically were at loggerheads at, essentially, over one day, one 24-hour period a month, and we needed to set the trial for matter. And the way -- we set the matter for trial. On the way out of the courtroom, the grandmother said something to the child that the attorney for the child reacted to. Now we're off the

record. We're not off record but we were off the record there. The attorney for the child reacted to what Ms. R[redacted] had said to her.

Q. To her or the child?

A. To the child about the child wanting alternate weekends. And Ms. Bourne reacted, and I reacted to that as well. Again, one of the overarching principals that we deal with in Family Court is we do not try to put the children in a vice between the parents. Whatever they they want, their attorney will advocate for.

Q. And did you address the fact that Ms. R[redacted] was addressing the 10 to 12-year-old child while exiting the courtroom?

A. I was. I admonished her that it was inappropriate. I don't recall my exact words, but I was very clear and unequivocal that she cannot put that kind of pressure on the child. Again, experience in Family Court, if they're doing it in court in front of the judge and the attorney, what's this child enduring at home. That's a concern.

That's what we deal with in Family Court all the time.

Q. So --

THE REFEREE: I'm sorry, could I just interrupt you?

THE WITNESS: Yes, sir.

THE REFEREE: Did you hear what the grandmother said to the child?

THE WITNESS: I did.

THE REFEREE: What did she say to the child?

THE WITNESS: "How can you say you want to go see him every other weekend," something sum and substance like that.

THE REFEREE: Okay.

Q. So she adopted a scolding tone in addressing the child?

MR. LEVINE: Objection.

A. She did.

THE REFEREE: Overruled.

A. She did.

Q. Did you thereafter, or promptly thereafter, threaten to take the grandmother into custody?

A. I don't dispute -- I didn't threaten to take her into custody. I let her know that she could be taken into custody for that.

Q. Was she ever taken into custody?

A. She was not.

Q. And did she -- after you told her that she could be taken into custody, did she express becoming ill?

A. She did.

Q. And did you direct anyone to provide her with aid or assistance?

A. The court officers immediately went to her when she appeared to have shortness of breath. The court officers went to her and dealt with it right away. Standard operating procedure is where EMS or whatever is going to be involved, they want the judge off the bench and back in chambers, so that's what I did.

Q. Do you know if Ms. R[redacted] received treatment or declined treatment?

A. She received treatment in the courtroom, courthouse and then declined treatment to go to be checked out at the

hospital. She went home with her daughter.

Q. Did that matter return to your calendar at any time?

A. It did.

Q. And was the grandmother present in court at any time?

A. She was.

Q. And prior to April of 2017, was anything about the way you had conducted yourself in court on that date brought to your attention by any judge or officer of court administration?

A. It was not.

Q. Do you recall a case entitled *E* [redacted] *and* [redacted]?

A. Yes.

Q. Do you recall any allegation concerning your conduct?

A. I do.

Q. And can you tell us a little bit about your perception of what occurred in *E* [redacted] *and F* [redacted]*?* And was that also in courtroom two?

A. That was in courtroom two in Family Court.

Q. A regularly calendared matter?

A. It was.

Q. And what do you recall -- have you listened to any tape or transcript of that -- read any transcript or listened to any tape of those?

A. I don't believe I listened to the tape. I have reviewed the transcript.

Q. And --

A. I was provided with the tape, just to be clear. I was provided with it. I don't know that I listened to that one.

Q. Now, do you recall advising the litigant that, words to the effect that "you are about seconds from getting yourself put in handcuffs" or words to that effect?

A. I do.

Q. And can you tell how that came about, that you would address a litigant in that manner?

A. So, again, contextually, this was a very difficult case in that in the scope of this case we had an assault of a case worker with a police officer present. I had --

Q. Who is alleged to have assaulted?

A. Ms. E[redacted].

Q. And the case worker would be employed by whom?

A. Department of Family Services. D[redacted] C[redacted], C-[redacted].

Q. And was that during a scheduled home visit?

A. Yes. The Department of Family Services couldn't find the parents or any of the six children, and they ultimately got an address, went there with law enforcement to do a welfare check. And when they went there, the mother would not allow them into the house and, ultimately -- and I was not there, but ultimately she was arrested for assault of Ms. C[redacted], the case worker.

Q. And was that prior to the November 7, 2014 appearance in your court?

A. It was.

Q. And were any of the litigants present on November 7, 2014 in custody at the time of that appearance, if you recall?

A. Mr. F[redacted] was in federal custody, but I don't recall if it was then

or shortly thereafter, so he may not have been in custody yet. He was ultimately placed in federal custody on a drug case, a major drug case.

Q. And Ms. E[redacted] was at liberty?

A. She was.

Q. And what was it that led you to advise the litigant that she was moments from getting herself put in handcuffs?

A. So as the proceedings wore on -- that was a trial day, so at the time Mr. Garn, who was Ms. E[redacted]'s attorney, was examining a witness on the stand, I don't recall what witness it was, and Ms. F[redacted] kept turning around and talking. Ms. E[redacted] kept turning around, talking to Mr. F[redacted] and she would turn back, and a couple of times I just gave her body language, letting her know don't do that.

Q. Why is that improper, to be turning around during the testimony and speaking to another litigant?

A. Well, it's distracting to everybody in the courtroom and it's

disruptive to the proceedings. And I don't, frankly, have any idea what they're saying, but it's inappropriate to be speaking to one another, litigant to litigant, during a trial.

Q. And you had gestured to her, you didn't speak to her to cease it?

A. Correct. And it was just nonverbal where maybe I would shake my head at her or make eye contact, something like that. And it continued a few more times, and then after that, after it had happened a couple of more times, I responded that she was about seconds away from being taken out of court.

Q. And what occurred, if anything, thereafter? Was she removed from court?

A. She was not.

Q. Did you have to break -- create a -- call a break in the proceedings?

A. We did not. They continued.

Q. Did the trial proceed to conclusion on that date?

A. It did.

Q. And was there a determination

reached by the court?

A. There was.

Q. And prior to April of 2017, had your conduct on November 7, 2014 been brought to your attention in any way by any member of the court system?

A. It had not.

Q. Now, with respect to the matter of *V* [redacted] *and G* [redacted], do you recall that case?

A. I do.

Q. And you were -- there was an appeal taken in that case?

A. There was.

Q. And you were reversed?

A. I was.

Q. And they believed you had showed -- and in being reversed, was the matter assigned to another judge?

A. It was.

Q. And do you know what judge it was assigned to?

A. Judge Meddaugh.

Q. And do you recall -- are you familiar with the decision of the Appellate

Division?

A. I am.

Q. And were you criticized in that decision?

A. I was.

Q. What was the nature of that criticism?

A. Appellate Division felt, two things: One, that I had granted a trial order of dismissal on the mother's custody petition after hearing the mother's testimony which the court -- which I found totally incredible, and they also suggested, stated that I had shown disdain to the mother, and Appellate Division believed that I could not be fair and impartial in dealing with the mother and directed the case be sent back to another judge for further proceedings.

Q. Now, prior to you reaching your trial decision, had the mother left the jurisdiction of the court?

A. The case started because the family made a determination to move to California. The mother was going to precede

the father out and the plan was that the father would follow a couple of months later and they would live with the two children in the mother's aunt's home outside of Los Angeles. And the father got everything closed up in New York and ready to go out. The mother told him not to go out.

Q. Did there come a time that a petition was filed that brought the matter to the Sullivan County Family Court?

A. One in Sullivan County, one in -- I don't remember if it was Orange County, but it was Los Angeles area, California.

Q. And the petition in Sullivan County was initiated by?

A. The father.

Q. And the petition in Los Angeles area, Orange County, California was brought by whom?

A. The mother.

Q. And where were the children at that time?

A. In California.

Q. And did there come a time that the matter was conferenced before -- a joint

conference between you and a judge of the California court system?

A. We actually did a dual hearing under the UCCJEA, the Uniform Child Custody Jurisdiction Enforcement Act, to make a determination of whether New York or California would be the appropriate forum to determine custody of these children.

Q. And the mother and the children were in California?

A. Yes.

Q. And the father was in Sullivan County?

A. Yes.

Q. And as a result of that hearing that you conducted with the judge of the California court system, what was mutually decided?

A. It was mutually decided that New York was the home state of the children and, therefore, jurisdiction for an initial custody determination would lie in New York State.

Q. And was the mother directed to return to Sullivan County?

A. She was directed to return for trial of the matter, but there was an interim order where the father would have access to the children prior to trial.

Q. When the mother returned for trial, had she been directed to bring the children with her?

A. She had.

Q. Did she bring the children with her?

A. She did not.

Q. But she did appear for trial?

A. She did.

Q. And based upon what you learned at trial, had the father seen the children subsequent to the mother taking them to Orange County, California?

A. He had not.

Q. And what period of time had passed between the time the mother took the children to California and the trial in your -- in the Family Court in Sullivan County?

A. I would rely on the Appellate Division decision, which would state the

date of the trial. My recollection would be that it was probably five to six months between January when the father left -- when the mother left and the trial, which was probably in the following summer.

Q. And the mother's petition was for -- what was her prayer for relief, that you dismiss at the close of the mother's case?

A. Physical custody to her in the State of California.

Q. So it was a combined custody and relocation?

A. Correct.

Q. Do you know if the relocation portion of your decision was disturbed in any way?

A. The entire decision was remanded back to, turned out to be Judge Meddaugh, for a new trial on the entire issue, which would have been moot at the time.

Q. And when you say "moot," why was that?

A. Because the mother had already relocated back to the State of New York

before the Appellate Division decision was done and they were sharing custody.

Q. And had they appeared before you while the matter was on appeal before the Appellate Division had ruled?

A. They did.

Q. And, if you recall, was it on one occasion or more than one occasion?

A. There was at least one round of litigation, which is where I learned that the mother was now back living in Monticello, the father was living in Roscoe, and they were essentially sharing time with the children.

Q. Now, following the rendition of the Appellate Division's decision, were you counseled or addressed in any way by any member of the Office of Court Administration, any superior judge concerning your conduct during that -- the litigation of the *V*[redacted] *and G*[redacted] matter?

A. I was not.

Q. Now, directing your attention to January 14, 2015, and earlier, Wendy Weiner served as your part secretary -- your

confidential secretary?

A. She did.

Q. Did you speak to her -- let me ask you first: Do you recall her leaving work crying at any time during the first six or seven months she was in your employ?

A. I do not.

Q. Were you advised of any quarrel that anyone had with the manner you were treating Wendy Weiner prior to January 14, 2015?

A. I was not.

Q. Had you been made aware of any complaints that Wendy Weiner had made regarding your condescending, angry, loud or screaming at her?

A. I was not.

Q. Did you scream at her?

A. I did not.

Q. Did you, on January 14, 2015, throw files?

A. I did not.

Q. Did you kick the files around the chambers?

A. I did not.

Q. Did you step on the files leaving a footprint on them?

A. I did not.

Q. Now, what type of shoes do you wear? Withdrawn.

A. Dress shoes.

Q. Now, had you been experiencing issues with the technology in your chambers?

A. There's always issues with technology. On that particular day, I had a particular problem with software.

Q. And after January 14, 2015, did you stop speaking with Ms. Weiner?

A. I did not stop speaking with Ms. Weiner.

Q. Did you stop e-mailing her?

A. No.

Q. Did you stop texting her?

A. I did not.

Q. Did she terminate speaking to you?

A. We communicated -- there was certainly not a warm friendly relationship. There -- business of the chambers continued, we continued to communicate through each of

those methods in furtherance of court business.

Q. Now, did you ever call Ms. -- address Ms. Weiner and call her "stupid"?

A. I did not.

Q. Now, there is also an allegation that you yelled at Andrea Rogers. You were here when Andrea Rogers testified?

A. I was.

Q. Did she serve in your court?

A. She did.

Q. Was she in your courtroom?

A. She was.

Q. Now, while court proceedings are ongoing, during the period of time when Andrea Rogers was in your court, did she serve in the same capacity as Ms. Sheridan?

A. She did.

Q. So she would be the operator of the recording device?

A. She would.

Q. And have you ever been presented with any tape recording of you speaking to her in a loud, angry or condescending manner in the presence of litigants?

A. I have not.

Q. Are you aware of any time that you spoke to her in a loud, angry or condescending manner in the presence of litigants between 2011 and 2013?

A. I'm not aware because it didn't happen.

Q. And if it happened in the presence of litigants, is it your understanding that the tape would be rolling, so to speak?

A. It would.

Q. Now, Ms. Rogers also spoke about a stop sign, and I'm holding my hand up, my left hand up like a traffic cop. Do you recall any incident where you addressed Ms. Rogers in that manner?

A. I am sure that I probably did use nonverbal signals to let her know that at that particular moment I wasn't ready to receive the information she was sending me because I was receiving information from other places.

Q. So if testimony were ongoing and somebody were approaching you and you were

listening to the witness or the attorney, might you hold your hand up?

A. Certainly possible. More likely one finger, but it certainly could have been my hand.

Q. Do you recall Ms. Rogers addressing you concerning how you were treating her during or -- during court proceedings?

A. I do not.

Q. Did she ever address you in a manner to call to question how you were treating her, either in or out of the court?

A. She did not.

Q. When did you learn that Ms. Rogers had alleged that you had frequently, in a loud and angry and condescending manner, addressed her and that on numerous of those occasions it was in the presence of litigants?

A. On or about July 18, 2018.

Q. And Ms. Rogers ceased service in your -- in the Family Court part that you operated?

A. Correct.

Q. Do you know where she went from there?

A. She went to the presiding judge, Judge Meddaugh.

Q. And does she remain at that post?

A. She does.

Q. Now, did Judge Meddaugh, without naming a name, ever call to your attention issues that you may have -- he may have --

THE REFEREE: Finish the question.

Q. Did Judge Meddaugh ever bring to your attention issues you may have had with court personnel?

MR. LEVINE: Objection.

THE REFEREE: Hearsay?

MR. LEVINE: Hearsay and relevance, both.

THE REFEREE: Overruled.

A. He did not.

Q. Now, you know there's an allegation that you yelled at Miguel Diaz.

A. Yes.

Q. And that you frequently, in a loud and angry manner, yelled at him. Do

you recall that allegation?

A. There are such allegations.

Q. And do you know if those allegations -- are you aware of a proceeding *N*[redacted] *versus H*[redacted]?

A. I'm not familiar with *N*[redacted] *versus H*[redacted]. I'm familiar with *E*[redacted] *versus H*[redacted].

Q. Oh, *E*[redacted] *versus H*[redacted].

A. I am.

Q. And that took place -- was that a case that was before you?

A. It was a case that was before me, yes.

Q. And did you address Mr. Diaz -- and what position did Mr. Diaz hold?

A. Mr. Diaz was a court officer assigned to my part on the day that *E*[redacted] *and H*[redacted] was scheduled to be heard.

Q. And was he in your part on that date?

A. He was.

Q. And was there a problem with his radio walkie-talkie?

A. There was often a problem with

his radio walkie-talkie being too loud and disruptive to the court. On that day, that was not the issue on the day of *E*[redacted] *versus* *H*[redacted].

Q. Well, what, if anything, do you recall occurred on the -- during the proceedings of *H*[redacted] *v E*[redacted] or *E*[redacted] *v* *H*[redacted]?

A. So there was an issue in the interim between the case, before *E*[redacted] *versus* *H*[redacted] and *E*[redacted] *versus H*[redacted], and that was -- that was -- *E*[redacted] *versus* *H*[redacted] would have been the third case that day. There was an issue with the start, before start and case one, between case one and case two, and then between case two and case three.

Q. When you say "an issue," what do you mean by that?

A. The issue was when the door would open, the next case was not ready to come in, which would set us back. We'd lose a minute or two, sometimes three or four, between cases, and that would have set us behind to where we either would not have

finished the calendar or would have gone overtime.

Q. Now, the doorway to your courtroom, can you describe, is there an area outside of that doorway where the next case is typically staged?

A. There is an area outside my courtroom where the next case up should be staged, yes.

Q. There's two conference rooms, small conference rooms in that area?

A. There's either two or three conference rooms and a standing area, the CASA office, Court Appointed Special Advocates there, and there's a file storage room there.

Q. And is it the custom and practice in the Family Court, both outside of your courtroom and outside of Judge Meddaugh's courtroom, to stage the next case there, so that as one set of litigants leave, the next case would arrive?

A. That's correct.

Q. So while case number one on the calendar is being addressed, who is

responsible for bringing the litigants and advising the attorneys that they're in the on-deck circle, so to speak?

A. Well, based on my experience, in Family Courts in several counties, it is the responsibility of the court officers outside the courtroom to get the cases staged or queued to come in. It's the responsibility of the officer inside the courtroom to alert the outside when to start queuing up that next case.

Q. And there were some difficulty on -- surrounding the *H*[redacted] *v E*[redacted] case in accomplishing those tasks, is that --

A. There were difficulties there. That was the -- that was the end of the difficulties. There had been difficulties regularly with Officer Diaz in my court and I had spoken to the chief clerk, the lieutenant and the sergeant about those consistent difficulties that we had with his management of the calendar.

Q. And can you describe if the radio played any part on that particular day

during the hearing of the *H*[redacted] *v E*[redacted] case?

A. On that day, the radio played little or no part, other than he needed to coordinate his communication so that we didn't open the door and have the parties for the next case outside beyond the mag, in the parking lot or wherever.

Q. Now, so do you recall frequently speaking in a loud and angry manner to Miguel Diaz?

A. I didn't frequently speak to him in a loud and angry manner, and on that particular day, I first made a comment -- and the transcript is in evidence, as is the tape -- that we need to get these cases moving. Then when we waited again a while, and you can hear that pause time on the transcript, I said, "Miguel, have the sergeant come and see me in chambers."

Q. Now, do you know who Will Oliveri is?

A. I do.

Q. Did you ever shove Mr. Oliveri with your hands?

A. Never.

Q. Did you tell him that you wanted an officer other than Mr. Diaz in your courtroom?

A. I did.

Q. And was that for the reasons you just explained?

A. What I said to him was, "either the guys outside have to start doing their job or the guys inside." At that time, I had suspected the problem was probably Officer Diaz's communication with them, and so I said "bring another officer into my courtroom."

Q. And when did you first become aware that some issue had been taken with your interaction with Sergeant Oliveri in connection with those proceedings on *H*[redacted] *v E*[redacted]?

A. April of 2017.

Q. And do you know when this incident was alleged to have taken place?

A. February 25, 2013.

Q. And between February 5, 2013 and 2017, had anybody, Mr. -- Sergeant Oliveri,

Mr. Diaz, any superior officer, CSEA member, senior court officer, brought to your attention any issues about your voicing your complaint about how matters were being attended to with respect to your part in the Family Court?

A. No, nothing was brought to my attention with respect to my exchange with Sergeant Oliveri. But the lieutenant did speak to me subsequent to that event about steps they were going to take to help train and bring Officer Diaz up to speed to be able to handle busy calendars in Family Court.

Q. Do you recall an allegation of you slamming or closing a door as an attempt to insult Brenda Downs?

A. I recall the allegation.

Q. And when was that allegation first brought to your attention?

A. April of 2017.

Q. And do you know when that incident is alleged to have occurred?

A. I've never been told when that incident is alleged to have occurred.

Q. And do you recall at any time closing your office door because people were conversing in the outer room?

A. I don't know that I recall the specific scenario, but I do recall on times -- what I've been able to put together on that particular incident is that I had tried a case in Family Court, recessed for 10 or 15 minutes to gather my thoughts and put together a decision. There were multiple people standing just beyond my private office door having a discussion. They weren't doing anything inappropriate. The walls are paper thin and I had about 15 minutes to gather my thoughts, get an outline of a decision, caselaw loaded into a decision, so that I could deliver it on the bench.

Q. That was a decision you were going to deliver orally?

A. Correct.

Q. And was Brenda Downs a frequent visitor to your chambers area?

A. Brenda Downs was in chambers almost daily, when she wasn't assigned to my

part. And when she was assigned to my part, she was there during those days most of the day.

Q. Was she there during break time and other times to visit with any of your personnel?

A. Frequently she would be.

Q. And who would she be visiting with?

A. She would visit with my secretary or with Ms. Weiner or Ms. Kaneily or she would pop her in her head in and say hello to me. It's a collegial atmosphere. And on that particular day they were having a discussion out there.

Q. Did you ever intentionally close a door in Brenda Downs's face?

A. I did not.

Q. Now, do you recall any interaction with Kevin McCabe concerning your start time?

A. I do.

Q. And when was that interaction? And I believe Mr. McCabe testified here?

A. Well, he testified -- my

recollection and his vary. My recollection was that that was much earlier in my tenure that we had that discussion about wanting to get started right at nine o'clock.

Q. Do you know what date, calendar date Mr. McCabe, if any, has identified as being the date of the occurrence?

A. I'm not aware of any specific date being attributed to being assigned to that incident.

Q. Do you know what period of time he's alleged that it occurred?

A. My recollection from his testimony here today was that it was in 2012. My recollection of my -- that discussion with Lieutenant McCabe was that it was early in 2011.

Q. So when was the first time that you were made aware that Kevin McCabe took any umbrage with your request that your court start on time?

A. April 2017.

Q. At any time prior to April 2017, did Mr. McCabe advise you, communicate with you that he had taken offense by the fact

that you had told him you wanted to start at nine o'clock and not 9:01 or 9:02 or thereafter?

A. Lieutenant McCabe and I conversed on a regular basis and he had never raised that issue with me.

Q. Now, are you familiar with the case of *M[redacted] v H[redacted]*?

A. I am.

Q. And that underlines charge number nine in the Charges and Specifications?

A. It does.

Q. Now, was that case resolved by settlement?

A. It was resolved amicably in one appearance.

Q. And did you know there is an allegation that you addressed the parties improperly?

A. There is an allegation.

Q. And do you recall, was that something that took place in courtroom number two?

A. It did.

Q. And do you recall addressing --

have you listened to the tape of those proceedings?

A. I have.

Q. And do you recall cautioning the parents about association with drug addicts or drug users?

A. So after they came in and we were able to settle the case amicably, they were actually very civil with one another. I have somewhat of a standard colloquy that I have with litigants inviting them and encouraging them to remain civil with one another, to always keep the child's best interest at heart.

Q. Did you do that in this case?

A. I did.

Q. Continue.

A. So part of that, and based on my experience; 15, 18 years in Family Court, frequently what we see in Family Court is the new spouse becomes ground zero for the next round of litigation, which puts the children back in litigation and creates a tug of war between the children and the dad's girlfriend, mom's boyfriend, paramour,

whatever the case may be. And inevitably, there are allegations that dad doesn't want mom's boyfriend around the children because dad's boyfriend is for some reason not a good person or dad's girlfriend, whatever it is, and that's very difficult on the children. So my standard colloquy is, if you have issues, work them out. It's tough enough for the child to endure mom and dad not together, but if they have to endure that dad's girlfriend is a drug addict or mom's boyfriend is a child abuser, that becomes very, very difficult. I certainly wasn't accusing the mom or the dad of being involved with these people. I was drawing from 15, 18 years of experience hearing those cases.

Q. Now, is custody a complicating factor in your experience, gives rise to a variety of allegations?

A. Absolutely.

Q. And was your admonition, for lack of a better word, to those litigants an attempt to avoid further litigation?

A. It was.

Q. Did there come a time where you represented your wife Corinne in connection with a traffic ticket in Wawarsing, New York?

A. May of 2010. The ticket is in evidence. I believe it was May of 2010. She got a speeding ticket in Wawarsing. I put a notice of appearance in and appeared on June 25, 2010 in the Wawarsing Court.

Q. And was the case resolved, to your knowledge, in June of 2010?

A. Ed Bruno was the prosecuting attorney. I made one appearance and we resolved the case.

Q. And when was the next time that you heard about the case?

A. In August of 2011, we received a letter at our home advising that my wife had never answered that ticket and if she did not answer the ticket, there would be a potential that her license would be suspended.

Q. Did you believe that to be a clerical mistake by the court?

A. I did.

Q. And did you send a letter to the court?

A. I did.

Q. And what was the result of that letter?

A. The result of the letter is the disposition that I had understood from June of 2010 was, in fact, entered in the court records.

Q. And that's the -- so if I understand you correctly, the clerical error was corrected as a result of your letter?

A. Apparently.

Q. Do you recall a gentleman named George Matisko?

A. I do.

Q. And was he a client of yours when you were in the private practice of law?

A. He was.

Q. And with respect to a claim you had, you were here during the testimony of Ms. Weiner, did you ever speak to any claims representatives on behalf of George Matisko?

A. I never spoke to any claim representative. I believed that the case

was completed before I took the bench.

Q. Did you direct Wendy Weiner to take any steps on behalf of George?

A. I did not.

Q. Did Wendy Weiner share with you the steps she was taking on behalf of Mr. Matisko that she testified to last week?

A. She did not.

Q. Do you recall receiving a check from Progressive Insurance for $1,000?

A. I do not recall that.

Q. Now, Eileen and Phillip Moore?

A. Yes.

Q. Did you ever speak to them about a house that they were buying out of foreclosure?

A. I did.

Q. And what was it that you -- do you recall the nature of that conversation?

A. I do. I was announcing a basketball game. When it was over, they came up to say hello, which is frequent that they do. This time their daughter joined them, along with their son-in-law Chris. They shared with me that they were buying a

house that was in foreclose, it was a cash deal, and they didn't think they needed a lawyer. Heather was somewhat sophisticated, she had a good job with the State doing contracts.

Q. Without saying what they said --

A. Right.

Q. -- did you provide them with any legal advice?

A. The only advice I gave them is that if it's a foreclosure, they really should have an attorney look at the contract because foreclosures can be tricky because of the way the contracts are structured.

Q. Did you take any further action?

A. I did not.

Q. Did you instruct them to speak to your wife?

A. I don't recall whether the mechanism was -- my wife may have even been there. I really don't recall that. I don't remember whether the mechanism was Heather reached out for my wife. My wife was the volleyball coach at the college at that time, so she may have been there at the

game. I really don't recall, but in essence --

Q. As you sit here today, do you know how the Moores made contact with your wife?

A. I don't specifically recall how that connection was made.

Q. Did you review the title?

A. I did not.

Q. Did you communicate with? Mr. De Carlo, the title person --

A. I did not.

Q. -- regarding the Moore transaction?

A. I did not.

Q. Did you receive any fee or compensation in connection with the Moores' real estate purchase?

A. I did not.

Q. Now, do you know a Ricky Pagan?

A. I do.

Q. Was he a client of yours when you were in private practice?

A. Yes.

Q. Did you perform any services for

him in connection with the property which was the subject of the real estate transaction with the -- pardon me. Withdraw that question.

Can you describe the nature of the real estate transaction that you handled for Ricky Pagan while you were in private practice, prior to January 1, 2011?

A. Yes. Ricky came by my office one evening. It was after five o'clock. It wasn't late at night. And I invited him into my office and engaged in small talk, and he said to me, in sum and substance, he was buying a piece of land. He conveyed to me that he was buying a piece of land, that he had spoken to the owner of that piece of land, that he knew it was a tax foreclosure that it was going up on and that he had gone -- that he had agreed on a sale price with the seller and that he had gone to the county treasurer's office already and paid 5,000 of the $8,000 sale price to take it out of the tax foreclosure. That was the back taxes.

Q. As a result of that advice that

he gave to you, did you prepare any mortgage documents?

A. I did because I explained to him that he just made a gift to the owner of the property, that if they don't want to sign a deed later, he would have problems collecting that $5,000. So we got the -- he had the phone number. We got Ms. Clark on the phone. I explained to her and Ricky that I wanted to -- I thought the best way to proceed was to put a mortgage on the property. When Ricky had the balance of the money, that Ricky would take care of satisfying the -- discharging the mortgage. And I told her if she wanted to consult an attorney, she certainly was encouraged to do that. This was property I understood that was inherited. She wasn't interested.

Q. When did that occur?

A. That occurred in March 2010.

Q. And in addition to the -- did you prepare the actual mortgage?

A. I prepared the mortgage and mailed it up to Binghamton within a day or two.

Q. Did you prepare any other documents in connection with that transaction?

A. Yes. Based on my discussions with Mr. Pagan, Ricky, I believed that was within a month or shortly thereafter he would have the balance of the money. And so when I sat down to do the mortgage, because much of the information in a mortgage and a deed are identical, like the Schedule A description, I did a mortgage, I did a deed, I did a TP584 and and RP5217, which are the transfer documents that are necessary, stuck them in the file and left them there. It took a while but we got the mortgage back, recorded the mortgage and the deed. TP and RP sat there in the file thereafter.

Q. And do you recall, after closing your practice, hearing, again, from Mr. Pagan about that real estate transaction?

A. So when we were closing, that was one of the files that we called a stray file because it was really nothing left to do but it wasn't completely resolved. So I

explained to Corinne that all it needs to do, when Ricky has the $3,000, is mail the documents to Binghamton, everything is done. Turned out I didn't hear -- I did hear from Ricky but not that he had the rest of the money for quite a while, couple of years. Quite frankly, by then the files had been stored and they were completely out of my mind. I mean, they were out of my mind. I wasn't thinking about them.

Q. Are you aware of a point in time where Mr. Pagan requested the documents?

A. I am.

Q. And did you have any role in the transmittal of the deed, TP584 and RPT that Mrs. McGuire testified about?

A. I didn't.

Q. Did you give her any instructions about what to do with the deed, the TP584 or the RPT?

A. In November, December, as we were going through the active files, seeing who we had contacted --

Q. This is 2010?

A. 2010. We went through those that

we called strays. Stuff you -- there was nothing to have them go to another attorney for, and so I went through the file with her and I said "well, what's got to happen here to get to the money, just mail the documents and then they'll come back and give them to Ricky and he'll file them." This was a very small piece of vacant land. This was not a substantial purchase.

Q. Did you receive, subsequent to December 31, 2010, any compensation from Mr. Pagan for any of the work you had done in connection with the preparation of the mortgage, deed or any other documents?

A. I never received any compensation from him at any time.

Q. With respect to those --

A. I did not.

Q. And with respect to the retrieval of the documents from storage and the transmittal of those documents for signature and recording, did you have any hand in that?

A. I did not.

Q. Now, who is Christopher Lockwood?

A. Christopher Lockwood is a young man -- well, now he's probably 26, 27. He played high school basketball and soccer with my son and he was one of the group that routinely was at my house playing basketball, drinking soda, eating potato chips, pizza, whatever it is.

Q. Did you represent him in connection with a traffic ticket?

A. I did.

Q. And where was that traffic ticket venue?

A. Town of Liberty.

Q. And can you tell us what you did with respect to that ticket while you were in private practice prior to December 31, 2010?

A. So in June of 2010, the documents are in evidence, my recollection is June of 2010, Chris -- either Chris or his mother, more likely his mother came to me to say her son had gotten a traffic ticket, could I help him out with it. I said "of course." I put a notice of appearance and a plea into the Town of Liberty Court and waited to get

response from the Town of Liberty Court. When I got elected and we were going through the active files, I made contact with the prosecutor for the Town of Liberty Court, tried to get a resolution worked out prior to December 31, 2010. The prosecutor wanted Christopher to take a defensive driving class and I communicated that to Christopher prior to January 1, 2011, but he didn't get it taken until sometime after January 1, 2011. So although there was a resolution agreed upon, there was the ministerial act that remained of physically getting that resolution put on the record.

Q. Or transmitting the proof of the defensive driving course?

A. Correct.

Q. And was that forwarded -- was that one of the cases that you had your brother complete?

A. And on December 30, 2010, when I met with my brother, that was not a Supreme Court matter, that was a local matter that I said to him was, "look, all that needs to happen here is when he gets the defensive

driving certificate, you mail that with his abstract." My brother is actually the town prosecutor in the town of Queemans, New York so he's very familiar with the process. You send it in, and with a -- what they call an application to amend a traffic infraction, which we had those forms in the office because we handled a lot of those cases in Liberty, because we were in Liberty, "so complete this, send it in and that'll be done."

Q. Were you compensated in any way by Christopher Lockwood, at any time, either before December 31, 2010 or thereafter?

A. No.

Q. And did you know that the closing documents were forwarded to the court on your former law office's letterhead?

A. I am aware of that now.

Q. And when was that first brought to your attention?

A. First brought to my attention probably -- now, to be fair, they were in the file that was in storage, but when I first became aware that that case was an

issue in April 2017, I went and retrieved the file and that's where I saw that in January of 2011 a letter was mailed to my office -- old office, and in February of 2011 a letter went out on my letterhead, over Ken's signature, essentially doing what we had talked about on December 30, 2010.

Q. Do you recall traveling to court with your son, Will McGuire?

A. In the City of Oneonta, I do.

Q. And was that after you had been sworn in --

A. It is.

Q. -- as a judge?

A. It is.

Q. And did you actually appear in court with your son?

A. I did.

Q. And did you represent yourself as a judge at that time?

A. I did not. I went with no ID whatsoever to the court.

Q. Did you represent yourself as a practicing attorney at that time?

A. I represented myself as an

attorney.

Q. Now, have you become familiar with a Lindsey Amoroso?

A. I have.

Q. And who is Lindsey Amoroso?

A. Lindsey Amoroso worked for the Hudson Valley Renegades with my son K[redacted] in, I believe it was, 2012, but I defer to the record on the date of the ticket.

Q. And can you describe your involvement in the handling of a traffic ticket on behalf of Lindsey Amoroso?

A. So Lindsey had stayed at my son's mother's home after a game and there was a structure fire that destroyed the entire home. My son's bedroom was in the basement. The basement was not effected by the fire but the floor ultimately collapsed onto the basement. Lindsey got herself out through a window, realized K[redacted] was not out and went back into the burning structure fire to get him out of the basement. Had she not done that, he would have perished.

Q. What I've asked you, Judge, is about her traffic ticket.

A. I apologize. So while K[redacted] was at the burn unit at Westchester Medical Center, she had gotten a ticket actually going to see him one day, and when I came to the hospital at some point that day or got back into his room at some point, K[redacted] showed me the ticket and asked me if I could get somebody to handle the ticket for her.

Q. And did you forward the ticket in any way on behalf Ms. Amoroso?

A. So -- I did.

Q. And to whom did you forward the ticket?

A. I forwarded it to Zach Kelson.

Q. And after you forwarded the ticket to Zach Kelson, did you have any involvement in the manner in which the ticket was handled?

A. I did not.

Q. Were you compensated in any way by Lindsey Amoroso for the handling of the ticket?

A. I was not.

Q. And do you know what fee arrangements she made with Mr. Kelson, if

any?

A. I had no interest in that.

Q. Now, has the matter of *Dean v Boyes* been brought to your attention?

A. It has.

Q. And did Mary Grace Conneely advise you that she had entered into a contract with one of the litigants during the pendency of that case?

A. She did not.

Q. Had she advised you of a contractual relationship that she had with one of the litigants prior to your addressing that matter on the record?

A. She had.

Q. Did you address the potential conflict based upon Ms. Conneely's contractual relationship with one of the litigants on the record?

A. I placed on the record everything that I knew at that time about the relationship that I had with one of the families and that she had with one of the families.

Q. And were the litigants

represented by counsel?
A. They were.
Q. And did either of the counsel express any reservation about proceeding at that time?
A. In February of 2013, after I put on the record the information that I was aware of, both stated that they had no problem with the court continuing.
Q. Do you know if Ms. C handled conferences of the matter?
A. She did.
Q. And in your Supreme Court practice did your principal law assistant conference the cases?
A. Many, many times.
Q. Would your law secretary or principal law assistant have a hand in drafting decisions once you had reached a conclusion in a case?
A. Several decisions.
Q. And at any time after the conference at which you disclosed your prior relationship with relatives of the litigants -- by the way, what was your

relationship with one of the litigants?

A. Mr. Boyes's mother had come to my office several years earlier and said that she wanted to convey a piece of property from her to her son. I told her she could come back -- I asked her did she want to do title and what not. She said "no, just simple transaction." I told her she could go have a cup of coffee, come back in about an hour, we would have a deed, TP and an RP ready, she could sign it and either we would record it or she could record it. It was up to her.

Q. And you made the parties aware of your prior representation of a member of the Boyes family?

A. I did.

Q. And did you make the litigants aware of Ms. Conneely's relationship with the litigant?

A. Ms. Conneely had had some work done in her home about a year earlier, done by the construction firm of Boyes and Torrence.

Q. Do you recall making any -- other

than the transcript of proceedings, do you recall any notes or memoranda regarding what Ms. Conneely told you?

A. I have no notes or memoranda regarding what she told me, other than what's in the transcript.

Q. And subsequent to -- as the case was progressing, did you learn from any source, other than Ms. Conneely, that she had entered into a subsequent contract with a litigant for construction of a kitchen at her house?

A. I learned from the Commission.

THE REFEREE: Let me know when you want to take a break.

MR. OSTRER: This would be a great time.

THE REFEREE: All right. Let's take a break, 10 minutes.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: On the record.

THE REFEREE: You may proceed, sir.

MR. OSTRER: Are we back on, Your

Honor?

THE REFEREE: Yes.

MR. OSTRER: May we proceed?

THE REFEREE: Yes. I said that several minutes ago.

MR. OSTRER: I'm sorry. I missed it.

THE REFEREE: Okay.

Q. Judge McGuire, are you aware of the exhibit -- that there was a creation of an e-mail account for you identified as judgemcguire[redacted]?

A. I am.

Q. When was the -- did you first become aware that there was an allegation that that may have been improper to identify -- to create an e-mail title of judgemcguire[redacted]?

A. April of 2017.

Q. And do you know when you had ceased using or ceased to have the e-mail account entitled [redacted]?

A. I don't know the exact date, but it was likely 2015 or early 2016.

Q. And had you observed any other

similar or communicated with people with any similar e-mail accounts?

A. I had.

Q. And did you recognize any as being affiliated with judges that you knew?

A. I had.

Q. And could you identify which e-mail accounts you were familiar with at the time you maintained the judgemcguire[redacted]?

A. Prior to that I had gotten a lovely congratulatory e-mail from now my co-judge, Judge LaBuda, and it came from judgelabuda@[redacted].

Q. Were there any other e-mails that you communicated with that had the connotation of a judicial office?

A. I received several e-mails congratulating me after I won. That's where I got the bulk of the e-mails. And there were several that had judge or honorable in them. As I sit here today, I don't recall. The reason Judge LaBuda's stuck in my mind was because he's the County Court judge that 80 percent of my criminal practice was in

front of and he was my co-judge, so I was pleased to get the e-mail and probably printed it out and showed it to lots of people.

Q. Now, are you permitted to have -- do you have judicial license plates?

A. I do have them issued to me. They're not on any car that I drive.

Q. On what car do you place your judicial plates?

A. They are on my wife's pickup truck.

Q. Well, that's a car that you own?

A. Yes, I own. Well, it's leased, but yes.

Q. Does the car you drive, does it bear judicial license plates?

MR. LEVINE: Objection. Relevance.

THE REFEREE: So let me get this straight. You have judicial license plates that are issued to you by New York State?

THE WITNESS: Correct.

THE REFEREE: Those plates are on

what car?

THE WITNESS: They are on the car that my wife drives, her pickup truck.

Q. Do you drive that pickup truck from time to time?

A. Rarely because my wife's very protective of her pickup truck, but I do drive it from time to time.

Q. Now, with respect to pistol permits, you understand that one of the charges you're answering here today is that you interviewed applicants for permits outside the courthouse?

A. That's correct.

Q. And that you improperly promoted the NRA?

A. That's correct. That's the allegation.

Q. Now, how did it come about that you interviewed applicants for permits outside of the courthouse?

A. So after April of 2011 when we could no longer do them during lunch hour, or later in the afternoon, and right around the time that the Safe Act was passed, we

got a considerable influx of demands for handgun licenses, and at about the same time, Judge LaBuda, who does 50 percent of them, was out with back surgery for an extended period of time. So there was a huge demand and we were only able to do about three or four a day in the confines that we had. I had suggested to Wendy Weiner to meet with the chief clerk of the Family Court, Ms. Benson, to see if we could carve out some time, a larger block of time during the week that we could do more of them.

Q. How did that go?

A. She never met with Ms. Benson and we continued to struggle and at one --

Q. Did you receive any feedback from the clerk or the court system about additional time being made available to respond to the demands of pistol permits?

A. I did not.

Q. And were you aware of any prohibition --

A. I was not.

Q. -- or requirement that pistol

permit interviews only take place in the courthouse?

A. I was not then and I am not now.

Q. Did you conduct pistol permit interviews in the county attorney's office?

A. I did.

Q. Did anybody ever criticize you for -- is the county attorney's office in the courthouse?

A. It is not.

Q. Were you ever admonished for conducting pistol permit interviews in the county attorney's office?

A. I was not.

Q. Who arranged for you to conduct interviews in the county attorney's office?

A. Wendy Weiner.

Q. Was the county clerk a participant in the -- or were representatives of the county clerk's office in attendance when you conducted interviews at the county attorney's office?

A. They were not.

Q. And where is the county attorney's office located?

A. It's on the second floor of the government center on the north side.

Q. So you would have to leave the annex through the breezeway, get into the government center, go upstairs?

A. Correct.

Q. It's not within the confines of the area protected by the court officers?

A. It is not.

Q. Is the area -- is there a security desk at the entrance to the building?

A. There is a desk where a sheriff's deputy sits.

Q. Now, over what period of time were you conducting pistol permit interviews at the county attorney's office?

A. Several months.

Q. Do you know if any other judges conducted interviews at the county attorney's office?

A. I'm not aware of any.

Q. Were you ever -- and why did you -- did there come a time that you ceased conducting interviews at the county

attorney's office?
A. Yes.
Q. And by the way, when you were doing the interviews at the county attorney's office, were you still handling some of the interviews in court?
A. We were.
Q. And when you ceased, what was the reason that you ceased conducting the interviews at the county attorney's office?
A. Because it still only bought us about a half hour a day because I couldn't be in the county attorney's after 5:00 when they would close and they would lock up their office. So it still didn't help us relieve the backlog of applications.
Q. And who first proposed to you to conduct the pistol permit interviews at another out-of-courthouse location?
A. Wendy Weiner.
Q. And did you speak to the county clerk or representatives of the county clerk about doing so, about moving off campus?
A. I mentioned it to Dan Briggs, who is the county clerk. He really didn't take

any position.
Q. Did he offer any objection, "Your Honor, you can't do that, you have to do it in court"?
MR. LEVINE: Objection.
THE REFEREE: Sustained.
MR. OSTRER: Withdrawn.
Q. Did anybody admonish you not to move off campus to conduct the interviews?
A. No.
Q. And prior to receiving the Charges and Specifications that bring you here today, had anybody -- had you received any admonition regarding the location at which you were doing pistol permit interviews?
A. No.
Q. Are you aware of anything in the any legal requirement concerning the location of pistol permit interviews?
A. No.
Q. Now, and did you conduct interviews at the Elks Lodge in Monticello?
A. I did.
Q. And who was present, if you will,

at the -- your initial -- on the initial occasion that you conducted pistol permit interviews at the Elks Lodge?

A. So there were three or four representatives from the Elks Lodge that had set up the room for us, that had opened the building, make sure the heat was on and those types of things. There was myself, Wendy Weiner and the applicants, which numbered probably about 40, 45.

Q. And you interviewed each of those individuals who were present?

A. Yeah, it's a large hall. What we did was we set up tables all the way in the front of that hall. I did a general orientation to how we were going to do it and then I would bring the people up to the table one at a time and interview them so that nobody else in the room would be in a position to have heard the substance of the interview.

Q. Now, during calendar year 2013, do you know how many pistol permit applications you addressed?

A. Between 12 and 1,500.

Q. In the calendar year?

A. In the year. A little over 100 a year -- 100 a month.

Q. And that was during the time that Judge LaBuda was unavailable?

A. Correct.

Q. Did you -- after having -- did you find that the interviews at the Elks Lodge had been successful in reducing the backlog?

A. It was -- yes, they were very successful.

Q. And on how many occasions did you go to the Elks Lodge?

A. I did it monthly or every four to six weeks for maybe a year, year and a half. I mean, we stopped in 2015, so about a year, year and a half, I would guess.

Q. Were you aware of any publicity that surrounded the fact that interviews were being conducted at the Elks Lodge that was disseminated by the Elks Lodge or any other group?

A. I was aware of at least one newspaper article, but we received a

tremendous amount of feedback, of goodwill feedback from the clerk's office and from the public at large.

Q. Now, are you familiar with an organization known as Friends of the NRA?

A. I am.

Q. Is that the same as the NRA?

A. It is not.

Q. Is that a local friends -- Sullivan County Friends of the NRA, is that a local organization or a national organization?

A. It is a local organization.

Q. And did you interact with any representatives of the friends -- the Sullivan County Friends of the NRA prior to conducting interviews at the Villa Roma in Sullivan County?

A. Several members of the organization.

Q. And without saying what they said, who did you speak to?

A. Spoke with Mike Gagliardi, who at that time was the president. I spoke with Jim Hemmer, who was on the -- vice

president. I spoke with Wendy Weiner, who was on the dinner committee. And then there's countless people that are part of that organization.

Q. Now, in addition to the license applications, are there transfer documents when somebody -- for when a licensee, a permit holder, acquires an additional handgun?

A. There is.

Q. And can you describe that document?

A. Yes. When you're licensed to carry a handgun, you're only licensed to carry the guns that are enumerated on your license. So any time you purchase a new weapon, that has to be added to your license. Or I say purchased, acquired. Any time you get rid of a handgun, that has to be removed from your license.

Q. And what is the process by which you add or remove a handgun from your license? Is there any paperwork that comes -- passes your desk --

A. Yes.

Q. -- as the County Court judge?

A. Every one of them has a document that I must sign which is called an addendum.

Q. When you say you sign, you or Judge LaBuda?

A. Or Judge LaBuda, correct.

Q. Well, could another judge sign it?

A. It's a County Court judge function.

Q. Now, prior to your doing the interviews at the Elks Lodge or at Villa Roma, are you aware of any -- did you personally observe any time at which a judge of the County Court signed transfer permits outside of the courthouse?

A. Yes.

Q. When was that?

A. At the Friends of the NRA dinner, Judge LaBuda was doing it before I was.

Q. And those were just the transfer documents, not the handgun interviews?

A. Right. There are a number of guns that are acquired at that event. There

are raffles, there are silent auctions. And those people can't leave with those guns. They have to be added to their addendum, to their license. So the county clerk was amendable to having, if a judge was there and willing to do it, do it there so that they didn't have to deal with that backlog of paper the following Monday.

Q. And in 2011, you attended the Friends dinner?

A. I did.

Q. That was after your election?

A. I did.

Q. And while you were campaigning, did you attend the Friends dinner?

A. I did.

Q. And when you attended the dinner in 2010 or 2011, was there county clerk personnel there to handle the handgun transfer permits?

A. There was.

Q. And do you know if that is a practice that is continuing in -- at least in Sullivan County?

A. It is.

Q. And have you observed the -- withdrawn.

And has that occurred, to your knowledge, at each dinner since 2010?

A. It has.

Q. And have you been the judge signing the transfer permits at each of those dinners since 2010?

A. No.

Q. And has the county clerk's office had a representative at the dinner to facilitate the transfer at each of those occasions?

A. They had.

Q. And that is an annual event?

A. It's in September of each year.

Q. Are you aware of any -- have you seen District Attorney Farrell at the event?

A. Yes, every year.

Q. Have you seen Sheriff Schiff at the event?

A. Every year.

Q. Have you seen representatives, besides the pistol permit clerk, from the county clerk's office at the dinner?

A. Dan Briggs, the county clerk, is there every year.

Q. How about, have you seen Judge Meddaugh?

A. Yes.

Q. Were you ever -- how about other elected officials?

A. Every year the congressmen from our area, Congressmen Faso, Congressman Gibson --

Q. Well, they've both got their --

A. They've both gotten beaten --

Q. Well, no. Gibson retired.

A. He retired, he's teaching. So Gibson, Faso have been there when I was there. Judge LaBuda has been there. Judge Meddaugh has been there. The chairman of the legislature, Mr. Alvarez, is there every year. The coroners are there every year. Assemblywoman Gunther is there every year. Senator Bonacic is there every year. He retired last year.

Q. And he was the head of the Judiciary Committee of the State Senate, isn't that true?

A. That is correct.

Q. And he was present at the dinner?

A. Every year that I was there from 2010 to 2015 he was there. 2008 to 2015 he was there.

Q. And did you -- is that, to your knowledge, a sold-out event?

A. Every year the tickets to that sell out very quickly because most people buy whole tables.

Q. And how do you know that, Judge?

A. I know that because I couldn't go in 2006 or '07 because I didn't know anyone that had a table that I could get a seat at to buy a ticket.

Q. And do you know who Aaron Morris is?

A. Aaron Morris, up until 2018, was one of the pistol clerks for the county clerk's office.

Q. And are you aware of coverage of the event in the press?

A. Every year the Sullivan County Democrat does a major spread on the event.

Q. And did that, to your knowledge,

include photographs of the judge -- of Judge LaBuda and Aaron Morris processing the transfer of firearms at the dinner in 2017?

A. Yes.

Q. Did you ever -- now, you were here when Ms. Weiner testified?

A. Yes.

Q. Did she ever -- without saying what she said, did she ever share with you her position with the Friends of the NRA?

A. She did.

Q. And were you aware as to whether she was a member of that dinner committee?

A. She is.

Q. Did you ever tell her that she had to buy a ticket to the event?

A. Never.

Q. And the interviews that you conducted as apart from the transfers, where were the interviews conducted at Villa Roma in 2013?

A. They were conducted on a separate floor of the hotel in a remote area of the grille room, which was not open at the time.

Q. Do you know if anyone who you

interviewed that night had a ticket for the dinner?

A. I have no idea.

Q. Did you require in any way that anybody who appeared for an interview have a ticket for the dinner?

A. I did not.

Q. Who scheduled the people for interviews at the Villa Roma?

A. Wendy Weiner.

Q. And you reviewed the schedule that had been prepared that was received in evidence?

A. I reviewed it here. I had never seen it before.

Q. So that was a document that was first seen by you in the context of this trial?

A. Correct.

Q. Or hearing?

A. Correct.

Q. And are you aware of what time of day or night you conducted your interviews?

A. They were relatively early in the afternoon, prior to three o'clock, because

I -- the only way I would do them was if they were completely separate from the event and there was no promotion of the event, which started at 4:00. They lasted about a half hour. I believe we got them started just before three o'clock.

Q. Are you aware of the fact that -- do you know who Ethan Beckett is?

A. I do now.

MR. LEVINE: Objection.

THE REFEREE: What's the objection?

MR. LEVINE: To the relevancy.

THE REFEREE: I don't know what it's about.

Q. Do you know who Ethan Beckett is?

A. I do.

Q. Who is Ethan Beckett?

A. Ethan Beckett is an investigator with the Commission on Judicial Conduct.

Q. When did you first learn that he was an investigator?

MR. LEVINE: Objection.

THE REFEREE: What's the relevance of this?

MR. OSTRER: He did an audit, unannounced, unidentified audit of my client, conducted in court in 2015. He was originally on the office's witness list. He has not been called. I want to lay a foundation to include his report that his observations were favorable, that he did not -- in August of 2015, he did not -- he observed the judge acting in a very appropriate manner and, in fact, concluded he appeared to have a good relationship with the clerk and the court officer and addressed and was polite and patient in dealing with attorneys and litigants. And I believe that that is relevant to your consideration in this proceeding, that when surveillance was conducted, nothing corroborated Ms. Weiner's versions of events, or other's versions, regarding yelling and screaming and such.

MR. LEVINE: First of all, I don't know if you recall, but you gave Respondent the option to call

Mr. Beckett. He chose not to. Now he's seeking to get in an out-of-court memorandum that -- into evidence, I guess, through the judge. It's hearsay. And if he wanted to call Mr. Beckett, he could have. He chose not to.

MR. OSTRER: We're not done yet so why don't we call Mr. Beckett then.

MR. LEVINE: Also, the relevancy. This is the time period passed where we are so --

MR. OSTRER: Well, I can --

THE REFEREE: Hold on. So this document is Beckett's report?

MR. LEVINE: It's a memorandum that he wrote.

THE REFEREE: Which you produced in discovery?

MR. LEVINE: Oh, yeah.

THE REFEREE: So Beckett could have been subpoenaed?

MR. OSTRER: Beckett was on their list. It was during the hearing that we were told they weren't going to call

him. He was, in fact, to be a witness during the first week of these proceedings.

MR. LEVINE: Correct. And then -- sorry, go ahead.

MR. OSTRER: And then on the morning of his appearance, or the night before, that -- while the hearing was ongoing, that he was not going to be called.

MR. LEVINE: Correct. And then, Respondent had -- you gave Respondent, Mr. Ostrer, the opportunity if he wanted to call Mr. Beckett. He could have, and then he didn't. So here we are. And so now he's trying to get this document --

THE REFEREE: So I don't recall, did we discuss this before?

MR. LEVINE: We did.

JUDGE MCGUIRE: Your Honor, if I may, I know it's inappropriate as a witness, I had told Mr. Levine that when we learned at a lunch break last -- a week ago Thursday, that they

were not going to call him, I said to Mr. Levine that I wanted to have him produced. Mr. Levine objected to that, we had a very cordial discussion in the room, and I said that I wanted to have him produced because he would be able to refute some of the issues that were going to be raised. He said that we would table it and discuss it thereafter. We absolutely want him produced and that was my position right from the get go, but rather than argue it here, I thought that we would work it out collegially with Mr. Levine.

THE REFEREE: So here's my problem with the relevancy of Beckett. You can tell me why you think I'm wrong about this, but if Beckett would be produced and Beckett would testify that on a particular day he didn't observe any objectionable conduct by Judge McGuire, that would be relevant to whether or not on that particular day there was bad conduct by Judge McGuire, but it certainly is hardly relevant to

refute the fact that on other days there was bad conduct by Judge McGuire. So how would that testimony be relevant?

MR. OSTRER: Well, there -- it would only be a link in a chain.

THE REFEREE: Chain of what?

MR. OSTRER: The investigatory steps which were taken in an attempt to corroborate Ms. Weiner.

THE REFEREE: I am not getting it. I'm sorry.

MR. OSTRER: Well, Your Honor, we did have testimony that she had a diary that was never secured by the Commission. She was interviewed by the Commission, she couldn't recall anything in the transcript.

THE REFEREE: This all goes to her credibility.

MR. OSTRER: Well, isn't that central to this proceeding?

THE REFEREE: Her credibility?

MR. OSTRER: As to a number of the allegations, I think, rise and fall

on her credibility.

THE REFEREE: Well, that's something that I need to wrestle with, but I will wrestle with it. But I don't see how what Beckett saw in court on a particular day would be relevant.

MR. OSTRER: Also, Your Honor --

THE REFEREE: If he was there every day for a year, that might be something else, but -- so if you're going to offer this document, I'm going to sustain that objection. If you want to call Mr. Beckett and all he would offer would be what he observed on a particular day, in my view that would also be irrelevant and I would not permit it.

MR. OSTRER: With your guidance, I'll review it with my client and address it after we go for --

THE REFEREE: Okay.

Q. Now, Judge, were you provided with a report of the Inspector General which prompted -- withdrawn.

Were you provided with a report

dated March 26, 2015 of the Inspector General containing interviews relating to Wendy Weiner's complaints?

A. I was provided it in July of 2018.

Q. And is there anything significant --

THE REFEREE: 2018?

THE WITNESS: 2018.

Q. Is there anything significant about the date of March 26, 2015?

A. Yes.

Q. And were you interviewed by representatives of the United Court System Inspector General prior to March 26, 2015?

A. I was not.

Q. When were you interviewed by the Inspector General?

A. April 5, 2015.

Q. And where were you interviewed by the Inspector General?

A. In their offices in White Plains, New York.

Q. And had you been -- how did you come to go to the Inspector General's office

in White Plains?

A. I was called by an investigator. They told me that they were investigating a complaint from Ms. Weiner and that they wished to speak with me in conjunction with that investigation.

Q. And at that time, were you provided with the sum and substance of the report?

A. I was not.

Q. And on March 26, the Inspector General informed Judge Coccoma that she concurred in the report?

A. That's what the report says, yes.

Q. However, you had not been interviewed as of that date?

A. I had not.

Q. Now --

MS. TISHMAN: What is this?

MR. OSTRER: This is the curriculum.

MS. TISHMAN: J?

MS. PARTIDA: Yes.

MR. OSTRER: J. Judge, I only have a couple more questions. I'm just

going to get a document in, I hope, and then we will be moving into cross.

THE WITNESS: Thanks.

THE REFEREE: Have one for me? Thank you.

(Respondent Exhibit J was marked for identification, as indicated.)

Q. Judge, do you recognize the document you have before you that's marked Exhibit J?

A. I do.

Q. And what is Exhibit J?

A. Exhibit J is the schedule of programs that were presented as part of the new judges education program which started January 2, 2011.

Q. And with respect to programs directed to judges in, let's say, the more rural counties, do you know if there were any such programs conducted before the end of the week?

A. There were none that really aimed at the rural counties.

Q. Well, does this document reflect the agenda for the classes that you attended

at the judge training in January of 2011?
A. It does.
Q. And as you sit here today, do you know if this accurately reflects at least the title of the different programs that you attended?
A. It does.
Q. And which track were you -- did you follow the civil track, the criminal track, the family track, the matrimonial track, surrogate track? And I see that on the last day there is a -- it was a round table for multi-bench judges. So which track did you follow, if you recall?
A. I didn't follow any particular track. I had to, because I'm a multi-bench judge, go to a variety of different things that I thought would be helpful to me.
Q. So on each of the tracks, the civil, criminal, family, matrimonial, you may have attended any one of the five categories listed?
A. Correct. Many of them were plenary sessions where everybody went to the same session, so that was easy. And the

breakouts, I went to a lot of surrogate breakouts because I had not done a lot of practice in Surrogate Court.

MR. OSTRER: I would offer it, Your Honor.

MR. LEVINE: Although we got it today, we have no objection.

THE REFEREE: Just for my education, what's the relevance of this document?

MR. OSTRER: It confirms what classes were taken in terms of closing your practice and the like. We had testimony about that earlier.

THE REFEREE: The fact that there were no classes on closing your practice?

MR. OSTRER: Correct. No instruction on contempt either, Your Honor.

THE REFEREE: So is it your position that if it wasn't part of the classes, then whatever he did would be a defense?

MR. OSTRER: No, Your Honor, but

I believe that had he been instructed, then there is a knowing element of a violation that bears on the nature of sanction and I think it should be included in the record.

THE REFEREE: Okay. No objection, then it's admitted.

(Respondent Exhibit J was admitted into evidence, as indicated)

MR. OSTRER: That figures, I nod my head and drop my papers. Nothing further, Your Honor.

THE REFEREE: Thank you for doing that efficiently. You want to break before you start your cross or you want to start?

MS. TISHMAN: Yes, I have to get a little organized.

THE REFEREE: So instead of taking our break at 4:30, we'll take it now and then we'll go straight through to 6:00.

MS. TISHMAN: That's fine.

THE REFEREE: So 10 minutes good?

MS. TISHMAN: Yes, sir.

MR. MAISONET: Off the record.

(A recess was taken.)

MR. MAISONET: We are on the record.

THE REFEREE: You may proceed with cross-examination, Ms. Tishman.

CROSS-EXAMINATION

BY MS. TISHMAN:

Q. Good afternoon, Judge.

A. Afternoon.

Q. In 2015, you had been a judge for five years at that point, right?

A. Four years.

Q. At the beginning of 2015, it was four years, right?

A. Correct.

Q. And at times during those four years, you were faced with litigants who you felt had become unruly in the courtroom?

A. That's correct.

Q. And you took action in some of those cases, right?

A. I took action in all the cases.

Q. You ordered people be put in handcuffs?

A. In some of the cases. Actually, I ordered them to be removed.

Q. I am going to be asking you some questions that you can respond with a yes, no answer. If you can't respond with a yes, no answer, then I will rephrase the question.

A. Fine.

Q. So just let me know.

A. Fine.

Q. In certain cases where you felt litigants became unruly, you ordered that they be placed into handcuffs, didn't you?

A. I really can't answer that with a yes or no, and I'm really not trying to be difficult, but I ordered them removed. The policy and procedure is that they be placed in handcuffs, so the answer is my order led to them being placed in handcuffs.

Q. So you never ever told the court officers to put individuals, put handcuffs on individuals?

A. I don't recall whether I used those words.

Q. You did order people to be taken

into custody?

A. I did.

Q. When you thought that they weren't acting the way they should in the courtroom?

A. That's correct.

Q. And you used this as a tool to manage people, didn't you?

A. Do you want that as a yes or no?

Q. Yes.

A. No.

Q. I'm going to Commission Exhibit I-3e. It's in evidence. And it's part of the prior transcript, an admission from the prior transcript. Question, "Did you use contempt and custody as a way to manage people?" Answer, "There is probably -- there is probably something to that. Again, probably coming from 17 years in a classroom and putting someone in a time out or sending someone to the dean's office or as a coach sitting someone on the bench, there probably is a part of that, although putting someone in handcuffs is certainly more serious than putting someone in a time out or putting

your child in a time out, but while I don't know I would give it a percentage, but that was my goal. There probably is -- was something to that. Some portion in the mix from me formulating the way that I would try to manage my courtroom."

Do you remember being asked those questions and giving those answers?

A. I was asked that question two years ago. I was not asked that question today.

THE REFEREE: Can I have that Exhibit, please?

MS. TISHMAN: It's in the bench book.

THE REFEREE: I mean the number.

MR. OSTRER: Exhibit I-3e.

MS. TISHMAN: Exhibit I-3e.

THE REFEREE: Thank you.

Q. One of the ways you managed your courtroom was to order that people be taken into custody when you believed they became unruly; isn't that true?

A. That's correct.

Q. And you used custody and the

threat of contempt to make people more compliant; isn't that true?

A. Well, it's a lot more complex than just being compliant there.

Q. You believed that handcuffing someone and ordering them held in custody made them more compliant when they returned, didn't you?

A. I wasn't concerned about their behavior in court.

Q. You weren't concerned about litigant's behavior in court?

A. My -- well, okay. Strike that.

Q. That's just what you said, right?

A. Okay. Okay. My concern is their behavior not only in court but their behavior with respect to the matter and their children.

Q. But part of the reason that you held people in -- that you ordered people be taken into custody and threatened them with contempt was to make them be more compliant to you in the courtroom?

MR. OSTRER: Objection as to form.

THE REFEREE: Overruled.

A. Could you ask that question again, please?

Q. You believed that handcuffing someone and ordering them to be held in custody made them more compliant in the courtroom, didn't you?

A. I believed that it --

Q. It's yes or no.

A. Well, if you want a yes or no, then a very small part of it would be yes.

Q. And it was your experience, though, after you held someone in contempt and they had been handcuffed, they came back to court, they were more compliant and easier to work with in the courtroom, right?

MR. OSTRER: Objection as to form.

THE REFEREE: Overruled.

A. It was my -- do you want that as a yes or no?

Q. Yes.

A. It was my experience that they gained greater insight and appreciation of the authority of the court.

Q. After you held them in -- after you took them into custody and you you had them handcuffed?

A. Correct.

Q. Did you ever consider that they were just terrified when they returned?

A. No.

Q. That never crossed your mind that being handcuffed and put in custody wouldn't make someone scared of you?

A. Well, you said terrified the first time.

Q. Okay.

A. Scared of me? No.

Q. Scared of being in the courtroom in front of you?

A. No.

Q. Did you ever consider that people, after they'd been handcuffed and put in a room and taken into custody, sometimes for almost two hours, that they would be afraid to express their opinions or what they wanted in the courtroom?

A. Their fear was not a major consideration of mine. I don't believe that

they were fearful.
Q. Do you believe that it's the role of a judge to make litigants be more compliant in front of the judge?
MR. OSTRER: Objection.
THE REFEREE: Overruled.
A. That cannot be answered with a yes or no.
Q. You can't answer that question?
A. That question cannot be answered with a yes or no.
Q. Do you believe that it's the role of a judge --
You also handcuffed people in order to diffuse what you believe was happening in the courtroom?
MR. OSTRER: Objection. He does not handcuff people.
THE REFEREE: Rephrase it.
Q. You also ordered that people be taken into custody in order to diffuse what you believed was happening in the courtroom?
A. In circumstances, yes.
Q. You wanted to give people cooling off time, didn't you?

A. At times, yes.

Q. And I'm going to read into the record what's been admitted into evidence as Exhibit I-3d as an admission. Question, "When you were holding people in contempt, did you review these sections, the sections I showed you, Commission Exhibit 16, 17 and 18 during that period? I didn't because the time periods were so brief and my intention was really to give them a cooling off and let them understand that they can't behave that way in a court of law and bring them back in."

MR. OSTRER: I'm going to object, Your Honor. That's a prior consistent statement not a prior inconsistent statement.

THE REFEREE: It's an admission by the judge, it's in evidence.

MS. TISHMAN: It's in evidence. It's an Exhibit.

Q. That's what you were doing, you were giving a cooling off time?

A. At times, yes.

Q. We can agree that being placed in

handcuffs can be a very scary event, right?
A. It depends on the circumstances. I don't know that I can answer that with a yes or no. You're trying to -- I can't answer that with a yes or no.
Q. Do you believe that someone who is handcuffed -- we can agree that being put in custody when you weren't in custody when you walked into the courtroom, can be very scary?
MR. OSTRER: Objection as to form.
THE REFEREE: Overruled.
A. I don't know that I can answer that with a yes or no. I really don't.
Q. You really don't think that it is scary to someone to be put in custody?
MR. OSTRER: Objection.
THE REFEREE: Sustain that. He says he can't answer yes or no.
Q. We can agree that being held in custody when you are unrepresented is very -- a scary event?
A. Again, I can't answer that with a yes or no.

Q. A judge ordering someone to be handcuffed and taken into custody is very serious, isn't it?

A. It is very serious.

Q. You found that when you -- after you had someone handcuffed -- I withdraw that.

You found that after you ordered someone to be put in custody and they were handcuffed, when they came back into the court, you very productive sessions with them?

A. At times, yes.

Q. And that's one of the reasons that you ordered that people be held in custody so they would become more compliant in the courtroom?

A. No.

Q. That's not one of the reasons that you held them, that you ordered they be in custody?

MR. OSTRER: Objection. Arguing with the witness. The question wasn't whether it is the reason, it's one of the reasons. The followup question is

improper based on the prior answer.

THE REFEREE: Overruled.

MS. TISHMAN: I'm sorry, what did you rule?

THE REFEREE: Overruled.

A. My paramount concern is not to make people compliant in court. It's to make people comport themselves appropriately in court.

Q. And that's to your -- to what you define is proper behavior in court?

A. When I'm the judge, yes.

Q. Now, you -- I'm going to the *R*[redacted] v. O[redacted] case. You had Mr. R[redacted] handcuffed -- you had ordered that Mr. R[redacted] be held in contempt of court when he asked you to recuse yourself as he thought there was a conflict, because he knew your son, correct?

A. Well, that was his words.

Q. Right?

A. Yes.

Q. He wasn't represented, was he?

A. He was not at the time. Not in Family Court.

Q. He wasn't represented that day when you held him in contempt?

A. Correct.

Q. Mr. R[redacted] and your son had gone to school together?

A. I don't know that for sure.

Q. They had been in school at the same time, hadn't they?

A. I don't know that for sure.

Q. Doesn't a litigant have the legal right to ask that a judge recuse him or herself from a matter?

A. When there is a matter pending, sure.

Q. And they're allowed to make the request at any time during the case, correct?

A. During the case, yes.

MR. OSTRER: Your Honor, can I be excused for one moment? I'm getting repeated -- it seems as though there may be an emergency. I keep declining someone.

THE REFEREE: One minute. Make it quick.

(A recess was held.)

MR. OSTRER: Thank you, Judge.

THE REFEREE: Are we still on? You may proceed.

Q. You had just dismissed the matter with Mr. R[redacted] without prejudice?

A. That is correct.

Q. And it was at that point that he asked that you recuse yourself?

A. That is correct.

Q. And when someone asks that they -- that the judge recuse themselves, they have to give -- they have to allege facts that warrant that recusal, don't they?

A. No.

Q. Doesn't someone when they are asking a judge to recuse themselves have to give the reason why they're asking the judge to recuse themselves?

A. Well, they don't have to.

Q. If they don't, it will be dismissed, right?

A. Well, he didn't have an action pending at the time. There was nothing pending for me to recuse myself from.

Q. R[redacted], Mr. R[redacted] asked you to recuse yourself and then he gave you the reason which was that he knew your son, that's all that he said, correct?

A. So that's not a reason for recusal, number one. Number two, there was nothing pending when he asked me to recuse myself from. The case had been dismissed.

Q. When Mr. R[redacted] spoke to you, he spoke to you in a calm voice, didn't he?

A. Mr. R[redacted] spoke to me like a gang member making a threat against my child.

Q. That's what you heard when you played the tape?

A. That's what I heard based on my experience dealing with gang members.

Q. He didn't raise his voice, did he?

A. Don't have to.

Q. You could have denied his request. You could have denied his request, at that time.

MR. OSTRER: Objection.

A. There was nothing pending --

THE REFEREE: Overruled.

A. -- to recuse myself from.

THE REFEREE: You keep on saying that. I just want to understand what you're saying. So you dismissed the case without prejudice?

THE WITNESS: Correct..

THE REFEREE: At that moment the case is over?

THE WITNESS: Correct.

THE REFEREE: And if the case gets re-filed, who does that case go back to?

THE WITNESS: Well, presumably it would go to me and then he can make the application to recuse when there's a case pending.

Q. But he wasn't represented at that time, was he?

A. He was not. And he was not -- he could have come in with the information that he had and made the same application and then I would have been able to deal with it.

Q. If you were worried that Mr. R[redacted] was threatening your son, you

could have made a judicial threat complaint without holding Mr. R[redacted] in contempt, correct?

A. I could have.

Q. But instead you imposed a 30-day sentence for judicial contempt?

A. For which he served no time.

Q. Is whether or not he served additional time or not, I'm not going to argue with that, it's -- there are -- it shows up on his rap sheet that he has a conviction for judicial contempt.

A. That is incorrect.

Q. So people who are held in contempt, it doesn't show up on their rap sheet?

MR. OSTRER: Objection.

A. Not civil.

THE REFEREE: What's the objection?

MR. OSTRER: Relevance

THE REFEREE: Overruled.

A. Not -- civil contempts do not. Only a criminal contempt where there's a criminal sanction, a misdemeanor or a

felony.

Q. You imposed a 30-day sentence for judicial contempt, didn't you?

A. I did.

Q. And you never vacated that sentence, did you?

A. I never did.

Q. You never warned Mr. R[redacted] what behavior you found offensive, did you, before you put him in contempt?

A. I would have to rely on the transcript. I believe I said you made a threat against my son and then held him in contempt, that's my recollection of the transcript, but the transcript will control.

Q. My question is: Did you ever warn him what behavior you found was offensive before you held him in contempt?

MR. OSTRER: Well, objection as to "warn."

THE REFEREE: Overruled.

A. I did not.

Q. You never gave Mr. R[redacted] a chance to correct the behavior you found offensive, did you?

A. I did not.

Q. You never gave him a chance to apologize before you held him in contempt, did you?

A. I did not.

Q. You did not get him an attorney before you held him in contempt, did you?

A. I did not.

Q. In the order you signed, you never stated the facts that constituted the offense, did you?

A. If I saw the order, I would answer that, but the order, I believe, is in evidence, so...

Q. It's Exhibit I-1b. It can be shown to the witness. In this order, does it state the facts that constituted the offense?

A. It does not.

Q. Do you believe from today's perspective that you were patient, dignified and courteous in your dealings with Mr. Ro[redacted]?

A. Mr. R[redacted] is a gang member that made a threat against my son.

Q. The words "I know your son." What --

A. Ma'am, I've been on crime scenes --

Q. I don't have a question in front of you.

A. Okay.

Q. So your testimony is the words "I know your son" constitute a threat?

A. When it comes from a member of the Bloods, with his background, it absolutely does in that context.

Q. Now, you presided over *P*[redacted] *v* *G*[redacted], didn't you?

A. Yes, ma'am.

Q. And she was in court that day for a sentence, right?

A. Yes, ma'am.

Q. And it was a negotiated sentence, correct?

A. There was a negotiated sentence, correct.

Q. You had no discretion on how much time to sentence to her -- sentence her to, correct?

A. That's incorrect. The final determination belongs to the judge at sentencing.

Q. Wasn't there a contract written that said what would happen and what she'd be sentenced to if she was violated?

A. The remedy would be that she would get her plea back if the judge could not go along with the agreement.

Q. She was promised that if she violated the conditions of her drug treatment, she would get one and a third to -- I can't remember -- one and a third to four?

A. That was the Drug Court contract.

Q. Right.

A. If you have a copy of the contract, I can take a look at that.

Q. She would get one and a third to four years in prison if she violated, that was the contract?

A. I don't -- if I could see the contract, that would enable me to answer the question.

Q. I'll show you what is marked

Commission in evidence Exhibit II-2, which is a copy of the transcript of August 28, 2013.

A. So, ma'am, this is the transcript and in the transcript I recite what the agreement was. I don't believe I was a party to that contract, it was done with the Drug Court judge. The ultimate determination on sentence, even with a negotiated plea, ultimately sits with the sentencing judge where the remedy would be that she would get her plea back and be restored to all the rights that she waived in reliance on that agreement.

Q. When she appeared in court on August 28, 2013, you made comments on her life choices, didn't you?

A. Those comments came from the PSI, yes.

Q. But you made comments in court on her life choices?

A. I'm obligated to make comments.

Q. You told Ms. G[redacted] that she had chosen to throw her life away, didn't you?

A. That is correct.

Q. And you believe that this comment was respectful to Ms. G[redacted]?

A. I believe that that comment was an attempt by the court to focus Ms. G[redacted] on where her life was going in the hope that she would resort to treatment and change her life rather than go to prison for four years and leave her children without a mother for four years.

Q. You told her you wished you could sentence her to life without parole as she, quote, demonstrated you have no desire or intention to ever be a productive member of society, to ever be a parent, to ever be anything that resembled a mother. Do you believe that those comments were respectful to Ms. G[redacted]?

A. Under the circumstances, I was trying to get Ms. G[redacted] focused on the fact that she was 27 years old, had 21 convictions and had not ever been able to care for her children, and one of the children were born positive for drugs. And so -- I'm trying to answer.

Q. But my question is --

MR. OSTRER: Interrupting the witness.

THE REFEREE: Let him finish.

A. So my hyperbole was to attempt bring her into the moment in the hope that she would agree to give treatment a try for a year, to a year and a half, rather than prison for four years.

Q. And you did this by saying that she chose to throw her life away and she has never demonstrated to be -- that she is a productive member of society, that is the way that you thought you would convince this person to get more drug treatment?

A. Under the circumstances, yes.

Q. And you told her also that her issues were not because of her addiction but rather were a conscious decision on her part to abandon her children to be totally self absorbed in her own world and those comments, you believe, were a way to get her to do a drug program?

A. She had made a conscious decision to go to prison for four years rather than

treatment for 18 months, so yes, that was a conscious decision to abandon her children for four years, rather than get treatment.

Q. I'm not asking you whether you think that your statement is true or not. The question is whether saying those statements to Ms. G[redacted] you believe was respectful to her?

A. Ma'am, sometimes it's more important to state the facts than to be kind and gentle with people. When you're dealing with drug addicts, it's very, very difficult to get them to focus on reality. They live in a world of deception.

Q. She was there for sentencing. She had been in a drug program, had failed the drug program, had been in and out of the system, as you said, many many times. At this point, she knew what she wanted to do, she want to be sentenced. But you chose instead to talk about her bad life decisions, right?

MR. OSTRER: Asked and answered.

THE REFEREE: Sustained.

Q. You told Ms. G[redacted] that her

life choices were pathetic --

A. They were.

Q. -- to you. They were?

A. Yes.

Q. In your opinion, that her life was pathetic?

A. I'm looking at it from the standpoint of the judge that's endeavoring to assist her and her children.

Q. You saw that Ms. G[redacted] was getting upset while she was in court, right?

A. She was getting agitated, yes.

Q. They was she was starting to cry while she was in court?

A. I don't dispute that but I don't recall it, specifically.

Q. But even though you saw that she was getting upset, agitated, starting to cry, you continued with your comments about her life being pathetic and her life choices, didn't you?

MR. OSTRER: Objection as to form.

THE REFEREE: Overruled.

A. Ms. Tishman, you may not agree

with that but I've had the good fortune to save the lives of many people who are in a similar situation.

Q. That wasn't my question.

THE REFEREE: Judge, you have to answer the question.

A. She was getting upset and I was continuing to speak with her as provided in the transcript.

Q. It got to such a point that she finally turned to her attorney and said she wanted to be sentenced so she could get out of the courtroom and when she used the curse word she was talking to her attorney, not to the Court, correct?

A. The court heard her, I don't recall that she was talking to her attorney. She was making a statement in open court.

Q. So one curse word was all it took for you to find her in contempt and sentence her to 30 days, correct?

A. That was the culmination, yes.

THE REFEREE: Culmination of what?

THE WITNESS: Culmination of the

entire proceedings that's captured in the --

THE REFEREE: So by culmination, you don't mean that she had done anything before that?

THE WITNESS: No.

Q. You never warned Ms. G[redacted] what behavior you found offensive, did you?

A. I did not.

Q. You never gave her a chance to correct her behavior, did you?

A. I did not.

Q. You never gave her a chance to confer with counsel, did you?

A. She was conferring with counsel throughout the proceeding.

Q. Before -- after she said that she wanted to get out of the courtroom and cursed, after she said to tell me anything but sentence me so I can get out of this fucking courtroom, you did not give her a chance to consult with counsel before you found her in contempt, correct?

A. As she was saying that, her attorney was saying to her don't go there,

so she was getting that counsel. The answer to that then, is no.

Q. You never gave her a chance to apologize, did you?

A. No.

Q. You did not draft an order stating the facts that constituted the offense, did you?

A. No.

Q. You testified on direct that there were other defendants in the courtroom sitting in the front watching what was happening in the *G*[redacted] case?

A. Correct.

Q. One of the reasons you held Ms. G[redacted] in contempt was a way to teach the other inmates sitting in the courtroom how they should behave in your courtroom; isn't that correct?

A. No.

Q. You were using her as a lesson for those other inmates --

A. No.

Q. -- weren't you?

A. No.

Q. Do you believe that you were patient, dignified and courteous in your dealings with Ms. G[redacted]?

MR. OSTRER: Compound question.

THE REFEREE: Overruled.

A. So based on the information that I had available to me in August of 2013, I believed that under those circumstances -- again knowing what I knew then -- that I acted appropriately at that time. That's not consistent with the manner in which I approach this similar situation today.

Q. Today, do you believe that it would be wrong to treat Ms. G[redacted] the way you treated her in August of 2013?

A. Well, today I would do it differently. Today I have done it differently many many times.

Q. Now, in the case of --

THE REFEREE: Before you leave that issue, so with respect to G[redacted] and not talking about your reaction to her using the curse word, but up until that point, do you believe your behavior was objectionable?

THE WITNESS: Judge, at that time -- I'm going to try to answer it the best I can for you -- at that time, knowing what I knew then, my only objective was to try to convince her to try treatment again, that was my only objective. I could have adjourned the case for two weeks and let her think about it and come back. It was -- as I sit here in 2019 -- judicial contempt isn't even part of my repertoire.

THE REFEREE: So let's separate out the -- there are two aspects to what's going on here. One is the judicial contempt and one is the way you treated her on the record and spoke to her on the record up until that point. My question is: Up until the point where there was the judicial contempt, do you believe sitting here today that your conduct towards her on the record was appropriate?

THE WITNESS: Today I would do it differently.

THE REFEREE: What would you do

differently?

THE WITNESS: Today I would go through the PSI, I would say that I'm not prepared to go along with the agreement, I would adjourn for two weeks, conference the matter with counsel at sidebar or in chambers, and tell counsel to go back and let's see if we can find an appropriate treatment facility and let's not give up on her because four years makes no sense.

THE REFEREE: And you would do it differently today because you believe today that what you did on this case on the record was inappropriate?

THE WITNESS: I believe what I did then was not the most effective way to get to the objective.

THE REFEREE: Do you believe it was inappropriate?

THE WITNESS: I believe that it was ineffective.

THE REFEREE: I'm going to ask it again: Do you believe it was inappropriate?

THE WITNESS: To the extent that it was ineffective, it was inappropriate.

THE REFEREE: So just in terms of looking at your own conduct.

THE WITNESS: Uh-huh.

THE REFEREE: And looking at it -- I'm asking you look at it objectively, do you believe you did anything wrong on that day, up until the point where you held her in contempt?

THE WITNESS: Using my experience now in 2019?

THE REFEREE: Sure.

THE WITNESS: Okay. Yes, I would do it differently today.

THE REFEREE: Only because your concern is the way you did it was not effective?

THE WITNESS: Correct. Correct.

THE REFEREE: Not that you did anything wrong?

THE WITNESS: Well, I don't believe that it was appropriate or

necessary to go at her as hard as I did because I'm attacking the problem from the wrong place. I should have made -- what was inappropriate was I should have let the attorneys know up front that I wasn't going to go along with the agreement because I didn't think that four years incarceration was going to help this person or this family in any way. So I attacked it wrong, so that was inappropriate. Certainly, you never start off to badger a person and you can't -- a drug addict can't be attacked that way. You've got to get the people that they trust because they don't know me. You've got to get the people they trust to convince them that they've got to do well in treatment and that's what I've done now in hundreds of cases since then. So it's difficult now for me to go back to 2013 because I learned that that wasn't appropriate because no matter -- I could have had 100 G[redacted]', I never would have gotten the outcome that I wanted. I

would have gotten more of the same.

THE REFEREE: Well, I mean, it's important to me to know whether or not you think your conduct was ineffective on the one hand or that you think, looking back on it, that your conduct was inappropriate conduct for a judge.

THE WITNESS: I think that it was. Given my objectives, it was inappropriate.

THE REFEREE: Okay.

Q. Now the *Z*[redacted] *verus F*[redacted] case, Ms. F[redacted] was not represented on October 3, 2012, was she?

A. That is correct.

Q. She was not in custody when she walked into the courtroom, was she?

A. That's correct.

Q. Ms. F[redacted] had told the court that her daughter would not want to go with her father if he picked her up at school, right?

A. That's what she reported.

Q. And you put Ms. F[redacted] in custody that day because she was interrupting you, correct?

A. That is correct.

Q. You testified on direct that you order should she be handcuffed because she was discourteous and showing disrespect; is that true?

A. That is correct.

Q. She did not yell in the courtroom, did she?

A. I don't really recall how her voice was elevated or otherwise.

Q. When you said take her into custody, she apologized not once but twice right there at the time, didn't she?

A. Again, as I sit here today, I don't specifically recall but the transcript certainly -- I don't have any reason to dispute the transcript.

Q. I'm reading from Commission Exhibit III-2a. Judge McGuire, "Take her into custody. Ms. F[redacted] is here to pick up E[redacted] Z[redacted]." Judge McGuire: Take her into custody. Take her into custody?"

THE REFEREE: Could you read a little slower?

Q. Judge McGuire, "Take her into

custody. Take her into custody."

Ms. F[redacted], "Okay, I'm sorry. I'll try."

Judge McGuire, "Judicial contempt."

Ms. F[redacted], "I'm sorry, I --" Judge McGuire, "Judicial contempt, take her into custody, you're disrupting the proceedings repeatedly?"

So at the time, Ms. F[redacted] apologized for her behavior --

A. She did.

Q. -- correct? And she did it not once, she did it twice?

A. She did.

Q. But even though Ms. F[redacted] was apologizing for her behavior, you still ordered that she be taken into custody?

A. Yes.

Q. Did you warn her what behavior was contemptuous before you ordered that she be taken into custody?

A. I did not.

Q. Did you afford her an opportunity to make a statement in her own behalf?

A. I did not.

Q. Did you give her an opportunity

to purge the contempt before she was taken out of the courtroom in handcuffs?

A. Well, I didn't pursue the contempt proceeding, so the answer is no.

Q. Did you get her an attorney at that time before you ordered that she be taken into custody?

A. I didn't pursue a contempt, so the answer to that is no.

Q. But the question was: Before you ordered her to be taken into custody, did you make sure she was represented?

A. I didn't at that time because I did not pursue contempt.

Q. So the fact that she was taken into custody and handcuffed, you didn't think that it was important that she have an an attorney represent her at that time?

A. If I were to pursue contempt, I certainly would have done that.

Q. Didn't you -- when you put her -- when you ordered her to take her into custody, you said that you were holding her in judicial contempt in the transcript. So you were holding her in judicial contempt?

MR. OSTRER: Objection.

THE REFEREE: Overruled.

A. I didn't pursue that. I didn't sentence her on that. I didn't issue an order on that. I had her detained and brought her back in and released her.

Q. And when you --

THE REFEREE: Hold it. What was she in when she was being detained?

THE WITNESS: Well, she was in custody.

THE REFEREE: Was she being held in judicial contempt?

THE WITNESS: She was being held for that, yes.

THE REFEREE: For judicial contempt?

THE WITNESS: Correct.

Q. And you didn't think it was important that she had an attorney to represent her at that time?

A. Well, again, it was important for her to have an attorney. I would have had to get her an attorney but the decision was to not pursue it, so there was nothing for

the attorney to have done.

Q. Well, she sat in custody handcuffed for almost two hours.

MR. OSTRER: Objection. Facts not in evidence.

Q. Didn't she?

MR. OSTRER: That's not in evidence.

THE REFEREE: It is in evidence.

MR. OSTRER: That she was handcuffed?

THE REFEREE: Yes.

A. She did. She did.

Q. And you don't think that an attorney, if she had been assigned an attorney, the attorney could do anything for her in those two hours?

A. Well, the attorney would have asked her to be brought back in and released and that's what I ultimately did.

Q. But do you think that if she was assigned an attorney that she would have been -- maybe she would have been brought back in 15 minutes, like in the *C*[redacted] case. *C*[redacted] who had an attorney with

her?

A. Well, I don't know that I could have gotten an attorney there in 15 minutes.

Q. But you didn't try, did you?

A. I did not.

Q. And when Ms. F[redacted] was -- she handcuffed in front of you in the courtroom, wasn't she?

A. She was.

Q. And when she was brought out of the courtroom, she walked by in the waiting area to the attorney room, correct?

A. My only knowledge of that would be based on the testimony of other people that were there. I can't see it from the bench.

THE REFEREE: Did you know where they were taking her?

THE WITNESS: I do. I know where they take her to the -- one of two holding rooms, one is right outside my courtroom and the other is through the waiting room.

Q. And if someone's taken -- and someone who is taken to the attorney room?

A. Yes.

Q. Which is on the other side of the waiting room?

A. Yes.

Q. That is one of the places that people were taken when they were taken from your courtroom in handcuffs, right?

A. That is correct.

Q. And if they go to the attorney room, they have to walk through the waiting area by the mag, correct?

A. Yes, that is correct.

Q. And that area is the waiting area, there are people in that area at different times waiting for their cases to be called?

A. At times, there are people there, and at other times there are not.

Q. When she came back almost two hours after you ordered that she be put in custody, the first thing you said to her was how's handcuffs; isn't that true?

A. That is correct.

Q. Do you think that was a respectful way to talk to her?

A. No.

Q. When she came back into the court you found her much more compliant than she had been before being put in handcuffs, correct?

A. When she came back to the court, I found that she understood the authority of the court.

Q. And that was the whole point of putting her in handcuffs was to make her understand your authority, correct?

A. The point of putting her in handcuffs was to have her understand that when the court issues an order it needs to be complied with.

Q. Had she not complied with a court order when you put her in custody?

A. She had indicated very clearly that she wasn't going to comply with the visitation order that I had set out.

Q. But at that point had she not complied with an order of the court, when you put her in custody, had she at that point not complied with an order of the court?

A. I don't recall whether prior to that there had already been an issue where she had not delivered the child or let the child see their dad. I can only speak at this moment to that proceeding where she had stated clearly that the child wasn't going to want to go with her dad, which we deal with quite frequently and that's a concern.

Q. When you were here for an investigative appearance on June 12, 2017, June 19, 2017 and June 23, 2017, you read into the record and had marked an Exhibit your notes on *Z* [redacted] *versus F* [redacted], correct?

A. I do remember reading into the record. I don't really remember which case it was, but I do remember that we did do that.

Q. And didn't you state in your notes that you read into the record during your investigative appearance that after a short period in handcuffs, Ms. Z [redacted] understood that the court was to be complied with?

A. That's what I said, yes.

Q. And that was your whole purpose of holding people in custody so they would comply with you, correct?

MR. OSTRER: Objection.

THE REFEREE: Sustained.

Q. You noted that she had an attitude adjustment after being placed in handcuffs, correct?

A. She did.

Q. Did you ever think that maybe she was more compliant with the court because she was scared?

A. Again, I'm just not comfortable with the word scared because I don't know.

Q. You don't know what?

A. I don't know what she was feeling. I can't know that she was scared. It would be pure speculation on my part. I don't know if she was scared.

Q. At that time, do you think you acted appropriately in holding Ms. Z[redacted] in judicial contempt?

A. Well, at the time, then I did. At the time now, I don't.

Q. So at the time you thought you

acted appropriately?

A. At that time, based on the experience I had at that time, no. Now, I don't. Was that confusing?

Q. Yeah, I think there were too many negatives in there.

A. Okay.

Q. At the time that you ordered her to be taken into custody in handcuffs, did you think you acted appropriately in holding her in contempt?

A. So we're talking -- that was 2013?

Q. 2012.

A. So in 2012, I believed I had acted appropriately. In 2019, I believe, looking back on it, I did I did not act appropriately.

Q. Was it appropriate from today's perspective to be to order that she be handcuffed?

A. No.

Q. Was it appropriate from today's perspective to have her remain handcuffed for almost two hours?

A. No.

Q. From today's perspective, do you believe that you spoke to Ms. Z[redacted] in a respectful manner on --

MR. OSTRER: Asked and answered.

Q. -- on October 3, 2012?

THE REFEREE: Overruled.

MR. OSTRER: Can we define which statement?

THE WITNESS: Yeah, that's what's holding me up.

THE REFEREE: Which particular statement?

Q. From today's perspective, do you believe when you addressed Ms. Z[redacted] in court on October 3, 2012, that you spoke to her in a respectful manner?

MR. OSTRER: He's already answered, Your Honor, that he believed when he asked her how the cuffs feel that that was not appropriate and not respectful. So I believe the question was asked and answered. It's the same question in a different form.

THE REFEREE: I think this is a

broader schedule.

MS. TISHMAN: And it's a different date.

A. So I'm not, as I sit here today, when I speak with somebody in court, I may make lots of statements. Some of them by today's perspective, my perspective today, are inappropriate. Others are appropriate. I don't know which statement you're referring to.

Q. Do you believe that you were patient, dignified and courteous in your dealings with Ms. F[redacted] on October 3, 2012?

MR. OSTRER: Objection as to form.

THE REFEREE: Overruled.

A. At times I was and at other times I was not.

Q. Do you believe that you were patient, dignified and courteous in your dealings with Ms. F[redacted]on -- during her second appearance in front of you on October 3, 2012?

A. At times I was and at other times I may not have been but I don't have present

recollection of all of the statements I made to her.

Q. On June 14, 2013, the *L*[redacted] *versus C*[redacted] case was in front of you, correct?

A. Correct.

Q. And Ms. L[redacted] was not represented by counsel, was she?

A. I don't recall.

Q. You don't recall whether she was represented or not?

A. I don't.

Q. I'm going to show you what has been marked in evidence as Commission Exhibit IV-2a.

A. Thank you.

Q. Can you now answer the question?

A. I can. She was not.

Q. And she was not in custody when she came into the courtroom, was she?

A. She was not.

Q. Do you think it was proper to say to Ms. L[redacted], "All right, Ms. L[redacted], parenting is not a spectator sport. You don't buy a ticket and watch your child grow

up."

A. Under those circumstances in 2013, it was appropriate. By today's standards, I would take a different tact, and so, by today's standards, say that it was inappropriate. However, the tenor of that, the message was absolutely correct and something we deal with every single day.

Q. But from today's perspective, you think that your statement was inappropriate?

A. I think, again, that today I wouldn't make that statement.

Q. Do you think that your statement was inappropriate from today's perspective?

A. But from today's perspective, I would say that that statement was inappropriate.

Q. Do you think it was appropriate to tell Ms. L[redacted] "you don't just sit back and say it's not my responsibility, I gave birth to her and it's now up to the government to raise her." Do you think that from today's perspective, it was appropriate to say that?

A. From today's perspective, the

message was correct, the words were inappropriate.

Q. At the time you said it, did you believe that it was an appropriate statement to make to Ms. L[redacted]?

A. In 2013, given the experience that I had at that point, I believed it was appropriate at that point.

Q. You put Ms. L[redacted]in custody because you didn't like her tone, correct?

A. I truly don't recall the exact issue I don't dispute that I put her in custody.

Q. I'm going to read from what's in evidence Commission Exhibit IV-5b. Question, "And on what basis did you have to put Ms. L[redacted] into custody?" I'm going to start a little on line 23. Question, "And so the fact that she was debating with you was why you put her in custody?" Answer, "Well her tone was not respectful of the court. Question, "So that's the basis for putting her into custody?" Answer, "Yes."

A. I made those statements and I gave those answers.

Q. And that is why you put her in custody because she -- you did not like her tone?

A. Correct.

Q. I'm sorry, I didn't hear the answer.

A. I'm sorry. Correct.

Q. You didn't like that you had to repeat your questions about the child getting math help, didn't you?

A. I didn't like that the mother was not recognizing her role in getting the child math help.

Q. And that angered you, didn't it?

A. Didn't anger me.

Q. You thought it was the reason though to have her ordered to put in custody and handcuffed?

A. Her tone and her debate with the court was the reason at that time that I justified that act in my mind.

Q. And she was handcuffed in front of you, wasn't she?

A. She was.

Q. Did you warn her her behavior was

contemptuous?

A. I did not.

Q. Did you afford her an opportunity to make a statement in her behalf?

A. I did not.

Q. Did you give her an opportunity to try to purge the contempt before you put her in custody?

A. I did not.

Q. Did you make any attempt to get her an attorney?

A. I did not.

Q. Did you prepare an order saying setting forth the nature of the offense and the steps taken by the court and the punishment imposed?

A. I did not.

Q. Did you prepare an order setting forth the nature of the offense and the steps taken by the court and the punishment imposed in the *Z*[redacted] matter?

A. *Z*[redacted] *v F*[redacted]?

Q. Yes, we just finished that but I'm asking a question that I didn't ask before.

A. You threw me a curve ball, I tried to keep my front shoulder in on it. I don't believe that I ultimately pursued contempt, although I held her for a contempt proceeding, the answer is no.

Q. Now, after you ordered Ms. L[redacted] to be put in custody, and she was handcuffed in front of you, she became short of breath and had chest pains, correct?

A. Ms. L[redacted]?

Q. Yes.

A. I don't recall that.

Q. I'm going to show you what is in evidence, Commission Exhibit IV-4. This Exhibit in evidence is an aided report for T[redacted] L[redacted].

A. Okay.

Q. Does that refresh your recollection?

A. No, because I would have never seen this aided report.

Q. Well, whether you saw the aided report or not isn't the question. The question is whether Ms. L[redacted] had shortness of breath and chest pains that you knew of

after you ordered that she be put in custody and she was handcuffed in front of you?

A. I did not know of that.

Q. Did you ever consider the effect of your actions on those you handcuffed?

A. Yes.

Q. Did you ever consider that being handcuffed and taken into custody would cause someone to have physical problems?

A. No.

Q. Now, Ms. L[redacted] was brought back over an hour later.

A. Yes, ma'am.

Q. And when she was brought back, Ms. L[redacted] still did not have an attorney, did she?

A. That's correct.

Q. And Ms. L[redacted] when she came back, she came back into your courtroom handcuffed, didn't she?

A. I believe she did.

Q. Didn't you tell the court officer to take the handcuffs off of her?

A. I would have to rely on the transcript.

Q. Reading from what's in evidence, Commission Exhibit IV-3a, Judge McGuire -- page 1, Judge McGuire -- I'm sorry line two.

MR. OSTRER: Is this to refresh his recollection?

THE REFEREE: This is in evidence.

Q. "Good morning. Well, we're at afternoon, we've rolled over. Mr. Garn, we have --" Judge McGuire, "Take the handcuffs off of Ms. L[redacted]. (Sound of handcuffs)." Ms. L[redacted], "Thank you."

So Ms. L[redacted] was handcuffed when she came back into the courtroom, wasn't she?

A. Yes, according to the transcript, yes. I have no independent recollection of that but I don't dispute the transcript.

Q. Did you lecture Ms. L[redacted]at that time about the court and it deserves respect?

A. I made statements to that effect, yes.

Q. Did you describe what would happen in other countries, in other court

systems around the world?

A. I don't dispute the transcript. I don't have any independent recollection. I don't dispute what's in the transcript.

Q. Do you believe -- well, I'm going to ask you to look at Commission Exhibit IV-3a. And if you can read to yourself from page 1, line 9 to page 2, line 6.

A. Okay.

Q. You finished?

A. I did.

Q. Do you believe these comments were proper?

A. Are you asking from today's perspective?

Q. Well, yeah, let's start with today's perspective. Do you believe that these comments were proper?

A. Some of them were, some of them were not.

Q. So I'm going to read from page 1, line 15, "The court not me as a person, the court deserves and will always be respected by everybody that's in the court because this is fundamental to our way of life in

this country." Do you believe that that was, from today's perspective, an appropriate comment to make to Ms. L[redacted]

A. Yes.

Q. Continuing line 18, "Men and women spill everyday for the freedoms that we enjoy. There are countries in this --

MR. OSTRER: "In this court."

You left something out.

MS. TISHMAN: Thank you. I'll start again.

Q. Page 1, line 18, "Men and women spill blood every day for the freedoms that we enjoy in this court. There are countries in this world where people don't have the opportunity and they don't have an opportunity to go before a judge, they just take your children away and you disappear in some countries in the world. These courts are provided to people so that there can be an orderly disposition of issues and what goes along with enjoying these freedoms, is a respect of the court. That's the building. Go ahead the judges, the staff, the officers, they will be treated with

respect at all times. So I don't mean to be draconian, there's no need to put you in Sullivan County jail for 30 days, but you need to think carefully before you address the court with disrespect." Do you think those comments were appropriate from today's perspective?

A. I believe that factually they were accurate. I would not make parts of that, those comments, today.

Q. Do you think from today's perspective that they were appropriate?

A. So from today's perspective, because I wouldn't use them, they were not appropriate, but factually, those comments are accurate.

Q. So what you're saying is what you said about other courts in other parts of the world, is factually accurate?

A. Yes.

Q. But you don't believe that they are appropriate from today's perspective?

A. From today's perspective, I wouldn't use those analogies and those statements in this court, in my court in New

York State, no.

Q. And at the time you made the comments, did you believe they were appropriate?

A. In 2013, based on the experience and training that I had, I did not see them as inappropriate at that time.

Q. And why do you think they're inappropriate at this time?

A. They are inappropriate at this time because they don't further any objective. They don't get us anywhere. Pointing out to people about military giving their lives for the freedoms that we enjoy, the freedoms that we -- that are not enjoyed in other parts of the world, frankly, there are many people that aren't even aware of that, so it becomes white noise to many, to many people. It doesn't further any objective. And so I have learned, as of 2019, that it's much more effective to focus on the objectives.

Q. From today's perspective, do you believe that your comments were disrespectful?

A. I don't believe they were disrespectful because they were factually accurate. I wasn't talking about her, I was talking about the freedoms and the tenor of our courts.

Q. Well, didn't you say after you said that, that you are talking about the courts and the tenure of courts, but didn't you say that she needs to be -- to think carefully before you address the court with disrespect, that came at the end of what you were saying?

A. Yes. I think that people do need to think carefully before they address a court with disrespect.

Q. You testified on direct that you had no future problems with Ms. L[redacted] after you put her in handcuffs, had put her in custody that day.

A. That's correct.

Q. Is that -- and you were using the custody as a way to control your courtroom, correct; to make people more compliant in the future?

A. You're overly simplifying it. So

the answer to that answer -- to that question as an absolute is no. It was a style that I don't use today, I have not used it in five or six years. I've grown past that. And I've found better ways to deal with the totality of the circumstances that I confront.

Q. But today on direct examination you made a statement, you talked about how after you put Ms. L[redacted] in custody and handcuffs and she was there for an hour that she became more compliant in the future. You brought that up as something that was the result of you ordering her to be put in custody?

MR. OSTRER: Objection.

THE REFEREE: Sustained.

Q. From today's perspective, do you believe you were correct in holding her -- in putting her into custody?

A. From today's perspective in 2019, no.

Q. At the time, did you believe that it was -- you were correct in holding her in custody?

A. At the time, I didn't know that it was incorrect.

THE REFEREE: Did you ever do anything to figure out what it was you were permitted to do in terms of putting people into custody?

THE WITNESS: I did.

THE REFEREE: What did you do?

THE WITNESS: I spoke to Judge Meddaugh. I -- well, let me backup. We're dealing with unruly people, I -- when I would hear about a person being overly excited in Judge Meddaugh's courtroom, I would listen to the transcript of that. I spoke to him. In 2018, we had the judicial summer institute, we had a program, and I made sure that I attended that program. I went to County Court judges meetings, spoke to other judges who were more seasoned than I.

THE REFEREE: Well going back to these incidents that we're talking about so far?

THE WITNESS: Yes, sir.

THE REFEREE: Did it ever occur to you at the time that you were not acting appropriately in removing people from the courtroom in handcuffs and having them held in a room sometimes for two hours? And if at that time you thought you were acting appropriately, what did you base that on?

THE WITNESS: So my belief at that time was that under Section 750 of the judiciary law, where people showed disrespect to the court, I had that authority.

THE REFEREE: Just any would disrespect?

THE WITNESS: That was my belief from when I was a practicing attorney, when I was a law student and then, ultimately, when I first came on the bench believe that.

THE REFEREE: And you believed you could remove people from the courtroom and then what?

THE WITNESS: I believed and I taught that that could happen, yes.

THE REFEREE: And have them put in handcuffs without providing them any due process rights?

THE WITNESS: That you could have them removed, yes. The due process would come afterwards if you were going to pursue contempt. That was my understanding.

THE REFEREE: Well, this is where I lose you. So you could remove somebody from the courtroom, put them in handcuffs without any due process rights; is that what you believed?

THE WITNESS: Similar to having probably cause for an arrest. Correct.

THE REFEREE: And then you could hold them in custody in the conference room for sometimes as much as two hours without there being any due process rights?

THE WITNESS: Well, it was never my intention when it started to hold them for two hours. Sometimes the calendar got so complex that we didn't get a chance to get them back for that.

But yes, that was my belief that it was a summary proceeding.

THE REFEREE: So you believed, summarily, without any due process rights, you could remove somebody from the courtroom, put them in handcuffs and have them held effectively in custody for two hours without there being any due process rights?

THE WITNESS: That was my belief at the time.

THE REFEREE: Okay.

Q. You mentioned that you spoke to Judge Meddaugh about that, that wasn't until 2018, correct?

A. Oh, no, no. I spoke to Judge Meddaugh in -- almost constantly spoke to Judge Meddaugh. I would say 13', '14, '15, '16, '17. Any time I was aware that he dealt with an unruly. If I got word that something happened, I would listen to the transcript.

THE REFEREE: By the way, is holding people in custody without due process rights something people do in

these other countries that you're referring to?

THE WITNESS: Yes.

Q. Now, going to talk about *G*[redacted] *versus C*[redacted]. You presided over the case *G*[redacted] *versus C*[redacted] on January 17, 2014, right?

A. Right.

Q. Ms. C[redacted] was not in custody when she entered the courtroom, correct?

A. Correct.

Q. And you put her in custody that day, you ordered that she be put in custody because she used one curse word, correct?

A. Correct.

Q. What she said was "That is a crock of shit to me, honestly." And based on that, you put her in custody?

A. Yes.

Q. You told Ms. C[redacted] to put her hands behind her back in order to be handcuffed didn't you?

A. Yes.

Q. And she was handcuffed in front of you, wasn't she?

A. Yes.

Q. Did you warn her what behavior was contemptuous?

A. I did not.

Q. Did you tell her that she could not curse in court?

A. I did not.

Q. Did you afford her an opportunity to make a statement in her own behalf?

A. I did not.

Q. Did you give her an opportunity to talk to counsel, Mr. Garn, before having her handcuffed?

A. I did not.

Q. After Ms. C[redacted] said that's a crock of shit to me did you talk to Mr. Garn and ask him to talk to his client?

A. I did not.

Q. Did you give her an opportunity to purge her behavior, purge the contempt before you had her handcuffed?

A. I did not.

Q. Did you prepare an order setting forth the nature of the offense, steps taken by the court, and the punishment imposed?

A. I did not.

Q. After Ms. C[redacted] left the courtroom, did you tell Mr. Farraro that you were trying to give Ms. C[redacted] a cooling off period?

A. I did.

Q. And that's the reason you put her in handcuffs so she could cool off, correct?

A. One of the reasons.

Q. From today's perspective, do you believe that you were correct in holding her in contempt?

A. No.

Q. At that time, did you believe that you were correct in holding her in contempt?

A. My answer would be consistent with what it has been throughout these proceedings that at that time, based on what I knew then, I did not believe that it was incorrect. I now know that it is inappropriate and was inappropriate.

Q. Do you believe that you were patient, dignified and courteous in your dealings with Ms. C[redacted] from today's

perspective?

A. At the -- at the moment that I ordered her put in custody.

Q. Do you believe that you dealt with Ms. C[redacted] in a patient, dignified and courteous manner?

A. Again, I just need a clarification, are you talking about the putting her in custody or the balance of the many many times that she was in front of me?

Q. Well, we're talking about that day, January 17, 2014.

A. Well, again -- and I'm really --

Q. Not the many many times that she was in front of you.

A. I appreciate that and I'm really not trying to be evasive. If you're referring to putting her in custody, I was not patient and dignified. Much of the rest of that day, I was.

Q. Well, when Ms. C[redacted] came back to court, her attorney apologized to the court on her behalf and mentioned Ms. C[redacted]was currently pregnant, didn't he?

A. He did.

Q. And do you think that it was respectful, I'm now going to read from what has been marked into evidence Commission Exhibit V-3a, page 4, line 16. And this court -- this is the judge speaking. "And this court and this country's providing quite a bit for the care of your child that you are incapable of providing right now. The court didn't bring the child into the world, you did. And now you're going to bring another child into the world. And that's your decision to do that at a time when you don't have a home, don't have any money, don't have a job, but that's your decision." Do you believe that those comments were respectful to Ms. C[redacted]?

A. No.

Q. Now, going to the case *F*[redacted] *versus K*[redacted] *versus K*[redacted]. You presided over that case on December 2, 2014, didn't you?

A. I did.

Q. And at that point you had been a judge for almost four years, correct?

A. The date again, please.
Q. December 2, 2014?
A. Yes.
Q. The grandparents who were in court were not represented that day, were they?
A. That's correct.
Q. And the grandparents were not in custody when they arrived in the courtroom, were they?
A. They were not.
Q. The grandparents had physical custody of the child along with the mother, correct?
A. I don't believe they did.
Q. The child was living with the grandparents though?
A. They were living. I don't believe that there was a court order of custody.
Q. After you temporarily changed physical custody to the father, the grandparents became upset, didn't they?
A. They did.
Q. And you ordered the court officer

to take the grandmother into custody right after she said if anything happens to my son, my grandson, Your Honor, I will sue the county and I will sue you?

A. That is correct.

Q. And that is the reason her statement that she will sue the county and sue you, is the reason you put her into custody?

A. I took that as a threat, yes.

Q. What was the threat?

A. The threat was to sue me personally based on the decision that I had made to set -- to place the child with the child's father.

Q. And did you report it as a judicial threat to the appropriate people?

A. It wasn't necessary to. It wasn't a threat of physical violence that they could do anything about. There was a record already that she had made that threat. If there was litigation, the Attorney General could have gotten that record.

Q. So the threat of her saying that

she might sue you if something happens to her child, was the reason you felt that you could put her into custody?

A. I took that as a threat in response to the action that the court took.

Q. She made that comment in response to what the court did, correct?

A. She made that comment in response to what the court did, yes.

Q. And that you thought then was a threat because she made the comment in response to what the court did?

A. Correct.

Q. Now, as soon as you ordered that she be taken into custody, didn't the grandmother state "I'm not threatening you"?

A. I don't dispute the transcript. I don't recall, specifically.

Q. Well, I'm going to read from Commission Exhibit VI-2a, page 19. Line 22. Judge McGuire, "Take her into custody. You want to threaten the judge, take her into custody. Mrs. K[redacted] "I'm just -- I'm not threatening you." Judge McGuire, "Take her into custody. You want to threaten the

judge, take her into custody."

So even after Ms. K[redacted] says that she is not threatening you, you continued with taking her into custody, correct?

A. Well, I took it as a threat, so regardless of what she said afterwards, I still took it as a threat.

Q. Did you change your conduct at all based on her statement?

A. I had already made a decision, so no.

Q. You never changed after you've made a decision, you never reflect or think that that decision might be incorrect and change what you do?

A. Well, I do that all the time, but in this situation, you're talking about seconds later, and the fact that she said she wasn't threatening me, what she said was to me clearly a threat.

Q. Didn't you yell "Then get her out of here" in a loud voice?

A. Yes.

Q. Did you give her any warning that

her behavior was contemptuous?

A. I did not.

Q. Did you afford her an opportunity to make a statement in her own behalf?

A. I did not.

Q. Did you make any effort to get her an attorney?

A. I did not.

Q. Did you give her an opportunity to purge the contempt --

A. I --

Q. -- before you took into custody?

A. I did not.

Q. Did you prepare an order setting forth the nature of the offense and the steps taken by the court and the punishment imposed?

A. I did not.

Q. From today's perspective, do you believe you were correct in putting her into custody?

A. I do not.

Q. Now, Ms. K[redacted] returned to the courtroom at 3:30 that day. That was about an hour and five minutes after she was

removed from your courtroom. Did you then tell her when she came back that you could put her in jail for 30 days?

A. That was my belief at that time in 2014.

Q. Is that a correct belief?

A. Not without following the 12-step procedure that I now have been instructed in.

Q. And when you stated -- I'm reading from Commission Exhibit VI-3a, page 1, line 17. If I say that you disrupted the proceeding -- Judge McGuire, "If I say that you disrupted the proceedings, I can put you in jail for 30 days and that's it." Mr. K[redacted], "Please don't do that, sir. I'm sorry." Judge McGuire, "You want me to put you in for 30 days?" Mr. K[redacted], "No. I'm sorry."

You threatened Mr. K[redacted] with contempt for saying that he just said -- he did not want you to put his wife in jail for 30 days?

A. I warned him.

Q. You mentioned that you could hold

Mr. K[redacted] in contempt just for saying, "Please don't do that, sir. I'm sorry."

A. I warned him for disrupting the proceeding.

Q. And what was wrong with Mr. K[redacted] saying that, that would rise to the level of having someone put in custody?

A. Well, it wouldn't rise to the level of putting someone in custody. It didn't rise to the level of putting someone in custody. It was a warning because he was disrupting the court.

Q. So Mr. K[redacted] stated, "Please don't do that, sir. I'm sorry," you believed was disrupting the court?

A. Yes, he was talking over the court.

Q. Do you believe that you were patient, dignified and courteous in your dealings with the K[redacted]?

A. I was not patient, dignified and courteous in having Mrs. K[redacted] detained. In the balance of the proceedings, I was patient, dignified and courteous.

Q. Were you patient, dignified and

courteous to Mr. K[redacted] when you threatened that he could be held in contempt?

A. I didn't threaten him. I warned him that his actions in disrupting the court could be -- could lead to a contempt proceeding.

Q. Do you believe that you were patient, dignified and courteous in your dealing with Mr. K[redacted] when you warned him that his actions could lead to him being put in custody?

A. Yes.

Q. Now, all these cases that we talked about before, all these people were handcuffed in the courtroom in front of you, correct?

A. Except for *R*[redacted], he came in handcuffed and was handcuffed throughout.

Q. But all of the people in Family Court, except for Mr. R[redacted], they were all handcuffed in the courtroom in front of you after you told -- ordered they be taken into custody?

A. Yes, ma'am.

Q. And they were all handcuffed

behind their back, correct?

A. I don't have specific recollection. I believe that's the custom and practice, although it doesn't happen all the time. I don't have specific recollection. The court officers handled those procedures.

Q. What was your legal basis to have these people taken into custody and handcuffed?

A. I believed at the time that they were acting in a manner that was consistent with the authority that I believed I had under 750 of the Judiciary Law.

Q. Has your belief -- you believe has now changed?

A. It has.

Q. Now, this was an extra judicial procedure, wasn't it?

A. What was?

Q. Well, there was never any record that these people were in custody, you never filled out any papers about them being in custody or filed any papers to make a record that individuals had been handcuffed and put

in custody, did you?

A. I did not.

Q. You never filed an order. There was no way that anyone could seek relief, correct?

A. Well, they were all sent home, so I don't know what relief -- I mean, in *R*[redacted] there was. He could have filed an appeal of it. I suppose and so could *G*[redacted] have. The others I don't know what relief they would seek but, no, there was no orders.

Q. Are you familiar with Judiciary Law 755?

A. I am.

Q. And were you familiar with judiciary law 755 in the time period when you first became a judge until December 2014?

A. I was familiar with its existence. I was probably not as familiar with its specific provisions.

Q. And that judiciary law 755 says that an order must be made by the court, judge court or referee stating the facts

which constitute the offense?
A. Correct.
Q. You did not follow that, did you?
A. I did not.
Q. Now, when you taught judicial seminars for Town and Village judges, you saw presentation -- I withdraw that.
You taught judicial seminars for Town and Village judges prior to becoming a judge, correct?
A. I did. And since.
Q. And prior to becoming a judge, when you taught at judicial seminars for Town and Village judges, you saw presentations that covered contempt, didn't you?
A. I have a vague recollection that I did. I don't have a recollection of when, of who gave it, nor do I have a recollection of sitting through the whole presentation. Sometimes they would be going on when I walked in. I do have a vague recollection, though, of having one that covered that.
MS. TISHMAN: One second, please.
Q. When you appeared in front of the

Commission on June 19, 2017, I'm reading from Volume 2, the June 19, 2017 proceeding, page 226. Did you give --

THE REFEREE: Just give me a second. What line?

MS. TISHMAN: Line 12 to 22.

MR. OSTRER: Is this an Exhibit? Ms. Tishman, is it an Exhibit?

MS. TISHMAN: Do you want a copy of the IA testimony?

Q. Volume 2, page 226.

You were asked this question and you gave this answer. Question, "You haven't reviewed any other cases that had to do with summary contempt during the time period that we're looking at?" Answer, "My only familiarity with summary contempt that time was during a training and I don't recall whether it was during the new judges initial training or it was during a time when I was teaching classes for the Office of Court Administration for Town and Village judges, that there was a presentation on judicial contempt, and that presentation talked about it being a summary proceeding.

And as a practicing attorney, I observed on more than one occasion juges holding people in summary contempt. And in fact, holding them for 30 days." Did you give the -- were you asked that question and gave that answer?

A. I did. I was and I did.

Q. Now you testified that they never talked about contempt when you went to judge school?

A. Correct.

Q. Now, looking at Respondent's Exhibit J in evidence?

A. Yes.

Q. Do you have that in front of you?

A. I don't know. I don't believe I do. Thank you.

Q. There was a presentation on Sunday, January 2, 2011, the presentation the Commission on Judicial Conduct. Did you attend that presentation?

A. That was on Monday, January 3rd?

Q. Yes, I'm sorry.

A. Yes, I did.

Q. And at that time, you learned

that the Commission on Judicial Conduct hears cases and makes determinations, correct?

A. That presentation -- yes.

Q. And then on Tuesday, January 4, 2011, did you attend the panel entitled, Judicial Ethics the Rules Governing Judicial Conducts, the Code of Judicial Conduct and the Advisory Committee on Judicial Ethics?

A. I did.

Q. And then at 11:15 to 1:15 on that day, Tuesday, January 4, 2011, did you attend the panel managing conflict in and outside the courtroom?

A. I did.

Q. And none of these -- none of these three panels that you went to talked anything about contempt?

A. They did not.

Q. Even the panel about managing conflict in and outside the courtroom, it's your testimony that there was nothing mentioned about contempt?

A. Absolutely not.

Q. You get the Commission's annual

report every year, don't you?

A. I do not.

Q. It's sent to every single judge in the state. You have never gotten it?

A. I never got it. In fact, I got one copy of it that I picked up here when I was here in 2017 out of the waiting room.

Q. But from the conference that you attended judge school, you knew who the Commission was and you knew that they issued determinations, correct?

A. I knew that they were. I knew who they were. I knew they issued determinations and I knew they could be viewed online.

Q. Did you ever review the Commission's determinations regarding judges who hold people in contempt?

A. No.

MR. OSTRER: Can we have a date when those were issued?

THE REFEREE: Any of them?

MS. TISHMAN: I'm asking Judge McGuire whether he ever did research about Commission determinations when

judges were held -- were sanctioned for holding people in contempt.

A. Yes, I did.

Q. Did you ever do research on -- during the time period 2011 to 2015, to January 2015, did you ever look up Commission's determinations concerning judges who hold people in contempt?

A. I did not.

Q. Did you ever review the case matter of *Feder* Commission determination from -- about a judge who was in the Third Department?

A. I did not.

Q. Did you ever review a --

MR. OSTRER: Can I have a cite on that matter *Feder*?

MS. TISHMAN: It's a Commission determination.

MR. OSTRER: Do you have a date of it then?

MS. TISHMAN: 2012.

Q. Between 2011 and 2015, did you ever learn that the Commission has decided in its determinations in the matter of

Feder, that the exercise of the enormous power of summary contempt requires strict compliance with mandated safeguards, including giving the accused a warning that the conduct can result in contempt and providing an opportunity to desist from the contemptuous conduct and to make a statement before attempted adjudication?

A. During what time period are you asking about?

Q. 2011 when you became a judge to December, end of December of 2014?

A. No, I was not aware of that until 2018. July of 2018.

Q. And you didn't review any of the Commission's determinations during that time period, did you?

A. I did not. I was too busy reading Appellate case law to stay current in my four areas.

Q. That wasn't my question.

A. The answer was, I did not.

Q. Did you review any of the law regarding judicial contempt during your first four years on the bench?

A. I did not.

Q. Did you ever review the third department case *Pronti*, P-R-O-N-T-I, *versus Allen*, 13AD3D1034, Third Department 2004?

Did you review that decision between the time period when it was issued until the time period of December -- end of December 2014?

A. I did not.

Q. You said you kept up-to-date with the Appellate division's decisions in Family Court. But this is -- these are things that you were doing in Family Court and you never took a moment to research whether your -- what you were doing was correct, did you?

MR. OSTRER: Argumentative.

THE REFEREE: Overruled.

A. I never read that Appellate case law and I can answer that more thoroughly if you'd like.

Q. Did you review any case law about contempt?

A. I did not. I read case law that dealt with the subject matter areas that I was dealing with which was voluminous.

Q. You never spoke to your law clerk before ordering litigants to be held in custody, did you?

A. My law clerk wasn't in the courtroom.

Q. Did you ever speak to your law clerk to -- and ask your law clerk whether you had the power to hold people in -- order that people be put in custody for interrupting you in court?

A. I'm sure I shared with her my experiences in the courtroom one. Never specifically asked her to research the issue for me.

Q. You never reached out to other judges between 2011 and the end of 2014, did you?

A. That's an ongoing process. So I was constantly evolving in more areas than just contempt. I was evolving in writing in -- so --

Q. The question was, did you ever reach out --

A. I don't.

Q. -- to other judges and talk to

them about holding a litigant in custody in judicial contempt between the time period 2011 and 2000 and -- December 2014?

A. I don't specifically recall during that time period.

Q. You never reached out to the advisory committee on judicial ethics to talk to them about your obligations when you hold a litigant in custody or contempt?

A. I did not.

Q. There were other cases where you threatened litigants with contempt.

A. I didn't threaten, I may have warned them.

Q. Now in the *P[redacted] versus R[redacted] and R[redacted]* case, you presided over that case on January 28, 2013, correct?

A. I did.

Q. And after the case was over, you told Ms. R[redacted]-- you threatened to hold Ms. R[redacted] in contempt for talking to the child?

A. I warned her if she continued to say the things she was saying to the child it could result in a contempt proceeding,

yes.

Q. And the child was in the courtroom at that time?

A. I'm sure she was.

Q. And you say you warned her. You were yelling when you were telling her this, weren't you?

A. Well, I don't -- I don't believe that I was yelling, I believe that my voice was projecting to her. I don't believe I was yelling. For example, I -- if you wants to compare it to my reaction on *R*[redacted] it was not that type of a reaction.

Q. Your voice was louder than your normal courtroom voice, correct?

A. My -- my inflection was authoritative. I don't honestly recall whether my voice was loud or not. I've been accused of my voice being loud all the time.

Q. The question was whether it was louder than your normal courtroom voice, not whether your voice is always loud.

A. I -- I -- I honestly don't recall.

Q. And then after you told Ms. R[redacted]

that her behavior could cause her to be held in contempt, she had trouble breathing, correct?

A. After my admonition she had trouble breathing.

Q. And this was all before the child?

A. I --

Q. Correct?

A. It's very hard for me to answer that because people were filing out of the courtroom already when it occurred, so I truly don't know whether the child was still there or not. I just don't know that.

Q. Do you believe that you were patient, dignified and courteous in your dealings with Ms. R[redacted] from today's perspective?

A. From today's perspective it is -- can -- it -- it cannot be condoned to put pressure on a 10 year old child to not see their father. I would today would approach it differently and I would bring them all back into the courtroom and deal with it with everybody.

Q. My question wasn't what you would do today. My question is do you believe that you were patient, dignified and courteous in your dealings with Ms. R[redacted] at that time?

A. Yes.

Q. Now, in the case *D*[redacted] *versus* *E*[redacted] *and* *F*[redacted], you presided over that case on November 7, 2014, correct?

A. Yes, ma'am.

Q. And during the testimony of the witness, you threatened Ms. E[redacted] that she could be held in contempt?

A. I warned her if her conduct didn't change that that could happen.

Q. At the time -- give me -- I'm sorry give me one second.

At the time you did not say to her verbally what her conduct was that could put her in custody, did you?

A. At the time she was very well aware of it because I had nonverbal communication with her that had gone on for about 20 minutes at that point.

Q. You had no verbal communication

with Ms. E[redacted], did you?

A. I had nonverbal communication where she clearly understood that she could not be turning around having discussions in the middle of the trial.

Q. Can you answer my question, please?

A. Ma'am --

Q. Did you have --

A. -- I'm trying to --

Q. And please don't call me ma'am.

Did you have verbal -- did you verbally say to Ms. E[redacted] what her conduct was that could cause her to be, as you say, put in handcuffs and taken out of here?

A. I did not.

Q. You said you made verbal -- you made nonverbal signs to her. You have no clue whether she saw your nonverbal signs, whether she knew what your nonverbal signs were, or she knew what she was doing wrong with your nonverbal signs, do you?

A. I absolutely know that she interpreted them.

Q. You were in her mind, you could tell that?

A. She responded "I'm sorry" at one time.

Q. There is nothing in the transcript that says that she said "I'm sorry".

A. I -- I agree with that.

Q. Now, in the *V*[redacted] *verus G*[redacted] case --

A. Yes.

Q. -- you presided over the case on August 21, 2014?

A. I did.

Q. And there was a T[redacted] -- T[redacted]?

A. T[redacted].

Q. T[redacted] hearing that day, correct?

A. Want me to spell it?

Q. I'll spell it. T-[redacted] hearing that day?

A. It was a trial and there was a Tropea issue embedded within the trial.

Q. And during that hearing, during the trial Ms. G[redacted] testified, correct?

A. She did.

Q. Now, after the mother testified, you met with the attorneys out of the presence of the litigants, right?

A. I did.

Q. And you mentioned that Ms. G[redacted]-- you thought had -- that Ms. G[redacted] had a boyfriend, correct? Did you mention that?

A. I don't recall specifically whether that was mentioned or not. It certainly could've been mentioned within the scope of the conference. Certainly her behavior was consistent with that.

Q. I'm sorry.

Now, had there been any testimony that Ms. V[redacted] had a boyfriend?

A. There had not.

Q. And there was no discussion off the record about a boyfriend either, was there?

A. There was lots of discussion off the record about a boyfriend.

Q. There was no testimony of anything about a boyfriend in the 9:07 call, was there?

MR. OSTRER: Objection as to form.

THE REFEREE: Overruled.

A. I'm sorry. The 9:07 call?

Q. There were a -- there were a couple of times that case was called during the day?

A. Oh, 9:07 in the morning?

Q. Yes, sorry.

A. There was no testimony because I believe she was the only one that testified. There was no testimony about her having a boyfriend.

Q. Now at the 9:58 a.m. proceeding on that day, August 21, 2014?

MR. OSTRER: Which Exhibit number please.

MS. TISHMAN: Exhibit VIII-7a.

Q. You state on Page 7 line 9, "the mother clearly had another plan in mind. There is no doubt in my mind that the mother's plan was to grab the children and flee to California."

There was no evidence that that was the mother's plan, was there?

A. Well, that was a reasonable inference to be drawn from what happened in that case from January till then.

Q. But there was no evidence that that was the mother's plan, was there?

A. Well, it's a reasonable inference to be drawn and that's what a fact finder has to do.

Q. And your reasonable inference was on the fact that she went to California and then the marriage fell apart?

A. No.

Q. There was no evidence that the mother went out to California because she wanted out of the marriage, was there?

A. There was a reasonable inference from all of the evidence that that was the mother's plan.

Q. There was no evidence that she was involved in another relationship, was there?

A. That was an inference that possibly could have been drawn but it was irrelevant to my ultimate determination in the case. It didn't matter whether she was

in a relationship or not.

Q. Do you believe that your comments about Ms. G[redacted] were fair to Ms. G[redacted]?

A. Yes.

Q. Do you believe that you were respectful --

A. I'm sorry --

Q. -- to Ms. G[redacted]?

A. -- I'm sorry, I'm sorry. Which comments are you referring to before I answer that question?

Q. The comment that -- "it was the mother's plan was to grab the children and flee to California and that their -- and that the mother went to California because she wanted out of the marriage."

Do you believe that those comments were respectful to Ms. G[redacted]?

MR. OSTRER: Excuse me. Were those comments directed to Ms. G[redacted] or was that in conference?

Q. It was in open court reading the decision aloud, right?

A. That was the decision of the court based on the evidence. The -- the --

a fact finder has to make -- draw reasonable inferences from the evidence. The evidence was overwhelming that that was her plan.

Q. And what evidence was overwhelming that that was her plan?

A. So she left in January with the plan that the father would stay behind and he would close up the house, finish out the lease, give notice to his job. They would go and live with her aunt in California. When he called and said "everything is wrapped up, I'm heading out to California," she says "no, there's no room for you out here." Then later when he wanted to see the children, she said "no, you can't." When he offered to come out to get the children, she says "no, I don't want you to come out here." Then when the court ordered her to allow him to have access to the children, with both courts, New York and California, and after she had filed in California when she had only been in California for about a month, the gentleman flew all the way from New York to California, got to the airport in California, she refused to bring the

children to the airport. Then --

Q. But that's not really correct, is it?

A. That's absolutely correct.

MR. OSTRER: You're interrupting the witness.

MS. TISHMAN: Okay.

MR. OSTRER: He was answering a question. I object.

MR. LEVINE: You can address this to the referee instead of yelling at the lawyer.

THE REFEREE: Sustained, sustained, sustained.

Q. Sorry, Judge.

A. It's okay. He gets to California. They don't have his car rental. He calls the mother and this is the testimony at trial. He calls the mother who is unwilling to get the children from her home in Los Angeles to Los Angeles International Airport. Even when he offered to pay for a cab, she still was unwilling to get them from her home outside of Los Angeles to the Los Angeles airport. This

gentleman bought tickets for himself roundtrip and the children, and he had to fly back to New York without seeing the children. Then she came to New York with a directive to bring the children with her and didn't bring the children so they weren't able to speak with their attorney and weren't able to see the father.

The aunt's house didn't shrink between January and March when she says, "oh there's no room for you." So yes, that was a reasonable inference that was drawn from the evidence adduced at trial, that the mother's intention all along was to get out of the marriage, because that's what the evidence was overwhelmingly. Now, different people with differ on the facts, but those were the facts as I found them to be on that day.

Q. Do you think it was proper to state during your decision in court, it was a six-bedroom home, now it's a two bedroom home and there's no room for the father. No managers in the area, there's no room at the inn, the dad's not allowed to come.

Do you think that was respectful to Ms. G[redacted]?

A. That was an accurate statement of what the facts were. It was a six bedroom house when they planned to move out there, plenty of room for the whole family, and then once they were out there, there wasn't enough room for the family.

Q. So there was testimony that the house was six -- a six-bedroom house?

A. I'm sure there was if I made that statement.

THE REFEREE: Why don't you find a good place to stop for the day.

MS. TISHMAN: I have just a few more questions on this case.

THE REFEREE: Okay. Let's do that.

MS. TISHMAN: Okay.

Q. Now, in the middle of your decision, you threatened to hold someone in court in contempt, correct?

A. I don't recall that.

Q. Well, I'm reading from what has been marked Commission Exhibit VIII-7a, Page

8, line 12. Let's start at line 10. "Clearly the mother went out there because she wanted out of this marriage. Clearly she wants -- she's out there, gets involved in another relationship and clearly that's her interest. Clearly that's her interest. I'm going to throw you out and put you in handcuffs in about 30 seconds." All right.

Do you remember now threatening someone to put someone in handcuffs?

A. Somebody was apparently warned, I don't know who it was. I don't have any recollection right now.

Q. Did you make a record or tell that person what they were doing that would cause them to be put in handcuffs?

A. Whatever record is there is the record that I made.

Q. Now, before on direct you said you never ordered anyone -- well, I withdraw that.

Now, the Appellate division found that you did -- that you talked to Ms. G[redacted] with apparent disdain.

Do you agree with the Appellate

Division's decision?

A. I'm really not going to answer that. I respect the Appellate Division's decision. It's not for me to agree with it or disagree with it. I respect the process.

Q. Do you believe that you treated her with apparent disdain?

A. I treated -- I -- I issued a decision with reasonable inferences that flow from it based on the evidence that was in front of me.

Q. It's not a question of your decision, it's a question of whether you believed you treated Ms. G[redacted] with disdain?

A. That was a finding of the Appellate Division. I'm not going to comment because it would be appropriate for me to comment on the Appellate Division.

Q. I'm not asking you to comment on the Appellate Division I'm asking you, do you think that you treated Ms. G[redacted] with disdain during the proceedings?

MR. OSTRER: Objection.

A. With all due respect --

THE REFEREE: Objection is

overruled.

A. -- because the Appellate Division made that finding, I will not comment on the decision that the Appellate Division rendered.

Q. Do you believe you were patient, dignified and courteous in your dealings with Ms. G[redacted]?

A. I issued a decision based on the evidence that was adduced at trial.

Q. Excuse me?

A. I issued a decision based on the evidence that was adduced at trial. It went up on appeal and I respect what the Appellate Division held.

MS. TISHMAN: Can you have the -- order that the witness answer the question?

THE REFEREE: I think that -- that he's reluctant to -- in my inference, from what you're testifying, is that you disagree with the Appellate Division but you don't want to say that because it's the Appellate Division.

THE WITNESS: It would be

inappropriate to say that.

THE REFEREE: If that's wrong, you should tell me.

THE WITNESS: I can't comment on the Appellate Division's ruling, and my position is that I issued a decision based on the evidence that was in front of me.

THE REFEREE: Well, you could say that you don't believe that you treated Ms. G[redacted] with disdain, but you respect the Appellate Division decision, or you could say that you do believe that you treated Ms. G[redacted] with disdain and you respect it.

THE WITNESS: Okay --

MR. OSTRER: Respectfully, Your Honor, I don't think that he can. I think that's parsing it in a way. I think we're obliged --

THE REFEREE: I'm going to ask you do to do one or the other. Do you believe you treated her with disdain and yet respect the Appellate Division decision or do you believe that you did

not treat her with disdain and respect the Appellate division?

THE WITNESS: I do respect the Appellate Division's decision and I do not believe I treated her with disdain.

THE REFEREE: You have your answer.

MS. TISHMAN: Thank you. That's a good place to stop.

THE REFEREE: Okay. So we are going to start tomorrow promptly at 9:30.

MS. TISHMAN: Great.

THE REFEREE: Unless there's anything to discuss, we will go off the record. Hearing nothing, off the record.

MR. MAISONET: Off the record.

(TIME NOTED: 6:00 P.M.)

INDEX TO EXHIBITS

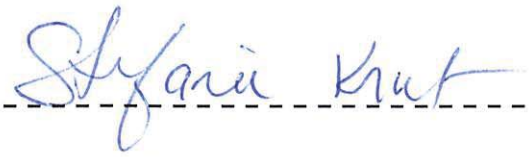
For the Respondent	INT.	IN EVD
J Program Schedule.	2431	2434

CERTIFICATION

I, STEFANIE KRUT, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 21, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of June 2019.



STEFANIE KRUT

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44, Subdivision 4, of the Judiciary Law in Relation to

MICHAEL F. MCGUIRE
a Judge/Justice of the Family Court
Sullivan County

---

61 Broadway
New York, New York

May 22, 2019
9:28 a.m.

Before:

MARK ARISOHN, ESQ.
Referee

Present:

For the Commission

PAMELA TISHMAN, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

CHRISTINA PARTIDA
Investigator

For the Respondent

BENJAMIN OSTRER, ESQ.
Attorney for Respondent
Ostrer & Associates, P.C.

[redacted]

Also Present:
HONORABLE MICHAEL MCGUIRE
Respondent

MICHAEL MAISONET
Senior Court Clerk

INDEX OF WITNESSES

WITNESS	Cross	Redirect
Michael F. McGuire	2545	2692

MR. MAISONET: On the record.

THE REFEREE: Good morning everybody, today is May 22, 2019. This is the continuation of the hearing in the matter of Judge Michael F. McGuire. Judge McGuire is on cross-examination, and still under oath. You may continue.

THE WITNESS: Judge, before we continue, from the minute we were done yesterday, I was probably a little bit punchy and was not really comfortable with how I had responded to your last question about my response to the Appellate Division, I was a little bit thrown to comment about the Appellate Division in the first place. I just wanted to clarify, fist to apologize, I was not trying to be evasive, at all, when that decision came to my attention, which was about maybe a year after the case was if front of me, I very much respected what they had given and it did cause me to undergo some reflection, and I agreed on reflection, that I had treated the -- Ms. G[redacted] or Mr. G[redacted] with disdain, and used that as an

educational opportunity for myself in my evolution, for lack of a better term, as a Judge. It was -- I was trying to walk a tightrope of not commenting on the Appellate Division, and walking to the train, it stayed on my mind and I wanted to clarify that.

THE REFEREE: I appreciate that. You may proceed.

CROSS EXAMINATION BY

MS. TISHMAN:

Q. Good morning, Judge.

A. Good morning.

Q. In March 10, 2014, you presided over the case M[redacted] versus H[redacted] (phonetic), correct?

A. I did.

Q. And this was the first and only time the case was on in court, correct?

A. Correct.

Q. And the parties came to court to put a custody agreement that they had worked on, really make if official, put it on the record, correct?

A. I think that's a fair

characterization, yes.

Q. You noted that on Commission Exhibit 9-2A, page 11, line 15, "So it's very important, I can notice that the two of you are being civil to one another and you need to continue to do that because that's in your child's best interest." You said that, right?

A. I did.

Q. And the parties were, they were getting along, they had come to the custody agreement themselves before they came to court?

A. For the most part, yes, they had come to an agreement.

Q. And after you state how well the parties are getting along, you mention that it would be bad for the child if the dad date a drug addict or a slut?

A. I believe the words that I used were, if the child had to endure comments from one party or the other about dad dating a drug addict.

Q. So I'll just rea what you said, page 11, line 21. "But if she has to endure

battles and she has to endure anyone that's --

THE REFEREE: Slower, please.

Q. "But if she has to endure battles and she has to endure anyone that Mr. H[redacted] dates is a drug addict, a slut, whatever, or anyone that Ms. M[redacted] dates is a drug addict, a slut, a child abuser, whatever, then she's going to have a very difficult time of this." There was no discussion that either party was dating someone at that time, correct?

A. There was not.

Q. And there were no allegations that either party was dating a child abuser?

A. There were not.

Q. And there were no allegations that either parent was dating someone who was a drug addict, was there?

A. That is correct.

Q. And these comments had nothing to do with this specific case, correct?

A. It had nothing to do with the facts of that case, that's correct.

Q. And when you used the word

"slut," you meant that it would be harmful to the child if a father dates a woman who has had sex with other people?

A. No.

Q. That's what the words, vernacular of "slut" means, it's someone who has had sex with more than one partner or many partners, and you're saying here that that would be harmful to the child?

A. No.

Q. Do you believe it was proper to use that term to these parents?

A. I don't believe, in retrospect, that it was proper, the message that I was intending to convey is that in the overwhelming majority of cases that we deal with in family court, particularly on modifications, parents come in and make those types of allegations, which generally have no basis in fact, and it does become very difficult on the child, the message being, if you've got concerns with the other party, speak to the other party rather than the child. I was inartful in the manner in which I conveyed my counsel to them, and

probably inappropriate to make any statement, at all, at that point.

Q. And as you just said, these comments that you made had no relationship to this particular case?

A. They did not.

Q. And if you're trying to tell the parties to get along and work out their problems, couldn't you have just said that instead of telling them that they might date the child abuser or a drug addict or a slut?

MR. OSTRER: Objection.

THE REFEREE: Overruled.

Q. The question is, couldn't you have just said that?

A. I could have.

Q. Do you think that your comments were respectful to the parties?

A. Those comments didn't relate to those parties, however it was inartful in the manner in which I conveyed what should have been a much more positive message to them.

Q. Do you think your comments were -- that you acted in a dignified manner

when you make those comments?

A. It was undignified to make those comments, although I was not suggesting that either of those parties were engaging in that conduct.

MS. TISHMAN: I'm sorry, I need one second, it's looks like I left something on my desk.

THE REFEREE: Okay. Take your time.

Q. Your law firm address was [redacted]?

A. [redacted], yes.

Q. And your e-mail when you were in private practice was mike-law@v[redacted]?

A. Yes.

Q. Your office phone number was ([redacted]?

A. It was.

Q. And when you were out of the office, your calls were forwarded to your cellphone?

A. At one point they were, I don't remember exactly when we did that, for a while we forwarded them just to -- for a while we forwarded them to my mother's

house, then we forwarded them to my house, and then, ultimately, we just forwarded them to my cellphone.

Q. And you had a voicemail that was attached to your law firm phone number?

A. Yes.

Q. And it said, you've reached the law office of Michael McGuire, there's no one available to take your call right now, but you leave you name, number and a message, when you hear the tone, someone will get back to you as soon as possible?

A. I believe that it said, you've reached the office of Mike McGuire.

Q. But other than that --

A. Yes.

Q. -- that's right?

A. Correct.

Q. And that's your voice on the voicemail?

A. It was.

Q. And after you became a judge, and when you lease ran out, you used the address, [redacted]?

A. Yes, Ferndale.

Q. It was in Ferndale also?

A. Yes.

Q. Ferndale's like a part of Liberty, right?

A. Okay. So Liberty, there's the Village of Liberty and there's the Town of Liberty, so within the Town of Liberty, there are several hamlets, Ferndale is one of the hamlets within the Town of Liberty.

Q. You kept your office number after you became a judge and had it forwarded to an answering machine, correct?

A. We didn't have it forwarded, we had it hardwired in the house and connected directly into an answering machine.

Q. And you kept the same voicemail that you had when you were in the law firm until 2016, correct?

A. Yes, we just moved the machine and plugged it in to the new line that came into our home.

Q. You could have changed the voicemail to state, you've reached the former office of Michael McGuire, couldn't you have?

A. Yes, we certainly could have.

Q. And you could have stated, the office is not closed, if you're a former client and need a file or information, please leave a message?

A. Yes, we certainly could have done that.

Q. But you didn't do that, did you?

A. We did not do that.

Q. Your home address is [redacted]?

A. [redacted].

Q. And you also have a home in Florida, right?

A. I do.

Q. You cellphone number is ([redacted]?

A. It is.

Q. And after you became a judge, you used the e-mail address judgemcguire@[redacted]?

A. I did.

Q. And you personally use that e-mail address to send e-mails?

A. I did.

Q. And you used that e-mail address

from the time you became a judge until 2015, correct?

A. I don't dispute that, it was around 2015, I don't remember the exact date.

Q. And you continued to use the same fax machine that had the McGuire Law imprint after you became a judge, correct?

A. We did, until it broke.

Q. And you used the same fax number?

A. No.

Q. The fax number was ([redacted]?

A. That was at the office.

Q. So that was the same fax number that was on the imprint?

A. I can't speak for the imprint, I've seen several of them for the first time, ever, here during these proceedings, the fax number, thought, was not transferred to the house, the 6860.

Q. But you never changed the imprint that was on the top of the fax?

A. No, we did not.

Q. When closing your office, you never reached out to the Advisory Committee

on Judicial Ethics to determine what you needed to do when you were closing an office and becoming a judge, did you?

A. I did not.

Q. As a judge, you usually start work around 3 a.m.

A. I do, between 3 and 3:30.

Q. And you would go into the office -- in the beginning, you would go into the office around that time?

A. I would go into the office usually around 4:30, quarter to 5.

Q. And the court officers, at some point, got you VPM so that you could stop going into the office that early but you could work at your home?

A. Yes, they were concerned about me being in there that early.

Q. But even though you had VPM, you started work, still, around 3:30, 4?

A. I did.

Q. Now, you sent letters to Yellowbook and Super Media regarding advertising in Yellow Pages?

A. I did.

Q. And there were four letters that we had looked at, previously, February 19, 2011, letter to Yellow Book, February 19, 2011, letter to Super Media, May 21, 2011 letter to Yellow Book, and May 21, 2011, letter to Super Media, these are all in Respondent's Exhibit H, in evidence. All these letters, you signed, didn't you.

A. I did.

Q. And all these letters used your law firm letterhead, didn't they?

A. They did.

Q. Now, the June 12, 2011, letter that is in Respondent's H, in that letter you used the P.O. Box for the address, correct?

A. So let me just correct my last answer.

MR. OSTRER: Can the exhibit be shown to the witness.

MR. TISHMAN: Do you want to see the exhibit?

THE REFEREE: I didn't hear a word you said.

MR. OSTRER: I apologize, I asked that

the June 12th letter be shown to the witness.

THE REFEREE: If he needs it, he'll ask for it.

A. And I just want to correct my -- the last answer said that I used the law office letterhead, I didn't use it on the June 12th letter.

Q. The first questions were about the two February letters and the two May letters.

A. Yes, that's correct.

Q. The last letter, the June 12, 2011, letter, you used the [redacted]?

A. I did.

Q. And that letter, attached to that letter was an affirmation?

A. There was.

Q. And in that affirmation, you state that you're an attorney, duly licensed to practice, don't you?

A. I do.

Q. And you were a judge at that time?

A. I was.

Q. And you signed the letter, Michael F. McGuire, Attorney at Law, right?

A. I did.

Q. And you were a judge at that time?

A. I was.

Q. Now, your son was arrested for marijuana in 2012 in Oneonta?

A. He was.

Q. And you asked Mr. Kelson to contact the Otsego, O-T-S-E-G-O, County District Attorney's Office to ascertain if they were offering and ACD, correct?

A. Otesaga Office, and that's not completely correct. It may be semantics, but to be accurate, he offered to call and see if the information my son had given me, from my son's first appearance, was accurate.

Q. And you agreed to the fact that he should call?

A. Yes.

Q. And after he called, he advised you about his conversations with the DA,

correct?

A. He did.

Q. Then, on December 12, 2012, you sent a letter to Chief Clerk, Catherine Tisenchek, T-I-S-E-N-C-H-E-K, informing her that you were W[redacted]M[redacted]'s attorney and filing a Notice of Appearance?

A. I did.

Q. Now, we can look at Commission Exhibit Roman numeral 10-1A. This is the letter that you sent to Ms. Tisenchek, correct?

A. Yes, it is.

Q. And it on the Michael F. McGuire, Attorney and Counselor at Law letterhead, correct?

A. It is.

Q. And on the bottom, under your name, did you sign this letter?

A. I did.

Q. And under your signature, it has your home address, correct?

A. It does.

Q. And on the top of this letter it has the fax imprint, and it says McGuire

Law?

A. It does.

Q. And this letter has your cellphone number and the fax number, right, under your name where you signed?

A. Yes.

Q. Now, attached to this letter, you file a Notice of Appearance, right?

A. Yes.

Q. And then you filed an Affirmation of Actual Engagement?

A. I did.

Q. Now, on page 3 of the -- I'm sorry, on the Affirmation of Actual engagement, paragraph 4 through 9, you list three county court cases and three family court cases that you state you were actually engaged in on that day?

A. Correct.

Q. And you engaged in those cases because you were presiding as a judge over those cases, correct?

A. That is correct.

Q. And this letter was sent to the chief clerk?

A. Sent to the Chief Clerk of the City Court of Oneonta.

Q. And then you sent a second letter that same day, Commission Exhibit 10-1B, and this letter you sent representing that you were your son's attorney, correct?

A. Correct.

Q. And you signed this letter, correct?

A. I did.

Q. And used your law firm letterhead, didn't you?

A. I did.

Q. And under your name, you put your home address and your cellphone?

A. I did.

Q. And again, this letter has the imprint on the top of McGuire Law from the fax where it came it?

A. It did.

Q. And this was sent to Oneonta Court, correct?

A. It was.

Q. Ask you gave your January vacation dates?

A. I did.

Q. And that was because you were going to be in Florida at that time?

A. Correct.

Q. And you asked that the case not be assigned to a Monday, and that's because you preside as a judge over the family court calendar on Mondays, correct?

A. Correct.

Q. I want to show you what is marked into evidence, Commission 10-1C. This letter still has to do with your son's case, correct?

A. Yes, it did.

Q. And you signed this letter?

A. I did.

Q. And you drafted this letter?

A. I did.

Q. And you drafted the other letters I showed you, correct?

A. I did.

Q. And you used, again, your law firm letterhead, correct?

A. I did.

Q. And there's a fax receipt that

says McGuire Law, correct?

A. Correct.

Q. You state in the letter that you cannot appear on the return date of January 29, 2013, as you're quote, "scheduled for a trial on that date in family court." You were scheduled to preside, as a judge, over the trial, correct?

A. That is correct.

Q. I'm going to show you what is marked as Commission Exhibit 2 and 2A. Well, no, just 2.

THE REFEREE: That's Roman numeral 10?

MS. TISHMAN: Yes, I'm sorry, Roman numeral 10-2 and 2A, it's in evidence.

Q. On February 26, 2013, you appeared in city court as your son's attorney, didn't you?

A. I did.

Q. And you conferenced the case with Judge McVinney, M-C-V-I-N-N-E-Y?

A. I did.

Q. And Mr. Getman (phonetic)?

A. I did.

Q. And you acted as your son's

attorney when you were in that conference?

A. I did.

Q. And then in April, you filed an omnibus motion on behalf of your son, didn't you?

A. I don't believe it was an omnibus motion, I think it was a motion to dismiss.

Q. If we can look at Commission Exhibit Roman numeral 10-1D, and you can look at the front page, it says, "Dear Judge McVinney, enclosed herewith, find a Notice of omnibus motion?

A. My recollection has been refreshed, it was an omnibus motion.

Q. Did you draft this letter and the omnibus motion?

A. I did.

Q. And did you sign this letter?

A. I did.

Q. And it was on Michael McGuire letterhead, correct?

A. It was.

Q. Ask you signed the Notice of Motion, correct?

A. I did.

Q. And you signed the Affirmation?
A. I did.
Q. And you drafted the Notice of Motion and the Affirmation, didn't you?
A. I did.
Q. And you filed it as your son's attorney?
A. I did.
Q. Now, if we can go to the Affirmation, paragraph 15, which is on page 6 of the Affirmation. Paragraph 15, page 6 of the Affirmation, it's states, "With respect to Defendant McGuire, although the attorney retained to address these issues was unavailable to appear on November 27, 2012, the adjourn date following the October 3, 2012, arraignment, by information and belief, the source of which is my discussion with the former attorney, he had been advised that this court did not recognize the provisions of criminal law procedure, Section 170.56." It's goes on but I'm going to stop there. When you're referring to the former attorney, that's Zachary Kelson?

A. That was not.

Q. You talking here that you spoke to a former attorney?

A. So --

Q. Let me finish my question. And that you talked to a former attorney who had spoken to the court about an ACD, and you're saying now, that wasn't Zachary Kelson?

A. That reference there is not to Mr. Kelson.

Q. But Mr. Kelson had done all of the things you talk about in here?

A. Mr. Kelson had called and asked whether or not an ACD would be offered, and he was told whatever he was told.

Q. And you're saying -- your testimony is, between Mr. Kelson and the time you started representing your son, you had retained a different attorney?

A. No, prior.

Q. Prior to what?

A. Prior to Mr. Kelson calling.

Q. You had retained an attorney?

A. My son had spoken to an attorney up there who was representing his three

codefendants.

Q. So instead of representing your son yourself, you could have continued with that attorney that your son had spoken to, correct?

A. I could have, my son could have walked in without an attorney and gotten the same deal that they were offering that attorney.

Q. But instead, you chose to represent your son yourself?

A. I did.

Q. Now, on August 4, 2013, Commission Exhibit Roman numeral 10-1E, that's in evidence, you can look at this, this is an August 4, 2013, letter to Judge McVinney. You drafted this letter?

A. I did.

Q. You signed this letter?

A. I did.

Q. On the top, it says, Michael F. McGuire, Attorney and Counselor at Law?

A. It does.

Q. And this is your Reply Affirmation, correct?

A. It is.

Q. And this was filed with the court?

A. It was.

Q. And you signed the Reply Affirmation?

A. I did.

Q. And you drafted the Reply Affirmation?

A. I did.

Q. Now, Commission Exhibit Roman numeral 10-1F, this is Judge McVinney's decision, correct?

A. It is.

Q. And the second -- it's says on the top, appearances, lists your name, correct?

A. It does.

Q. And the second full paragraph, it refers to you as the attorney of record?

A. Correct.

Q. In 2013, you knew it was prohibited for a judge to represent anyone including family member, didn't you?

A. I absolutely did.

Q. But you went ahead and represented your son, even though you knew you weren't allowed to?

A. I did.

Q. You represented you wife Corrine McGuire on a speeding ticket that she got before you became a judge?

A. That is correct.

Q. And after you became a judge -- I'm going to show you what is marked Commission Exhibit 10-3A. You sent this letter, Commission Exhibit 10-3A to Judge Charles Dechon, D-E-C-H-O-N?

A. I did.

Q. And it is on your law firm letterhead?

A. It is.

Q. And it says, "Attorney and Counselor at Law"?

A. It does.

Q. And you were a judge at this time?

A. I was.

Q. And you signed this letter?

A. I did.

Q. Now, you state in this letter, "whereas I have now taken office as County Court Judge, I recognize that I'm am not permitted to represent this or any other client accordingly, if the court is either unaware or unwilling to accept this disposition, kindly advise." So you tell Judge Dechon that you a sitting judge?

A. I do.

Q. And then you ask him to give the same disposition of dismissing the case, that you had a conversation in 2010, with Mr. Bruno about?

A. I had actually been in court on June 21, 2010, and that was the disposition that was entered, so I was expressing to Judge Dechon that if their records differed from my records, that my wife would appear.

Q. And you ask that they abide by the offer in June 2010, right after you mention to Judge Dechon that you're a county judge, correct?

A. Well, it was more than an offer, it was actually entered in court that day, so it was more than an offer, we were

actually in court that day.

Q. But you remind him the case was supposed to be dismissed after you tell him that you're a judge?

A. I do.

Q. And the case was dismissed, wasn't it?

A. The case had been dismissed in June of 2010.

Q. Well, it came back to you and you got a letter, so obviously the court records did not say it was dismissed in 2010, otherwise they would not have come back and sent it to you.

A. I don't know what the court records said, I believe that there was a clerical error, and whatever Judge Dechon did from that point, I'm really not aware.

Q. You represented George Matisco (phonetic) in 2010, didn't you?

A. I did.

Q. And that was on a case where is suffered from an automobile accident?

A. It was a property damage accident, correct.

Q. I'm going to show you what is marked Commission Exhibit 10-6, this is the January 20, 2011, letter, this letter is on your letterhead, correct.

A. It is.

Q. And this letter was sent -- you sent this letter to Loraine Rose of Progressive Insurance?

A. It was sent out of my former office.

Q. You knew this letter was being sent, didn't you?

A. I did not.

Q. On the bottom, it's signed, Michael F. McGuire, dash, MAS, that's your sister, Maryanne Schares, S-C-H-A-R-E-S?

A. Yes.

Q. Now, she sent the letter?

A. I have no reason to doubt that she did.

Q. I'm going to show you what is marked Commission Exhibit 10-14, and this is the activity log that's in evidence from Progressive Insurance, if you can look on page 1, the middle of the page, the

January 20, 2011, 1:48 p.m. entry, it says that Progressive spoke with Maryanne and then it says that "she will evaluate my request to attorney again, for the MA off and the IND-TX status." Maryanne Schares talked to you about the Matisco matter after she spoke to Progressive Insurance, correct?

A. She did not.

Q. She never spoke to you about it at all?

A. She did not.

Q. And she sent this letter without you knowing it, that's your testimony?

A. That's my testimony.

Q. You received mail from Progressive Insurance about the Matisco matter, didn't you?

A. I don't recall that I did.

Q. I'm going to show you Commission Exhibit 10-7, 10-8 and 10-9.

MS. PARTIDA: 7, 8 and 9?

MS. TISHMAN: Yes, please.

Q. If you can look at these, they're in evidence, Roman numeral 10-7, 8, and 9, all these letters are from Progressive

Insurance, correct?

A. They are.

Q. And all these letters were sent while you were a judge, correct?

A. Based on the dates, yes.

Q. And all these letters are sent to Michael McGuire, Esquire, at [redacted], correct?

A. They are.

Q. And you received these letters, didn't you?

A. Well, presumably, they were received in my office, I never saw them.

Q. Did you do anything to stop communications from Progressive Insurance being sent to you?

A. I did not.

Q. You asked Ms. Weiner to help with the Matisco matter, didn't you?

A. I absolutely did not.

Q. You directed her to contact the adjustor, didn't you?

A. I did not.

Q. You asked her to negotiate a settlement, didn't you?

A. I did not.

Q. All communication were sent to your law firm address, there was nothing that was ever sent to chambers, correct?

A. The three letter that you've provided were sent to the law firm address.

Q. They weren't sent to chambers, were they?

A. I don't believe they were.

Q. So unless you said something to Ms. Weiner, she would have not idea that this matter was pending, correct?

A. I never said anything to Ms. Weiner, I don't know what source of information she had or didn't have.

Q. Now, she sent an e-mail to Ira Saffron (phonetic) from Progressive Insurance, and that was about a month after Commission Exhibit 10-9 was sent to your home, and Ms. Weiner told you about the conversation that she was having with Progressive Insurance negotiating for a settlement for Mr. Matisco, right?

A. I had no discussions, at any time, about this matter, with Ms. Weiner.

Q. She talked to you about the release prior to sending it to Ira Saffron?

A. She did not.

Q. She showed you the release prior to sending it to Ira Saffron, didn't she?

A. She did not.

Q. Ms. Weiner spoke to you before she sent out the December 3, 2011, letter or the January 25, 2012, letter, didn't she.

A. She did not.

Q. And you called Progressive Insurance and told them that the check they sent had been lost and you needed a new one, didn't you?

A. I did not.

Q. Again, can you look at Commission Exhibit Roman numeral 10-14, page 3, the middle of the page, January 26, 2012, 6:52 a.m. log authored by Ira Saffron, it says, "attorney called, lost draft, put stop on draft and reissued draft." That's a reference to you, isn't it?

A. I don't know what it's a reference to, I never spoke to anyone from Progressive Insurance.

Q. Well, when we looked at the first page, and we looked at the January 20, 2011, 1:48 p.m. indication, there's -- in the log they said they spoke with LA Maryanne, if we look on page 2 on the October 31, 2011, 2:46 p.m. indication, towards the bottom of the page, authored by Ira Saffron, it says, "the attorney office, Wendy Weiner called, the attorney became a judge." So in both those times, they specifically said who they spoke to, and on page 3, at 6:52 a.m., on January 26, 2012, they said the attorney called, that was when you called, correct?

A. I never called Progressive Insurance and spoke to anyone about this matter.

Q. I'm going to show you what is marked Commission Exhibit 10, Roman numeral 10-12, this is the check, this check is sent -- you were one of the parties that it's payable to, aren't you?

A. That is correct.

Q. George Matisco, adult male, Michael McGuire, Esquire, as Attorney, it's made out to, correct?

A. Correct.

Q. And on the back of the check, it has George Matisco's signature, correct?

A. Correct.

Q. And then under that, it has your signature, your initials, correct?

A. I believe that's my signature stamp, but yes, it does.

Q. Do you know for a fact that that's a signature stamp or your signature?

A. Without seeing an original, I have no way of determining that.

Q. You received this check in the mail, didn't you?

A. I did not.

Q. I'm going to show you what's marked Commission Exhibit Roman numeral 10-13A, this is a claim payment inquiry from Progressive Insurance, it is dated January 26, 2012. If we can go back to Commission 10-14, page 3, the 6:52 a.m. note that's dated January 26, 2012, where it says "the attorney called, they lost the draft, put stop on draft and reissue draft," that's the same date as Commission Exhibit Roman

numeral 10-13A, correct?

A. Yes.

Q. Now, on Commission Roman numeral 10-13A, this talks about that a payment for $1,000 was made to George Matisco, adult male, and Michael McGuire, Esquire, and the address that is given is [redacted], and that's the address it was sent to, that's your address, correct?

A. That was the post office box we used, yes.

Q. And that's where the check was sent, correct, according to this document?

A. Yes, that's correct.

THE REFEREE: Are you getting all of this.

THE COURT REPORTER: Yes, sometimes, they're a little fast, just slow down a little bit.

THE REFEREE: Slow down a little bit, and try not to speak over each other.

MS. TISHMAN: I'm sorry.

Q. You were friends with Irene and Phillip Moore's son-in-law, Chris Depew,

correct?

A. I still am.

Q. And you became involved in the purchase of the house on [redacted] [redacted]?

A. I became aware of it, yes.

Q. But was gave the Moores advice about what they needed to do, didn't you?

A. I suggested that they not go without an attorney, at least for the contract stage.

Q. You spoke to them on at least two occasions, didn't you?

A. I actually spoke to Heather more than I spoke to Phillip and Irene, but yes.

Q. Commission Exhibit 10-42I, that is in evidence, this is your testimony from your prior appearance under oath at the Commission. It says:

"Q. Were you involved in representing the Moores?"

"A. I was not, but like I said, I didn't kind of give them guidance and I didn't give them legal advice, I did speak to the Moores on at least one or two occasions, I did speak with their daughter,

I don't have any recollection of being involved on this level, that's my only answer to that."

So you spoke to the Moores a few times?

A. Well, as I just said, I spoke to the Moores I spoke to Heather more than I spoke to her parents, but I don't dispute that I spoke to them once or twice.

Q. And you gave the Moores the name of All County, didn't you?

A. I did not give them that name.

Q. I'm going to read from your prior testimony here, page 353 volume 2, I'm reading from when you appeared before the Commission on June 19, 2017, under oath, page 353, volume 2, where you were asked this question and you gave this answer --

THE REFEREE: What line, please?

MS. TISHMAN: I'm sorry, starting at line 12.

Q. ^ Ck punctuation

"Q. And why would you have to have that contact instead of your brother?"

"A. Well, neither need to have

contact with him, I had given the Moores the name of a home inspector up in our area, and I assume that the Moores gave the realtor my name, I assume that, I don't know that for sure, I assume they gave him my name and he contacted me to schedule the thing and I give him the phone number for the home inspector."

Were you asked those questions and did you give that response.

A. You asked about the title company.

Q. I asked if you gave the Moores the name of All County, your title company?

A. Right, the passage you just read didn't deal with the title company, it dealt with the home inspector.

Q. It says,

"A. Well, neither need to have contact with him, I had given the Moores the name of a home inspector."

A. Correct, the home inspector, Jim Carnell.

Q. I am corrected, I'm sorry. Had you given the Moores the name of a home

inspector?

A. Yes.

Q. Ask you wife's e-mail address was given as the contact for the seller, correct?

A. It was.

Q. And Maryanne Schultz (phonetic) sent your wife the contract of sale?

A. I believe she did.

Q. And your wife printed out the contract and gave it to you to give to the Moores, didn't she?

A. She did not.

Q. Well, you brought the contract of the sale that was sent to your wife, and that she printed out, to the Moores' house, didn't you?

A. Ultimately, but it went to my brother's office first.

Q. You explained -- when you went to the Moores' house, you spoke to them and you went into their home and sat at a table with them, didn't you?

A. Sat at the kitchen table with them and talked about Cleanthony Early.

Q. You explained the documents, the contract of sale that you brought to them, didn't you?

A. I did not, they were premarked with "signed here" tickets, I told them to sign it where it's marked.

Q. You didn't tell them what the document was?

A. I did not.

Q. You told them where to sign the documents?

A. I believe that they knew, based on our conversation, that I was going to stop by with the contracts, so they knew what the documents were.

Q. You told them where to sign the document?

A. I didn't have to, they were marked with flags.

Q. Did you point out where the flags were, where they had to sign?

A. I think it was self-evident, they're big yellow and red markers that say "sign here."

Q. When you came in, didn't you say,

here, I'm here with the documents for you to sign, or something to that effect?

A. I handed them the envelope and when they took them out, I said, sign or initial where indicated.

Q. And you waited as they signed the documents, correct?

A. They signed the documents while I was having a glass of iced tea with them, yes.

Q. And you brought the documents away with you?

A. I did not.

Q. Now, I'm going to show you what is marked Commission Exhibit 10-17. This is a letter to Maryanne Schultz (phonetic), and this has your P.O. Box number on it, doesn't it, in the letterhead?

A. No.

Q. Well, it says [redacted], right.

A. That's correct.

Q. It says Ferndale, New York, and that's where your box is?

A. Correct.

Q. It's doesn't have Ken McGuire's office address of [redacted], does it?

A. It does not.

Q. And here, this letter says, "enclosed, please find three counterparts of the contracts for sale and our rider." This refers to the contracts that you delivered to the Moores and they signed in your presence, correct?

A. So this letter was in the packet with the contracts, and so it was there for them, yes.

Q. I'm going to show you what is marked Commission ^ Roman numeral ^ global Roman numeral 10-23. This is an August 25, 2014, 8:09 p.m. e-mail to Maryanne Schultz, to Michael McGuire at judgemcguire@[redacted], this document's in evidence. This document has your e-mail address of judgemcguire@[redacted], correct?

A. It does, yes.

Q. Your wife's e-mail address is not on it, is it?

A. It is not.

Q. Now, on the last paragraph, it states, "if you have any questions, concerns or comments, please feel free to contact me at ([redacted] or through e-mail." That's you cellphone number, isn't it?

A. It is.

Q. Doesn't have your wife's cellphone number on it, does it?

A. It's an error, yes, it does not.

Q. That wasn't my question.

A. Okay. It does not.

Q. Does it have your wife's cellphone number on it?

A. It does not.

Q. Does it have Ken McGuire's office phone number on it?

A. It does not.

Q. Does it have Ken McGuire's cellphone number on it?

A. I'm not sure if he had a cellphone at that time, so it does not.

Q. So he was a practicing attorney and he didn't have an e-mail or a cellphone?

A. He still uses a flip phone, so I

don't know when he got his first cell phone, I honestly don't know, he did not have e-mail until probably 2015 or so.

Q. And it says here to contact by that phone number or through e-mail, and the only two e-mails that Maryanne Schultz and Frenkel Lambert had was the judgemcguire@[redacted] or the [redacted]OB inky (phonetic) e-mails, correct?

A. I'm not sure if she may have also had the [redacted], because I know that there were some e-mails that were presented here that used that, but they would not have an e-mail that went other than to -- signed, other to Corrine or myself.

Q. Now, Commission Exhibit Roman numeral 10-24, that's in evidence, if you can look at this, and this has your e-mail address on it, correct?

A. It does.

Q. And it's dated August 26, 2014, at 5:16 in the morning, correct?

A. Correct.

Q. Now, the second paragraph, the second full paragraph, it says in the second

full sentence, I'm reading from the middle of the sentence, "since I'm often unable to check e-mail during the business day, it's most efficient that you contact me by phone or text message," and again, it has the number ([redacted], that's your cellphone number, correct?

A. That is correct.

Q. And on the last paragraph, it says," feel free to contact me by phone, [redacted], voice or text, or either e-mail me of the two e-mails that you have." That is your cellphone number again, correct?

A. That is correct.

Q. And the two e-mails that they're referring to are the judgemcguire@[redacted] and the OB inky e-mail, correct?

A. I can only assume so, yes.

Q. You were aware what was going on with the sale of the Moores property, weren't you?

A. The Moores were purchasing the property, I was aware that it was ongoing,

yes.

Q. You read the e-mails that were sent to and/or received to judgemcguire@[redacted], correct?

A. Not contemporaneous with them, but I have ultimately read them, yes.

Q. You reviewed them at the time they were coming in, didn't you?

A. I don't recall that I did, I don't recall that I did review them contemporaneous with when they were coming in.

Q. I'm going to show you what is marked Commission Exhibit 10-42A, in evidence.

"Q. Now, I'm going to show you what is marked Commission Exhibit --

MR. OSTRER: Excuse me, oh, pardon me for interrupting.

Q. Let me start again, this is from your testimony in front of the Commission in 2017.

"Q. Now, I'm going to show you what is marked Commission Exhibit 67, it's an e-mail from Maryanne Schultz, Tuesday,

August 26 at 8:09."

THE WITNESS: I'm sorry, Ms. Tishman, I think I got handed the wrong exhibit.

MS. TISHMAN: 42K.

THE WITNESS: I have 42A.

Q. Now you have the right one, correct?

A. I do, thank you.

Q. And just for the record, this exhibit, Commission Exhibit Roman numeral 10-42K, refers to Commission Exhibit 67 that was used during the Judge's appearance, that exhibit in this hearing, Commission Exhibit Roman numeral 10-42J.

"Q. Now I'm going to show you what is marked Commission Exhibit 67, it's an e-mail from Maryanne Schultz, Tuesday, August 26th, at 8:09, to judgemcguire@[redacted], CC to obinky@[redacted], did you send this e-mail?"

"A. No, this is from Maryanne Schultz."

"Q. Did you receive this e-mail?"

"A. I probably did."

"Q. Do you remember reviewing it?"

"A. I probably would have forwarded

it to my wife.

"Q. Did you know that your e-mail address was being used?"

"A. Well, when I received this e-mail, I certainly would have known that."

So at the time that this e-mail was sent, you knew that your e-mail address was being used in relationship to the sale of the Moores property?

A. I did but that wasn't the question you had asked me.

Q. You knew that you --

A. I did know my e-mail was being used, but you asked if I had read the e-mails and I said that I didn't believe I had read them contemporaneous, I have read them since.

Q. Well, you state here that you forwarded to your wife?

A. Correct?

Q. So you forwarded it to your wife without reading what it was about?

A. Correct.

Q. But when you looked at it, you knew it had to do with the Moore property,

didn't you?

A. I don't remember what the caption on the e-mail was, whatever the caption was --

Q. I'll show you Commission Exhibit 10-42J, and it's the subject matter on this, this is in evidence, it's from Maryanne Schultz to judgemcguire@[redacted], Tuesday, August 26, 2014, 8:09 a.m., the subject matter, Penny Mack to Moore, [redacted]. So the subject matter alerted you that this had to do with the Moore property, correct?

A. It probably did, that's why I would have forwarded it to my wife.

Q. At that point, you knew that your e-mail address was being used in relationship to the sale of the property to the Moores?

A. I did.

Q. And you did not do anything to stop your e-mail address being used at that time, did you?

A. I did not.

Q. You never told your wife not to

use your e-mail address, did you?

A. I did not.

Q. And your wife was handling part of the Moore property, wasn't she, that's why you forwarded that e-mail to her, correct?

A. I did, yes, she was helping them, yes.

Q. And you were aware of the issues surrounding the inspection of that house, weren't you?

A. I was aware that they were having difficulty getting the inspector in to be able to check the various systems.

Q. And you knew there was a problem with the oil tank, correct?

A. That I didn't know until much later.

Q. You knew your wife was working on that problem, didn't you?

A. I knew that my wife was working on a problem, I did not know what the specific problem was.

Q. And you knew the problem had to do with the Moores' house, correct?

A. I did, yes.

MS. TISHMAN: I'm sorry, give me one second, please?

Q. Now, I'm going to show you what is marked Commission Exhibit ^ ck global; I'll stop marking this Roman numeral 10-26. Now, if you can look, that is a series of e-mails starting on -- it's in evidence, this document. It's a series of e-mails starting on August 25, 2014, at 8:55 p.m., and going to August 26, 2014, at 8:24 a.m., and your e-mail address is on these e-mails, either as the receiver or the sender of the e-mails?

A. That is correct.

Q. Now if we can go to page 3 --

A. Mm-hmm.

Q. -- and look at the 8/26/2014 e-mail, 3:47 a.m. --

A. Yes.

Q. You sent this e-mail, didn't you?

A. I did not.

Q. The prior e-mail on page 4 at 10 p.m., was sent to your e-mail address, correct?

A. It was.

Q. And when you testified under oath, here, in front of -- I'm sorry, you're testimony right now is that you did not send the 3:47 a.m.?

A. Yes, and that's different from my testimony two years ago.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 10-42P. Two years ago, when you testified before the Commission, you told the Commission that you had sent that e-mail, didn't you?

A. Two years ago, I had taken responsibility for it, I have learned, since then, that I was incorrect two years ago.

Q. So you gave incorrect testimony, under oath, two years ago?

A. Well I initially -- to be fair, I initially said I didn't recall writing it, and when you pushed me with several other questions, I said, well, I don't know if my brother is up at that time, I probably did write it. I, since then, so I believe my testimony at that time is correct, since

then, I've learned that it was not correct.

Q. Didn't you say, on the date when you testified in front of the Commission, that you took responsibility for sending that e-mail, you used the word responsibility, didn't you?

A. I did, that was after first indicating at line 5 that I didn't recall, and when I was further pushed, didn't have another answer, I did take responsibility. I believe I was correct at that time, I've learned since than, that I was incorrect.

Q. Now, in this e-mail, the 3:47 e-mail, it states that "I'm directing that you cease and desist from making any of your crude comments to my clients, if they persist, I will have no option but to take action against you." Those words, cease and desist, and taking action against you, that is words that an attorney would use, correct?

A. An attorney could use those words.

Q. That's legal -- that's acting as an attorney, right?

A. No.

Q. When someone says, directing them to cease and desist, that's not acting as an attorney?

A. Telling someone to cease and desist, that alone does not designate as an attorney, but Ken McGuire is an attorney, so if he used that language.

Q. That morning, after that e-mail was sent at 3:47 a.m., you spoke to Maryanne Schultz, didn't you?

A. I did not.

Q. She states, on Commission Exhibit 10-26, at 8:19 in the morning, page 1, "Jeff, Mr McGuire and I just spoke," isn't she referring to you?

A. She is not.

Q. She didn't have -- the only number she had, from the prior e-mails, were your cellphone number, correct?

A. She did have my cellphone number, correct.

Q. There's nothing in the e-mails that suggest that she had any other number but your cellphone number?

A. That would not have prohibited somebody from calling her.

Q. I'm going to show you what is marked Commission 10-29, Roman numeral 10-29, we can look at the bottom e-mail on this one-page document that's in evidence. It's from judgemcguire@[redacted], Tuesday, August 26, 2014 at 8:48 a.m., and it's to Maryanne Schultz. This is from your e-mail address, correct?

A. It is.

Q. And it's the same date as the prior exhibit that I showed you, Commission Exhibit 26?

THE REFEREE: 10-26.

MS. TISHMAN: 10-26, thank you.

A. It is.

Q. And what I showed you before, 10-26, where Maryanne Schultz says she spoke to Mr. McGuire, that's at 8:19 a.m., and this e-mail, 10-29, is at 8:48 a.m., that's after Ms. Schultz says she had spoken to Mr. McGuire, correct?

A. I believe this is at 9:35 a.m.

Q. Look at the bottom e-mail.

A. Oh, I'm sorry, I stand correct, it's 8:48, yes.

Q. And in this e-mail, the last sentence says, "to clear up the confusion, I am handling this matter, but Mike is my brother, also an attorney but not practicing full-time right now, and so you may, from time to time, speak with him as well. Sorry for the confusion." And this was written because you had spoken with Maryanne Schultz earlier that morning?

A. I didn't speak with her that morning.

Q. I'm going to show you what is marked Commission Exhibit 10-28. If we can look in the middle of the page, the September 3, 2014, 10:33 a.m. e-mail, do you see that?

A. I do, yes.

Q. And that is from your e-mail address, judgemcguire@[redacted]?

A. It is.

Q. And that e-mail states, "I am on vacation from September 16th through 24th," correct?

A. Correct.

Q. And that was the time that you were on vacation, you went to Florida, correct?

A. I was not.

Q. You were on vacation during that time, weren't you?

A. I would not have been on vacation at that time because that's the middle of volleyball season.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 10-36, this is in evidence. This is an e-mail from Wendy Weiner to Sara Katzman (phonetic) dated August 5, 2014, at 10:53 a.m. "Hello, please note that upon review of Judge McGuire's calendar, it appears he will be away from Tuesday, September 16, 2014, through Tuesday, September 23, 2014. He will return into the office on September 24, 2014." Those are the exact dates that are given in the e-mail in Commission Exhibit Roman numeral 10-28, correct?

A. They are.

Q. I'm going to show you what is marked as Commission 10-30, it's in evidence, if you can go to page 2, top e-mail, sent from your e-mail address on September 17, 2014, at 1245 p.m., that's the one I'm referring to. This e-mail refers to a vacation down in Florida, it says, "Good morning, I am down in Florida," and the date is September 17th -- I'm sorry, let me finish reading it. "Good morning, I am down in Florida but do maintain an office here so I can keep up to date on progress." And then the letter goes on. That is dated September 17, 2014, and that is within the dates that was given as your vacation to Sarah Katzman, correct?

A. It is.

Q. You suggested that the Moores use All County Abstract Company, didn't you?

A. I don't recall whether they asked me or spoke to Corrine about that, if they had asked, I would have recommended them, yes.

Q. And that's a company that you had been using for years when you were in

private practice?

A. I did.

Q. I'm going to show you what is marked Commission Exhibit 10-37, Roman numeral 10-37, it's in evidence. This is an e-mail from Wendy Weiner to you, relating about a phone call that she received from Irene and Phillip Moore, you received this e-mail, didn't you?

A. I did.

Q. And you called the Moores back, didn't you?

A. I don't recall whether I did or not.

Q. Well, you called someone from the Moores family back, in relationship, since they're a family to a good friend of yours?

A. Correct, I don't know if I called Phillip and Irene, I probably would have called Chris or Heather.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 11-12.

MS. TISHMAN: You have it, Counselor?

MR. OSTRER: I do, thank you very

much.

Q. Commission Exhibit Roman numeral 11-12, the middle of the page, July 30, 2014, at 3:43 a.m., this is an e-mail from you to Zachary Kelson at your e-mail address, judgemcguire@[redacted], the third full sentence, "I have a friend who's being a home in Napanoch, he is an attorney from out of the area and called me yesterday to ask who we use up here." That's a reference to the Moores, isn't it?

A. That's correct.

Q. You represented Ricky Pagon when he wanted to purchase land from Barbara Clark in 2010, correct?

A. That's correct.

Q. Now, you testified that Corrine took care of everything having to do with Pagon property in 2011?

A. No, that's not accurate. Oh, in 2011?

Q. Yeah, that's what you testified to?

A. I don't believe that anything was done in 2011, I think it was either '12 or

'13.

Q. Well, after you became a judge, you received, sometime in 2012, a phone call from the seller, didn't you?

A. We received a message in chambers, yes, I received a message from Ms. Weiner, yes.

Q. And you called the seller back, didn't you?

A. I don't recall calling the seller back.

Q. I'm going to show you what is marked Commission Exhibit 10-42R, and this is in evidence, it's a statement from your prior testimony in front of the Commission in 2017, line 8. "And so this woman called, I called her back and it turned out that the property was, she had noticed, on foreclosure again." So when the woman called, you called her back, didn't you?

A. That's what this says, I really don't recall calling her back, I know that ultimately, what I did was send a message to Ricky that he needed to go to the treasurer's office.

Q. But in 2017, you testified that you had called her back?

A. I said -- I don't recall -- I recall this testimony, I don't recall, as I sit here today, whether I called her back or not.

Q. And in 2013, you had conversations with Ricky Pagon about the property, right?

A. I had a conversation with Ricky that he had the money and wanted to finish the deal.

Q. And he brought you a check for the property?

A. I don't recall whether he brought the check or not, the check ultimately was put in with the documents that Corrine sent up, but I don't recall whether he brought it to me or Corrine met him, I just don't recall that.

Q. Going back to the exhibit you were just looking, Roman numeral 10-42R, reading now from line 13, "then maybe a year later, Ricky calls and says, I have the money, I said, all right, he brought me a

check, we took the documents that had already been drafted, mailed them up to Binghamton, they mailed them back, and I think I gave them to Ricky and he took them down and got them recorded, but it's possible that I went and recorded them." So Mr. Pagon had brought you the check?

A. That's when I testified to, but today, I don't recall if he brought it to me, if he dropped it off at the house, I just don't recall. I don't dispute that at some point the combination of myself and Corrine, received the check.

Q. And you were a judge at this time correct?

A. I was.

Q. And your memory was better in 2107 then it was now, isn't it?

A. I don't know, it's somewhat semantics, a check was received, whether it was received by him bringing it to me, dropping it at the house, I just don't recall.

Q. Now, you sent -- after Mr. Pagon told you he had the money and brought you a

check, you sent a letter to the seller, the Clarks, correct?

A. A letter was sent, correct.

Q. You sent that letter, didn't you?

A. I believe Corrine actually sent that letter.

Q. You drafted the letter, didn't you?

A. I don't recall, I know that she went and got the documents out of the file and put the date on the deed, I don't recall whether or not I drafted a letter or not.

Q. Well, there was a cover letter that went along with the documents?

A. There probably was, I just don't recall if I drafted it or Corrine drafted it.

Q. I'm going to show you what is marked Commission Exhibit 10-43C, this is from your testimony in 2017, line 19.

"Q. And did you send the documents?"

"A. I did."

"Q. And you were a judge at the time?"

"A. When I sent the documents, I

was."

"Q. And did you communicate with the seller?"

"A. Only by sending the documents and having her return them to me."

"Q. Did you sent a letter to the seller, like a cover letter, with the documents?"

"A. I probably did."

"Q. And this was when you were a judge?"

"A. It was."

"Q. And what letterhead would you have used?"

"A. I don't recall, it could have been my office letterhead or it could have been just a generic letterhead."

That was your testimony in 2017?

A. That was my testimony, I don't, today, have any recollection of the specifics of whether I drafted a letter, I don't believe I did, I believe Corrine did, but I really don't recall.

Q. But your memory was better in 2017?

A. It's not a matter of my memory being better than or now, as I sit here now, I don't' recall the mechanics of that.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 10-39. This is a deed in the matter having to do with Ricky Pagon?

A. Yes.

Q. And this is a certified copy that's in evidence. On the second page of this document, which is the county clerk's recording page, it states on the left-hand side that the date, November 14, 2013, you were a judge at that time?

A. I was.

Q. And it's says "description deed," and then it and it says "received from" and it says "McGuire." That it was received from you, the document states, and if we can go to page --

MR. OSTRER: Objection as to the statement, I don't think that was a question.

Q. Does the document state that it was received from you?

A. It says it was received from McGuire, it could have been myself or Corrine, I may have walked them down and filed them or she may have, I don't recall.

Q. Going to the fourth page of the document --

A. Mm-hmm.

Q. -- of the deed, on the bottom right corner, it says, "return by mail to Michael McGuire, [redacted]" That's your name and the address for your law firm that you were using at that time?

A. That is correct.

Q. You represented Christopher Lockwood on a speeding ticket in 2010, correct?

A. I did.

Q. When you became a judge, Connie Vancuren called the chambers, left a message with Ms. Weiner, and you returned that call, didn't you?

A. I did.

Q. You didn't have your brother return that call, did you?

A. I did not.

Q. After the call from Ms. Vancuren, you spoke to Wendy Weiner about the matter, didn't you?

A. I don't recall that.

Q. You requested that Wendy Weiner fill out the application to amend the traffic infraction?

A. I don't recall that.

Q. You reviewed the application to amend the traffic infraction after Ms. Weiner had filled it out, didn't you?

A. I don't recall doing that, no.

Q. I'm going to show you what's marked Commission Exhibit 10-40E. This is an August 5, 2011, letter, this letter has your [redacted]?

A. That is correct.

Q. And you approved this letter before it was sent out, didn't you?

A. I did not.

Q. All the documents in the court file had your address, your law firm address, either 111 Sullivan or [redacted] on them, didn't they?

A. They did.

Q. None of the documents in the file had chambers address on them, did they?

A. They did not.

Q. During this time period that we were talking about with all these cases, you knew letters were going out on your letterhead, correct?

A. I knew some letters were going out, I didn't know all the letters were going out.

Q. And you knew that as a judge, that a judge's name cannot be tied to a law firm, correct?

A. That's correct.

Q. But you still had letters being sent out on your letterhead, correct?

A. Yes.

Q. And you were still using your fax machine that said McGuire Law, correct?

A. I was.

Q. And you were still using an e-mails that referred to you as a judge?

A. I was.

Q. And you were still using the

address on letters that you tied to your law firm, correct?

A. I was.

Q. And you were still using your voicemail, correct?

A. I was.

Q. And you nothing to stop this or to change this from happening, did you?

A. I did not.

Q. You didn't correct the problem in the first six years of your term?

A. Well, I did in the first six years, the fax machine, I don't think was still being used in '17, I think it self-destructed in '14 or '15.

Q. Well, you said you used your voicemail to 2016, correct?

A. Okay. Well that would have been five years.

Q. From today's perspective, do you believe you violated the rules by using your letterhead, the fax, and law firm address?

A. Based on what I know today, I absolutely did.

MS. TISHMAN: I'm moving on to a new

topic, do we want to take a break now?

THE REFEREE: If you would like to break, that's fine with me, I was going to wait till 11 but we can do it now.

MS. TISHMAN: Why don't we do it now since --

THE REFEREE: Are we good for ten minutes or do you want to take five minutes?

MS. TISHMAN: Ten minutes.

THE REFEREE: Ten minutes, off the record.

MR. MAISONET: Off the record.

(Whereupon, a recess was taken at this time.)

MR. MAISONET: We are on the records.

THE REFEREE: Please proceed, Ms. Tishman.

MS. TISHMAN: Thank you.

Q. You were assigned the Dean versus Boise (phonetic) case in 2013, correct?

A. I was.

Q. And in 2007, you represented Sean Boise's mother, didn't you?

A. Marylou Boise, yes.

Q. And that's Sean Boise's mother,

correct?

A. Yes, it is.

Q. And Sean Boise is one of named litigants in the Dean versus Boise case that you presided over in 2013?

A. Yes.

Q. And you helped Sean Boise's mother transfer land to her son, Sean Boise?

A. She came into the office and asked us to draft the deed transferring a piece of land from her to her son.

Q. And the land that she transferred to her son, Sean Boise, that land was the same parcel of land that was at issue in the case Dean versus Boise, correct?

A. I didn't know that until 2017 when you pointed it out.

Q. Well, you were asked to recuse yourself based on the fact that you represented Sean Boise's mother in 2013, correct?

A. I was.

Q. So you knew there were allegations that you should not preside over the case because you had represented the

mother?

A. I made a full disclosure, and both attorney's, in February 2013, indicated that they were okay with me presiding over the case.

Q. But it was the same parcel, at issue, in the case Dean versus Boise, that you had transferred from the mother to the son?

A. I did not know that until 2017.

Q. That wasn't my question.

A. It turns out yes, I'm aware of that now.

Q. And the Dean's, right at the start, asked that the case be assigned to a different judge, didn't they, the moment it was assigned to you?

A. They did.

Q. In February 13, 2013, the parties appeared before you, didn't they?

A. Correct.

Q. And you, at that time, you made a record that you had represented Ms. Boise, but you did not recuse yourself at that time, did you?

A. I made a record and asked that there was -- the record speaks for itself, but I asked if anyone had a problem with me sitting on the case and neither indicated that they did.

Q. And you didn't disqualify yourself at that time, did you?

A. I did not.

THE REFEREE: So are you saying at the time that you made the record -- what's the date of that, I'm sorry?

MR. OSTRER: February '13.

MS. TISHMAN: The transcript is -- I'm sorry, February 13, 2013.

THE REFEREE: So at the time that you made that record on February 13, 2013, you were unaware that the land that was involved in your representation previously was the same land at issue in the case?

THE WITNESS: I didn't, and if I can explain, I'd be happy to do that.

THE REFEREE: Did you make any effort to determine whether that was the case?

THE WITNESS: I didn't, I made the disclosure that I had done a real estate

transactions. Ownership of the land was never at issue, it was a partition action, so there was never going to be any information that would have played any role in anything we did.

THE REFEREE: But if the subject matter of your representation was the same subject matter of the case that you were sitting on, that would have raised different issues, right?

THE WITNESS: I honestly don't see where it would have because ownership wasn't at issue, it was a partition action, everybody knew that the two people owned the land.

THE REFEREE: Okay. Please proceed.

Q. You knew that the land that you helped Marylou Boise transfer to her son, Sean Boise, was in the Town of Neversink?

A. I did.

Q. And you knew that the property that was at issue in the Dean versus Boise case, when you presided over it, was in the Town of Neversink also, didn't you?

A. I did.

Q. And you knew that the property that Ms. Boise transferred to her son, Sean Boise had involved something that she had inherited from Justus Asthalter, J-U-S-T-U-S, last name A-S-T-H-A-L-T-E-R?

A. I really don't recall, as I sit here, how much I knew, she came into the office and asked -- she give us an old deed and asked us to prepare a new deed, my dealing with her were about an hour or less, there was no full-blown transaction.

Q. I'm going to show you what is marked Commission Exhibit 11-39, it's in evidence, Roman numeral 11-39. And if you can look at the description of property, which is page 4 of this document. The property is described on this page, correct?

A. Yes.

Q. And it tells that it's in the Town of Neversink, correct?

A. It does.

Q. And it tells how she received the property and where it came from, correct?

A. Yes.

Q. And these facts were also facts

that came up in the Dean versus Boise case when you presided over it, correct?

A. No.

Q. Wasn't there discussion, in the Dean versus Boise case, about how the two parties, the Deans and the Boises had inherited the property from their, I believe it was, one was a father and one was an uncle of grandparent from the family members?

A. But that wasn't a fact in dispute.

Q. But there was a description of where the property had come from?

A. To be clear, there was a description, but that issue was not in dispute, that both conceded the lineage that the property had, there was no dispute about that.

Q. My question is, you knew, from Commission Exhibit Roman numeral 11-39 where the property was, who had owned the property in the past, who they inherited the property to, and then you had these same set of facts when you were assigned the case and presided

over the case in 2013?

A. I did not, I'm trying to answer your question. When I made the appearance in February of 2013, I was aware and disclosed that I had represented Marylou Boise in a real estate transactions, the attorneys probably were aware that it related to the same property, the Boises and the Deans own hundreds of acres in the Town of Neversink, I didn't consciously know that it was the same parcel and then had been deep enough into the case, at that point to have gone back to 2007 and look at the chain of title from the deed. So I didn't know that, but even at that, that issue was not in dispute, it was a partition action. In order to file a partition actions, you have to acknowledge that they both own the same parcel of land.

Q. It was a partition action, but it was the same property that you had worked with the mother about?

A. I don't dispute that today.

Q. Now, when -- don't you think that the fact that you had previously represented

one of the parties regarding the same property that was now in dispute, would cause the public to doubt your impartiality?

A. No, and I made a disclosure that I represented her.

THE REFEREE: Excuse me, but you didn't make a disclosure that you represented her with respect to the same parcel of property?

THE WITNESS: I did not.

THE REFEREE: And that's because you're claiming not that you didn't know that?

THE WITNESS: I didn't know that it was the same parcel of property.

THE REFEREE: My question is, what did you do to find out whether or not it was the same parcel of property?

THE WITNESS: Nothing.

Q. On February 13, 2013, when you presided over an appearance in court of the parties, you made a record that the Boise had previously worked for Ms. Canele (phonetic), correct?

A. I did.

Q. And when you make that record, you stated that it was in the past, that they had worked for her a year before?

A. That's correct.

Q. At no time after February 13, 2013, did you tell the parties that the Boise's were continuing to do work on Ms. Canele's home?

A. That is correct.

Q. You never made a record that the work by the Boise's were ongoing, correct?

A. That's is correct.

Q. Even though Ms. Canele told you the work was going on, you never made a record of this to the parties?

A. She never told me that.

Q. Didn't you tell Ms. Canele that you had told the parties that the Boise's were continuing to work on her property?

A. I'm sorry, I think I missed part of the question.

MR. OSTRER: Objection to form.

THE REFEREE: Rephrase it, please.

Q. Didn't you tell Ms. Canele that you had told the Deans and the Boises that

the Boises were continuing to do work on Ms. Canele's house?

A. I told them that they had completed the work because that was my understanding, beyond that, Ms. Canele told me that they were doing some touch-up work, replacing a cabinet door, and she never told me about a new contract.

Q. So your testimony is that she did tell you they were doing touch-up work in her house?

A. Stuff that related to the old contract, and I never made that disclosure.

Q. Did you make that disclosure?

A. I did not.

Q. You never directed or ensured that Ms. Canele did not participate in any aspect of the case, did you?

A. There was no reason to, so no.

Q. Did you ever tell Ms. Canele not to hold conferences in the case?

A. No.

Q. Did you ever tell her not to attend a site visit?

A. No.

Q. When the Boise made a motion in August of 2014, asking for your disqualification, you denied it, didn't you?

A. I did.

Q. You did not tell Ms. Canele not to work on that decision, did you?

A. I did not.

Q. You are friends with Zachary Kelson, aren't you?

A. He's a colleague, yes.

Q. You have lunch with him while you were a judge?

A. On occasion, yes.

Q. You referred cases to him?

A. I don't want to get into semantics, but I don't believe I referred cases to him.

Q. You told people to contact him regarding cases, legal cases?

A. I did not tell anybody to contact him, there was one matter where I sought the name of an attorney and he said he would handle that.

Q. Didn't you send him information on cases?

A. Sent him information on a case where he had already been retained, so yes.

Q. He's a good friend of yours, isn't he?

A. I wouldn't really call him a good friend, he's a colleague, it's a small community, he's a colleague.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 11-3, it's in evidence. On page 3 of this, bottom of page 3, the December 3, 2012, e-mail from you to Mr. Kelson, 6:48 p.m., do you see that?

A. I do.

Q. And you state "that sounds great, don't worry, you did not fail me at all, we will handle it, you are a great and wonderful friend, missed you at Brother Bruno's today." So he is a good friend, isn't he?

A. He's a friend, yes, he's a good friend.

Q. Now, I'm going to show you what is marked Commission Exhibit Roman numeral 11-10, in evidence. If you can look at the

first page, April 19, 2012, 7:35 p.m., from Michael McGuire, judgemcguire@[redacted] to Zachary Kelson. "Thank you very much, I can't tell you how much I appreciate your friendship, our lunch breaks are a great therapy for me, Mike." So again, you're writing to him about this friendship and what it means to you, correct?

A. Yes.

Q. There were numerous occasions, after you became a judge, that you asked Mr. Kelson to help you with cases involving family members or friends, correct?

A. I spoke to him about a couple of cases, yes.

Q. Well, you spoke to him about W[redacted] M[redacted], correct?

A. I did.

Q. You spoke to him about Tina McTighe, M-C-T-I-G-H-E, correct?

A. There was some communications, the initial communication was not from me on Tina McTighe.

Q. But there was communication, back and forth, between you and Mr. Kelson having

to do with Tina McTighe?

A. There was.

Q. And you had communications between you and Mr. Kelson having to do with the case, Fernandez -- a case involving Jerry Fernandez and the Estate of Lydia Fernandez?

A. There were.

Q. And there were communications between you and Mr. Kelson having to do with Jerry Fernandez and his case that had to do with Eye Physicians of Orange County versus Fernandez?

A. There was.

Q. And there were communications between you and Mr. Kelson having to do with Lindsey Amoroso, A-M-O-R-O-S-O?

A. There was.

Q. And there were communications between you and Mr. Kelson having to do with the traffic ticket involving Willy Williams?

A. There was one communication regarding Willy Williams, yes.

Q. And there was communication between you and Mr. Kelson having to do with

Lori Shepish, S-H-E-P-I-S-H?

A. There was.

Q. And you referred that case to Mr. Kelson, and he was paid for that case, wasn't he?

A. Ms. Shepish case, I never spoke to him in advance, he sent me a gratuitous e-mail afterwards.

Q. When Mr. Kelson was handling the cases I just mentioned, you stayed involved in those cases?

A. He gave me periodic updates on what was happening with them, yes.

Q. He updated you about the Jerry Fernandez case involving the estate of Mr. Fernandez's mother?

A. He did.

Q. And he updated you about the Jerry Fernandez case involving the case about the eye physician, didn't he?

A. He did.

Q. And he updated you about the Lindsey Amoroso case?

A. He did.

Q. And he updated you about the

Willy Williams case?

A. Willy Williams is very different from the others, so he forwarded me a thank you note that Willy had sent him.

Q. And the thank you note had to do with, Mr. Kelson had resolved the traffic ticket, correct?

A. Yes, but --

Q. And so, he updated you by sending you the thank you letter and also the e-mail that Mr. Kelson had sent to Willy Williams saying that the traffic ticket had been resolved?

A. He did.

Q. And he updated you about the Lori Shepish matter?

A. He did.

Q. And you thanked him for the work he did on Lori Shepish?

A. I did.

Q. You also sent him documents, didn't you?

A. I did.

Q. In the Jerry Fernandez case?

A. Yes.

Q. That has to do with the estate, you sent him the summons, didn't you?

A. I did.

Q. And in the Jerry Fernandez case, you asked Mr. Kelson to contact people on Mr. Fernandez's behalf, didn't?

A. I did.

Q. And Mr. Kelson showed you documents he was sending out on cases?

A. He sent me copies of documents he was sending out on cases.

Q. And did you ever tell him to stop sending you copies of documents that he was sending out on cases?

A. I did not.

Q. And he sent you documents on the Jerry Fernandez case involving the estate of Mr. Fernandez's mother?

A. Yes, he did.

Q. And he sent you documents on the Jerry Fernandez case involving the eye physicians?

A. He did.

Q. And he sent you documents on the Lindsey Amoroso matter?

A. I don't remember if he sent me documents, he certainly sent me communications on that.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 11-21. And if you can look at the document that's in evidence, and the first e-mail from Zachary Kelson, Monday August 8, 2011, at 4:12 p.m., to judgemcguire@[redacted].

A. Yes.

Q. It states, "Mike, attached is Ms. Amoroso's waiver, do you want me to mail it to her, do you have an e-mail address."

A. So this has refreshed my recollection, he did send me a copy of the waiver.

Q. And you reviewed -- I'm going to show you what is marked Commission Exhibit Roman numeral 10-23 -- I mean 11-23, I'm sorry. And if you look at Roman numeral 11-23, the first e-mail is from Zachary Kelson to you, at judgemcguire@[redacted], April 3, 2012, at 11:21 a.m. It says, "Please see the attached," and what is attached is a letter that he sent to

Ms. Amoroso and a document from the Plattekill Town Court, P-L-A-T-T-E-K-I-L-L.

A. Yes, I acknowledged that I did receive that.

Q. And your response to Mr. Kelson is that you had reviewed the document and you gave him your opinion about the document, correct?

A. Yes.

Q. Mr. Kelson asked you to contact people he was representing, correct?

A. He asked me to contact people -- could you be specific?

Q. Well, he sent you documents and asked you to have his client sign them and return them to him?

A. Yes.

Q. And he did this in the McTighe case, correct?

A. He did.

Q. And you agreed to help him and make it possible for Ms. McTighe to sign these documents, correct?

A. Well, he sent them to Corrine and myself, and I responded that I would

follow-up and see that it was done.

Q. So you helped him make sure it was done?

A. Actually, I didn't, my wife did, but yes.

Q. And you told him that you would make sure it was done, didn't you?

A. Correct, and I did speak to my wife to make sure it was done.

Q. You did not tell Mr. Kelson to stop sending you documents, did you?

A. I did not.

Q. You didn't tell him, Mr. Kelson, to stop asking you to contact his clients, did you?

A. I did not.

Q. Mr. Kelson asked you to deliver messages about what was happening on cases involving Jerry Fernandez, correct?

A. He did. Well, those case were completed, he asked me to follow-up with Jerry to remind him to send checks, yes.

Q. Well, that was part of the case, there was a stipulation of how much Mr. Fernandez had to pay timely?

A. Again, I don't want to play semantics, but the cases were resolved and that was the follow-up, yes.

Q. He asked you to deliver messages --

A. He did.

Q. -- to Mr. Fernandez, involving the estate of Lydia Fernandez?

A. He did.

Q. And also the eye physician case?

A. He did.

Q. And you offered to set up a dinner at Jerry's restaurant with Mr. Kelson?

A. I did.

Q. And that was a way for you to thank Mr. Kelson for his help in the Jerry Fernandez matters?

A. Yes.

Q. Do you believe it was proper to set up this dinner at the same time Mr. Kelson was appearing before you?

A. No.

Q. Now, Mr. Kelson notified you --

MS. TISHMAN: Excuse me, one second.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 11-15. And if you can look at what is marked in evidence, Commission Exhibit Roman numeral 11-15, you can look at the bottom of the first page, the e-mail, October 28, 2014, at 10:58 a.m., from Zachary Kelson to Michael McGuire at judgemcguire@[redacted], it says, "FYI," and attached to that document is a letter that Zachary Kelson sent to Judge Cione in the Town of Goshen, and you saw this letter, didn't you?

A. Yes, I referred to this in an earlier question, yes.

Q. And this letter states that Mr. Kelson cannot appear on Jerry Fernandez's case because he's appearing in front of you in family court?

A. That is correct.

Q. At the time that you saw this letter from Zachary Kelson, did you think there was a conflict in Mr. Kelson appearing before you in the matter of Sullivan County ^ ck D[redacted] versus C [redacted]?

A. At that time, I did not.

Q. You did nothing to rectify the situation, you didn't notify the attorneys or the parties in D[redacted] versus C[redacted]

A. I did not.

Q. You didn't make a record of the conflict in the case, did you?

A. I did not.

Q. You didn't disqualify yourself from the D[redacted] versus C[redacted] case, did you?

A. I did not.

Q. At the same time that you were referring cases to Mr. Kelson and Mr. Kelson was updating you on these cases, Mr. Kelson represented parties in Supreme Court of cases that were assigned to you?

A. That is correct.

Q. And he represented parties in M[redacted], M-[redacted], versus B[redacted] [redacted] in Supreme Court?

A. He did.

Q. And he appeared before you, in that case, on January 24, 2014?

A. He did.

Q. And you addressed him in court, didn't you?

A. I did.

Q. Mr. Kelson argued his position in court, didn't he?

A. He did.

Q. And you made a decision in that case, right?

A. I did.

Q. And at the same time Mr. Kelson was appearing before you in Massey versus Board of Election, you were in contact with him about Eye Physician of Orange County versus Gerardo Fernandez?

A. Yes.

Q. And can you were in contact with him, at the same time, in this case of County of Sullivan versus Estate of Lydia Fernandez?

A. Yes.

Q. And you never made a record of your relationship with Mr. Kelson in the Massey versus Board of Election case?

A. I did not.

Q. And you never disqualified yourself in that case, did you?

A. I did not.

Q. FIA Credit Card versus Fishbain, F-I-S-H-B-A-I-N, case, you were assigned that case?

A. I was.

Q. And that's a Supreme Court matter, correct?

A. It is.

Q. And Kelson filed papers in court on that case?

A. He did.

Q. And you issued decisions in that case?

A. I did.

Q. And the decisions were sent to Kelson, he was CC'd on those decisions, they were sent to him, the decisions that you issued?

A. He was.

Q. And Kelson's name were on documents that you signed and were sent out by your chambers, correct?

A. It was.

Q. At the same time that FIA Credit Card versus Fishbain was assigned to you, Mr. Kelson was representing Jerry Fernandez

in the eye physician case and the estate of Lydia Fernandez case?

A. He was.

Q. And you never made a record of your relationship with Mr. Kelson, did you?

A. I did not.

Q. And you never disqualified yourself?

A. I did not.

Q. You were assigned the Miller versus Liberty, 2013 case?

A. Yes, it was a whole series of cases, yes.

Q. But you were assigned the 2013 case?

A. I was.

Q. And there was a conference held by the parties with your law clerk Mary Grace Camele, correct?

A. Yes.

Q. And you signed off on that conference stipulation, correct?

A. That was a preliminary conference order, a discovery schedule, if that's what you're referring to.

Q. I'll show you what's marked as Commission Exhibit Roman numeral 11-31B, in evidence.

A. So this refreshed my recollection, this is a preliminary conference order, I did sign off on it.

Q. And Zachary Kelson's name appears on the first page?

A. It does.

Q. And Zachary Kelson signed it on the third page, correct?

A. He did.

Q. And his signature is right above your signature, correct?

A. It is.

Q. And he signs it prior to you signing it, correct?

A. Yes.

Q. And at the same time, Mr. Kelson was helping you on your son's case, correct?

A. Mr. Kelson, yes, had made a phone call to Oneonta, I'd have to rely on the dates, but I'll answer yes.

Q. You never made a record --

A. Umm -- just hold on one second,

I'm not sure that was at the same time. No, that was not at the same time.

Q. Well, the e-mails and the records will speak for themselves, I'm just going to move on.

A. Well, the stipulation and order is September 9, 2013, and my letter is December 2, 2012, so he had stopped helping with my son before December 2, 2012.

Q. The records will speak for themselves and we'll move on.

A. Fine.

Q. You never made a record of your relationship with Mr. Kelson in the Miller versus Liberty, 2013, case, did you?

A. I did not.

Q. And you never disqualified yourself in that case?

A. I did not.

Q. In the Miller versus Liberty, 2014, case, that case was assigned to you?

A. It was.

Q. And you never made a record in that case about your relationship with Mr. Kelson, did you?

A. I did not.

Q. And you never disqualified yourself?

A. I did not.

Q. The 2 Sullivan Street Trust versus Town of Liberty, you were assigned that case, correct?

A. I was.

Q. You signed off a conference stipulation in that case, didn't you?

A. I did.

Q. And that conference stipulation had Zachary Kelson's name on it, correct? I'll show it to you, Commission Exhibit Roman numeral 11-33B.

A. I don't dispute the document, I just don't know without seeing it.

Q. Okay. Let's show it to you then.

A. So my recollection has been refreshed, yes, I did sign this order on September 9, 2013.

Q. And Mr. Kelson's name is on the first page of this order, correct?

A. It is.

Q. And he signed on the third page

of this order, correct?

A. He did.

Q. And you never made a record of your relationship with Mr. Kelson, did you?

A. I did not.

Q. And you never disqualified yourself, did you?

A. I did not.

Q. Sam's Towing versus Town of Liberty, you were assigned that supreme court case, weren't you?

A. I was.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 11-34B, B like in boy.

MS. PARTIDA: Has that previously been shown?

MS. TISHMAN: No.

Q. Do you remember signing off on a conference stipulation in the Sam's Towing and Town of Liberty case?

A. Yes.

Q. And Zach Kelson's name appeared on it?

A. I don't dispute that it did.

Q. And Zack Kelson signed that document?

A. I don't dispute that he did.

Q. And you never made a record in that case, Sam's Towing versus Town of Liberty, of your relationship with Mr. Kelson?

A. I did not.

Q. And you never disqualified yourself, did you?

A. I did not.

Q. Now, in family court, Mr. Kelson was appointed as an attorney for the child, or law guardian, I know the laws changed, I'm not sure which one is the right one right now.

A. So today, it's attorney for the child, and yes, he is on the attorney for the child panel.

Q. And he's been on that panel for many years?

A. Predates my being on the bench, yes.

Q. And he appeared in front you on many occasions while you were a judge in

family court, as an attorney for the child?

A. He has over eight-and-a-half years, yes.

Q. In the case D[redacted] versus F[redacted] and P[redacted], F-[redacted], new word P-[redacted], you appointed Mr. Kelson as attorney for the child, didn't you?

A. He was appointing -- we had lots of testimony about the mechanism which that's done, I did sign the ultimate order though.

Q. And on the order that you signed, that appointed him as attorney for the child, Mr. Kelson's name was on that order, correct?

A. Yes.

Q. And once you saw that his name was on the order, did you make a record of your relationship with him?

A. I did not.

Q. Did you disqualify yourself at that time?

A. I did not.

Q. You sent decisions out in this case, to all the parties, including

Mr. Kelson, correct?

A. I don't recall, if you've got something to refresh my recollection, I don't recall if there was a written decision sent out.

Q. Well, let me ask you this, was there an order directing temporary removal of the child after petition filed in this case?

A. Yes.

Q. And Zachary Kelson's name was on that?

A. Yes.

Q. And were there may permanency hearing documents?

A. Yes.

Q. And Zachary Kelson's name were on those as well?

A. Yes.

Q. Now I'm going to show you what is marked Commission Exhibit Roman numeral 11-36, this is a May 5, 2016, 4:30 a.m. e-mail between you and Mr. Kelson, it is in evidence, and the e-mail, the 4:30 a.m. e-mail is from you to Mr. Kelson. This

involved the permanency hearing in the D[redacted] versus P[redacted] and Fl[redacted] matter, correct?

A. Yes.

Q. And it has to do with the fact that the permanency hearing was cancelled, correct?

A. I believe the child had been adopted, so there'd be no reason for a permanency hearing.

Q. So Zachary Kelson, on May 4, 2016, at 6:33 p.m., sends you an e-mail to your court e-mail address, "FYI, I guess we aren't doing a permanency hearing tomorrow, Zack." And then you responded to Mr. Kelson at 4:30 in the morning on May 5, 2016, "that is incredible as the matter was still on my calendar on Tuesday, and I spent over an hour preparing for the permanency hearing, simply incredible. I will address this as well on my end." When you sent this e-mail to Mr. Kelson, did you include Colleen Cunningham and other people who where involved in the case?

A. I did not, there was no case anymore.

Q. You didn't CC Colleen Cunningham on your e-mail, did you?

A. I did not.

Q. Do you think it was proper to discuss the hearing with only Mr. Kelson and not including other people, other attorneys who were involved in the matter?

A. So this, by operation of law, there would be no hearing, the case would be completely closed, it was really a scheduling issue, and he was concerned that he wasn't aware, and so was I, so it was really a scheduling issue, there was no case.

Q. So you didn't think there was anything wrong it doing it then?

A. I didn't believe that this was an improper ex parte communication because the case was closed by virtue of the child being adopted.

Q. In the D[redacted] versus F[redacted] P[redacted] matter, and the whole length of the case, which I know was lengthy, did you ever once make a record of your relationship with Mr. Kelson?

A. I did not.

Q. Did you ever disqualify yourself?

A. I did not.

Q. In the D[redacted] versus C[redacted] matter, C[redacted], you signed the papers that appointed Mr. Kelson as the attorney for the child, didn't you?

A. I did.

Q. And once you saw his name on that, did you make a record of your relationship with Mr. Kelson?

MR. OSTRER: Your Honor, in the interest of time, we'll be willing to stipulate, since thee documents are in evidence, that the Judge's responses to the questions with respect to disqualification, disclosure, and the signing of orders would be the same.

THE REFEREE: This is cross-examination, so I'm going to let her make her record on this.

MS. TISHMAN: Thank you.

A. I did not make any disclosure with respect to the C[redacted]matter.

Q. Once you saw that Mr. Kelson had

been appointed as attorney for the child, did you disqualify yourself?

A. I did not.

Q. During the course of the case, there were documents sent from chambers to Mr. Kelson having to do with the C[redacted] matter, correct?

A. I don't belive they would be sent from chambers, they probably would be sent from family court, I don't dispute that he received documents.

Q. Were there order directing temporary removal of the child after petition?

A. Yes.

Q. Sent to Mr. Kelson?

A. But they would be sent from family court, not from chambers.

Q. But they're signed by you, right?

A. They were, yes.

Q. And in the order directing temporary removal of child after petition, Zachary Kelson's name is listed?

A. Yes, it is.

Q. And in the June 11, 2013, order

of dismissal that you signed, Zackary Kelson's name was listed?

A. That is correct.

Q. And all the other documents in this case, Zachary Kelson's name was listed?

A. That is correct.

Q. And you signed the judicial subpoenas that Zachary Kelson brought to you in this matter, didn't you?

A. I don't have specific recollection but if they were brought to me, then I probably, I'm sure I would have signed them.

Q. I'm going to show you what is marked Commission Exhibit Roman numeral 11-37F, like in Frank.

A. My recollection having been refreshed, I acknowledge that I did sign a subpoena on or about April 24, 2013, submitted by Mr. Kelson.

Q. I'm going to show you Commission Exhibit Roman numeral 11-37G, this is a judicial subpoena.

A. Likewise, my recollection having been refreshed, I did issue a so ordered

subpoena on or about April 24, 2013.

Q. At any time during the pendency of this case, which was another long case, did you make a record of your relationship with Mr. Kelson?

A. I did not.

Q. And did you ever disqualify yourself?

A. I did not.

Q. Did you ever ask Ms. Canele to make a record, during the Supreme Court conferences, of the cases that we went over, about your relationship with Mr. Kelson, to the parties?

A. I did not.

Q. You never asked Christina Benson, B-E-N-S-O-N, not to assign you cases where Mr. Kelson was assigned as law guardian, did you?

A. Not as of 2016.

Q. You never asked Sara Katzman not to assign you cases where Mr. Kelson was assigned in Supreme Court, did you?

A. Not as of 2016.

Q. At that time, you did not think

this was a conflict, right?

A. At that time, I did not, at this time, I acknowledge it was inappropriate.

Q. Now, besides the cases that I referred to you, the two D[redacted] cases, D[redacted] versus C[redacted] and D[redacted] versus F[redacted] cases, Mr. Kelson represented children in other cases where he appeared in front of you, correct?

A. I don't have specific recollection, he is on the law guardian panel, I don't have specific recollection of other cases, I'm not denying it but I don't --

Q. Are you sayings your memory is that those were the only two cases that he appeared before you as a law guardian?

A. During what period of time are you referring to?

Q. To 2011 to today.

A. Oh, yes, absolutely yes.

Q. And in any of those cases, have you made a record of your relationship with Mr. Kelson?

A. I have not.

Q. In any of those cases, have you disqualified yourself?

A. I have on all that are pending now, but acknowledge that was done very recently.

Q. And when you say "very recently," what do you mean, how recent?

A. May 1st.

Q. Of 2019?

A. '19 yes.

Q. Now, Court Officer Diaz was assigned to your family court part, as a court officer at times, right?

A. He was.

Q. And when he was assigned, he was assigned for a month?

A. He was.

Q. And you were annoyed if he did not get cases in that courtroom at fast as you wanted, correct?

A. He interrupted the flow of the efficiency of he court if cases didn't move in appropriately.

Q. And that made you angry?

A. No, it did not make me angry.

Q. Annoyed?

A. That's a little too strong a word, but I was irritated.

Q. And you were also thought his radio, his radio was too loud, that annoyed you also, didn't it?

A. It's disrupted the proceedings, yes.

Q. I didn't ask whether it disrupted the proceedings, I was asking whether that annoyed you if you thought his radio was too loud?

A. Again, it's not a personal feeling, but it was a distraction in court if his radio was too loud.

Q. And that annoyed you, didn't it?

A. It irritated me.

Q. So you lost your temper at Court Officer Diaz, didn't you?

A. No.

Q. You yelled at him, didn't you?

A. Again, I don't want to play semantics, I certainly made it clear that his radio was disrupting the proceedings.

Q. You talked to him in a voice that

was louder than your regular voice, correct?

A. I spoke to him with a tone that was certainly more stern than my normal tone.

Q. I'm talking about the volume of your voice, you spoke to him with a volume of your voice, when you spoke to Court Officer Diaz, was louder than your regular voice?

A. Again, I don't -- I really don't recall what the volume was, but there's no question that I was being more stern than I normally would be.

Q. And when you spoke to him, this was in the courtroom in front of other people, other litigants and attorneys?

A. At times, yes, at other times, no.

Q. In the D[redacted] versus N[redacted] case, you got upset at Court Office Diaz when he was trying to get other people in the courtroom in that case?

A. I did.

Q. And isn't that one of Mr. Diaz's jobs, to make sure all the parties are in

the courtroom?

A. Not after the proceedings have commenced.

Q. You yelled at him, didn't you?

A. Told him to close the door and not let people in because we were about to put a child sex abuse victim on the stand for testimony.

Q. That child was 20 years old?

A. She was going to be testifying about her experiences when she was 4 to 8 years old.

Q. But she was 20 years old at the time?

A. At the time, she was.

Q. And her testimony hasn't started yet?

A. It had not.

Q. And so the proceeding, actually hadn't started, no witnesses had been called, nothing had started at the time when you got angry at Court Officer Diaz?

A. I did not get angry, I directed him to close the door.

Q. So, if we listen to the tape

here, you're saying that you did not speak to him in an angry tone?

A. The tape really can speak for itself, I just don't really -- I don't have enough of a recollection, my voice was elevated and it was stern.

Q. It was higher than your normal voice?

A. The inflection was certainly stern.

Q. Do you think, from today's perspective, there were other ways you could have handled th situation?

A. Yes.

Q. There was another time when you and Officer Diaz were in the courtroom alone, and you told Officer Diaz, in a loud voice, that he was too slow; is that correct?

A. Again, I told him that we needed to move the cases more quickly, I don't know that I used the word too slow, I don't have any recollection that my voice was more loud than it is any other times.

Q. But when you spoke to him, you

spoke to him in an angry tone?

A. No.

Q. There was another time that you spoke to Court Office Diaz in a loud angry voice to stop talking and put down his radio while in court?

A. I believe that was during the N[redacted] case.

Q. Was there another time besides the N[redacted] case?

A. Not that I recall.

Q. In D[redacted] versus E[redacted], E-[redacted], which is also known as H[redacted] versus E[redacted], H[redacted], you presided over that case, didn't you?

A. I did.

Q. And on February 25, 2013, you became angry at Court Officer Diaz when all the parties did not come into the courtroom at the start of the case?

A. I was not angry with him.

Q. You were annoyed with him?

A. I was frustrated.

Q. And you raised your voice towards him, didn't you?

A. Again, I don't have specific recollection, the tape is in evidence.

Q. You demand to see Sergeant Oliveri?

A. I did.

Q. And you walked off the bench, went behind to your chambers, and then when you saw Sergeant Oliveri walking towards chambers, you ran down the hall to meet him?

A. I did not run down the hall.

Q. You walked faster then your normal pace?

A. Probably, don't have specific recollection of whether I walked but I'm sure I was walking swiftly.

MS. TISHMAN: I'm sorry, I just need one second.

Q. You were walking very quickly towards Sergeant Oliveri?

A. I was walking more quickly than I would walk under normal circumstances.

Q. And when you approached Sergeant Oliver, you were screaming and yelling about Court Officer Diaz?

A. I was not.

Q. You voice was raised above your normal speaking voice?

A. I really don't recall the volume of my voice but I was frustrated that the court officers were not getting the cases lined up and we were heading towards finishing the calendar if we continued at that pace.

Q. You told Sergeant Oliveri that you wanted another court officer in the courtroom now, and that you had to have someone else right now, didn't you?

A. I did.

Q. And you raised your finger and you pointed at Sergeant Oliveri?

A. I don't recall that I did that.

Q. Sergeant Oliveri backed away from you during this time?

A. The interaction lasted about ten seconds, and then he turned around and walked away, as did I, so I don't recall him backing away as we were talking.

Q. He turned his body at an angle towards you?

A. No, he did not.

Q. He had his hands up in the air, palms out?

A. He did not, we were face-to-face, about two feet apart.

Q. Sergeant Oliveri asked you not to speak to him in the tone you were using, correct?

A. He did.

Q. And you approached Sergeant Oliveri, you talked to him in that tone, all because cases were not moving as fast as you thought they should?

A. Because I did not believe the court officers were acting in the manner that they were supposed to act.

Q. And based on that, that's your reason for having the interaction that you did with Sergeant Oliveri?

A. That's why I asked to see him, yes.

Q. And from today's perspective, do you believe that you handled the matter properly?

A. From today's perspective, I would handle the matter differently.

Q. Do you believe that you spoke in a patient, dignified and courteous manner to Court Officer Diaz on February 25, 2013?

A. I certainly was not patient.

Q. Were you dignified and courteous?

A. I don't know that I was discourteous and undignified, but I certainly was not patient.

Q. Do you believe that you acted in a patient, dignified and courteous manner towards Sergeant Oliveri that day?

A. No, I certainly was not patient with him.

Q. Do you believe that you were dignified and courteous to Sergeant Oliveri?

A. I don't know that there was anything in the interaction that I would classify as discourteous, other than that I was frustrated.

Q. So you're denying that you ran towards Sergeant Oliveri in the hallway?

MR. OSTRER: Asked and answered.

THE REFEREE: Sustained.

Q. At the end of 2014, the beginning of 2015, you slammed the door in Officer

Down's face as she was standing outside of your private chambers, correct?

A. I did close the door, not in her face.

Q. Well, you got up from your desk, you walked towards the door, and you shut it while Court Office Downs was standing on the threshold of your door?

A. She was not standing on the threshold of my door.

Q. You never said anything to Court Officer Downs or any of the people outside of your office, you never asked them to be quiet, did you?

A. I didn't.

Q. Before closing your door, you never said anything to them, did you?

A. I didn't.

Q. From today's perspective, do you believe that you handled the matter with Court Officer Downs and other talking outside your door properly?

A. I don't have specific recollection of having slammed the door in anyone's face, so even today, if there's

noise in the outer office, I will go and close the door. That said, in light of this experience, I certainly will be much more aware of the manner in which I close the door.

Q. In 2012, you called Lieutenant McCabe into your office, as you were upset the time the calendar was called that day?

A. I don't dispute that Lieutenant McCabe and I had that discussion, in my mind, it was earlier than 2012, that's the only dispute I have with that.

Q. You had a discussion with Kevin McCabe one day about the time that your calendar was called that day?

A. I recall having that discussion very early on within my tenure, within the first month or so.

Q. When Kevin McCabe came to your office, you spoke to him in a loud voice, didn't you?

A. I would not say that it was loud.

Q. And it was louder than your normal speaking voice?

A. I was emphasizing a point for

him.

Q. Was it louder than your normal speaking voice?

A. I don't recall the volume of my voice that day.

Q. You pointed your index finger and you punched the desk with your finger for emphasis, a few times that day, when speaking to Lieutenant McCabe, correct?

A. I tapped my finger on the table, much in the manner as I'm doing right now, I wouldn't say it's punching the table.

MS. TISHMAN: May the record reflect that the witness took out his left hand, has his index finger extended, the rest of the fingers are in a fist and making contact with the table repeatedly.

THE WITNESS: Well, it was only two or three times.

Q. You told Lieutenant McCabe, while you were making that gesture with your index finger, that you wanted the cases in your courtroom, not at 9:01, not at 9:02, but at 9:00, didn't you?

A. Using hyperbole to make a point,

I did make that statement to Kevin McCabe, to Lieutenant McCabe.

Q. And from today's perspective, do you belive that you handled the matter properly?

A. From today's perspective, I would be infinitely more conscious, and I am, about all communications that I have with everyone. So from today's perspective, I would have done something differently.

Q. Do you believe that you spoke to Lieutenant McCabe in a patient, dignified, and courteous manner, in the interaction we just described?

A. Nothing in that interaction that was neither patient and courteous and undignified.

Q. I'm the little confused by your answer, you're saying that you did speak to Lieutenant McCabe in a patient, dignified, and courteous manner on that day?

A. I did.

Q. Now, when Andrea Rogers was your court clerk, one day after the lunch break, Ms. Rogers's computer needed to be rebooted,

correct?

A. Yes.

Q. And it took some time for it to be rebooted, and you couldn't start court at the time that you wanted to start, correct?

A. That's correct.

Q. And you became angry when that happened, didn't you?

A. I did not.

Q. And you yelled at Ms. Rogers about the situation?

A. I did not.

Q. You raised your voice about the situation?

A. I did not.

Q. Did you talk to Ms. Rogers at all about the situation?

A. Yes, I did.

Q. And your testimony is that you spoke in the same tone and the same volume as you're speaking here in court now?

A. Yes, probably lower then I'm speaking now, actually.

Q. When Ms. Rogers was your court clerk, you often spoke to Ms. Rogers in a

condescending manner, didn't you?

A. Never.

Q. Often, when Ms. Rogers was trying to get information about cases, you put your hand up, palm out towards her, correct?

MR. OSTRER: Objection to the term "often."

THE REFEREE: Overruled.

A. In the normal course, I regularly had to control the flow of information because I can only process information from one person at a time, so I may well have signalled to her to hold on while I'm listening to somebody else, but it was not done in a condescending or discourteous manner.

Q. But was did put your hand, palm up, towards Ms. Rogers?

A. I don't have specific recollection of any times that I did that, but I, likewise, don't dispute that I may have said to somebody, hold on, while I'm listening to another person speak.

Q. You testified on direct about interactions at Ms. Rogers not being on

audio, you putting your hand up towards Ms. Rogers, that wouldn't have been noted on any FTR audio in the courtroom, correct?

MR. OSTRER: We'll stipulate to that.

THE REFEREE: Okay.

A. It's ^ nonverbal ^ global non-verbal communication.

Q. You would not let Ms. Rogers ask questions to you during lulls in proceedings, correct?

A. That is incorrect.

Q. You wouldn't allow her to get information that she needed to do her job?

A. That is incorrect.

Q. One time when Ms. Rogers asked a question, you rolled your eyes at attorneys and litigants in the courtroom?

A. That is incorrect.

Q. Do you believe you treated Ms. Rogers in a patient, dignified and courteous manner?

A. I do.

Q. Now, on January 14, 2015, you were unable to access your notes for that day's court calendar, correct?

A. That is correct.

Q. And you became frantic, right?

A. Yeah, I was quite anxious.

Q. And when you testified here prior, in 2017, you used the word "frantic," is that how you felt that day?

A. Yes, I was frantic.

Q. And you yelled at Ms. Weiner when she didn't understand what was going on, correct?

A. I did not yell at Ms. Weiner because she didn't understand what was going on.

Q. Well, you yelled at Ms. Weiner during that interaction on January 14, 2015?

A. Not at Ms. Weiner, no.

Q. You were yelling that day on January 14, 2015?

A. Don't recall that I was yelling, I was running around between two offices trying to gather paper to replicate the electronic data that I had lost for my case calendar that morning.

Q. Was your voice louder than your normal voice?

A. I don't recall that it was, although Ms. Weiner was in a different room most of the time, so I certainly would have elevated my voice so that she could hear me.

Q. So your voice was louder than your normal voice?

A. It may well have been because Ms. Weiner was in a different room.

Q. And when she was in the same room with you, was your voice louder than your usual voice?

A. She was not in the same room with me for more than a couple of seconds.

Q. So it's your testimony that except for a couple of seconds, she was always on the outside, in her area?

A. She was working at her desk, yes.

Q. And you threw a jump drive across your disk towards her, didn't you?

A. Absolutely not, that was the only hope of saving my data, I was not going to risk damaging that jump drive, I placed in on my desk as I walked out and told her that it was on my desk, to please bring it to MIS.

Q. And Ms. Weiner was in your office when you placed in on your desk?

A. She was in her office, and when I spoke to her, I was in the courtroom walking out.

Q. Ms. Weiner had given you court files?

A. She had given me four or five supreme court files.

Q. And you had them in your office?

A. They were on the corner of my desk.

Q. And you threw the files that she gave you on the floor, on that date, didn't you?

A. Absolutely not.

Q. You stamped on the court files?

A. Absolutely not.

Q. You cleaned up the files -- the files, at one point, ended up on the floor, didn't they?

A. There was a stack of files, but they were not aligned, they were staggered, so some opened in one direction, some in the other, I took the stack with my hand, off my

desk to put them in my briefcase, and as I pulled them off the desk, the one that were open in the opposite direction, stuff fell out on the floor. It was stuff that was critical for being able to run the calendar, so I immediately kneeled down and put the materials back in the files, stuffed them into my briefcase, and left.

Q. So the files that were on the floor, you cleaned up and took with you before you left to county court?

A. There were no files on the floor, there were papers from the files, the files themselves were still in my hand.

Q. You cleaned up the papers that were on the floor prior to going to county court, correct?

A. The papers were basically on my foot and I kneeled down and picked them up, that is correct.

Q. You cleaned up the papers that fell on your foot prior to going to county court?

A. Yes, I did.

Q. So when you left your office to

go to county court, there was no papers on the floor, everything had been cleaned up, correct?

A. The eight or ten pages that had fallen out, were picked up and put back in their files so that I could use them in county court, that is correct.

Q. And when you got back from county court later that day, you had a conversations with Judge Breslin about what had happened that morning?

A. I did.

Q. And Judge Breslin, could you just for the record, I don't know his exact title at that point?

A. So it's Thomas Breslin, he was the Administrative Judge for the 3rd Judicial District.

MS. TISHMAN: B-R-E-S-L-I-N.

Q. Do you believe that you spoke to Ms. Weiner In a patient, dignified, and courteous manner on January 14, 2015?

A. I was not patient, but it was not directed at Ms. Weiner, I was not patient with myself, there was really no comments

that were directed at Ms. Weiner, other than to please call MIS to have them look at the software.

Q. Do you think that people who are around you can differentiate between whether you're angry at them and angry generally?

A. I don't know that that question can be answered, but I was not angry, I was in a -- I was not angry.

Q. You weren't frantic?

A. We're in the throws of a potential tragedy within chambers, where every bit of date for every case we had ever handled, potentially was lost, decisions, data, notes, everything, and I had fourteen cases on a calendar that I had to be up on the hill for about ten minutes later, I had spent probably 12 hours prepping for those 14 cases, so I was certainly rushed, ask I was certainly very concerned about a potential overwhelming tragedy in terms of operations of chambers.

Q. Do you believe that you spoke to Ms. Weiner in a patient, dignified, and courteous manner that day?

A. I really -- I was not patient, there was nothing discourteous or undignified because I had very few comments that were even directed at Ms. Weiner that day.

Q. After the event, you spoke, in April 2015, to the Office of Court Administration, OIG, didn't you?

A. I did.

Q. Now, there was a time when you were reviewing pistol permit documents with Ms. Weiner, when she didn't understand what was going on and you told her she was stupid; is that correct?

A. I never referred to Ms. Weiner as stupid.

Q. You didn't call her stupid when she was in your presence?

A. Never.

Q. After the January 2015 incident, you did not verbally speak to Ms. Weiner again, did you?

A. We did have verbal communication, it was limited.

Q. It was different than before the

January 2015 issue?

A. It was.

Q. Your relationship deteriorated, didn't it?

A. It did.

Q. Now, you testified that you need litigants to be calm in the courtroom, not act out, be respectful of you. Do you think it is also important for a judge, no matter what is going on, to be calm with those he deals with?

A. Absolutely, I do.

Q. Even if cases are called late?

A. Even if cases are called late.

Q. Even if people are talking outside his office?

A. Even if people are talking outside my office.

Q. Even if a flash drive might be corrupted?

A. It's important to remain patient and dignified, sometimes human nature is that there's certain issues that will upset us, losing four years worth of work upset me.

Q. Now, you said before that you had spoken to the OIG, Office of Court Administration, your behavior towards staff and litigants changed because you knew, after you spoke to OIG, that you were being watched; is that correct?

A. No, no, that was -- it had nothing to do with the OIG, because the OIG didn't speak to me till April 5, 2015.

Q. Right, and after that, your behavior changed?

A. No.

Q. You handled pistol permits in 2013, didn't you?

A. I did.

Q. You held them in the Elks Lodge starting in March 2013?

A. I did.

Q. And you, as the judge, it is ultimately your decision where to hold the pistol permit interviews, correct?

A. It is.

Q. And what day of the week to hold the pistol permit interviews, correct?

A. Yes.

Q. You held them on a Saturday, didn't you?

A. I did.

Q. And Wendy Weiner helped on those Saturdays that you were in the Elks Lodge in 2013?

A. She did at her request.

Q. Whether she requested it or not, the question is, she was present on Saturdays to help with the pistol permit interviews, correct?

A. She was present on the Saturdays, yes.

Q. And prior to the Saturday schedule, Ms. Weiner went to the courthouse, picked up files, and delivered them to the Elks Club, correct?

A. She did.

Q. And she was there working with you in her position as a confidential secretary during the time you were at the Elks Club?

A. She was sitting next to me, yes.

Q. And after the interviews were finished, she went back to the courthouse to

return the files, correct?

A. Not each time, sometimes I took them.

Q. But there were times that Ms. Weiner took them also?

A. Yes.

Q. And you requested that she help you with the pistol permits, correct?

A. I did not.

Q. You never told her not to help with the pistol permits, did you?

A. I did not.

Q. She was not compensated, in any way, for the time she spent working on those Saturdays?

A. She was given flex time and was home on Friday.

Q. Is it your testimony that comp time is available to be given to chamber's staff?

A. At that time, I did not know that it could not, and that was the arrangement, the agreement that she asked for, and I was okay with that.

Q. You approved Ms. Weiner's time

sheets, correct?

A. I did.

Q. At the time you approved her time sheets, did they show that she took comp time in connection with the Saturday work that she did for the pistol permits?

A. Probably not.

Q. Isn't it true that Ms. Weiner never received any comp time?

A. That is not true, she was off on Friday.

Q. On September 7, 2013, you held pistol permit interviews at the Villa Roma in Callicoon?

A. I did.

Q. That was a Saturday, wasn't it?

A. It was.

Q. And you held them before an NRA dinner, Friends of the NRA dinner?

A. It was earlier in the day, the Friends of the NRA dinner was later that afternoon, yes.

Q. It's the same day?

A. Yes, it was.

Q. You instructed Ms. Weiner to

mention the NRA dinner when she contacted people regarding their interview, didn't you?

A. Just the opposite, I instructed her not to mention the NRA dinner.

Q. And you requested that Ms. Weiner help you on that day, didn't you?

A. I did not, and she was not available to help me that day.

Q. Ms. Weiner helped when you interviewed individuals at the Villa Roma?

A. She did not.

Q. You did it all by yourself?

A. I did.

Q. Ms. Weiner picked up files before the event and delivered them to the Villa Roma?

A. She did not.

Q. The interviews were held in bar area in the Villa Roma?

A. They were held in the Grill Room, which was not open at the time.

Q. But there were people playing golf who were accessing the room from the outside, correct?

A. The bar serves both an inside and outside, they were accessing the bar from the outside, and that was during the last couple of minutes that I was in there, not at the beginning.

Q. Ms. Weiner, after you finished doing the interviews, returned the files to the office?

A. She did not.

Q. Was she compensated, in any way, for the interviews that you conducted in the Villa Roma in Callicoon?

A. She didn't participate in the interviews that day, she was on the committee for the dinner and was tied up working the dinner that day.

Q. You handled pistol permits in 2014, correct?

A. I did.

Q. And you held them in the Elks Lodge during that year?

A. On occasion, yes.

Q. Well, often?

A. About once a month or every six weeks.

Q. And you held them on a Saturday when you held them at the Elks Lodge, correct?

A. Generally on Saturday, I believe a couple of them were in the evenings, 5:00 or 5:30.

Q. After business hours?

A. Yes, absolutely, yes.

Q. And Ms. Weiner helped on those Saturdays when you were in the Elks Lodge?

A. She did.

Q. And prior to the Saturday schedule in 2014, Ms. Weiner went to the courthouse and picked up files and delivered them to the Elks Club, correct?

A. Generally, she had them home with her on Friday.

Q. Part of her responsibilities in helping with the interviews held at the Elks Lodge in 2014, was to deliver files to the Elks Club?

A. She generally did because she had them home with her on Friday.

Q. And she had brought them from the courthouse in anticipation of delivering

them to the Elks Club for the interviews?

A. She brought them from the county clerk's office, to home, to the Elks Lodge, yes.

Q. And she helped you during the time you were at the Elks Club doing those interviews?

A. She really didn't play any role, she was there next to me.

Q. She handed you files?

A. No, I had the stack of files next to me, I actually would hand them to her after we were done with the interview.

Q. And then she would organize them, she'd take them back to the county?

A. Sometimes she took them back to chambers, sometimes I took them back to chambers.

Q. And you requested that she help with the pistol permits in the Elks Lodge in 2014?

A. I did not.

Q. You never asked her to do that?

A. She was very involved in the NRA and wanted to be involved, she expressed

that to me.

Q. She was not compensated, in any way, for the time she spent working on Saturdays?

A. Other than she got time on Friday.

Q. So if she volunteered to do this because she was involved with the NRA, and it wasn't one of your requests, it doesn't make any sense that you would give her comp time.

MR. OSTRER: Objection, that's argumentative.

THE REFEREE: Overruled.

A. That's what we did, that's what we did.

Q. So even though she was voluntarily there, your testimony is that you gave her comp time?

A. Correct.

Q. And comp time is not available for chamber staff, is it?

A. I was not aware at that time, I was make aware sometime in 2015 or '16.

Q. At the time you approved her time

sheets, did they show she took comp time in connection with the Saturday work she did for the pistol permits in 2014?

A. Probably not.

Q. But you signed them anyway?

A. Well, it's an electronic approval.

Q. And you approved them anyway?

A. I did approve them.

Q. And you approved them in 2013, even though the comp time was not noted?

A. Well, what happens is, the employee prepares the time card, and the judge approves it, so I approved as she had prepared it, there was no reason not to.

Q. You testified on direct that prior to April 2017, you never heard that you should not be doing pistol permits outside the courthouse county buildings?

A. That's correct.

Q. But weren't you told in 2015, by Judge Breslin, to stop doing pistol permits outside the courthouse on Saturdays and that is why you stopped using the Elks Lodge?

A. I had a discussion with Judge

Breslin that he suggested that there should be a way within our schedule to get it done without having to do that.

Q. And he wanted you to come in-house, right?

A. He suggested that I should try and get it done between 9 and 5, Monday through Friday.

Q. And that was in 2015?

A. That was at some point after January 2015.

Q. I'm going to read it, it's page 613 from your prior appearance in 2017, volume 3. June 23, 2017 is the date of that appearance, page 613, line 22.

"Q. Now, did Judge Breslin or anyone from OCA tell you that they didn't want you to do it anymore offsite?"

"A. No, when we got to the spring of 2015, and Ms. Weiner had left and gone to work in the Surrogate's Court, Judge Breslin came one day and he said he would prefer us to bring it back in-house and see if we couldn't work to schedule sometime to do that, and that's what we've done."

Did you ask those questions and make those statements?

A. Yes.

MS. TISHMAN: I have no further questions. I'm finished with my cross-examination.

THE REFEREE: Okay. So we'll take our lunch break now, let me ask -- this is earlier than I anticipated.

MR. OSTRER: We can go the hour, we won't be past 2 o'clock.

THE REFEREE: That's what I figured, okay. So let's take an hour break and come back at 1:30. Off the record.

MR. MAISONET: Off the record.

(Whereupon, a recess was taken at this time.)

THE REFEREE: On the record. Welcome back everybody, Judge McGuire, you're on the stand, you're still under oath. You may proceed with redirect.

REDIRECT EXAMINATION BY

MR. OSTRER:

Q. Judge McGuire, Ms. Tishman asked you, with respect to comp time or leave

time, in your chambers, I'd like to ask you how you handled the operation of your chambers when there would be delayed school opening or early school dismissal on a day that court was in session?

A. So that's quite common up in the rural areas, you've got children that are travelling quite a distance often, and it's just a reality that children get dismissed early or we could have delayed openings several days a week, and those circumstances, it's cultural up there that people will come into -- even though we don't open late, court doesn't open late, my staff would come in as quickly and as soon as they could get in, and they would make up the time, they would get their work done, and that was an accommodation, as far as I know, is done by all the judges in all the law offices, it's natural.

Q. And would it be more frequent -- could you say with some -- in your experience, how often, during the months, let's say, December to march, there would be delayed school opening or an early school

dismissal when court was in session?

A. The average probably doesn't mean the whole lot, it certainly, probably, averaged out to one day a week, but on certain weeks, it may be several days that week, if there was a storm in.

Q. And were these delays frequently two-hour delays?

A. Generally, a two-hour delay from the school, which makes it really a one-hour delay from the court opening, school would open at 10 instead of 8, so parents would get them on the bus at say 9:30, and then come to work.

Q. Now, Ms. Tishman also -- and with respect to the time lost, to leave early to accept children off the bus, or deliver children to school, was there any formal accounting of that time by your chambers?

A. There was no formal accounting, it was more professionals.

Q. Are you aware, in any way, in the electronic time sheets that you were called to approve, to accommodate for those factors, the early dismissals or delayed

arrivals?

A. No.

Q. Now, Ms. Tishman also inquired of you with respect to your communication with the Administrative Judge, Judge Thomas Breslin, during the day on January 14th and times thereafter, were you cautioned in any way concerning your actions going forward?

MR. LEVINE: Objection -- I'll withdraw it.

A. I was cautioned to be very careful about my communications around chambers.

Q. And were you cautioned, in any way, about your interactions with Ms. Weiner?

A. Specifically, that I should be very careful, it was my understanding that I should be very cautious and careful moving forward, while this issue played itself out.

Q. Now, Ms. Tishman also asked you if you reformed your behavior, so to speak, because you knew you were being monitored or watched -- I believe "watched" was the phrase she employed -- can you explain the

circumstances that occurred with respect to the confidential secretary's position from January 2015 until you were granted permission to designate a replacement?

A. So on or soon after January 14th, I was aware that a grievance of some sort or a complaint of some sort had been filed, I wasn't told by whom or with whom, and as time went on, sometime in late March, I was asked if I would come to White Plains to meet with the representatives from the IG's office.

Q. Did you do that?

A. I did, on April 5th.

Q. And that interview dealt with your interaction with Ms. Weiner?

A. It did.

Q. And can you tell -- now Ms. Weiner had already left chambers by the April date?

A. Correct, on March 31st at 4 p.m., was her last point in chambers.

Q. Were you permitted to designate a new confidential secretary after Ms. Weiner moved to the law library in the 1st of

April?

A. I was not.

Q. And who would -- did you ultimately obtain permission to hire a confidential secretary?

A. I did.

Q. And had you been -- who did you communication with concerning your ability to hire a confidential secretary?

A. The district office, most of the communications were with Beth Dible, who's the Administrator of the 3rd Judicial District.

Q. And after your interview at the IG's office in White Plains, what happened next, vis-a-vis, that position?

A. So I had been told, probably on April 1st, that I could not hire a secretary yet, and that Judge Breslin would get back to us when we could, we heard nothing through April, May, June, at some point in July, I don't recall the exact date, Judge Breslin came down and it was after that brief meeting with him, in that July date, that we got permission to go ahead and hire

a new confidential secretary.

Q. And during that period of time, were you aware that you were being watched or monitored?

A. I was not.

Q. What did it mean to you that after, if anything, that you were granted permission sometime in July of 2015, to appoint a new confidential secretary?

A. So it was my understanding that when we were not permitted, we were not permitted because of this IG's investigation was still ongoing, when we got permission, it signalled to me, my understanding was that it was completely resolved, go back to normal, we hired a secretary, she started in August, August of '15, and certainly as of July 15, I believed that that episode was behind me.

Q. When did you next become aware that your conduct was being -- was under scrutiny?

A. April 17, 2017, on or about April 17th.

Q. Now, Ms. Tishman observed, in her

questioning you, that your conduct had appeared to have changed between January of 2015 to how you currently run your chambers and courtroom, was that because you knew you were being monitored in or about the 1st or 2nd quarter of 2015?

A. That played no role in any changes.

Q. Did the events of January 14, 2015, impact upon the manner in which you operate your chambers?

A. Not significantly.

Q. How about the other issues that have been brought to your attention or the scolding that you received from the Appellate Division?

A. That was significant, I did not ever want to have a case removed from me again because anyone had interpreted, particularly an appellate court, that I had been less than fair and impartial with anyone.

MR. OSTRER: Nothing further.

MS. TISHMAN: I have no questions.

THE REFEREE: Okay. Judge, you're

excused, thank you. Any further witnesses?

MR. OSTRER: No rebuttal witnesses. We rest.

MS. TISHMAN: We rest.

THE REFEREE: So that closes the evidence in the case.

MR. OSTRER: Well, I'm sorry, no, I'm not, withdrawn.

THE REFEREE: Is there anything else that we need to discuss?

MR. LEVINE: Well, we can talk about it once the transcript is done, I don't want to steal your thunder, Mr. Arisohn, we could have an arranged conference call?

THE REFEREE: Yes, so once your office receives the transcript, which will be before I get it, your office can arrange a conference call with the parties and me, and we can, at that time, discuss the mechanics and the timing of submission of post-hearing papers.

MS. TISHMAN: I just have one question on that, is my contact person going to be you, Mr. Ostrer?

THE WITNESS: Ben.

THE REFEREE: And I would ask, based on prior experience, that when you submit whatever you're going to submit to me, proposed findings of fact and conclusions of law, that you provide detailed record references, meaning page numbers in the transcript, and exhibit designations, because anything that you have in there without such, I'm probably going to have so ignore. So I want the proposed findings of fact, especially the proposed findings of fact, to be annotated into the record. Okay?

MR. OSTRER: Yes, sir.

THE REFEREE: And I did have a question, I may as well ask on the record. Is either side going to claim that I should or should not draw any negative inferences from the fact that Ken McGuire did not testify here? And the reason I'm raising that now is, if the answer to that is going to be yes, I'd like to inquire about his availability to both sides. So let me ask first the Commission.

MR. LEVINE: We just need a second, if

you don't mind.

MS. TISHMAN: Can we just have -- just want to get two minutes.

THE REFEREE: Sure, let's go off the record for two minutes.

MR. MAISONET: Off the record.

(Whereupon, a recess was taken at this time.)

MR. MAISONET: On the record.

MR. LEVINE: Thank you for giving us the time to think about this, Mr. Arisohn, and upon reflection, it's our review that the Commission, of course, has proven by a preponderance of the evidence that Judge McGuire did the legal work in connection with this case, to the extent that he's asserting a defense that his own brother was actually the person who did it, we would argue a negative inference. If he wants to show that someday else did it, he would have to call the brother. The brother is not going to be sympathetic to the Commission, which is why we didn't call his wife to cross-examine her, so it is our view that based on the evidence in this case, if

that's his defense, then he should call his brother, and the fact that he didn't is something we would reflect upon.

MR. OSTRER: Your Honor, there was testimony concerning that he would be equally as available, maybe not as sympathetic the goals, the ultimate -- his sympathies would certainly run in favor of his brother, but as an officer of the court, as an attorney admitted to practice, he would be duty bound to appear if requested, and to testify truthfully once sworn. And I believe he would, therefore, have been available to the Commission for that purpose.

In addition, there were allegations of a variety of matters that Ken McGuire handled, one of which the testimony was, I believe, it was the Kyamesha (phonetic) Waters case that went to trial, and several matrimonial cases that he handled, and the Commission had ample time to investigate those issues to determine the veracity, which was of his representation in those, and they did not appear to even delve

into those in cross-examining Judge McGuire. So for that reason, as I think he was equally available to both, and it would have been cumulative testimony for us to call him to ratify or bolster Judge McGuire's testimony, that an adverse inference should not be accorded to us for failure to present Kenneth McGuire.

THE REFEREE: Okay. I didn't mean that we would argue this out right now, but I had a feeling that this was going to be an issue coming up and I just wanted to flag it. And not that is has come up, I'm going to ask both sides to address this issue in your submissions to me. So whether I'm permitted to draw a negative inference, would be the first part, and the second part, if I'm permitted to, if I should.

MR. OSTRER: There was one other matter, and, Your Honor, to the Commission and to Your Honor, I do express my appreciation for the fact that you entertained the fact of having the Judge appear pro se and then having him assisted by counsel at different stages of this

proceeding. I did handle the examination of Ms. Weiner, and both, during her testimony and subsequently, there were questions relating to the production of a accident report and certain communications that were embodied in a memoranda that was prepared by counsel for the Commission. I believe that Ms. -- and I may be wrong, I'm not quoting verbatim, but in response to my questions, Ms. Weiner was unable to recall whether she had obtained the accident report, had forwarded it to the Commission, and had those communication with the Commission. I think for clarity on the record, since there was a memorandum that was produced to us in discovery, that we, at least as a matter of setting the record straight or correcting an omission, that that was in fact the case, that she has secure the accident report and made other disclosures to the Commission subsequent to, I believe, in December of '16 and January 2017.

THE REFEREE: So you may recall we discussed this earlier, and when this issue was raised earlier, I pointedly asked

Commission Counsel whether they were aware of anything that Ms. Weiner had testified to falsely, and the reason I asked that is if they were, they would be under an obligation to correct it, they said no, and my recollection is that when you asked her those questions, her responses were all "I don't recall." So given that her responses were all "I don't recall" about these events, I don't know what more there is to do or can be done, so I think that's where it is and that's where it will be, that's where it stands. Obviously, I think, as I said yesterday, her credibility is at issue, and her lack of recollection is something that I can certainly take into account when I weigh her credibility.

MR. OSTRER: I understand.

THE REFEREE: So, anything else?

MR. LEVINE: No.

MR. OSTRER: No.

THE REFEREE: So I do want to say that, picking up on something that you just said, that when I heard that Judge McGuire was going to participate here pro se, to

some extent, I was a little bit concerned about that, but I just do want the record to reflect that in every single way that could be possible, Judge McGuire behaved both professionally and collegiately, and everybody did, both sides. So I wanted to extend my thanks for that, and we'll talk after the transcript gets delivered. Thank you very much everybody.

MR. OSTRER: Thank you.

MS. TISHMAN: Thank you.

MR. MAISONET: We're off the record.

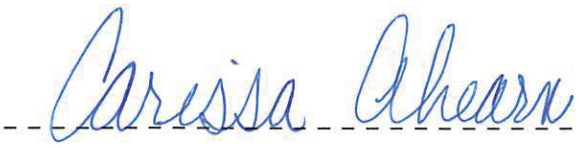
(Time Noted: 1:59 p.m.)

CERTIFICATION

I, CARISSA AHEARN, a Notary Public in and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes, in the matter held on May 22, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand the 21st day of June 2019.



CARISSA AHEARN