

In The Matter Of:
In Re: Paul M. Sushchik

Hearing, Day 3
July 22, 2020
Videoconference



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Exhibits None

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT
COMPLAINT NUMBER 2019-27
SUPREME JUDICIAL COURT CASE NO. OE-143

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IN RE: PAUL M. SUSHCHYK :
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ALL PARTICIPANTS APPEARED REMOTELY
VIA ZOOM VIDEOCONFERENCE
BEFORE: HON. BERTHA JOSEPHSON (Ret.),
Hearing Officer

APPEARANCES:

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ALSO PRESENT:

Hon. Paul M. Sushchyk

Held via Zoom

Wednesday, July 22, 2020

10:05 a.m.

(Alexander Loos, Registered Diplomat Reporter)

* * *

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

NOEL B. STERN

BY MR. ANGELINI 3-23

PAUL M. SUSHCHYK

BY MR. ANGELINI 3-33

BY MR. NEFF 3-97

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E X H I B I T S

NO. DESCRIPTION PAGE

(None)

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1 P R O C E E D I N G S

2 THE HEARING OFFICER: Good morning,
3 everyone.

4 MR. NEFF: Good morning.

5 MR. ANGELINI: Good morning, your Honor.

6 THE HEARING OFFICER: My name is Bertha
7 Josephson. I'm the Hearing Officer conducting the
8 hearing in this matter.

9 Before we begin, let me just ask those of
10 you who are observing and who are not
11 participants -- if you're not a witness or one of
12 the attorneys engaged in the matter -- kindly
13 disable your video so that you will not appear on
14 the screen. Thank you.

15 All right.

16 Again, we're ready to proceed in the
17 matter, and this is the hearing on Commission on
18 Judicial Conduct Complaint Number 2019-27 in re
19 Judge Paul M. Sushchyk. The attorneys, as I said,
20 are all present.

21 If I could ask you if you would kindly
22 identify yourself and the party you're representing.

23 MR. NEFF: Yeah. It doesn't look
24 particularly professional.

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1 My name is Howard Neff, and I'm
2 representing the Commission on Judicial Conduct.

3 MS. COSGROVE: Good morning, your Honor.

4 My name is Audrey Cosgrove, and I'm here
5 representing the Commission on Judicial Conduct in
6 this matter.

7 MR. ANGELINI: Good morning, your Honor.

8 Michael Angelini. I represent Judge
9 Sushchyk.

10 THE HEARING OFFICER: All right. Good
11 morning. Thank you.

12 Let me just, if I could, just summarize
13 where we are procedurally at the moment.

14 First, I recognize Mr. Angelini that when
15 we concluded yesterday we had decided that the
16 matter of the expert witness reconsideration and any
17 offer of proof would be put off to today. Again, I
18 would ask that that be at the end of the proceedings
19 today, if that is acceptable to both parties.

20 MR. NEFF: That is.

21 MR. ANGELINI: That is, your Honor.

22 MR. NEFF: Yes.

23 THE HEARING OFFICER: Okay. So where we
24 are now is the hearing was begun on Monday, the 20th

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1 of July. That day we heard opening statements from
2 both the party with the burden of proof and the
3 responding party. We also heard from Ms. Emily
4 Deines, whose testimony took the entire day, and we
5 concluded with her testimony.

6 The following day, which was yesterday,
7 July 21st, we heard from Chief Justice of the Family
8 and Probate Court John D. Casey throughout the
9 morning and slightly after lunch. We also heard
10 from Attorney Patsos, who is with the Family and
11 Probate Court, in the afternoon, and also Attorney
12 Welsh, who is with the Family and Probate Court, and
13 we concluded at the usual time yesterday, and we're
14 ready to get underway.

15 Let me ask you, Mr. Neff, as the party with
16 the burden of proof and burden of production, are
17 you ready to proceed?

18 MR. NEFF: We are.

19 Our current plan, your Honor, at this
20 point, after considering the matter overnight in
21 terms of the evidence that we have been able to
22 successfully present in the form of testimony and
23 exhibits, and the witnesses that we would have
24 remaining, we feel at this point that -- that we

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1 were just going to rest with what -- with what we've
2 presented at this point and not call any further
3 witnesses as part of Commission's case against the
4 judge.

5 THE HEARING OFFICER: All right. Thank you
6 very much, Mr. Neff.

7 That being the case, Mr. Angelini, I'll
8 turn to you. The party who has the burden of proof
9 has rested. How do you wish to proceed?

10 MR. ANGELINI: I wish to proceed by filing
11 a motion with the Court, and I guess I need some
12 help in the technicalities of doing that. In the
13 ordinary case, I know how to do it.

14 So I have a motion under Rule 41B prepared.
15 I intend to file it. I can e-mail it to Mr. Loos
16 and he can furnish it to the parties, or I can do it
17 in a different way. I seek your guidance, your
18 Honor.

19 THE HEARING OFFICER: Well, I think maybe
20 the best way would be to e-mail right now to
21 Mr. Loos. Mr. Loos can then share it with all of us
22 and then I can proceed from there.

23 Mr. Loos, does that work for you?

24 THE REPORTER: If I get it, I can e-mail it

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1 to everyone.

2 MR. NEFF: All right.

3 THE HEARING OFFICER: Can you screen share
4 it, because the e-mail might be a little slower than
5 we'd like?

6 THE REPORTER: It takes a little time to
7 make a link.

8 THE HEARING OFFICER: I'm sorry. I
9 couldn't hear you, Mr. Loos.

10 THE REPORTER: I'm saying it would take a
11 little while to make a link, but we could do that,
12 too.

13 THE HEARING OFFICER: I'm sorry, Mr. Neff.
14 What had you --

15 MR. NEFF: Oh, no. I was -- I was just
16 going to offer an alternative suggestion -- Mr. Loos
17 knows this better than me -- that maybe it could be
18 sent through the chat window, but I don't think
19 that's an option under the format we're using, is
20 it?

21 THE REPORTER: No. It's turned off for
22 security.

23 THE HEARING OFFICER: Okay. Mr. Angelini,
24 why don't you do this, if you don't mind.

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1 Would you e-mail it to Mr. Loos, Mr. Neff
2 and me, and we'll see if we can all get it
3 relatively quickly.

4 MR. ANGELINI: I'll attend to that right
5 now. I need to be excused for a moment while I do
6 so, your Honor.

7 THE HEARING OFFICER: Okay.

8 MR. ANGELINI: I'll report back in just a
9 few minutes.

10 How's that?

11 THE HEARING OFFICER: That's perfect.

12 Thank you.

13 THE REPORTER: Off the record?

14 THE HEARING OFFICER: Yes, please.

15 (Recess)

16 THE HEARING OFFICER: Thank you.

17 All right. I have the motion.

18 I believe Mr. -- Mr. Loos has a copy of the
19 motion as well.

20 Is that right, Mr. Loos, for purposes of
21 the record?

22 THE REPORTER: I do.

23 THE HEARING OFFICER: Okay. And, Mr. Neff,
24 you have not been able to access it; is that

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1 correct?

2 MR. NEFF: So far I have not seen it in my
3 e-mail box. No, I'm afraid not.

4 THE HEARING OFFICER: Okay. Well, let me
5 tell you, just in the interest of moving forward, it
6 is a very brief motion. It is simply one paragraph,
7 three lines. I'll read it to you:

8 "The party with the burden of
9 production and the burden of proof, having
10 presented its evidence, the respondent
11 hereby moves for dismissal on the grounds
12 that upon the facts and the applicable
13 standard of proof the alleging party has
14 not sustained its burden."

15 I don't think there is anything surprising
16 there. And even if we were in a -- an actual
17 courtroom, it wouldn't be unusual for it -- for me
18 to hear argument --

19 MR. NEFF: No.

20 THE HEARING OFFICER: -- and have the
21 written -- the written motion caught up with us at
22 some later point in the day.

23 MR. NEFF: I agree.

24 THE HEARING OFFICER: Okay. So can we

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1 proceed with that?

2 Okay. Great.

3 Mr. Angelini, whenever you're ready.

4 MR. ANGELINI: Yes.

5 Excuse me. Thank you, your Honor.

6 As your Honor knows, in this case there is
7 a special burden of proof, and that is a burden to
8 prove the Commission's case by clear and convincing
9 evidence.

10 Let me say at the beginning, as your Honor
11 knows, it is not unusual for motions such as this to
12 be filed, and by saying that, I don't mean in any
13 way to suggest the motion is just routine in this
14 case. I believe on the facts that you have heard,
15 you have not heard evidence which is clear and
16 convincing as to the allegations being made.

17 Certainly with respect to the -- just
18 taking the lowest hanging fruit, with respect to the
19 allegation with respect to the flask, there is
20 absolutely no evidence to support the charge which
21 has been made, and we are here confined to a
22 specific charge alleging specific acts of
23 wrongdoing.

24 But leaving the flask aside, and going to

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1 the alleged intentional conduct -- excuse me just a
2 minute -- at the place, there is not simply an
3 allegation here that Judge Sushchuk made contact
4 with Ms. Deines. There is an allegation -- as there
5 would have to be in order for there to be a
6 violation of the policy -- that he intentionally
7 made contact with her, did it without her
8 permission, but did it intentionally with the
9 purpose of doing so and did it even in a particular
10 way. And that, I suggest, your Honor, has frankly
11 not been proven. It's not been proven on the basis
12 of the testimony presented by the moving party.

13 As a reminder, Exhibit Number 6 presented
14 by Ms. Deines says -- it's her first statement, the
15 statement made at 9:25 p.m. on the 25th of April:

16 "Oh, my God. I think" -- my
17 emphasis -- "one of the judges grabbed my
18 butt on purpose."

19 I think so.

20 And then she says:

21 "He's also carrying a hip flask, so
22 maybe" he "just" -- I put the word "he" in
23 because her testimony is she was referring
24 to the fact that "maybe he just fell."

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1 Well, it is impossible, I suggest to your
2 Honor, that someone could have fallen and then could
3 have committed the act which is described in the
4 Commission's charge here, of sliding his hand under
5 her left buttocks, pinching or grabbing it and
6 squeezing -- it's been described in various ways by
7 her. I suggest to you that this is entirely
8 inconsistent with the possibility that she expresses
9 in this text message that maybe he just fell, making
10 a distinct pinch as he was falling. I suggest to
11 you that is -- that reflects speculation which is
12 unfounded in any realism.

13 And then if we go -- if we go to the second
14 text, which is Exhibit Number 7, which she
15 describes this not in the way in which it's
16 described in the Commission's charge, she claims
17 that one of the -- "one of the newer male judges"
18 palmed -- "full palmed my ass." She acknowledges
19 that even at that point, a whole day later, she kind
20 of thought it was a mistake. A mistake is not an
21 intentional act.

22 And something -- whether or not there was
23 hovering around her is something that is not
24 supported -- as addressed in the second paragraph --

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1 is not supported by any of the evidence, but it is
2 supported in a way by her testimony, which is
3 meaningful, because her testimony is, acknowledging
4 that the facts of what happened on that second day
5 would not realistically describe anybody "hovering,"
6 what she said is, "Well, I perceived that,"
7 acknowledging that her perception was inconsistent
8 with the facts.

9 Why do I mention that? Because I suggest
10 to you, respectfully, your Honor, given the
11 heightened bar for proof here, what we have is a
12 complaint based upon a perception which is
13 inconsistent entirely with the facts, and her
14 acknowledgement that on this, a day later she
15 decided to file this charge because she acknowledged
16 that she had a perception inconsistent with facts is
17 a reflection of really what this case is all about.
18 It is a metaphor for this prosecution.

19 I remind the Court that she is not a
20 percipient witness to this act, to this alleged act.
21 She did not see Judge Sushchuk do this. She does
22 not know who did this. But there are two percipient
23 witnesses who have been called by the Commission.
24 Those witnesses saw Judge Sushchuk moving behind

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1 Ms. Deines. And it is no doubt that at some point
2 in time that evening he was traveling by foot and,
3 as he traveled by foot, he went behind her. Both of
4 those witnesses called by the Commission say he
5 never stopped moving until he reached Ms. Patsos,
6 next to her side. He was then not behind
7 Ms. Deines.

8 It could not occur. It could not happen
9 that a man could conduct himself in the way it is
10 alleged that he conducted himself while he was
11 moving continuously along without stopping. By,
12 therefore, the Commission's only evidence, by the
13 evidence it has produced, there is not, I suggest,
14 your Honor -- and I don't want to go on and on, but
15 I'll be to the point -- it has not been -- there has
16 not been clear and convincing evidence produced by
17 the Commission by which, on the basis of that
18 evidence, your Honor could find clear and convincing
19 proof supporting the allegations of this charge.

20 That's all I have to say at this time.

21 THE HEARING OFFICER: All right. Thank
22 you, Mr. Angelini.

23 Mr. Neff, or Ms. Cosgrove?

24 MR. NEFF: Well, thank you, Judge

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1 Josephson.

2 I would first -- I may be wrong, but I
3 would first start out by pointing out that I don't
4 believe clear and convincing is the standard under
5 Rule 41. Maybe the standard under the rules of the
6 Commission of Judicial Conduct, but not the standard
7 under Rule 41, which is essentially analogous to a
8 directed verdict motion.

9 And in this case, Judge Sushchuk has been
10 charged by the Commission with a series of
11 violations of the rules of the Code of Judicial
12 Conduct, and we have presented you with evidence in
13 the form of witness testimony and some documents
14 that have established, particularly through
15 Ms. Deines, her belief that Judge Sushchuk, while he
16 was behind her, while he was the only person she
17 believed was behind her, grabbed her buttocks in
18 such a way that, the way she described it, would
19 have been an intentional act on his part not an
20 accidental act on his part, and then she ultimately
21 reported it to parties.

22 With respect to the flask, you know,
23 clearly as the evidence came out, it appears that
24 the flask was partially pulled out, or the evidence

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1 was that the flask may have been partially pulled
2 out of Judge Sushchuk's coat pocket and displayed to
3 parties at that -- at this event during the course
4 of the evening on April 25th, 2019, and he discussed
5 with those parties that it contained whiskey. And I
6 don't want to overcharacterize what's in evidence,
7 but maybe that was funny. I don't know why that was
8 being discussed. But that -- that's the evidence
9 that -- that -- that we have on that subject.

10 And I would suggest that the improper
11 touching of a colleague at the Probate and Family
12 Court by essentially sexually assaulting her by
13 grabbing her buttock without her permission -- and
14 she says that's what she believes to be the truth,
15 and obviously you can weigh questions of credibility
16 as this matter proceeds -- but at this stage I would
17 respectfully suggest the Commission as sufficiently
18 met its burden to establish that there are facts in
19 evidence sufficient for you to find that Judge
20 Sushchuk has, indeed, violated each of the rules
21 within the Code of Judicial Conduct with which he's
22 been charged.

23 THE HEARING OFFICER: Thank you.

24 Thank you, Mr. Neff.

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1 My understanding of the standard for a
2 required finding, which is what I would view the
3 motion as properly characterized as, is viewing the
4 evidence in the light most favorable to the
5 non-moving party. There has to be sufficient
6 evidence to warrant a rational trier of fact
7 concluding -- in this case, by clear and convincing
8 evidence -- the claims that are made by the
9 proponent of -- or the -- excuse me, the party with
10 the burden of proof.

11 And in this matter, viewing the evidence in
12 the light most favorable to the Commission, I find
13 that there is sufficient evidence, when taken in the
14 light most favorable to the Commission, to a
15 rational trier of fact in concluding, by clear and
16 convincing evidence, the truth of the allegations.
17 Therefore, the motion is at this time denied.

18 Mr. Angelini, do you wish to present any
19 evidence?

20 MR. ANGELINI: I do, your Honor. And I
21 appreciate your Honor's ruling on this and
22 understand it and -- and I understand appropriately
23 the standard by which your Honor needs to make that
24 determination.

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1 So let me just say that I'm a bit
2 surprised. I was caught by surprise a bit. My
3 intention is to call Judge Sushchuk. There is an
4 additional witness whom I expected that the
5 Commonwealth -- the Commission will call, Noel
6 Stern. I've been in contact with Ms. Stern
7 yesterday, and I have just sent her an e-mail asking
8 her if -- of her availability, and she is now
9 available. So she just sent me an e-mail indicating
10 she's now available.

11 I will assume that Mr. Neff has given her
12 the instructions how to get into the hearing. So
13 I'm going to e-mail her now and ask her to sign in,
14 and I will then call her as my first witness.
15 That's my plan.

16 THE HEARING OFFICER: Okay. Thank you.

17 THE REPORTER: I believe she's in already.

18 MR. ANGELINI: Oh, good.

19 THE HEARING OFFICER: Great. Thank you.

20 MR. ANGELINI: Ms. Stern, are you
21 available?

22 THE HEARING OFFICER: She is, but she needs
23 to be unmuted.

24 THE REPORTER: I believe she should be.

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1 THE HEARING OFFICER: There she is. Okay.
2 I think.

3 THE WITNESS: I am here. I think the host
4 has stopped my video.

5 THE HEARING OFFICER: Yeah. The video...

6 THE REPORTER: One moment.

7 THE WITNESS: Okay.

8 THE HEARING OFFICER: All right. We have
9 Ms. Stern.

10 Are you ready to proceed, Mr. Angelini?

11 MR. ANGELINI: I am, your Honor.

12 JUDGE SUSHCHYK'S CASE-IN-CHIEF

13 THE HEARING OFFICER: Okay. Let me then
14 tell Ms. Stern.

15 Ms. Stern, I need to ask you -- first I
16 need to swear you in, if you'd raise your right
17 hand.

18 (NOEL B. STERN, sworn)

19 THE WITNESS: I do.

20 THE HEARING OFFICER: Okay. Ms. Stern, I
21 need to ask you a series of questions, as I am
22 asking everyone before their testimony, in
23 conformance with the rules that have been
24 promulgated for this virtual hearing.

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1 So would you kindly state your name for the
2 record.

3 THE WITNESS: Noel Boroughs Stern.

4 THE HEARING OFFICER: And where are you
5 physically located at this time?

6 THE WITNESS: I'm in my office at the
7 Hampshire Probate and Family Court in Northampton.

8 THE HEARING OFFICER: Okay. And who is
9 physically in the room with you?

10 THE WITNESS: Nobody.

11 THE HEARING OFFICER: And what materials
12 and devices do you have with you?

13 THE WITNESS: I have my computer. I have
14 closed everything except this Zoom hearing. I have
15 a smartphone. I've turned the volume down. I can
16 turn it off. And then I have a regular phone.

17 THE HEARING OFFICER: Great. Okay.

18 And what is currently displayed on your
19 screen or screens?

20 THE WITNESS: Okay. So I have two screens,
21 and I have the -- the Zoom hearing on one where I
22 can see everybody's video, and then I have sort of
23 like the blank screen on the other screen, and
24 that's it.

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1 THE HEARING OFFICER: Okay.

2 THE WITNESS: I've closed everything else.

3 THE HEARING OFFICER: Okay. I'm just going
4 to interject, because you're the second witness from
5 the Trial Court who has indicated that there are two
6 screens.

7 THE WITNESS: Right.

8 THE HEARING OFFICER: Am I correct that
9 that is the way that the computer system is set up
10 at the Trial Court so that you actually are seeing
11 this -- you are connected to the same thing but have
12 two screens available to be able to move between
13 documents or whatever is the feed for your screen;
14 is that fair to say?

15 THE WITNESS: That's correct.

16 THE HEARING OFFICER: Okay. So it's not
17 giving you something different?

18 THE WITNESS: No.

19 THE HEARING OFFICER: Okay.

20 And also let me ask you, are you in
21 communication with any people other than those who
22 are conducting the examination here today?

23 THE WITNESS: No, not at the moment.

24 THE HEARING OFFICER: Okay. I'll be asking

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1 you the same questions at the end of your testimony.
2 And if any answers change at any time, by all means
3 let me know that.

4 All right?

5 THE WITNESS: Okay.

6 THE HEARING OFFICER: All right, then.

7 Mr. Angelini, whenever you're ready.

8 MR. ANGELINI: I am ready, your Honor.

9 DIRECT EXAMINATION

10 BY MR. ANGELINI:

11 Q. Good morning, Ms. Stern.

12 A. Good morning.

13 Q. Thank you for accommodating us on short
14 notice. I appreciate it.

15 Ms. Stern, you -- you and I have not met.

16 Am I correct?

17 A. That's correct.

18 Q. And you were interviewed -- were you
19 interviewed by the Commission on Judicial Conduct in
20 connection with this allegation by Ms. Deines?

21 A. I did. I had a phone call with Attorney
22 Neff.

23 Q. Now, are -- do you know Ms. Deines?

24 A. I do.

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1 Q. In what capacity do you know her?

2 A. I know her as a work colleague.

3 Q. You and she work from the same location?

4 MR. NEFF: Objection.

5 A. We -- we --

6 MR. NEFF: Objection.

7 A. We do -- Emily works at several --

8 THE HEARING OFFICER: Sorry.

9 A. -- different locations.

10 THE HEARING OFFICER: I'm sorry, Mr. --
11 hang on for a moment.

12 Mr. Neff, you objected to the question?

13 MR. NEFF: As leading. I think a different
14 question can be asked regarding how they know each
15 other rather than it's where they work.

16 THE HEARING OFFICER: Overruled. Go ahead.

17 Q. Go ahead, Ms. Stern.

18 A. Emily works -- she moves to several
19 different locations, particularly in western
20 Massachusetts, and she does have some desk space in
21 the Hampshire Probate and Family Court, but I -- I
22 interact with her -- you know, even when she's at
23 other locations, we interact by e-mail or over the
24 phone.

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1 Q. And were you interacting with her in that
2 manner in April of 2019?

3 A. I was.

4 Q. And --

5 A. She was at the Hampshire Probate and Family
6 Court that day and she was helping me.

7 Q. Okay. And you continue to interact with
8 her as we speak here today?

9 A. That's correct.

10 Q. And do you consider your relationship with
11 her to be a friendly one?

12 A. Yes.

13 Q. Thank you.

14 Do you know Judge Sushchyk?

15 A. I do not.

16 Q. Have you ever spoken with Ms. Deines with
17 respect to the allegation that she's made against
18 Judge Sushchyk?

19 A. I have.

20 Q. When did you do so for the first time?

21 A. I don't remember the exact date, but I
22 remember that the judicial conference was held in
23 the spring, in April, and I believe it was maybe at
24 the end of the week. And then I think there was a

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1 weekend in between, and then it would have been
2 early the following week.

3 Q. So within -- is it your best memory that it
4 was in -- the conference having been held on
5 Thursday and Friday, it would have been in the early
6 part of the subsequent week?

7 A. That's correct.

8 Q. And did you have conversation with
9 Ms. Deines -- with Ms. Deines in which she told you
10 what she claimed had happened as between her and
11 Judge Sushchuk?

12 MR. NEFF: Objection.

13 THE HEARING OFFICER: What's the basis,
14 please.

15 MR. NEFF: Leading, and it's hearsay.
16 Anything she said to Ms. Stern is hearsay.

17 THE HEARING OFFICER: Why is it being
18 offered, Mr. Angelini?

19 MR. ANGELINI: As an inconsistent statement
20 of Ms. Deines.

21 MR. NEFF: We have no foundation for that.

22 THE HEARING OFFICER: Well, we'll get
23 there.

24 Overruled.

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1 BY MR. ANGELINI:

2 Q. So did you have some conversation with her
3 at that time?

4 A. I did.

5 Q. And what did she say to you had occurred as
6 between her and Judge Sushchyk?

7 A. She said that she was at -- at the judicial
8 conference; that there had been some event in the
9 evening, and that she had -- she had sat down and
10 then she used the words "and he grabbed my ass."

11 Q. Did she say to you that she was going to
12 sit down and he reached out and very forcefully
13 grabbed her ass?

14 A. She -- she said -- she said that he grabbed
15 her ass, and she went like this with her hand
16 (indicating). And that's the part that I remember
17 very clearly, because she went like that
18 (indicating).

19 In terms of the specific language she used
20 about when she was sitting down, or whether she was
21 sitting down, I don't remember her specific
22 language. In my mind, the way I imagined it when
23 she told me, was that she was going to sit down and
24 that he then did that to her.

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1 But I don't remember the specific language
2 she used about the mechanics of where she was
3 sitting or how. But I do specifically remember the
4 exact language. Her words specifically were "he
5 grabbed my ass" and she went like that (indicating)
6 with her hand.

7 Q. So is it your testimony here today that you
8 don't recall whether she said she was sitting down
9 or whether she was going to sit down when this
10 happened?

11 A. I don't. I don't remember the specific
12 words that she used for that part.

13 MR. ANGELINI: If you do not remember those
14 words, then I have no further questions.

15 Thank you very much.

16 THE HEARING OFFICER: All right.

17 Anything, Mr. Neff?

18 MR. NEFF: Can I have one moment please,
19 Judge?

20 THE HEARING OFFICER: Yes.

21 MR. NEFF: Thank you.

22 No further questions for this witness.

23 THE HEARING OFFICER: All right.

24 Ms. Stern --

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1 MR. NEFF: Good to see you, Ms. Stern.

2 THE HEARING OFFICER: Ms. Stern, did any of
3 your answers to my prior questions change at all in
4 the few minutes that you were testifying?

5 THE WITNESS: They did not.

6 THE HEARING OFFICER: Okay. Thanks,
7 Ms. Stern.

8 You're excused as a witness, but you're
9 welcome to stay on if you care to --

10 THE WITNESS: Okay.

11 THE HEARING OFFICER: -- as an observer.
12 Thanks.

13 THE WITNESS: Thank you, your Honor.

14 MR. ANGELINI: May I proceed, your Honor?

15 THE HEARING OFFICER: Yes, Mr. Angelini.

16 MR. ANGELINI: Yes, your Honor.

17 I call Judge Paul Sushchuk.

18 THE HEARING OFFICER: All right.

19 MR. ANGELINI: Now Mr. Sushchuk and I are
20 in the same room. I had some conversation with
21 Mr. Loos about the mechanics. It appears that, to
22 avoid an echo, it's best that Mr. Sushchuk turn off
23 his audio and he speak through my computer. We're
24 going to try that. But I mention that to your Honor

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1 because, if there's any problem with that, we'll
2 have to make some other arrangements, and please
3 advise me.

4 THE HEARING OFFICER: Okay.

5 MR. ANGELINI: But that said, Mr. Sushchyk,
6 Judge Sushchyk.

7 THE HEARING OFFICER: Okay.

8 Judge Sushchyk, could I ask you to please
9 raise your right hand.

10 (PAUL M. SUSHCHYK, sworn)

11 THE WITNESS: I do.

12 THE HEARING OFFICER: All right.

13 We can hear you so far, and I will say to
14 you -- although I know you've been watching as I've
15 done this with other people -- I need to ask you the
16 questions that are required under the protocol.

17 So would you kindly state your name for the
18 record?

19 THE WITNESS: My name is Paul Michael
20 Sushchyk.

21 THE HEARING OFFICER: All right.

22 And would you tell me -- I think we know
23 where you are physically located, but would you
24 confirm where you are physically located.

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1 THE WITNESS: I am physically located in
2 the room with my attorney, Michael Angelini.

3 THE HEARING OFFICER: Okay. I think we're
4 having a little difficulty with the audio being --
5 certainly it's dropping out a little.

6 THE REPORTER: Yeah. Maybe turn the
7 computer screen toward him.

8 MR. ANGELINI: Yeah. I'm going to move and
9 do just that.

10 Excuse me, your Honor.

11 THE HEARING OFFICER: Sure.

12 MR. ANGELINI: Could we try a test?

13 THE HEARING OFFICER: Sure.

14 MR. ANGELINI: Judge, would you say
15 "testing, one, two, three"?

16 THE WITNESS: Testing one, two, three.
17 Testing one, two, three.

18 THE HEARING OFFICER: Say it again, please.

19 THE WITNESS: Testing, one, two, three.

20 THE HEARING OFFICER: Okay. I think that's
21 good.

22 Mr. Loos, does that seem adequate from your
23 perspective?

24 THE REPORTER: Yes. That's better.

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1 THE HEARING OFFICER: Okay. Great. Thank
2 you.

3 All right.

4 And let me ask, continuing on, who is
5 physically in the room with you?

6 THE WITNESS: No one else except Attorney
7 Angelini.

8 THE HEARING OFFICER: All right.

9 And what materials and devices do you have
10 with you?

11 THE WITNESS: I have a cell phone which has
12 been placed at the far end of the table. I have a
13 notepad, which is in place at the far end of the
14 table. I have a document which indicates the
15 password, and I have a glass, water glass.

16 THE HEARING OFFICER: All right.

17 And would you tell me, please, what's
18 currently on the screens that you have available to
19 you?

20 THE WITNESS: Yes, your Honor.

21 The only thing that's on the screen is --
22 the only thing I have is the Zoom video feed.

23 THE HEARING OFFICER: Okay. Great. Thank
24 you.

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1 Q. I'll ask you to keep your voice up and --

2 A. Yes, sir. I'll keep my voice up.

3 Q. All right.

4 Don't yell at us, but speak as loud as you
5 can.

6 A. I will speak as loud as I can.

7 Q. All right. Fair enough.

8 And where did you go to law school?

9 A. I went to law school at Western New England
10 School of Law.

11 Q. And what year did you graduate?

12 A. I graduated in 1981.

13 Q. Okay. Take us briefly, and sequentially,
14 through your career, working career, would you
15 please, sir.

16 A. Yes. I started working as a police cadet
17 for the town of Sterling in 1974. I left that and
18 went on to the New Hampshire State Police in May of
19 1977. I worked with the New Hampshire State Police
20 for approximately one year.

21 I left New Hampshire and then returned to
22 school, my four-year degree, and went on to law
23 school. While I was in law school, I continued
24 working as a Sterling police officer.

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1 After I graduated law school and passed the
2 bar, I started to work as an attorney, and I was
3 associated with the firm of Berg & Laipson until
4 2015.

5 Q. And you are now a judge of the Probate and
6 Family Court; is that correct?

7 A. I am.

8 Q. When did you become a judge of the Probate
9 and Family Court?

10 A. I became a judge on February 28th of 2018.

11 Q. You indicated you live in Sterling,
12 Massachusetts.

13 Have you ever held any elected office in
14 the town of Sterling?

15 A. Yes.

16 Q. What office?

17 A. I was elected as a selectman from 1984 to
18 1987. I also served in the Sterling planning board.
19 Subsequent, I was reelected as selectman in 2000,
20 and I served as a selectman until 2013.

21 Q. You and your family live in Sterling,
22 Massachusetts?

23 A. Yes. I was born and raised in Sterling.

24 Q. Married?

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1 A. I am married.

2 Q. Do you have children?

3 A. I have three children.

4 Q. Do you have grandchildren?

5 A. Not yet, but I would expect. She's due
6 tomorrow.

7 Q. All right. On the way. All right.

8 Let's go to -- let's go to this case.

9 A. Yes, sir.

10 Q. I'm directing your attention to April 25th
11 of 2019.

12 Do you recall that date?

13 A. I do, sir.

14 Q. And what I'd like to ask you is take us
15 through that day as best you can. I'll ask you a
16 series of questions.

17 How did you arrive at the Ocean Edge Resort
18 that day?

19 A. I drove down from my home in Sterling.

20 Q. And what time did you leave the town of
21 Sterling?

22 A. I left the town of Sterling at
23 approximately six o'clock in the morning.

24 Q. What time did you awaken that day?

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1 A. I got up at about 5:00.

2 Q. Okay. And you arrived at the Ocean Edge
3 Resort at about what time?

4 A. I arrived at the Ocean Edge Resort at
5 approximately 8:30.

6 Q. And then what did you do?

7 A. I checked into the conference, and I
8 entered the conference.

9 Q. Did you attend the conference that morning?

10 A. I did.

11 Q. And that afternoon, did you?

12 A. I did, sir.

13 Q. And did you attend a -- what's been
14 referred to in the proceeding as a hospitality
15 function sometime that afternoon?

16 A. After the --

17 Q. "Yes" or "no"?

18 A. Yes.

19 Q. Okay. And what was the hospitality
20 function?

21 A. The hospitality function was a group of
22 judges who got together in a suite and had both food
23 and drink.

24 Q. Now, by that time were you familiar with

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1 most of the other probate judges?

2 A. Not really.

3 Q. Okay. And had you attended any prior
4 judicial functions comparable to the one that was
5 being held at the Ocean Edge Resort in April of
6 2019?

7 A. I attended a -- shortly after I was
8 appointed I attended the event that was held in
9 April of 2018.

10 Q. By the way, after your appointment,
11 where -- where were you sitting?

12 A. I made the circuit for a short period of
13 time, and I was reassigned. I was assigned to the
14 Worcester Probate and Family Court in March of 2018.

15 Q. And that's where you were sitting as of
16 April of 2019, were you?

17 A. Yes, sir.

18 Q. Okay. All right.

19 So you -- where was this hospitality event
20 that took place on April 25th?

21 A. It was in the room or suite of one of the
22 judges who was staying over.

23 Q. Okay. And, indeed, were you -- did you
24 have a room there at the Ocean Edge Resort for the

1 night of the 25th of April?

2 A. I did.

3 Q. And was that provided by the Trial Court?

4 A. It was.

5 Q. Now, up until the time of that -- or strike
6 that.

7 Who was present at the hospitality suite
8 event?

9 A. There were a number of judges.

10 Q. Was it largely a function for judges, as
11 you understood it?

12 A. Yes.

13 Q. And did you have anything, any alcohol to
14 drink at that session?

15 A. Yes.

16 Q. And what did you have to drink at that
17 session?

18 A. I brought my own alcohol.

19 Q. I asked you what did you have to drink.

20 A. I had whiskey.

21 Q. Okay. How many -- and did you -- strike
22 that.

23 Did you have more than one drink?

24 A. I did not.

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1 Q. And up until that time, had you had any
2 alcoholic beverage at any time that day?

3 A. No.

4 Q. What time did the hospitality function end?
5 Approximately.

6 A. I would say approximately 6:45.

7 Q. Okay. And by that time you'd been up for
8 12 3/4 of an hour?

9 A. That's correct.

10 Q. Then what happened? Then what did you do?

11 A. I went over to the dinner at the conference
12 site.

13 Q. Who did you sit with at that dinner?

14 A. I don't recall.

15 Q. And following the dinner -- strike that.

16 At that dinner did you have anything to
17 drink, any alcohol to drink?

18 A. No, I did not.

19 Q. And after the dinner, you've heard some --
20 you've heard the testimony in the case about
21 something called the Bayzos Pub.

22 A. Yes.

23 Q. Did you at some time after dinner go to the
24 Bayzos Pub?

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1 A. Yes. I walked over with Judge Geoffrey
2 German and Judge Kathryn Bailey.

3 Q. Those are two judges who were also at that
4 time sitting in the Worcester Probate and Family
5 Court, are they?

6 A. Yes.

7 Q. And did you -- at some time, as you were
8 walking from the dinner to the Bayzos Pub, did you
9 see anyone else that you recognized?

10 A. I saw Attorney Evelyn Patsos.

11 Q. And did you see her with a group of other
12 women?

13 A. I did.

14 Q. Were you -- did you have any conversation
15 with Ms. Patsos at that time?

16 A. I did not.

17 Q. And you then went down to the Bayzos Pub,
18 did you? Or went to the Bayzos Pub? I'm sorry.

19 A. That's correct.

20 Q. Was it on the same floor as the place where
21 the dinner had taken place?

22 A. Bayzos Pub is not the same building where
23 the dinner takes place. I would call it -- we
24 walked -- it's a separate building, and we walked

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1 over to the Bayzos Pub. It's in the basement.

2 Q. Now, when you arrived at the Bayzos Pub,
3 were there other people there?

4 A. Yes. The bar was crowded.

5 Q. And do you know whether the people who were
6 there were only judges from the Worcester Probate
7 and Family Court and court personnel?

8 That is to say, did you see people who you
9 did not recognize as either judges or court
10 personnel?

11 A. Yes.

12 Q. Okay. And when you went into the Bayzos
13 Pub, what did you do?

14 A. I went into the Bayzos Pub. I stood by the
15 door for a few minutes kind of looking over the
16 crowd. I really didn't recognize anyone that I knew
17 other than Judge German and Judge Bailey.

18 They started to circulate. I waited by the
19 door for, you know, probably five minutes, and then
20 I started to -- I think I talked with Judge German
21 and Bailey and the persons that they were talking
22 to, and then I was -- then I started to circulate a
23 little bit. And I eventually saw Attorney Patsos
24 sitting over at a table with some other individuals.

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1 Q. Now, how did you know Attorney Patsos?

2 A. I've known Attorney Patsos since she worked
3 in the Worcester Probate and Family Court. She was
4 a probate court assistant register, and she would
5 assist the lawyers in reviewing their pleadings and
6 talking to them about -- make sure that they
7 correctly filed things.

8 Q. Is that how you became acquainted with her?

9 A. Yes.

10 Q. Okay. And how long ago was that? That is,
11 how much prior to April of 2019 was it that you met
12 Attorney Patsos in that connection?

13 A. I probably met Attorney Patsos probably
14 around 2005. She worked there for a period of time,
15 and then she left, I believe, shortly after we moved
16 into the new building.

17 Q. Did you ever have anything other than a
18 professional relationship with Attorney Patsos?

19 A. No.

20 Q. Did you ever socialize with her?

21 A. I have not.

22 Q. Okay. And as of April of 2019, how long
23 had it been since you had been in the presence of
24 Ms. Patsos? Approximately.

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1 A. Probably after I was sworn in during my
2 training. I had a short block of instruction on the
3 MUPC from Attorney Patsos at the administrative
4 office in Boston. And I think we talked for about
5 an hour, maybe less than that, on the MUPC.

6 Q. So you had seen her -- is it fair to say
7 you had kind of renewed your friendship with her at
8 that time?

9 A. Yes.

10 Q. Okay. Now, since you raised the issue of
11 training, and before we get to further events at the
12 Bayzos Pub, let me ask you about Emily Deines.

13 As you recalled, as of April of 2019, had
14 you met Ms. Deines before?

15 A. Not that I recall.

16 Q. Do you have a recollection that Ms. Deines
17 was involved somehow in your -- in some way or other
18 in your training after you became appointed to the
19 court?

20 A. Not that I recall.

21 Q. Were a number of people -- in addition to
22 Ms. Patsos, whom you had known before, were there a
23 number of other people involved in your training?

24 A. Yes.

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1 Q. Approximately how many?

2 A. Over the course of two weeks, I would say
3 I...

4 Q. Keep your voice up, please.

5 A. Over the course of two weeks that we --
6 that I received the training, I would say 10 to 15
7 people.

8 Q. Okay. And you don't remember one way or
9 another whether Ms. Deines was one of them; is that
10 fair to say?

11 A. That is correct.

12 Q. Excuse me.

13 So after going back to the Bayzos Pub,
14 Judge Sushchuk, you've told us you got there; you
15 waited by the door; you had a brief conversation
16 with Judge Bailey and Judge German, whom you knew,
17 and then you said you saw Ms. Patsos.

18 Is that correct?

19 A. That is correct.

20 Q. And approximately -- when you saw
21 Ms. Patsos, approximately how much time had passed
22 from the time that you had arrived at the pub that
23 evening?

24 A. I would say approximately 15 minutes.

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1 Q. Okay. And in that time --

2 MR. ANGELINI: Excuse me just a minute,
3 your Honor.

4 THE HEARING OFFICER: Sure.

5 MR. ANGELINI: Mr. Loos, would you please
6 call up Exhibit Number 8.

7 THE REPORTER: Okay.

8 MR. ANGELINI: So can you see Exhibit
9 Number 8, Judge Sushchyk?

10 THE WITNESS: I don't see it.

11 MR. ANGELINI: Can we screen share that,
12 Mr. Loos?

13 THE REPORTER: Sure.

14 THE WITNESS: I'm now able to see Exhibit
15 Number 8.

16 BY MR. ANGELINI:

17 Q. Now, with respect to the configuration of
18 the furnishings and the structure of the Bayzos Pub,
19 does Exhibit Number 8 fairly reflect those
20 circumstances?

21 That is to say -- let me rephrase my
22 terrible question.

23 Does Exhibit Number 8 fairly reflect the
24 furnishings and the structure of the Bayzos Pub on

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1 the evening of April 25, 2019?

2 A. Yes, it does.

3 Q. Now, as you were at the pub that evening,
4 just before you saw Ms. Patsos sitting with a group
5 of women, would you describe, looking at Exhibit 8,
6 how it was populated?

7 A. It was populated -- the crowd of
8 individuals who were in the bar that night were
9 sitting at the -- in the seats adjacent to the bar.
10 There were people standing behind those individuals.
11 There were people at the tables in the foreground,
12 the round -- the high round-top tables. There were
13 other people milling about. There were people in
14 that far room, the very top of the picture, and
15 there were also tables to -- to the left-hand side
16 that's out of the picture.

17 There were generally a lot of people
18 present.

19 Q. Now, without driving these exhibits to
20 death here, if you look at Exhibit -- at this
21 exhibit, there is a round so-called high-top table
22 in the foreground.

23 A. I see that.

24 Q. And was it at that table or a table of that

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1 nature in which Ms. Patsos was gathered with this
2 group of women you observed?

3 A. Yes. That is the table I referred to as a
4 high round-top table.

5 Q. The question is, was it at that table or a
6 table of that nature at which you saw Ms. Patsos
7 with a group of women, "yes" or "no"?

8 A. Yes.

9 Q. Okay. And what is to the immediate left of
10 that table as you look at this exhibit?

11 A. To the immediate left is another round-top.

12 Q. To left of the round-top table, as we look
13 at it?

14 A. There is a passageway.

15 Q. And is the passageway -- as we look at this
16 table, is the passageway -- here's a bad word --
17 above the table or to the left of the table?

18 A. It's to the left of the table.

19 Q. Is there a brick wall somewhere?

20 A. Yes. There are a number --

21 Q. Was there a brick wall is the question.
22 "Yes" or "no"?

23 A. There are brick walls, and there are brick
24 pillars.

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1 Q. Okay. Was there a brick pillar to the left
2 of the table?

3 A. Yes.

4 Q. And the passageway as one -- if you look
5 from the bar, which is to the right, and you look
6 straight ahead at the brick pillar, you would first
7 come to the round-top table and then you would come
8 to the pillar; is that correct?

9 A. That is correct.

10 Q. And to the right of that, is that where the
11 passageway is you're referring to?

12 A. To the right of the picture depicts the
13 area immediately adjacent to the bar.

14 Q. And as you look from the bar at the
15 high-top table and the pillar behind the table, and
16 you look to the right of the table, immediately to
17 the right of that table, is that where the
18 passageway is located?

19 If you're unable to determine it based on
20 this picture, we'll move on.

21 A. I'm not really able to determine that.

22 Q. Okay. When you saw Ms. Patsos, did you
23 recognize any of the other women she was seated
24 with?

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1 A. I did not.

2 Q. Did you recognize the woman whom you have
3 come to know as Emily Deines?

4 A. No.

5 MR. ANGELINI: Mr. Loos, would you call up,
6 please, Exhibit Number 11.

7 THE REPORTER: Okay.

8 BY MR. ANGELINI:

9 Q. Judge Sushchuk, can you see what has been
10 designated in this record as Exhibit Number 11?

11 A. Yes.

12 Q. Okay. And does that indicate the high-top
13 table in the area of which you saw Ms. Patsos that
14 evening as you described?

15 A. Yes.

16 Q. And to the left of that high-top table, as
17 we look at Exhibit Number 11, what do you see?

18 A. I see a brick pillar.

19 Q. And as we look from the perspective of this
20 photograph at that table, and with respect to what
21 you described as a passageway, where is that
22 passageway?

23 A. The passageway is underneath the arch in
24 between the two tables.

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1 Q. You say the "two tables."

2 That is the two round-top tables in this
3 exhibit?

4 A. The two high round-top tables.

5 Q. Thank you.

6 Now, as you -- with respect to this
7 photograph, and the perspective of this photograph,
8 when you first saw Ms. Patsos and this group of
9 women that evening, where were you?

10 A. I was by the entranceway.

11 Q. All right.

12 And as one looks at this picture, would one
13 be looking from the perspective of the entranceway
14 to what is shown in this Exhibit 11?

15 A. Yes.

16 Q. Okay. And did you make a decision to go
17 over to that table?

18 A. I did.

19 Q. Okay. And when you made that decision to
20 go over to that table, what path -- what was the
21 path of your travel?

22 A. I traveled to the left-hand side -- it's
23 actually off the picture -- essentially traveling to
24 the back side in the area where there are other

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1 tables coming down -- coming to the table through
2 the passageway.

3 Q. So you -- as we look at Exhibit Number 11,
4 we see two stools in the foreground, two barstools,
5 right?

6 Do you see two barstools in the foreground
7 of Exhibit 11?

8 A. I see two barstools in Exhibit 11 are --
9 they are on the far right-hand --

10 Q. Do you see two barstools in Exhibit 11?

11 A. I see two stools that are by the
12 round-top -- I actually see four stools that
13 surround the round-top table.

14 Q. And two are in the foreground and two
15 further back; is that correct?

16 A. That's correct.

17 Q. Okay. And with respect to those barstools,
18 as you approached that table, were you going to the
19 right or to the left?

20 A. As I approached the table, I went to the
21 left.

22 Q. Right.

23 And to the left of that brick pillar that
24 we see in Exhibit Number 11, what was there that

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1 evening?

2 A. There were tables and chairs.

3 Q. Were people seated at those tables and
4 chairs?

5 A. Yes.

6 Q. And were people also standing around those
7 tables and chairs?

8 A. People were standing more towards the
9 passageway and towards the bar.

10 Q. Okay.

11 A. And --

12 Q. So as you --

13 A. Hold on for a moment, please.

14 And there were some people standing in the
15 back.

16 Q. Would you describe the scene in the
17 passageway and between the barstool and the --
18 stools and the bar as crowded?

19 A. I do. It was crowded.

20 Q. And what were those people doing as you
21 made your decision to approach the table at which
22 Ms. Patsos and these other women were seated?

23 A. People were talking to one another and
24 enjoying themselves.

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1 Q. And so there -- so that we're clear about
2 what's in Exhibit 11, the bar at which you've
3 testified some people were seated and other people
4 were standing behind them is to the right as we look
5 at Exhibit 11; is that correct?

6 A. It's to the far right. It's off the
7 picture.

8 Q. Why did you decide -- in approaching the
9 table from where you were at the entryway to the
10 pub, why did you decide to approach the table by
11 going left rather than going straight ahead or to
12 the right?

13 A. Well, the area by the bar and behind the
14 bar was crowded with people, and it's a lot easier
15 for me to navigate through a less crowded area, and
16 that's just the way I went.

17 Q. Okay. Now, by that time, at that moment,
18 how many alcoholic drinks had you had that day?

19 A. I had the one at the hospitality suite.

20 Q. Is that all?

21 A. Uh-huh. That's true.

22 Q. Were you in any way -- as you judged it, in
23 any way under the influence of alcohol?

24 A. Absolutely not.

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1 Q. Were you taking any medication as of that
2 day?

3 A. No.

4 Q. So tell us, then, what you did as you
5 approached the table to the very -- to the point --
6 looking at Exhibit 11, to the point at which you
7 stopped? Can you tell us your course of travel and
8 describe it to the point where you stopped?

9 A. Well, I -- I threaded my way through the
10 crowd, and I walked around the back side of the
11 pillar and the table -- tables.

12 Q. The tables.

13 At which table?

14 A. The tables which are behind the pillar that
15 are really off the picture.

16 And I came down through the passageway and
17 stopped at -- stopped at the table by Attorney
18 Patsos.

19 Q. And when you stopped, where was Ms. Patsos
20 as -- in relationship to you?

21 A. She was close. I was standing next to her.

22 Q. Now, at any time on your path of travel
23 from when you were at the entryway, 15 minutes or so
24 after you arrived, and you made the decision to go

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1 to this table, at any time before you arrived next
2 to Ms. Patsos did you stop?

3 A. No.

4 Q. Did you have any reason to stop?

5 A. I did not.

6 Q. And when you made your way to the point at
7 which you stopped and Ms. Patsos was to your left,
8 how would you describe the number of people who were
9 in the course of your travel?

10 A. There were a lot of people there. I mean,
11 there were people place -- the area was crowded.
12 There were people having a good time, and there were
13 people there.

14 Q. Did you come to learn that at the time you
15 stopped and Ms. Patsos is to your left, that the
16 woman who has been described as Emily Deines was
17 sitting to your right?

18 A. I did learn that subsequent.

19 Q. Now, did you recognize Ms. Deines?

20 A. I did not at the time.

21 Q. And as you passed behind Ms. Deines on your
22 way to where you stopped just before meeting up with
23 Ms. Patsos, were there other people behind
24 Ms. Deines?

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1 A. Yes.

2 Q. Do you know any of those people?

3 A. No.

4 Q. Were there -- how many people would you say
5 were in that -- is that -- strike that.

6 Is the area where Ms. Deines was sitting
7 immediately adjacent to the area which you have
8 designated or described, I should say, as a
9 passageway?

10 A. It is.

11 Q. And approximately how many people would you
12 say were in that passageway? At that time.

13 A. I would say it's hard to say, give a
14 definite number.

15 Q. Give us your best estimate.

16 A. I would say, to the best of my memory, I
17 would say six or seven to ten people, but there were
18 people walking back and forth.

19 Q. Whether they were walking back and forth or
20 stationary, what's your best memory as to
21 approximately how many people were in that
22 passageway behind the barstool on which Ms. Deines
23 was seated?

24 A. I would say there were somewhere between

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1 seven to ten in that immediate area. The bar --
2 there were people between the bar and --

3 Q. I'm just asking you in that particular
4 area.

5 A. All right.

6 Q. There were other people behind the bar and
7 in the area of the bar of the table; is that what
8 you're saying?

9 A. Yes, sir.

10 Q. But the seven or ten you were describing
11 were in that passageway you're describing?

12 A. Yes.

13 Q. Thank you.

14 Now, to the best of your knowledge, as you
15 sit here today, under oath, did you -- do you recall
16 having any physical contact of any type with any
17 part of Ms. Deines' body as you made your way from
18 the entryway around the way to the place you stopped
19 and met up with Ms. Patsos?

20 A. I did not have any physical contact with
21 Ms. Deines while I walked or approached.

22 Q. Did you have any physical contact with her
23 at any time that evening?

24 A. No, I did not.

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1 Q. Did you ever at any time that evening
2 intentionally have any physical contact?

3 A. Absolutely not.

4 Q. Did you at any time that evening, as
5 charged by the Commission, intentionally place one
6 of your hands under Ms. Deines' buttocks or buttock
7 and pinch or squeeze her buttocks or buttock?

8 Did you ever do that?

9 A. Absolutely not.

10 Q. You're certain of that?

11 A. Yes, I am.

12 Q. Did you ever see anyone -- did you see
13 anyone else do that?

14 A. No, I did not.

15 Q. And as you walked behind Ms. Deines, making
16 your way to where you stopped next to Ms. Patsos,
17 how close did you observe any other person to be in
18 that passageway as compared to Ms. Deines? That is
19 to say -- let me withdraw that question.

20 You've indicated you saw a number of people
21 in that passageway. How close did you observe any
22 of those people to Ms. Deines?

23 A. I would say within a foot.

24 Q. And when you made your way behind her, to

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1 the place where you stopped and met up with
2 Ms. Patsos, you used the word "threaded" your way in
3 some prior testimony.

4 Did you have any contact with any of those
5 people, any physical contact with any of those
6 people?

7 A. I may have. Because you're moving through
8 a crowd, you do bump into people.

9 Q. Did you have any intentional contact with
10 anyone that evening?

11 A. Absolutely not.

12 Q. So you came to Ms. Patsos.

13 By the way, had you spoken with Ms. Patsos
14 at any time during the course of the day?

15 A. No.

16 Q. Had you spoken with her at any -- to any
17 extent as you were walking from the dinner down to
18 the pub or over to pub?

19 A. No.

20 Q. Okay. When you went -- when you arrived at
21 the place next to Ms. Patsos, and as you say
22 stopped, what did you -- what's the first thing you
23 said as you recall?

24 A. Well --

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1 Q. Did you greet the people at the table, or
2 anyone at the table?

3 A. I greeted Attorney Patsos. I began to
4 introduce myself. Attorney Patsos also introduced
5 me.

6 MR. NEFF: Objection. I think the
7 question --

8 Q. I asked you what you did.

9 A. Okay.

10 Q. You introduced yourself?

11 A. I did.

12 Q. And how did you do so?

13 A. "Hi there. My name's Paul Sushchuk."

14 Q. You referred to yourself as "Judge
15 Sushchuk" or as "Paul Sushchuk"?

16 A. I referred to myself as "Paul Sushchuk."

17 Q. At sometime that evening did you come to
18 realize that the woman seated to your right was
19 Emily Deines?

20 A. Yes. We started to talk.

21 Q. Who started to talk?

22 A. We all started talking, and -- and she
23 referred to herself as Emily.

24 Q. Did she introduce herself to you?

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1 A. She did.

2 Q. And how did she introduce herself to you?

3 A. I believe she -- I recall that she
4 introduced herself as "Emily."

5 Q. As "Emily"?

6 A. That's correct.

7 Q. And when she did so, was there anything
8 which seemed to you to be unusual in the way in
9 which she acted or expressed herself?

10 MR. NEFF: Objection.

11 THE HEARING OFFICER: Overruled.

12 A. Nothing whatsoever.

13 Q. Did you engage in some conversation with
14 her then?

15 A. I did.

16 Q. And in that conversation was there anything
17 in the way she acted or conducted herself which
18 seemed to you to be unusual in any way?

19 A. Not that I recall.

20 Q. And have you searched your memory about
21 that?

22 A. Absolutely.

23 Q. After -- just to go back to the
24 introductions.

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1 You introduced yourself, people introduced
2 themselves to you. And then what next occurred?

3 A. I asked everybody if they wanted a drink.
4 I was going to get one for myself, so I bought a
5 round of drinks for the table.

6 Q. Let's be clear about that.

7 A. Okay.

8 Q. Who did you ask -- when you said, "I asked
9 if they wanted a drink," who did you ask?

10 A. Jocelyne Welsh, Christine Yurgelun,
11 Attorney Patsos and Emily.

12 Q. Emily Deines?

13 A. Emily Deines. Ms. Deines.

14 Q. And, I'm sorry, did -- did you complete
15 your testimony?

16 A. I did.

17 Q. Okay. And did some of those people accept
18 your offer to buy them a drink?

19 A. They did.

20 Q. And you heard Judge Casey's testimony, did
21 you?

22 A. I recall it.

23 Q. And do you recall going over to the bar and
24 getting drinks for other people?

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1 A. I did.

2 Q. And then carrying them back to the table?

3 A. I do.

4 Q. In a manner consistent with what Judge
5 Casey testified to?

6 A. It is consistent with Judge Casey's
7 testimony.

8 Q. Keep your voice up. Okay?

9 A. I will.

10 Q. You can yell at me without people
11 necessarily taking issue to it.

12 MR. NEFF: I'm objecting as to him
13 asking --

14 MR. ANGELINI: Can you all hear him?

15 MR. NEFF: My objection is to
16 Mr. Angelini's effort to have Judge Sushchuk
17 essentially agree with or corroborate Chief Justice
18 Casey's testimony from the prior day.

19 THE HEARING OFFICER: I'm sorry. I did not
20 hear the objection before that.

21 MR. NEFF: All right.

22 THE HEARING OFFICER: So it may stand.

23 MR. ANGELINI: All right.

24 Q. So who accepted your offer for a drink?

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1 A. I don't have a specific memory, but I know
2 I purchased a number of drinks.

3 Q. How many drinks did you bring back to the
4 table according to your memory?

5 A. I believe I brought back --

6 Q. Keep your voice up, please.

7 A. I believe I brought back four.

8 Q. Was one of them for yourself?

9 A. Yes.

10 Q. And what did you have in your drink?

11 A. I had a whiskey and water, with ice.

12 Q. When you came back to the table -- strike
13 that for a second.

14 As compared to where Ms. Deines was
15 sitting, were you and Ms. Patsos to her left?

16 A. Originally.

17 Q. Just when you came to the table and stood
18 next to Ms. Patsos.

19 A. Yes, I was.

20 Q. Were you to Ms. Deines' left?

21 A. Yes. Thank you.

22 Q. And then you went to the bar and brought
23 back some drinks, and where did you go on -- as you
24 went to that bar, did you walk through the crowd?

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1 A. Yes.

2 Q. And was it continued to be crowded?

3 A. Absolutely.

4 Q. And when you ultimately got the drinks and
5 came back to the table, where did you go?

6 A. I stood next to Jocelyne Welsh -- to
7 Jocelyne Welsh and Christine Yurgelun.

8 Q. And where was Ms. -- by the way, had you
9 met Ms. Welsh -- did you know Ms. Welsh prior to
10 that evening?

11 A. No.

12 Q. Did you know Ms. Yurgelun prior to that
13 meeting?

14 A. I never met either of these individuals.

15 Q. When you say you went next to Jocelyne
16 Welsh, you went next to the person who has been
17 identified as Jocelyne Welsh; is that right?

18 A. Right.

19 Q. Is that right?

20 A. That is correct.

21 Q. And Ms. Welsh was sitting -- as compared to
22 Ms. Deines, Ms. Welsh was sitting across from
23 Ms. Deines; is that correct?

24 A. That is correct.

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1 Q. And you then, rather than be next to
2 Ms. Deines, you moved across the table.

3 And why did you go across the table rather
4 than the location you'd been next to where the
5 location -- rather than the location at which you
6 had been with Ms. Patsos?

7 A. It was a less congested area.

8 Q. Was there any purpose other than that?
9 That is --

10 A. No. The -- it was more -- it was an open
11 area. I saw an open space. I went to it, and I
12 sat -- you know, I stood there and talked to the
13 people at the table.

14 Q. You say you talked to the people at the
15 table.

16 Was Ms. Deines involved in that
17 conversation?

18 A. She was, yes.

19 Q. Now, during the course of that evening did
20 you observe Ms. Deines leaving at some point?

21 A. I did.

22 Q. And was there anything about her leaving
23 which seemed to you in any way unusual?

24 A. No, it did not.

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1 Q. Was there any conversation on the subject
2 of her leaving, if you recall?

3 A. Not that I --

4 MR. NEFF: I'm sorry. I couldn't hear the
5 question.

6 MR. ANGELINI: The question was, was there
7 any conversation on the subject of her leaving that
8 he can recall. And the answer the witness said,
9 "Not that I can recall."

10 But keep your --

11 MR. NEFF: Judge Josephson, I don't want to
12 hold us up, but I would like to ask if I could have,
13 like, a one-minute recess I'm going to grab my
14 headphones so that I can actually hear and maybe be
15 heard better than I have for the last ten minutes or
16 so.

17 THE HEARING OFFICER: Go ahead. We'll just
18 wait here.

19 MR. ANGELINI: Your Honor, can you hear
20 sufficiently?

21 THE HEARING OFFICER: Yes.

22 MR. ANGELINI: Thank you.

23 THE REPORTER: May I take down the exhibit?

24 THE HEARING OFFICER: Are you done with it,

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1 Mr. Angelini?

2 MR. ANGELINI: Done with what? I'm sorry.

3 THE HEARING OFFICER: The exhibit.

4 MR. ANGELINI: Oh, yes. I am.

5 Thank you very much.

6 THE HEARING OFFICER: I'll come back.

7 MR. NEFF: We'll have higher quality for a
8 moment, for a while.

9 It's already falling apart on me.

10 There we go.

11 Is it on? Will it start working?

12 THE HEARING OFFICER: All set, Mr. Neff.

13 MR. NEFF: Can you hear me okay, Judge
14 Josephson?

15 THE HEARING OFFICER: I can. Thank you.

16 MR. NEFF: Okay. Great.

17 And I can certainly hear you, so I think I
18 am optimistic problem solved.

19 Oh, gosh, now I'm unplugged.

20 But problem solved. There we are.

21 THE HEARING OFFICER: Okay. Mr. Angelini,
22 whenever you're ready to continue.

23 MR. ANGELINI: I am. I am, your Honor.

24 Thank you.

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1 Q. All told, that day, the 25th of April,
2 2019, how much alcohol did you consume, Judge?

3 A. I had two drinks.

4 Q. Can you keep your voice up?

5 A. I had two drinks.

6 Q. The one at the hospitality suite, and the
7 one at the Bayzos Pub; is that correct?

8 A. That is correct.

9 Q. Are you certain that that's all you had to
10 drink?

11 A. I am.

12 Q. Judge Casey testified that earlier in the
13 day he had a very brief contact with you and you
14 appeared to him to be tired or less than energetic.

15 Do you recall seeing Judge Casey earlier in
16 the day? On the 25th?

17 A. You mean during the --

18 Q. During the day.

19 A. During the day? I recall seeing him.

20 Q. And were you tired or in any way feeling in
21 any unusual way at the time you had contact with
22 Judge Casey?

23 A. No.

24 Q. Had you had a long day at that point?

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1 A. By the time of the dinner, we had had a
2 long day. During the day, when I saw Judge Casey, I
3 was not tired.

4 Q. And you had had nothing to drink?

5 A. I had nothing to drink during the day.

6 Q. Let me come to the subject of a flask.

7 Did you have a pocket flask with you --

8 A. Yes.

9 Q. -- on April 25, 2019?

10 A. I did.

11 Q. And what was in that -- what was the size
12 of that flask, by the way?

13 A. The flask is about three -- maybe three and
14 a half by three and a half inches. It holds five or
15 six ounces of liquid.

16 Q. And why did you bring a flask with you to
17 this event at the Ocean Edge pub?

18 A. Well, I brought a flask with me because I
19 wanted some -- something to drink at the hospitality
20 suite. I mean...

21 Q. Well, did you know there was going to be a
22 hospitality suite when you went off to the meeting?

23 A. Generally they have one.

24 Q. And did you use that flask from which to

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1 retrieve alcohol at that hospitality suite?

2 A. Come again?

3 Q. Did you use that flask from which to
4 retrieve alcohol at that hospitality suite?

5 A. Yes.

6 Q. And was there a particular kind of whiskey
7 that you drink?

8 A. Typically what I like to drink is Irish
9 whiskey. The type of Irish whiskey I like is called
10 Glendalough.

11 Q. Glendalough?

12 A. If you want me to spell that, it's
13 G-l-e-n-d-a-l-o-u-g-h.

14 Q. Is that whiskey generally available at
15 bars?

16 A. No, it is not.

17 Q. Now, by the way, Judge Sushchyk, referring
18 your attention to April of 2019, how frequently at
19 that time did you drink alcohol?

20 A. I have a drink now and again.

21 Q. And what do you mean as "now and again"?

22 A. Occasionally.

23 Q. Weekly?

24 A. Yes.

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1 Q. Thank you.

2 Was it your habit or custom at that time in
3 that month at any time at about that time to drink
4 alcohol?

5 A. Absolutely not.

6 MR. NEFF: I'm going to object to this
7 question.

8 THE HEARING OFFICER: What's the basis,
9 please?

10 MR. NEFF: Well, we're not -- this gets
11 into the area of character evidence, which is not
12 something that we've discussed being allowed to
13 permit in the context of this hearing.

14 THE HEARING OFFICER: Overruled.

15 Q. Now, was that -- where did you carry that
16 flask on April 25th?

17 A. On April 25th, it was in my left-hand
18 pocket of my suit.

19 Q. Now, I'm wearing a suit coat and I have --
20 referring on the camera now to what I call a vest
21 pocket (indicating).

22 Were you carrying it in that vest pocket?

23 A. I was.

24 Q. And you were present during Ms. Deines'

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1 testimony in which she testified that that evening
2 you lifted that flask about one inch above so that
3 the top one inch of it could be visible.

4 Is that consistent with your memory?

5 A. It is.

6 Q. Beyond lifting that flask one inch above
7 the lining of the coat, did you ever further remove
8 that flask that evening?

9 A. It was removed while I was in the
10 hospitality suite.

11 Q. No. That evening at the Bayzos Pub.

12 A. I did not remove the flask that evening at
13 the Bayzos Pub.

14 Q. Thank you.

15 Now, let me ask you to turn your attention
16 to the following day, the 26th of April.

17 What did you do that day?

18 A. I went to the conference.

19 Q. And do you recall seeing Ms. Deines that
20 day?

21 A. No, I do not.

22 Q. Did you go to a luncheon that day?

23 A. Yes.

24 Q. What was the purpose of -- excuse me.

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1 What was the nature of the luncheon?

2 A. Well, the conference is being held in the
3 first floor, and they hold lunch on the second
4 floor.

5 Q. So that's the location of the luncheon?

6 A. Right.

7 Q. And was the luncheon -- did the luncheon
8 involve a number of people?

9 A. Yes. The probate court judges and some of
10 the staff.

11 Q. Were there tables at that luncheon?

12 A. There are.

13 Q. And did you sit at one of those tables?

14 A. I did.

15 Q. Did you happen to notice Ms. Deines at
16 anywhere in the room in which those tables were
17 located?

18 A. I did not.

19 Q. Was she seated at your table?

20 A. No.

21 Q. How did you determine where to sit for that
22 luncheon?

23 A. I found an open spot. I found a chair
24 that -- the area where we have the luncheon is

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1 somewhat --

2 Q. Keep your voice up.

3 A. The area where the luncheon is being
4 held -- it's a buffet-style luncheon -- it's like
5 in -- it's like in a refurbished attic, because some
6 of the roof -- you know, the roof lines -- the roof
7 lines come into the room. And it's not very large.
8 They try to squeeze a lot of people in it. And I
9 found out a spot and sat down.

10 Q. Did you ever hover around Ms. Deines that
11 day?

12 A. Absolutely not. Absolutely not.

13 Q. Did you ever see her again after she left
14 the Bayzos Pub on the evening of Thursday,
15 April 25th?

16 A. No, I did not.

17 MR. ANGELINI: Now, I -- could I just have
18 one moment, your Honor?

19 THE HEARING OFFICER: Sure.

20 MR. ANGELINI: Thank you.

21 Q. At some point in time, Judge Sushchych, did
22 you learn that Ms. Deines had made an allegation
23 against you?

24 A. I did.

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1 Q. And from whom did you learn that?

2 A. I learned that on the morning of May 17th
3 from Chief Justice Casey.

4 Q. Now, I realize that Judge Casey has
5 described when and how that meeting was set up.

6 Did the meeting take place in your
7 chambers?

8 A. It did.

9 Q. Did you have any knowledge prior to that
10 meeting as to the subject matter of the meeting?

11 A. None whatsoever.

12 Q. When Judge Casey told you that day of the
13 allegations which Ms. Deines had made against you,
14 what was your reaction?

15 A. I was horrified and I was really
16 flabbergasted. I -- I really -- I could have cried.
17 It's -- I never had an allegation like in my life,
18 to me, my family, and to my standing in the
19 community. I just -- I really didn't know what to
20 say.

21 Q. Were you shocked?

22 A. I was -- I was blindsided by it.

23 Q. Were you shocked?

24 A. Absolutely.

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1 Q. What did you tell Judge Casey?

2 A. I told Judge Casey that I couldn't do it.
3 I wouldn't do it. I would never do such a thing.

4 Q. Was that the truth?

5 A. Absolutely.

6 MR. NEFF: Objection.

7 THE HEARING OFFICER: Sustained.

8 Q. Have you thought about this allegation
9 since that time?

10 A. I have thought about this allegation
11 literally every waking moment. I think about it at
12 night. It has occupied my mind since it was brought
13 to my attention by Judge Casey on May 17th at
14 nine o'clock in the morning.

15 I realize that this is the -- the biggest
16 event in my life, and I think about it all the time.
17 It's always in the back of my mind, and I don't
18 think I'm ever going to be free of it.

19 Q. Do you, as you think back on this now --
20 we're on the 22nd of July, one year and two or three
21 months after this event is claimed to have
22 occurred -- do you acknowledge any possibility
23 whatsoever that you had any intentional physical
24 contact with Ms. Deines on April 25, 2019?

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1 A. I had no intentional contact with Emily
2 Deines on April 25th, 2019.

3 Q. Do you --

4 A. I --

5 Q. Excuse me.

6 Did you ever, as you think back on this
7 now, place any one of your hands under her buttock
8 or buttocks at any time?

9 A. Absolutely not.

10 Q. Did you ever at any time pinch any one of
11 her buttock or buttocks?

12 A. Absolutely not.

13 Q. Did you ever squeeze at any time one of her
14 buttock or buttocks?

15 A. Absolutely not.

16 Q. Do you accept the possibility, Judge
17 Sushchyk, that you had some unintentional,
18 accidental physical contact with some part of
19 Ms. Deines' body on April 25, 2019?

20 MR. NEFF: Objection.

21 THE HEARING OFFICER: Sustained.

22 Q. Do you accept the possibility that you had
23 any accidental -- strike the words.

24 Do you accept the possibility that you had

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1 any unintentional physical contact with any part of
2 Ms. Deines' body on April 25, 2019?

3 MR. NEFF: Objection. Objection.

4 THE HEARING OFFICER: Sustained.

5 Q. Did you have any unintentional physical
6 contact with Ms. Deines' body on April 25, 2019?

7 A. No.

8 Q. Did you have any accidental physical
9 contact with any part of Ms. Deines' body on that
10 date?

11 MR. NEFF: Objection, asked and answered.

12 THE HEARING OFFICER: Overruled.

13 A. I think the only possibility is --

14 MR. NEFF: Objection. Objection.

15 I would ask that the witness answer the
16 question that was actually asked.

17 THE HEARING OFFICER: Go ahead, Counsel.

18 THE WITNESS: Reask the question, please.

19 BY MR. ANGELINI:

20 Q. The question is whether you had any
21 accidental contact with any part of Ms. Deines' body
22 on April 25, 2019.

23 A. There may have been.

24 Q. Do you recall it?

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1 A. No, I do not.

2 Q. Now, you ultimately prepared, did you not,
3 a statement in evidence as Exhibit Number 10 which
4 you gave to Judge Casey; is that right?

5 A. That is correct.

6 Q. Have you reviewed that statement in advance
7 of this proceeding?

8 A. I have.

9 Q. And so the record is clear, you
10 acknowledge, do you not, that at some time that
11 evening, as you've testified to today, you passed in
12 that passageway behind Ms. Deines?

13 A. I did.

14 Q. You said in your statement to Judge Casey:
15 "I was somewhat unsteady on my feet,
16 feeling the effects of past hip replacement
17 surgery, the long day (I had driven to
18 Brewster that morning from Sterling) the
19 evening meal and the alcohol consumed."

20 A. That is correct. That's what my statement
21 reads.

22 Q. And do you stand by that?

23 A. I do.

24 Q. You said then:

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1 "I recall that as I began to pass by
2 Ms. Deines, to steady myself, I placed my
3 hand in the direction of her chair and came
4 into momentary contact with a portion of
5 her lower body."

6 A. That's what the statement is.

7 Q. That is indeed what the statement says; is
8 that right?

9 A. It is.

10 Q. As you currently recall, is that what
11 happened?

12 A. No.

13 As I currently recall, I don't recall
14 having any physical contact with Ms. Deines.

15 Q. Why did you say, then, on -- on May 20,
16 2019:

17 "I placed my hand in the direction of
18 her chair and came into momentary contact
19 with a portion of her lower body"?

20 A. Because after being presented with
21 Ms. Deines' statement, in recalling the facts of
22 the -- I tried to figure out in my own mind what
23 happened.

24 Chief Casey asked me to produce --

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1 MR. NEFF: Objection.

2 THE HEARING OFFICER: What's the basis,
3 Mr. Neff?

4 MR. NEFF: Objection to anything Chief
5 Justice Casey said to him.

6 THE HEARING OFFICER: It's not being
7 offered for truth, I don't think.

8 Is it, Mr. Angelini?

9 MR. ANGELINI: No, it is not, your Honor.

10 THE HEARING OFFICER: Okay.

11 Go ahead with your answer.

12 THE WITNESS: Thank you. Thank you, ma'am.

13 BY MR. ANGELINI:

14 Q. Keep your voice up.

15 A. I did not think that Ms. Deines would lie.

16 In attempting to rationalize what she said
17 and recalling the events of the evening, I could
18 then only conclude that there was a possibility that
19 I may have had some fleeting contact with her. Not
20 intentional contact. Not purposeful contact. But
21 something that had occurred.

22 And I -- I created that statement in
23 response to Chief Casey's request. It was done so
24 while I was away at a conference in Buffalo, New

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1 York. And I sent it to him by -- by e-mail.

2 Q. So just a few more questions.

3 What -- have you been back to the Bayzos
4 Pub since this event?

5 A. Yes.

6 Q. Did you do so at my request?

7 A. Yes.

8 Q. And did you attempt to recreate when you
9 went back -- strike that.

10 When did you do so?

11 A. I returned to Bayzos Pub on December 12th,
12 2019.

13 Q. And was the configuration of tables and
14 chairs at the Bayzos Pub when you went back there,
15 at my request, was it approximately the same as it
16 had been on the evening of April 25, 2019?

17 A. Yes.

18 Q. Did you attempt -- when you went back
19 there, did you attempt to recreate what you recalled
20 as having occurred that evening on April 25, 2019?

21 A. Yes.

22 MR. NEFF: Objection.

23 THE HEARING OFFICER: Overruled.

24 Just "yes" or "no," please.

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1 THE WITNESS: Yes, ma'am.

2 BY MR. ANGELINI:

3 Q. And in doing so, in rethinking this, going
4 back to that location, did you go to the actual
5 location of the table and the barstools at which you
6 were present that evening?

7 A. Yes.

8 Q. And having -- and did you walk around the
9 table in which you had walked around it that
10 evening?

11 A. Yes.

12 Q. And did you stand in the position where you
13 later stood after returning from the bar?

14 A. Yes.

15 Q. And did you use your best efforts to recall
16 the events of that evening of April 25, 2019?

17 A. Yes.

18 Q. And that day, after having done all of
19 that, did you have any recollection whatsoever of
20 any intentional contact with Ms. Deines' body?

21 A. None whatsoever.

22 Q. By the way, Mr. Sushchuk, there's been --
23 Judge Sushchuk, excuse me, there's been an
24 allegation, according to Ms. Deines' testimony, that

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1 you slid one of your hands under her left buttock.

2 Did you ever do that?

3 A. No.

4 Q. Hold up your hands.

5 A. (Indicating)

6 Q. Now --

7 MR. NEFF: I'm -- I'm going to object to
8 this testimony. We have no way of establishing a
9 frame of reference for what we're looking at here,
10 Judge Josephson.

11 MR. ANGELINI: I'm going to give you one.
12 Might I proceed?

13 THE HEARING OFFICER: Overruled. Go ahead.

14 BY MR. ANGELINI:

15 Q. What is the size of your hands?

16 A. I have extra, extra large sized hands.

17 Q. And you determine that by glove size?

18 A. Yes.

19 MR. NEFF: And I'm just going to renew my
20 objection, which is I'm still not sure how this is
21 providing a relevant frame of reference regarding
22 the size of Judge Sushchuk's hands and how that
23 relates to the allegations in this complaint.

24 MR. ANGELINI: May I be heard?

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1 THE HEARING OFFICER: You don't need to be.

2 I think I -- to me it's relevant because
3 part of the allegation involves the judge's hands.

4 THE WITNESS: Yes.

5 THE HEARING OFFICER: So overruled.

6 BY MR. ANGELINI:

7 Q. Okay. You were in the military, weren't
8 you?

9 A. I spent 23 years in the United States Army
10 Reserves.

11 Q. And did you -- you wear gloves during the
12 course of your military service?

13 A. We were issued winter gloves which
14 consisted of a liner and an exterior black shell.

15 Q. And were those gloves that fit the hand of
16 your size of hand -- I'm sorry.

17 Were those gloves available to fit the size
18 of your hands readily available?

19 A. They were not readily available.

20 Q. Because of the size of your hands?

21 A. That's correct.

22 Q. Have you made any attempt to recreate a
23 circumstance by which you would slide one of your
24 hands under a body weighing approximately

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1 200 pounds?

2 MR. NEFF: Objection.

3 THE HEARING OFFICER: "Yes" or "no."

4 Q. The answer was "yes"?

5 A. Yes.

6 Q. What have you done?

7 MR. NEFF: Objection.

8 THE HEARING OFFICER: Overruled.

9 A. Well, we prepared a stool of the same
10 height and configuration.

11 MR. NEFF: Can we discuss this at sidebar,
12 Judge Josephson, please?

13 THE HEARING OFFICER: Sure.

14 THE REPORTER: One moment.

15 MR. ANGELINI: Judge, with your permission
16 I'm going to take a very quick bathroom break.

17 THE HEARING OFFICER: Why don't we take
18 five minutes and we'll meet again. It's 12:01.
19 Let's say at 12:06, please.

20 MR. ANGELINI: Thank you very much.

21 (Recess)

22 (Meeting in private breakout room. Hearing
23 Officer Josephson, Mr. Neff, Ms. Cosgrove,
24 Mr. Angelini, and Mr. Loos present)

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1 MR. NEFF: So the issue I wanted to ask you
2 about --

3 THE HEARING OFFICER: Hold on. Hold on.
4 Mr. -- Mr. Neff, we're not. We're not in the
5 breakout room yet that I know of.

6 THE REPORTER: We are.

7 THE HEARING OFFICER: Are we? Okay. Thank
8 you.

9 Are we on the record?

10 THE REPORTER: Yes.

11 THE HEARING OFFICER: Okay. All right.
12 Now, Mr. Neff, go ahead.

13 MR. NEFF: Okay. If I may.

14 THE HEARING OFFICER: Yes.

15 MR. NEFF: I'm sorry.

16 THE HEARING OFFICER: That's okay.

17 MR. NEFF: The issue I wanted to address
18 with you is that what we -- or what I -- what I am
19 interpreting we are getting into is -- is the very
20 subject matter of in-court demonstration or
21 experiment that was the subject of the motion in
22 limine which I filed with the Court which you
23 deferred ruling on --

24 THE HEARING OFFICER: Right.

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1 MR. NEFF: -- until sort of it became a
2 more live or active issue in the context of this
3 hearing. And since Mr. Angelini, I think, seems to
4 be going in the direction of trying to start to
5 introduce testimony regarding and a demonstration
6 regarding this comparable stool, et cetera, it
7 seemed to me that I would like to at least ask if
8 you would think about making a ruling now, or at
9 least think about at some point in -- in the early
10 stages of Mr. Angelini's presentation -- if you're
11 not inclined to rule now -- if you would be willing
12 to make a ruling on my -- my motion in limine.

13 Because what we've already heard is that,
14 you know, someone who really doesn't look like
15 anyone that we know was involved directly in -- or
16 anyone who looks like Emily at all, was involved in
17 maybe some sort of demonstration using a comparable
18 stool. We've been provided with a photograph of
19 what Mr. Angelini believes to be this comparable
20 stool. Which it's hard to tell, of course, from
21 photographs, but it appears to be made of different
22 materials; it appears to be more solid in certain
23 ways. There's no way to determine what variety of
24 cushioning it has, what variety of materials it's

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1 been made of, how flexible it is.

2 And, I mean, to put a fine point on it, if
3 the real question is is it possible for Judge
4 Sushchyk to stick his hand or slide his hand under a
5 buttock and squeeze on April 25th, in violation of
6 the Code as has been charged, given the qualities of
7 the barstools at the Bayzos Pub, should you allow
8 Mr. Angelini, by way of another person in a
9 barstool -- which I would suggest looked very little
10 like the barstools at the Bayzos Pub -- be able to
11 present any evidence at all to sort of contradict
12 her description of that event or undermine her
13 credibility of her description of that event, given
14 that we know nothing at all about the qualities of
15 that bench versus the qualities of the bench that
16 was -- that was being sat upon at the time of the
17 alleged assault in this incident.

18 THE HEARING OFFICER: All right. Thank
19 you, Mr. Neff.

20 Mr. Angelini, where are we headed?

21 MR. ANGELINI: We're headed to Judge
22 Sushchyk describing the barstool that was in the
23 Bayzos Pub, describing the barstool that is present
24 with us, on which I'm currently sitting. He will

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1 testify that it is the same height, the same width,
2 it has the same degree of cushion on top, and -- and
3 he will then testify with respect to his ability to
4 move someone of the same or even slightly less
5 weight than Ms. Deines off that barstool or to slide
6 his -- I should say to slide his hand under her
7 buttocks and the effect of doing so. That's where
8 we're headed.

9 THE HEARING OFFICER: Okay. Give me a
10 chance, okay, before we go any further, to ask
11 Mr. Angelini.

12 Is there an individual who was the subject
13 of this experiment on the barstool?

14 MR. ANGELINI: Yes, your Honor.

15 THE HEARING OFFICER: And who is that
16 individual?

17 MR. ANGELINI: My partner, Mr. Louis
18 Ciavarra. I've identified him as a witness in this
19 matter and, if necessary, I will call him and he
20 will testify to his weight.

21 THE HEARING OFFICER: How did you determine
22 the cushioning? In other words, that age of the
23 barstool, the -- that particular one that Ms. Deines
24 was sitting on, the give of the that particular

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1 barstool's fabric, was there -- I'm not sure how
2 that was done.

3 I'm not sure also -- I mean, there are two
4 components -- not to be too, what, graphic, but
5 there are two components: There's the barstool and
6 then there is the buttock, or buttocks, and --

7 MR. ANGELINI: Right.

8 THE HEARING OFFICER: -- I don't know that
9 we can ever recreate sufficiently both components
10 adequately to allow for an experiment that would be
11 of any probative value, at least in my view.

12 So at this point, given -- if you want to
13 make more of an offer of proof, Mr. Angelini, as to
14 any components at all, go right ahead.

15 MR. ANGELINI: No, no. I appreciate that.

16 Look. We're not doing this to kill time.

17 THE HEARING OFFICER: Absolutely.

18 MR. ANGELINI: And I -- I'll be frank to
19 say, I don't want to get into the size of
20 Ms. Deines' buttocks, and it degrades, frankly, the
21 solemnity of these proceedings by doing this, and I
22 don't intend to do that. This is an obviously a
23 very, very important matter.

24 THE HEARING OFFICER: It is.

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1 MR. ANGELINI: The best I could do is to --
2 is to ask Judge Sushchuk to recreate -- to purchase
3 a barstool of the same height, the same width, of
4 the same degree of cushion as the barstools at the
5 Bayzos Pub, which he personally examined. I asked
6 Ms. Deines at her deposition what her weight was.
7 At that point she said it was between 180 and 200.

8 To be perfectly frank, I solicited the male
9 members -- lawyers at our office. It turns out
10 Mr. Ciavarras weighs 190, and it turns out his office
11 is next to mine so was easy to corral him.

12 THE HEARING OFFICER: Sure.

13 MR. ANGELINI: I placed him on the
14 barstool. I centered him on the barstool in a
15 manner consistent with Ms. Deines' testimony. I
16 placed his elbows on the table which, as Judge
17 Sushchuk will tell you, is the same height as the
18 bar -- as the bar table about which Ms. Deines has
19 testified, his elbows in the same position, her
20 hands crossed in the same way, leaning forward and
21 speaking to Ms. Welsh, as she said she was. And I
22 asked Judge Sushchuk, as he would testify, to try to
23 lift Mr. Ciavarras' buttocks off the barstool.

24 And what he would have told you is that the

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1 only way to do that -- and he is not a weak
2 person -- the only way to do that was essentially to
3 thrust her forward, towards Ms. Welsh.

4 Now, that's the best I could do. If your
5 Honor decides not to take it, I understand it. But
6 I wanted to be completely frank as to what I
7 attempted to do.

8 THE HEARING OFFICER: Right.

9 MR. ANGELINI: And, you know, that's one of
10 the problems of having -- it's a limitation of a
11 virtual hearing that I can't say this as graphically
12 as I would like to do it and present it as
13 graphically. That's our position.

14 I understand your position.

15 THE HEARING OFFICER: Sure. Well, thank
16 you, Mr. Angelini. I appreciate the offer of proof
17 so that the record is complete, and I -- based on
18 the inability to -- to replicate all of the factors
19 that would be necessary for it to be a -- an
20 experiment or a demonstration that would approach
21 adequately the circumstances, conditions and
22 components of the evening in question, and the --
23 the people, the furniture, so on involved, I think
24 that the probative value -- there virtually is no

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1 probative value because it can't be recreated.

2 So with that, the record's complete with
3 your offer of proof, and Mr. Neff's objection is
4 sustained.

5 We can go back to the hearing room, for
6 lack of a better phrase.

7 MR. NEFF: Thank you.

8 MR. ANGELINI: Fair enough.

9 THE HEARING OFFICER: Thank you.

10 (Return to the open proceedings)

11 THE HEARING OFFICER: Thank you, Mr. Loos.

12 I'm sorry. I left the -- I meant to leave
13 the room and I ended up leaving, I guess, the whole
14 building.

15 THE REPORTER: No problem.

16 THE HEARING OFFICER: Thanks for letting me
17 back in.

18 MR. NEFF: Oh, good. Glad to have you
19 back, Judge.

20 THE HEARING OFFICER: Thanks.

21 Okay. Now I think we're ready to resume.

22 MR. ANGELINI: Yes, your Honor.

23 THE HEARING OFFICER: Are we all set,
24 Mr. Loos?

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1 THE REPORTER: Yes.

2 THE HEARING OFFICER: Okay. Great.

3 Mr. Angelini, you may continue.

4 MR. ANGELINI: Thank you.

5 I have no further questions, your Honor.

6 THE HEARING OFFICER: Okay. And let me
7 ask, Mr. Neff, how long do you think you'll be on
8 any cross-examination?

9 MR. NEFF: I do have some
10 cross-examination, but I don't really feel it will
11 be particularly long. So it may -- if I'm reading
12 this correctly, at 12:25, it may go to 1:00-ish, but
13 I would be surprised if I went much further than
14 that.

15 THE HEARING OFFICER: Okay. Why don't we
16 begin then. Thank you.

17 MR. ANGELINI: Keep your voice up.

18 CROSS-EXAMINATION

19 BY MR. NEFF:

20 Q. Good afternoon, Judge Sushchyk.

21 A. Good afternoon, Mr. Neff.

22 THE REPORTER: Could you turn the speaker
23 more towards him a little bit?

24 MR. NEFF: Towards me or --

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1 MR. ANGELINI: Hold on. Let me adjust --
2 adjust my laptop here to get it closer.

3 MR. NEFF: I know Judge Josephson preferred
4 that we stand if I --

5 THE REPORTER: No, it was for the witness.

6 MR. NEFF: If I sit, is that acceptable.
7 Because it seems like it maybe was more audible.

8 THE REPORTER: No. It was the judge.

9 THE HEARING OFFICER: You're not the
10 inaudible one, I don't think. I think we're having
11 trouble with -- with the judge's.

12 THE WITNESS: Can you hear me now?

13 THE REPORTER: Yes, I can hear you now.

14 MR. NEFF: Potentially this is the problem.
15 I am not a tall person, but okay.

16 MR. ANGELINI: Keep your voice up.

17 THE WITNESS: I'll make every effort to
18 keep my voice up.

19 Mr. Loos, if for some reason you can't hear
20 me, please just either wave or something so I can
21 keep my voice up.

22 THE REPORTER: Will do.

23 MR. NEFF: Absolutely will do. Thank you.
24 Thank you for the offer.

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1 Q. Can I ask you, Judge Sushchuk, how long
2 have you been a judge of the Probate and Family
3 Court?

4 A. I've been a judge since February 28th of
5 2018.

6 Q. Okay. And how many occasions have you had
7 to obtain -- attend conferences held, or trainings
8 held by the Probate and Family Court department?

9 A. Well, the conferences, I went to the
10 April 2018 spring conference. I attended --

11 Q. Okay.

12 A. -- the fall 2018 conference, which was held
13 here in Worcester. I then attended the 2019 spring
14 conference. I did not attend the fall 2019
15 conference, and the spring 2020 conference was not
16 held.

17 Q. Okay. Did you, however, attend a
18 conference, a Probate and Family Court spring
19 conference in 2019?

20 A. I did.

21 Q. Okay. And, as we've discussed, that was at
22 the Ocean Edge Resort?

23 A. Yes, sir.

24 Q. Okay. And did you stay for the entirety of

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1 that conference, meaning both the 25th and 26th?

2 A. I did, sir.

3 Q. Okay. And may I ask, what were you doing
4 on the day prior to your attendance at that
5 conference on April 25th?

6 A. I conducted my session that year at the
7 Worcester Probate and Family Court until 4:30,
8 quarter to 5:00, maybe five o'clock. I went home.
9 My wife and I went out to dinner. It's our
10 anniversary on April 25th. And I got back probably
11 around 9:30, ten o'clock. I packed some and then
12 went to bed.

13 Q. So would you describe that as a late night
14 for you or an average night to go to bed for you?

15 A. It was probably -- it was probably an
16 average night. I usually try to go to bed by 9:00
17 9:30.

18 Q. So when you arrived at the spring
19 conference in -- on the Cape in Brewster on
20 April 25th of 2019, would you have described
21 yourself as compromised, as already tired when you
22 arrived there?

23 A. No, I would not.

24 Q. You would not describe yourself as having

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1 been compromised or tired --

2 A. No.

3 Q. -- as a result --

4 A. No.

5 Q. -- of the events of that week or because of
6 your state when you arrived on April 25th?

7 A. When I arrived, I had probably had a couple
8 of cups of coffee. I brought some coffee with me.
9 So when I arrived, I was -- I was not tired.

10 Q. Can I ask you how many alcoholic beverages
11 did you have during the anniversary dinner you had
12 with your wife on the evening prior to your
13 departure to the conference on April 25th?

14 A. Probably one. I don't have a really
15 specific memory of it.

16 Q. Okay. And did you have your flask with you
17 at the anniversary dinner with your wife on
18 April 24th?

19 A. No, I did not.

20 Q. Okay. But you made a decision to pack it
21 and bring it with you to a work-related conference
22 on the Cape on April 25th and 26th following that
23 anniversary?

24 A. I did.

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1 Q. Okay. And among the things that happened
2 at that conference on April 25th, after the
3 trainings on various subjects of import in the area
4 of the Probate and Family Court at that particular
5 period of time, after that all happened at
6 approximately 3:00 p.m., at some point thereafter
7 someone hosted something called a hospitality suite.

8 Do you recall that?

9 A. I do.

10 Q. Okay. Do you recall who hosted the
11 hospitality suite?

12 A. I -- it was -- it was some of the judges
13 that I -- I don't know all of the judges, but it
14 was, I think, two of the judges. I don't know their
15 names.

16 Q. Okay. And how many -- if you recall, or at
17 least had to estimate, how many judges attended this
18 hospitality event on April 25th after 3:00 p.m.?

19 A. If I recall correctly, Mr. Neff, it was
20 after -- hospitality suite started at about
21 six o'clock, and I think there were 15 or 20 judges
22 coming in and coming out. I didn't count them, but
23 I think it was 15 to 20. The room was -- the room
24 was fairly crowded.

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1 Q. When you say "the room," are we talking
2 about someone's hotel room was used as a hospitality
3 suite? Or was there sort of more of a common room
4 made available by the -- by the resort for you all
5 to get together and socialize and have a hospitality
6 suite to get into, that you would get into together
7 to chat and catch up?

8 A. It was, I believe, one of the suites. It
9 was -- as I recall, that there was a kitchen. I
10 recall the living area. People were out on the --
11 there was a balcony. There was some food, some
12 drink there, but nothing official. So I -- you
13 know, I think that we were all gathered together
14 where someone was staying overnight.

15 Q. Okay. And I suppose this is implied by the
16 questions I've already asked you, but did you attend
17 the hospitality suite event that took place on
18 April 25th, 2019?

19 A. I did.

20 Q. I'm sorry. I actually didn't hear you.

21 A. I'm sorry, I may have dropped my voice.
22 I did attend the hospitality suite.

23 Q. And what time did you get to the
24 hospitality suite event?

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1 A. It was probably sometime after six o'clock,
2 shortly after 6:00 --

3 Q. Okay.

4 A. -- that evening on the 25th.

5 Q. I'm sorry. And what was the answer to --
6 the end of your answer to your question? I couldn't
7 quite hear that.

8 A. I said I -- I arrived -- I walked over to
9 the hospitality suite sometime after six o'clock.

10 Q. Okay. And how long did you stay at the
11 hospitality suite?

12 A. I was there till about, I would say, 6:45,
13 when I left to go to the -- over to the -- to the --
14 the dinner.

15 Q. Okay. And did you bring your flask with
16 you to the hospitality suite event?

17 A. I did.

18 Q. Okay. And did you consume any alcohol out
19 of your flask at the hospitality suite event?

20 A. I did.

21 Q. And how much alcohol from that flask, if
22 you know, did you consume at the hospitality suite
23 event?

24 A. Probably an ounce or so.

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1 Q. And how did you measure that?

2 A. By pour.

3 Q. Pouring into a glass?

4 A. A glass with ice and water.

5 Q. And is that the only drink you had at the
6 hospitality suite event before you left it?

7 A. Yes. They had beer and wine. I typically
8 don't drink beer and wine, and I drank my whiskey.

9 Q. Okay. And at that point you went back to
10 your room?

11 A. No. I went over to the -- I went over to
12 the dinner.

13 Q. You went to the dinner directly from the
14 hospitality suite event? Okay.

15 And did you go to the dinner with anyone?

16 A. I think I went over -- I think I -- I
17 think -- although I'm not absolutely sure -- I think
18 I went over with Judge German and Judge Bailey.

19 Q. And I think we've heard enough about the
20 Ocean Edge to know that this is a big place, but
21 everything is still pretty close together.

22 Would you say -- how long would you say it
23 took for you to get from the -- the hospitality
24 suite to the dinner that you were -- that you were

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1 going to attend?

2 A. It was probably -- it was probably a
3 five-minute drive.

4 Q. Five-minute drive? Okay.

5 And when you arrived at the dinner, who did
6 you sit with?

7 A. I don't recall.

8 Q. Okay. Did you sit with anyone that you
9 know, even if you don't remember their names?

10 A. I don't recall them.

11 Q. Okay. And how many people were seated at a
12 particular table? If you remember.

13 A. I don't recall.

14 Q. Okay. And if you had to guess, how many
15 people attended the Probate and Family
16 Court-sponsored dinner that night at 7:00 p.m.?

17 A. I would say probably 40 to 50.

18 Q. Okay. Was alcohol or beer or hard liquor
19 available at this dinner?

20 A. It was.

21 Q. Okay. Was it free or for purchase?

22 A. It was cash.

23 Q. Okay. And did you consume any alcoholic
24 beverages at this dinner?

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1 A. No, I did not.

2 Q. Do did you consume any alcohol from your
3 flask at this dinner?

4 A. No, I did not.

5 Q. Well, you earlier mentioned that there's a
6 particular type of Irish whiskey that you really
7 prefer.

8 Was that particular type of Irish whiskey
9 available at this dinner, Glendalough? Did you
10 check?

11 A. I don't know.

12 Q. And how long did this dinner last?

13 A. To -- I believe to about 8:00 -- 8:30 or
14 so.

15 Q. Okay. And instead of drinking alcohol at
16 this dinner you attended for an hour and a half,
17 what is it that you did choose to drink?

18 A. I had water.

19 Q. You just had water? Okay.

20 And so when you left the dinner at -- that
21 was being held at the Bayzos Pub -- excuse me -- at
22 the Ocean Edge Resort on that day, where did you go
23 next?

24 A. I went to the Bayzos Pub.

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1 Q. Okay. And did you go there with anyone?

2 A. Well, I walked over as a crowd. I think a
3 crowd of us walked over.

4 Q. So is it safe to say that a decent number
5 of the people who had attended the dinner, the
6 Probate and Family Court-sponsored dinner that
7 started at 7:00 and ended at 8:30, then proceeded to
8 the Bayzos Pub to extend their evening and their
9 socializing?

10 A. That's true.

11 Q. And you were among the group that went to
12 the Bayzos Pub at that point; is that true?

13 A. Could you keep your voice up?

14 Q. Okay. I'm sorry if I'm not being loud
15 enough now.

16 So you -- you went to the Bayzos Pub at
17 approximately 8:30; is that correct?

18 A. I think it was -- I got over there probably
19 about 8:45, maybe.

20 Q. Okay. And when you arrived at the Bayzos
21 Pub, was there any particular location within the
22 Bayzos Pub that you chose to stand or sit to spend
23 your time there while -- while you were at that
24 venue?

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1 A. I stood initially by the door.

2 MR. NEFF: And did you -- let's see what
3 I've got.

4

5 All right. I can ask that Judge Sushchuk
6 be shown what's been marked as Exhibit 1, please.

7 THE HEARING OFFICER: Okay.

8 THE REPORTER: One moment.

9 MR. NEFF: Okay.

10 Q. So this is Exhibit 1, Judge Sushchuk.

11 When you say you were standing by the
12 door -- when you say you were standing by the doors,
13 is the door -- this door that we can see sort of at
14 the far end of this photograph, or is the door you
15 were referring to somewhere else?

16 A. I think I came in a bit towards the end of
17 the bar from the door.

18 Q. And I'm sorry if I'm not following exactly
19 what you mean by that. But --

20 A. I'm sorry. I don't mean to talk over you,
21 Mr. Neff.

22 The door is from the -- the door leads in
23 from the bar room into the pub from the entrance
24 where there's a stairs. And I think what I did is I

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1 think I came in. I think I stood towards the -- the
2 far right end of the -- of the bar.

3 Q. At some point in time did you approach a
4 table within this particular bar? Judge Sushchuk?

5 I'm sorry. I stepped away. You probably
6 couldn't hear me.

7 At some point in time did you approach a
8 table located within -- within this bar?

9 A. I did.

10 Q. Okay. And -- and at about what time did
11 you approach that table?

12 A. I think it was 10, 10 or 15 minutes after I
13 entered.

14 Q. Okay. And --

15 A. As I recall. I recall I think I talked to
16 some people. I kind of looked about. As I said, I
17 did not know a lot of people. And I saw Attorney
18 Patsos, and I started to work my way over.

19 Q. Okay. All right.

20 So you found a table at which Attorney
21 Patsos was seated and you proceeded over in that
22 direction at that point?

23 A. Right. I went -- I came in from the -- the
24 back side.

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1 Q. Okay. And when you say "came over from the
2 back side," if you had to point to a direction you
3 came from on this photo, at least, can you -- can
4 you sort of point to an area of that photo from
5 which you -- you started your motion for us?

6 A. Well, it's hard for me to point because I
7 can't get up -- I can't -- there's no pointer
8 available for me.

9 So the thing is, so if you're looking at
10 the -- the photograph, do you see the door in the
11 very back side of it? That -- I think that I do
12 believe that's the stairway. That's the door that
13 leads up -- there's a stairway that leads to the
14 first floor down into the basement.

15 Q. Okay.

16 A. If you walk -- if you walk through the
17 door, and I think what I did is I stood in that area
18 where the -- do you see where the TV screen is,
19 Mr. Neff?

20 Q. I do.

21 A. Okay. So I think I stood in that area, and
22 I -- I proceeded -- you know, there were a lot of
23 people in the bar. And I made my way in, and then
24 eventually I saw Attorney Patsos, and I walked

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1 behind -- because there were just a lot of people
2 to, you know, go through the crowd.

3 MR. NEFF: Okay. Understood.

4 Here's an important point, to help point a
5 little bit better picture for us, I'm going to ask
6 if we could show Judge Sushchuk what's been marked
7 as Exhibit J which I do not believe has been
8 produced as part of this hearing at this point.

9 THE HEARING OFFICER: I think it's number
10 12.

11 MR. NEFF: Oh, it is.

12 MR. ANGELINI: It is.

13 MR. NEFF: I thought I had managed it this
14 time.

15 THE REPORTER: One moment.

16 THE HEARING OFFICER: Thank you, Mr. Loos.
17 Go ahead.

18 MR. NEFF: Okay. If I can inquire, Judge
19 Josephson.

20 THE HEARING OFFICER: Sure.

21 BY MR. NEFF:

22 Q. Judge Sushchuk, the photo that's now in
23 front of you, do you -- do you recognize it as a
24 fair and accurate representation of at least a

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1 portion of the Bayzos Pub as it looked on the
2 evening of April 25th, 2019, when you were there or
3 just arrived to that bar and then climbed down the
4 stairs and were kind of waiting?

5 A. Mr. Neff, to orientate us, this is to the
6 rear portion of the room. That is -- you would see
7 if you were sitting at the -- at the bar. And the
8 table I believe where Attorney Patsos was standing
9 is on the left-hand side. You could just -- you can
10 just see a corner of it.

11 Q. Okay. Understood. Okay.

12 I -- I just wanted to ask you if this --
13 well, I gather from your answer that this does
14 accurately depict that portion of Bayzos Pub on
15 April 25th.

16 But I also wanted to ask you, does this
17 depict the area you were referring to where you came
18 downstairs at least initially and were sort of
19 sorting out where you were going to come --

20 A. No, it does not.

21 MR. ANGELINI: Let him finish his question.

22 A. I'm sorry. My apologies.

23 Q. I'm sorry. I couldn't --

24 A. No, that -- the stairway in the upper

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1 left-hand corner of the picture is a stairway that
2 leads to the administrative offices that are
3 upstairs. There's a second means of ingress to the
4 pub which was more accurately depicted on the prior
5 exhibit.

6 Q. That's fine.

7 THE REPORTER: Sorry about that.

8 THE HEARING OFFICER: That's okay. Thanks,
9 Mr. Loos. We were getting feedback. I think we
10 solved it.

11 And yes.

12 MR. NEFF: I thought I had done something
13 wrong.

14 THE HEARING OFFICER: No.

15 MR. NEFF: Okay.

16 Q. So can I at least ask you, Judge Sushchuk,
17 would you say this fairly and accurately represents
18 the -- the sort of physical setup of the furniture,
19 the high-top tables versus the dining tables and so
20 forth, in the immediate area where you stood with
21 Emily Deines and Ms. Patsos and Ms. Yurgelun on the
22 evening of April 25th of 2019?

23 A. Yes, it does.

24 Q. And I think you were already asked this by

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1 your counsel, but you were not taking any kind of
2 special medication that you should not be taking
3 with alcohol at this particular point in time?

4 A. At that time, no.

5 Q. Okay. Had you been taking any type of
6 medication that you should have not been taking or
7 not been consuming alcohol for a period of time
8 afterward even if you had stopped taking that
9 medication?

10 A. Mr. Neff, I'm going to ask you to speak up
11 and just repeat your question.

12 Q. I'm sorry. Gosh. I can't tell where the
13 microphone is, but were you taking any type of
14 medication where you had been instructed that even
15 if you did, indeed, stop taking that medication,
16 there was a period of time when you should refrain
17 from consuming alcohol after stopping that
18 medication, and for reasons of safety and health?

19 A. At that time, Mr. Neff, I was not on any
20 medication for which I was instructed not to drink
21 alcohol. I -- however, I am on now.

22 MR. ANGELINI: Objection.

23 A. I'm nonresponsive. My apologies.

24 I was not on any medications.

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1 Q. That's okay. Not a question I'm asking
2 you.

3 And on the -- on the evening of April 25th
4 of 2019, you testified that as you essentially
5 passed through the corridor depicted in this
6 exhibit -- which I'm sorry, Mr. Loos, remind me of
7 the exhibit number here?

8 THE REPORTER: 12, I believe.

9 BY MR. NEFF:

10 Q. 12.

11 There were approximately seven to ten
12 people milling about the area, and you were trying
13 to get to Evelyn Patsos who was sort of in the
14 barstool most off to the left, on the bottom
15 left-hand corner of this photo.

16 Is that correct?

17 A. That's my memory.

18 Q. Okay. And you were able to successfully
19 get to Evelyn Patsos and have a conversation with
20 her on -- on that night, on April 25th, 2019?

21 A. I did.

22 Q. And you were able to do so without, as you
23 said, really engaging in any inadvertent physical
24 contact with any of the seven to ten people that

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1 were in that area as --

2 MR. ANGELINI: We missed the first part of
3 the question, please. Could you restate it?

4 MR. NEFF: I'm sorry. I -- maybe I'll -- I
5 wish I could do headphones and speakers for you.

6 MR. ANGELINI: I couldn't hear it well.

7 MR. NEFF: Can everybody hear me okay? And
8 I can certainly hear you.

9 THE HEARING OFFICER: You're a little
10 tinny.

11 MR. NEFF: Okay. It's -- I think it's kind
12 of loading up its drivers, so it's going to improve
13 momentarily if we give it a minute.

14 THE HEARING OFFICER: You're audible. It's
15 just a different quality than it was before. I
16 think we're fine to continue.

17 Judge, can you hear Mr. Neff okay?

18 MR. NEFF: I don't see any settings.

19 Okay. Let's see.

20 Does that help at all?

21 THE HEARING OFFICER: I think it's -- I
22 think it's fine.

23 Mr. Angelini, did you hear?

24 MR. ANGELINI: I can hear him, yes.

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1 MR. NEFF: Oh, good.

2 THE WITNESS: Thank you, Mr. Neff.

3 BY MR. NEFF:

4 Q. Great. I just want to do my best to
5 eliminate that as an issue, because I have to say
6 there -- you can't tell, but there is no visible
7 microphone for me to try to stay in proximity to as
8 I try to ask questions.

9 A. You sound much better, Mr. Neff.

10 Q. All right. Great. Great. I'm glad to
11 hear it.

12 The same applies to you as you offered to
13 me, which is if -- if you can't hear me, feel free
14 to stop me, of course, and I will try to repeat
15 myself or repeat myself more loudly so that -- so
16 that you can hear exactly what I have to say.

17 When you approached Ms. Patsos on
18 April 25th of 2019, in order to -- to get to her,
19 did you have to pass behind Ms. Deines in order to
20 get to Ms. Patsos, do you recall?

21 A. I did. I walked behind her.

22 Q. Okay. You went right behind her.

23 And do you recall how long it took for you
24 to get right behind Ms. Deines as you passed behind

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1 her and tried to get to Ms. Patsos?

2 MR. ANGELINI: I object to the question.

3 MR. NEFF: I'm just asking how long.

4 THE HEARING OFFICER: What's the basis,
5 Mr. Angelini?

6 MR. ANGELINI: Yes. Because it's not clear
7 from the question from which point he wants him to
8 start. It obviously takes a varying amount of the
9 time depending on where you stop and where you
10 start, and that's the basis of my objection.

11 MR. NEFF: Well --

12 THE HEARING OFFICER: Overruled.

13 For what it's worth, go ahead Mr. Neff.

14 Q. You can answer the question, Judge, which
15 I'm happy to repeat, and maybe repeat it a little
16 more precisely.

17 Which is, from the time sort of your body
18 began to pass by the -- the first part of
19 Ms. Deines' body, to the point where your body has
20 completely passed Ms. Deines' body and you were now
21 in the area of Evelyn Patsos on April 25th of 2019,
22 how long would you say that it took for you to make
23 that passage?

24 A. I would probably say a second or two.

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1 Q. Okay.

2 A. I didn't stop behind Ms. Deines.

3 Q. And you were able to accomplish passing
4 behind her in a second or two despite the six or
5 seven other people that were also occupying that
6 archway at the same time you were trying to get to
7 Ms. Patsos that night?

8 A. I had to -- my memory, I had to kind of --
9 as I said, I think I used the word "threaded."

10 You know, I'm not a small person, and, you
11 know, very often I just have to ask people to move a
12 little bit so I can get through. And, you know, I
13 probably bumped into somebody, okay? But --

14 Q. Okay.

15 A. -- that's what I recall. I recall the
16 people there, and I eventually stood next to
17 Ms. Patsos and started introducing myself.

18 Q. Understood.

19 One of the things you said when you arrived
20 at the table was you offered everyone at the table
21 sort of a free first round of drinks, right? Is
22 that correct?

23 A. It was a -- a measure of hospitality, I
24 guess.

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1 Q. Yeah. Okay. Great.

2 And do you recall at least how many drinks
3 you ended up buying as a result of that offer?

4 A. I think I brought -- I think I purchased
5 four, including for myself. I think -- I think I
6 purchased three for other people.

7 Q. And what was the drink that you purchased
8 for yourself?

9 A. It was whiskey.

10 Q. Okay. And just out of curiosity, did
11 Bayzos Pub happen to have this Irish whiskey of
12 particular liking for you, Glen -- I'm not going to
13 pronounce it. Glendalough?

14 A. Glendalough.

15 No, they didn't.

16 Q. Okay.

17 A. They had -- I had to settle on Jameson.

18 Q. Okay. So -- so you went with that one
19 instead.

20 Did Ms. Deines accept your offer for a free
21 drink, or for you to buy her a drink on that
22 particular evening?

23 A. I don't think so. I really don't
24 specifically recall, but I don't think so.

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1 Q. Do you recall how long Ms. Deines remained
2 at the table after you arrived at the table and
3 started speaking with other parties who were present
4 there?

5 A. I think she was there for 15 minutes or so.
6 You know, we -- we engaged in some conversation.
7 But, you know, probably 15 minutes.

8 Q. For about 15 minutes? Okay.

9 And remind me, how many alcoholic beverages
10 had you consumed as of this particular point in
11 time?

12 A. Two.

13 Q. Okay. And you -- other than the one that
14 you -- you consumed at the hospitality suite, you
15 had not taken advantage of any opportunity at any
16 other venue available at Ocean Edge to consume
17 alcohol from your flask before arriving at the
18 Bayzos Pub that night, did you?

19 A. That's true.

20 Q. Okay. And you do recall running into Chief
21 Justice Casey at the dinner, Probate and Family
22 Court-sponsored dinner, that started at 7:00 p.m.,
23 ended around 8:30 p.m. on April 25th?

24 A. I honestly do not.

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1 Q. Oh, you don't even recall running into him
2 on that particular --

3 A. No.

4 Q. -- day? Okay.

5 Okay. Can I ask you, what was the size of
6 your flask, the flask that you were carrying at this
7 Probate and Family Court conference?

8 A. I think it carries six ounces.

9 Q. Six ounces.

10 And did -- did you, indeed, succeed in
11 filling it with your Irish whiskey of choice,
12 which you'll have to pronounce for me, but it starts
13 Glen something?

14 A. It was not filled.

15 Q. It was not filled.

16 What had you put in it?

17 A. Pardon?

18 Q. What had you put in your -- your flask that
19 you decided that you wanted to bring to the Probate
20 and Family Court conference?

21 A. I'm sorry. I didn't hear your question.

22 Q. I'm sorry. I thought this would be
23 helping.

24 What variety of -- what exactly did you put

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1 into the flask that you decided to bring with you to
2 the Probate and Family Court conference on
3 April 25th and 26th of 2019?

4 A. There was Glendalough whiskey in it.

5 Q. Okay. So, I'm sorry, that was actually my
6 initial question. I'm having trouble pronouncing
7 the name of it.

8 So you were able to fill it with that
9 particular variety of your favorite whiskey
10 before -- before coming down to the conference?

11 A. When I took it from home, it was not
12 filled.

13 Q. Okay. Well, how full was it, would you
14 say?

15 A. Probably --

16 Q. I'm sorry?

17 A. Probably had three or four ounces in it.

18 Q. Okay. And do you regularly keep a supply
19 of your favorite whiskey at your home?

20 A. Typically, yes.

21 Q. Okay. Do you keep more than four or
22 five ounces of whiskey in your home? Or do you keep
23 larger quantities than that at your home?

24 A. I think right now I don't have any.

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1 Q. Okay. Okay.

2 Do you recall being asked to go to --
3 strike that. One second.

4 Can you give me one moment, please?

5 THE HEARING OFFICER: Sure.

6 Actually, we're at the --

7 MR. NEFF: This a good lunch break?

8 Okay.

9 THE HEARING OFFICER: Well, how much longer
10 do you expect you will be, Mr. Neff?

11 MR. NEFF: I do have -- I'm sorry. I -- I,
12 like many lawyers, I kind of under predict, and so I
13 probably have 30 to 45 minutes to go.

14 So if you think this is a good time for a
15 lunch break, it may, indeed, be a good time for a
16 lunch break.

17 THE HEARING OFFICER: Okay. Well, why
18 don't we do that. Let's take the lunch recess.

19 It's a minute after 1:00. Let's resume as
20 close to 1:31 as we can.

21 Thank you.

22 MR. NEFF: All right.

23 Sounds good.

24 MR. ANGELINI: Thank you.

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MR. NEFF: Thank you very much.
(Luncheon recess taken
at 1:01 p.m to 1:31 p.m.)

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AFTERNOON SESSION

THE HEARING OFFICER: On the record.

I'll thank everyone for being prompt.

MR. NEFF: I'm foregoing headphones in an effort to make everyone, including my co-counsel, be able to hear me, so feel free to voice -- voice up, anyone, if I fail to -- to achieve that goal.

THE HEARING OFFICER: Whenever you're ready, Mr. Neff.

MR. NEFF: I'm sorry. I'm sorry. Just sort of pulling my paperwork up. All right.

Q. Judge Sushchuk, welcome back. Thank you.

I want to start by asking you about the meeting you were invited to attend -- excuse me, the meeting you were asked to have with Chief Justice Casey in your lobby at Worcester district court on May 10th of 2019.

A. Okay. Go ahead, please.

THE HEARING OFFICER: Yes.

Q. And -- and how was that arranged, as far as you remember?

A. Well, it really wasn't, Mr. Neff.

Q. Okay.

A. What I recall is that I reported for work

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1 at about seven o'clock. May 17th is a Friday.
2 That's my motion day, and it's the busiest day of a
3 probate family court judge's week.

4 So I started going through my motions and
5 about a quarter to 9:00 in the morning Marty
6 Heidenfelder, who is my -- my clerk notified me that
7 Justice Casey wanted -- was present and he wanted to
8 meet with me.

9 And I met with Justice Casey after that.

10 Q. Okay. So you do not -- you do not recall
11 being aware of that meeting was going to happen
12 before it actually did happen on May --

13 A. Mr. Neff, you'll need to repeat that,
14 please.

15 Q. No. It's all right. Well, I'll move on to
16 another subject.

17 Give me one moment, please.

18 As a consequence of your meeting with Chief
19 Justice Casey on May 10th, did you write a statement
20 regarding the events that were alleged to have taken
21 place on April 25th of 2019?

22 A. Yes, I did.

23 MR. ANGELINI: Keep your voice up.

24 MR. NEFF: And, I'm sorry. That's probably

1 me, too.

2 And I'm trying to keep up. I believe we're
3 talking about Exhibit 10 now. And in that
4 statement, if I could ask you, Mr. Loos, to put it
5 before Judge Sushchyk, I just wanted to ask him a
6 little bit about it.

7 THE REPORTER: One moment.

8 MR. NEFF: Okay. Great.

9 Q. And I want to -- I don't know how to scroll
10 down exactly here, but I want to direct your
11 attention to the very last paragraph of this
12 particular statement.

13 Okay. And I -- I should ask, as a
14 preliminary matter, this was a statement written by
15 you and, in a fashion at least, signed by you and
16 then submitted to Chief Justice Casey?

17 A. It was. The statement was written by me
18 while I attended the ERICSA conference in Buffalo,
19 New York, using my iPad.

20 Q. And when it says "signed this 20th day of
21 May 2019," is that the date you completed this
22 statement and then sent it?

23 A. I believe I completed the statement on the
24 evening of May 20th and sent it on, I think it was

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1 May 21st, or May 22nd -- probably May 21st -- per
2 the instruction of Judge Casey.

3 Q. Okay. And I'm skipping ahead a little bit,
4 but in the interest of -- if you'll permit me, at
5 least, saving a little time, I'll orient you in.

6 The very end of this letter, which is your
7 response or your statement regarding the allegations
8 Ms. Deines had made regarding the events of
9 April 25th, 2019, in this final paragraph you
10 stated -- and correct me if I'm wrong:

11 "Having completed my use of the
12 facilities, I began my return to our table,
13 again threading my way between ...
14 patrons" -- "the patrons and the tables. I
15 was somewhat unsteady on my feet, feeling
16 the effects of past hip replacement
17 surgery, the long day (I had driven to
18 Brewster that morning from Sterling), the
19 evening meal and the alcohol consumed. I
20 recall that as I began to pass by
21 Ms. Deines, to steady myself, I placed my
22 hand in the direction of her chair and came
23 into momentary contact with a portion of
24 her lower body. I then returned to my seat

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1 at the table, rejoining Ms. Patsos,
2 Ms. Yurgelun, Ms. Welsh and Ms. Deines."

3 Do you recall writing that statement?

4 A. I do, sir.

5 Q. And you were telling us today that you did
6 not come in contact, physical contact, with
7 Ms. Deines at all on April 25th of 2019; that
8 this -- that -- that portion of your description in
9 this paragraph is not accurate?

10 A. When I wrote that statement, it was done to
11 the best of my memory.

12 Q. Answer the question, sir.

13 MR. ANGELINI: Answer his question, sir.

14 A. I'm sorry. Reask the question.

15 Q. Well, "yes" or "no," are you -- do you --
16 are you today saying that the portion of this final
17 paragraph of this particular statement, where you
18 say you placed your hand in the direction of her
19 chair, meaning Ms. Deines' chair, and came into
20 momentary contact with a portion of her lower body
21 is not true and your current memory, as of today, or
22 your current statement as of today is that that's
23 not true and you never made contact with Ms. Deines
24 on April 25th, 2019? "Yes" or "no"?

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1 A. Yes.

2 Q. Let me ask you this:

3 Did you submit this statement to Chief
4 Justice Casey before or after he told you that he
5 would be forwarding results of his investigation to
6 other parties for -- for further investigation?

7 A. Repeat that, please, sir.

8 Q. Did you submit this -- this statement,
9 which is dated May 20th, 2019, 2000 -- excuse me,
10 May 20th, 2019, to Chief Justice Casey before or
11 after he advised you that as a consequence of his
12 work following up on Ms. Deines' report a further
13 investigation or a further -- further review would
14 take place as a consequence of that initial report?

15 A. The only thing I was informed by Justice
16 Casey when he requested me on May 20th to prepare a
17 statement was that he was going to send my statement
18 to Chief Justice Gants of the Supreme Judicial
19 Court.

20 MR. NEFF: I'm sorry. One moment, please.

21 THE HEARING OFFICER: Sure.

22 MR. NEFF: I have no further questions.

23 THE HEARING OFFICER: Mr. Angelini,
24 anything further?

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1 MR. ANGELINI: Let me think for just a
2 moment.

3 May I, your Honor?

4 THE HEARING OFFICER: Sure.

5 MR. ANGELINI: Thank you.

6 I have no further questions.

7 THE HEARING OFFICER: Do you mind if I ask
8 a question or two just on the last area?

9 MR. ANGELINI: None whatsoever, your Honor.

10 THE HEARING OFFICER: Okay. Judge, I --
11 did I understand you to say that you were instructed
12 to prepare a statement by Chief Justice Casey?

13 THE WITNESS: Yes, ma'am.

14 THE HEARING OFFICER: And that was the
15 statement that you prepared that's dated May 20th;
16 is that right?

17 THE WITNESS: That is correct.

18 THE HEARING OFFICER: And did I understand
19 you to say that you understood that that statement
20 was one that was going to be submitted to the Chief
21 Justice of the Supreme Judicial Court, Judge Gants?

22 THE WITNESS: That's correct, ma'am.

23 THE HEARING OFFICER: Okay. Thank you.

24 Is there any objection to anything I asked

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1 by either party?

2 MR. ANGELINI: None by me.

3 MR. NEFF: No, your Honor.

4 THE HEARING OFFICER: Is there any
5 follow-up question that either of you would like to
6 ask?

7 MR. ANGELINI: I have none.

8 MR. NEFF: None. None, your Honor.

9 THE HEARING OFFICER: All right. Thank you
10 very much, Judge. That completes the testimony,
11 Mr. Angelini, that you wanted of your client.

12 Are there any other witnesses who you
13 intend to call?

14 MR. ANGELINI: There are none, and we rest.

15 THE HEARING OFFICER: All right.

16 Any rebuttal, Mr. Neff?

17 MR. NEFF: I do not have any rebuttal
18 witnesses, no, your Honor.

19 THE HEARING OFFICER: Okay. All right.

20 Then, if I could, I would like to address
21 the issue of the motion for reconsideration before
22 we move beyond the point of the proceedings that we
23 are now.

24 Is that something you're prepared to do,

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1 Mr. Angelini?

2 MR. ANGELINI: If you would give me one
3 minute to get a file out of my office, I'll be
4 prepared to do that, your Honor.

5 THE HEARING OFFICER: Okay. And Mr. Neff?

6 MR. NEFF: Yes.

7 THE HEARING OFFICER: You'll be prepared
8 also?

9 Q. MR. NEFF: Yes. But I'll also have to pull
10 that back up, because I don't think I have it on
11 this computer. If you'll give me one moment to go
12 retrieve it.

13 THE HEARING OFFICER: Of course.

14 (Recess taken)

15 MR. ANGELINI: I'm prepared to proceed,
16 your Honor. I'm prepared, your Honor, at your
17 convenience, to proceed.

18 THE HEARING OFFICER: Okay. Thank you,
19 Mr. Angelini.

20 I think we're just waiting.

21 MR. ANGELINI: Oh, sorry.

22 THE HEARING OFFICER: Okay. All right.

23 Mr. Neff is back.

24 MR. NEFF: Yes.

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1 THE HEARING OFFICER: And at this moment
2 I'll just remind everyone that we are not in
3 breakout room, not at sidebar. If you wish to have
4 anything discussed that would be on the record but
5 in the nature of a sidebar conference if we were in
6 an actual courtroom, you should let me know that.
7 Otherwise we'll stay where we are.

8 MR. NEFF: I -- Judge, I mean, I can't
9 obviously point to any statutory protection on one
10 of the subjects that's relevant in this motion for
11 reconsideration, but in deference to the party
12 involved, if we could -- if we could do -- if we
13 could discuss this in a breakout room so that -- so
14 that it's kept as private as possible, I would -- I
15 would ask for that.

16 THE HEARING OFFICER: Any objection,
17 Mr. Angelini?

18 MR. ANGELINI: None whatsoever, your Honor.

19 THE HEARING OFFICER: Okay. Thank you.

20 It will be on the record; it will be
21 available to the public. The discussion itself will
22 take place in the nature of a sidebar, which would
23 not be an uncommon practice at all in an actual
24 courtroom.

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1 All right.

2 MR. ANGELINI: Great.

3 THE HEARING OFFICER: I don't expect --
4 just for people's timing, I don't expect this to
5 last more than maybe ten minutes, so that we should
6 be back in the -- or back out of the breakout room
7 in about ten minutes.

8 Okay.

9 MR. NEFF: Great. Thank you.

10 THE HEARING OFFICER: Thank you.

11 (Meeting in private breakout room. Hearing
12 Officer Josephson, Mr. Neff, Ms. Cosgrove,
13 Mr. Angelini, and Mr. Loos present)

14 THE HEARING OFFICER: Then, Mr. Angelini,
15 you had filed a motion for reconsideration of my
16 ruling on the issue of expert testimony, and a
17 related matter of inquiry of Ms. Deines, concerning
18 a prior alleged assault ten years before.

19 So I wanted to -- I had allowed the motion
20 to exclude that, that was filed by Mr. Neff, and
21 wrote my decision. And since then you have filed a
22 motion for reconsideration, and I wanted to give you
23 an opportunity to be able to make an offer of proof.
24 And I'm sorry it's so late in the proceedings, but

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1 let's -- let's do it now that we can.

2 Okay?

3 MR. ANGELINI: Good. So happy to do that,
4 your Honor.

5 Look. I'm doing this in the interest of
6 completeness. We're not trying this for the purpose
7 of an appeal, but having gone this far down the
8 line, let me just tell you what I would have -- if
9 the evidence had been presented, what it would have
10 been. I don't -- it's somewhat moot at this point,
11 but I'll say it.

12 So Ms. Deines testified in a deposition
13 that approximately ten years ago, while she was
14 riding on an MBTA train, she was groped, and her
15 testimony at that time at her deposition was that it
16 made her -- she remembered that incident. It made
17 her at least wary, and -- and that it was in her
18 mind. Judge, Hanya Bluestone is a licensed
19 psychologist, a forensic psychologist, been
20 practicing in central Massachusetts for
21 approximately 20 years. She deals with situations
22 generally -- as she would testify -- of this type in
23 which a person suffers a -- a deeply disturbing
24 experience of a type unfortunately sustained by

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1 Ms. Deines ten years ago. And she -- I would
2 present her CV to you, but her testimony would be
3 that in those situations it is common that a person
4 who has that experience will misperceive an -- a
5 relatively insignificant event, a non-traumatic
6 subsequent event, will misperceive that by reason of
7 the prior disturbing experience, and that, in this
8 case, even incidental, casual, unintentional conduct
9 and contact may trigger that reaction, and may have
10 triggered that reaction in Ms. Deines.

11 That's the -- that's the subject, that
12 simple. That's it.

13 THE HEARING OFFICER: All right.

14 Well, thank you. Out of an abundance of
15 caution, because I had -- I had allowed the motion
16 to exclude primarily on procedural grounds, in the
17 event in the -- in the possible, very possible event
18 that I am wrong -- which certainly I could be -- I
19 wanted to make sure that the substance could be
20 considered as well.

21 I will now tell you that, given the state
22 of the evidence, which is that -- is that Judge
23 Sushchuk -- Sushchuk -- I'm sorry; I stumble over
24 his name; I apologize for that -- that Judge

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1 Sushchyk -- Sushchyk would -- has denied any
2 touching whatsoever, and Ms. Deines' testimony was
3 very clear on the nature of the touching that she
4 experienced, I'm not -- I'm not certain that the
5 expert testimony would be -- would be pertinent
6 to -- to the evidence that I have before me.

7 I will note that the five areas that -- the
8 foundation requirements include the opinion must be
9 based on a body of knowledge or principle that -- or
10 method that is reliable, and although it's -- I
11 won't address the other areas -- that would be my
12 main area of concern if -- if I had not excluded it
13 on procedural grounds, which I did.

14 So that's where we are now. If there's
15 anything you want to add, Mr. Angelini, be my guest.

16 Mr. Neff, anything you want to add?

17 MR. NEFF: None. Unless you need to hear
18 from me, I have nothing left to add, Judge.

19 THE HEARING OFFICER: Mr. Angelini.

20 MR. ANGELINI: I just -- look. The purpose
21 of my -- I think this is all moot at this stage of
22 the proceeding. I've raised it early.

23 THE HEARING OFFICER: I know you did.

24 MR. ANGELINI: So it's not a problem.

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1 Let's move on.

2 THE HEARING OFFICER: Okay. Thank you.
3 Fine with me. Let's move on, then. Let's go back
4 into the non-breakout area and meet there.

5 Thank you.

6 (Return to open proceedings)

7 THE HEARING OFFICER: Okay. We're back and
8 can we be on the record, please, Mr. Loos, if we're
9 not?

10 THE REPORTER: We are.

11 THE HEARING OFFICER: Okay. Great.

12 All right, then, Mr. Angelini. You have
13 concluded your presentation on behalf of your
14 client.

15 Mr. Neff, you have -- or do you have any
16 rebuttal evidence?

17 MR. NEFF: I do not, your Honor, no.

18 THE HEARING OFFICER: All right.

19 Then at this time the evidence is closed.

20 Are you each prepared to open -- to present
21 closing arguments?

22 MR. NEFF: I would like to make a closing
23 argument, your Honor, and I am perfectly happy to do
24 so today. I would, if the Court's willing to permit

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1 me to do so, like to take maybe a ten-minute recess
2 or so because, while I have prepared a closing
3 argument, I want to make sure that certain aspects
4 of the evidence that were presented today that
5 may -- may not have been anticipated the last time I
6 looked at it are incorporated and/or accurate in
7 what I actually say to you at the end in that
8 argument.

9 THE HEARING OFFICER: Any objection,
10 Mr. Angelini?

11 MR. ANGELINI: No, your Honor.

12 THE HEARING OFFICER: Okay. Then let's
13 take a -- I apologize to those who I told --

14 MR. NEFF: I'm sorry for the delay.

15 THE HEARING OFFICER: No. It's fine.

16 Let me just say, it's exactly what would
17 happen during the course of any hearing. Before
18 closing arguments attorneys always need a few
19 minutes to collect their thoughts, and that's --
20 that's only fair.

21 So let's do the ten minutes that we
22 normally would anyway, and we'll resume at 1:10,
23 please.

24 MR. NEFF: Perfect. Thank you very much.

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1 (Recess taken)

2 THE HEARING OFFICER: Thank you.

3 And -- all right. And we're ready to
4 resume. As I said, the evidence has closed, and
5 I'll be happy to hear any closing argument. Given
6 that Mr. Neff is the party with the burden of proof,
7 he will go last, but, Mr. Angelini, any closing
8 remarks that you'd like to make?

9 MR. ANGELINI: Yes. I'm prepared to start,
10 your Honor.

11 May I proceed?

12 THE HEARING OFFICER: Sure.

13 MR. ANGELINI: Yeah.

14 CLOSING ARGUMENT FOR JUDGE SUSHCHYK

15 MR. ANGELINI: Well, thank you, your Honor,
16 for your attention to this.

17 Look. I -- we recognize that there is a
18 special burden of proof in this case. I don't
19 intend to repeat the nature of what it means to be
20 able to prove something, or to be required to prove
21 something by clear and convincing evidence. Your
22 Honor knows that better than anyone, perhaps, in
23 this room, even this virtual room. But even if this
24 was a case based on the preponderance of the

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1 evidence, rather than on clear and convincing
2 evidence, I would suggest to you, respectfully, that
3 this is extraordinary that we are here, because what
4 we have here is completely an uncorroborated charge.
5 There is no corroboration for what is alleged to
6 have occurred except from the mouth of the person
7 who claims lately that it occurred.

8 And the event itself is an extraordinary
9 event as described by Ms. Deines. She says -- she
10 says, and said to you under oath, that for 5, 10 or
11 15 seconds, this judge placed his hand, slipped his
12 hand under her buttocks and pinched and squeezed it.
13 No one saw that happen. No one saw that happen.
14 She didn't see it happen, of course, because she
15 could not see it happen. Ms. Patsos, who was
16 standing right next to her, did not see it happen,
17 did not see anything unusual occur. Ms. Patsos did
18 not see Judge Sushchyk as he walked towards her stop
19 for a second or two seconds, or three or four or
20 five seconds, much less somewhere between five and
21 15 seconds. This is a completely uncorroborated
22 claim and denied expressly by the only percipient
23 witness to what is alleged to have occurred, and
24 that is Judge Sushchyk.

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1 Now if Judge Sushchuk, who denies doing
2 this, denies this intentional act, indeed stopped
3 for 5, 10 or 15 seconds, surely -- and during that
4 5, 10 or 15 seconds not only stopped but pulled out
5 his hand, slid it under Ms. Deines' buttocks and
6 pinched and squeezed her, put aside the absence of
7 reaction from her, surely Ms. Patsos must be lying
8 because she says he didn't stop as he was moving.
9 And this is not something that -- obviously
10 something taking 5, 10 or 15 seconds, it's not
11 something which could possibly occur on the run.
12 Whether it could occur even if he was stationed
13 behind her and purposely trying to do it is an
14 entire separate question for your Honor.

15 And then talk about the reaction of
16 Ms. Deines, who says this lifted her off the
17 cushion. That was her testimony. This act was such
18 a violent act -- it wasn't a simple squeeze of some
19 part of her skin; it was a full body, full palm
20 grab, as she has described it, a grab, a squeeze of
21 her buttocks, lifting her off the cushion.

22 But that didn't occur. That did not occur,
23 because we have the testimony of two people who know
24 Ms. Deines well, who are apparently friendly with

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1 her: Ms. Patsos and Ms. Welsh. During all this
2 period of time, according to her own testimony,
3 Ms. Deines was speaking across the table to
4 Ms. Welsh with her elbows on the table, her body
5 positioned towards Ms. Welsh, and they were having a
6 conversation. And Ms. Welsh remembers no
7 interruption of that conversation. She remembers
8 nothing unusual. And also remembers watching Judge
9 Sushchyk, and he was moving at all times.

10 You asked her the -- she was asked the
11 question -- you asked Ms. Patsos -- again, the
12 question was asked of her, "Was he moving? Did he
13 stop?" Her answer was, "No, he did not stop." That
14 testimony, her testimony, Ms. Patsos' testimony,
15 Judge Sushchyk's testimony, would all have to be
16 wrong for the uncorroborated testimony of
17 Ms. Deines, which is inconsistent with her own
18 behavior, to have occurred.

19 And take a hard look at her testimony. She
20 said -- she said, in response to a question from
21 Mr. Neff on direct examination, "I immediately
22 turned around. I immediately turned around." In
23 fact, as she acknowledged, she didn't turn around
24 for 30 seconds. That's her -- that is what

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1 happened. At some time after this occurred, she
2 turned around and, 30 seconds later, saw Judge
3 Sushchyk there. There's no doubt that he was there,
4 but there's no doubt from the witnesses who saw him
5 get there that he was moving as he got there and did
6 not stop to have an encounter with Ms. Deines'
7 buttocks.

8 If this claim could be sustained against
9 Judge Sushchyk, this claim could be sustained
10 against anybody at any time at any place, because it
11 is completely without corroboration, and is
12 completely inconsistent with the behavior of the
13 person to whom it is alleged to have occurred. She
14 did not stop. She did not turn around. She did not
15 see what was going on behind her. She didn't say to
16 Ms. Welsh, "Oh, my God. Something just happened,
17 but I'm not going to turn around for 30 seconds."
18 She didn't say anything to Ms. Patsos who was to her
19 left. She didn't say or do anything that would lead
20 anyone to believe that anything had occurred. And
21 the reason for that is, respectfully, is that
22 nothing had occurred. She claimed, incredibly, that
23 she knew who was behind her. There is no way --
24 there is no way.

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1 There is -- the only evidence you have,
2 your Honor, the only evidence you have is that this
3 took place in a bar, with a number of people who
4 were drinking and moving about, crowded, milling
5 about, doing what people do in bars: Some standing,
6 some sitting, socializing at the end of a day's
7 event with members of the public there.

8 You heard the testimony from Judge Casey
9 that this is -- this is not a remote mountaintop
10 location. This is an area where there are
11 townhouses and condominiums around, all as part of
12 this project, this residential -- or this resort, I
13 should say.

14 In any event, this was a crowded bar, and
15 the claim by Ms. Deines that she knew who, or what,
16 or how many, or the nature of the people behind her,
17 whether they were male or female or whatever, is
18 without foundation. It is pure speculation. It is
19 not evidence. There is simply no evidence of what
20 occurred.

21 I cannot emphasize enough that this event,
22 that this claim is an uncorroborated one, and,
23 frankly, the statements of Ms. Deines themselves,
24 before the Commission for Judicial Conduct got

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1 involved, before a scenario was created by which
2 this judge has been subjected to this uncorroborated
3 accusation, what did Ms. Deines say?

4 Well, what she said at first was, "Oh, my
5 God, I think" -- "I think" -- to use her words --
6 "that something had occurred." "Oh, my God, I think
7 one of the judges grabbed my butt on purpose." She
8 didn't say, "One of the judges grabbed my butt on
9 purpose." She said, "I think so." And then she
10 said, "He's also carrying a hip flask," which turns
11 out not to be a hip flask, "so maybe" -- as she
12 testified to, "maybe he just fell."

13 We don't know what her perception was at
14 any time this evening, but if she perceived that
15 someone slid his extra, extra large hand under her
16 butt and grabbed and squeezed it, there is no way in
17 the world that that could be viewed as consistent
18 with what she has described and with what Judge
19 Sushchuk is charged at. You just cannot reconcile
20 somebody stumbling and falling down because he was
21 carrying a hip flask with what she claims occurred.

22 And then we have her next text message in
23 which she says the next day, "I kind of thought it
24 was a mistake." Let's be clear about it. It cannot

1 be a mistake by which someone slides his hand under
2 your butt and squeezes and grabs it or pinches it,
3 however she wants to describe. That could not be a
4 mistake. That could not be a mistake. That doesn't
5 happen by mistake. It cannot happen by mistake
6 unless you've got a choice of two different people
7 to do it to. It was not a mistake.

8 But then what does she say? "Until today,
9 he spent the day hovering uncomfortably around me."
10 There is no evidence of that. You've listened to
11 Judge Sushchuk, and I put his -- his credibility is
12 on the line. I acknowledge it. Putting aside the
13 burden of proof, there is no evidence whatsoever
14 that he was hovering uncomfortably around her that
15 day.

16 And listen to her testimony on
17 cross-examination about that. I asked her, "In what
18 manner was he hovering around you, Ms. Deines?"
19 "Well, he was sitting at lunch, and I thought he sat
20 too close to me." It turns out he wasn't sitting
21 too close to her. He picked, as he told you, an
22 empty seat. He didn't even see her that day.

23 And then I asked her to reconcile the fact
24 that he was not sitting close to her with her claim

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1 that he spent the day -- spent the day hovering
2 uncomfortably around her. And her testimony on that
3 point, as I said earlier today at a different
4 connection, is telling. She said, "Well, that was
5 my perception." Well, what that demonstrates, your
6 Honor, is that we have here a person who has the
7 ability to perceive things which are not real. She
8 perceived, somehow, by the fact that he sat at an
9 adjoining table in which there was an empty seat,
10 that he was spending the day hovering around her, as
11 she said in a text to two of her friends. Which he
12 clearly was not, but she perceived that to be the
13 case because she demonstrated to you that she has
14 somehow the ability to disassociate reality from
15 what she chooses to perceive.

16 Whether that happened -- it certainly
17 happened with respect to the alleged hovering.
18 Whether that happened or something else happened by
19 which she has made up this story, we don't know. We
20 don't know how or why she did so. But what we do
21 know from the evidence is it didn't take place.

22 But let us give her the benefit of the
23 doubt, that somehow she convinced herself that he
24 did not fall down and slide his hand under her

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1 buttocks as he was falling down. Somehow she's
2 convinced herself that something occurred, which she
3 has described in these graphic terms. What she's
4 demonstrated by her testimony as to the second day
5 is that she has the ability to perceive things which
6 don't occur. And that is remarkable. But it is not
7 so remarkable that this man should be deprived of
8 the office to which he holds. It is extraordinary,
9 as you think about it, that simply by walking behind
10 her that night, keeping on moving, doing nothing
11 offensive, he has put himself in the position where
12 he faces this charge.

13 The fact, Judge, is that testimony you have
14 heard from Ms. Deines is contradictory. It
15 describes this event in different ways. It
16 contradicts what Ms. Welsh and Ms. Patsos say.
17 They're no great friends of Judge Sushchuk. They're
18 independent, fair-minded people saying what they
19 believe. They're colleagues of Ms. Deines. But you
20 cannot reconcile, I suggest respectfully, their
21 testimony, including the testimony responsive to
22 questions asked by you, with anything that she says.

23 Now, let me speak for a moment about Judge
24 Sushchuk's statement. I was struck by his testimony

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1 regarding that this morning. Because he did, I
2 think, I suggest to you what is natural for any
3 human being to do, which is to try to figure this
4 out. That is not a sign of guilt. It's a sign of
5 innocence. What he tried to do was to say, "How
6 could this possibly be true that someone would say
7 these things about me that didn't? How could
8 someone perceive that I did this when I didn't? How
9 can I rationalize this?"

10 Well, the easy thing to say was, "Well,
11 people lie." He didn't -- he didn't do that. He
12 didn't do that. To his credit, he tried to
13 rationalize what had occurred, and he rationalized
14 it by recalling, as he testified to you today, that
15 this was, as I've said earlier, a crowded bar of
16 many people -- and he used his word; he used it
17 today, and he used it in his statement to Judge --
18 to Judge Casey -- he was threading his way through
19 people. We've all been in that situation, whether
20 it's on a bus, on a streetcar, at a cocktail party,
21 at a ball game, at a cultural event, at whatever.
22 We have all been in that situation, where you need
23 to get through a group of people to get where you're
24 going, and you inevitably have some contact with

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1 those people. And what he concluded, and the only
2 thing he could conclude in order to rationalize this
3 extraordinary claim against him, is that he must
4 have bumped against her and that, somehow or other,
5 somehow or other, somehow or other she misperceived
6 what had occurred.

7 Now, her ability to misperceive what has
8 occurred is now well known, but the fact that he did
9 that should not be a basis for criticism. He
10 honestly tells you today he has thought about this
11 every day and every night. He went back to the
12 Bayzos Pub to try to recreate what happened. His
13 responsibility today is to tell you the truth, and
14 you'll have to be the judge of that. But what he
15 tells you today is, in all honesty, while he tried
16 to rationalize this as best he could, his belief
17 today, his best belief is he did not even touch her.

18 It would be easy for him to come here today
19 and say "Well," you know, "I said that. I guess I
20 probably did. It wasn't intentional." He's here to
21 tell you the truth. He's here to tell to the truth.
22 He was trying to, at the time, to rationalize in his
23 mind how someone could make this extraordinary claim
24 against him. And he did, I think, what the human

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1 thing -- he did what I would suggest to you,
2 respectfully, he did the human thing. He did the
3 humanistic thing. He tried to give someone the
4 benefit of the doubt who perceived something to have
5 happened that did not happen.

6 Let me spend a minute on this wide-eyed
7 look. None of us know, and no one was asked, what
8 was meant by this look. We all know that Ms. Deines
9 went home. She gave no sign of being upset about
10 anything. We don't know whether she was trying to
11 tell people that, "I'm getting out of here. I've
12 got a three-year-old at home. My mother and father
13 is watching him. I've got to get back to Eastham."
14 But there was no sign that she was upset about it,
15 quite aside from the fact that she said and did
16 nothing. She then went over to see Judge Casey and
17 said good-night to him in a very un -- in a very
18 uneventful way.

19 There is -- frankly, as we look at this,
20 there is, as I said at the beginning, the complete
21 absence of any corroboration, any, any, any
22 corroboration of this claim. This man faces
23 extraordinary consequences to this. He has told you
24 honestly -- and you will have to judge his honesty

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1 or not -- what he recalls, what he did, but most
2 explicitly what he did not do. He did not
3 intentionally -- to use the words of which he is
4 charged, he did not "intentionally grab, slide,
5 pinch the buttocks of Ms. Deines," and to do so for
6 5, 10 or 15 seconds, it is beyond, beyond reasonable
7 understanding.

8 Now, let me finish where I started. This
9 is a case which must be proven by clear and
10 convincing evidence. That is a requirement of the
11 law. That is a heavy burden. Even aside from the
12 fact that there is no corroboration, that is a heavy
13 burden. There must be clear evidence that he did
14 something like this, that he did this event, that he
15 slid his hand under her buttocks and pinched and
16 squeezed it and did all the other things with a full
17 palm grab. There is no such clear evidence, and
18 there is certainly no convincing evidence.

19 Convincing evidence is that evidence which,
20 I suggest to you respectfully, must be convincing
21 because it is consistent with other events occurring
22 at the time. I would suggest to you that this is a
23 case even clearer than that, because not only is
24 there no clear evidence, not only is there no

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1 convincing evidence, there is no evidence. There is
2 a claim, but there is no evidence of that claim.

3 I could as easily say to you right now --
4 right now -- that there's a tsunami outside my
5 window. That wouldn't mean that there's evidence
6 that there's a tsunami. Ms. Deines can say, "This
7 person did this to me." That is not evidence.
8 Evidence is something which supports the allegation
9 that is made and is rational.

10 So that is this case, your Honor. I -- it
11 is a burden I'm going to ask your Honor, that you
12 deal with it promptly. It is a Damoclean sword
13 which has hung over this man's head now for more
14 than a year on the basis of an uncorroborated,
15 unproven, unsupportable claim, inconsistent with the
16 conduct, actions of the complainant and the
17 testimony of independent witnesses.

18 That's our case, your Honor. Thank you for
19 your attention. I appreciate it very much and look
20 forward to your verdict.

21 Thank you.

22 THE HEARING OFFICER: Thank you very much,
23 Mr. Angelini.

24 Mr. Neff, you appear to be muted.

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1 THE REPORTER: One moment. I'll unmute
2 him.

3 MR. NEFF: Am I good now?

4 THE HEARING OFFICER: Yes. Go ahead.

5 MR. NEFF: Okay.

6 CLOSING ARGUMENTS FOR THE COMMISSION

7 MR. NEFF: Well, first thing I'd like to
8 start out by saying is to object to the
9 characterization of -- of Ms. Patsos, who is an
10 attorney in this state, by Mr. Angelini as a liar.
11 We can call each other -- we can say that each other
12 may lack credibility or there are reasons to
13 question credibility.

14 MR. ANGELINI: Wait a minute.

15 MR. NEFF: We respectfully suggest in this
16 circumstance that it is inappropriate for
17 Mr. Angelini to begin --

18 THE HEARING OFFICER: Let me interrupt for
19 a minute, Mr. Neff. I did not hear Mr. Angelini to
20 accuse Ms. Patsos of being a liar.

21 MR. NEFF: Okay. I'll let the record speak
22 for itself, but that's the word I heard, and it
23 caught my attention.

24 In any event, I'll move on.

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1 THE HEARING OFFICER: Okay.

2 MR. NEFF: What we have here, Judge
3 Josephson, is an assault by one person on a second
4 person. Two people are involved, and there are no
5 other percipient witnesses. So what we are left
6 with is corroboration, corroboration evidence. How
7 can we establish who is the more truthful party in a
8 two-person transaction that amounts to --
9 potentially amounts to serious judicial misconduct
10 on the part of one of the parties.

11 I would like to also start out by thanking
12 you, Judge Josephson, for your patience with me and
13 sometimes me being a little slow and delayed and
14 needing bathroom breaks and that sort of thing, and
15 to all the witnesses who are willing to participate
16 in this matter, in particular to Mr. Loos for his
17 cooperation and patience in helping me with the
18 exhibits.

19 In this matter, the Commission has brought
20 charges of judicial misconduct against Probate and
21 Family Court Judge Paul M. Sushchuk, charging him
22 with having engaged in willful judicial misconduct,
23 that brings the judicial office into disrepute, as
24 well as conduct prejudicial to the administration of

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1 justice and unbecoming a judicial officer, in
2 violation of Massachusetts General Laws
3 Chapter 211C, and which also violated the
4 Massachusetts Code of Judicial Conduct, by failing
5 to comply with the law, including the Code of
6 Judicial Conduct in violation of Rule 1.1 by failing
7 at all times to act in a manner that promotes --
8 that promotes public confidence in the integrity
9 and/or impartiality of the judiciary; and by failing
10 to avoid impropriety and/or the appearance of
11 impropriety in violation of Rule 1.2; by failing to
12 perform the duties of judicial office without bias,
13 prejudice or harassment, in violation of Rule 2.3(A)
14 of the Code of Judicial Conduct; by failing in the
15 performance of judicial duties to refrain from
16 manifesting or -- by manifesting bias or prejudice
17 or engaging in harassment in violation of Rule 2.3;
18 by failing to be dignified and/or courteous to
19 litigants, witnesses, lawyers, court personnel and
20 others with whom he deals in an official capacity,
21 in violation of Rule 2.8(B); and then finally by
22 participating in activities that would appear to a
23 reasonable person to undermine the judge's
24 independence, integrity or impartiality in violation

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1 of Rule 3.1(C).

2 And again what we have here is a -- a very
3 brief fact pattern. As I indicated to you at the
4 outset of this matter on Monday, this case was
5 brought to you based on a factual allegation that, I
6 would now suggest to you, the evidence supports was
7 courageously reported to the Probate and Family
8 Court by Ms. Emily Deines after she spoke with a
9 number of people for advice, and you heard testimony
10 about that. She brought that to the attention --
11 she brought this to the attention of the Probate and
12 Family Court, despite testifying about her concerns
13 about making this report and the negative impact
14 that this report might have on her career in the
15 future. She had absolutely, and still does, has
16 absolutely nothing to gain by coming forward and
17 making this report, but she, I would suggest,
18 courageously chose to do so despite her concerns
19 about the impact on her career and has, indeed,
20 ended up doing so at some personal cost.

21 I would suggest that even though a -- even
22 through a video screen it was clear -- I would
23 suggest that even through a video screen it was
24 clear that it remained difficult for Emily to come

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1 forward and talk about this as late as this past
2 Monday. Emily did come forward and followed
3 through, explaining that, among other reasons she
4 felt she needed to come forward was to make sure
5 that she did her part to ensure that this person,
6 this judge, Judge Paul M. Sushchuk -- who is really
7 supposed to represent the highest ideals of trust
8 and authority and moral values in our society --
9 would not be in a position to engage in similar
10 conduct again.

11 On Monday, Ms. Deines in her testimony told
12 you that Judge Sushchuk slid his hand under her left
13 buttock and grabbed or squeezed it without her
14 permission while she was seated at the Bayzos Pub in
15 Brewster Massachusetts on April 25th, 2019.

16 Now, Mr. Angelini wants to make much of the
17 fact that Ms. Deines didn't literally see Judge
18 Sushchuk grab her buttock as he stood or passed
19 behind her. I would suggest that Ms. Deines
20 testified to what most reasonable people would have
21 seen during such an assault, which is maybe a person
22 approaching you from one side, and then feeling, as
23 they passed behind you, a grab -- in this case an
24 inappropriate grab of your buttocks -- while they

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1 are behind you, and then a moment or two later they
2 are back in your line of vision and you see that
3 that person is indeed whoever it is. In this case,
4 Emily testified that that person she believed was
5 Judge Paul M. Sushchyk.

6 Ms. Deines testified that she felt her left
7 buttock being grabbed in a way that she described
8 that could only have been deliberate. I would
9 suggest that Ms. Deines' description of the events
10 of April 25th, 2019, alone are credible, clear and
11 convincing and more -- more than sufficient for you
12 to find Judge Sushchyk has violated the rules of the
13 Code with which he has been charged by the
14 Commission.

15 Now, in this case, you did hear from
16 several other witnesses in this matter, including
17 Chief Justice Casey. He testified that while Bayzos
18 Pub did fill up and become somewhat crowded as
19 the -- as the Probate and Family Court dinner ended,
20 he saw Judge Sushchyk there. He saw Judge Sushchyk
21 there and saw him approach Ms. Deines' table. But
22 when I asked him about it, he said he didn't see
23 Judge Sushchyk have to contort his way around or do
24 any kind of special acrobatics in order to get

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1 access to Ms. Patsos. He just walked right over
2 there with no apparent reason to come into close
3 contact with Ms. Patsos (sic), other than that he
4 did.

5 On Monday, Ms. Deines testified that she
6 was so shocked that Judge Sushchyk, a Probate and
7 Family Court judge, had done this to her, that at
8 first she didn't know how to react. So she's
9 sitting at this table with her friends, going about
10 life as usual, like many of us might have. And this
11 person who you may not necessarily know personally
12 or even professionally, but who you know enough
13 about to hold in high esteem, all of a sudden has
14 done what Ms. Deines says he did -- which is he
15 grabbed her buttocks -- and she doesn't know how to
16 react to that. "That really happened? What do I do
17 about it now? What should I say? What should I
18 do?"

19 And in her case, her reaction was she
20 didn't do anything at all except she tried to get
21 the attention of Ms. Patsos, who was basically the
22 one person primarily engaged with Judge Sushchyk at
23 this particular point in time, gave her this
24 wide-eyed look, trying to get her attention.

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1 Ms. Patsos didn't really understand what was going
2 on. Eventually Ms. Deines gave up and left and then
3 eventually sent a text message to her sister
4 reporting the event.

5 In Ms. Patsos' testimony, which you also
6 heard yesterday, Ms. Patsos did corroborate that at
7 certain points during the event of April 25th, Emily
8 looked at her with wide eyes and seemed to be trying
9 to communicate something. So when Mr. Angelini
10 talks about, you know, this is just two people and
11 there's really no corroboration at all, well, one
12 variety of corroboration, I would suggest we have
13 here, is Emily's reaction and her attempt to get
14 some sort of reaction or some sort of communication
15 to happen with Ms. Patsos, unsuccessfully. And
16 Ms. Patsos confirmed that when she was questioned.
17 And when she testified earlier this week, Ms. Patsos
18 testified that several days after the April 25th,
19 2019, event at the Bayzos Pub, she, several days
20 later, was able to eventually have a conversation
21 with Emily relating to the events of April 25th,
22 2019.

23 On Monday you also heard Mr. Angelini
24 choose to ask Emily personal questions about her

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1 weight. In his case, Mr. Angelini has made
2 references to how someone could slide their hand
3 under Ms. Deines' buttocks. I would suggest that on
4 Monday Ms. Deines merely did -- merely just did her
5 best to accurately testify to what her perception of
6 what it felt like when Judge Sushchuk
7 inappropriately grabbed her buttocks. Emily
8 testified that it felt like someone slid their hand
9 under her buttock and squeezed. I would suggest
10 that in Ms. Deines' written statement, which is one
11 of the exhibits in this hearing, she wrote that
12 someone grabbed her, and she believed that that
13 person was Judge Sushchuk because he was the only
14 person standing behind her at the time.

15 As Mr. Angelini correctly pointed out,
16 Ms. Deines cannot turn her head 180 degrees and can,
17 therefore, not tell us how the improper -- who
18 exactly did the improper touching. Ms. Deines just
19 had to draw a reasonable inference because Judge
20 Sushchuk was on one side of her at one moment, right
21 behind her when the grab happened, and then on the
22 other side of her after the grab happened.

23 On Monday, Mr. Angelini also asked
24 Ms. Deines some questions about her weight. I

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1 know -- I know that's a topic that for many,
2 including myself, is an uncomfortable one. However,
3 given that it was brought up, I would suggest that
4 it raises some questions for you as trier of fact.
5 And the questions are, did Emily feel a hand slide
6 under her because a portion of her buttocks was
7 maybe not fully rested on the barstool? Ms. Deines
8 merely testified that she felt someone, she believed
9 to be Judge Sushchyk, slide his hand under her
10 buttocks and squeeze. Given that we all acknowledge
11 that Emily did not see the actual grab of her
12 buttocks, does there really need to be evidence that
13 a person fully slide his hand under Ms. Deines'
14 buttocks for -- for Emily's description of Judge
15 Sushchyk's improper touching be credible and
16 accurate? Maybe partly under her butt. Maybe it
17 gets under the portion of her butt that hangs over
18 the stool. Maybe it just gets a little under the
19 stool. Who knows? But I would suggest that there's
20 ample reason to believe that Ms. Deines' reports
21 were both consistent and credible.

22 You have heard testimony from Emily and her
23 friends -- we have heard testimony that Emily and
24 her friends were sitting at bar-height tables with

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1 bar-height chairs. You have heard testimony from
2 various witnesses that these four, occasionally five
3 women were socializing and having drinks and having
4 a good time on the evening of April 25th, 2019. You
5 have in evidence several photos of examples of the
6 actual barstool at Bayzos Pub that night. As you
7 could see in Exhibit 3, Emily clearly rests her feet
8 on the support that -- that the barstool there
9 provided. You also heard that Emily was sometimes
10 talking in this increasingly loud and crowded bar,
11 to Jocelyne Welsh, who was directly across from
12 her, but was also speaking with other parties at the
13 table diagonally across from her. In fact, one of
14 the witnesses in this case actually testified that
15 the touching -- the alleged touching may have
16 actually happened while they were all just seating
17 themselves at the table itself.

18 During the course of this hearing,
19 Mr. Angelini asked Ms. Deines about how she sat at
20 that table and whether she rested her arms on it. I
21 would suggest that in the context of a fun, loud,
22 bar outing, a reasonable person could infer that
23 from time to time Ms. Deines did lean on the table
24 and towards someone she was speaking with, causing

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1 her full weight not necessarily to remain on the
2 barstool, allowing -- allowing a person access to do
3 exactly what Ms. Deines alleged Judge Sushchyk did
4 to her.

5 You also heard testimony that after
6 speaking with various parties, Ms. Deines ultimately
7 made the difficult decision to make a formal
8 complaint against Judge Sushchyk to Chief Justice
9 Casey. It was not an easy decision. And what
10 followed, I would suggest, were actions taken by
11 Chief Justice Casey consistent with the Trial
12 Court's policy on gender and sexual harassment that
13 was then in effect and is in evidence in this matter
14 as Exhibit 9.

15 Chief Justice Casey did his duty. He
16 conducted a prompt investigation of Ms. Deines'
17 report. He sought advice and/or -- and or notified
18 the Chief Justice of the Trial Court, Paula Carey,
19 spoke to and notified Probate and Family Court
20 administrator Linda Medonis, and was in contact with
21 the person who was then basically the newly
22 appointed human resources coordinator to this type
23 of matter, for gender issues, whose name was Maggie
24 Pinkham.

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1 In his testimony -- in response to a
2 question from Mr. Angelini about Ms. Deines' written
3 statement alleging that Judge Sushchuk assaulted her
4 on April 25th, 2009, which is Exhibit 6 (sic), Chief
5 Justice Casey, I asked him a lot of questions about
6 that, but the only answer that Chief Justice Casey
7 gave about the contents of that report came in the
8 context of a question asked by Mr. Angelini at the
9 close of Chief Justice Casey's testimony when Chief
10 Justice Casey stated that, in response to being
11 confronted with Ms. Deines' allegations, Judge
12 Sushchuk -- Judge Sushchuk did not deny those
13 allegations.

14 In a May 20th, 2019, written statement,
15 however, in evidence as Exhibit 13, Judge Sushchuk
16 actually admits to touching Ms. Deines, although he
17 is taking that back today, writing -- and I won't
18 belabor it, but basically writing, "I placed" --
19 skipping ahead a bit:

20 "I placed my hand in the direction of
21 her chair and came in momentary contact
22 with a portion her lower body. I then
23 returned to my seat at the table, rejoining
24 Ms. Patsos, Ms. Yurgelun, Ms. Welsh and

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1 Ms. Deines."

2 I would respectfully suggest that a judge
3 does not reduce a statement like that to writing and
4 then sign it and submit it to his chief justice
5 unless he really means it. And he is -- he is now
6 telling you that he is taking that back. So what is
7 true? Is he credible? I would suggest there are
8 serious questions about the credibility of Judge
9 Sushchuk and his responses to Ms. Deines'
10 allegations against him.

11 I would respectfully suggest that weighing
12 all of the evidence in this matter and evaluating
13 its credibility, Ms. Deines, a person with nothing
14 to gain, but concerns about losing -- having impacts
15 on her career as a consequence of her report
16 regarding this matter, notwithstanding all of that,
17 still chose to come forward because she felt it was
18 the right thing to do.

19 Judge Sushchuk, by contrast, when
20 confronted with Ms. Deines' allegations, first
21 failed to deny the allegation, as Chief Justice
22 Casey said, and -- and then, in his May 20th
23 statement, actually admitted to touching Ms. Deines,
24 and then today, in his testimony, has now taken that

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1 back again and said he did not touch Ms. Deines at
2 all on April 25th, 2019.

3 I would respectfully suggest that the
4 evidence presented demonstrates Ms. Deines as a
5 selfless, courageous woman of moral character who
6 made the report that gave rise to this complaint.
7 There may have been some variations in the words she
8 used, in how she described the events, but I would
9 respectfully suggest that those changes are not
10 meaningful or relevant. I would respectfully
11 suggest that she has consistently reported that
12 Judge Sushchuk improperly grabbed her left buttock
13 at the Bayzos Pub on April 25th, 2019, without
14 justification, excuse, invitation or consent,
15 shocking her and causing her to delay any action
16 until she tried to get the friend of her friend,
17 Ms. Patsos -- which, as I said, the fact Ms. Patsos
18 later confirmed in her testimony.

19 By contrast -- by contrast, under
20 question -- I would respectfully suggest that the
21 weight of the evidence in this matter strongly
22 favors a finding by clear and convincing evidence
23 that Judge Sushchuk improperly touched Ms. Deines'
24 buttock on April 25th, 2019, in violation of

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1 Massachusetts General Laws Chapter 211C and the Code
2 of Judicial Conduct, or at least the rules with
3 which he's been charged in connection with this
4 matter. I would also respectfully suggest that
5 Judge Sushchyk has also further violated the rules
6 by displaying and discussing with certain people
7 that he was carrying a flask in a bar that was open
8 to the public and that contained whiskey.

9 The Commission respectfully submits that
10 the evidence in this case has established that the
11 judge engaged in willful judicial misconduct,
12 prejudicial to the administration of justice and
13 unbecoming a judicial officer and which brought the
14 judicial office into disrepute in violation of
15 Massachusetts General Laws Chapter 211C, and I would
16 respectfully request that you find those violations
17 and that you find that he has, indeed, violated the
18 applicable portions of the statute --

19 THE HEARING OFFICER: Thank you very much,
20 Mr. Neff.

21 All right. With the closing arguments of
22 both counsel, the proceeding is now at its
23 conclusion.

24 Regarding the next steps, my understanding

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1 is that a report from me is expected within 30 days.

2 MR. NEFF: -- yeah. Tough time frame. I
3 can tell you -- I'm sorry. I didn't mean to
4 interrupt your Honor.

5 MR. ANGELINI: The judge is speaking.

6 THE HEARING OFFICER: That's my intention.
7 That's what the -- that's what's called for, and
8 that's what I'll do.

9 So with that, I also will communicate with
10 Mr. Loos, because another requirement of the Hearing
11 Officer is to provide a transcript to the
12 Commission, and the only vehicle that I have to do
13 that is through the kind offices of Mr. Loos.

14 So what did you want to say, Mr. Neff?

15 MR. NEFF: And I was actually going to say
16 something germane to that, which is I agree with you
17 that it's the Commission's responsibility, and these
18 are pretty short time frames. So even -- obviously,
19 an expedited transcript or whatever is an additional
20 cost, but I think, under the circumstances, it's the
21 Commission's obligation to try to get you a
22 transcript of this hearing as quickly as we possibly
23 can so that -- so that you can work on this and --
24 and get the report done within the time frame

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1 allotted under our rules. At least try to.

2 THE HEARING OFFICER: Thank you.

3 MR. NEFF: We will do that.

4 THE HEARING OFFICER: Okay. And I know
5 that -- or I'm assuming that any transcript that's
6 provided to me will obviously be provided to the
7 Commission in short order.

8 MR. NEFF: Well, I think probably --
9 unless -- I'm not sure what Mr. Loos' plans are. I
10 may just get it and at that point I'll distribute
11 it, and I'll distribute it to both you and
12 Mr. Angelini simultaneously.

13 I will also add that as part of the
14 protocols established by the Commission for virtual
15 hearings, the hearing itself was recorded.

16 THE HEARING OFFICER: Yes.

17 MR. NEFF: So unless either of you do not
18 want that -- that actually could be a lot of data;
19 so it could be a OneDrive kind of situation again,
20 unfortunately -- but unless you do not want that,
21 I'm more than happy to also share the -- the
22 audio-visual recording of the hearing itself, if
23 you'd like to be able to review that in connection
24 with making your findings and so forth in this

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1 matter.

2 THE HEARING OFFICER: Yeah. I would like
3 that.

4 Mr. Angelini, would you like that?

5 MR. ANGELINI: Whatever is helpful to the
6 Court I think would be useful.

7 Thank you.

8 THE HEARING OFFICER: Okay. All right.

9 And anything I get, I think, Mr. Neff,
10 you'll arrange for Mr. Angelini to be able to get
11 that as well.

12 MR. NEFF: Oh, yes. I absolutely. I -- I
13 will -- I'll just do it all concurrently.

14 I don't know what the time frame will be.
15 I'll talk to Mr. Loos about how quickly things can
16 get moved along.

17 One administrative matter -- and I only
18 have one case for frame of reference -- which, as
19 we've discussed, is a good thing -- is occasionally
20 the parties will submit to the Hearing Officer
21 proposed findings, which we can do if you'd like,
22 and then it would just be a question of -- of a --
23 if you wanted to -- if you wanted us to do that, and
24 if you wanted to set a deadline for us to do that.

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1 THE HEARING OFFICER: You know, I've done
2 that in the past, and, you know, and -- when I was
3 sitting. Sometimes, you know, in certain cases it's
4 very helpful.

5 I don't know that it really is worth the
6 amount of effort that you both would have to put
7 into it, given that I have everything before me I
8 need to --

9 MR. NEFF: Okay.

10 THE HEARING OFFICER: -- happen. So I hate
11 to see you put through any difficulty getting me
12 that. But if you want to, I'm always happy to get
13 it.

14 So would you like that opportunity,
15 Mr. Angelini?

16 MR. ANGELINI: I don't think it's necessary
17 in this case, your Honor. And, frankly, I'd --
18 given some other commitments, I think your Honor
19 said it as well as could be said, and I'll leave it
20 to your discretion.

21 THE HEARING OFFICER: Okay. Thank you.
22 I'm not inviting it, but Mr. Neff?

23 MR. NEFF: It's possible. I think the
24 facts are what they are, and, you know, I mean, I

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1 think factual findings in some ways end up being
2 more spin than factual findings anyway. So if you
3 don't feel strongly that you want them, particularly
4 given such a short time frame, rather than add
5 something to an already short time frame, maybe we
6 will just forego that for now.

7 This is, as you may know -- and I'll tell
8 Mr. Angelini, if he doesn't know -- there is an
9 opportunity afterward -- and this is with all due
10 respect to you, because I may --

11 THE HEARING OFFICER: Okay.

12 MR. NEFF: -- disagree with everything,
13 there is an opportunity for both parties to object
14 to the findings of the Hearing Officer. So -- so we
15 can submit proposed findings if we want, but we can
16 also July skip that and submit objections to
17 findings at a later date.

18 THE HEARING OFFICER: Yeah. You --
19 absolutely. You have the right to, after that, to
20 submit whatever objections you wish to, and there's
21 a time frame for that as well.

22 So let's just hope that things can move
23 along as quickly as possible with the transcript and
24 getting things to the point of resolution.

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1 MR. NEFF: And since we've got Mr. Loos
2 here, maybe I can put him on the spot. He's been
3 wonderful, so I hate to do it to you, but not to
4 necessarily hold you to a date, but do you have any
5 rough estimate regarding when we might be able to
6 receive the transcript and a copy of the
7 audio-visual recording of this hearing?

8 THE REPORTER: Maybe we could discuss it
9 after we go off the record?

10 MR. NEFF: Oh, okay. I'm sorry. We are
11 completely on the record. Why don't we go into a
12 breakout room to discuss that then.

13 THE HEARING OFFICER: Why don't you get
14 back to me. It's the Commission's responsibility.

15 MR. NEFF: Okay.

16 THE HEARING OFFICER: So I'll -- I'll --
17 I'll await any information that you have. If I have
18 a question, I'll get back in touch with all of you.

19 All right.

20 MR. NEFF: Okay. As with everything, I
21 will do my absolute best, and I know Mr. Loos will
22 as well, so I'll just keep you up-to-date.

23 Up-to-date.

24 THE HEARING OFFICER: All right.

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1 If there's nothing further then.

2 Anything further, Mr. Angelini?

3 MR. ANGELINI: Nothing, your Honor.

4 Thank you very much.

5 THE HEARING OFFICER: Okay. Thank you all
6 very much.

7 Mr. Loos, especially thank you.

8 MR. ANGELINI: Yes.

9 THE HEARING OFFICER: All right.

10 That concludes the hearing. Thank you.

11 MR. NEFF: Thank you, everyone.

12 (Whereupon, the proceedings were
13 concluded at 3:05 p.m.)

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C E R T I F I C A T E

I, Alexander K. Loos, Registered Diplomate Reporter, do hereby certify that the foregoing transcript, Volume III, is a true and accurate transcription of my stenographic notes taken on July 22, 2020.



Alexander K. Loos
Registered Diplomate Reporter

**Hearing, Day 3 - July 22, 2020
Videoconference**

D I S C L A I M E R

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