### MASSACHUSETTS JURY DUTY - YOU MAKE A DIFFERENCE

With The Honorable Jeffrey M. Winik By the Massachusetts Judicial Branch

Audio video recording produced by the Office of the Jury Commissioner in association with the Boston Neighborhood Network Transcript produced by Approved Court Transcriber Donna Holmes Dominguez

CAPTION: Jury Duty, Michael Ryan, Host

MICHAEL RYAN, BNN LIVE HOST: Hi. My name is Mike Ryan. The name of the show is Jury Duty: You Make a Difference on BNN, the show that should answer all your questions about the one day, one trial jury system.

HOST RYAN: Our special guest today is Judge Jeffrey Winik from the Housing Court.

Welcome, Judge.

JUDGE WINIK: Thank you. Happy to be here.

HOST RYAN: Thank you very much for coming here.

Judge Winik is a prior graduate of the University of Michigan, received his Master's Degree at London College University of London, and obtained his Juris Doctorate from Boston University Law School.

And after that, he worked briefly for the New York

Commission on Judicial Combat, combat. Judicial Conduct, and

came back to these parts, where he worked at the Greater

Boston Elderly Service and Greater Boston Legal Services,

specializing in Federal and State housing.

Then you went and you taught for ten years at BU Law School where you still, where you still teach, before going into private practice with a focus on real estate, land use, and housing litigation.

He was appointed to the Housing Court Bench in 1995.

JUDGE WINIK: That's correct.

HOST RYAN: Appointed First Justice in 2004.

He is a recipient of several judicial awards including the Boston Bar's Citation for Judicial Conduct in 2013.

So Judge, we, people I think generally know what the Housing Court does. But what exactly are some of the things that the Housing Court touches upon?

JUDGE WINIK: Sure. The Housing Court was created by statute with specific jurisdiction.

We're a Court of superior jurisdiction, similar to the Superior Court, but with specialized focus.

We deal with cases that deal directly or indirectly with residential habitation. That can include issues dealing with tenancies. It deals with code enforcement, state sanitary codes, state health codes, environmental codes.

We deal with issues of land use, zoning, and we deal with disputes pertaining to personal injury if they relate to something arising out of a housing relationship.

HOST RYAN: How long has the Housing Court been around?

JUDGE WINIK: We've been around since the early 1970s was when it was first created initially in Boston and Springfield, and then has since expanded to cover, you know, the regions of Worcester, the northeast section of the state. We have a southeast division. We have a western division.

And there's a bill pending now to make, extend the jurisdiction of the Housing Court to cover statewide, so that

1 everybody would have access to the Court.

HOST RYAN: So you're about 80 percent, you cover the state now, the Housing Court?

JUDGE WINIK: Approximately.

HOST RYAN: So the only places that don't have the Housing Court would be the Cape and the Islands?

JUDGE WINIK: Cape Islands, Cambridge, Quincy, a range of the western part of, you know, areas like Framingham, Natick do not have coverage.

But we're slowly, as I said, the idea is to expand to cover those major population areas.

HOST RYAN: I noticed in some of your divisions, that the, the Court almost rides circuit, that it, it not only is in one spot, they're not just in Springfield. They're not just in Worcester. So.

JUDGE WINIK: Of the five divisions, four of them travel extensively.

The, each day, they'd be a Judge sitting somewhere within the division.

That requires not just the Judge to travel, but you also have to have Court Officers. You have to have Clerks. You have to have housing specialists which is one of our special features of the Housing Court is that we do have full time trained mediators who we call housing specialists who are trained to assist the parties when they have disputes to find

common ground in an effort to resolve them.

Our mediators have had very large amounts of success. And the fact that we can give each of these cases individualized attention enhances the likelihood that the cases can be resolved to the satisfaction of both parties.

HOST RYAN: So the mediation, they're able to settle their issues without going to Court?

JUDGE WINIK: Well --

HOST RYAN: Or going to case, to trial.

JUDGE WINIK: Without necessarily going to trial or having to appear before the Judge to argue their case.

HOST RYAN: So unlike some of the Court departments, like Superior and District and Boston Municipal, you don't have probation officers, but you have housing specialists?

JUDGE WINIK: That's correct.

HOST RYAN: And what is their role besides being mediators?

JUDGE WINIK: They do a few things. They, they are often

the Judge's eyes and ears, where they can go out upon the

request of the Judge and with the parties permission to do

views so they can take a look at the property. If there's a

dispute between a landlord and a tenant for example as to

whether there is a problem in the apartment.

I can send one of my mediators, my housing specialists, out to the apartment together with the parties, and my specialist can take a look and prepare a report that would be provided to me, giving the specialist's view of what in fact needs to be done.

What interestingly happens when that occurs is that often that becomes the catalyst for a mediation between the two sides. Once the specialist sees what's there, the specialist is in a very good position to make suggestions and recommendations as to how the dispute might be resolved.

HOST RYAN: So some of these specialists, they probably have backgrounds in property management or construction, home repair.

JUDGE WINIK: Some have backgrounds in, in home repair or they've had experience in some aspect of home improvement or they have experience as you said in property management.

And sometimes, if they don't have that extensive experience, our specialist department can train our new specialists to gain the expertise that they need.

HOST RYAN: And they're trained also in alternative dispute resolution?

JUDGE WINIK: That's correct. And they are, they receive certifications for, as, as individuals who can engage in alternative dispute resolution.

HOST RYAN: Would eviction be the most, I hate to say popular kind of case in the Housing Court.

JUDGE WINIK: I would say in terms of the raw numbers, the largest portion of our cases involve issues of possession. So

1 that would be an eviction action, sometimes we get them where there's a risk of eviction that will occur if a problem cannot 2 3 be resolved. But you know, we, we have an extensive case load of, of 4 5 evictions. 6 HOST RYAN: And the legal term is summary process? JUDGE WINIK: Statutorily, it's called summary process. 7 8 And, but part of what I have to do as a Judge is make sure 9 when I'm on the bench and communicating with the public, I'm 10 using words that everybody understands. 11 And there aren't that many people who would understand what 12 I mean if I say summary process. No one would know 13 instinctively that it dealt with housing. But if I say eviction, everybody understands what I'm 14 15 saying. 16 HOST RYAN: And of course, you, there's one day of the week 17 that seems to be the busiest at the Housing Court? JUDGE WINIK: In Boston where I sit, we set aside Thursday, 18 19 Thursdays for summary process cases, eviction cases involving 20 private parties. 21 And we set aside Wednesday morning for eviction actions 22 involving the public housing authority. 23 HOST RYAN: What are some of the common issues in landlord 24 tenant disputes?

JUDGE WINIK: The, if we're dealing with eviction, the most

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common is going to be from the landlord side nonpayment of 1 rent.

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Sometimes, it's going to be that they believe the tenant is not, is engaging in certain conduct which the landlord believes violates the lease.

For example, the allegation could be that they are not properly taking care of the property or they're acting in a way that's disruptive of other tenants. So the landlord would seek to recover possession from the tenant.

The tenant side, typically they will argue that they do not owe the rent that is being claimed, and they may assert that the landlord has failed to maintain the property in good repair, and that as a result, the amount of rent that the landlord claims is due is not in fact the amount that the tenant should be obligated to pay.

HOST RYAN: I noticed in the Housing Court, there are restraining orders but they're not the kind of restraining orders involve, involving spousal abuse?

JUDGE WINIK: No. The, the Court has what we call equitable authority.

And what the Court has the ability to do is to hear cases where a party comes in asking the Court to tell the other side either to do something or not to do something.

For example, a landlord may seek a restraining order to order a tenant to allow the landlord's repair maintenance crew to enter the apartment to do repairs if the tenant for any reason is refusing access.

A tenant may come to Court and seek a restraining order to order the landlord to make repairs that the landlord for some reason has refused to do.

And the Court has the authority, after hearing, to issue an order that would be responsive to the request if the Court is satisfied that there's a reasonable likelihood that the party asking for relief will prevail.

HOST RYAN: Now, you also deal with, you mentioned about local zoning boards and appeals. What does that, what does that mean, if someone comes to Court about a Zoning Board issue?

JUDGE WINIK: Well, typically, it would take the form of a, an appeal from a decision rendered by the, the Zoning Board. It can be either a special permit allowance or denial. It could take the form of a variance that's allowed or granted or denied.

The Court does have authority under statute to hear those cases.

HOST RYAN: And also, you might hear appeals. I didn't realize that people get tickets from state and local enforcement agencies or the State Fire Marshal's Office?

JUDGE WINIK: That's correct. And it will vary from division to division, but the Court does have jurisdiction to

consider appeals from a, for example, a trash citation issued by the city of Boston if the property owner felt that it was incorrectly issued, the property owner could seek an appeal and have a hearing in the Housing Court before the Clerk.

HOST RYAN: We had such a lovely winter last winter. If I was cited for not cleaning up the snow in front of my house, is that, would, would I appeal to the Housing Court?

JUDGE WINIK: You could. I think that last year everybody would understand it was an extraordinary year, and Judges and municipal agencies had to of necessity use some practical reality, and, and make adjustments to the, you know, to the severity of, of what nature brought on us.

HOST RYAN: Now, have you done many jury trials in the Housing Court?

JUDGE WINIK: I have. People may not know this, but the Housing Court does have jurisdiction to hear jury cases, and that means that the parties have the right to request juries.

And typically it's going to be on cases where either a jury is allowed by statute or a jury was typically permitted, a jury claim was permitted on a case back when the Massachusetts state constitution was created back in the late 18<sup>th</sup> Century.

So if you had a right to a jury back in 1780, you have a right to a jury in 2016.

And typically, in a, in an eviction case, there was a type of action where a litigant could request a jury in 1780, so

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       they can request a jury today.
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         HOST RYAN: Thank you John Adams, right?
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         JUDGE WINIK: That's correct. The, the author of the State
       Constitution.
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         HOST RYAN: Absolutely.
         So your jury trials, are they juries of 12 or are they
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       juries of six?
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         JUDGE WINIK: In the Housing Court, they are juries of 12
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       because again we sit as Courts of Superior Court jurisdiction
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       in our specialized subject matter.
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         So we will impanel 12 jurors. We can impanel alternates,
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       but typically, it's going to be civil cases rather than
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       criminal cases that we hear in jury, and we would, in the
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       typical case, impanel 12.
         HOST RYAN: And what's, do you remember what your longest
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       jury trial was?
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         JUDGE WINIK: Thinking back to it, it was a very complicated
       lead poisoning personal injury case that ran about two weeks.
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         HOST RYAN: That's very long.
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         JUDGE WINIK: Ten trial days.
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         And that's the longest. Typically, our jury claims will
       run between 2 and 3 days.
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         HOST RYAN: 2 and 3 days.
         Now, before you start the trial, do you give special
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       instruction to the jury, like for instance stay off the
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internet, don't discuss the case, or anything like that?

JUDGE WINIK: Yeah. The jury impanelment process, maybe
this is a way to, to get into that, is very straightforward.

In Massachusetts, it's, we call one day, one trial. So if you're called for jury duty, you show up at the Court on that day, and you were either sat as a juror or your service is completed for the statutory period. I believe it's three years.

HOST RYAN: Yes.

JUDGE WINIK: And what I do is when I'm ready to impanel a jury, I have my Jury Commissioner's Office bring over the jurors. They bring the, a panel into my courtroom.

Typically, I would get somewhere around 25 to 28 jurors. We swear in the jurors, and then I ask the jurors a set of questions. And the questions deal, typically deal with do they know the parties, is there anything in their experience or background that would lead them to think that they could not be a fair and impartial juror, do they have a reason of a personal nature why they couldn't sit as a juror either on this case or on this day, and I also give the parties, if they're represented by lawyers, I give the lawyers the opportunity to present questions for me to ask the jurors. And if it's an unrepresented litigant, I'll do the same thing. I'll ask the unrepresented litigant if there is anything they want me to ask the prospective jurors.

And then I give the parties an opportunity to talk to me outside of the hearing of the jurors to determine whether there's a reason they think that the jurors should be excused, and I'll make a ruling on that.

And I explain to the jurors that it is not a reflection on them. It is part of the jury impanelment process.

I then put 12 jurors into the jury box, and I give each of the parties four preemptory challenges which means that they can excuse up to four jurors for any reason so long as it's not an illegal reason.

HOST RYAN: And jurors should not take offense if they're challenged peremptorily? It's not a reflection upon them?

JUDGE WINIK: It is not. It's just part of the process, a very stylized process that we have to sit a jury that both the plaintiff and the defendant feel comfortable with.

And if I excuse a juror, I always thank the juror for coming in, and I tell them again it is not a judgment on them. It's not a contest. It's not a competition.

HOST RYAN: You mentioned about the impanelment process.

And as you're probably well aware in the Superior Court in the past year, they've had a pilot program of attorney participating voir dire which meant the attorneys could ask questions of prospective jurors.

Do you see something like that eventually coming to the Housing Court?

JUDGE WINIK: I think the answer is yes.

I sit on one of the committees, Supreme Judicial Court
Committees, that's dealing with attorney conducted voir dire,
and we've also created a subcommittee to discuss jury
impanelment generally throughout the Trial Court.

And part of our task is to consider the prospect for expanding the rights of lawyers and unrepresented litigants to be more involved in the jury selection process by engaging directly with the prospective jurors and asking them questions.

So my guess is that in the not too distant future, you're going to see more and more lawyers and litigants in the Housing Court being able to engage the jurors directly, and I think it's going to expand to the other Trial Court Departments as well.

HOST RYAN: You think this is something you would welcome in the Housing Court?

JUDGE WINIK: I would.

HOST RYAN: Yeah.

JUDGE WINIK: I think that the goal of everybody, Judges and lawyers and litigants alike, is to impanel a fair and impartial jury.

Anything we can do to enhance the prospect for that happening is something that I would favor, and I think is, it promotes confidence in the judiciary.

HOST RYAN: And you mention jurors. Now, do we really need jurors if we have people like yourself who are trained in the law? How important are jurors in the Housing Court?

JUDGE WINIK: I think they're very important. I'm a firm believer in the jury system. I believe that jurors collectively do a very good job of, of reaching results.

I also think that our citizens are willing to accept a judgment rendered by their fellow citizens when they sit as jurors more readily than perhaps they'd accept the judgment of a single Judge sitting with a black robe.

HOST RYAN: Some people argue that in other Courts, I mean I don't know if it follows in the Housing Court, that maybe some cases are too complex for jurors.

JUDGE WINIK: Again, I have a lot of confidence in both the jury system and our jurors.

It's been my experience that if a Judge carefully instructs the jury on the law that they are to apply to the facts that the jury decides, the jury can collectively understand even very complicated and complex legal principles.

HOST RYAN: So that's the, that's the role of the lawyers to break it down so the lay people can understand?

JUDGE WINIK: Well, it's partly the lawyers' job to explain their client's position and their client's case.

It's the Judge's responsibility to explain the law to the jury in a manner that the jury can both understand and apply.

HOST RYAN: Now, that, I, come to find out the Housing Court has several programs that are available to people who come to the Housing Court.

You mention mediation is one. The other thing you have is lawyer, lawyer for a day.

JUDGE WINIK: Yeah.

HOST RYAN: What is lawyer for a day?

JUDGE WINIK: Well, we have worked closely with, in Boston with the Boston Bar Association to have volunteer lawyers through the Boston Bar Association, the Volunteer Lawyers Project to provide lawyers who will sit at tables directly in front of the courtrooms, providing counsel and assistance in some regards to both unrepresented landlords and un, unrepresented tenants.

It's something that we think is an important part of what the services that the Housing Court provides.

We can't expect everybody coming into the Housing Court to understand the law, to understand what their rights are, to understand what, what their options might be.

And what we found is that the volunteer lawyers serve as a, an organization that can in fact assist the parties in their efforts to make better decisions.

Sometimes the lawyers will come into Court to represent the litigants. More often, they'll talk to the litigants and tell them what they should bring to the Judge's attention. And

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sometimes it will assist them with documents, motions, pleadings, these, pleading is just a piece of paper that a litigant gives to the Court, help them fill it out and bring it into the, the courtroom.

HOST RYAN: So similar to that, you also have limited assistance representation?

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JUDGE WINIK: Sometimes lawyers cannot or are unwilling to enter, agree to represent a party not knowing how long or how complicated or how expensive the case may be to try.

But what they, they can do is agree to assist a litigant on one specific issue on one specific day.

And we, we call that limited appearance representation. And there's a form, a, a simple contract that they fill out. And then the lawyer comes into Court, gives the Judge the appearance form which identifies the specific issue or motion that the lawyer is going to represent the litigant on, and when that case is heard, the lawyer has the right to then withdraw their appearance.

And what my experience has been is that litigants who could not get a lawyer otherwise then with limited appearance representation are well served when they can get a lawyer to come in and assist them.

HOST RYAN: You also have a Tenancy Preservation Project. That's to prevent homelessness?

JUDGE WINIK: It's a, it's a program that is operated by, in

Boston by Bay Cove Social Service, and they work in cooperation with the Housing Court.

And what they provide are social workers working to assist tenants and sometimes landlords.

If it's a tenant, it's at risk of becoming homeless, losing their homes.

And if it's a landlord who's at risk of losing their homes because, because of either some physical difficulty. It could be illness. It could be mental health related. Or sometimes, age. You know, the, the, someone is elderly and has, has some financial difficulties or difficulties getting work that needs to be done done.

And what the social workers do is they work with the litigants as their clients to assist them in obtaining social services that are needed, making assessments of their needs, and then working with the Court to see if there's a way to fashion a resolution, a settlement to a case, that's fair to both the landlord and to the tenant, and in doing so, avoiding homelessness, either giving the tenant the ability to stay in the apartment that they're currently in with the landlord's assist, agreement, or time to find an appropriate alternative place to live.

HOST RYAN: Judge, in the statute about the Housing Court, I found what was interesting was a phrase health, safety, and welfare. Does that sum up the mission of the Housing Court?

JUDGE WINIK: That's a very descriptive description of the, what we do.

You can look at what we do on a day to day basis, and you're going to find that we're either dealing with an issue of health safety, when it's dealing with conditions, be it housing code conditions, fire safety conditions, environmental issues dealing with lead or asbestos, and we're also dealing with safety issues when we're involved with people whose conduct may be endangering other residents or other neighbors, and we also deal with issues of contract, meaning the lease that the parties have entered into, either oral or written.

And those would not necessarily impact safety or health, but it certainly impacts the, the ability of both a landlord and a tenant to live peacefully, quietly, and in accordance with their obligations under law.

HOST RYAN: Well, we've run out of time.

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Thank you, Judge Winik.

JUDGE WINIK: Thank you. It's been my pleasure to be here.

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3	Produced by the Office of the Jury Commissioner						
4	Directed by Cullen Cockrell						
5	Audio and Video Tape Operator Wallace Fashaw						
6	Camera Operators Marcela Maroso and Vsevolod Iskiyaev						
7	For the Boston Neighborhood Network						
8	Studio Manager David A. Palomares						
9	Assistant Studio Manager Cullen Cockrell						
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