

CERTIFIED HEARING TRANSCRIPT
(DAY 2)

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

COMPLAINT NUMBER 2019-22

VOLUME II

HEARING

~ BEFORE ~

HEARING OFFICER

DENIS J. McINERNEY, ESQ.

JUNE 10, 2025

10:00 A.M.

Boston, Massachusetts

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21	EXHIBIT AA	392
22	Proffer Letter	
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24	4 pages	

1 THE HEARING OFFICER: Good
2 morning Everybody. We're on the record.

3 My name is Denis McInerney.
4 I'm the hearing officer in this matter.

5 We're here in connection with
6 the Commission on Judicial Conduct's Complaint
7 Number 2019-22 against Judge Joseph.

8 Yesterday we had a viewing at
9 the Newton District Courthouse first thing in
10 the morning, and then we resumed here at the
11 Suffolk County Courthouse for opening statements
12 and testimony.

13 At the beginning, I would like
14 to ask both parties, to have counsel identify
15 themselves for the record, please.

16 JUDGE FABRICANT: Judith
17 Fabricant, special counsel for the Commission on
18 Judicial Conduct.

19 MS. MULVEY: Elizabeth Mulvey
20 for Judge Joseph.

21 MR. HOOPES: Tom Hoopes for
22 Judge Joseph.

23 MR. KEATING: Michael Keating
24 for Judge Joseph.

25 MR. NEFF: And Howard Neff for

1 the Commission on Judicial Conduct.

2 HEARING OFFICER. Thank you.

3 So with that, we concluded at
4 3:00 yesterday with the first witness, and I'll
5 ask special counsel to call the next witness.

6 JUDGE FABRICANT: All right.
7 And I'm about to do that.

8 I'd like to just offer the
9 document that we referred to late in the day
10 yesterday, proffer letter and the immunity
11 agreement, and I'd like to hand up -- So I have
12 a copy ready for marking and a copy with holes
13 punched in case you want to put it in your
14 binder. And if you would like to have it in the
15 electronic form, we can certainly send that.

16 HEARING OFFICER: Great. Thank
17 you very much.

18 No objection?

19 MR. HOOPES: No.

20 HEARING OFFICER: Thank you.
21 You're good.

22 JUDGE FABRICANT: And with
23 that, the Commission calls Shannon Jurgens.

24 And Mr. McInerney, I want to
25 again ask your permission. We have the next

1 witness ready on Zoom, which we expect to have
2 ready on Zoom at 11:00. And if he's ready at
3 11:00, we'll want to interrupt this witness.

4 HEARING OFFICER: Yes.

5 MS. MULVEY: That's fine.

6 HEARING OFFICER: Yes.

7 JUDGE FABRICANT: Thank you.

8 DIRECT EXAMINATION

9 BY JUDGE FABRICANT:

10 Q. Good morning.

11 A. Morning.

12 Q. Please state your name.

13 A. Shannon McDermott.

14 Q. And Ms. McDermott, please tell us your
15 professional background.

16 A. I started as an assistant district attorney
17 in 2015 for the Middlesex County DA's office,
18 where I worked for four years, then in September
19 of 2019, I worked at Keney & Sams, a small
20 office in Boston, until March of 2020, then I
21 went to the Suffolk District Attorney's office,
22 and then in May of 2021 I became an assistant
23 clerk magistrate at Malden District Court, which
24 I still am today.

25 Q. I'm going to ask you a lot of questions about

1 April of 2018. And I know that that's nearly --
2 actually, it's a little more than seven years
3 ago, so it's challenging to take your mind back
4 to that time, but that's what I need to ask you
5 to do.

6 As of April 2nd of 2018, what
7 was your position?

8 A. I was the only district attorney at the
9 Newton District Court.

10 Q. In that capacity, did you have a title of
11 supervisor?

12 A. Yes.

13 Q. And what was your role? What did you do?

14 A. So as I said, I was the only assistant
15 district attorney in Newton District Court, so I
16 was assigned to prosecute all of the cases that
17 came through that courthouse, supervise myself,
18 and the victim witness advocate, and then there
19 was one, you know, staff, support staff that
20 helped as well. That was really our whole
21 office there.

22 Q. So were you in the courtroom every day?

23 A. Yes.

24 Q. And every time a case was called before the
25 court, were you the person standing up?

1 A. Yes.

2 Q. Where was your office?

3 A. My office was in the Newton Police Station,
4 which the building is connected to the
5 Newton District Court. I was on the second
6 floor, which is within the detective bureau.

7 Q. Was there another office in the courthouse
8 associated with district attorney's office?

9 A. Yes.

10 Q. Who used that office?

11 A. The victim witness advocate.

12 Q. Did you ever work in that office?

13 A. I did not.

14 Q. As of April 2nd of 2018, how long had you been
15 in that role in the Newton District court?

16 A. I believe I went to Newton in March, so about
17 a month, few weeks.

18 Q. About how many arrests were there in the
19 Newton District Court? Say, how many a week?

20 A. Not many. Not many at all. Five, maybe,
21 would be average. I guess I could bring it up
22 to 10, but I think that would have been rare.
23 Just roughly. My best guess.

24 Q. When in court you worked in, not regular.

25 A. Exactly.

1 Q. Did you have occasion to deal with ICE
2 detainers?

3 A. Yes.

4 Q. And what was the practice about ICE detainers,
5 about the paperwork, who would get it, when,
6 how?

7 A. There is a couple ways. Sometimes I would
8 get it when I got the packet in the morning from
9 the police department, the police prosecutor,
10 with the new arrests for that day, sometimes it
11 would be in it, sometimes I know it gets sent to
12 the clerk's office, so sometimes I would get it
13 from them. There was a couple of different ways
14 that I could have obtained that paperwork.

15 Q. Would it be something that you would get?

16 A. Yes, yes, at that time.

17 Q. And were you aware in the course of the day who
18 else would get it, who else would have it?

19 A. I know that the clerk's office got it and
20 that it was always something given to the
21 security department, the court officer. I don't
22 know who else got it.

23 Q. When you're in the courtroom in Newton, where do
24 you sit or stand?

25 A. Well, the main courtroom, as you walk in,

1 there's a left -- there's a table on the left,
2 table on the right, and mine was on the left.

3 Q. And let's bring up the Photograph 509, which was
4 received in evidence yesterday.

5 Okay. So you see photograph on the monitor.
6 And can you just indicate on the photograph
7 where would be your place?

8 A. I think I was on the left.

9 Q. Okay. And what is -- If you're on the left, at
10 that chair and table, what's immediately to your
11 left?

12 A. With the glass?

13 Q. Yes.

14 A. That would be the dock, we call it, where a
15 custody comes up from lockup.

16 Q. So a person in custody would be in that dock.

17 A. Correct. Now that I'm looking at this, I
18 could have been in the left or right chair. I
19 don't remember.

20 Q. Do you see in the glass in the dock something
21 that looks like a metal circle?

22 A. Yes.

23 Q. What is that?

24 A. I don't know if it was a speaker or if it was
25 amplified it all. I can't remember. But it was

1 just a way for the person in the dock to hear
2 better in that area.

3 Q. And if an interpreter was helping a defendant in
4 the dock, where would the interpreter stand?

5 A. They would be outside along, you know, that
6 small alleyway on the left talking through that
7 metal piece.

8 Q. So when you say "outside," you mean outside the
9 dock?

10 A. Correct.

11 Q. And talking through that metal piece?

12 A. Correct.

13 Q. Again, taking your mind back to April of 2018.
14 When a defendant was in custody and was then
15 released from custody, how would that happen?

16 A. If they were going to be released, the court
17 officer, who -- you can't see it, but there
18 would be a little seat to the left outside the
19 photo where there's a court officer seat, and
20 they would just unlock the door to the dock and
21 they would walk right out.

22 JUDGE FABRICANT: Let's bring
23 up photo Number 513, Page 513.

24 Q. Does this show what you were just talking about?

25 A. Yes.

1 Q. And was what you can see, the piece of furniture
2 that you can see on the left, is that the court
3 officer's station that you're talking about?

4 A. Yes.

5 Q. And the door that you can see there that looks
6 like it's slightly ajar in the photo, is that
7 the door that you're talking about?

8 A. Yes.

9 Q. And -- So you said the court officer would go in
10 there and pick up restraints and would the
11 person just come out?

12 A. Yes.

13 Q. And then when the person's leaving the
14 courtroom, how does the person leave the
15 courtroom?

16 A. The door in the back of the courtroom.

17 JUDGE FABRICANT: And why don't
18 we bring up -- We'll get to the photograph that
19 shows that. There it is. And what number is
20 this?

21 Q. All right. So this is numbered Page 512 of the
22 appendix. Does this show the door that you're
23 referring to?

24 A. Yes.

25 Q. And Photograph 509 was already received in

1 evidence yesterday. Photograph 513 and 512, do
2 those fairly and accurately depict what you
3 described?

4 A. Yes.

5 JUDGE FABRICANT: And I offer
6 those in evidence.

7 MS. MULVEY: No objection.

8 Q. What if a defendant had property downstairs?
9 We're talking now about a defendant who doesn't
10 have to go check in with probation, doesn't need
11 the bail posted, is being released. What is the
12 property -- How would the defendant get the
13 property?

14 A. My best memory is one of the court officers
15 would just run it up to them.

16 Q. On that date, April 2nd of 2018, I want to draw
17 your attention to a case involving a
18 Mr. Medina Perez. Do you remember the charges?

19 A. Yes.

20 Q. What were the charges?

21 A. There was a possession of a drug charge, I
22 think it was B, but I don't remember, and a
23 fugitive from justice charge.

24 Q. And what's a fugitive from justice charge?

25 A. It's a mechanism to kind of hold somebody

1 when they have an out of state warrant, so the
2 language of the charge is fugitive from justice
3 from X state for Y charges.

4 Q. So it's a Massachusetts criminal charge for the
5 purpose of effectuating a warrant from another
6 state.

7 A. Correct.

8 Q. On that day, with respect to Mr. Medina Perez,
9 you said he had a drug charge and a fugitive
10 from justice charge. Were you also aware of an
11 ICE detainer?

12 A. Yes.

13 Q. And was there an ICE officer in the courtroom
14 for part of the day?

15 A. Yes. At some point they arrived.

16 Q. And did you speak with him?

17 A. Yes, at some point.

18 Q. And did he show you a photograph or a video or
19 something to that effect?

20 A. I don't remember a video. He had paperwork
21 that he showed me.

22 Q. Okay. Did you notify others of the presence of
23 ICE and the detainer?

24 A. I'm sure I mentioned the detainer. I don't
25 know whether I told others about the ICE officer

1 or not. There wasn't very many people there.

2 Q. Did you become aware at some point in the course
3 of the day that the ICE officer left the
4 courtroom?

5 A. Yes.

6 Q. And do you know what caused the ICE officer to
7 leave the courtroom?

8 A. My understanding is he was asked to wait
9 outside.

10 Q. Do you know who asked him to wait outside?

11 A. I think it was the judge asked someone to ask
12 him. I don't remember exactly how it happened,
13 I guess is my answer.

14 Q. Do you know where he went?

15 A. I think he just went right in the hallway.

16 Q. In the hallway, the main lobby of the
17 courthouse?

18 A. Correct.

19 Q. Was the case called, the Medina Perez case
20 called a number of times over --

21 A. Yes.

22 (INTERRUPTION)

23 HEARING OFFICER: Okay. It's
24 not playing anymore; so...

25 JUDGE FABRICANT: Okay.

1 Q. So the case was called a number of times over
2 the course of the day?

3 A. Yes.

4 Q. And was it then put on for further call?

5 A. Several times, yes.

6 Q. And during the course of the morning, what
7 information did you have about the Pennsylvania
8 warrant?

9 A. I knew that it was not -- I guess
10 Pennsylvania OUI/DUI charge. I'm sure I had a
11 piece of paper reflecting that. I don't
12 remember what other supporting documents I had
13 for that.

14 Q. Did you at some point in the morning inform the
15 court that you were going to ask to detain the
16 defendant on the fugitive from justice charge?

17 A. Yes, at first I did.

18 Q. And why was that your position at that point?

19 A. So generally the practice that we were taught
20 in the DA's office when there's a fugitive from
21 justice charge, you reach out to the out of
22 state body, sheriff's office, the police and see
23 if it's something that they want to come
24 extradite, come pick the person up for. Most
25 times they say yes. Sometimes they say no.

1 When they say yes, we ask that we hold without
2 bail pending the out of state authorities coming
3 to pick up the person to face the warrant in the
4 other court -- in the other state.

5 Q. And in the course of the morning, when you were
6 taking that position, had you yet been in touch
7 with the Pennsylvania authorities?

8 A. I don't recall. I don't remember.

9 Q. At some point later on in the course of the day
10 did you get more information? Did you get a
11 photograph?

12 A. Yes.

13 Q. And did you review the photograph with the
14 defendant's attorney?

15 A. I reviewed it with a couple of people. But
16 it was the booking photo from Pennsylvania is
17 what someone gave me and I can't remember who.
18 That is what I reviewed with definitely a couple
19 people.

20 Q. And in the course of the morning, did you take a
21 position regarding bail on the Massachusetts
22 charges?

23 A. Yes. I was not going to be asking for bail
24 on the possession charge.

25 Q. And why was that?

1 A. At the time in my office, the mandate was on
2 nonviolent misdemeanors. We were not to ask for
3 bail.

4 Q. And I want to just call your attention to a
5 transcript of the proceeding. This is
6 Appendix G. I want to take a look at Page 39 at
7 the bottom of the page and going into Page 40.
8 And you have in front of you a book that has all
9 of the appendices that have been received in
10 evidence. So if it's easier to look at that,
11 rather than refer to the monitor, that's fine.

12 So looking at Page 39, at the
13 bottom and going over to the top of Page 40, so
14 do you see where, five lines from the bottom,
15 the judge asks Commonwealth with respect to new
16 charges, is there going to be a request? What
17 did you understand, is there going to be a
18 request?

19 A. A bail request.

20 Q. Okay. And what did you say?

21 A. I said no, Your Honor.

22 Q. And the judge says okay. And what did you say?

23 A. I said, well, not on the drug possession.

24 Q. And the judge says that the possession that --
25 and then what did you say?

1 A. If they're treated separately, I'm not going
2 to ask that he's held without.

3 Q. And what did you mean by "if they're treated
4 separately"?

5 A. The state charges are the Newton -- I don't
6 remember if it was state police or Newton. The
7 charge versus the fugitive from justice charge.

8 Q. And then the judge says, right on the fugitive.
9 What did you say?

10 A. But if he's not, I would have bail request.

11 Q. So if he's not what?

12 A. So sometimes you argue -- Sometimes a judge
13 won't hold somebody without bail on a fugitive
14 charge, in which case I would have asked for a
15 number on the same.

16 Q. Bail on the fugitive charge.

17 A. Correct.

18 Q. But not bail on the misdemeanors.

19 A. No.

20 Q. All right. Now, in the afternoon, did
21 Attorney Jellinek appear for the defendant?

22 A. Yes.

23 Q. And at the beginning of when he appeared, did
24 you and he go to side bar?

25 A. At some point we went to side bar. I don't

1 recall at what point that was.

2 Q. So we're going to bring up a transcript again,
3 starting at Page 40, and we're going to go to
4 2:48:13 p.m. And we're going to play the
5 recording. The initial part of the recording is
6 pretty good, but you can see the transcript. So
7 we're going to play the recording at
8 2:48:13 p.m. until the end of that first clip.

9 (RECORDING PLAYING)

10 Q. So does that refresh your memory that
11 Mr. Jellinek asked to go to side bar and you
12 went to side bar?

13 A. Yes.

14 Q. Did you have an understanding of why you were
15 going to side bar?

16 A. No, not before.

17 JUDGE FABRICANT: Let's put up
18 Photograph Number 511 if we could.

19 Q. Is this where -- This is Number 511 of
20 Appendix U. This was admitted in evidence
21 yesterday. Does this show where you would be at
22 side bar?

23 A. Yes.

24 Q. And where would the judge be when you're at side
25 bar?

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Q. Attorney Jellinek says, so there's fugitive.
Judge Joseph says, if there's no warrant. What
did you understand that to be referring to?

1 A. If I was going to dismiss the fugitive from
2 justice charge, then there's no out of state
3 Pennsylvania warrant.

4 Q. And you then said yes; is that right?

5 A. Yes.

6 Q. And then Attorney Jellinek says, there isn't
7 something inaudible that we can tie this to him.
8 What do you understand that to refer to?

9 A. I believe the Pennsylvania warrant.

10 Q. And then you said, I don't think it's him. Is
11 that right?

12 A. Yes.

13 Q. And was that also in reference to the
14 Pennsylvania warrant?

15 A. Correct.

16 Q. And Judge Joseph said, okay. And then
17 Judge (verbatim) Jellinek says, ICE is convinced
18 that this guy, and he goes on and talks about
19 his discussion with the ICE agent and what he
20 saw in the records. And he says, ICE is going
21 to pick him up if he walks out the front door,
22 but I think the best thing for us to do is to
23 clear the fugitive issue, release him on a
24 personal, and hope he can avoid ICE. You said,
25 I don't think ICE is really my -- Is that right?

1 Is that what you said?

2 A. Yes.

3 Q. What did you mean by that?

4 A. I think I finished it somehow in the
5 transcript saying, ICE has nothing to do with my
6 role as a prosecutor.

7 Q. And so what was your view about any discussion
8 relating to this?

9 A. That I did not have an opinion or a standing,
10 it's not my job, doesn't have anything to do
11 with my job.

12 Q. Were you neutral about it?

13 A. Yes.

14 Q. So a little later the judge says, the other
15 alternative is if you need more time to figure
16 this out until tomorrow. Attorney Jellinek says
17 something inaudible. Judge Joseph says,
18 difference. And then you said, there's a
19 detainer attached to my paperwork but I feel
20 like that that's separate and apart from what my
21 role is. Was that a reiteration of you're
22 neutral about it?

23 A. Yeah. I think I was finishing my thought
24 that ICE isn't my business.

25 Q. And then Attorney Jellinek says, there's an ICE

1 detainer, so if he's bailed out from Billerica,
2 ICE will pick up him. Judge Joseph says, ICE is
3 going to get him. Judge Joseph -- says
4 something inaudible. Judge Joseph says, what if
5 we detain him. What was your understanding of
6 what was going on in that conversation between
7 Attorney Jellinek and Judge Joseph?

8 A. Just --

9 MS. MULVEY: Objection.

10 Q. Well, did you have an impression of what
11 Judge Joseph was conveying in that conversation?

12 MS. MULVEY: Objection.

13 HEARING OFFICER: I'm going to
14 allow it. I'm going to allow it.

15 JUDGE FABRICANT: Allow the
16 witness to answer.

17 HEARING OFFICER: Yes.

18 A. Just for both Judge Joseph and
19 Attorney Jellinek, just options to have him not
20 to leave with ICE, to be walked out into the
21 hallway.

22 Q. Discussing options.

23 A. Yes.

24 Q. Then Attorney Jellinek says, are we on the
25 record. Judge Joseph says, Larry, can we go off

1 the record for a minute. Larry is
2 Clerk Okstein?

3 A. Correct.

4 Q. And Clerk Okstein says, what's that.
5 Judge Joseph says, are we off the record.
6 Clerk Okstein says, we're on the record.
7 Attorney Jellinek says, can we go off the record
8 for a minute.

9 Going off the record in the
10 course of a matter on a case, was that something
11 you had experienced before?

12 A. No.

13 Q. Do you have a feeling about that?

14 A. I had never experienced that before while a
15 case is being discussed.

16 Q. Were you concerned about it?

17 A. Yes.

18 Q. And the conversation that had occurred with
19 respect to the options to have him leave without
20 encountering ICE, did you have a feeling about
21 that, an impression about that?

22 A. I just -- It wasn't my role. I didn't
23 think it was not really a proper conversation,
24 but I stayed out of it.

25 Q. But you didn't think it was a proper

1 conversation.

2 A. Correct.

3 Q. Did it make you uncomfortable?

4 A. Yes.

5 Q. When you went off the record, the three of you
6 went off the record, tell us everything you can
7 remember about the discussion off the record.

8 A. I don't remember a lot of what was on the
9 record and what was off the record. The best I
10 can say was sort of a continuation of the last
11 few pieces of conversation. You know, just ICE
12 being there. Like I don't remember any quotes
13 or any direct statements at all. It was just a
14 continuation of the same type of conversation.

15 Q. So without quotes, do you have a general sense
16 of the substance or do you have a general sense
17 of the substance of the conversation?

18 A. Yes.

19 Q. What was your sense -- What is your sense of the
20 substance of the conversation?

21 A. Just different options to have the individual
22 not be taken by ICE.

23 Q. And what sort of options?

24 A. To the best of my memory, I think like if
25 there is a bail put on him. I, I can't be

1 certain. I don't remember.

2 Q. Okay. Would looking at your grand jury
3 testimony help you?

4 A. Yes.

5 Q. So let me ask you to look in particular --
6 There's copy of your grand jury testimony. I
7 would ask you to look particularly at
8 Pages 45 to 46.

9 HEARING OFFICER: Yes.

10 Q. And just to establish, did you testify before
11 the Federal grand jury on January 10, 2019?

12 A. I did.

13 Q. And this is, as far as you can tell, an accurate
14 representation of your testimony?

15 A. Yes, it is.

16 Q. So 45 to 46. And the bottom of 45 is where I
17 think the most pertinent part starts, but look
18 at however much you need to make sure you
19 understand the contents.

20 (PAUSE)

21 A. My memory's refreshed.

22 Q. Okay. So what's the best you can remember now
23 that your memory's refreshed of what you heard?

24 A. Now that I reviewed this, I remember also
25 saying at that time -- I didn't remember any

1 direct quote or statements -- but that was the
2 gist was Attorney Jellinek saying I have a plan.
3 I don't know if he used the word "plan." But
4 that was the impression that I got.

5 Q. Okay. And do you remember --

6 HEARING OFFICER: If I can just
7 interrupt one second. I'm hearing another
8 person speaking, and I'm just not following what
9 that could be.

10 If we could take a two-minute
11 break so that we can try to solve this, that
12 would be helpful. Sorry to interrupt.

13 JUDGE FABRICANT: Okay.

14 HEARING OFFICER: We're off the
15 record for a minute while we try and solve this.
16 Thank you.

17 (PAUSE)

18 HEARING OFFICER: We're back on
19 the record.

20 And we think Mr. Neff has
21 solved this particular riddle, so you may
22 continue with your questioning. Sorry to
23 interrupt.

24 Q. Ms. McDermott, I think what you had just told us
25 was that you remembered Mr. Jellinek saying

1 something to the effect of, but not the exact
2 words, I have a plan.

3 A. Yes.

4 Q. Is that your best memory of what he said off the
5 record?

6 A. Yes.

7 Q. And did you hear Judge Joseph saying something
8 off the record?

9 A. Just I think before he said that, it was
10 something to the effect of, you know, what could
11 we do and him saying, I have a plan, it's all
12 set. Logistic.

13 Q. And again, did you have concern about that?

14 A. Yeah. The conversation made me
15 uncomfortable.

16 Q. And why did it make you uncomfortable?

17 A. Because my training was that ICE, that just
18 didn't play a calculus in a criminal case.

19 Q. In the course of the discussion at side bar,
20 whether on or off the record, was there
21 discussion about where the ICE officer was
22 waiting?

23 A. At some point in the day there was. I don't
24 remember when.

25 Q. So you're not sure whether it was during that

1 side bar.

2 A. I don't remember.

3 Q. Did you say anything -- Was there any reference
4 to an immigration lawyer, that you recall?

5 A. Not that I recall.

6 Q. And now I want to turn back to the recording and
7 back to the transcript, starting when everybody
8 went back on the record and everybody went back
9 to open court. So we're going to play the
10 recording starting at 2:50:17 p.m., and this
11 appears at Appendix G, Pages 41 and 43. It's
12 2:50:57. Pardon me.

13 (RECORDING PLAYING)

14 Q. So Ms. McDermott, at the beginning of that
15 section Mr. Jellinek says, after a search of the
16 various FBI numbers, Social Security numbers, as
17 well as obtaining a photo from Pennsylvania, we
18 don't believe that this gentleman is the same
19 gentleman as on the fugitive from justice
20 warrant. And then you said, with the
21 information I have, I don't think there's enough
22 tying to the Pennsylvania warrant but that there
23 are other out of state records, I do believe
24 that some of them belong to this individual, but
25 that's not what's at issue, and then shortly

1 thereafter you said you were going to dismiss
2 the fugitive from justice charge.

3 Was there something a little
4 off sequence in his saying it and then you
5 saying it?

6 A. I mean, yes. I am the only person that can
7 move to dismiss it.

8 HEARING OFFICER: I'm sorry.
9 Could you speak into the microphone.

10 THE WITNESS: Oh, sorry.

11 A. I just said that the ADA is the only person
12 that can make a decision to dismiss it. I mean,
13 obviously an attorney can ask for something to
14 be dismissed. But I moved to dismiss it, so
15 usually I would be the one to say that.

16 Q. And then later on, a little bit further out on
17 Page 42, Mr. Jellinek says, I would ask that he,
18 I believe he has some property downstairs, I'd
19 like to speak with him downstairs with the
20 interpreter if I may.

21 In your experience, was it
22 unusual at the Newton District Court, was it
23 unusual for a defendant and the interpreter,
24 after the defendant had been ordered released,
25 to go back downstairs?

1 A. Yes.

2 Q. Then over on the top of Page 43, the clerk says
3 to the judge, there was a representative from
4 ICE here in the court to, to visit the lockup.
5 And the judge says, that's fine, I'm not going
6 to allow them to come in here but he's been
7 released on this. How did you understand that?

8 A. Just that the clerk was alerting that --
9 everyone that the ICE officer was there, and
10 that the judge said that's fine, but he's not
11 going to come into the courtroom or I guess
12 lockup, if that's what the clerk is referencing
13 as well.

14 Q. So I want to make sure I understand what you
15 just said. Did you understand the judge to be
16 saying something about whether ICE could go into
17 lockup?

18 A. I don't have a memory of that. In reading
19 the transcript, it was just that the ICE officer
20 wasn't going to be permitted to come into the
21 courtroom.

22 Q. And then later on, about six bullet points from
23 the end, the judge -- the court officer asks,
24 he's released, the judge says he is,
25 Mr. Jellinek asked if the interpreter can

1 accompany him downstairs to further interview
2 him.

3 In your experience in the
4 Newton District Court with a defendant who has
5 been ordered released, was that unusual?

6 A. Yes.

7 Q. All right. Now, what happened next?

8 A. I don't know how long it took me, but I
9 finished my business, and then I was going to
10 walk back to my office, so I went out into the
11 hallway, I saw the ICE officer was still there.
12 I don't recall how much later after this
13 recording ended at 2:55. I just was, oh, you're
14 still here. And that's when I learned that the
15 individual hadn't come out -- come up out of
16 lockup.

17 Q. So before that, did the court officer open the
18 door to the dock and let Mr. Jellinek and the
19 interpreter in and let everybody go downstairs?

20 A. Yes.

21 Q. And did you see that happen?

22 A. I'm sure I did. I can't remember.

23 Q. Okay. So when you went out into the hallway,
24 you saw that the ICE officer was still there,
25 did you have some conversation with the ICE

1 officer?

2 A. Yeah. I just, oh, you're still here, has he
3 not come up yet, you know, they could still be
4 talking, something like that.

5 Q. After what you had heard in the courtroom, did
6 you have any -- what was your expectation as to
7 where the defendant was going to come out?

8 A. Right up the back door of that main courtroom
9 that you showed in one of the earlier exhibits.

10 Q. What you had previously experienced in Newton.

11 A. Correct.

12 Q. Did you have any thought that there was another
13 way he might be released?

14 A. No.

15 Q. Did you say anything to the ICE officer as to
16 where he would come out?

17 A. I just said he has to come out this way.
18 Kind of didn't know what to tell him. This is
19 the only way out.

20 Q. Were you aware of any other way out?

21 A. I mean, unless you're leaving in custody, no.

22 Q. And did you wait with him for some period of
23 time?

24 A. I did.

25 Q. Did you become concerned?

1 A. Yeah. It was just a really long time. So I
2 decided, huh, I wonder what's going on.

3 Q. Did you do something to inquire?

4 A. At some point I -- The victim witness
5 advocate's office is downstairs. I think he
6 came up. And I just said, I was like, Mike, is
7 there another door that they can -- you know,
8 down there. I think he just said I don't think
9 so.

10 Q. And did he go to check?

11 A. He may have. I can't remember.

12 Q. Okay. Did you see Mr. Jellinek again that day?

13 A. Yes.

14 Q. Did you have some interaction with him?

15 A. Yes.

16 Q. Tell us about that, please.

17 A. At some point he came out the way I expected
18 everyone to come out of the main courtroom, to
19 the door, and he had a property bag in his hand.
20 And then I can't remember if I said something to
21 him before or after he went into one of the
22 conference rooms in the hallway, and came back
23 out and left. And at some point I put it
24 together what had happened. And I don't recall
25 if somebody else said something, too, or if I

1 just figured it out and I -- At some point -- I
2 can't remember if it was still inside the
3 hallway or right outside the front door, but I
4 said I know what you did and that was not the
5 right thing to do.

6 Q. What did you figure out?

7 A. That he had somehow facilitated the
8 individual leaving.

9 Q. After that happened, did you call your
10 supervisor?

11 A. Yes.

12 Q. And why then?

13 A. Because it was a very unusual day, and the
14 ICE officer is very upset, it was not, you
15 know -- An individual was let out the back door,
16 and it was something that I felt I needed to
17 report to my supervisor, because I was
18 uncomfortable with what had happened.

19 Q. What was your overall impression of what had
20 happened?

21 A. Just that it was wrong. He was -- Yeah.

22 Q. Did it affect -- Did the experience affect your
23 view of the court?

24 A. Of the -- In general? No, not really.

25 Q. Did you have a view about Judge Joseph's role?

1 A. I mean, I think I've said it before.
2 Misjudgment, misguided, attempted to do what she
3 thought was right.

4 JUDGE FABRICANT: All right.
5 Thank you. I have nothing further for this
6 witness.

7 What I'd like to do, if
8 everyone is in agreement, is have her step down
9 and take Mr. Mendoza on Zoom if he's here.

10 HEARING OFFICER: I assume that
11 makes sense from your perspective as well.

12 MS. MULVEY: Yes. That's fine.

13 HEARING OFFICER: So we'll take
14 a two-minute break while you try to plug us in
15 by Zoom.

16 JUDGE FABRICANT: Thank you.

17 HEARING OFFICER: I'd ask that
18 the witness -- if I could ask the witness not to
19 talk about your testimony to anybody or this
20 hearing during this break for you. We'll see
21 you back probably in an hour or so. Thank you.

22 (PAUSE)

23 HEARING OFFICER: We're back on
24 the record.

25 JUDGE FABRICANT: We're back on

1 the record?

2 HEARING OFFICER: Yes, we're
3 back on the record.

4 And I'll leave it to you to
5 call the witness, and then I'll swear him in.

6 JUDGE FABRICANT: All right.
7 So the Commission calls Eric Mendoza.

8 HEARING OFFICER: Thank you.

9 Mr. Mendoza, can you hear me?
10 Mr. Mendoza, can you hear me? Hello?

11 MR. NEFF: The only
12 microphone --

13 HEARING OFFICER: Is there only
14 one microphone?

15 JUDGE FABRICANT: Mr. Mendoza,
16 are you able to hear the hearing officer?

17 THE WITNESS: No. I can hear
18 you.

19 HEARING OFFICER: I'll try one
20 more time. Mr. Mendoza, can you hear me?
21 Mr. Mendoza? Can you hear me?

22 MR. NEFF: The only microphone
23 is on the laptop.

24 HEARING OFFICER: If you could
25 just bring the laptop up, that would be probably

1 the best.

2 (PAUSE)

3 HEARING OFFICER: Can you hear
4 me, Mr. Mendoza?

5 THE WITNESS: Yes, sir.

6 HEARING OFFICER: If it's okay,
7 under these circumstances, just for this
8 particular part of the proceeding.

9 Good morning, Mr. Mendoza.
10 First, let me swear you in. If you would please
11 raise your right hand.

12 ERIC MENDOZA, SWORN

13 HEARING OFFICER: All right.
14 Thank you.

15 I just have -- Because this is
16 the only Zoom testimony, I have a few additional
17 questions just to make sure we've covered these
18 things. And we do this, Mr. Mendoza, for any
19 witness who is testifying remotely.

20 Could I ask, where are you
21 physically located at this time?

22 A. I'm presently in Las Cruces, New Mexico.

23 HEARING OFFICER: Okay. Is
24 anyone physically in the room with you at this
25 time?

1 A. No, Your Honor.

2 HEARING OFFICER: And what
3 materials and devices do you have with you right
4 now?

5 A. I think just my phone. I'm not too sure
6 about my laptop because it's old.

7 HEARING OFFICER: Got it.
8 And please tell us, what is
9 currently on your screen?

10 A. I see you and I believe I'm on the screen
11 with my name on it.

12 HEARING OFFICER: Okay. And
13 are you in communication with anyone other than
14 the people who are conducting your examination
15 and myself today right now?

16 A. No, no.

17 HEARING OFFICER: Okay. If
18 anything changes in this regard during your
19 testimony, please let us know.

20 A. Yes, Your Honor.

21 HEARING OFFICER: Thank you.
22 With that, I will return the
23 laptop.

24

25

1 DIRECT EXAMINATION

2 BY JUDGE FABRICANT:

3 Q. Good morning, Mr. Mendoza.

4 A. Good morning.

5 JUDGE FABRICANT: We're going
6 to pause for just a moment while Mr. Neff plugs
7 in the computer in a different location.

8 (PAUSE)

9 Q. All right. Mr. Mendoza, you recall, we met on
10 Zoom before. I'm Judith Fabricant. I'm serving
11 as special counsel for the Commission in this
12 case.

13 A. Yes.

14 Q. And now would you tell us what you see on your
15 screen besides yourself.

16 A. Well, I'm in the top corner and you're in my
17 main screen with -- I don't know -- maybe people
18 in the background or a jury. I'm not sure.

19 Q. Okay. You see me and people in the background.

20 A. Yes, ma'am.

21 Q. All right. Thank you.

22 Mr. Mendoza, would you please tell us your
23 professional background.

24 A. Well, I was a certified or vetted interpreter
25 for about, about 20 years.

1 Q. And in Massachusetts, with the Massachusetts
2 court system, what was your role?

3 A. Pretty much a vetted interpreter where I was
4 able to do certain cases, like moving
5 violations, things that dealt with domestic
6 issues. But major trials was -- although I may
7 have been able to do them, I wasn't there in the
8 process yet. So I was a vetted, like I was a
9 vetted interpreter.

10 Q. So was vetted a credential that was not at the
11 level of certified?

12 A. According -- Based on the courts. Correct.
13 Yes.

14 Q. Okay.

15 A. But I was certified in other aspects of
16 interpretation.

17 Q. And what is the role of an interpreter in a
18 courtroom?

19 A. To basically give the information or
20 interpret what is being said in and around the
21 defendant or the client.

22 Q. And who are you interpreting for?

23 A. Usually -- I forget the, I forget the acronym
24 that they use. But it's basically people who do
25 not speak or have difficulty communicating in

1 English from Spanish.

2 Q. So the person who needs assistance with English,
3 is that the person who you are interpreting for?

4 A. Yes. Yeah. If it has to do with Spanish,
5 yes.

6 Q. And when that person speaks to the court, to the
7 judge, to the lawyer, are you then interpreting
8 what that person says?

9 A. Correct. Yes.

10 Q. Did you for some period of time serve as an
11 interpreter in the Newton District Court?

12 A. In the Newton District Court?

13 Q. Yes.

14 A. Yes.

15 Q. Okay.

16 A. Yeah.

17 Q. And how long a period did you do that?

18 A. I don't know. Like maybe half a dozen to a
19 dozen times I was in that courtroom.

20 Q. Okay. And I should put the question a little
21 differently. How long a period did you serve as
22 an interpreter for the Massachusetts court
23 system?

24 A. Oh. I don't know. Anywhere between a year
25 and a half, two years, maybe.

1 Q. Okay. And then you said you were in the
2 Newton District Court, you said you thought half
3 a dozen times?

4 A. Yeah. Newton. Maybe more. Yeah.

5 Q. In the Newton District Court, do you remember
6 the physical arrangement of the courthouse?

7 A. Yeah. Yes.

8 Q. And I want to take you back to April of 2018.

9 A. All right.

10 Q. I know that's a little more than seven years
11 ago.

12 A. Yeah.

13 Q. A lot has happened since.

14 A. Yeah.

15 Q. But I'm going to ask you to put your mind back
16 into that time frame.

17 A. Okay.

18 Q. So in that time frame, if you were interpreting
19 in the first session in the Newton District
20 Court, the main courtroom on the first floor, --

21 A. Yes.

22 Q. -- if there was a defendant in custody, and if
23 the defendant was in the dock, where would you
24 be?

25 A. Before or while I'm interpreting?

1 Q. While you're interpreting, if the defendant is
2 in the dock.

3 A. Okay. If the defendant's in the dock, it's
4 like a concealed area, like some type of
5 plexiglass or something like that, and then
6 there's a little cutout area, and I would stand
7 usually facing the courtroom and listening to
8 the judge or listening to whoever is speaking or
9 proceeding and letting the client know through
10 the, through the little hole in the dock, the
11 dock.

12 Q. If the defendant is not in the courtroom, is
13 being brought up, you're waiting for him, but
14 he's not yet in the courtroom, he's not yet in
15 the dock, and there is something going on, where
16 would you be?

17 A. Well, in Newton, it was, it was different.
18 It was set up differently. Like there was a
19 chair specifically set up for the interpreters.
20 So that was usually -- you're facing the court,
21 usually on the left side. There could have been
22 one on the right side as well, but usually on
23 the left side in that particular courtroom.
24 Normally, in most courtrooms you're sitting
25 behind the defendant -- the defense or the

1 prosecuting attorney, they have a section for
2 you to sit at.

3 Q. And is that always where you were or did you at
4 times move around?

5 A. Yeah. I was able to move around. And as the
6 hearings went through the day, I might sit
7 closer towards either the attorneys, just to be
8 able to listen and approach the court quicker.

9 Q. I want to call your attention to April 2nd of
10 2018.

11 A. Okay.

12 Q. Were you serving as interpreter in Newton that
13 day?

14 A. I believe so, yes.

15 Q. And do you remember a case involving a
16 Mr. Medina Perez?

17 A. Yes.

18 Q. Do you remember that that case was called
19 several times over the course of the day --

20 A. Yes.

21 Q. -- and then set for further call?

22 A. Yes.

23 Q. Were you aware that there was an ICE officer
24 present?

25 A. Yes.

1 Q. Were you aware that there was a detainer for
2 Mr. Medina Perez?

3 A. Only because it was shown to me, yes.

4 Q. It was shown to you.

5 A. Yes.

6 Q. Now, in the afternoon, the afternoon session,
7 after a series of calls in the morning, I want
8 to call your attention to the afternoon session,
9 and do you recall that at one point in the
10 afternoon session the lawyers went to side bar
11 and spoke with the judge at side bar?

12 A. Yes.

13 Q. And at that point, when they started the side
14 bar conversation, was the defendant,
15 Mr. Medina Perez, was he in the dock or not in
16 the dock?

17 A. I, I don't believe he was.

18 Q. Okay. And when they started, when he was not in
19 the dock, where were you while you were waiting
20 for the defendant?

21 A. Towards the left, close to the table of where
22 the attorneys sit, kind of set away. Like you
23 don't -- I don't have to listen to what's being
24 said or what the judge is doing at side bar.
25 Sometimes you can hear. Sometimes you can't.

1 But I was trying to set back -- I don't know --
2 just being respectful. I wasn't right there.
3 Nobody had to say, hey, move away or anything.

4 Q. Were you able to hear some of what was being
5 said at side bar?

6 A. A little bit.

7 Q. Who did you hear speaking?

8 A. I heard the judge speaking. And both
9 attorneys were there, but the gentleman was
10 speaking to her more. That's what I recall.

11 Q. The male attorney more than the female attorney?

12 A. Yes, ma'am.

13 Q. And what did you hear?

14 A. I mean, I -- It was a while ago. I know that
15 the judge wasn't happy with ICE being there,
16 wasn't happy with the fact that he might have to
17 be released or let go or -- and that he was
18 going to be detained. So yeah. That's pretty
19 much what I heard.

20 Q. When you say "the judge wasn't happy," what was
21 it that gave you the impression that the judge
22 wasn't happy with that situation?

23 A. She didn't like the fact that ICE was around.
24 I don't even think they were in the courtroom.
25 But the fact that ICE was there, I don't think

1 she was like happy about that.

2 Q. Was there -- Were there words or tone that gave
3 you that understanding?

4 A. Yeah. Yeah. I don't -- I can't say
5 specifically what she said. But she didn't like
6 the fact, regardless of what he did, this person
7 was going to be detained by ICE.

8 Q. And tell us -- I know you don't remember exact
9 words. We all understand that it was a long
10 time ago.

11 A. Yeah.

12 Q. The best you can, what was the substance of what
13 you heard?

14 A. What was the what?

15 Q. The substance of what you heard. The gist of
16 what you heard, the best --

17 A. Oh, the gist of what I heard was that she
18 wasn't happy, and there was possibly an
19 agreement to -- instead of the client -- You're
20 usually released out the front. So if somebody
21 leaves the courtroom, that's, that's -- those
22 case has been heard. They usually leave the
23 front of the court. Maybe go and sign some
24 papers or something. But she was suggesting
25 that this particular person be let go out the

1 back. Now, I -- That's like the gist of what I
2 heard. But that he'd be let go out the back or
3 a different way.

4 Q. After the proceeding came to its conclusion and
5 the defendant was ordered released, what
6 happened?

7 A. Well, I believe, I believe the defendant had
8 to be brought out and then notified that
9 something was going to happen or that he was
10 going to be released. But I don't think he knew
11 that he was going to be released out the back
12 door. So when he came back up, there was that
13 discussion, and then when he went back down, and
14 that's when, that's when he was released.

15 Q. Who went back down?

16 A. I believe the court officer was in front, the
17 defendant was in front of me, I was in back of
18 the defendant, and the attorney was behind me.

19 Q. And had you previously had occasion to go down
20 to the lockup after a defendant had been ordered
21 released?

22 A. In Newton or --

23 Q. Yeah, in Newton.

24 A. -- in the court at all? No.

25 Q. In the Newton District Court.

1 A. No, no.

2 Q. And on the way downstairs, did you have any
3 conversation with the attorney?

4 A. The attorney asked me if I was good with all
5 this. And I just said to him, that's not for me
6 to make a decision or judgment on what the judge
7 decides, I'm just here to like interpret and be
8 unbiased.

9 Q. When you went -- When you were downstairs, --

10 A. Yes.

11 Q. -- did you interpret something briefly? And I'm
12 not asking for what. Did you interpret
13 something briefly before the attorney and the
14 defendant -- I'm not asking for what was said.
15 But did you interpret something briefly?

16 A. Yes.

17 Q. And about how long did that take?

18 A. Couple minutes.

19 Q. Okay. And then what happened?

20 A. Are you asking me what I interpreted and what
21 the reaction was when I interpreted or...

22 Q. No. I don't want to, I don't want you to tell
23 us what you interpreted. But after you
24 interpreted, what was the next thing that
25 happened?

1 A. The defendant went down the hallway, took a
2 right, the door was open for him, and he went
3 out the back door.

4 Q. Did what happened there that day affect your
5 view of the court?

6 A. Yes, ma'am.

7 Q. Tell us how.

8 A. You're doing your job for like justice and to
9 do the right thing. And when a decision is
10 made, especially coming from a judge, you kind
11 of like wonder if everything you see or hear --
12 you kind of like lose faith in the system a
13 little. You'd like to think that it's a
14 certain -- it's just happening right there, but
15 I've noticed that it's happening throughout the
16 country.

17 JUDGE FABRICANT: All right.
18 Thank you, Mr. Mendoza. I have nothing further.
19 Mr. Hoopes will have some questions for you.

20 THE WITNESS: Okay.

21 CROSS-EXAMINATION

22 BY MR. HOOPES:

23 Q. Good morning, Mr. Mendoza.

24 A. Good morning.

25 Q. My name is Tom Hoopes, and I represent

1 Judge Joseph.

2 A. Okay.

3 Q. And sir, you said you were a vetted court
4 reporter -- or court interpreter in the
5 Massachusetts system for about a year and a
6 half; right?

7 A. Yes, sir.

8 Q. And that would have been from when to when?

9 A. I'm not sure of the dates. It would have
10 been about, about a year and, about a year and
11 four months prior to this, prior to this case.

12 Q. And you were working at the time for a woman
13 named Ms. Barrios; is that correct?

14 A. Correct.

15 Q. And --

16 A. Well, it's kind of -- That was -- It's kind
17 of complicated. Because in the courts, I worked
18 for her. But at the same time, when I wasn't in
19 the courts, I was working for an agency that
20 would allow or that was allowed to send in
21 vetted interpreters. So I was kind of working
22 for both the state and for a private agency.

23 Q. Okay. So you had two places that you were
24 working, one private and one the state; is that
25 right?

1 A. Correct.

2 Q. And your employment, I think you've told us or
3 you made statements in the past, didn't work out
4 with Ms. Barrios; right?

5 A. Right. Yes.

6 Q. And so you never followed through to become a
7 certified interpreter.

8 A. I was basically not allowed to.

9 Q. Okay. And if I can, you spoke at some point to
10 the -- to Ms. Fabricant or to special counsel;
11 correct?

12 A. Yes.

13 Q. And the date of that I believe was February 24th
14 of 2025. Does that sound about right?

15 A. I'm sorry. What was that for?

16 Q. So you spoke to the attorney who was just asking
17 you questions in the past; right?

18 A. Yes.

19 Q. Yeah.

20 A. Yes, yes.

21 Q. And the date of that was after the beginning of
22 this year; correct?

23 A. Yes.

24 Q. Now, that morning at the Newton District Court,
25 what time did you arrive?

1 A. What time did I arrive to the court in
2 Newton?

3 Q. Yes.

4 A. I don't recall. But if the session started
5 at 8:00 or 9:00, I was usually there about a
6 half hour, 45 minutes before.

7 Q. Okay. And so were you interpreting that day
8 just for one case, for Mr. Medina Perez, or were
9 you interpreting for other cases?

10 A. I was interpreting for other cases.

11 Q. And on the Medina Perez case, do you have a
12 memory as you are with us today as to what time
13 you first interpreted on that case?

14 A. No. No. It was, it was definitely -- There
15 was definitely -- He was definitely called first
16 session, but that could have been between
17 anywhere between 9:00 and 11:00.

18 Q. Okay. And so the case was called originally,
19 and Mr. Medina Perez was brought up for you to
20 do the interpreting; correct?

21 A. Yes.

22 Q. And there was an initial discussion, appearance
23 in front of the judge, and you interpreted that;
24 correct?

25 A. Yes.

1 Q. And there was a prosecutor, who is a woman, who
2 was present for that; correct?

3 A. I'm not sure, I'm not sure what you mean.
4 There was a what?

5 Q. There was a -- So there's two sides. You know
6 that.

7 A. Yes.

8 Q. There's a prosecutor --

9 A. Yeah.

10 Q. -- and a defense attorney; correct?

11 A. Yes.

12 Q. And the prosecutor that morning for
13 Mr. Medina Perez's case was a woman; right?

14 A. I believe so. I'm not sure which attorney
15 was which. I'm sorry.

16 Q. So in the morning, the attorney representing
17 Mr. Medina Perez was also a woman, in the
18 morning. You remember that.

19 A. I'd say so, yes.

20 Q. And that person was different than the person
21 who appeared in court in the afternoon; correct?

22 A. Yeah. I believe, I believe, I believe one of
23 the attorneys stepped in for her or something
24 happened where another attorney came in.

25 Q. Okay. And so in the morning you were up in the

1 first session courtroom in Newton; yes?

2 A. I was, yes.

3 Q. And Mr. Medina Perez was brought up; yes?

4 A. Yeah.

5 Q. And you did the interpreting. And then there
6 was a recess after that; correct? Or they
7 continued the matter to allow some time. You
8 recall that.

9 A. Yes. Yes. Afterwards.

10 Q. Yeah. And so they brought Mr. Medina Perez back
11 downstairs; right?

12 A. I believe so, yes.

13 Q. To the lockup.

14 A. Yeah.

15 Q. Okay. And the next time that you had contact
16 with Mr. Medina Perez was in the morning or in
17 the afternoon?

18 A. You tell me.

19 Q. You're the witness, sir.

20 A. No. Because you're talking in the morning or
21 you're talking in the afternoon? Because if
22 we're talking in the afternoon, I had one final,
23 I had one final time with Mr. Medina upstairs
24 and then I communicated or interpreted for him
25 downstairs.

1 Q. And so let's -- Thank you. Let's go back to the
2 morning. Was that first time the only time in
3 the morning that you had contact
4 with Mr. Medina Perez, in the morning?

5 A. No. I believe he was brought up twice.

6 Q. And so both times that you had contact were
7 there in the courtroom in the morning.

8 A. Was in the courtroom in the morning, yes.

9 Q. In the morning. So it was in the courtroom with
10 the judge on the bench and the attorneys right
11 there in the courtroom; correct?

12 A. Yes.

13 Q. And that was the only contact that you had in
14 the morning with Mr. Medina Perez; right?

15 A. I believe so. I think so, yeah.

16 Q. Okay. And it would be fair to say that you
17 never saw him again until he was brought up in
18 the afternoon; right?

19 A. Correct.

20 Q. So in the morning there was a discussion that
21 you interpreted about whether they had the right
22 individual that Pennsylvania wanted; correct?

23 A. Yeah. They needed --

24 Q. I'm sorry?

25 A. Yes. They needed to confirm because

1 everybody was worried of the fact that ICE was
2 there. So they wanted to make sure who he was
3 and what was going to be done.

4 Q. Well, so you say they were worried about ICE
5 being there. Did you hear any discussion about
6 ICE in the morning?

7 A. Yes. Well, we were kind of -- I'm kind of
8 like a court employee. So we're somewhat
9 notified just for safety sake that ICE may be
10 present.

11 Q. Okay. So ICE was there. But what did you hear
12 that there was some concern that ICE was there?
13 And from whom?

14 A. I guess our concern was from the employees or
15 people that were there that ICE was present.

16 Q. Okay. But you never heard anything said by the
17 judge in the morning about ICE; correct?

18 A. I, I don't think so, no.

19 Q. And do you remember, was there an announcement
20 that ICE was not allowed in the courtroom in the
21 morning or not?

22 A. I don't remember that announcement.

23 Q. Okay. And so did you see anybody that was --
24 that you knew to be an ICE officer in the
25 courtroom in the morning?

1 A. I would have to say I was guessing.

2 Q. Okay. And so what is your memory? Were there a
3 few people in the audience in the morning or
4 almost nobody or a lot of people?

5 A. You mean general population --

6 Q. Yeah.

7 A. -- in the audience?

8 Q. Yeah.

9 A. People in the audience?

10 Q. Yeah, number of people.

11 A. There was several.

12 Q. I'm sorry?

13 A. There was several.

14 Q. Several people in there. Between one and five,
15 between 1 and 10?

16 A. Maybe more. But I'll say 1 and 10, but more
17 closer to 10.

18 Q. Okay. And over time in the morning, the number
19 of people in the courtroom thinned out,
20 diminished as cases were called, as cases were
21 resolved; correct?

22 A. Yes.

23 Q. And so you, sitting where you are sitting in the
24 courtroom, you wouldn't have had any problem
25 looking around to your right or behind you and

1 actually seeing anybody who was in the
2 courtroom; right?

3 A. Correct.

4 Q. Because the distance from where you were sitting
5 to the audience is only a matter of a few feet;
6 correct?

7 A. Yes.

8 Q. Now, so can I ask you, had you ever heard at any
9 time from 2017 until today about what's called a
10 Lunn policy, L-u-n-n policy?

11 A. A what policy?

12 Q. I'm going to say Lunn or Lunn. Sounds like
13 Lunar. But it's L-u-n-n in English and it's
14 pronounced the Lunn or the Lunn policy. Have
15 you ever heard of that before?

16 A. No.

17 Q. And so were you given any training as an
18 interpreter as to policies and procedures and
19 things in court just besides -- in addition to
20 the language issues?

21 A. Yes.

22 Q. Okay. And in any of that training did anybody
23 draw to your attention that there was a thing, a
24 document, a policy in Massachusetts beginning in
25 November of 2017 into 2018, that policy was

1 called the Lunn policy?

2 A. A Lunn policy?

3 Q. Lunn, yes. L-u-n-n.

4 A. I'm not sure if that was presented to me.

5 But not -- Ms. Barrios was pretty thorough. And
6 if I had to read something, I'm sure I would
7 have gotten it.

8 Q. So this policy deals with how to handle people
9 in custody when ICE is there to take custody.
10 So sounds like you never read that policy.

11 A. I -- Probably not.

12 Q. Okay. And so you wouldn't know that that policy
13 requires that individuals who are in custody
14 that ICE is waiting for or advises that they be
15 taken into custody by ICE in the lockup.

16 JUDGE FABRICANT: Objection.
17 The witness says he doesn't know anything about
18 the policy.

19 HEARING OFFICER: I'll allow
20 it.

21 Q. Let me rephrase.

22 A. I had been, I had been present with
23 authorities taking clients, taking clients in
24 lockup, yeah. I've been, I've been exposed to
25 that, yes.

1 Q. Okay. And had you ever seen ICE take custody in
2 the front lobby at the Newton District Court?
3 Yes or no? If you remember, you remember. If
4 you don't, you don't. If the answer's yes, it's
5 yes. If it's no, it's no. That's okay.

6 A. No. The screen, the screen shut off. So you
7 may want to go back approximately two minutes
8 and let me know what you were saying.

9 Q. It didn't like my question.

10 A. Excuse me?

11 Q. So I'll ask the question again.

12 A. Yes.

13 Q. So you had interpreted at the Newton District
14 Court a half a dozen or so times?

15 A. Yeah. Maybe a little more, yeah.

16 Q. Okay. And in any of those times were you
17 interpreting when ICE was there to take custody
18 of somebody?

19 A. I don't think so.

20 Q. So for you to say that a policy was that ICE
21 takes custody out of the front lobby of the
22 Newton District Court, you wouldn't have any
23 basis for that because you've never seen it
24 before; right?

25 A. What -- The procedures that ICE do is what

1 ICE does, not -- I had nothing to do with the
2 policy.

3 Q. Okay.

4 A. And whether I know it or not, they're going
5 to operate either way whether the judge lets it
6 or not or whether ICE, ICE is going to do
7 something or not.

8 Q. Okay. Now, in the afternoon session, you were
9 there for the afternoon because Medina Perez was
10 still an active case; correct?

11 A. In the afternoon session, I'm still there,
12 whether there's -- until I'm dismissed by the
13 judge.

14 Q. Understood. And in the afternoon, was
15 Medina Perez the only case that you were there
16 for?

17 A. Oh, yeah. That was, that was the only or
18 last Spanish case.

19 Q. And so when the case was called, you told us
20 earlier that you were sitting at the special
21 desk or carrel that they had for interpreters?

22 A. I may have been sitting closer. That's what
23 I mentioned, that there's a, there's a legal
24 desk where the prosecutor or defender -- I'm not
25 sure in Newton which one it is back there, but I

1 may have been like leaning up against that table
2 or sitting right, right at that table.

3 Q. But you weren't over by the dock because there
4 was nobody in the dock when the case was first
5 called; correct?

6 A. Correct.

7 Q. And so do you remember whether or not, when the
8 case was called, the parties stayed talking to
9 the judge in the open court or do you remember
10 if they went to side bar?

11 A. I'm not sure what you're asking.

12 Q. Do you have any memory of where the conversation
13 between the two lawyers and the judge first took
14 place in the afternoon about Medina Perez?

15 A. It started open and then it went to side bar.

16 Q. And so when it was open, you would have been
17 next to the conversation or next to the lawyers;
18 correct?

19 A. I was kind of behind the attorney, because
20 the defendant wasn't out there yet.

21 Q. Yup. And there was no interpreting for you to
22 do.

23 A. Excuse me?

24 Q. There was -- No defendant means there was no
25 interpreting for you to do; correct?

1 A. Correct.

2 Q. And so when they moved the side bar, they moved
3 away from you to your right and up next to the
4 judge; right?

5 A. No. They moved closer.

6 Q. Closer to the judge? Or closer to you?

7 A. No. Closer to me.

8 Q. Oh. Because you were on the right side now or
9 on the left side facing the judge?

10 A. Facing the judge, I'm on the left side.

11 Q. So in your memory, the side bar was on the left
12 side, not the right side of the courtroom.

13 A. When you're looking at the court, on the left
14 side.

15 Q. That's where you remember the side bar to be.

16 A. Yes.

17 Q. And so do you recall, was there -- when they
18 moved to side bar, was there any white noise in
19 the courtroom? Do you know what white noise is?

20 A. Yes, there was.

21 Q. And there was white noise in Newton at that
22 time?

23 A. That's what I just said. Yes.

24 Q. And so when they moved the side bar, and they're
25 talking, there's white noise in the courtroom.

1 I just want to make sure I understand that.

2 That's a yes; correct?

3 A. I'm not sure if it's in the whole courtroom.

4 I thought -- From what I recall, was right at
5 the, at the little system itself. But it could
6 have been throughout the whole courtroom.

7 Q. And the purpose of the white noise is to make it
8 harder for people in the audience to hear the
9 conversation; correct?

10 A. I don't believe there was an audience.

11 Q. Oh, you think there was nobody else in the
12 courtroom at that point.

13 A. I don't believe there was.

14 Q. Okay. But the white noise was on anyway; right?

15 A. Yes.

16 Q. And are you saying that the white noise had no
17 impact on your ability to hear what was being
18 said at side bar?

19 A. No, I'm not saying that.

20 Q. And --

21 A. I'm saying I didn't hear everything that was
22 being said, because there was white noise and it
23 was side bar. It's not my position to be
24 listening.

25 Q. Okay. So today do you have a memory as to

1 whether or not the whole conversation at side
2 bar was being recorded or not being recorded?

3 A. I don't believe side bar is recorded,
4 especially if there is white noise. I'm not
5 sure, though.

6 Q. But you don't know.

7 A. If I was a gambling man, I would say that it
8 wasn't recorded.

9 Q. Now, you've said that you heard the judge say
10 something about the defendant being sent
11 downstairs; is that right?

12 A. Being let go. Not being sent downstairs.

13 Q. About being let go.

14 A. Yes.

15 Q. So if the judge used words "he's released," that
16 would be consistent with what you heard.

17 A. If the judge said what?

18 Q. He's being released, Medina Perez is released,
19 that would be consistent with what you heard.

20 A. Yes.

21 Q. And if the judge said to the lawyers, why don't
22 we detain him overnight, that would be
23 consistent with what you thought the judge was
24 saying about avoiding ICE; right?

25 A. No.

1 Q. So tell us, why did you think that the judge was
2 concerned about Medina Perez avoiding ICE?

3 A. It was -- I'm not hearing you well. But you
4 mentioned something about having -- something
5 having to be overnight, and I don't know what
6 that has to do with...

7 Q. Well, let's break it into two parts. I think
8 you've told us that you couldn't hear the
9 conversation very well; right?

10 A. Correct.

11 Q. You could hear bits and pieces; right?

12 A. Correct. Right.

13 Q. And from those bits and pieces, that's why you
14 drew the inference that there was some effort on
15 the judge's part to avoid ICE, from those bits
16 and pieces; right?

17 A. To let the client out, to let the -- to
18 release the client.

19 Q. To release the client. So you heard the judge
20 say to release the client; is that right?

21 A. No. I heard a judge say let the client go.

22 Q. And that was still at side bar?

23 A. I believe she might have said it even before
24 that, but I recall at side bar.

25 Q. And how about -- At some point the conversation

1 moved back to the open court; right? Or do you
2 not remember?

3 A. Not -- I don't -- Yeah. Because they have to
4 finish the session.

5 Q. And would it be fair to say that it's hard for
6 you to remember what you heard from side bar and
7 what you heard said at open court? Seven years
8 ago? I'm sorry.

9 A. It may not be exactly the time frame that it
10 occurred.

11 Q. Okay. So in the afternoon there were two
12 lawyers speaking to the judge; correct?

13 A. Correct.

14 Q. One was a woman; right?

15 A. Yes.

16 Q. And one was a male; correct?

17 A. Correct.

18 Q. And you said previously that you thought that
19 the male was the district attorney, the
20 prosecutor, because he was doing all the
21 talking; right?

22 A. Correct.

23 Q. So if you thought he was the prosecutor, it's
24 pretty fair to say that you never talked to
25 Medina Perez with him alone prior to going

1 downstairs after court completed; right?

2 A. I believe I may have. I don't, I don't
3 recall.

4 Q. You have no memory.

5 A. I said I don't recall. I said I believe I
6 may have, but I'm not entirely sure during the
7 first session.

8 Q. During the first session in the morning or in
9 the afternoon?

10 A. In the morning.

11 Q. And so -- But it's fair to say you thought the
12 man there in the afternoon was the prosecutor at
13 the beginning; right?

14 A. Yes.

15 MR. HOOPES: May I just have a
16 moment, Your Honor?

17 HEARING OFFICER: Sure.

18 JUDGE FABRICANT: Mr. Mendoza,
19 we're just pausing just for a minute. Just stay
20 with us, please.

21 (PAUSE)

22 MR. HOOPES: Mr. Mendoza,
23 that's all I have. Thank you very much.

24 JUDGE FABRICANT: Mr. Mendoza,
25 I'm going to be very brief.

REDIRECT EXAMINATION

BY JUDGE FABRICANT:

Q. You said that in the course of your time working as an interpreter in the Massachusetts court system that you had been exposed to situations in which ICE went to the lockup to take custody of someone. Did I understand that correctly?

A. Yes.

Q. Did that happen, --

A. Yes.

Q. -- did that happen in Newton or in other courthouses?

A. In other courthouses.

Q. Did you ever see that happen in Newton?

A. No.

JUDGE FABRICANT: That's all I have.

Perhaps Mr. Hoopes has more, perhaps the hearing officer has questions for you, so stay with us a little longer.

THE WITNESS: Okay.

MR. HOOPES: Yes. You're back with me again, Mr. Mendoza.

RECROSS-EXAMINATION

BY MR. HOOPES:

Q. So you told us, when I asked you questions earlier, that there were two lawyers in the morning dealing with the Mendoza -- Medina Perez case, -- I'm sorry -- the Medina Perez case, both of them were women; correct?

A. Both of them are what?

Q. Women. Female lawyers.

A. There was a man and a woman and one of the women was switched. One of the attorneys came in and there was another -- there was a different attorney.

Q. So the one --

A. That was a woman.

Q. So there was a woman initially and then there was a man; is that right?

A. That's not what I said.

Q. I'm not understanding you. In the morning, who was representing Mr. Medina Perez, a man or a woman?

A. I was under the assumption it was a man.

Q. Oh.

A. So it's irrelevant for me because I just need to do the interpreting. So whether it's a

1 prosecutor or defendant, it's almost irrelevant.
2 I just have to interpret for the client.

3 Q. So would it be fair to say that today you don't
4 remember in the morning whether Mr. Medina Perez
5 was represented by a woman or a man or do you
6 believe it was a man?

7 A. I believe it was a man.

8 MR. HOOPES: Thank you. No
9 other questions.

10 JUDGE FABRICANT: Just stay
11 with us a little longer just in case the hearing
12 officer wants to ask you anything.

13 THE WITNESS: Okay.

14 HEARING OFFICER: Yes. It may
15 easiest if I just go down there.

16 JUDGE FABRICANT: Mr. Mendoza,
17 just stay with us a little longer. The hearing
18 officer has some questions for you.

19 THE WITNESS: Okay.

20 HEARING OFFICER: Can you hear
21 me, Mr. Mendoza?

22 A. Yes, sir.

23 HEARING OFFICER: So my only
24 question relates to your location during the
25 proceedings. And I don't know how easy it is

1 for us to do this. But in Exhibit U -- And this
2 is -- We'll start with page APP 508. Are you
3 able to see this?

4 A. Yes.

5 HEARING OFFICER: Okay.

6 A. Wait. Yes.

7 HEARING OFFICER: So can you
8 describe, looking at this page, where you were
9 located before Mr. Medina Perez came upstairs?
10 So we're in the afternoon session. At the
11 beginning of the session, before there is a side
12 bar, I believe you said that you were behind
13 where the attorneys were. Is that correct? Is
14 that what you said?

15 A. On the -- So if -- I believe the little, the
16 little hole where you speak to the client, that,
17 that -- the major thing on that picture is the
18 dock itself. So there's the desk right, right
19 there, I believe -- Nope. Closer. Right around
20 there. There's a sign in the picture. I can't
21 see the picture. There you go. So I believe, I
22 believe that's, that's the attorney's desk. I
23 was like standing right on the corner of the
24 dock.

25 HEARING OFFICER: Do you see

1 where I'm pointing with my pen?

2 A. Yes, sir. Right around there. That's what I
3 recall.

4 HEARING OFFICER: I see. And
5 so -- And I'm pointing now to the area where, if
6 somebody were inside the dock, you would be
7 speaking through this hole right here? Is that
8 right?

9 A. Is that, is that -- I can't see the hole.
10 But if that's where the hole was, yes.

11 HEARING OFFICER: It's just to
12 the right of the door to the dock.

13 A. Yes. And normally I'd be sitting,
14 approximately diagonally towards the back there
15 would be a chair.

16 HEARING OFFICER: Okay. I
17 understand what you're saying.

18 Do you see where there's a
19 place for the court officer, there's a location?
20 Do you see where I'm pointing?

21 A. Okay.

22 HEARING OFFICER: Is that where
23 the court officer often sits?

24 A. If you say so. I would be sitting around,
25 right around him.

1 HEARING OFFICER: Okay. So my
2 understanding from what you're saying is you
3 basically would have been located somewhere
4 between that location where the court officer
5 typically sits and that door to the dock.

6 A. Yes. But during the side, during the side
7 bar, I was, I was closer, because it was the end
8 of the day, they were making a decision as to
9 what they were going to do with the client, so I
10 was standing a little closer, but I wasn't able
11 to hear everything. Either way, I had to notify
12 the client of what was going to happen, and a
13 decision was made for him to be let go out the
14 back door. So whether I know who the prosecutor
15 was or who the defendant was or what the
16 decision was made, I had to tell the client what
17 was going to happen, and the client had to
18 decide whether he was going to go with what was
19 agreed upon.

20 HEARING OFFICER: Okay. I was
21 just asking you about your physical location,
22 sir. But I understand you.

23 With that, I've got no further
24 questions.

25 JUDGE FABRICANT: All right.

1 I'm going to ask one more question, if I may.

2 REDIRECT EXAMINATION

3 BY JUDGE FABRICANT:

4 Q. Mr. Mendoza, I'm going to try and hold up the
5 same photo. Can you see it again?

6 A. Yup. Yes. That's a little clearer.

7 Q. You can see that there's the door to the dock.

8 A. Yes.

9 Q. A little bit on the same side. The dock is a
10 rectangle.

11 A. Yes.

12 Q. On that same glass wall of the dock, right next
13 to the door, there's a little metal circle.

14 A. I don't remember where the stairs were inside
15 the dock or outside. I think they're inside
16 there.

17 Q. Okay. So what I want to direct your attention
18 to is -- Again, the dock is a rectangle.

19 A. Yes.

20 Q. On the other wall of the dock.

21 A. Yes.

22 Q. The wall that is not where the court officer
23 sits is not where the door is.

24 A. Correct.

25 Q. The other wall, there's another little metal

1 circle. If the client is in the dock, which one
2 of those little metal circles do you speak
3 through?

4 A. The one, the one around the corner, the one
5 in the middle that you just mentioned.

6 Q. In the middle, meaning along the longer wall?

7 A. Yes.

8 Q. Not the one next to the door; is that right?

9 A. No.

10 Q. All right.

11 A. Correct.

12 JUDGE FABRICANT: Thank you.
13 Stay with us a little longer just in case
14 anybody else wants to --

15 HEARING OFFICER: That was a
16 very helpful clarification. Thank you for that.

17 JUDGE FABRICANT: All right. I
18 think we're all finished.

19 May this witness be excused?

20 HEARING OFFICER: Yes.

21 JUDGE FABRICANT: Thank you
22 very much, Mr. Mendoza.

23 THE WITNESS: Thank you.

24 JUDGE FABRICANT: You have
25 completed your testimony. Thank you.

1 HEARING OFFICER: At this
2 point, we've been going for a couple hours. I
3 think it probably makes sense to take a
4 10-minute break.

5 JUDGE FABRICANT: Yes.
6 Before we do that, may counsel
7 approach side bar just very briefly?

8 HEARING OFFICER: Sure.

9 SIDE BAR CONFERENCE

10 HEARING OFFICER: Let me make
11 sure. Do we have any white noise --

12 JUDGE FABRICANT: I think the
13 hearing officer -- I mean the court reporter is
14 hearing us directly, not through any device.

15 HEARING OFFICER: Fine.

16 JUDGE FABRICANT: We're having
17 a little trouble remembering whether
18 Shannon McDermott was sworn -- now, I am aware
19 of SJC authority that it actually is not
20 essential as long as they're aware of necessity
21 to tell the truth.

22 HEARING OFFICER: I will swear
23 her in as she comes back.

24 JUDGE FABRICANT: I thought you
25 did.

1 HEARING OFFICER: I will
2 confirm that everything she's already testified
3 to is the truth.

4 JUDGE FABRICANT: Thank you.
5 Maybe you did.

6 HEARING OFFICER: I'm not sure.
7 I'll do it again. Thank you.

8 (SIDE BAR CONFERENCE ENDS)

9 (Recess taken at 12:05 p.m.
10 Proceedings resumed at
11 12:20 p.m.)

12 JUDGE FABRICANT: Can we have
13 Ms. McDermott come back, please.

14 (PAUSE)

15 HEARING OFFICER: Thank you,
16 Ms. McDermott. Apologies for interrupting your
17 testimony.

18 THE WITNESS: Okay.

19 HEARING OFFICER: It has been
20 brought to my attention that I likely didn't
21 swear you in at the beginning. So if I can ask
22 you if you solemnly swear that the testimony
23 you've already given and will be giving is the
24 truth, the whole truth, and nothing but the
25 truth?

1 THE WITNESS: yes.

2 HEARING OFFICER: Can you
3 please raise your right hand and swear to that?

4 THE WITNESS: Yes, I do swear.

5 HEARING OFFICER: Okay. With
6 that...

7 CROSS-EXAMINATION

8 BY MS. MULVEY:

9 Q. Good afternoon, Ms. McDermott.

10 A. Hi.

11 Q. My name is Liz Mulvey. We've never met before;
12 is that right?

13 A. That's right.

14 Q. And can I apologize now to you for when I call
15 you Jurgens?

16 A. Oh, that's fine, too.

17 Q. Okay. I'm going to do the best I can, but
18 you've been Jurgens for six years. Okay.

19 You told the special counsel
20 that, after kind of everything that was over,
21 you saw David Jellinek in the front lobby of the
22 courthouse; is that right?

23 A. Yes.

24 Q. And you said to him, I know what you did and it
25 wasn't the right thing.

1 A. Yes.

2 Q. Did David Jellinek say to you, Shannon, what are
3 you talking about, I told the judge the court
4 officer was going to let him out the back door?

5 A. No.

6 Q. Did he say to you, Shannon, what you are talking
7 about, Judge Joseph said this was okay?

8 A. No.

9 Q. Did he say, Shannon, come on, you knew what was
10 going to happen?

11 A. No.

12 Q. Did you know what was going to happen?

13 A. No.

14 Q. What did David Jellinek do or say when you said
15 I know what you did and it wasn't the right
16 thing?

17 A. He smiled and he didn't say a word.

18 Q. Now, when you said to David Jellinek, I know
19 what you did, what did you mean?

20 A. Helped facilitate Mr. Perez leaving the
21 courthouse.

22 Q. All right. And what did you mean when you said
23 it wasn't the right thing?

24 A. Well, I think by that time I knew that it had
25 been from the security door downstairs somehow

1 and just -- that wasn't okay to do.

2 Q. All right. And I think you told us on direct
3 that you had either figured it out or somebody
4 had told you --

5 A. Yeah. I can't remember how I learned, but by
6 that time, I had learned.

7 Q. All right. By the time you learned that he went
8 out the back door, he was long gone and hard to
9 find; right?

10 A. Correct.

11 Q. All right. You were present at side bar for
12 both the on the record and off the record
13 conversation; is that right?

14 A. Yes.

15 Q. And I think you told us that in your mind they
16 kind of blend together?

17 A. Yes.

18 Q. You said off the record was kind of a
19 continuation of the on the record?

20 A. Yes.

21 Q. And you had trouble kind of sorting out in your
22 mind what was on the record and what was off the
23 record?

24 A. That's fair, yes.

25 Q. And if you didn't have a transcript, you

1 wouldn't be able to tell at all. Is that fair?

2 A. Yes.

3 Q. It all kind of blends in?

4 A. Yes.

5 Q. And one thing that you did remember that was new
6 off the record was David Jellinek asking to go
7 downstairs to speak with his client in the
8 lockup; is that right?

9 A. Yes, he did ask that.

10 Q. That was the part you remembered as being new;
11 is that true?

12 A. I don't know -- I always remembered him
13 asking to go back downstairs. I don't think I
14 could have told you it was on or off the
15 record --

16 Q. Okay.

17 A. -- before seeing a transcript.

18 Q. Okay. So we know from the transcript that it
19 wasn't before you went off the record, so it
20 must have been while you were off the record;
21 true?

22 A. Yes. Must have been. Yes.

23 Q. Now, you also told us that you don't have a real
24 clear memory of what was actually said at side
25 bar. Is that true?

1 A. True.

2 Q. And I'm going to ask you a little bit more in
3 detail later. But is it fair to say that,
4 whatever it was that David Jellinek said, you
5 walked out the door thinking that Medina Perez
6 was coming out the front door. Is that true?

7 A. I did, yes.

8 Q. And certainly, as an assistant district
9 attorney, you weren't going to go out and lie to
10 ICE, were you?

11 A. No.

12 Q. And you wouldn't be part of a plan to avoid ICE;
13 right?

14 A. I would not.

15 Q. And so if there were a plan discussed at side
16 bar on or off the record to help Medina Perez go
17 out the back door and avoid ICE, you wouldn't
18 then go out to the ICE agents and say he's
19 coming out the courtroom door, would you?

20 A. I would not.

21 Q. You would have, if you heard anything like that,
22 done something; right?

23 A. Probably.

24 Q. Now, if David Jellinek had said at side bar, the
25 court -- if I take him downstairs, the court

1 officer will let him out the back door, and the
2 judge said, yes, that's what we'll do, is there
3 any way you would have gone out to the hall and
4 told ICE he's coming out this door?

5 A. No.

6 Q. So is it fair to say that, without remembering
7 exactly what was said, it wasn't that?

8 A. Correct.

9 Q. All right. And it wasn't anything that would
10 have given you that impression; right?

11 A. Correct. I did not have that impression.

12 Q. And in fact, you have spoken with
13 Special Counsel Fabricant, haven't you?

14 A. Yes.

15 Q. And she pretty much asked you that same
16 question; right? Whatever was said, what did
17 you think after it. Right?

18 A. Yes.

19 Q. And you said I thought he's coming out the front
20 door.

21 A. Yes.

22 Q. And that's the truth, isn't it?

23 A. It is.

24 Q. Now, if somebody in that courtroom had said,
25 either at side bar or out loud, we've made a

1 decision that he's going to go out the back
2 door, that's the kind of thing you'd remember,
3 isn't it?

4 A. Yes.

5 Q. Did that happen?

6 A. Not to my memory.

7 Q. Would you forget something like that?

8 A. I don't think I would have.

9 Q. Now, you said about Judge Joseph, in response to
10 one of Special Counsel Fabricant's questions,
11 you thought that she had made a misguided
12 attempt to do what she thought was right?

13 A. I did say that.

14 Q. And you had no reason to believe, having been
15 present at side bar, that she knew that
16 David Jellinek was going to have released out
17 the back door, do you?

18 A. I do not.

19 Q. And when you say a misguided attempt to do what
20 she thought was right, are you referring to the
21 idea that maybe there was a way that ICE
22 wouldn't get him?

23 A. Right.

24 Q. Okay. Now, at side bar David Jellinek was
25 claiming very vociferously that his client was

1 not the guy ICE was looking for; right?

2 A. Yes.

3 Q. And certainly, no one would want ICE to take the
4 wrong guy, would they?

5 A. No.

6 Q. That's not a good thing, is it?

7 A. It is not.

8 Q. All right. And so what Judge Joseph was
9 actually doing was offering David Jellinek time
10 to try to convince ICE this wasn't the guy.

11 A. I don't know if that's what the offer was for
12 or not.

13 Q. Well, you know that that's what she had been
14 doing all morning, right, giving more time?

15 A. The more time, for me, I thought was to
16 figure out the Pennsylvania warrant.

17 Q. All right.

18 A. But...

19 Q. But not just you, but Attorney Bostwick was
20 asking for more time; right?

21 A. Correct. Yeah. Absolutely.

22 Q. And there was a second call and a third call --

23 A. Absolutely.

24 Q. -- and a fourth call?

25 A. Many, yes.

1 Q. All right. And all of those were with you and
2 Attorney Bostwick; is that right?

3 A. I don't remember at which point
4 Attorney Bostwick withdrew because of the
5 private appearance by Attorney Jellinek, but
6 Attorney Bostwick was certainly there in the
7 morning, and at some point, that I can't recall,
8 Attorney Jellinek came in.

9 Q. Well, let's see if we can try to shed a little
10 light on that. Do you have the book of exhibits
11 there?

12 A. I do.

13 Q. And would you take a look at Exhibit H, please.
14 And Exhibit H is a transcript of the full day.
15 Can you take my word for that?

16 A. Yes. I am with you.

17 Q. All right. And if you could, would you look at
18 Page 147.

19 A. I'm sorry. Are we talking about within the
20 transcript?

21 Q. Yes.

22 HEARING OFFICER: Can you give
23 us the --

24 Q. The transcript page, not physical page.

25 A. Okay. I'm here.

1 Q. All right. And if we look at Line 16, the clerk
2 is saying, and that's just, Judge, that leaves
3 us with Mr. Perez and Attorney Bostwick, are you
4 still, and Ms. Bostwick says I just sent a fax?

5 A. Yes, I see that.

6 Q. Do you remember that happening?

7 A. Not specifically but...

8 Q. All right. But we can tell from the transcript
9 Ms. Bostwick was still there representing
10 Medina Perez and she was trying to sort out the
11 identity issue; --

12 A. Yes.

13 Q. -- is that right?

14 A. Yes.

15 Q. All right. And then Judge Joseph asked
16 Mr. Harrington whether he needed more time.
17 Right? Do you see that, the next line?

18 A. I do see the next line that says that as
19 well.

20 Q. All right. And if we flip over to two pages
21 later, 149, there's a period where Judge Joseph
22 and the clerk are talking to Mr. Harrington; is
23 that right?

24 A. Yes.

25 Q. And again, you would be there because you'd be

1 representing the Commonwealth on that case,
2 whatever it was?

3 A. Correct.

4 Q. All right. And then if we get to Page 149, and
5 we look at Line 18, do you see that?

6 A. Yes.

7 Q. All right. Then Ms. Bostwick is speaking again?

8 A. Yes.

9 Q. And she says, I will, and then she says, I
10 think, Your Honor, I have an appointment this
11 afternoon and I wanted to ask if we could have
12 a -- I understand that the interpreter has to be
13 somewhere as well, if maybe we could have
14 Mr. Medina's case called at 2:15 or so, so that
15 would give me time and then we're not just
16 waiting, and the clerk says, at 2:15.

17 A. Yes.

18 Q. Do you recall that happening?

19 A. Not specifically, but it sounds right.

20 Q. All right. And then if we flip to Page 150,
21 Ms. Bostwick says, somewhere, and then the clerk
22 interrupts and says, and the interpreter's okay
23 with that, too, 2:15, and Ms. Bostwick says, I
24 have a medical appointment at 1:30, Judge Joseph
25 says, not a problem, Ms. Bostwick says, so I

1 don't know if I'm going to be able to get back
2 at 2:00, Judge Joseph says, not a problem, the
3 clerk says, that's fine, court says, we'll hold
4 it, do you have to be somewhere else today. And
5 now she's talking to Mr. Harrington?

6 A. Yes, I see that.

7 Q. And if we slide down to Line 18, all of that
8 happened just before 12:40 in the afternoon; is
9 that true?

10 A. Yes.

11 Q. Okay. So does that refresh your recollection
12 that at least as of the lunch break
13 Attorney Bostwick was actively representing
14 Jose Medina Perez?

15 A. Yes.

16 Q. All right. And you don't have any recollection
17 of interactions with David Jellinek before that,
18 do you?

19 A. I don't.

20 Q. Now, Attorney Bostwick was doing things, like
21 she said, sending a fax, and at one point do you
22 recall she asked for something called a
23 Triple I?

24 A. That makes sense that she would.

25 Q. Help us out. What's a Triple I?

1 A. It's an out of state record.

2 Q. All right. And is that something a defense
3 lawyer might want to see if they're trying to
4 investigate identity?

5 A. Yes.

6 Q. And you understood Ms. Bostwick had some
7 questions about her client's identity, who was
8 he really; --

9 A. Yes.

10 Q. -- right? And appropriately she was trying to
11 figure it out.

12 A. Correct.

13 Q. And appropriately Judge Joseph was giving her
14 time, repeated calls, to try to figure it out.

15 A. Yes.

16 Q. And she gave her the lunch break to try to
17 figure it out.

18 A. Yes.

19 Q. And there's nothing wrong with a judge giving a
20 lawyer time to do his or her job; right?

21 A. No.

22 Q. Okay. Now, would you take a look at the
23 transcript. And why don't we look at the typed
24 version because I think it's a little cleaner.
25 That's Exhibit G. And --

1 JUDGE FABRICANT: G?

2 MS. MULVEY: G. I'm sorry. G,
3 like girl.

4 Q. And it's App 34?

5 HEARING OFFICER: Are we using
6 the A or the B transcript?

7 MS. MULVEY: It's A.

8 HEARING OFFICER: So don't you
9 want to use the B or...

10 MS. MULVEY: Oh, I'm sorry.
11 Sure. Let's go to 40. I didn't realize they
12 were in here one after the other. I apologize.

13 HEARING OFFICER: Thank you.

14 Q. At 40.

15 A. 40, yes.

16 Q. And if we look, we see 2:48, and that's the
17 beginning of the afternoon call for Mr. Medina
18 Perez's case?

19 A. Yes.

20 Q. All right. And the clerk says,
21 Attorney Jellinek filed an appearance. And
22 everybody's in open court at that point; is that
23 right?

24 A. Yes.

25 Q. And then Attorney Jellinek asks to go to side

1 bar.

2 A. Yes.

3 Q. All right. And you all go up to side bar?

4 A. Yes.

5 Q. Okay. And if we look at the picture up here, is
6 that where we all are?

7 A. Yes.

8 Q. All right. Now, you said that the judge would
9 sort of scooch over, roll the chair over to
10 here?

11 A. Yes, generally.

12 Q. And then you and David Jellinek would stand
13 there?

14 A. Yes.

15 Q. All right. And there's some stairs here?

16 A. Yes.

17 Q. I don't know how tall you are. Do you climb up
18 on the stairs?

19 A. I'm pretty tall. I don't remember if I stood
20 on the stairs or not.

21 Q. Okay. But either way, you and David Jellinek
22 are standing side by side at the side bar; --

23 A. Yes.

24 Q. -- is that right? And the clerk's over here
25 somewhere?

1 A. Yes.

2 Q. All right. Now, at that point the first part of
3 this side bar was on the record; is that right?

4 A. Yes.

5 Q. And we see Judge Joseph, is dismissed, so it's
6 my understanding that ICE is here. That's the
7 part that starts at side bar; is that right?

8 A. Yes.

9 Q. Okay. And we know you're there because you say
10 yes?

11 A. Right.

12 Q. And Attorney Jellinek, again, starts saying this
13 is the wrong guy?

14 A. Right.

15 Q. And if we continue onto Page 49, he's pleading
16 his case that this is the wrong guy?

17 A. Yes.

18 Q. Okay. And you said, and you pointed it out, I
19 don't think arguing ICE is really my, and that
20 means you're not getting involved in is he the
21 guy ICE is looking for or not.

22 A. Correct.

23 Q. All right. And David Jellinek at the end says,
24 I think the best thing for us to do is to clear
25 the fugitive issue, release him on a personal,

1 and hope that he can avoid ICE. Now, did you
2 interpret that as meaning I'm going to let him
3 out the back door?

4 A. I did not.

5 Q. What did you think that meant?

6 A. That he was going to try to figure a way for
7 him to avoid the ICE officer, but I didn't know
8 how.

9 Q. And one way would be to convince the ICE officer
10 this isn't the guy; right?

11 A. Sure.

12 Q. He's successfully done that with the
13 Pennsylvania warrant, hadn't he?

14 A. He had.

15 Q. All right. So if he's done it once, he could
16 very well think he could do it again; true?

17 A. True.

18 Q. And if we look at what Judge Joseph says is, the
19 other alternative is, if you need more time to
20 figure it out, hold until tomorrow.

21 A. That is what it says, yes.

22 Q. And did you understand that Judge Joseph was
23 once again offering this defendant's lawyer time
24 to do whatever he could on the issue of
25 identity?

1 A. Yeah.

2 Q. All right. And again, nothing wrong with that,
3 is there?

4 A. Not, not necessarily, no.

5 Q. All right. And she says, hold until tomorrow?

6 A. Yes.

7 Q. All right. And then they say, if he's bailed
8 out from Billerica, ICE will pick him up, and
9 she says, ICE will pick him up?

10 A. Right.

11 Q. And what all that means is, Billerica is the
12 overnight pretrial place?

13 A. Yes.

14 Q. Is that where they send them?

15 A. Yes.

16 Q. All right. And if somebody goes to Billerica
17 and posts bail, they walk out the door but ICE
18 can take them right then; right?

19 A. Right.

20 Q. Whereas if they bail, et cetera, they don't make
21 bail, they're held in custody and they're
22 brought back for the next appearance.

23 A. Correct.

24 Q. And so if he were held at Billerica overnight
25 and brought back in the morning, you'd be there;

1 right?

2 A. Yes.

3 Q. David Jellinek could come back.

4 A. Yes.

5 Q. ICE could come back.

6 A. Yes.

7 Q. And we can pick up where we left off and see if
8 David Jellinek had had any luck convincing ICE
9 this wasn't the guy; right?

10 A. Yeah.

11 Q. All right. And there would be nothing wrong
12 with that, would there?

13 A. Well, holding someone without bail on an ICE
14 detainer I don't think is part of the bail
15 consideration. So that's -- What I thought was,
16 maybe we were still talking about the
17 Pennsylvania warrant. I don't recall. It could
18 have been both.

19 Q. Okay. But there's a couple of parts there.
20 First, if his lawyer says, yes, I'd like you to
21 hold him, there's no problem; right?

22 A. It depends what the reason is to hold
23 someone. You need a reason.

24 Q. Well, one reason, if you're talking about bail,
25 is to make sure he's going to show up for the

1 next appearance.

2 A. Absolutely. Yes.

3 Q. And one of your roles as the district or
4 assistant district attorney is to make a bail
5 request?

6 A. Yes.

7 Q. But the judge isn't bound by your request, --

8 A. No.

9 Q. -- is she?

10 A. No.

11 Q. And if you say, Judge, I want bail, the judge
12 can say, no, I'm going to release him on
13 personal?

14 A. Absolutely.

15 Q. And vice-versa. You could say I'm not asking
16 for bail and the judge can say I have concerns
17 I'm going to set bail.

18 A. Sure.

19 Q. That's the judge's role.

20 A. Absolutely.

21 Q. And one of the things that might make a
22 defendant likely not to show up is if he's not
23 the guy everybody's talking about.

24 A. Sure.

25 Q. And so if you had concerns about or if a judge

1 had concerns about a defendant's identity, it
2 wouldn't be unreasonable to impose bail to make
3 sure he shows up, whoever he is.

4 A. Right.

5 Q. And that would have been a reasonable thing,
6 again, for Judge Joseph to be thinking, wouldn't
7 it?

8 A. Yes. To set bail, yup.

9 Q. Now, she then says, what if we detain him;
10 right?

11 A. Yes.

12 Q. And did you understand, again, that meant kind
13 of hanging onto him while David Jellinek tried
14 to sort things out?

15 A. Yes.

16 Q. All right. And then David Jellinek basically
17 said, no, I don't want any of that to happen;
18 right?

19 A. Yes.

20 Q. Okay. And he asked to go off the record.

21 A. Yes.

22 Q. He didn't say why?

23 A. No.

24 Q. You didn't know why?

25 A. No.

1 Q. And you don't anticipate Judge Joseph would have
2 known why.

3 A. No. I can't speak to that. But I don't know
4 why.

5 Q. All right. And there was an exchange and the
6 clerk turned off the recording.

7 A. Yes.

8 Q. The clerk didn't say, Judge, what are you doing,
9 there's a rule against this.

10 A. No.

11 Q. You told us you're a clerk magistrate now.

12 A. Yes.

13 Q. Could you tell us what that is in the
14 Massachusetts system?

15 A. Sure. An assistant clerk magistrate, we have
16 a number of roles. One of them is to assist in
17 the courtroom session, facilitating calling
18 cases on the record. That's one of many things.
19 That would be what Mr. Okstein was doing on that
20 date. We also order search warrants, do
21 applications for criminal complaints, small
22 claims. Many, many other things. But one of
23 the roles is to assist in the courtroom, calling
24 a list.

25 Q. Sort of half courtroom clerk and half type of

1 judge?

2 A. Sure.

3 Q. All right. And when you're sitting as a clerk
4 magistrate, one of the things you do, try to
5 help the new judge?

6 A. Yes, sometimes.

7 Q. And do new judges sometimes say --

8 A. Sometimes.

9 Q. -- how do I handle this?

10 A. (Witness nods head).

11 Q. And you know that's something that happens
12 between clerks and judges; right? Clerks who
13 are experienced try to help new judges not to do
14 something they shouldn't do.

15 A. Sure.

16 Q. And Clerk Okstein didn't say, no, you can't go
17 off the record, did he?

18 A. No.

19 Q. Then there was this 52 seconds off the record;
20 right?

21 A. Yes.

22 Q. And the only firm memory you have is
23 David Jellinek asking to go speak with his
24 client downstairs?

25 A. In terms of like a statement, yes.

1 Q. Okay. Now, you've been dragged into this and
2 asked questions on a number of occasions; is
3 that right?

4 A. It is.

5 Q. All right. Now, the first time you were
6 interviewed by somebody from the U.S. Attorney's
7 office; is that right?

8 A. Yes.

9 Q. And if I suggested to you that was in October of
10 2018, does that sound about right?

11 A. Yes. That could be right.

12 Q. And that was a phone call?

13 A. I don't remember, but probably.

14 Q. Okay. And at that point did you know that
15 David Jellinek was talking to the U.S.
16 attorney's office?

17 A. I did not.

18 Q. Did you know that he -- Well, he hadn't yet.
19 You didn't know anything about his interactions;
20 is that right?

21 A. I did not.

22 Q. Did you know anything about Clerk Okstein's
23 interactions with the U.S. attorney's office?

24 A. I did not.

25 Q. And do you recall telling the U.S. attorney in

1 October of 2018 that you remembered the
2 defendant's attorney asking at side bar to speak
3 to his client in the lockup and thinking that it
4 was odd?

5 A. Yeah, that sounds, that sounds accurate.

6 Q. Do you remember at that point saying anything
7 about a plan or anything like that?

8 A. I don't recall.

9 Q. Okay. And then you had another interview with
10 the U.S. attorney's office; is that right?

11 A. At some point, yes.

12 Q. And this was January 9th of 2019. Does that
13 sound about right?

14 A. Yes. Yes, it does.

15 Q. And you went there?

16 A. I did.

17 Q. And at this point you had counsel representing
18 you?

19 A. I did.

20 Q. All right. And you were asked again some
21 questions about the side bar?

22 A. Yes.

23 Q. And you said at this point that you found the
24 side bar discussion weird or sketchy. Does that
25 sound like something you would say?

1 A. Yeah, I guess so, yeah.

2 Q. Okay. And that Jellinek and Joseph discussed
3 options to avoid defendant being turned over to
4 ICE?

5 A. Yes.

6 Q. And was that the bail and the detainer and the
7 holding him overnight?

8 A. Right.

9 Q. Is that what you meant by that?

10 A. I believe so, yes.

11 Q. You weren't suggesting that you heard
12 David Jellinek say, well, why don't we avoid ICE
13 by taking him out the back door?

14 A. No.

15 Q. And the next day you testified to the grand
16 jury; is that right?

17 A. Yes.

18 Q. All right. And is it fair to say that your
19 memory of that side bar was probably better in
20 January of 2019 than it is in June of 2025?

21 A. Yes.

22 Q. All right. And did you tell the grand jury at
23 that point, so I don't have a memory of what was
24 on and off the record, but having heard the
25 recording now, what else was discussed at side

1 bar was Attorney Jellinek's request to have
2 Mr. Medina Perez brought back downstairs to
3 lockup, there was also a short discussion and,
4 again, I remember zero direct quotes, but there
5 was the continued discussion between
6 Judge Joseph and Attorney Jellinek of sort of
7 what can we do, and I just have a memory again,
8 I can't remember any direct words of
9 Attorney Jellinek, but saying something to the
10 effect of, is he all set, I have a plan, I don't
11 remember him saying I have a plan, but it was
12 the gist and it was that -- that is what I got
13 from their exchange was, you know, what should
14 we do, and he is like I've got it under control,
15 that sort of thing. Again, I don't remember any
16 words, but that was the impression that I was
17 getting at side bar, and after that is when he
18 asked still at side bar if his client could be
19 brought back downstairs to speak with him.

20 A. Yes.

21 Q. Does that sound like the most accurate you're
22 going to do?

23 A. It's a lot of words. But yes, that is what I
24 said.

25 Q. And certainly, nothing about any plan or I've

1 got it, meaning I'm going to get him out the
2 back door.

3 A. Right.

4 Q. Now, in terms of going back down to speak to his
5 client -- Have you ever been a defense lawyer?

6 A. No.

7 Q. Okay.

8 A. Actually, one case, for about a week.

9 Q. Did you have trouble finding a place in the
10 courthouse to have a private talk with your
11 client?

12 A. No. Because I had been an ADA in that
13 courthouse.

14 Q. Okay. Well, for the rank and file, there aren't
15 a lot of private places to speak to a defendant,
16 are there?

17 A. It depends on the courthouse, but that's
18 fair.

19 Q. In Newton. I'm sorry.

20 A. There's actually conference rooms out in the
21 hallway.

22 Q. There's a conference room?

23 A. Yeah. I think there might be one.

24 Q. But, for example, if you're in a courtroom, and
25 you need an interpreter, there's not really a

1 good place to huddle and have a private
2 conversation.

3 A. In the courtroom, no. It's small.

4 Q. Okay. And everybody knew that ICE was in the
5 front hall, --

6 A. Yes.

7 Q. -- is that right, --

8 A. Yes.

9 Q. -- waiting for Mr. Medina Perez?

10 A. Yes, I believe so.

11 Q. And would it be a legitimate concern that, if he
12 walked out the doorway with his lawyer, they
13 might not be quite as respectful of the
14 attorney/client privilege and they might not
15 give him a chance to talk to his counsel?

16 A. That's fair.

17 Q. And so there would be a legitimate reason to
18 think, well, we don't want to walk out in the
19 hall because he may get grabbed before I get a
20 chance to talk to him.

21 A. Maybe.

22 Q. And that leaves the lockup, doesn't it?

23 A. It does, yeah.

24 Q. There wouldn't be really any other place he
25 could go.

1 A. Well, there was no one else in the courtroom
2 but...

3 Q. Well, there was one more matter, wasn't there?

4 A. Oh. I don't remember. I don't remember
5 there being anything else, but there could have
6 been.

7 Q. If you look at the transcript --

8 A. If the transcript says there was, then there
9 may have been another one.

10 Q. All right. And his friends were there? Do you
11 remember --

12 A. I believe there was one person there.

13 Q. Okay. And he had some property in the lockup?

14 A. Yes.

15 Q. All right. And so sometimes defendants would go
16 down and get their own property?

17 A. Not in my memory but... That's just my
18 memory.

19 Q. Not in a month there?

20 A. Yeah. Exactly.

21 Q. Okay. Now, in the month that you were there or
22 in the time that you were there, had you had ICE
23 take into custody any other defendants?

24 A. I don't have a memory of, at Newton, that
25 happening prior to this case.

1 Q. Okay. So fair to say you didn't have any
2 experience with how or where ICE did that in
3 Newton?

4 A. Correct.

5 Q. Were you, as an assistant district attorney,
6 familiar with something called a Lunn policy?

7 A. I am not.

8 Q. As a clerk magistrate, are you familiar with a
9 policy about how defendants should be taken into
10 ICE custody?

11 A. We just got a new one. I don't know what
12 it's called. But I'm familiar with it.

13 Q. Okay. And did you know that there was a prior
14 version?

15 A. I'm sure that there was.

16 Q. Take a look at page -- I'm sorry -- Exhibit B in
17 the book in front of you.

18 A. Okay.

19 Q. And this is a transmittal memo. Do you -- As a
20 clerk magistrate now, are you on the receiving
21 end of these sometimes?

22 A. Yes.

23 Q. All right. And it says chief judges, clerks,
24 registers, chief probation officers, and all
25 staff?

1 A. Yes.

2 Q. From the chief justice of the Trial Court and
3 court administrator?

4 A. Yes.

5 Q. And it says policy and procedures regarding
6 interactions with the Department of Homeland
7 Security?

8 A. Yes.

9 Q. Is that similar to the one that you said you
10 just got a new one?

11 A. Yes.

12 Q. All right. And if we turn to App 7, which is
13 the third page.

14 A. Okay.

15 Q. Do you see a Section 3, DHS? That's
16 Department of Homeland Security?

17 A. Yes.

18 Q. Officials taking custody of individuals at a
19 courthouse?

20 A. Yes.

21 Q. And Section A is individuals over whom the
22 Trial Court has custody?

23 A. Yes.

24 Q. All right. And it says, consistent with
25 Chapter 2, Sections --

1 A. Uh-huh.

2 Q -- 14 and 15 of the court officer manual --

3 A. Yes.

4 Q. I assume that's not something you had; --

5 A. I did not.

6 Q. -- is that right? Okay. When an individual who
7 was brought into court in custody and subject to
8 release after his or her court proceeding,
9 that's Mr. Medina Perez; right?

10 A. Yes.

11 Q. All right. Court security personnel shall
12 process that individual out of lockup in the
13 normal course regardless of whether the
14 individual is subject to a civil immigration
15 detainer or warrant; right?

16 A. Yes.

17 Q. Okay. And then it says, if, during the process,
18 processing of an individual subject to release
19 out of the courthouse, -- Again, that's
20 Mr. Medina Perez?

21 A. Yes.

22 Q. -- a DHS official is present in the courthouse
23 and seeks admission to the courthouse's holding
24 cell area in order to take custody of the
25 individual. Now, the holding cell area, is that

1 what we've been calling the lockup?

2 A. Yes.

3 Q. Okay. Court officers shall permit DHS officials
4 to enter the holding cell area; right?

5 A. Yes.

6 Q. And what that means is, if the DHS officials, if
7 ICE wants to go to the lockup, they may.

8 A. Yes.

9 Q. And that's exactly what Judge Joseph said.

10 A. I don't remember. I don't recall what --

11 Q. Do you recall special counsel reading you, when
12 the clerk said ICE is here, they want to visit
13 the lockup, and she said that's fine, but they
14 can't come in here?

15 A. Oh, yes.

16 Q. All right. And so she was complying with that
17 policy, wasn't she?

18 A. Yes, yes.

19 Q. And if we keep going there, it says they can
20 enter once trial court personnel had finished
21 processing that individual out of the court
22 security personnel custody.

23 A. Yes.

24 Q. If a security department supervisor determines
25 that the DHS official would otherwise take

1 custody of the individual inside or immediately
2 outside of the courthouse. And again, that's
3 Mr. Medina Perez; right?

4 A. Yes.

5 Q. All right. And then the last paragraph there
6 says, to the extent possible, court security
7 personnel should require that DHS officials
8 transport any individuals taken into custody
9 through the prison or transport entrance and
10 avoid taking the individual through the public
11 areas of the courthouse. Right?

12 A. Yes.

13 Q. And the prisoner transport entrance is this
14 sallyport that we've talked about?

15 A. Yes.

16 Q. And you knew that was there. There was a place
17 where vans would pull up and they take the
18 people in custody directly from the van 5 feet
19 to the door?

20 A. Yes.

21 Q. And that would be called the sallyport? Does
22 that sound --

23 A. Yes.

24 Q. And what this policy is saying is, if ICE is
25 taking somebody, they should go out through that

1 door; right?

2 A. Yeah, that is what this says.

3 Q. And that you understand is a security thing,
4 it's not great to have ICE try to take custody
5 of people in public areas?

6 A. Right.

7 Q. Because you just don't know what's going to
8 happen?

9 A. Sure.

10 Q. Okay. And so in terms of Mr. Medina Perez going
11 down to the lockup, that's exactly where, per
12 the policy, he was supposed to go, isn't it?

13 A. I think if he was still in custody, yes.

14 Q. Okay. They were supposed to process him for
15 release down there?

16 A. Well, I'm just reading the section,
17 individual whom the Trial Court has custody.

18 Q. Right. And it says, people who are brought into
19 court in custody and is subject to release.

20 A. Okay.

21 Q. Right. That's him; right?

22 A. Yes, yes.

23 Q. Okay. And ICE should have been permitted to go
24 down there, should have been required to go down
25 there and take him; right?

1 JUDGE FABRICANT: I think this
2 calls for an interpretation of the policy.

3 A. I'm not -- I'm trying to read it quickly.

4 Q. All right. The last paragraph says, to the
5 extent possible, court security personnel should
6 require that DHS officials transport any
7 officials taken into custody through the
8 prisoner transport entrance?

9 A. That is what this says.

10 Q. All right. And so if ICE had been permitted to
11 go down to the lockup, as they had asked, all of
12 that would have happened; right?

13 A. I would assume so.

14 Q. And it wasn't Judge Joseph that prevented them
15 from going to the lockup, was it?

16 A. From going to lockup.

17 Q. She said that's fine; right?

18 A. If that's what the transcript says. I don't
19 remember this part at all; so...

20 Q. Okay. All right. Now, the rest of the
21 appearance for Mr. Medina Perez was pretty
22 routine; right? He was arraigned and he was
23 given drug warnings?

24 A. Yes.

25 Q. And then he and David Jellinek and the

1 interpreter went downstairs to the lockup?

2 A. Yes.

3 Q. And you gathered up your stuff and at some point
4 you went out to the lobby?

5 A. Yes.

6 Q. And you saw the ICE agent there.

7 A. Yes.

8 Q. And you told him he's coming out this door.

9 A. Yes.

10 Q. And you stood there and you waited with him.

11 A. Yes.

12 Q. And at some point you thought, gee, this is kind
13 of taking a long time; --

14 A. Right.

15 Q. -- right? And at that point you asked somebody
16 to go check.

17 A. Yeah. I don't remember if I asked him to
18 check or I may have -- I just remember it was
19 Michael Owens, the advocate, and I was just kind
20 of asking any other doors.

21 Q. When you say "advocate," you mean the victim
22 witness advocate?

23 A. Yes.

24 Q. Is that somebody who works with your office?

25 A. Correct.

1 Q. All right. Then you're standing there and
2 David Jellinek comes out with his property bag?

3 A. Yes.

4 Q. And everything kind of gets disrupted. The ICE
5 agents weren't happy?

6 A. Oh. Yes.

7 Q. Somebody goes running around to the back. Do
8 you recall that?

9 A. That sounds like probably what happened. I
10 don't specifically recall.

11 Q. And at some point, after you figured out what
12 had happened, you called your supervisor; --

13 A. Yes.

14 Q. -- is that right? And the reason you called
15 your supervisor was because of this escape;
16 right?

17 A. Yes.

18 Q. Okay. And you were actually asked a question
19 about that call at the grand jury.

20 A. Yes.

21 Q. Do you recall that?

22 A. Yes.

23 Q. And did you say -- You were asked, a member of
24 the grand jury wants to inquire as to why it is
25 at that time that you -- Where am I? With the

1 context there. A member of the grand jury
2 asked, getting back to the side bar conference
3 when the recording was turned off and you had a
4 feeling of discomfort, a member of the grand
5 jury wanted to inquire as to why it is at that
6 time that you did not go and immediately contact
7 the supervisor about the recording shut off and
8 the discussion about this way to get
9 Medina Perez out while avoiding ICE. And you
10 said probably because I didn't think he was
11 going to escape, I thought he was going to get
12 released and go with ICE and then it would be
13 just sort of another day, and that was weird
14 but, well, you know, it happened. So once it
15 didn't happen, I immediately called my boss.

16 A. Yes.

17 Q. Is that true?

18 A. Yes.

19 Q. All right. And so up until the time you learned
20 he had gone out the back door, it was just, you
21 know, kind of an odd day; right?

22 A. Yeah. It was something I didn't feel I had
23 to immediately report.

24 Q. All right. And once he went out the back door,
25 that changed everything, didn't it?

1 A. Yes.

2 MS. MULVEY: May I have one
3 moment, Chair?

4 (PAUSE)

5 MS. MULVEY: I have nothing
6 else. Thank you.

7 JUDGE FABRICANT: Very briefly.
8 Very briefly, Ms. McDermott.

9 REDIRECT EXAMINATION

10 BY JUDGE FABRICANT:

11 Q. You said, in response to one of Ms. Mulvey's
12 questions, that an ICE detainer was not part of
13 bail conditions. What -- Take your mind back to
14 the spring of 2018. What were legitimate
15 considerations for an ICE consideration,
16 condition, what were legitimate considerations
17 for setting bail on the law as it stood at that
18 time in Massachusetts?

19 A. So, I mean, what I would consider in asking
20 for bail is default history, sentence that they
21 might be facing, motivation not to return to
22 court, whether they had other open cases,
23 whether they had a strong defense. There's a
24 number of factors.

25 Q. So had there been a decision of the SJC a few

1 months earlier regarding the issue of what was
2 proper to consider in setting bail?

3 A. Yes. Commonwealth versus Brangan.

4 Q. Can you tell us the essence in your view what
5 the teaching of that case was?

6 A. It was to -- Bail is meant to ensure the
7 defendant return to court. For instance, DA can
8 argue dangerousness associated with bail. One
9 way it affected my job.

10 Q. And just to make sure we've got it here on the
11 record. That's Commonwealth versus Brangan,
12 B-r-a-n-g-a-n?

13 A. B-r-a-n-g-a-n, yes.

14 Q. And the essence of the holding was the
15 legitimate purpose of bail is to ensure the
16 defendant's return to court.

17 A. Correct.

18 Q. And not other things.

19 A. Yes.

20 Q. Now, if somebody has an ICE detainer, and ICE
21 takes custody of the person, person -- ICE might
22 bring the person back to court or might not.

23 A. Sure.

24 Q. Assuming it's the right person for ICE to take,
25 ICE might bring the person back and might not.

1 And if it's not the right person for ICE to
2 take, ICE might bring the person back and might
3 not; correct?

4 A. Correct.

5 Q. So on that issue of how ICE relates to whether
6 the person is going to appear, it doesn't matter
7 whether it's the right person or it isn't the
8 right person, does it?

9 A. I guess not. What I'm -- It's not part of my
10 calculus in requesting bail.

11 Q. So you as an assistant district attorney would
12 not take into consideration whether there was or
13 wasn't an ICE detainer, whether the person was
14 or wasn't the right person for an ICE detainer.
15 That wouldn't be part of your consideration as
16 to whether you requested bail or not.

17 A. Correct.

18 Q. And in your view, again, back in the spring of
19 2018, was that a legitimate part of
20 consideration with respect to bail?

21 A. I mean, the view on ICE and detainers in the
22 courtroom has changed so many times. I mean,
23 our office has always said it's not part of the
24 district attorney's job to consider that, and we
25 know what the judge's policies are, I don't

1 know. I just know that, you know, for the
2 criminal case is what I consider when I'm asking
3 for bail and other factors.

4 Q. The criminal cases that you prosecuted, criminal
5 charges that you were prosecuting, were the
6 focus of your attention; correct?

7 A. Correct.

8 JUDGE FABRICANT: Okay. Thank
9 you.

10 I have nothing further.

11 MS. MULVEY: I have nothing
12 else. Thank you.

13 JUDGE FABRICANT: May this
14 witness be excused?

15 HEARING OFFICER. Yes. Yes.
16 Thank you very much.

17 HEARING OFFICER: Given the
18 hour, does counsel agree this is a good time to
19 prepare for lunch?

20 JUDGE FABRICANT: Yes.

21 HEARING OFFICER: So we'll
22 resume at 2:00. Thank you.

23 (Luncheon recess taken at
24 1:03 p.m.

25 Proceedings resumed at

1 2:01 p.m.)

2 HEARING OFFICER: Good

3 afternoon.

4 I'll defer to you,
5 Special Counsel, to call your next witness.

6 JUDGE FABRICANT: Thank you.

7 And the Commission calls
8 Lawrence Okstein.

9 (PAUSE)

10 JUDGE FABRICANT: While he's
11 coming to the witness stand, Mr. McInerney,
12 counsel have now agreed that the whole set of
13 photographs that's in Appendix U should be
14 received in evidence with your permission.

15 HEARING OFFICER: Absolutely.
16 Got it, Judge.

17 JUDGE FABRICANT: Thank you.
18 And there's another
19 photograph --

20 MR. HOOPES: Yes. And I will
21 bring that in the morning to add. So that will
22 be the collection of photographs.

23 HEARING OFFICER: That's fine.

24 JUDGE FABRICANT: Thank you.

25 MR. HOOPES: And they all come

1 from one set of photos. This one was missing.

2 HEARING OFFICER: Understood.

3 Thank you very much.

4 Would you please raise your

5 right hand.

6 LAWRENCE JOSEPH OKSTEIN, SWORN

7 HEARING OFFICER: Thank you.

8 Please have a seat.

9 DIRECT EXAMINATION

10 BY JUDGE FABRICANT:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Tell us your name, please.

14 A. Lawrence Joseph Okstein.

15 Q. And what is your occupation?

16 A. I am the first assistant clerk magistrate at
17 the Newton District Court.

18 Q. And going back through your career, can you give
19 us a brief overview of your professional
20 history?

21 A. Sure. From 1993 to 1995 I was an assistant
22 district attorney in Norfolk County,
23 William Delahunt, from 1995 to 2014 I was in
24 private practice, general law practice, and then
25 from December 29th of 2014 to present I've been

1 in the Newton District Court, first as an
2 assistant clerk magistrate and now as the first
3 assistant clerk magistrate.

4 Q. And what's your role as first --

5 A. So I conduct criminal show cause hearings, so
6 when the police are seeking criminal complaints
7 against individuals, I hold hearings to
8 determine whether there is probable cause to
9 issue a criminal complaint, I conduct small
10 claims trials, I handle CMVI or civil motor
11 vehicle infractions hearings, I process appeals
12 to the various courts, decisions of the court, I
13 also issue search warrants upon finding probable
14 cause, arrest warrants upon finding probable
15 cause, and that's generally -- and I sit in the
16 session to assist the judge when the session
17 clerk is otherwise unavailable.

18 Q. And you said that before you became first
19 assistant clerk, you were an assistant clerk.
20 When you were assistant clerk, were you more
21 frequently sitting in the session?

22 A. I, again, we have a session clerk. So we are
23 a small court. If the session clerk is
24 unavailable due to sickness, vacation, or any
25 other reason, I would sit in the session to

1 assist.

2 Q. Okay. I'm going to ask you to give us a general
3 description of the physical layout of the
4 building and the courtroom. We're going to put
5 up some photographs to assist in this. So let's
6 start with Photograph 509, Page 509, Appendix U.

7 And Mr. Okstein, in front of
8 you on the witness stand is a binder that has a
9 set of exhibits that have been received in
10 evidence. The photographs are at Tab U. So you
11 can look at them there or you can look at them
12 on the screen, whatever is easier. And there
13 are page numbers in the upper right-hand corner,
14 and those are the page numbers that I'm going to
15 refer to.

16 So what do you see here in
17 Photograph Number Page 509?

18 A. So -- Page 509. Are they marked page
19 numbers?

20 Q. In the upper right-hand corner, there's a red
21 number. Actually, in the book --

22 A. I see the numbers. Okay.

23 So on Page 509 I see what appears to be the
24 first session of the Newton District Court.

25 Q. And what are we looking at from the perspective

1 of this photograph?

2 A. So you're looking at a shot of where the
3 judge sits, which is the far back, with the
4 seat, what appears to be the false bookcase, if
5 you will, in the back with two flags, and then
6 in front of where the judge sits is where the
7 session clerk or whoever's covering for the
8 session clerk would sit, and then the litigants
9 would be at the table that you see where -- with
10 the two chairs, and then if there was a custody,
11 the person in custody would be where you see the
12 glass enclosure up close.

13 Q. Is that referred to as the dock?

14 A. The dock, yes.

15 Q. And let's pull up Photograph Page 506. And what
16 do you see here?

17 A. So Page 506 is a picture, a photograph of the
18 entranceway to the clerk magistrate's office, so
19 the first floor of the Newton District Court.

20 Q. If you're coming out -- Looking at this
21 photograph, if you're walking out the door of
22 the courtroom, the public door of the courtroom,
23 where are you in this photograph?

24 A. So you can just make out the bench that's on
25 the left-hand side. The door to the first

1 session is just past that bench, on the
2 right-hand side.

3 Q. And so you'd be coming out and turning to your
4 left to go into the clerk magistrate's office if
5 you're coming out of the courtroom?

6 A. Yes. Yes. If you walk out of the first
7 session courtroom, you walk out and you turn to
8 your left, that's what you would see. This is
9 the view.

10 Q. If you're in the clerk's office, in your office,
11 and you're going into the courtroom, is there
12 another way to get there?

13 A. There is. So if you walk through the clerk's
14 office, there is a back entranceway into the
15 courtroom.

16 Q. And does that lead to a secure door on the side
17 of the courtroom?

18 A. Yes. So the only people that are allowed
19 back there are court personnel, court officers,
20 clerks, judges. And so, yes, that was the
21 secure area back there.

22 Q. And do you need a security pass to open that
23 door?

24 A. Yes, you need a pass and you put it up to the
25 little reader.

1 HEARING OFFICER: Could I ask
2 that you speak a little closer to the
3 microphone, sir.

4 THE WITNESS: Sorry. Yes.

5 HEARING OFFICER: Thank you.

6 JUDGE FABRICANT: It is partly
7 probably because I'm having him turn to the
8 photograph.

9 Q. Let's bring up Photograph 512, Page 512. So
10 what do you see here?

11 A. So on Page 512 you have a photograph of the
12 exitway of the first session. So if you were
13 leaving the first session, you would walk
14 through those double doors and into the main
15 corridor where you just saw the clerk's office
16 to your left.

17 Q. And what are those benches that you see back
18 there behind the bar?

19 A. So the benches are for the public, it's where
20 the public would sit, or if there are observers
21 of the court, if you will.

22 Q. And let's just bring up Photograph 513. What's
23 that?

24 A. So Page 513 is a photograph of the dock, if
25 you will. So that's where people in custody

1 would sit, where there's a little bench there,
2 and stand before the judge, they approach the
3 glass that faces the bench so the judge could
4 hear them.

5 Q. And let's bring up 512. Is this the same one we
6 just looked at?

7 Do part of your responsibilities, if you're
8 serving as the clerk in the courtroom, do part
9 of your responsibilities include managing the
10 recording system?

11 A. Yes.

12 Q. And back in spring of 2018 -- And now everything
13 else I'm going to ask you is going to relate to
14 April of 2018, which I realize is seven years
15 ago, but I'm going to ask you to put your mind
16 back to that time frame.

17 A. Sure.

18 Q. In that time frame, what kind of recording
19 system did you have?

20 A. It was called JAVS. I'm not sure what JAVS
21 stood for. It's J-A-V-S. It was -- That was
22 the recording system that we used.

23 Q. Has that since been replaced by something else?

24 A. It has. It has.

25 Q. And the new system, what's that called, For?

1 A. I believe it's called FTR, For the Record.

2 Q. So focusing on JAVS. If you needed to get
3 access to a recording after a proceeding, what
4 did you have to do?

5 A. So what I personally did was ask someone in
6 our office who was well versed in the technology
7 side to make a copy of a proceeding, they would
8 come into the courtroom, they could pull up the
9 proceeding through JAVS, make a recording on a
10 CD or disc, if you will.

11 Q. So you'd get it in the form of a CD?

12 A. Yes.

13 Q. Nowadays, with the FTR system, what do you do?

14 A. Now it's all online. You request a copy
15 online, pay for it online.

16 Q. And for you, if you want to listen to
17 something --

18 A. I go on For the Record, I have a pass, and I
19 can listen to the proceeding that was detected.

20 Q. So turning to April 2nd of 2018. Before that
21 day, had you had experience with ICE detainers?

22 A. I had seen them before, yes, so I'd seen both
23 detainers and warrants.

24 Q. And how often?

25 A. If felt like they were coming fairly

1 regularly around that time frame. So I'd see
2 them a few times a week.

3 Q. And if you were serving as the clerk for the
4 session, would you get the detainer?

5 A. Yes. They would make their way to me.
6 Typically, I believe the court officer probably
7 got them from the police. I'm not sure how it
8 came to be in the court's possession. But
9 someone would give it to me, I would then
10 distribute a copy if I had, and I would let the
11 judge know that we have one.

12 Q. And up to that day, had you had experience with
13 ICE taking custody of someone from
14 Newton District Court?

15 A. I had seen individuals taken into custody
16 outside of the courthouse by ICE.

17 Q. Outside the courthouse. Outside what part?

18 A. The front. Outside the front door, on the
19 street.

20 Q. And prior to that day, and it was 2018, had you
21 had -- had you seen ICE going to the lockup in
22 the Newton District Court?

23 A. I personally had not seen that.

24 Q. Were you aware of that happening?

25 A. I was not aware if it happened or not. I --

1 Typically, I wasn't in the courtroom. But I had
2 never heard of it happening. I've never seen it
3 happen.

4 Q. On that day, were you working as a clerk in the
5 courtroom with Judge Joseph?

6 A. I was. The session clerk was unavailable, so
7 I was covering.

8 Q. During the course of the day, were there times
9 when things were active in the courtroom and
10 then breaks?

11 A. Yes. We would call the list to start the
12 day, find out who is present, who wasn't
13 present, judge would get a handle on how much
14 business there was and how much time she or he
15 needed to allot to the cases, so -- and then we
16 would take a break so that the attorneys could
17 talk to their clients or the DA's office or --
18 judge would come back out when the session clerk
19 or in this case myself would tell the judge that
20 we had business for her, to side bar.

21 Q. And were you in and out of the courtroom --

22 A. I was.

23 Q. -- during times?

24 A. I was.

25 Q. During the course of that morning, did you see

1 an ICE officer in the courtroom?

2 A. I did. I did see an ICE officer in the
3 courtroom.

4 Q. And how did you become aware that that person
5 was an ICE officer?

6 A. So I think I first saw the ICE officer in the
7 hallway. I can't remember precisely how I knew
8 he was an ICE officer. Typically, they had a
9 tag on or they identified themselves, introduced
10 themselves. But I don't recall on that day how
11 I knew, but I knew that the gentleman, one of
12 the gentleman sitting in the bench that I
13 pointed out in the courtroom was from ICE.

14 Q. Who was the first justice at Newton District
15 Court?

16 A. Judge Mary Heffernan.

17 Q. And was she the judge who would be sitting there
18 most often?

19 A. Yes.

20 Q. Did she have a practice regarding ICE agents in
21 the courtroom?

22 A. So it was her practice, my understanding of
23 the practice, was that, if the ICE officer was
24 present in the court indicating that he or she
25 wanted to take custody of a litigant, that they

1 would -- she would ask that they wait outside
2 the courtroom so that they're not in the
3 courtroom, and that if they're going to take
4 custody of the person, that they do it outside
5 the courtroom, so it's not to interfere with the
6 business of the court.

7 Q. And would she speak to the ICE officer --

8 A. No.

9 Q. -- or would she have you do it?

10 A. No. She would let the session clerk know, or
11 if I was in the session, she would tell me to
12 let the ICE officer know that that was the
13 preference of the court.

14 Q. And was that preference, that practice, ever put
15 in writing anywhere?

16 A. No. Each judge that came in had their own
17 way of doing things, so to speak. So it wasn't
18 something that other judges had to follow, but
19 some judges did follow it and some judges had
20 their own idea of how things should go, and we
21 would follow that judge and whatever that judge
22 wanted.

23 Q. On April 2nd, 2018, --

24 A. Yes.

25 Q. -- you're serving as the session clerk,

1 Judge Joseph is sitting in the first session
2 courtroom. Was Judge Heffernan in the building
3 that afternoon?

4 A. No, Judge Heffernan was not present on
5 April 2nd, 2018.

6 Q. Did you talk to Judge Joseph about ICE being
7 there?

8 A. I did. We had a conversation about the ICE
9 officer being present in the courtroom.

10 Q. And did you have a conversation with her about
11 Judge Heffernan's practice?

12 A. I did. I did.

13 Q. Tell us that conversation as much as you can.

14 A. So I spoke to Judge Joseph, and I let her
15 know that there was an ICE officer in the
16 courtroom, and we talked a little bit about it.
17 Judge Joseph -- I asked her how she wanted to
18 handle the situation, and she in turn asked me
19 what Judge Heffernan's custom was, that she
20 wanted to follow whatever Judge Heffernan did
21 typically, and I advised her what
22 Judge Heffernan did typically, and she said
23 that's what we want to do here today.

24 Q. Do you know when in the course of the day that
25 conversation occurred?

1 A. I think it was probably a little past
2 10:00 a.m., maybe, or -- around that time, but
3 I'm not positive of the exact time.

4 Q. Did you have one conversation with her or more
5 than one conversation about ICE and how to
6 handle ICE being there?

7 A. I believe we had just that one conversation
8 where I just wanted -- I knew that, you know,
9 she was fairly new to the bench, and I wanted to
10 inform her of the ICE officer, and I think she
11 was trying to make a reasonable decision, so I
12 think following the first justice was a way
13 that...

14 Q. And did you at some point communicate with the
15 ICE officer what you understood to be the
16 preference of the court?

17 A. I did. After I left Judge Joseph, I walked
18 to the ICE officer and let him know the
19 preference of the court was that he, if he
20 intended to take custody of the individual he
21 was there for, that it was preferred to do so
22 outside of the courtroom.

23 Q. And did you give him direction or make a request
24 to him regarding where he would physically be?

25 A. He asked should he wait in the hallway. I

1 said that's fine, you can wait in the hallway.

2 I think he asked me about which door the person
3 come out of, and I just pointed to the front of
4 the building, which is right in the hallway.

5 And he said, okay, I'll wait out in the hallway.

6 Q. At some point later in the day did you have
7 further conversation with the ICE officer?

8 A. Yes. I had -- So toward the very end of the
9 day, so late, later in the afternoon, almost
10 toward the ending time of court, he asked me if
11 the defendant was going to be released and go to
12 lockup or downstairs in the basement to where
13 the cells are to get, to get the person he was
14 interested in taking custody of, and he asked me
15 to ask the judge if he could do that.

16 Q. Did you tell you would ask the judge?

17 A. I did tell him I would ask the judge.

18 Q. We're going to come back to that.

19 At this point what I want to do is play the
20 recording of the afternoon call of the
21 Medina Perez case.

22 A. Okay.

23 Q. So we're going to play that recording.

24 What you have in front of you, in the binder in
25 front of you is a transcript, which is at

1 Appendix G and starts at Page 40 in Appendix G.
2 So you can turn to that. We'll also have the
3 transcript on screen. So you can refer to the
4 screen or binder in front of you.

5 (RECORDING PLAYING)

6 Q. So in this first clip, counsel says he wants to
7 go to side bar and yet to wait for his client.
8 Is that your understanding of what happened?

9 A. That's my understanding, yes.

10 Q. Is that your memory of what happened?

11 A. That is my memory.

12 Q. Do they at that point go to side bar?

13 A. They did.

14 Q. The two attorneys and the judge?

15 A. And I believe someone was present from
16 probation as well.

17 Q. Okay. And would that often happen that --

18 A. Yeah. Some of the people, they often changed
19 out who was there during the lobby -- during
20 this -- little conferences. So one person could
21 be there and then leave and another officer --
22 But usually probation is somewhere in that mix.

23 Q. When they were at side bar, what were you doing?

24 A. I was marking cases from cases that we had
25 already done, so I was filling out the docket

1 sheets, next dates, what had happened in the
2 court proceeding, attorneys were asking me for
3 dates or, you know, whispering to me about
4 something, so I was really taking care of what I
5 needed to do from a clerk's perspective.

6 Q. Were you paying attention to the conversation at
7 side bar?

8 A. No.

9 Q. All right. We're going to play the next clip.

10 (RECORDING PLAYING)

11 Q. So that conversation that appears in the
12 transcript and we heard on the recording,
13 although it's a little difficult to hear, until
14 we get to the point where the judge says, are we
15 on the record, did you hear any of that
16 conversation?

17 A. No.

18 Q. And then when she said, are we on the record,
19 the first time she said that, did you hear her
20 say it?

21 A. I think I wasn't paying attention, so I asked
22 her to repeat herself, because I just wasn't
23 paying attention.

24 Q. And then the transcript indicates you said,
25 what's that. Is that your memory of --

1 A. Yes. That was my way of asking what
2 happened, what she wanted me -- because I just
3 wasn't paying attention.

4 Q. And then, according to the transcripts, she
5 says, are we off the record. You say, no, we're
6 on the record. And then Mr. Jellinek says, can
7 we go off the record for a minute.

8 A. Yes.

9 Q. Had you had previous experiences in
10 District Court with going off the record?

11 A. Do you mean Newton District Court
12 specifically or just in general?

13 Q. Well, let's start with Newton.

14 A. So I think that there were other judges that
15 would go off the record to greet an old friend
16 or to talk about something that was personal.
17 So that happened on occasion. And from my
18 experience in Newton, it didn't happen a
19 tremendous amount, but it did happen. Different
20 judges coming into the court.

21 Q. Did you have experience in Newton with judges
22 having conferences off the record about the
23 substance of a case or about matters in a case?

24 A. No. Well, typically, it was to discuss
25 something a little -- something personal,

1 personal to the judge and whoever they were
2 talking to.

3 Q. Meaning personal to the lawyers or --

4 A. Yeah, personal to the lawyers. So if they
5 had an old college roommate or a friend or
6 somebody they hadn't seen in many, many years,
7 and they were appearing in Newton and they
8 wanted to say hello or asked about their family,
9 they didn't want that to all be part of the tape
10 recording record, so that could you shut that
11 off for a second, they say hello, and put it
12 back, they ask that it be back on.

13 Q. Going back earlier in your career to when you
14 were a new lawyer in your earlier years of your
15 law practice.

16 A. Uh-huh.

17 Q. Had you had experience with conversations with
18 judges off the record?

19 A. Yes. As a practitioner, I definitely had
20 experiences with judges more often, because I
21 practiced with my father who had been a
22 practicing attorney for 50 years, so a lot of
23 judges knew him or knew my mother and they want
24 to say hello or asked how they were or something
25 like that. So oftentimes it was much more

1 common. It's not common now. But it was common
2 that a judge would say, hey, let me ask you a
3 couple of questions and it would all be not
4 taped.

5 Q. And back in those early years of your career,
6 had you had experience with substantive
7 conversations off the record?

8 A. Only in lobby conferences. So going back to
9 the lobby conferences, which was earlier in my
10 career, they were not tape recorded. It would
11 be in a lobby of a judge, the judge, the
12 prosecutor, usually a criminal case, the defense
13 attorney. And oftentimes, a judge would have
14 somebody else just sit in the room to make sure
15 that there was somebody else in the room other
16 than defense attorney and prosecutor. But those
17 weren't -- And then at some point they started
18 to recommend that those conferences be taped, so
19 judges would have tape recorders and tape the
20 lobby conference.

21 Q. And in the 2018 time frame, April 2nd of 2018
22 frame in particular, were the judges doing lobby
23 conferences off the record that you knew of?

24 A. No, not that I'm aware of.

25 Q. And were judges doing other kinds of conferences

1 other than what you've described off the record?

2 A. Not off the record. Sometimes they would
3 hold side bar -- lobby conferences but on the
4 record in the courtroom.

5 Q. On the record.

6 A. On the record. But they would conduct that.

7 Q. Were you aware of a rule about recording?

8 A. I wasn't at the time this all happened. I of
9 course now am aware.

10 Q. And when the judge asked you to go off the
11 record, what did you do?

12 A. I went off the record.

13 Q. And did you have any concern about that at that
14 point?

15 A. Not at that point, no.

16 Q. When you went off the record, when you turned
17 off the recording, and the judge and the lawyers
18 were talking, what were you doing?

19 A. I was just marking my cases and dealing with
20 the clerk -- clerical part of my job, of being
21 in the courtroom, marking paperwork and --

22 Q. Were you listening to their conversation?

23 A. No.

24 Q. Did you hear any of their conversation?

25 A. No.

1 Q. And then at some point did you go back on the
2 record?

3 A. I did.

4 Q. And let's play the back on the record part.

5 (RECORDING PLAYING)

6 Q. Mr. Okstein, if you look on Page 42 of the
7 transcript, and you go about a third of the
8 page, about a third of the way down the page,
9 Mr. Jellinek says, I would ask that he, I
10 believe he has some property downstairs, I'd
11 like to speak with him downstairs if I may. Was
12 that something that was usual in your experience
13 in the first session in the District Court?

14 A. Well, I wasn't in the first session all that
15 often. But I hadn't seen an interpreter go down
16 into custody for -- with the defendant like
17 that, but that doesn't mean it didn't happen. I
18 just, I hadn't seen it.

19 Q. It wasn't in your experience.

20 A. In my experience, I hadn't seen it.

21 Q. Okay. Now, at the bottom of the page where we
22 just stopped, and Judge Joseph says wait just a
23 second, let's go -- let's play a little more.

24 (RECORDING PLAYING)

25 Q. Mr. Okstein, you said to the judge, there is

1 representative from ICE here in the court to
2 visit the lockup.

3 A. Yes.

4 Q. What did you intend to be asking her or
5 conveying to her at that point?

6 A. So I was conveying the ICE officer's or
7 agent's request to visit the lockup to take the
8 individual he was interested in into custody.

9 Q. Was that the request you told us about a little
10 while ago?

11 A. Yes.

12 Q. And her response, that's fine, I'm not going to
13 allow them to come in here, but he's been
14 released on this, how did you understand that
15 response?

16 A. I understood that response to be following
17 the practice of the court, that officer was an
18 agent, wasn't coming into the courtroom, wasn't
19 coming into the courtroom to go down into the
20 lockup, but she was releasing the prisoner and
21 he was free to leave, and whatever happened
22 after that was between him and ICE.

23 Q. And did you have any understanding as to whether
24 ICE could go to the lockup another way?

25 A. I think at that time there was a policy that

1 indicated that ICE agents were permitted to go
2 to lockup. I had never seen them in Newton go
3 to the lockup. I had never seen that. But I
4 think under the policy that the court put out to
5 all the clerks and judges, I think that a judge
6 could allow it.

7 Q. And did you understand that Judge Joseph was
8 allowing it?

9 A. No. As I understood it, Judge Joseph was
10 saying the agent was not permitted to come into
11 the courtroom down the stairs through the
12 courtroom to lockup but that she was releasing
13 him and he was, the individual was free to
14 leave, and then she was just following the
15 practice of the court, that this gentleman would
16 leave and if the ICE agent wanted to take him
17 into custody he would.

18 Q. And the practice of the court, are you referring
19 to Judge Heffernan's practice?

20 A. Yes. Well, refer to Judge Heffernan's
21 practice, but more specifically, that's what I
22 believe that Judge Joseph was following.

23 Q. And what was the practice of the court as to how
24 a defendant would leave the courtroom when the
25 defendant was released from custody?

1 A. So my experience is that the defendant would
2 leave through the front door. So they get their
3 possessions, and the court officer would walk
4 with them up the stairs, and they literally
5 would walk right out the front door.

6 JUDGE FABRICANT: Let's
7 continue playing.

8 (RECORDING PLAYING)

9 Q. Now, when the judge says, Mr. Jellinek asked if
10 the interpreter can accompany him downstairs to
11 further interview him, was that something in
12 your view consistent with the practice you had
13 seen previously in that courtroom?

14 A. Well, in the limited time that I'd been
15 serving as the session clerk in the courtroom
16 covering for a clerk, I hadn't seen that.

17 Q. Hadn't seen that.

18 A. I had not.

19 Q. You told us earlier that the ICE agent asked you
20 if he could go to the lockup and you said you
21 would ask the judge. Did you convey back to him
22 an answer?

23 A. I did. I let him know.

24 Q. So let's try to get as close as we can when you
25 conveyed that back to him.

1 A. So after we were done with, with my reading
2 what happened in the case, and Attorney Jellinek
3 walked down the stairs to the lockup with the
4 court officer and the interpreter and then a
5 defendant, I -- the hearing was over, I went out
6 of the courtroom, the ICE officer was waiting in
7 the hallway, and I conveyed to him that the --
8 you know, what had happened, that he could not
9 go down to the lockup, that the individual would
10 be -- was released from custody and would be
11 coming up and going out the front door.

12 Q. And what was the basis for your telling the ICE
13 officer that he couldn't go to the lockup?

14 A. That's how I understood -- That's what I
15 understood Judge Joseph's decision to be in that
16 respect.

17 Q. At some point did the ICE officer express a
18 concern to you?

19 A. He did. He didn't say anything specifically.
20 He was more speaking of, there was another
21 individual in the courtroom with the defendant,
22 and he expressed that he was alone that day at
23 the Newton District Court and he was going to
24 call another agent to come assist him so he --
25 That's what he expressed initially.

1 Q. Did he express concern about being alone?

2 A. Yes. He expressed concern about being alone
3 and that the defendant had a friend, he wasn't
4 sure who the friend was, but he was in the
5 courtroom waiting for him; so...

6 Q. And did you do something about that?

7 A. So yeah. When he expressed his concern about
8 that situation, I called the chief court
9 officer, who was in his office downstairs, and
10 expressed to him that I'd be more comfortable if
11 he came upstairs and stayed with the ICE agent
12 to make sure that there was no confrontation to
13 occur, and he did, he came up.

14 Q. And at some point -- That conversation you just
15 talked about, you have an officer who's
16 concerned, so you called the chief court
17 officer, can you place that in time?

18 A. So, again, that would have been after the
19 hearing was conducted, that would have been
20 while the defendant, the defense attorney, the
21 interpreter, the court officer were downstairs.
22 So that's -- When they were all downstairs, I
23 was on the first floor by the front door in the
24 hallway area, and that's where the ICE
25 representative was. So it was sometime after

1 the hearing concluded but before the court
2 closed at 4:30.

3 Q. And the chief court officer --

4 A. He came right up, yeah.

5 Q. And did you or the chief court officer tell the
6 ICE officer where you expected the defendant to
7 come out?

8 A. So yeah. Definitely one of us did. I don't
9 remember if it was me. I definitely, if I was
10 asked, I would have said the front door. I just
11 don't remember if it was the chief who said the
12 front door or myself. But I would have said
13 that if I was asked.

14 Q. And the front door of what?

15 A. The front door of the courthouse. So
16 opposite the courtroom, when you walk out of the
17 first session, you literally walk right out the
18 courthouse right through the doors.

19 Q. When you're having this conversation, are you
20 outside the building or inside the building?

21 A. I'm inside the building in the hallway with
22 the ICE officer and at that point with the chief
23 court officer.

24 Q. And where -- How were you expecting the
25 defendant to come into that hallway, what we've

1 been referring to as the main lobby of the
2 courthouse?

3 A. I was expecting that the defendant would
4 be -- I guess not -- "supervise" isn't the right
5 word, but accompanied by a court officer,
6 brought up the steps, and then they would walk
7 out the front door.

8 Q. So is that the stairway that comes from the
9 probation counter?

10 A. Yes. That's where the public would go down.

11 Q. At some point that day did you become aware that
12 the defendant wasn't coming out into the main
13 lobby?

14 A. So I stayed with the chief court officer and
15 the ICE officer for probably about five or 10
16 minutes, and then I left to do other things that
17 I needed to do to close up the court. But in
18 that five or 10 minutes, the prosecutor had come
19 out of the courtroom. I don't know what she had
20 been doing prior. But she came out of the
21 courtroom and she asked, you know, whatever they
22 were still doing here. I asked the ICE officer
23 what he was still doing here. I was somewhat
24 surprised that he was still there. And he said
25 that he was waiting for the defendant to come

1 out through the door that we told him was going
2 to happen. So...

3 Q. And did you at some point learn what had
4 happened?

5 A. Yes. So it became clear as we approached the
6 4:30 time frame, when the court's closing up,
7 that the defendant wasn't coming out. We also
8 saw the defense attorney came up and walked by
9 the ICE agent and the prosecutor and the chief
10 court officer and walked out the door for the
11 day. So he was leaving. So I wasn't sure where
12 his client was, but he was leaving.

13 Q. The next day, was Judge Heffernan back in
14 Newton District Court?

15 A. I believe it was the next day. I don't --
16 I'm not a hundred percent sure. I believe it
17 was the very next time I saw Judge Heffernan, I
18 think it was the next day.

19 Q. So you're not sure which day the next time --

20 A. No. I think it was April 3rd, the next day,
21 but it could have been April 4th. I just don't
22 remember exactly.

23 Q. Did you have a conversation with her?

24 A. I did.

25 Q. Tell us about that conversation, please.

1 A. So typically, when Judge Heffernan is not in
2 the court, when she comes back to the court,
3 she'll ask did everything go okay, is there
4 anything I should know about or any problems,
5 because she's just trying to monitor how the day
6 went for everybody. And I let her know that
7 there was an issue, I didn't quite understand at
8 that time the magnitude fully, but I said there
9 was an issue with this person leaving the court
10 not through the front door and the ICE agent was
11 waiting and wasn't able to take him into
12 custody.

13 Q. And did you talk to her at all about the
14 recording?

15 A. I did. I let her know that -- She asked me a
16 little bit about the hearing and what had
17 happened, and I was trying to remember what had
18 happened and in my mind tell her. And I did, I
19 did say at some point the tape was off, and
20 that's it.

21 Q. Did you at some point listen to the recording?

22 A. I did. I listened to the recording. Because
23 I was trying to figure out, I was trying to
24 figure out if I had said anything or if the
25 judge said -- I was trying to figure out why the

1 defendant didn't come up through the front, and
2 I thought if I listened to the tape maybe I
3 missed something that the judge said or I said
4 or the defense attorney said, and so I listened
5 the tape and I didn't hear anything that
6 addressed that issue.

7 Q. Sometime later, did Judge Joseph ask you for a
8 copy of the recording?

9 A. Yes. I believe I bumped into Judge Joseph
10 maybe a week or so after, could have been two
11 weeks, sometime in that time frame, when she was
12 visiting the court, and she asked me for a copy
13 of the tape.

14 Q. And did you have someone make a copy for her?

15 A. I did. Well, I had had multiple copies made
16 anyway, so I just gave her one that we had.

17 Q. And who else did you give a copy to at some
18 point?

19 A. Judge -- Well, I took one to listen to,
20 Judge Heffernan asked for one, I think the
21 Trial Court asked for several. They wanted it
22 several different ways, because it was a little
23 choppy, start, stop, start, stop, and a couple
24 times the tape captured some but not all. So we
25 made sure that the whole day proceedings was

1 captured on tape so whoever was listening could
2 hear the whole day, not just a part of the day.

3 Q. That request that came from the Trial Court, can
4 you place that in time at all?

5 A. I would say it was probably a couple of weeks
6 after my seeing Judge Joseph maybe or a week
7 after seeing Judge Joseph or somewhere -- It was
8 sometime after that week that I saw
9 Judge Joseph.

10 Q. And was that Dan Sullivan, general counsel for
11 the Trial Court, who made that request?

12 A. My best recollection is, it might have been
13 Joe Jackson from the administrative office, and
14 sometime Dan Sullivan, general counsel, had made
15 a request, but requested not just the day, they
16 wanted the day before, the day after. So they
17 were changing up what they wanted from the
18 clerk's office; so...

19 Q. And to the best of your memory, that request
20 that was changing and asking for the day before,
21 the day after, the whole day, did that come from
22 Joe Jackson or from Dan Sullivan?

23 A. I don't recall. I think that the ultimate
24 request came from Dan Sullivan, from the general
25 counsel's office, but I don't know why he was

1 requesting -- That's what he requested. That's
2 my recollection.

3 Q. Was Joe Jackson in the administrative office of
4 District Court?

5 A. I think so. At the time, yes. I think he
6 dealt with those like tape issues and stuff like
7 that.

8 Q. So was he working for working for
9 Chief Justice Paul Dawley?

10 A. I believe so. The administrative office.

11 JUDGE FABRICANT: That's all I
12 have for you at this time. Counsel may have
13 some questions for you.

14 HEARING OFFICER: Mr. Hoopes?

15 MR. HOOPES: Thank you.

16 CROSS-EXAMINATION

17 BY MR. HOOPES:

18 Q. Good morning.

19 A. Good morning, sir.

20 Q. My name is Tom Hoopes, and I represent
21 Judge Joseph. Nice to meet you.

22 A. Nice to meet you, too.

23 Q. Thank you for your testimony so far.
24 But I'd like to go back a little bit --

25 A. Sure.

1 Q. -- and ask you some questions, if I might.

2 A. Sure.

3 Q. So let's go straight to April 2nd. Event
4 happens on that day that you've described, some
5 events happened after that day.

6 A. Right.

7 Q. That was some seven years ago?

8 A. Yes.

9 Q. And so it would be fair to say that you remember
10 some things, some things you don't remember;
11 correct?

12 A. Yes.

13 Q. And at the time, it didn't seem like to you
14 something you needed to take notes on, so you
15 don't have any notes; correct?

16 A. Correct.

17 Q. And nobody asked you to make notes at that
18 point?

19 A. No.

20 Q. So did you start out as the session clerk at the
21 very beginning of the morning?

22 A. I'm trying to remember. Because when I
23 looked at the transcripts that were from the
24 hearings, it starts around 10:00. We usually
25 start the day at 9:00. So I wasn't sure if I

1 started out the day or when the -- The session
2 clerk's mother had passed away, so I'm not sure
3 if she found that out and left or how I ended up
4 going into the session. But the first that I
5 had of going into the session here on the tape
6 is 10:00.

7 Q. So you started when you heard it; right?

8 A. Yeah.

9 Q. But you were the session clerk for the entire
10 day.

11 A. Yes. Yup.

12 Q. And so talking about it today, you seem to have
13 some specific memories of this case,
14 Medina Perez.

15 A. Yes.

16 Q. Okay. And do you remember today that initially,
17 when the case was called, Medina Perez was
18 represented by Ms. Bostwick?

19 A. Yes.

20 Q. And you, I assume, are familiar with
21 Ms. Bostwick?

22 A. I am.

23 Q. She's a bar advocate?

24 A. Yes.

25 Q. She's been a bar advocate there for a number of

1 years; --

2 A. Yes.

3 Q. -- right? She's there often, to say the least?

4 A. She was at that time, yes.

5 Q. Yup. And the ADA was Shannon Jurgens?

6 A. Yes.

7 Q. And she had been there just about a month or so
8 at that point?

9 A. Yes. They change over fairly quickly. I
10 think she had been there for a little while,
11 yeah.

12 Q. Just so I have it in time. So this is 2018,
13 April of 2018. How long had you been the
14 clerk -- been a clerk there?

15 A. I started December 29th of 2014. So maybe
16 four years, a little over.

17 Q. Okay. And you've been promoted. So you've been
18 the first assistant clerk on that day for --

19 A. From 2015 -- November of 2015 I was promoted.

20 Q. Okay. And so Ms. Bostwick represented Mr. Perez
21 for the morning essentially; correct?

22 A. Yeah. She was appointed in the morning by
23 Judge Joseph, yes.

24 Q. And when you listen to the tape for the day, you
25 don't hear any reference to ICE by you in the

1 morning.

2 A. No. No. I don't think I reference ICE ever
3 other than asking the judge about the lockup,
4 going downstairs. The conversation I had with
5 Judge Joseph was in her lobby.

6 Q. And do you have a firm memory as to when that
7 conversation took place? Could have been in the
8 morning, could have been at the lunch break?

9 A. I don't have a firm recollection. I thought
10 it was in the morning hour. When I say
11 "morning," I mean around the 9:00, 10:00 area,
12 but I don't -- I couldn't tell you the exact
13 time.

14 Q. Okay. And the first time you noticed ICE in the
15 courthouse was you thought sometime in the
16 morning.

17 A. Yes. I saw him in the hallway.

18 Q. And later on that morning you saw him actually
19 in the courtroom.

20 A. I did.

21 Q. And he was sitting in the courtroom.

22 A. He was.

23 Q. So if I showed you a blow-up, if I can, of the
24 courtroom. Do you have a recollection -- So
25 we've got two. We've got -- This is a blow-up

1 from the bench view out the door to the left
2 side and this is a blow-up of the other side.

3 A. Yes.

4 Q. And I'll just put this one here. Do you have a
5 recollection today of where you saw --

6 A. I do. He was sitting in the front row on the
7 right-hand side.

8 Q. So right up here.

9 A. That's the left-hand side.

10 Q. I'm sorry. The left. Well, okay. So we're --

11 A. I think. If I'm looking at it correctly. So
12 I'm looking at the one behind that.

13 Q. When you say "left-hand side," looking at the
14 bench --

15 A. I'm sorry. You're correct. So if I'm
16 looking at the bench walking into the courtroom,
17 it would be on the left-hand side, front row.

18 Q. Okay. So it would be fair to say that he would
19 have had a front row seat.

20 A. Yes.

21 Q. And do you have a recollection of how many
22 people were in the courtroom that day, like
23 spectators --

24 A. I don't, I don't recall how many. It wasn't
25 the busiest day. There definitely were other

1 people. I just don't remember how many.

2 Q. It was a Monday.

3 A. It was -- I don't, don't remember. But like
4 I said, it wasn't the busiest day, but there was
5 definitely other court business.

6 Q. Yup. And it would be fair to say that
7 oftentimes in District Courts Monday's an
8 arraignment day for arrests over the weekend and
9 some other --

10 A. Traditionally it's the busiest day.

11 Q. Now, do you have a memory of whether the ICE
12 agent was there the entire time before you said
13 something to him or not?

14 A. I think when I came out -- when I came into
15 the courtroom to handle cases, I saw him sitting
16 there, and I think that's what prompted me to
17 have a conversation with Judge Joseph, just to
18 make sure I knew what she expect and wanted.

19 Q. So was this a conversation during the course of
20 the morning? Again, I'm asking the same
21 question. Or could this have been a
22 conversation that was over the lunch?

23 A. I believe it was in the morning hours.

24 Q. But you're not sure.

25 A. I'm not sure.

1 Q. Okay. And the conversation was about ICE being
2 in the courtroom?

3 A. Yes. I let her know that there was a
4 representative from ICE present in the
5 courtroom.

6 Q. And you also told her, as I understood it, that
7 Judge Heffernan's policy was no ICE in the
8 courtroom.

9 A. It was not -- I would say her practice.

10 Q. Her practice.

11 A. Yeah.

12 Q. Well --

13 A. Yeah. Because every judge is a little
14 different. So it wasn't a policy you had to
15 follow, but it was definitely Judge Heffernan's
16 practice.

17 Q. And not everybody had to follow it because the
18 judge is the judge of that particular court that
19 particular day.

20 A. Yes. Yeah.

21 Q. But you knew that that was Judge Heffernan's
22 preference.

23 A. I did know, yeah.

24 Q. And you had known it was her preference, you
25 would have said something to Judge Joseph.

1 A. Well, I said, I said something to
2 Judge Joseph when I saw the ICE agent. I knew
3 that Judge Joseph was a fairly new judge, so I
4 wanted to alert her of it and ask her what she
5 wanted me to do, if anything. And she in turn
6 asked me, well, what was Judge Heffernan's usual
7 practice, what did Judge Heffernan usually do,
8 so I told her, and she said let's just follow
9 what Judge Heffernan usually does; so...

10 Q. And you knew that Judge Joseph was a fairly new
11 judge because -- a rookie judge, so to speak;
12 right? Because you had seen her practice in
13 that court before as a lawyer; right?

14 A. I'd seen her a couple times, but I knew she
15 was a lawyer for sure.

16 Q. And -- So you had that conversation. Do you
17 recall her saying anything to you about she
18 wanted to check on the policy by calling the
19 administrative offices?

20 A. I do remember that, yes.

21 Q. And so in fact she did call; correct?

22 A. Yes. I think I left at the point she was
23 starting to call, but she did indicate to me --
24 I think she asked me if I had a copy of the
25 policy handy. I went to my office, I couldn't

1 put my hands on the actual policy. So she said
2 don't worry about it, I'm going to call anyway
3 to make sure I understand the policy.

4 Q. So based on your experience, limited experience
5 as a session clerk, but experience as the first
6 assistant clerk, some judges follow that
7 practice, but not all.

8 A. Correct.

9 Q. When they were at the Newton District Court.

10 A. Correct.

11 Q. Were you aware of that practice of asking ICE to
12 step out of the courtroom being utilized or
13 practiced in any other District Court?

14 A. I didn't know one way or another.

15 Q. Okay. Now, the policy that she was asking you
16 about, that was called the Lunn policy; correct?

17 A. You mean Judge Joseph was asking?

18 Q. I'm sorry. Judge Joseph, yes.

19 A. Yes. It was a fair case.

20 Q. And you went to look for it?

21 A. Yes.

22 Q. And it would be fair to say that clerks have
23 their own organization, right, where they
24 transmit documents and policies and things like
25 that, that keep you updated?

1 A. Association of clerks and magistrates. Yes.
2 Oftentimes we'll get transmittals of important
3 cases or rules. But this was a policy that was
4 generated and transmitted by the Trial Court to
5 all the clerks.

6 Q. To all the clerks.

7 A. All the clerks.

8 Q. So whatever you had, you were the first
9 assistant.

10 A. Yup.

11 Q. And I suppose in some ways very responsible in
12 that courthouse for running the daily sort of
13 functions.

14 A. I try to, I try to do my best.

15 Q. And I'm sure -- The clerk himself is a little
16 older; correct?

17 A. He's a little older, yes.

18 Q. And so he relied on you to sort of be at the
19 mouth of the information coming in from both of
20 those sources.

21 A. I would imagine that's true.

22 Q. Now, after, did she get back to you and tell you
23 exactly what the results were, the
24 communications?

25 A. Did Judge Joseph?

1 Q. Yes.

2 A. I think she said that she was able to get
3 someone in town or she -- I knew she was calling
4 in town. I think she got to talk to somebody.
5 I'm not sure who. But I think she said she was
6 all set. Because I continued to look for the
7 policy. She said don't worry about it, that she
8 had -- I think she said she had spoken to
9 someone, she now knew the answer to her
10 question.

11 Q. So you've read the Lunn policy?

12 A. A while ago, but yes.

13 Q. Okay. And so it would be fair to say, with
14 regard to that policy, that that policy doesn't
15 say anything about whether ICE can be in the
16 courtroom; correct? It has to do with ICE
17 getting custody of individuals to whom they want
18 to take custody; correct?

19 A. Correct. It was kind of differentiated
20 between the detainers and the warrants and
21 taking them into custody and when the judge
22 should hold someone in custody and whatnot.

23 Q. And so without us reading through this, --
24 though we can -- it's, as you know it now, that
25 Lunn policy mandates that District Court

1 personnel allow, permit, and require ICE to go
2 into a lockup in order to take custody of an
3 individual in District Court; correct?

4 A. Yes. I think we received the transmittal to
5 that effect. That's a -- if requested, they
6 should have access. And I think there's a whole
7 protocol, that the court officer should take
8 them into, take them into prison or cell block
9 and transfer --

10 Q. So that was the policy that was in effect on
11 April the 2nd, 2018; correct.

12 A. I believe so.

13 Q. Yeah. And so when you went in to see
14 Judge Joseph, you went in to see her about this
15 issue of whether ICE could be in the courtroom;
16 correct?

17 A. Whether she wanted the ICE agent to be in the
18 courtroom.

19 Q. And she answered yes, you could, after you
20 pointed the administrative District Court that
21 you could follow, we could follow, she could
22 follow the practice of Judge Heffernan and ask
23 ICE to stand out; correct?

24 A. Yeah. So that was -- She told me in her
25 lobby, in her lobby. She said that she

1 preferred to just follow what Judge Heffernan
2 customarily did.

3 Q. And she said nothing, that you could recall,
4 about asking -- telling ICE that they couldn't
5 take custody down to the lockup.

6 A. No. Because at that point there was no
7 question -- like the ICE officer hadn't
8 requested that and that wasn't part of our
9 conversation at that point.

10 Q. Okay. Now, Ms. Bostwick stayed representing
11 Medina Perez all the way up to the lunch break.

12 A. Yes.

13 Q. Like just before 1:00?

14 A. Yes. Lunch break was 1:00 to 2:00.

15 Q. And she was allowed to come back a little late
16 because she had a medical appointment that day?

17 A. Yes.

18 Q. But at some point Jellinek showed up in court;
19 correct?

20 A. My recollection is that he filed an
21 appearance at the lunch break.

22 Q. Okay.

23 A. Sometime over the 1:00 to 2:00 mark.

24 Q. And -- So you would have seen him around there
25 or you would have heard that he filed an

1 appearance?

2 A. I don't recall if he was there earlier in the
3 day, but he definitely was there right at 2:00
4 when we were starting after lunch. So I assume
5 he was in the courthouse doing something,
6 whether it be he had court business or other
7 filings or -- I don't recall specifically
8 whether he came to the courtroom at all prior to
9 the lunch break.

10 Q. And there were court officers there that day;
11 correct?

12 A. I believe there were two court officers there
13 that day, one who sat with the custody, one in
14 the courtroom, and then at some point the chief
15 came from another court, he kind of supervised
16 three different courts, and he showed up, too.

17 Q. So we can talk about that for a minute. So
18 Wesley MacGregor was there that day?

19 A. Yes.

20 Q. And he was handling the custody?

21 A. Yes.

22 Q. And Michael Walsh was there that day as a --

23 A. Yes. I had met him a couple of times. He
24 was retired.

25 Q. Retired. He was there as what we call a per

1 diem?

2 A. Yes.

3 Q. And -- But the chief, name is Scott Noe, --

4 A. Yes.

5 Q. -- Scott Noe, was not there until later; right?

6 A. I didn't see him until later. I think I --
7 My best recollection is that he came from some
8 other court at some point during the day. I
9 don't know when. I was told he was in the
10 building.

11 Q. And the Lunn policy requires that the chief
12 court officer, which would have been Noe, would
13 do at least two things, one would be to make
14 sure that there's notice given to the presiding
15 justice of the court that ICE was there; right?

16 A. Correct.

17 Q. But the presiding justice was out.

18 A. Correct.

19 Q. And to make sure that the Lunn policy was
20 followed with regard to access to ICE in the
21 lockup; correct?

22 A. Yes. I wasn't in the session too often, but
23 that's my understanding.

24 Q. Okay. So if I'm understanding it correctly,
25 your communication to the ICE agent, there was

1 only one at that point.

2 A. Correct.

3 Q. It was two-fold. One is, they're being asked to
4 step outside of the courtroom.

5 A. Yes.

6 Q. And second -- And that was directly from
7 Judge Joseph; right?

8 A. Correct.

9 Q. But the second was, that, no, he couldn't take
10 custody in the lockup. But that was your
11 interpretation of what Judge Joseph was saying.

12 A. So the second communication with the ICE
13 officer would have been after we concluded for
14 the day. And the answer to your question is,
15 yes, that's what I interpreted Judge Joseph's
16 directive to be.

17 Q. So -- Okay. Thank you. So -- But sitting here
18 today, you have no memory of having one more
19 conversation with the ICE agent.

20 A. I don't recall having any other -- other than
21 which door he'd be going out of initially, and
22 then secondarily, the -- when he asked for
23 permission to go to the lockup. I don't recall
24 having other communications with him.

25 Q. So you indicated, when special counsel asked you

1 some questions, your previous memory is that ICE
2 had taken custody out on the street in the front
3 door area.

4 A. I had seen that once before.

5 Q. You had seen that.

6 A. I actually saw it, yeah.

7 Q. Now, court ends; right? Before court ends --
8 Judge Fabricant, special counsel, ran you
9 through the transcript of the end of that
10 proceeding; right?

11 A. Yes.

12 Q. And we heard already that you said something to
13 Judge Joseph about ICE being there, right, and
14 wanting to take custody in to lockup.

15 A. Yes. I was just, I was just reminding her
16 that the ICE officer was there, because he was
17 waiting out in the hallway, and I conveyed his
18 request to go down to lockup.

19 Q. And you actually put -- It's on the record that
20 you conveyed that, and she said that's fine,
21 they're not coming in here, in essence; correct?

22 A. Correct.

23 Q. So it would be fair to say that there were at
24 least two or three other ways at the
25 Newton District Court that could have access to

1 the lockup. One is, to go around the back.

2 A. Yeah.

3 Q. They can come in the sallyport --

4 A. Yeah. They could gone around the back of the
5 courthouse and knocked on the door and have the
6 court officer provide access or they could have
7 just walked down the public stairs -- well, they
8 could have gone through the back way and there's
9 the -- where the lockup is situated, they could
10 have walked through -- You're right. There's
11 two different ways other than the way down the
12 stairs.

13 Q. Or third, unless you're including the one you
14 just relayed, go downstairs, have someone escort
15 them through probation.

16 A. Correct.

17 Q. So there were several different ways.

18 A. Sure.

19 Q. And with the sallyport, were you aware that
20 there was a van, pickup van inside the sallyport
21 that afternoon?

22 A. No, I was not aware.

23 Q. So if there were no van there, then they could
24 have just driven in.

25 A. Sure.

1 Q. With their unmarked vehicle, whatever it is.

2 A. Sure.

3 Q. And then take into custody.

4 A. Sure.

5 Q. Now, we talked about Ms. Bostwick. You knew
6 David Jellinek, too; correct? You had seen him
7 from time to time.

8 A. I think they were calling, because they were
9 both on duty attorneys.

10 Q. Both bar advocates.

11 A. Both bar advocates.

12 Q. Got it. And you saw him there. He came in for
13 the drug court on Tuesday afternoon?

14 A. Typically, he did. He did the drug court.

15 Q. And so he was there fairly frequently, at least
16 once a week; right?

17 A. For sure.

18 Q. And I mean, he'd say hi to you, you'd say hi to
19 him.

20 A. Typically. I try to say hi to everybody.

21 But yes.

22 Q. Yup. And he was at least friendly, as far as
23 you could see, with many of the court personnel.

24 A. He was familiar with all the court personnel,
25 yes.

1 Q. And so were you present when the conversation
2 between David Jellinek and Wesley MacGregor
3 letting Medina Perez out the back?

4 A. No.

5 Q. And did David Jellinek approach you before the
6 2:00 session after he filed his appearance and
7 tell you that he had a conversation with
8 Wesley MacGregor?

9 A. No.

10 Q. When you saw him walk out, when you were with
11 the ICE agents, did David Jellinek come over to
12 you and say I had the judge's blessing to let
13 him out, anything like that?

14 A. No. He just walked straight by us.

15 Q. Didn't say a word?

16 A. No.

17 Q. He was there the next morning?

18 A. Was he there the next morning? Is that what
19 you just said?

20 Q. Yeah. David Jellinek.

21 A. I have no idea. I don't know.

22 Q. From that day, April 2, until today, has he ever
23 said Wesley MacGregor and I together conspired
24 to let him out?

25 A. No. I have not talked to him about it.

1 MR. HOOPES: Can I just have a
2 moment?

3 (PAUSE)

4 MR. HOOPES: Thank you very
5 much. No other questions.

6 JUDGE FABRICANT: I just want
7 to clarify one point.

8 THE WITNESS: Sure.

9 REDIRECT EXAMINATION

10 BY JUDGE FABRICANT:

11 Q. The ways to get to the lockup, if not through
12 the courtroom and into the dock and down the
13 stairs, how many other ways are there?

14 A. So you could go through the -- where the
15 clerk's office and the judge has her lobby, you
16 go down the set of stairs, that's a secure area,
17 you could come back that back stairwell and that
18 leads to the lockup. You could go, as counsel
19 indicated, you could go around the building and
20 knock on the door. They could open the
21 sallyport door for you. And the other way you
22 could do it, I suppose, is you could, -- just
23 trying to think -- you could go through -- come
24 down the front stairs. You'd have to go through
25 probation, I believe; so...

1 Q. And once you went through probation, would you
2 have to get through a secure door?

3 A. Yeah. There was a secure door. You would
4 have to even use your pass or you'd have to
5 knock and they'd have to let you in the
6 courthouse.

7 Q. So each of those ways that you've described,
8 would you have to get through a secure door?

9 A. Yes.

10 Q. So you would need somebody with a pass --

11 A. Yes.

12 Q. -- to let you through.

13 A. Yes. You couldn't just walk through.

14 JUDGE FABRICANT: That's all I
15 have.

16 MR. HOOPES: That's all I have.

17 HEARING OFFICER: So I just
18 have one clarifying question for me.

19 When you spoke to the ICE agent
20 after the proceeding, did you tell the ICE agent
21 that they were not -- that he was not allowed to
22 go to the lockup period or did you say you're
23 not allowed to go to the lockup through the
24 courtroom?

25 A. I think what I said was just what the judge

1 said, which is, you're not allowed to come in
2 here and go to the lockup.

3 HEARING OFFICER: I'm sorry.
4 Say that again.

5 A. I said you're not allowed to go in the way
6 they had all gone down through the courtroom. I
7 think I said to the ICE agent that he could not
8 go in any courtroom down to the lockup.

9 HEARING OFFICER: Did you tell
10 him there are other ways to get to the lockup?

11 A. I didn't discuss it with him, no.

12 HEARING OFFICER: You knew he
13 wanted to go to the lockup.

14 A. I did overhear. He made it clear.

15 HEARING OFFICER: And were you
16 clear with him? Do you believe that you told
17 him you just can't go to the lockup through the
18 court?

19 A. I didn't say just. I think I was under the
20 impression he couldn't go to the lockup at all.

21 HEARING OFFICER: Based on
22 what?

23 A. Based on, when I asked the judge, I said
24 there was someone here to visit the lockup, I
25 think is how I phrased it, to get the person

1 intended to be taken. And she said something
2 like, okay, but I'm not going to allow him in
3 here but he's released. I took that to mean
4 that she was following Judge Heffernan's
5 practice of releasing him, he'd walk out the
6 court front door, and if they wanted to take him
7 to custody, that's where they would take him
8 into custody. So that's what I was under the
9 impression.

10 HEARING OFFICER: Okay. And so
11 your impression was that he was not going to be
12 allowed to go to the lockup area from any
13 direction.

14 A. Correct. I didn't go over with him the
15 different ways. I didn't think he would be
16 going to the lockup area.

17 HEARING OFFICER: But you did
18 understand Judge Joseph to be saying he can't go
19 to the lockup area through the court.

20 A. Yeah. I understood that just how she said
21 it. Because I listened to the tape, too.
22 That's how she said it. And that's how I took
23 it. But I took her to mean I'm -- when she said
24 I'm releasing him, what she meant was, he's
25 going to walk out, and so if they want him, they

1 can take him, but it's not my, not my issue.

2 HEARING OFFICER: Okay. I have
3 no further questions.

4 Any follow-up?

5 JUDGE FABRICANT: May this
6 witness be excused?

7 HEARING OFFICER: Yes.

8 JUDGE FABRICANT: Thank you,
9 sir.

10 And again, Mr. Hoopes is much
11 more efficient than predicted. And so we don't
12 have a next witness ready. We will have
13 Scott Noe at 9:00 in the morning,
14 Judge Heffernan at 11:00, and Judge Fortes,
15 Chief Justice now, Chief Justice Fortes at 2:00
16 tomorrow.

17 HEARING OFFICER: Okay. So
18 with that, unless the parties have anything else
19 to cover, we're recessed for the day.

20 (The proceedings adjourned
21 at 3:16 p.m.)

22 EXHIBIT AA (DOCUMENT
23 SUBSEQUENTLY MARKED AS
24 EXHIBIT AA)

25

C E R T I F I C A T E

I, LISA L. CROMPTON, Registered
Professional Reporter, hereby certify that the
foregoing is a true and accurate transcript of my
stenographic notes of the proceedings in this
matter on the date and time specified in the
caption hereof.

IN THIS WITNESS WHEREOF I have hereunto
set my hand this 27th day of August, 2025.



LISA L. CROMPTON

REGISTERED PROFESSIONAL REPORTER

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