

CERTIFIED HEARING TRANSCRIPT

(DAY 4)

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

COMPLAINT NUMBER 2019-22

VOLUME IV

HEARING

~ BEFORE ~

HEARING OFFICER

DENIS J. McINERNEY, ESQ.

JUNE 12, 2025

9:00 A.M.

Boston, Massachusetts

Lisa L. Crompton, CSR (MA) (RI), RPR

APPEARANCES:

For Commission on Judicial Conduct

Commission on Judicial Conduct

BY: former HONORABLE JUDITH FABRICANT

AND: HOWARD V. NEFF, III, ESQ.

11 Beacon Street

Suite 525

Boston, Massachusetts 02108

617-725-8050

617-248-9938 Fax

For Honorable Shelley M. Richmond Joseph

Libby Hoopes Brooks & Mulvey

BY: ELIZABETH N. MULVEY, ESQ.

AND: THOMAS M. HOOPES, ESQ.

260 Franklin Street

Boston, Massachusetts 02110

617-338-9300

617-338-9911 Fax

emulvey@lhbmllegal.com

thoopes@lhbmllegal.com

~ AND ~

Meehan, Boyle, Black & Bogdanow, P.C.

BY: MICHAEL B. KEATING, ESQ.

100 Cambridge Street

Suite 2101

Boston, Massachusetts 02114

617-523-8300

I N D E X

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

3 So this is the fourth day of
4 the hearing on the Commission on Judicial
5 Conduct's Complaint Number 2019-22.

6 I'd ask that counsel please
7 identify themselves for the record.

8 JUDGE FABRICANT: Judith
9 Fabricant, special counsel for the Commission on
10 Judicial Conduct.

11 MR. NEFF: Howard Neff for
12 Commission on Judicial Conduct.

13 MS. MULVEY: Elizabeth Mulvey
14 for Judge Joseph.

15 MR. HOOPES: Tom Hoopes for
16 Judge Joseph.

17 MR. KEATING: Michael Keating
18 for Judge Joseph.

19 HEARING OFFICER: Thank you.
20 Good morning Everybody.
21 Special Counsel, call your next
22 witness.

23 JUDGE FABRICANT: And I call
24 Judge Joseph.

25

1 HONORABLE SHELLEY RICHMOND JOSEPH,
2 SWORN

3 HEARING OFFICER: Thank you.

4 Take your seat.

5 DIRECT EXAMINATION

6 BY JUDGE FABRICANT:

7 Q. Good morning.

8 A. Good morning.

9 Q. Two years ago, on June 6th of 2023, you and I
10 met in the Commission's office for an interview,
11 I was acting on behalf of the Commission, and
12 your three lawyers were there, and -- the same
13 lawyers who are here now, you were under oath,
14 and there was a court reporter, and the court
15 reporter produced a transcript of that
16 interview; correct?

17 A. Yes.

18 Q. And that transcript is in and stipulated
19 appendices which are all in the book; okay?

20 A. Okay.

21 Q. So we may refer to that the from time to time.

22 You started practicing law in
23 1993; correct?

24 A. Well, I graduated from law school in 1992. I
25 did some work in -- I was sworn into the bar in

1 the end of 1992, and I started working at the
2 end of that year or the beginning of the
3 following year.

4 Q. You were at the attorney general's office,
5 Massachusetts attorney general's office first
6 for some period of time, and then you were with
7 a civil law firm for a period, and then you
8 started a private practice in 2000.

9 A. I did.

10 Q. And your office was in Newton.

11 A. Yes.

12 Q. And your work was mostly criminal defense.

13 A. Mostly.

14 Q. You spent several years as a bar advocate.

15 A. I did.

16 Q. And we've heard some testimony about what bar
17 advocates do, and they serve as attorney for the
18 day, from time to time in different courthouses,
19 and getting entered into whatever's on that day;
20 correct?

21 A. Yes.

22 Q. And that's what you did.

23 A. I did.

24 Q. And you did that for several years, and two of
25 those years were in the Newton District Court;

1 correct?

2 A. I don't recall how long I was a bar advocate
3 in Newton. I think it was longer than that. I
4 was on the bar advocate list for about seven
5 years. And during those seven years, I was a
6 bar advocate both in Middlesex and
7 Suffolk County.

8 Q. So you think your role in Newton as a bar
9 advocate was longer than two years.

10 A. I think it was longer than two years.
11 Although, the bar advocate work that I did, I
12 did more of it as I was beginning my law
13 practice and little by little I --

14 HEARING OFFICER: Could you get
15 just a little closer to --

16 THE WITNESS: Of course.

17 HEARING OFFICER: Thank you.

18 Q. Eventually your private practice picked up and
19 you phased out the bar advocate.

20 A. I did.

21 Q. And that happened -- You're the not the only one
22 who followed that path; right?

23 A. I would expect. Right.

24 Q. During your private practice, sometimes you
25 would be in Newton every day, other times there

1 would be a gap of some months; correct?

2 A. I don't think I was ever in Newton every day.
3 There were times when I had multiple cases in
4 Newton and I would be there every day of the
5 week. There are other times when I had gaps in
6 cases that I was handling and I wouldn't be in
7 Newton for months.

8 Q. So let's take a look at Exhibit N, Page 243,
9 Line 10. So you said, I had a lot of cases in
10 Newton District Court, but they ran slow, some
11 days I was there every week, other days it would
12 be months until I came back. That's what you
13 said.

14 A. Correct.

15 Q. So you had a lot of cases in Newton but it
16 wasn't constant --

17 A. That's right.

18 Q. -- during that period of time.
19 And you were familiar with the courthouse.

20 A. I was.

21 Q. In 2019, the U.S. attorney brought a matter to
22 the Federal grand jury and you were indicted on
23 criminal charges; correct?

24 A. Yes.

25 Q. You were represented by excellent counsel;

1 correct?

2 A. Yes.

3 Q. Two of the same who are here -- All three of the
4 ones who are here are excellent. Two of them
5 represented you in the criminal case; correct?

6 A. That's correct.

7 Q. And the case was dismissed by the Federal Court
8 based on the agreement that you entered into
9 with the United States attorney; correct?

10 A. That's right.

11 Q. The agreement was some four pages long with the
12 signatures on the fourth page; correct? So
13 we're going to bring up the signature page. The
14 agreement is Appendix M. We're going to look at
15 Page 162, which is the signature page. And do
16 you see your signature there?

17 A. I do.

18 Q. And see the signatures of your lawyers there?

19 A. I do.

20 Q. And now we're going to go back a couple of
21 pages, to Page 159, which is the beginning of
22 the agreement, and see the beginning of the
23 agreement. And I'm going to read Paragraph 2,
24 and you have it at Page 115 on your side. I'm
25 just going to read Paragraph 2.

1 Judge Joseph, -- I'm inserting
2 the title, although it was not there --
3 Judge Joseph agreed that within 30 days of the
4 effective date of this agreement she will
5 formally refer herself to the Massachusetts
6 Commission on Judicial Conduct and will
7 thereafter cooperate fully in any investigation
8 or proceeding into her conduct that has been or
9 may be initiated or conducted by the
10 Massachusetts Commission on Judicial Conduct
11 until any such investigation or proceeding is
12 closed or concluded.

13 Such referrals shall include, a
14 stipulation by Judge Joseph to the accuracy of
15 the facts set forth in the attached statement of
16 facts. Parties agree that the attached
17 agreed-upon statement of facts may not represent
18 all relevant facts. Judge Joseph agrees that
19 she will not contest the accuracy of the
20 statement, that she does not object to the
21 consideration or admissibility into evidence of
22 the statement and any investigation or
23 proceeding that has been initiated or conducted
24 by Massachusetts Commission on Judicial Conduct,
25 attest in writing under penalties of perjury to

1 compliance with the conditions of this
2 paragraph, at the time of her submission to the
3 Massachusetts Judicial Conduct. And then there
4 are a couple more sentences about how the
5 Commission reviews the Federal material and
6 there's a sentence that makes it clear that
7 you're entitled to --

8 A. Yeah.

9 Q. So you did refer yourself to the Commission, you
10 did certify that you did so, and we have a
11 statement of facts before us.

12 A. (Witness nods head).

13 Q. So let's -- Is all that correct?

14 A. Yes, it is.

15 Q. Let's look at the statement of facts which was
16 attached to the agreement. And let's look at
17 Paragraph 3. Again, certain title, even though
18 I've -- Judge Joseph knew -- This is Page 163.

19 A. Give me one second. Okay. Thank you.

20 Q. Judge Joseph knew that criminal defendants in
21 Newton District Court custody were kept in the
22 lockup area in the basement of the courthouse
23 and were brought upstairs by a court officer in
24 the courtroom for the court appearances. The
25 normal custom and practice in Newton District

1 Court, subject to certain exceptions, was that a
2 defendant would be released from custody into
3 the courtroom. This courtroom had only one
4 public entry/exit which led to the courthouse
5 lobby.

6 So you are not contesting that
7 the normal custom and practice in
8 Newton District Court, subject to certain
9 exceptions, was that a defendant would be
10 released from custody into the courtroom.

11 A. That's correct.

12 Q. Correct?

13 Now, while you were in practice, you had
14 experience with lobby conferences off the
15 record.

16 A. I did.

17 Q. And in 2015, you were practicing as a criminal
18 defense lawyer.

19 A. Yes.

20 Q. And you became aware in 2015 that lobby
21 conferences were no longer conducted off the
22 record.

23 A. So I wasn't aware that there was a rule
24 change. I am aware of that now. But I did know
25 that practice had changed a little bit, just by

1 experience and being in court where lobby
2 conferences were beginning to be recorded on the
3 record.

4 Q. And you now know that that's because the SJC
5 changed Rule 12 of the Rules of Criminal
6 Procedure to require that lobby conferences be
7 recorded.

8 A. That's correct.

9 Q. Correct? And then you became a judge on
10 November 2nd of 2017.

11 A. I did.

12 Q. And as a new judge, you were provided with a lot
13 of materials.

14 A. Yes.

15 Q. Some of them came from District Court, some of
16 them came from the Trial Court, some of them
17 came from the Flaschner Judicial Institute.
18 There were a lot of materials.

19 A. There were a lot of materials.

20 Q. And among the materials was this binder of the
21 Massachusetts Rules of Court. Correct?

22 A. Yes. It probably was the 2017 or '18
23 version, but it looked something like that.

24 Q. This issue is the 2021 version. But yes, it
25 would have been the version that was current at

1 the time.

2 A. Yes.

3 Q. Your lawyer put it out yesterday, by the way,
4 your lawyer said I think 1,500 pages. Actually,
5 it's about 1,300 pages. But there is a section
6 of District Court rules; right?

7 A. There are.

8 Q. You were familiar with this book even before you
9 became a judge.

10 A. I was.

11 Q. You were familiar with it in practice, maybe
12 even in law school.

13 A. I don't remember it in law school, but
14 certainly in practice.

15 Q. Okay. And so you know that at the back of the
16 book there's a way to find particular sets of
17 rules because there's a list and then there are
18 markings on the edge of the pages that help you
19 find what's listed.

20 A. Yes.

21 Q. So if you wanted to look for District Court
22 rules, you could do that by looking on the list
23 and finding the marking and that would be where
24 that marking is; right?

25 A. Yes. That's correct.

1 Q. And the District Court rules in this book amount
2 to about 30 pages; right?

3 A. I, I don't know.

4 Q. Do you want to look at the book?

5 A. If you tell me it's 30 pages, I believe you.

6 Q. 30 pages you could read or scan in probably an
7 hour; right?

8 A. Rules -- There are times -- I don't know if
9 you can read them in an hour but...

10 Q. But it wouldn't take up 1,300 pages.

11 A. No.

12 Q. The rest of the book has the Rules of Civil
13 Procedure, Rules of Criminal Procedure, Rules of
14 Appellate Procedure, and the SJC court rules,
15 the rules of Superior Court, the rules of the
16 Land Court, the rules, et cetera, et cetera, et
17 cetera, it has all kinds of things; right?

18 A. Yes.

19 Q. So if you wanted to look specifically at the
20 District Court rules, you could do that and
21 you'd get -- you'd find about 30 pages.

22 A. Yes.

23 Q. You never did as a new judge sit down with the
24 rule book and review the District Court rules to
25 make sure you were familiar with the rules of

1 the district --

2 A. I was familiar with the rules from the
3 practice. I did not sit down with the rule book
4 and read the rule from, you know, the
5 District Court rules from beginning to end.

6 Q. Did you read part of it, again, as part of your
7 preparation for becoming a judge?

8 A. As part of my preparation for becoming a
9 judge, there was a training program that the
10 District Court initiated where I sat with judges
11 for the first month or so, and I think over the
12 course of the three and a half weeks I sat with
13 20 different judges and saw what they did on the
14 bench. And I was what they called a baby judge,
15 so I would sit next to a judge on the bench and
16 watch daily with them, whoever they were, and I
17 would go back and review the substantive matters
18 either that I learned that day or that I didn't
19 know that I needed to familiarize myself with.

20 Q. So you've anticipated my next series of
21 questions. But there was never a time when you
22 picked up the rule book, during a break or at
23 night or anytime, picked up the rule book and
24 said maybe I should be familiar with the
25 District Court rules and look through them or

1 skim them or read them.

2 A. Well, I'm sure, if there was an issue that
3 dealt with a rule, I would have referred to the
4 rule book. I don't recall picking it up and
5 just reading it from start to finish.

6 Q. You talked about this court orientation process.
7 You spent about four weeks sitting with other
8 judges so that you could see what each of them
9 does on various substantive matters; correct?

10 A. Yes.

11 Q. And there were about 20 of them, because it's
12 about four weeks, that's about 20 days, usually
13 one judge each day, and so about 20 of them.

14 A. Correct.

15 Q. And you could ask those judges any questions you
16 wanted to ask.

17 A. Absolutely.

18 Q. And during that period of orientation, you have
19 no memory of ever seeing a judge go off the
20 record; right?

21 A. I don't.

22 Q. And you now know that District Court Rule 211
23 requires that all court proceedings be recorded.

24 A. I do.

25 Q. The process for new judges also includes

1 assignment of a mentor; correct?

2 A. Yes.

3 Q. And initially you were assigned
4 Judge Michael Brooks and then that changed
5 later; correct?

6 A. That's correct.

7 Q. And part of the mentor process, as you were
8 told, was that you could call your mentor with
9 questions at any time; correct?

10 A. Yes.

11 Q. And in fact, you could ask questions of any
12 judge at any time.

13 A. Absolutely.

14 Q. And were people welcoming and forthcoming and
15 inviting you to call them at any time?

16 A. Oh, of course. It was such a collegial
17 atmosphere where judges would give you their
18 numbers, their cell phone numbers, call me
19 anytime if you have a question.

20 Q. In the orientation manuals that you got at the
21 beginning, there was a laminated benchcard
22 reporting each matter; correct?

23 A. Yes.

24 Q. And there was a District Court education
25 conference on December 13th, 2017, focused on

1 race and bias that you were not able to attend.

2 A. Yes, I was not able to attend that
3 conference.

4 Q. After that, you're not sure whether you received
5 whatever materials were distributed at that
6 conference; is that correct?

7 A. The only thing I remember receiving was a
8 book by Bryan Stevenson, because he was speaking
9 at that conference. I don't recall receiving
10 any of the other materials. That was given to
11 me earlier because of the family issue,
12 emergency that I had that I was unable to attend
13 the conference.

14 Q. And you didn't contact the administrative law
15 office to say please make sure I get the
16 materials.

17 A. My father had passed away, so I wasn't able
18 to go to the conference. And I had a couple
19 weeks off before I came back to work, and it
20 just wasn't on my mind to call the
21 administrative office and ask them.

22 Q. Okay. But you did get District Court
23 transmittal 12-22; correct?

24 A. What -- Sorry. I don't recall what
25 transmittal that was.

1 Q. That is in the binder at -- So it's Appendix C
2 in the binder. You'll see that it's dated
3 January 16, 2018.

4 A. Yes, I did receive that.

5 Q. And you'll see that it's addressed to all
6 judges, magistrates, et cetera, and it goes out
7 by e-mail, and you saw the practice of
8 transmittals coming by e-mail.

9 A. I did. I don't have any independent memory
10 of receiving this, but it did go to all judges.
11 I did have a computer at that time, so I would
12 imagine I received it, but I don't have an
13 independent memory of receiving this.

14 Q. You were reading your e-mails.

15 A. I was.

16 Q. And if an e-mail came --

17 A. Yes, I was.

18 Q. And the transmittal makes reference to, in
19 Paragraph 6, it makes reference to an updated
20 immigration benchcard that was distributed at
21 that conference that you weren't able to attend;
22 correct?

23 A. Yes.

24 Q. Paragraph 6 on Page 12.

25 A. Yes.

1 Q. Is that correct?

2 And it tells you that, if you don't have it, if
3 you didn't get it, you can contact Jackie Lawson
4 to get it.

5 A. It does.

6 Q. And it also says that an electronic version,
7 laminated version.

8 A. Correct.

9 Q. But an electronic version was attached to the
10 transmittal; correct?

11 A. Yes.

12 Q. And that's on Tab D. So it's at Page 15 and 16
13 in the binder. The transmittal, -- going back
14 for a minute -- it tells you that the new
15 updated benchcard supersedes any previous
16 benchcard.

17 A. Yes.

18 Q. And the benchcard itself tells you when it was
19 issued. Right at the bottom it says
20 District Court AODC revised December 2017;
21 correct?

22 A. I see that now. I don't think I ever noticed
23 that before. But yes, it does say that.

24 Q. It tells you, if you look at the very last
25 paragraph within the box, it tells you, for

1 guidance about immigration matters, for guidance
2 about requests for the DHS to take custody, you
3 can refer to what we're calling the Lunn policy,
4 that is Transmittal 17-13 issued by the
5 administrative law, the executive office of
6 Trial Court on November 10th, 2017; correct?

7 A. Yes.

8 Q. And when you got the transmittal and the
9 attached benchcard, did you check to make sure
10 you had the Lunn policy?

11 A. I, I don't know.

12 Q. Okay.

13 A. It's eight years ago almost, so I just, I
14 just don't remember.

15 Q. So you don't know whether you found it, pulled
16 it out, and read it to make sure you were
17 familiar with it?

18 A. I have no memory of doing that.

19 Q. And you did later on become familiar with that
20 policy.

21 A. I did.

22 Q. And you now know that it goes on for several
23 pages, it has some complexity, but the essence
24 of what it says is that all court personnel are
25 supposed to allow ICE to do their job, not help

1 or hinder, allow them to go to the lockup to
2 take custody if that's what they asked to do.

3 A. Right. I think the essence of the Lunn
4 policy is you can't help or hinder and that the
5 preferable place to take somebody in custody is
6 from the lockup.

7 Q. And you now know that the Lunn decision issued
8 by the SJC, Lunn versus Commonwealth, says that
9 a court cannot hold a defendant in custody any
10 longer than the person would otherwise be held
11 for purposes of an ICE detainer.

12 A. Correct.

13 Q. On April 2nd of 2018, you were sitting in
14 Newton District Court.

15 A. I was.

16 Q. And the First Justice was not there that day.

17 A. Correct.

18 Q. You were sitting in the first floor courtroom,
19 the first session.

20 A. I was.

21 Q. And you had a list of cases to hear.

22 A. I did.

23 Q. You had sat in the Newton District Court about
24 six times before.

25 A. I did. Although I'm not sure if I ever sat

1 with the docket before. I was often there on a
2 Thursday when there was no docket.

3 Judge Heffernan was in Quincy that day. They
4 would assign a judge when emergencies that came
5 in, last minute arrests or restraining orders,
6 something of that nature.

7 Q. So, again, you've anticipated some of my next
8 questions, but that's fine.

9 So on that day you did have a
10 list. And I want to call your attention to the
11 full day docket -- the full day transcript --

12 A. Okay.

13 Q. -- of that day, which is Appendix H. But let's
14 look at Page 47. It is Page 5 of the docket.
15 And it is the second page -- Page 5 of the
16 transcript. It's the second case called. It's
17 a case of someone called -- Take your time to
18 find it.

19 A. I'm sorry. Page --

20 Q. It's Page 47 of the appendix.

21 A. Okay.

22 Q. Within the transcript, if that's easier, --

23 A. Sure.

24 Q. -- Page 5.

25 A. Okay. Thank you.

1 Q. And it's a case of a person by the name of
2 Pineda -- if I'm pronouncing that correctly.
3 What you can see here is that the clerk says,
4 the clerk says that there is private counsel
5 that came in on Friday and requested an
6 11:00 a.m. call because he just filed an
7 appearance Friday and had to be in another
8 court. That's what the clerk says.

9 A. Yes, it is.

10 Q. And so you said second call.

11 A. Yes.

12 Q. And the Commonwealth asked the clerk, do you
13 have the appearance. The clerk said, I don't
14 have that. The defendant's counsel, did you
15 understand that to mean the counsel who had been
16 appointed and was being replaced by private
17 counsel who had entered an appearance?

18 A. Let me just read.

19 (PAUSE)

20 A. I don't know. I don't know that refers to
21 that he doesn't have the appearance or he
22 doesn't have the continuance. I don't know.

23 Q. If you go to where it says defendant's counsel,
24 defendant's counsel said, -- and they're not
25 named -- defendant's counsel said, I have

1 originally been appointed to represent
2 Mr. Pineda and I understand there's been a
3 notice of appearance, may I withdraw. See that?

4 A. Yes.

5 Q. And you said you may.

6 A. Yes.

7 Q. So this was an example of a situation, and it
8 was the second case on the list that day, a
9 situation where retained counsel comes in and
10 replaces appointed counsel.

11 A. Yes. I mean, it looks from the transcript
12 that an attorney had filed an appearance a few
13 days prior to replace appointed counsel.

14 Q. And that's something that you see happen.

15 A. Sure.

16 Q. Not unusual.

17 A. This situation is not unusual, no.

18 Q. And maybe it's because of stereotypes up there
19 in the world about appointed counsel or for
20 whatever other reason, but it happens.

21 A. I mean, I don't feel I can comment as to the
22 reasons it happens. It happens for a whole host
23 of reasons, you know, including sometimes
24 counsel got appointed for bail purposes only
25 because they're not indigent and they're not

1 entitled to private counsel. I can't speculate
2 as to what happened here.

3 Q. Okay. But it happens.

4 A. It does.

5 Q. Now, not long after, the case of
6 Mr. Medina Perez was called.

7 A. Correct.

8 Q. And the case was on the docket that day for
9 arraignment.

10 A. It was.

11 Q. The charges were fugitive from justice based on
12 a Pennsylvania warrant and two drug
13 misdemeanors.

14 A. Yes.

15 Q. And you appointed the bar advocate of the day
16 Ms. Bostwick.

17 A. I did.

18 Q. The assistant district attorney's position in
19 the morning was that she would ask him to detain
20 Mr. Medina Perez on the fugitive from justice
21 charge; correct?

22 A. That's correct.

23 Q. But she would not be seeking bail on the drug
24 charges.

25 A. Well, I think what she said is that she

1 wouldn't be seeking bail on the drug charges if
2 he was held on the fugitive from justice matter.

3 Q. Let's take a look at the transcript, which is
4 Appendix G. Page 39. Appendix G. So it's
5 toward the bottom of Page 39. And you say,
6 Commonwealth with respect to the new charges --
7 I take that was a reference to the drug charges,
8 not that the old Pennsylvania charge -- is there
9 going to be a request. Does "request" mean
10 bail, request for bail?

11 A. A bail request, yes.

12 Q. And she says, no, Your Honor. And then you
13 said, okay. And then she said, well, not the
14 drug possession. And you said, the drug
15 possession that. And she said, if they're
16 treated separately, I'm asking that he be held
17 without. And you said, right on the fugitive.
18 And she said, but if he's not, I would have a
19 bail request.

20 A. Yes.

21 Q. So did you understand that to mean she was not
22 asking for bail on the drug charges, she was
23 going to ask for a detention on the fugitive
24 from justice charge, and if you did not detain
25 on the fugitive charge -- which you didn't have

1 to.

2 A. Correct.

3 Q. But if you do, she would ask for bail.

4 A. Right. Exactly.

5 Q. Do you understand that?

6 A. Yes.

7 Q. So if she were to press that position, which she
8 ultimately didn't do, but if she were to press
9 that position, you would have to make a decision
10 about whether to detain him on the fugitive from
11 justice charge; correct?

12 A. I don't know if I'm understanding your
13 question.

14 Q. If her position didn't change on the fugitive --

15 A. Yes. I would have to make a decision whether
16 to hold him on the fugitive from justice charge
17 or not or release him on bail or just release
18 him.

19 Q. And in making that decision, you would have to
20 determine whether there was sufficient evidence
21 that he was the person wanted in Pennsylvania;
22 correct?

23 A. Well, I think there's a lot of factors that
24 go into that decision, so I don't think it's
25 fair to what you're suggesting.

1 Q. That's one of the factors, --

2 HEARING OFFICER: Sorry. If
3 you could be a little closer to the mic. Thank
4 you.

5 Q. -- that's one of the factors that would go into
6 it.

7 A. It's one of the factors.

8 Q. If you weren't satisfied that there was enough
9 evidence to connect him to the Pennsylvania
10 warrant, you wouldn't have a basis to hold him,
11 would you?

12 A. Well, again, I don't think you can look at
13 the factors individually. You really need to
14 look at the factors as a whole. And that's one
15 of the factors to consider, but there is a lot
16 of factors to consider.

17 Q. That's one of the factors --

18 A. Yes.

19 Q. -- you would have had to consider if that
20 decision were presented to you.

21 A. Of course.

22 Q. And Attorney Bostwick questioned whether he was
23 the person --

24 A. She did. When you have a matter that's
25 before us on the fugitive, one of the first

1 questions that we're trained to ask is whether
2 or not there's a question of identification,
3 because that really sets forth the procedure
4 that we would follow to handle the matter for
5 the day. So that is one of the questions that I
6 asked at some point in the morning, and
7 Attorney Bostwick indicated that there was a
8 question about identification with respect to
9 her client and the fugitive from justice matter.

10 Q. And she asked for time to investigate that, --

11 A. Yes.

12 Q. -- that issue. And you gave her time.

13 A. Of course.

14 Q. As the case was called multiple times over the
15 course of the morning and she was still working
16 on that.

17 A. She was. I think we called it four times. I
18 could be wrong about that. I think it was about
19 four times. And each time she asked for
20 additional time to continue her investigation as
21 to the identification of her client.

22 Q. And when the court was ready to recess for
23 lunch, she was still working on it.

24 A. She was.

25 Q. And she said she had a doctor's appointment

1 during lunch break and asked you to not call it
2 before 2:15 --

3 A. Yeah. She said she was waiting for a fax, as
4 I recall, and she had a doctor's appointment and
5 wouldn't be able to be back until 2:15, so she
6 asked if we could move the session at 2:15 or at
7 least hold this matter until 2:15.

8 Q. And sometime during the course of the day, maybe
9 during the morning, maybe during the lunch
10 break, the clerk informed you that there was an
11 ICE officer present with a detainer for
12 Mr. Medina Perez.

13 A. Yes. It was at the end of the lunch break.
14 The first assistant clerk, who was also my
15 session clerk that day, came in to inform me
16 that there is an ICE detainer for Mr. Medina
17 Perez.

18 Q. And the clerk informed you that it was
19 Judge Heffernan's practice to have the ICE
20 officer remain outside the court.

21 A. He did. And he said that there was a
22 practice in the Newton District Court that
23 prevented ICE from coming into the courtroom
24 proceedings and he asked if I would follow it.

25 Q. And you were concerned about that.

1 A. I was. I had never heard of a policy like
2 that before.

3 Q. And you were concerned about it because you
4 understood that the public has a right of access
5 to court proceedings; correct?

6 A. Correct.

7 Q. You understood that the public has a right to
8 see and hear what's happening in court; correct?

9 A. That's right.

10 Q. And you knew, as you told me in our interview,
11 these are public hearings open to the public.

12 A. That's right.

13 Q. And you remembered that there was a policy
14 somewhere about ICE but you couldn't put your
15 hands on it.

16 A. Correct.

17 Q. So you called the administrative office of the
18 District Court and you spoke with a lawyer
19 there.

20 A. I did.

21 Q. And the lawyer there read the Lunn policy to
22 you.

23 A. Yeah. It took them a while, a short while to
24 call -- to find it, and they had to call me
25 back, and they read me the policy.

1 Q. And you concluded that you could follow
2 Judge Heffernan's policy.

3 A. Yes. We talked about the policy. It was a
4 fairly long policy. They read it to me. And I
5 told them the concern I had and the information
6 that I was given about this policy. And my
7 question was two-fold. One, do I have to -- you
8 know, is the policy consistent with the
9 Trial Court -- is the Newton policy consistent
10 with the Trial Court policy; and two, is it a
11 policy, Newton policy that has to be followed,
12 and I was given advice on that.

13 Q. And after that conversation, you told the clerk
14 to make that request to the ICE officer, to step
15 outside the court.

16 A. Well, I did. I told him I would follow the
17 Newton District Court policy. And I was a new
18 judge, a visiting judge. I was only there for
19 the day covering for Judge Heffernan, who was
20 not there for the day, and I didn't feel that it
21 was my place to not follow any policies that the
22 court had so long as they were proper policies
23 according to the administrative office.

24 Q. And so the clerk told you that he would do that.

25 A. Yes.

1 Q. And in the afternoon, after the lunch break.

2 A. Yes.

3 Q. The Medina Perez case was called at
4 2:48:13 p.m., and Mr. Jellinek appeared,
5 David Jellinek appeared on behalf of the
6 defendant; correct?

7 A. He did.

8 Q. And the transcript now, again, is on Tab G.
9 We're going to look at Page 40. And you have
10 stipulated to the accuracy of this transcript;
11 correct?

12 A. I have.

13 Q. So I'm going to read from the transcript and
14 then I'm going to stop at various times and ask
15 you some questions about it.

16 So at 2:48:13 Clerk Okstein
17 says, court officer, can you bring out the next,
18 Mr. Perez. And Court Officer MacGregor says all
19 right. Clerk Okstein says, Judge, the next case
20 will be Commonwealth versus Jose Medina Perez,
21 Attorney David Jellinek has filed an appearance
22 on behalf of Mr. Perez. And you say, good
23 afternoon.

24 A. I did.

25 Q. Attorney Jellinek says, good afternoon,

1 Attorney Jellinek on behalf of Mr. Perez, may we
2 approach briefly. You say, yes, please. And
3 Attorney Jellinek said, thank you. Clerk
4 Okstein said, do you want to wait for your
5 client. Attorney Jellinek said, no, side bar.
6 And you said, we're just going to side bar.
7 A. That's correct.

8 Q. So at that point the defendant had not been
9 brought into the court.

10 A. He was in the process of being brought up.
11 And the question was whether to wait for him to
12 actually get into the courtroom or to begin the
13 side bar without him since he wasn't going to be
14 part of the side bar conversation, but since you
15 could hear the steps coming, he was coming
16 upstairs, I said that we could go to side bar
17 before he was physically let into the courtroom.

18 Q. And an attorney certainly can waive his client's
19 presence.

20 A. He could. That's not what happened here.

21 Q. But he said not to wait for him.

22 A. Right. But it was going to be a side bar
23 anyway without his client present.

24 Q. When Mr. Jellinek asked to go to side bar, you
25 granted that request.

1 A. I did.

2 Q. And you knew that that meant the public could
3 see what was going on but couldn't hear what was
4 being said.

5 A. Correct.

6 Q. You also knew that, as long as you were on the
7 record, if anyone wanted to know what had been
8 said, they could get a recording.

9 A. I hadn't thought of that at the time. But
10 that is true, that if it's on the record, the
11 public can get a recording of it.

12 Q. So there's still public access, although it's
13 not so immediate.

14 A. Correct.

15 Q. Now, let's go back to the transcript. So you go
16 to side bar. And you said -- It starts with
17 something inaudible. Then you said, is
18 dismissed. Is that a reference to the fugitive
19 from justice charge?

20 A. I don't know what that is. That doesn't make
21 a lot of sense looking at the transcript, so I'm
22 not sure if that -- I'm not sure what that is.

23 Q. What is it that was dismissed?

24 A. Nothing at that point in time had been
25 dismissed, so I'm not sure.

1 Q. Ultimately, the course of the day, what was it
2 that was dismissed?

3 A. Ultimately, the Commonwealth moved to dismiss
4 the fugitive from justice but --

5 Q. Did she move to dismiss or did she nolle pros?

6 A. She moved to dismiss. There was no nolle
7 pros filed in that matter.

8 Q. So after you said it was being dismissed, you
9 said, so it's my understanding that ICE is here.

10 A. Yes.

11 Q. And that was the first in this call of this
12 case, that was the first mention of ICE;
13 correct?

14 A. I believe so.

15 Q. And then Attorney Jellinek says, so there's the
16 fugitive. And Judge Joseph says, if there's no
17 warrant. And the assistant district attorney
18 says, yes. And Attorney Jellinek says, there is
19 no something inaudible that we can tie this to
20 him. And the assistant district attorney says,
21 I don't think it's him. Is that, as you
22 understood it, in reference to the Pennsylvania
23 charge?

24 A. I believe so.

25 Q. And then you said, okay. Then Mr. Jellinek

1 says, ICE is convinced that this guy -- went
2 over to ICE, they say they have a biometric
3 match, I went through it and did the research,
4 there's 13 FBI numbers connected to this Social,
5 so something's bad with the inaudible, my client
6 denies that it's him, ICE is going to pick him
7 up if he walks out the front door, but I think
8 the best thing for us to do is to clear the
9 fugitive issue, release him on a personal, and
10 hope that he can avoid ICE. Is that what was
11 said?

12 A. That's what it says, yes.

13 Q. So you understood that what Mr. Jellinek wanted
14 to do, what his goal was, was to have his client
15 avoid ICE.

16 A. Oh, what I -- how I interpreted that is that
17 he had concerns that his client was not the same
18 person that ICE thought he was, just like he
19 wasn't the same person he was arguing that
20 Pennsylvania thought he was, and I interpreted
21 that as him wanting more time to do the
22 investigation to see how that pertained to both
23 agencies.

24 Q. Is that what he said?

25 A. Well, he said, avoid ICE. And my response

1 was, if you need more time, we can hold him
2 until tomorrow.

3 Q. And then did he accept that suggestion?

4 A. He didn't ultimately.

5 Q. So he wasn't asking for his client to be held
6 longer so that he could work on the issue, was
7 he?

8 A. Well, at that point in time I didn't know
9 what he was asking for. I can only tell you how
10 I interpreted it, which, as you can see from my
11 response, is that I offered to have him held
12 until the following day.

13 Q. So the assistant district attorney says, I don't
14 think arguing ICE is really my. And
15 Attorney Jellinek says, right. Then she says --
16 she's continuing but she was interrupted. She
17 says my, my. And then you said, the other
18 alternative is, if you need more time to figure
19 this out, hold him until tomorrow.

20 A. Right.

21 Q. And David Jellinek says something inaudible.
22 And then you said, then it's a different. Do
23 you know what you were referring to?

24 A. I don't.

25 Q. Then the assistant district attorney says,

1 there's a detainer attached to my paperwork, but
2 I feel like that's separate and apart from what
3 my role is. And then Attorney Jellinek says,
4 there is an ICE detainer, so if he's bailed out
5 from Billerica, and then something inaudible,
6 ICE will pick him up. Then you said, ICE is
7 going to get him. Attorney Jellinek says
8 something inaudible. And then you said, what if
9 we detain him.

10 A. Correct.

11 Q. Attorney Jellinek said, are we on the record.
12 And you said, Larry, can we go off the record
13 for a moment. And Larry refers to first
14 assistant clerk who was serving as session clerk
15 that day.

16 A. Correct.

17 Q. And the clerk said, what's that. And you had to
18 get his attention.

19 A. Right. He was -- Yeah. He wasn't paying
20 attention, so he -- I think his reference,
21 what's that, I interpreted that as what's that,
22 I didn't hear that.

23 Q. And then you said, are we off the record. And
24 Clerk Okstein says, we're on the record.
25 David Jellinek says, can we go off the record

1 for a minute.

2 A. Correct.

3 Q. And when you said -- When he asked to go off the
4 record, he didn't give any reason and you didn't
5 ask for any reason; correct?

6 A. That's right.

7 Q. And you granted the request by asking the clerk
8 to go off the record.

9 A. I did.

10 Q. And you told me in our interview that there
11 didn't seem to be any reason not to allow it.

12 A. Correct.

13 Q. You said there wasn't a lot of contemplation.

14 A. That's correct.

15 Q. And you said you didn't give it much thought.

16 A. I didn't.

17 Q. And you said there really wasn't a reason.

18 A. No. At that point in time, I didn't know
19 that there was a rule preventing it. And so he
20 asked, and I allowed it.

21 Q. And you said, when we interviewed, that you
22 thought he might tell you something about why
23 Attorney Bostwick hadn't come back after lunch.

24 A. She said she had a medical appointment. I
25 wasn't sure. I figured in the past, when off

1 the record conversations were conducted, because
2 this was something sensitive to discuss. That
3 could have been one of the options.

4 Q. The medical thing.

5 A. Sure.

6 Q. But in fact, she had come back. She was sitting
7 in the audience.

8 A. I didn't realize that at the time.

9 Q. And you knew that, if you're off the record,
10 there's no record.

11 A. Correct.

12 Q. So there's no public access.

13 A. Right.

14 Q. But this was an arraignment, not a lobby
15 conference, not a conference regarding a
16 disposition; correct?

17 A. Correct.

18 Q. And you have no specific memory of ever seeing a
19 judge go off the record.

20 A. I have no specific memory one way or the
21 other. I didn't keep track of when people were
22 on or off the record. Certainly, it could have
23 happened. I just can't recall a specific matter
24 or what was discussed.

25 Q. So no specific memory.

1 A. No, not one way or the other.

2 Q. And you then had a conversation off the record
3 for some 52 seconds.

4 A. Correct.

5 Q. And the conversation was about the Medina Perez
6 case.

7 A. It was.

8 Q. Not about anything else.

9 A. No. It was about the Medina Perez case.

10 Q. And you have stipulated -- Getting back to the
11 statement of facts that you agreed to.

12 A. Sure.

13 Q. -- with the U.S. attorney that, during that
14 off the record conversation, Mr. Jellinek asked
15 that the defendant be allowed to go back
16 downstairs after he was released; correct?

17 A. After -- That he be allowed to interview his
18 client with the assistance of the interpreter in
19 the lockup, I would say prior to his release.
20 After I had released him on his own recognizance
21 but before the court officers had physically
22 released him in the lockup.

23 Q. So let's take a look at Appendix M, Page 164,
24 Paragraph 10. So after the recorder was turned
25 off, there was a 52-second off the record side

1 bar conference with Judge Joseph with defense
2 attorney, with prosecutor present. In the
3 course of this conference, the defense attorney
4 asked Judge Joseph to allow -- and this refers
5 to him as AS. I think it was intended to mean
6 alien subject, but we'll call him Medina Perez.
7 -- to allow Mr. Medina Perez be escorted up to
8 the courtroom by a court officer to go back
9 downstairs.

10 A. Correct.

11 Q. And your position is that nothing was said off
12 the record that hadn't been said on the record;
13 correct?

14 A. No, that's not correct. There was one thing
15 that was different off the record than on the
16 record, and I put that on the record as soon as
17 we went back on the record.

18 Q. So maybe my question is confusing. Your
19 position is that nothing was said off the record
20 that wasn't then put on the record.

21 A. Afterwards. So there was one thing that was
22 said off the record that was not said on the
23 record, and that was his request to speak with
24 his client in the lockup area with the
25 interpreter prior to his release.

1 Q. And you put that on the record.

2 A. And I put that on the record.

3 Q. And other than that, your position is nothing
4 was said off the record that wasn't said either
5 before or after, wasn't said at some point on
6 the record.

7 A. So the off the record conversation was really
8 a continuation of the on the record
9 conversation. The words were different, so I
10 don't -- but there was nothing of substance that
11 was any different than him asking to speak with
12 his client downstairs with the assistance of the
13 interpreter.

14 Q. So there was no purpose for being off the
15 record.

16 A. At the time, I didn't know what the purpose
17 was.

18 Q. Looking at it in retrospect, there was no
19 purpose for being off the record according to --

20 A. Again, at the time, on April 2nd, I didn't
21 know what the purpose was. I -- He asked to go
22 off the record, and I allowed that request.

23 Q. And shortly before you allowed that request,
24 Mr. Jellinek had told you that he didn't think
25 his client was the right person for ICE and had

1 said that he thought the best thing to do was to
2 clear the fugitive issue, release him on
3 personal, and hope that he can avoid ICE.

4 A. Yes. That's what his response was or that's
5 what his statement was, which is when I
6 suggested to hold him without bail overnight.

7 Q. And your suggestion was to hold the defendant
8 without bail to prevent ICE from arresting him
9 while the attorney would investigate.

10 A. No. My purpose for holding him overnight was
11 to give the attorney enough time to continue his
12 investigation. It was already 3:00 in the
13 afternoon. And I had afforded his morning
14 attorney plenty of time to do her investigation,
15 and I felt that it was only fair now that there
16 was a new attorney, who came in after the lunch
17 break, to give him the same courtesy that I gave
18 her in the morning. And, --

19 Q. I'm sorry.

20 A. -- and in order to make sure that everybody
21 would be back the next day, the only way I saw
22 at the time to do that would be to detain him,
23 hold him without bail for the night, and have
24 everybody come back the next morning.

25 Q. And what she had been investigating was the

1 Pennsylvania warrant, whether he was the right
2 person for the Pennsylvania warrant.

3 A. Yes. She was investigating his
4 identification as it pertained to the
5 Pennsylvania warrant.

6 Q. And what you thought that Mr. Jellinek would be
7 looking to investigate was whether he was the
8 right person for ICE; correct?

9 A. Well, they were working off the same
10 biometric information and identification
11 information. So I'm not sure that you can
12 really separate them like that. The fugitive
13 from justice matter hadn't been dismissed yet,
14 and his identification was important. I mean,
15 we need to know who's coming in and out of the
16 courthouse.

17 Q. But the assistant district attorney had already
18 said she had concluded he was not the right
19 person for the Pennsylvania warrant and she was
20 seeking to dismiss that.

21 A. I'm not sure whether or not -- Let me take a
22 look at the transcript. Give me one moment.

23 Q. You might look at the top of Page 41.

24 A. Right. That's all part of the same
25 conversation, yes.

1 Q. She said, I don't think it's him.

2 A. I don't think it's him, yes.

3 Q. Meaning, the Pennsylvania --

4 A. Correct.

5 Q. She wasn't saying anything about ICE.

6 A. Correct. But she hadn't moved to dismiss it
7 at that point in time.

8 Q. But you understood that she was going to.

9 A. Not at that -- She said I don't think it's
10 him, then we started talking about the, as I'm
11 looking at the transcript, the identification as
12 it pertained to ICE as well. So kind of talking
13 about it all at the same time.

14 Q. And she said, at least once, perhaps more than
15 once, ICE is not my role.

16 A. Correct.

17 Q. So she wasn't talking about identification for
18 ICE. She was talking about identification for
19 Pennsylvania and she was telling you she had
20 concluded that she didn't think it was him.

21 A. Well, I'm not sure -- I think she was saying
22 that the ICE detainer was not her issue, you
23 know, she was concerned about the two complaints
24 that -- the Massachusetts complaints. I think
25 the conversation that we were having was whether

1 he was the same individual that Pennsylvania
2 thought, that ICE thought he was, and all I was
3 doing was trying to give the attorney more time
4 to do his investigation.

5 Q. And you thought the suggestion to hold the
6 defendant overnight without bail, you thought
7 that was a good suggestion for Mr. Jellinek's
8 client; correct?

9 A. I did.

10 Q. That's what you said in your response to the
11 Commission --

12 A. I did.

13 Q. And Mr. Jellinek didn't like that suggestion;
14 correct?

15 A. He did not.

16 Q. You were concerned that ICE might take the wrong
17 person.

18 A. Yeah. I wasn't really concerned that ICE was
19 going to take the wrong person. ICE was not my
20 concern. I was concerned about giving the
21 attorney enough time to do the investigation
22 regarding his client's identification that I
23 thought he wanted to do. And if he could get
24 that information and convince ICE that it wasn't
25 who they thought he was, that would be his job.

1 That's not my role. I wasn't concerned about
2 ICE.

3 Q. So let's look at your response to the
4 Commission's charges at Paragraph 23, which I'll
5 read from here, but try --

6 A. Is it in the book so I can read it as well?

7 Q. So we don't have it in our copy in hand.

8 A. Okay.

9 Q. So maybe make it bigger.
10 Judge Joseph disagrees either that her
11 statements as quoted in Paragraph 23 --

12 HEARING OFFICER: I'm sorry.
13 Please speak up. Speak into the microphone.

14 Q. Judge Joseph disagrees that her statements as
15 quoted in Paragraph 23 conveyed an intention to
16 assist defense counsel to identify and avoid ICE
17 or that she subjectively had any intention. As
18 she had tried to do throughout the day,
19 Judge Joseph did intend to permit both of
20 Medina Perez's counsel sufficient time to
21 represent the client properly because she did
22 not want ICE to take custody of Medina Perez if
23 it was determined that he was not the person
24 subject to the detainer. Given the preceding
25 events, Judge Joseph's intention was to make

1 sure that Medina Perez's counsel, who had
2 repeatedly insisted that the ICE detainer did
3 not pertain to his client, had a reasonable
4 opportunity to investigate his belief that his
5 client was not the subject of the detainer and
6 to present ICE with any further information he
7 was able to obtain to establish that ICE was
8 mistaken by his client's identity. Her
9 suggestion was intended to explore a course of
10 action that would the cause the defendant to be
11 held without bail in state custody until morning
12 to permit defense counsel a reasonable
13 opportunity to make that inquiry. And then it
14 goes on.

15 So you wanted to make sure that
16 ICE wasn't going to take the wrong person;
17 correct?

18 A. Again, my concern was, allowing the defense
19 attorney enough time to investigate and do
20 whatever job he felt that he could do with
21 whatever information that he got. I was just
22 trying to hit pause, just like I had four times
23 during the morning.

24 Q. And your proposal was to do that by detaining
25 him overnight.

1 A. That's correct. That was the only safe,
2 secure, practical way to do it to make sure that
3 everybody would be back the next day.

4 Q. And if he were -- If the fugitive from justice
5 charge was dismissed, you couldn't detain him
6 overnight on that if it was dismissed.

7 A. That's true. But it hadn't been dismissed
8 yet.

9 Q. So did you think that you would deny the motion
10 to dismiss that charge so as to keep him
11 overnight even though the DA was saying she
12 didn't think it was him?

13 A. See, now we're speculating as to things that
14 didn't happen. But what I was suggesting at
15 that point in time was pause, everything stops
16 right here, and we are going to do all of this
17 tomorrow, we'd handle the fugitive from justice
18 matter tomorrow, we'll handle the arraignment on
19 the Newton charge tomorrow, he's going to get
20 held one more day so you can do your
21 investigation however you want to do it and get
22 any information that you think might be helpful,
23 if there's any helpful information, we'll all
24 come back tomorrow.

25 Q. Did you consider the question of what the legal

1 authority would be to detain him overnight?

2 A. At that point in time, I don't think I got to
3 analyze it in those terms. I was really just
4 trying to hit pause and bring everybody back
5 tomorrow to give him the time that I thought he
6 was requesting to do the investigation that he
7 wanted, and I really wanted to extend him the
8 same courtesy that I had given prior counsel
9 over the morning to do exactly what she had
10 done.

11 Q. So the question of what legal authority there
12 would be to keep a person at the jail overnight,
13 you didn't think about that.

14 A. Well, it would have been, it was by
15 agreement, we would have just continued the
16 matter until the following day. And I guess,
17 technically, if the fugitive of justice matter
18 hadn't been dismissed, which it wasn't at that
19 point in time, that could have been a legal way
20 to do it as well. But I don't think I really
21 contemplated that at the time. I think it was
22 just really more continue all of this until
23 tomorrow, we'll do all of this tomorrow.

24 Q. And didn't think through the question of
25 authority to detain him.

1 A. No. You can hear in the transcript that
2 we've played, it all happened very quickly, and
3 I was responding to the statements that I was
4 hearing and the questions I was being given,
5 really, I was just trying to hit pause and say,
6 sure, happy to give you more time.

7 Q. And you said it happened very quickly. You were
8 the judge; right?

9 A. Sure.

10 Q. You were in charge.

11 A. I was.

12 Q. You could slow it down if you thought that
13 appropriate, couldn't you?

14 A. Well, that's what I tried to do, by saying
15 I'm going to give you your time, let's come back
16 and do this tomorrow.

17 Q. So you could slow down the proceeding in the
18 courtroom if you thought that appropriate,
19 couldn't you?

20 A. I suppose.

21 Q. You could take a recess and go into your lobby
22 and pause some more, couldn't you? Call your
23 mentor.

24 A. Hypothetically.

25 Q. Call another judge.

1 A. Well, that already happened. I spent a good
2 portion of the lunch break and then 45 minutes
3 afterwards doing that. So we didn't get back on
4 the bench until 2:48, which we typically get
5 back at 2:00. I knew this case was being called
6 at 2:15. So there was a significant delay in
7 starting the session so that I did have an
8 opportunity to call down to the administrative
9 office and seek guidance.

10 Q. But as to this question of detaining him
11 overnight when the assistant DA is saying it's
12 not him for the fugitive from justice warrant,
13 and you're -- the question of whether you could
14 detain him overnight, whether there was legal
15 authority to detain him overnight, you didn't
16 think to look into that, ask someone's advice
17 about that?

18 A. I wasn't analyzing it that way. I was just
19 trying to find the solution to the problem I
20 thought he was asking me, which was can I please
21 have some more time to do my investigation.

22 Q. And that wasn't -- He rejected that suggestion;
23 right?

24 A. He rejected that, which is why he got
25 released on his own recognizance.

1 Q. And you told me in an interview that you were
2 very concerned about who is this guy, you really
3 wanted to determine who he was.

4 A. Yes.

5 Q. And you told me that you felt that you had a
6 responsibility to everybody involved, the
7 defendant, the attorneys, the district
8 attorney's office, ICE, everybody needed to know
9 who he was.

10 A. Correct.

11 Q. And you felt that it would be an injustice to --
12 for ICE to take him if he was the wrong person.

13 A. I don't know if I -- whether or not I used
14 the word "injustice." I was very concerned
15 about knowing who the individual was that was
16 being arraigned in my courtroom that day given
17 all of the identification issues that we had
18 been facing that day.

19 Q. And you didn't want an injustice to happen in
20 the courthouse; correct?

21 A. You never want injustice to happen. You want
22 fairness to happen.

23 Q. Even if he was the right person, you were not
24 confident that the ICE agents would either delay
25 their seizure of the defendant to permit an

1 attorney/client conference or an attorney
2 conference to take place once they had taken him
3 custody; correct?

4 A. Can you repeat that? I don't understand your
5 question.

6 Q. This is your response to Commission's charges at
7 Paragraph 24. You said that you were not
8 confident that the ICE agents would either delay
9 their seizure of the defendant to permit an
10 attorney/client conference or permit an
11 attorney/client conversation to take place once
12 they had taken him into custody. Right?

13 A. Right. That's why I suggest -- That's why
14 the attorney asked if he could just speak with
15 his client in the lockup area prior to his
16 release to ICE custody, and I allowed that to
17 happen.

18 Q. And you wanted to pause the ICE arrest. That's
19 what you told me in our interview.

20 A. Not necessarily. I just wanted his attorney
21 to be able to speak with him.

22 Q. Well, let's look at your interview, Page 216.
23 So this is Appendix M, Page 216 of the appendix.
24 Let's look at Line 5. And you said, it would
25 just pausing everything. Right?

1 A. I'm just reading the paragraph.

2 Q. Sure. Read as much as you feel you need to to
3 understand the context.

4 (PAUSE)

5 A. So as I say a few lines before that, the
6 question of why didn't you feel like you needed
7 to put that on the record, meaning that he could
8 speak with his client in the lockup needing the
9 assistance of the interpreter. And my answer
10 was -- He asked me to. I didn't feel as if I
11 needed to. But he asked. And I was under the
12 impression he was going to go directly into ICE
13 custody. And it seemed as if it was important
14 for him to be able to speak to his client before
15 that, as I paused so that he would have the
16 assistance of the interpreter in order to do
17 that.

18 Q. And then you say, it was just pausing
19 everything. Correct?

20 A. It was pausing everything because they were
21 going to be taking him into ICE custody. Yeah.
22 It was a place he could have a quick
23 conversation before that happened.

24 Q. And then you went back on the record. And we'll
25 go back to the transcript, Exhibit G, and we'll

1 go back to Page 40 -- Page 41. So when you went
2 back on the record, there was no more discussion
3 about whether the defendant was the right person
4 for ICE; correct?

5 A. So where, -- I'm sorry -- where are we
6 talking?

7 Q. Exhibit G.

8 A. Talking about 2:50:57?

9 Q. Yes.

10 A. Yes. Correct.

11 Q. So back on the record. There's no more mention
12 of the question of whether the defendant is the
13 right person for ICE.

14 A. Correct.

15 Q. Correct? And I'm just going to read the
16 transcript at this point.

17 A. Okay.

18 Q. So Clerk Okstein says, Judge, we're back on the
19 record on Mr. Jose Medina Perez,
20 Attorney Jellinek on behalf of Medina Perez.
21 And you say, good afternoon, Mr. Jellinek.
22 Attorney Jellinek says, good afternoon.
23 Attorney Jellinek then says, after some
24 extensive research into the various FBI numbers
25 and then something inaudible Social Security

1 numbers, as well as obtaining a photo from
2 Pennsylvania, we don't believe that this
3 gentleman is the same gentleman on the fugitive
4 from justice warrant. Did it strike you as odd
5 that it's the defense attorney who's saying
6 that -- saying it first?

7 A. It did. But ultimately, it didn't matter.

8 Q. And then the assistant district attorney
9 confirms it. She says, Your Honor, with the
10 information that I have, I don't think that
11 there is enough tying him to the Pennsylvania
12 warrant, a great deal of other out of state
13 records, I do believe that some of them belong
14 to this individual, but that is not what's at
15 issue.

16 A. Correct.

17 Q. And you said, okay. And the assistant district
18 attorney said, so at this point I would dismiss
19 the. And you said, the fugitive. She says,
20 count one. And you said, okay. And then she
21 says, there's not a bail request for counts two
22 and three. Those are the drug counts.

23 A. Yes.

24 Q. But I would ask that for a pretrial conference
25 date on those. And you said, okay. And then

1 Attorney Jellinek said, absolutely. You said,
2 that's fine. Attorney Jellinek said, I would
3 ask that, I believe he has some property
4 downstairs, I'd like to speak with him
5 downstairs with the interpreter if I may. And
6 you said, that's fine, of course. And then he
7 said, thank you. And the clerk said -- I'm
8 sorry. You said, Commonwealth no request on
9 counts. District attorney said, yes. The clerk
10 said, so do you want me to arraign him. And you
11 said, yes, please. And then -- This is the
12 district attorney said, yes, please. And you
13 said, yes. Defense counsel said, yes. And then
14 Clerk Okstein goes through the arraignment
15 process. And defense attorney says, could we
16 have May 29th for a pretrial. The clerk says,
17 May 29th. Defense attorney says, please. And
18 then you said, sir, I'm going to enter a plea of
19 not guilty on your behalf, Attorney Jellinek has
20 filed his appearance to represent you in this
21 matter, are you privately retained. Jellinek
22 says, yes. And then you said, okay, sir, you
23 are entitled to request an examination to
24 determine whether you're a drug-dependent person
25 who would benefit from treatment, if you choose

1 to exercise this right, you must do so in
 2 writing within five days, and your attorney can
 3 further explain that to you. Mr. Jellinek says,
 4 thank you. Clerk says, all right, Judge.
 5 Attorney Jellinek says, thank you. Clerk says
 6 something inaudible. Attorney Jellinek says,
 7 all set, Mr. Clerk. And you said, wait just a
 8 second.

9 And then turning over to the
 10 next page. You see the clerk speaking to you.
 11 Now, the clerk is right in front of you;
 12 correct?

13 A. Correct.

14 Q. So he can turn around and speak to you in a soft
 15 voice, but it's still on the record.

16 A. Yes.

17 Q. And he said -- When we listen to the tape -- And
 18 you've heard the tape recording now multiple
 19 times --

20 A. Yeah.

21 Q. -- in this proceeding. So you can hear that
 22 it's a softer voice. He says, there was a
 23 representative from ICE here in the court to
 24 visit the lockup. Correct?

25 A. Correct.

1 Q. And you said, that's fine, I'm not going to
2 allow them to come in here, but he's been
3 released on this.

4 Now, you had already told the
5 clerk that ICE couldn't come into the courtroom,
6 correct, in accordance with Judge Heffernan's
7 practice?

8 A. Correct.

9 Q. And -- So you said it again at this point.

10 A. Right. I felt bound by the Newton District
11 Court policy that we were following.

12 Q. So then probation officer asked, are we still
13 doing the \$150 attorney fees. No, he's
14 privately retained. And then you reiterated
15 what date, May 29. And then the clerk gives him
16 the standard warning. And then Court Officer
17 MacGregor asks, he's released, Mr. Clerk? Clerk
18 says, what's that? Court Officer MacGregor,
19 he's released? Clerk says, he is. Attorney
20 Jellinek says, yup. And then you said, he is,
21 Mr. Jellinek asked if the interpreter can
22 accompany him downstairs to further interview
23 him. And Attorney Jellinek says, yes, please.
24 And you said, and I've allowed that to happen.
25 And then Attorney Jellinek says, thank you.

1 According to this, Attorney Jellinek says again,
2 thank you, Your Honor. And you said, you're
3 welcome. Clerk says, thank you, Judge, that's
4 all we have. That's all -- we're all done for
5 now. So that ended the proceeding.

6 A. Yes.

7 Q. And during the course of that proceeding, of
8 that on the record portion back in open court,
9 the interpreter is interpreting for the
10 defendant; correct?

11 A. Yes, he is.

12 Q. And in the recording, you can hear that voice in
13 the background; correct?

14 A. Correct.

15 Q. And you knew throughout that on the record in
16 open court, in part, you knew that the ICE
17 officer was not in the courtroom.

18 A. Correct.

19 Q. So when you said that the defendant was
20 released, you knew that the ICE officer was not
21 in the courtroom.

22 A. Correct.

23 Q. And you knew that, when you said he was going
24 downstairs with his lawyer, the ICE officer is
25 not in the courtroom.

1 A. I didn't hear --

2 Q. That the ICE officer was not in the courtroom.

3 A. That's correct.

4 Q. And you knew that the ICE officer was out in the
5 main lobby outside the courtroom; correct?

6 A. I don't know where the ICE officers were.

7 Q. Well, let's go back to -- First of all, let's go
8 back to the transcript where Mr. Jellinek
9 says -- We're back to the top of Page 41.
10 There's a big paragraph with Mr. Jellinek
11 talking.

12 A. Where are we again? Sorry.

13 Q. Page 41. Mr. Jellinek is talking. And he says,
14 ICE is going to pick him up if he walks out the
15 front door. Did that give you a clue about
16 where the ICE officer was?

17 A. You know, I didn't know. I assume that -- I
18 didn't know how many officers there were. I was
19 under the impression there would be one officer.

20 Q. But where did you think they were?

21 A. I thought one, at least one was in the lobby.
22 I expected that one would be in the lobby as
23 well.

24 Q. But nobody told you that; right?

25 A. No.

1 Q. And when I interviewed you, -- let's look at
2 Appendix N, Page 218, Line 8 and 9 -- I had
3 asked you -- We had a conversation about how the
4 ICE officers could get to the lobby.

5 A. Right.

6 Q. And then I asked you, they can't get there from
7 here -- or you said, they can't get there from
8 here, but they can certainly get there any other
9 way they want.

10 A. Right.

11 Q. And then you said, why is that, you know,
12 relevant, there were ICE agents waiting in the
13 lobby. So that's where you thought they were.

14 A. Right. But if you actually look a couple
15 lines down from there, I said that I assume that
16 there was an ICE van in the back.

17 Q. So you said, I only know that, referring to ICE
18 agents waiting in the lobby, I only know that
19 because the chief court officer was standing in
20 front of the doors in first session. Going to
21 say blocking the door. Right? I'm not sure,
22 you know, what the intention was. And then at
23 some point later on you said you thought they
24 might have a van in the back. Correct?

25 A. Just the next couple of lines. After I say,

1 I'm not sure that was their intention or not,
2 you asked standing in the front of the doors
3 inside the courtroom or outside the courtroom.
4 I said, inside the courtroom and I assume that
5 there was an ICE van in the back.

6 Q. But nobody told you that.

7 A. No.

8 Q. Now, let's turn to the time period after
9 April 2nd.

10 A. Okay.

11 Q. You were not in Newton on April 3rd.

12 A. I was not.

13 Q. On April 4th, you were in Newton again.

14 A. (Witness nods head).

15 Q. And you were in second session because
16 Judge Heffernan was there in the first session.

17 A. Correct.

18 Q. And Judge Heffernan came up to your lobby to see
19 you.

20 A. She did.

21 Q. And she told you that a defendant who was wanted
22 by ICE had escaped through the sallyport;
23 correct?

24 A. Yes.

25 Q. And your position is that that's the first you'd

1 heard about it.

2 A. It is.

3 Q. You did not say anything in that conversation
4 with Judge Heffernan about going off the record.

5 A. I didn't. I asked her how that happened, and
6 she said that she was trying to figure that out.

7 Q. And she didn't ask you about going off the
8 record; correct?

9 A. No.

10 Q. And you told me, when we interviewed, that the
11 issue of going off the record just didn't come
12 to mind.

13 A. Correct. At that point in time, I didn't
14 know that there was a policy preventing it.

15 Q. So just didn't come to your mind.

16 A. It just -- No.

17 Q. And you did not tell her that you were concerned
18 that ICE would take the wrong person; correct?

19 A. It was a very brief conversation. I don't
20 recall the specifics of what we talked about.
21 We talked about generally what happened, and
22 that was it.

23 Q. And you didn't tell her that your intention was
24 to pause ICE taking the defendant into custody;
25 correct?

1 A. I'm not sure that we got that far into what
2 happened, other than her trying to determine on
3 a security basis how somebody could have been
4 released out the sallyport and not have been
5 apprehended by ICE.

6 Q. But you didn't tell her that.

7 A. Again, I don't recall seven years later the
8 full substance of the conversation. I know we
9 talked very frankly for a couple minutes and
10 then that was it.

11 Q. And then sometime in the next couple of weeks
12 you were sitting in the Lowell District Court.

13 A. Yes. Close to about three weeks later.

14 Q. I'm sorry?

15 A. Close to about three weeks later.

16 HEARING OFFICER: Get close to
17 the mic.

18 Q. Sometime been April 5th and April 20; correct?

19 A. Yes.

20 Q. And Stacey Fortes was then the
21 Regional Administrative Justice for that region
22 and she was the First Justice for the Lowell
23 District Court.

24 A. She was.

25 Q. She's now the Chief Justice.

1 A. She is now the Chief Justice.

2 Q. And the Regional Administrative Justice has the
3 power, has the authority to schedule judges --

4 A. Correct.

5 Q. She asked you to come to her lobby during the
6 lunch break.

7 A. Right.

8 Q. She didn't tell you why.

9 A. No.

10 Q. She didn't tell the topic of the conversation.
11 But she asked you to come to the lobby.

12 A. Yeah. She said why don't you grab your lunch
13 and come on into the lobby.

14 Q. And you sat there and ate lunch and had a
15 conversation.

16 A. Yeah.

17 Q. And she said to you that it was her
18 understanding that part of -- She brought your
19 attention to the Newton event.

20 A. She did.

21 Q. And she said it was part of her understanding --
22 it was her understanding that part of the
23 proceeding was not recorded, and she asked what
24 happened. Right? She didn't accuse you. She
25 said it was her understanding that part of the

1 proceeding was not recorded, and she asked what
2 happened. Right?

3 A. Correct.

4 Q. And you told me, when I asked you about that
5 conversation with Judge Heffernan, that you
6 acknowledged it immediately; correct?

7 A. I did.

8 Q. You did or you told me that?

9 A. Well, I told you that and I did.

10 Q. Is it your position in response to the
11 Commission's charges that you acknowledged it
12 immediately? Let's look at --

13 A. I would have if she said that it was in --
14 And I recall that she showed me the rule, and
15 that was the first that I had heard that there
16 was a rule preventing unrecorded conversations
17 in the courtroom.

18 Q. But let's look at Paragraph 37 of your response
19 to the Commission's charges. So let's go to
20 the -- read the part of what the Commission
21 charges is accurate. And you said the RAJ
22 invited Judge Joseph to her chambers during the
23 lunch recess, and they spoke while having lunch,
24 and Judge Joseph learned from the RAJ of the
25 evidence, of the existence of Special Rule 211,

1 which prohibited off the record recordings,
 2 Judge Joseph told the RAJ that she was unaware
 3 of the rule prohibiting off the record
 4 proceedings and expressed her understanding of
 5 the rule and promised that she would observe the
 6 rule in all future proceedings. Is that
 7 correct?

8 A. Correct.

9 Q. And then Judge Joseph denies that she was less
 10 than fully candid as she believes that the RAJ
 11 understood that Judge Joseph had directed that
 12 the conference take place off the record and
 13 that it was that understanding that prompted the
 14 meeting and the discussion about Special Rule
 15 211 and its purpose. Right? That's what you
 16 said.

17 A. Yes. That's what I said.

18 Q. But you didn't say that you acknowledged it;
 19 correct?

20 A. I don't understand your question.

21 Q. Well, there's a difference between assuming or
 22 believing that she knew it and acknowledging it
 23 directly; correct?

24 A. Again, I'm not really understanding what
 25 you're saying. It made sense that I denied that

1 I was less than fully candid, and I believe that
2 at the time Chief -- well, at the time,
3 First Justice Fortes understood that I had
4 directed the conference to take place off the
5 record and that -- I'm just having a hard time
6 regarding -- and it was that understanding that
7 prompted the meeting, the discussion about the
8 rule.

9 Q. So you believed that she understood that you had
10 directed the clerk to go off the record.

11 A. Yes. I mean, she said it when we started the
12 meeting that she understood that part of
13 record -- part of the conversation was off the
14 record.

15 Q. She didn't say, I understand you told the clerk
16 to go off the record; correct?

17 A. No. I don't remember the specific words.
18 But it was clear that we were talking about the
19 same thing. That's why she opened the book,
20 read me the book, and she even printed a copy of
21 the rule for me.

22 Q. But you never said to her directly, I told the
23 clerk to go off the record.

24 A. Again, I don't remember. But it was clear
25 that we were off the record. And I was the

1 judge, so whether the words came out or it was
2 inferred, I can't speak as to what the exact
3 words that was said seven years ago.

4 Q. You talked to her about the recording equipment
5 in Newton; right?

6 A. I did.

7 Q. And you talked about an incident in another
8 court; right?

9 A. In Waltham, yes.

10 Q. In Waltham. And that was an incident in which
11 the recording system or the amplification system
12 malfunctioned; correct?

13 A. The amplification system was -- We were
14 having a side bar conference on a rather
15 sensitive matter, concerning somebody's mental
16 health, and I was notified by attorneys that
17 were sitting in the audience that it was
18 amplifying in the audience as opposed to just
19 being at side bar.

20 Q. And that's not the way --

21 A. No.

22 HEARING OFFICER: Speaking of
23 amplifying. Thank you.

24 Q. And so on that occasion, you turned off the
25 record so that that wouldn't happen; correct?

1 A. I did. Actually, what I did, I just
2 disconnected the microphone that was at the side
3 bar. So the record was going on in the
4 courtroom, but I just disconnected the
5 microphone when the side bar conversation was
6 occurring.

7 Q. And you talked about that with Judge Fortes --

8 A. I did.

9 Q. -- when she asked you about this.

10 A. Yes.

11 Q. In Newton, on April 2nd or at any other time,
12 there was no malfunction of the recording
13 system; correct?

14 A. No.

15 Q. It was a decision you made to direct the clerk
16 to turn off the record; correct?

17 A. Right.

18 Q. You did not tell Judge Fortes in that
19 conversation that you were concerned that ICE
20 might take the wrong person.

21 A. Again, I don't remember the full extent of
22 the conversation. We spoke about the case. She
23 was worried about having gone off the record and
24 was really there to guide me. I was a new judge
25 in her region. And it was a very friendly

1 conversation. You know, I don't -- I would have
2 shared with her everything that was relevant as
3 I remember it.

4 Q. But you didn't tell her that you were concerned
5 that ICE would take the wrong person; right?

6 A. Again, I don't remember the specifics of the
7 conversation that we had.

8 Q. So you don't remember telling her that ICE
9 wouldn't allow an attorney/client conference.

10 A. Again, I can't recall sitting here today
11 exactly the conversation that we had. You know,
12 I just -- I'm sorry. I just can't say for sure.

13 Q. So then you don't remember telling her that you
14 were just pausing the arrest.

15 A. I wasn't pausing anything. I was trying to
16 afford the attorney the time to speak to his
17 client before he was taken into ICE custody,
18 which is where I presumed he was going.

19 Her concern was the fact that I
20 had gone off the record, she gave me the rule,
21 she gave me a copy of the Lunn policy, which I
22 had had because I received it on that day, and
23 that was really the concern and some of the
24 conversation. It wasn't a very long
25 conversation. We finished our lunch and went

1 back to session. I just don't recall the, you
2 know, the complete dialogue of what we talked
3 about, but we had a very open back and forth
4 dialogue about exactly what happened that day.

5 Q. And the next thing you heard about this event
6 was, I believe it was May 2nd, you got an e-mail
7 from Chief Justice Dawley's administrative
8 assistant inviting you to come to a meeting with
9 Chief Justice Dawley on May 8th.

10 A. Correct.

11 Q. And you got the recording from the clerk.

12 A. After I received that notification -- His
13 e-mail had indicated what he wanted to talk
14 about, that he wanted to talk about that matter.
15 So I actually was sitting in Newton. And while
16 I was there, I requested a copy of the -- They
17 were on the old system. We talked about the
18 JAVS system. So I requested a copy of the CD so
19 that I could listen to the hearing prior to
20 meeting with Chief Justice Dawley.

21 Q. And you did listen to it.

22 A. I did.

23 Q. And so when you went into the meeting with
24 Chief Justice Dawley, you had listened to the
25 recording.

1 A. I had.

2 Q. And you knew that the recording showed that you
3 had told the clerk to turn off the record.

4 A. Right.

5 Q. So when you went into that meeting, and
6 Chief Justice Dawley asked you about going off
7 the record, you acknowledged --

8 A. Of course.

9 Q. -- to the Chief Justice that you had gone off
10 the record. Correct?

11 A. Of course I did.

12 Q. And you apologized for it.

13 A. I did.

14 Q. And you told him that the off the record
15 discussion was about the defendant's identity
16 with respect to the Pennsylvania warrant;
17 correct?

18 A. And it was, yes.

19 Q. And -- It was? You're saying that the off the
20 record discussion was about the issue of
21 identity regarding the Pennsylvania warrant?

22 A. No. The off the record conversation was
23 about the defendant's identity, period, and also
24 the defendant's request to -- the defense
25 attorney's request to speak to his client

1 downstairs with the assistance of the
2 interpreter prior to his release.

3 Q. Before the off the record discussion, the
4 assistant district attorney had told you that
5 she didn't believe he was the person wanted in
6 Pennsylvania; correct?

7 A. Correct.

8 Q. So the off the record discussion, that issue was
9 done; correct?

10 A. Again, it was the off the record
11 conversation, as best as I remember, it was
12 really a continuation of the conversation that
13 started on the record. The only difference is
14 that the defense attorney asked that the client
15 to speak with his attorney in the lockup prior
16 to his release from state custody, which I
17 allowed. But I don't know that you can separate
18 the identification issues. They're all part of
19 and parcel of the same thing.

20 Q. But you weren't talking about Pennsylvania in
21 that off the record discussion.

22 A. Again, it was a continuation of the
23 conversation that happened on the record.

24 Q. The Chief Justice asked you if you had anything
25 to do with the defendant being released out the

1 back; correct?

2 A. He did.

3 Q. And you denied it.

4 A. I did.

5 Q. And you did not say that you were concerned that
6 ICE would take the wrong person.

7 A. Again, I don't recall the specific things
8 that we talked about other than what happened
9 during that matter.

10 Q. You did not say that you thought you should
11 determine if defendant was the right person for
12 the ICE detainer.

13 A. I don't believe so. I just -- I don't -- I
14 don't know that I understand your question.

15 Q. Well, should we go back to your interview with
16 me in Appendix M, Page 229, when you said,
17 starting at Line 8, you said, I certainly felt
18 that I had a responsibility as a judge to
19 everybody involved, the defendant, the
20 attorneys, whoever they may be, the district
21 attorney's office, ICE, everybody, we needed to
22 know who he was, didn't matter to me whether
23 this was on or off the record, ascertaining his
24 identity was a huge importance to me, and I felt
25 there was responsibility to know who he was.

1 So you told me that you had a
2 responsibility to determine his identity for all
3 purposes, including the ICE detainer; correct?

4 A. Well, looking at it, that I wanted to know
5 who the defendant was, period.

6 Q. But you didn't tell Chief Justice Dawley that
7 you thought you had a responsibility to
8 determine if he was the right person for the ICE
9 detainer; correct?

10 A. I'm just going back to look at the
11 transcript.

2 Q. Yup. Take your time.

3 (PAUSE)

14 A. So if you go back to the page before, you
15 have the whole conversation. You know, we were
16 just talking about the identity of defendant and
17 as it pertained to everybody. And again, I was
18 just trying to be fair to everybody and give
19 everybody enough time to do whatever job they
20 felt that they needed to do for the person
21 that's before me.

22 Q. But you thought you had a responsibility to
23 determine who he was and that included for ICE;
24 correct?

25 A. No. I was affording his attorney enough time

1 to investigate his identity as he saw it fit.

2 Q. So go back to that big paragraph where you're
3 answering on Page 229. We've got a list of
4 people who you thought you had a responsibility
5 as to ascertaining his identity. The list
6 includes ICE; correct?

7 A. It does. But I don't think that what was
8 meant by that was that I had the responsibility
9 to determine his identification for ICE
10 purposes. I wasn't concerned about ICE. I was
11 concerned about the attorney having enough time
12 to do whatever investigation he felt necessary
13 to help his client. The fact that he -- ICE was
14 there, it really didn't make a difference, other
15 than the fact that the issue of identification
16 was raised. And that's why I hit pause, which
17 is the word I use here, let's come back
18 tomorrow, let's do this tomorrow.

19 Q. So when you refer to ICE here in this paragraph
20 long answer, that's what you meant, was to give
21 the attorney an opportunity to figure out? It
22 wasn't that you were supposed to make a
23 determination.

24 A. No. I didn't need to make a determination.

25 Q. Well, certainly, you didn't need to make a

1 determination. But your answer here was not
2 that you -- You're telling me now, you're
3 telling the hearing officer now, that your
4 answer did not indicate that you thought you had
5 a responsibility to everybody, district
6 attorney's office, ICE, everybody, we needed to
7 know who he was.

8 A. Again, I felt that I needed to be fair to
9 everybody that was before me, and I wanted to
10 everybody to be able to do their jobs as they
11 wanted to do their jobs.

12 Q. All right.

13 A. And that includes ICE.

14 Q. And in that -- So that includes ICE, that you
15 wanted ICE to be able to do the job as they
16 should, and part of that issue is whether it's
17 the right person; correct?

18 A. Yes. But that's not my determination.
19 That's, you know, that was for the attorney to
20 figure out if he could --

21 Q. Certainly not your determination.

22 A. No.

23 Q. You know that now.

24 So in this conversation with Chief Justice
25 Dawley, you did not say that you intended to

1 pause the ICE arrest; correct?

2 A. Again, I don't recall the specific words that
3 we said, and there was no discussion about
4 pausing any arrest.

5 Q. But that was part of what you told me at our
6 interview, right, that you were just pausing?
7 Correct?

8 A. Right. I was pausing to continue the matter
9 until tomorrow so that everybody could come back
10 and do the jobs that they needed to do.

11 Q. And you did not say to Chief Justice Dawley, as
12 you have said in your response to the
13 Commission's charges, that you had the
14 unintended effect of assisting in what happened.
15 Right? This is Paragraph 32 of the response.

16 So Judge Joseph agrees that the
17 unintended effect of her assent to allow defense
18 counsel and the interpreter to accompany
19 Medina Perez to the lockup was to assist defense
20 counsel's plan, but denies that she had any
21 knowledge of the plan. And then it goes on. Or
22 that she intended to assist the plan or that she
23 intended to permit anything other than the
24 retrieval of the defendant's property. And it
25 goes on.

1 So in response to Commission's
2 charges, you said you agreed that you had the
3 unintended effect of assisting defense counsel's
4 plan. You didn't tell Chief Justice Dawley
5 that, did you?

6 A. Again, I wouldn't have -- I mean, I had no
7 intent to help the defense attorney with his
8 plan. So that's what I would have told
9 Chief Justice Dawley, and that's exactly what I
10 did tell Chief Justice Dawley.

11 Q. But you didn't tell him you had an unintended
12 effect of assisting; correct?

13 A. I don't know. Again, I don't remember the
14 words that we used, but I can't imagine that I
15 would have included that.

16 Q. And what you told Chief Justice Dawley was that
17 you denied completely that you had anything to
18 do --

19 A. I didn't have anything to do with it.

20 Q. But we're talking about the conversation with
21 Chief Justice Dawley. You denied completely
22 that you had anything to do with it.

23 A. Of course.

24 Q. And in your interview with me, I asked you,
25 similar question, I asked you if you had done

1 anything to facilitate, and at that time you did
2 say that you wanted to pause the ICE arrest, but
3 you did not say that you had the unintended
4 effect of assisting or intentionally assisting;
5 correct?

6 A. Right.

7 Q. And you deny completely that you had anything to
8 do with it.

9 A. Right. I didn't.

10 JUDGE FABRICANT: That's all I
11 have. Thank you.

12 HEARING OFFICER: Ms. Mulvey.

13 MS. MULVEY: Thank you.

14 CROSS-EXAMINATION

15 BY MS. MULVEY:

16 Q. Good morning, Judge Joseph.

17 A. Good morning.

18 Q. Okay. I just want to sort of fill in some of
19 the gaps without repeating everything that
20 you've already said. Fair enough?

21 A. Sure.

22 Q. Okay. Now, you've talked a little bit about
23 your background as a defense lawyer, both as a
24 bar advocate and private counsel.

25 A. I did.

1 Q. Did you also spend some years on the law
2 enforcement side?

3 A. As a prosecutor, yes.

4 Q. Tell us about that, please.

5 A. So when I finished law school, I actually
6 worked at the State House as legal counsel for a
7 state senator for about six months, and then I
8 was hired by the attorney general's office where
9 I spent the next -- close to seven years of my
10 career. While at the attorney general's office,
11 I spent some time in family bureau, family
12 community crimes bureau, where I worked with
13 victims of violent crimes who would at that time
14 sue the state for financial recovery as a result
15 of being victims of violent crimes, and it was
16 my determination whether or not to award
17 out-of-pocket expenses or not. I then went to
18 the criminal bureau where I spent five years as
19 a special assistant district attorney, working
20 as a baby at the Suffolk County attorney's
21 office, and in between those five years I was
22 there for a year in District Court, and then --
23 well, which was then District Court, now we call
24 it the Boston Municipal Court, and then I spent
25 three months back at the attorney general's

1 office in the insurance fraud bureau where I
2 prosecuted insurance fraud cases, before coming
3 back to the district attorney's office as a
4 special assistant, where I spent the last four
5 years in Superior Court, again, back in the gang
6 unit.

7 Q. And as a result of working both as a prosecutor
8 and criminal defense lawyer, how did you see
9 your role as the judge?

10 A. I saw my role as kind of an intermediary
11 before -- between both. Having been on both
12 sides, my role was to be fair to everybody who
13 appeared before me. I had been a prosecutor and
14 I had appeared before many judges. I had been a
15 defense attorney, tried many cases, was in court
16 very often. And I wanted to make sure that
17 everybody who came before me and what felt fair,
18 felt that they had an opportunity to be heard,
19 and that I handled their matters, you know, so
20 that they felt that, you know, that they were
21 able to be heard.

22 Q. Did that include ICE?

23 A. It did.

24 Q. And if Attorney Jellinek had said, yes, let's
25 just come back in the morning, let me see what I

1 can do, was it your assumption ICE would come
2 back?

3 A. Absolutely.

4 Q. And depending on how successful David Jellinek
5 had been, what did you think ICE would do?

6 A. If they were convinced that they didn't have
7 the proper paperwork that -- or identification
8 of the defendant, that they would have released
9 the detainer and then not be able to serve the
10 detainer.

11 Q. Did you think that continuing the proceeding for
12 one day and having ICE come back to give
13 David Jellinek time, if that's what he wanted,
14 did you think that that was obstructing or
15 impeding or hindering ICE?

16 A. Not at all. I thought it was giving the
17 attorney time that he needed. It was already
18 3:00, a little bit later in the afternoon. You
19 know, the court closes down at 4:30. I was just
20 trying to give him as much time as he needed to
21 do whatever investigation he wanted to do.

22 Q. Let me back up a little. We've heard that this
23 was a Monday in the Newton District Court?

24 A. It was.

25 Q. And you said you think it was the first time you

1 had a docket. Can you tell us what that means?

2 A. Yes. So there's a docket of cases that are
3 scheduled to be in court every day. As I had
4 indicated a little bit earlier, Newton is a
5 little unusual in that it's a small court. It
6 only represents one town, the town -- or the
7 city, the City of Newton. And on Thursdays, the
8 First Justice doesn't sit in Newton, she sits
9 over in Quincy to handle their recovery court.
10 And so a visiting judge sometimes, not all the
11 time, comes to Newton to sit in case of any
12 emergencies. On all other days there is a judge
13 that's assigned to Newton District Court and
14 handles whatever cases are on the list for that
15 day. So this being a Monday, I had all the
16 weekend arrests plus anything that had been
17 scheduled to be heard that day.

18 Q. So by Newton standards, was this a busy day?

19 A. It actually was a busy day, particularly for
20 Newton standard. Not a lot happens in Newton.
21 I think we had about 20 cases on the list, which
22 is very busy for Newton.

23 Q. And as we've heard, First Justice Heffernan was
24 not there that day?

25 A. Correct.

1 Q. As a visiting judge, how did you see your
2 relationship or responsibility with the
3 First Justice or the Presiding Judge?

4 A. So I always like to -- The First Justices
5 are, you know, the leader of the court, and I
6 always like to follow how they like to do things
7 in their court.

8 Q. Was that part of sort of trying to be fair or
9 trying to respect everybody?

10 A. Absolutely. We're taught that we're judges,
11 we're independent, we can make our own
12 decisions. Particularly as a new judge who's
13 learning and meeting my colleagues for the
14 first, second, third time, I certainly want to
15 be respectful to judges, particularly senior
16 judges who have practices and policies that are
17 specific to their courts, because every court is
18 different.

19 Q. At this point, by April of 2018, can you give us
20 some idea of how many different District Courts
21 you've sat in over five months?

22 A. I believe at that time there were eight
23 District Courts in the region where I was
24 assigned to. So, certainly, sometimes we would
25 sit out of region if we needed to cover for

1 somebody else. So it was a possibility that I
2 sat in more than eight, but I at least sat in
3 eight courts.

4 Q. And if you sat down and you thought about it and
5 made a list, would you be able to come up with
6 something unique or perhaps even odd about every
7 single one of them?

8 A. Oh, absolutely.

9 Q. Just the way it works.

10 A. It's just the way it works. Every
11 District Court -- They're all built at different
12 times. They're not cookie-cutter courts.
13 They're all different.

14 Q. Now, during the morning, one of cases that came
15 before you was Jose Medina Perez; is that right?

16 A. Correct.

17 Q. And this was a misdemeanor drug arrest --

18 A. Yes.

19 Q. -- over the weekend.

20 A. Yes.

21 Q. Were there, as we've heard, two additional
22 nuances or facets or complications?

23 A. There were.

24 Q. One was the Pennsylvania warrant and one was the
25 ICE detainer?

1 A. Correct.

2 Q. Now, you I think said to
3 Special Counsel Fabricant on your direct exam
4 something about the Pennsylvania warrant and the
5 ICE detainer using the same biometric
6 information?

7 A. Yes.

8 Q. Could you tell us what you meant by that?

9 A. So I was under the assumption that -- So when
10 somebody's arrested on a criminal offense,
11 there's a bail determination made. There was --
12 This individual was held without bail over the
13 weekend between his arrest and the time of his
14 arraignment. And it was then that they
15 determined that -- it was during that time that
16 they determined that he was also alleged to have
17 been a fugitive from justice out of
18 Pennsylvania. And it all goes into the same
19 central computer system so all law enforcement
20 agencies get their information off that same
21 central system.

22 Q. Okay. And so when you say the same biometric
23 information, do you, as either a prosecutor or
24 defense lawyer, have some understanding what the
25 police department actually does to figure out

1 there's a fugitive warrant and an ICE detainer?

2 A. I believe that they've just got to type into
3 it the system and then up pops the information.

4 Q. And do they do that by name or height or eye
5 color or fingerprint? What do they use?

6 A. So it's my understanding they use their name
7 and the date of birth, and that alerts all other
8 law enforcement agencies that an inquiry has
9 been made.

10 Q. And biometric, does that mean fingerprinting?

11 A. I believe it means fingerprints and maybe any
12 other information that they may have about the
13 person.

14 Q. And knowing that basically Pennsylvania and ICE
15 would be relying on the same sources, did that
16 enter into your thinking?

17 A. It did.

18 Q. How?

19 A. Well, if one agency got it wrong, there's
20 certainly a possibility that the other agency
21 was wrong, too.

22 Q. And was that what the lawyers were telling you?

23 A. Exactly.

24 Q. Did you think it was fair to give them a chance
25 to prove that to whoever?

1 A. I did. I mean, I had two lawyers who were
2 questioning their client's, same client's
3 identification based on the same, I'm going to
4 say biographical, biometric information.

5 Q. And in fact, as the day evolved, did somebody,
6 -- and maybe we'll talk about who in a minute --
7 did somebody convince the Commonwealth that
8 Pennsylvania had the wrong guy?

9 A. They did. And what was odd about it is that
10 in the morning the assistant district attorney
11 was adamant that that's who Pennsylvania thought
12 he was, and she had made a call, I believe to
13 the department, and they said, yes, we're going
14 to come and get him. And there was also a
15 photograph that had been shown to me that was
16 inconclusive to me as to whether they were the
17 same person or not. I think the photograph was
18 from the Pennsylvania arrest eight years prior.
19 And I couldn't tell whether it was the same
20 person or not. So -- And then after the lunch
21 break, it appeared where she didn't believe it
22 was the same person that she was -- she received
23 some information convinced her of that.

24 Q. The prosecutor.

25 A. The prosecutor, yes.

1 Q. Let's go back to the morning. We heard that
2 there were three or four calls of Mr. Medina
3 Perez's case?

4 A. Yes.

5 Q. Is that common in the District Court, that
6 they'll do a second or a third call?

7 A. There is. Typically, when there's an
8 interpreter involved.

9 Q. Why is that?

10 A. Because you want to give the attorney time to
11 speak with their client. Oftentimes -- I don't
12 know whether this was the case on this day or
13 not -- the interpreter has multiple people that
14 they have to the interpret for. And so
15 oftentimes that takes some time to do that. In
16 a case such as this and any case of this matter,
17 you need to afford the attorney time to speak
18 with their client so that they can determine if
19 there are any issues, questions of
20 identification. Again, that's the first issue,
21 the question that we ask as judges on a fugitive
22 matter. And then to get whatever information
23 they need from their client.

24 Q. Who was representing Mr. Medina Perez in the
25 morning?

1 A. So in the morning, I appointed
2 Attorney Bostwick to represent him.

3 Q. And she's referred to as bar advocate?

4 A. She was the bar advocate. She was our duty
5 attorney for the day. And Newton typically only
6 has one duty attorney, because typically the
7 list isn't very long, so they just assign one
8 attorney to handle the case, indigent clients
9 that appear for arraignment.

10 Q. And so had somebody determined that
11 Mr. Medina Perez was indigent?

12 A. Yes. I was actually told he was marginally
13 indigent. He was afforded an opportunity to
14 have a court-appointed attorney, but the fee for
15 that would be little bit more. I also want to
16 say that, if somebody does come in and doesn't
17 have an attorney, and if there is a question of
18 detention as opposed to release that day, a bar
19 advocate would be appointed for bail purposes
20 only, just to make sure that person has an
21 advocate for arraignment.

22 Q. But in this case, it was because
23 Mr. Medina Perez was marginally indigent --

24 A. Correct.

25 Q. And we've seen some mention of \$150. Is that

1 what he'd pay?

2 A. Yes. That's a statutory fee for
3 court-appointed counsel.

4 Q. Now, at some point in the morning did you
5 attempt to reach First Justice Heffernan?

6 A. I did.

7 Q. Tell us about that.

8 A. So there was -- And I don't remember all of
9 the detail, but there was another matter on the
10 list where I believe I was told that it was a
11 file she had in her office as opposed to in the
12 clerk's office. So somehow it didn't make its
13 way into the courtroom. And we couldn't find
14 it. And so I called her in the morning just to
15 find out if she knew where that file was, since
16 the clerk's office couldn't find it and it was
17 on the list.

18 Q. And how did you try to reach her?

19 A. I called her on her cell phone. I didn't
20 know she was at a funeral. I just knew she
21 wasn't at court. So I wouldn't have called.
22 But I called her on her phone and left a
23 message.

24 Q. Did you get any response?

25 A. I didn't.

1 Q. Now, did Attorney Bostwick continue to represent
2 Mr. Medina Perez throughout the morning?

3 A. She did.

4 Q. And in fact, right up until the time court
5 recessed for the luncheon break, --

6 A. That's correct.

7 Q. -- was she representing Mr. Medina Perez?

8 A. She was.

9 Q. And based on what you knew, did she intend to
10 continue to represent him after the lunch break?

11 A. She did. In fact, she asked if she could
12 come back a little bit late after the lunch
13 break because she had a medical appointment
14 which -- and she was waiting for a fax. So it
15 was pretty clear to me that she intended to come
16 back after the lunch break to continue to
17 represent Mr. Medina Perez.

18 Q. Up until the point of the luncheon recess when
19 Attorney Bostwick was saying can we start at
20 2:15 instead of 2:00, had you seen
21 David Jellinek that morning?

22 A. I hadn't.

23 Q. Did he appear on any other matters that morning?

24 A. He did not.

25 Q. Did you see him sitting around in the back of

1 the courtroom?

2 A. I did not.

3 Q. Did he say anything on the record?

4 A. In the morning session?

5 Q. Yes.

6 A. No. He wasn't there.

7 Q. Now, so we saw around 12:40, 12:45 there was the
8 luncheon recess?

9 A. Yes.

10 Q. And you know in Massachusetts we eat lunch from
11 1:00 to 2:00; is that right?

12 A. Correct.

13 Q. All right. Up until the time of luncheon
14 recess, were you aware that there was an ICE
15 officer --

16 A. No.

17 Q. -- in the courthouse?

18 A. I was not.

19 Q. How did you become aware of that?

20 A. So towards the end of the lunch break, when I
21 was sitting in the lobby, assistant clerk
22 magistrate -- First Assistant Clerk
23 Magistrate Okstein came into my lobby and
24 informed me of that.

25 Q. Do you recall what he said?

1 A. He said, Judge, just want to let you know
2 that the Medina Perez matter that is coming in
3 at the end of the afternoon, that there's an ICE
4 agent here with a detainer, and that
5 Newton District Court has a policy that does not
6 permit ICE agents to sit in the courtroom during
7 matters, would you like me to follow that
8 policy.

9 Q. And had you ever heard of a policy like that
10 before?

11 A. I had not.

12 Q. What did you think?

13 A. Well, I asked him -- Particularly new judges
14 rely on our clerks. And having practiced in
15 Newton, I knew Clerk Okstein a little bit. I'm
16 like, you know, do we -- do you have a copy of
17 that policy. And he informed that it was state
18 court protocol, it was a proper practice. I'm
19 not sure what word he used. So there wasn't --
20 And I said, do other judges do that, do you have
21 to do that. Like, you're the judge. And I
22 stated, do we have any policies around about how
23 to handle ICE matters in the courthouse. I
24 figured there's a policy for everything, there
25 has to be a policy. And he didn't -- he says,

1 yes, I know there's a policy, you know, let me
2 see if I can find it. I started looking for a
3 policy. I was looking in my training materials.
4 I looked. I couldn't find it in my materials.
5 I started looking in Judge Heffernan's office to
6 see if I could find anything for any guidance.
7 When I realized I wasn't easily putting my hands
8 on anything, I called down to the administrative
9 office for some guidance from the legal counsel
10 who were there for us when you have questions.

11 Q. Why did you spend so much time? Why didn't you
12 just say, well, if that's Judge Heffernan's
13 policy, we'll do it?

14 A. Because it seemed odd to me to have a rule to
15 exclude anybody from the courtroom. And it
16 just, it just made me pause and say I just want
17 to make sure I can do this. It just didn't seem
18 right to me.

19 Q. Well, why didn't you just say to Clerk Okstein,
20 I don't care what Judge Heffernan does, I'm not
21 doing that?

22 A. Because I was a four-month-old judge and
23 sitting in somebody else's court and I wanted to
24 be respectful to Judge Heffernan and her
25 policies, also, and if it is part of the policy

1 that was proper or allowed, I certainly wanted
2 to follow it.

3 Q. Did you call Downtown to the District Court
4 office?

5 A. I did.

6 Q. Did you speak to somebody there?

7 A. I did.

8 Q. Do you recall who it was that you spoke to?

9 A. I believe I spoke with Ellen Shapiro and I
10 may have also spoke with Zach Hillman. I don't
11 remember whether I spoke with him or not. I
12 remember speaking with Ellen Shapiro.

13 Q. Were there actually a couple of calls?

14 A. There were a couple of calls. I called -- It
15 was during a lunch break. And I left a couple
16 of voicemail messages for various people. I
17 think I left one for Ellen, I left one for Zach.
18 After getting both their voicemails, I actually
19 called the administrative assistant to the
20 administrative office. Her name is
21 Sarah Adamson. And I said, Sarah, I really need
22 some help, are there any of the legal counsels
23 available. There is at the time. I said I
24 don't care who you talk to, but I have this
25 issue here in Newton and I would really like to

1 get some guidance. And she said, let me get
2 back to you. And then within a few minutes, I
3 believe Ellen Shapiro called me.

4 Q. Did you have a conversation with her about this
5 situation with ICE?

6 A. I did.

7 Q. And tell us about that.

8 A. So I recall saying to her, I have a situation
9 here in Newton where I've been asked to exclude
10 ICE from the courtroom. I said, can we do that,
11 is there any guidance that you can offer as to
12 whether that protocol is proper, and if so, do I
13 have to follow it, because I just have some
14 concerns about excluding people from a
15 courtroom. And she said, let me get back to
16 you. And there is a policy.

17 HEARING OFFICER: Trying to be
18 respectful.

19 Is there any way we can do
20 something about the noise here?

21 MS. MULVEY: Would it make
22 sense, Your Honor, just to take -- I'm almost
23 moving topics. Would it make a sense to take a
24 break and let them do what --

25 HEARING OFFICER: Sure. I

1 didn't mean to interrupt.

2 MS. MULVEY: It doesn't matter.

3 HEARING OFFICER: Are you okay
4 with that?

5 Why don't we take our 10-minute
6 break now.

7

8

9 (Recess taken at 10:52 a.m.

10 Proceedings resumed at

11 11:11 a.m.)

12 HEARING OFFICER: Thank you,
13 Court Officer, for taking care of that.

14 I hope it doesn't get too warm
15 back there. And if it does, we'll put that back
16 into operation.

17 Thank you. You may continue.

18 MS. MULVEY: Thank you.

19 Q. Judge Joseph, we were talking about your calls
20 with the administrative office of the
21 District Court; is that right?

22 A. Yes, yes.

23 Q. And when they called you back, what happened?

24 A. So when they called me back, they read me the
25 Lunn policy and --

1 Q. The whole thing?

2 A. A lot of it. I think it was the whole thing.
3 Certainly, the relevant parts to it. And then I
4 asked, again, you know, is the Newton policy --
5 can I do this, and I was given the advice and I
6 remember this story, that the Newton policy is
7 not inconsistent with our policy.

8 Q. I'm sorry. Not?

9 A. Not inconsistent. Correct.

10 Q. All right.

11 A. So you can make the decision you want to
12 make. So I'm the new judge, it's on me, what
13 should I do. She says, you're the judge. But
14 I'm a new judge. And if I have discretion, I
15 wouldn't have normally done that. She says,
16 you're the judge, you make the decision that you
17 want. And I said, you know what, I'm a visiting
18 judge, I'm a new judge, I'm not doing anything
19 that the First Justice in this court wouldn't
20 want me to do so long as it's proper under our
21 policies.

22 MS. MULVEY: Okay. May I
23 approach the witness?

24 HEARING OFFICER: Yes.

25 Q. Let me show you an e-mail with a document. Do

1 you recognize that?

2 A. I do.

3 Q. What is it?

4 A. So that's an e-mail that was sent to me by
5 Ellen Shapiro with a copy of what we refer to as
6 the Lunn policy, the November 10th of 2017
7 policy.

8 Q. What time was that e-mail sent?

9 A. So the e-mail was sent to me at 3:19 --

10 Q. All right.

11 A. -- in the afternoon. But it was --

12 Q. I was going to say, is she forwarding to you an
13 earlier e-mail?

14 A. Yes. So it was scanned in to me at 1:54 in
15 the afternoon that day.

16 Q. And is that about the time you were having these
17 conversations and getting the policy read to
18 you?

19 A. Yes. That was still within that lunch period
20 and prior to -- like I said, I delayed coming
21 back on the bench because I was trying to
22 understand this policy and that was during that
23 time period.

24 HEARING OFFICER: I'm sorry.

25 Can you just clarify for me, when you say that

1 it was scanned in to you, what does that mean?

2 A. So it looks like Ms. Shapiro scanned, it
3 looks like she scanned the policy at 1:54 in the
4 afternoon, which is around the time that I had
5 called for some advice. I had called earlier,
6 and she got the policy and scanned it in. It
7 looks like it was e-mailed to me at 3:19 in the
8 afternoon. So I received the physical copy of
9 the policy after the hearing, but she read me
10 the policy around 1:54 prior to the hearing.

11 HEARING OFFICER: Got it.

12 Q. Actually, if we look at it, does it look like
13 some serial number for a scanner sent it to
14 Ellen Shapiro at 1:54?

15 A. Yes.

16 MS. MULVEY: I'd offer this as
17 the next exhibit. I think it's 4, maybe.

18 HEARING OFFICER: 5. Exhibit 5
19 is received.

20 EXHIBIT 5

21 (DOCUMENT MARKED AS EXHIBIT 5)

22 Q. Now, attached to this is four pages of what
23 we've been calling the Lunn policy; is that
24 right?

25 A. That's correct. I don't have a copy here

1 anymore but...

2 Q. Oh, I apologize.

3 A. Yes. I saw that that was attached.

4 Thank you.

5 Q. And do you remember Ellen Shapiro reading to you
6 the part about people who were in custody and
7 being released?

8 A. I do.

9 Q. Is that in Section A on the bottom of Page 3?

10 A. Yes.

11 Q. And it says, Individuals over whom the
12 Trial Court has custody.

13 A. Correct.

14 Q. And then it talks about an individual who was
15 brought in to court in custody is subject to
16 release after his or her court proceeding.

17 A. Yes.

18 Q. Right? Now, at the point this was being read to
19 you, the prosecutor had not yet told you she'd
20 changed her mind on the Pennsylvania warrant; is
21 that true?

22 A. That's correct.

23 Q. So at the time this was being read to you, did
24 you know what was going to happen?

25 A. I didn't.

1 Q. All right. And did she read the part about how
2 people -- Well, strike it. If he wasn't
3 released, was ICE going to get him?

4 A. No.

5 Q. All right. So if you were, for example, were
6 to hold him for Pennsylvania, --

7 A. Correct.

8 Q. -- what would happen?

9 A. I believe that in the hierarchy of what would
10 happen, because we had him on state charges in
11 Newton, which included the fugitive of justice
12 matter, if I held him without bail on the
13 fugitive of justice matter or the Newton matter,
14 you know, wasn't issue at that time, then we
15 would have kept custody of him until
16 Pennsylvania made the determination whether or
17 not to come in and take him, so to speak. So
18 Massachusetts on behalf of Pennsylvania would
19 have had control of the body, for lack of a
20 better word.

21 Q. Okay. And does that mean that ICE would or
22 would not take custody of him?

23 A. ICE would not have been able to take custody
24 of him.

25 Q. All right. And so ICE would be an issue if for

1 some reason the Pennsylvania warrant wasn't an
2 issue?

3 A. Correct.

4 Q. And during the lunch hour, did you have an
5 understanding that that was sort of a live
6 issue, what's the story on Pennsylvania?

7 A. Yes. And that's when we continued matter
8 until the end of the lunch break, a little
9 further than the lunch break, so that the
10 attorney could continue to do her investigation
11 on whether he was the same person that was
12 subject to the Pennsylvania warrant.

13 Q. All right. Now, I assume, since your issue was
14 ICE in the courtroom, you and Ms. Shapiro were
15 sort of looking very carefully at what it said
16 about where ICE could and couldn't go?

17 A. Exactly.

18 Q. All right. And if we -- I guess we don't need
19 to read the whole thing. But did you read
20 through or did you have it read for you -- to
21 you Section A to see if it said anything about
22 ICE in the courtroom?

23 A. Yes, we did. And I know that -- We actually
24 read the sections a couple different times,
25 because I didn't physically have a copy, and we

1 were going back and forth, and she was having to
2 repeat reading it to me. Both together trying
3 to make whatever determination we needed to
4 make.

5 Q. All right. And after that process was done, did
6 the two of you decide it didn't say you couldn't
7 keep ICE out of the courtroom?

8 A. Yes. And again, her word was it's not
9 inconsistent.

10 Q. And did she read to you parts about where ICE
11 was permitted to go?

12 A. Yes.

13 Q. And what was your understanding about that after
14 she read the policy to you?

15 A. So after she read the policy and indicated
16 that having ICE remain outside the courtroom
17 during the proceeding was not inconsistent, she
18 also told me that they are permitted to go to
19 the lockup and that that's a preferred place to
20 take custody of somebody because it's the most
21 secure and safest place to do that.

22 Q. Did that make sense to you?

23 A. Made complete sense.

24 Q. All right. Had you ever, either as a judge or a
25 defense lawyer, been in a lockup at the

1 Newton District Court?

2 A. Only as a defense lawyer.

3 Q. How did you come to be in the lockup as a
4 defense lawyer?

5 A. If I had clients who were in the lockup area.
6 If I was the bar advocate, and I needed to
7 interview a client, I would interview a client
8 in lockup, you know, for arraignment purposes or
9 whatever needed to happen. And if I had a
10 client in the lockup that was being transported
11 elsewhere after a case, then I would go to the
12 lockup to interview my client or talk to my
13 clients, is probably a better word, before being
14 released to wherever they were going next. So,
15 yeah, to interview clients.

16 Q. And did you know how custodies got in and out of
17 the lockup?

18 A. So from my experience, if you came in
19 custody, you came in through the sallyport. If
20 you left in custody, you left through the
21 sallyport.

22 Q. And the sallyport is that secure door leading
23 into the fenced area that we --

24 A. Yeah. It's secure. That black fence area we
25 saw at the view.

1 Q. And so somebody, a sheriff or ICE or whoever,
2 could pull up a vehicle and it would be a very
3 short distance?

4 A. Yes.

5 Q. To transport the prisoner?

6 A. So the vans would pull right in, they'd come
7 out the doorway, and go in. I never witnessed
8 that, but that's what we knew happened.

9 Q. After your last conversation with Ellen Shapiro,
10 did you speak with Clerk Okstein again?

11 A. I did.

12 Q. What did you tell him?

13 A. I told Clerk Okstein that I had tracked down
14 the policy and that I would follow
15 Chief Justice -- chief Justice -- First
16 Justice Heffernan's policy.

17 Q. Did you ever actually talk to any of the ICE
18 agents yourself?

19 A. No. I never saw any of the ICE agents that
20 day.

21 Q. Never laid eyes on them?

22 A. No.

23 Q. Did you know how many were there?

24 A. I did not.

25 Q. Now, after your conversation with

1 Attorney Shapiro, did the session start up
2 again?

3 A. At some point, yes. I don't recall how much
4 after that, but yes.

5 Q. And who showed up for Mr. Medina Perez?

6 A. Mr. Jellinek.

7 Q. How did you learn that that was happening?

8 A. The case was called, and then there he was.
9 And I was told by the clerk, as we saw in the
10 transcript, that Mr. Jellinek had filed an
11 appearance of counsel.

12 Q. Was that the first time you saw David Jellinek
13 that day?

14 A. It was.

15 Q. Was he somebody you knew from court business?

16 A. He was. I didn't know him well. But I knew
17 him because he was a defense attorney, and we
18 would oftentimes -- often -- a handful of times
19 were in the same court at the same time, so I
20 knew his face and I knew enough to say hello to
21 him.

22 Q. Now, if we look at the transcript --

23 A. I'm sorry. He also appeared before me when I
24 was a judge. I sat in the Waltham court, also,
25 and he used to take bar advocate cases in

1 Waltham, and I do recall he appeared before me
2 once when I was on the bench as well.

3 Q. Now, do you have the transcript there?

4 A. I do. Can you just tell me what section it
5 is, please?

6 Q. It's Section G. And I think we're somewhere
7 around App 40.

8 A. Okay.

9 Q. And I'm looking at the part that starts at
10 2:48:48. Do you see that?

11 A. I see 2:48. Yes, I do.

12 Q. Okay. And is this when you first got to side
13 bar or they first got to side bar?

14 A. Yes. Yes.

15 Q. Okay.

16 A. I was looking above, the paragraph above that
17 says 2:48:13, but that's just when the case was
18 called. So the side bar began at 2:48:48.

19 Q. And we've heard you were sort of rolling your
20 chair over to the side where the lawyers were?

21 A. Yes.

22 Q. And was David Jellinek there?

23 A. He was.

24 Q. Was Assistant District Attorney Jurgens there?

25 A. Yes.

1 Q. Standing side by side?

2 A. Standing side by side.

3 Q. And if we go to the next page.

4 Attorney Jellinek had been pressing his point
5 that this wasn't the fellow that ICE was looking
6 for?

7 A. Right.

8 Q. Was he consistent about that?

9 A. He was.

10 Q. All right. And he said, I think the best thing
11 to do is to clear the fugitive issue, release
12 him on a personal, and hope that he can avoid
13 ICE. Did you think that that meant he was going
14 out the back door?

15 A. Oh, God, no.

16 Q. Did you think that by "avoid ICE" he meant in
17 any improper way?

18 A. No.

19 Q. Is there any way you would have been a party to
20 that?

21 A. No. Absolutely not.

22 Q. If we look down at the next thing you said, does
23 that help you figure out how you interpreted
24 what he was saying?

25 A. Well, it does. Because as soon as he said

1 that, my response is, if you need more time to
2 figure this out, we could -- I said hold until
3 tomorrow. I think hold him until tomorrow is
4 probably what I said, but it just probably
5 didn't get picked up in the transcript. Same
6 sentiment.

7 Q. And when you said, if you need more time to
8 figure this out, what was in your mind?

9 A. That if he wanted time to investigate his
10 client's identity and time to convince ICE that
11 it wasn't who they thought he was, if he wasn't
12 who they thought he was either, that I'd be
13 happy to give him time to do that.

14 Q. We've heard this is almost 3:00 in the
15 afternoon?

16 A. It was.

17 Q. All right. Why didn't you say, I'll give you
18 another hour?

19 A. It was getting to be late in the day. I'm
20 very sensitive to custodies and -- as a judge,
21 as a lawyer. I just know the court officers
22 always like to get the custodies out as soon as
23 possible. I didn't know that he'd be able to
24 get that information in an hour or so, so I
25 thought the best thing to do was to give him as

1 much time as he needed, I had given the attorney
2 hours in the morning, I'd give him the same
3 courtesy, done with court by then, so everybody
4 just come back tomorrow.

5 Q. Now, I think you said on direct that ultimately
6 Attorney Jellinek said, no, that's not what I
7 want; right?

8 A. Correct.

9 Q. Was that on the record?

10 A. I don't remember.

11 Q. Well, if we read through, do you see any place
12 on the record where Attorney Jellinek says, no,
13 I don't want more time, I don't want to come
14 back tomorrow?

15 A. I don't.

16 Q. Did he ultimately tell you, no, that's not what
17 I want?

18 A. He did.

19 Q. Is it fair to assume, then, that that must have
20 been part of the continuation off the record?

21 A. That must have been -- Yes, that must have
22 been off the record.

23 Q. Do you actually remember that?

24 A. I don't.

25 Q. But do you remember he didn't want more time?

1 A. Yes.

2 Q. Once he told you, no, I don't want to come back
3 tomorrow, did you drop the issue of holding him?

4 A. I did.

5 Q. When you were talking about holding him
6 tomorrow, did you see that as any different from
7 holding him from first call to second call or
8 holding him over the lunch break?

9 A. I didn't.

10 Q. Why not?

11 A. Because I had given the attorney in the
12 morning enough time to do her investigation. I
13 wanted to give him the same amount of time to do
14 his investigation. And given the time of the
15 day, I just thought holding him until the
16 following day would be the best way to give him
17 enough time to do that. Plus, I wasn't coming
18 back the next day and thought maybe another
19 judge would handle it.

20 Q. All right. Would it have broken your heart?

21 A. It would not have broken my heart.

22 Q. Okay. When you said, hold him until tomorrow,
23 did you think that would allow him to escape ICE
24 if he was the right guy?

25 A. No, no. To hold him, meaning detain him,

1 keep him in custody for the evening with no
2 opportunity to post a bail. No. He was coming
3 back to Newton District Court the following day.
4 And the attorney would come back, the assistant
5 district attorney would be there, ICE would
6 certainly be, everybody would just come right
7 back the following day. The only question would
8 be whether or not I would be there. I may come
9 back to handle the matter or who -- they may
10 have swapped us or maybe I would have been off
11 to wherever I was going the next day.

12 Q. And certainly, if his lawyer said, yes, that's
13 what I want, I want to come back tomorrow, did
14 you think it would be all right for you to do
15 that?

16 A. Of course.

17 Q. And over his lawyer's objection, did you make
18 any attempt to hold him?

19 A. No.

20 Q. You also said that the thing you do remember
21 that was different was that he asked to speak to
22 his client downstairs with the interpreter.

23 A. Yes.

24 Q. Did that strike you as crazy or an unusual
25 request?

1 A. Not at all.

2 Q. Why not?

3 A. I thought it was a completely appropriate
4 request. I was under the impression that he was
5 going to go back downstairs, pick up his
6 property, and go right into ICE custody through
7 the sallyport, and in order for him to have an
8 opportunity to speak with his lawyer, that would
9 be the -- I mean, his client, that would be the
10 only place to securely do that.

11 Q. Did you have any role in how ICE would actually
12 get him, where they would actually get him?

13 A. No, no.

14 Q. And so were you actually thinking, well, okay,
15 he can go downstairs or he could go to the
16 sallyport or go out the front, was that, as a
17 judge, was that your responsibility?

18 A. No. That's a security issue. And I was
19 familiar with the Lunn policy where, as far as I
20 knew, it was all going to happen in the lockup.

21 Q. And in fact, once you went back on the record,
22 you arraigned Mr. Medina Perez.

23 A. I did.

24 Q. And you gave him some required statutory drug
25 warnings?

1 A. I did.

2 Q. And just as things were winding down, you had
3 ordered him released; is that right?

4 A. I did.

5 Q. And that was released from state custody?

6 A. Released from state custody. I did not set a
7 bail on the state charges. And the fugitive
8 matter at that point I dismissed.

9 Q. Once you had ordered him released, did you
10 think you had any further say or responsibility
11 in what would happen to him?

12 A. No.

13 Q. Did Clerk Okstein then tell you to just wait a
14 second?

15 A. He did.

16 Q. And he said there was a representative from ICE
17 here in the court inaudible to, to visit the
18 lockup?

19 A. Yes.

20 Q. And you said, that's fine, I'm not going to
21 allow them to come in here, but he's been
22 released on this.

23 A. Yes.

24 Q. What did you mean by that?

25 A. What I meant is that that's fine, they can go

1 to the lockup, but in compliance with
2 Newton District Court policy, they can't come
3 into the courtroom to access the lockup, but
4 they can use any of the other entrances and
5 opportunities to get to the lockup that they're
6 able to.

7 Q. Did you think that the ICE agents had walked or
8 taken the T to the Newton District Court?

9 A. No. I assume they drove.

10 Q. All right. And would you assume that they would
11 be placing Mr. Medina Perez into a vehicle?

12 A. Yes.

13 Q. Is there a place at the courthouse where that
14 happens?

15 A. Typically in the sallyport.

16 Q. Did you actually think about that or concern
17 yourself with the logistics?

18 A. I didn't. That's really a security issue.
19 But you know, I just had the policy read to me,
20 and it makes complete sense to take custody of
21 somebody in the lockup where they're already
22 there anyway and it's the most secure place. I
23 mean, I wouldn't want -- It's just the most
24 secure place to do it.

25 Q. Now, the court recessed as Mr. Jellinek and the

1 interpreter and Mr. Medina Perez were going
2 downstairs; is that right?

3 A. Yes, yes.

4 Q. And having seen the transcript, did you actually
5 handle two more short matters afterwards?

6 A. I did.

7 Q. Do you recall what time you left the courthouse
8 that day?

9 A. Sometime around 4:30.

10 Q. As of that time, had anybody told you what had
11 happened with Mr. Medina Perez?

12 A. No.

13 Q. What did you think happened?

14 A. I figured he went into ICE custody and that
15 was the end of it.

16 Q. The next day, did you sit in the Newton District
17 Court?

18 A. I didn't.

19 Q. When were you next there?

20 A. I was in Newton two days later. So on the
21 4th, on that Wednesday.

22 Q. On the 3rd, on Tuesday, did anybody call you up
23 and say let me tell you about Mr. Medina Perez?

24 A. No.

25 Q. Did anybody call you up and say, what happened,

1 what did you do?

2 A. No.

3 Q. What happened on Wednesday, April 4th?

4 A. So on Wednesday, April 4th, I got to the
5 courthouse, I went in and checked in with
6 Judge Heffernan, and she gave me my assignment
7 for the day. She asked if I would handle the
8 jury session upstairs. So I went up to the
9 second floor lobby. I handled the matters that
10 were on that day. Some were jury matters, some
11 were not jury matters. There was some overflows
12 from the first session. And then when the
13 session was down on a break, either I went down
14 to her lobby or she came up to my lobby, I can't
15 remember, and we talked about the Medina Perez
16 case. That's when she notified me that he had
17 been released out the back and had not been
18 apprehended by ICE.

19 Q. Was that the first you were hearing it?

20 A. That was the first I heard of it.

21 Q. What did you say to her?

22 A. I said, how did that happen.

23 Q. What did she say?

24 A. She said, that's what I'm trying to find out.

25 Q. Do you recall exactly what she said and what you

1 said?

2 A. I don't recall everything that she said. She
3 did tell me she had talked to Attorney Jellinek
4 by then and that either she was going to or she
5 had, I don't recall, talked to the chief court
6 officer and other court officers who were there,
7 and she wanted to find out from me what
8 happened, so we briefly discussed what happened.

9 Q. Did you tell her that you had gone off the
10 record?

11 A. No.

12 Q. Did she ask you?

13 A. No.

14 Q. At that point did you know that it was against
15 the rule?

16 A. I didn't. I didn't know until Judge Fortes
17 told me a couple of weeks later.

18 Q. If you had known it was against the rule, would
19 you have done it?

20 A. Oh, God, no.

21 Q. Have you done it since?

22 A. No.

23 Q. Did you also talk about another case with
24 First Judge Heffernan during that conversation?

25 A. We did. And that's actually how the

1 conversation started. Up in the second session,
2 there was a matter that had some public
3 attention, and there were cameras in the
4 courtroom, and the clerk had asked me whether
5 that would be okay or not. When there's cameras
6 in the courtroom, you need permission in order
7 to record. And I said, I'm fine. And so she
8 had said, you know, I just want you to know, I'm
9 the First Justice, and I like to know when
10 there's cameras in a courtroom. So I apologized
11 and said, I'm so sorry, I would have thought the
12 clerk told you that, when the question came to
13 me, I assume you know, and thanks for letting me
14 know, and then she said, let me ask you about a
15 case on Monday. So that's how it came up. Yup.

16 Q. After that conversation on Wednesday, did you
17 have a different -- a second conversation with
18 First Judge Heffernan about the Medina Perez
19 case?

20 Q. I did. During our conversation on Wednesday,
21 she was very concerned about the identity of
22 Mr. Medina Perez, saying that now we don't know
23 where -- who he is or where he is and, you know,
24 we don't know what warrants he may have or what
25 can we do. You know, so we talked with that.

1 And that really upset me, so I called her on
2 Thursday, sometime late in the day, I left her a
3 voicemail message. She called me back on Friday
4 morning, and we talked about it a little bit,
5 really just on the public safety concern. I had
6 asked if he had been arrested on the warrant
7 yet. She said, no. And I said, I'm really
8 concerned that we don't know who he is, I don't
9 want him to be -- So she said, don't worry about
10 it, you know, it happens and, you know,
11 that's -- We just talked about it for a few
12 minutes.

13 Q. Is that the last time you talked about
14 Mr. Medina Perez with first Justice Heffernan?

15 A. I believe so.

16 Q. Let's move then to RAJ Fortes. Did there come a
17 time when you were sitting the Lowell District
18 Court?

19 A. Yes. I believe I was scheduled -- We get our
20 schedules a month in advance. I believe I was
21 scheduled to sit there. If not, I was switched
22 to sit there, which oftentimes happens, also.
23 But regardless, I was sitting there on a day
24 when she was sitting as well.

25 Q. Is that a bigger, busier court than Newton?

1 A. A much busier court.

2 Q. And is there usually more than one judge there?

3 A. There's usually about five judges there.

4 Q. What happened at lunchtime?

5 A. At lunchtime, she came into the lobby. And I
6 was a visiting judge lobby, where I was sitting.
7 And said, why don't you grab your lunch and come
8 in and talk to me.

9 Q. Did you do that?

10 A. Of course.

11 Q. What happened?

12 A. So I went into her office, we sat at a round
13 table, we talked about our kids. We've known
14 each other for a little bit of time. We weren't
15 friends outside of work, but I've known her for
16 a number of years. She was asking how things
17 were going. I was a new judge in her region, so
18 she just wanted to get a check in to see how
19 things were going since I was sitting there.
20 And then she said she wanted to talk to me about
21 a matter I had handled in Newton a few weeks
22 prior.

23 Q. Did you know that was on the agenda?

24 A. I did not.

25 Q. What did she say?

1 A. Again, I don't recall how she identified that
2 case. I hadn't thought about it in a few weeks.
3 But she said something that made me understand
4 that that was the case that she wanted to talk
5 about.

6 Q. And what can you recall about that conversation?

7 A. I don't recall the specifics of the
8 conversation, other than at some point she
9 either asked or I told her or she said that she
10 knew, but we started talking about how did that
11 conversation part of the hearing being off the
12 record.

13 Q. As you understood it, was the reason she was
14 raising it because she knew you'd been off the
15 record?

16 A. At that point, yes.

17 Q. Did you try to hide it or deflect or anything?

18 A. No, no.

19 Q. Did you say, no, I didn't do that?

20 A. Not at all.

21 Q. What happened?

22 A. She says there's a rule that prevents that.
23 She had a copy of the rule. I think she opened
24 up the book and took a xerox copy that she had
25 made of the rule and handed it to me, and we

1 talked about that, and that was it. And she was
2 wicked nice. She's like, listen, you're not in
3 trouble, I just want you to know that I'm here
4 to help you, like I just want to make sure that
5 you're doing all that you need to be doing, and
6 I thanked her for the rule, and that was it.

7 Q. Do you remember her also giving you a copy of
8 the Lunn policy?

9 A. I do. I remember she said, and I have a copy
10 of the Lunn policy. As you all know, I got a
11 copy e-mailed to me that day when I requested
12 it.

13 Q. When you got that Lunn policy in Newton, what
14 did you do with it?

15 A. I read it again and then I put it in my
16 binder.

17 Q. Did you give it to anybody else?

18 A. I did. I made a copy of it for the clerk's
19 office. Actually, I made two copies. I gave
20 one to the clerk magistrate and one to
21 Assistant Clerk Okstein, because they couldn't
22 put their hands on it either, and I left one
23 actually on Judge Heffernan's desk, also.

24 Q. When you spoke with Judge Heffernan, did you
25 attempt to answer her questions and be honest

1 and candid?

2 A. Of course.

3 Q. And when you spoke to RAJ Fortes, did you
4 attempt to answer her questions and be honest
5 and candid?

6 A. Yes.

7 Q. Did each of them have slightly different
8 focuses?

9 A. They did. So Judge Heffernan was concerned
10 with the security issue, for lack of a better
11 word, you know, how did he get out the back door
12 without ICE having apprehended him. That really
13 seemed to be the focus of her concern.

14 Judge Fortes was, the focus of her concern was
15 part of the matter had been conducted off the
16 record, and that was really her focus.

17 Q. Now, we've also heard that you were asked to
18 meet with Chief Justice Dawley; is that right?

19 A. I was.

20 Q. Do you remember that meeting?

21 A. I do.

22 Q. What do you remember about that?

23 A. So I remember, you know, going to his office
24 and he -- And I knew, as I said earlier, that
25 that's the case that he wanted to talk about, so

1 the next time I sat in Newton, I got a copy of
2 the CD. At that point, I knew that part of the
3 record -- part of the hearing had been conducted
4 off the record, and so I assumed that that's
5 what he wanted to talk about. So I wanted to
6 hear it before I got there. So I listened to
7 the recording. I went to his office. It was
8 Judge Fortes, Judge Dawley, myself in his
9 office. He said, do you understand why you're
10 here, and I said, yes, to talk about the case.
11 I don't think I remembered the name of it at
12 that point, but the case in Newton where the
13 defendant had been released out the back door
14 and avoided ICE. He said, well, that's the case
15 I want to talk to you about, what I want to talk
16 to you about is having gone off the record. And
17 that's what we spent a lot of time talking about
18 again.

19 Q. And what did he tell you about that?

20 A. He told me a number of things, you know, the
21 record is your friend, this isn't old times when
22 it happened a lot. He said you should always --
23 The record is your best protector, it's your
24 friend, and there's a rule, and you now know
25 about the rule, so don't do it again, and use

1 this as a learning experience, go to the judges.

2 Q. How did the meeting end?

3 A. It ended on a very positive note. He thanked
4 me for coming in, and I thanked him for the
5 opportunity to come in, and that was it.

6 Q. And did you send him an e-mail afterward?

7 A. I did. I followed up with an e-mail either
8 that day or the next day thanking him and
9 reassuring him that I heard, I listened, and it
10 won't happen again.

11 Q. Did you get a response from him?

12 A. I did.

13 Q. What was that?

14 A. Essentially, thanks for meeting with me and,
15 you know, looking forward to seeing me at the
16 upcoming judicial conference that we have every
17 year.

18 Q. At the time you left Chief Justice Dawley's
19 office, did you think that that would be the end
20 and it should be moving forward?

21 A. I did. Each time I have a conversation about
22 this case, I think it's over and then it comes
23 back.

24 Q. Okay. Chief Justice Dawley told you that the
25 record is your friend?

1 A. He did.

2 Q. Do you believe that?

3 A. I absolutely believe that.

4 Q. Do you wish you had a record of what happened --

5 A. I do.

6 Q. -- during those 52 seconds?

7 A. No question.

8 MS. MULVEY: May I have a
9 moment?

10 (PAUSE)

11 MS. MULVEY: I have nothing
12 else. Thank you.

13 JUDGE FABRICANT: Very briefly.

14 THE WITNESS: Sure.

15 REDIRECT EXAMINATION

16 BY JUDGE FABRICANT:

17 Q. When you proposed -- Well, let me put this a
18 little differently. I think I just heard you
19 say in response to Ms. Mulvey's question that
20 you viewed detaining the defendant overnight,
21 sending him back to the jail, that he would stay
22 overnight, and come back to the courthouse, you
23 viewed that as essentially the equivalent of
24 putting it on for further call. Is that right?

25 A. I mean, at the time I'm not sure that I

1 really analyzed it in that way. But yes. I was
2 just trying to give him more time, and that
3 seemed to be the proper way to do it or a way to
4 do it.

5 Q. And the way that you had in mind that you would
6 do that was you would use the fugitive from
7 justice charge, which authorizes detention
8 without bail if the underlying offense is
9 violent, you would use that charge even though
10 the assistant DA said, I don't think it's him,
11 you would use that charge to send him back to
12 the jail and have him detained overnight.

13 A. No, no, no. So what I was thinking is that
14 there would be agreement to do this, and the
15 attorney would agree, everybody would be on the
16 same page, he would be detained overnight and
17 come back the next day.

18 Q. So with agreement of his attorney, your idea
19 was, you send him back to jail and he'd be
20 detained overnight, even though the law says you
21 can do that only if it's a violent offense
22 underlying and even though the assistant DA says
23 I don't think it's the same person.

24 A. Well, that's if you analyze it under the
25 fugitive of justice matter. I mean, I guess, if

1 you want to get technical, you could do the
2 arraignment. Pause it there. I haven't
3 arraigned him yet. All come back tomorrow, do
4 this tomorrow. That's all I was trying to do.

5 Q. Send him back to the jail to do it.

6 A. Yes. With the agreement of his attorney.

7 Q. Okay. And you thought, if the attorney agrees
8 with that, then you can do it even though there
9 wasn't a legal basis for it.

10 A. No. I thought, under the circumstances, that
11 is the solution that I was offering his attorney
12 to give him more time to do what I thought he
13 was asking me to do.

14 Q. And you said, if I heard you correctly, that you
15 thought he would go right into ICE custody;
16 correct?

17 A. Well, I figured he would go down to the
18 lockup and that ICE would take custody of him in
19 the lockup.

20 Q. And Mr. Jellinek had argued quite vociferously
21 that he was the wrong person, and he had said I
22 think the best thing for us to do is clear the
23 fugitive issue, release him on the personal, and
24 hope he can avoid ICE. And what you thought
25 was, he was abandoning that argument; right?

1 A. No, no. I thought that he didn't want his
2 client held overnight and he would deal with the
3 identification issues in the -- in another
4 forum.

5 Q. So you thought that he was acquiescing in the
6 idea that his client was going to go down to
7 lockup, ICE was going to go to lockup, he was
8 going to be handed over from the lockup to ICE,
9 even though Mr. Jellinek was arguing quite
10 vociferously that he was the wrong guy.

11 A. No. What I thought is what happened, is that
12 I offered a solution, if you want more time to
13 investigate his identification, I'm going to
14 give you more time. And the best way, in my
15 opinion then, to do that would have been to hold
16 his client overnight without any possibility of
17 bail so that everybody that had any involvement
18 in the case would come back the next day,
19 period.

20 Q. But he didn't accept that.

21 A. He didn't accept it. That's why I released
22 him on his own recognizance. Done.

23 Q. And your expectation, releasing him on his own
24 recognizance, was that his lawyer was basically
25 acquiescing that ICE was going to take him.

1 A. I didn't make any judgment about what his
2 lawyer was thinking.

3 JUDGE FABRICANT: All right.
4 That's all I have. Thank you.

5 MS. MULVEY: Nothing else.
6 Thank you.

7 HEARING OFFICER: Thank you
8 very much.

9 JUDGE FABRICANT: And that
10 completes the Commission's case at this time.

11 HEARING OFFICER: Okay. So do
12 you have a witness?

13 MR. HOOPES: Our witness moved
14 her schedule, so she'll be here tomorrow morning
15 at 9:00.

16 HEARING OFFICER: Okay.

17 MR. HOOPES: And we'll be --
18 Within the two hours, we'll have our witnesses.
19 We'll be done.

20 HEARING OFFICER: Tomorrow
21 morning.

22 MR. HOOPES: Yes.

23 HEARING OFFICER: So with that,
24 I think we're recessed for the day.

25

(The proceedings adjourned
at 11:48 a.m.)

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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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