

CERTIFIED HEARING TRANSCRIPT
(DAY 6)

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

COMPLAINT NUMBER 2019-22

VOLUME VI

HEARING

~ BEFORE ~

HEARING OFFICER

DENIS J. MCINERNEY, ESQ.

JUNE 16, 2025

9:00 A.M.

Boston, Massachusetts

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1 HEARING OFFICER: Good morning.

2 This is obviously the sixth day
3 of our hearing on the Commission on Judicial
4 Conduct's Complaint Number 2019--22. And this
5 morning we're going to have closing statements
6 by both parties, and we will be starting this
7 morning with Mr. Hoopes, on behalf of
8 judge Joseph.

9 MR. HOOPES: Good morning.
10 It's been a long seven years, a long seven
11 years. And when you know someone, and when you
12 know that they're not capable of what's
13 described in the indictment, and when you know
14 that they're not capable of the conduct that's
15 charged here, then you can defend on the burden
16 of proof or you can do it differently. You can
17 simply search for the truth. And in this case,
18 that's what we've done, for seven years, until
19 we arrived here with you which, frankly, has
20 been as eye-opening as anything preceding it.

21 Now, the truth, though, was
22 shredded beneath the clouds that in the front of
23 the grand jury for a long time, and then the
24 truth was hidden for a long time behind the
25 Jencks Act, and then initially it was still

1 hidden when it came to the CJC. But
2 Special Counsel joined with us, with that then
3 administration, and we finally got many of the
4 documents we were hoping for and looking for
5 and, frankly, thrilled to see.

6 But what we got for documents
7 wasn't nearly enough. It was just the
8 beginning. There were things to do, people to
9 see, people to talk to, interviews, but the one
10 simple thing that we learned at the end of that
11 was this: David Jellinek is a liar.

12 Now, David Jellinek is just not
13 any liar. David Jellinek is a criminal who, for
14 some reason, is still practicing his trade, not
15 just as a lawyer, though, but as a liar. Now,
16 lawyers go to school to get a JD, to learn how
17 to argue inferences. David Jellinek went to
18 school to get a JD, but he may also have
19 attended some school somewhere for liars. But
20 David Jellinek must have cut some classes, not
21 read the material, gotten kicked out of school,
22 because he is a very bad lawyer and a very, very
23 bad liar.

24 So if you look simply and
25 carefully enough the lies are obvious. He is

1 not the mastermind that he thinks he is and in a
2 sense he's not the mastermind of this case,
3 because what he did here was sort of mindless,
4 beyond the pale, committing his crimes in plain
5 sight, so to speak, in many ways, in front of
6 people that he knew, who would instantly wonder
7 what happened. But David Jellinek has a PhD in
8 manipulation. He could teach the school, run
9 the academy, and hire the faculty. He has
10 out-manipulated court officers and clerks,
11 lawyers and prosecutors, and many judges along
12 the road of this case, in the Newton District
13 Court, in the Federal Court, and here before
14 you, and before that, the CJC.

15 Now, like most bad liars,
16 though, the manipulation takes an added light
17 from the lies, and his bad lies in the clear
18 light here tell it all. Now, he seemed to like
19 to lie first in the morning chronologically,
20 which is what he did here. He said what? He
21 said he was at the Newton District Court on the
22 morning of April 2nd of 2018. He got there mid
23 morning, is what he claimed. But he said that
24 he arrived, and he told you why he was hired, he
25 told you what he supposedly heard from ICE, to

1 be out in the courtroom, kicked out of the
2 courtroom into the hallway, he talked about when
3 he spoke to ICE, he claimed that he saw his
4 client, he claimed that he thought about a fee
5 agreement, he talked about a conversation with
6 Ms. Bostwick, he said he received documents from
7 Ms. Bostwick, all in the morning. Well... And
8 he talked a little bit about check and cash, and
9 we'll talk about that a little bit later.

10 What is the simple proof of the
11 lies? ICE, the transcript, the interpreter,
12 Ms. Bostwick, Judge Joseph. He said he was
13 there in the morning. The ICE agent, Simmons,
14 who you heard from through his own report, said
15 one thing; he didn't see him that morning.
16 Ms. Bostwick said she didn't see him that
17 morning, she didn't talk to him that morning,
18 she didn't give him any documents that morning.
19 Judge Joseph said that she didn't see him that
20 morning, which is why she said hello in the
21 afternoon session on the tape. The interpreter,
22 Mendoza, thought he was the prosecutor because
23 of all the talking he did in the afternoon. How
24 could he have interpreted for him in the morning
25 if he thought he was the district attorney?

1 So if you go back through his
2 lies, he could not have arrived in the morning,
3 he could not have been hired as he said because
4 they saw him and they liked his performance.
5 There was no performance. There's not a word in
6 the transcript that says David Jellinek,
7 appearing, Your Honor, for anything in the
8 morning, let alone putting on a masterful
9 performance.

10 Supposedly he said that he
11 heard ICE asked out of the courtroom. If you
12 look at the transcript, there's not one word
13 about any of that happening on the record, and
14 it couldn't have, because it happened in the
15 afternoon, and it was never on the record.

16 Seeing his client? He couldn't
17 have seen his client. If he had seen his
18 client, Mendoza could talk about it, tell about
19 it, explain about it, not what was said, but
20 that there was actual contact. He didn't
21 remember any.

22 Now, that's about 10 lies. And
23 if you remember, when I was asking him
24 questions, who's telling the truth, you or the
25 ICE agent, and if it was the ICE agent, then we

1 have half a dozen lies. I underestimated.
2 We're already at 10, and we haven't even gotten
3 to the afternoon. He exceeded expectations in
4 lying. But his manipulations are countless,
5 without being able to be numbered, innumerable.

6 So as court goes, there are
7 different forms of manipulating and lying.
8 There are untruths, there are half truths, and
9 there are expectations that you would be
10 truthful in a particular situation you are not,
11 all arising to the level of false statements or
12 perjury, depending on the circumstances.

13 He manipulated the assistant
14 district attorney before the case was called, he
15 never said a word about his plan. He
16 manipulated the ICE agent before the case was
17 called, never said anything about his
18 conversation with MacGregor. He manipulated the
19 clerk, never said a word, the other court
20 officers besides MacGregor. That's just before
21 the case was called. While the case was called,
22 never raised his hand and said, oh, Judge, I've
23 talked to Mr. MacGregor and this is what we've
24 agreed to do, never said that so that the DA
25 could hear it, never said that so that the clerk

1 could hear it. After the case was done, the
2 same manipulations.

3 Now, manipulations come easy to
4 him. It's almost unfathomable to imagine, if
5 you are a practicing lawyer with any sense of
6 ethics, that the next morning you would knock on
7 the door of the presiding justice of the
8 Newton District Court, have an ex parte
9 conversation to tell her about a little incident
10 about somebody going out the back and only tell
11 a thumbnail of the story and not tell the fist
12 of what was really important, which was that he
13 had a conversation with MacGregor and out
14 Medina Perez went because of that conversation.
15 From that morning on, she didn't know for days
16 and months any such thing happened. Didn't say
17 anything to the clerk, didn't say anything to
18 the chief court officer Noe. Didn't come over
19 to the ADA the next day and say, you were right,
20 this is what I did.

21 So if you counted all of these
22 lies, out and out, half truths, failures to
23 disclose, David Jellinek must have been setting
24 a one-man record for liars, by a lawyer, lies by
25 a lawyer, or a lawyer's lies, not only in the

1 Newton District Court, but for any court in the
2 Commonwealth of Massachusetts ever.

3 Now, he's not done, though, in
4 some ways. Because from April 3rd on, he said
5 nothing. He was hiding in plain sight every
6 day, going to work, nobody saying anything.
7 Bizarre. But at the same time, he was keeping
8 track of what was happening. He knew about the
9 subpoena to MacGregor and that MacGregor was
10 going to the grand jury.

11 So he claimed that he didn't
12 talk to him between April 3rd and that date when
13 he found out about the subpoena. Can we believe
14 that? Do you believe that? His co-conspirator?
15 Now, the co-conspirator was doing one huge
16 favor, the biggest favor that a co-conspirator
17 could do for David Jellinek. When I asked Noe,
18 and Noe was asked, Officer Noe, Court Officer
19 Noe, when you interviewed MacGregor, did he say
20 anything about David Jellinek, the answer was
21 no.

22 Now, for whatever reason, and
23 we'll get to that, MacGregor was keeping his
24 mouth shut. Jellinek was keeping track of
25 MacGregor, because if MacGregor was keeping his

1 mouth shut, Jellinek still had options. And he
2 sat on it and sat on through May, through June,
3 through July, through August, through September,
4 through October, until he got a call from
5 Clerk Okstein's lawyer, oh, the grand jury's in
6 action and they're coming for you, you are a
7 target. Now, he called the lawyer. And when he
8 heard that word "t-a-r-g-e-t," he must have
9 known bad things can happen.

10 Now, he claimed he wasn't
11 afraid of going to jail. I know no one who is
12 not afraid of going to jail. 20 years, five
13 years, 36 months. If most people, who are made
14 as human beings, get sweaty palms when they see
15 the blue light behind them and wonder if it's
16 for him, for you, for somebody you're with, then
17 he clearly had sweaty palms at the very least.
18 But he said to you, oh, he was just worried
19 about his livelihood and providing a family and
20 professional career. That is not the case. He
21 was worried about everything.

22 Now, he went in to see the
23 U.S attorney's office, after his lawyer had made
24 contact, and we can presume he did the usual
25 thing, which is, he called, said I'm going to

1 talk to you, give you the attorney proffer, and
2 I'm going to bring him in, and in he went, and
3 he cooperated for a number of months.

4 And the reason we know that he
5 was keeping track of MacGregor to see what his
6 options were is because MacGregor had a
7 retirement party in the spring, after Jellinek
8 had been in to see the U.S. attorney's office no
9 less than five times, and who showed up at the
10 party for MacGregor, four court officers and one
11 other person, Jellinek. And while Jellinek had
12 been throwing MacGregor under the bus and
13 causing him to be indicted and him alone, along
14 with Judge Joseph, he walked over to shake his
15 hand.

16 Now, what kind of a person
17 would do something like that? A master
18 manipulator, who has probably did a fellowship
19 in manipulation. So he knew what his cards
20 looked like exactly.

21 And when I asked him, I said,
22 so it was a trade. What did he say? It was a
23 trade. I said it was a trade for what you were
24 going to be able to tell him about the 52
25 seconds. And he said, yeah, it was. He said,

1 he said that was the core of it. I said they
2 had everything in front of it, everything in
3 back of it, it was what was said in those
4 52 seconds off the record, and he agreed. He
5 knew that's what it was about, and they knew
6 that was what it was about. And so he got
7 immunity.

8 Now, you know better than
9 anyone in this courtroom that giving complete
10 immunity to the mastermind of a plot with no
11 corroboration is beyond unusual, and it's
12 tantamount to prosecutorial suicide, because you
13 always, always, always, as a prosecutor,
14 particularly in white collar cases, either need
15 more corroboration or you need a piece out of
16 them, because if you don't take a piece out of
17 them, no jury will believe them, because they
18 know what anybody on the street knows, you can
19 make anything up. And these people made that
20 deal. And that either means that they didn't
21 care about a conviction, they cared about just
22 an indictment, whatever happened after that, or
23 they were fools, and they are not fools. You
24 know and I know and they know one thing: Ties
25 lie. People with ties lie. In the white collar

1 world of prosecution, people who wear ties are
2 the bread and butter of making cases. So you
3 have to do the other things, the actual work.

4 Now, Jellinek gave them two
5 things that they were looking for in the
6 52 seconds, one, what he said to her, and of
7 course, there's variations on that, got
8 infinitely longer, if you could put his nose
9 next to the timeline, you would watch Pinocchio
10 grow. On November 8th, he said, I requested
11 that the judge release Medina Perez through the
12 lockup area. That's all he said. By the time
13 he got to the grand jury, he added, oh, he said
14 that he thought Medina Perez could be released
15 out the back door. That's -- Sounds like two
16 words. Small thing. That's the case. He said
17 one other thing. What was in her mind, he was
18 asked, February of 2019. What did he say? He
19 said he didn't know what was in her mind. He
20 wasn't a mindreader. So that was 2019, 2020,
21 '21, '22, '23, '24, he came and spoke, sat down
22 or did the Zoom, as we understand it, with the
23 special prosecutor in December 2024. She asked
24 him the same question. You said you didn't
25 know. He said not true. She said she

1 understood his plan and, yeah, that's what we'll
2 do. That's the core of the case. That's the
3 core that they traded for. That's the core that
4 they didn't care about. Once he made the trade,
5 he just made it better.

6 Now, it's useful to look at the
7 things that I would suggest that the Federal
8 authorities did not do, because it had
9 spill-over effect into this proceeding. If you
10 look at the document that they produced, they
11 ignored the Lunn policy as the governing factor,
12 they ignored the Lunn policy and the court
13 officer manual, governing factor for where the
14 exit would be, they focused on this mirage that
15 some people are calling the common practice of
16 the point of release in Newton, but they papered
17 their way through that. They ignored the
18 statements that they had in the front of their
19 nose, the interpreter statement that we've
20 discussed. They ignored the ICE statement that
21 they had. They had. We didn't see it for
22 months and years. They had it before they
23 pulled the trigger on this case. They didn't do
24 any of the work that would have seemed to them
25 the collection of small lies all gathered up

1 into one whopper, for the morning, and we've
2 been over it, they would have known he wasn't
3 there in the morning. They didn't accurately
4 state a time he arrived, because he never
5 arrived, why he was hired, all the litany that
6 we talked about earlier.

7 More telling than that, there
8 was an attorney general in Massachusetts named
9 Frank Bellotti, he used to say, if you're going
10 to indict in a case like this, you better be
11 careful, because sloppiness takes you nowhere
12 and it hurts everyone. And in here, they never
13 ordered the transcript of the day. We did that.
14 He had an iPad. They never asked to get the
15 iPad, to go through it, to see what the schedule
16 was, the things that were missing for
17 Special Counsel. They never saw it. They never
18 followed up on his calendar.

19 But the most telling thing, the
20 eagerness to just pull the trigger to ruin
21 somebody was the fact that they never spoke to
22 Ms. Bostwick. You heard her here. We asked
23 her, Ms. Mulvey asked her, the vital question,
24 did the Federal authorities, the FBI, the
25 assistant U.S. attorney ever speak to you. The

1 answer was no. Really? In a case of this
2 magnitude, the woman who was there in the
3 morning, who could tell you whether he was lying
4 or not, you never knocked on her door, you never
5 made a call, you never interviewed her? There's
6 only one explanation for that. And it's not
7 that they're sloppy. Because I assure you, --
8 I've been in cases with these people -- they are
9 not stupid. The only possible explanation is,
10 they didn't want to hear, it might get in the
11 way of their project.

12 Now, probably the most
13 mysterious thing is this whole notion that check
14 versus cash. Now, Mr. Jellinek told the
15 prosecutors and told the grand jury, do you
16 solemnly swear to tell the truth, the whole
17 truth and nothing, but the truth so help you
18 God. I do. And how were you paid. I was paid
19 by check. You were in a proffer session. You
20 know you have an obligation to tell the truth.
21 If you don't, it's a thousand and one violation.
22 You know that. Yes, I do. How were you paid.
23 I was paid by check. Did they ever ask for the
24 check? No. If they had, we'd have it. Did
25 they ever look for the bank account? No. If

1 they had, we'd have it. Did they ask for his
2 tax record? No. We would have it. Did they
3 ever ask for his accounting records? No.

4 Now, if you were supervising
5 these people, and they did something like that,
6 they would be demoted to going forfeiture cases.
7 There's no explanation for this other than they
8 didn't want to do it. Because they are not
9 sloppy. They know what they're doing. And then
10 he walks in six years later to the office of
11 Special Counsel by Zoom and confessed. It was
12 cash. Now, nobody forgets whether it was check
13 or cash. And he didn't.

14 And Special Counsel is much
15 quicker about these things, trying to pay
16 attention to the truth, than her predecessors,
17 and she followed up and asked, where are the
18 bank accounts, let's go back and check, that's
19 what you said, you said check, now you're saying
20 cash. Which is it? And he said, oh, I'll go
21 look for it. You heard him. I asked him. You
22 said you'll go look for it. And we don't have
23 it today. If we don't have it today, that means
24 Special Counsel didn't get it today. Really?

25 Why is that important? It's

1 not just important, it's critical. Because the
2 important question before you is, why the lies,
3 why all the morning lies, why this 10, not six,
4 10 lies that have a destructive weight of a
5 piece of cement as their case. Why? Well, if
6 you weren't there in the morning, why are you
7 lying about it? So talking it through with you,
8 it could have only been because somehow he got
9 there at a time when was different than the
10 morning. And why is that important? Because it
11 goes to how he got to these people. How did
12 they find him, if they didn't see him perform,
13 if he didn't smile at them as he went by, how
14 did he get introduced to them.

15 Well, it seems like the only
16 natural candidate for that would be
17 Wesley MacGregor, who was the court officer at
18 that point. We don't know for sure, but there's
19 nobody else really around. And if
20 Wesley MacGregor made the introduction, and
21 there's no check and they're supposedly only a
22 thousand dollars in cash, could have been more,
23 could have been much more, we don't know, into
24 whose pocket did that cash go. All one? Split?
25 Who knows?

1 But going to back to not asking
2 the questions, I would suggest, I would suggest
3 and I know you know what I'm talking about, what
4 person would ever risk immunity in a case like
5 this to lie? Because as soon as you lie, you
6 get caught and you have no immunity. You're
7 dead. You're going to jail. And so why would
8 he lie about something like check versus cash?
9 If you front that at the very beginning, they'll
10 give you a pass. You know that. I know that.
11 They'll give you a pass, as long as you front
12 it. The only possible explanation, we can't say
13 for sure, but we don't have to, is that
14 something untoward happened between those two,
15 and MacGregor was smart enough to not name
16 Jellinek. Because he can explain, oh, I let him
17 out the back door. You can't explain as a court
18 officer beyond the tape. If you're Jellinek,
19 you can't explain handing cash to a court
20 officer in return for a referral. Maybe there's
21 another explanation. That's as good as I can
22 do. But I would suggest to you something at a
23 crisis level, more important in their minds than
24 letting somebody out the back, is driving this
25 host of lies about the morning. It's too wild a

1 whopper to take a risk otherwise.

2 Now, without trying to be
3 critical of anybody here, because the CJC has
4 its process, CJC filed these charges, then they
5 talked to Jellinek, then they talked to the
6 interpreter, then they talked to the ADA. They
7 never talked to Bostwick. They never looked
8 into any of the things in the transcript. But,
9 by then, it was too late. We were on this path.
10 And in the end, thank God we were. But we were
11 on this path, a path that David Jellinek excused
12 because he said, oh, I was just, what, I was
13 just advocating for my client.

14 Now, there's a preliminary
15 section to the Massachusetts bar rules that says
16 that in a section, Preamble 5 that says that an
17 attorney's conduct is -- has to conform with the
18 requirements of the law. And he knew this
19 didn't conform to the requirements of the law,
20 and Federal authorities knew it didn't conform
21 to the requirements of the law, because they
22 named him in there as the mastermind and
23 co-conspirator.

24 Now, even the Bible, in the
25 Torah and the revelation says that you need two

1 witnesses. What did Federal authorities have?
2 What does Special Counsel have? They have a
3 liar. So maybe we can update, if that's humanly
4 possible, the Torah and the new testament and
5 say you need two credible witnesses. That means
6 for thousands of years, for thousands of years
7 things that were important to human kind where
8 you were going to have a penalty of any kind
9 needed corroboration. They understood that.
10 Somehow that's gotten lost here. Is there any
11 good reason for it? I would suggest not.

12 And if Special Counsel suggests
13 that Mr. Mendoza is that credible second person,
14 he shot himself in the foot. Because whatever
15 his impressions were, he was clear that it had
16 been seven years, clear that he had memory
17 issues, couldn't remember the correct locations
18 of things as simple as where the side bar took
19 place, recognized there was white noise,
20 distance. Even Ms. Bostwick, who was sitting in
21 the front row, right inside the rail, with the
22 rail to her back, said I couldn't hear, I didn't
23 hear a thing. Didn't hear off the record,
24 didn't hear on the record. And he didn't know
25 what the Lunn policy was. So clearly, he could

1 misinterpret many things. But the most critical
2 thing is that he thought David Jellinek was the
3 prosecutor.

4 Now, the assistant district
5 attorney is not their second witness. The
6 assistant district attorney is our second
7 witness, Judge Joseph's second witness. Was
8 anybody more credible than the woman who stood
9 before you and sat before you and testified?
10 She said that, as far as she was concerned, the
11 off the record was just a continuation of the on
12 the record. She was right there. Nothing was
13 said that gave her the impression that
14 Medina Perez was doing anything other than going
15 out the side door -- excuse me -- going out the
16 front door. Although she may have used the word
17 "misguided," she didn't think that Medina Perez
18 was going out the back door. She said nothing
19 was said in that regard. She thought
20 Judge Joseph was just offering Jellinek time.
21 She didn't know about the Lunn policy either,
22 she knows it now, and she thought that
23 Judge Joseph was complying with it. She also
24 agreed that it was not a good thing for ICE to
25 take the wrong person. If they were looking for

1 help for their second person, they got none, and
2 we got everything we needed.

3 Now, the next witnesses from
4 Special Counsel are the three Newton District
5 Court witnesses that really told us what really
6 happened. And that's what this hearing, and in
7 some respects, if not all respects, is really
8 about. What actually happened that day? And
9 Court Officer Noe said to you three things: ICE
10 isn't there very often, so they don't deal with
11 this often, he had his interaction with ICE, and
12 he claimed to have offered them the opportunity
13 to go down or to stay up and wait at the front
14 door. But Noe didn't know about the
15 conversation ICE had had with Clerk Okstein.
16 And he may or may not ever heard about the Lunn
17 policy. Because he was doing things the old
18 way. That's what he said. In very good faith
19 and very honestly.

20 But the two witnesses that you
21 heard from the Newton District Court that were
22 most critical I would suggest were, one,
23 Clerk Okstein and, two, Judge Mary Beth
24 Heffernan. Now, Clerk Okstein told you that
25 going off the record was nothing to get excited

1 about as far as he was concerned. He told you
2 that people go downstairs in custody for their
3 property. He said that when he spoke to
4 Judge Joseph about ICE in the lobby, she didn't
5 ever say anything to him about them not being
6 able to access through the lockup. All she
7 talked about was whether they could be in the
8 courtroom or not.

9 But he showed, I would suggest,
10 great courage in answering your questions,
11 questions that had never been asked before. He
12 interpreted the order by Judge Joseph to also
13 include that ICE couldn't go anywhere into the
14 lockup, they had to wait out front. He
15 interpreted that as Judge Heffernan's policy.
16 Some seven years later, for the very first time,
17 we heard that out of his lips.

18 And then we heard from
19 Judge Heffernan. Now, Judge Heffernan said that
20 she only knew about Rule 211 anecdotally.
21 Anecdotally is a cute word for I've never read
22 it before. She thought custodies could go down
23 to get property. She told us that Jellinek,
24 when he saw her the morning of April 3rd, never
25 told her this agreement with MacGregor, never

1 told her his involvement with Medina Perez going
2 out the back door, or that Judge Joseph had
3 blessed it.

4 She talked about her e-mail
5 policy discussion with Judge Dawley, and she
6 acknowledged that she had this policy in effect,
7 we've learned that nobody else in the
8 Commonwealth of Massachusetts had it, and she
9 got rid of it. But the critical thing that she
10 said to you were that she claimed that she knew
11 about Lunn, that's what she claimed, she claimed
12 and said that she had acknowledged that she
13 hadn't implemented it. She admitted that the
14 Lunn policy says that, when ICE is present,
15 they're supposed to be able to take the
16 individual from the lockup. But she went on
17 with questioning from Special Counsel to say
18 that, oh, the policy was a little confusing and
19 her policy was not inconsistent with Lunn.
20 Really? Seriously?

21 Now, she acknowledged that it
22 was important to give the defense attorney time.
23 She acknowledged that no one would want ICE to
24 take the wrong person. And critically, she was
25 asked the following questions: Did you feel

1 like she, meaning Judge Joseph, told you what
2 she thought was important as far as you can
3 remember? Answer, yes. You didn't feel like
4 she was holding anything back. Not that I could
5 tell. And that you would have been the one to
6 tell Judge Joseph that Medina Perez went out the
7 back door when you talked that morning. Yes.
8 Mary Beth Heffernan was not trying to reprimand
9 Judge Joseph. She was trying to find out what
10 happened.

11 Now, that same bell, you know
12 the line of bells, and they have the bells that
13 play the same sort of sound, you know, depth and
14 quality. We heard from the other two judges,
15 the senior judges, from Judge Fortes. And
16 Fortes called her in. The conversation was
17 about Newton and it was precisely because they
18 both understood that she had gone off the
19 record. Though Judge Fortes never asked her,
20 that was the focus of the meeting. They didn't
21 get into ICE. Judge Fortes at this point seven
22 years later has no memory of any conversation
23 about Waltham, but you have the documents that
24 support it. As far as Judge Fortes was
25 concerned, it was an educational meeting,

1 permission, permission was accomplished. She
2 never said a word about half truths, part
3 truths, anything other than the truth from Judge
4 Joseph.

5 Probably another of the most
6 important witnesses was judge Dawley. He
7 acknowledged that he hadn't offered any training
8 in the manuals, separate training, whatever on
9 the issue of off the record. He thought being a
10 new judge was like drinking from a fire hose.
11 He acknowledged that Judge Carey, who is the
12 judge of all judges in the Trial Court, had in
13 an e-mail acknowledged that she didn't know
14 about this Rule 211. He, himself, had been off
15 the record on certain circumstances. He laid
16 out what the criteria was for the governor's
17 warrant, and he explained that Lunn was clear
18 and mandated, but the most important thing he
19 said for our purposes here was, I asked him, did
20 you think she was candid, and he said yes.

21 Now, Judge Joseph testified,
22 and you heard her testimony, she worked so hard
23 that morning and afternoon to find out about
24 this policy. But Judge Heffernan was excluding
25 people, ICE, who had a perfect right to be

1 there. She asked Okstein about it. She called
2 down to the office of the administrator of the
3 District Court, they talked her through it, they
4 e-mailed it to her, she followed.

5 When she was speaking, she was
6 asked to go off the record. Before that,
7 Jellinek said, best thing we could do is release
8 him and see if he can dodge ICE, and she
9 interpreted that as, he was asking for more
10 time. And the reason we know that that is a
11 more than reasonable interpretation is the
12 person in this courtroom testifying before you
13 who had the least axe to grind ever interpreted
14 it the same way, the assistant district
15 attorney, because she never heard anything, on
16 or off the record, inconsistent with that, and
17 said she thought one was just a continuation of
18 the other.

19 And at the end of the case,
20 Clerk Okstein turns around and says what? ICE
21 is here, they want to take him. And what does
22 Judge Joseph say? She says, they can't come in
23 here, but he's released. And there are four
24 other ways, three at least, for them to get
25 downstairs. Who knows where ICE is? But ICE

1 can come in the back, ICE can go down the
2 stairs, ICE can take the car around the back,
3 ICE can go down the other set of stairs.

4 Now, there's not one whip of
5 evidence showing, not one scintilla, as
6 Ms. Mulvey said to you at the very beginning,
7 showing that Judge Joseph had any other thought
8 in her mind, any improper, impure thought or
9 motivation. But in addition to that, we put on
10 a case, and we put on the case of involving
11 first Ms. Bostwick.

12 Now, besides Ms. Bostwick,
13 putting a pin in the balloon of the morning that
14 David Jellinek was trying to float, she said one
15 other thing that was telling about the state of
16 mind of David Jellinek. Remember, he said, when
17 he was asked questions by Special Counsel, I saw
18 Ms. Bostwick afterwards, and Ms. Bostwick said
19 to me, oh, I think you obstructed justice.
20 Ms. Bostwick said I have no memory of saying
21 anything like that. David Jellinek, like the
22 central figure in crime and punishment was
23 hearing voices of his crime, and he knew from
24 April 2nd on that he was in deep trouble.

25 Ms. Khoury, the attorney, said

1 going downstairs to get your property was the
2 thing to do here. Judge Heffernan had agreed
3 with that. Clerk Okstein had agreed with that.
4 And she would have wanted to talk to her client,
5 too.

6 But, you know, one of the most
7 powerful things I would suggest, hope, were the
8 three judges, experienced judges, of the
9 Massachusetts court, who said to you three
10 things: They had been off the record many
11 times, in the District Court, in Superior Court,
12 throughout their careers, and they had seen
13 other judges do exactly the same thing. And it
14 was not for some bad purpose. It was forgetting
15 the business of the court done.

16 Judge Ball, who you heard from,
17 Judge Ball sat in this courthouse six months out
18 of the year, six months in Brockton. Why did
19 they have her here? Because she could move
20 cases. She knew how sausage was made. So other
21 people who are prim could do the trails. And
22 without her -- And they were very happy to have
23 her year after year after year working that
24 hard. She used every tool in her kit to get
25 things done so that the wheels of justice in

1 Suffolk County and Plymouth County did not come
2 to a screeching halt. And even the people
3 sitting here today, we're happy to bless the
4 fact that she used those tools. So to say 2025,
5 oh, some things changed and it's a bad thing, is
6 beyond ridiculous.

7 Judge MacLeod said she did the
8 same thing, and she also told us that justice
9 was a little bit like McCourt, McJustice, you
10 know when you have to move things fast. But the
11 most important thing I would suggest to you was,
12 she talked about the fact that how necessary it
13 was to facilitate people being open and honest,
14 and that was the purpose that she used off the
15 record for.

16 But the most important thing
17 came from the lips of Judge Ball. She said, I
18 trust lawyers, I like lawyers, if somebody asked
19 to go off the record, she believed presumptively
20 that they were there for a good purpose. And if
21 she had done that, as she did for all those
22 years, her trust was never betrayed. What does
23 that mean? That means that she never ran into a
24 David Jellinek. Nor would anybody ever
25 reasonably think that they'd run into a

1 David Jellinek.

2 Now, you heard from the ICE
3 agents through their testimony they needed to be
4 heard. That was their testimony. And they said
5 one key thing, beyond the fact that Jellinek
6 wasn't there. They basically begged to be
7 allowed to go into the lockup, because they knew
8 that the policy, the Lunn policy, and they knew
9 about Lunn, was there for the public's
10 protection and for their protection. And you
11 heard from the chief, now of security,
12 supervising at that time, and he said, when
13 asked about the policies at the Newton District
14 Court, were they, -- I think I was trying to be
15 careful about it -- were they consistent with
16 the Lunn policy, court officer policy, and to be
17 gentle about it. His answer was, no.

18 Now, on April 2nd of 2018,
19 there was one person in that courtroom who knew
20 about the Lunn policy, which is the key in court
21 to the case. Not the 52 seconds. The Lunn
22 policy. That was a policy, as Judge Heffernan
23 described, that Judge Dawley really described,
24 was put together in response to the Lunn
25 decision, recognizing that it was a delicate

1 balance, committees put months of work into it,
2 they worked very hard to put that together, they
3 distributed it widely, they had every
4 expectation that all of judiciary would read it,
5 that court officers, supervisors would get to
6 read it, that everybody would know about it.

7 Judge Joseph, if you read that
8 transcript, did everything right on every case
9 that day, which she particularly did everything
10 right on this case, on the Medina Perez case,
11 because she was the only person in the courtroom
12 who knew about the Lunn policy. She called for
13 it, it was read to her, she wanted to implement
14 it, she got copies. And what did she do with it
15 when she left for the day? She took the
16 policy -- we have it here -- and she dropped a
17 copy on the clerk's desk, she dropped a copy on
18 the first assistant's desk, and she also dropped
19 a copy on Mary Beth Heffernan's desk. Right
20 here.

21 How would you feel if you were
22 the Chief Justice, the Presiding Justice, and
23 you walked in, and your rookie, your baby judge
24 who was filling in for you that day dropped that
25 piece of paper on your desk? I think you would

1 know that there was a policy that nobody in your
2 courthouse seemed to be aware of, not the clerk,
3 not the court officer, not the assistant
4 district attorney. Is it sort of crazy that
5 these people all along have wanted to penalize
6 the only person who made the judiciary look good
7 that day?

8 So I have to say, in closing,
9 when I finally got the chance, when we finally
10 got the chance, and I read the Clerk Okstein's
11 grand jury, I said to myself, oh, my word, this
12 is what really happened. And then I watched you
13 ask him a question that neither counsel asked,
14 which is, did you tell ICE that they could go
15 other ways? And he said no. Why? Because he
16 misinterpreted the policy in Newton and thought
17 that's what Judge Joseph was ordering, even
18 though she hadn't said it. He confessed. And
19 when you ask that question, you got that answer,
20 I thought, oh, that's what really happened.

21 But then Judge Heffernan got on
22 the stand. And she said, I knew about Lunn,
23 whether she did or didn't, but I never
24 implemented. And I thought, oh, my God, oh, my
25 God, that's what happened. Now, you heard her

1 say at the beginning of her testimony, my job as
2 the presiding Justice is getting everybody
3 together, make sure we're on the same page.

4 You heard Judge Bonnie MacLeod
5 say my job is to gather everybody together and
6 make sure that they're on the same page.

7 So if one says it's their
8 responsibility as the Presiding Justice no
9 matter how they divided up authority in the
10 courthouse, and the person who is the
11 Presiding Justice says that's my responsibility,
12 how did the Lunn policy fall through the cracks
13 all these years.

14 Now, it doesn't matter that she
15 claimed that she met Jellinek in the afternoon.
16 It was a little of an ex parte conversation.
17 Because you know that of course Jellinek had his
18 hair on fire and went in in the morning, and
19 there's no way Noe didn't go see her right away,
20 and there's no way that Okstein didn't go see
21 her right away. But who cares? What's really
22 important is that, when she confessed, she
23 added, oh, confusing time, it was, my policy was
24 consistent with Lunn.

25 In what parallel universe is

1 her policy consistent with Lunn? Lunn was
2 there, mandating into the lockup, if at all
3 possible, there was no impossibility that day,
4 mandating that for the protection of the public
5 so that there weren't -- my colleagues --
6 scuffles in the courtroom. And most important,
7 for the protection of our law enforcement people
8 in the lockup. And but for her policy that ICE
9 couldn't go downstairs and but for that, we
10 wouldn't be here today.

11 Now, having said that, I asked
12 the question of Judge Dawley. I said, well, do
13 you think that, you know, she should be
14 complained to the CJC. And I said that simply
15 to make a point. And the point is that her
16 policies were just the contributing cause. She
17 was trying to do the best she could every day,
18 just like everybody else, except one person,
19 David Jellinek.

20 No judge in this courthouse
21 today or before or hopefully in the future has
22 ever met someone like David Jellinek, Judge
23 Ball, who did cases with hundreds of people,
24 Judge MacLeod, who done cases with thousands of
25 people, lawyers from within the Commonwealth,

1 out the Commonwealth, nobody has ever met a liar
2 and a manipulator and a scammer like that. And
3 if there was no David Jellinek, the imperfect
4 policies of Judge Heffernan would probably still
5 be there today. Because he was the stress point
6 that no one anticipated.

7 It's a little bit like,
8 Judge Joseph was walking down the sidewalk, and
9 some scaffold fell on her head, and somebody's
10 blaming her for walking down the sidewalk. Who
11 dropped the scaffolding? Who hoisted the rope?
12 It doesn't do us any good here to cast blame.
13 Because I would suggest to you you're going to
14 take all this in, you're going to write
15 findings, I think that without question the SJC
16 is going to be dying to hear what you have to
17 say and take any kind of remedial measure.

18 But in the end, I would ask you
19 that it's enough. We don't need to throw
20 anybody to the wolves, you don't need to throw
21 another person to the wolves, we don't need to
22 throw other people to the wolves. Other people
23 have been doing the best they can in the
24 judiciary. Only David Jellinek is the criminal
25 here. And if we throw someone to the wolves,

1 the wolves are insatiable, insatiable, and we
2 won't gain anything. We need to be better than
3 them and end this now.

4 Thank you.

5 HEARING OFFICER: Thank you,
6 Mr. Hoopes.

7 JUDGE FABRICANT: Good morning.
8 Judith Fabricant, Special Counsel for the
9 Commission on Judicial Conduct.

10 I need to make a couple of
11 comments about Mr. Hoopes' argument. I have no
12 doubt that you will make findings based on the
13 evidence and nothing that isn't in the evidence,
14 but we heard quite a bit here in this closing
15 argument that wasn't in the evidence, starting
16 with what was essentially a character reference
17 by Mr. Hoopes when there was no character
18 evidence in the witness -- among the witnesses
19 in the evidence.

20 We heard a speculative theory
21 about Mr. Jellinek paying off Officer MacGregor.
22 There was no evidence of that. In fact,
23 Mr. Hoopes asked Mr. Jellinek a question about
24 that, and Mr. Jellinek said absolutely not. If
25 Mr. Hoopes wanted to bring in Officer MacGregor,

1 perhaps he could have. He didn't. There is
2 simply no evidence of that.

3 Mr. Hoopes said that the
4 assistant district attorney said that what
5 Judge Joseph was doing was to give Mr. Jellinek
6 more time. She didn't say that. She said
7 something different, which we'll talk about, but
8 she didn't say that. So we've had a lot here.
9 And there was some argument about Judge Ball and
10 her role and how the court viewed it. There's
11 been some argument about how U.S. attorneys
12 operate, how the justice department operates.
13 None of that is in evidence. And I know that
14 you will make findings based on the evidence.

15 I also think it's important to
16 note that the Commission is not the U.S.
17 attorney, the Commission's charges are not the
18 indictment, and this hearing is not the trial of
19 the indictment. This is an entirely different
20 matter. The U.S. attorney may or may not have
21 done some things that they would otherwise do,
22 may or may not have had whatever motivation they
23 had, may have not done some things that
24 Mr. Hoopes thinks they should have done. That
25 is not what this hearing is about.

1 This hearing is about the
2 charges made by the Commission on Judicial
3 conduct whose responsibility it is to monitor
4 judges' compliance with the Code of Judicial
5 Conduct and with the provisions of Chapter 211C,
6 and to take action when it has reason to believe
7 that there has been a violation by a judge of
8 those requirements. So that's what this hearing
9 is about, and I know that you will make your
10 findings and your ruling about those issues.

11 Now, as I said when we started,
12 there's one central factual dispute, and that is
13 what was said in the 52 seconds off the record.
14 And we've spent five days of evidence to resolve
15 that one disputed fact. Some of the evidence
16 that's been presented actually bears on that
17 dispute, a lot of it has been peripheral. I'm
18 going to keep my focus on that central issue, on
19 the facts that I ask you to find based on what
20 was said in those 52 seconds, on what Joseph
21 said, Judge Joseph said afterward, and on the
22 undisputed facts.

23 So how do you resolve the one
24 disputed issue. We're all thoroughly familiar
25 with the factors that a fact-finder can

1 consider. You consider whether the witnesses
2 have a bias or motive to tell you anything other
3 than the whole truth, you consider the demeanor
4 of the witnesses, as I know you have and will,
5 you consider whether their testimony is
6 consistent in itself and with their previous
7 statements and with the other evidence, and most
8 important in this case, I suggest is to consider
9 the plausibility of the conflicting versions in
10 light of what was said on the record and in
11 light of the surrounding circumstances.

12 Two most conflicting witnesses
13 obviously are Judge Joseph and Attorney
14 David Jellinek. Judge Joseph is the responding
15 party, her judicial career is at stake, her
16 reputation is at stake. She's biased by
17 definition.

18 What about David Jellinek.
19 He's a practicing lawyer. And you heard a lot
20 about him from Mr. Hoopes. But he's a
21 practicing lawyer who appears in the
22 Newton District Court almost daily and in other
23 courts regularly and has for 25 years and he
24 continues to have positive professional
25 relationships with court personnel.

1 You've heard a lot about his
2 proffer and grant of immunity. Counsel relies
3 heavily on that to suggest that he had reason to
4 make a false accusation. But David Jellinek was
5 fully aware that he could assert a
6 Fifth Amendment privilege, refuse to speak and
7 refuse to testify. He knew what might follow
8 from that, but he also knew that he would defend
9 himself vigorously and he would have had a lot
10 of ground for defense. His duty was to his
11 client, not to ICE. And as Officer MacGregor
12 told him and Chief Court Officer Noe confirmed
13 here, there was no rule at the time against
14 releasing someone out the back.

15 And as respondent has
16 emphasized, the official Trial Court policy
17 favored bringing ICE to the lockup, which was
18 entirely outside Mr. Jellinek's control. So if
19 Mr. Jellinek had asserted his privilege and been
20 prosecuted, he would have had plenty of room for
21 defense.

22 And Attorney Jellinek fully
23 understood that waiving his privilege and
24 accepting immunity was a two-edged sword. He
25 could not be prosecuted if the U.S. attorney

1 believed he told the full truth, but he would
2 lose his immunity and would be prosecuted for
3 perjury at least if the U.S. attorney believed
4 that he told any material untruth.

5 You have the proffer letter and
6 the immunity letter in evidence as AA, and you
7 may be familiar with these types of letters.
8 The phrasing has a certain in terrorem effect,
9 the witness is warned in no uncertain terms that
10 he is at the mercy of the U.S. attorney's
11 unreviewable evaluation of the truth of his
12 statements. Surely, a lawyer with an active and
13 successful practice would not risk his career
14 and his freedom with a fabricated accusation.

15 What about demeanor.

16 Mr. Hoopes has said a lot about demeanor. And
17 you will evaluate demeanor, and I have no doubt
18 you observed the witnesses, and you don't need
19 much comment made on that topic. But I will
20 make a couple of comments. David Jellinek
21 answered the questions from both sides directly,
22 even when the answers would hardly make him look
23 good. He acknowledged that what he did for his
24 client was on the edge of ethical. Mr. Hoopes
25 characterizes it as criminal, Mr. Jellinek

1 disagrees, but he admits this was borderline.
2 He acknowledged what he doesn't remember and he
3 acknowledged that in some respects, particularly
4 when and why he came to Newton that day and when
5 he spoke with various people, his memory after
6 seven years differs from what appears in the
7 full day transcript. He didn't dance around
8 those questions. He answered them directly.

9 What about Judge Joseph's
10 demeanor. She did dance around, as you saw.
11 And I'll mention a couple of examples, and I
12 know you'll review the transcripts and I know
13 you have your own recollection, but I'll mention
14 a couple of examples.

15 The first on a point that was
16 hardly worth quibbling about, but she did
17 quibble. I asked her about the case of
18 Mr. Pineda, second on the list that day, when
19 retained counsel had filed an appearance and
20 appointed counsel, who turned out to be
21 Allison Khoury, a witness here, withdrew. The
22 only significance of this fact is that
23 substitution of retained counsel for appointed
24 counsel is a frequent occurrence. It happened
25 twice that day. It's not a reason to be

1 puzzled, as Judge Joseph said she was in
2 Paragraph 13 of her response to the charges.

3 But instead of just answering
4 yes to my question, she talked around it and she
5 talked about cases when a defendant who's not
6 indigent, but has no counsel on arraignment, so
7 the court appoints counsel just for bail and
8 that lawyer doesn't come back and retained
9 counsel comes in. That might happen. But the
10 transcript was right in front of her, and it
11 shows that that's not what happened in the
12 Pineda case. Attorney Khoury was there on
13 April 2nd because she had been appointed
14 previously. She came back and she was replaced
15 by retained counsel. Nothing significant,
16 nothing unusual, except that judge Joseph didn't
17 want to acknowledge it.

18 A similar example more
19 significant to the issues here is when I asked
20 her whether detention on the fugitive from
21 justice charge would require a determination
22 that the evidence was sufficient to connect the
23 defendant to the warrant, and she talked at
24 length about the factors as if the other factors
25 would somehow justify holding someone without

1 evidence that he was the person named in the
2 underlying warrant.

3 A little later I read from the
4 transcript where Mr. Jellinek said, the best
5 thing for us to do is to clear the fugitive
6 issue, release him on a personal, and hope he
7 can avoid ICE. I asked her whether she
8 understood that Mr. Jellinek's goal was to have
9 his client avoid ICE, exactly as he said, and
10 she would not acknowledge that she understood he
11 meant exactly what he said. She insisted that
12 she interpreted that as that he wanted more time
13 to investigate, to see how it pertained to both
14 agencies. That's the theory she's putting
15 forward now, and that the lawyers have argued,
16 but it's not what Mr. Jellinek had just said to
17 her on the record.

18 And then, when she was
19 answering her lawyer's questions, she said that
20 she thought that detaining the defendant
21 overnight, sending him to the jail, was
22 analogous to putting a matter on for further
23 call during the court day. And when I asked her
24 if that was really what she meant, she insisted
25 it was. After a career as a criminal defense

1 lawyer, could she really be so cavalier about
2 sending a defendant to the jail overnight with
3 no legal basis. That's preposterous. But once
4 she had said it, in response to her lawyer's
5 questions, she insisted on sticking to it.

6 The way she answered my
7 questions was reminiscent of Chief Justice
8 Fortes' description of the conversation in
9 Lowell, when Judge Fortes was the Regional
10 Administrative Justice. Chief Justice Fortes'
11 testimony was very precise. She told you that
12 she asked Judge Joseph an open-ended question
13 without any accusation, that she had been told
14 that part of the proceeding was not recorded.
15 But she didn't assume that that meant that the
16 judge had told the clerk to turn off the
17 recording. She knew there were other
18 possibilities. The clerk could have forgotten
19 to turn it on after the lunch break or the
20 equipment might have malfunctioned or otherwise.

21 So she said to Judge Joseph, I
22 understand that part of the proceeding was not
23 recorded. What happened. And Judge Joseph did
24 not say I told the clerk to turn off the
25 recording or the defense lawyer asked to go off

1 the record and I did. The first time
2 Judge Fortes heard Judge Joseph say directly
3 that she went off the record was in Chief
4 Justice Dawley's office on May 8.

5 Instead, in her conversation
6 with Judge Fortes, Judge Joseph danced around,
7 as she did here, she asked questions about how
8 the recording system worked in Newton and how
9 that system was different from the newer system
10 in other courts and she talked about a time when
11 she turned off the record in Waltham because of
12 a malfunction there. And Judge Fortes didn't
13 remember it, but Judge Joseph talked about it
14 here and in my interview with her, which is
15 Exhibit N. But she never directly answered
16 Judge Fortes' question what happened.

17 While we're talking about that
18 conversation, there's another point to mention.
19 Chief Justice Fortes testified that, when she
20 told Judge Joseph that everything has to be
21 recorded, Judge Joseph said she knew that.
22 Chief Justice Fortes did not testify that
23 Judge Joseph said she knew about Rule 211. And
24 I'm not suggesting that you should find from
25 that statement that she did know about Rule 211

1 before Chief Justice Fortes showed it to her,
2 although she should have known about it. What I
3 do suggest is that her position changes with the
4 context and the audience, as it did in her
5 testimony here.

6 Let's turn to consistency as a
7 factor in evaluating credibility. Respondent's
8 counsel has been very thorough and has found
9 some inconsistencies in Mr. Jellinek's
10 statements on periphery points, which
11 Mr. Jellinek has acknowledged. But his account
12 of the material facts has not changed, from the
13 time of his first interview with the U.S.
14 attorney in November of 2018 through his
15 testimony here.

16 Counsel has emphasized that
17 Mr. Jellinek did not go around the courthouse
18 before the afternoon call, before the afternoon
19 call telling people that he had a plan to get
20 his client out the back. Why would he do that?
21 That would destroy the plan. And he didn't go
22 around afterward saying that he had the judge's
23 blessing. Well, why would he do that? He had
24 no reason to want to cause trouble to the judge.
25 To the contrary, he preferred to talk with the

1 judge off the record to protect both himself and
2 her and to keep it as private as possible
3 afterward.

4 Judge Joseph, on the other
5 hand, has taken a series of shifting positions.
6 The most glaring inconsistency is her effort to
7 backtrack on the statement of facts that she
8 agreed to with the U.S. attorney and that she's
9 agreed not to contest before the Commission in
10 return for dismissal of criminal charges in
11 September of 2022.

12 She stipulated that the normal
13 custom and practice in Newton was that a
14 defendant released from custody would be
15 released into the courtroom. We heard from
16 security director McPherson that that should not
17 have been the practice, and we heard from some
18 lawyers that that was not always what happened.
19 But Judge Joseph stipulated that that was the
20 normal custom and practice, and the chief court
21 officer as well as the assistant district
22 attorney, the clerk, and the First Justice have
23 confirmed that it was. And it didn't depend on
24 whether somebody had property. The assistant
25 district attorney and the chief court officer

1 said the court officer would run down and get
2 the property, or would bring it up if the court
3 officer had reason, as in this case, to believe
4 that the person was going to be released on
5 personal recognizance.

6 Judge Joseph started
7 backtracking on her stipulation during her
8 interview under oath in June of 2023, and you
9 can see this in Appendix N, Pages 190 to 192.
10 Her positions on what she knew and didn't know,
11 what she intended, and what she did and didn't
12 do have also shifted. She told Chief Justice
13 Dawley that the off the record conversation was
14 about the Pennsylvania warrant. She told him
15 nothing about any discussion about ICE. He
16 could hear a reference to ICE on the recording,
17 but not more than that. And of course he did
18 not know and could not know, aside from what she
19 told him, anything that was said off the record.

20 And when Chief Justice Dawley
21 asked her whether she had anything to do with
22 the defendant being released out the back or any
23 responsibility for it or any knowledge of it,
24 she denied it. Emphatically and adamantly.

25 In her interview with me under

1 oath on behalf of the Commission, she gave the
2 same emphatic denial. But she also said that
3 she thought she had a responsibility to
4 determine whether the defendant was the right
5 person for ICE, she thought she had that
6 responsibility to ICE, and she intended to pause
7 the ICE arrest to allow for an attorney/client
8 conference. She resisted acknowledging that in
9 her testimony here, but you will see that in the
10 transcript of her interview which is in
11 evidence.

12 In her response to the
13 Commission's charges, Paragraph 32, she says
14 that her conduct had the unintended effect of
15 assisting in the defendant's avoidance of ICE.
16 She did not say that in her interview with me
17 and she did not say any of these things in her
18 meeting with the Chief Justice Dawley. These
19 are all material inconsistencies.

20 Whose version of what happened
21 is more plausible? Which version finds support
22 in the recorded part of the proceeding and in
23 the testimony of other witnesses? The recording
24 has no bias. It cannot lie or spin or
25 misremember. David Jellinek's version is

1 consistent with what both he and Judge Joseph
2 said on the record and with the other witnesses
3 on the record.

4 Judge Joseph was the first to
5 mention ICE as soon as they were at side bar.
6 David Jellinek did not open that topic. She
7 said it's my understanding that ICE is here.
8 What did this communicate to Mr. Jellinek? It
9 conveyed that she was concerned about ICE, she
10 understood that he would be concerned, and she
11 was inviting him to discuss how to deal with
12 that concern.

13 And what does it tell us? She
14 had said that she didn't know why he asked to go
15 to side bar. But this tells us she did know or
16 at least she inferred ICE was there, and that
17 was the topic to be discussed at side bar.

18 David Jellinek heard this as an
19 invitation to do exactly what he hoped to do, he
20 made his argument about identity and then he
21 told the judge clearly and directly what he
22 wanted to accomplish, release on personal and
23 try to avoid ICE.

24 Her statements gave him reason
25 to think she would help him and she now

1 acknowledges that she was trying to help him.
2 She says so in Paragraph 12 of her response to
3 the charges. She says she made what she thought
4 was a good suggestion for his client, keeping
5 the defendant in state not Federal custody.

6 What remained for David
7 Jellinek was to tell Judge Joseph how he had
8 proposed to accomplish his goal and what he
9 needed from her to make it possible. He needed
10 his client to go back downstairs, contrary to
11 what she has stipulated was the normal practice
12 in that court. If the defendant went back
13 downstairs, he thought he could get him released
14 out the back. That's why he asked to go off the
15 record and that's what he told her off the
16 record. Her response as he remembers it was,
17 that's what we'll do, we'll proceed that way, or
18 something like that. This version makes sense,
19 it's plausible and consistent with the record
20 and with what happened.

21 Mr. Jellinek acknowledges that
22 his conduct was skirting the edge of ethical.
23 Would an attorney characterize his own conduct
24 that way if he were fabricating? If there were
25 a more favorable version for himself, wouldn't

1 he offer it? And would he do what he did if he
2 didn't think he had the judge's permission?
3 Mr. Jellinek had too much to lose without the
4 judge's permission. He was and still is a
5 regular in the Newton District Court, he
6 cultivates relationships with court personnel,
7 and he benefits from those relationships. Would
8 he jeopardize all of what he had gone through?

9 David Jellinek felt the need
10 for the judge's blessing. He came in to the
11 side bar discussion knowing what he needed from
12 the judge and looking to gauge whether he had
13 that opportunity. Her statements on the record
14 signaled to him that he did have the opportunity
15 he needed, her suggestion to hold the defendant
16 overnight, ICE is going to get him, what if we
17 detain him. He listened carefully, and he saw
18 the opportunity he was looking for. That's when
19 he asked to go off the record in that context.
20 He had a specific purpose to tell her how he
21 would accomplish what he was trying to do and
22 what he needed from her to make it possible. He
23 tells her exactly why he needed to go off the
24 record, what he wanted to say to her, and did
25 say to her.

1 Her version is implausible, it
2 doesn't make sense. She would have you believe
3 that Mr. Jellinek asked to go off the record for
4 no reason with no purpose, not to say anything
5 secret or private, not to say anything other
6 than exactly what was said later on the record.
7 Would a lawyer ask to go off the record with no
8 purpose for no reason with no intention to say
9 anything private?

10 There's been evidence that some
11 judges did go off the record in the years when
12 she was practicing, and that may be so. But
13 context is key. She knew what came immediately
14 before the request to go off the record. She
15 knew that ICE was the topic and
16 Attorney Jellinek's hope that his client could
17 avoid ICE. And she was the first to mention
18 ICE. There was no room for doubt that that was
19 what he wanted to talk about. It was with that
20 knowledge that she immediately granted his
21 request to go off the record.

22 What about the other witnesses
23 to this conversation? Assistant District
24 Attorney Jurgens, Shannon Jurgens McDermott and
25 Interpreter Eric Mendoza have different memories

1 of what they heard, but the general sense of
2 what they heard both on and off the record and
3 the impression that they both gleaned is
4 consistent, the judge was trying to help the
5 defendant avoid ICE.

6 Eric Mendoza is a bit rough
7 around the edges, but he has no bias and no
8 reason to want to incriminate anyone. He
9 doesn't remember much about the morning, when he
10 served on a number of cases and nothing unusual
11 happened. He doesn't remember whether the
12 defense attorney on this case in the morning was
13 male or female. It didn't matter to him. He
14 couldn't hear everything at side bar and he
15 doesn't claim that he could and he can't quote
16 specific words or phrases. But he heard enough
17 to get an impression, the impression that the
18 judge was unhappy about ICE being there and she
19 was suggesting that this particular person be
20 let go out the back, and that a decision was
21 made for him to be let go out the back.

22 He remembers that because it
23 bothered him. He felt disappointed in the
24 court. As he said it, you kind of lose faith in
25 the system a little. He's spent a lot of time

1 in courtrooms. He may not understand the fine
2 points, but he has a sense of what is supposed
3 to happen and what is not supposed to happen,
4 and he knew this was not supposed to happen.
5 That's why he remembered it.

6 What about Shannon McDermott?
7 Her testimony was clear and precise and
8 consistent with her previous statements. She
9 fully understood her role. She said right away
10 that ICE was outside her role, she would take no
11 position regarding ICE. She was there at the
12 side bar, and she listened. But having said she
13 would take no position, her focus was not on the
14 discussion about ICE. Her focus was the
15 criminal charges that she was there to
16 prosecute.

17 Her memory of the conversation
18 at side bar was limited and does not fully match
19 David Jellinek's testimony or Eric Mendoza's.
20 She does not remember anyone saying anything
21 about going out the back. Although, Chief Court
22 Officer Noe testified that she -- and he
23 testified to this on cross-examination, that she
24 told him later that she had a sense that that
25 might happen, that she couldn't believe a court

1 officer would do that.

2 She heard and understood enough
3 of the conversation between Attorney Jellinek
4 and Judge Joseph to make her uncomfortable with
5 the judge and the defense attorney talking about
6 how the defendant could avoid ICE. She
7 described the conversation as sketchy. That was
8 in her grand jury testimony. She acknowledged
9 it in her testimony, she's a few years older and
10 a little more professional and maybe that's not
11 a word she would use today, but that was the
12 word she used and she acknowledged it. She
13 remembers the judge saying, what should we do.
14 Well, what should we do about what? It had to
15 be about ICE. There was nothing else left for
16 the court to do in that case that day. The
17 fugitive from justice charge was dismissed and
18 there would be no bail request on the
19 misdemeanor charge.

20 Counsel pointed out, and we had
21 some discussion with Ms. McDermott on this
22 topic, that a judge can set bail even if the DA
23 doesn't request it, especially if there is
24 reason to think the defendant won't come back to
25 court. And if ICE takes him, they might not

1 bring him back to court, whether he's the right
2 person or the wrong person. So that might
3 prevent him from appearing.

4 There was some suggestion that
5 maybe Judge Joseph would have set bail to keep
6 him in state custody so that he would appear in
7 court. But if that were the purpose, then it
8 would have been necessary to keep him detained
9 until the case was resolved, unless she thought
10 ICE was going to forget about it, which is
11 extremely unlikely. Maybe a judge would do that
12 on a charge of rape or robbery or drug
13 trafficking that might lead to a sentence of
14 incarceration with credit for the period in
15 detention. But these were misdemeanor charges
16 with no criminal record. The docket is in
17 evidence and you can see that the case was
18 ultimately disposed by pretrial probation, not
19 by incarceration. Unless the motive were to
20 keep the defendant away from ICE, this would not
21 be a case where a judge would set bail without a
22 request from the DA.

23 Respondent puts a lot of
24 emphasis on Ms. McDermott going out to the main
25 lobby after the proceeding ended and waiting

1 with the ICE officer, telling him that the
2 defendant would come out from the public
3 doorway. Ms. McDermott told us why she did
4 that. She knew there was a sallyport
5 downstairs, although she didn't use the office,
6 she didn't go downstairs, but she knew it was
7 there. But she didn't believe a court officer
8 would release a defendant that way, knowing that
9 ICE was waiting upstairs, and she knew that the
10 normal practice was that a defendant would come
11 out through the courtroom as indeed Judge Joseph
12 has stipulated.

13 Let's talk about what happened
14 after the matter went back on the record and
15 back to open court. There was no more
16 discussion of the defendant's identity for ICE,
17 no more mention of whether he was the right
18 person for ICE. Why not? Because it was no
19 longer a concern. There was a plan. The judge
20 and the defense attorney knew what was about to
21 happen.

22 You heard from
23 Judge MacLeod, -- and this was interesting --
24 she had a long judicial career first on the
25 District Court and then on the Superior Court.

1 She said, and I think this is not what she was
2 brought in for, I think she was brought in to
3 testify that judges go off the record, but she
4 said that, when she would go off the record, she
5 would then put a sanitized version of that
6 discussion on the record.

7 That was exactly what happened
8 here. Judge Joseph and Mr. Jellinek engaged in
9 a little performance for the benefit of everyone
10 in the courtroom, especially the court officers
11 who had control of the secure doors. The
12 attorneys established that the defendant was not
13 the right person for the Pennsylvania warrant,
14 so the fugitive from justice charge would be
15 dismissed, there would be no bail on the drug
16 charges, and the defendant would be released on
17 personal recognizance.

18 Then Mr. Jellinek made public
19 his request that the defendant go back
20 downstairs. He said I think he has some
21 property downstairs and I'd like to speak with
22 him downstairs with the interpreter, if I may.
23 Judge Joseph said, that's fine, of course. So
24 at this point, everyone in the courtroom knows
25 he's going downstairs, and the arraignment

1 proceeds.

2 And there's been a lot of talk
3 about whether it was common for a lawyer to go
4 down to the lockup with a client after the
5 client had been ordered released with the
6 interpreter if necessary. And maybe it was.
7 Although Judge Joseph has stipulated again that
8 the normal practice was to release a defendant
9 into the courtroom and out the front door, and
10 you've heard from various witnesses, that a
11 court officer would go down and get the property
12 if he hadn't already brought it back up with the
13 defendant.

14 But whether it was common to go
15 downstairs or not, Judge Joseph clearly thought
16 that she needed to give permission for them to
17 go downstairs, and she said on the record that
18 she did give permission. When Officer MacGregor
19 asked if the defendant was released, she
20 responded, he is. And then she said,
21 Mr. Jellinek asked if the interpreter can
22 accompany him downstairs to further interview
23 him and I've allowed that to happen.

24 The clerk then reminded her
25 that ICE was present to visit the lockup. She

1 responded, fine, I'm not going to let them come
2 in here, but he's released on this. Why say
3 that at that moment? She had already told the
4 clerk to follow the First Justice's practice of
5 excluding ICE from the courtroom, and there was
6 no request to change that at this point.

7 In context, her saying that
8 might seem to be a kind of nonsequitur, but it
9 was not a nonsequitur. It expressed her
10 awareness of the effect of excluding the ICE
11 officer from the courtroom. ICE was not there
12 to see and hear what was happening and when, to
13 know that she had ordered the defendant released
14 and had allowed the defendant to go down to
15 lockup. She knew ICE wasn't in the courtroom to
16 hear it and she made sure it would stay that way
17 long enough for Attorney Jellinek to put his
18 plan into effect.

19 Both the clerk and
20 Attorney Jellinek interpreted her response as
21 indicating that she would not allow ICE to go to
22 the lockup. She rejects that interpretation and
23 emphasizes that there were other ways to get
24 there. Indeed there were. Only there were
25 obstacles. If they were go through the

1 building, they need to be escorted by someone
2 with a security pass and to get there before the
3 defendant left. And if they were to go around
4 outside to the back and into the fenced area
5 where a sheriff's van was waiting for another
6 detainee, and then knock on the door to seek
7 entry to the lockup, they would have to know
8 exactly when he was going downstairs and when he
9 was going to be released and maybe they'd also
10 have to have someone wait upstairs in case he
11 changed the plan and went back that way. Not
12 being in the courtroom to see and hear, they
13 could hardly accomplish any of this.

14 I want to be clear. In
15 excluding ICE from the courtroom, Judge Joseph
16 was following the practice of the First Justice,
17 and the Commission does not fault her for that.
18 She was new, she was not in charge of that
19 courthouse, and that was the First Justice's
20 practice. But in announcing at that moment that
21 I'm not going to let them come in here, she was
22 acknowledging that she knew the effect in this
23 case. ICE is waiting outside the courtroom,
24 expecting him to go out through the courtroom,
25 according to the normal practice, having no way

1 to know that he's going another way and no way
2 to do anything about it.

3 So why would she do this?

4 Excuse me just a moment.

5 (PAUSE)

6 Why would she do it? There's
7 been no suggestion that she was a political
8 activist or a zealot of some kind, and the
9 Commission doesn't contend that she was. The
10 contention, rather, is that she stepped out of
11 the judicial role. She was trying to help. She
12 saw a problem, a potential injustice. ICE might
13 arrest the wrong person. She wanted to prevent
14 that. But that was not her role as a
15 Massachusetts District Court judge. Her role
16 was to address the state charges before her.

17 Regarding ICE. Her obligation
18 was to be neutral, both in reality and in
19 appearance, to do nothing to help or hinder, as
20 Chief Justice Fortes said and as Judge Joseph
21 repeated. The assistant district attorney
22 understood that. She was neutral regarding ICE.
23 That's exactly what Judge Joseph should have
24 done. The assistant district attorney was three
25 years out of school, but she knew that that's

1 what she was supposed to do and that's what
2 Judge Joseph should have done.

3 Instead, as Ms. McDermott said,
4 the judge's conduct on that day was a misguided
5 effort to do what she thought was right, to help
6 the defense attorney get his client out of a
7 difficult situation. Having stepped out of her
8 role then, instead of acknowledging error and
9 taking responsibility for it -- if she had done
10 that, I don't think we'd be here, but instead of
11 acknowledging her error and taking
12 responsibility for it, Judge Joseph has
13 continued to claim that she did have some proper
14 role regarding ICE.

15 In response to the charges in
16 Paragraph 23, filed in December of 2024, six and
17 a half years, more than six and a half years
18 after the fact, says she was trying to help, she
19 wanted to resolve the issue of whether the
20 defendant was the person ICE wanted. She
21 thought it was her responsibility.

22 Her further response in
23 Paragraph 12 says that David Jellinek resisted
24 what I thought was a good suggestion for his
25 client.

1 Paragraph 15 says that she
2 wanted to ensure that defendant's conference
3 with his attorney would happen before he was
4 taken into ICE custody, not that she wanted to
5 give him more time to investigate. That's a
6 theory that she's presented here. But that's
7 not what's in her response to the charges. None
8 of this was within her role.

9 And now, in this hearing,
10 instead of acknowledging that she did facilitate
11 what happened, she has this new theory she was
12 just trying to give the defense attorney more
13 time, even though he never asked for more time,
14 and even if it would mean sending the defendant
15 to jail overnight with no legal basis to do
16 that.

17 Let's turn to what happened
18 after April 2nd. On April 4, she had a
19 conversation with Judge Heffernan. There was no
20 falsehood. But she did not volunteer relevant
21 information. She was not candid. If what she
22 says now is true, that this conversation was
23 when she first learned that defendant was
24 released out the back -- And I'm not suggesting
25 she learned the outcome earlier, but that she

1 learned what was going to happen.

2 But if this was the first time
3 she had heard about it, wouldn't it have dawned
4 on her in this conversation that she had
5 unwittingly facilitated, that she had allowed it
6 to happen? As she said in her response to the
7 charges, that she unintentionally facilitated,
8 although she did not say it in her testimony
9 here. Wouldn't she have wanted to share that
10 new recognition with the First Justice?
11 Wouldn't she have wanted to ask what should I
12 do, how do I keep this from blowing up? Or if
13 she didn't feel comfortable with the
14 First Justice enough to do that, wouldn't she
15 have called someone else to talk it through and
16 think about what to do? Her mentor? A judge
17 friend?

18 Then sometime within the next
19 couple of weeks she had a conversation with the
20 regional administrative justice. Again, there
21 was no falsehood, but no acknowledgment in
22 response to Judge Fortes' question, what
23 happened. There was a lot of talking around it,
24 but she never said I told the clerk to turn off
25 the record. She was not candid and she was not

1 honest about that conversation after in her
2 interview under oath with me on behalf of the
3 Commission. In that interview, she said she
4 acknowledged going off the record immediately.
5 That's in Appendix N, Page 240, Line 13.

6 And in her testimony here she
7 said she did acknowledge it. That's not so.
8 Chief Justice Fortes testified that that was not
9 so. And in Judge Joseph's response to the
10 charges at Paragraph 37, she said she assumed
11 that the Regional Administrative Justice knew.
12 Judge Fortes didn't assume anything, but she now
13 says she assumed.

14 If it had happened the way she
15 says now, then by the time of her conversation
16 with the Regional Administrative Justice, she
17 knew that the defendant avoided ICE, she knew
18 what she had said and what Attorney Jellinek had
19 said on the record, and now she knew she had
20 violated the rule. Wouldn't it have dawned on
21 her then, if it hadn't already, how it would
22 look to others? Wouldn't she have realized what
23 she says in her response that she
24 unintentionally facilitated and that others
25 would think she facilitated intentionally,

1 wouldn't she have wanted to explain to the
2 Regional Administrative Justice what happened,
3 again, to ask what should I do, how do I keep it
4 from blowing up, do I have to tell the chief?
5 But she didn't do that. She talked about the
6 recording equipment, the Waltham incident, the
7 issue of the defendant's identification for
8 Pennsylvania. Again, if she didn't feel
9 comfortable enough with the Regional
10 Administrative Justice, wouldn't she have wanted
11 to call her mentor or a judge friend to talk it
12 through?

13 Then comes May 8th, the meeting
14 with Chief Justice Dawley. At this point she
15 had listened to the recording. She knew that
16 the recording showed she went off the record and
17 she knew that that violated Rule 211. There was
18 no way to deny it. She had to acknowledge it
19 and show remorse for it. So she did. She also
20 knew what the recording would reveal about what
21 was said on the record.

22 Now, you heard the original
23 recording. It actually doesn't reveal a whole
24 lot, but she knew what it could reveal. Surely
25 she could perceive how it would look and surely

1 she understood by this point that she had
2 facilitated what happened, even if, as she
3 claims, her involvement was unintentional.

4 But in response to the Chief's
5 direct questions regarding her involvement in
6 the release of the defendant from the lockup,
7 she adamantly denied having anything to do with
8 it. She didn't say she was concerned about ICE
9 taking the wrong person, she didn't say, as she
10 told me under oath, that she thought she had the
11 responsibility to determine his identity for
12 ICE, she didn't say, as she told me under oath,
13 that she intended to pause the ICE arrest to
14 make sure his attorney could have a conference
15 with him first, and she didn't say, as she is
16 now, that she was trying to give his attorney
17 more time to investigate. Even she has now
18 acknowledged that her denial of having anything
19 to do with this release out the back was not
20 fully accurate. Her position in response is
21 that she did facilitate unintentionally, that by
22 allowing the defendant to go downstairs, she
23 allowed it to happen. But she didn't tell the
24 Chief Justice that. She tried to protect
25 herself rather than to participate candidly and

1 honestly in a discussion of what was now a
2 problem for the court and how the court would
3 have to deal with it.

4 Again, the issue is role. She
5 wasn't a school child called to the principal's
6 office, she wasn't a criminal suspect with a
7 right to remain silent, or even a civil deponent
8 who's best advised to answer the questions and
9 volunteer nothing. She's a judge in a position
10 of high honor and great -- and high authority
11 and great responsibility, including the duty to
12 be candid and honest with court leadership.

13 And even now, after all this
14 time and opportunity to think about what
15 happened and to think about the role of a judge,
16 and after all of what she has suffered, and
17 there's no doubt she has suffered, she still
18 doesn't acknowledge what it means to be a judge.

19 Paragraph 22 of her further
20 response compares her suspension from the bench
21 during her indictment with the immunity granted
22 to the defense attorney as if there were some
23 unfairness in their different treatment. But a
24 judge is held to a higher standard than an
25 attorney, indeed a higher standard than almost

1 anyone. Apparently she still doesn't accept
2 that higher standard.

3 I submit that Judge Joseph
4 facilitated what happened not inadvertently, not
5 unintentionally, but knowingly, understanding
6 that by allowing the defendant and his attorney
7 to go downstairs after she ordered the defendant
8 released, she was providing an opportunity to
9 the defendant to be released out the back while
10 ICE waited in front.

11 She didn't know there was an
12 arranged plan. She didn't know about the
13 conversation between Mr. Jellinek and Court
14 Officer MacGregor, but she knew what
15 Attorney Jellinek hoped would happen and she did
16 what she could to make it possible. She did it
17 not out of any political motive and not out of
18 any ill intention. To the contrary, she did it
19 in an effort to prevent what she thought was an
20 imminent injustice. But in doing so, she
21 violated her obligation as a judge to serve the
22 rule of law, to uphold both the reality and
23 appearance of integrity, impartiality, and
24 independence of the judiciary.

25 When she realized that her

1 conduct was coming to light, she tried to
2 protect herself. She was not candid and honest
3 with the Chief Justice as the code required her
4 to be. What she told the Chief Justice was
5 false.

6 In her interview with me on
7 behalf of the Commission under oath, she gave
8 the same falsehood. She offered various
9 explanations, as she has here, but she still did
10 not acknowledge, as she did in her response to
11 the charges, that she even unintentionally
12 facilitated what happened, and she repeated her
13 denial to you here in this courtroom, without
14 acknowledging that she facilitated what happened
15 even unintentionally.

16 Judge Joseph has garnered
17 sympathy in some quarters, and indeed she is in
18 a sympathetic position. The United States
19 attorney went after her in a way that came as a
20 shock to the judiciary and the bar and surely
21 came as a shock to her, based on conduct when
22 she had been a judge for only five months. She
23 was indeed new as a judge when she encountered
24 the Medina Perez case. The relationship between
25 the Massachusetts judiciary and Federal

1 officials was tense and the atmosphere around
2 ICE in courthouses was fraught.

3 A more experienced judge might
4 have recognized that this was the time to be as
5 careful as one could ever be, to be completely
6 transparent, not just to stay on the record, but
7 to stay in open court so that there could be no
8 question about what was happening. She was not
9 experienced, and perhaps she could be excused
10 for not recognizing how dangerous the situation
11 was.

12 But it doesn't take experience
13 to be honest, to tell the truth, the whole
14 truth. What it takes to do that is courage,
15 especially when what you're going to tell
16 doesn't make you look great. Judge Joseph did
17 what she did and she said what she said when she
18 was asked about it, and what she did and said
19 undermined public trust and confidence in the
20 Massachusetts judiciary and brought the judicial
21 office into disrepute. Sympathy cannot protect
22 her and cannot protect the public from the
23 consequences of her conduct.

24 Excuse me for just a minute.

25 (PAUSE)

1 Turning to the violations.
2 General Laws Chapter 211C authorizes the
3 Commission on Judicial Conduct to discipline
4 judges for violations of the Code of Judicial
5 Conduct as well as for willful misconduct under
6 Section 2(5)(B) and conduct prejudicial to the
7 administration of justice for unbecoming the
8 judicial office that brings the judicial office
9 into disrepute.

10 I will address the code
11 violations and explain which ones the Commission
12 contends also violate these statutory sections,
13 starting with the least serious and ending with
14 the most serious.

15 First, Judge Joseph violated
16 District Court Rule 211 by going off the record.
17 She concedes that she did that. She said she
18 didn't know about the rule, but it was her
19 obligation to know. She says others did the
20 same. That doesn't change the violation.

21 The definition section of the
22 Code of Judicial Conduct, which is on the screen
23 there, -- I'm sorry that it's not big enough,
24 but it's on the screen -- the definition says,
25 defines law to include court rule. Rule 2.2 of

1 the Code of Judicial Conduct requires a judge to
2 uphold and apply the law.

3 So the violation of District
4 Court Rule 211 was a violation of Rule 2.2 of
5 the Code of Judicial Conduct. The violation of
6 District Court Rule 211 was also a violation of
7 Rule 1.2 of the Code of Judicial Conduct, also
8 on the screen, which requires that a judge act
9 at all times in a manner that promotes public
10 confidence and independence, integrity, and
11 impartiality of the judiciary and avoid
12 impropriety and the appearance of impropriety.

13 Comment 5 to Rule 1.2 teaches
14 that violations of law violate Rule 1.2. The
15 violation of District Court Rule 211, if she
16 didn't know about Rule 211, is also a violation
17 of Rule 2.5 of the Code of Judicial Conduct,
18 which requires the judge to perform judicial
19 duties and administrative duties competently.
20 The judge has to know the law and the rules that
21 apply to the court she sits on and has to apply
22 the law and the rules.

23 Accepting that she did not know
24 about the rule, I do not argue that this
25 violation was willful. If she did know about

1 the rule then, I would suggest it was willful.
2 Either way, it was prejudicial to the
3 administration of justice and unbecoming a
4 judicial officer and has brought the judicial
5 office into disrepute in violation on
6 General Law 211C, Section 2(5)(B).

7 The second more serious
8 violation is that Judge Joseph demonstrated bias
9 and gave the appearance of bias as between the
10 defendant and ICE by what she did in assisting
11 defense counsel in implementing his plan and by
12 what she said on the record and by going off the
13 record in this context.

14 On the record she introduced
15 the topic of ICE, which was not within her
16 proper concern. She said ICE is going to get
17 him. First, she said, I understand ICE is here.
18 Then she said, ICE is going to get him, what if
19 we detain him. Then she went off the record
20 right after the defense attorney had told her
21 that his goal was to avoid ICE. Her comments
22 and going off the record in that context gave
23 the appearance that she was trying to help the
24 defendant avoid ICE, as indeed she was. All the
25 witnesses who heard some or all of the

1 discussion, David Jellinek, the assistant
2 district attorney, and the interpreter got that
3 impression.

4 Her demonstration of bias as
5 between the defendant and ICE and the appearance
6 of bias was a violation of Rule 2.2 of the
7 Code of Judicial Conduct which requires a judge
8 to perform all duties of the judicial office
9 fairly and impartially. It was also another
10 violation of Rule 1.2 of the Code of Judicial
11 Conduct which requires a judge to act at all
12 times in a manner that promotes public
13 confidence in the independence and integrity and
14 impartiality of the judiciary and avoid
15 impropriety and the appearance of impropriety.

16 The demonstration of bias I
17 suggest was willful in violation of Chapter
18 211C, Section 2(5)(B). She knew that she was
19 supposed to be neutral toward ICE and to appear
20 neutral, but she chose to do otherwise. It was
21 also prejudicial to the administration of
22 justice and unbecoming a judicial officer, and
23 there can be no question that it has brought the
24 judicial office into disrepute in violation of
25 Chapter 211C, Section 2(5)(B).

1 Third and most serious, lack of
2 candor and honesty. In her meeting with
3 Chief Justice Dawley and in her interview under
4 oath with me on behalf of the Commission, as
5 well as with you as hearing officer in this
6 proceeding. This is a violation of Rule 2.16 of
7 the Code of Judicial Conduct which says a judge
8 shall cooperate and be candid and honest with
9 judicial disciplinary authorities.

10 The First Justice and the RAJ
11 are not disciplinary authorities, so her lack of
12 candor with them did not in itself violate
13 Rule 2.16. But part of their roles was to pass
14 on information that the Chief Justice should
15 have in fulfilling his duties, so that a lack of
16 candor with them was effectively with the
17 Chief Justice as well.

18 With Chief Justice Dawley and
19 in her interview with me and here in this
20 courtroom, she was more than just not candid,
21 she was dishonest. This I submit was willful
22 misconduct prejudicial to the administration of
23 justice and unbecoming a judicial officer, that
24 brought the judicial office into disrepute, in
25 violation of General Laws Chapter 211C, 2(5)(B)

1 and (D) .

2 The violation of Rule 2.6, and
3 particularly a willful violation, goes to the
4 essence of the judicial rule. Honesty of every
5 judge is essential to public trust and
6 confidence in the judiciary which in turn is
7 essential to rule of law.

8 I'm going to turn to mitigating
9 and aggravating factors and recommend sanctions.

10 There are two mitigating
11 factors, and I've already mentioned both.
12 First, she was very new as a judge. And second,
13 she's already suffered quite a lot. There's no
14 question about that. I suggest there is one
15 aggregating factor. It is essentially the flip
16 side of what I said a few moments ago. The
17 aggregating factor is the context of the
18 controversy in which this event occurred.

19 Judge Joseph was new as a
20 judge, but she was not new as a lawyer, and she
21 could not have been living in a bubble. She had
22 to know that anything involving ICE would
23 trigger scrutiny and she had to know that the
24 way a judge handled it would affect public trust
25 and confidence in the judiciary. That context

1 and her failure to recognize it and respond to
2 it appropriately was an aggravating factor.

3 As for sanctions, I'll address
4 the three categories of misconduct from least to
5 most serious.

6 First, going off the record in
7 violation of District Court Rule 211, and based
8 on that District Court rule violation, in
9 violation of 2.2, 1.2, and 2.5 of the Code of
10 Judicial Conduct. Now, I've recited a list of
11 rules. But this is the least serious of the
12 violations. If it stood alone, it would warrant
13 minimal discipline. But where a matter has
14 become as public as this matter has, the
15 resulting discipline has to be public, because
16 the public has a right to know the result. Any
17 private discipline would fail to promote public
18 confidence in the judiciary as the Commission is
19 mandated to do.

20 Lowest level of public
21 discipline authorized by law is a public
22 reprimand, and so that is the recommendation I
23 make to you, a public reprimand with conditions
24 of monitoring for a period of time.

25 The next more serious violation

1 is actual bias and the appearance of bias in
2 violation of Rules 2.2 and 1.2 of the Code of
3 Judicial Conduct. Here it is necessary to
4 differentiate between actual and apparent. I
5 urge you to find both. Based on both, the
6 appropriate sanction is a public censure, which
7 is the higher level of public condemnation above
8 public reprimand. Again, with a period of
9 monitoring.

10 If the violation were the
11 appearance of bias without actual bias, that is,
12 if she had created the appearance of bias by
13 what she said on the record and by going off the
14 record, but did not actually assist in the
15 defendant's avoidance of ICE, then I would
16 suggest that the appropriate sanction would be
17 public reprimand, again, with a period of
18 monitoring.

19 Finally, the third violation is
20 the lack of candor and honesty with disciplinary
21 authorities, in violation of Rule 2.16 of the
22 Code of Judicial Conduct, including under oath
23 in this courtroom and in her interview with me
24 and on behalf of the Commission as well as with
25 Chief Justice Dawley.

1 As has been the case in so many
2 other contexts, the attempt to cover up, to
3 deny, and obfuscate, her refusal to accept
4 responsibility is more serious than the
5 underlying violations and warrants the most
6 severe sanctions.

7 In past cases, when a judge has
8 violated Rule 2.16, the SJC has concluded that
9 the judge can no longer command respect and
10 authority essential to the performance of a
11 judicial function and on that basis can no
12 longer serve as a judge. That is all the more
13 necessary where, as here, this violation occurs
14 in the context of other violations.

15 The SJC does not in itself have
16 authority to remove a judge from office. That
17 authority rests with the legislature and
18 governor. The highest level of discipline the
19 SJC can impose and what it has done in past
20 cases when a judge has violated Rule 2.16 is
21 indefinite suspension without pay and referral
22 to the legislature and the governor. That I
23 suggest is the appropriate sanction for this
24 violation.

25 I know you have listened

1 carefully to all of the evidence and that you
2 have reviewed and will further review all of the
3 materials before you and will make findings and
4 rulings based on all of the evidence. That is
5 all the Commission asks for.

6 Thank you for your attention
7 throughout this matter of great importance to
8 the Massachusetts judiciary.

9 HEARING OFFICER: Thank you,
10 Special Counsel, and thank you, Mr. Hoopes.

11 It's been extremely helpful to
12 hear your arguments today, and I want to commend
13 all counsel for the quality of your arguments
14 and the presentation of the evidence during this
15 hearing.

16 As we've discussed on Friday,
17 it's my understanding that we will have final
18 transcripts from the hearing by this Thursday.
19 Counsel will then submit your initial post
20 hearing briefs with your proposed findings of
21 fact and conclusions of law by Thursday,
22 July 3rd, and your responses to each other's
23 initial briefs by the following Thursday,
24 July 10th. At that point the hearing will be
25 closed, and I will then issue my report and

1 recommendation within 30 days.

2 I also want to express my deep
3 appreciation for your exemplary professionalism
4 throughout this matter, including your
5 commitment to working so cooperatively with each
6 other throughout this process. That is very
7 much appreciated.

8 I look forward to reviewing
9 your upcoming submissions.

10 And with that, I believe we're
11 done for today, unless there's anything else
12 either of you have.

13 MR. HOOPES: Thank you.

14 JUDGE FABRICANT: Thank you.

15 HEARING OFFICER: Thank you
16 very much.

17 We're adjourned.

18 (The proceedings adjourned
19 at 11:00 a.m.)
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21
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25

C E R T I F I C A T E

I, LISA L. CROMPTON, Registered
Professional Reporter, hereby certify that the
foregoing is a true and accurate transcript of my
stenographic notes of the proceedings in this
matter on the date and time specified in the
caption hereof.

IN THIS WITNESS WHEREOF I have hereunto
set my hand this 27th day of August, 2025.



LISA L. CROMPTON

REGISTERED PROFESSIONAL REPORTER

MY COMMISSION EXPIRES 1/17/2031

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