

APPENDIX R

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

Hearing, Day 1
July 20, 2020
Videoconference



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

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IN RE: PAUL M. SUSHCHYK :
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- - - - -x

ALL PARTICIPANTS APPEARED REMOTELY
VIA ZOOM VIDEOCONFERENCE

BEFORE: HON. BERTHA JOSEPHSON (Ret.),
Hearing Officer

APPEARANCES:

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ALSO PRESENT:

Hon. Paul M. Sushchuk

Held via Zoom
Monday, July 20, 2020
10:11 a.m.

(Alexander Loos, Registered Diplomat Reporter)

* * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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EMILY DEINES

BY MS. COSGROVE	26		205	
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BY MR. ANGELINI		116		
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E X H I B I T S

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

2 THE HEARING OFFICER: I'm going to
3 introduce myself.

4 My name is Bertha Josephson. I'm the
5 Hearing Officer conducting the hearing in this
6 matter.

7 Before we begin, I would ask anyone who is
8 not a participant in these proceedings -- that is,
9 if you're not a witness, or if you're not one of the
10 attorneys engaged in the matter -- kindly disable
11 your video so you will not appear on the screen. It
12 seems as though most have done that, and we'll be
13 able to get underway.

14 This is the matter of the Commission on
15 Judicial Conduct complaint Number 2019-27 in re
16 Judge Paul M. Sushchuk.

17 The attorneys who are involved in this
18 case, I would ask if you would kindly identify
19 yourselves and the party you're representing at the
20 outset now.

21 MR. NEFF: Well, I can start, if you'd
22 like, Judge Josephson.

23 And my name is Howard Neff. I'm an
24 attorney for the Commission on Judicial Conduct

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1 representing the Commission on Judicial Conduct in
2 this matter, and I also serve as its executive
3 director.

4 THE HEARING OFFICER: Thank you.

5 MR. ANGELINI: My name is Michael Angelini.
6 I'm a partner with the firm of Bowditch & Dewey in
7 Worcester, Massachusetts, and I am counsel for Judge
8 Sushchyk.

9 THE HEARING OFFICER: Thank you,
10 Mr. Angelini.

11 Ms. Cosgrove.

12 MS. COSGROVE: My name is Audrey Cosgrove.
13 I am a staff attorney, and I am representing the
14 Commission on Judicial Conduct in this matter.

15 THE HEARING OFFICER: Thank you very much.

16 The hearing will be conducted according to
17 the protocols that were promulgated by the Supreme
18 Judicial Court's emergency -- excuse me -- temporary
19 emergency order on protocol for remote formal
20 hearing that was promulgated on July 10th.

21 Because we are proceeding virtually, I'm
22 going to ask -- first, I'm going to thank Mr. Loos,
23 who is our technical guru, for all of his help and
24 everything that I know he's going to be taking care

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1 of. I would also ask all of the participants please
2 be mindful of the fact that, because we are on a
3 virtual platform, it's really, really important that
4 we not speak over one another. Please leave, for
5 lack of a better phrase, daylight between when
6 someone else finishes speaking and you begin.

7 Other than that, we will be conducting this
8 as closely as possible to the way that it would be
9 conducted if we were actually in one another's
10 presence. Any adjustments that we have to make, of
11 course, we will do our best to keep the hearing in
12 the same form and at least with the same decorum as
13 would be the case if it was not virtual.

14 So the first order of business that I would
15 like to address is just two outstanding matters:

16 One is Mr. Angelini has filed a motion to
17 reconsider a prior ruling of mine concerning expert
18 testimony in an area of inquiry of one of the
19 witnesses, and I am -- I know that Mr. Neff had
20 wanted an opportunity to be able to address that in
21 writing. The motion was filed yesterday, so the
22 turnaround time is really difficult given that we're
23 starting today.

24 What I will do is I am not going to

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1 consider the motion at this time, but what I will do
2 is offer, at the end of the day, these proceedings,
3 I will offer Mr. Angelini the opportunity to make an
4 offer of proof on the record. But at this time,
5 because I am not considering -- because I am not
6 reconsidering, let me put it that way, my prior
7 decision, the motion is denied without prejudice,
8 and Mr. Angelini can make whatever record he would
9 like at the conclusion of today's proceedings.

10 The second matter I would like to address
11 is I received a -- an e-mail from Mr. Angelini
12 referencing withdrawing an objection to Exhibit B.
13 I didn't know what that was in reference to, but I'm
14 assuming Mr. Neff does, and we will just go forward
15 with any objection to Exhibit B having been
16 withdrawn.

17 So --

18 MR. ANGELINI: Thank you.

19 THE HEARING OFFICER: -- with that, I would
20 ask Mr. Neff, will you be giving the opening on
21 behalf of the Commission?

22 MR. NEFF: I will, indeed, Judge, and I'm
23 prepared to do so now if -- if now is the time.

24 THE HEARING OFFICER: Thank you.

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1 Go ahead.

2 MR. NEFF: All right; great. Thank you.

3 OPENING STATEMENT ON BEHALF OF THE COMMISSION

4 MR. NEFF: Well, good morning, Judge
5 Josephson. Good morning to you all. Thank you for
6 taking the time to be here with us today for -- for
7 the Commission's first virtual formal hearing.

8 As I've already said, my name is Howard
9 Neff. I am counsel for the Commission in this
10 particular matter and -- I should say co-counsel for
11 the Commission in this particular matter with
12 Ms. Audrey Cosgrove, who will also be representing
13 the Commission in the presentation of evidence in
14 connection with the formal charges against Probate
15 and Family Court Judge Paul M. Sushchyk in this
16 matter.

17 In this matter the Commission has brought
18 those charges of judicial misconduct against Judge
19 Sushchyk charging him with having engaged in willful
20 judicial misconduct that brings the judicial office
21 into disrepute, as well as conduct prejudicial to
22 the administration of justice and unbecoming a
23 judicial officer in violation of Massachusetts
24 General Laws, Chapter 211C.

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1 And the Commission is also charging him
2 with having, by extension, violated the
3 Massachusetts Code of Judicial Conduct which is, as
4 you know, a rule promulgated by the Supreme Judicial
5 Court of Massachusetts. The violations of the Code
6 of Judicial Conduct that are at issue in the formal
7 charges here are that Judge Sushchyk violated the
8 Code by failing to comply with the law, including
9 the Code of Judicial Conduct:

10 In violation of Rule 1.1 of the Code, that
11 he failed to act at all times in a manner that
12 promotes public confidence in the integrity and/or
13 impartiality of the judiciary;

14 And/or by failing to avoid to impropriety
15 or the appearance of impropriety in violation of
16 Rule 1.2;

17 That by failing to perform judicial
18 duties -- perform the duties -- perform the duties
19 of judicial office without bias, prejudice or
20 harassment, he violated Rule 2.3(A) of the Code of
21 Judicial Conduct;

22 That by failing, in the performance of
23 judicial duties, to refrain from manifesting bias,
24 prejudice or engaging in harassment, he violated

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1 Rule 2.3(B) of the Code of Judicial Conduct;

2 That he failed to be dignified and/or
3 courteous to litigants, witnesses, lawyers, court
4 personnel and others with whom he deals in an
5 official capacity in violation of Rule 2.8(B) of the
6 Code of Judicial Conduct;

7 And that he participated in activities that
8 would appear, to a reasonable person, to undermine a
9 judge's independence, integrity or impartiality in
10 violation of Rule 3.1(C) of the Code of Judicial
11 Conduct.

12 This matter is brought before all of you --
13 but in particular Judge Josephson, as the trier of
14 fact -- based on a factual allegation that the
15 Commission would argue was very courageously brought
16 to the attention of the Chief Justice of the Probate
17 and Family Court, John Casey, and other senior staff
18 and judges of the Probate and Family Court by
19 Ms. Emily Deines, a field coordinator for the
20 Massachusetts Probate and Family Court, who has
21 worked for Probate and Family Court here in
22 Massachusetts since 2004.

23 The first witness you'll actually hear from
24 today is Ms. Deines, and we expect that she will

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1 testify that she helped plan, and then attended, a
2 two-day Probate and Family Court conference at the
3 Ocean Edge Resort in Brewster, Massachusetts, to
4 take place on April 25th and 26th of 2019. She will
5 testify that after the training had ended on
6 April 25th, there was a court-arranged dinner for
7 attendees; and immediately after that dinner, some
8 of those attendees extended their evening by going
9 to a bar called the Bayzos Pub, which is a bar that
10 is essentially located on part of the -- the Ocean
11 Edge Resort campus. The parties went to that bar
12 approximately -- approximately 8:30, 9:00 p.m. on
13 April 25th.

14 Ms. Deines, we expect, will testify that
15 she sat at a tall, bar-height table, on a tall,
16 bar-height stool with coworkers from the Probate and
17 Family Court that included a number of people,
18 including Ms. Evelyn Patsos, Ms. Christine Yurgelun,
19 Ms. Jocelynn Welsh, all of whom we expect we'll
20 hear from and who will testify as part of this
21 hearing. We expect that Ms. Deines will testify
22 that while she was sitting with them at that table
23 at Bayzos Pub, she saw the respondent in this case,
24 Judge Paul M. Sushchuk, in the Bayzos Pub, walking

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1 toward her table. She will testify that she saw him
2 walk toward her table from one direction and just as
3 he passed by behind her, she felt someone grab her
4 left buttock -- without invitation or consent,
5 without justification or excuse -- and that the
6 touching by this person -- who she believed was
7 Judge Sushchuk, because she believed he was the only
8 person behind her at the time and could have done
9 that -- was unwanted.

10 We expect that Ms. Deines will testify that
11 she was so shocked at that moment that a person
12 serving in such a highly regarded and respected
13 position as a Massachusetts judge, a Probate and
14 Family Court judge, had done this to her, that she
15 didn't react at first. She didn't know what to do.
16 She only slowly came to terms with the reality that
17 what had happened had actually really just happened;
18 and that someone had randomly -- in this case she
19 will testify she believes Judge Sushchuk -- had
20 randomly assaulted her by touching her buttock in
21 the midst of a public bar, with people around, on
22 April 25th, 2019.

23 We expect Ms. Deines to testify that she
24 remained at the bar after that happened for a short

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1 period of time, mostly trying to get the attention
2 of one of her friends who was also sitting at the
3 table speaking with Judge Sushchuk, Ms. Evelyn
4 Patsos -- who, as I said, will testify as part of
5 this hearing, we expect. And after she failed to
6 get Ms. Patsos's attention, Ms. Deines eventually
7 left the bar and went to her home, which was her
8 family home, a short distance away from the resort
9 where the conference was taking place.

10 In his responses to date, Judge Sushchuk
11 has denied grabbing Ms. Deines' buttock as
12 Ms. Deines has described it, so over the course of
13 the next few days, and several witnesses, the
14 Commission expects to present you -- meaning you,
15 Judge Josephson, as trier of fact -- with evidence
16 and testimony establishing, we would say clearly and
17 convincingly, that Ms. Deines made a credible report
18 that Judge Sushchuk improperly grabbed her buttocks
19 at the Bayzos Pub on April 25th, 2019.

20 We expect to present testimony and evidence
21 regarding the natural and deliberate thought process
22 Ms. Deines went through after this happened and as
23 she decided whether to report Judge Sushchuk's
24 assault upon her person. Ms. Deines was

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1 concerned -- Ms. Deines, we expect, will testify she
2 was concerned for her own career, but she was also
3 concerned for the potential impact on Judge
4 Sushchuk's career; was not necessarily out to get
5 anyone. We expect that she will testify that, after
6 seeking more than one opinion from more than one
7 person regarding what should she do -- should she
8 report this; who should she report it to --
9 Ms. Deines considered whether or not to file a
10 complaint about this with the Massachusetts
11 Commission Against Discrimination -- I would argue,
12 effectively escalating this complaint -- and
13 instead, with 16 years of experience working for the
14 Probate and Family Court, Ms. Deines had said --
15 decided to keep the matter in-house and make the
16 complaint to the Probate and Family Court, the court
17 she worked with and trusted a number of employees
18 within that court department.

19 Ms. Deines will also testify that as part
20 of her decisionmaking process that caused her to --
21 to eventually decide that she needed to make this
22 report, or did make this report, she had concerns
23 about other employees who may end up working with
24 Judge Sushchuk in the future and what it would mean

1 if she remained silent in response to Judge
2 Sushchuk's conduct toward her and let it slide.
3 And, as a consequence, ultimately decided that she
4 was going to make a complaint to the Probate and
5 Family Court.

6 We expect Ms. Deines to testify that she
7 formally reported Judge Sushchuk's assault against
8 her on April 25th to the chief justice of the
9 Probate and Family Court, John Casey, by phone. We
10 expect you will hear testimony that the Probate and
11 Family Court takes all complaints of sexual
12 harassment very seriously and, accordingly, Chief
13 Justice Casey also took this complaint very
14 seriously, swiftly acting on Ms. Deines' report,
15 seeking advice from the chief justice of the Trial
16 Court, Paula Carey, following established guidelines
17 set by the Trial Court for the investigation of this
18 type of complaint, complaints of sexual harassment.

19 And we expect that you will hear testimony
20 that Ms. Deines reported Judge Sushchuk's assault on
21 her on April 25th, 2019, several times during the
22 course of that investigation, and to several
23 people -- sometimes using slightly different word
24 choices -- but the Commission fully expects that the

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1 testimony will be such that you will see that her
2 report that Judge Sushchuk improperly grabbed her
3 left buttock never waivered in any kind of
4 meaningful way other than that she occasionally
5 chose different words to describe what happened, the
6 Commission might argue, based on her familiarity or
7 the formality of the relationship Ms. Deines had
8 with the particular party to whom she was making the
9 report.

10 THE HEARING OFFICER: All right.

11 MR. NEFF: We expect that in the testimony
12 and evidence that will be presented you will find a
13 clear, convincing contrast between Ms. Deines'
14 thoughtful, measured actions and Judge Sushchuk's
15 emotional, nonsensical and arguably meaningfully
16 inconsistent responses to Ms. Deines' allegations of
17 misconduct against him; and on the basis of all of
18 that evidence, the Commission expects that that
19 testimony and evidence presented will clearly and
20 convincingly establish that Ms. Deines -- a woman
21 with nothing, really, to gain and everything to
22 lose; who had fears of the consequences to her
23 career and her job by bringing a complaint against a
24 judge -- despite all that, chose to make the

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1 difficult and courageous decision to make the
2 complaint against Judge Sushchyk and not let the
3 matter pass.

4 Thank you.

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

7 Before I turn to Mr. Angelini, let me just
8 say to those members who have joined, or observers
9 who have joined, welcome. If you did not hear what
10 I initially said to members of the public, of course
11 you're welcome to be here. I would ask that you
12 kindly disable your video so -- the video coming
13 from you so that we have a blank screen.

14 I will also state for the record that I
15 disabled the video of Galaxy S10 because of the
16 display of political material in the video, which
17 would not be allowed in any court and will not be
18 allowed here, either.

19 With that, Mr. Angelini, would you like to
20 make an opening at this time or do you want to
21 reserve your right?

22 MR. ANGELINI: I would like to make a very
23 brief opening, your Honor, and I'll do so now with
24 your permission.

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1 THE HEARING OFFICER: Absolutely.

2 MR. ANGELINI: Thank you.

3 OPENING STATEMENT ON BEHALF OF JUDGE SUSHCHYK

4 MR. ANGELINI: My name is Michael Angelini,
5 and I'm proud to represent Judge Sushchyk, who is a
6 judge of the Probate and Family Court sitting
7 primarily here in Worcester, Massachusetts.

8 Let me be clear from the beginning, Judge
9 Sushchyk explicitly denies each and every one of
10 these allegations. He does so in the strongest
11 possible terms. He respects the fact that we have a
12 system of justice that allows anyone to make a claim
13 against someone else, but we're pleased to be here
14 in this very formal proceeding by which that claim
15 is tested.

16 You will hear, your Honor, that this claim
17 is a claim which has been variously stated,
18 inconsistently repeated, and is entirely without
19 foundation. There is no witness to what is claimed
20 to have occurred. There is no percipient testimony
21 by anyone with respect to what has been claimed to
22 have occurred. Ms. Deines has not claimed that she
23 saw Judge Sushchyk do anything to her or with
24 respect to her. There are no other witnesses to

1 this, and you will find that her claim, which has
2 been variously stated, is implausible based on the
3 evidence.

4 Let me be clear what we're here for, your
5 Honor. We're here based on formal charges brought
6 by the Commission. It is their responsibility to
7 prove these charges not just simply by some
8 evidence, but by reliable evidence which is clear
9 and convincing.

10 You will find, with respect to these
11 charges, that there is, indeed, no evidence which
12 supports either of them -- and I say either of them,
13 because the charges here fall into two categories:

14 The first category is that Judge Sushchuk
15 intentionally -- I'm quoting the words from the
16 Commission's formal charges, quote:

17 "Intentionally, without justification
18 or excuse, and without invitation or
19 consent from Ms. Deines, placed one of
20 his hands under Ms. Deines' buttocks or
21 buttock and pinched and squeezed her
22 buttock or buttocks."

23 That claim is expressly denied. No one saw
24 anything like that happen. Judge Sushchuk will

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1 testify under oath, as an officer of the court as
2 well as a human being who has a reputation for truth
3 and credibility, that no such thing occurred
4 implicating him in any way.

5 You will hear Ms. Deines say that she
6 doesn't know who, if anyone, did this to her. She
7 doesn't know who, if anyone, did any of the actions
8 which she has variously described as involving some
9 contact with some part of her body. There are no
10 witnesses. She did not see it happen. She has
11 presumed it happened based upon faulty assumptions,
12 which we will provide significant evidence about.
13 She has no basis to believe that Judge Sushchuk did
14 any of these things, but she has nevertheless
15 concluded that he did, despite the fact that he
16 expressly denies it, and despite the fact that he
17 has no motive for doing anything of this nature.

18 You will hear a lot about this. You will
19 hear from Ms. Deines, and I look forward to my
20 cross-examination of her testimony.

21 The second aspect here is the claim that
22 while he was in an area engaging in friendly
23 conversation after this alleged event had occurred
24 involving her body, that Judge Sushchuk, during the

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1 course of friendly conversation, noted that he had a
2 flask in his side coat pocket. And you will hear
3 Ms. Deines testify that he didn't remove it from his
4 pocket. He lifted it about one inch so that the top
5 inch of that flask was visible.

6 That was a harmless event. There's no
7 violation of law to carry a flask into a restaurant
8 or anywhere else. He'll testify as to why he did
9 so. That it was -- it is neither illegal, nor an
10 embarrassing or inappropriate act. And you'll hear
11 Ms. Deines, the principal witness of the -- of the
12 Commission on Judicial Conduct, testify that he
13 didn't remove it.

14 So I ask you, your Honor, that -- as I know
15 you will -- you consider this case to be what it is:
16 That it is the responsibility of the Commission on
17 Judicial Conduct to prove its case, to prove its
18 case not on the basis of supposition, not on the
19 basis of assumption, not on the basis of conjecture,
20 not on the basis of speculation, not on the basis of
21 character assassination, but prove what it says has
22 occurred. And I assert to you that when you hear
23 all the evidence, you will conclude that there is,
24 indeed, much less no clear evidence, much less no

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1 convincing evidence, but much less no reliable
2 evidence whatsoever in support of either of these
3 charges.

4 Thank you very much.

5 THE HEARING OFFICER: Thank you,
6 Mr. Angelini.

7 We'll be asking you, Mr. Neff, to call your
8 first witness.

9 And I will just say to anyone who may be a
10 witness in this matter, at the outset of your
11 testimony I will be asking you a series of questions
12 that are required under the protocol, the emergency
13 protocol promulgated by the Commission on Judicial
14 Conduct. I will be asking the same questions of
15 every witness, and I will be asking those questions
16 again of every witness after any breaks or recesses
17 or if there is a break going overnight. So please
18 don't feel as though you're being singled out in any
19 way for some special attention to where you are or
20 what the circumstances are of your testimony.

21 THE COMMISSION'S CASE-IN-CHIEF

22 THE HEARING OFFICER: So with that,
23 Mr. Neff, could I ask you to please call your first
24 witness.

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1 MR. NEFF: I appreciate that.

2 At the risk of being picky, I just wanted
3 to address one minor issue first, Judge Josephson.

4 I am not aware that Mr. Angelini intends to
5 call any character witnesses regarding Judge
6 Sushchuk, so I object to and would ask that
7 Mr. Angelini's vouching that Judge Sushchuk is a
8 truthful or credible judge during his opening
9 statement is not based on any evidence before the
10 Court and should be stricken from -- from the record
11 of this matter and shouldn't be repeated unless
12 proper foundation is established.

13 THE HEARING OFFICER: Okay. Well, thank
14 you, Mr. Neff.

15 Not to cut you off, Mr. Angelini, but given
16 that it's an opening statement without a jury, if it
17 were a jury, I'd instruct the jury that it is simply
18 opening and it is not evidence, and until there is
19 evidence, it is not to be considered.

20 So I'll instruct myself accordingly, and
21 thank you, Mr. Neff.

22 MR. NEFF: As I said, I'm just being a
23 little picky.

24 But in any event, the next thing to say is

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1 that, as I indicated, our next witness will be
2 Ms. Emily Deines. And my co-counsel, Ms. Cosgrove,
3 is going to conduct the examination of this time.

4 THE HEARING OFFICER: Thank you, Mr. Neff.

5 (EMILY DEINES, called)

6 THE HEARING OFFICER: Good morning,
7 Ms. Deines.

8 THE WITNESS: Good morning, Judge.

9 THE HEARING OFFICER: Can you hear me okay?

10 THE WITNESS: I can.

11 THE HEARING OFFICER: As I said, I need to
12 ask you some questions before Ms. Cosgrove gets
13 underway with her direct examination.

14 So could I ask you to kindly state your
15 name for the record.

16 THE WITNESS: Sure.

17 My name is Emily Deines.

18 THE HEARING OFFICER: Thank you.

19 And where are you physically located at
20 this time?

21 THE WITNESS: I'm physically located in my
22 home in Northampton, Massachusetts.

23 THE HEARING OFFICER: Okay. And who is
24 physically in the room with you at this time?

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1 THE WITNESS: No one.

2 THE HEARING OFFICER: What materials and
3 devices do you have with you?

4 THE WITNESS: I have some of the -- so
5 devices, I have a phone and I have a tablet, both of
6 which are switched off. And materials, I have some
7 of the evidence, photographs.

8 THE HEARING OFFICER: Okay. And if you
9 would, please tell us what is currently on your
10 screen or screens.

11 THE WITNESS: Just my e-mail and Zoom.

12 THE HEARING OFFICER: Okay.

13 THE WITNESS: That's it.

14 THE HEARING OFFICER: And this, right?

15 THE WITNESS: And this, right. Correct.
16 Zoom.

17 THE HEARING OFFICER: Okay. And finally,
18 are you in communication with any persons other than
19 those conducting the examination?

20 THE WITNESS: No. Not right -- not at this
21 moment.

22 THE HEARING OFFICER: Right. Okay.

23 If anything about those answers changes at
24 any time during your testimony, if you would please

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1 make me aware of that.

2 THE WITNESS: Okay.

3 THE HEARING OFFICER: All right. Thank
4 you, Ms. Cosgrove.

5 MS. COSGROVE: Thank you, your Honor.

6 May I inquire of the witness?

7 THE HEARING OFFICER: Yes, please.

8 DIRECT EXAMINATION

9 BY MS. COSGROVE:

10 Q. Ms. Deines, could you please state your
11 name -- state your full name and spell your last
12 name for the record as a way of introduction.

13 A. Sure.

14 My name Emily Deines. It's spelled
15 D-e-i-n-e-s, as in "Sam."

16 Q. Thank you.

17 Can you please tell us just generally where
18 do you live?

19 A. I live in Northampton, Massachusetts.

20 Q. In -- with who do you reside?

21 A. I live with my 3-year-old and my husband.

22 Q. Okay. You said your husband.

23 What's his name?

24 A. My husband's name is Lawrence George.

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1 Q. And how long have you been married?

2 A. Five years.

3 Q. You said you had a three-year-old son?

4 A. Yes.

5 Q. Now, Ms. Deines, can you tell us, are you
6 currently employed?

7 A. I am.

8 Q. And where do you work?

9 A. I work for the Trial Court of
10 Massachusetts.

11 Q. And specifically do you work for a
12 particular branch of the Trial Court of
13 Massachusetts?

14 A. Yes. I work for the administrative office
15 of the Probate and Family Court.

16 Q. Can you tell us for how long have you
17 worked for the administrative office of the Probate
18 and Family Court?

19 A. It will be 16 years in the fall.

20 Q. So when did you actually begin employment
21 there?

22 A. 2004.

23 Q. Now, can you please explain to us where are
24 you -- where is your office physically located in

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1 Massachusetts?

2 A. I am regional to western Massachusetts. I
3 have an office in Springfield and a very nice
4 cubicle in Northampton at the Northampton court.

5 Q. However, does your job take you to various
6 locations throughout the state?

7 A. It does, yes.

8 Q. Okay. So can you please explain to us what
9 is your job title, actually?

10 A. My job title is field coordinator.

11 Q. And could you please describe for us some
12 of your job responsibilities as the field
13 coordinator for the Probate and Family Court.

14 A. Sure.

15 We handle sort of IT initiatives,
16 technology initiatives for the Probate and Family
17 Court. I do a decent amount of training, on-site
18 support, you know, creating implementation, rollout
19 of technology, helping our office sort of move
20 forward with technology.

21 Q. When you say "trainings," is that for the
22 judges of the Probate and Family Court?

23 A. Yes.

24 Q. And are these trainings collective group

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1 trainings or are they individual trainings?

2 A. They're both.

3 So there are some one-on-one trainings I do
4 for some newer employees, and I'll also do group
5 trainings when we have new technology that's being
6 rolled out or implemented.

7 Q. So in your time for the past 16 years with
8 the Probate and Family Court has your job involved
9 doing any type of judicial conferences?

10 A. Yes. I am the staff liaison to our
11 judicial education committee.

12 Q. So as you also -- you're field coordinator,
13 but, as a field coordinator, you're also the staff
14 liaison?

15 A. Yes. To our judicial education committee,
16 and they put on our two conferences a year.

17 Q. Can you please explain that for all of us.
18 What do you mean by two conferences a year?

19 A. Sure.

20 The Probate and Family Court judges have a
21 fall one-day -- usually one-day conference and a
22 spring two-day conference every year, and the
23 education committee puts together the programming
24 for those two days. Or for that -- I'm sorry, those

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1 two conferences.

2 Q. And how many people are on this education
3 committee?

4 A. There's about 10 to 15, usually.

5 Q. In -- in your past 16 years with the
6 Probate and Family Court, have you participated in
7 several of these conferences, both the fall and the
8 spring?

9 A. Yes. I was added to the education
10 committee probably about six years ago, and so I've
11 participated in it an average of 12, I would say,
12 conferences.

13 Q. Now, I would like to now draw your
14 attention to the dates of April 25th through the
15 26th of 2019.

16 Can you tell me specifically, were you
17 involved in the spring Probate and Family judicial
18 conference at that time?

19 A. I was, yes.

20 Q. Okay. Can you explain to us what -- what
21 your schedule -- what your -- what your involvement
22 was?

23 A. Sure.

24 So we plan the conference, conferences

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1 throughout the year, with the committee. We meet
2 monthly. We put together the programming.

3 My role is sometimes to coordinate
4 presenters, you know, make sure materials work, make
5 sure that all of the Powerpoints are in, that the
6 technology is going to -- to go off without a hitch,
7 and to make sure that the conferences are -- are --
8 we're supporting the judges at the conferences.

9 Q. So on this occasion, where was the
10 conference actually scheduled to be held?

11 A. The actual conference was at the Ocean Edge
12 Resort in -- on the Cape in Brewster.

13 Q. So it was in Brewster, Mass.

14 Had the conference actually ever been held
15 there before?

16 A. Not since I've been on the committee. Not
17 that I've known. Not that -- not since I've been
18 going. They could have been prior to my time on
19 the -- on the committee.

20 Q. As part of your preparation, did you
21 actually visit the facility at all?

22 A. I did not, no.

23 Q. Okay. Now, you said it was a two-day
24 conference.

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1 Where --

2 A. I'm sorry, Audrey. Sorry, Attorney
3 Cosgrove. They -- I believe that they had the
4 conference the year before at the Ocean Edge Resort,
5 but I was -- I didn't go to that one.

6 Q. Okay.

7 A. I'm sorry. To clarify.

8 Q. Thank you.

9 Now, as a two-day conference were the
10 participants, the judicial participants attending
11 that conference offered overnight accommodation?

12 A. Yes. They are.

13 Q. Okay. And so where -- where on the
14 facility did the -- did the judges that attended the
15 conference stay?

16 A. They had the option of either staying, at
17 the Trial Court's expense, in I believe what's
18 called the Villages, which is a little bit removed
19 from -- from the actual location of the conference,
20 or stay in what they called the mansion rooms, which
21 are on-site where the conference is, but they would
22 have to pay the difference in cost.

23 Q. And who actually arranged all these
24 reservations for the judges that were in attendance?

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1 A. Sure.

2 Michelle Hynes from the Judicial Institute.

3 Q. And if you know, how many -- how many --
4 approximately how many judges were attending the
5 conference that year?

6 A. I think approximately 48 or 49.

7 Q. Now, as -- as somebody that was helping to
8 coordinate this event, were you offered the
9 opportunity to stay overnight at the conference?

10 A. Yes, I was.

11 Q. And did you do that?

12 A. No, I did not. I stayed at my family's
13 summer home in Eastham, Massachusetts.

14 Q. I'm sorry. Where did you say?

15 A. I stayed at my family's home in Eastham,
16 Massachusetts.

17 Q. Thank you.

18 And why is it that you stayed in your
19 family home -- at your family's home in Eastham,
20 Massachusetts versus on the facility in Brewster?

21 A. I had to bring my son with me, and my
22 parents were going to be watching him while I worked
23 at the conference for the two days.

24 Q. So -- and once again, so you -- actually

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1 for child care reasons you did that?

2 A. Yes.

3 Q. Okay. Now, why is it that you couldn't
4 leave your child at home?

5 A. My husband works on Thursday and Friday
6 nights.

7 MR. ANGELINI: Objection. Relevance.

8 THE HEARING OFFICER: Sustained.

9 Q. Other than the judges who were there at
10 the -- and yourself who was invited to attend, were
11 there other nonjudicial employees that attended the
12 conference?

13 A. Non-judges, yes. There was -- there were a
14 few administrative office staff and Michelle Hynes
15 from the Judicial Institute.

16 Q. Can you please explain to us, is it normal
17 for nonjudicial attendees to attend the conference?

18 A. Some years, if they're invited. I believe
19 Chief Justice Casey wanted to offer them an invite
20 that year.

21 Q. And why is that, if you know?

22 A. I don't --

23 MR. ANGELINI: Objection.

24 THE HEARING OFFICER: Sustained.

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1 Q. So do you know if any of the other
2 nonjudicial court employees that attended the
3 conference were offered overnight stays?

4 A. They were, yes.

5 Q. And who do you know, if you do, was given
6 an opportunity to stay overnight?

7 A. Jocelynn Welsh, Christine Yurgelun, Evelyn
8 Patsos and Denise Fitzgerald.

9 Q. So when did you actually leave to actually
10 get to this conference that you were helping
11 coordinate on April 25th and 26th, 2019?

12 A. When did I leave to go to the -- to the
13 Cape?

14 Q. Yes.

15 A. So I traveled down Wednesday night with my
16 son.

17 Q. Now, I want to actually just specifically
18 now turn to April 25th, 2019.

19 What time was the conference scheduled to
20 begin that day?

21 A. I believe it was scheduled to begin around
22 9:00 or 9:30.

23 Q. So what time did you get up -- what was
24 your routine that day? What time did you get up?

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1 What time did you leave your mother's house?

2 A. I probably got up when my son got up, but
3 probably between 6:00 and 6:30. I got him ready for
4 the day, made sure my parents were -- were okay
5 taking care of him, probably fed him breakfast, and
6 I believe I left -- it took about 20 minutes to get
7 from the house to the conference -- probably left
8 around 7:15 that morning to get there.

9 Q. And so what time did you arrive at the
10 conference facility at the Ocean Edge?

11 A. About 7:45, eight o'clock.

12 Q. And what were your responsibilities at that
13 time as you arrived at the Ocean Edge Resort?

14 A. Sure.

15 I was bringing some materials that were
16 last minute that didn't get into the folders, so I
17 had to bring those in. I had to set up, add those
18 to the folders that were already there. We set up
19 the name tags. We greet the judges when they come
20 in. We make sure they have their folders, their
21 agenda for their day, their name tag, and that they
22 sign in. We sort of make sure that the breakfast is
23 set out okay and that the -- the -- the -- the
24 presenters are sort of prepared to speak and

1 everything, the setup looks good.

2 Q. You said -- you keep saying the word "we."
3 Was anybody else working with you in this task of
4 coordinating and greeting the participants?

5 A. Yes. Michelle Hynes.

6 Q. Okay. And you mentioned that some of the
7 other employees that are nonjudicial were at the
8 conference.

9 Were they also arriving?

10 A. Yes, they were.

11 Q. And what was their role in the conference?

12 A. They -- I'm sorry, Audrey. I'm sorry,
13 Attorney Cosgrove.

14 They were there as guests, so they were
15 there to -- to listen to the speakers and be guests
16 of the -- like similar to how a judge would be.

17 Q. Okay. And can you tell us a little bit
18 about what was scheduled? Like how -- what the
19 timing of the schedule was that day, for the
20 conference itself?

21 A. Sure.

22 From what I remember, we had two
23 presentations in the morning, a break for lunch, and
24 we would have usually two or three smaller

1 presentations in the afternoon. And the goal was to
2 end a little bit early on the first day, about 3:30.
3 I think it probably went to almost 4:00 at that
4 point, but...

5 Q. So as the first day was supposed to end at
6 4:00?

7 A. I believe the first day was supposed to end
8 at 3:30, but I think they usually go a little bit
9 late. So I think it almost went till 4:00.

10 Q. And there was -- I think you made mention
11 of a luncheon?

12 A. Yes. There's a lunch provided on site.

13 Q. Did you attend the luncheon?

14 A. On Thursday, I actually think I was working
15 to help put one of the Powerpoint presentations
16 together for -- for the afternoon session. I don't
17 think I actually sat down and had -- had lunch with
18 the other people that were there.

19 Q. Now, when you were greeting participants
20 did you see Judge Sushchuk when he came to the
21 conference? Had you seen him that day on the 25th?

22 A. I don't remember in particular. There were
23 a decent number of people coming in and out.

24 Q. There was -- so you have no independent

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1 recollection of when he arrived at the conference?

2 A. No, I do not.

3 Q. Do you remember seeing him during the first
4 day of this -- of the -- of the afternoon portion or
5 the morning portion of the conference?

6 A. Yes, I do remember seeing him at the
7 conference that day.

8 Q. Was there anything in particular that drew
9 your attention to anything? Was there anything
10 unusual between your interactions with him?

11 A. No.

12 MR. ANGELINI: Objection.

13 THE HEARING OFFICER: Overruled.

14 Q. When -- backing up for a minute, have you
15 met Judge Sushchuk before this conference on the
16 25th and the 26th?

17 A. Yes.

18 Q. Thank you.

19 And please tell me, when was the first time
20 you've met Judge Sushchuk?

21 A. I believe the first time I met him, I had
22 offered to do a training. I do a training for our
23 newer judges a few months after they get on the
24 bench. It's just a walk-through of our software and

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1 hardware programs that we -- that the Trial Court
2 provides. It's really to answer any technical
3 questions.

4 And I met with him, it was probably
5 sometime in May or April of the year that he was
6 appointed.

7 Q. And how was your interaction with Judge
8 Sushchuk at that time?

9 A. Fine. It was, you know, short.

10 Q. Did you help him -- had you had any other
11 working -- relationship other than a working
12 relationship with him? Was he a social friend --

13 A. No.

14 Q. -- or acquaintance?

15 A. No.

16 Q. Did you actually have any other -- any
17 other time during your professional relationship
18 with him to interact with Judge Sushchuk?

19 A. Yes.

20 Pretty soon after that he was having issues
21 logging into our videoconferencing system, and he
22 texted me. You know, it was resolved, and he
23 thanked me.

24 Q. Was there anything unusual about that, in

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1 your opinion?

2 A. No.

3 MR. ANGELINI: Objection.

4 I withdraw my objection.

5 Q. So going back to the April 25th of 2019,
6 you said that the session was scheduled to end
7 around 3:30, but it actually went till 4:00?

8 A. Yeah. Or 3:45. Actually 3:30, 3:45, I
9 would say.

10 Q. At the end of that, of the first afternoon
11 of the conference, what did -- what did you do,
12 then?

13 A. I helped clean up the room, and I left to
14 go back to my family's home and get my son ready,
15 you know, for dinner and for bed.

16 Q. Thank you.

17 But was there actually a dinner planned
18 that night as part of the events, since everybody
19 was staying overnight?

20 A. Yes. Yes. There's a Trial Court-sponsored
21 dinner.

22 Q. Okay. So what time was the dinner
23 scheduled to begin?

24 A. 7:00 p.m.

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1 Q. And so as you were finishing cleaning up,
2 at approximately what time did you leave the Ocean
3 Edge facility to go care for your son?

4 A. I probably left around 4:00.

5 Q. Okay. Was your intention to come back for
6 the dinner?

7 A. Yes.

8 Q. And wouldn't it have been easier just to
9 stay at the facility until the dinner happened?

10 A. I guess I didn't think about that, but no.
11 You know, I had to sort of take care of my son. So
12 I had to make sure everything was okay, my parents
13 were not overwhelmed with a toddler.

14 Q. Okay. So as you were leaving, or at some
15 point prior to that, were you aware if there was any
16 other non-conference-related events that were being
17 hosted for the judges or the attendees that happened
18 after the -- after the conference and before dinner?

19 A. I believe there was an announcement made
20 about a social gathering for judges in between the
21 dinner and the end of the conference -- the
22 conference and the end of the dinner. I'm sorry.

23 Q. So there was actually an announcement made
24 about a social gathering for judges?

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1 A. Yeah.

2 Q. Was this a planned event as part of the
3 conference that you had coordinated?

4 A. No.

5 Q. And was it only for the judges?

6 A. That was my understanding.

7 Q. So after at some point in time you went to
8 your mom's house and then actually had to drive back
9 to the Ocean Edge facility for the dinner?

10 A. Yes.

11 Q. Okay. What time did you arrive back at the
12 Ocean Edge facility for that dinner?

13 A. I believe I was a little bit late. I think
14 I got there about 7:15.

15 Q. Can you please tell us a little bit about
16 the dinner? You know, were there other non-judges
17 there, other nonjudicial employees there attending
18 the dinner as well?

19 A. Yes. They did. Yes.

20 Q. So specifically who was there as far as
21 your social group?

22 A. As far as my social group, it would have
23 been Michelle Hynes, Jocelyne Welsh, Christine
24 Yurgelun, Evelyn Patsos and Denise Fitzgerald.

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1 Q. And can you please tell us what you
2 remember about, as you arrived at the Ocean Edge for
3 the dinner portion of the evening, what happened?

4 A. It was located sort of downstairs in I
5 would call it probably a ballroom, and it was a
6 buffet. There was a cash bar. I think everyone was
7 there before I got there, so I -- our table sort of
8 sat together in the back, closest to the door.

9 Q. When you say "closest to the door," you
10 mean the exit at the back of the ballroom?

11 A. Yes. So -- yes.

12 Q. So when you arrived at the event, what's
13 the first thing you did?

14 A. I got in line for the cash bar. Looked
15 pretty popular.

16 Q. Okay. So -- and what did -- did you
17 purchase a beverage?

18 A. I did.

19 Q. And what kind of beverage did you purchase?

20 A. I purchased a glass of wine for myself and
21 for Michelle Hynes.

22 Q. And then did you find your way towards a
23 seat?

24 A. I did, yes.

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1 Q. And who did you sit with specifically?

2 A. I sat with Michelle Hynes, Jocelyne Welsh,
3 Denise Fitzgerald, Evelyn Patsos and Christine
4 Yurgelun.

5 Q. Was there anything unusual that occurred at
6 the dinner itself?

7 MR. ANGELINI: Objection.

8 A. No.

9 Q. Did you see or speak to Judge Sushchuk at
10 that dinner?

11 A. No.

12 Q. After the dinner concluded --

13 I should ask first, what time did the
14 dinner conclude?

15 I think we lost -- oh, you came back.

16 A. The host had to unmute me. I can't unmute
17 myself.

18 THE HEARING OFFICER: Correct.

19 A. So I'm sorry about that. I'm not sure what
20 happened.

21 So Audrey -- I'm sorry.

22 Attorney Cosgrove, can you ask that
23 question again?

24 Q. Of course.

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1 So what time did the dinner conclude at?

2 A. I believe it started to wrap up around
3 8:00 p.m.

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

5 A. I'm sorry.

6 It started to wrap up around 8:00 p.m.

7 Q. And did you have any plans for after the
8 dinner concluded?

9 A. The -- the people at my table decided to go
10 grab a drink at the Bayzos Pub, which is located
11 on -- in the facility.

12 Q. I was just going to ask you that.

13 So the Beyzos Pub is actually on the same
14 facility? Can you please explain that to us?

15 A. Sure.

16 So the ballroom was sort of downstairs from
17 where the conference was held, and the Bayzos Pub
18 was on the same floor. So you sort of walk by it on
19 your way upstairs and downstairs.

20 Q. Approximately how far from the -- from the
21 ballroom is it to the Bayzos Pub? How long would it
22 take to walk?

23 A. Oh, two minutes. I think it's probably
24 about 50 feet. Close to -- close to the location.

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1 Q. So at that point in time you had a
2 conversation with the people you were having dinner
3 with?

4 A. I did.

5 Q. And the decision was to head to the Bayzos
6 Pub?

7 A. Yeah. Yep.

8 Q. At that point was anybody else leaving the
9 dinner?

10 A. From what I remember, I believe we were
11 some of the first people to leave the dinner.

12 Q. Okay. So you were some of the first
13 people.

14 And at that point in time why didn't you
15 just head back to your mother's house?

16 MR. ANGELINI: Objection.

17 THE HEARING OFFICER: Sustained.

18 Q. And so who specifically did you walk over
19 to the Bayzos Pub with?

20 A. Sure.

21 Evelyn Patsos, Jocelyne Welsh, Christine
22 Yurgelun and Denise Fitzgerald.

23 Q. As you were walking towards that, were
24 there other judicial attendees who were also moving

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1 towards the Bayzos Pub after the dinner portion of
2 the conference concluded?

3 A. I didn't notice at the time.

4 Q. Now, can you please tell us -- can you
5 please describe for us, give us a brief description
6 about the Bayzos Pub.

7 A. Sure.

8 It's a -- appeared to be a bar/restaurant.
9 When you walked in the front door, there was a --
10 like a sort of L-shaped bar on your left. There
11 were sort of what I would call restaurant tables on
12 the left, and -- and then in the middle there were
13 some sort of what I would call high-top tables.

14 MS. COSGROVE: Your Honor, at this point in
15 time I would like to, if I might, ask what has been
16 previously marked for identification as Exhibit F be
17 brought up for Ms. Deines to view and --

18 THE HEARING OFFICER: All right.

19 THE REPORTER: One moment.

20 THE WITNESS: So, Mr. Loos, you're putting
21 it in the chat so I can open it?

22 THE REPORTER: Yes.

23 THE WITNESS: Okay. Perfect. Thank you.

24 Okay, Audrey. I have it.

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1 MS. COSGROVE: So let me see. I'm just
2 opening it up on mine also.

3 THE HEARING OFFICER: Hang on one minute.
4 Let me make sure also Mr. Angelini and Judge
5 Sushchuk have it.

6 Do you have it?

7 MR. ANGELINI: I haven't gotten it, Judge,
8 but let me try here.

9 THE HEARING OFFICER: All righty.

10 MR. ANGELINI: Excuse me a second.
11 I opened chat, but I don't see it.

12 THE REPORTER: I can try again. I'll send
13 it to you again.

14 MR. ANGELINI: Mr. Matthew is here, and
15 he's going to try to assist me here, an exhibit
16 which is shown in the chat.

17 Oh, I have it.

18 MS. COSGROVE: Great.

19 MR. ANGELINI: Thank you, your Honor.

20 THE HEARING OFFICER: Okay, Ms. Cosgrove.

21 MS. COSGROVE: Thank you, your Honor.
22 May I inquire?

23 THE HEARING OFFICER: Sure.

24

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1 BY MS. COSGROVE:

2 Q. Ms. Deines, with Mr. Loos' help here, I
3 believe you can view what has been previously marked
4 as Exhibit F for identification.

5 Do you see that?

6 A. I do.

7 Q. And can you please tell us, do you
8 recognize what that is?

9 A. That is the Bayzos Pub.

10 Q. Can you please tell us, is that a fair and
11 accurate representation or depiction of the Bayzos
12 Pub as you entered it on April 25th, 2019, after the
13 dinner?

14 A. Yes.

15 MS. COSGROVE: Your Honor, at this point I
16 would like to move that the Commonwealth's Exhibit F
17 that was marked for identification be admitted into
18 evidence.

19 THE HEARING OFFICER: Any objection?

20 MR. ANGELINI: No objection, your Honor.

21 THE HEARING OFFICER: All right.
22 Exhibit 1, please.

23 (Document marked as Commonwealth's
24 Exhibit 1 admitted into evidence)

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1 MS. COSGROVE: Thank you, your Honor.

2 Mr. Loos, could you please mark that as
3 Exhibit 1.

4 THE REPORTER: Sure.

5 MS. COSGROVE: Thank you.

6 Q. Now, as you gave us a brief description, by
7 looking at this photo could you please describe for
8 us what you see in the photo, how you entered the
9 Bayzos Pub with your coworkers?

10 A. Okay. So the Bayzos, on the far side of
11 the photo there's the -- there's the door. That
12 would be the entrance, and we would have entered
13 through there. And we went to the bar to get drinks
14 before we picked -- before we sat at a table.

15 MS. COSGROVE: Mr. Loos, is it possible for
16 Ms. Deines to actually manipulate a pointer so she
17 could actually use a pointer to move this through
18 while she's describing it? Or is that not -- I'm
19 not sure about the technology. You'll have to bear
20 with me.

21 THE REPORTER: Your Honor, do you want to
22 post it on the screen?

23 THE HEARING OFFICER: Yes. It's an exhibit
24 now. We can do that. Thank you.

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1 THE REPORTER: Ms. Deines, you can share
2 your screen now. The document. I gave you
3 permission.

4 THE WITNESS: Sure.

5 Does everyone see it?

6 THE HEARING OFFICER: Yes.

7 MS. COSGROVE: Thank you.

8 Q. So, Ms. Deines, can you actually -- using
9 the cursor, as I would call it, if that's using the
10 right term -- show us exactly from when you entered
11 after the dinner?

12 A. Sure.

13 So we would have traveled in from this door
14 (indicating), and we came in and stood at the bar
15 here (indicating) to -- to order drinks.

16 Q. When you say "we," once again, just to be
17 specific, who were you walking in with?

18 A. Okay. So I was walking in with Evelyn
19 Patsos, Jocelynn Welsh, Denise Fitzgerald and
20 Christine Yurgelun.

21 Q. Okay. And did -- did you all stop there to
22 purchase something to drink?

23 A. No. Denise Fitzgerald had stopped earlier
24 to speak with a -- two judges who were at the bar,

1 and I believe -- I believe Evelyn and I were the
2 ones who were ordering.

3 Q. Okay. Now, you said that there were --
4 Denise Fitzgerald had stopped to speak with two
5 judges that were in the bar.

6 So there were other judges that were in the
7 bar at that time?

8 A. Yes.

9 Q. And approximately how many did you see in
10 the bar at that time?

11 A. Just the two, that I noticed.

12 Q. And when you say you stopped with
13 Ms. Patsos to purchase a beverage, what did you
14 purchase?

15 A. I purchased a beer.

16 Q. Okay. All right.

17 Then go on, please. Can you tell us -- can
18 you show us exactly what you did next?

19 A. Sure.

20 I paid, and then I took my beer over here
21 to the table that Jocelynnne and Christine were
22 already seated at (indicating).

23 Q. Okay. So Jocelynnne Welsh and Christine
24 Yurgelun already made their way over to that table

1 that you have your cursor on now?

2 A. Yes.

3 Q. With your -- with your cursor can you
4 please show us exactly, when you arrived, where
5 everybody was seated?

6 A. Sure.

7 So I was seated here in this -- the stool
8 closest to -- I'm sorry, closest to the brick
9 pillar. Christine was seated in the stool, but it
10 was pulled out a little bit and her leg -- she had a
11 foot injury -- was up on this stool, and Jocelynn
12 was sitting across from me in that stool.

13 Q. Okay. Now --

14 A. And Evelyn was standing back here
15 (indicating). Sorry.

16 Q. Oh, okay.

17 So Evelyn actually did make her way over to
18 the table?

19 A. Yes.

20 Q. Okay. And I see four stools, but you said
21 there were -- there were -- you know, so there was
22 five people; nobody brought over a separate stool?

23 A. No.

24 Q. So Evelyn chose to stand?

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1 A. Evelyn chose to stand, yeah.

2 Q. Were there extra stools in the bar area
3 that you could have dragged over if you wanted to?

4 A. Yes.

5 Q. Now, you said that Ms. Yurgelun's foot was
6 on a barstool.

7 Was there a reason for that?

8 A. She had an injury to her foot or her ankle.
9 I'm not remembering what it was. But she was in a
10 sort of Aircast, something along those lines.

11 Q. So the extra stool was to have her foot
12 elevated?

13 A. Have her foot elevated.

14 Q. Yes.

15 Now as I look at photos, the four stools
16 are pushed in.

17 Was that how they were once you sat in
18 them?

19 A. No. We probably pulled them out a
20 little -- I know Christine did, because she sort of
21 had to put her foot up. I probably pulled mine out
22 a little to make room for the other people who were
23 standing.

24 Q. Okay. Now, you also discussed sitting next

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1 to a pillar. I see -- is that -- can you point to
2 the brick pillar that you were sitting near?

3 A. Sure. Right here (indicating).

4 Q. Okay. And there's two seats. I just want
5 to be very specific.

6 When you were sitting, you were facing
7 Ms. Jocelynn Welsh?

8 A. Yes. I was.

9 Q. And you were facing towards the entrance of
10 the bar where you were?

11 A. I was, yes.

12 MS. COSGROVE: Okay. Bear with me one
13 moment, please.

14 THE HEARING OFFICER: Sure.

15 BY MS. COSGROVE:

16 Q. Specifically, can you point, once again, to
17 the stool you were sitting in?

18 A. (Indicating)

19 Q. And can you please describe the stools as
20 you remember them on that night on April 25th, 2019?

21 A. Sure.

22 They were round, backless stools with a
23 cushioned top.

24 Q. And when you say "cushioned," you know, was

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1 there -- like there was definitely a cushion on it;
2 you could feel that when you sat in the seat?

3 A. Yeah. Maybe foam.

4 Q. Okay.

5 A. Something along those lines.

6 MS. COSGROVE: At this point, your Honor, I
7 would like to ask permission to have the host,
8 Mr. Loos, bring up what has been previously marked
9 for identification as Exhibit D.

10 THE HEARING OFFICER: All right.

11 Mr. Loos, if you could.

12 THE REPORTER: Could you bring down, stop
13 sharing your screen, Ms. Deines.

14 Okay.

15 THE HEARING OFFICER: All right.

16 THE WITNESS: Thank you, Mr. Loos.

17 MS. COSGROVE: I can see it. I have it,
18 your Honor.

19 THE HEARING OFFICER: Mr. Angelini.

20 MR. ANGELINI: No objection, your Honor.

21 BY MS. COSGROVE:

22 Q. Well, just as a way of foundation:

23 I'm showing you a picture what's marked as
24 D for identification. Do you recognize what it --

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1 that picture, Ms. Deines?

2 A. Yes. That is a picture of the Bayzos -- of
3 me seated on the stool at the Bayzos Pub.

4 Q. Is this the type of stool that you sat on
5 on the night of April 25th, 2019?

6 A. Yes.

7 MS. COSGROVE: Your Honor, just for
8 purposes of the record, I would like to have that
9 moved in and marked as, I guess, Exhibit Number 2.

10 THE HEARING OFFICER: I understand there's
11 no Exhibit 2.

12 So Exhibit 2, please, Mr. Loos.

13 (Document marked as Commonwealth's
14 Exhibit 2 admitted into evidence)

15 BY MS. COSGROVE:

16 Q. So, Ms. Deines, do you remember when you
17 took this photo?

18 A. I took that photo when I traveled down to
19 the Ocean Edge Resort in October or November of last
20 year to meet you and Attorney Neff.

21 Q. So this was not taken actually on the night
22 of April 25th, 2019?

23 A. No.

24 Q. You are seated on a barstool in the Bayzos

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1 Pub, are you not?

2 A. Yes, I am.

3 Q. And is this -- is this how you were seated
4 on the night of April 25th, 2019?

5 A. I was probably -- I was probably leaning
6 forward, talking to Jocelynn. I probably wasn't
7 seated as upright.

8 Q. Okay. I see your feet are on the bar --

9 A. Yes.

10 Q. -- at the bottom of that.

11 And why is that?

12 A. I'm not very tall.

13 Q. And can you explain? You said that you may
14 have been, I think you said the word "leaning."

15 Explain that, why would you be leaning?

16 A. It is sort of generally how I sit. And I
17 was talking to Jocelynn across from me, so I'm sure
18 my body was leaning in to that conversation.

19 Q. Okay. Now, in this photo, you were
20 sitting -- you're seated near the brick pillar.

21 Is that how you were seated on that night
22 in relation to the brick pillar that was in what has
23 been previously marked as Exhibit 1?

24 A. Yes.

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1 Q. And, once again, you said you were across
2 from Jocelynnne?

3 A. Yes. I was across from Jocelynnne, yep.

4 Q. Now, at this point, while you were speaking
5 with her, while you were speaking with Jocelynnne,
6 how long have you been in the Bayzos Pub for at this
7 point in time?

8 A. Probably about 15, 20 minutes.

9 Q. And were other attendees coming in --
10 judicial attendees coming in from the conference,
11 from the dinner?

12 A. Yeah.

13 Q. What about were there other patrons in the
14 pub other than yourself and your friends and
15 judicial attendees?

16 A. From what I remember, yes, there were a
17 few.

18 Q. A few.

19 How big is the Bayzos Pub, if you recall?

20 A. How big is the Bayzos Pub?

21 So it's not a small bar. It had sort of a
22 split bar/restaurant-y type of area. So it wasn't
23 small, small, but it wasn't a big restaurant,
24 either.

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1 Q. Can you please maybe describe the crowd and
2 the noise level in there as attendees from the
3 conference were coming in?

4 A. So the -- from what I remember, the -- the
5 attendees from the conference were coming in through
6 the front door, in sort of a pretty steady fashion,
7 and it was getting progressively louder. But most
8 of them were sort of congregating together around
9 the bar area.

10 Q. So it was getting a little bit more
11 crowded?

12 A. Yes.

13 MR. ANGELINI: Objection.

14 THE HEARING OFFICER: Sustained.

15 BY MS. COSGROVE:

16 Q. Do you -- at this point in time, at that
17 time had you seen Judge Sushchyk in the Bayzos Pub?

18 A. No.

19 MS. COSGROVE: Now, at this point in time,
20 your Honor, I would like to ask if I could have
21 Mr. Loos bring up what has been previously marked
22 for identification as Exhibit Z.

23 THE HEARING OFFICER: Z, as in "zebra"?

24 MS. COSGROVE: Yes, please.

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1 THE HEARING OFFICER: Okay.

2 THE REPORTER: One moment.

3 THE HEARING OFFICER: Yes.

4 THE REPORTER: Okay.

5 THE HEARING OFFICER: Okay.

6 MR. NEFF: Does everybody have it? I'm
7 sorry.

8 THE HEARING OFFICER: I do.

9 Mr. Angelini?

10 MR. ANGELINI: Yes, your Honor, I do.

11 THE HEARING OFFICER: Okay.

12 BY MS. COSGROVE:

13 Q. Ms. Deines, I believe what you're seeing
14 now is what has previously been marked as Exhibit
15 Z -- Z, as in "zebra" -- for identification.

16 Do you recognize what that is?

17 A. Yes. That is where I was seated the night
18 of April 25th.

19 Q. And from the photo you believe that is
20 exactly the location of where you were seated on
21 April 25th, 2019?

22 A. Yes. From this photo, I believe that's
23 where I was seated.

24 Q. You can see where your seat was.

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1 Is that a fair and accurate representation
2 of the table and stool that you were seated at?

3 A. Yes.

4 MS. COSGROVE: Your Honor, at this point I
5 would like to have this -- move that this Exhibit Z
6 for identification be admitted into evidence as,
7 apparently, Exhibit 3, I believe.

8 THE HEARING OFFICER: Any objection?

9 MR. ANGELINI: No objection.

10 THE HEARING OFFICER: Thank you.

11 MR. ANGELINI: No objection, your Honor.

12 THE HEARING OFFICER: Thank you. 3.

13 (Document marked as Commonwealth's
14 Exhibit 3 admitted into evidence)

15 MS. COSGROVE: Mr. Loos, could I ask if we
16 could bring that up so that I could have Emily use
17 the cursor.

18 And again -- and your Honor, I should say,
19 more -- more appropriately, is it possible that we
20 share that so Ms. Deines can actually manipulate
21 that on screen for us?

22 THE HEARING OFFICER: Sure.

23 MS. COSGROVE: Are we all set?

24 THE WITNESS: All set.

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1 MS. COSGROVE: Thank you.

2 Q. Ms. Deines, can you please, using the
3 cursor, show us exactly where you were seated once
4 again on that night on April 25th, 2019?

5 A. I was seated here (indicating).

6 Q. Okay. And I'm now going to ask you in
7 relation to --

8 At some point in time at that evening,
9 while you were seated in that seat, did you have an
10 occasion to see Judge Sushchyyk in the Bayzos Pub?

11 A. Yes.

12 Q. And when was that, if you recall?

13 A. I couldn't say for certain, but it was
14 when -- it was sort of while the other participants
15 from the conference were filtering in.

16 Q. Okay. And can you please show us where he
17 was when you first saw him?

18 A. So Jocelynn was seated in front of me, and
19 I was having a conversation with her. And I sort of
20 noticed him coming towards our table from over her
21 shoulder, her left shoulder.

22 Q. Okay. Now, so you said you were speaking
23 with Ms. Welsh at that time?

24 A. Yes.

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1 Q. And you said you saw him over her left
2 shoulder?

3 A. Over, yeah, sort of her left shoulder. Or
4 behind her, probably, somewhere behind her.

5 Q. So did you notice how he was -- where he
6 was traveling towards? What direction he was
7 walking towards, I should say.

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Overruled.

10 Go ahead.

11 A. He was traveling in this direction
12 (indicating).

13 Q. Okay. So as I note that there are some
14 pillars there.

15 Was he on the other side, to the right side
16 of those pillars as we look at the photo right now?

17 A. Yes, he was.

18 Q. Okay. Now, as -- so at some point in time
19 did he walk around that pillar -- pillar?

20 MR. ANGELINI: Objection.

21 THE HEARING OFFICER: Sustained.

22 Q. Emily, why don't you just tell us.

23 A. Yes, he walked around the tables on the
24 other side -- I'm sorry.

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1 So he sort of was walking around the tables
2 on the other side of the pillar.

3 Q. I apologize. Why don't I put a question to
4 you.

5 Emily, can you please describe for us,
6 using the cursor -- actually, I should say show us,
7 as best you can, using the cursor, the course that
8 Mr. -- that Judge Sushchuk took as you watched him
9 walk through the bar, the pub?

10 A. I first saw him probably over here, and
11 then I next saw him when he was walking around the
12 table and coming towards our table.

13 Q. I see that there are tables to the right of
14 you on the other side of that pillar?

15 A. Yes.

16 Q. Were those types of tables there on that
17 evening?

18 A. They were.

19 Q. Is there any possible way, I mean, that you
20 could actually draw a line on that? Is there, like
21 I would call it a bread crumb trail, if anybody had
22 an objection, so we can make it clear?

23 Like can she mark up the photo?

24 Can Ms. Deines mark up the photo, or is

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1 that not possible?

2 A. I would probably have to download it first.
3 Would you like me to try?

4 THE HEARING OFFICER: Well, let's ask
5 Mr. Loos. He's our --

6 THE WITNESS: Okay.

7 THE HEARING OFFICER: -- expert about this.
8 Is there a way for her to mark it at all,
9 Mr. Loos?

10 THE REPORTER: There may be.

11 Can we go off the record for a moment?

12 THE HEARING OFFICER: Sure. Let's do that.
13 This will be with counsel, Mr. Loos and I.
14 (Meeting in private breakout room. Hearing
15 Officer Josephson, Mr. Neff, Ms. Cosgrove,
16 Mr. Angelini, Ms. Deines and Mr. Loos
17 present)

18 THE HEARING OFFICER: Thank you.

19 Mr. Angelini, I had asked if Ms. Deines
20 could join us in the breakout room to be able to...

21 I had asked Ms. Deines to join us in this
22 conversation about how to use the -- how to use the
23 ability to mark the exhibit, and if there was no
24 objection.

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1 Mr. Angelini, you had an objection, so we
2 went back on the record for that. Go ahead.

3 MR. ANGELINI: So, I -- I have no objection
4 to the witness identifying where Judge -- where she
5 claims Judge Sushchuk was when she saw him.
6 However, in the absence of any evidence that she was
7 continuously watching him in his course of travel, I
8 would object to her diagraming what she would
9 suppose to have been his course of travel. So
10 that's the nature of my objection. I don't want to
11 overly -- I realize we're trying to --

12 THE HEARING OFFICER: Yeah.

13 MR. ANGELINI: -- adapt as best as possible
14 to this, but it's a more elemental objection than it
15 is to her ability to course -- to describe a course
16 of travel.

17 That's what I object to.

18 THE HEARING OFFICER: Okay.

19 MR. ANGELINI: I think she's testified she
20 saw him in two places.

21 MR. NEFF: I know this is Ms. Cosgrove's
22 examination, Judge.

23 THE HEARING OFFICER: Yes, it is. Yes.

24 MR. NEFF: But she and I were just talking

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1 a little bit, and, I mean, obviously, Mr. Angelini
2 has made it clear --

3 THE HEARING OFFICER: Mr. Neff. Mr. Neff.

4 MR. NEFF: Can you hear me?

5 THE HEARING OFFICER: I can hear you, but I
6 don't think I should.

7 MR. NEFF: Okay.

8 THE HEARING OFFICER: -- because it's
9 Ms. Cosgrove's.

10 MS. COSGROVE: Do you want to hear from me?

11 Yes, your Honor, I believe that I've
12 already -- I mean, we can go back and, if need be, I
13 will try to lay a better foundation, but I believe
14 that Ms. Deines has appropriately said that she has
15 identified that she saw him. She actually already
16 was using the cursor in order to identify that she
17 could see him, Judge -- I don't mean "him" -- Judge
18 Sushchuk over Jocelyne Welsh's shoulder. And that
19 she has already indicated that while that -- in that
20 area that she could see his route.

21 I was just trying to make it clear for the
22 record so that she could actually draw that route
23 in, but -- so I would actually suggest that there is
24 no reason to stop her from being able to manipulate

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1 that and make a -- make a record of that. I believe
2 I've already laid the proper foundation for that.

3 THE HEARING OFFICER: Okay. Let me just
4 ask Mr. Loos, is there a way that Ms. Cosgrove --
5 Ms. -- excuse me -- Deines could -- I bet there is.
6 I don't need an answer to that.

7 Let me just say, Ms. Deines is allowed to
8 testify to what she saw, and she can mark along the
9 pathway that she saw the points at which she saw
10 Judge Sushchuk. Okay.

11 MS. COSGROVE: And I would say, too -- just
12 off the record --

13 THE REPORTER: We're on the record.

14 THE HEARING OFFICER: No. We're on the
15 record.

16 MS. COSGROVE: Well, on the record.

17 In my experience Ms. Deines is pretty --
18 luckily pretty well-versed with this because of her
19 job with the --

20 THE HEARING OFFICER: Sure.

21 MS. COSGROVE: -- with the Trial Court. I
22 think she actually is pretty good with this.

23 Better than me, I would say, and that's on
24 the record.

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1 THE HEARING OFFICER: Okay. Thanks. All
2 right.

3 So why don't we, if you would, Mr. Loos,
4 when we go back into the public forum, perhaps you
5 could just direct Ms. Deines how to utilize the tool
6 that will be able to mark where she saw Judge
7 Sushchyk. Okay?

8 MS. COSGROVE: Thank you.

9 THE REPORTER: All right. So you can just
10 leave the room and we'll be back in the main room.

11 THE HEARING OFFICER: Okay.

12 (Return to the open proceedings)

13 THE HEARING OFFICER: All right. I think
14 we can go ahead.

15 THE REPORTER: One moment.

16 Do you want everything on the record or
17 not?

18 THE HEARING OFFICER: Yes. Please.

19 Just how -- how a tool can be utilized for
20 the progress that she observed.

21 THE REPORTER: So, Ms. Deines, I believe at
22 the top of the screen, you should see something when
23 share the screen that says "annotate," and that
24 should allow you to mark the screen.

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1 If you put it back up.

2 THE WITNESS: I'll try it, Mr. Loos.

3 MS. COSGROVE: Am I ready? Or you need a
4 few minutes, Ms. Deines?

5 THE HEARING OFFICER: Ms. Deines, why don't
6 you tell us when you've located that feature that
7 Mr. Loos described.

8 THE WITNESS: To Mr. Loos, I'm not seeing
9 it when I do share screen, but I believe that when I
10 have to -- I think I have to share it as like a --
11 like a white board. I have to share advanced first.

12 Can I stop a second and try to come back
13 in?

14 THE HEARING OFFICER: Sure.

15 THE REPORTER: It might work more easily if
16 you download it and manipulate it somewhere.

17 THE WITNESS: Let me try that, Mr. Loos.

18 THE REPORTER: I think I might have the
19 whiteboard turned off.

20 THE WITNESS: Do you want me to wait until
21 you turn it back on before I share my screen?

22 THE REPORTER: Can we go off the record for
23 a moment?

24 THE HEARING OFFICER: Yes.

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1 (Recess taken)

2 MS. COSGROVE: All right.

3 May I inquire, your Honor?

4 THE HEARING OFFICER: Yes, please.

5 MS. COSGROVE: Thank you.

6 Q. So, Ms. Deines, can you please mark where
7 you first saw Judge Sushchyk on -- Sushchyk on the
8 evening of April 25th, 2019?

9 A. (Complies)

10 Q. And can you please, using your marker, show
11 us what you saw was his course of travel on that
12 evening?

13 A. (Complies)

14 Q. And could you also just mark where you were
15 sitting on that evening?

16 A. (Complies)

17 Q. What were you doing when you -- when you --
18 once again, what were you doing when you saw him?

19 A. I was having a conversation with Jocelyne
20 Welsh. I was seated at the -- at the table --

21 Q. And --

22 A. -- drinking a beer.

23 Q. -- while you were speaking with Ms. Welsh,
24 that's when you saw him over her shoulder?

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1 A. Yes.

2 Q. Okay. As you -- as I look at the course of
3 travel, your mark indicates he came around the
4 bricks and around those tables that were to your
5 right?

6 A. I'm sorry, Audrey, you cut up.

7 Can you ask that one more time?

8 Q. By your mark it looks like you're saying
9 that he went around some low tables that were
10 located to your right.

11 Was that the case on April 25th, 2019?

12 A. Yes, that was the case.

13 Q. Okay. So can you tell us what happened --
14 so were you able to see whether or not he was
15 walking towards you?

16 A. I was able to see that he was walking
17 towards me, yes.

18 Q. Okay. And then can you tell us what
19 happened next?

20 A. As he passed behind me, I felt him grab,
21 slide his hand under my left buttock and grab me.

22 Q. Okay. You said he -- when you say he
23 "slid" his hand under your left buttock and grabbed
24 you, did you see him do that?

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1 A. I did not see him do that, no.

2 Q. Okay. So how do you know it was Judge
3 Sushchyk who grabbed your left buttocks?

4 A. He was walking behind me at that time.

5 Q. When you say "walking behind" you, was
6 there anything -- was there anybody else behind you
7 at that time?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Overruled.

10 A. There was no one else directly behind me at
11 that time that I know of, no.

12 Q. Was there any other seats behind you?

13 A. I'm sorry.

14 Q. Were there any seats behind you?

15 A. No. No. I believe there was a low table
16 farther in the back of the facility, but -- but not
17 anything directly behind us.

18 Q. And then -- all right.

19 So once again, you said that there was
20 nobody behind you, and was there -- who was the only
21 person that walked behind you that you know of?

22 MR. ANGELINI: Objection.

23 THE HEARING OFFICER: Sustained.

24 MR. ANGELINI: Objection.

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1 THE HEARING OFFICER: Sustained.

2 Q. So as soon as you found -- as soon as you
3 felt an individual grab your left buttocks, what did
4 you do?

5 A. I paused. I paused, and then I turned --
6 turned around.

7 Q. Did you say anything to him?

8 A. No.

9 Q. Why not?

10 MR. ANGELINI: Objection.

11 THE HEARING OFFICER: Sustained.

12 Sustained. Excuse me.

13 Q. Can you please describe for us what it felt
14 like when Judge Sushchuk grabbed your left buttocks?

15 MR. ANGELINI: I object to that form.

16 THE HEARING OFFICER: Overruled.

17 A. It felt like someone was -- was sliding
18 their hand under me and using their full hand to
19 grab upwards.

20 Q. Using your hand, could you demonstrate for
21 us what you felt?

22 A. Yeah. So it felt like somebody lifted
23 their hand and then like an upward (indicating)
24 grab.

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1 Q. Now, I think at different points in time --
2 strike that.

3 So you say when that happened you
4 immediately turned.

5 And who was the first person that you saw
6 after feeling that grab of your left buttocks?

7 MR. ANGELINI: I object to the question.
8 It's leading, your Honor.

9 THE HEARING OFFICER: Overruled.
10 I'll allow it.

11 A. I saw Paul Sushchyk behind me over my left
12 shoulder, and I saw Evelyn standing next to him.

13 Q. How long did the -- did the grab actually
14 last?

15 A. Geesh. I don't know, 5, 10, 15 seconds,
16 something along those lines.

17 Q. And once again, can you describe the --
18 the -- how many patrons were in the pub at that
19 time? Was it crowded? Was it not?

20 A. I would say that the bar area was crowded,
21 but the restaurant side didn't have very many
22 people.

23 Q. In your opinion, could it have been an
24 accident?

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1 MR. ANGELINI: Objection.

2 THE HEARING OFFICER: Sustained.

3 Q. Do you have any doubt in your mind whether
4 or not the grabbing of your left buttocks was
5 intentional?

6 A. I believe it was intentional.

7 Q. And why do you feel that way?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Well, overruled.

10 A. Because it felt like somebody was
11 intentionally sliding their hand under and reaching
12 up to grab.

13 Q. So why didn't you turn around and yell at
14 Judge Sushchuk at that point in time?

15 MR. ANGELINI: I object.

16 THE HEARING OFFICER: Overruled at this
17 time.

18 I'm sorry, I overruled it.

19 THE WITNESS: I'm sorry.

20 THE HEARING OFFICER: That's okay.

21 MS. COSGROVE: So, your Honor, may she
22 answer?

23 THE HEARING OFFICER: Yes.

24 I'm sorry. Wait a minute. I meant -- I'm

1 sorry. This is my error.

2 She cannot answer it. The objection is
3 sustained. My problem. I'm sorry. I -- go ahead.

4 BY MS. COSGROVE:

5 Q. Once again, could you please tell us who
6 else -- who else was in the -- at your table at the
7 time of this incident?

8 A. Jocelynn Welsh was seated across from me,
9 Christine Yurgelun was seated sort of across from me
10 and to the left, and then Evelyn was standing sort
11 of behind me but next to me on the left-hand side,
12 my left-hand side.

13 Q. And was Judge Sushchuk now at the table
14 also? Or did he go to another location in the pub?

15 A. No. He had stopped to speak with Evelyn.

16 Q. And approximately how close -- using, once
17 again, as Exhibit Z, as we turn to it -- I'd like to
18 draw your attention to Exhibit Z, which I believe
19 now is Exhibit 3 -- what was previously identified
20 as Exhibit Z is now Exhibit 3 --

21 MS. COSGROVE: And I apologize, your Honor.
22 But is that now -- do I now have to ask that be
23 marked as another numerical exhibit because I'm
24 having her mark it?

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1 THE HEARING OFFICER: Well, I don't know if
2 it can be. That's what I was wondering.

3 Mr. Loos, is that -- is that something that
4 can be preserved in the way that we see it on the
5 screen?

6 THE REPORTER: Yes. If Ms. Deines will
7 save and forward to Ms. Cosgrove, then we can have
8 it marked as an exhibit.

9 THE HEARING OFFICER: Okay.

10 THE WITNESS: Is it a new exhibit number?
11 I'm sorry. Is it --

12 THE HEARING OFFICER: Why don't we have it
13 marked as Exhibit Number 4.

14 (Document marked as Commonwealth's
15 Exhibit 4 admitted into evidence)

16 THE HEARING OFFICER: Thank you.

17 THE REPORTER: And if Ms. Cosgrove can get
18 that to me, we'll have it appended.

19 THE HEARING OFFICER: Okay.

20 MS. COSGROVE: So my computer says it's
21 letting the ink dry.

22 Oh, there it is.

23 BY MS. COSGROVE:

24 Q. So, Ms. Deines, could you please show us

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1 approximately from -- where Judge Sushchyk and
2 Ms. Evelyn Patsos were standing when they were
3 speaking?

4 A. I'm going to change pen color.

5 MS. COSGROVE: Okay. For the record, I
6 believe the witness is changing to a purple color.

7 A. So -- so Evelyn was probably around here
8 (indicating). The judge was probably around here
9 (indicating).

10 Q. And can you tell us, could you hear their
11 conversation?

12 A. Yes.

13 Well, after I turned around, yes.

14 Q. After you turned around, did you have any
15 conversation with Judge Sushchyk?

16 A. Not at first.

17 Q. Not at first.

18 But at some point did you have a
19 conversation with Judge Sushchyk?

20 A. I don't know if it was a conversation.

21 Q. Did you have any --

22 A. But I asked him what he was carrying in his
23 flask.

24 I'm sorry, Attorney Cosgrove, what was

1 that?

2 Q. So you had some communication with Judge
3 Sushchuk?

4 A. Yes.

5 Q. And what was in a communication?

6 A. I asked him what he was carrying in his
7 flask. I think I said, "Whiskey or bourbon?"

8 Q. So when did you learn that Judge Sushchuk
9 had a flask in his -- on his person on that evening?

10 A. When I turned around -- so I turned, and he
11 was having a conversation with Evelyn and -- about
12 what they were drinking, and he opened his coat
13 pocket and pulled out a flask.

14 Q. Okay. When you said he opened his coat
15 pocket, can you please tell us exactly, you know,
16 what he did? What side did he open up?

17 A. Sure.

18 It was the left-hand coat pocket -- you
19 know, inside pocket. I don't know what it's called.

20 Q. So if you remember, what was Judge -- was
21 Judge Sushchuk wearing a blazer?

22 A. I don't know if it had like a notched, like
23 a blazer collar. I'm picturing more of a -- more of
24 a -- like a stand-up collar.

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1 So I don't know if I would describe it as a
2 blazer. I'm not sure.

3 Q. But it was from his inside pocket; is that
4 what you're saying?

5 A. Yes.

6 Q. And what was -- was there conversation
7 about what was in the flask?

8 A. Yes.

9 Q. And what was that conversation precisely?

10 A. I'm sorry, Attorney Cosgrove. Can you ask
11 that again?

12 Q. What was the conversation? Can you please
13 describe for us the conversation that you heard
14 about what was in the flask.

15 A. I don't remember. I believe he said it was
16 whiskey.

17 MR. ANGELINI: Objection.

18 Q. So at some point in time --

19 THE REPORTER: Excuse me, your Honor. What
20 was that?

21 THE HEARING OFFICER: That was overruled,
22 Mr. Loos. I'm sorry.

23 MS. COSGROVE: I apologize, your Honor.

24 THE HEARING OFFICER: Okay.

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1 BY MS. COSGROVE:

2 Q. At some point in time was there a
3 conversation about what was in the flask?

4 A. I'm sorry. Can you ask that question
5 again.

6 I'm sorry, Attorney Cosgrove. You cut out
7 a little bit.

8 Q. At some point in time was there a
9 conversation about what Judge Sushchyk had in his
10 flask?

11 A. Yes.

12 Q. Please tell us about that conversation.

13 A. I believe I said, "Whiskey or bourbon?"
14 And I don't remember his response.

15 Q. Did Judge Sushchyk seem impaired to you by
16 alcohol at this time?

17 MR. ANGELINI: Objection.

18 A. No.

19 THE HEARING OFFICER: Overruled.

20 Q. Did Judge Sushchyk ever leave that table
21 before you did on that evening?

22 A. No.

23 Q. How long did you remain at that table with
24 Judge Sushchyk after you -- your left buttocks had

1 been grabbed?

2 A. Probably 10, 15 minutes.

3 Q. And did you speak to anybody else at that
4 table about what had happened to you?

5 A. No.

6 Q. Why not?

7 MR. ANGELINI: Objection.

8 THE HEARING OFFICER: Overruled.

9 Go ahead.

10 A. I was with work colleagues. It was a work
11 event. I was still probably processing it. I think
12 I was pretty shocked. I wouldn't have known how to
13 start that conversation in -- in that room at that
14 time.

15 Q. So at some point in time did you leave the
16 table yourself?

17 A. Yes.

18 Q. And why did you do that?

19 A. Because I was very uncomfortable.

20 Q. Did you say good-bye to anybody at the
21 table before you left?

22 A. I'm sorry, Attorney Cosgrove. What was
23 that question?

24 Q. Did you -- did you say good-bye to the

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1 individuals at the table before you left?

2 A. I did. I finished my conversation with
3 Evelyn -- I'm sorry, with Jocelynnne. I think I gave
4 Evelyn a sort of wave and I got ready to leave.

5 Q. So did you actually try to communicate with
6 Evelyn at all as she was standing closest to you?

7 A. I did. I tried to give her some nonverbal
8 cues that something had happened, and I was
9 uncomfortable leaving her in that situation.

10 Q. And were you able to do -- were you able to
11 communicate at all with Evelyn on that evening --
12 Evelyn, I apologize -- Ms. Patsos on that evening?

13 A. No. We did sort of give each other some
14 raised eyebrows back and forth, you know, some
15 pointed looks, but I don't think what happened was
16 communicated.

17 THE HEARING OFFICER: I'm sorry,
18 Mr. Angelini. You had stood for a moment, and I did
19 not hear what you said.

20 MR. ANGELINI: I did not object, your
21 Honor.

22 THE HEARING OFFICER: Okay. Thank you.

23 MR. ANGELINI: Thank you.

24

1 BY MS. COSGROVE:

2 Q. All right.

3 After -- so at that point in time what did
4 you do after saying good-bye to your -- the patrons
5 at the table, your friends -- the coworkers at the
6 table?

7 A. I went and said good-bye to Chief Justice
8 Casey and his wife.

9 As I was walking out, Judge Connolly and
10 Judge Fiordino stopped to just have a quick
11 conversation about one of the programs earlier in
12 the day. And I saw Judge Simons on the stairs as I
13 was leaving, and I said good-bye to him, and then I
14 got in my car.

15 Q. Did you indicate to any of the people that
16 you also spoke to, or the justices that you spoke to
17 as you were leaving, what had occurred?

18 A. No.

19 Q. You said that you actually went over to say
20 farewell to Judge Casey; is that true?

21 A. That is true. I did.

22 Q. And you did not say anything to him at that
23 point in time to report the incident?

24 A. No.

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1 Q. And why not?

2 MR. ANGELINI: Objection.

3 THE HEARING OFFICER: At this point I will
4 sustain that.

5 Q. So as you were leaving the Ocean Edge
6 facility after -- was there anybody else you said
7 farewell to or you communicated with before you left
8 the facility?

9 A. Not that I remember.

10 Q. And at that point in time where did you go
11 after leaving the Bayzos Pub?

12 A. I drove back to my family's home in
13 Eastham.

14 Q. So you left and got into your car?

15 A. I left and got into my car, yes.

16 Q. Okay. And when you got into your car,
17 what's the first thing you did?

18 A. I texted my sister.

19 MS. COSGROVE: Your Honor, at this point in
20 time I would ask permission to have Mr. Loos bring
21 up what has been previously marked as Exhibit -- as
22 Exhibit W for identification.

23 THE HEARING OFFICER: All right.

24 THE REPORTER: If you could pull down your

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1 screen, Ms. Deines.

2 THE WITNESS: Okay.

3 MS. COSGROVE: I have it up. Does
4 everybody else?

5 THE HEARING OFFICER: I don't. I don't
6 have anything.

7 THE REPORTER: Try again.

8 MR. ANGELINI: I have it.

9 MR. NEFF: I believe it should be in the
10 chat room, your Honor.

11 THE HEARING OFFICER: I'm looking. Thank
12 you.

13 I think I changed the screen here. Hold on
14 one minute. Okay. There we go.

15 Thank you. Great.

16 MS. COSGROVE: Ms. Deines, can you see
17 that --

18 I apologize, your Honor.

19 May I inquire?

20 THE HEARING OFFICER: Yes.

21 BY MS. COSGROVE:

22 Q. Ms. Deines, do you see that screen now,
23 what has been previously marked as Exhibit W for
24 identification?

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1 A. I do.

2 Q. Do you recognize what that is?

3 A. It's a text message between my sister and
4 I.

5 Q. And is that a screen shot of a text message
6 that you actually provided to this office?

7 A. Yes, it is.

8 MS. COSGROVE: Okay. Your Honor, I'd ask
9 that this -- I'd move that this, what has been
10 previously marked as Exhibit W for identification,
11 be now admitted into evidence as Exhibit 5, I
12 believe.

13 THE HEARING OFFICER: Mr. Angelini?

14 MR. ANGELINI: There is no objection, your
15 Honor.

16 THE HEARING OFFICER: All right.

17 Exhibit 5, please.

18 (Document marked as Commonwealth's
19 Exhibit 5 admitted into evidence)

20 MS. COSGROVE: Thank you, your Honor.

21 Q. Ms. Deines, could you please tell us who is
22 that a text message to?

23 A. It's a text message to my sister, Allison
24 Deines.

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1 Q. Okay. And is that the text message you
2 were referring to that you sent after leaving the
3 Bayzos Pub and getting into the car on April 25th,
4 2019?

5 A. It is.

6 Q. Can you please read the text message for
7 us.

8 A. "OMG. I think one of the judges grabbed my
9 butt on purpose."

10 She responds:

11 "What? Slap him."

12 And then I respond:

13 "He's also carrying a hip flask, so
14 maybe just fell? Except it was a distinct
15 pinch."

16 Q. So in this text message I note that you
17 used the word, I think -- can you please explain to
18 us, in your first line when you said:

19 "OMG. I think one of the judges
20 grabbed my butt on purpose,"

21 what did you mean?

22 MR. ANGELINI: Objection.

23 THE HEARING OFFICER: Sustained.

24 Q. Can you please clarify for us, in this text

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1 message I see the term "I think."

2 Why did -- why did you write "I think"?

3 MR. ANGELINI: Objection.

4 THE HEARING OFFICER: Sustained.

5 Q. Emily -- Ms. Deines, after reading this
6 text, did you think Judge Sushchuk grabbed your left
7 buttocks?

8 MR. ANGELINI: I object.

9 THE HEARING OFFICER: Sustained.

10 Q. Ms. Deines, what was your state of mind
11 when you -- when you wrote that text message?

12 MR. ANGELINI: I object.

13 THE HEARING OFFICER: Sustained.

14 Q. Your Honor -- I mean, Ms. Deines, I see
15 that you also discussed a hip flask.

16 Can you describe for us what you meant by
17 that?

18 MR. ANGELINI: Objection.

19 THE HEARING OFFICER: I'm sorry. Go ahead.

20 MR. ANGELINI: If the question is simply
21 for her to describe what she meant by the words "hip
22 flask," I have no objection.

23 THE HEARING OFFICER: Okay. Then
24 overruled -- without objection, Ms. Deines may

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1 answer the question.

2 A. I meant that -- that it was a small metal
3 container to hold, usually, alcohol.

4 MS. COSGROVE: Your Honor, may we go off
5 the record for a brief moment?

6 THE HEARING OFFICER: Sure.

7 MS. COSGROVE: Or actually, could I
8 actually have a brief moment to speak to -- confer
9 with co-counsel?

10 THE HEARING OFFICER: Yes. Please.

11 Why don't we -- actually, why don't we --
12 why don't we -- I don't know how we would do this,
13 but we could suspend for about five minutes.

14 Are you -- are you just about done with
15 your examination of the witness, Ms. Cosgrove?

16 MS. COSGROVE: Yeah. I would say probably
17 another -- I'd like to be fair -- probably about
18 another -- maybe another 20 minutes.

19 THE HEARING OFFICER: Okay. All right.

20 Well, then, why don't you confer with
21 counsel and we'll -- we'll have a side bar
22 conference, if that's what you're asking for. I
23 don't want to go off the record, but I don't see any
24 reason why we can't go into the chat room.

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1 MS. COSGROVE: I just wanted to confer with
2 Mr. Neff privately for a brief moment.

3 THE HEARING OFFICER: No. No. That's
4 fine. Go ahead.

5 THE REPORTER: Off the record?

6 MS. COSGROVE: Mr. Loos, I would just like
7 to confer for a moment.

8 THE HEARING OFFICER: So you want to mute.

9 MR. NEFF: Can't we just mute ourselves?

10 THE HEARING OFFICER: Yes.

11 THE REPORTER: Off the record?

12 THE HEARING OFFICER: Yep.

13 (Recess)

14 MS. COSGROVE: All right.

15 So, your Honor, may I inquire?

16 THE HEARING OFFICER: Yes.

17 BY MS. COSGROVE:

18 Q. So, Emily, after you texted with your
19 sister, Allison Deines, where did you -- what did
20 you do?

21 A. I drove back to my family's home in
22 Eastham.

23 Q. After you got to your mother's house, did
24 you make any phone calls?

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1 A. No.

2 Q. Why not?

3 MR. ANGELINI: Objection.

4 THE HEARING OFFICER: Sustained.

5 Q. So did you speak with anybody else on that
6 evening after -- about what had happened?

7 A. No.

8 Q. Okay. Now, I would like to move to
9 April 26th, 2019.

10 Drawing your attention to the following
11 morning, you know, can you please briefly tell us
12 what time you wake up -- woke up at?

13 A. It's usually between 6:00 and 6:30.

14 And I would get up with my son. I would
15 have, you know, helped get him ready for the day,
16 breakfast, things like that, handed him over to my
17 parents, and -- and then left to -- to go to the
18 second day of the conference.

19 Q. What date was the conference set to begin
20 at?

21 A. The second day I believe was beginning
22 earlier, maybe 8:30 or 8:45.

23 Q. And approximately how far away -- what's
24 the distance and time frame from your mother's house

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1 to the conference?

2 A. It's about 20 minutes.

3 Q. At some point in time on that morning did
4 you make any phone calls on your commute to the
5 conference?

6 A. I did. I called my husband.

7 Q. And why did you call your husband?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Sustained.

10 Q. Can you please tell us -- you said you
11 called your husband. What was -- what did you talk
12 about with your husband?

13 MR. ANGELINI: I object.

14 THE HEARING OFFICER: Sustained.

15 Q. What did you say to your husband?

16 MR. ANGELINI: I object.

17 THE HEARING OFFICER: Sustained.

18 Q. So you actually -- you spoke to your
19 husband on that morning?

20 MR. ANGELINI: I object.

21 A. Yes.

22 THE HEARING OFFICER: That calls for a
23 "yes" or "no."

24 A. Yes.

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1 Q. Did you speak to anybody else on your way
2 to the conference?

3 MR. ANGELINI: Objection.

4 A. My sister.

5 THE REPORTER: What was that, your Honor?

6 THE HEARING OFFICER: That was overruled.

7 Q. Did you speak to anyone else on the way to
8 the conference, "yes" or "no," Ms. Deines?

9 A. Yes.

10 THE HEARING OFFICER: Thank you.

11 Q. And who was that?

12 A. My sister.

13 Q. Why did you decide to return to the
14 conference on the second day after what had
15 happened --

16 MR. ANGELINI: Objection.

17 Q. -- the night before?

18 MR. ANGELINI: I object.

19 THE HEARING OFFICER: Sustained.

20 Q. What time did you arrive at the conference
21 on the second day?

22 A. I believe about 8:00 a.m.

23 Q. How did you feel walking into the Ocean
24 Edge?

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1 MR. ANGELINI: I object.

2 THE HEARING OFFICER: Sustained.

3 MR. ANGELINI: I object.

4 THE HEARING OFFICER: Sustained.

5 MS. COSGROVE: Thank you, your Honor.

6 Q. So you saw the attendees as they were
7 entering the conference that morning?

8 A. I did.

9 Q. What was your duties that day? Your work
10 duties and responsibilities.

11 A. Similar to the day before.

12 Similar to the day before, both making sure
13 that the everyone had an agenda, that they were
14 prepared for the day, and that if there were any new
15 materials, that they were provided.

16 Q. Did you see Judge Sushchuk that morning?

17 A. Yes. At some point.

18 Q. Was there any communication between the two
19 of you?

20 A. No.

21 Q. What about your coworkers from the evening
22 before? Did you see Jocelyne Welsh, Christine
23 Yurgelun and Christine Patsos that morning?

24 A. Yes.

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1 Q. Were they there at the beginning of the
2 conference on the second day?

3 A. Yes.

4 Q. At the same time in the morning, around
5 8:00, would you say around 8:15, 8:30?

6 A. Yeah. Probably a little bit later. Maybe
7 8:45. I think our first speaker went on at 8:45.

8 Q. Can you tell us a little bit about the
9 agenda the second day?

10 A. Sure.

11 Chief Justice Gants was speaking first
12 about a confidential issue, so we had to make sure
13 that no non-judges and non-Trial Court personnel
14 were able to enter the room, including, you know,
15 servers or people setting up or breaking down
16 breakfast.

17 And then the rest of the day was
18 presentations, with a lunch, and our last
19 presentation ended -- we sort of ran a little late,
20 so we canceled the small-group discussions.

21 Q. So there was a lunch that day?

22 A. Yes.

23 Q. And did you -- who did -- did you attend
24 that lunch?

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1 A. I'm sorry.

2 Attorney Cosgrove, can you repeat that?

3 Q. Did you attend lunch on the second day?

4 A. I did, yes.

5 Q. And with whom did you sit on that day?

6 A. I sat with Judge Jennifer Ulwick. I sat
7 with Evelyn Patsos, and I believe Chief Justice
8 Gants was at the table also.

9 Q. Did you have any conversation with
10 Ms. Patsos on that date about what had happened the
11 night before?

12 MR. ANGELINI: Objection.

13 THE HEARING OFFICER: That's a "yes" or a
14 "no."

15 A. Yes.

16 Q. And what was that conversation?

17 MR. ANGELINI: I object.

18 THE HEARING OFFICER: Sustained.

19 Q. And once again, was there any interaction
20 or communication between you and Judge Sushchuk
21 during the second -- during the afternoon portion of
22 the conference on the second day?

23 A. No.

24 Q. And what time did the conference end?

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1 A. I believe around 3:30.

2 Q. And where did you go after you left the
3 Ocean Edge at the end of the conference?

4 A. I went back to my family's home in Eastham.

5 Q. And so you did not head back to
6 Northampton?

7 A. No.

8 Q. And why not?

9 MR. ANGELINI: Objection.

10 A. I was --

11 THE HEARING OFFICER: Sustained.

12 Q. At some point in time did you actually --
13 so you went back to your mother's house?

14 A. Yes.

15 Q. And at any point in time did you discuss
16 what had happened with your mother?

17 A. Yes.

18 MR. ANGELINI: Objection.

19 THE HEARING OFFICER: Sustained.

20 Q. When did you leave your mother's house?

21 A. Saturday. Saturday. The Saturday of the
22 conference, so the 27th.

23 Q. And at that point in time, where did you
24 go?

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1 A. I drove back to Northampton.

2 Q. And -- to return home?

3 A. Yes, to return home.

4 Q. At any point in time did you have a
5 conversation with your husband about -- about the
6 conference?

7 MR. ANGELINI: Objection.

8 THE HEARING OFFICER: That's "yes" or "no."

9 A. Yes.

10 Q. What was the purpose of your communication
11 with your husband about the conference?

12 MR. ANGELINI: I object.

13 THE HEARING OFFICER: Sustained.

14 Q. Ms. Deines, you have -- earlier you've
15 described an incident that occurred on April 25th,
16 2019, with -- that you believe with Judge -- that
17 Judge Sushchuk grabbed you on April 25th, 2019.

18 At any point in time did you report that to
19 Chief Justice Casey?

20 A. Yes.

21 Q. So at some point in time you decided to
22 make a formal reporting of this incident?

23 A. Yes.

24 Q. How did you decide to do that?

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1 A. I spoke with some trusted friends and
2 family, and I --

3 MR. ANGELINI: I object. I object. I
4 object. Unresponsive.

5 THE HEARING OFFICER: No, it is responsive.
6 Overruled.

7 THE WITNESS: May I continue?

8 THE HEARING OFFICER: Please.

9 THE WITNESS: Okay.

10 I spoke with some family, some friends, my
11 husband, some people that I respect their opinion,
12 and I contacted an attorney.

13 BY MS. COSGROVE:

14 Q. And after speaking with an attorney, what
15 did you decide to do?

16 A. I decided to report it.

17 MR. ANGELINI: I object.

18 THE HEARING OFFICER: Overruled.

19 Q. Who did you report it to?

20 A. I reported it to Chief Justice Casey.

21 Q. And how did you report it?

22 A. By phone. By phone call.

23 Q. And when did you report it?

24 A. It was a Wednesday, Wednesday -- the

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1 Wednesday after the conference, so I believe it's
2 May 1st.

3 Q. Was that an easy decision for you?

4 A. No.

5 MR. ANGELINI: Objection.

6 THE HEARING OFFICER: Sustained.

7 Q. As part of your formal reporting, did you
8 make -- did you give Judge Casey a written
9 statement?

10 A. Yes.

11 MS. COSGROVE: Your Honor, I would now ask
12 that what has been previously marked as Exhibit SS
13 for identification, that Mr. Loos be allowed to
14 bring that up for us to view.

15 THE HEARING OFFICER: Mr. Loos, go ahead.

16 THE REPORTER: One moment.

17 THE HEARING OFFICER: Sure.

18 THE REPORTER: Okay.

19 THE HEARING OFFICER: One minute, please.

20 Does everyone have it?

21 MR. ANGELINI: I have it, your Honor.

22 THE HEARING OFFICER: Okay. Great.

23 All right.

24 MS. COSGROVE: May I continue, your Honor?

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1 THE HEARING OFFICER: Yes.

2 MS. COSGROVE: Okay. Thank you, your
3 Honor.

4 Q. You can now see what has been previously
5 marked as Exhibit SS for identification.

6 Is that true, Ms. Deines?

7 A. I can see the -- yes, my statement.

8 Q. Okay. And so -- I was just going to ask
9 you, do you know what that is?

10 A. That is the written statement I provided to
11 Chief Justice Casey.

12 MS. COSGROVE: I would move that the
13 Commission's Exhibit SS for identification be now
14 admitted into evidence.

15 THE HEARING OFFICER: Any objection,
16 Mr. Angelini?

17 MR. ANGELINI: No, your Honor.

18 THE HEARING OFFICER: Okay. Without
19 objection, Exhibit 6.

20 (Document marked as Commonwealth's
21 Exhibit 6 admitted into evidence)

22 MS. COSGROVE: Thank you, your Honor.

23 Q. Ms. Deines, could you please read Exhibit 6
24 for the record.

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1 A. Give me one second.

2 Okay. Would you like me to read it?

3 Q. Yes, please.

4 A. Okay.

5 "Emily Deines, typed 4/29/19 at 3:00
6 p.m.

7 "At or around 9:00 p.m. on Thursday,
8 April 25th, 2019, someone grabbed my left
9 buttock while I was seated on a stool at
10 the Bayzos Pub at the Ocean Edge Resort
11 during the Probate and Family Court's
12 spring judicial conference. I believe the
13 person who grabbed me was Paul Sushchyk
14 because he had recently come over to the
15 table where I was seated and was the only
16 person directly behind me at the time of
17 the grab.

18 "The following other individuals were
19 either seated at the table with me or were
20 in the direct vicinity:

21 "Evelyn Patsos, Jocelynn Welsh,
22 Christine Yurgelun.

23 "The grab lasted a few seconds and
24 felt like it was made using a full hand. I

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1 did not address this with Judge Sushchyk or
2 anyone else at the table at the time. I
3 did try to make eye contact with Evelyn
4 Patsos before leaving a few minutes later."

5 Q. Thank you.

6 This is the statement, the written
7 statement you provided to Chief Justice Casey?

8 A. Yes.

9 Q. Did you actually have an in-person
10 conversation with Chief Justice Casey about the
11 incident at any time?

12 A. Yes.

13 Q. And at that time did you express how you
14 felt you wanted the situation to be handled?

15 MR. ANGELINI: Objection.

16 THE HEARING OFFICER: Just "yes" or "no."

17 A. Yes.

18 Q. Did you also -- after reporting this to
19 Chief Justice Casey, did you actually -- did you
20 discuss the incident with anybody else?

21 A. Yes.

22 Q. And who was that?

23 A. I spoke with Judge Linda Fidnick, and Judge
24 Richard Simons.

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1 Q. And specifically why did you speak to those
2 two judges?

3 MR. ANGELINI: I object.

4 THE HEARING OFFICER: If it's -- if it's --
5 is the question what was her purpose in speaking to
6 them? Or is the question why did she select those
7 individuals?

8 Q. Why did you select those individuals to
9 speak with?

10 MS. COSGROVE: That was my question. I
11 apologize, your Honor.

12 THE HEARING OFFICER: That's all right.
13 Go ahead.

14 MR. ANGELINI: My objection to that
15 question, your Honor.

16 THE HEARING OFFICER: Overruled.

17 A. Judge Fidnick is a very kind human being,
18 first. Second, she's the vice chair of the
19 education committee.

20 Q. And why did you select Judge Simons to
21 speak with?

22 A. Judge Fidnick asked me if I would mind if
23 she reached out to him, and I said no, because he's
24 the -- he's the chair of the education committee.

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1 MS. COSGROVE: Your Honor, at this point in
2 time could I take a brief break? Or is this an
3 appropriate time for a recess?

4 THE HEARING OFFICER: Sure.

5 How much longer, Ms. Cosgrove, do you think
6 you'll be with Ms. Deines?

7 MS. COSGROVE: I don't know. I believe
8 co-counsel would like to confer with me.

9 THE HEARING OFFICER: Okay. All right.

10 Let me ask, Mr. Angelini and -- and
11 Ms. Cosgrove, would this be a good time for us
12 perhaps to suspend for the lunch break and then come
13 back at -- it's 12:23 now. We could reconvene at
14 five minutes of 1:00.

15 MS. COSGROVE: That's fine with us, your
16 Honor.

17 THE HEARING OFFICER: Mr. Angelini?

18 MR. ANGELINI: Your Honor.

19 Yeah, your Honor. In light of the fact
20 that I think counsel said 20 minutes ago that she
21 had about 20 minutes left, and I think she's nearly
22 done, I would, frankly, prefer we complete direct
23 and then take a lunch break.

24 But of course --

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1 THE HEARING OFFICER: Okay.

2 MR. ANGELINI: -- whatever is convenient
3 for your Honor is what controls.

4 THE HEARING OFFICER: That's right. We'll
5 take a very brief recess. Five minutes.

6 MS. COSGROVE: I'll just mute myself.

7 Is that okay, Mr. Loos?

8 THE REPORTER: Sure.

9 Off the record?

10 THE HEARING OFFICER: Okay.

11 (Recess taken)

12 THE HEARING OFFICER: All right.

13 Ms. Cosgrove, go ahead.

14 MS. COSGROVE: Thank you.

15 Q. So, Ms. Patsos -- at some point in time
16 after the April 25th conference did you have an
17 occasion to speak with Evelyn Patsos?

18 A. Yes.

19 Q. And did you speak with her about the
20 conference?

21 A. Yes.

22 Q. And what did you express about the
23 conference?

24 MR. ANGELINI: I object.

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1 THE HEARING OFFICER: Sustained.

2 Q. Why did you speak with Evelyn Patsos about
3 the conference?

4 MR. ANGELINI: I object.

5 THE HEARING OFFICER: Overruled, if it's
6 what was the purpose in speaking to her.

7 MS. COSGROVE: Yes, it is what is the
8 purpose in speaking with her.

9 THE HEARING OFFICER: Okay.

10 A. I wanted to get her advice. I wanted to
11 know if she had -- if she saw anything. Yeah.
12 Mostly to get her advice and to see if she -- she
13 was -- had witnessed it.

14 Q. And did she indicate whether or not she had
15 witnessed anything on that evening?

16 MR. ANGELINI: Objection.

17 THE HEARING OFFICER: Sustained.

18 Q. Just briefly drawing your attention back to
19 April 26th, 2019, during the conference -- I'm not
20 sure if you answered it, but on that date did you
21 see Judge Paul Sushchuk?

22 MR. ANGELINI: I'm sorry.

23 THE HEARING OFFICER: I'm sorry?

24 MR. ANGELINI: I missed the question.

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1 May the question be restated, your Honor?
2 I apologize.

3 THE HEARING OFFICER: Yes.

4 Please, Ms. Cosgrove.

5 MS. COSGROVE: I apologize, your Honor.

6 Q. On April 26th, 2019, during the second day
7 of the conference, did you see Paul Sushchuk?

8 A. Yes.

9 MR. ANGELINI: I object, your Honor. Asked
10 and answered.

11 THE HEARING OFFICER: Yeah. Overruled.

12 Ms. Deines, I think your answer was "yes"?

13 A. Yes.

14 Q. And how did he appear to you on that day?

15 MR. ANGELINI: Objection.

16 THE HEARING OFFICER: I'll sustain to the
17 form of the question.

18 Q. Did you notice, was there any interaction
19 between you and Judge Sushchuk on that day?

20 A. There was no verbal interaction.

21 Q. Can you please clarify that when you say
22 "no verbal," was there any other type of interaction
23 between you two?

24 MR. ANGELINI: I object, your Honor. Asked

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1 and answered.

2 THE HEARING OFFICER: Overruled.

3 A. From my perception, I thought he sat too
4 close behind me at lunch.

5 MR. ANGELINI: May it be stricken, your
6 Honor?

7 THE HEARING OFFICER: No. It may stand.

8 MS. COSGROVE: At this point in time, your
9 Honor, I believe that we have no further questions
10 on direct examination.

11 THE HEARING OFFICER: All right. All
12 right.

13 Then, I had, in your absence, Ms. Cosgrove,
14 and Mr. Angelini, and I think Ms. Deines as well,
15 and Judge Sushchych, asked Mr. Loos if he needed a
16 break, and he said he'd be fine going until the
17 direct examination was finished.

18 So if there's no objection to it,
19 Mr. Angelini, because you're up next, would you have
20 any objection to us taking a lunch recess now for a
21 half hour and when we come back, have the
22 cross-examination?

23 MR. ANGELINI: I have no objection, your
24 Honor. I would like to -- I do have a request of

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1 the Court, however, prior to the recess.

2 THE HEARING OFFICER: Okay. Is this in the
3 nature of a side bar?

4 MR. ANGELINI: It need not be.

5 I would simply request that the witness be
6 instructed not to have any conversations with anyone
7 with respect to the subject matter during the break.

8 THE HEARING OFFICER: Okay. All right.

9 Ms. Deines, did you hear what Mr. Angelini
10 said?

11 THE WITNESS: I did. He --

12 I'm sorry. Can he repeat it, though, just
13 so I'm clear?

14 THE HEARING OFFICER: I'll cover it. Okay.

15 THE WITNESS: Okay.

16 THE HEARING OFFICER: Please don't have any
17 conversation with anyone concerning your testimony
18 or any matters related to your testimony during the
19 recess.

20 And also I am required to ask you, when you
21 come back, the same questions as I asked you when
22 you were first sworn in, and I will also be asking
23 you if you've had any conversations.

24 Okay?

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1 THE WITNESS: Okay.

2 THE HEARING OFFICER: Just so you're
3 prepared.

4 All right. Anything else?

5 THE WITNESS: Thank you, Judge.

6 MS. COSGROVE: Thank you, your Honor.

7 MR. NEFF: Thank you, your Honor.

8 THE HEARING OFFICER: Then I'm going to
9 say, let's -- five minutes after 1:00, everybody
10 back in their places, and we'll start then.

11 Thank you.

12 MS. COSGROVE: Thank you.

13 MR. NEFF: Okay.

14 MR. ANGELINI: Thank you, your Honor.

15 (Luncheon recess taken
16 at 12:33 p.m. to 1:05 p.m.)
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1 AFTERNOON SESSION

2 THE HEARING OFFICER: We're underway.

3 And, Mr. Loos, you've opened it up again,
4 if it was ever shut down, for people who wish to
5 attend to be able to see and hear us?

6 THE REPORTER: Yes.

7 THE HEARING OFFICER: Okay. Great.

8 All right, then.

9 We had left off with Ms. Cosgrove's direct
10 examination, and Mr. Angelini, you were going to
11 conduct your cross-examination of Ms. Deines.

12 MR. ANGELINI: I'm ready to proceed, your
13 Honor.

14 May I proceed?

15 THE HEARING OFFICER: Yes.

16 CROSS-EXAMINATION

17 BY MR. ANGELINI:

18 Q. So good afternoon, Ms. Deines. My name is
19 Mike Angelini. We've met before at your deposition.
20 Thank you for your appearance today.

21 Let me ask you, you've made some reference
22 at the beginning of the day to having some documents
23 with you today as you've been testifying. And I
24 just want to make sure that we have a complete

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1 record of what you had in front of you during your
2 testimony this morning.

3 Would you please tell us?

4 A. I had -- I can pull it up. Just give me
5 one second, Attorney Angelini.

6 So I had Exhibit Z, which I believe is now
7 Exhibit 3.

8 THE HEARING OFFICER: Excuse me. Let me
9 interrupt for a moment, Ms. Deines.

10 I don't want to derail where you're headed,
11 or you, Mr. Angelini, but I am mindful of the fact
12 that I asked -- or told Ms. Deines that I would be
13 asking if there had been any conversation or any
14 changes in your answers to my questions earlier
15 since you answered them last.

16 Any changes in those answers?

17 THE WITNESS: No.

18 THE HEARING OFFICER: Okay. And any
19 conversations with anyone during the break
20 concerning this matter --

21 THE WITNESS: No.

22 THE HEARING OFFICER: -- testimony?

23 All righty, then.

24 I'm sorry. Go ahead. You were going to

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1 answer that.

2 BY MR. ANGELINI:

3 Q. So that my question to you is clear, let me
4 withdraw it and start again.

5 Aside from what have become exhibits in
6 this matter, did you have, when you began your
7 testimony this morning, any notes, any handwritten
8 or typed instructions, any reflections on paper or
9 otherwise that were available to you?

10 A. No. No, Attorney Angelini.

11 Q. What had you done in preparation for your
12 testimony here today?

13 A. I had spoken with Attorney Dan Carey. I
14 had spoken with Attorney Audrey Cosgrove twice.

15 Q. Does that complete your answer?

16 A. That completes my answer.

17 Q. And during your meeting with Attorney
18 Cosgrove, did you make notes?

19 A. No.

20 Q. All right.

21 Now, let me just direct your attention now
22 to the period before April 25th of 2018 -- 2019.

23 You had what you described as some
24 interactions with Judge Sushchuk prior to the events

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1 at the Ocean Edge Resort, and those events were
2 professional events.

3 Is that correct?

4 A. That is correct.

5 Q. Your dealings with him were entirely on a
6 professional basis; is that right?

7 A. Yes.

8 Q. And you had met with him during the course
9 of his orientation as a judge in 2018; is that
10 correct?

11 A. There is a formal orientation that the
12 judges --

13 Q. Is that correct?

14 A. No. No.

15 Q. Did you -- did you meet with him in 2018?

16 A. Yes.

17 Q. Was that in connection for his introduction
18 to the probate court?

19 A. Yes.

20 Q. Was there anything inappropriate in any way
21 about that meeting?

22 A. I'm sorry, Attorney Angelini. Could you
23 repeat that question?

24 Q. Would you agree with me that there was

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1 nothing inappropriate in any way about that meeting?

2 A. I would agree with you, yes.

3 Q. Then you spoke with him once by telephone;
4 is that correct?

5 A. I spoke with him by text and telephone,
6 yes.

7 Q. And you would agree with me that that --
8 that there was nothing at all in any way
9 inappropriate about that change?

10 A. Not inappropriate, no.

11 Q. So by the time that you came to Bayzos
12 Pub -- or to the Ocean Edge Resort, I should say, on
13 April 25th of 2019, you had met in person with Judge
14 Sushchuk once and you had texted or telephoned with
15 him on one other occasion, for a total of two
16 communications; is that right?

17 A. No. We had e-mails going back and forth
18 prior to setting up a -- setting up the training or
19 meeting.

20 Q. And were those entirely on a professional
21 basis?

22 A. Yes.

23 Q. Thank you.

24 But you had met him in person only once; is

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1 that correct?

2 A. I believe so, yes.

3 Q. Now, with respect to this event, do you --
4 this event was an event to which all of the probate
5 judges were invited.

6 Am I correct about that?

7 A. Yes.

8 Q. And others as well, correct?

9 A. Yes.

10 Q. What was the total number of the attendees
11 at this event -- judges, non-judges -- all in?

12 A. So I don't have an exact number.

13 Q. What's your best understanding?

14 A. My best understanding, including presenters
15 and judges and administrative office staff, and
16 speakers -- so those would be, you know -- we had
17 some speakers -- I would say probably 60.

18 Q. Does that include -- does that include you
19 and the other staff members who were invited?

20 A. Yeah.

21 So it's probably -- yes. So it's probably
22 more like 65 if we're including the -- the guest --
23 what we call guest speakers.

24 Q. Okay. Now, you have testified that after

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1 the speaking event, the banquet, so to speak, on the
2 first day, you then went with your colleagues down
3 to the Bayzos Pub, and that was at about between
4 8:00 and 8:15 in the evening; is that correct?

5 A. That is correct.

6 Q. And you left the Bayzos Pub that evening at
7 about shortly before 9:30; is that correct?

8 A. No. I think I probably left closer to
9 9:00.

10 Q. Answer my question.

11 Your answer is no?

12 MS. COSGROVE: I would ask that the witness
13 be allowed to answer the question.

14 THE HEARING OFFICER: Right.

15 Ms. Deines, had you answered?

16 THE WITNESS: The answer to that is "no."

17 THE HEARING OFFICER: Okay. Thank you.

18 BY MR. ANGELINI:

19 Q. Now you've testified on examination --

20 THE WITNESS: If he's asking for 9:30.

21 THE HEARING OFFICER: Okay.

22 THE WITNESS: I'm sorry, Attorney Angelini.
23 What was that?
24

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1 BY MR. ANGELINI:

2 Q. You testified on direct examination that
3 when you left the pub that evening, the first thing
4 you did was to send a text message to your sister.

5 A. No. I did say -- no. I did say "bye" to
6 some people first.

7 Q. Okay. So you left the table; you had a
8 conversation with Judge Casey. You saw some other
9 people very briefly on the way out.

10 And then you left and immediately sent a
11 text to your sister; is that right?

12 A. So I walked to my car, and then I sent a
13 text to my sister from my car, yes.

14 Q. And that text was sent at 9:29 in the
15 evening; isn't that right?

16 A. I believe -- if I can look again.

17 Am I allowed to look again?

18 Q. Of course.

19 A. It's 9:25.

20 Q. 9:25. Fair enough. And I apologize.

21 And how long would you say it took you to
22 get from where you were in the Bayzos Pub at that
23 round table until you got to your automobile?

24 A. I mean, I would say probably 15 minutes.

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1 Q. Okay. So that you left the Bayzos Pub,
2 according to what you now recall, at about 9:10 that
3 evening; is that right?

4 A. So I left the table at probably about 9:10
5 that evening, yes. So if you're -- yes.

6 Q. The -- from the time that you went to that
7 table after going to the bar and ordering a drink,
8 until the time you left at 9:10 or so, did your
9 location at that table change in any way?

10 A. No.

11 Q. During that entire period of time you sat
12 on the barstool that you've identified next to the
13 brick wall; isn't that correct?

14 A. Yes.

15 Q. Now, in the course of the evening -- strike
16 the question.

17 You have identified some photographs
18 showing the Bayzos Pub and the table and chair at
19 which you were -- on which you were seated.

20 Those photographs were taken at a time when
21 the pub was not in operation; isn't that correct?

22 A. The pub was in operation. They were
23 getting -- preparing to -- if I remember correctly,
24 they were preparing to serve lunch.

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1 Q. Were people attending the pub at that time;
2 that is to say, were there customers present?

3 A. No. Just -- just workers.

4 Q. But now let me direct your attention to the
5 evening of the first day of the event at the Ocean
6 Edge Resort.

7 You and your colleagues from work walked
8 down the stairs. As you said, you were among the
9 first to leave the dinner, and you walked down the
10 stairs and there were a few people there in the pub
11 area.

12 Am I correct?

13 A. No. The pub is on the same floor as the
14 ballroom. We did not walk downstairs.

15 Q. I'm sorry.

16 You walked into the pub, and you came to
17 the bar room area, and there were a few people
18 there, right?

19 A. Yes.

20 Q. And over time that evening -- that was
21 about 8:15 in the evening.

22 Over time that evening the number of people
23 who came to that bar increased, did it not?

24 A. The number of people increased, yes.

1 Q. The bar was, as you pointed out in your
2 direct examination, open to the public as well as to
3 people using the hotel; isn't that correct?

4 A. That is correct.

5 Q. And the bar area --

6 A. Attorney Angelini, I'm sorry. I actually
7 don't know if it was open to the public. I know --
8 I don't know if it's open to the public. I just
9 know that it was open for -- for the people who were
10 staying there.

11 Q. In any event, there were a number of people
12 there at the pub when you arrived that evening, were
13 there not?

14 A. No, there were not a number of people there
15 when we arrived.

16 Q. Was there anybody there when you arrived?

17 A. Yes.

18 Q. All right.

19 So there were some people there. And we'll
20 come to back to that again, but in any event, as the
21 evening wore on, the pub became crowded.

22 Is that not right?

23 A. The -- the bar area filled with people from
24 the conference, yes. Participants from the dinner.

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1 Q. All right.

2 And the bar area was the area in which you
3 were seated, am I not correct?

4 A. No. We weren't seated at the bar. We were
5 seated on one of the high tops sort of in the
6 middle.

7 Q. But there was, at the Bayzos Pub, an area
8 where there was a bar and next to it, five or six or
9 seven feet away, some high-top tables, and then on
10 the other side of the brick wall that you've
11 mentioned was a restaurant area.

12 Am I not correct?

13 A. You are correct. Yes.

14 Q. All right.

15 And you were seated on -- at one of the
16 high-top tables directly across from the bar.

17 Is that not correct?

18 A. That is correct, yes.

19 Q. All right.

20 And indeed, the table at which you were
21 seated was more or less in the middle of what was a
22 long and extended bar, right? Am I not correct?

23 A. Can you ask that question again?

24 Q. You were seated at a table, a high-top

1 table on a barstool, and to the left of where you
2 were sitting was the bar.

3 Am I correct?

4 A. That is correct, yes.

5 Q. So if you had turned -- if you were sitting
6 at that table and, instead of looking at Jocelynn
7 Welsh, you turned your head to the left, you would
8 see the bar?

9 A. Yes.

10 Q. Am I correct? All right.

11 And you would see what was approximately
12 the middle of what was a long bar by turning your
13 head to the left; am I correct?

14 A. So, you mean -- when you ask me about the
15 middle, you mean sort of the bar's lengthwise, in
16 the middle lengthwise?

17 Is that your question?

18 Q. Yes. Yes.

19 A. Okay.

20 Q. Am I correct?

21 A. So -- no. We were probably -- we were
22 probably more towards the back, I would say. I
23 don't think -- we weren't right in the middle.

24 Q. Okay. But without doubt you were only a

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1 few feet from what was a very long bar, right?

2 A. Yeah. I mean, we were probably, you know,
3 at least seven feet away, maybe six or seven feet
4 away.

5 Q. And at that bar there were a number of
6 bar -- there were a number of seats at which people
7 were seated at the bar.

8 Am I not correct?

9 A. There were a number of seats, yes.

10 Q. People were sitting there during the course
11 of the evening, correct?

12 A. Yes.

13 Q. And other people were standing in the area
14 between the brick pillars that you've identified and
15 the bar; is that not correct?

16 A. So other people were standing in between
17 the bar and where we were seated, yes.

18 Q. Thank you.

19 And people were milling about, so to speak,
20 talking with each other, moving around. It was that
21 type of event.

22 Am I correct?

23 A. You are correct.

24 Q. All right.

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1 And as the evening moved on, the crowd got
2 larger, and it got louder.

3 Am I correct?

4 A. Yes.

5 Q. Thank you.

6 A. Yes.

7 MR. ANGELINI: Now, just give me one
8 moment, your Honor.

9 Would you please call up, Mr. Loos, Exhibit
10 Number 4.

11 THE REPORTER: From today?

12 MR. ANGELINI: Yes.

13 Exhibit Number 4 was Exhibit Z with markers
14 on it.

15 THE REPORTER: I don't have the one with
16 markers yet. Ms. Deines has it.

17 THE WITNESS: I e-mailed it to Attorney
18 Cosgrove at the break.

19 MS. COSGROVE: I apologize about this
20 little technical -- I haven't been to my e-mail yet,
21 so if you'd like, I can try to take a brief pause
22 and go see -- check my e-mail.

23 MR. ANGELINI: I'd ask you to do that now,
24 and I'll come back to it, with your Honor's

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1 permission.

2 MS. COSGROVE: I would actually ask your
3 Honor if I might be able to do that.

4 THE HEARING OFFICER: Sure.

5 It will just be a couple of minutes.

6 MS. COSGROVE: Just by way of
7 explanation -- I apologize about this -- I had to be
8 in a different spot. I can't be actually at my
9 desk. With the confidentiality here, we don't have
10 webcams in our offices attached right now. So I'm
11 in a satellite conference area. So I'm just going
12 to go back to my office and actually do that.

13 I apologize, your Honor.

14 THE HEARING OFFICER: No problem.

15 THE REPORTER: Off the record?

16 MS. COSGROVE: Off the record?

17 THE HEARING OFFICER: Yes.

18 (Recess taken)

19 THE HEARING OFFICER: And, Ms. Deines --
20 Ms. Deines, are you able to do the transfer of that
21 to your screen and then share it with us?

22 There we go. Thank you very much.

23 MS. COSGROVE: Thank you.

24 MR. ANGELINI: Actually, I'm going to start

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1 with Exhibit Number 3 and then come back to this in
2 a couple of minutes.

3 So may I have Exhibit Number 3, please.

4 THE REPORTER: I put it in the chat on the
5 break.

6 THE WITNESS: Would you like me to pull it
7 up, Attorney Angelini?

8 MR. ANGELINI: Sure.

9 All right.

10 May I proceed, your Honor?

11 THE HEARING OFFICER: Yes.

12 MR. ANGELINI: All right.

13 Q. So Exhibit Number 3 is the same as what was
14 marked as Exhibit Z, and it shows a brick post or
15 wall.

16 Do you see that, Ms. Deines?

17 A. I do.

18 Q. And in the forefront of this photograph, it
19 shows a stool adjacent to that brick wall or post.

20 And that's the stool in which you were
21 seated that evening; am I correct?

22 A. That is correct.

23 Q. You were sitting on that stool, centered on
24 that stool; is that correct?

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1 A. Yes.

2 Q. And you were approximately five -- your
3 body was approximately five or six inches from the
4 high-top table that you were facing; is that
5 correct?

6 A. So --

7 Q. Is that correct?

8 A. My body, I think I was making contact with
9 the actual table.

10 Q. Fair enough.

11 So you were on that stool, leaning in
12 towards the table, correct? To the point where your
13 body was just either contacting the table or a very
14 short space between the table and your body.

15 Correct, Ms. Deines?

16 A. Yes.

17 Q. And you were looking across the table?

18 A. Yes, I think that's correct.

19 Q. And you were speaking to Jocelynn Welsh --
20 Welsh, and Ms. Welsh was seated in a chair, on the
21 barstool directly across from you as you were -- as
22 you were facing her, correct?

23 A. That is correct.

24 Q. Now, you and Ms. Welsh -- you and Ms. Welsh

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1 had known each other for some time; maybe not?

2 A. It's Attorney Welsh.

3 And yes, we have.

4 Q. And you were friendly?

5 A. Yes.

6 Q. And do you recall -- I'll withdraw.

7 Was she seated in the same location for the
8 entire evening at which you were seated at that --
9 at that table?

10 A. Yes.

11 Q. So she was directly across from you during
12 this entire period of time, correct?

13 A. Yes.

14 Q. And you were primarily speaking with her
15 that evening.

16 Am I correct about that as well?

17 A. I spoke to Christine Yurgelun and Evelyn
18 Patsos also while I was seated there.

19 Q. But shortly before this incident occurred,
20 you were engaged in conversation, looking at
21 Ms. Welsh and speaking with her?

22 A. Yes.

23 Q. That's your testimony, isn't it?

24 A. Yes.

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1 Q. Now -- and you were leaning -- your hands
2 were on the table, were they?

3 Excuse me. I was moving.

4 Your hands were on the table as you were
5 speaking to and facing Ms. Welsh.

6 Am I correct?

7 A. I believe I was actually -- had my elbows
8 on the -- on the table.

9 Q. All right.

10 So -- and so your upper body was on -- was
11 angled towards the table so the elbows were actually
12 on top of it, right?

13 A. Yes.

14 Q. That's your testimony (indicating)?

15 A. Yes.

16 Not like that, but yes.

17 Q. Well, your elbows were on the table. Were
18 your hands raised or were your hands -- or were your
19 hands horizontal to the table?

20 A. They were probably crossed.

21 Q. All right. Your hands were crossed.

22 Your elbows were on the table, and your
23 hands were crossed on the table, correct?

24 A. Yes.

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1 Q. All right. Fair enough.

2 And you were looking at Ms. Welsh, Attorney
3 Welsh, as you were speaking with her, right?

4 A. Yes. Yes.

5 Q. I hear you.

6 You were -- your feet were not touching the
7 floor.

8 Am I correct about that?

9 A. No.

10 Q. Were your feet touching the floor?

11 A. No.

12 Q. And you don't remember whether or not your
13 feet were on the footrest, do you? Do you?

14 A. Is it -- no, I don't.

15 Q. And were your feet crossed?

16 A. I don't remember.

17 Q. And just to clear up this point, your best
18 recollection is that your feet were not on the
19 floor, right?

20 MS. COSGROVE: Objection, asked and
21 answered, your Honor.

22 THE HEARING OFFICER: Yeah. Overruled.

23 But I don't think that was her answer.

24 Q. Well, what was your answer as to whether

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1 your feet were on the floor, Ms. Deines?

2 A. My feet did not reach the floor; that is
3 correct.

4 Q. Okay. Now, what was your weight at that
5 time?

6 MS. COSGROVE: Objection, your Honor.

7 THE HEARING OFFICER: Overruled.

8 A. I would say about 200 pounds.

9 Q. And as you were sitting on that barstool,
10 centered on it, with your elbows on the table,
11 leaning forward towards Attorney Welsh -- excuse me
12 for moving your Honor; it's an old and bad habit --
13 did you feel any deflection in the cushion that was
14 on the top of that barstool?

15 A. I can't say for certain.

16 Q. Okay. But, indeed, the barstool did have a
17 top, and it was a soft top, was it not?

18 A. Yes, it was a soft top.

19 Q. So it was not a hardwood top as some bar
20 stools are, but it was a piece of leather or other
21 fabric which compressed a bit on pressure.

22 Am I not correct?

23 A. Yes.

24 Q. Now, as you were looking -- as you were --

1 excuse me -- as you were sitting on that barstool,
2 with your elbows on the table, with your hands
3 crossed, with your feet dangling, and leaning
4 towards Attorney Welsh, you saw, you say, Judge
5 Sushchuk over one of Ms. -- Attorney Welsh's
6 shoulders.

7 Is that your testimony?

8 A. Yes.

9 Q. Over which shoulder did you see Judge
10 Sushchuk?

11 A. So it would have been Attorney Welsh's left
12 shoulder, if I'm remembering correctly.

13 Q. So it was her shoulder that would have been
14 closer to the brick post or wall, right?

15 A. I'm sorry, Attorney Angelini. Could you
16 repeat that question?

17 Q. Yes.

18 It would have been her shoulder that was
19 closest to the brick post or wall?

20 A. Yes.

21 Q. By the way, Ms. Deines, before I continue
22 with this, let me ask you, do you have with you a
23 copy of your deposition transcript?

24 A. I do not.

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1 Would you like me to get it?

2 Q. Just answer my question for the time being.

3 Were you ever asked to have a copy of your
4 deposition transcript with you here today?

5 A. I do not have it here with me, no.

6 Q. Were you asked to bring it with you?

7 A. I have it electronically.

8 Q. Okay. And you will be able to refer to it
9 electronically during the course of my examination,
10 will you?

11 A. Yes. If we could take a short break, and I
12 can retrieve it.

13 Q. When the time comes I'll ask the Court for
14 your ability to take the time to do so.

15 All right.

16 So we're now looking at this exhibit.
17 You've identified seeing Judge Sushchyk over
18 Attorney Welsh's left shoulder.

19 And what time that evening do you say you
20 saw him at that location?

21 A. I'm sorry, Attorney Angelini. Could you
22 repeat that? You cut out a little bit.

23 Q. What time -- what was the time that evening
24 at which you say you saw him at that location?

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1 A. I can't be certain.

2 Q. But certainly it was sometime after you had
3 with your group come -- come to the Bayzos Pub, gone
4 to the bar, retrieved drinks, come back to the table
5 and sat down.

6 It was sometime after that, right?

7 A. Yes.

8 Q. Was it -- it wasn't immediately after you
9 sat down, was it?

10 A. No.

11 Q. It was at least several minutes, was it
12 not?

13 A. Yes.

14 Q. And so you were looking at Ms. Welsh; your
15 elbows and hands were on the table; you were leaning
16 forward. You were --

17 MS. COSGROVE: Actually, I believe
18 Mr. Angelini is testifying for Ms. Deines.

19 Could he just put a question towards her?

20 MR. ANGELINI: A question is coming.

21 THE HEARING OFFICER: I know.

22 Overruled.

23 Go ahead, Mr. Angelini.

24

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1 BY MR. ANGELINI:

2 Q. Let me just start. I want to make sure I
3 have this correct.

4 You were centered on that stool; your feet
5 were not touching the ground; you don't remember
6 whether they were on the barstool, on the -- your
7 feet were not on the ground; you were leaning
8 forward; you were talking with Attorney Welsh; your
9 elbows were on the table; your body was either
10 touching the table or just about touching the table;
11 and you were looking at Ms. Welsh as you were
12 speaking with her.

13 Am I correct?

14 A. I can't say for certain that I was only
15 looking at Attorney Welsh as she was speaking.

16 Q. Well, she was the person with whom you were
17 speaking, certainly, when you saw Judge Sushchik?

18 A. Yes.

19 Q. Isn't that correct?

20 A. Yes. Yes. That is correct.

21 Q. And you were looking at her then, were you
22 not?

23 A. I'm sorry, Attorney Angelini. Could you
24 repeat that?

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1 Q. You were looking at her then when you saw
2 over her left shoulder the person you have described
3 as Judge Sushchyk.

4 Is that not correct?

5 A. Yes. I was looking in her direction, that
6 is correct.

7 Q. And you continued to look at her direction,
8 did you not?

9 A. I don't know.

10 Q. Okay. Now, at that time, at that moment
11 when you saw Judge Sushchyk, for how many minutes
12 had you been conversing with Attorney Welsh?

13 A. With Attorney Welsh only? Or...

14 Q. I'm going ask you to tell us from -- at the
15 time that you saw Judge Sushchyk, you were talking
16 to Attorney Welsh. And my question is for how many
17 minutes had you been speaking with Attorney Welsh?

18 A. I don't know. I think we were -- I don't
19 know.

20 Q. Well, was it several minutes?

21 MS. COSGROVE: Asked and answered, your
22 Honor. Objection.

23 THE HEARING OFFICER: Overruled.

24 Q. It was several minutes, at least, was it

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1 not, Ms. Deines?

2 A. Yes. It was probably several minutes, yes.

3 Q. And during that period of time, your
4 attention was directed across the table, correct?

5 A. Yes.

6 Q. Okay. Now, as we look at Exhibit Z, there
7 is an area behind the barstool in which you were
8 seated in the foreground of that exhibit.

9 Do you see, it's a wooden floor behind the
10 barstool? Do you see that area?

11 A. Yes.

12 Q. By the time you saw Judge Sushchyk over the
13 left shoulder of Attorney Welsh, that area that I've
14 just pointed out to you had become filled with
15 people, had it not?

16 A. I don't believe so, no.

17 Q. Well, you didn't look back there, did you?

18 A. My --

19 Q. You were looking at -- you were looking at
20 Ms. Welsh. You weren't looking behind yourself,
21 were you?

22 A. I was --

23 THE HEARING OFFICER: Excuse me.

24 There are two questions, Mr. Angelini. One

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1 question at a time.

2 MR. ANGELINI: Yes, your Honor. Thank you.
3 My apologies.

4 THE HEARING OFFICER: That's all right.

5 Mr. Deines...

6 BY MR. ANGELINI:

7 Q. You were not looking behind you; your
8 attention was directed to Ms. Welsh and over her
9 shoulder to Attorney -- to Judge Sushchyk, correct?

10 A. I was speaking with Attorney Welsh; that's
11 correct.

12 Q. That's where your attention -- you were
13 not -- you had not turned around and looked behind
14 you for several minutes during which you were
15 speaking with Attorney Welsh, were you?

16 A. I actually don't remember.

17 Q. You don't remember?

18 A. I don't remember. I can't say for certain.

19 Q. But you cannot say for certain -- strike
20 the question.

21 You can't tell us, based on your own
22 knowledge, who or what was going on as you were
23 sitting on that barstool talking to Ms. Welsh and
24 looking at Judge Sushchyk over her left shoulder.

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1 You cannot tell us, can you?

2 A. I cannot tell you -- I cannot tell you
3 what -- I cannot tell you --

4 Q. You can't tell me what was going on behind
5 your back, can you?

6 A. I cannot tell you what was going on behind
7 my back. That is accurate.

8 Q. But you can tell us, as this evening went
9 on, the area between those brick walls and the bar
10 became increasingly crowded as you testified; isn't
11 that correct?

12 A. That is correct.

13 Q. And indeed that area behind the barstool on
14 which you were seated was -- was a passageway from
15 the area on the other side of the brick wall, the
16 restaurant, for people to get from that restaurant
17 area over into the bar? It was a passageway for
18 that purpose, was it not?

19 A. I don't know.

20 Q. Well, it was an open area between two
21 tables and there were restaurant tables on the other
22 side.

23 Is that not correct?

24 A. That is correct, yes.

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1 Q. And there were people on the other side
2 congregating and eating.

3 Is that not also correct?

4 A. That is correct, yes.

5 Q. And for those people to get from where they
6 were cong -- where they had been congregated and
7 were eating, they would, to get to the bar, pass
8 directly behind the barstool of which you were
9 seated.

10 Is that not correct?

11 A. Yes, among other routes, probably.

12 Q. That was a route to get to the bar from the
13 restaurant area, right?

14 A. Yes.

15 MR. ANGELINI: Now, I just need a minute,
16 your Honor.

17 THE HEARING OFFICER: Sure.

18 MR. ANGELINI: May we now have Exhibit
19 Number 4?

20 THE WITNESS: I'm sorry. You'd like me to
21 share another exhibit?

22 MR. ANGELINI: I'd like to see Exhibit
23 Number 4. That is the Exhibit Number 3 in which you
24 have made pencilled markings.

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1 THE WITNESS: Okay.

2 THE HEARING OFFICER: I think the only way
3 for us to get it is for you to share it, Ms. Deines.
4 Thank you.

5 Okay. Thank you.

6 BY MR. ANGELINI:

7 Q. Now, the "X" in the foreground in blue
8 represents the barstool in which you were seated as
9 you were talking with Ms. Welsh, right?

10 A. Yes.

11 Q. And the "X" in the background is the
12 location at which you said you saw Judge Sushchyk
13 over Ms. Welsh's left shoulder, correct?

14 A. That is correct.

15 Q. Now, after you saw Judge Sushchyk over
16 Ms. Welsh's left shoulder, or when you saw him, did
17 you recognize him?

18 A. I did.

19 Q. You hadn't seen him for how long?

20 A. I'm sorry, Attorney Angelini. You cut out
21 again.

22 Can you repeat the question?

23 Q. I'm sorry. I'll ask you again.

24 The last time you saw Judge Sushchyk was

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1 during his orientation as a probate judge.

2 Am I not correct?

3 A. No, I did not see him during his
4 orientation as a probate judge. It would have been
5 probably three or four months after. Two to four
6 months after.

7 Q. All right.

8 And when was that --

9 A. It was --

10 Q. -- period of time?

11 A. -- in, I believe, late May or June of 2018.

12 But that was not the last time I saw him.
13 I saw him at the fall conference, the previous fall.

14 Q. All right.

15 So you had -- and at that fall conference
16 had you had any interaction with him?

17 A. No.

18 Q. But your testimony is that as you looked
19 over Christine -- I'm sorry, Jocelyne Welsh's left
20 shoulder and saw you a man over her shoulder, you
21 recognized that as Judge Paul Sushchuk.

22 That's your testimony under oath, isn't it?

23 A. My testimony is I saw Judge Sushchuk in
24 that area, yes.

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1 Q. And you recognized him as Paul -- as Judge
2 Paul Sushchyk. That's your testimony under oath; is
3 that not right?

4 A. Yes, that is my testimony under oath.

5 Q. And then you kept on speaking with
6 Ms. Welsh, did you not?

7 A. Yes.

8 Q. And you continued speaking with her for
9 several minutes, did you not?

10 A. I'm sorry, Attorney Angelini. What was
11 that question?

12 Q. You continued to speak with her for several
13 minutes?

14 A. Yes. For a few minutes, yes.

15 Q. For a few minutes.

16 And during that period of time, you
17 continued leaning forward on that barstool with your
18 elbows on the table in the direct -- with your hands
19 crossed, with your body either at or very close to
20 the bar table itself, and speaking with and
21 communicating with Jocelynn Welsh in those several
22 minutes, right?

23 A. Yes. As far as I can remember.

24 Q. Of course. Of course.

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1 Now, when do you say -- recognizing all of
2 which you just testified, when do you say you next
3 saw Judge Sushchuk?

4 A. When he was approaching our table from the
5 right-hand side. So when he was sort of
6 approaching, yes, from the right-hand side.

7 Q. Well, you have drawn on this exhibit what
8 you say -- strike the question.

9 When you say "approaching our table from
10 the right-hand side," do you mean to say to the
11 right of your barstool?

12 A. Yes. To the right of my barstool. Uh-huh.

13 Q. Now, you were still talking with Jocelyne
14 Welsh, were you not?

15 A. Yes. I was having a conversation.

16 Q. The same conversation that you had been
17 having -- that you were in the course of having when
18 you first saw Judge Sushchuk over Ms. Welsh's left
19 hand shoulder, right?

20 A. Yes.

21 Q. And was it during that conversation,
22 Ms. Deines, that you say you saw Judge Sushchuk to
23 the right of your barstool?

24 A. Was it during that conversation?

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1 Yes.

2 Q. Thank you.

3 So your testimony is that this path of
4 travel that you've drawn on Exhibit 4 is not the
5 path that you saw Judge Sushchyk take. You didn't
6 see him take any path, did you?

7 MS. COSGROVE: Objection. I don't think
8 that's her testimony.

9 THE HEARING OFFICER: Overruled.

10 Q. You didn't see any path of travel by Judge
11 Sushchyk as you testified to on direct examination,
12 did you, Ms. Deines?

13 A. Attorney Angelini, I'm not sure I
14 understand your question.

15 Q. Let me withdraw it and start again.

16 THE HEARING OFFICER: You rephrased it,
17 Mr. Angelini, in the form that I would sustain
18 objection to, so let's give it another go on it.

19 MR. ANGELINI: All right. I'll give it
20 another shot, your Honor. Thank you.

21 THE HEARING OFFICER: Okay.

22 BY MR. ANGELINI:

23 Q. We've established by your testimony, or at
24 least your testimony is that you saw Judge Sushchyk

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1 at the location over Attorney Welsh's left shoulder
2 where it is marked "X" at the upper part of this
3 photograph?

4 A. That's correct.

5 Q. That's where you first saw him?

6 A. Yes.

7 Q. And your testimony is that you next saw him
8 while you were speaking to Attorney Welsh in the
9 location that you've described and in the posture
10 that you've described just to the right of your
11 barstool, right?

12 A. Yes.

13 Q. All right.

14 So this path of travel that you have marked
15 here in a blue pen or pencil does not describe
16 anything you saw, does it?

17 MS. COSGROVE: Objection.

18 THE HEARING OFFICER: Overruled.

19 A. So Attorney Angelini --

20 Q. Not anything you saw.

21 A. So I think the answer to that is --
22 Okay, no.

23 Q. "Yes" or "no," please.

24 MS. COSGROVE: Objection, your Honor.

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1 I would ask that the witness be allowed to
2 answer. I think we discussed the fact that we're on
3 a Zoom and that there are going to be some pauses,
4 but if Mr. Angelini doesn't allow Ms. Deines the
5 opportunity to actually briefly answer, we can't
6 actually can't hear her answers.

7 THE HEARING OFFICER: I understand.

8 MR. ANGELINI: I would ask that the witness
9 be directed to answer the question responsively.
10 The question asked is whether or not she observed
11 Judge Sushchuk on that path of travel that she wrote
12 on this exhibit. That's my question.

13 THE HEARING OFFICER: Okay.

14 Ms. Deines, go ahead.

15 A. So I did not see the -- the path behind the
16 pole. That is correct.

17 Q. If that's the case, why during direct
18 examination did you draw this as Judge Sushchuk's
19 path of travel, if you didn't see it?

20 A. Well, I assumed that when I saw him on one
21 side of the pole and then on the other side of the
22 pole, that would be where he would be coming from.

23 Q. So that was an assumption you made, right?

24 A. That was an assumption. That is correct.

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1 Q. Now, you've testified that sometime
2 later -- strike the question.

3 Do you recall anything that occurred
4 immediately before you say you saw Judge Sushchuk to
5 the right of your barstool?

6 A. Do I recall anything occurring?

7 Q. Yes.

8 A. No. Other than having a conversation.

9 Q. With Jocelyne, right?

10 A. Right.

11 Q. Okay. And the next time you say you saw
12 Judge Sushchuk was sometime later when you saw him
13 at the location in which you have marked the larger
14 of two Xs on this exhibit.

15 Am I correct?

16 A. No. So I saw him over Jocelyne's
17 shoulder, and then I saw him walking towards our
18 table on the right-hand side of the barstool.
19 That -- the purple "X" is --

20 Q. So -- go ahead. Sorry. I interrupted you,
21 and I did not mean to, and I apologize to you.

22 A. Okay.

23 Q. You saw him over Jocelyne's shoulder?

24 MS. COSGROVE: Can she finish her answer,

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1 please?

2 THE HEARING OFFICER: Were you done,
3 Ms. Deines?

4 A. So the purple "X" just indicates where he
5 had stopped. So after I turned around, that's where
6 he was standing.

7 Q. So you saw him at three different
8 locations:

9 You first saw him over Jocelynne Welsh's
10 left shoulder. You secondly saw him to the right of
11 the barstool while you were speaking to Jocelynne,
12 and you then also saw him at the location of the
13 larger of those two Xs.

14 Am I correct about those three points?

15 A. Yes.

16 Q. Thank you.

17 And in the meantime, somebody touched your
18 body; is that correct?

19 A. Yes.

20 Q. You did not see who did it, did you?

21 A. I'm sorry, Attorney Angelini. Can you ask
22 that question again? You cut out.

23 Q. You did not see the person whom you claim
24 touched your body, did you?

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1 A. I did not see who touched my body.

2 MR. ANGELINI: Now, I just need a moment,
3 your Honor.

4 THE HEARING OFFICER: Sure.

5 BY MR. ANGELINI:

6 Q. You testified on direct examination that
7 somebody touched your body what you described 5, 10,
8 or 15 seconds, correct?

9 A. Yes. That is correct.

10 Q. That was your testimony?

11 A. Yes.

12 Q. And -- and as you described this in your
13 direct examination, you said that somebody grabbed
14 part of your body; is that right? You said that
15 somebody grabbed your buttocks; is that right?

16 A. Yes.

17 Q. Now -- and that grab lasted 5, 10 or 15
18 seconds.

19 Is that right?

20 A. Yes.

21 Q. Now, as you say that you experienced this
22 situation --

23 MS. COSGROVE: Objection, I don't believe
24 that was her testimony.

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1 THE HEARING OFFICER: There's not a
2 question yet, so overruled.

3 Go ahead.

4 Q. You say that somebody grabbed your
5 buttocks, right?

6 A. I believe I said somebody slid their hand
7 under my left buttocks and grabbed, yes.

8 Q. And -- and you don't know who that was, do
9 you?

10 A. I believe it was Paul Sushchyk.

11 Q. But you didn't see Judge Sushchyk do that,
12 did you?

13 A. I did -- I did -- did not see the person at
14 the exact moment that it was grabbed, no.

15 Q. You didn't see that person -- well, before
16 you were grabbed, what is your best estimate as to
17 how long before that you had seen Judge Sushchyk?
18 How many minutes, if any?

19 A. No minutes.

20 So he was -- I saw him out of the corner of
21 my eye on the right-hand side. And before -- how
22 many seconds before I was grabbed, I'm probably 15,
23 20 seconds, something along those lines, if I had to
24 guess. I mean, I didn't have a stopwatch.

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1 Q. Now, you don't know at that moment -- just
2 to continue, you don't know at that moment how many
3 people were behind you at that barstool, do you?

4 A. I don't.

5 Q. There could have been several people behind
6 you on that barstool; is that not correct?

7 A. I did not see anyone -- I did not see
8 anyone, but that is accurate, I suppose.

9 Q. You didn't see anybody because you don't
10 have eyes in the back of your head, sort of as the
11 saying goes.

12 MS. COSGROVE: Objection, your Honor.

13 THE HEARING OFFICER: It's not a question.
14 Sustained. Sustained.

15 Q. You didn't see anybody because you weren't
16 looking in that direction, right?

17 A. That is true, yes.

18 Q. Right.

19 And if there was someone else behind there,
20 any one of the persons who were behind there could
21 have done what you say happened to you; isn't that
22 not correct?

23 MS. COSGROVE: Objection.

24 THE HEARING OFFICER: I'll -- I will

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1 sustain. It's a confusing formulation of the
2 question, Mr. Angelini.

3 MR. ANGELINI: I'll restate it, your Honor.
4 I'll restate it. I'm happy to.

5 THE HEARING OFFICER: Sure.

6 BY MR. ANGELINI:

7 Q. If there were other people behind you, any
8 one of them could have grabbed you at that moment,
9 right?

10 MS. COSGROVE: Objection.

11 THE HEARING OFFICER: Overruled.

12 A. If there were other people behind me, any
13 one of them could have grabbed me, yes.

14 Q. By the way, it wasn't just that a person --
15 strike the question.

16 What part of your buttocks you say was
17 grabbed by whoever grabbed you?

18 A. It was my left what I would call cheek,
19 left butt cheek.

20 Q. And according to what you say occurred, the
21 person who did this slid his or her hand under that
22 left cheek and grabbed it from underneath.

23 Isn't that -- isn't that what you say
24 happened?

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1 A. That is what I say happened. Yes, that is
2 what happened.

3 Q. And how far under your left cheek -- strike
4 that.

5 You have said that this person slid his or
6 her hand under that left cheek and grabbed it with a
7 full hand.

8 Isn't that your testimony?

9 A. Yes. That's what it felt like.

10 Q. So that whoever this person was had a hand
11 of the size that would allow her or him to go
12 completely under your left cheek with his or her
13 hand and then to contract his hand and grab or
14 squeeze your left buttocks, right?

15 A. I'm assuming yes. That person would have
16 to have a certain hand size.

17 Q. And to do that for 5, 10 or 15 seconds,
18 right?

19 A. Yes.

20 Q. Now, during that 5, 10 or 15 seconds, did
21 you continue to have your conversation with
22 Jocelynn Welsh?

23 A. I -- I believe she was speaking to me, and
24 I was not speaking back. But yes, I was still

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1 facing Jocelynn.

2 Q. You were still facing her, and the
3 conversation with her was continuing, right?

4 A. Yes.

5 Q. Now, can you access your deposition
6 transcript, Ms. Deines?

7 A. Yes.

8 Could someone give me a few minutes,
9 please?

10 THE HEARING OFFICER: Sure.

11 MR. ANGELINI: Your Honor, I'm sorry for
12 this interruption. I ask that she have it available
13 to her, so if we could have a short break.

14 THE HEARING OFFICER: No problem.

15 Let's take a short recess -- let's say no
16 more than five minutes -- and everybody will be back
17 in place.

18 MR. ANGELINI: Thank you.

19 (Recess taken)

20 MS. COSGROVE: I would just like a private
21 conversation with the attorneys, just for a brief
22 moment, and Mr. Loos, and obviously Judge Sushchuk.

23 THE HEARING OFFICER: Sure.

24 Let's go into a -- the chat room. Just I

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1 want to make sure the record's clear when we're --

2 MS. COSGROVE: Yes. Clearly, your Honor.

3 THE HEARING OFFICER: -- addressing it.

4 MS. COSGROVE: Okay.

5 THE REPORTER: One moment.

6 (Meeting in private breakout room. Hearing
7 Officer Josephson, Mr. Neff, Ms. Cosgrove,
8 Mr. Angelini, Judge Sushchyk and Mr. Loos
9 present)

10 THE HEARING OFFICER: Okay. We just need
11 Mr. Angelini.

12 THE REPORTER: He should be able to get in
13 there.

14 MS. COSGROVE: My apologies.

15 Because when we took that brief break
16 Mr. Neff and I were just conferring a little bit
17 about scheduling and trying to, you know, make sure
18 we coordinated the next witness. So we were trying
19 to figure out with the afternoon -- because we're
20 coming on 2:30, and...

21 MR. NEFF: And I don't want -- I feel bad I
22 spoke out of turn last time, so I don't -- can I --
23 can I weigh in on --

24 THE HEARING OFFICER: On scheduling, yes,

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1 of course.

2 MR. NEFF: I -- I'll confess, in terms of
3 administration and logistics, I was working on so
4 many things over the last couple of days I don't
5 remember what I necessarily e-mailed and/or
6 vocalized and to whom in every case.

7 THE HEARING OFFICER: Of course.

8 MR. NEFF: I thought I communicated to most
9 people hopefully, including all of you, that I had
10 kind of hatched a plan with our witnesses where I
11 had everyone's text message and/or e-mail and could
12 give them, like, a 35- to 45-minute warning that
13 they would need to make themselves available to
14 testify so that they would be kind of ready to go.
15 And --

16 THE HEARING OFFICER: Yes.

17 MR. NEFF: And I guess the point of this
18 was in part just to kind of remind everyone of that,
19 and then if we get to a point where we have 35 to 45
20 minutes to go -- and I know we were going to maybe
21 end a little early today -- whether you want me
22 to -- to warn a witness to -- to potentially make
23 themselves available.

24 THE HEARING OFFICER: Okay. Thank you.

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1 Yes. I did receive that.

2 Mr. Angelini, do you have a sense -- and
3 I'm not holding you to anything -- but do you have a
4 sense of how much longer you'll be with Ms. Deines?

5 MR. ANGELINI: My sense is about a half
6 hour.

7 THE HEARING OFFICER: Okay.

8 MR. ANGELINI: I appreciate you not holding
9 me to it.

10 THE HEARING OFFICER: No. I know it's a
11 moving target.

12 Ms. Cosgrove, you may have redirect, I'm
13 assuming.

14 MS. COSGROVE: I do, but it would be fairly
15 brief after Ms. Angelini finishes, so maybe 15 --
16 you know, I don't even know if it will be 15
17 minutes. You know, if he's...

18 MR. NEFF: I think we wanted to end at 3:30
19 if I remember correctly.

20 THE HEARING OFFICER: Right. Right.

21 MS. COSGROVE: I had just learned that
22 Mr. Angelini has an appointment, so part of this is
23 whether or not we can try to bring other people --
24 you know, whether we should try to bring somebody

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1 else on board or make sure that they're in the
2 queue, as you would say.

3 THE HEARING OFFICER: Why don't we have
4 something in the queue, given that they don't have
5 to show up anywhere; they just have to be -- you
6 know, we might get a few minutes, you know. But
7 let's do that.

8 MS. COSGROVE: I would say that, depending
9 on how the testimony comes out, I think I may not
10 be -- given some of your rulings on the -- my
11 direct, I do not know that I'll be calling
12 Mr. George or Ms. Deines' sister.

13 So the next person would just --

14 MR. NEFF: Maybe.

15 MS. COSGROVE: -- maybe could possibly be
16 Chief Justice Casey. So we should get him in the
17 queue.

18 THE HEARING OFFICER: Okay. Whoever you
19 want next who's on that list that we were expecting
20 is fine. And, you know, worst case scenario is they
21 sat somewhere for a few minutes and would have to be
22 called back tomorrow anyway.

23 MS. COSGROVE: Okay.

24 THE HEARING OFFICER: Okay?

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1 MR. NEFF: I just want to say, I have
2 advised him of the possibility. So I --

3 THE HEARING OFFICER: Great. Good.

4 MR. NEFF: -- haven't necessarily told him
5 the possibility may be in five to ten minutes of
6 testimony, but --

7 THE HEARING OFFICER: We'll get what we
8 can. Thank you.

9 Okay. So I think we're done --

10 MR. NEFF: I'll get out of your way.

11 THE HEARING OFFICER: I think we're done at
12 the sidebar, and we can continue on.

13 MS. COSGROVE: Yeah. I just want to -- I
14 didn't want to interrupt again, so I thought maybe
15 just to bring that up now. I apologize.

16 Thank you, Mr. Angelini.

17 MR. NEFF: Yes, thank you, Judge. I
18 appreciate it.

19 THE HEARING OFFICER: No problem.

20 (Return to the open proceedings)

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

22 THE HEARING OFFICER: Okay. Go ahead,
23 Mr. Angelini.

24

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1 BY MR. ANGELINI:

2 Q. Ms. Deines, you have previously testified
3 under oath, have you not, that this grab, which
4 you've told us today in your sworn testimony lasted
5 5, 10 to 15 seconds, took one to two seconds.

6 Isn't that correct?

7 A. In the deposition, yes.

8 Q. That's what you testified to under oath at
9 your deposition.

10 Am I not correct?

11 A. Yes.

12 Q. And you testified to that on at least two
13 occasions in your deposition.

14 Isn't that correct?

15 A. Yes.

16 Q. And today you say it wasn't one or two
17 seconds; it was 5, 10 or 15.

18 Now, on which of those two occasions were
19 you telling the truth, Ms. Deines?

20 MS. COSGROVE: Objection.

21 THE HEARING OFFICER: Well, I'll sustain.

22 THE WITNESS: Would you like me to answer
23 that?

24 THE HEARING OFFICER: No, I sustained the

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1 objection.

2 THE WITNESS: Okay. Thank you.

3 BY MR. ANGELINI:

4 Q. Now, you testified today that after this
5 occurred, after this grab occurred -- whether it was
6 one or two seconds, as you testified to in your
7 deposition twice, or whether it was up to 15 seconds
8 as you testified today -- but after it occurred,
9 your testimony on direct examination was, "I
10 immediately turned and saw Paul Sushchyk behind me
11 to my left."

12 That was your testimony on direct
13 examination, wasn't it?

14 A. No. I paused. I believe I said I paused.

15 Q. You didn't say, "I immediately turned and
16 saw Paul Sushchyk behind me and to my left"?

17 A. I don't -- I don't remember saying that. I
18 don't remember saying that.

19 Q. In any event, your testimony now is that
20 you paused before turning, right?

21 A. Yes. That is accurate.

22 Q. And what you say now, for how long a period
23 do you say you paused, Ms. Deines?

24 A. I don't know. I don't know. If I had to

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1 guess, it was a few seconds, but...

2 Q. What was --

3 A. I was in shock.

4 Q. How many seconds --

5 MR. ANGELINI: I ask that be stricken, your
6 Honor.

7 THE HEARING OFFICER: Okay. All right.

8 BY MR. ANGELINI:

9 Q. What do you -- you said a few seconds, if
10 you had to guess.

11 Do you mean by that --

12 MS. COSGROVE: Objection, your Honor. He
13 just asked that that be stricken and now he's
14 choosing to use that word.

15 THE HEARING OFFICER: No. That wasn't the
16 part that was stricken.

17 Overruled. Go ahead.

18 Q. I think you said, "if I had to guess, I
19 would say a few seconds."

20 Do you mean by that answer that you have no
21 recollection as to how long it was before you turned
22 and saw Judge Sushchyk?

23 MS. COSGROVE: Objection.

24 THE HEARING OFFICER: Overruled.

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1 A. Attorney Angelini, could you ask that
2 question again? I'm sorry. I missed a little bit
3 of it.

4 Q. Yes. I'll be happy to ask it again.

5 I asked you how long you say it was before
6 you turned and saw Judge Sushchyk after somebody
7 grabbed your buttocks, and you said, as I recall
8 your testimony of a minute ago, "if I had to guess,
9 I would say a few seconds."

10 That was your answer, was it not?

11 A. Yes. That is my answer.

12 Q. And do you mean by that answer that you
13 don't have any memory as to how long it was?

14 A. I mean that -- yes. That is what I mean by
15 that answer.

16 Q. Okay. So you remember some things that
17 occurred that evening, but other things you do not
18 remember.

19 Am I correct about that, Ms. Deines?

20 A. Yes, that is correct.

21 Q. In fact, at your deposition you stated, did
22 you not, that you paused for a few seconds before
23 you turned, and you said, "I mean, within
24 30 seconds."

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1 That was your deposition testimony, wasn't
2 it, Ms. Deines?

3 A. Yes. With -- yes.

4 Q. So sometime within 30 seconds after
5 somebody slid his or her hand under your -- under
6 your left buttocks, contracted it, and grabbed it,
7 and squeezed it, as many as 30 seconds later you saw
8 Judge Sushchuk for the first time to your left,
9 right?

10 A. For the first time after it happened, yes.

11 Q. Yes. You don't know how long he was there,
12 how long he had been there when you saw him, do you?

13 A. No, I do not.

14 Q. For all you know, he was there for
15 30 seconds.

16 Isn't that right?

17 MS. COSGROVE: Objection.

18 THE HEARING OFFICER: Overruled.

19 Q. Isn't that right?

20 A. So for all I know --

21 Yes, that is correct. That is correct.

22 Q. And if he was there for all of those
23 30 seconds, he could not have been the person who
24 slid his hand, his full hand under your left

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1 buttocks and grabbed and squeezed it.

2 Isn't that correct?

3 MS. COSGROVE: Objection.

4 THE HEARING OFFICER: Sustained.

5 THE WITNESS: I don't think that's correct.

6 Oh, I'm sorry. Sustained.

7 THE HEARING OFFICER: Okay. That's okay.

8 BY MR. ANGELINI:

9 Q. Well, if he was there for those 30 seconds,
10 he couldn't be the person who had contact with your
11 body, could he?

12 MS. COSGROVE: Objection.

13 THE HEARING OFFICER: Sustained.

14 MR. ANGELINI: Is that sustained, your
15 Honor?

16 THE HEARING OFFICER: Yes.

17 MR. ANGELINI: I'm sorry. I didn't hear
18 you.

19 THE HEARING OFFICER: Yes. That's all
20 right.

21 BY MR. ANGELINI:

22 Q. Now 30 seconds, Ms. Deines, your best
23 memory when your deposition was taken. And that
24 was, as I recall, last winter sometime; is that

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1 right?

2 January of 2020, right?

3 A. That is correct.

4 Q. And during those 30 seconds, you were
5 continuing your conversation with Jocelynn Welsh,
6 weren't you?

7 A. I was facing towards Jocelynn, and it
8 wasn't -- it was under 30 seconds.

9 Q. Well, you said you said "immediately,
10 within 30 seconds"?

11 A. Right.

12 Q. Do you want to change that testimony now?

13 A. No. I think under 30 seconds is what I --
14 is within 30 seconds.

15 Q. I see.

16 So somewhere from one second to 29 seconds,
17 would that be a fair way of saying it?

18 A. Yes, I think so.

19 Q. In any event, going back to what
20 occurred -- strike that. Strike that.

21 Let me turn now to Exhibit Number 6.

22 THE HEARING OFFICER: All right.

23 A. Attorney Angelini, that would be my
24 statement; is that correct?

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1 Q. Yes. That is your statement dated
2 April 29th, at 3:00 p.m.

3 A. Okay.

4 Q. This is the -- do you have that available
5 to you?

6 A. I do.

7 MR. ANGELINI: Do you want to call that up,
8 Mr. Loos?

9 THE REPORTER: Do you want it on the screen
10 or --

11 MR. ANGELINI: Yeah. On the screen, if you
12 would.

13 THE REPORTER: Ms. Deines, perhaps.

14 THE WITNESS: Yes, I can share it.

15 THE REPORTER: It might be easier.

16 THE HEARING OFFICER: Thank you.

17 BY MR. ANGELINI:

18 Q. All right.

19 Now, this is a statement that you made, you
20 typed approximately four days after this alleged
21 incident.

22 Is that correct, Ms. Deines?

23 A. Yes.

24 Q. And directing your attention to the third

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1 line of the body of this statement, you said:

2 "I believe the person who grabbed me
3 was Paul Sushchuk because he had recently
4 come over to the table where I was
5 seated..."

6 Now, when you describe him as having
7 recently come over to the table, you're talking
8 about, are you not, that you saw him to your right
9 during the course of your conversation with
10 Jocelyne Welsh, right?

11 MS. COSGROVE: Objection.

12 THE HEARING OFFICER: Overruled.

13 Is that --

14 A. When I'm saying when -- I'm sorry.

15 So when I say, "because he had recently
16 come over to the table where I was seated," and your
17 question is?

18 Q. Well, my question is, what you're referring
19 to is having seen him to your right during the
20 course of your conversation with Jocelyne Welsh.

21 Is that what you're referring to there in
22 this statement?

23 A. I believe it's -- what I'm referring to is
24 both when I saw him on my right-hand side and also

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1 when I turned around and saw him behind me. I think
2 I'm also -- I'm just trying to portray that he had
3 come over to the table.

4 Q. All right.

5 And then you go on to say:

6 "... and" he "was" -- I'm sorry, "and
7 was the only person directly behind me at
8 the time of the grab."

9 Those are your words, right?

10 A. Yes.

11 Q. Those are the words that you presented as a
12 truthful statement to Judge Casey --

13 A. Yes.

14 MS. COSGROVE: Objection.

15 Q. -- in order for him to conduct his
16 investigation.

17 Isn't that right? Right?

18 A. Yes. That is correct.

19 Q. He asked you to prepare a statement; you
20 told him you'd prepare a statement; and you
21 understood the responsibility of giving him a
22 truthful statement, didn't you?

23 A. I did.

24 Q. But, in fact, as we have -- as you have

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1 acknowledged, you have no idea whether he was the
2 only person behind you -- that is, whether Judge
3 Sushchych was the only person behind you at the time
4 of this alleged grab.

5 You just don't know; isn't that correct?

6 MS. COSGROVE: Objection.

7 THE HEARING OFFICER: Overruled.

8 You can answer it, Ms. Deines.

9 A. I don't know for certain because I had not
10 turned around before it happened.

11 Q. And when you say you don't know for
12 certain, the fact is you just don't know at all,
13 whether for certain or uncertain; you have no
14 knowledge of who or how many people were behind you
15 while you were sitting on that stool at the time
16 that somebody grabbed you, right?

17 MS. COSGROVE: Objection.

18 THE HEARING OFFICER: Sustained.

19 Q. Now, let me now direct your attention to
20 Exhibit Number 5.

21 THE HEARING OFFICER: And we'll get that
22 from Mr. Loos.

23 THE WITNESS: Would you like me to pull
24 up -- is it the text message between my sister and

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1 I?

2 THE HEARING OFFICER: Yes, it is.

3 MR. ANGELINI: It is a text message, April
4 25, 9:25 p.m. That's correct.

5 THE HEARING OFFICER: Thank you.

6 THE WITNESS: Thank you.

7 I'm sorry. I don't know if I have it here.
8 I do.

9 THE HEARING OFFICER: Thank you.

10 MR. ANGELINI: Do you have it? Yes.

11 MS. COSGROVE: I can't see it. I have a
12 deposition in front of me.

13 THE WITNESS: Oh, let me stop and restart.
14 Give me two seconds.

15 THE HEARING OFFICER: Okay.

16 THE WITNESS: Can everyone see it now?

17 THE HEARING OFFICER: Yes, I can.

18 MR. ANGELINI: All right.

19 Q. Now, I want -- I want to direct your
20 testimony (sic) to the last three lines of this
21 exhibit. And let me deal now to the subject of the
22 flask and then I'll ask you some questions about
23 this.

24 You have stated that Judge Sushchuk had a

1 flask with him that evening.

2 Am I correct?

3 A. Yes.

4 Q. And you had some conversation with him
5 about that flask, did you not?

6 A. It wasn't necessarily about the flask. It
7 was about what he was drinking.

8 Q. And this conversation is conversation that
9 took place after someone had -- had physical contact
10 with you, right?

11 A. Yes.

12 Q. And there was some conversation about what
13 kind of alcohol he had in the flask, and whether it
14 was Irish whiskey or some other kind of whiskey,
15 words to that effect.

16 Is that a fair way to describe it?

17 A. Yes.

18 Q. And you and he participated in that
19 conversation with other people at the table.

20 Am I correct about that?

21 A. I believe with Evelyn Patsos, yes.

22 Q. Now, Judge Sushchuk did not remove that
23 flask from his pocket that evening, did he?

24 A. He didn't pull it out all the way, no.

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1 Q. Well, when you remove something, you take
2 it from where it is and you put it somewhere else,
3 right?

4 MS. COSGROVE: Objection.

5 THE HEARING OFFICER: I'll sustain to that.

6 Q. Well, what Judge Sushchyk did is he opened
7 his side pocket -- as I'm doing -- and pulled that
8 flask, the top of it, and showed about one inch of
9 it.

10 MS. COSGROVE: Objection.

11 Q. Isn't that what he did?

12 THE HEARING OFFICER: Overruled.

13 Q. Isn't that what he did?

14 A. Yes. It was -- it was more of a show; less
15 of a -- he didn't pull it out, yes.

16 Q. He showed one inch of the top of his flask,
17 right?

18 MS. COSGROVE: Objection.

19 THE HEARING OFFICER: Overruled.

20 A. An inch? Maybe a few inches. Maybe two
21 inches.

22 Q. Let me direct you to your deposition
23 testimony at Page 87. If you could pull that up,
24 please, Ms. Deines.

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1 A. Sure. I'm sharing my screen.

2 Can I -- can I pull it up with the screen
3 or should I stop?

4 THE HEARING OFFICER: No, you can share, if
5 that's okay with you.

6 THE WITNESS: Sure.

7 And I'm sorry, Attorney Angelini. You said
8 Page --

9 BY MR. ANGELINI:

10 Q. 87.

11 A. It's going to take me a minute.

12 I don't have page 87. Did you say 27?

13 Q. 87.

14 A. Oh, I'm sorry, I'm going by my -- I'm going
15 by my actual pages.

16 Yes, I see it.

17 MS. COSGROVE: It's a Min-u-script, so...

18 THE WITNESS: Yep. I got it.

19 BY MR. ANGELINI:

20 Q. Before we go to that, let's look at Page 85
21 Ms. Deines.

22 A. Okay.

23 Q. And I'll direct your attention to Line 11.

24 A. Yes.

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1 Q. The question was:

2 "He said he was carrying a flask,"
3 question mark.

4 Your answer:

5 "He didn't say it. He showed it.

6 "Q." -- Line 13 -- "Yeah. How did
7 he -- what did he do to show it," question
8 mark.

9 Line 15, your answer:

10 "He opened his left coat pocket, and
11 it was in his" pocket -- "it was in his
12 jacket pocket, and he raised it out of his
13 jacket pocket."

14 Now let me direct your attention to

15 Page 87, Line 6:

16 "Q. Okay. Okay. Did you see the
17 entire flask?

18 "A. No.

19 "Q. Okay. What kept you from seeing
20 the entire flask?

21 "A." -- Line 11 -- "He just pulled it
22 out a little bit, a small amount, maybe an
23 inch.

24 "Q. Yeah.

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1 Line 14, your answer:

2 "Maybe less."

3 That was your testimony under oath at the
4 time of your deposition in January of 2020, was it
5 not, Ms. Deines?

6 A. It was, yes.

7 Q. Were you telling the truth that day?

8 A. To the best of my knowledge, of course.

9 Q. Thank you.

10 A. Can I stop sharing?

11 Q. Yes. Thank you very much.

12 Now, going back to Exhibit Number 5 --

13 A. My sister's text messages?

14 Q. Yeah. The text message to your sister?

15 A. Would you like me to share that?

16 Q. Please do it. Thank you.

17 THE WITNESS: Does everyone see it?

18 MS. COSGROVE: Yes. I do. At least I do.

19 I'm sorry.

20 BY MR. ANGELINI:

21 Q. You said in the first sentence of the last
22 paragraph:

23 "He is also carrying a hip flask, so
24 maybe just fell," double question mark.

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1 Were you referring to the hip flask -- what
2 you called a "hip flask" falling? Or are you
3 referring to Judge Sushchyk falling?

4 A. I was referring to Judge -- to a possible
5 scenario, Judge Sushchyk falling.

6 Q. Now, if someone, in your experience, was
7 walking behind you and fell, and you felt the effect
8 of that fall, that person could not, in your
9 experience, slide his or her hand under your left
10 buttock, close the fingers of that hand and squeeze
11 or grab it.

12 Isn't that correct?

13 MS. COSGROVE: Objection, your Honor.

14 THE HEARING OFFICER: Sustained.

15 Q. But you concluded that maybe what you
16 experienced was Judge Sushchyk falling down?

17 MS. COSGROVE: Objection.

18 THE HEARING OFFICER: Overruled.

19 Q. Is that right? Isn't that right?

20 A. I was working through what had happened,
21 and that was a -- you know, it was a possibility, I
22 guess.

23 Q. That was a possibility in your mind within
24 an hour of this event having occurred, right?

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1 A. I'm sorry, Attorney Angelini. I didn't
2 hear that question.

3 Q. That was a possibility in your mind within
4 an hour of your having experienced whatever you
5 experienced?

6 A. It wasn't a possibility within an hour. It
7 was -- it was a way I was working through what had
8 happened.

9 Q. Well, you said to your sister -- so maybe
10 you didn't use the word "he," but you were saying to
11 your sister, "maybe he just fell."

12 That's what you were saying to your sister,
13 right?

14 MR. NEFF: Objection.

15 THE HEARING OFFICER: Sustained. It's in
16 the context.

17 Q. "He is also carrying a hip flask, so maybe
18 just fell?"

19 That's what you told your sister, right?

20 A. That is what I sent in this text message,
21 yes.

22 Q. Were you suggesting to her that maybe he
23 was falling down and, in the course of falling down,
24 had made contact with your body?

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1 A. I -- yes.

2 Q. And then you said:

3 "Except it was a distinct pinch,"
4 right?

5 A. Yes.

6 Q. So that's how you described it to your
7 sister, as a "distinct pinch." The grabbing of the
8 butt was a "distinct pinch."

9 Is that a fair way -- does that fairly
10 describe what you were describing to your sister?

11 A. I -- I wrote that, yes.

12 But in the context of this text message
13 section, it was mostly to just say that -- that it
14 was on purpose; that it was purposeful. I don't
15 think I meant it -- I didn't mean -- I meant -- I
16 didn't mean "pinch," like you take two fingers and
17 pinch.

18 Q. You didn't mean the word "pinch"; is that
19 what you said?

20 A. Yeah. I don't believe I meant the word
21 "pinch."

22 Q. So when you said "except it was a distinct
23 pinch," you didn't mean what you said.

24 Is that it?

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1 A. Yeah. I was trying to convey that -- that
2 it was on purpose. That it was purposeful. It
3 wasn't by accident.

4 Q. But those are the words that you picked in
5 order to convey that, is it?

6 A. Yes.

7 MR. ANGELINI: Now, I'm sorry, your Honor.
8 Just almost there.

9 THE HEARING OFFICER: All right.

10 While we are waiting, let me just say
11 something regarding members of the public.

12 Mr. Loos, I am not inclined to allow in
13 people who use a statement that could be construed
14 as a view of the evidence in this case into the --
15 any more than I would somebody wearing a sign in the
16 courtroom.

17 So, for the record, I am excluding and
18 would ask that you exclude the one waiting person
19 who has that type of a name.

20 THE REPORTER: Understood.

21 THE HEARING OFFICER: That's the reason why
22 I'm doing it for the record.

23 MR. ANGELINI: Thank you, your Honor.

24 May I resume?

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1 THE HEARING OFFICER: Please.

2 MR. ANGELINI: Thank you.

3 Q. Ms. Deines, the next day, on April 26th,
4 the day after the evening in which someone had
5 contact with your body, you wrote a message to a
6 group of your friends, including -- to a group of
7 your friends.

8 Am I not correct?

9 A. I did, yes. Yes.

10 Q. And to whom did you write that?

11 A. My friend, Ashley Mroczek; and my friend,
12 Serena Mohan.

13 MR. ANGELINI: Mr. Loos, could you call up,
14 please, what is Exhibit Y to the Commission's
15 exhibits.

16 THE REPORTER: One moment, please.

17 MS. COSGROVE: Your Honor, could we just go
18 off the record just for a brief moment? I have a
19 sidebar question I would like to ask.

20 THE HEARING OFFICER: Let's go to the chat,
21 please.

22 MS. COSGROVE: Yes.

23 (Meeting in private breakout room. Hearing
24 Officer Josephson, Mr. Neff, Ms. Cosgrove,

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1 Mr. Angelini, Judge Sushchyk and Mr. Loos
2 present)

3 MS. COSGROVE: And this is probably -- I
4 apologize if it's my fault, but I was just -- I was
5 concerned because I wasn't sure. I thought the
6 second text message was not -- it's probably more
7 Mr. Angelini saying.

8 Mr. Angelini, did you want that second
9 message to come in? I thought that was something
10 that was out of the order of completeness that
11 was -- you had requested that we not bring in.

12 MR. ANGELINI: I've decided to use it as an
13 exhibit.

14 MS. COSGROVE: Okay. I just wanted to make
15 sure. I just wanted to make sure that I was -- I
16 was not aware of that. I probably would have, you
17 know, let Ms. Deines -- Deines know, or whatever.

18 But I just wasn't sure I was not -- we
19 weren't doing something improper. I wanted to stop
20 it on the record if it was an improper -- if I was
21 misunderstanding. I just needed a point of
22 clarification.

23 I apologize. I know this was -- it was a
24 point of contention about the completeness of it.

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1 So I definitely asked about whether or not
2 there was other messages or whatnot, and I wanted to
3 make sure that I had that clearly on the record
4 before we went down a line of questioning and got
5 too far.

6 THE HEARING OFFICER: Okay. Thank you.

7 While we're here, let me just complete the
8 record by saying -- and I don't know.

9 Mr. Loos, are you the only other one who
10 can see the people who are in the waiting room?

11 THE REPORTER: Yes.

12 THE HEARING OFFICER: Okay.

13 Is there a way of preserving the name of
14 the individual, or the name that was posted trying
15 to get in?

16 THE REPORTER: To my knowledge, no.

17 THE HEARING OFFICER: Then I'll say on the
18 record there was someone who was in the waiting
19 room, and their name was "he did it." And so that
20 person was excluded. Whoever that is is not coming
21 in.

22 It's as I said --

23 MS. COSGROVE: Of course.

24 THE HEARING OFFICER: -- it's tantamount to

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1 somebody bringing in a sign during a proceeding, and
2 I'm not going to allow it.

3 MS. COSGROVE: It's improper.

4 MR. NEFF: I absolutely agree. In fact, in
5 the protocol we wrote up, there's a section about
6 that.

7 THE HEARING OFFICER: Okay.

8 MR. NEFF: And at first I didn't understand
9 what that meant.

10 THE HEARING OFFICER: Yeah.

11 MR. NEFF: But that's what that means.
12 Which is people come up with, like, all sorts of
13 offensive names --

14 THE HEARING OFFICER: Right.

15 MR. NEFF: -- to call themselves, and then
16 they enter these chat rooms, and that's how they
17 make their offensive case. So --

18 THE HEARING OFFICER: Okay. Well, thank
19 you.

20 Mr. Loos has been watching as well, and I
21 think Mr. Loos has allowed -- allowed me to let them
22 in, and if I didn't let them in, then they waited
23 out there for a while, and that was one of the ones
24 that was not permitted in. That was the only one

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1 that was not permitted in.

2 Galaxy S10 was turned off as to the video
3 feed because of a political paraphernalia that was
4 what he was displaying.

5 Okay. So we'll go back. We'll leave our
6 breakout room.

7 MS. COSGROVE: I apologize. I know this is
8 a lot of work. I just wanted to make sure. It is
9 easier if we could just go up to sidebar, but I just
10 wanted to make sure.

11 THE HEARING OFFICER: No apology necessary.

12 MR. NEFF: I wasn't sure if that was
13 Exhibit D, the exhibit to the whole hearing, or
14 Exhibit D to my motion in limine.

15 MR. ANGELINI: So for -- that is exhibit --
16 the exhibit is Exhibit Y to the disclosures made by
17 the Commission, the exhibits marked by the
18 Commission. I'm going to offer it in evidence
19 eventually, but I'm just trying to find it.

20 MS. COSGROVE: Yeah. Mr. Angelini, I was a
21 little confused as to the status of the motion in
22 limine, but I appreciate it.

23 Thank you -- thank you, guys.

24 THE HEARING OFFICER: Okay. We're done.

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1 We'll go back. Thanks.

2 (Return to open proceedings)

3 THE HEARING OFFICER: We're back.

4 MR. ANGELINI: All right.

5 Q. Ms. Deines, during your direct examination
6 this morning you were asked about contact you had
7 with Judge Sushchuk on the day following this
8 alleged incident. And as I recall the record -- but
9 I invite you to correct me -- you indicated that you
10 had no interaction with Judge Sushchuk on the second
11 day.

12 Is that your testimony?

13 A. I had no verbal interaction with Judge
14 Sushchuk on the second day; that is correct.

15 Q. And you then testified that you did see him
16 once on the second day, right? At lunch?

17 A. I -- I saw him in the morning and at lunch,
18 yes.

19 Q. In the morning you saw him from a distance,
20 right?

21 A. Yes.

22 Q. And at lunch, the lunch took place where?

23 A. It was sort of up in an upstairs room from
24 where the conference was held. It was a smaller

1 sort of meeting room.

2 Q. And was it a -- how many tables were there
3 in that room?

4 A. I don't know for certain.

5 Q. Do you have any memory whatsoever with
6 respect to that?

7 A. I'm sorry, of the exact number? Sorry.

8 Q. Approximately. The approximate number.

9 A. The -- so configurations can be ten people
10 per table, eight people per table or six people per
11 table usually for conferences. And I believe the
12 room was small. I think that there were -- but the
13 tables were sort of larger.

14 There were two -- if I'm remembering
15 correctly, two rows of tables, so there were
16 probably, I would say, probably eight tables of, you
17 know, six or eight people. Six people each,
18 probably, around that.

19 Q. All right.

20 And you -- and you -- you sat at lunch at
21 one of those tables --

22 A. I did.

23 Q. -- right?

24 And you saw Judge Sushchuk also in the

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1 lunch, right? Having lunch?

2 A. Yes. Yes.

3 Q. He didn't sit at your table, did he?

4 A. No.

5 Q. He sat at a different table?

6 A. Correct. Yes.

7 Q. And you had no interaction with him
8 whatsoever at that table -- I'm sorry, at that
9 lunch?

10 A. No verbal, correct. No verbal interaction,
11 yes.

12 Q. Well, did you have any physical contact
13 with him?

14 A. No.

15 Q. Okay. And you said on direct examination
16 that, "I thought that he sat too close to me at
17 lunch."

18 Do you remember saying that?

19 A. Yes. Yes. That's correct.

20 Q. He sat at a separate table, though, right?

21 A. He was at a separate table, but there was a
22 retirement presentation, and so everyone was -- had
23 sort of moved their chairs to watch the retirement
24 presentation.

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1 Q. And he moved his -- are you saying he moved
2 his chair to watch the retirement presentation?

3 A. Yes, I believe so.

4 Q. So going back to your exhibit, and that was
5 the last time -- strike the question.

6 That's the last time you saw Judge Sushchuk
7 that day --

8 A. Yes.

9 Q. -- right?

10 A. I believe so, yes, at lunch.

11 Q. And that was the only time you saw him
12 other than having seen him from a distance earlier
13 in the morning, right?

14 A. Yes.

15 Q. But on the 26th, on that afternoon, at
16 4:05 p.m., you wrote to your sister -- or you wrote
17 to your two friends and you say:

18 "Kinda thought maybe it was a
19 mistake..."

20 Referring to the physical contact with you?

21 MS. COSGROVE: Your Honor, I would just ask
22 that the exhibit be brought back up if he's going to
23 refer to it.

24 MR. ANGELINI: Of course. Of course. I

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1 apologize for --

2 MR. NEFF: That's okay. With this whole
3 process, it's a little confusing. So I just
4 wanted -- I just thought it would be better if it's
5 up on the screen.

6 MR. ANGELINI: When it's up. When it's up.

7 THE WITNESS: Would you like me to do that?

8 THE REPORTER: I don't know if it's been
9 identified as an exhibit yet.

10 MR. NEFF: It's not been identified as an
11 exhibit. It is Exhibit Y on the Commissions's list
12 of potential --

13 THE HEARING OFFICER: Okay. Well, then
14 let's get Exhibit Y instead of Ms. Deines having to
15 find it and --

16 MR. ANGELINI: Sure.

17 THE HEARING OFFICER: I think it's going to
18 be offered at some point.

19 THE REPORTER: I've sent the link already.

20 THE HEARING OFFICER: Thank you.

21 MR. ANGELINI: Are we up?

22 THE REPORTER: Not yet.

23 MS. COSGROVE: I have it.

24 THE HEARING OFFICER: Yes.

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1 MR. ANGELINI: Okay.

2 Q. In the first paragraph of that message you
3 said:

4 "I just attended a conference for
5 judges and while at the bar after dinner
6 one of the newer judges full palmed my
7 ass."

8 MS. COSGROVE: Objection, your Honor. I
9 believe this has not been entered as an exhibit yet.

10 THE HEARING OFFICER: No, it hasn't.

11 MR. ANGELINI: All right. I offer it.

12 THE HEARING OFFICER: All right.

13 No objection?

14 MS. COSGROVE: No objection.

15 THE HEARING OFFICER: Okay. Then we're up
16 to Exhibit 7, I believe.

17 (Document marked as Commonwealth's
18 Exhibit 7 admitted into evidence)

19 THE HEARING OFFICER: Okay.

20 BY MR. ANGELINI:

21 Q. All right.

22 That's how you described what you say had
23 occurred to your two friends:

24 "... one of the newer male judges full

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1 palmed my ass," right?

2 A. That is accurate. That's what I said.

3 Q. That's not how you described it in your
4 testimony today, is it?

5 THE HEARING OFFICER: You're getting kind
6 of too far away from the microphone and you started
7 to drop out.

8 MR. ANGELINI: No one's ever asked to have
9 a better look at me, Judge, but I appreciate it.

10 Q. That's not how you described it in your
11 testimony today, is it?

12 A. I didn't describe it exactly as this.
13 That's correct.

14 Q. And then you go on to say, "I kind of
15 thought" -- strike that.

16 In the second paragraph:

17 "Kinda thought maybe it was a mistake
18 until today. He spent the day hovering
19 uncomfortably around me."

20 Now that statement was not true, was it,
21 Ms. Deines?

22 A. That was my perception of what -- that was
23 my perception after having had this happen to me.

24 Q. But you've told us -- put your perception

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1 aside.

2 You've told us what the reality was. The
3 reality was that you saw him from a distance once in
4 the morning and you saw him at a separate table
5 during a luncheon, at lunch.

6 That was the reality, right?

7 MS. COSGROVE: Objection.

8 THE HEARING OFFICER: Sustained.

9 Q. That's what your testimony is, right?

10 A. My testimony is that I thought he was --
11 you know, that my perception was an uncomfortable
12 closeness at lunch.

13 Q. That was how you say you perceived what
14 you've described as what happened, right?

15 MS. COSGROVE: Objection.

16 THE HEARING OFFICER: Overruled.

17 Q. You're telling us how you perceived --

18 THE HEARING OFFICER: Well, no. Now you're
19 asking a whole other question.

20 MR. ANGELINI: No. No, I'm not.

21 I'll revert to the question. I was trying
22 to make it easier for her. I'll stand by the
23 question.

24 What's your answer?

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1 THE HEARING OFFICER: Do you remember the
2 question?

3 THE WITNESS: I'm sorry, Attorney Angelini.
4 So if you're asking me --
5 Yeah. Can you ask me again? I apologize.

6 THE HEARING OFFICER: Okay.

7 BY MR. ANGELINI:

8 Q. What you were saying to your friends in the
9 last two lines of the second paragraph was to
10 describe your perception of the facts that you have
11 given us in your testimony here today, right?

12 MS. COSGROVE: Objection.

13 A. Yeah.

14 THE HEARING OFFICER: Overruled.

15 It may stand. Thank you.

16 A. Yes.

17 Q. And so what you're also saying is that
18 until you reached the perception that you're
19 referring to here, until you reached that
20 perception, on April 29th, in your words, you "kinda
21 thought maybe it was a mistake," right?

22 MS. COSGROVE: Objection.

23 THE HEARING OFFICER: Overruled.

24 Go ahead, Ms. Deines. You can answer.

1 A. So, I'm sorry, your question is about my
2 statement on April 29th or the text message on the
3 26th?

4 Q. I'm referring to your text message.

5 A. Or 27th?

6 Q. Of April 26th.

7 To be clear --

8 A. Okay.

9 Q. -- what you're saying in that second
10 paragraph was that until you perceived what you have
11 described here as having occurred on April 26th, you
12 kind of thought what occurred was a mistake, right?

13 A. I think I was more hopeful that it was a
14 mistake.

15 Q. Now, Ms. Deines, in addition to describing
16 whatever happens by whoever did it on the evening of
17 April 25th in the way in which you have described it
18 here during your testimony, you've also described it
19 in other ways, have you not?

20 A. Probably, yes.

21 Q. In fact, you -- you told Ms. Stern that you
22 were about to sit down and that Judge Sushchuk, as
23 you were about to sit down, reached out and very
24 forcibly grabbed your ass.

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1 That's what you told Ms. Stern, isn't it?

2 A. I don't remember telling her that.

3 Q. Well, we'll ask her.

4 And how about Ms. Patsos? Do you remember
5 telling Ms. Patsos that Judge Sushchyk grabbed your
6 ass as you were about to sit down? Do you remember
7 saying that to her?

8 A. I actually don't remember saying that to
9 her.

10 Q. Do you remember saying that to anybody?

11 A. No.

12 Q. As this person -- I'm just about done.

13 As this person, to use your word, slid his
14 or her hand under your left buttocks and squeezed or
15 grabbed it, were you lifted off the barstool?

16 A. Not -- not standing, not -- no.

17 Q. Your answer is "no"?

18 A. My answer is "no."

19 MR. ANGELINI: All right.

20 Let me just have one minute, your Honor;
21 check my notes.

22 THE HEARING OFFICER: Sure. Sure.

23 MR. ANGELINI: Thank you.

24 A couple of more questions, Ms. Deines.

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1 Q. You had been working, I take it, on
2 preparing this conference for some period of time;
3 is that right?

4 A. Yes.

5 Q. And would it be fair to say that at the end
6 of the first day of the conference, that day ended
7 and you went down with your friends to have a drink
8 in the Bayzos Pub, that you were tired after a long
9 day and after a long experience?

10 MS. COSGROVE: Objection.

11 A. Yes.

12 MS. COSGROVE: I don't believe that was her
13 testimony, your Honor.

14 THE HEARING OFFICER: Overruled.

15 A. I think that's accurate, yes.

16 MR. ANGELINI: I have no further questions,
17 your Honor. Thank you very much.

18 THE HEARING OFFICER: All right.

19 Redirect?

20 MS. COSGROVE: Yes. Thank you. Just a few
21 brief questions, your Honor.

22 May I inquire, your Honor?

23 THE HEARING OFFICER: Yes, please.

24 MS. COSGROVE: Thank you.

1 REDIRECT EXAMINATION

2 BY MS. COSGROVE:

3 Q. Ms. Deines, on cross-examination
4 Mr. Angelini discussed at length about your
5 conversation with Ms. Welsh.

6 During that conversation, were you aware of
7 your surroundings in the -- in the pub, I should
8 say?

9 A. Yes. Yes.

10 Q. And were you aware if people were around
11 you and close to you and in close proximity to you
12 while you were having that conversation with
13 Ms. Jocelynnne Welsh?

14 MR. ANGELINI: I object.

15 THE HEARING OFFICER: Overruled.

16 A. Yes.

17 Q. So your recollection today, do you believe
18 that there was anybody standing behind you on the
19 night of April 25th, 2019?

20 MR. ANGELINI: I object.

21 THE HEARING OFFICER: Overruled.

22 A. No, I do not believe anyone else was
23 standing behind me.

24 Q. I now want to draw your attention to the

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1 exhibit that hopefully is probably still up. It's
2 now, I believe, marked as Exhibit 7. The text
3 message to your friends that was sent out on April
4 26th, 2019.

5 A. Yes.

6 Q. For completeness, could I just have you
7 read the entire thing so that we're all on the -- we
8 all know what it says?

9 A. Yes.

10 You just may have to give me a second.

11 Q. Sure.

12 Are you okay? Do you need a moment?

13 A. Sorry. Just give me one second.

14 Q. Take your time.

15 THE HEARING OFFICER: Do you need a moment?

16 THE WITNESS: I think so.

17 THE HEARING OFFICER: Okay. Take your time
18 and --

19 MS. COSGROVE: I'm almost done, Ms. Deines.

20 THE WITNESS: Okay. Just give me two
21 seconds.

22 Okay.

23 So it starts with:

24 "All right guys. I just attended a

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1 conference for judges, and while at the bar
2 after dinner one of newer male judges full
3 palmed my ass.

4 "I'm still reeling a bit today from
5 it. Kinda thought it was a mistake until
6 today he spent the day hovering
7 uncomfortably around me.

8 "Ugh. My sister wants me to report
9 it. I'm reluctant for a million reasons.
10 What are your thoughts?"
11 And my friend responds:

12 "Oh, Lord. Let me chew on this one.
13 I'm sorry, Deines. Did you tell Lawrence?"
14 And I said:

15 "I'm still on the fence about
16 reporting it. I did write down all the
17 details just in case."

18 Q. When you -- as you were reviewing the
19 document that Mr. Angelini put into evidence, when
20 you say "I'm reluctant for a million reasons"
21 concerning reporting it, can you please tell us what
22 your reluctance was?

23 MR. ANGELINI: My objection.

24 THE HEARING OFFICER: I'll sustain.

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1 Q. Drawing your attention to the next -- the
2 second-to-the-last paragraph, the first line:

3 "I am still on the fence about
4 reporting."

5 Could you tell us what your state of mind
6 was when you wrote that text message?

7 MR. ANGELINI: My objection.

8 THE HEARING OFFICER: Sustained.

9 Q. Emily, could you tell us what factors you
10 were weighing as you were considering reporting this
11 incident to Judge Casey?

12 MR. ANGELINI: My objection.

13 THE HEARING OFFICER: Well, tell me -- tell
14 me how that's admissible, Ms. Cosgrove.

15 MS. COSGROVE: I believe it goes to her
16 state of mind, some of the decision -- the thought
17 process that went into -- the exact state of mind
18 what she -- what she was thinking when she made that
19 report.

20 THE HEARING OFFICER: Well, I had
21 previously ruled that state of mind was not
22 relevant, and if something has changed because of
23 the testimony, I'll hear you regarding it. But if
24 you don't have more than that, I'll stick with my

1 original ruling.

2 MS. COSGROVE: Just one more brief question
3 as to this text message.

4 Q. I note that in the first paragraph, as
5 Mr. Angelini pointed out, that you wrote that:

6 "... one of the newer male judges full
7 palmed my ass."

8 There's been some speculation about -- some
9 concern about the terms you've used as far as, you
10 know, "full palmed."

11 Can I ask you, as you sit here today, what
12 did you feel on the night of April 25th, 2019?

13 A. I felt someone slide their hand under my
14 left buttock and grab -- grab upwards (indicating).

15 Q. And you're making a full gesture, a full
16 hand motion.

17 Is that with your full hand?

18 A. Yes.

19 Q. So why in the past have you used different
20 terms as "pinched" or "squeezed," or -- as opposed
21 to "grabbed"?

22 A. I think that -- I think in retelling it,
23 you're just -- you know, it's a grab. I don't
24 know -- I'm not -- I'm so sorry.

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1 I'm not sure what else to say. It was a
2 grab. And "full palm to my ass" and "grab" I
3 consider very close. You know, "squeezed," that was
4 definitely a squeezing. "Pinched," I think I was
5 probably using with my sister to just sort of denote
6 that it was intentional; that I did not believe it
7 was a mistake.

8 MS. COSGROVE: Thank you.

9 I don't believe I have any further
10 questions, your Honor.

11 THE HEARING OFFICER: All right. Thank
12 you, then, Ms. Deines. Thank you very much.

13 We don't have any more reason why you need
14 to be here, but if you did want to, obviously you're
15 welcome to stay and be part of any public viewing.

16 Okay?

17 THE WITNESS: Thank you, Judge Josephson.

18 THE HEARING OFFICER: Okay. All right.

19 We really have run right up to the time
20 that we said we would be suspending, and I don't
21 think it would make any sense to have another
22 witness right now.

23 So we'll -- if there's no -- nothing else
24 for us to address, and if it's agreeable to

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1 everyone, we'll suspend for the day.

2 Any problem with that, Mr. Angelini?

3 MR. ANGELINI: None whatsoever, your Honor.

4 Thank you.

5 THE HEARING OFFICER: Thank you.

6 Ms. Cosgrove?

7 MS. COSGROVE: Just trying to get -- it's
8 just about scheduling. I think just for our
9 purposes we're -- we're not going to be calling
10 Mr. Lawrence George or Alison Deines.

11 And then we will start tomorrow what time?
12 Just for scheduling, once again. It was a ten
13 o'clock start?

14 THE HEARING OFFICER: Ten o'clock works for
15 me if it works for everyone else. If you want to
16 adjust that -- it seemed to work well, but...

17 MS. COSGROVE: Yes.

18 THE HEARING OFFICER: Okay. All right.
19 Then let's start at 10:00 tomorrow.

20 Thank you all very much. We'll see you
21 then.

22 MS. COSGROVE: Thank you, your Honor.

23 Thank you, Mr. Angelini. Thank you very
24 much, Mr. Loos. Cheers.

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THE REPORTER: Off the record.

THE HEARING OFFICER: All right.

(Whereupon, the proceedings were
adjourned at 3:26 p.m.)

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C E R T I F I C A T E

I, Alexander K. Loos, Registered Diplomat
Reporter, do hereby certify that the foregoing
transcript, Volume I, is a true and accurate
transcription of my stenographic notes taken on July
20, 2020.



Alexander K. Loos
Registered Diplomat Reporter

- - - -

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D I S C L A I M E R

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

Hearing, Day 2
July 21, 2020
Videoconference



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

- - - - -x

IN RE: PAUL M. SUSHCHYK

- - - - -x

ALL PARTICIPANTS APPEARED REMOTELY
VIA ZOOM VIDEOCONFERENCE

BEFORE: HON. BERTHA JOSEPHSON (Ret.),
Hearing Officer

APPEARANCES:

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ALSO PRESENT:

Hon. Paul M. Sushchyk

Held via Zoom

Tuesday, July 21, 2020

10:01 a.m.

(Alexander Loos, Registered Diplomat Reporter)

* * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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JOHN D. CASEY

BY MR. NEFF	2-13		2-145	
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BY MR. ANGELINI		2-142		
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EVELYN PATSOS

BY MR. NEFF	2-151			
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BY MR. ANGELINI		2-193		
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JOCELYNNE D. WELSH

BY MR. NEFF	2-206			
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E X H I B I T S

NO.	DESCRIPTION	IN EVD
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Exhibit 8	Photograph of the Bayzos Pub looking towards the rear	2-55
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Exhibit 9	Massachusetts Trial Court Policy and Procedure for the Elimination of Sexual and Gender Harassment in the Workplace, January 7, 2013	2-91
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Exhibit 10	Judge Sushchyk's written statement	2-126
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E X H I B I T S, Continued

NO.	DESCRIPTION	IN EVD
Exhibit 11	Photograph of the Bayzos Pub, looking towards the back	2-162
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* * * *

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

2 THE HEARING OFFICER: We're on the record
3 now.

4 It is two minutes after 10:00. We'll be
5 opening the courtroom doors, so to speak, in a
6 moment.

7 And in the interim, let's see. Mr. Loos,
8 of course, is present. Ms. Cosgrove, Mr. Neff and
9 Mr. Angelini are all present.

10 The matter was just raised with me as to
11 the number of people who wanted to be able to
12 observe the proceedings yesterday reaching 100,
13 Mr. Neff said, or nearly. I monitored it quite
14 closely, and it never, in my viewing of it, reached
15 more than, I think, 97.

16 MR. NEFF: And I agree we got pretty close,
17 higher than I thought we might have, actually, but
18 we never really hit the limit.

19 THE HEARING OFFICER: If we find that it
20 becomes a problem, we'll address it. But the same
21 as in a physical courtroom, there are limitations.
22 And particularly under COVID protocols, having 100
23 people able to be in a courtroom, were we in an
24 actual courtroom, would be quite an accomplishment.

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1 So I'm comfortable. I know that there
2 would -- there was some delay -- not significant
3 delay, I don't think -- about people coming in any
4 more than -- certainly no more than there would have
5 been with, again, a physical courtroom where a court
6 officer may have just, you know, been monitoring the
7 egress and entrance of people, depending on
8 availability of space and so on.

9 So it's been open to the public, and
10 there's been no one that I have seen who has wanted
11 to come in, was unable to come in, aside from the
12 two situations that I mentioned on the record
13 yesterday.

14 So I think we can -- if there's nothing
15 else, why don't we open the courtroom doors, so to
16 speak, and let those who are waiting in.

17 Any objection to that from anyone?

18 MR. NEFF: Nope. Nope. Not at all.

19 THE HEARING OFFICER: Mr. Angelini?

20 MR. ANGELINI: None, your Honor. Thank
21 you.

22 THE HEARING OFFICER: Okay. Great.

23 Shall I do the honors, I guess.

24 Admit all.

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1 There they all go.

2 And at this point we have 41 people, so --
3 42, 43. Okay.

4 All right. We'll get underway.

5 It is 10:04, and my name is Bertha
6 Josephson. I am the Hearing Officer conducting the
7 hearing in this matter.

8 Before we begin, I would ask anyone who is
9 not a participant -- meaning who is not a witness or
10 one of the attorneys engaged in this matter, or who
11 otherwise has arranged in advance to be able to have
12 their video accessible and their audio accessible --
13 to kindly disable your video so that you will not
14 appear on the screen, and we will not -- we will not
15 be allowing the audio portion, either, from
16 non-hearing participants.

17 So with that, let me -- let me just say
18 that this is the hearing on the Commission on
19 Judicial Conduct complaint Number 2019-27 in re
20 Judge Paul M. Sushchyk.

21 And counsel representing each party, if you
22 would kindly identify yourself and the party you're
23 representing so that the record is clear in that
24 regard.

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1 MR. NEFF: Let's see.

2 So we have to maximize our screen so we can
3 actually see everyone.

4 There we go. Okay.

5 THE HEARING OFFICER: If you would
6 kindly --

7 MS. COSGROVE: Good morning.

8 Audrey Cosgrove on behalf of the Commission
9 on Judicial Conduct.

10 THE HEARING OFFICER: Thank you.

11 MR. NEFF: And Howard Neff on behalf of the
12 Commission on Judicial Conduct.

13 MR. ANGELINI: Good morning, your Honor.

14 Michael Angelini, counsel for Judge
15 Sushchyk.

16 THE HEARING OFFICER: All right.

17 The hearing will be conducted according to
18 the protocols that were promulgated by the
19 Commission's temporary emergency order on protocol
20 for remote formal hearing.

21 Again, I will remind everyone because we
22 are proceeding by this virtual means, please be
23 mindful of not talking over anyone. Please make
24 sure that when you're speaking, no one else is

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1 speaking.

2 Let me just -- before we have the
3 presentation of evidence, let me just give a summary
4 of where we are right now. We had yesterday the
5 opening statements from both parties. The party
6 with the burden of production and the burden of
7 proof began its presentation in the case-in-chief
8 with its first witness, Ms. Deines. It was a full
9 day of hearing, with Ms. Deines' testimony
10 concluding yesterday at 3:30. Both direct,
11 cross-examination and redirect was conducted, and
12 she was excused from any further testimony.

13 There was a motion for reconsideration that
14 I had mentioned earlier in the day that was filed by
15 Mr. Angelini, and I indicated in the morning that I
16 would give Mr. Angelini an opportunity to make an
17 offer of proof on the record at the end of the day
18 to preserve his rights, but we ran out of time to do
19 that.

20 So I will just mention that I will afford
21 that opportunity to Mr. Angelini at the end of
22 today's proceedings, and if anybody wants to remind
23 me about it at the end of the day, that's fine with
24 me.

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1 MR. NEFF: Yes. Yes.

2 THE HEARING OFFICER: Okay. So with that,
3 let me ask you, Mr. Neff, as the -- as the party, as
4 I said, with the burden of production and the burden
5 of proof, are you ready to present your next
6 witness?

7 MR. NEFF: We are, your Honor. If everyone
8 else is ready, we are ready to call our next
9 witness, yes.

10 THE HEARING OFFICER: All righty.

11 MR. NEFF: And that next witness would be
12 Chief Justice John Casey, who I now see in his
13 window is -- is with us.

14 THE HEARING OFFICER: I don't see him.

15 THE REPORTER: I'll let him...

16 MR. NEFF: If I could just step back for
17 one moment, your Honor.

18 THE HEARING OFFICER: Sure.

19 MR. ANGELINI: I see Judge Casey.

20 THE REPORTER: Shall I unmute him?

21 THE HEARING OFFICER: Please.

22 Good morning, Judge Casey.

23 THE WITNESS: Good morning, Judge.

24 THE HEARING OFFICER: We're just waiting

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1 for Mr. Neff and Ms. Cosgrove to come back onto the
2 screen, and then I'll begin.

3 Mr. Neff, are you --

4 MR. NEFF: Yes.

5 THE HEARING OFFICER: -- ready?

6 Okay. Let me just say, as I have with --
7 with other witnesses --

8 First I'll need to swear you in, Judge
9 Casey. If you would raise your right hand.

10 (JOHN D. CASEY, sworn)

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: Okay.

13 And as with every witness who is
14 testifying -- because I'm required to under the
15 protocols that have been promulgated by the
16 Commission -- I'm going to ask you a series of
17 questions at the beginning of your testimony and at
18 the end, if necessary. And so I'm asking this of
19 all witnesses.

20 First, may I ask, where you -- first if you
21 would kindly state your full name.

22 THE WITNESS: Sure.

23 John Dennis Casey.

24 THE HEARING OFFICER: Thank you.

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1 And where are you physically located?

2 THE WITNESS: 3 Center Plaza in Boston,
3 Mass.

4 THE HEARING OFFICER: And who is physically
5 in the room with you at this time?

6 THE WITNESS: No one.

7 THE HEARING OFFICER: And what materials
8 and devices do you have with you?

9 THE WITNESS: So I have a laptop. I have
10 two screens. I have a cell phone, printer, land
11 line, speakers, all located here on my desk.

12 THE HEARING OFFICER: Okay. Thank you.
13 And what is currently on your screen or
14 screens?

15 THE WITNESS: Just this hearing.

16 THE HEARING OFFICER: Thank you.

17 And I also need to ask you whether you are
18 in communication with any persons other than those
19 conducting the examination.

20 THE WITNESS: No.

21 THE HEARING OFFICER: Okay. If you would
22 kindly let me know if any of your answers to those
23 questions change or would change during the course
24 of the hearing. Thank you.

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1 Mr. Neff.

2 THE WITNESS: You're welcome. I will.

3 THE HEARING OFFICER: Thank you.

4 MR. NEFF: May I inquire, Judge Josephson?

5 THE HEARING OFFICER: Yes.

6 MR. NEFF: Great. Thank you.

7 DIRECT EXAMINATION

8 BY MR. NEFF:

9 Q. Good morning, Chief Justice Casey. Thank
10 you for taking the time to join us. I appreciate
11 that it's a very busy time for all the court
12 departments, including the Probate and Family Court
13 department. Thank you for being here.

14 As part of our record could you please just
15 tell us your name and spell your last name for the
16 record?

17 A. My name is John Dennis Casey, C-a-s-e-y.

18 Q. Okay. And what city or town do you live
19 in?

20 THE REPORTER: I couldn't hear that, sorry.

21 THE HEARING OFFICER: I couldn't, either.

22 THE WITNESS: Judge, would you mind if I
23 use the headset?

24 THE HEARING OFFICER: Not at all.

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1 THE WITNESS: Okay.

2 So I live in Scituate, Mass.

3 BY MR. NEFF:

4 Q. Great.

5 And what is your educational background?

6 A. High school graduate, college graduate, law
7 school graduate.

8 Q. And if I could ask, where did you go to law
9 school?

10 A. I went to Suffolk University and graduated
11 in 1982.

12 Q. Great. Great. Local.

13 And what was your first legal position
14 after graduating from law school?

15 A. I was the assistant city solicitor/police
16 prosecutor for the city of Attleboro.

17 Q. And how long were you in that position?

18 A. Approximately one year.

19 Q. Okay. What year did you begin your first
20 position with the Massachusetts Probate and Family
21 Court?

22 A. December of 2006.

23 Q. Okay. And what position did you hold with
24 the Massachusetts Probate and Family Court when you

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1 began in December of 2006?

2 A. I was appointed as an associate justice of
3 the Probate and Family Court assigned to the Essex
4 division.

5 Q. Great.

6 And so my math is bad. I know you said the
7 year, but so how long would that mean you have been
8 serving as a -- as a judge here in Massachusetts?
9 13 years or so, is that --

10 A. Yes.

11 Q. 13, 14 years?

12 A. Yes.

13 Q. Okay. And what are your job
14 responsibilities as -- well, what is your current
15 position within the Probate and Family Court?

16 A. I am the Chief Justice of the Probate and
17 Family Court.

18 Q. And what are your responsibilities as the
19 Chief Justice of the Probate and Family Court?

20 A. Well, there are numerous.

21 I am involved in setting policy for the
22 department. I'm responsible for all of the
23 employees of the Probate and Family Court: Judges,
24 registers, all staff. I make assignments of judges.

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1 I investigate any types of complaints that are
2 brought against judges or registers. And again,
3 just involved in lots of policy decisions.

4 Q. So many, many hats.

5 A. Yes.

6 Q. Okay. And do you know an employee of the
7 Probate and Family Court by the name of Ms. Emily
8 Deines, or Deines?

9 A. I do. I do.

10 MR. NEFF: And for purposes of this -- I
11 know we discussed this at the outset, but for
12 purposes of this, can we stipulate that Chief
13 Justice Casey's testimony with respect to Ms. Emily
14 Deines is the witness who has already testified in
15 this matter, in this particular set of formal
16 charges?

17 THE HEARING OFFICER: Mr. Angelini, you had
18 stipulated previously.

19 MR. ANGELINI: I think he's asking me to
20 stipulate Ms. Deines testified yesterday; and if he
21 is, I certainly stipulate to that.

22 THE HEARING OFFICER: I think it was the
23 identification.

24 MR. NEFF: I'm asking -- I'm going to ask

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1 Chief Justice Casey a series of questions about a
2 woman by the name of Ms. Emily Deines who he is not
3 in a position to physically point out for anyone for
4 purposes of an official court record.

5 So I'm asking, can we stipulate that the
6 person Chief Justice Casey is going to be referring
7 to as "Ms. Emily Deines," or "Emily," or
8 "Ms. Deines" is, indeed, Ms. Emily Deines, the
9 witness in this matter who testified yesterday in
10 this hearing?

11 MR. ANGELINI: Without question. Yes.

12 THE HEARING OFFICER: Thank you.

13 MR. NEFF: Okay. Thank you.

14 Q. And how do you know Ms. Deines?

15 A. I think I first met her when I became a
16 judge back in December of 2006. I think at some
17 point I met her at conferences, and she may have
18 provided training to me and other judges.

19 That's how I first met her.

20 Q. Okay. And what kind of training did she --
21 was she providing to judges, new judges, at that
22 particular point in time?

23 A. Yep. I'm not sure that it was part of the
24 new judge training. It could have been. It was a

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1 long time ago.

2 But Emily's very involved in --

3 MR. ANGELINI: Objection.

4 A. -- you know, providing training to judges.

5 MR. ANGELINI: Objection.

6 THE HEARING OFFICER: Sustained.

7 MR. NEFF: So I'll ask a better question,
8 which is:

9 Q. What kind of training did she provide that
10 you described she provided you several years ago?

11 MR. ANGELINI: Objection, relevance.

12 THE HEARING OFFICER: Overruled.

13 MR. ANGELINI: Your Honor, I'm just -- may
14 I say I'm having -- trying to adjust my laptop here
15 so I can stand and be seen, and I'm having a little
16 difficulty. So let me just ask your indulgence for
17 a moment --

18 THE HEARING OFFICER: No problem.

19 MR. ANGELINI: -- so I can be seen when I'm
20 sitting and be seen when I'm standing.

21 Let's see here.

22 Close.

23 THE HEARING OFFICER: Yeah. That looked
24 good.

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1 MR. ANGELINI: All right. I think that's
2 it.

3 Thank you very much.

4 THE HEARING OFFICER: Okay. Great.
5 Thanks, Mr. Angelini.

6 Go ahead, Mr. Neff.

7 MR. NEFF: Okay.

8 Q. And did you meet or interact with
9 Ms. Deines, Emily Deines, at all before she came to
10 work for the Probate and Family Court or you came to
11 work for the Probate and Family Court?

12 A. No, I don't believe so.

13 Q. Okay. Do you know how long she has -- and
14 when I say "she," Ms. Emily Deines, has worked for
15 the Probate and Family Court?

16 A. I watched the hearing yesterday, and I
17 believe she testified she had worked in the court
18 for approximately 16 years. I can't recall.

19 But I don't know -- I don't know exactly
20 how long she's worked for the court.

21 Q. To ask you a different question, Ms. Deines
22 was working for the Probate and Family Court at the
23 point at which you were first appointed as a judge
24 of the Probate and Family Court, was already -- was

1 already working for the Probate and Family Court at
2 that point?

3 A. Yes.

4 Q. Okay. And what is Emily Deines' current
5 position with the Probate and Family Court?

6 A. I think she's a field coordinator
7 covering -- part of her duties are to cover and
8 provide support to the courts in west of Worcester
9 and to -- also she is the person responsible for
10 operation of the conferences and also she supports
11 our education committee. And, as I mentioned, she
12 also provides sort of generalized training in
13 MassCourts or, you know, could be Zoom technology,
14 other emerging matters that come up that we need to
15 help educate our staff about.

16 Q. And how often do you have to work -- work
17 with Ms. Deines in your capacity as Chief Justice,
18 or in her capacity as a field coordinator who has
19 the job responsibilities you just described?

20 A. It depends. You know, it's -- the contact
21 is greater as we approach, for example, a conference
22 where there may be some decisions that I have to
23 make and we interact. There are periods of time --
24 before the pandemic, Emily would be in the office, I

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1 would say, probably twice a month is my guess, so we
2 would interact then.

3 And again, there are often issues that come
4 up on a weekly basis that we communicate via e-mail
5 or -- or telephonically.

6 Q. Okay. Great.

7 And did you -- did you know Emily at all
8 before she and you started working for the Probate
9 and Family Court?

10 A. No.

11 Q. And to the extent that you have worked with
12 her on trainings and -- new trainings for -- well,
13 trainings for judges, and conferences for judges,
14 and the varieties of professional interactions
15 you've described you've had to collaborate with her
16 on as Chief Justice of the Probate and Family Court,
17 would you describe her to be a reliable employee of
18 the Probate and Family Court?

19 MR. ANGELINI: Objection.

20 THE HEARING OFFICER: Sustained.

21 MR. ANGELINI: Objection.

22 THE HEARING OFFICER: Sustained.

23 Q. Have you had any issues with Ms. Deines'
24 work as a -- as an employee of the Probate and

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1 Family Court?

2 MR. ANGELINI: Objection.

3 THE HEARING OFFICER: Sustained.

4 Q. Well, then, let me ask you a different
5 question.

6 Other than the present complaint she's made
7 against Judge Sushchyk, have you known her,
8 Ms. Deines, to make other complaints -- to have made
9 any other complaints against any other employees of
10 the Probate and Family Court?

11 MR. ANGELINI: Objection.

12 THE HEARING OFFICER: Sustained.

13 Q. Do you know if she has any friends among
14 her fellow employees of the Probate and Family
15 Court?

16 MR. ANGELINI: Objection.

17 THE HEARING OFFICER: Sustained.

18 Q. Okay. Is she required to work with any
19 other people to fulfill her job responsibilities for
20 the Probate and Family Court?

21 A. Yes.

22 Q. How many people -- how many different
23 Probate and Family Court employees, other than
24 yourself, would you say Ms. Emily Deines is required

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1 to work with and coordinate with in order to
2 successfully perform her job as a field coordinator
3 for the Probate and Family Court?

4 A. It might be 100.

5 Q. Okay. And have -- and have you had any
6 problems with her or her work as a field coordinator
7 for the Probate and Family Court?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Sustained.

10 MR. ANGELINI: Objection.

11 THE HEARING OFFICER: Sustained.

12 Q. Well, it's safe to say that she is still
13 employed as a field coordinator for the Probate and
14 Family Court?

15 A. She is.

16 Q. Okay. Do you know a Probate and Family
17 Court judge by the name of Paul M. Sushchych?

18 A. I do.

19 MR. NEFF: Okay. And I don't want to
20 belabor stipulations. I'm just -- in my early days
21 as a lawyer I learned to be picky about
22 identifications.

23 And can we similarly stipulate the
24 testimony that Chief Justice Casey is about to give

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1 about a person named Judge Paul Sushchuk, or Judge
2 Sushchuk is, indeed, the Judge Sushchuk who's a
3 party to this matter?

4 THE HEARING OFFICER: Yes. That was
5 stipulated to.

6 Mr. Angelini?

7 MR. ANGELINI: Yes. Of course.

8 THE HEARING OFFICER: Thank you.

9 BY MR. NEFF:

10 Q. How do you know Judge Sushchuk?

11 A. Well, first of all, I know him from being a
12 colleague of his and now being the Chief of the
13 court where he works.

14 Q. Okay. And did you meet or interact with
15 him at all before he became a judge of the Probate
16 and Family Court?

17 A. Yes.

18 Q. Okay.

19 A. I'm sorry. I'm sorry. I thought -- no, I
20 didn't know him before he became a judge. I'm
21 sorry.

22 Q. Did you work with him on any cases or was
23 he opposing counsel on any cases before his
24 assignment as a judge on the Probate and Family

1 Court?

2 A. I don't believe so.

3 Q. To your knowledge, were you listed as an
4 attorney or as a reference anywhere in Judge
5 Sushchuk's most recent application to become a judge
6 or in any of his prior four applications to become a
7 judge?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Well, overruled.
10 I'll allow it.

11 A. Certainly not that I'm aware of.

12 Q. Were you a reference and did you provide a
13 letter of recommendations in support of any of his
14 five applications to become a judge?

15 MR. ANGELINI: Objection.

16 There is no evidence of any five
17 applications. I ask that -- I object to the
18 question.

19 THE HEARING OFFICER: The objection is
20 sustained, and --

21 MR. NEFF: Well, I can --

22 THE HEARING OFFICER: -- it's not a matter
23 that has been the area of testimony at all, nor
24 should it be.

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1 BY MR. NEFF:

2 Q. Well, have -- I don't need to use a number.

3 Have you provided a reference or a letter
4 of recommendation in support of any prior
5 application, or any application Judge Sushchyk has
6 submitted in support of an application to become a
7 judge in Massachusetts?

8 A. No.

9 Q. Okay. Did you offer any testimony in
10 support of his nomination when he appeared before
11 the Governor's Council as part of the nomination
12 process for his current position as a Probate and
13 Family Court judge?

14 A. No.

15 Q. Do you know Judge Sushchyk personally or
16 have you spent time with him socially outside of
17 work?

18 A. So I have not -- go ahead. I'm sorry.

19 Q. No, no. Don't let me interrupt.

20 A. It's -- I don't -- I've never -- other than
21 the conferences, educational conferences, I have
22 never interacted with Judge Sushchyk outside of
23 work-related functions and programs.

24 In terms of personal, do I know him

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1 personally? I'm not sure what you mean by that.
2 I -- I have spoken to him. I know a little bit
3 about his family. I know a little bit about his
4 background. So I -- I don't know how else to answer
5 that question.

6 MR. NEFF: Well, I think that's sufficient.

7 I am looking at some exhibits. Give me one
8 moment, please.

9 THE HEARING OFFICER: Certainly.

10 BY MR. NEFF:

11 Q. Does the Probate and Family Court conduct
12 any kind of organized trainings for its judges?

13 A. Yes.

14 Q. Okay. And what -- what kind of trainings
15 does the Probate and Family Court conduct for its
16 judges?

17 A. Typically we have a two-day educational
18 conference in the spring, and we have a one-day
19 educational conference in the fall.

20 Q. And what is the general content of -- of
21 those trainings?

22 A. Frankly, it depends. We try to cover a
23 variety of topics. We have different programs
24 broken up throughout the day.

1 On occasion we might have, for example, in
2 the fall, a conference. We may pick one particular
3 subject matter and have programs throughout the day,
4 for example, regarding domestic violence, regarding
5 other subject matters.

6 Q. Okay. I wanted to direct your attention
7 now, if I could, specifically to the Probate and
8 Family Court's spring conference in April of 2019, a
9 little over a year ago.

10 Do you recall having a conference in the
11 spring of April of 2019 in Brewster, Massachusetts
12 for judges?

13 A. I do.

14 I'm sorry. I do.

15 Q. And was attendance at the particular
16 conference mandatory for all judges of the Probate
17 and Family Court?

18 A. Yes.

19 Q. Okay. And do you recall specifically where
20 that conference took place?

21 A. I do.

22 Q. Okay. And where did it take place?

23 A. The Ocean Edge Resort.

24 Q. Okay. And do you know what town that

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1 was -- or city that was in?

2 A. I think it's Brewster.

3 Q. Okay. And how was that particular spring
4 2019 conference organized?

5 A. I'm not sure what you mean by that.

6 Q. Well, as you've already testified, there's
7 a series of trainings that take place at these
8 conferences, and there's a location where this
9 conference takes place.

10 How are the arrangements made for trainings
11 and location and so forth in order to hold a
12 conference like this?

13 A. Okay.

14 The -- as I mentioned, we have an education
15 committee made up of maybe 10 or 12 of our judges
16 out of 51, and they work on the content of the
17 trainings, and for the conferences. And Emily
18 Deines is, again, the liaison from our office to
19 that committee. And she works with Michelle Hynes
20 from the Judicial Institute and together, in
21 consultation with me or previous chiefs, they will
22 identify possible locations for the conference.
23 Certainly they'll discuss invitees for the
24 conferences, in addition to the mandatory

1 participation by the judges, and that's how the
2 conferences come together.

3 Q. Great.

4 And when -- well, at least this particular
5 conference in the spring of 2019, how was that
6 funded?

7 A. I believe it's through budgetary
8 allocation; that each department is afforded a
9 certain amount per judge for the entire fiscal year
10 for educational programs. So in this case that --
11 go ahead.

12 Q. Great.

13 And as part of the conference, do judges
14 stay at the resort where the training is to take
15 place overnight?

16 A. Yes.

17 Q. Okay. And how many days was the spring
18 2019 conference in Brewster at the Ocean Edge -- how
19 long did it last?

20 A. It was two days.

21 Q. Okay. And for day one, to the extent you
22 can remember, at least generally, could you describe
23 for us the -- the sort of general itinerary of day
24 one of a conference -- of that particular conference

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1 back in spring of 2019? Were there any particular
2 topics of the day that were being presented on, that
3 sort of thing?

4 A. There were certainly topics. I just can't
5 recall all of them.

6 I remember that typically the chair of the
7 education committee, Judge Richie Simons, welcomes
8 people on behalf of the education committee. I'm
9 afforded an opportunity to also address the
10 individuals who are present, and then typically
11 there are two or three programs before lunch.

12 Typically -- and I believe we did in this
13 case -- during lunch we presented some gifts to and
14 recognized retirees from our court. And then we
15 had, again, programs in the afternoon. I don't
16 remember all of the subject matters. I mean, I
17 could guess, but I just don't remember.

18 Q. Generally just trainings and topics of the
19 day and awards for people who sound like they are
20 well-earned by -- by certain parties, that sort of
21 thing?

22 MR. ANGELINI: Objection.

23 THE HEARING OFFICER: Sustained.

24 Q. At least approximately do you recall the

1 hours of the -- the official functions of the first
2 day of the spring 2019 conference on April 25th,
3 2019? Approximately when did it start, when did it
4 end that day?

5 A. I believe it may have started at 9:00 a.m.
6 on Thursday, the first day of the conference, to
7 allow people the opportunity to get there. We have
8 people, judges coming from western Mass. to Cape
9 Cod, so I believe it was a little later start at
10 9:00.

11 And I believe that we were supposed to
12 finish by 3:30 or three o'clock that day, and the
13 next day it would have started earlier and probably
14 ended around the same -- same time.

15 Q. Okay. And you touched on this a little
16 bit, but what, generally speaking, would be your
17 role at a conference -- well, what was your role at
18 the spring 2019 conference you just described?

19 A. Other than speaking to the judges and
20 invitees, and being there to answer any questions
21 that Emily and Michelle, Judge Simons, Judge
22 Fidnick, the co-chair of the education committee, or
23 vice-chair, just trying to provide support.

24 That's pretty much my -- it's a limited

1 role at the conference.

2 Q. Fair enough.

3 And what would you say Emily's role was at
4 the spring 2019 conference?

5 A. As I mentioned, she worked with Michelle
6 Hynes. She was really responsible for all of the
7 logistical issues that had to be attended to, making
8 sure that they were prepared to have the materials
9 to provide to all the judges, make sure that, you
10 know, the matters ran timely.

11 That's one of the most difficult jobs she
12 has is to kind of keep everybody on track from a
13 time perspective, make sure that people get back
14 after breaks, those kind of things. Just make sure
15 that it all runs as smoothly as possible.

16 Q. As best you know, do most or all of the
17 attendees of the conference, generally speaking,
18 stay at the conference, in the rooms at the
19 conference when these things take place?

20 A. I would say a majority do. Two-thirds do.
21 There's always some exceptions.

22 Q. To ask a different, maybe more pointed
23 question, did you stay at the conference overnight
24 that time from April 25th to 26th?

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1 A. I did. In fact, I stayed the night before
2 and the night after.

3 Q. Okay. Great.

4 And do you know how long Judge Sushchyk had
5 been a judge of the Probate and Family Court as of
6 the time of the training in Brewster at Ocean Edge
7 in spring of 2019?

8 A. I don't know exactly, but I thought it was
9 approximately one year.

10 Q. And was he present at the spring 2019
11 conference in Brewster --

12 A. Yes.

13 Q. -- Judge Sushchyk?

14 As far as you know, was he present for the
15 entirety of the spring 2019 conference in Brewster,
16 Judge Sushchyk? As far as you know.

17 A. I -- again, I don't keep track of every
18 judge every hour, but my recollection is that he was
19 there for the programs both days. He was there, I
20 believe, for -- I -- I know he was at the dinner,
21 and I know he was at the pub after the dinner.

22 Q. And I think we already covered this a
23 little bit, but attendance at this particular
24 conference is mandatory for judges of the Probate

1 and Family Court; is that not true?

2 A. That is true.

3 Q. Okay. Do you know if Judge Sushchyk was
4 coming from any other trip or place prior to his
5 arrival at the Ocean Edge training for the Probate
6 and Family Court? Do you know where he was coming
7 from?

8 A. I don't --

9 Do I know where he was coming from?

10 Q. Do you know where he was coming from?

11 A. No.

12 Q. Okay. Do you know if this was the first
13 time Judge Sushchyk attended a training overnight as
14 a Probate and Family Court judge?

15 A. I don't know that for certain.

16 Q. And we've basically covered this, since she
17 was involved in the organization of it.

18 But Emily -- was Emily Deines present for
19 the spring 2019 Probate and Family Court conference?

20 A. Yes.

21 Q. And was she the only non-judge employee of
22 the Probate and Family Court at the conference?

23 A. No.

24 Q. Okay. And what other non-judge employees

1 of the Probate and Family Court were present for
2 that conference?

3 A. I believe it was our four staff attorneys
4 at the time.

5 Q. And --

6 A. I think four or five.

7 Q. Do you remember who they were --

8 A. I do.

9 Q. -- by name?

10 And who were they?

11 A. Yep.

12 Jocelynn Welsh, Christine Yurgelun, Evelyn
13 Patsos, and Denise Fitzgerald.

14 Q. And did they have any role at this
15 conference, that you were aware of? Or were they
16 there for their -- for another reason?

17 A. They were there for another reason.

18 Q. Okay. What was -- what was the other
19 reason?

20 A. Well, I decided to invite them because I
21 wanted -- when I became Chief, I thought there was a
22 disconnect between the administrative office and the
23 field, and I thought it was important for the judges
24 and for our staff attorneys to just kind of connect

1 in that setting. I thought it might build stronger
2 relationships. So I invited them.

3 Q. Understood. Fair enough. Kind of like a
4 rapport-building exercise.

5 After the trainings were -- I don't know if
6 you told me this already, but approximately what
7 time did the sort of official training part of the
8 conference on April 25th get completed? That day.
9 Approximately.

10 A. Yeah. I think it was between 3:30 and four
11 o'clock that day.

12 Q. And were there any other official Probate
13 and Family Court functions later in the day on
14 April 25th, 2019?

15 A. Just a -- a dinner was offered, and I know
16 we took photographs on the deck of the facility.
17 So...

18 Q. I understand.

19 A. Just the dinner.

20 Q. Okay. Do you know if there were any non --
21 non -- or events not organized by the Probate and
22 Family Court, social events arranged by judges
23 between the time of the end of the trainings and the
24 beginning of the dinner later that night in what

1 might be called a hospitality suite at the Ocean
2 Edge Resort?

3 A. I believe there was.

4 Q. Okay. And -- and when you say you believe
5 there was, what -- what facts do you know, or what
6 information do you know that causes you to -- to say
7 that you believe that there -- there was a
8 hospitality suite event after the training but
9 before the dinner?

10 A. Well, because I received numerous text
11 messages from judges asking me to go to a particular
12 location prior to the dinner.

13 Q. And this was basically an invitation to
14 a -- you know, just a social gathering of the judges
15 to get together and chitchat and so forth in between
16 the training but before -- before the dinner
17 actually took place.

18 Is that what your understanding was?

19 A. Generally, yes.

20 Q. Okay. Do you know who was hosting the --
21 this particular -- if we can call it a hospitality
22 suite event, who was hosting it?

23 A. I don't recall. I don't know for certain.

24 Q. Okay. Do you know how many judges attended

1 the hospitality suite event?

2 A. I don't.

3 Q. Okay. Do you know if -- well, did you
4 attend any part of the hospitality suite event?

5 A. I did not.

6 Q. Okay. Do you know if Judge Sushchuk
7 attended the hospitality suite event?

8 A. I don't know -- I don't know for certain.
9 I don't know.

10 Q. Okay. Do you know if alcohol was available
11 at the hospitality suite event?

12 A. I don't know.

13 MR. ANGELINI: Objection.

14 Withdrawn.

15 Q. Do you know how long the hospitality suite
16 event lasted?

17 A. No.

18 Q. Okay. And you may have already told me,
19 but approximately what time did the Probate and
20 Family Court's dinner that it arranged for begin on
21 April 25th of 2019?

22 A. I think it was 7:00 p.m.

23 Q. Okay. And did you attend that dinner?

24 A. I did.

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1 Q. And when you say dinner was arranged for
2 judges participating in this event, where did that
3 dinner take place?

4 A. It took place at the main resort in one of
5 the, I guess, ballrooms.

6 Q. And -- and for those who maybe have not had
7 the benefit of being to Ocean Edge, could you, as
8 best you can, kind of just describe what we're
9 talking about when we say the "Ocean Edge Resort
10 space," so that we can sort of visually imagine what
11 we're talking about in terms of building and housing
12 and facilities that are available there.

13 A. Okay. Well, I've only -- I've only been
14 there twice, I think, but there's a main mansion
15 that houses ballrooms and guest areas, guest
16 check-in area, places -- there may be a fireplace
17 people can sit around and read. And there's a
18 pub/tavern located in the basement there.

19 Up on the -- excuse me -- higher level
20 there's a very large sort of open area with an
21 outdoor bar/restaurant overlooking the grounds that
22 roll down to the ocean, and in that area there are
23 residences, I think, that are part of the facility,
24 and there is access to the beach.

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1 And if you leave the resort and you go down
2 the road approximately half a mile or so, you'll go
3 into an area where there are, I would say, hundreds
4 of townhouses located along and around the golf
5 course and lake area.

6 Q. Great.

7 And when you make reference -- well, strike
8 that.

9 So the dinner, safe to say, was part -- was
10 at one of the facilities at this Ocean Edge Resort
11 property at approximately 7:00 p.m. on April 25th,
12 2019?

13 A. Yes.

14 Q. Okay. And did you attend the dinner?

15 A. I did.

16 Q. Okay. And how long were you there?

17 A. I think about an hour and a half or so,
18 hour and 45 minutes.

19 Q. Okay. Do you know if Judge Sushchuk was at
20 this dinner?

21 A. Yes.

22 Q. Okay. And did you speak with him at this
23 dinner?

24 A. Yes. Very briefly.

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1 Q. Okay. And how would you describe that
2 exchange between yourself and Judge Sushchyk?

3 A. I'm not sure I understand the question.

4 Q. Okay. Well, you -- you approached Judge
5 Sushchyk and spoke with him.

6 And how would you describe that
7 interaction?

8 MR. ANGELINI: I object.

9 THE HEARING OFFICER: Sustained.

10 Excuse me. Sustained.

11 MR. NEFF: Okay.

12 Q. Well, what did you talk to him about?

13 MR. ANGELINI: I object.

14 THE HEARING OFFICER: Just generally.

15 Overruled.

16 A. I think that we were both just passing. I
17 don't know if one of us was -- we were just both
18 passing by tables, and I just said "hi" to him, and
19 he said something back to me. And just it was very,
20 very brief.

21 Q. How did Judge Sushchyk seem to you when you
22 spoke to him on that particular evening?

23 MR. ANGELINI: Objection.

24 THE HEARING OFFICER: I'll sustain.

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1 Could we have something more specific?

2 Q. Well, did you -- during what you described
3 as a relatively brief interaction, but an
4 interaction with Judge Sushchuk at this dinner --
5 have any sense of -- of him having any variety of
6 impairment, or tiredness, or seeming slower than
7 normal?

8 MR. ANGELINI: My objection.

9 THE HEARING OFFICER: Let's determine first
10 if he actually had an opportunity to make any kind
11 of observation that would permit him to conclude
12 about any of those topics.

13 So I'll sustain.

14 Q. Well, how long did you interact with Judge
15 Sushchuk at the dinner?

16 Chief Justice Casey?

17 A. No. I'm just -- I'm just trying to think
18 about it.

19 It's probably about five seconds.

20 Q. Okay. And -- and do you recall that you
21 gave us some prior deposition testimony regarding
22 your interactions with Judge Sushchuk at this
23 particular dinner on April 25th, 2019? Do you
24 recall that deposition which took place on May 27th

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1 of 2020?

2 A. Yes, I remember being deposed.

3 Q. Okay. And do you recall telling us what
4 you -- you saw?

5 MR. ANGELINI: I object.

6 THE HEARING OFFICER: Sustained.

7 Q. Okay. Well, let me ask you differently.

8 Do you recall me asking whether you had any
9 sense of whether or not he might have been affected
10 by or under the influence of alcohol during your
11 conversation with him during your interaction with
12 him on that particular evening?

13 MR. ANGELINI: My objection, your Honor.

14 THE HEARING OFFICER: I'll sustain at this
15 point.

16 MR. NEFF: Okay.

17 Q. Well, again, you gave -- you do recall
18 giving this prior sworn statement on May 27th of
19 2020.

20 And so now I ask you, again, during this
21 hearing, did you, during your interaction with Judge
22 Sushchuk at this dinner on April 25th, 2019, observe
23 anything about his behavior or during your
24 conversation with him that made -- that made you

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1 think that he seemed tired or slower than normal?

2 MR. ANGELINI: I object, your Honor.

3 THE HEARING OFFICER: Sustained.

4 Q. What observations did you make of Judge
5 Sushchyk during your interaction and conversation
6 with him on April 25th, 2019?

7 MR. ANGELINI: My objection.

8 THE HEARING OFFICER: Overruled.

9 A. As I mentioned, I think -- I think we
10 passed each other as we were walking, and we spoke
11 very briefly. And I -- I thought he looked tired
12 based on, I would say -- I'm trying to recall why it
13 is that I felt he appeared tired to me, but it might
14 have been -- I just can't recall right now why, but
15 I think that was how I felt at the time.

16 Q. Do you recall making any observations of
17 his eyes?

18 A. Yeah. I thought his eyes were -- appeared
19 to be red or -- or dry or...

20 Q. And how would you describe your
21 conversation, albeit a brief one, with Judge
22 Sushchyk on April 25th, 2019, versus the nature of
23 the conversation that you've -- or conversations
24 that you've had with him at other times?

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1 MR. ANGELINI: I object, your Honor.

2 THE HEARING OFFICER: Sustained.

3 Q. Well, was there anything about the way
4 Judge Sushchuk presented to you that made it seem
5 like he was perhaps not as energetic as you had seen
6 him in the past?

7 MR. ANGELINI: I object to the question.

8 THE HEARING OFFICER: Sustained.

9 Q. Did you make any observations of Judge
10 Sushchuk's level of energy during your interaction
11 with him at the dinner on April 25th, 2019?

12 MR. ANGELINI: I object.

13 THE HEARING OFFICER: Overruled.

14 A. I did.

15 Q. Okay. And what were those observations?

16 A. He seemed tired. He seemed less energetic
17 than when I had dealt with him previously.

18 Q. Okay. Fair enough.

19 Do you know if Judge Sushchuk -- excuse me.

20 Do you know if Judge Sushchuk stayed and
21 attended the entirety of that dinner?

22 A. I believe he did.

23 Q. Okay. You did not sit with him at that
24 particular dinner?

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1 A. That's correct.

2 Q. Was alcohol available at this dinner for
3 free or for purchase?

4 A. Yes.

5 Q. Okay. And what type of alcohol was
6 available at this dinner? Was it beer and wine?
7 Was it mixed drinks and liquor? Or a combination
8 thereof?

9 A. I'm not certain.

10 Q. Okay. Did you observe Judge Sushchuk
11 drinking any alcohol during the course of this
12 dinner on April 25th, 2019?

13 A. I -- I can't recall.

14 Q. Okay. Fair enough. Fair enough.
15 I can't remember if you testified to this,
16 but you stayed -- the dinner lasted about an hour
17 and a half and ended about 7:30. I'm sorry, you
18 said the dinner lasted about an hour and a half and
19 started at 7:00 p.m. on April 25th?

20 A. It was scheduled to start at 7:00 p.m., and
21 I believe that I left somewhere between probably
22 8:45 -- 8:30 and 8:45.

23 Q. Okay. And when you left the dinner, where
24 did you go?

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1 A. I think I went to the room that I was
2 staying at with my wife.

3 Q. And -- and as we've already covered, the
4 room you were staying at with your wife was a room
5 that was -- was a room provided at the Ocean Edge
6 Resort?

7 Is that true?

8 A. Well, there was -- there was one night that
9 was provided by the -- or reimbursed by the
10 Commonwealth. The other nights it was privately
11 paid. But the -- the room itself was located on the
12 main mansion property, not at the other location
13 where the townhouses were.

14 Q. Understood. Understood.

15 How long -- well, strike that.

16 Did you go anywhere else that particular
17 evening other than your room after the dinner on
18 April 25th, 2019?

19 A. Yes.

20 Q. Where did you go?

21 A. The Bayzos Pub.

22 Q. And where is Bayzos Pub in relation to the
23 locations you've already described for us?

24 A. It's in the lower level of the mansion

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1 resort.

2 Q. Okay. So it's also part of this Ocean Edge
3 Resort complex, yes?

4 A. Yes.

5 Q. Okay. And were -- were -- were you the
6 only employee of the Probate and Family Court at
7 Bayzos Pub when you arrived there? Or were there
8 other employees of the Probate and Family Court
9 already present at Bayzos Pub at that point in time?

10 A. There were others there.

11 Q. Okay. And you may have said it, but
12 approximately what time would you say you arrived at
13 Bayzos Pub?

14 A. It was just a one-minute or so walk to my
15 room. I met up with my wife. She and I walked over
16 to the pub.

17 So it would have been probably five minutes
18 in total, so I would say it would be somewhere
19 before nine o'clock or so, 10 of 9:00.

20 Q. And when you went to Bayzos Pub, it was
21 really just you and your wife walking over.

22 Did you go over with anyone other than --
23 than her?

24 A. Not that I recall.

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1 Q. Okay. Did you see Judge Sushchyk at Bayzos
2 Pub that evening?

3 A. I did.

4 MR. NEFF: And forgive me for not entirely
5 keeping up, Mr. Loos. I want to try to start with
6 what was marked by us as Exhibit 7 for
7 identification, I suppose, and submit it to you all,
8 which is a photograph which I would like to show to
9 Chief Justice Casey, with your permission, Judge
10 Josephson.

11 THE REPORTER: I don't know if that's
12 Exhibit 7.

13 THE HEARING OFFICER: Is it already -- it's
14 already an exhibit.

15 THE REPORTER: I believe that's Exhibit 3,
16 though.

17 MR. NEFF: It's Exhibit 3?

18 THE HEARING OFFICER: Exhibit 7 is the
19 text.

20 MR. NEFF: Okay. Great.

21 So --

22 THE REPORTER: I can forward that if you
23 give me a moment.

24 MR. NEFF: I'm sorry.

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1 THE REPORTER: I can forward that to
2 everyone if you give me a moment.

3 MR. NEFF: Okay. I was going to say my
4 logistical question, which I'm embarrassed to ask,
5 just because it's so new, Mr. Loos, is since it was
6 already introduced, how do I sort of get it out of
7 the pile and let Chief Justice Casey take a look at
8 it?

9 THE REPORTER: I can send the link.

10 MR. NEFF: If you can do that, that would
11 be very much appreciated.

12 MR. ANGELINI: If I can ask what exhibit is
13 being called for, please.

14 THE HEARING OFFICER: I have the same
15 question.

16 MR. NEFF: Well, I had made reference to
17 what we marked as Exhibit F for identification.
18 Mr. Loos had indicated that it is already in
19 evidence for purposes of this hearing as Exhibit 3.

20 THE REPORTER: That was previously Z.

21 MR. NEFF: I'm sorry?

22 THE REPORTER: That was previously Z.

23 MR. ANGELINI: That was Exhibit 1.

24 MR. NEFF: That was Exhibit 1? Okay. As

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1 Exhibit 1.

2 THE HEARING OFFICER: Okay.

3 MR. NEFF: So I would ask that Judge Casey
4 just be asked to allow -- be allowed to observe
5 Exhibit 1, which is already in evidence in this
6 case.

7 THE HEARING OFFICER: Sure.

8 MR. NEFF: May I ask a question, Judge?

9 THE HEARING OFFICER: Certainly.

10 THE WITNESS: There's -- it appears to be a
11 chat message. It says number one there, and it's
12 from Mr. Loos.

13 I just don't know if you, or Attorney Neff,
14 wish for me to look at that chat message.

15 THE HEARING OFFICER: Now, I think does --
16 it say "HTTPS."

17 THE REPORTER: That should be it.

18 THE WITNESS: Yes.

19 THE HEARING OFFICER: That's the one you
20 need to -- yeah, if you can click on it --

21 THE WITNESS: Okay.

22 THE HEARING OFFICER: -- that should bring
23 the document onto your screen.

24 THE WITNESS: Okay.

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1 I -- I don't know why it's not. I am
2 clicking on it and nothing's happening.

3 MR. NEFF: Alex, do you have an idea what
4 might be going on?

5 THE REPORTER: I'm not sure, but we can
6 screen share it.

7 THE HEARING OFFICER: That would be great.
8 Thank you.

9 MR. NEFF: So are we at a point where we
10 can, with your permission, ask questions, Judge
11 Josephson?

12 THE HEARING OFFICER: Go ahead.

13 BY MR. NEFF:

14 Q. Okay. So, Chief Justice Casey, on this
15 particular photograph -- which is exhibit -- I'm
16 sorry, I need you to repeat yourself, Mr. Loos.
17 This is Exhibit 1 for purposes of this hearing, even
18 though you see "Exhibit F" there.

19 Can you describe for us approximately where
20 in that photograph you were located in the bar when
21 you -- when you went to that bar that night,
22 April 25th, 2019.

23 A. So it's a little difficult, because I can't
24 tell where this picture's taken from. I don't -- I

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1 don't recall if -- how many seats, for example, were
2 at the bar, but I believe that my wife was seated to
3 the far left end of the bar and I was standing to
4 her right. I just --

5 Q. Okay. Let me -- I'm going to try to help
6 you. I know photographs are proving to be one of
7 the harder aspects of this video hearing, but I'm
8 going to try to help you out a little bit and ask if
9 I can show you what has been marked as Exhibit M.

10 Is that in evidence at this point,
11 Mr. Loos?

12 THE REPORTER: I don't believe so.

13 THE HEARING OFFICER: Okay.

14 MR. NEFF: And with Judge Josephson's
15 permission, I would like to show --

16 MR. ANGELINI: M is not in evidence.

17 THE HEARING OFFICER: I'm not seeing M in
18 evidence.

19 Is there a number attached to it?

20 MR. NEFF: It's -- like with all of the
21 exhibits that we prepared in preparation for the
22 hearing, it's -- it's in the group that is
23 alphabetic.

24 THE HEARING OFFICER: I know.

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1 MR. NEFF: That's in alphabetical sequence.

2 THE HEARING OFFICER: Right. It's only
3 when the exhibit has been entered in evidence that
4 it gets a number. So if --

5 MR. NEFF: Okay. I -- I'm just trying to
6 be very careful about protocol, and I don't want to
7 put a photo in front of a witness unless I'm sure I
8 have your permission to at least do that. And of
9 course I'll ask for authentication, et cetera, but
10 with your permission I'd like to present --

11 MR. ANGELINI: I'll make this easy.

12 We have no objection to Exhibit M coming
13 into evidence as an exhibit.

14 THE HEARING OFFICER: Are you offering it,
15 Mr. Neff?

16 MR. NEFF: I am.

17 THE HEARING OFFICER: Okay. Then that will
18 be 8.

19 (Document marked as Commonwealth's
20 Exhibit 8 admitted into evidence)

21 MR. NEFF: That will be marked as
22 Exhibit 8.

23 And do you have the ability to display
24 that, Mr. Loos? Or do I need to send it to -- the

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1 link that you provided?

2 THE REPORTER: I'll -- I'll take care of
3 it. Just give me one moment.

4 MR. NEFF: Thank you.

5 THE REPORTER: There you go.

6 MR. NEFF: With your permission, can I --
7 can I now inquire?

8 THE HEARING OFFICER: Sure.

9 BY MR. NEFF:

10 Q. So from this perspective, Judge Casey, I
11 don't know if this helps you very much, but can you
12 describe for us on this exhibit -- which I think
13 we're now up to 9 (sic) -- where you and your wife
14 were standing?

15 Well, strike that.

16 Would you say this is a fair and accurate
17 representation of at least a portion of the Bayzos
18 Pub at the Ocean Edge Resort in Brewster,
19 Massachusetts?

20 A. It appears to be.

21 Q. Okay. And can you describe for us where,
22 approximately at least, you and your wife decided to
23 situate yourself or spend time in the bar on
24 April 25th, 2019?

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1 A. Yes.

2 So on the right-hand side of this exhibit
3 it appears to show the bar area, and there is a lamp
4 down at the end of the bar. And I think that my
5 wife was situated probably in that last chair, and I
6 was standing, again, to the right of her.

7 Q. I'm frozen out for some reason here.

8 And dealing with photos, I may have
9 forgotten. But can I ask, did you see Judge
10 Sushchyk at the Bayzos Pub that evening?

11 A. I did.

12 Q. Okay. And where was he when you -- when
13 you saw him first? Was he anywhere in the picture
14 that's currently before us as Exhibit I (sic)?

15 MR. ANGELINI: On this question, please, I
16 object.

17 THE HEARING OFFICER: Overruled.

18 A. I think I first saw him approaching one of
19 the high tops located in that exhibit.

20 Q. When you say "one of the high tops," are
21 you referring to those two round tables to the --
22 sort of towards the left of that particular
23 photograph?

24 A. I believe so. Although there could be

1 another one. I don't know from this angle.

2 Q. Okay. And are you able to tell from this
3 angle which one you observed Judge Sushchuk
4 approach?

5 A. No.

6 Q. Okay. Maybe if we revert back -- and I'm
7 terrible with numbers, so I apologize. If I could
8 revert back to what was Exhibit F and is now
9 Exhibit 1.

10 Can I -- can we display that one for Chief
11 Justice Casey, please?

12 THE HEARING OFFICER: Okay.

13 MR. NEFF: Great. Thank you.

14 Q. So from that vantage point where you can
15 see that there are -- there are basically just those
16 two tables over there, can you tell us which of
17 those two tables you observed Judge Sushchuk
18 approach on the evening of April 25th, 2019?

19 A. I think it was the first table on the
20 right, sort of in the foreground.

21 Q. Okay. And was there anyone already seated
22 at that table at that time?

23 A. That he approached?

24 Q. Yes.

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1 A. Yes. Yes.

2 Q. And what direction did Judge Sushchyk
3 approach that table from, from your perspective?

4 A. From the right-hand side.

5 Q. Meaning sort of from off screen, like from
6 a -- from an area that is to the right of where this
7 visual depiction ends? If that's the direction he
8 approached from.

9 A. Yes. Yes.

10 Q. Okay. And do you recall who was seated at
11 that table at that time?

12 A. I do.

13 Q. Okay. And who was seated at that table at
14 that time?

15 A. I believe that Emily Deines was seated at
16 the stool to the far right of the photograph,
17 adjacent to the brick wall. I believe Evelyn Patsos
18 was to her left. I -- I'm not sure if it was
19 Jocelynne Welsh in the next seat and then Christine
20 Yurgelun, but I believe the two of them were located
21 at that table.

22 Q. Okay. So for -- you saw Emily Deines at
23 the -- at the stool next to the brick post,
24 Christine Yurgelun was next?

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1 A. No. Evelyn Patsos was to her left.

2 Q. Okay.

3 A. To Evelyn's left I'm not 100 percent sure
4 if it was Jocelynne Welsh or if that was Christine
5 Yurgelun. But I -- I believe the two of them were
6 seated at the table with Evelyn and Emily.

7 Q. Okay. And did you notice anything in
8 particular about Christine at that table that night?

9 A. No -- no. I -- no.

10 Q. Did you see what they were doing at the
11 table as Judge -- as Judge Sushchyk approached the
12 table?

13 A. It appeared that they were talking.

14 Q. And I seem to get frozen with these photos.

15 THE REPORTER: Do you want me to pull it
16 down?

17 MR. NEFF: No. I'm good. Once I -- once I
18 enlarge them, they seem to not want to go away at
19 all.

20 Q. At that -- at the point at which Judge
21 Sushchyk entered Bayzos bar that night,
22 approximately what time would you say that was?

23 MR. ANGELINI: Objection.

24 THE HEARING OFFICER: Overruled.

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1 A. I don't believe I saw him enter the pub.

2 Q. Okay. Well, at the time you first saw him
3 in Bayzos Pub, what time was it?

4 A. Shortly after I arrived with my wife.

5 Q. Okay. And approximately what time had you
6 arrived with your wife?

7 A. Sometime before nine o'clock, between --
8 maybe 8:50 p.m.

9 Q. And this was following a dinner that had
10 lasted to approximately 7:30 p.m., earlier that
11 evening?

12 MR. ANGELINI: Objection, asked and
13 answered twice.

14 THE HEARING OFFICER: Sustained.

15 MR. NEFF: Let me ask.

16 Q. Did the -- did the dinner hosted by the
17 Probate and Family Court on April 25th, 2009, end as
18 planned at approximately 7:30 p.m. that night?

19 MR. ANGELINI: Objection.

20 A. No.

21 MR. ANGELINI: Asked and answered.

22 THE HEARING OFFICER: I'm sorry. It didn't
23 sound like it was a question. It was a statement.

24 Are you still maintaining your objection,

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1 Mr. Angelini?

2 MR. ANGELINI: Yes, your Honor.

3 Yes, your Honor.

4 THE HEARING OFFICER: Sustained.

5 MR. NEFF: Okay.

6 Q. So can you bring me back, help my poor
7 memory?

8 What time did you first see Judge Sushchyk
9 in Bayzos Pub on April 25th, 2019?

10 MR. ANGELINI: I object. Asked and
11 answered.

12 THE HEARING OFFICER: Overruled.

13 A. I think it was somewhere between 8:50 and
14 9:00 p.m. that evening.

15 Q. Okay. And when you made observations of
16 Ms. Deines and Ms. Welsh and others sitting at the
17 table he was approaching, you said you could see
18 them talking amongst themselves?

19 A. They appeared to be, yes.

20 Q. Okay. And could you see anything about how
21 Ms. Deines was -- was seated on her stool as she was
22 attempting to participate in a conversation with
23 parties from across that high-top table?

24 MR. ANGELINI: I object to the form of the

1 question.

2 THE HEARING OFFICER: Yeah. Sustained.

3 Q. Could you see anything about how Judge --
4 could you see anything about how Ms. Emily Deines
5 was seated on her stool as she was attempting to
6 speak to -- or while she was speaking to parties
7 that were at that high-top table with her?

8 MR. ANGELINI: My objection.

9 THE HEARING OFFICER: Well, the question
10 contains a statement that isn't in evidence, so
11 maybe something broader, please.

12 MR. NEFF: Okay.

13 Q. Did you -- among the parties you saw at the
14 table Judge Sushchuk was approaching, who were the
15 parties who were -- who were occupying the
16 bar-height stools you mentioned?

17 MR. ANGELINI: Objection, asked and
18 answered.

19 THE HEARING OFFICER: That was. Sustained.

20 Q. Well, was Ms. Deines in her bar-height
21 stool for the entire time you observed her at that
22 table that night?

23 A. I'm just -- I'm not sure what you mean by
24 "bar-height stool," but she was seated on the stool

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1 I believe that is depicted in this exhibit to the
2 far right against the brick wall.

3 Q. And did you see her moving at all while she
4 was sitting on that stool?

5 A. I would have to say that during the course
6 of my time there I would have seen her move.

7 Q. As you saw Judge Sushchyk approach this
8 table, did you observe him forced to make any kind
9 of sharp turns or acrobatic movements to get past
10 groups of people or to get over to the location
11 where Ms. Deines and Ms. Patsos were seated at that
12 table that night?

13 MR. ANGELINI: I object to the question.

14 THE HEARING OFFICER: I'll allow it.

15 A. I -- I would say no.

16 Q. Okay. And -- and you did not see any
17 variety of physical contact, improper or otherwise,
18 take place between Judge Sushchyk and Ms. Deines on
19 the evening of April 25th, 2019?

20 A. That's correct.

21 Q. Okay. While you were at the Bayzos Pub,
22 did you observe Judge Sushchyk consuming any
23 alcohol?

24 A. Not consuming.

1 Q. Did you see Judge Sushchyk purchase any
2 alcohol?

3 A. I saw him walk from the high-top table that
4 Mr. Deines was sitting at with the others, go to the
5 bar to the left in this exhibit, and then return
6 with some glasses with liquid in them, returning to
7 that table.

8 Q. And what was the color of the liquid in
9 those classes?

10 MR. ANGELINI: I'm sorry, I didn't hear the
11 question.

12 Could you restate?

13 MR. NEFF: I'm sorry. I'm not sure where
14 the microphone is, to be honest.

15 But my question was, what -- what color
16 is -- or was the -- well, what color or colors were
17 the liquids in the two glasses Judge Sushchyk
18 returned from the bar with?

19 MR. ANGELINI: I object.

20 THE HEARING OFFICER: If he could see.

21 A. I don't recall.

22 Q. Okay. Do you recall whether it was
23 something other than clear?

24 MR. ANGELINI: I object.

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1 THE HEARING OFFICER: Sustained.

2 Q. Do you recall whether there was any ice in
3 either of those two glasses?

4 MR. ANGELINI: I object.

5 THE HEARING OFFICER: Well, I'll allow it.

6 A. I don't recall.

7 Q. Okay. And do you recall what Judge
8 Sushchyyk did with those two glasses when he returned
9 to the table?

10 A. I'm not sure if it was two or three
11 glasses. I don't recall. I know there were more
12 than one. And I -- he placed one or two on the
13 table, and he had one in his hand.

14 Q. Okay. Did you see him consume any of the
15 liquid in the glass that was in his hand?

16 MR. ANGELINI: Object, asked and answered.

17 THE HEARING OFFICER: Overruled.

18 MR. NEFF: I'm not sure when I asked that.

19 THE HEARING OFFICER: I overruled it.

20 THE WITNESS: I -- I don't -- I don't know
21 if I actually -- I can't recall if I actually saw
22 him bring the glass to his lips and -- and consume
23 the alcohol, but it was in his hand --

24

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1 BY MR. NEFF:

2 Q. Okay.

3 A. -- whatever was in the liquid that was in
4 the glass.

5 Q. Understood.

6 Did you see Judge Sushchuk consume any
7 variety of liquid from a flask in his possession
8 that night on the evening of April 25th, 2019?

9 A. No.

10 Q. Okay. Did you see Judge Sushchuk in
11 possession of a flask at the Bayzos Pub on the
12 evening of April 25th, 2019?

13 A. No.

14 Q. Did you see anything in Judge Sushchuk's
15 behavior from your observations up to that point
16 that suggested he was impaired at all due to alcohol
17 or for any other reason whatsoever?

18 A. Well, as I mentioned earlier, my initial
19 observation when we passed briefly, in a very brief
20 conversation, was that he appeared tired to me.
21 When I observed him walk toward the table and when I
22 observed him walk toward the bar and back, I didn't
23 notice anything unusual.

24 Q. Okay. So when you saw Judge Sushchuk at

1 the Bayzos Pub later that night, whatever length of
2 time after you had initially seen him at the dinner,
3 you did not continue to see the same observations of
4 him that he seemed tired and maybe was moving a
5 little more slowly than you were used to, or less
6 energetically?

7 A. Well, again, for a majority of the time he
8 had his back to me.

9 Q. Okay.

10 A. And he was quite a bit further away from me
11 in the pub than he was at the dinner.

12 Q. If you had to approximate in feet, let's
13 say, how far away from Judge Sushchuk -- and
14 basically, really, the whole table -- were you
15 during your time at the Bayzos Pub on April 25th,
16 2019?

17 You can use yards if that's easier. Just
18 whatever -- whatever is easiest for you.

19 A. Thank you.

20 I would say 10 -- 10, 12 feet.

21 Q. Okay. Do you recall saying good-night to
22 Ms. Deines at some point that evening, the evening
23 of April 25th, 2019?

24 A. Yes.

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1 Q. Okay. And do you recall approximately what
2 time you said good-night to her?

3 A. I don't really -- I don't know an exact
4 time.

5 Q. Well, maybe working from reverse, about --
6 about how long after you arrived at Bayzos Pub would
7 you say you said good-night to Emily Deines?

8 A. I don't mean to be picky, but --

9 Q. That's fine.

10 A. -- at some point she approached my wife and
11 I, and she said good-night to us. And I would say
12 that we were probably at the pub maybe ten minutes
13 before that occurred.

14 Q. Okay. So she left about ten minutes after
15 you arrived?

16 A. That's my estimate.

17 And we did, in fact, say good-night to her.

18 Q. How did -- how did Ms. Deines' demeanor or
19 emotions seem to you when you said good-bye to her
20 that night?

21 MR. ANGELINI: Objection.

22 THE HEARING OFFICER: Overruled.

23 A. I'm just trying to -- she -- again, she
24 was -- I thought it was very considerate of her to

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1 come up and to say good-night to my wife and I. And
2 it had been a long day, but she didn't seem tired.
3 And we had a very -- it was just a very brief
4 conversation.

5 Q. So would you describe your experiences with
6 Ms. Deines that night in general as generally being
7 pretty pleasant and polite, then?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Sustained.

10 Q. Well, you would describe your interaction
11 as a pleasant and polite one?

12 MR. ANGELINI: I cannot hear what Mr. Neff
13 is saying, your Honor.

14 THE HEARING OFFICER: Okay.

15 I'm sustaining the objection.

16 MR. NEFF: I'm not sure where the
17 microphone is, but...

18 THE HEARING OFFICER: I think you just
19 dropped off in your voice, Mr. Neff.

20 MR. NEFF: Okay. All right. Maybe that's
21 all I did. Okay. I will do my best not to.

22 Q. Okay. Did you see Ms. Deines again on the
23 night of April 25th, 2019?

24 A. After she said good-night to us?

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1 Q. Yeah. Yeah.

2 A. No, I did not.

3 Q. Okay. And do you recall seeing Judge
4 Sushchuk leave Bayzos Pub on either late April 25th,
5 2019, or early April 26th, 2019?

6 A. No.

7 Q. Do you recall approximately what time you
8 and -- and your wife left Bayzos Pub on April 25th?

9 A. I would say shortly after nine o'clock.

10 Q. Okay. And did you speak with Judge
11 Sushchuk before you left Bayzos Pub on the evening
12 of April 25th, 2019?

13 A. Not that I recall.

14 Q. When did you first become aware of
15 Ms. Deines' complaint that Judge Sushchuk had
16 touched her buttocks inappropriately at the Bayzos
17 Pub during the evening of April 25th, 2019?

18 A. It was the following week when she called
19 me.

20 Q. Okay. Do you recall what date that was?

21 A. I -- I think it was May 2nd. I think it
22 was -- yeah. I just know it was the next week.

23 Q. And was that contact in person or by phone?

24 A. It was by phone, and I was in my vehicle at

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1 the time.

2 Q. Okay. And when you received a phone call
3 from Ms. Deines, did you continue driving or pull
4 over?

5 A. I pulled over.

6 Q. And in connection with the complaint that
7 Ms. Deines made to you beginning on that day,
8 May 2nd, 2019, you prepared a written report, did
9 you not?

10 MR. ANGELINI: I'm sorry. Would you mind
11 repeating that, Mr. Neff?

12 MR. NEFF: I'm sorry.

13 Q. In connection with Ms. Deines' complaint,
14 the one that she started to make to you by phone
15 call on May 2nd, 2019, you prepared a written
16 investigative report regarding her allegations, did
17 you not?

18 A. I did.

19 MR. NEFF: And at this point I would like
20 to present what would be the attested copy that I
21 have provided of Exhibit A, which is the adjusted
22 recorded copy of Chief Justice Casey's investigation
23 of this matter.

24 THE HEARING OFFICER: Exhibit 8 is the

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1 photograph.

2 MR. NEFF: A. I'm sorry, the -- the
3 exhibit that has been marked as Exhibit A, I
4 would --

5 THE HEARING OFFICER: A. Okay.

6 MR. NEFF: I would like to use that and ask
7 that it be introduced as an attested business copy
8 relating to his investigation of Ms. Deines'
9 complaint against Judge Sushchyk.

10 MR. ANGELINI: My objection.

11 THE HEARING OFFICER: I'll sustain.

12 MR. NEFF: Okay. Well --

13 Can I have a moment, please?

14 THE HEARING OFFICER: Sure.

15 Mr. Neff, we need to unmute you.

16 I'm sorry, Mr. Neff?

17 MR. NEFF: Yes.

18 THE HEARING OFFICER: Can you hear me?

19 MR. NEFF: I can hear you now.

20 THE HEARING OFFICER: Now we can hear you.

21 I couldn't hear anything you said before that. I'm
22 sorry.

23 MR. NEFF: Okay. I'm sorry, I was really
24 just saying thank you for your patience in giving me

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1 a little bit of time to confer and wait for me.

2 Q. So when you spoke to Ms. Deines by phone on
3 May 2nd, was anyone else present or did anyone else
4 take part in your phone conversation with Ms. Deines
5 at any point during that conversation on May 2nd,
6 2019?

7 A. Not on my part.

8 Q. Okay. And what was the nature of
9 Ms. Deines' complaint against Judge Sushchuk?

10 MR. ANGELINI: My objection.

11 THE HEARING OFFICER: Sustained.

12 MR. NEFF: Okay. Well, I have to be heard
13 on this, Judge Josephson.

14 THE HEARING OFFICER: Sure. Let's go
15 sidebar.

16 MR. NEFF: This is a complaint being
17 made --

18 THE HEARING OFFICER: Hang on. Mr. Neff,
19 I'm asking to go to sidebar, which means that we go
20 into the -- let's see.

21 THE REPORTER: I'll make the breakout room.

22 THE HEARING OFFICER: Okay. Great. Thank
23 you very much, Mr. Loos.

24 (Meeting in private breakout room. Hearing

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1 Officer Josephson, Mr. Neff, Ms. Cosgrove,
2 Mr. Angelini, and Mr. Loos present)

3 THE HEARING OFFICER: And we're on the
4 record, Mr. Loos?

5 THE REPORTER: Yes.

6 THE HEARING OFFICER: Okay. Great.

7 Go ahead, Mr. Neff.

8 MR. NEFF: Okay. Well, directing my
9 attention first to the -- the issue I was suggesting
10 I needed to address, which was my questions about
11 the subject matter of Ms. Deines' complaint.

12 There really has to be testimony here about
13 the report that Chief Justice Casey received and the
14 nature of that report and what the contents of that
15 report were, because that provides the context for
16 every action he and others took in connection with
17 the investigation of this matter. There's --
18 there's nothing left to say if --

19 We're not -- we're not putting any of that
20 in front of anyone, including you, to prove that
21 Mr. Deines told the truth because she said this to
22 Chief Justice Casey. But under the Trial Court's --
23 and it's one of the exhibits that I don't think has
24 actually been introduced yet, but I'm going to seek

1 to introduce -- the Trial Court's policy regarding
2 sexual and gender harassment that was in effect in
3 May of 2019 required that in response to certain
4 reports by certain parties who are employees of the
5 Trial Court required that a supervisor -- in this
6 case, Chief Justice Casey -- take certain actions in
7 connection with that. And he's going to testify,
8 not to establish the truth of the allegations, but
9 he's going to testify about the course of his
10 investigation and what he did to appropriately
11 follow through on -- on the report that he received.

12 THE HEARING OFFICER: How is that relevant?
13 How is what the Trial Court did relevant at all to
14 whether or not --

15 MR. NEFF: Because that's all the evidence
16 that was asked --

17 THE HEARING OFFICER: Let me finish,
18 Mr. Neff. Let me please finish.

19 How is that relevant to whether or not
20 Judge Sushchuk committed the acts that he's alleged
21 to have committed that constitute the complaint
22 against him?

23 Go ahead.

24 MR. NEFF: Because, like with any

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1 allegation made against anyone, this investigation
2 was going to be interviews with parties who were
3 percipient witnesses to some of or all of the events
4 that are being complained of; who are going to tell,
5 from their own perspective, what they saw and
6 remember happening. And that is going to form the
7 basis for developing evidence to make a decision, at
8 least in that context, regarding what to do about
9 this.

10 This -- it's the investigation. So it's
11 relevant because everything that Chief Justice Casey
12 does, every question he asks, every response he gets
13 is -- is relevant to the investigation that gave
14 rise to the charges in this complaint.

15 THE HEARING OFFICER: Mr. Angelini?

16 MR. ANGELINI: Yes, your Honor.

17 Your Honor, Judge Casey has given testimony
18 with respect to percipient knowledge of his.

19 THE HEARING OFFICER: Uh-huh.

20 MR. ANGELINI: Beyond percipient knowledge
21 this plays -- this report has no place in these
22 proceedings.

23 There is one question -- actually there are
24 two questions, and two questions only, before this

1 inquiry. The first is whether Judge Sushchuk
2 intentionally, without justification or excuse, and
3 without invitation or consent from Ms. Deines,
4 placed one of his hands under Ms. Deines' buttocks
5 or buttock and pinched or squeezed her buttock or
6 buttocks. The second relates to whether, indeed, he
7 removed a silver flask from his coat pocket.

8 Now this report is hearsay. It is as
9 classically hearsay as it could be. And it is not
10 relevant to whether, indeed -- to what your
11 responsibility is, which is to determine whether or
12 not there are -- there is proof, sufficient proof,
13 clear and convincing proof, that Judge Sushchuk
14 committed either of these acts. That's the issue.

15 And this is, I say, classically hearsay.
16 It is hearsay. There's no other way to describe it.
17 It is not based on percipient knowledge. It's based
18 on a separate investigation.

19 That's my position, your Honor.

20 THE HEARING OFFICER: Thank you.

21 Is there any allegation before me that
22 Judge Sushchuk engaged in misconduct during the
23 investigation?

24 MR. NEFF: In connection with the

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1 investigation of the -- investigation?

2 THE HEARING OFFICER: Correct.

3 MR. NEFF: I suppose it depends on your
4 perspective. I mean, the current set of rules do
5 require judges to comply and be honest with those
6 who investigate complaints of judicial misconduct
7 against a judge. So to the extent that there's a
8 belief that the evidence supports a finding that he
9 was not honest, that would constitute a violation of
10 the Code.

11 THE HEARING OFFICER: And that would be
12 entirely based on whatever he said?

13 MR. NEFF: It could be. Or it could be
14 that -- yeah. I think that's the most likely
15 scenario. I don't want to say that's the only
16 scenario on the -- on the spur of the moment.

17 But, I mean, this investigation -- again,
18 I'm not trying to get in and suggest to you -- I'm
19 trying to make these things fair. I'm not trying to
20 get in this report and have you look at it and say,
21 "These things must be true because they're written
22 down by the Chief Justice of the Probate and Family
23 Court as part of his investigation."

24 But it is part of a narrative of what

1 happened after she made her report, who was talked
2 to, what evidence was -- was discovered that may or
3 may not corroborate what -- what she has already
4 testified took place that day, and in the subsequent
5 days.

6 This investigation is going to include
7 interviews with Judge Sushchyk where he makes a
8 number of statements in response to the allegations
9 Ms. -- Ms. Deines made against him that she reported
10 to Chief Justice Casey, and I'm going to
11 respectfully suggest that there will come a point at
12 the end of this hearing where I will suggest that
13 the nature of his responses to those allegations,
14 and the inconsistent nature of his responses to
15 those allegations, go to his credibility and suggest
16 that Ms. Deines -- well, go to his credibility and
17 are relevant in that sense, not in the sense that
18 they establish the truth of anything.

19 THE HEARING OFFICER: Okay. Well, let's
20 look at this from the perspective of evidentiary
21 rulings and what is admissible and what isn't, and
22 what is hearsay and what is an exception to hearsay.

23 There is nothing that I've been told so far
24 that convinces me that this is not hearsay. It is

1 not an exception to hearsay, and I'm not persuaded
2 that it is admissible. So I am sustaining the
3 objection.

4 If we get to a point in the proceedings
5 where any of that changes, by all means then we'll
6 revisit it. But at this point the objection is
7 sustained, and we can leave the sidebar, which is, I
8 guess, the break room here.

9 MR. ANGELINI: Thank you, your Honor.

10 MR. NEFF: If I could get a little
11 guidance, because I do -- while I respectfully
12 disagree, but I do want to abide by your decision.
13 I do want to --

14 THE HEARING OFFICER: Thank you.

15 MR. NEFF: I -- in terms of sort of
16 presenting a narrative at this point in Chief
17 Justice Casey's testimony that may make some sense,
18 I still -- without getting into the specifics of
19 questions or -- or her responses, I would like to be
20 able to ask him questions about, "After you received
21 a report from her, who did you contact? What kind
22 of investigation did you initiate? Who did you
23 involve in that investigation? How long did that
24 investigation last?"

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1 All of that, I would respectfully suggest,
2 are not hearsay. They're just --

3 THE HEARING OFFICER: I understand. I
4 understand.

5 Any objection to that, Mr. Angelini,
6 insofar as what was done, not what was said, who was
7 spoken to, period?

8 MR. ANGELINI: I believe -- I believe, your
9 Honor, that we should take the questions as they
10 come.

11 THE HEARING OFFICER: That's fine.

12 MR. NEFF: That's fine. I -- I really am
13 only asking it because I don't --

14 MR. ANGELINI: I haven't finished.

15 MR. NEFF: I like to be careful and,
16 believe it or not, I really do try to be as
17 respectful as I can. And I just don't want you to
18 say one thing and then have me immediately do the
19 wrong thing, and -- and --

20 THE HEARING OFFICER: Hang on, Mr. Neff.
21 Hang on.

22 I'm sorry. I don't think Mr. Angelini was
23 done.

24 MR. NEFF: I'm sorry. Go ahead.

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1 MR. ANGELINI: I would just say that I -- I
2 don't think it's appropriate, your Honor, to reach
3 some blanket understanding as to the nature of the
4 questions that Mr. Neff should ask. That's my
5 position.

6 THE HEARING OFFICER: Okay. That's fine.
7 We'll take them as they come, and we'll
8 leave the break room -- breakout, excuse me, room
9 now, and go back to the witness.

10 Thank you.

11 MR. ANGELINI: Thank you, your Honor.

12 (Return to the open proceedings)

13 MR. NEFF: Thank you all for your patience.

14 With your permission, Judge Josephson, if I
15 could continue to inquire of Chief Justice Casey.

16 THE HEARING OFFICER: Yes, please.

17 BY MR. NEFF:

18 Q. So when we left off, on Thursday, May 2nd,
19 2019, you received a phone call from a Probate and
20 Family Court employee by the name of Emily Deines.
21 When you received that call, you pulled over and
22 stopped your car in order to have that conversation.

23 Is that correct?

24 A. Sorry. I muted myself during the break,

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1 and I apologize for that.

2 And so yes, I received a call from Emily
3 Deines, and I pulled my vehicle over.

4 Q. And how would you describe her demeanor,
5 temperament during that phone call that day?

6 MR. ANGELINI: Object.

7 THE HEARING OFFICER: Well, to the extent
8 that you were able -- well, first let's determine
9 whether or not there was -- the conversation was one
10 in which the witness was able to make any
11 determination.

12 MR. NEFF: I'm not sure -- I'm not trying
13 to be dense, Judge.

14 THE HEARING OFFICER: I know you're not.

15 MR. NEFF: Reach any determination
16 regarding the witness' -- make any determination
17 regarding what?

18 THE HEARING OFFICER: The demeanor you just
19 asked about.

20 MR. NEFF: Okay. All right.

21 Q. Well, let's -- maybe I'll just ask the
22 question better.

23 During your phone call with Ms. Deines on
24 May 2nd, 2019, did you note -- well, strike that.

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1 Had you ever spoken to Ms. Deines on the
2 phone before May 2nd of 2019?

3 A. Yes.

4 Q. Okay. And when you spoke with Ms. Deines
5 on May 2nd of 2019, did you notice anything in that
6 conversation regarding her demeanor or emotional
7 state?

8 MR. ANGELINI: Object.

9 THE HEARING OFFICER: Overruled.

10 MR. ANGELINI: May I be heard, your Honor?

11 THE HEARING OFFICER: Yes. Go ahead.

12 MR. ANGELINI: So the reason for my
13 objection is clear, we're talking about an event
14 which occurred more than one week beyond the event
15 which is the subject matter of these proceedings.

16 I would suggest to you respectfully that
17 they are -- demeanor on that date is irrelevant to
18 whether or not anything occurred on April 25th, or
19 April 26th, and that is the basis of my objection.

20 THE HEARING OFFICER: Okay. Thank you,
21 Mr. Angelini.

22 The objection is overruled. The witness
23 may answer.

24 THE WITNESS: Yes.

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1 BY MR. NEFF:

2 Q. You can answer, Chief Justice Casey.

3 A. Will you ask the question again?

4 Q. I'm sorry. Certainly.

5 Did you -- did you -- during that May 2nd,
6 2019, phone call, where you pulled your car over to
7 talk to Emily Deines, did you notice anything about
8 her demeanor or emotions during that conversation
9 that you remember?

10 A. My answer was "yes."

11 Q. And what do you remember about that?

12 A. She sounded different than the previous
13 conversations that I had had with her on the
14 telephone.

15 Q. And -- and what were the differences, if
16 you had to describe them? What were the differences
17 in how she sounded on that particular day?

18 A. She was -- was sort of talking faster.
19 She -- her voice was different. She seemed to be
20 upset.

21 Q. Did she make mention of anything related to
22 her -- anything she had done with respect to her
23 work for the Probate and Family Court during that
24 phone conversation?

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1 MR. ANGELINI: My objection.

2 THE HEARING OFFICER: Sustained.

3 Q. During your conversation with Ms. Deines on
4 May 2nd, without getting into the specifics of what
5 you discussed with her, did -- did any names come up
6 during that conversation?

7 MR. ANGELINI: My objection.

8 THE HEARING OFFICER: Sustained.

9 Q. During that conversation with Ms. Deines on
10 May 2nd, did she suggest to you any persons that you
11 might want to speak to --

12 MR. ANGELINI: My objection.

13 Q. -- following her May 2nd call?

14 MR. ANGELINI: My objection.

15 THE HEARING OFFICER: Sustained.

16 Q. After Ms. Deines stated to you what she had
17 to say to you on May 2nd, 2019, what did you say
18 back to her in terms of what you planned to do --

19 MR. ANGELINI: My objection.

20 Q. -- in response?

21 MR. ANGELINI: Excuse me.

22 THE HEARING OFFICER: Sustained.

23 MR. NEFF: Okay. Well, can we go to
24 sidebar? This is -- this is --

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1 MR. ANGELINI: I apologize for interrupting
2 you. I thought you had finished your question. I
3 apologize.

4 THE HEARING OFFICER: That's all right.

5 MR. ANGELINI: Thank you, your Honor.

6 MR. NEFF: I am asking what Chief Justice
7 Casey said to Ms. Deines --

8 THE HEARING OFFICER: I know.

9 MR. NEFF: -- on May 2nd.

10 THE HEARING OFFICER: I know.

11 I'm sustaining the objection.

12 MR. NEFF: Okay.

13 Q. Well, what did you do following receiving
14 that phone call and what Ms. Deines said to you on
15 May 2nd of 2019?

16 MR. ANGELINI: I object to the form of the
17 question.

18 THE HEARING OFFICER: No. I'll allow it.

19 MR. ANGELINI: Okay.

20 A. I -- I called the Chief Justice of the
21 Trial Court, Paula Carey.

22 Q. And why did you call her?

23 MR. ANGELINI: Objection.

24 THE HEARING OFFICER: Sustained.

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1 Q. Without getting into any particular subject
2 matter, were you calling to inform her of something?
3 Seek advice about something? Report something to
4 her? Calling her about normal court matters?

5 What was the purpose of the call?

6 MR. ANGELINI: I object.

7 THE HEARING OFFICER: Sustained.

8 Q. Okay. Were you -- were you contacting
9 Chief Justice Carey pursuant to any protocols or
10 policies that were required by the Trial Court of
11 Massachusetts?

12 MR. ANGELINI: My objection.

13 THE HEARING OFFICER: Overruled.

14 A. Not at that time.

15 Q. Okay. Did Chief Justice Carey say anything
16 to you about what you should do after speaking to
17 her on the phone?

18 MR. ANGELINI: My objection.

19 THE HEARING OFFICER: Sustained.

20 MR. NEFF: Let me try something a little --
21 a little bit differently here.

22 I'd like to -- and I don't believe this is
23 in evidence for purposes of the hearing yet, but
24 show Chief Justice Casey what we have marked as

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1 Exhibit B, which is the Massachusetts Trial Court
2 policy and procedure for the elimination of sexual
3 and gender harassment to the workplace.

4 And with your permission.

5 THE HEARING OFFICER: Okay. Exhibit B for
6 identification, Mr. Loos.

7 THE REPORTER: One moment.

8 THE HEARING OFFICER: Sure.

9 THE REPORTER: All right.

10 MR. NEFF: Okay.

11 Q. And do you have that in front of you now?

12 Okay.

13 That -- what I have presented is an
14 attested copy of the policy of the Trial Court
15 regarding sexual and gender harassment that was in
16 effect as of the time of the alleged incident in
17 this matter, April 25th, 2019. I'd ask that it be
18 admitted for purposes of this hearing as Exhibit
19 Number -- I'm sorry. I don't know what we're up to.

20 MR. ANGELINI: 9.

21 MR. NEFF: 9? Okay.

22 MR. ANGELINI: In any event, I have no
23 objection, your Honor.

24 THE HEARING OFFICER: All right.

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1 Exhibit 9 is in evidence.

2 (Document marked as Commonwealth's
3 Exhibit 9 admitted into evidence)

4 MR. NEFF: Thank you, Mr. Angelini. I'm
5 sorry. I'll try to be better with the numbers. I
6 have a lot of things to keep focus on.

7 Mr. Loos is a master. I have no idea how
8 he, or some of the others of you, are doing it.

9 Q. I'm going to back you up just slightly,
10 Chief Justice Casey. And I'm going to ask you, if I
11 can -- using a bigger copy, if you happen to have
12 one, or an electronic copy of -- it would have to be
13 the same document -- look at Page 8 of that policy.

14 A. So are you asking me to retrieve a certain
15 document and then look at Page 8?

16 I'm just a little unclear.

17 MR. NEFF: I'm not sure. I'll confess, I'm
18 a little new with the limits and what's happening in
19 terms of the technology.

20 But Mr. Loos, are you able to not just show
21 but maybe send or make available to Chief Justice
22 Casey a complete copy of Exhibit, did we say 10 --

23 THE REPORTER: 9.

24 MR. NEFF: -- for purposes of -- 9.

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1 THE REPORTER: If he clicks on the link, it
2 should open and he should be able to go through it.

3 MR. ANGELINI: Your Honor, may I
4 respectfully request a sidebar?

5 THE HEARING OFFICER: All right.

6 MR. ANGELINI: Thank you.

7 THE REPORTER: Just go to the breakout
8 room, Mr. Angelini.

9 MR. ANGELINI: Thank you.

10 (Meeting in private breakout room. Hearing
11 Officer Josephson, Mr. Neff, Ms. Cosgrove,
12 Mr. Angelini, and Mr. Loos present)

13 MR. ANGELINI: I requested a sidebar
14 because I want to make it clear to the Court that
15 there is no assertion by or on behalf of Judge
16 Sushchuk that the policy and procedures with respect
17 to this matter have not been carried out.

18 THE HEARING OFFICER: Sure.

19 MR. ANGELINI: There's no assertion of any
20 violation of that policy.

21 Of course we strongly reject the claim of
22 any underlying bad conduct by Judge Sushchuk, but
23 aside from that, with respect to the policy, whether
24 Judge Casey did what he may have been required or

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1 not, I want to make it clear to the Court that there
2 is absolutely no assertion that anything improper
3 took place.

4 THE HEARING OFFICER: Okay.

5 MR. ANGELINI: And I thought that making
6 that clear at a sidebar may be helpful to our
7 process going forward, and that's the reason I
8 requested a sidebar.

9 THE HEARING OFFICER: Okay. Great. Thank
10 you, Mr. Angelini.

11 Mr. Neff, you can make whatever use you
12 care to of what Mr. Angelini is stipulating to.

13 MR. NEFF: Understood. Thank you.

14 THE HEARING OFFICER: Yep.

15 MR. NEFF: Well, I mean obviously the
16 testimony from yesterday is that there was a report
17 made to the Probate and Family Court of sexual
18 harassment.

19 And I -- as I said, I -- while I object to
20 them, I respect your rulings to -- to keep out
21 anything that's even approaching hearsay relating to
22 what Chief Justice Casey may have done following
23 Ms. Deines' report to him, but I do feel like if I
24 am going to present a comprehensible narrative

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1 regarding the events that took place and the people
2 that were involved and what happened afterward, I
3 want to, as creatively as I can -- using things that
4 I would suggest are not hearsay, but are relevant --
5 try to do my best to paint that picture.

6 So -- so, for instance, I forget exactly
7 what I was going to say, but I think Page 8
8 basically gives -- gave Chief Justice Casey some
9 direction regarding first steps --

10 THE HEARING OFFICER: Okay.

11 MR. NEFF: -- in response to that kind of
12 report. And so then he made a phone call, and then
13 he has a meeting.

14 He doesn't have to talk about the meeting,
15 and I'm not going -- I don't want to mislead. He
16 does have a meeting at some point with Judge
17 Sushchyk, and I'll obviously leave it to you and
18 respect your decisions regarding admissibility, but
19 Judge Sushchyk, of course, made statements during
20 the course of the investigation. I'm probably going
21 to ask what those were.

22 THE HEARING OFFICER: Okay. Then we can go
23 back, unless there's something else, Mr. Angelini.

24 MR. ANGELINI: No, nothing at all, your

1 Honor.

2 THE HEARING OFFICER: Okay. Then let's --
3 okay. Great.

4 Then let's go back to where we left off,
5 Page 8 of Exhibit Number 9.

6 (Return to the open proceedings)

7 MR. NEFF: So if we were now ready?

8 THE HEARING OFFICER: We are.

9 MR. NEFF: Thank you very much.

10 And with your permission, Judge Josephson,
11 I'll continue to inquire of Chief Justice Casey.

12 THE HEARING OFFICER: Sure.

13 BY MR. NEFF:

14 Q. And when we left off -- I don't know if
15 you've had a chance to locate it, but I was about to
16 ask you about some contents on Page 8 of the Trial
17 Court's then in effect, at least, policy regarding
18 sexual and gender harassment in the workplace.

19 Have you found that page?

20 A. I didn't look for it because I thought
21 there was a sidebar relative to that issue.

22 So -- and Mr. Loos had sent me a link. And
23 I'm not that technologically savvy, but I can click
24 on a link, and it's not working.

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1 So if you -- if, with the Judge's
2 permission, if you want me to try to locate that
3 document, or if he wants to send it to me some other
4 way, I'm happy to do whatever the Judge instructs me
5 to do.

6 THE HEARING OFFICER: Great. Thanks.

7 Mr. Loos, you had provided the document, a
8 different document in some other -- some other
9 means.

10 Can you do that again?

11 THE REPORTER: I can screen share Page 8.

12 THE HEARING OFFICER: That's great. Thank
13 you.

14 THE REPORTER: One moment.

15 THE HEARING OFFICER: Okay. Thank you.

16 BY MR. NEFF:

17 Q. On that page, I would just like to direct
18 your attention to --

19 THE REPORTER: Tell me where you'd like to
20 be.

21 Is this it?

22 BY MR. NEFF:

23 Q. So I'll direct your attention to Section F
24 of Page 8, which basically says -- and I won't

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1 belabor it too much, and read the whole thing:

2 "A manager who becomes aware of
3 conduct that may constitute a violation of
4 the policy, could potentially lead to a
5 violation of the policy, whether or not a
6 complaint has been made, must take
7 appropriate action to stop the conduct."
8 Going ahead a little bit further:

9 "In a situation where an employee has
10 not come forward with a specific complaint,
11 but the manager is aware of the incident
12 that might be in violation of the policy,
13 the manager has a range of options:"
14 Including -- including, and then it says:

15 "The manager may decide to conduct an
16 investigation on his/her own initiative and
17 take remedial action, possibly including
18 disciplinary action, to ... eliminate the
19 conduct."

20 In particular --

21 MR. ANGELINI: If this is a question, I
22 object to it, your Honor. The document speaks for
23 itself.

24 MR. NEFF: I'm no sure I'm even done asking

1 a question.

2 THE HEARING OFFICER: It does. And reading
3 the whole thing, I don't know if it's necessary.

4 Where are you headed with this, Mr. Neff?
5 Are you going to ask Chief Justice Casey about
6 something?

7 BY MR. NEFF:

8 Q. Well, let me ask you this:

9 Did you consult your policy after your
10 conversation with Ms. Deines?

11 A. Again, I just want to understand, is this
12 the policy that was in effect at the time that the
13 incident was reported to me?

14 Q. Well, I'm not sure I'm allowed to answer
15 your questions, Mr. Angelini (sic), but I will tell
16 you what has been submitted as an exhibit here is an
17 attested copy that was actually signed by you on the
18 17th saying that this report was in effect as of
19 April 25th, 2019.

20 A. You're asking me about a policy of the
21 Trial Court. Isn't that what this document is
22 that's in front of me?

23 Q. Right. Correct.

24 A. Okay. And so again, I just -- I just want

1 to be clear. I'm being asked to confirm that I
2 referred to a provision of a document, policy. I
3 just want to make sure it's the one that was in
4 effect at the time, that May 2nd, 2019.

5 If that's the case, yes, I did refer to the
6 policy that was in effect at that time --

7 Q. Okay.

8 A. -- in May of 2019.

9 Q. And at the very bottom of Page 8, it
10 says -- it makes reference to managers being
11 encouraged to:

12 "... contact the CGI about any
13 situations that involve this policy..."

14 Do you know what a CGI is?

15 A. I just -- at this moment I can't -- I
16 don't -- I can't recall what it stands for.

17 Q. Well, I -- I just don't want to make this
18 very hard.

19 MR. ANGELINI: Your Honor, I object to
20 questions regarding this, on this subject, as
21 irrelevant to the preceding that is taking our
22 attention here.

23 The question before you is whether or not
24 these charges against Judge Sushchuk should be

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1 sustained by clear and convincing evidence. This is
2 not relevant to that inquiry.

3 THE HEARING OFFICER: I'm not seeing how it
4 is, but -- and it doesn't seem as though it's been
5 even endorsed by the witness, so I'll sustain.

6 If we need to come back to this, Mr. Neff,
7 we will; but let's move on to another area. And, of
8 course, I'll give you a chance to -- to make a
9 record concerning this, but let's move on for now.

10 MR. NEFF: Well, I mean, I'm really just
11 trying to -- I understand your position, Judge. I'm
12 really just trying to build a narrative, without
13 getting into any hearsay, that at least makes sense.

14 So --

15 THE HEARING OFFICER: I really --

16 MR. NEFF: I wonder if we can agree and
17 stipulate Judge Casey received a call from Emily
18 Deines on May 2nd, 2019, and, as a consequence,
19 contacted other people and conducted an
20 investigation, then -- which is basically what
21 different portions of this policy say to do -- then
22 I think we can just move on.

23 THE HEARING OFFICER: Great. Let's do
24 that.

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1 MR. NEFF: Okay.

2 THE HEARING OFFICER: Thank you.

3 MR. NEFF: Thank you.

4 Q. Who did you or your office contact
5 following Ms. Deines' report to you?

6 A. Who did I contact relative to my
7 conversation with Ms. Deines?

8 Q. Yeah.

9 And I probably should be more specific and
10 say, who did you or someone from your office contact
11 in response to Emily Deines' May 2nd, 2019,
12 conversation with you?

13 A. I'm not sure what other people in my office
14 may or may not have done or contacted, but in terms
15 of I contacted Chief Justice Carey --

16 Q. Uh-huh.

17 A. -- as I mentioned. I spoke with the deputy
18 court administrator for our department, Attorney
19 Linda Medonis.

20 Q. Okay. Did someone from your office speak
21 with a woman by the name of Maggie Pinkham?

22 A. I ultimately spoke to Maggie Pinkham.

23 Q. Okay. And who is she and what is her role
24 in the Trial Court?

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1 A. Yep. She's basically -- it's a relatively
2 new position. It had been new at the time of this
3 situation. And she's, I think, director of
4 compliance with the policy that you referred to.

5 Q. Okay. So did you get any advice of any
6 kind from Ms. Medonis, Chief Justice -- I should say
7 Chief Justice of the Trial Court Paula Carey, or
8 from Maggie Pinkham, regarding anything you should
9 be doing next after receiving that report?

10 MR. ANGELINI: My objection. My objection.

11 THE HEARING OFFICER: Only to the extent
12 the answer is "yes" or "no," the witness may answer.

13 A. Okay. Yes.

14 Q. As of the point when Ms. Pinkham,
15 Ms. Medonis and Chief Justice Carey, and you knew
16 about Ms. Deines' conversation with you, do you know
17 if anyone else within the probate court was aware of
18 what she had said to you?

19 MR. ANGELINI: "Yes" or "no," please.

20 THE HEARING OFFICER: Right.

21 A. Yes.

22 Q. You do know.

23 And who else was aware?

24 MR. ANGELINI: Objection.

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1 THE HEARING OFFICER: Sustained.

2 MR. NEFF: Okay.

3 Q. Following your conversations with
4 Ms. Medonis, Chief Justice Carey and Ms. Maggie
5 Pinkham, did you make arrangements to interview
6 Judge Paul Sushchyk?

7 A. Yes.

8 MR. NEFF: Okay. And I apologize, Judge,
9 but I -- I could actually use just a very, very
10 brief restroom break.

11 THE HEARING OFFICER: Sure. Of course, of
12 course.

13 Let's -- we'll take a five-minute recess.
14 Everybody will reconvene -- let's do that without
15 delay.

16 MR. NEFF: Okay. Thank you. Thank you
17 very much.

18 THE HEARING OFFICER: Yes.

19 MR. ANGELINI: Thank you.

20 (Recess taken)

21 THE HEARING OFFICER: Okay.

22 BY MR. NEFF:

23 Q. Okay. I believe my last question before we
24 took the break, if I am correct, is did you make

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1 arrangements to speak with Judge Paul Sushchuk about
2 a matter after -- after all of this?

3 A. Yes.

4 Q. Okay. And how did you make arrangements to
5 have that interview take place with Judge Paul
6 Sushchuk?

7 A. I think I asked my administrative assistant
8 to schedule a meeting for, I believe, 8:00 a.m. on
9 Friday, May 10th, to take place at the Worcester
10 lobby where Judge Sushchuk was sitting.

11 Q. Okay. And not any -- any content that may
12 have caused you to do so, but did any person suggest
13 that he may be a person that you would want to speak
14 to in -- in connection with a matter?

15 MR. ANGELINI: I object.

16 THE HEARING OFFICER: Sustained.

17 MR. ANGELINI: I object.

18 THE HEARING OFFICER: Sustained.

19 Sustained. Thank you.

20 Q. Let me ask you a different question:

21 How many days after your phone conversation
22 with Ms. Deines on May 2nd did you arrange for a
23 meeting with Judge Sushchuk in his lobby in
24 Worcester to discuss a matter?

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1 A. I think it was eight days later.

2 Q. Okay. And you said you had your assistant
3 make arraignments to make that appointment?

4 A. That's my recollection.

5 MR. ANGELINI: Objection.

6 Q. Okay. And it was -- it was to happen at
7 8:00 a.m., first thing, on Monday morning?

8 THE HEARING OFFICER: I'm sorry.

9 Mr. Angelini, are you objecting.

10 MR. ANGELINI: I'm objecting. These are
11 asked and answered. He's testified that the meeting
12 was set up for 8:00 a.m. on Friday, May 10th.

13 Yes, your Honor.

14 THE HEARING OFFICER: Okay. Okay.

15 MR. NEFF: Part of this is me just trying
16 to move things along. I'm really trying to create
17 testimony, but...

18 THE HEARING OFFICER: Okay.

19 BY MR. NEFF:

20 Q. Do you know when your assistant placed that
21 phone call and made that arrangement with Judge
22 Sushchyyk for the meeting to take place on May 10th
23 of 2019?

24 MR. ANGELINI: I object, relevance.

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1 THE HEARING OFFICER: I'll sustain.

2 Let's move along.

3 MR. NEFF: Well, if I can be heard at
4 sidebar, then, Judge.

5 THE HEARING OFFICER: Let's --

6 MR. ANGELINI: To avoid sidebar -- to avoid
7 sidebar, I'll withdraw my objection.

8 THE HEARING OFFICER: Thank you.

9 Go ahead, Mr. Neff.

10 BY MR. NEFF:

11 Q. So you can -- you can answer then, Chief
12 Justice Casey.

13 A. I don't remember exactly when I asked my
14 assistant to do that, but I think it was closer to
15 the scheduled appointment. I think it was within a
16 few days of the 10th.

17 Q. And the 10th was a Monday, so --

18 A. I'm sorry. It was a Friday. I thought it
19 was a Friday.

20 Q. Maybe I got it wrong. It was a Friday. I
21 should probably double-check that.

22 The 10th -- oh, actually, no. Let's see.
23 10th. The 10th was a Friday.

24 So you would say either the 8th or 9th of

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1 May your assistant called Judge Sushchuk and asked
2 him to meet with you in his lobby at 8:00 a.m. in
3 Worcester?

4 A. I don't know if she called him or not. I
5 know that she arranged for me to meet with him on
6 that Friday morning at 8:00 a.m. in Worcester.

7 Q. And was the situation in terms of your
8 calendar and so forth such that you felt comfortable
9 actually going out and attending that meeting in
10 Worcester?

11 MR. ANGELINI: I object.

12 THE HEARING OFFICER: Sustained.

13 Q. Well, you did go to the meeting? Yes?

14 A. Yes.

15 Q. Okay. And where in the courthouse did the
16 meeting take place?

17 A. In Judge Sushchuk's lobby in the Worcester
18 Judicial Center.

19 Q. Okay. And was Judge Sushchuk present for
20 this meeting?

21 A. Yes, he was there when I arrived shortly
22 before 8:00 a.m.

23 Q. He was there before you or after you got
24 there?

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1 A. No. He was there before I arrived.

2 Q. And without discussing the exact purpose of
3 the meeting, is it safe to say that this was
4 actually the second time you had made arrangements
5 to discuss a serious matter with Judge Sushchuk?

6 MR. ANGELINI: I object.

7 THE HEARING OFFICER: Sustained.

8 MR. NEFF: All right. Well, then I'll ask
9 more generally.

10 Q. Was this the first time you had made
11 arrangements to discuss a matter with Judge Sushchuk
12 in his lobby in Worcester since --

13 MR. ANGELINI: I object.

14 Q. -- he became a judge?

15 THE HEARING OFFICER: Sustained.

16 MR. ANGELINI: I object.

17 THE HEARING OFFICER: Sustained.

18 MR. NEFF: Okay.

19 Q. Well, let me ask you this:

20 Is it -- how long have you been Chief
21 Justice of the Probate and Family Court?

22 THE HEARING OFFICER: We've already gone
23 over this. We've already gone over this, Mr. Neff.
24 I'm going to ask you to move along.

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1 I'm sustaining the objection.

2 MR. NEFF: Okay. All right. We'll ask it
3 a different way.

4 Q. In the time you've been the Chief Justice
5 of the Probate and Family Court, on how many
6 occasions have you felt it was necessary to arrange
7 private one-on-one meetings with judges of the
8 Probate and Family Court to discuss a particular
9 matter?

10 MR. ANGELINI: My objection.

11 THE HEARING OFFICER: Sustained.

12 Q. How long did your interview with Judge
13 Sushchyk on May 10th last?

14 A. My meeting lasted, I think, about half an
15 hour.

16 Q. And what did you tell him was the purpose
17 of the meeting?

18 THE WITNESS: So I'm allowed to answer
19 that, Judge?

20 THE HEARING OFFICER: Yeah.

21 THE WITNESS: Okay. Sorry. I didn't see
22 Mr. Angelini.

23 THE HEARING OFFICER: Okay. That's okay.

24 THE WITNESS: So you want me to -- you want

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1 me to testify as to what I explained to Judge
2 Sushchuk as the purpose of my meeting with him?

3 BY MR. NEFF:

4 Q. Yes, please.

5 A. Is that true? Sure.

6 I told him -- well, I -- I asked him to
7 read something and to respond to it, and -- and that
8 was relative to my phone conversation with
9 Ms. Deines that occurred the week before.

10 MR. NEFF: Okay. Mr. Loos, if I could ask
11 what would -- what exhibit number was Ms. Deines'
12 statement entered into as?

13 MR. ANGELINI: Exhibit Number 6.

14 MR. NEFF: Can I then ask that Chief
15 Justice Casey be shown Exhibit Number 6 that has
16 been admitted during this hearing.

17 THE HEARING OFFICER: Can we agree that was
18 shown to your client, Mr. Angelini?

19 MR. ANGELINI: Yes, we can agree to that,
20 your Honor.

21 THE HEARING OFFICER: Okay. Let's get it
22 that way.

23 MR. NEFF: Okay.

24 Q. So that statement said what it said, and

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1 did you give Judge Sushchyk a chance to review the
2 entirety of that statement?

3 A. Yes.

4 Q. Okay. Was anyone but Judge Sushchyk and
5 you present in his lobby while this was going on?

6 A. No. I -- I think his sessions clerk may
7 have been there when I first entered the lobby, but
8 she left shortly thereafter. So there was no one
9 else present when I asked the judge to review that
10 exhibit.

11 Q. Okay. And how long, approximately, would
12 you say it took him to review that exhibit?
13 Seconds? Minutes? How long did he look it over
14 before he finished?

15 A. It was very short. So maybe 10 or
16 15 seconds.

17 Q. Okay. And how would you describe Judge
18 Sushchyk's demeanor or temperament after he read
19 what's been marked as Exhibit 6 in -- in this
20 hearing, Ms. Deines' statement regarding events of
21 April 25th?

22 A. He appeared visibly upset by it. He -- I
23 believe he stood up from his desk. He took his
24 glasses off. I think he rubbed his eyes and started

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1 to kind of pace a little bit in his -- by his desk.

2 Q. Did he say anything to you at that
3 particular point in time?

4 A. Yes.

5 Q. What did he say?

6 A. He said, "I couldn't have" -- "I couldn't
7 have done something like that. I" -- "I wouldn't do
8 something like that. I would never hurt anyone,
9 especially a woman."

10 I think that was the gist of his initial
11 comments.

12 Q. Did you, during your May 10th, 2019,
13 interview with Judge Sushchuk, discuss his alcohol
14 consumption on April 25th of 2019?

15 MR. ANGELINI: Objection.

16 THE HEARING OFFICER: Overruled.

17 A. Yes.

18 Q. And what was -- what did you ask him and
19 what did he say?

20 A. I asked him if it was possible that he was
21 impaired by the consumption of alcohol such that it
22 would affect his memory of the events of that
23 evening as alleged by Ms. Deines.

24 Q. And is that a question you asked him, by

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1 the way, before or after he said he would be able to
2 recall this type of incident, if anything like that
3 had happened?

4 A. Afterwards, I believe.

5 Q. Did he -- did he, during this May 10th,
6 2019, interview reveal to you that at the time of
7 the alleged incident he was carrying with him a
8 flask containing whiskey?

9 MR. ANGELINI: Objection.

10 THE HEARING OFFICER: Sustained.

11 Q. Did you have any conversation with him
12 during your May 10th, 2019, interview with Judge
13 Sushchuk about your observations of him earlier
14 during the dinner that he seemed tired -- tired
15 than normal and that his energy level seemed lower
16 than normal?

17 A. I don't recall. It's -- I don't recall.

18 Q. Okay. Do you recall during a deposition
19 you gave in this matter on May 27th of 2020 being
20 asked basically the question, "Did you bring up with
21 Judge Sushchuk your observations of him earlier in
22 the dinner on April 25th that he seemed tired and
23 sort of slow during" -- "during" -- "during the
24 May 10th interview with him?"

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1 Do you recall me asking you that question?

2 MR. ANGELINI: I object. It was just
3 asked. The witness said he did not recall.

4 THE HEARING OFFICER: Sustained.

5 MR. ANGELINI: Asked and answered.

6 THE HEARING OFFICER: Sustained.

7 If you want to refresh the witness'
8 recollection because you believe it's exhausted,
9 then you'll have to follow that procedure, Mr. Neff.

10 MR. NEFF: Okay. Okay. Well, if I could
11 be permitted to refresh his memory.

12 THE HEARING OFFICER: You don't start
13 there.

14 I'm sorry. You have to start a different
15 place than that. I'm sorry. I'm sustaining the
16 objection.

17 MR. NEFF: Well, as Mr. Angelini knows, I
18 have provided with -- I have provided both him and
19 Chief Justice Casey with a copy of the deposition
20 transcript of May 27th, 2020 --

21 THE HEARING OFFICER: Right.

22 MR. NEFF: -- deposition.

23 THE HEARING OFFICER: Not a problem.

24 MR. NEFF: So to refresh his memory I would

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1 like to ask him to review that portion of the
2 deposition transcript which is -- all right.

3 Well, yeah.

4 Q. Is your memory exhausted at this point as
5 to whether or not you had that conversation or had a
6 conversation with him about your concerns about him
7 seeming tired or low energy during the dinner on
8 April 25th, 2019?

9 A. I don't think so.

10 Q. Okay. Do you -- after talking about it a
11 little bit, do you recall whether you may have,
12 indeed, brought up with Judge Sushchuk that you had
13 noticed as early as during dinner on April 25th,
14 2019, that he -- that he seemed a little tired and
15 low energy during the dinner?

16 MR. ANGELINI: I object.

17 THE HEARING OFFICER: Sustained.

18 Q. Well, did you bring it up with him during
19 your --

20 THE HEARING OFFICER: Mr. Neff. Mr. Neff.
21 I'm sorry to interrupt.

22 I sustained the objection.

23 Let me just -- let me just help out a
24 little bit by saying that you're going to need to

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1 move to a different area. The witness has answered
2 the question, and that's the answer.

3 MR. NEFF: Okay. All right.

4 Q. Well, then, I'd like to refresh your memory
5 with your deposition testimony if I can. And, as I
6 said, I provided a copy of that deposition to
7 Mr. Angelini and, of course, to Chief Justice Casey.

8 MR. NEFF: And I'd like to direct his
9 attention to Page 76 of that deposition, ask him to
10 take a look at that and ask him if it refreshes his
11 memory as to what he discussed with Judge Sushchuk
12 on May 10th of 2019.

13 MR. ANGELINI: I object, your Honor, based
14 on the testimony of the witness with respect to his
15 recollection.

16 THE HEARING OFFICER: It's sustained. It's
17 sustained.

18 Mr. Neff, this is -- this has already been
19 answered. The witness has confirmed that his memory
20 does not need to be refreshed and has already stood
21 by the testimony that he just gave in answer to your
22 question. So I'm going to ask you to move to a
23 different area, please.

24

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1 BY MR. NEFF:

2 Q. Did Judge Sushchuk, during the May 10th,
3 2019, interview with him, say anything to you about
4 being up late on the evening of April 24th or early
5 morning of April 25th and being compromised before
6 he arrived at the conference on that first day of
7 the conference on April 25th, 2019?

8 A. He may have mentioned -- I know he
9 mentioned it was a long drive; he had to get up
10 early that morning, the Thursday of that first day
11 of conference.

12 I don't recall him saying that he was up
13 late the night before. It's possible. And I -- I
14 don't recall him saying that he was compromised when
15 he arrived at the conference.

16 Q. Okay. Well, let me ask you this:

17 After confronting Judge Sushchuk with
18 Ms. Deines' allegations against him regarding
19 improper touching on April 25th, what did you
20 understand Judge Sushchuk's response to that, to
21 those allegations to be?

22 MR. ANGELINI: I object, your Honor.

23 THE HEARING OFFICER: Sustained.

24 MR. NEFF: Okay. All right.

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1 Q. Well, let me ask you this:

2 During your May 10th, 2019, interview with
3 Judge Sushchuk, did he ever specifically deny
4 touching Ms. Deines?

5 THE HEARING OFFICER: Mr. Angelini?

6 MR. ANGELINI: I object, your Honor.

7 THE HEARING OFFICER: Sustained.

8 Q. At the conclusion of your interview with
9 Judge Sushchuk on May 10th of 2019, did you have any
10 concerns about his status?

11 MR. ANGELINI: Objection.

12 THE HEARING OFFICER: Sustained.

13 Q. As -- at the conclusion of your May 10th,
14 2019, interview with Judge Sushchuk did you have any
15 concerns or feelings that, for whatever reason,
16 Judge Sushchuk did not have a clear recollection of
17 whether or not he had, in fact, done the things, or
18 done the thing that Ms. Deines alleged he had done
19 to her on April 25th of 2019?

20 MR. ANGELINI: My objection, your Honor.

21 THE HEARING OFFICER: Sustained.

22 MR. NEFF: Okay. All right.

23 Q. Well, I would then like to ask you about
24 your deposition.

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1 This is something Mr. Angelini has, and I
2 have provided --

3 THE HEARING OFFICER: May I ask, Mr. Neff,
4 your purpose for directing the witness to his
5 deposition?

6 MR. NEFF: Because he -- he -- he does have
7 an -- he did state an opinion.

8 THE HEARING OFFICER: Yeah. But I said he
9 can't say it. It's not admissible whether he said
10 it in a deposition or you're asking him now.

11 I sustained the objection, so I -- I just
12 don't want to see you needlessly going down a road
13 that's not going to prove fruitful.

14 Q. All right.

15 Well, let me ask you this, then:

16 During your May 10th, 2019, meeting did
17 Judge Sushchuk disclose to you some intimate
18 personal medical information about himself?

19 MR. ANGELINI: I object.

20 THE HEARING OFFICER: That's a "yes" or a
21 "no."

22 A. Yes.

23 Q. And what did that relate to?

24 MR. ANGELINI: I object, your Honor.

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1 THE HEARING OFFICER: What's the basis,
2 Mr. Angelini?

3 MR. ANGELINI: Well, I must say it's -- I
4 understand the rules of evidence, your Honor. I
5 also understand that we are all humanistic, and, as
6 described by Mr. Neff, it's personal medical
7 information.

8 I would ask Mr. Neff to respect that
9 privacy and not to disclose it.

10 THE HEARING OFFICER: Well --

11 MR. NEFF: I certainly am not -- I'm sorry.
12 Go ahead.

13 MR. ANGELINI: I have no further objection,
14 your Honor.

15 THE HEARING OFFICER: Okay. I understand
16 it.

17 Go ahead, Mr. Neff. It's in your court, so
18 to speak.

19 MR. NEFF: Well, I will preface this by
20 saying I have no desire to embarrass anyone,
21 including Judge Sushchych. This is information
22 that's actually part of the public charges.

23 MR. ANGELINI: If you're going to do it, do
24 it.

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1 BY MR. NEFF:

2 Q. So what is it that Judge Sushchuk told you
3 was his health condition during -- during that
4 May 10th, 2019, meeting with him?

5 A. He indicated that he had had a previous
6 medical condition which negatively impacted his
7 sexual drive.

8 Q. Did Judge Sushchuk ever explain to you why
9 he thought his medical condition was a relevant
10 response to Ms. Deines' allegations against him?

11 MR. ANGELINI: I object, your Honor.

12 THE HEARING OFFICER: Overruled.

13 Go ahead.

14 A. I'm sorry. The question was did the judge
15 explain to me what his -- why he was telling me
16 that?

17 Q. Yeah. Why he thought that this medical
18 condition he had was a relevant response to
19 Ms. Deines' allegations against him?

20 A. I think so, yes.

21 Q. All right. Okay.

22 Well, then what did he say?

23 A. Yeah. I think he was -- when he said, "I
24 would never do anything like that," meaning what was

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1 alleged, "and here's part of my basis for telling
2 you that."

3 Q. Okay. After Ms. -- Judge Sushchyk, during
4 his interview with you, also volunteered that he had
5 only one drink while at the Bayzos Pub as of the
6 time of the alleged incident with Ms. Deines, did he
7 not?

8 MR. ANGELINI: I object. It's a leading
9 question.

10 THE HEARING OFFICER: Well, it is, but I'll
11 allow it.

12 A. Yeah. I believe that's what he said, yes.

13 Q. Okay. And did -- did he, at any point
14 during this May 10th, 2019, interview, also tell you
15 that he was carrying a flask of whiskey with him at
16 the time of the incident?

17 MR. ANGELINI: Objection, asked and
18 answered, your Honor.

19 THE HEARING OFFICER: I don't think it was.

20 MR. ANGELINI: Okay.

21 THE HEARING OFFICER: I sustained the
22 objection because of the form of it before.

23 So go ahead. Overruled. You may answer,
24 Judge Casey.

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1 A. No, he did not tell me that he had a flask.

2 Q. And if you know, was Bayzos Pub open to the
3 general public at the time of the incident at issue
4 on April 25th, 2019?

5 A. I believe it was, yes.

6 Q. So in your view as Chief Justice, would it
7 be appropriate for a judge to have a flask out
8 containing alcohol at a bar where he may or may not
9 be recognized by a member of the public if it's open
10 to the public?

11 MR. ANGELINI: My objection.

12 THE HEARING OFFICER: Sustained.

13 Q. During your interview with Judge Sushchuk
14 on May 10th, 2019, did you question him about his
15 alcohol consumption at the hospitality suite event?

16 A. I -- I don't know if I knew he was at that
17 event at that time. I did question him about how
18 much he had consumed -- how much alcohol he had
19 consumed over the course of the night, of the
20 Thursday night of the conference.

21 Q. And how much alcohol did he tell you he
22 consumed over the course of the Thursday night of
23 the conference?

24 A. Yeah. My recollection was that he said he

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1 had had one drink before the dinner, and then one
2 drink at the pub.

3 Q. So he was telling you that over the course
4 of the entire evening he had had two alcoholic
5 beverages?

6 A. Yes.

7 Q. Okay. During your May 10th, 2020,
8 interview with Judge Sushchuk, did you ask him to
9 prepare a written statement regarding the alleged
10 incident between him and Ms. Deines on April 25th,
11 2019?

12 A. I didn't ask him to. I just told him that
13 it might be advisable for him to do so.

14 Q. And did he do so?

15 A. Yes.

16 MR. NEFF: Okay. And all right.

17 Give me one moment. I'm sorry.

18 THE HEARING OFFICER: Mr. Neff --

19 MR. NEFF: Give me one moment, please.

20 THE HEARING OFFICER: Mr. Neff, where are
21 we?

22 MR. NEFF: I'm sorry. Just give me one
23 moment, and I -- okay. All right.

24 Well, I'd like to direct your -- I'd like

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1 to go back to Exhibit A, then, and at least ask
2 Chief Justice Casey to look at the final page of
3 Exhibit A, which is -- excuse me. Not the final
4 page -- well, yeah, the final page of Exhibit A,
5 which in the top right-hand corner is marked
6 Exhibit 2.

7 MR. ANGELINI: If the question is the
8 admissibility of Judge Sushchuk's statement of
9 May 20, 2019, I have no objection, your Honor, if we
10 locate it and put it into evidence.

11 MR. NEFF: And obviously, I thought I had
12 provided a separate redacted copy, and I will submit
13 to the Court and to Mr. Loos a copy of just that
14 statement so that --

15 THE HEARING OFFICER: All right.

16 MR. NEFF: -- so I don't have the full
17 report.

18 THE HEARING OFFICER: Send to Mr. Angelini
19 the redacted copy that you're submitting.

20 MR. NEFF: Okay. Actually, I'll just do an
21 e-mail to everyone to make sure that it's all --
22 that everyone sees what I do and is in agreement
23 with it.

24 THE HEARING OFFICER: Thank you, Mr. Neff.

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1 That will be Exhibit 10.

2 (Document marked as Commonwealth's
3 Exhibit 10 admitted into evidence)

4 THE HEARING OFFICER: And at this point how
5 much longer do you expect you'll be with --

6 MR. NEFF: Gosh. You know, I'm doing my
7 best to -- some of my questions are -- are not going
8 quite as planned and some are, but I'm -- I'm doing
9 my best.

10 I am on Page 15 of 20 of a list of direct
11 examination questions I had prepared for Judge --
12 excuse me, Chief Justice Casey. So I would say
13 there's a little bit longer to go.

14 THE HEARING OFFICER: Well, then, if
15 there's no objection from anyone, why don't we take
16 that half hour lunch break. It's 1:00 -- a
17 little -- it's actually one o'clock on the button,
18 and we'll resume at 1:30, please, everyone.

19 MR. ANGELINI: Thank you, Judge.

20 THE HEARING OFFICER: Okay. Thank you all.

21 MR. NEFF: Okay. Thank you.

22 THE HEARING OFFICER: Have a good lunch.

23 (Luncheon recess taken
24 at 1:00 p.m. to 1:38 p.m.)

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1 AFTERNOON SESSION

2 THE HEARING OFFICER: Okay.

3 MR. NEFF: So I can send it privately to
4 Mr. Loos -- or I can just send it to everyone --
5 well, I don't want to do that given the nature of
6 how we're handling this hearing. But I could send
7 you the PDF of that one exhibit that I was supposed
8 to kind of redact and present.

9 Can I send it to Mr. Loos and Mr. Angelini
10 both through this chat window?

11 THE HEARING OFFICER: I think --

12 MR. NEFF: No, not really. Should I just
13 e-mail it then? Is that satisfactory? I'm -- I'm
14 not working on my normal computer, so I'm not sure
15 what I've got here.

16 THE HEARING OFFICER: Is it necessary,
17 Mr. Neff, in order for you to continue with your
18 examination?

19 MR. NEFF: No, no, no. I just didn't know
20 if there was any urgency for me to kind of get that
21 issue out of the way?

22 THE HEARING OFFICER: No. Let's then
23 resume, please.

24 MR. NEFF: Okay.

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1 MR. ANGELINI: Before we do, your Honor,
2 could I just ask Mr. Loos to mute Judge Sushchyk.
3 We're getting some echo and apparently we can't shut
4 it off from his -- can you do that, Mr. Loos?

5 THE REPORTER: Let me see.

6 MR. ANGELINI: Okay. Thank you very much.

7 THE HEARING OFFICER: Go ahead, Mr. Neff.

8 BY MR. NEFF:

9 Q. Okay. All right. Let's see.

10 A. Hello?

11 Q. No. I'm just trying to reorient myself to
12 where we were when we left off with the questioning
13 so I don't repeat too much or miss anything, I
14 suppose, although I -- I know I've gone on for a bit
15 of time, so...

16 MR. ANGELINI: Can I say something, your
17 Honor?

18 THE HEARING OFFICER: Yes. Please.

19 MR. ANGELINI: My understanding is the last
20 question was whether the pub was open to the members
21 of the public. The witness answered that question.

22 THE HEARING OFFICER: Thank you.

23 MR. NEFF: Okay. All right.

24 Q. And I think my follow-up then would have

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1 been in Chief Justice Casey's view, would it have
2 been appropriate for a judge to be openly displaying
3 a flask while in such a situation where he might be
4 recognized -- or she might be recognized as a judge.

5 MR. ANGELINI: I objected to that question.

6 THE HEARING OFFICER: I know, and I
7 sustained it.

8 Q. Chief Justice Casey, in your view, would --
9 after reviewing -- do you know when Judge Sushchuk
10 provided you with the written statement that he
11 prepared that's dated May 20th? Was it actually
12 provided on May 20th or on a different date?

13 A. I don't recall.

14 Q. Okay. And would you say that, in your
15 view, his description of the events of April 25th
16 between him and Ms. Deines, as he's described them
17 in that written statement, are consistent with what
18 he told you in your interview on May 10th?

19 MR. ANGELINI: My objection.

20 THE HEARING OFFICER: Sustained.

21 Q. After you completed your interview with
22 Judge Sushchuk, did you circle back and speak with
23 Chief Justice Carey and Ms. Medonis and follow up
24 with them in terms of the process that followed

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1 Ms. Deines' report?

2 MR. ANGELINI: "Yes" or "no," please.

3 THE REPORTER: What was that? I'm sorry.
4 I didn't catch that, Mr. Angelini.

5 MR. ANGELINI: Yes. May the witness be
6 required to answer the question either "yes" or
7 "no"?

8 THE HEARING OFFICER: Yes. Thank you,
9 Mr. Angelini. I didn't hear you, either.

10 Yes.

11 A. I conferred with those two individuals
12 throughout the course of these events, so I just
13 don't recall the exact timing, but --

14 Q. Okay. Were you coordinating with anyone
15 else, besides Chief Justice Carey and Ms. Medonis,
16 as you followed procedures relating to Ms. Deines'
17 report to you?

18 MR. ANGELINI: Objection, relevance.
19 Objection.

20 THE HEARING OFFICER: Overruled.

21 A. So, I'm sorry. The question was, was I
22 conferring with anyone besides Chief Carey and
23 Deputy Medonis?

24 Q. Right.

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1 THE HEARING OFFICER: Were you
2 coordinating?

3 THE WITNESS: Coordinating? I'm sorry.

4 THE HEARING OFFICER: Coordinating with
5 anyone else.

6 THE WITNESS: Other than maybe my assistant
7 helping me to schedule appointments to meet with
8 individuals, then no.

9 BY MR. NEFF:

10 Q. Okay. Did you discuss the course -- did
11 you discuss this matter with Maggie Pinkham at any
12 point at the beginning, during or at the end of
13 your -- your handling of Ms. Deines' report?

14 MR. ANGELINI: "Yes" or "no," please, your
15 Honor.

16 THE HEARING OFFICER: Yes. Just a "yes" or
17 "no," please, Judge Casey.

18 A. I know she was involved, and I just don't
19 recall if I had a direct conversation with her or
20 whether it was somebody else, either -- it might
21 have been Attorney Medonis. I just can't recall
22 today --

23 Q. Okay.

24 A. -- who spoke to Maggie Pinkham.

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1 Q. But one person or the other was in contact
2 with her regarding events as they progressed?

3 A. Yes.

4 Q. Just not you?

5 Did you interview anyone else in connection
6 with Ms. Deines' report to you, other than Judge
7 Sushchuk?

8 A. Yes.

9 Q. Who did you interview?

10 A. Attorney Evelyn Patsos.

11 Q. Okay. And do you remember when you
12 interviewed her?

13 A. I do.

14 Q. Okay. And when did you interview her?

15 A. I believe it was May 14th.

16 Q. Okay. And where did that take place?

17 A. At our administrative office here at 3
18 Center Plaza, Boston.

19 Q. Okay. And was anyone else present for that
20 interview?

21 A. No. Not in the room, no.

22 Q. Okay. And I already asked, was there
23 anyone else, and you say Evelyn Patsos.

24 Evelyn Patsos is the third and last

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1 person -- third and -- the third person that you
2 interviewed in connection with this matter? There's
3 no one else that you interviewed in connection with
4 Ms. Deines' report to you?

5 MR. ANGELINI: I object to the question.

6 THE HEARING OFFICER: Objection sustained.

7 MR. NEFF: Okay.

8 Q. Well, did you -- other than Ms. Patsos,
9 Ms. -- and Judge Sushchuk, did you interview anyone
10 in connection with Ms. Deines' report to you?

11 A. Just Ms. Deines a second -- an in-person
12 meeting preceding my meeting with Attorney Patsos on
13 the 14th.

14 Q. Okay. And where did you meet with
15 Ms. Deines before you met with Ms. Patsos?

16 A. Here in our administrative office, just the
17 two of us alone in the room.

18 Q. And what was the purpose of that meeting?

19 MR. ANGELINI: Objection.

20 THE HEARING OFFICER: Overruled.

21 Just the purpose.

22 A. To speak with her in person about our --
23 our phone call from the previous week.

24 Q. Okay.

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1 A. Two weeks, roughly.

2 Q. Okay. Did you discuss with her or
3 summarize Judge Sushchuk's May 20th -- May 20, 2019,
4 statement regarding the events of April 25th with
5 her?

6 MR. ANGELINI: Objection.

7 THE HEARING OFFICER: Sustained.

8 Q. Did she see that statement or hear anything
9 about the contents of that statement on that date?

10 MR. ANGELINI: My objection.

11 THE HEARING OFFICER: Sustained to the
12 form.

13 Q. Well, did -- was Ms. Deines made aware of
14 any information in connection with what steps you
15 had taken following her report to you on May 2nd
16 during your interview with -- excuse me -- during
17 your second meeting with her prior to your interview
18 with Ms. Patsos?

19 MR. ANGELINI: "Yes" or "no," please, your
20 Honor.

21 THE HEARING OFFICER: All right.

22 A. I'm sorry, I just want to make sure I
23 understand.

24 Are you --

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1 Q. It was a complicated question. I'm sorry.

2 Did you advise Ms. Deines of the steps you
3 had taken, or any steps that you had taken in
4 connection with following up or following her report
5 to you on May 2nd -- yeah, regarding her report to
6 you on May 2nd?

7 MR. ANGELINI: Objection.

8 THE HEARING OFFICER: "Yes" or "no,"
9 please, Judge.

10 A. Yes.

11 Q. Okay. Did you advise her that you had
12 conducted an interview with Judge Sushchyk at that
13 point?

14 MR. ANGELINI: Objection.

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

16 A. Yes.

17 Q. Did you make her aware of the contents of
18 Judge Sushchyk's responses or statements during your
19 interview with him?

20 MR. ANGELINI: "Yes" or "no," please.

21 THE HEARING OFFICER: Yes.

22 A. Yes.

23 Q. You did? Okay.

24 And did Ms. Deines react to your

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1 description of Judge Sushchuk's responses during
2 your interview with him?

3 MR. ANGELINI: I object.

4 THE HEARING OFFICER: Just a -- just in
5 terms of what you observed, not anything she may
6 have said.

7 Q. Judge Casey?

8 A. No. I'm sorry. I'm thinking.

9 Q. I'm sorry. I didn't mean to rush you. I
10 just wanted to make sure --

11 A. No, thank you. I'm just reflecting on the
12 question and...

13 She appeared to me to react?

14 MR. ANGELINI: I object, your Honor. The
15 question calls for a "yes" or "no" answer.

16 THE WITNESS: I'm sorry.

17 THE HEARING OFFICER: In terms of what you
18 observed, overruled to that extent.

19 Judge --

20 MR. ANGELINI: Thank you.

21 THE HEARING OFFICER: -- you can tell us
22 what you observed.

23 A. I observed her face to become a little
24 flushed and to observe her shake her head side to

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1 side.

2 THE HEARING OFFICER: Thank you.

3 Q. Did you make any observations of her
4 temperament in response to what you told her Judge
5 Sushchuk's response was?

6 MR. ANGELINI: I object.

7 THE HEARING OFFICER: I'll sustain. I
8 don't understand, actually, "temperament."

9 Q. Did you make any observations regarding her
10 demeanor or emotions following your description of
11 what Judge Sushchuk's response was?

12 MR. ANGELINI: I object. He was asked.

13 THE HEARING OFFICER: If there's anything
14 further regarding demeanor that you observed, Judge
15 Casey, you can answer that.

16 A. Yeah. I don't think so. I don't think
17 there was anything further that I observed about her
18 demeanor at that time.

19 Q. Did you discuss with Ms. Deines during this
20 meeting the steps that would follow after -- well,
21 the steps that would follow -- the steps you took in
22 response to her report to you?

23 MR. ANGELINI: I object.

24 THE HEARING OFFICER: I'm sorry. I'm

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1 distracted for a moment here.

2 And I'm sorry to interrupt, but I'm going
3 to say that anyone who engages in any private
4 conversation with me concerning the proceedings is
5 going to be excluded.

6 MR. NEFF: Okay.

7 THE HEARING OFFICER: And that individual
8 has just provided some sort of directive to me is
9 going to be excluded now, Mr. Loos. I will not
10 engage in conversations coming toward me while this
11 hearing is underway.

12 So if you would kindly remove that person.

13 THE REPORTER: Which person?

14 MR. NEFF: And I'm sure I don't need to ask
15 this about anyone that I work with, but is there
16 anything I should know about?

17 THE HEARING OFFICER: Mr. Neff?

18 MR. NEFF: Because if there's no --

19 THE HEARING OFFICER: Mr. Neff. Mr. Neff.

20 MR. NEFF: Yes.

21 THE HEARING OFFICER: Excuse me. I'm
22 talking to Mr. Loos. I'll get back to you in a
23 minute.

24 Mr. Loos, can you see what I'm talking

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1 about?

2 THE REPORTER: No. With whom? Whom?

3 You can go there -- go to that person, and
4 you go more --

5 THE HEARING OFFICER: I'm going to -- I'm
6 going to private text you.

7 THE REPORTER: Sure.

8 THE HEARING OFFICER: Okay. No, it's
9 nothing -- I'll put it on the record at the end of
10 the day.

11 MR. NEFF: Okay. Nothing I need to respond
12 to, though, I guess is my question.

13 THE HEARING OFFICER: No, it's not.
14 Go ahead.

15 MR. NEFF: Okay. Okay.

16 Q. I'm sorry. And I think my question at that
17 point -- which I don't know; you may or may not have
18 ruled on; I apologize if it was and I had just
19 forgotten -- was did you discuss with Ms. Deines
20 during this meeting any additional steps that would
21 be taken after the steps you took in response to the
22 report she made to you on May 2nd?

23 A. Yes.

24 Q. Okay. And how did she respond to you

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1 telling her that -- about the additional steps that
2 would be taken following the results of your steps
3 into your report?

4 MR. ANGELINI: My objection, your Honor.

5 THE HEARING OFFICER: Overruled.

6 A. Well, she made certain statements to me, if
7 am I allowed the repeat those statements?

8 THE HEARING OFFICER: You can tell us that
9 she made certain statements, and that's enough for
10 now, please.

11 THE WITNESS: Okay. Okay.

12 BY MR. NEFF:

13 Q. And what did she have to say then?

14 MR. ANGELINI: I object.

15 THE HEARING OFFICER: Sustained.

16 Q. Well, how would you describe her emotional
17 response or demeanor in response to you explaining
18 to her what steps were going to be taken, or could
19 be taken after you had finished the steps that you
20 were going to take in response to her report to you?

21 MR. ANGELINI: I object.

22 THE HEARING OFFICER: Sustained.

23 MR. NEFF: Okay.

24 I'm sorry. Just give me a moment. I'm

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1 going to do my best to ask questions that conform
2 with the -- the evidentiary rulings that have been
3 made up until this point.

4 If I could have just one moment, please.

5 THE HEARING OFFICER: Mr. Neff, I need us
6 to get underway. I'm sorry. We can give you some
7 time --

8 MR. NEFF: I'm fine. I'm sorry, Judge.
9 I'm just conferring a little bit, and I'm trying
10 to --

11 THE HEARING OFFICER: You don't need to
12 apologize.

13 MR. NEFF: -- with all proper respect to
14 your -- your evidentiary rulings to date, see if
15 there was anything, anything left in the questions
16 that I had planned to ask that -- that might be
17 possible, and at this point I don't have any further
18 questions for Chief Justice Casey.

19 THE HEARING OFFICER: Okay. Thank you very
20 much.

21 Cross-examination, Mr. Angelini.

22 MR. ANGELINI: Yes, your Honor.

23 Just one minute, please, and I'll be very
24 short.

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1 CROSS-EXAMINATION

2 BY MR. ANGELINI:

3 Q. Judge Casey, good afternoon. I'll stand so
4 you can see me.

5 Was Judge Sushchyk cooperative with your
6 investigation?

7 A. Yes.

8 Q. And is it the case that when he spoke with
9 you at the meeting at his office -- in his lobby, I
10 should say, on May 5th, he -- he said to you, "I
11 didn't do anything like that. I would never do
12 anything like that. I did not do that."

13 Are those the words that he used?

14 MR. NEFF: Objection.

15 THE HEARING OFFICER: Overruled.

16 A. First of all, I think you're referring to
17 the meeting which I think was on May 10th, that
18 first time that I met with him.

19 Q. Absolutely. You're absolutely right. My
20 apologies.

21 A. Just to be clear.

22 And --

23 Q. Yes. Thank you.

24 A. -- yeah, I -- I don't remember -- I don't

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1 recall him using those exact words.

2 Q. Was it clear to you from that -- was it
3 clear to you from that session that he denied the
4 allegations made by Ms. Deines?

5 MR. NEFF: Objection.

6 THE HEARING OFFICER: Overruled.

7 A. No.

8 Q. I'm sorry?

9 A. No. The answer is no.

10 Q. He did not deny the allegations?

11 A. No.

12 Q. Did you not tell us he said, "I couldn't do
13 something like that. I didn't do anything like
14 that"?

15 Isn't that what you told us on direct
16 examination?

17 A. I don't believe so. I think he said words
18 to the effect --

19 Q. I asked you a question.

20 Is it your recollection that you did not
21 tell us on direct examination that Judge Sushchuk
22 said to you, "I couldn't do anything like that. I
23 didn't do anything like that"?

24 MR. NEFF: Objection.

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1 A. I don't recall.

2 MR. NEFF: Objection. That was not the
3 testimony.

4 THE HEARING OFFICER: Overruled.

5 A. I don't recall -- I'm sorry, I don't recall
6 that being -- I tried to use my words, choose them
7 very carefully. That's not my recollection of what
8 I testified to earlier today.

9 Q. All right. The record will speak for
10 itself.

11 A. Right.

12 MR. ANGELINI: One moment, please, your
13 Honor.

14 THE HEARING OFFICER: Yes.

15 BY MR. ANGELINI:

16 Q. Did he say to you, "I would never do
17 anything like that. I am not that kind of person.
18 I would never intentionally hurt anyone, but
19 especially a woman"? Did he use those words?

20 A. I believe so, yes.

21 MR. ANGELINI: Thank you. I have no
22 further questions.

23 THE HEARING OFFICER: All right, then.

24 Anything else, Mr. Neff?

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1 MR. NEFF: Just one thing, your Honor,
2 since we've been able to go there.

3 REDIRECT EXAMINATION

4 BY MR. NEFF:

5 Q. Judge, Chief Justice Casey, would you agree
6 that there's a difference between someone who says,
7 "I would never do that," and someone who says, "I
8 did not do that"?

9 MR. ANGELINI: I object, your Honor.

10 THE HEARING OFFICER: Sustained.

11 MR. NEFF: I have nothing further.

12 THE HEARING OFFICER: All right, then.

13 Thank you very much, Judge Casey. If
14 there's nothing else --

15 I'm sorry, Mr. Angelini. Was there
16 anything else?

17 MR. ANGELINI: No, your Honor. Thank you.

18 THE HEARING OFFICER: Okay.

19 Judge Casey, thank you very much. I do
20 have to ask you -- because I am required to under
21 the protocol on completion of your examination --
22 have any of the answers that you gave me at the
23 commencement of your examination regarding where you
24 were located, what devices you had with you, and any

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1 communications with other people, have any answers
2 changed in any way?

3 THE WITNESS: Yes, Judge. Yes.

4 THE HEARING OFFICER: Okay.

5 And which?

6 THE WITNESS: So -- and again, just so I'm
7 clear, during an earlier break when Attorney Neff
8 asked for a brief recess, I left the office and I
9 went out to the men's room across the hall and
10 returned. And during that period of time I did not
11 encounter anyone and didn't have a conversation with
12 anyone.

13 And then during -- I did not access e-mail,
14 text, phone, anything else, other than just this
15 Zoom hearing in front of me.

16 And I just would note that there are two
17 other staff members who are here in the offices
18 today, one of them being Attorney Evelyn Patsos, and
19 the three of us -- and Dom DiCenso is the assistant
20 deputy court administrator, and we had lunch.

21 And Attorney Patsos just -- I think she
22 said something about, "There are five questions
23 left?" And I said, "I think it's five pages of
24 questions. I'm not sure." And she indicated that

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1 she was going to be the next witness.

2 And so that's the extent of the changes.

3 THE HEARING OFFICER: Okay. Thank you very
4 much for telling us.

5 I don't have any other questions.

6 Any questions regarding this from you,
7 Mr. Neff?

8 MR. NEFF: No, your Honor. That is --
9 that's -- as I've mentioned, it's consistent with
10 what I've been trying to do, which is to let
11 everyone know when they're kind of on deck, and
12 that's -- I think that's what Ms. Patsos was meaning
13 to say.

14 THE HEARING OFFICER: Any questions,
15 Mr. Angelini?

16 MR. ANGELINI: No, your Honor.
17 Thank you.

18 THE HEARING OFFICER: Okay. Thank you.
19 Thank you, Judge Casey.

20 THE WITNESS: Thank you.

21 THE HEARING OFFICER: You're excused.

22 THE WITNESS: Thank you, Judge.

23 THE HEARING OFFICER: And, Mr. Neff, your
24 next witness, please.

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1 MR. NEFF: My next witness is Ms. Evelyn
2 Patsos, Esq.

3 THE HEARING OFFICER: Okay.

4 MR. NEFF: Who hopefully is here.

5 THE HEARING OFFICER: There she is.

6 And Mr. Loos -- there we go.

7 Okay. Thank you.

8 Ms. Patsos, can you hear me all right?

9 THE WITNESS: Yes, I can, your Honor.

10 THE HEARING OFFICER: Okay. Your -- your
11 audio is a little delayed from your video, so I
12 don't know if my audio is delayed from my video with
13 you.

14 Is it?

15 THE WITNESS: Just a little bit, yes.

16 THE HEARING OFFICER: Oh.

17 Mr. Loos, might you be able to remedy that?

18 THE REPORTER: It's probably her
19 connection. It's not us.

20 THE HEARING OFFICER: Okay. All right.

21 Well, Ms. Patsos, so long as it's not
22 distracting to you and you're able to follow along
23 despite the two -- the two communications being
24 delayed, we'll continue on.

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1 Is that all right with you?

2 THE WITNESS: Yes. Definitely.

3 THE HEARING OFFICER: Okay. All right.

4 I have -- first let me swear you in.

5 Please raise your right hand.

6 (EVELYN PATSOS, sworn)

7 THE WITNESS: I do.

8 THE HEARING OFFICER: All right.

9 And I'm going to ask you a couple of
10 questions that I have to ask everyone before they
11 testify in this matter.

12 And would you start by telling us your name
13 for the record, please.

14 THE WITNESS: Evelyn Patsos.

15 THE HEARING OFFICER: And where are you
16 physically located?

17 THE WITNESS: I'm at 3 Center Plaza in
18 Boston at the administrative office of the Probate
19 and Family Court.

20 THE HEARING OFFICER: Okay. Would you
21 kindly tell us who is physically in the room with
22 you right now?

23 THE WITNESS: No one.

24 THE HEARING OFFICER: Okay. And what

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1 devices or materials do you have with you now?

2 THE WITNESS: Just my computer. I have my
3 cell phone in front of me, not in -- not near me,
4 and nothing else.

5 THE HEARING OFFICER: Okay. And would you
6 tell me what is currently on your screen or screens?

7 THE WITNESS: On the screen I'm looking at
8 I have this hearing. On the other screen there's
9 nothing. I have my e-mail, but it's minimized.

10 THE HEARING OFFICER: Okay. And are you in
11 communication with any people other than those who
12 are conducting this hearing?

13 THE WITNESS: No.

14 THE HEARING OFFICER: Okay. If your
15 answers to any of those questions change at any
16 time, I would ask you to report that to me. And I
17 will be asking you, at the conclusion of your
18 testimony, to confirm that nothing has changed; or,
19 if it has, what that is.

20 Okay?

21 THE WITNESS: Okay.

22 THE HEARING OFFICER: All right. Thank
23 you.

24 Mr. Neff, when you're ready.

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1 MR. NEFF: Thank you very much, Judge.

2 DIRECT EXAMINATION

3 BY MR. NEFF:

4 Q. Good to see you again, Ms. Patsos.

5 Can you just start off by, for the record,
6 telling us your name and spelling your last name for
7 the record.

8 A. Evelyn Patsos, P-a-t-s-o-s.

9 Q. And what city or town do you live in?

10 A. I live in Lynnfield, Massachusetts.

11 Q. And what's your date of birth?

12 A. 3/20/64.

13 Q. Okay. And what is your current employment?

14 A. I work for the administrative office of the
15 Probate and Family Court.

16 Q. What's your position with the
17 administrative office of the probate court?

18 A. My official title is case manager.

19 Q. Okay. And what -- what are the roles and
20 responsibilities associated with that job?

21 A. I'm involved in developing policies,
22 procedures, conducting research. My area of
23 specialty is actually the Massachusetts Uniform
24 Probate Code, Massachusetts Uniform Trust Code,

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1 guardianship law.

2 Q. Are we good, Mr. Loos?

3 And what is your educational background?

4 A. I have a law degree.

5 Q. Okay.

6 A. Bachelor's degree.

7 Q. And can I ask you where you went to law
8 school?

9 A. Massachusetts School of Law.

10 Q. Great.

11 And when did you graduate from law school?

12 A. In 2003, I believe.

13 Q. So what was your first employment after law
14 school?

15 A. I worked for -- I spent a year volunteering
16 for various public service -- well, for Neighborhood
17 Legal Services, Volunteer Lawyers Project.

18 After I year I worked for a law firm in
19 Chelmsford by the name of Gallant & Ervin. And
20 thereafter -- I was there for about a year and a
21 half, and then I joined the Probate and Family Court
22 in 2007.

23 Q. Okay. Great.

24 So if I'm doing my math right, you've

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1 worked for the Probate and Family Court for about
2 13 years?

3 A. Correct.

4 Q. Okay. Great.

5 And do you know of someone by the name of
6 Emily Deines as part of your work for the Probate
7 and Family Court?

8 A. Yes, I do.

9 Q. And how do you know her?

10 A. She works in the administrative office as
11 well as a field coordinator.

12 Q. Okay. And do you have any work interaction
13 or work collaboration with -- with Emily Deines, as
14 a part of your -- part of your role in the Probate
15 and Family Court?

16 A. Yes. We work on several projects together,
17 most related to changes to forms as a result of the
18 Massachusetts Uniform Probate Code and Massachusetts
19 Uniform Trust Code implementation.

20 Q. Great.

21 And if you had to -- well, over the course
22 of how many years would you say you've -- you've
23 worked on and off with Emily Deines during your time
24 at the Probate and Family Court?

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1 A. About -- for about the last, I would say,
2 seven years.

3 Q. Okay. And do you -- are you involved in
4 any preparation for trainings or present training
5 materials for judges as part of your role in working
6 with -- with Emily Deines for Probate and Family
7 Court?

8 A. Not with Emily. On training materials, no.
9 I mean, I do a lot of training materials.
10 I do a lot of training in general, both the bar and
11 court staff.

12 Q. Okay. I would like to direct your
13 attention to the Probate and Family Court conference
14 that took place last spring in 2019.

15 Do you recall attending that -- that
16 Probate and Family Court conference?

17 A. I do.

18 Q. Okay. And do you recall where it was?

19 A. Yes.

20 Q. Okay. And where was it?

21 A. It was down in Brewster at the Ocean Edge
22 Resort.

23 Q. Okay. And was Emily there as well? Emily
24 Deines.

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1 A. Yes, she was.

2 Q. And what dates were you there for that
3 conference?

4 A. I was there on April 25th and the morning
5 of April 26th.

6 Q. Great.

7 And what was your role at this conference?
8 Were you attending to learn from the trainings? Or
9 did you have a role in producing the event? Or some
10 other role?

11 A. I was invited just to attend trainings as
12 an attorney of the administrative office.

13 Q. Great.

14 And do you recall attending any trainings
15 on the first day of the conference, on April 25th?

16 A. Yes. Oh, no. I'm sorry. I don't believe
17 there was training on --

18 Honestly, I don't remember at this point.

19 Q. Okay. No. That's fine. It was over a
20 year ago. Just whatever you remember.

21 Let me ask you this:

22 Do you recall approximately what time on
23 April 25th, on that first day of the conference,
24 maybe all the trainings on that first day were

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1 completed?

2 A. I don't know.

3 Q. Okay. Well, let me ask you this:

4 Did you stay at the Ocean Edge Resort as
5 part of your attendance at the conference?

6 A. Yes.

7 Q. Okay. And on the first day of the
8 conference was there a Probate and Family
9 Court-sponsored dinner?

10 A. Yes.

11 Q. Okay. And did you attend that dinner?

12 A. I did.

13 Q. Do you remember approximately when the
14 dinner started?

15 A. I -- I think somewhere around 6:00 or 7:00,
16 somewhere around there.

17 Q. Okay. And did you go with anyone to the
18 dinner?

19 A. I did. I did.

20 Q. Who did you go with?

21 A. I went with other attorneys in this office
22 that were also invited to this program. Their names
23 are Christine Yurgelun, Attorney Christine Yurgelun,
24 Attorney Jocelynne Welsh, and Attorney Denise

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1 Fitzgerald.

2 Q. Okay. Did you go to that dinner with Emily
3 Deines? Or did she go separately?

4 A. She was working the event, so she was
5 separate.

6 Q. And approximately what time would you say
7 dinner concluded and/or you left that dinner?

8 A. I believe the dinner lasted for about, I
9 want to say, an hour and a half.

10 Q. Okay. So -- so would you say approximately
11 8:30 p.m. on April 25th you left the dinner?

12 A. I would say approximately 8:30, yes.

13 Q. And where did you go after the dinner?

14 A. The dinner -- everybody left the room where
15 the dinner was held and walked up a little -- I
16 don't know, several, maybe couple of feet -- to the
17 pub that was attached.

18 Q. Okay. And when you -- when -- and when you
19 say "everyone walked up," was it your sense that --
20 that virtually everyone who was at the dinner,
21 including the people you were with, left the dinner
22 and then proceeded onward to -- to a pub that was
23 nearby and continued to socialize?

24 A. Yes.

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1 Q. And do you recall the name of that pub?

2 A. Brazos, or Brizos (sic).

3 Q. And how far away was that from where the
4 dinner took place?

5 A. It was in the same building. So it was
6 just leaving the ballroom and walking up a little,
7 you know, like a small hallway, I should say, where
8 the pub entrance was.

9 Q. Okay. Great.

10 And if I can show you a picture and ask you
11 if you recognize where you went.

12 And I'm sorry, Mr. Loos, to ask, keep
13 asking you this, but if I were to ask Ms. Patsos to
14 look at what we have marked as F, what exhibit
15 number is that for purposes of the -- of not the
16 deposition, but this hearing at this point?

17 THE REPORTER: Exhibit 1.

18 MR. NEFF: Exhibit 1? Okay. Great.

19 So if I can, with your permission, Judge
20 Josephson, I would like to ask Ms. Patsos to look at
21 Exhibit 1 --

22 THE HEARING OFFICER: Sure.

23 MR. NEFF: -- to this deposition which
24 is --

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1 THE REPORTER: Shall I screen share it?

2 THE HEARING OFFICER: Please.

3 Q. Okay. And do you, Ms. Patsos, recognize
4 this location?

5 A. I do.

6 Q. Okay. And do you recognize this location
7 as being at least a portion of the Bayzos Pub at the
8 Ocean Edge Resort?

9 A. Yes. It looks like it, yes.

10 Q. And would you say it fairly and accurately
11 represents at least that portion of that particular
12 venue?

13 A. It appears so.

14 Q. Okay. And incidentally, would you say that
15 fairly and accurately represents the appearance of
16 the furniture, including the tables and chairs and
17 benches and stools, when you visited there on
18 April 25th of 2019?

19 A. Yes.

20 Q. Okay. And if you recall, when you arrived
21 at the Bayzos Pub, approximately what time did you
22 get there?

23 A. Like I said, it was -- we had exited the
24 dinner and everybody walked into the pub.

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1 Q. So --

2 A. Quarter of 9:00, somewhere.

3 Q. Okay. And within the frame of this
4 picture, do you see where you and anyone you were
5 with may have decided to stand or sit once you
6 arrived in the pub?

7 A. Not -- not necessarily from that picture.
8 We -- I can tell you where we sat at a pub table,
9 but I -- it's hard to tell from this picture which
10 one it was.

11 Q. Okay. Okay. No. That's fine. I've got a
12 few more to show you. Let's see if I can -- let's
13 see if I can do a little better.

14 MR. NEFF: Okay. Actually, again, I
15 apologize, Mr. Loos, has exhibit, what we've marked
16 as Exhibit AA been introduced as an -- as an exhibit
17 in the hearings at this stage?

18 THE REPORTER: I don't believe so.

19 MR. NEFF: Okay.

20 Well, with your permission, Judge, if I --
21 if I could, I'd like to show Ms. Patsos a photograph
22 that has been marked as Exhibit AA for purposes of
23 this hearing.

24 THE REPORTER: It's in the chat.

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1 THE HEARING OFFICER: Thank you.

2 MR. NEFF: And that's next up, the photo,
3 Judge Josephson.

4 THE HEARING OFFICER: I'm trying to access
5 it.

6 MR. NEFF: I'm sorry.

7 THE HEARING OFFICER: Okay.

8 MR. NEFF: It's Exhibit AA in what would of
9 course, be in the list of links. And I can send --
10 well, I can send it to you privately. I'm happy to
11 send a link of the photo to -- it looks like I can
12 only send to either you or Ms. Loos.

13 THE REPORTER: I've sent it to everyone.

14 THE HEARING OFFICER: I have it. Thank
15 you.

16 Do you have it, Mr. Angelini?

17 MR. ANGELINI: Yes, I do, your Honor.

18 THE HEARING OFFICER: Okay. Great.

19 MR. ANGELINI: And I have no objection to
20 it being introduced if that's the intention.

21 THE HEARING OFFICER: All right.

22 Is that the intention, Mr. Neff?

23 MR. NEFF: That is the intention, Judge
24 Josephson. If we can introduce that as -- what are

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1 we up to, 11?

2 THE HEARING OFFICER: Yep.

3 (Document marked as Commonwealth's
4 Exhibit 11 admitted into evidence)

5 MR. NEFF: I would ask that we do that.

6 And if we can, when you have a moment,
7 Mr. Loos, if you could show it to us.

8 THE HEARING OFFICER: I think we have it in
9 front of us.

10 MR. NEFF: We do. Oh.

11 THE HEARING OFFICER: Attorney Patsos, is
12 it in front of you?

13 THE WITNESS: Would that be on the chat
14 button?

15 THE HEARING OFFICER: Yes.

16 THE WITNESS: Yes. Yep.

17 THE HEARING OFFICER: Great.

18 BY MR. NEFF:

19 Q. In any event, looking at now what has been
20 marked as Exhibit -- Ms. Patsos, do you see in that
21 photo any portion of the Bayzos Pub where you and
22 others may have decided to spend time either
23 standing or sitting on the evening of April 25th?

24 A. Yes.

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1 Q. Okay. And -- and as best you can, just
2 describing for now, on that photo, where would you
3 say you and the people you were with decided to
4 stand or sit?

5 A. At that first pub table --

6 Q. Okay.

7 A. -- to the left.

8 Q. Okay. And when you say "the first pub
9 table," you mean the pub table that is closer to the
10 foreground of the photo, basically a little off to
11 the left of the second -- second pub table that is
12 further back in the foreground -- in the background
13 of the photo?

14 MR. ANGELINI: I object. I don't have any
15 sense of -- object to the form of the question.

16 MR. NEFF: Okay. All right. Again, as
17 usual, I am just trying to do my best not to
18 mislead, but if we -- I'll try again to see if I can
19 ask Ms. Patsos to describe before -- rather than
20 start marking up photos.

21 THE HEARING OFFICER: Okay.

22 Q. And so you say -- so you said the closer of
23 two pub tables.

24 When you say "pub tables," can you describe

1 in this particular exhibit what -- what you mean by
2 a "pub table"?

3 A. It appears to be a tall table, and it's the
4 first one. It looks like the larger one of the two.
5 I see two in that photo, and I'm referring to the
6 first, what appears in the photo to be the larger
7 table, the closer. It has two brown barstools in
8 front of it.

9 That's -- that's the table I'm referring
10 to.

11 Q. Okay. And -- and again, that -- that is --
12 that's a round pub table or a square pub table?

13 A. It's round.

14 Q. Okay. And around that, those two -- well,
15 and there are two round pub tables in this photo.

16 Would you agree with that?

17 A. Yes.

18 Q. Okay. And the closer of the two round pub
19 tables is the one that you and others sat at on that
20 evening of --

21 A. Yes.

22 Q. -- April 25th?

23 A. Yes.

24 Q. And would you say on that particular

1 evening, at least initially there were stools
2 similar to or that appeared like the ones depicted
3 in this particular exhibit surrounding that pub
4 table on the evening of April 25th, 2019?

5 A. Yes.

6 Q. Okay. Okay. And if you can -- and again,
7 we're going -- I'll try to -- try to do this without
8 asking you to mark up the photo. But can you, as
9 best we can, tell us where at this table you sat
10 when you sat down there that night?

11 A. I sat -- so in that photo, in the table I
12 was referencing --

13 Q. Uh-huh.

14 A. -- there are two barstools in the front,
15 two -- the brown leather -- looks like leather tops.
16 I sat to the one to the right, not the one closest
17 to the wall.

18 Q. Okay. Meaning one of the -- the one toward
19 the front on the right-hand side in that photo?

20 A. Yes.

21 Q. Okay. And who -- was there anyone sitting
22 in the or sitting on the barstool immediately to the
23 left of you in that particular photo?

24 A. Yes.

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1 Q. Who was sitting there?

2 A. Emily Deines.

3 Q. Okay. And was there anyone seated --
4 seated in either of the two remaining bar stools at
5 this particular table?

6 A. Yes. To my right I recall would be
7 Christine Yurgelun --

8 Q. Uh-huh.

9 A. -- being seated, and Jocelynn Welsh was
10 also -- was basically across from me.

11 Q. Okay. Okay. And so when you say Jocelynn
12 Welsh was across from you, was she across from
13 you -- oh, gosh. How do we do this with a picture?

14 When you say Jocelynn Welsh was across
15 from you, was she on the barstool on the other side
16 of this pub table closer to the brick pillar? Or
17 further away from the brick pillar?

18 A. Further away. I don't recall if she was --
19 if she was actually seated or standing.

20 Q. Okay.

21 A. But I just recall that she was across from
22 me.

23 Q. Okay. And Christine Yurgelun, she was
24 seated in the barstool -- this is somewhat

1 repetitive, but I'll ask.

2 Christine Yurgelun was seated in the
3 barstool on the opposite side of this table that
4 was -- that was closer to the brick pillar or
5 further away the brick pillar on that opposite side
6 of that table?

7 A. Further away.

8 Q. And do you recall whether Christine
9 Yurgelun had any injuries on this particular
10 evening?

11 A. She did.

12 Q. Okay. And what injuries did she have?

13 A. She had a foot -- a foot injury. I'll just
14 leave it at that.

15 Q. Okay. And to accommodate that foot injury,
16 was she sitting normally with the three of you? Or
17 did she sit in some other different way on -- on
18 that barstool?

19 A. Well, at what point during the night?

20 Q. Well, was there a point during the night
21 where she sat differently than the -- than the three
22 of you on those barstools in light of her foot
23 injury?

24 A. Yes.

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1 Q. Okay. And how did she sit differently?

2 A. Later on in the night, towards the end of
3 the night, I recall her putting her foot up. But
4 I -- but I believe she had moved out of -- I can't
5 recall at that point where she was seated exactly,
6 but I know she put her foot up on a barstool because
7 her foot hurt her.

8 Q. Okay. And did you -- if you remember, did
9 you bring over a fifth barstool or was There just an
10 unoccupied barstool by the time she put her foot up
11 at night?

12 A. I believe there was another barstool
13 brought over, about I really couldn't say for sure.

14 Q. Now, at some point on this particular
15 evening did you see someone -- strike that.

16 MR. NEFF: And I don't mean to keep being
17 picky, but we've all agreed that -- that there's a
18 sort of general stipulation that people who are
19 being referred to by names are the people we're
20 talking about? I don't need to keep addressing
21 this, Judge Josephson?

22 THE HEARING OFFICER: No. Not at all.

23 Thanks, Mr. Neff.

24 MR. NEFF: Okay.

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1 Q. So was there a point in the evening on
2 April 25th of 2019 that you saw at Bayzos Pub
3 someone who you know to be Judge Paul M. Sushchuk?

4 A. Yes.

5 Q. Okay. Okay. And where were you when you
6 first saw him?

7 A. I saw him at dinner.

8 Q. Okay.

9 A. That's where I first saw him.

10 Q. Did you speak to him at dinner?

11 A. No.

12 Q. Okay. How did he seem to you at dinner?

13 A. I -- I'm sorry. Can you repeat that
14 question?

15 Q. Well, did you make any observations of how
16 he appeared when you saw him at the dinner? Did
17 he -- was he just attending dinner and eating or --
18 did you notice anything about him at all?

19 A. No. Nothing. Just he was eating.

20 Q. Okay. And when did you next see Judge
21 Sushchuk that day?

22 A. When we left the dinner to go into Bayzos
23 Pub, as we were exiting we were in the same
24 vicinity, and we started talking as we did that

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1 short walk up into the pub.

2 Q. Okay. So you actually walked into the pub
3 with Judge -- Judge Sushchuk or --

4 MR. ANGELINI: Objection.

5 MR. NEFF: Or at least --

6 MR. ANGELINI: Objection, leading.

7 THE HEARING OFFICER: It is leading.

8 MR. NEFF: I'm sorry.

9 THE HEARING OFFICER: I'll allow it.

10 MR. NEFF: All right.

11 A. Yes.

12 Q. Okay. Okay. And did you have any
13 conversation with him at that time?

14 A. Yes.

15 Q. Okay. And what did you talk to him about?

16 A. I don't remember. I don't remember, but it
17 was just chitchat. Nothing.

18 Q. Okay. And did you notice anything about
19 Judge Sushchuk or -- Judge Sushchuk at that point in
20 time?

21 A. No.

22 Q. Okay. And among -- okay.

23 And so when you arrived in Bayzos Pub and
24 sat down with Emily Deines and Christine Yurgelun,

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1 and the third person is -- Jacqueline Campbell, no?

2 A. Denise Fitzgerald.

3 Q. Denise Fitzgerald.

4 Where did Judge Sushchuk go?

5 A. Well, when I walked into the pub -- or when
6 we walked into the pub, there were a lot of people
7 in the pub at that point. I had seen the people
8 that I hadn't seen in a while, judges. So I said
9 "hello" -- I stopped and said "hello," I believe, to
10 Chief Justice Carey, one other judge, and -- and
11 then approached the table.

12 I don't know -- so at that point I don't
13 know where Judge Sushchuk went. That's where we
14 parted.

15 Q. Okay. And when -- or excuse me. I should
16 ask.

17 Where were you when you next saw him?

18 A. At the table.

19 Q. Okay. So -- and when you're saying "at the
20 table," you're referring to the -- the table in the
21 foreground in Exhibit 11 -- excuse me, the
22 bar-height round table in the foreground in
23 Exhibit 11 that we've been talking about earlier
24 today?

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1 A. Yes.

2 Q. Okay. Okay.

3 And where was Judge Sushchyk when you saw
4 him at that point?

5 A. He approached the table. He approached the
6 table. So if you see in that photo there's a brick
7 wall. He approached from behind the brick wall, so
8 it would have been across from me.

9 Q. Okay. Okay. Meaning on the opposite side
10 where -- if I remember correctly -- you said
11 Jocelynnne and maybe Christine were sitting
12 initially, at least?

13 A. Yes. Or at least in that area, yes.

14 Q. Okay. And how did Judge Sushchyk seem to
15 you at that particular point in time? Did he seem
16 okay or did you see him at all under the influence
17 of alcohol?

18 A. He seemed fine.

19 Q. Okay. Did he seem tired to you at all that
20 day, at any point?

21 A. I don't know if I could say. Nothing --
22 nothing out of the usual.

23 Q. And how long have you known Judge Sushchyk?

24 A. I had -- well, I've known him, I would say,

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1 six years. I mean, I've known of him. I don't know
2 him, but when I worked for the Worcester Probate and
3 Family Court, I covered the lawyers line of the
4 counter in the registry, and that's how I first met
5 him.

6 Q. So -- so if you had to say how many years
7 you've had some sort of variety of professional
8 contact with him, how long have you known him at
9 least in a professional capacity?

10 MR. ANGELINI: Sorry. Your Honor, excuse
11 me. Excuse me.

12 THE HEARING OFFICER: Yes.

13 MR. ANGELINI: I can't hear either Mr. Neff
14 or the witness very clearly. I catch some of the
15 words.

16 Mr. Loos -- I'm sorry --

17 MR. NEFF: Okay. I didn't realize.

18 MR. ANGELINI: -- is there any way we can
19 help this?

20 MR. NEFF: I'm moving a lot, but I -- I do
21 have a set of headphones I can put on.

22 THE HEARING OFFICER: May I?

23 MR. NEFF: Let me step away for a moment.
24 I do have a set of headphones that --

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1 THE HEARING OFFICER: Mr. Neff. Hang on,
2 Mr. Neff.

3 MR. NEFF: Yes. Oh, okay. No?

4 THE HEARING OFFICER: Let me see if I can
5 handle this, okay?

6 Mr. Loos, is there a way of being able to
7 up the audio from either end for Mr. Angelini?

8 THE REPORTER: He could turn up the volume
9 on his computer, perhaps.

10 MR. ANGELINI: It's not the -- it's not the
11 volume. It's the words become garbled.

12 THE HEARING OFFICER: Okay. Okay.

13 Well, if you want to put on a headset,
14 Mr. Neff, that's entirely up to you, but I don't
15 think that that will help with Ms. Patsos' answers.

16 THE REPORTER: Just speak up, I think.

17 THE HEARING OFFICER: I'm sorry, Mr. Loos.

18 THE REPORTER: Just speak up and make sure
19 you're one at a time.

20 THE HEARING OFFICER: Yeah.

21 MR. NEFF: Okay. I will do my -- I will
22 leave off the headphones for now, but let's -- I
23 will see what I can do about making sure I speak up.

24 THE HEARING OFFICER: Great.

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1 BY MR. NEFF:

2 Q. I'm not sure exactly where we left off, but
3 you saw Judge Sushchuk -- excuse me.

4 I asked you about seeing Judge Sushchuk a
5 second time while you're sitting at the table.

6 Approximately what time did you see him
7 that second time?

8 MR. ANGELINI: Objection.

9 THE HEARING OFFICER: Overruled.

10 Well, Mr. Angelini, what's the basis?

11 MR. ANGELINI: The last question I asked --
12 I heard was for how many years she has known of
13 Judge Sushchuk. I didn't -- if there was a question
14 about a second time, I didn't hear it. I'm sorry.

15 THE HEARING OFFICER: Okay. I don't
16 think -- I think you're right.

17 I think, Mr. Neff, I don't think we got a
18 second time, but...

19 MR. NEFF: That's fine. No. That's a good
20 reminder, because, you're right, that's not where I
21 left off.

22 Q. I left off with asking how long have you
23 known Judge Sushchuk professionally as of now,
24 Ms. Patsos?

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1 A. I would say about six, seven years.

2 THE HEARING OFFICER: Can you hear Attorney
3 Patsos, Mr. Angelini?

4 MR. ANGELINI: Yeah. I can, your Honor.
5 Thank you very much for asking.

6 THE HEARING OFFICER: Okay. Thank you.

7 MR. NEFF: I apologize, again, Judge. Can
8 we take one -- I just need to take a brief bathroom
9 break.

10 THE HEARING OFFICER: All right. Fine.

11 MR. NEFF: I'm the one who's keeping us
12 hear so long already, but if you don't mind.

13 THE HEARING OFFICER: Let's -- let's do
14 five minutes at most and we'll get underway whenever
15 everyone's back.

16 MR. NEFF: Great. Thank you.

17 THE HEARING OFFICER: Yep.

18 (Recess taken)

19 MR. NEFF: Okay. Okay. So thanks, again,
20 for the break. I'm sorry to keep asking. No matter
21 how much air conditioning we put in this room, it
22 just seems to be very, very hot, and it makes me
23 thirsty.

24 Q. In any event, as Mr. Angelini reminded me,

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1 I was asking about -- Ms. Patsos, I was asking you
2 about how long you've known Judge Sushchyk. You
3 said you've known him for about seven years.

4 How did you first get to know Judge
5 Sushchyk professionally?

6 A. When I was a deputy assistant register at
7 the Worcester Probate and Family Court.

8 Q. And -- and in what capacity doing that job
9 did you get to know Judge Sushchyk?

10 A. I worked at the front counter, covered the
11 lawyers' line --

12 Q. Uh-huh.

13 A. -- and I assisted lawyers with procedural
14 questions and reviewing filings and things like
15 that.

16 Q. And how long did you do that job in
17 Worcester?

18 A. I did -- that's actually where I started,
19 and then after about three years I -- I became --
20 well, I was on loan to the administrative office to
21 work on the implementation of the MUPC and the MUTC.

22 Q. Did you continue to have professional
23 contact with Judge Sushchyk after -- after you left
24 that initial role or --

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1 A. No.

2 Q. -- was after those three years basically
3 the end; you just kind of reunited eventually, if
4 not -- well, actually I shouldn't -- I shouldn't
5 assume.

6 You did that job for three years, and then
7 you moved on to a new job.

8 Did you interact with Judge Sushchyk
9 professionally again at all? Or -- or was the --
10 the next time you saw him at this conference in
11 spring of 2019?

12 A. I may have received an e-mail on an MUPC,
13 Massachusetts Uniform Probate Code, procedural
14 question while he was a lawyer. I did a lot of
15 trainings, as I said.

16 But no, I didn't really see him again until
17 he became a judge.

18 Q. Okay. Great.

19 Okay. And I think I've asked you, but you
20 know someone by the name of Emily Deines?

21 A. Yes.

22 Q. Okay. And did you see any contact,
23 physical contact of any kind between Emily Deines
24 and Judge Sushchyk while you all were seated at a

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1 table at Bayzos Pub on April 25th, 2019?

2 A. No.

3 Q. Okay. While you were seated at the table
4 with Ms. Deines and others, and Judge Sushchuk --
5 well, strike that.

6 At a certain point in that evening you were
7 seated at that table at Bayzos Pub that you pointed
8 out in the exhibit. Ms. Deines was seated there.
9 Judge Sushchuk --

10 I'm sorry. You saw Judge Sushchuk a second
11 time on April 25th; is that true? Like after --

12 MR. ANGELINI: Objection. Leading. I
13 object.

14 MR. NEFF: I'm trying to expedite a little
15 bit.

16 MR. ANGELINI: It's still leading, and I
17 object.

18 THE HEARING OFFICER: I'll sustain it.

19 MR. NEFF: I'm trying to move it along.

20 Q. So you already said that you walked in and
21 did not sit with Judge Sushchuk initially.

22 Did you see Judge Sushchuk again at Bayzos
23 Pub on the evening of April 25th?

24 A. Yes.

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1 Q. Okay. And where were you when you saw him
2 a second time at Bayzos Pub on April 25th?

3 A. I was seated at that pub table.

4 Q. Okay. And who -- who was still -- or who
5 was at that table with you at that point in time?

6 A. Emily was seated to my left, and Christine
7 and Jocelynn were there as well.

8 Q. Okay. And so Emily is seated to your left.
9 Jocelynn, would you describe, as, like, diagonally
10 across from Emily, or directly across from Emily at
11 the table at this point in time?

12 A. I honestly I would say diagonally across
13 from her, I would say.

14 Q. Okay. No. That's fine.

15 And from that -- you said that Judge
16 Sushchuk approached the table from your -- as far as
17 you saw, approached the table coming from basically
18 the left-hand side of that photo around one of the
19 brick pillars and kind of toward your table.

20 Is that true?

21 A. Correct.

22 Q. Is that an accurate way to put it?

23 A. Yeah. Yeah.

24 Q. And as he passed Ms. Deines, you did not

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1 see any contact, physical or otherwise, between
2 Ms. Deines and Judge Sushchuk?

3 A. No, I did not.

4 Q. Okay. And once Judge Sushchuk arrived at
5 the table, did you have any conversation with him?

6 A. Yes.

7 Q. Okay. And what did you talk to him about?

8 A. He offered to buy us a drink.

9 Q. Okay. And when you said "he offered to buy
10 us a drink," who was he offering to buy drinks for?

11 A. The table.

12 Q. Everyone at the table? Okay.

13 A. Yes.

14 Q. Okay. And did everyone take him up on that
15 offer or only some people?

16 A. I don't know who did, but a few of us did.

17 Q. Okay. Did you -- did you take him up on
18 his offer to buy you a drink?

19 A. I did.

20 Q. Did he buy you a drink?

21 A. Yes.

22 Q. And did he buy himself a drink at the same
23 time?

24 A. I don't -- I don't know. I don't remember.

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1 No.

2 Q. Okay. And how -- how -- how did the
3 mechanics of buying those drinks work? Did he leave
4 the table and go to the bar and buy the drinks and
5 come back? Or did a waiter come by and he just
6 placed an order on all your behalf?

7 A. He went up to the bar.

8 Q. Okay. And when he came back, how many
9 drinks did he come back with?

10 A. I don't honestly recall.

11 Q. Okay. But there was one for you?

12 A. Yes.

13 Q. Okay. And there was one for -- was there
14 one for Jacqueline (sic)?

15 A. Jocelynne?

16 Q. Jocelynne, I should say.

17 A. I believe Jocelynne, yeah. I believe
18 Jocelynne had a drink, yeah.

19 Q. And do you recall what anyone drank that
20 night?

21 A. No. Just what I drank.

22 Q. Do you recall at a certain point discussing
23 with Judge Sushchuk that he had a particular type of
24 whiskey that he liked to drink?

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1 A. Yes.

2 Q. And what was that whiskey? Do you recall?

3 MR. ANGELINI: I didn't hear the question.
4 I'm sorry.

5 Q. What was the type of whiskey that Judge
6 Sushchuk told you that he -- he preferred to drink?

7 A. I don't -- I don't remember the brand, but
8 I just recall that he said that he enjoyed these
9 particular type of Irish whiskey, but I don't
10 remember particular brand.

11 Q. Do you recall at any point having a
12 discussion with him about a flask he liked to carry
13 containing that particular type of whiskey he was
14 fond of?

15 A. I remember the -- the -- the idea of a
16 flask, or the issue of a flask coming up in
17 conversation, yes.

18 Q. Do you recall seeing a flask?

19 A. I did not see a flask, no.

20 Q. You did not see a flask.

21 A. I did not, no.

22 Q. Okay. Okay.

23 At a certain point in time while you
24 were -- while you were having a conversation with

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1 Judge Sushchuk, did you observe anything about Emily
2 Deines -- well, was Emily Deines -- did you observe
3 anything about Emily Deines?

4 A. Yes.

5 Q. Okay. And what did you observe about her?

6 A. At one point I remember looking at her, and
7 she gave me a particular look with her eyes. You
8 know, very wide-eyed is how I would describe it.

9 Q. If you had to ascribe an emotional state or
10 demeanor to her at that particular moment or time,
11 how would you describe her?

12 MR. ANGELINI: My objection. My objection.

13 THE HEARING OFFICER: I'll allow it.
14 Overruled.

15 Go ahead.

16 A. She -- I guess I would describe it as,
17 like, trying to get my attention. Basically she did
18 this with her eyes (indicating), like wide-eyed.

19 Q. Did you know why she was trying to get your
20 attention?

21 A. No, I didn't.

22 Q. Okay. And did she say anything to you
23 about why she was trying to get your attention?

24 A. No.

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1 Q. Okay. And for what length of time did you
2 observe her trying to get your attention?

3 A. It was very quick. Five seconds. It
4 wasn't too long. It was very quick.

5 Q. And while she was trying to get your
6 attention, what, if anything, else were you doing?

7 A. Gabbing with everybody at the table.

8 Q. Okay. Was Judge Sushchuk still present?

9 A. Yes.

10 Q. Okay. And where was he in relation to you
11 while Emily Deines was looking at you in that
12 particular way?

13 A. Across from me at the table.

14 Q. Okay. And when you say "across from you at
15 the table," was he on the other side of the table?
16 Was he diagonal -- well, what do you mean by
17 "across" from you?

18 A. Just across from the table -- I guess that
19 would be diagonal -- towards the brick -- that
20 brick -- I don't know what you call that -- that
21 brick part of the wall.

22 Q. Was he on your side of the table or on the
23 other side of the table at that point?

24 A. Across from me. The other side.

1 Q. And how long after Emily stopped looking at
2 you in that particular way -- well, strike that.

3 Was there a point in time that Emily Deines
4 eventually left the bar and left you behind at the
5 bar with your friends?

6 A. Yes.

7 Q. Okay. And how long after the point in time
8 when she was looking at you in that particular way,
9 how long afterward was it that she left?

10 A. No more than 15 minutes.

11 Q. Okay. Did she say anything to you as she
12 left?

13 A. No.

14 Q. Okay.

15 A. Not that I recall.

16 Q. She just left.

17 Do you recall having lunch with her, or
18 trying to have lunch with her the second day of this
19 conference?

20 A. No.

21 Q. Okay. Do you recall trying to have a
22 conversation with her about a -- about a subject you
23 needed to catch up on --

24 MR. ANGELINI: Objection.

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1 Q. -- on the second day of the conference?

2 MR. ANGELINI: Objection.

3 THE HEARING OFFICER: Overruled.

4 A. Can you repeat the question?

5 Q. Do you recall having a conversation with
6 her about -- about a subject that you needed to
7 catch up on on the second day of the conference?

8 A. No -- I don't think I understand your
9 question. I'm sorry.

10 Q. All right.

11 Well, let me ask you it differently.

12 On the second day of the conference in your
13 interactions and observations of Ms. Deines, did she
14 give you any reason to believe that there was
15 something that she wanted to discuss with you?

16 A. Yes.

17 Q. Okay. And what did she do or say that
18 caused you to believe that she had something that
19 she wanted to discuss with you?

20 MR. ANGELINI: I object.

21 THE HEARING OFFICER: Overruled.

22 A. She told me she wanted to talk to me about
23 something.

24 Q. And did you have an opportunity to have a

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1 discussion with her on that day, April -- Friday,
2 April 26th, during the second day of the conference?

3 A. No. Actually, no, I did not.

4 Q. Did you eventually -- not what you spoke
5 with her, but were you able to eventually catch up
6 with Emily and have a conversation about what she
7 wanted to discuss with you on that day?

8 A. I did have a conversation with her the
9 following Monday.

10 Q. So approximately, let's say, two to
11 three days after -- after the Friday night you
12 eventually did speak with Emily about what she
13 wanted to tell you?

14 A. Yes.

15 Q. Okay. And was that -- where did that
16 conversation take place?

17 A. I was in my office over -- at the time our
18 office was at the John Adams courthouse, so I was in
19 my office there. She was, I believe, in her office
20 in Northampton when she called me.

21 Q. She called you. Okay.

22 And, again, not what she said at all, but
23 how would you describe her temperament or emotions
24 during this phone call?

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1 A. I would say flabbergasted would probably be
2 the best way to describe it.

3 Q. Was she seeking any advice from you?

4 A. No, not necessarily. No. I would say no.

5 Q. Did you offer her any advice during this
6 phone conversation on what would have been Monday
7 April 20th -- excuse me, 30th?

8 A. No. I think it was the 29th.

9 Q. Did you offer any advice on that day?

10 A. Yes.

11 Q. Okay. I'm sorry. Just give me one moment,
12 please.

13 At some point after your conversation with
14 Ms. Deines you ultimately were asked by Chief
15 Justice Casey to also have a conversation with him
16 about a particular subject matter, were you not?

17 A. Yes.

18 Q. Okay. And when in relation to -- or how
19 long after your conversation with Ms. Deines did you
20 have a conversation with Chief Justice Casey?

21 A. I don't remember the exact date, but I
22 would say a couple of weeks after; somewhere around
23 there.

24 Q. And again, not what was said, or

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1 necessarily the specifics, but was the subject
2 matter of your conversation with Emily Deines and
3 with Chief Justice Casey basically the same?

4 A. I think they were a little different. Same
5 topic, but...

6 Q. And did the topic involve something
7 relating to April -- something that had happened on
8 April 25th of 2019?

9 A. Yes.

10 Q. After Emily left the Bayzos Pub on
11 April 29th of 2019 (sic), how long did you remain?

12 A. I would say maybe a couple of hours.

13 Q. And did you basically stay until the bar
14 was about to close? Or did you leave before the bar
15 closed?

16 A. It was closing.

17 MR. ANGELINI: Objection. My objection,
18 your Honor. Relevance.

19 THE HEARING OFFICER: Overruled.

20 Q. Okay. Well, let me ask you, when you made
21 your decision to leave the bar on April 25th, or
22 maybe the early morning hours of April 26th, 2019,
23 did anyone offer you a ride from the bar back to the
24 room or lodging where you were staying that evening?

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1 A. Yes.

2 Q. Okay. And who made that offer to you?

3 A. Judge Sushchuk.

4 Q. And did he make that offer to any other
5 people, or just to you?

6 A. No. It was -- I was there. It was
7 probably, I would say, like around 11:00, and it was
8 myself, Jocelyne Welsh, Christine Yurgelun and
9 Denise Fitzgerald.

10 Q. Okay. And as of that point in time, if you
11 know, how many -- between the time you had seen
12 Judge Sushchuk join you at the table that night
13 until the time he then offered to leave with you and
14 drive you home, how many alcoholic beverages did he
15 consume?

16 MR. ANGELINI: Objection.

17 A. I have no idea.

18 Q. If you know.

19 MR. ANGELINI: My objection.

20 THE HEARING OFFICER: I couldn't hear
21 whether the question was how many did the witness
22 consume or was it how many your client,
23 Mr. Angelini, consumed.

24 MR. NEFF: My question was about the

1 client, Judge.

2 THE HEARING OFFICER: Okay. Well, I'll
3 sustain what the answer -- I'll sustain. I'm not --
4 I don't understand that Ms. Patsos was in a position
5 to know how many were consumed, so that's the reason
6 I'm sustaining it. If there's -- if you can offer
7 evidence that she would be in a position to know
8 that, I'll hear it.

9 MR. NEFF: Okay.

10 Q. Well, did you, over the course of that
11 evening, Ms. Patsos, observe how many drinks Judge
12 Sushchyk had at Bayzos Pub?

13 A. I saw -- I only saw him have one drink.

14 Q. Throughout the entire evening?

15 A. Yes.

16 Q. Okay. Did you see him consume any alcohol
17 from a flask over the course of that evening?

18 A. No.

19 Q. Okay. Did he, at any point or points
20 during the course of that evening, excuse himself to
21 use the restroom?

22 A. I don't -- I don't remember.

23 Q. Did you have, when -- I appreciate that you
24 took a ride from Judge Sushchyk from a bar on the

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1 Cape in a relatively quiet area back to your room,
2 but did you have any concerns whatsoever about his
3 state of impairment or sobriety as a consequence of
4 consuming alcohol that night when he was driving you
5 and others home -- not home, but to your rooms on --
6 after leaving Bayzos Pub?

7 A. No.

8 MR. NEFF: Okay. If I could have one
9 moment.

10 THE HEARING OFFICER: Yes.

11 MR. NEFF: I have no further questions.

12 THE HEARING OFFICER: All right.

13 Mr. Angelini?

14 MR. ANGELINI: Yes.

15 CROSS-EXAMINATION

16 BY MR. ANGELINI:

17 Q. Good afternoon, Attorney Patsos.

18 A. Good afternoon.

19 Q. Let me just ask a very few questions, and
20 I'll try to keep my voice up. And if you would do
21 the same, I'd appreciate it.

22 Are you friendly with Ms. Deines?

23 A. Yes, I am.

24 Q. And have you and she socialized from time

1 to time?

2 A. Yes, we have.

3 Q. Have -- over what period of time have you
4 been social friends as well as colleagues at work?

5 A. I would say over the last, I would say,
6 five or six years.

7 Q. Okay. Have you -- and would you describe
8 that socialization, please?

9 A. Well, we were more social when she was
10 working in the admin office here in Boston, but we
11 have gone out after work to have dinner. I went to
12 her -- I think it was a 30th birthday party that her
13 family gave. When her son was born, I got him a
14 present. I believe I was invited to a birthday
15 party -- I don't know, but I believe I was also
16 invited to his birthday party.

17 Less social once she moved out west.

18 Q. But have you remained friends with her even
19 as of today?

20 A. Yes. Yes.

21 Q. And I just want to be clear about your
22 relationship with Judge Sushchuk.

23 A. Uh-huh.

24 Q. I understood from your question that you

1 met him when you were staffing a responsibility at
2 the Worcester probate court.

3 Is that right?

4 A. Correct.

5 Q. And he was then a lawyer who -- who, as
6 part of his practice, was probate law, I take it?

7 A. Correct.

8 Q. And what was the nature of your
9 interaction? Was it purely professional, or did it
10 have a social aspect to it?

11 A. Purely professional.

12 Q. And has that -- and I think you said -- and
13 I had a little trouble hearing you, so I'm going to
14 risk pursuing this again -- that that was -- that
15 stint of yours ended about three years ago.

16 Am I right?

17 A. No. Longer than that. Longer than that.

18 Q. Okay. Then I misheard.

19 How long ago did you leave the Worcester
20 probate court?

21 A. After about three years of working there, I
22 became -- I went on loan to the Chief's office. It
23 was then Chief Justice Carey. She was the Chief
24 Justice of the Probate and Family Court, but I still

1 would go back to Worcester a couple of days. It
2 wasn't -- I wasn't officially in that office until
3 Chief Justice Ordonez. So about, I'm going to say,
4 seven years ago.

5 Q. Okay. And during that seven years, I take
6 it your testimony to be that the only contact you've
7 had with Judge Sushchik was perhaps some question
8 about the Massachusetts Uniform Probate Code or
9 something of that nature?

10 A. Correct.

11 Q. Aside from this session of the Bayzos Pub,
12 have you ever socialized with him?

13 A. No. Never.

14 Q. Okay. Now, when Judge Case -- Sushchik
15 came to the table that night, I think you said you
16 were all there -- that is, you and your -- the other
17 lawyers and your colleagues were there.

18 Is it fair to say that you were engaging in
19 maybe you used the phrase "chitchat," talking to
20 each other?

21 A. Yes. Yes.

22 Q. And was that a friendly sociable occasion?

23 A. Yeah. Definitely.

24 Q. Did it continue that way during the entire

1 period that Judge Sushchuk was there?

2 A. Yes.

3 Q. And did you observe Judge Sushchuk having
4 any conversation with Ms. Deines?

5 A. Well, we were all at the table at one point
6 together, all gabbing.

7 Q. Okay. And that included Judge Sushchuk and
8 you and Christine and Emily, all of you?

9 A. Yes.

10 Q. Okay. Thank you.

11 Did you see anything that happened that
12 night while you were there which struck you as, in
13 any way, unusual?

14 A. No.

15 Q. And when Judge Sushchuk later offered you a
16 ride home, I take it from your testimony that he
17 gave the group of you a ride -- not home, but back
18 to your -- the area where you were staying; is that
19 right?

20 A. Correct.

21 Q. And was that a -- how long a distance was
22 that from the pub to where -- to where the
23 residences that you were all staying at were
24 located?

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1 A. I'd have to say, if I were to make just an
2 educated guess, I would say about half a mile at
3 least. It was very, very dark. It would have been
4 a dangerous walk.

5 MR. ANGELINI: It would have been a
6 dangerous walk. All right. Thank you.

7 I have no further questions. Thank you
8 very much.

9 THE HEARING OFFICER: All right.
10 Anything else, Mr. Neff?

11 MR. NEFF: Nothing further, Judge.

12 THE HEARING OFFICER: All right.

13 Would you mind if I ask Attorney Patsos a
14 couple of questions?

15 MR. NEFF: No.

16 MR. ANGELINI: I don't mind.

17 MR. NEFF: Of course not.

18 THE HEARING OFFICER: Okay.

19 Attorney Patsos --

20 THE WITNESS: Yes.

21 THE HEARING OFFICER: -- regarding the
22 testimony that you've given concerning the night of
23 the conference when you were at the -- at the table,
24 and -- and Ms. Deines, you testified, seemed to be

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1 looking at you to get your -- to get your attention
2 in some manner.

3 Is that right?

4 THE WITNESS: Correct.

5 THE HEARING OFFICER: Okay. I'm going
6 to -- hang on one second. I'm sorry. There is
7 someone whose video is on right next to your picture
8 on this, and it's very distracting.

9 Mr. Loos, please exclude that individual.

10 THE REPORTER: He left.

11 THE HEARING OFFICER: Thank you very much.
12 That's the second time with that same
13 individual.

14 MR. ANGELINI: No, I can still see it.

15 THE HEARING OFFICER: I'm sorry to
16 interrupt.

17 THE REPORTER: One second.

18 THE HEARING OFFICER: At the time when you
19 saw Ms. Deines moving her eyes in a way that -- or
20 "wide-eyed" I think was how you described it --
21 where was Judge Sushchyk?

22 THE WITNESS: Across the table from me.

23 THE HEARING OFFICER: Where was he located
24 in relationship to Ms. Deines?

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1 THE WITNESS: Across -- it would have been
2 across from her.

3 THE HEARING OFFICER: Across the table from
4 her.

5 THE WITNESS: Right.

6 THE HEARING OFFICER: Where had he been
7 immediately prior to that?

8 THE WITNESS: I don't recall. I don't
9 know.

10 THE HEARING OFFICER: Was there any time
11 that you observed him behind Ms. Deines' barstool?

12 THE WITNESS: The only time I vaguely
13 remember was when we first sat down. I believe he
14 went by her.

15 THE HEARING OFFICER: Okay. And when was
16 that in relationship to when you saw her eyes widen?

17 THE WITNESS: I would say five minutes
18 before or somewhere around there.

19 THE HEARING OFFICER: And during the time
20 that you saw Judge Sushchuk behind Ms. Deines'
21 barstool, did you observe any point at which he was
22 not in motion, in other words moving behind her
23 barstool?

24 THE WITNESS: No. No.

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1 THE HEARING OFFICER: Did you observe him
2 stop at any point in that location?

3 THE WITNESS: No.

4 THE HEARING OFFICER: All right.

5 Are there any objections to any of the
6 questions that I've asked?

7 Mr. Neff?

8 MR. NEFF: No, your Honor.

9 THE HEARING OFFICER: Mr. Angelini?

10 MR. ANGELINI: No, your Honor.

11 THE HEARING OFFICER: Any follow-up
12 questions?

13 MR. ANGELINI: No, your Honor.

14 THE HEARING OFFICER: Mr. Neff?

15 MR. NEFF: No. No, your Honor.

16 THE HEARING OFFICER: Okay.

17 Ms. Patsos, thank you very much. I do have
18 to ask you, again, concerning the questions that I
19 asked at the beginning.

20 Have any of your answers changed?

21 THE WITNESS: No.

22 THE HEARING OFFICER: Okay. Again, thank
23 you very much. You're welcome to stay and observe,
24 but you're excused as a witness.

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1 THE WITNESS: Thank you.

2 MR. NEFF: Sorry. I'm sorry, your Honor.
3 I was just making sure I knew who we had -- we
4 wanted to go next.

5 THE HEARING OFFICER: Okay. Great.

6 MR. NEFF: And I believe the witness we are
7 calling is Jocelynn Welsh who is ready and
8 hopefully in the room.

9 THE HEARING OFFICER: Okay.

10 MR. NEFF: I think she goes by the name
11 Debb Welsh. So in our chat room -- and this is, I
12 guess, for you, Mr. Loos, because I did not know
13 that when we gave you a witness list.

14 THE REPORTER: One moment. I'll find her.

15 MR. NEFF: She may not -- you may not be
16 letting her in because she -- she has the name Debb
17 Luce -- Welsh, not Jocelynn Welsh.

18 Is Debb a middle name or something?

19 THE HEARING OFFICER: Shall I unmute her?
20 I see her on the -- on the screen.

21 MR. ANGELINI: I see it.

22 THE HEARING OFFICER: Okay. Great.

23 Before we get to Ms. Welsh's testimony, I
24 would just like to state not only for the record,

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1 but for any individuals who are viewing this by
2 Zoom, that there have been a number of occasions
3 where I've asked people to please make sure that
4 their video feed is off; and everyone, almost, has
5 complied with that. And I will say, if you do not
6 comply with it, we will exclude you, because part of
7 what we're doing here requires everyone's attention,
8 and we cannot have the kind of distraction that we
9 wouldn't allow in a courtroom.

10 The second thing I'm going to say is,
11 anyone who is observing engages in a chat or uses
12 the chat feature and it comes to my attention that
13 it is chatting with any of the participants,
14 including me, you will be excluded. The same as we
15 would not allow someone to stand up in court and
16 make comments, we will not allow it in this format,
17 either. And if that's not acceptable to -- to you,
18 and you're viewing it, I suggest that you find
19 another way to watch the proceedings, because you
20 won't be able to watch them through this mechanism.
21 You might be able to view them later on, but viewing
22 them live will not be an option that's available to
23 you.

24 Mr. Loos, is there anything that I've said

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1 that doesn't comport with your understanding of how
2 the platform, number one, works; and number two,
3 with what has transpired occasionally over the past
4 two days?

5 THE REPORTER: No, that's fair.

6 THE HEARING OFFICER: Okay. I don't mean
7 to put you on the spot, but I just did. I'm sorry.

8 But no, if there is anything, by all means,
9 just jump right in, because your -- you're the guy
10 who knows about this.

11 THE REPORTER: Great. I will.

12 THE HEARING OFFICER: Okay. All right.
13 Thank you. All right.

14 Then, Mr. Neff, your next witness is
15 present, and this is Ms. Welsh.

16 MR. NEFF: Welsh, and we said Debb.

17 THE HEARING OFFICER: Okay. Let me...

18 Ms. Welsh, good afternoon.

19 THE WITNESS: Good afternoon, Judge.

20 THE HEARING OFFICER: My name is Bertha
21 Josephson, and obviously I'm the Hearing Officer.

22 I need to ask you, as I have with everyone,
23 a series of questions according to the protocol that
24 the Commission is following. So bear with me. And

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1 I'll ask these again, or at least refer to them
2 again, at the end of your testimony or at any
3 breaks.

4 So if you would, kindly just state your
5 name for the record.

6 THE WITNESS: Jocelynnne Deborah Welsh.

7 THE HEARING OFFICER: Okay. And,
8 Ms. Welsh, where are you physically located now?

9 THE WITNESS: In my home in Hanson,
10 Massachusetts.

11 THE HEARING OFFICER: Okay. And who's in
12 the room with you?

13 THE WITNESS: No one.

14 THE HEARING OFFICER: And what materials or
15 devices do you have with you?

16 THE WITNESS: I have my laptop with the
17 hearing on it. I have my cell phone, which is set
18 to vibrate.

19 And that's it.

20 THE HEARING OFFICER: Okay. And you
21 mentioned that you have the hearing on your laptop.

22 Is there anything else on any of your other
23 screens?

24 THE WITNESS: No.

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1 THE HEARING OFFICER: Okay. And are you in
2 communication with any persons other than those
3 conducting the examination in this matter --

4 THE WITNESS: No.

5 THE HEARING OFFICER: -- at this moment?

6 THE WITNESS: Right.

7 THE HEARING OFFICER: Okay. All right.

8 The answer is no, and thank you very much.
9 I'll turn it --

10 THE REPORTER: She needs to be sworn in.

11 THE HEARING OFFICER: Oh, thank you very
12 much, Mr. Loos. You did jump in.

13 I need you to raise your right hand,
14 Ms. Welsh.

15 (JOCELYNNE D. WELSH, sworn)

16 THE WITNESS: I do.

17 THE HEARING OFFICER: Thank you.

18 Thank you very much, Mr. Loos.

19 MR. NEFF: And if I can -- if I may
20 inquire, Judge?

21 THE HEARING OFFICER: Yes.

22 DIRECT EXAMINATION

23 BY MR. NEFF:

24 Q. Okay. Good afternoon, Ms. Welsh. Thank

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1 you for taking the time to join us.

2 I wanted to start out by asking if you
3 could just for the record tell us your name and
4 spell your last name?

5 A. Jocelynnne Deborah Welsh, W-e-l-s-h.

6 Q. Okay. And what city or town do you live
7 in?

8 A. Hanson, Massachusetts.

9 Q. And what is your date of birth?

10 A. February 28, 1950.

11 Q. What is your current employment?

12 A. I have retired from the Commonwealth of
13 Massachusetts, the Trial Court, as of July 5th,
14 2019. And since that time, I have been working on a
15 per diem basis, helping the administrative office by
16 being in the field.

17 Q. Excellent. Well, congratulations on your
18 retirement.

19 A. Thank you.

20 Q. Thank you for coming back and -- and
21 testifying for us despite the fact that you are
22 retired.

23 Can I ask, when you were fully employed by
24 the Probate and Family Court, what was your role for

1 the Probate and Family Court?

2 A. I was the administrative attorney for the
3 department.

4 Q. And what does that mean? What kind of --
5 what kind of roles do you serve as administrative
6 attorney for the Probate and Family Court
7 department?

8 A. Having worked in that same department and
9 in the administrative office for 34 years, I have
10 worked with six chief justices, and they each have
11 their own interests and priorities. Therefore, my
12 jobs have changed.

13 Q. And how long did you work for the Probate
14 and Family Court before you retired?

15 A. 34 years.

16 Q. Wow. That's very, very good.

17 Did you work in a particular area, like
18 geographic area, one of the geographic offices of
19 the Probate and Family Court? Or did you work in
20 Boston, at the Boston office?

21 A. I was in Boston in the administrative
22 office, but I also occasionally went into the field,
23 depending on what I was being asked to do.

24 Q. Can I ask you, what is your educational

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1 background?

2 A. I am a high school graduate, college
3 graduate. I went to Suffolk University Law School.

4 Q. Great. Good for you. Wonderful.

5 And after you left law school, what was
6 your first legal employment, or first employment?

7 A. As a law clerk for Chief Justice Podolski
8 several years after my graduation from law school.

9 Q. Okay. And how many years after law school
10 was it that you first started working -- it couldn't
11 have been that long -- for the Probate and Family
12 Court?

13 A. Six years.

14 Q. Okay. Great. Great. Great. Great.

15 And in your time working for the Probate
16 and Family Court, did you get to know someone who
17 also worked for Probate and Family Court by the name
18 of Ms. Emily Deines?

19 A. Yes.

20 Q. Okay. And how did you get to know her?

21 A. I have known Emily since she first became
22 employed by our department and I worked with her on
23 some matters. And sometimes she was in our office,
24 and other times she was located elsewhere.

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1 Q. Okay. Were -- were you in a position where
2 you would collaborate with little frequency, some
3 frequency, or lots of frequency -- or something
4 different -- on projects with her in -- in
5 your roles?

6 A. A lot of frequency, such as working with
7 forms creation for the Probate and Family Court
8 department. I would create them. She would fix
9 them and post them.

10 Q. And did you have a positive working
11 relationship with her?

12 A. Yes.

13 Q. And over what period of time would you say
14 you worked with her that closely?

15 A. I would say at least six years.

16 Q. Okay. Great.

17 And in addition to being, it sounds like,
18 good professional counterparts, did you have any --
19 any kind of personal relationships or go to each
20 other's houses for cookouts or anything like that
21 once you got to know her?

22 A. We did not have that sort of a
23 relationship. We did participate in things -- for
24 example, a baby shower the office had when she was

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1 expecting her son. So we were friendly, but not so
2 much outside of the office.

3 Q. Understood.

4 And I wanted to -- well, do you know
5 someone by the name of Judge Paul M. Sushchuk?

6 A. Yes.

7 Q. Okay. And how do you know him?

8 A. I met Judge Sushchuk when he was appointed
9 to the Probate and Family Court as a new justice.

10 Q. And why did you meet him immediately then?
11 Were you at a ceremony? Or was he appointed to a
12 court that you were working at for a period of time?

13 A. At that time I would participate in new
14 judge training, and he was one of the new judges.

15 Q. Okay. Great.

16 And -- and how long ago was that?

17 A. I believe less than two years. About a
18 year and a half, I believe.

19 Q. And so what did you train him in two years
20 ago? What kinds of training did you provide him?

21 A. Some of the projects that I was involved
22 in. For example, the availability of limited issue
23 settlement conferences. At the time I was managing
24 the guardian ad litem list, so we talked about that.

1 And other -- you know, other things like that. But
2 specific tasks.

3 Q. Okay. Understood.

4 And did you have ongoing contact with him
5 after his appointment as a judge? Or once you kind
6 of trained him up on certain issues, did you -- did
7 you then move on and start training other judges?

8 A. I did not have further training
9 opportunities with him.

10 Q. So when was the last time you would say you
11 had any kind of training contact with Judge Sushchuk
12 before -- well, when was the last time?

13 A. In connection with that new judge training.
14 And it wasn't necessarily a one-on-one. It
15 was -- it could be a group of new judges, depending
16 on how many people were appointed.

17 Q. And following the end of your training
18 period, whether it was one-on-one or a group with
19 Judge Sushchuk, did you have any other variety of
20 contact, training or otherwise, with Judge Sushchuk
21 following that training period?

22 A. No.

23 Q. Okay. I would like to now ask you about
24 the spring 2019 Probate and Family Court conference

1 in Brewster.

2 Do you recall attending that conference?

3 A. Yes.

4 Q. Okay. And do you recall where that was?

5 A. Ocean Edge Resort in Brewster.

6 Q. And did you stay for both days, April 25th
7 and 26th, 2019?

8 A. Yes, I did.

9 Q. Okay. And did you have a particular role
10 to train at that conference? Or were you there as
11 an observer or learner, or in some other capacity
12 there?

13 A. I was there as an observer/learner.

14 Q. Okay. Great.

15 And if you remember, because it was a
16 little over a year ago, do you recall the itinerary
17 of that first day of the -- the training conference,
18 generally at all?

19 A. Sure. There was probably a continental
20 breakfast, followed by a welcome by Chief Justice
21 Carey -- Casey, a couple of presentations, lunch, a
22 couple of more presentations, although we may have
23 had breakout groups for the judges, and then dinner.

24 Q. Great.

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1 On that first day of the conference, do you
2 recall attending a dinner, a Probate and Family
3 Court sponsored dinner approximately 7:00 p.m. that
4 day?

5 A. Yes.

6 Q. Okay. And did you go to that -- well, I
7 think I just asked you that. You went to that
8 dinner.

9 Did you go with someone or did you go
10 alone?

11 A. I was seated with other colleagues who were
12 non-judicial who were attending the conference.

13 Q. And who else were you -- who else were you
14 sitting with at that table?

15 A. Evelyn Patsos, Christine Yurgelun, Denise
16 Fitzgerald.

17 Q. Okay. And did the dinner start on time at
18 around 7:00 or not too long after as planned?

19 A. Yes.

20 Q. Okay. And about how long did the dinner
21 last?

22 A. Approximately an hour and 15 minutes or an
23 hour and a half.

24 Q. Okay. And after the dinner was concluded,

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1 did you return to your guest room at the Ocean Edge
2 or did you go somewhere else?

3 A. I went someplace else.

4 Q. And where did you go?

5 A. I went to the Bayzos Pub.

6 Q. Okay. And where is that in relation to
7 where you were having the dinner?

8 A. Very, very, very short walk within the same
9 building.

10 Q. And did you go with anyone?

11 A. I was, again, with my colleagues.

12 Q. Okay. Meaning Evelyn Patsos and --

13 A. Correct.

14 Q. Okay. And how many -- if you had to sort
15 of estimate, at least, for us, how -- how large a
16 group, or how many people -- at the time you did it,
17 at least -- left that dinner and started walking
18 over to the bar to kind of extend their evening
19 there?

20 A. Probably 15, although some people may have
21 come later.

22 Q. And when you arrived at that bar, did
23 you -- did you select a particular place to stand or
24 is it to enjoy yourself and chat while you were

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1 there?

2 A. Yes.

3 Q. Okay. And let me see if I can finally do
4 this a little bit better, but I'm going to show you
5 what I think was marked Exhibit AA and is now marked
6 Exhibit 1.

7 Did I get that right, Mr. Loos?

8 THE HEARING OFFICER: It's actually 11.

9 MR. NEFF: 11. Okay. All right. Well,
10 sorry. I'm getting there.

11 So with your permission, Judge, if I could
12 show her Exhibit 11, I'd like to ask her about that
13 photo.

14 THE HEARING OFFICER: Sure.

15 THE REPORTER: Do you want me to share
16 screen or link?

17 MR. NEFF: If you could put that up, that
18 would be great, Mr. Loos.

19 THE HEARING OFFICER: I still have it on
20 mine, so I didn't -- however you can get that to
21 Attorney Welsh.

22 THE REPORTER: It should be in her chat.

23 BY MR. NEFF:

24 Q. So what you may have received, Ms. Welsh in

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1 your chat box, as part of the Zoom platform, is a
2 link. And if you click that link, you will open a
3 web browser, and the web browser will display a
4 photograph, and that's the photograph I'm trying to
5 show you.

6 A. Okay. Maybe. It says "chat to Alexander
7 Loos (privately)." I'm not sure if that's what we
8 want.

9 THE REPORTER: That's it.

10 THE HEARING OFFICER: That's it.

11 THE WITNESS: Okay. And so I'm clicking
12 "chat."

13 THE REPORTER: Yes.

14 And there should be a link in the chat box.

15 THE WITNESS: There you go.

16 Sorry.

17 BY MR. NEFF:

18 Q. Can you see that now?

19 A. Not yet.

20 Q. I'm sorry. I don't mean to be riding
21 behind you. Just let me know when you can see it.

22 A. Okay. I can see it.

23 Q. Great.

24 Do you recognize that photo?

1 A. Yes.

2 Q. Okay. And do you recognize that to be at
3 least a portion of the Bayzos Pub at the Ocean Edge
4 Resort where you visited way back last -- over a
5 year ago now -- spring of 2019?

6 A. Yes.

7 Q. Okay. And in the frame -- in the -- in
8 what -- the portion of the bar that is depicted in
9 that photo, do you see the area where you stopped or
10 stood or sat when you arrived in the bar to relax
11 and kind of enjoy yourself with your friends?

12 A. I believe it's the high-top, of the two,
13 furthest away from the front of the picture.

14 Q. So it's -- it's -- there are two high-top
15 tables.

16 A. Yes.

17 Q. And there is one that's sort of closer and
18 a little to the left, and then there's a second
19 high-top table depicted in this picture that is a
20 little off to the right and then just really, due to
21 perspective, I think --

22 A. Right.

23 Q. -- smaller.

24 And it's that smaller high-top table off to

1 the right where you believe you sat?

2 A. Yes.

3 Q. Okay. And I'm going to try to ask you to
4 do this so that we don't have to ask you to mark the
5 photos -- which we can do if you need to, but it's a
6 little trickier.

7 So if I could just ask, as best you can,
8 can you tell us where you were seated at that
9 particular table that night?

10 A. I believe I was seated either at the
11 closest to the brick wall, the brick pillar, or the
12 next one to the right, closer to the bar, on the
13 side closest to the front of the picture.

14 Q. So you were in one of the two barstools at
15 that table that are closer to the front of the
16 photo; you're just not sure whether you were -- you
17 were in the one next to the brick pillar or you were
18 in the one to the -- to the right of that particular
19 barstool?

20 A. Correct.

21 Q. Okay. And I probably should have asked you
22 this at the outset, but would you say this -- as
23 best you can remember at least -- fairly and
24 accurately represents what the Bayzos Pub looked

1 like when you visited that day?

2 A. Yes.

3 Q. And -- and this also kind of fairly and
4 accurately represents the furniture and the
5 high-tops and the barstools that you were able to
6 use while you visited the bar that day?

7 A. Yes.

8 Q. Okay. Thank you.

9 And who else sat at that table with you
10 that day?

11 A. Denise Fitzgerald, Christine Yurgelun,
12 Emily Deines, and Evelyn Patsos.

13 Q. Okay.

14 A. I believe Denise may have been standing
15 since there are four stools.

16 Q. Okay. And as best you can -- and we're
17 going to try to have to not mark it if we don't have
18 to -- can you try to describe, as best you can,
19 where each of those four parties were either seated
20 on the remaining three stools, or maybe where that
21 fourth person, who I think you said was -- well, I
22 won't put words in your mouth. I think you said a
23 fourth person may have remained standing.

24 Can you -- can you try to describe for us

1 where they were?

2 A. Sure.

3 I believe I was next to the pillar. Denise
4 Fitzgerald was standing next to me. Christine
5 Yurgelun was seated at the next stool, and then
6 Evelyn Patsos at the next stool, and Emily Deines
7 closest to the pillar on the other side of the
8 high-top.

9 Q. Great.

10 And do you remember whether or not
11 Christine Yurgelun had any kind of foot injury on
12 this particular date?

13 A. She did.

14 Q. Okay. And was she able to sit in one of
15 those stools normally? Or did she require any kind
16 of special assistance?

17 A. I believe she was able to sit on it, but
18 she had to support her leg at some point because it
19 was throbbing, I believe.

20 Q. Okay. And I'm sorry if I missed it, but
21 who is it that you said also joined you at that
22 table but really just kind of stood and maybe kind
23 of circled around and socialized?

24 A. I believe that was Denise Fitzgerald.

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1 Q. Okay. Okay. And approximately what time
2 would you say you all arrived there at that table at
3 the Bayzos Pub on April 25th, 2019?

4 A. Approximately 8:45.

5 Q. Okay. And at some point in time while you
6 were at the Bayzos Pub that night did you see Judge
7 Paul Sushchuk enter?

8 A. Yes.

9 Q. Okay. And where were you when you saw him
10 enter?

11 A. I think I was seated at the stool with my
12 back to the entrance coming from the direction of
13 the restaurant.

14 MR. NEFF: I'm going to -- I'm maybe going
15 to -- I'm doing slightly -- well, with photos I'm
16 now probably going to do less well with photos, and
17 try to show you another one which was marked as
18 Exhibit F, Mr. Loos, and I do not know what number
19 it was assigned.

20 THE HEARING OFFICER: Number 1.

21 MR. NEFF: So this is the one that's Number
22 1. Right.

23 THE HEARING OFFICER: This is Number 11,
24 Mr. Neff.

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1 MR. NEFF: So AA is --

2 THE HEARING OFFICER: 11.

3 MR. NEFF: AA is 11, okay.

4 F is number 1, though.

5 THE REPORTER: Yes.

6 MR. NEFF: Okay. Okay. So that's all
7 right. I guess that's the source of my confusion.

8 So I would like, with Judge Josephson's
9 permission, to show Ms. Welsh what has been marked
10 as Exhibit 1 for purposes of this hearing.

11 THE HEARING OFFICER: Sure.

12 MR. NEFF: I'm not always able to tell if
13 someone can see the photo.

14 Q. Can you --

15 A. I'm still looking at Exhibit AA.

16 THE REPORTER: It's in the chat now.

17 THE WITNESS: You're supposed to tell me
18 what you would like me to do.

19 THE REPORTER: Go to the chat again, and
20 there's another link there for you.

21 THE WITNESS: Am I removing this picture,
22 the AA picture?

23 THE HEARING OFFICER: I think it will
24 automatically just superimpose itself.

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1 THE WITNESS: The problem is I don't see
2 chat again.

3 THE HEARING OFFICER: Okay. Look at the
4 bottom of your screen.

5 THE WITNESS: Uh-huh. And hover the mouse
6 over the screen.

7 THE HEARING OFFICER: Do you see a little
8 thing at the very bottom that says "chat"?

9 THE WITNESS: No. At the bottom it says
10 21 percent, and plus, and arrows.

11 THE HEARING OFFICER: Now we're beyond my
12 capabilities.

13 THE REPORTER: Close -- close the browser.
14 I think you'll see the chat, the Zoom.

15 THE WITNESS: Close it.

16 Okay. I think...

17 Okay. There is one that says 3:42 p.m. and
18 one that says 3:34 p.m. Am I looking at the
19 3:42 p.m.?

20 THE REPORTER: I believe so.

21 THE WITNESS: Exhibit F?

22 THE HEARING OFFICER: That's the one.

23 THE WITNESS: Okay.

24

1 BY MR. NEFF:

2 Q. There you are.

3 And that is hopefully useful after all
4 that.

5 And it's -- and I'll ask, does that -- as
6 best as you can recall, over a year later -- fairly
7 and accurately represent that portion of the Bayzos
8 Pub which is essentially from the opposite
9 perspective of the other photo?

10 A. Yes.

11 Q. Okay. Okay.

12 And so when you were sitting at this bar
13 and saw Judge -- at some point did you see Judge
14 Sushchyk?

15 A. Yes.

16 Q. Okay. And -- and you said you were still
17 seated at the bar -- at the table at the time you
18 saw him, yes?

19 A. Yes.

20 Q. Okay. And in Exhibit now 1, can you tell
21 us where the various parties -- can you just
22 describe by seat where the various parties were
23 seated?

24 A. Okay. I think the stool closest to the

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1 front.

2 MR. ANGELINI: Object, your Honor.

3 May we have a point in time?

4 THE HEARING OFFICER: Sure.

5 MR. NEFF: I was asking when Ms. -- when
6 she saw Judge Sushchuk approach their --

7 MR. ANGELINI: Thank you.

8 MR. NEFF: -- table where each of the
9 parties were seated at the table.

10 THE HEARING OFFICER: Okay. Fair enough.

11 THE WITNESS: Okay.

12 So I believe that the stool of the four
13 which is now closest to the front of the picture
14 would be where Emily Deines was sitting, and to her
15 left would be Evelyn Patsos, to her left Christine
16 Yurgelun, and to her left would be me next to the
17 pillar on the other side.

18 Q. Okay. So your memory of looking at this
19 picture is that the four of you were kind of sitting
20 at this particular table, which is kind of, as you
21 can see, a bit of a distance away from a doorway or
22 exit to the bar down at the opposite end?

23 A. Yes.

24 Q. Okay. And since Mr. Angelini asked, I'll

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1 try to be a little more precise and ask you
2 approximately what time of day or night was it that
3 you saw Judge Sushchyk while you were at the bar?

4 A. I would say between 9:00 and 9:20.

5 Q. What were the four of you doing when you
6 saw -- when you first noticed him?

7 A. We were chatting and having a drink.

8 Q. Okay. And did you see -- what direction
9 did Judge Sushchyk come from -- using this picture
10 to help describe it at least, what direction did
11 Judge Sushchyk come from?

12 A. I believe he came around the tables which
13 were behind the pillar for food service --

14 Q. Uh-huh.

15 A. -- kind of like toward the front of the
16 picture, past Emily Deines, I believe probably to
17 chat with Evelyn Patsos, who was more acquainted
18 with him than we were.

19 MR. NEFF: Understood. Understood.

20 Okay. And -- and I know it's late, so I'm
21 sorry, but I now have what's been marked as Exhibit
22 J, which I would, with permission, like to show also
23 to Ms. Welsh. I don't think this one has been
24 introduced, Mr. Loos.

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1 THE REPORTER: It has not.

2 MR. NEFF: It may have been and I missed
3 it.

4 But this -- but I just think this may be
5 germane to where she -- where some of her
6 testimony --

7 MR. ANGELINI: It's not an objection, but I
8 have no objection to it being shown.

9 THE HEARING OFFICER: Okay. Great. Thank
10 you, Mr. Angelini.

11 So we can have F -- excuse me, not F. We
12 can have Exhibit Number 12 as the next one that
13 you're showing, which is?

14 THE REPORTER: J, I believe.

15 THE HEARING OFFICER: What's the letter?

16 MR. NEFF: J. I was using J.

17 THE HEARING OFFICER: J. Thank you very
18 much.

19 (Document marked as Commonwealth's
20 Exhibit 12 admitted into evidence)

21 THE WITNESS: I'm closing F as we did
22 before.

23 THE HEARING OFFICER: Thank you.

24 THE REPORTER: One moment.

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1 THE WITNESS: Okay.

2 THE REPORTER: All right.

3 THE HEARING OFFICER: Thank you.

4 BY MR. NEFF:

5 Q. And, Ms. Welsh, can you see that photo, or
6 could you at least let me know when you can?

7 A. I can see the photo.

8 Q. Great. Okay.

9 So would you say that that exhibit fairly
10 and accurately represents the area of the Bayzos Pub
11 you were just describing where on the other side of
12 the pillars from those bar-top -- high-top tables
13 there were essentially dining tables that are
14 adjacent to those brick pillars and people would
15 have to basically constitute the flow of traffic
16 throughout that particular area of the bar?

17 A. Yes.

18 Q. Okay. So I guess you can now, using any of
19 these particular photos that you feel has worked for
20 you, I'd ask you, when you first saw Judge Sushchuk
21 that night, where in any one of these three photos
22 did you first see him?

23 MR. ANGELINI: Well, I object. If she's
24 going to be referring to a photo, we should -- I

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1 respectfully request that we be able to see which
2 one it is.

3 A. I think I can use this photo, Exhibit J.

4 Q. Okay. Well, all right. Maybe that's the
5 better way for me to ask.

6 If there's a best photo for you to use to
7 point out to us where you first saw him, you would
8 say it's Exhibit J, which I think means we're up to
9 12?

10 THE HEARING OFFICER: Correct.

11 Q. And --

12 A. We were at the high-top on the right of
13 this picture.

14 Q. Okay.

15 A. And so I believe he was coming to the right
16 of the end of this picture, around toward what we
17 can see.

18 Q. So you basically just saw him walking
19 around there?

20 A. Yes.

21 Q. Okay. And as he approached the table, did
22 you see him have to do any bouncing around or
23 acrobatics in order to get around big crowds in
24 order to get to your table that particular evening?

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1 A. I did not notice that.

2 Q. Okay.

3 THE REPORTER: Excuse me, Mr. Angelini.
4 Was there something --

5 Q. Who was the first person who basically
6 passed by or was closest to as we got to the table?

7 A. I believe it would have been Emily Deines.

8 Q. Okay. And how long was he behind Emily
9 Deines before he continued moving further along --

10 MR. ANGELINI: Objection.

11 Q. -- approaching the table?

12 MR. ANGELINI: I object.

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

15 MR. ANGELINI: There's been no statement by
16 the witness that Judge Sushchuk was in her sight as
17 he moved behind Ms. Deines.

18 THE HEARING OFFICER: Overruled.

19 MR. ANGELINI: All right.

20 Q. You can answer.

21 A. I do not think there was any time element
22 that I recall with the judge stopping behind Emily.

23 Q. Okay. How close -- if you remember, how
24 close did you get to her as he passed behind her?

1 A. I don't remember.

2 Q. Okay. And what were the four of you --
3 excuse me. Strike that.

4 How many of you were at the table when
5 Judge Sushchuk approached it?

6 A. I believe four.

7 Q. Okay.

8 A. I think Denise Fitzgerald may have been
9 chatting with one of the judges who was seated at
10 the bar.

11 Q. And as Judge Sushchuk approached the bar --
12 excuse me, approached your table on that particular
13 evening, what were the four of you doing?

14 A. Chatting.

15 Q. Just kind of chitchatting and still
16 drinking and laughing and hopefully having a good
17 time, that sort of thing?

18 A. Yes. Uh-huh.

19 Q. Great.

20 And you noticed Judge Sushchuk approaching.

21 Did you notice anything about how he
22 approached, or how he walked, or the speed at which
23 he walked, or anything like that?

24 A. I did not.

1 Q. Okay. And as he approached your table,
2 did -- did he stop at a particular point once he
3 reached the table? Or did he continue walking
4 around the table after he arrived at it?

5 A. I believe he stopped to chat with Evelyn
6 Patsos.

7 Q. Okay. And Evelyn would have been the
8 person who was sitting directly next to Emily Deines
9 at that table?

10 A. Correct.

11 Q. Okay. Did you see any physical contact
12 between Judge Sushchuk and Emily Deines on the
13 evening of April 25th, 2019?

14 A. I did not.

15 Q. Okay. How long after Judge Sushchuk
16 left -- excuse me.

17 How long after Judge Sushchuk arrived at
18 that table that night did Ms. Deines then leave the
19 table?

20 A. Within ten minutes at the most, I believe.

21 Q. Did you notice anything about her behavior
22 during the ten minutes that immediately preceded her
23 departure from the table that day?

24 A. No.

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1 Q. Okay. And how long did you remain at the
2 bar that day?

3 A. We were probably there for another hour and
4 a half, perhaps.

5 Q. Okay. And so my math is bad. 7:00 to
6 8:30, got there at 9:00. The bar closed basically
7 around midnight-ish, then, I gather?

8 A. I think so.

9 Q. So when the bar closed, how was it that --
10 that you left the bar?

11 A. I don't believe we stayed to close the bar,
12 but when we left, it was before last call as it
13 were.

14 Q. Okay. Okay. And how -- how is it that you
15 left the bar? How did you leave the bar?

16 A. Judge Sushchuk offered to give us a ride to
17 our rooms.

18 Q. And when you said -- and when you say "us,"
19 who else was he offering rides to at that particular
20 point in time?

21 A. Everyone at the table, I believe.

22 Q. And who was -- who was still there at that
23 point?

24 A. Evelyn Patsos, Christine Yurgelun, Denise

1 Fitzgerald, and me.

2 Q. Okay. And all four of you, as far as you
3 recall, accepted rides from Judge Sushchyk?

4 A. Yes.

5 Q. What kind of vehicle did he have?

6 A. I believe he was driving a truck.

7 Q. And during the period of time that you were
8 with him that evening, did you see how many
9 alcoholic beverages he had consumed over the period
10 of time he was with you at the table?

11 A. I did not.

12 Q. Okay. Did you have any concerns at all
13 about his impairedness or his state of intoxication
14 due to alcohol on driving?

15 A. No, I did not.

16 Q. Okay. And you accepted a ride from Judge
17 Sushchyk and he drove you back to your rooms?

18 A. Yes.

19 Q. And who was the last person he dropped off
20 at one of their rooms?

21 A. That would have been Evelyn Patsos.

22 Q. And after a certain point -- well, at a
23 certain point that evening did you call Evelyn
24 Patsos to check on her?

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1 A. I did.

2 MR. ANGELINI: Objection.

3 THE HEARING OFFICER: Overruled.

4 Q. Why did you call Evelyn Patsos to check on
5 her later that evening or early morning of
6 April 26th?

7 A. It wasn't that much later, and it was
8 because I knew she was the last person to be dropped
9 off and I wanted to make sure she was okay.

10 Q. And why would you be concerned about
11 whether she was okay?

12 A. I would have done the same thing for anyone
13 else, depending on who was the last person, just to
14 make sure everyone was okay.

15 Q. Did Judge Sushchyk give you any particular
16 cause for concern?

17 A. No.

18 MR. NEFF: One moment, please.

19 THE HEARING OFFICER: Sure.

20 Mr. Neff, you are -- you are muted.

21 MR. NEFF: Got it.

22 THE HEARING OFFICER: Okay. There we go.

23 MR. NEFF: Sorry. All right.

24 Q. One thing I wanted to just quickly back up

1 on is was there a point in time, Ms. Welsh, when you
2 were all kind of hanging out at the table and Judge
3 Sushchych was there and he pulled out a flask that he
4 was kind of showing off to all of you?

5 A. We were -- I was aware that he had a flask,
6 but I would not say he pulled it up to show it to
7 us. I think he opened his jacket pocket and pulled
8 it up a tiny bit to support his conversation that he
9 had a flask.

10 Q. And he described it as a "flask" to you?

11 A. No.

12 Q. Okay. How did you know it was a flask,
13 then?

14 A. He said so, and I saw the top of it.

15 Q. Okay. What color was it?

16 A. Silver.

17 Q. Okay. And did you -- did he have any
18 conversation with you or say anything to you about,
19 you know, "This is the flask I carry because it
20 allows me to carry this special whiskey that I
21 really like," et cetera?

22 A. No.

23 MR. ANGELINI: I object.

24 THE HEARING OFFICER: Sustained.

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1 Q. He didn't -- well, did Judge Sushchyk offer
2 you any explanation for why he would -- he would
3 carry a flask around with him?

4 MR. ANGELINI: I object.

5 THE HEARING OFFICER: Overruled.

6 A. No.

7 MR. NEFF: Okay. I have no further
8 questions for this witness. Thank you.

9 THE HEARING OFFICER: Thank you.

10 Mr. Angelini, do you have questions for
11 Attorney Welsh?

12 MR. ANGELINI: I have no questions for
13 Attorney Welsh. Thank you.

14 THE HEARING OFFICER: Okay, Attorney Welsh.
15 Thank you. I have to ask that question.

16 Did your answers to my previous questions
17 change in any way from then to this point?

18 THE WITNESS: They did not.

19 THE HEARING OFFICER: Okay. Thank you
20 very, very much. You're excused as a witness, but
21 of course you are welcome to stay and observe if
22 you'd like.

23 THE WITNESS: Thank you.

24 THE HEARING OFFICER: Thank you.

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1 MR. NEFF: And thank you all for your time
2 and patience with me. I am still mastering the
3 exhibits, obviously.

4 THE HEARING OFFICER: Okay.

5 MR. ANGELINI: Your Honor, may I address
6 the Court?

7 THE HEARING OFFICER: Yes.

8 MR. ANGELINI: This morning you asked all
9 of us to remind you about --

10 THE HEARING OFFICER: Yeah.

11 MR. ANGELINI: -- a motion, and I'm --
12 realized during the course of the day that I had
13 left that file home this morning.

14 THE HEARING OFFICER: Okay.

15 MR. ANGELINI: So I don't think it makes
16 much difference at this stage of the proceedings,
17 but if we could do that tomorrow instead of today,
18 I'd be grateful.

19 THE HEARING OFFICER: That's fine. I think
20 we're at the end of the court day.

21 The only thing I wanted to do was to speak
22 to Mr. Loos and the two of you just regarding
23 technical matters that really are nothing to do with
24 the proceeding, the content or the manner of the

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1 proceedings. It's just these logistics having to do
2 with the technology.

3 Are you available for that, for like ten
4 minutes?

5 MR. NEFF: Absolutely. Absolutely.

6 I'm sorry to say I wasn't aware you were
7 having that much trouble.

8 THE HEARING OFFICER: Okay.

9 MR. ANGELINI: I would like to ask if
10 there's any information about the order of witnesses
11 tomorrow, that would be helpful, your Honor.

12 THE HEARING OFFICER: Sure.

13 Mr. Neff, what's your expectation for
14 tomorrow, please?

15 MR. NEFF: Well, that's a great question.

16 I -- we do have a few more witnesses lined
17 up from the list. We don't have many because it's
18 really just from the list that we provided. I think
19 it's Jacqueline Campbell -- no. I sorry. Long day.

20 Denise Fitzgerald, Judge Simons and Judge
21 Fidnick would be the remaining witnesses. But we're
22 going -- to be perfectly open and up front, in light
23 of -- and this is with all due respect, because I do
24 respect your rulings -- but in light of some of the

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1 evidentiary rulings that have been made, we may give
2 some thought to how to present them, whether to
3 present them, what order to present them in the
4 morning, but we don't really have that much left.

5 THE HEARING OFFICER: Okay. All right.

6 MR. NEFF: I mean, one question that maybe
7 I could ask now is, since Mr. Angelini, in his
8 opening statement, essentially made guarantees that
9 his client would be presenting evidence of certain
10 denials, I'm assuming that I don't need to worry
11 about calling him as a hostile witness since he'll
12 be testifying anyway.

13 THE HEARING OFFICER: I don't think
14 Mr. Angelini -- well, I'll let Mr. Angelini speak
15 for himself.

16 But at this point ordinarily, in a
17 proceeding, given that the party with the burden of
18 proof and the burden of production needs to present
19 its case, and then I turn to the party that is
20 responding to ask if the party would like to present
21 any evidence, we're not at that point yet.

22 So I don't know whether there's an answer
23 to that or not.

24 MR. ANGELINI: There is none, your Honor.

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1 We are not at that point yet.

2 THE HEARING OFFICER: Okay. Then let me --
3 if we could, if there's nothing else of a public
4 nature, other than what -- mine isn't of a public
5 nature; it's just what I want to talk to you and
6 Mr. Loos about having to do with the technology --
7 we can suspend for the day.

8 Is there anything else from anyone?

9 MR. NEFF: No, I don't think so.

10 MS. COSGROVE: Thank you, your Honor.

11 MR. NEFF: Thank you, your Honor.

12 THE HEARING OFFICER: You're welcome.
13 You're welcome.

14 We'll see everybody, I expect, at
15 ten o'clock tomorrow morning, a full day.

16 MR. NEFF: Yes.

17 THE HEARING OFFICER: Okay. Great. Then
18 if I could ask Mr. Loos, Mr. Neff and Mr. Angelini
19 to remain behind, and we'll close everyone else out.

20 Thank you.

21 MR. NEFF: Great.

22 THE REPORTER: Maybe.

23 MR. NEFF: I'm going to ask Audrey to stick
24 by, too, if it's okay, just to keep her in the loop.

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1 THE REPORTER: Off the record?

2 THE HEARING OFFICER: No. On the record,
3 please.

4 THE REPORTER: Okay. Maybe we can go to a
5 breakout room.

6 THE HEARING OFFICER: That's great. I'm
7 going.

8 MR. NEFF: Even better.

9 (Meeting in private breakout room. Hearing
10 Officer Josephson, Mr. Neff, Ms. Cosgrove,
11 Mr. Angelini, and Mr. Loos present)

12 THE HEARING OFFICER: Yeah. These are very
13 minor issues in a way.

14 First, I just wanted to ask Mr. Neff --
15 this is a sensitivity that I have regarding asking
16 the witnesses for their dates of birth. That's, as
17 far as I'm concerned, not necessary, and I'm
18 concerned with privacy having to give their actual
19 full dates of birth, which really makes no
20 difference to the proceedings, you know --

21 MR. NEFF: Okay.

22 THE HEARING OFFICER: -- as far as I'm
23 concerned.

24 MR. NEFF: Yeah. It's a bad habit, I

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1 guess. I'll stop.

2 THE HEARING OFFICER: That would be great.

3 Thank you. It makes me --

4 MR. NEFF: I apologize for that.

5 THE HEARING OFFICER: No, not -- that's all
6 right. That's all right.

7 The other -- okay.

8 Now, regarding the people who were
9 excluded, I'll make a record of this. First there
10 was an individual who appeared under the name
11 "fathers rights," and that individual communicated
12 in a private chat to me stating something like "let
13 them answer" -- "let them answer questions.
14 Embarrassing. Let them answer."

15 And so I asked Mr. Loos to exclude him, or
16 her, from the proceeding. It was a private -- I
17 don't know if it appeared on anybody else's screen,
18 but I don't want...

19 MR. NEFF: No, I didn't -- I didn't see it.

20 THE HEARING OFFICER: The other person who
21 I excluded was -- came -- came in -- Mr. Loos,
22 please correct me, or add anything -- there was one
23 that came in under the name "guilty."

24 THE REPORTER: We never let him in -- we

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1 never let him in from the waiting room.

2 THE HEARING OFFICER: Right. That one I
3 just -- again, it's in the nature of essentially
4 wearing something that would not be allowed in the
5 courtroom.

6 And the other was an individual who I think
7 name included "Pixel" something who had appeared
8 with his -- I could see it was a gentleman, with his
9 video on. And Mr. Loos noticed it initially, and I
10 think you -- before you get a chance to tell him to
11 turn it off, he left. Is that right, Mr. Loos?

12 THE REPORTER: We ended up kicking him out
13 at the end.

14 THE HEARING OFFICER: Okay. And then he
15 appeared -- he appeared anyway, where I could see
16 him as I was asking the questions of Ms. Patsos, and
17 it was right in the screen next to him, despite
18 having been told before to turn it off. So there's
19 that.

20 And finally, regarding the issue of the
21 number of attendees and whether or not the room is
22 big enough for them, Mr. Loos, I did not give you an
23 opportunity this morning to say what your indication
24 of numbers had been for the day before, just so that

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1 we have an accurate record and information for the
2 Commission if they wish to change anything.

3 THE REPORTER: Yesterday I saw either 96 or
4 97.

5 Today we did hit, briefly, 100.

6 THE HEARING OFFICER: We did, and we hit
7 briefly 100 -- let me just get my notes on this.
8 What did I do with it? Excuse me.

9 We hit -- just to make a complete record
10 here, we were hovering -- let's see. We hit 100
11 at -- at -- at 2:33. By 2:39 it had dropped down --
12 nobody had asked to get in. It had dropped down to
13 99. We took a break, and it dropped down to 96 at
14 that point, and when we came back from the break, we
15 were at 97 and stayed below 100 for the remainder of
16 the day that I saw.

17 I don't know if there's a record of that
18 somewhere, Mr. Loos, but again, I just don't want
19 there to be a concern that someone who wanted to get
20 in wasn't able to get in. I did not see even when
21 we were at 100 anyone waiting to come in.

22 Did you?

23 THE REPORTER: I did not. But I'm not sure
24 if we would.

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1 THE HEARING OFFICER: Okay. I wasn't sure
2 about that.

3 But we were at 100, just from my view, very
4 briefly. I don't know if you have different
5 information than that, Mr. Loos, but I'll be happy
6 to hear it.

7 THE REPORTER: That comports with my
8 observation.

9 THE HEARING OFFICER: Okay. All right.
10 Well, thank you.

11 Is there anything that we're doing that
12 would make your -- anybody's life here easier in
13 terms of the technology?

14 Mr. Loos, let's start with you, because
15 you're really doing yoeman's duty.

16 THE REPORTER: I think I would it's say
17 going very well overall.

18 THE HEARING OFFICER: Oh, I didn't expect
19 that. Thank you.

20 Okay. Let's just end it there.

21 THE REPORTER: All things considered.
22 We're working through it.

23 THE HEARING OFFICER: Mr. Angelini, is
24 there anything that you're concerned about that is

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1 of a technical nature?

2 MR. ANGELINI: No. There may be something,
3 depending upon the trail of testimony, that will
4 come up tomorrow, but I may ask for a short break to
5 talk about it then. But as I see it now, we'll be
6 fine.

7 THE HEARING OFFICER: Okay. Great.
8 Mr. Neff?

9 MR. NEFF: The only thing I'd say is while
10 it's clear I have a few different faults -- one of
11 them has been the -- keeping track of exhibit
12 letters versus numbers -- I don't know if there's
13 anyway I can, at some point, if Mr. Loos is able to
14 PDF a copy of the exhibits as they've been admitted
15 so far so I can at least work from a starting point
16 and not have to keep slowing us down by asking those
17 questions. But if not, I don't -- I don't foresee
18 any problem beyond that.

19 THE HEARING OFFICER: Okay. All right.

20 You know what I'll do is I will -- well,
21 here. You can have this. I don't think that will
22 help you.

23 But you know what I could -- what I could
24 do is, why don't I just, if you don't -- if you

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1 don't mind, I'm doing it by hand. I can take a
2 picture of this and send it to each, text it to each
3 of you on your cell phones if that would help.

4 MR. ANGELINI: That would be great, your
5 Honor. Thank you.

6 THE HEARING OFFICER: All right.
7 Anything else?

8 MR. NEFF: Last thing to remind you of, I
9 guess because I realized I haven't done it yet, is
10 I'm going to e-mail you, Judge Josephson, you Ms. --
11 I don't mean to point -- you, Judge Josephson, you,
12 Mr. Loos, and you, Mr. Angelini, a one-page PDF copy
13 of Judge Sushchyk's statement --

14 THE HEARING OFFICER: Okay.

15 MR. NEFF: -- which hopefully will be to
16 your satisfaction. I'll get that done before I --
17 as soon as we get off the call, actually. I'm
18 realizing I didn't quite get to that.

19 THE HEARING OFFICER: Great.

20 MR. NEFF: Because I don't think I know
21 how -- I don't think I can e-mail from this machine.

22 THE HEARING OFFICER: All righty.

23 Well, thank you, everyone. I hope you have
24 as pleasant an evening as possible, and we'll see

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1 you tomorrow. If we assemble just a little earlier,
2 you know, a few minutes earlier as we have been,
3 I'll see you a little before 10:00 then.

4 MR. NEFF: Sounds great.

5 MR. ANGELINI: Very good.

6 THE HEARING OFFICER: All right.

7 Thank you all very much.

8 MR. NEFF: Thank you. Have a great night.

9 THE HEARING OFFICER: You, too. Bye-bye.

10 (Whereupon, the proceedings were
11 adjourned at 4:19 p.m.)

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C E R T I F I C A T E

I, Alexander K. Loos, Registered Diplomat
Reporter, do hereby certify that the foregoing
transcript, Volume II, is a true and accurate
transcription of my stenographic notes taken on July
21, 2020.



Alexander K. Loos
Registered Diplomat Reporter

Hearing, Day 2 - July 21, 2020
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D I S C L A I M E R

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

Hearing, Day 3
July 22, 2020
Videoconference



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

- - - - -x

IN RE: PAUL M. SUSHCHYK

- - - - -x

ALL PARTICIPANTS APPEARED REMOTELY
VIA ZOOM VIDEOCONFERENCE

BEFORE: HON. BERTHA JOSEPHSON (Ret.),
Hearing Officer

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ALSO PRESENT:

Hon. Paul M. Sushchyk

Held via Zoom

Wednesday, July 22, 2020

10:05 a.m.

(Alexander Loos, Registered Diplomat Reporter)

* * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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NOEL B. STERN

BY MR. ANGELINI	3-23			
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PAUL M. SUSHCHYK

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E X H I B I T S

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(None)

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

2 THE HEARING OFFICER: Good morning,
3 everyone.

4 MR. NEFF: Good morning.

5 MR. ANGELINI: Good morning, your Honor.

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

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

15 All right.

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

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

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

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

3 MS. COSGROVE: Good morning, your Honor.

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

7 MR. ANGELINI: Good morning, your Honor.

8 Michael Angelini. I represent Judge
9 Sushchyk.

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

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

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

20 MR. NEFF: That is.

21 MR. ANGELINI: That is, your Honor.

22 MR. NEFF: Yes.

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

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

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

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

18 MR. NEFF: We are.

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

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

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

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

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

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

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

23 Mr. Loos, does that work for you?

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

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1 to everyone.

2 MR. NEFF: All right.

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

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

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

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

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

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

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

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

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

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

7 THE HEARING OFFICER: Okay.

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

10 How's that?

11 THE HEARING OFFICER: That's perfect.

12 Thank you.

13 THE REPORTER: Off the record?

14 THE HEARING OFFICER: Yes, please.

15 (Recess)

16 THE HEARING OFFICER: Thank you.

17 All right. I have the motion.

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

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

22 THE REPORTER: I do.

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

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1 correct?

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

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

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

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

19 MR. NEFF: No.

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

23 MR. NEFF: I agree.

24 THE HEARING OFFICER: Okay. So can we

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1 proceed with that?

2 Okay. Great.

3 Mr. Angelini, whenever you're ready.

4 MR. ANGELINI: Yes.

5 Excuse me. Thank you, your Honor.

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

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

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

24 But leaving the flask aside, and going to

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

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

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

19 I think so.

20 And then she says:

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

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

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

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

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

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

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

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

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

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

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

23 Mr. Neff, or Ms. Cosgrove?

24 MR. NEFF: Well, thank you, Judge

1 Josephson.

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

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

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

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

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

23 THE HEARING OFFICER: Thank you.

24 Thank you, Mr. Neff.

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

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

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

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

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

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

16 THE HEARING OFFICER: Okay. Thank you.

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

18 MR. ANGELINI: Oh, good.

19 THE HEARING OFFICER: Great. Thank you.

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

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

24 THE REPORTER: I believe she should be.

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

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

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

6 THE REPORTER: One moment.

7 THE WITNESS: Okay.

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

10 Are you ready to proceed, Mr. Angelini?

11 MR. ANGELINI: I am, your Honor.

12 JUDGE SUSHCHYK'S CASE-IN-CHIEF

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

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

18 (NOEL B. STERN, sworn)

19 THE WITNESS: I do.

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

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

3 THE WITNESS: Noel Boroughs Stern.

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

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

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

10 THE WITNESS: Nobody.

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

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

17 THE HEARING OFFICER: Great. Okay.

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

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

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1 THE HEARING OFFICER: Okay.

2 THE WITNESS: I've closed everything else.

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

7 THE WITNESS: Right.

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

15 THE WITNESS: That's correct.

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

18 THE WITNESS: No.

19 THE HEARING OFFICER: Okay.

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

23 THE WITNESS: No, not at the moment.

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

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

4 All right?

5 THE WITNESS: Okay.

6 THE HEARING OFFICER: All right, then.

7 Mr. Angelini, whenever you're ready.

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

9 DIRECT EXAMINATION

10 BY MR. ANGELINI:

11 Q. Good morning, Ms. Stern.

12 A. Good morning.

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

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

16 Am I correct?

17 A. That's correct.

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

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

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

24 A. I do.

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1 Q. In what capacity do you know her?

2 A. I know her as a work colleague.

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

4 MR. NEFF: Objection.

5 A. We -- we --

6 MR. NEFF: Objection.

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

8 THE HEARING OFFICER: Sorry.

9 A. -- different locations.

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

12 Mr. Neff, you objected to the question?

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

16 THE HEARING OFFICER: Overruled. Go ahead.

17 Q. Go ahead, Ms. Stern.

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

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

3 A. I was.

4 Q. And --

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

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

9 A. That's correct.

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

12 A. Yes.

13 Q. Thank you.

14 Do you know Judge Sushchuk?

15 A. I do not.

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

19 A. I have.

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

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

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

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

7 A. That's correct.

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

12 MR. NEFF: Objection.

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

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

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

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

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

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

24 Overruled.

1 BY MR. ANGELINI:

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

4 A. I did.

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

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

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

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

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

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

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

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

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

15 Thank you very much.

16 THE HEARING OFFICER: All right.

17 Anything, Mr. Neff?

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

20 THE HEARING OFFICER: Yes.

21 MR. NEFF: Thank you.

22 No further questions for this witness.

23 THE HEARING OFFICER: All right.

24 Ms. Stern --

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

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

5 THE WITNESS: They did not.

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

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

10 THE WITNESS: Okay.

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

13 THE WITNESS: Thank you, your Honor.

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

15 THE HEARING OFFICER: Yes, Mr. Angelini.

16 MR. ANGELINI: Yes, your Honor.

17 I call Judge Paul Sushchuk.

18 THE HEARING OFFICER: All right.

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

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

4 THE HEARING OFFICER: Okay.

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

7 THE HEARING OFFICER: Okay.

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

10 (PAUL M. SUSHCHUK, sworn)

11 THE WITNESS: I do.

12 THE HEARING OFFICER: All right.

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

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

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

21 THE HEARING OFFICER: All right.

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

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

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

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

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

10 Excuse me, your Honor.

11 THE HEARING OFFICER: Sure.

12 MR. ANGELINI: Could we try a test?

13 THE HEARING OFFICER: Sure.

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

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

18 THE HEARING OFFICER: Say it again, please.

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

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

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

24 THE REPORTER: Yes. That's better.

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

3 All right.

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

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

8 THE HEARING OFFICER: All right.

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

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

16 THE HEARING OFFICER: All right.

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

20 THE WITNESS: Yes, your Honor.

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

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

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1 And finally, would you please indicate
2 whether you are in communication with any persons
3 other than those who are conducting this
4 examination?

5 THE WITNESS: I am not in communication
6 with any person other than those conducting this
7 examination.

8 THE HEARING OFFICER: All right.

9 Thank you very much.

10 We'll proceed, then, Mr. Angelini, whenever
11 you're ready. And if there is any difficulty with
12 anyone hearing the testimony, please just let us
13 know that and we'll adjust.

14 MR. ANGELINI: Thank you very much.

15 DIRECT EXAMINATION

16 BY MR. ANGELINI:

17 Q. Judge Sushchych, tell us, you're a high
18 school graduate, and a college graduate and a law
19 school graduate, are you?

20 A. I am.

21 Q. And where did you go to college?

22 A. I went to college in Mount Wachusett
23 Community College, and then I attended -- I got my
24 four-year degree from Westfield State College.

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

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

3 Q. All right.

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

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

7 Q. All right. Fair enough.

8 And where did you go to law school?

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

11 Q. And what year did you graduate?

12 A. I graduated in 1981.

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

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

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

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

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

7 A. I am.

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

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

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

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

15 A. Yes.

16 Q. What office?

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

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

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

24 Q. Married?

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1 A. I am married.

2 Q. Do you have children?

3 A. I have three children.

4 Q. Do you have grandchildren?

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

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

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

9 A. Yes, sir.

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

12 Do you recall that date?

13 A. I do, sir.

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

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

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

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

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

24 Q. What time did you awaken that day?

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

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

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

6 Q. And then what did you do?

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

9 Q. Did you attend the conference that morning?

10 A. I did.

11 Q. And that afternoon, did you?

12 A. I did, sir.

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

16 A. After the --

17 Q. "Yes" or "no"?

18 A. Yes.

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

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

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

1 most of the other probate judges?

2 A. Not really.

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

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

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

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

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

17 A. Yes, sir.

18 Q. Okay. All right.

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

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

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

1 night of the 25th of April?

2 A. I did.

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

4 A. It was.

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

7 Who was present at the hospitality suite
8 event?

9 A. There were a number of judges.

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

12 A. Yes.

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

15 A. Yes.

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

18 A. I brought my own alcohol.

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

20 A. I had whiskey.

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

23 Did you have more than one drink?

24 A. I did not.

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

3 A. No.

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

6 A. I would say approximately 6:45.

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

9 A. That's correct.

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

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

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

14 A. I don't recall.

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

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

18 A. No, I did not.

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

22 A. Yes.

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

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

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

6 A. Yes.

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

10 A. I saw Attorney Evelyn Patsos.

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

13 A. I did.

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

16 A. I did not.

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

19 A. That's correct.

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

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

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

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

4 A. Yes. The bar was crowded.

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

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

11 A. Yes.

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

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

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

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

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

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

9 A. Yes.

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

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

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

19 A. No.

20 Q. Did you ever socialize with her?

21 A. I have not.

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

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

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

9 A. Yes.

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

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

15 A. Not that I recall.

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

20 A. Not that I recall.

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

24 A. Yes.

1 Q. Approximately how many?

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

4 Q. Keep your voice up, please.

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

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

11 A. That is correct.

12 Q. Excuse me.

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

18 Is that correct?

19 A. That is correct.

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

24 A. I would say approximately 15 minutes.

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1 Q. Okay. And in that time --

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

4 THE HEARING OFFICER: Sure.

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

7 THE REPORTER: Okay.

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

10 THE WITNESS: I don't see it.

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

13 THE REPORTER: Sure.

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

16 BY MR. ANGELINI:

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

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

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

1 the evening of April 25, 2019?

2 A. Yes, it does.

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

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

17 There were generally a lot of people
18 present.

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

23 A. I see that.

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

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

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

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

8 A. Yes.

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

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

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

14 A. There is a passageway.

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

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

19 Q. Is there a brick wall somewhere?

20 A. Yes. There are a number --

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

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

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

3 A. Yes.

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

9 A. That is correct.

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

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

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

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

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

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

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1 A. I did not.

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

4 A. No.

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

7 THE REPORTER: Okay.

8 BY MR. ANGELINI:

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

11 A. Yes.

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

15 A. Yes.

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

18 A. I see a brick pillar.

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

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

1 Q. You say the "two tables."

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

4 A. The two high round-top tables.

5 Q. Thank you.

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

10 A. I was by the entranceway.

11 Q. All right.

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

15 A. Yes.

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

18 A. I did.

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

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

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

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

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

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

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

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

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

16 A. That's correct.

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

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

22 Q. Right.

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

1 evening?

2 A. There were tables and chairs.

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

5 A. Yes.

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

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

10 Q. Okay.

11 A. And --

12 Q. So as you --

13 A. Hold on for a moment, please.

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

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

19 A. I do. It was crowded.

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

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

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

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

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

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

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

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

20 Q. Is that all?

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

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

24 A. Absolutely not.

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

3 A. No.

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

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

12 Q. The tables.

13 At which table?

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

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

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

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

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

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

3 A. No.

4 Q. Did you have any reason to stop?

5 A. I did not.

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

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

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

18 A. I did learn that subsequent.

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

20 A. I did not at the time.

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

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1 A. Yes.

2 Q. Do you know any of those people?

3 A. No.

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

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

10 A. It is.

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

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

15 Q. Give us your best estimate.

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

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

24 A. I would say there were somewhere between

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

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

5 A. All right.

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

9 A. Yes, sir.

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

12 A. Yes.

13 Q. Thank you.

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

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

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

24 A. No, I did not.

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

3 A. Absolutely not.

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

8 Did you ever do that?

9 A. Absolutely not.

10 Q. You're certain of that?

11 A. Yes, I am.

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

14 A. No, I did not.

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

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

23 A. I would say within a foot.

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

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

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

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

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

11 A. Absolutely not.

12 Q. So you came to Ms. Patsos.

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

15 A. No.

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

19 A. No.

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

24 A. Well --

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

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

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

8 Q. I asked you what you did.

9 A. Okay.

10 Q. You introduced yourself?

11 A. I did.

12 Q. And how did you do so?

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

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

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

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

20 A. Yes. We started to talk.

21 Q. Who started to talk?

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

24 Q. Did she introduce herself to you?

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1 A. She did.

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

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

5 Q. As "Emily"?

6 A. That's correct.

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

10 MR. NEFF: Objection.

11 THE HEARING OFFICER: Overruled.

12 A. Nothing whatsoever.

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

15 A. I did.

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

19 A. Not that I recall.

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

22 A. Absolutely.

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

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

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

6 Q. Let's be clear about that.

7 A. Okay.

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

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

12 Q. Emily Deines?

13 A. Emily Deines. Ms. Deines.

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

16 A. I did.

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

19 A. They did.

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

22 A. I recall it.

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

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1 A. I did.

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

3 A. I do.

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

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

8 Q. Keep your voice up. Okay?

9 A. I will.

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

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

14 MR. ANGELINI: Can you all hear him?

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

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

21 MR. NEFF: All right.

22 THE HEARING OFFICER: So it may stand.

23 MR. ANGELINI: All right.

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

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

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

5 A. I believe I brought back --

6 Q. Keep your voice up, please.

7 A. I believe I brought back four.

8 Q. Was one of them for yourself?

9 A. Yes.

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

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

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

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

16 A. Originally.

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

19 A. Yes, I was.

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

21 A. Yes. Thank you.

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

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1 A. Yes.

2 Q. And was it continued to be crowded?

3 A. Absolutely.

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

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

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

11 A. No.

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

14 A. I never met either of these individuals.

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

18 A. Right.

19 Q. Is that right?

20 A. That is correct.

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

24 A. That is correct.

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

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

7 A. It was a less congested area.

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

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

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

16 Was Ms. Deines involved in that
17 conversation?

18 A. She was, yes.

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

21 A. I did.

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

24 A. No, it did not.

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

3 A. Not that I --

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

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

10 But keep your --

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

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

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

21 THE HEARING OFFICER: Yes.

22 MR. ANGELINI: Thank you.

23 THE REPORTER: May I take down the exhibit?

24 THE HEARING OFFICER: Are you done with it,

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1 Mr. Angelini?

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

3 THE HEARING OFFICER: The exhibit.

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

5 Thank you very much.

6 THE HEARING OFFICER: I'll come back.

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

9 It's already falling apart on me.

10 There we go.

11 Is it on? Will it start working?

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

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

15 THE HEARING OFFICER: I can. Thank you.

16 MR. NEFF: Okay. Great.

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

19 Oh, gosh, now I'm unplugged.

20 But problem solved. There we are.

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

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

24 Thank you.

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

3 A. I had two drinks.

4 Q. Can you keep your voice up?

5 A. I had two drinks.

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

8 A. That is correct.

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

11 A. I am.

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

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

17 A. You mean during the --

18 Q. During the day.

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

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

23 A. No.

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

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

4 Q. And you had had nothing to drink?

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

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

7 Did you have a pocket flask with you --

8 A. Yes.

9 Q. -- on April 25, 2019?

10 A. I did.

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

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

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

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

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

23 A. Generally they have one.

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

1 retrieve alcohol at that hospitality suite?

2 A. Come again?

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

5 A. Yes.

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

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

11 Q. Glendalough?

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

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

16 A. No, it is not.

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

20 A. I have a drink now and again.

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

22 A. Occasionally.

23 Q. Weekly?

24 A. Yes.

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1 Q. Thank you.

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

5 A. Absolutely not.

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

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

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

14 THE HEARING OFFICER: Overruled.

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

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

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

22 Were you carrying it in that vest pocket?

23 A. I was.

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

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

4 Is that consistent with your memory?

5 A. It is.

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

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

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

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

14 Q. Thank you.

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

17 What did you do that day?

18 A. I went to the conference.

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

21 A. No, I do not.

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

23 A. Yes.

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

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1 What was the nature of the luncheon?

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

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

6 A. Right.

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

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

11 Q. Were there tables at that luncheon?

12 A. There are.

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

14 A. I did.

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

18 A. I did not.

19 Q. Was she seated at your table?

20 A. No.

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

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

1 somewhat --

2 Q. Keep your voice up.

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

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

12 A. Absolutely not. Absolutely not.

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

16 A. No, I did not.

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

19 THE HEARING OFFICER: Sure.

20 MR. ANGELINI: Thank you.

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

24 A. I did.

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1 Q. And from whom did you learn that?

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

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

6 Did the meeting take place in your
7 chambers?

8 A. It did.

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

11 A. None whatsoever.

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

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

21 Q. Were you shocked?

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

23 Q. Were you shocked?

24 A. Absolutely.

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1 Q. What did you tell Judge Casey?

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

4 Q. Was that the truth?

5 A. Absolutely.

6 MR. NEFF: Objection.

7 THE HEARING OFFICER: Sustained.

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

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

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

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

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

3 Q. Do you --

4 A. I --

5 Q. Excuse me.

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

9 A. Absolutely not.

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

12 A. Absolutely not.

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

15 A. Absolutely not.

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

20 MR. NEFF: Objection.

21 THE HEARING OFFICER: Sustained.

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

24 Do you accept the possibility that you had

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

3 MR. NEFF: Objection. Objection.

4 THE HEARING OFFICER: Sustained.

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

7 A. No.

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

11 MR. NEFF: Objection, asked and answered.

12 THE HEARING OFFICER: Overruled.

13 A. I think the only possibility is --

14 MR. NEFF: Objection. Objection.

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

17 THE HEARING OFFICER: Go ahead, Counsel.

18 THE WITNESS: Reask the question, please.

19 BY MR. ANGELINI:

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

23 A. There may have been.

24 Q. Do you recall it?

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1 A. No, I do not.

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

5 A. That is correct.

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

8 A. I have.

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

13 A. I did.

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

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

22 Q. And do you stand by that?

23 A. I do.

24 Q. You said then:

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

6 A. That's what the statement is.

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

9 A. It is.

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

12 A. No.

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

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

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

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

24 Chief Casey asked me to produce --

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1 MR. NEFF: Objection.

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

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

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

8 Is it, Mr. Angelini?

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

10 THE HEARING OFFICER: Okay.

11 Go ahead with your answer.

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

13 BY MR. ANGELINI:

14 Q. Keep your voice up.

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

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

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

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

2 Q. So just a few more questions.

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

5 A. Yes.

6 Q. Did you do so at my request?

7 A. Yes.

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

10 When did you do so?

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

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

17 A. Yes.

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

21 A. Yes.

22 MR. NEFF: Objection.

23 THE HEARING OFFICER: Overruled.

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

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1 THE WITNESS: Yes, ma'am.

2 BY MR. ANGELINI:

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

7 A. Yes.

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

11 A. Yes.

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

14 A. Yes.

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

17 A. Yes.

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

21 A. None whatsoever.

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

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

2 Did you ever do that?

3 A. No.

4 Q. Hold up your hands.

5 A. (Indicating)

6 Q. Now --

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

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

13 THE HEARING OFFICER: Overruled. Go ahead.

14 BY MR. ANGELINI:

15 Q. What is the size of your hands?

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

17 Q. And you determine that by glove size?

18 A. Yes.

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

24 MR. ANGELINI: May I be heard?

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

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

4 THE WITNESS: Yes.

5 THE HEARING OFFICER: So overruled.

6 BY MR. ANGELINI:

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

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

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

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

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

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

19 A. They were not readily available.

20 Q. Because of the size of your hands?

21 A. That's correct.

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

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1 200 pounds?

2 MR. NEFF: Objection.

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

4 Q. The answer was "yes"?

5 A. Yes.

6 Q. What have you done?

7 MR. NEFF: Objection.

8 THE HEARING OFFICER: Overruled.

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

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

13 THE HEARING OFFICER: Sure.

14 THE REPORTER: One moment.

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

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

20 MR. ANGELINI: Thank you very much.

21 (Recess)

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

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

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

6 THE REPORTER: We are.

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

9 Are we on the record?

10 THE REPORTER: Yes.

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

13 MR. NEFF: Okay. If I may.

14 THE HEARING OFFICER: Yes.

15 MR. NEFF: I'm sorry.

16 THE HEARING OFFICER: That's okay.

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

24 THE HEARING OFFICER: Right.

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

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

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1 been made of, how flexible it is.

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

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

20 Mr. Angelini, where are we headed?

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

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

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

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

14 MR. ANGELINI: Yes, your Honor.

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

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

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

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

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

7 MR. ANGELINI: Right.

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

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

15 MR. ANGELINI: No, no. I appreciate that.
16 Look. We're not doing this to kill time.

17 THE HEARING OFFICER: Absolutely.

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

24 THE HEARING OFFICER: It is.

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

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

12 THE HEARING OFFICER: Sure.

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

24 And what he would have told you is that the

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

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

8 THE HEARING OFFICER: Right.

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

14 I understand your position.

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

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1 probative value because it can't be recreated.

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

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

7 MR. NEFF: Thank you.

8 MR. ANGELINI: Fair enough.

9 THE HEARING OFFICER: Thank you.

10 (Return to the open proceedings)

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

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

15 THE REPORTER: No problem.

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

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

20 THE HEARING OFFICER: Thanks.

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

22 MR. ANGELINI: Yes, your Honor.

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

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1 THE REPORTER: Yes.

2 THE HEARING OFFICER: Okay. Great.

3 Mr. Angelini, you may continue.

4 MR. ANGELINI: Thank you.

5 I have no further questions, your Honor.

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

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

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

17 MR. ANGELINI: Keep your voice up.

18 CROSS-EXAMINATION

19 BY MR. NEFF:

20 Q. Good afternoon, Judge Sushchyk.

21 A. Good afternoon, Mr. Neff.

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

24 MR. NEFF: Towards me or --

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

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

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

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

8 THE REPORTER: No. It was the judge.

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

12 THE WITNESS: Can you hear me now?

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

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

16 MR. ANGELINI: Keep your voice up.

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

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

22 THE REPORTER: Will do.

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

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

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

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

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

11 Q. Okay.

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

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

20 A. I did.

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

23 A. Yes, sir.

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

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

2 A. I did, sir.

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

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

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

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

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

23 A. No, I would not.

24 Q. You would not describe yourself as having

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1 been compromised or tired --

2 A. No.

3 Q. -- as a result --

4 A. No.

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

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

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

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

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

19 A. No, I did not.

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

24 A. I did.

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

8 Do you recall that?

9 A. I do.

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

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

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

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

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

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

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

19 A. I did.

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

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

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

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

3 Q. Okay.

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

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

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

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

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

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

17 A. I did.

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

20 A. I did.

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

24 A. Probably an ounce or so.

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1 Q. And how did you measure that?

2 A. By pour.

3 Q. Pouring into a glass?

4 A. A glass with ice and water.

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

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

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

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

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

15 And did you go to the dinner with anyone?

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

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

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

1 going to attend?

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

4 Q. Five-minute drive? Okay.

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

7 A. I don't recall.

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

10 A. I don't recall them.

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

13 A. I don't recall.

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

17 A. I would say probably 40 to 50.

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

20 A. It was.

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

22 A. It was cash.

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

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1 A. No, I did not.

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

4 A. No, I did not.

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

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

11 A. I don't know.

12 Q. And how long did this dinner last?

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

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

18 A. I had water.

19 Q. You just had water? Okay.

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

24 A. I went to the Bayzos Pub.

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

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

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

10 A. That's true.

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

13 A. Could you keep your voice up?

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

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

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

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

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1 A. I stood initially by the door.

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

4

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

7 THE HEARING OFFICER: Okay.

8 THE REPORTER: One moment.

9 MR. NEFF: Okay.

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

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

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

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

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

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

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

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

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

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

9 A. I did.

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

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

14 Q. Okay. And --

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

19 Q. Okay. All right.

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

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

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

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

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

15 Q. Okay.

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

20 Q. I do.

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

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

3 MR. NEFF: Okay. Understood.

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

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

11 MR. NEFF: Oh, it is.

12 MR. ANGELINI: It is.

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

15 THE REPORTER: One moment.

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

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

20 THE HEARING OFFICER: Sure.

21 BY MR. NEFF:

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

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

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

11 Q. Okay. Understood. Okay.

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

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

20 A. No, it does not.

21 MR. ANGELINI: Let him finish his question.

22 A. I'm sorry. My apologies.

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

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

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

6 Q. That's fine.

7 THE REPORTER: Sorry about that.

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

11 And yes.

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

14 THE HEARING OFFICER: No.

15 MR. NEFF: Okay.

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

23 A. Yes, it does.

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

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

4 A. At that time, no.

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

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

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

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

22 MR. ANGELINI: Objection.

23 A. I'm nonresponsive. My apologies.

24 I was not on any medications.

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

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

8 THE REPORTER: 12, I believe.

9 BY MR. NEFF:

10 Q. 12.

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

16 Is that correct?

17 A. That's my memory.

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

21 A. I did.

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

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1 were in that area as --

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

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

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

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

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

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

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

17 Judge, can you hear Mr. Neff okay?

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

19 Okay. Let's see.

20 Does that help at all?

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

23 Mr. Angelini, did you hear?

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

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1 MR. NEFF: Oh, good.

2 THE WITNESS: Thank you, Mr. Neff.

3 BY MR. NEFF:

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

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

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

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

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

21 A. I did. I walked behind her.

22 Q. Okay. You went right behind her.

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

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1 her and tried to get to Ms. Patsos?

2 MR. ANGELINI: I object to the question.

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

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

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

11 MR. NEFF: Well --

12 THE HEARING OFFICER: Overruled.

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

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

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

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

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1 Q. Okay.

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

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

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

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

14 Q. Okay.

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

18 Q. Understood.

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

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

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1 Q. Yeah. Okay. Great.

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

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

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

9 A. It was whiskey.

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

14 A. Glendalough.

15 No, they didn't.

16 Q. Okay.

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

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

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

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

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

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

8 Q. For about 15 minutes? Okay.

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

12 A. Two.

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

19 A. That's true.

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

24 A. I honestly do not.

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

3 A. No.

4 Q. -- day? Okay.

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

8 A. I think it carries six ounces.

9 Q. Six ounces.

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

14 A. It was not filled.

15 Q. It was not filled.

16 What had you put in it?

17 A. Pardon?

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

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

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

24 What variety of -- what exactly did you put

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

4 A. There was Glendalough whiskey in it.

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

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

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

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

15 A. Probably --

16 Q. I'm sorry?

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

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

20 A. Typically, yes.

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

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

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1 Q. Okay. Okay.

2 Do you recall being asked to go to --
3 strike that. One second.

4 Can you give me one moment, please?

5 THE HEARING OFFICER: Sure.

6 Actually, we're at the --

7 MR. NEFF: This a good lunch break?

8 Okay.

9 THE HEARING OFFICER: Well, how much longer
10 do you expect you will be, Mr. Neff?

11 MR. NEFF: I do have -- I'm sorry. I -- I,
12 like many lawyers, I kind of under predict, and so I
13 probably have 30 to 45 minutes to go.

14 So if you think this is a good time for a
15 lunch break, it may, indeed, be a good time for a
16 lunch break.

17 THE HEARING OFFICER: Okay. Well, why
18 don't we do that. Let's take the lunch recess.

19 It's a minute after 1:00. Let's resume as
20 close to 1:31 as we can.

21 Thank you.

22 MR. NEFF: All right.

23 Sounds good.

24 MR. ANGELINI: Thank you.

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1 MR. NEFF: Thank you very much.

2 (Luncheon recess taken

3 at 1:01 p.m to 1:31 p.m.)

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1 AFTERNOON SESSION

2 THE HEARING OFFICER: On the record.

3 I'll thank everyone for being prompt.

4 MR. NEFF: I'm foregoing headphones in an
5 effort to make everyone, including my co-counsel, be
6 able to hear me, so feel free to voice -- voice up,
7 anyone, if I fail to -- to achieve that goal.

8 THE HEARING OFFICER: Whenever you're
9 ready, Mr. Neff.

10 MR. NEFF: I'm sorry. I'm sorry. Just
11 sort of pulling my paperwork up. All right.

12 Q. Judge Sushchuk, welcome back. Thank you.

13 I want to start by asking you about the
14 meeting you were invited to attend -- excuse me, the
15 meeting you were asked to have with Chief Justice
16 Casey in your lobby at Worcester district court on
17 May 10th of 2019.

18 A. Okay. Go ahead, please.

19 THE HEARING OFFICER: Yes.

20 Q. And -- and how was that arranged, as far as
21 you remember?

22 A. Well, it really wasn't, Mr. Neff.

23 Q. Okay.

24 A. What I recall is that I reported for work

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1 at about seven o'clock. May 17th is a Friday.
2 That's my motion day, and it's the busiest day of a
3 probate family court judge's week.

4 So I started going through my motions and
5 about a quarter to 9:00 in the morning Marty
6 Heidenfelder, who is my -- my clerk notified me that
7 Justice Casey wanted -- was present and he wanted to
8 meet with me.

9 And I met with Justice Casey after that.

10 Q. Okay. So you do not -- you do not recall
11 being aware of that meeting was going to happen
12 before it actually did happen on May --

13 A. Mr. Neff, you'll need to repeat that,
14 please.

15 Q. No. It's all right. Well, I'll move on to
16 another subject.

17 Give me one moment, please.

18 As a consequence of your meeting with Chief
19 Justice Casey on May 10th, did you write a statement
20 regarding the events that were alleged to have taken
21 place on April 25th of 2019?

22 A. Yes, I did.

23 MR. ANGELINI: Keep your voice up.

24 MR. NEFF: And, I'm sorry. That's probably

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1 me, too.

2 And I'm trying to keep up. I believe we're
3 talking about Exhibit 10 now. And in that
4 statement, if I could ask you, Mr. Loos, to put it
5 before Judge Sushchuk, I just wanted to ask him a
6 little bit about it.

7 THE REPORTER: One moment.

8 MR. NEFF: Okay. Great.

9 Q. And I want to -- I don't know how to scroll
10 down exactly here, but I want to direct your
11 attention to the very last paragraph of this
12 particular statement.

13 Okay. And I -- I should ask, as a
14 preliminary matter, this was a statement written by
15 you and, in a fashion at least, signed by you and
16 then submitted to Chief Justice Casey?

17 A. It was. The statement was written by me
18 while I attended the ERICSA conference in Buffalo,
19 New York, using my iPad.

20 Q. And when it says "signed this 20th day of
21 May 2019," is that the date you completed this
22 statement and then sent it?

23 A. I believe I completed the statement on the
24 evening of May 20th and sent it on, I think it was

1 May 21st, or May 22nd -- probably May 21st -- per
2 the instruction of Judge Casey.

3 Q. Okay. And I'm skipping ahead a little bit,
4 but in the interest of -- if you'll permit me, at
5 least, saving a little time, I'll orient you in.

6 The very end of this letter, which is your
7 response or your statement regarding the allegations
8 Ms. Deines had made regarding the events of
9 April 25th, 2019, in this final paragraph you
10 stated -- and correct me if I'm wrong:

11 "Having completed my use of the
12 facilities, I began my return to our table,
13 again threading my way between ...
14 patrons" -- "the patrons and the tables. I
15 was somewhat unsteady on my feet, feeling
16 the effects of past hip replacement
17 surgery, the long day (I had driven to
18 Brewster that morning from Sterling), the
19 evening meal and the alcohol consumed. I
20 recall that as I began to pass by
21 Ms. Deines, to steady myself, I placed my
22 hand in the direction of her chair and came
23 into momentary contact with a portion of
24 her lower body. I then returned to my seat

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1 at the table, rejoining Ms. Patsos,
2 Ms. Yurgelun, Ms. Welsh and Ms. Deines."

3 Do you recall writing that statement?

4 A. I do, sir.

5 Q. And you were telling us today that you did
6 not come in contact, physical contact, with
7 Ms. Deines at all on April 25th of 2019; that
8 this -- that -- that portion of your description in
9 this paragraph is not accurate?

10 A. When I wrote that statement, it was done to
11 the best of my memory.

12 Q. Answer the question, sir.

13 MR. ANGELINI: Answer his question, sir.

14 A. I'm sorry. Reask the question.

15 Q. Well, "yes" or "no," are you -- do you --
16 are you today saying that the portion of this final
17 paragraph of this particular statement, where you
18 say you placed your hand in the direction of her
19 chair, meaning Ms. Deines' chair, and came into
20 momentary contact with a portion of her lower body
21 is not true and your current memory, as of today, or
22 your current statement as of today is that that's
23 not true and you never made contact with Ms. Deines
24 on April 25th, 2019? "Yes" or "no"?

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1 A. Yes.

2 Q. Let me ask you this:

3 Did you submit this statement to Chief
4 Justice Casey before or after he told you that he
5 would be forwarding results of his investigation to
6 other parties for -- for further investigation?

7 A. Repeat that, please, sir.

8 Q. Did you submit this -- this statement,
9 which is dated May 20th, 2019, 2000 -- excuse me,
10 May 20th, 2019, to Chief Justice Casey before or
11 after he advised you that as a consequence of his
12 work following up on Ms. Deines' report a further
13 investigation or a further -- further review would
14 take place as a consequence of that initial report?

15 A. The only thing I was informed by Justice
16 Casey when he requested me on May 20th to prepare a
17 statement was that he was going to send my statement
18 to Chief Justice Gants of the Supreme Judicial
19 Court.

20 MR. NEFF: I'm sorry. One moment, please.

21 THE HEARING OFFICER: Sure.

22 MR. NEFF: I have no further questions.

23 THE HEARING OFFICER: Mr. Angelini,
24 anything further?

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1 MR. ANGELINI: Let me think for just a
2 moment.

3 May I, your Honor?

4 THE HEARING OFFICER: Sure.

5 MR. ANGELINI: Thank you.

6 I have no further questions.

7 THE HEARING OFFICER: Do you mind if I ask
8 a question or two just on the last area?

9 MR. ANGELINI: None whatsoever, your Honor.

10 THE HEARING OFFICER: Okay. Judge, I --
11 did I understand you to say that you were instructed
12 to prepare a statement by Chief Justice Casey?

13 THE WITNESS: Yes, ma'am.

14 THE HEARING OFFICER: And that was the
15 statement that you prepared that's dated May 20th;
16 is that right?

17 THE WITNESS: That is correct.

18 THE HEARING OFFICER: And did I understand
19 you to say that you understood that that statement
20 was one that was going to be submitted to the Chief
21 Justice of the Supreme Judicial Court, Judge Gants?

22 THE WITNESS: That's correct, ma'am.

23 THE HEARING OFFICER: Okay. Thank you.

24 Is there any objection to anything I asked

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1 by either party?

2 MR. ANGELINI: None by me.

3 MR. NEFF: No, your Honor.

4 THE HEARING OFFICER: Is there any
5 follow-up question that either of you would like to
6 ask?

7 MR. ANGELINI: I have none.

8 MR. NEFF: None. None, your Honor.

9 THE HEARING OFFICER: All right. Thank you
10 very much, Judge. That completes the testimony,
11 Mr. Angelini, that you wanted of your client.

12 Are there any other witnesses who you
13 intend to call?

14 MR. ANGELINI: There are none, and we rest.

15 THE HEARING OFFICER: All right.

16 Any rebuttal, Mr. Neff?

17 MR. NEFF: I do not have any rebuttal
18 witnesses, no, your Honor.

19 THE HEARING OFFICER: Okay. All right.

20 Then, if I could, I would like to address
21 the issue of the motion for reconsideration before
22 we move beyond the point of the proceedings that we
23 are now.

24 Is that something you're prepared to do,

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1 Mr. Angelini?

2 MR. ANGELINI: If you would give me one
3 minute to get a file out of my office, I'll be
4 prepared to do that, your Honor.

5 THE HEARING OFFICER: Okay. And Mr. Neff?

6 MR. NEFF: Yes.

7 THE HEARING OFFICER: You'll be prepared
8 also?

9 Q. MR. NEFF: Yes. But I'll also have to pull
10 that back up, because I don't think I have it on
11 this computer. If you'll give me one moment to go
12 retrieve it.

13 THE HEARING OFFICER: Of course.

14 (Recess taken)

15 MR. ANGELINI: I'm prepared to proceed,
16 your Honor. I'm prepared, your Honor, at your
17 convenience, to proceed.

18 THE HEARING OFFICER: Okay. Thank you,
19 Mr. Angelini.

20 I think we're just waiting.

21 MR. ANGELINI: Oh, sorry.

22 THE HEARING OFFICER: Okay. All right.

23 Mr. Neff is back.

24 MR. NEFF: Yes.

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1 THE HEARING OFFICER: And at this moment
2 I'll just remind everyone that we are not in
3 breakout room, not at sidebar. If you wish to have
4 anything discussed that would be on the record but
5 in the nature of a sidebar conference if we were in
6 an actual courtroom, you should let me know that.
7 Otherwise we'll stay where we are.

8 MR. NEFF: I -- Judge, I mean, I can't
9 obviously point to any statutory protection on one
10 of the subjects that's relevant in this motion for
11 reconsideration, but in deference to the party
12 involved, if we could -- if we could do -- if we
13 could discuss this in a breakout room so that -- so
14 that it's kept as private as possible, I would -- I
15 would ask for that.

16 THE HEARING OFFICER: Any objection,
17 Mr. Angelini?

18 MR. ANGELINI: None whatsoever, your Honor.

19 THE HEARING OFFICER: Okay. Thank you.

20 It will be on the record; it will be
21 available to the public. The discussion itself will
22 take place in the nature of a sidebar, which would
23 not be an uncommon practice at all in an actual
24 courtroom.

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1 All right.

2 MR. ANGELINI: Great.

3 THE HEARING OFFICER: I don't expect --
4 just for people's timing, I don't expect this to
5 last more than maybe ten minutes, so that we should
6 be back in the -- or back out of the breakout room
7 in about ten minutes.

8 Okay.

9 MR. NEFF: Great. Thank you.

10 THE HEARING OFFICER: Thank you.

11 (Meeting in private breakout room. Hearing
12 Officer Josephson, Mr. Neff, Ms. Cosgrove,
13 Mr. Angelini, and Mr. Loos present)

14 THE HEARING OFFICER: Then, Mr. Angelini,
15 you had filed a motion for reconsideration of my
16 ruling on the issue of expert testimony, and a
17 related matter of inquiry of Ms. Deines, concerning
18 a prior alleged assault ten years before.

19 So I wanted to -- I had allowed the motion
20 to exclude that, that was filed by Mr. Neff, and
21 wrote my decision. And since then you have filed a
22 motion for reconsideration, and I wanted to give you
23 an opportunity to be able to make an offer of proof.
24 And I'm sorry it's so late in the proceedings, but

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1 let's -- let's do it now that we can.

2 Okay?

3 MR. ANGELINI: Good. So happy to do that,
4 your Honor.

5 Look. I'm doing this in the interest of
6 completeness. We're not trying this for the purpose
7 of an appeal, but having gone this far down the
8 line, let me just tell you what I would have -- if
9 the evidence had been presented, what it would have
10 been. I don't -- it's somewhat moot at this point,
11 but I'll say it.

12 So Ms. Deines testified in a deposition
13 that approximately ten years ago, while she was
14 riding on an MBTA train, she was groped, and her
15 testimony at that time at her deposition was that it
16 made her -- she remembered that incident. It made
17 her at least wary, and -- and that it was in her
18 mind. Judge, Hanya Bluestone is a licensed
19 psychologist, a forensic psychologist, been
20 practicing in central Massachusetts for
21 approximately 20 years. She deals with situations
22 generally -- as she would testify -- of this type in
23 which a person suffers a -- a deeply disturbing
24 experience of a type unfortunately sustained by

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1 Ms. Deines ten years ago. And she -- I would
2 present her CV to you, but her testimony would be
3 that in those situations it is common that a person
4 who has that experience will misperceive an -- a
5 relatively insignificant event, a non-traumatic
6 subsequent event, will misperceive that by reason of
7 the prior disturbing experience, and that, in this
8 case, even incidental, casual, unintentional conduct
9 and contact may trigger that reaction, and may have
10 triggered that reaction in Ms. Deines.

11 That's the -- that's the subject, that
12 simple. That's it.

13 THE HEARING OFFICER: All right.

14 Well, thank you. Out of an abundance of
15 caution, because I had -- I had allowed the motion
16 to exclude primarily on procedural grounds, in the
17 event in the -- in the possible, very possible event
18 that I am wrong -- which certainly I could be -- I
19 wanted to make sure that the substance could be
20 considered as well.

21 I will now tell you that, given the state
22 of the evidence, which is that -- is that Judge
23 Sushchyk -- Sushchyk -- I'm sorry; I stumble over
24 his name; I apologize for that -- that Judge

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1 Sushchyk -- Sushchyk would -- has denied any
2 touching whatsoever, and Ms. Deines' testimony was
3 very clear on the nature of the touching that she
4 experienced, I'm not -- I'm not certain that the
5 expert testimony would be -- would be pertinent
6 to -- to the evidence that I have before me.

7 I will note that the five areas that -- the
8 foundation requirements include the opinion must be
9 based on a body of knowledge or principle that -- or
10 method that is reliable, and although it's -- I
11 won't address the other areas -- that would be my
12 main area of concern if -- if I had not excluded it
13 on procedural grounds, which I did.

14 So that's where we are now. If there's
15 anything you want to add, Mr. Angelini, be my guest.

16 Mr. Neff, anything you want to add?

17 MR. NEFF: None. Unless you need to hear
18 from me, I have nothing left to add, Judge.

19 THE HEARING OFFICER: Mr. Angelini.

20 MR. ANGELINI: I just -- look. The purpose
21 of my -- I think this is all moot at this stage of
22 the proceeding. I've raised it early.

23 THE HEARING OFFICER: I know you did.

24 MR. ANGELINI: So it's not a problem.

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1 Let's move on.

2 THE HEARING OFFICER: Okay. Thank you.
3 Fine with me. Let's move on, then. Let's go back
4 into the non-breakout area and meet there.

5 Thank you.

6 (Return to open proceedings)

7 THE HEARING OFFICER: Okay. We're back and
8 can we be on the record, please, Mr. Loos, if we're
9 not?

10 THE REPORTER: We are.

11 THE HEARING OFFICER: Okay. Great.

12 All right, then, Mr. Angelini. You have
13 concluded your presentation on behalf of your
14 client.

15 Mr. Neff, you have -- or do you have any
16 rebuttal evidence?

17 MR. NEFF: I do not, your Honor, no.

18 THE HEARING OFFICER: All right.

19 Then at this time the evidence is closed.

20 Are you each prepared to open -- to present
21 closing arguments?

22 MR. NEFF: I would like to make a closing
23 argument, your Honor, and I am perfectly happy to do
24 so today. I would, if the Court's willing to permit

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1 me to do so, like to take maybe a ten-minute recess
2 or so because, while I have prepared a closing
3 argument, I want to make sure that certain aspects
4 of the evidence that were presented today that
5 may -- may not have been anticipated the last time I
6 looked at it are incorporated and/or accurate in
7 what I actually say to you at the end in that
8 argument.

9 THE HEARING OFFICER: Any objection,
10 Mr. Angelini?

11 MR. ANGELINI: No, your Honor.

12 THE HEARING OFFICER: Okay. Then let's
13 take a -- I apologize to those who I told --

14 MR. NEFF: I'm sorry for the delay.

15 THE HEARING OFFICER: No. It's fine.

16 Let me just say, it's exactly what would
17 happen during the course of any hearing. Before
18 closing arguments attorneys always need a few
19 minutes to collect their thoughts, and that's --
20 that's only fair.

21 So let's do the ten minutes that we
22 normally would anyway, and we'll resume at 1:10,
23 please.

24 MR. NEFF: Perfect. Thank you very much.

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1 (Recess taken)

2 THE HEARING OFFICER: Thank you.

3 And -- all right. And we're ready to
4 resume. As I said, the evidence has closed, and
5 I'll be happy to hear any closing argument. Given
6 that Mr. Neff is the party with the burden of proof,
7 he will go last, but, Mr. Angelini, any closing
8 remarks that you'd like to make?

9 MR. ANGELINI: Yes. I'm prepared to start,
10 your Honor.

11 May I proceed?

12 THE HEARING OFFICER: Sure.

13 MR. ANGELINI: Yeah.

14 CLOSING ARGUMENT FOR JUDGE SUSHCHYK

15 MR. ANGELINI: Well, thank you, your Honor,
16 for your attention to this.

17 Look. I -- we recognize that there is a
18 special burden of proof in this case. I don't
19 intend to repeat the nature of what it means to be
20 able to prove something, or to be required to prove
21 something by clear and convincing evidence. Your
22 Honor knows that better than anyone, perhaps, in
23 this room, even this virtual room. But even if this
24 was a case based on the preponderance of the

1 evidence, rather than on clear and convincing
2 evidence, I would suggest to you, respectfully, that
3 this is extraordinary that we are here, because what
4 we have here is completely an uncorroborated charge.
5 There is no corroboration for what is alleged to
6 have occurred except from the mouth of the person
7 who claims lately that it occurred.

8 And the event itself is an extraordinary
9 event as described by Ms. Deines. She says -- she
10 says, and said to you under oath, that for 5, 10 or
11 15 seconds, this judge placed his hand, slipped his
12 hand under her buttocks and pinched and squeezed it.
13 No one saw that happen. No one saw that happen.
14 She didn't see it happen, of course, because she
15 could not see it happen. Ms. Patsos, who was
16 standing right next to her, did not see it happen,
17 did not see anything unusual occur. Ms. Patsos did
18 not see Judge Sushchuk as he walked towards her stop
19 for a second or two seconds, or three or four or
20 five seconds, much less somewhere between five and
21 15 seconds. This is a completely uncorroborated
22 claim and denied expressly by the only percipient
23 witness to what is alleged to have occurred, and
24 that is Judge Sushchuk.

1 Now if Judge Sushchyk, who denies doing
2 this, denies this intentional act, indeed stopped
3 for 5, 10 or 15 seconds, surely -- and during that
4 5, 10 or 15 seconds not only stopped but pulled out
5 his hand, slid it under Ms. Deines' buttocks and
6 pinched and squeezed her, put aside the absence of
7 reaction from her, surely Ms. Patsos must be lying
8 because she says he didn't stop as he was moving.
9 And this is not something that -- obviously
10 something taking 5, 10 or 15 seconds, it's not
11 something which could possibly occur on the run.
12 Whether it could occur even if he was stationed
13 behind her and purposely trying to do it is an
14 entire separate question for your Honor.

15 And then talk about the reaction of
16 Ms. Deines, who says this lifted her off the
17 cushion. That was her testimony. This act was such
18 a violent act -- it wasn't a simple squeeze of some
19 part of her skin; it was a full body, full palm
20 grab, as she has described it, a grab, a squeeze of
21 her buttocks, lifting her off the cushion.

22 But that didn't occur. That did not occur,
23 because we have the testimony of two people who know
24 Ms. Deines well, who are apparently friendly with

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1 her: Ms. Patsos and Ms. Welsh. During all this
2 period of time, according to her own testimony,
3 Ms. Deines was speaking across the table to
4 Ms. Welsh with her elbows on the table, her body
5 positioned towards Ms. Welsh, and they were having a
6 conversation. And Ms. Welsh remembers no
7 interruption of that conversation. She remembers
8 nothing unusual. And also remembers watching Judge
9 Sushchuk, and he was moving at all times.

10 You asked her the -- she was asked the
11 question -- you asked Ms. Patsos -- again, the
12 question was asked of her, "Was he moving? Did he
13 stop?" Her answer was, "No, he did not stop." That
14 testimony, her testimony, Ms. Patsos' testimony,
15 Judge Sushchuk's testimony, would all have to be
16 wrong for the uncorroborated testimony of
17 Ms. Deines, which is inconsistent with her own
18 behavior, to have occurred.

19 And take a hard look at her testimony. She
20 said -- she said, in response to a question from
21 Mr. Neff on direct examination, "I immediately
22 turned around. I immediately turned around." In
23 fact, as she acknowledged, she didn't turn around
24 for 30 seconds. That's her -- that is what

1 happened. At some time after this occurred, she
2 turned around and, 30 seconds later, saw Judge
3 Sushchuk there. There's no doubt that he was there,
4 but there's no doubt from the witnesses who saw him
5 get there that he was moving as he got there and did
6 not stop to have an encounter with Ms. Deines'
7 buttocks.

8 If this claim could be sustained against
9 Judge Sushchuk, this claim could be sustained
10 against anybody at any time at any place, because it
11 is completely without corroboration, and is
12 completely inconsistent with the behavior of the
13 person to whom it is alleged to have occurred. She
14 did not stop. She did not turn around. She did not
15 see what was going on behind her. She didn't say to
16 Ms. Welsh, "Oh, my God. Something just happened,
17 but I'm not going to turn around for 30 seconds."
18 She didn't say anything to Ms. Patsos who was to her
19 left. She didn't say or do anything that would lead
20 anyone to believe that anything had occurred. And
21 the reason for that is, respectfully, is that
22 nothing had occurred. She claimed, incredibly, that
23 she knew who was behind her. There is no way --
24 there is no way.

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1 There is -- the only evidence you have,
2 your Honor, the only evidence you have is that this
3 took place in a bar, with a number of people who
4 were drinking and moving about, crowded, milling
5 about, doing what people do in bars: Some standing,
6 some sitting, socializing at the end of a day's
7 event with members of the public there.

8 You heard the testimony from Judge Casey
9 that this is -- this is not a remote mountaintop
10 location. This is an area where there are
11 townhouses and condominiums around, all as part of
12 this project, this residential -- or this resort, I
13 should say.

14 In any event, this was a crowded bar, and
15 the claim by Ms. Deines that she knew who, or what,
16 or how many, or the nature of the people behind her,
17 whether they were male or female or whatever, is
18 without foundation. It is pure speculation. It is
19 not evidence. There is simply no evidence of what
20 occurred.

21 I cannot emphasize enough that this event,
22 that this claim is an uncorroborated one, and,
23 frankly, the statements of Ms. Deines themselves,
24 before the Commission for Judicial Conduct got

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1 involved, before a scenario was created by which
2 this judge has been subjected to this uncorroborated
3 accusation, what did Ms. Deines say?

4 Well, what she said at first was, "Oh, my
5 God, I think" -- "I think" -- to use her words --
6 "that something had occurred." "Oh, my God, I think
7 one of the judges grabbed my butt on purpose." She
8 didn't say, "One of the judges grabbed my butt on
9 purpose." She said, "I think so." And then she
10 said, "He's also carrying a hip flask," which turns
11 out not to be a hip flask, "so maybe" -- as she
12 testified to, "maybe he just fell."

13 We don't know what her perception was at
14 any time this evening, but if she perceived that
15 someone slid his extra, extra large hand under her
16 butt and grabbed and squeezed it, there is no way in
17 the world that that could be viewed as consistent
18 with what she has described and with what Judge
19 Sushchyk is charged at. You just cannot reconcile
20 somebody stumbling and falling down because he was
21 carrying a hip flask with what she claims occurred.

22 And then we have her next text message in
23 which she says the next day, "I kind of thought it
24 was a mistake." Let's be clear about it. It cannot

1 be a mistake by which someone slides his hand under
2 your butt and squeezes and grabs it or pinches it,
3 however she wants to describe. That could not be a
4 mistake. That could not be a mistake. That doesn't
5 happen by mistake. It cannot happen by mistake
6 unless you've got a choice of two different people
7 to do it to. It was not a mistake.

8 But then what does she say? "Until today,
9 he spent the day hovering uncomfortably around me."
10 There is no evidence of that. You've listened to
11 Judge Sushchuk, and I put his -- his credibility is
12 on the line. I acknowledge it. Putting aside the
13 burden of proof, there is no evidence whatsoever
14 that he was hovering uncomfortably around her that
15 day.

16 And listen to her testimony on
17 cross-examination about that. I asked her, "In what
18 manner was he hovering around you, Ms. Deines?"
19 "Well, he was sitting at lunch, and I thought he sat
20 too close to me." It turns out he wasn't sitting
21 too close to her. He picked, as he told you, an
22 empty seat. He didn't even see her that day.

23 And then I asked her to reconcile the fact
24 that he was not sitting close to her with her claim

1 that he spent the day -- spent the day hovering
2 uncomfortably around her. And her testimony on that
3 point, as I said earlier today at a different
4 connection, is telling. She said, "Well, that was
5 my perception." Well, what that demonstrates, your
6 Honor, is that we have here a person who has the
7 ability to perceive things which are not real. She
8 perceived, somehow, by the fact that he sat at an
9 adjoining table in which there was an empty seat,
10 that he was spending the day hovering around her, as
11 she said in a text to two of her friends. Which he
12 clearly was not, but she perceived that to be the
13 case because she demonstrated to you that she has
14 somehow the ability to disassociate reality from
15 what she chooses to perceive.

16 Whether that happened -- it certainly
17 happened with respect to the alleged hovering.
18 Whether that happened or something else happened by
19 which she has made up this story, we don't know. We
20 don't know how or why she did so. But what we do
21 know from the evidence is it didn't take place.

22 But let us give her the benefit of the
23 doubt, that somehow she convinced herself that he
24 did not fall down and slide his hand under her

1 buttocks as he was falling down. Somehow she's
2 convinced herself that something occurred, which she
3 has described in these graphic terms. What she's
4 demonstrated by her testimony as to the second day
5 is that she has the ability to perceive things which
6 don't occur. And that is remarkable. But it is not
7 so remarkable that this man should be deprived of
8 the office to which he holds. It is extraordinary,
9 as you think about it, that simply by walking behind
10 her that night, keeping on moving, doing nothing
11 offensive, he has put himself in the position where
12 he faces this charge.

13 The fact, Judge, is that testimony you have
14 heard from Ms. Deines is contradictory. It
15 describes this event in different ways. It
16 contradicts what Ms. Welsh and Ms. Patsos say.
17 They're no great friends of Judge Sushchuk. They're
18 independent, fair-minded people saying what they
19 believe. They're colleagues of Ms. Deines. But you
20 cannot reconcile, I suggest respectfully, their
21 testimony, including the testimony responsive to
22 questions asked by you, with anything that she says.

23 Now, let me speak for a moment about Judge
24 Sushchuk's statement. I was struck by his testimony

1 regarding that this morning. Because he did, I
2 think, I suggest to you what is natural for any
3 human being to do, which is to try to figure this
4 out. That is not a sign of guilt. It's a sign of
5 innocence. What he tried to do was to say, "How
6 could this possibly be true that someone would say
7 these things about me that didn't? How could
8 someone perceive that I did this when I didn't? How
9 can I rationalize this?"

10 Well, the easy thing to say was, "Well,
11 people lie." He didn't -- he didn't do that. He
12 didn't do that. To his credit, he tried to
13 rationalize what had occurred, and he rationalized
14 it by recalling, as he testified to you today, that
15 this was, as I've said earlier, a crowded bar of
16 many people -- and he used his word; he used it
17 today, and he used it in his statement to Judge --
18 to Judge Casey -- he was threading his way through
19 people. We've all been in that situation, whether
20 it's on a bus, on a streetcar, at a cocktail party,
21 at a ball game, at a cultural event, at whatever.
22 We have all been in that situation, where you need
23 to get through a group of people to get where you're
24 going, and you inevitably have some contact with

1 those people. And what he concluded, and the only
2 thing he could conclude in order to rationalize this
3 extraordinary claim against him, is that he must
4 have bumped against her and that, somehow or other,
5 somehow or other, somehow or other she misperceived
6 what had occurred.

7 Now, her ability to misperceive what has
8 occurred is now well known, but the fact that he did
9 that should not be a basis for criticism. He
10 honestly tells you today he has thought about this
11 every day and every night. He went back to the
12 Bayzos Pub to try to recreate what happened. His
13 responsibility today is to tell you the truth, and
14 you'll have to be the judge of that. But what he
15 tells you today is, in all honesty, while he tried
16 to rationalize this as best he could, his belief
17 today, his best belief is he did not even touch her.

18 It would be easy for him to come here today
19 and say "Well," you know, "I said that. I guess I
20 probably did. It wasn't intentional." He's here to
21 tell you the truth. He's here to tell to the truth.
22 He was trying to, at the time, to rationalize in his
23 mind how someone could make this extraordinary claim
24 against him. And he did, I think, what the human

1 thing -- he did what I would suggest to you,
2 respectfully, he did the human thing. He did the
3 humanistic thing. He tried to give someone the
4 benefit of the doubt who perceived something to have
5 happened that did not happen.

6 Let me spend a minute on this wide-eyed
7 look. None of us know, and no one was asked, what
8 was meant by this look. We all know that Ms. Deines
9 went home. She gave no sign of being upset about
10 anything. We don't know whether she was trying to
11 tell people that, "I'm getting out of here. I've
12 got a three-year-old at home. My mother and father
13 is watching him. I've got to get back to Eastham."
14 But there was no sign that she was upset about it,
15 quite aside from the fact that she said and did
16 nothing. She then went over to see Judge Casey and
17 said good-night to him in a very un -- in a very
18 uneventful way.

19 There is -- frankly, as we look at this,
20 there is, as I said at the beginning, the complete
21 absence of any corroboration, any, any, any
22 corroboration of this claim. This man faces
23 extraordinary consequences to this. He has told you
24 honestly -- and you will have to judge his honesty

1 or not -- what he recalls, what he did, but most
2 explicitly what he did not do. He did not
3 intentionally -- to use the words of which he is
4 charged, he did not "intentionally grab, slide,
5 pinch the buttocks of Ms. Deines," and to do so for
6 5, 10 or 15 seconds, it is beyond, beyond reasonable
7 understanding.

8 Now, let me finish where I started. This
9 is a case which must be proven by clear and
10 convincing evidence. That is a requirement of the
11 law. That is a heavy burden. Even aside from the
12 fact that there is no corroboration, that is a heavy
13 burden. There must be clear evidence that he did
14 something like this, that he did this event, that he
15 slid his hand under her buttocks and pinched and
16 squeezed it and did all the other things with a full
17 palm grab. There is no such clear evidence, and
18 there is certainly no convincing evidence.

19 Convincing evidence is that evidence which,
20 I suggest to you respectfully, must be convincing
21 because it is consistent with other events occurring
22 at the time. I would suggest to you that this is a
23 case even clearer than that, because not only is
24 there no clear evidence, not only is there no

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1 convincing evidence, there is no evidence. There is
2 a claim, but there is no evidence of that claim.

3 I could as easily say to you right now --
4 right now -- that there's a tsunami outside my
5 window. That wouldn't mean that there's evidence
6 that there's a tsunami. Ms. Deines can say, "This
7 person did this to me." That is not evidence.
8 Evidence is something which supports the allegation
9 that is made and is rational.

10 So that is this case, your Honor. I -- it
11 is a burden I'm going to ask your Honor, that you
12 deal with it promptly. It is a Damoclean sword
13 which has hung over this man's head now for more
14 than a year on the basis of an uncorroborated,
15 unproven, unsupportable claim, inconsistent with the
16 conduct, actions of the complainant and the
17 testimony of independent witnesses.

18 That's our case, your Honor. Thank you for
19 your attention. I appreciate it very much and look
20 forward to your verdict.

21 Thank you.

22 THE HEARING OFFICER: Thank you very much,
23 Mr. Angelini.

24 Mr. Neff, you appear to be muted.

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1 THE REPORTER: One moment. I'll unmute
2 him.

3 MR. NEFF: Am I good now?

4 THE HEARING OFFICER: Yes. Go ahead.

5 MR. NEFF: Okay.

6 CLOSING ARGUMENTS FOR THE COMMISSION

7 MR. NEFF: Well, first thing I'd like to
8 start out by saying is to object to the
9 characterization of -- of Ms. Patsos, who is an
10 attorney in this state, by Mr. Angelini as a liar.
11 We can call each other -- we can say that each other
12 may lack credibility or there are reasons to
13 question credibility.

14 MR. ANGELINI: Wait a minute.

15 MR. NEFF: We respectfully suggest in this
16 circumstance that it is inappropriate for
17 Mr. Angelini to begin --

18 THE HEARING OFFICER: Let me interrupt for
19 a minute, Mr. Neff. I did not hear Mr. Angelini to
20 accuse Ms. Patsos of being a liar.

21 MR. NEFF: Okay. I'll let the record speak
22 for itself, but that's the word I heard, and it
23 caught my attention.

24 In any event, I'll move on.

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1 THE HEARING OFFICER: Okay.

2 MR. NEFF: What we have here, Judge
3 Josephson, is an assault by one person on a second
4 person. Two people are involved, and there are no
5 other percipient witnesses. So what we are left
6 with is corroboration, corroboration evidence. How
7 can we establish who is the more truthful party in a
8 two-person transaction that amounts to --
9 potentially amounts to serious judicial misconduct
10 on the part of one of the parties.

11 I would like to also start out by thanking
12 you, Judge Josephson, for your patience with me and
13 sometimes me being a little slow and delayed and
14 needing bathroom breaks and that sort of thing, and
15 to all the witnesses who are willing to participate
16 in this matter, in particular to Mr. Loos for his
17 cooperation and patience in helping me with the
18 exhibits.

19 In this matter, the Commission has brought
20 charges of judicial misconduct against Probate and
21 Family Court Judge Paul M. Sushchuk, charging him
22 with having engaged in willful judicial misconduct,
23 that brings the judicial office into disrepute, as
24 well as conduct prejudicial to the administration of

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1 justice and unbecoming a judicial officer, in
2 violation of Massachusetts General Laws
3 Chapter 211C, and which also violated the
4 Massachusetts Code of Judicial Conduct, by failing
5 to comply with the law, including the Code of
6 Judicial Conduct in violation of Rule 1.1 by failing
7 at all times to act in a manner that promotes --
8 that promotes public confidence in the integrity
9 and/or impartiality of the judiciary; and by failing
10 to avoid impropriety and/or the appearance of
11 impropriety in violation of Rule 1.2; by failing to
12 perform the duties of judicial office without bias,
13 prejudice or harassment, in violation of Rule 2.3(A)
14 of the Code of Judicial Conduct; by failing in the
15 performance of judicial duties to refrain from
16 manifesting or -- by manifesting bias or prejudice
17 or engaging in harassment in violation of Rule 2.3;
18 by failing to be dignified and/or courteous to
19 litigants, witnesses, lawyers, court personnel and
20 others with whom he deals in an official capacity,
21 in violation of Rule 2.8(B); and then finally by
22 participating in activities that would appear to a
23 reasonable person to undermine the judge's
24 independence, integrity or impartiality in violation

1 of Rule 3.1(C).

2 And again what we have here is a -- a very
3 brief fact pattern. As I indicated to you at the
4 outset of this matter on Monday, this case was
5 brought to you based on a factual allegation that, I
6 would now suggest to you, the evidence supports was
7 courageously reported to the Probate and Family
8 Court by Ms. Emily Deines after she spoke with a
9 number of people for advice, and you heard testimony
10 about that. She brought that to the attention --
11 she brought this to the attention of the Probate and
12 Family Court, despite testifying about her concerns
13 about making this report and the negative impact
14 that this report might have on her career in the
15 future. She had absolutely, and still does, has
16 absolutely nothing to gain by coming forward and
17 making this report, but she, I would suggest,
18 courageously chose to do so despite her concerns
19 about the impact on her career and has, indeed,
20 ended up doing so at some personal cost.

21 I would suggest that even though a -- even
22 through a video screen it was clear -- I would
23 suggest that even through a video screen it was
24 clear that it remained difficult for Emily to come

1 forward and talk about this as late as this past
2 Monday. Emily did come forward and followed
3 through, explaining that, among other reasons she
4 felt she needed to come forward was to make sure
5 that she did her part to ensure that this person,
6 this judge, Judge Paul M. Sushchyk -- who is really
7 supposed to represent the highest ideals of trust
8 and authority and moral values in our society --
9 would not be in a position to engage in similar
10 conduct again.

11 On Monday, Ms. Deines in her testimony told
12 you that Judge Sushchyk slid his hand under her left
13 buttock and grabbed or squeezed it without her
14 permission while she was seated at the Bayzos Pub in
15 Brewster Massachusetts on April 25th, 2019.

16 Now, Mr. Angelini wants to make much of the
17 fact that Ms. Deines didn't literally see Judge
18 Sushchyk grab her buttock as he stood or passed
19 behind her. I would suggest that Ms. Deines
20 testified to what most reasonable people would have
21 seen during such an assault, which is maybe a person
22 approaching you from one side, and then feeling, as
23 they passed behind you, a grab -- in this case an
24 inappropriate grab of your buttocks -- while they

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1 are behind you, and then a moment or two later they
2 are back in your line of vision and you see that
3 that person is indeed whoever it is. In this case,
4 Emily testified that that person she believed was
5 Judge Paul M. Sushchuk.

6 Ms. Deines testified that she felt her left
7 buttock being grabbed in a way that she described
8 that could only have been deliberate. I would
9 suggest that Ms. Deines' description of the events
10 of April 25th, 2019, alone are credible, clear and
11 convincing and more -- more than sufficient for you
12 to find Judge Sushchuk has violated the rules of the
13 Code with which he has been charged by the
14 Commission.

15 Now, in this case, you did hear from
16 several other witnesses in this matter, including
17 Chief Justice Casey. He testified that while Bayzos
18 Pub did fill up and become somewhat crowded as
19 the -- as the Probate and Family Court dinner ended,
20 he saw Judge Sushchuk there. He saw Judge Sushchuk
21 there and saw him approach Ms. Deines' table. But
22 when I asked him about it, he said he didn't see
23 Judge Sushchuk have to contort his way around or do
24 any kind of special acrobatics in order to get

1 access to Ms. Patsos. He just walked right over
2 there with no apparent reason to come into close
3 contact with Ms. Patsos (sic), other than that he
4 did.

5 On Monday, Ms. Deines testified that she
6 was so shocked that Judge Sushchuk, a Probate and
7 Family Court judge, had done this to her, that at
8 first she didn't know how to react. So she's
9 sitting at this table with her friends, going about
10 life as usual, like many of us might have. And this
11 person who you may not necessarily know personally
12 or even professionally, but who you know enough
13 about to hold in high esteem, all of a sudden has
14 done what Ms. Deines says he did -- which is he
15 grabbed her buttocks -- and she doesn't know how to
16 react to that. "That really happened? What do I do
17 about it now? What should I say? What should I
18 do?"

19 And in her case, her reaction was she
20 didn't do anything at all except she tried to get
21 the attention of Ms. Patsos, who was basically the
22 one person primarily engaged with Judge Sushchuk at
23 this particular point in time, gave her this
24 wide-eyed look, trying to get her attention.

1 Ms. Patsos didn't really understand what was going
2 on. Eventually Ms. Deines gave up and left and then
3 eventually sent a text message to her sister
4 reporting the event.

5 In Ms. Patsos' testimony, which you also
6 heard yesterday, Ms. Patsos did corroborate that at
7 certain points during the event of April 25th, Emily
8 looked at her with wide eyes and seemed to be trying
9 to communicate something. So when Mr. Angelini
10 talks about, you know, this is just two people and
11 there's really no corroboration at all, well, one
12 variety of corroboration, I would suggest we have
13 here, is Emily's reaction and her attempt to get
14 some sort of reaction or some sort of communication
15 to happen with Ms. Patsos, unsuccessfully. And
16 Ms. Patsos confirmed that when she was questioned.
17 And when she testified earlier this week, Ms. Patsos
18 testified that several days after the April 25th,
19 2019, event at the Bayzos Pub, she, several days
20 later, was able to eventually have a conversation
21 with Emily relating to the events of April 25th,
22 2019.

23 On Monday you also heard Mr. Angelini
24 choose to ask Emily personal questions about her

1 weight. In his case, Mr. Angelini has made
2 references to how someone could slide their hand
3 under Ms. Deines' buttocks. I would suggest that on
4 Monday Ms. Deines merely did -- merely just did her
5 best to accurately testify to what her perception of
6 what it felt like when Judge Sushchuk
7 inappropriately grabbed her buttocks. Emily
8 testified that it felt like someone slid their hand
9 under her buttock and squeezed. I would suggest
10 that in Ms. Deines' written statement, which is one
11 of the exhibits in this hearing, she wrote that
12 someone grabbed her, and she believed that that
13 person was Judge Sushchuk because he was the only
14 person standing behind her at the time.

15 As Mr. Angelini correctly pointed out,
16 Ms. Deines cannot turn her head 180 degrees and can,
17 therefore, not tell us how the improper -- who
18 exactly did the improper touching. Ms. Deines just
19 had to draw a reasonable inference because Judge
20 Sushchuk was on one side of her at one moment, right
21 behind her when the grab happened, and then on the
22 other side of her after the grab happened.

23 On Monday, Mr. Angelini also asked
24 Ms. Deines some questions about her weight. I

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1 know -- I know that's a topic that for many,
2 including myself, is an uncomfortable one. However,
3 given that it was brought up, I would suggest that
4 it raises some questions for you as trier of fact.
5 And the questions are, did Emily feel a hand slide
6 under her because a portion of her buttocks was
7 maybe not fully rested on the barstool? Ms. Deines
8 merely testified that she felt someone, she believed
9 to be Judge Sushchuk, slide his hand under her
10 buttocks and squeeze. Given that we all acknowledge
11 that Emily did not see the actual grab of her
12 buttocks, does there really need to be evidence that
13 a person fully slide his hand under Ms. Deines'
14 buttocks for -- for Emily's description of Judge
15 Sushchuk's improper touching be credible and
16 accurate? Maybe partly under her butt. Maybe it
17 gets under the portion of her butt that hangs over
18 the stool. Maybe it just gets a little under the
19 stool. Who knows? But I would suggest that there's
20 ample reason to believe that Ms. Deines' reports
21 were both consistent and credible.

22 You have heard testimony from Emily and her
23 friends -- we have heard testimony that Emily and
24 her friends were sitting at bar-height tables with

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1 bar-height chairs. You have heard testimony from
2 various witnesses that these four, occasionally five
3 women were socializing and having drinks and having
4 a good time on the evening of April 25th, 2019. You
5 have in evidence several photos of examples of the
6 actual barstool at Bayzos Pub that night. As you
7 could see in Exhibit 3, Emily clearly rests her feet
8 on the support that -- that the barstool there
9 provided. You also heard that Emily was sometimes
10 talking in this increasingly loud and crowded bar,
11 to Jocelynn Welsh, who was directly across from
12 her, but was also speaking with other parties at the
13 table diagonally across from her. In fact, one of
14 the witnesses in this case actually testified that
15 the touching -- the alleged touching may have
16 actually happened while they were all just seating
17 themselves at the table itself.

18 During the course of this hearing,
19 Mr. Angelini asked Ms. Deines about how she sat at
20 that table and whether she rested her arms on it. I
21 would suggest that in the context of a fun, loud,
22 bar outing, a reasonable person could infer that
23 from time to time Ms. Deines did lean on the table
24 and towards someone she was speaking with, causing

1 her full weight not necessarily to remain on the
2 barstool, allowing -- allowing a person access to do
3 exactly what Ms. Deines alleged Judge Sushchuk did
4 to her.

5 You also heard testimony that after
6 speaking with various parties, Ms. Deines ultimately
7 made the difficult decision to make a formal
8 complaint against Judge Sushchuk to Chief Justice
9 Casey. It was not an easy decision. And what
10 followed, I would suggest, were actions taken by
11 Chief Justice Casey consistent with the Trial
12 Court's policy on gender and sexual harassment that
13 was then in effect and is in evidence in this matter
14 as Exhibit 9.

15 Chief Justice Casey did his duty. He
16 conducted a prompt investigation of Ms. Deines'
17 report. He sought advice and/or -- and or notified
18 the Chief Justice of the Trial Court, Paula Carey,
19 spoke to and notified Probate and Family Court
20 administrator Linda Medonis, and was in contact with
21 the person who was then basically the newly
22 appointed human resources coordinator to this type
23 of matter, for gender issues, whose name was Maggie
24 Pinkham.

1 In his testimony -- in response to a
2 question from Mr. Angelini about Ms. Deines' written
3 statement alleging that Judge Sushchuk assaulted her
4 on April 25th, 2009, which is Exhibit 6 (sic), Chief
5 Justice Casey, I asked him a lot of questions about
6 that, but the only answer that Chief Justice Casey
7 gave about the contents of that report came in the
8 context of a question asked by Mr. Angelini at the
9 close of Chief Justice Casey's testimony when Chief
10 Justice Casey stated that, in response to being
11 confronted with Ms. Deines' allegations, Judge
12 Sushchuk -- Judge Sushchuk did not deny those
13 allegations.

14 In a May 20th, 2019, written statement,
15 however, in evidence as Exhibit 13, Judge Sushchuk
16 actually admits to touching Ms. Deines, although he
17 is taking that back today, writing -- and I won't
18 belabor it, but basically writing, "I placed" --
19 skipping ahead a bit:

20 "I placed my hand in the direction of
21 her chair and came in momentary contact
22 with a portion her lower body. I then
23 returned to my seat at the table, rejoining
24 Ms. Patsos, Ms. Yurgelun, Ms. Welsh and

1 Ms. Deines."

2 I would respectfully suggest that a judge
3 does not reduce a statement like that to writing and
4 then sign it and submit it to his chief justice
5 unless he really means it. And he is -- he is now
6 telling you that he is taking that back. So what is
7 true? Is he credible? I would suggest there are
8 serious questions about the credibility of Judge
9 Sushchuk and his responses to Ms. Deines'
10 allegations against him.

11 I would respectfully suggest that weighing
12 all of the evidence in this matter and evaluating
13 its credibility, Ms. Deines, a person with nothing
14 to gain, but concerns about losing -- having impacts
15 on her career as a consequence of her report
16 regarding this matter, notwithstanding all of that,
17 still chose to come forward because she felt it was
18 the right thing to do.

19 Judge Sushchuk, by contrast, when
20 confronted with Ms. Deines' allegations, first
21 failed to deny the allegation, as Chief Justice
22 Casey said, and -- and then, in his May 20th
23 statement, actually admitted to touching Ms. Deines,
24 and then today, in his testimony, has now taken that

1 back again and said he did not touch Ms. Deines at
2 all on April 25th, 2019.

3 I would respectfully suggest that the
4 evidence presented demonstrates Ms. Deines as a
5 selfless, courageous woman of moral character who
6 made the report that gave rise to this complaint.
7 There may have been some variations in the words she
8 used, in how she described the events, but I would
9 respectfully suggest that those changes are not
10 meaningful or relevant. I would respectfully
11 suggest that she has consistently reported that
12 Judge Sushchuk improperly grabbed her left buttock
13 at the Bayzos Pub on April 25th, 2019, without
14 justification, excuse, invitation or consent,
15 shocking her and causing her to delay any action
16 until she tried to get the friend of her friend,
17 Ms. Patsos -- which, as I said, the fact Ms. Patsos
18 later confirmed in her testimony.

19 By contrast -- by contrast, under
20 question -- I would respectfully suggest that the
21 weight of the evidence in this matter strongly
22 favors a finding by clear and convincing evidence
23 that Judge Sushchuk improperly touched Ms. Deines'
24 buttock on April 25th, 2019, in violation of

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1 Massachusetts General Laws Chapter 211C and the Code
2 of Judicial Conduct, or at least the rules with
3 which he's been charged in connection with this
4 matter. I would also respectfully suggest that
5 Judge Sushchuk has also further violated the rules
6 by displaying and discussing with certain people
7 that he was carrying a flask in a bar that was open
8 to the public and that contained whiskey.

9 The Commission respectfully submits that
10 the evidence in this case has established that the
11 judge engaged in willful judicial misconduct,
12 prejudicial to the administration of justice and
13 unbecoming a judicial officer and which brought the
14 judicial office into disrepute in violation of
15 Massachusetts General Laws Chapter 211C, and I would
16 respectfully request that you find those violations
17 and that you find that he has, indeed, violated the
18 applicable portions of the statute --

19 THE HEARING OFFICER: Thank you very much,
20 Mr. Neff.

21 All right. With the closing arguments of
22 both counsel, the proceeding is now at its
23 conclusion.

24 Regarding the next steps, my understanding

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1 is that a report from me is expected within 30 days.

2 MR. NEFF: -- yeah. Tough time frame. I
3 can tell you -- I'm sorry. I didn't mean to
4 interrupt your Honor.

5 MR. ANGELINI: The judge is speaking.

6 THE HEARING OFFICER: That's my intention.
7 That's what the -- that's what's called for, and
8 that's what I'll do.

9 So with that, I also will communicate with
10 Mr. Loos, because another requirement of the Hearing
11 Officer is to provide a transcript to the
12 Commission, and the only vehicle that I have to do
13 that is through the kind offices of Mr. Loos.

14 So what did you want to say, Mr. Neff?

15 MR. NEFF: And I was actually going to say
16 something germane to that, which is I agree with you
17 that it's the Commission's responsibility, and these
18 are pretty short time frames. So even -- obviously,
19 an expedited transcript or whatever is an additional
20 cost, but I think, under the circumstances, it's the
21 Commission's obligation to try to get you a
22 transcript of this hearing as quickly as we possibly
23 can so that -- so that you can work on this and --
24 and get the report done within the time frame

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1 allotted under our rules. At least try to.

2 THE HEARING OFFICER: Thank you.

3 MR. NEFF: We will do that.

4 THE HEARING OFFICER: Okay. And I know
5 that -- or I'm assuming that any transcript that's
6 provided to me will obviously be provided to the
7 Commission in short order.

8 MR. NEFF: Well, I think probably --
9 unless -- I'm not sure what Mr. Loos' plans are. I
10 may just get it and at that point I'll distribute
11 it, and I'll distribute it to both you and
12 Mr. Angelini simultaneously.

13 I will also add that as part of the
14 protocols established by the Commission for virtual
15 hearings, the hearing itself was recorded.

16 THE HEARING OFFICER: Yes.

17 MR. NEFF: So unless either of you do not
18 want that -- that actually could be a lot of data;
19 so it could be a OneDrive kind of situation again,
20 unfortunately -- but unless you do not want that,
21 I'm more than happy to also share the -- the
22 audio-visual recording of the hearing itself, if
23 you'd like to be able to review that in connection
24 with making your findings and so forth in this

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1 matter.

2 THE HEARING OFFICER: Yeah. I would like
3 that.

4 Mr. Angelini, would you like that?

5 MR. ANGELINI: Whatever is helpful to the
6 Court I think would be useful.

7 Thank you.

8 THE HEARING OFFICER: Okay. All right.

9 And anything I get, I think, Mr. Neff,
10 you'll arrange for Mr. Angelini to be able to get
11 that as well.

12 MR. NEFF: Oh, yes. I absolutely. I -- I
13 will -- I'll just do it all concurrently.

14 I don't know what the time frame will be.
15 I'll talk to Mr. Loos about how quickly things can
16 get moved along.

17 One administrative matter -- and I only
18 have one case for frame of reference -- which, as
19 we've discussed, is a good thing -- is occasionally
20 the parties will submit to the Hearing Officer
21 proposed findings, which we can do if you'd like,
22 and then it would just be a question of -- of a --
23 if you wanted to -- if you wanted us to do that, and
24 if you wanted to set a deadline for us to do that.

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1 THE HEARING OFFICER: You know, I've done
2 that in the past, and, you know, and -- when I was
3 sitting. Sometimes, you know, in certain cases it's
4 very helpful.

5 I don't know that it really is worth the
6 amount of effort that you both would have to put
7 into it, given that I have everything before me I
8 need to --

9 MR. NEFF: Okay.

10 THE HEARING OFFICER: -- happen. So I hate
11 to see you put through any difficulty getting me
12 that. But if you want to, I'm always happy to get
13 it.

14 So would you like that opportunity,
15 Mr. Angelini?

16 MR. ANGELINI: I don't think it's necessary
17 in this case, your Honor. And, frankly, I'd --
18 given some other commitments, I think your Honor
19 said it as well as could be said, and I'll leave it
20 to your discretion.

21 THE HEARING OFFICER: Okay. Thank you.
22 I'm not inviting it, but Mr. Neff?

23 MR. NEFF: It's possible. I think the
24 facts are what they are, and, you know, I mean, I

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1 think factual findings in some ways end up being
2 more spin than factual findings anyway. So if you
3 don't feel strongly that you want them, particularly
4 given such a short time frame, rather than add
5 something to an already short time frame, maybe we
6 will just forego that for now.

7 This is, as you may know -- and I'll tell
8 Mr. Angelini, if he doesn't know -- there is an
9 opportunity afterward -- and this is with all due
10 respect to you, because I may --

11 THE HEARING OFFICER: Okay.

12 MR. NEFF: -- disagree with everything,
13 there is an opportunity for both parties to object
14 to the findings of the Hearing Officer. So -- so we
15 can submit proposed findings if we want, but we can
16 also July skip that and submit objections to
17 findings at a later date.

18 THE HEARING OFFICER: Yeah. You --
19 absolutely. You have the right to, after that, to
20 submit whatever objections you wish to, and there's
21 a time frame for that as well.

22 So let's just hope that things can move
23 along as quickly as possible with the transcript and
24 getting things to the point of resolution.

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1 MR. NEFF: And since we've got Mr. Loos
2 here, maybe I can put him on the spot. He's been
3 wonderful, so I hate to do it to you, but not to
4 necessarily hold you to a date, but do you have any
5 rough estimate regarding when we might be able to
6 receive the transcript and a copy of the
7 audio-visual recording of this hearing?

8 THE REPORTER: Maybe we could discuss it
9 after we go off the record?

10 MR. NEFF: Oh, okay. I'm sorry. We are
11 completely on the record. Why don't we go into a
12 breakout room to discuss that then.

13 THE HEARING OFFICER: Why don't you get
14 back to me. It's the Commission's responsibility.

15 MR. NEFF: Okay.

16 THE HEARING OFFICER: So I'll -- I'll --
17 I'll await any information that you have. If I have
18 a question, I'll get back in touch with all of you.

19 All right.

20 MR. NEFF: Okay. As with everything, I
21 will do my absolute best, and I know Mr. Loos will
22 as well, so I'll just keep you up-to-date.
23 Up-to-date.

24 THE HEARING OFFICER: All right.

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1 If there's nothing further then.

2 Anything further, Mr. Angelini?

3 MR. ANGELINI: Nothing, your Honor.

4 Thank you very much.

5 THE HEARING OFFICER: Okay. Thank you all
6 very much.

7 Mr. Loos, especially thank you.

8 MR. ANGELINI: Yes.

9 THE HEARING OFFICER: All right.

10 That concludes the hearing. Thank you.

11 MR. NEFF: Thank you, everyone.

12 (Whereupon, the proceedings were
13 concluded at 3:05 p.m.)

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C E R T I F I C A T E

I, Alexander K. Loos, Registered Diplomat
Reporter, do hereby certify that the foregoing
transcript, Volume III, is a true and accurate
transcription of my stenographic notes taken on July
22, 2020.



Alexander K. Loos
Registered Diplomat Reporter

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