

In The Matter Of:
Helen Brown and Crystal Young vs.
John J. O'Brien, et al.

Hon. Kathleen Elizabeth Coffey
November 10, 2009

Doris O. Wong Associates, Inc.
Professional Court Reporters
Videoconference Center
50 Franklin Street, Boston, MA 02110
Phone: (617) 426-2432

Suffolk, ss. Superior Court Department
of the Trial Court
Civil Action No. 07-3552.

DEPOSITION OF HON. KATHLEEN ELIZABETH
COFFEY, a witness called on behalf of the
Plaintiffs, taken pursuant to Rule 30 of the
Massachusetts Rules of Civil Procedure, before Linda
A. Walsh, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Rodgers, Powers &
Schwartz LLP, 18 Tremont Street, Suite 500, Boston,
Massachusetts, on Tuesday, November 10, 2009,
commencing at 10:06 a.m.

Rodgers, Powers & Schwartz LLP
(By Jonathan J. Margolis, Esq.)
18 Tremont Street, Suite 500, Boston, MA
02108, for the Plaintiffs.

(Continued on next page)

PRESENT (Continued):

The Commonwealth of Massachusetts
Office of the Attorney General
(By Daniel P. Sullivan, Esq.)
Two Center Plaza, Suite 540, Boston, MA
02108, for Judge Mulligan.

* * * * *

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

HON. KATHLEEN
ELIZABETH COFFEY

BY MR. MARGOLIS 5

BY MS. WERNER 99

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
9	Document entitled "Candidates Listed in Order of Rank for Position of Chief Probation Officer West Roxbury BMC"	52
10	Document entitled "CPO Interviews"	53
11	Document entitled "West Roxbury District Court interviews, candidates listed in order of rank for position of first assistant chief"	62
12	Letter dated March 1, 2007, to Leslie Harris from Helen Brown	63
13	Document entitled "What Anger Does to People"	72

E X H I B I T S, Continued

NO.	DESCRIPTION	PAGE
14	Memo dated March 20, 2009, to Assistant Chief Probation Officer Helen Brown from Chief Probation Officer Mark Prisco	76
15	Letter dated September 28, 2009, to Assistant Chief Probation Officer Helen Brown from Mark Prisco	79
16	Letter dated October 14, 2009, to Mark Prisco	81
17	Memo dated October 22, 2009, to All Probation Employees from Chief Probation Officer Mark J. Prisco	85
18	Memo dated October 28, 2009, to Mark McHale from Mark Prisco	88
19	Memo dated October 6, 2008, to Chief Probation Officer Mark Prisco from First Justice Kathleen Coffey	97
20	Handwritten note by Mark	97
21	Letter dated October 23, 2009, to Honorable Kathleen E. Coffey from Charles Johnson	97
22	Letter dated October 23 to Chief Justice Johnson from Justice Kathleen Coffey	99

* * * *

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

2 HON. KATHLEEN ELIZABETH COFFEY

3 a witness called for examination by counsel for the
4 Plaintiffs, having been satisfactorily identified by
5 the production of her driver's license and being
6 first duly sworn by the Notary Public, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MARGOLIS:

10 Q. Judge, would you state your full name and
11 residential address for us.

12 A. Kathleen Elizabeth Coffey, [REDACTED]
13 [REDACTED].

14 MR. MARGOLIS: The parties have agreed that
15 all objections, except as to form, and motions to
16 strike will be held until time of trial.

17 Q. Judge, would you like to read and sign the
18 deposition?

19 A. Yes.

20 MR. MARGOLIS: Waive the notary?

21 MS. WERNER: Would you want to waive the
22 notary for your signing of the deposition?

23 THE WITNESS: Certainly.

24 MS. WERNER: Okay.

1 Q. And the normal 30 days will suffice?

2 A. (No verbal response)

3 Q. Yes?

4 A. Yes.

5 Q. As you've probably told witnesses in your
6 court, you have to answer orally or the stenographer
7 has trouble taking it down.

8 This may seem like a silly question, Judge,
9 but have you ever been deposed before?

10 A. No.

11 Q. Well, it's going to be a little bit
12 different than the courtroom. There's no judge here
13 except you. So if there is an objection, it's
14 reserved, and you should answer the question.

15 A. I should let the lawyers do their job.

16 Q. Right. We'll argue it out in front of the
17 Superior Court judge at a later occasion, if
18 necessary.

19 A. That's fine.

20 Q. If you don't understand any of my
21 questions, just tell me, and I'll try to rephrase it
22 in a way that you can comprehend it. If you feel
23 that the way that I have asked a question you can't
24 answer it, feel free to tell me that. You may stop

1 the deposition if you want to take a break at any
2 time except I would ask you not to do that if
3 there's a question pending before you. If you don't
4 remember the answer to something; that is, "I think
5 I used to know it, but I don't recall it," feel free
6 to tell us that. If you don't know, feel free to
7 tell us that. We're asking for your recollection as
8 it is here today. When you get the transcript
9 you'll have an opportunity to read it over and make
10 corrections. You may make corrections on matters of
11 form, spelling, details, things like that or in
12 matters of substance. However, if the deposition --
13 if you're called as a witness at trial, you may be
14 asked why you made a particular change. So as long
15 as you know that, I think we can go ahead.

16 Is there anything that would impede your
17 ability to hear and understand my questions other
18 than my perhaps difficulty in asking them?

19 A. No.

20 Q. Am I right that you are here without
21 representation by counsel?

22 A. I am. Mr. Sullivan is here. He is the
23 legal counsel for Judge Mulligan, and he has agreed
24 to be here.

1 Q. But is he your counsel?

2 A. Personally, no. He's here because I am a
3 justice in the trial court.

4 MR. SULLIVAN: By the way, I don't intend
5 to appear on the record. So, in other words, I'm
6 not in a position to object.

7 MR. MARGOLIS: Fine.

8 MS. WERNER: And I'm assuming, since I'm
9 here on behalf of the Defendants, I may object for
10 the record on behalf of the Defendants.

11 MR. MARGOLIS: Certainly.

12 MS. WERNER: So -- okay.

13 MR. MARGOLIS: Right.

14 MS. WERNER: Just so we have the ground
15 rules straight.

16 MR. MARGOLIS: And then when I finish and
17 it comes time for cross-examination, we can discuss
18 whether we want to switch seats or not. That won't
19 be a problem.

20 MS. WERNER: Okay. Or further direct
21 examination.

22 MR. MARGOLIS: Okay.

23 Q. Now, Judge Coffey, how long have you been a
24 judge?

1 A. I was appointed in August of 1993.

2 Q. And have you always served in West Roxbury?

3 A. No.

4 Q. Where did you serve before West Roxbury?

5 A. I served in many courts: In the district
6 court as well as the Boston Municipal Court. Do you
7 want a list?

8 Q. No. You were riding the circuit?

9 A. Yes.

10 Q. When did you come to West Roxbury?

11 A. I came September the 5th of 1997. I was
12 appointed the First Justice by Chief Justice Samuel
13 Zoll.

14 Q. And you have been the First Justice since
15 that time?

16 A. Yes.

17 Q. What does it mean to be the First Justice?

18 A. It means that you're in charge of the
19 building and that you are responsible for the daily
20 operations of the court.

21 Q. What is your relationship in that role with
22 departments such as the probation department?

23 A. It's an interesting configuration. I have
24 general superintendence authority. So I am

1 responsible, in other words, to make sure that the
2 daily operations occur timely, efficiently, fairly,
3 justly, but each department has a certain amount of
4 independence that you wouldn't see in a business
5 corporation or any other government entity. The
6 probation department is independent in that the
7 commissioner of probation has authority to hire,
8 discipline, transfer. The clerk's office also is
9 independent, and the clerk magistrate for each
10 individual court has that same authority to hire,
11 discipline, transfer. And the First Justice in each
12 court really doesn't have a say on a lot of
13 administrative and procedural occurrences in each of
14 the departments, and that's by statute from the
15 legislature.

16 To make things even more interesting, the
17 security department I have no direct control over
18 either. That is -- has been centralized. So the
19 hiring and disciplining of court officers, that all
20 goes through the trial court, through the
21 administrative office of the trial court, Chief
22 Justice Mulligan's office and his director of
23 security Tom Connolly.

24 Q. Thank you. Now, you knew James Rush, did

1 you not?

2 A. Yes.

3 Q. How long have you known him?

4 A. He was there when I arrived in 1997. I
5 also knew him because he lived around the corner
6 from me in West Roxbury. So I had had -- and I knew
7 him through my church as well. So I knew him
8 outside of the building as well as inside when I
9 arrived in 1997. He was at that time an assistant
10 probation officer.

11 Q. Did you have frequent opportunities to
12 observe his performance of his jobs in the probation
13 department?

14 A. Yes.

15 Q. And did you have frequent opportunities to
16 observe his interactions with other probation
17 department employees?

18 A. Yes.

19 Q. Can you summarize for us what Mr. Rush's
20 attitude toward women employees was?

21 MS. WERNER: Objection.

22 MR. MARGOLIS: Let me rephrase that
23 slightly.

24 Q. To women who were employed in the probation

1 department?

2 MS. WERNER: Objection.

3 A. You'd almost have to put a timeline on that
4 to answer that correctly. And the reason why I say
5 that is that there was a dramatic change in the way
6 Mr. Rush interacted with female employees once he
7 was appointed the acting chief and then when he was
8 appointed the permanent chief. And the reason why I
9 say that is because -- and I think it had to do with
10 the authority and power that was invested in him. I
11 can give you specific examples. I don't know if you
12 want me to. I'm not really -- I don't mean
13 to -- but that's a very broad question, and I want
14 to -- at what time or do you want to give -- could
15 you rephrase the question?

16 Q. Okay. Well, before he became the acting
17 chief probation officer, how did he relate to and
18 interact with women that he worked with in your
19 observation?

20 A. In my observation he was respectful of
21 women in general prior to his being appointed the
22 chief. He would often refer to women as "girls" and
23 that -- and I would correct him about that
24 constantly. And that was troublesome because to me

1 that was indicative of larger issues. And I used to
2 point out to him, "Jim, you don't refer to the male
3 employees as the boys, so it's not appropriate for
4 you to refer to the female employees of all
5 different ranks and stature as the girls," but that
6 was a pattern that in many ways I think was
7 indicative of a larger view. Once he became the
8 chief he had real problems interacting with women
9 and especially interacting with women who were in
10 positions of authority, myself included.

11 Q. I was going to ask whether that included
12 judges.

13 A. Yes.

14 Q. Can you summarize the way -- what his
15 attitude in the way he treated women, and
16 again -- well, women in the courthouse? Let's start
17 with that, and then I'll narrow that down. So
18 you'll know that question is coming.

19 MS. WERNER: Objection.

20 A. Okay. He trivialized their roles and their
21 abilities. It was common for him to speak
22 differently with women than with the male probation
23 officers or even the male judges and the female
24 judges. He would raise his voice. He raised his

1 voice with me on more than one occasion, and I had
2 to call him on it and correct him, which wasn't very
3 pleasant but was necessary. He had difficulty, I
4 think, accepting the fact that women were equals,
5 that women and men can work cooperatively together,
6 and that although women may see things differently
7 than men, we can all contribute and we can all work
8 together as a team.

9 Q. Was there anything that -- again, in your
10 observation, was there any significant difference in
11 his dealings with women who were in the probation
12 department, focusing now after his appointment as
13 acting chief, than with other women in the
14 courthouse?

15 A. Yes. Than with other women in the
16 courthouse or other men in the courthouse?

17 Q. Other women in the courthouse. In other
18 words, was he -- did he act toward women in the
19 probation department differently than he would act,
20 as a for instance, with women in the clerk's office?

21 A. Yes, because he was supervising the women
22 in the probation department. So there was a whole
23 different tenor and tone.

24 Q. Can you summarize the difference?

1 A. Well, he was less patient. He was less
2 accommodating. He was very demanding of the women
3 who worked for him in the probation department. He
4 was not willing to accommodate requests or needs,
5 many of which were reasonable requests such as
6 requests for child care, proper compensation for
7 working outside in the community, accommodations for
8 taking care of sick parents, all of those duties and
9 responsibilities that often fall upon women in our
10 society rather than men. And he had an inability to
11 recognize that employees can still perform to a
12 certain standard but there needs often to be a
13 certain flexibility and understanding of the larger
14 picture if you're going to have a healthy and
15 productive environment with the employees.

16 Q. Was that different from the way that he
17 acted towards and with males in the probation
18 department?

19 A. Yes.

20 Q. How did he treat them that was different
21 from the way he treated women?

22 A. The men he was much more accepting, less
23 critical -- less critical and much more accepting of
24 mistakes. Part of the difficulty was that there

1 were two women who were in a management position,
2 Helen Brown and Mary Tracey-Walsh, and I think he
3 never fully accepted the fact that they were
4 managers.

5 Q. How long have you known Helen Brown?

6 A. The same length of time. I did not know
7 her prior to coming to the court.

8 Q. And have you found Ms. Brown to be
9 competent at her job?

10 A. Extremely so.

11 Q. Has she proved herself to be knowledgeable?

12 A. Yes.

13 Q. Has she acted in a professional manner?

14 A. Yes.

15 Q. And have those -- her competence,
16 knowledgeability I guess it would be, and
17 professionalism, have they changed over the years?

18 A. No. They've improved. Well, they have
19 changed. They've improved.

20 Q. Thank you. I would like to talk for a
21 moment about the mothers program in the court.

22 A. Uh-huh.

23 Q. Would you explain to me what the Mothers
24 Program is through the probation department?

1 A. When I arrived in 1997 I set up a community
2 advisory board called Reinventing Justice, and it
3 still exists. And what it is is it's a
4 collaboration of outside community groups with
5 inside court personnel, and we meet every four weeks
6 to six weeks to address needs of the community. And
7 we attempt to identify initiatives that can make the
8 court more accountable, responsive to the community
9 that we serve. The Mothers Program was one of the
10 many programs that has come out of the Reinventing
11 Justice project.

12 Helen Brown has been an active participant
13 in the Reinventing Justice program. Jim Rush was an
14 active participant prior to his becoming chief.
15 Once he became chief he stopped participating, but
16 to answer your question, the Mothers Program came
17 out of Reinventing Justice. It was one of our
18 brainchilds, and it is a program first in the state.
19 It's run by Helen Brown. She volunteered to head up
20 the program, and she's done a phenomenal job with
21 it. It has been replicated throughout the state in
22 many different courts and jurisdictions. The focus
23 of the program is to assist women who are on
24 probation who are court involved. They've committed

1 crimes and who happen to be mothers. And Helen,
2 with my support and assistance, and Chief Tony Owens
3 designed a curriculum that addresses ways to assist
4 women being good mothers, such as Helen has speakers
5 come in on a regular basis.

6 It's a 12-week program, and it addresses
7 such issues as sobriety, reading to your children,
8 the importance of reading to your children, domestic
9 violence, nutrition, job skills, communication
10 skills, substance abuse. It is a program that is
11 designed to attempt to meet many of the needs of
12 these women who are -- most of them are struggling.

13 The interesting -- the reason for the
14 success of the program, I would say, is Helen Brown
15 and Crystal Young who has been assisting her. They
16 have a -- they're wonderful role models for these
17 women, and the women typically come back and seek
18 Helen's advice and support even after the program
19 has been completed. A good way I think to measure
20 the success of a program is the recidivism rate of
21 the people who have participated in that program.

22 And you should know that when someone is
23 placed in the program it is a placement by a judge.
24 It's mandated. It's a condition of probation and --

1 but the recidivism rate for women who graduate from
2 the program is less than 15 percent, which is very
3 impressive when you look at statewide for female
4 offenders. It's much higher. I think it's like 40
5 to 50 percent. So in many regards the program is
6 doing a very good job thanks to Helen and Crystal
7 and really making a difference in the lives of many
8 women.

9 Q. Do you know how many women who start the
10 program, what percentage complete it?

11 A. It's very high. Over 90. And we've had
12 over, I think, close to 200 graduates.

13 Q. You mentioned Crystal Young. How long have
14 you known Ms. Young?

15 A. Same amount of time. And like Helen, I
16 didn't know them prior to coming to the court.

17 Q. Have you had an opportunity to observe
18 Ms. Young's behavior in her position in the
19 probation department?

20 A. Yes.

21 Q. Has she proved herself to be competent?

22 A. Yes.

23 Q. Has she proved herself to be knowledgeable?

24 A. Yes.

1 Q. How would you describe her work habits?

2 A. Consciousness, professional, highly
3 motivated, attention to detail.

4 Q. Has she proved herself to be professional
5 in her approach to the job?

6 A. Yes.

7 Q. Did you know in 2005 that Ms. Young took
8 some time to care for her parents?

9 A. I did know that.

10 Q. Did you know it at the time that she was
11 out?

12 A. That she was caring for her parents?

13 Q. Yes.

14 A. Yes.

15 Q. And did you know --

16 A. That was common knowledge in the court.

17 Q. Did you know at the time that cases
18 continued to be assigned to her?

19 A. I learned that later, that not only cases
20 but high-risk need cases that required a lot of
21 attention and supervision were being assigned.
22 While it was going on I did not know.

23 Q. Do you know whether the department
24 continues to assign particularly high-risk need

1 cases to probation officers who may be out on leave
2 or vacation?

3 A. I don't know.

4 Q. Have you spoken to any of the people in the
5 probation department about assigning cases to
6 probation officers who may be away?

7 A. No.

8 Q. And in 2005 did any problems become
9 apparent because of cases that had been assigned to
10 Ms. Young while she was out on leave?

11 A. Yes, very much so.

12 Q. What kind of problems were exhibited?

13 A. The problem was that when she came back she
14 was -- had this overload, and so she was placed in a
15 position of attempting to play catchup. And
16 Mr. Rush was very critical of her inability to be up
17 to date with reporting and with the entries, the
18 necessary entries and documentations. My
19 understanding is that it was the type of situation
20 where once she came back, the -- there had been a
21 period where there had been no supervision because
22 of her absence. She had been assigned the case.
23 There was no supervision, and then she was placed in
24 a position when she came back of not only addressing

1 the needs of her earlier case load that was
2 continuing but also she had this additional new work
3 that she had to address and attempt to complete and
4 meet the standards imposed by the probation
5 department. So it was a very challenging and
6 tenuous situation.

7 My understanding as well is that she did
8 not receive the support from Mr. Rush that could
9 have assisted her. He was not sympathetic to the
10 situation.

11 Q. You used the term "supervision" a couple of
12 times in your answer. Do you mean supervision of
13 the probationers --

14 A. Yes.

15 Q. -- or supervision of Ms. Young or something
16 else?

17 A. Supervision of the probationers. A risk
18 need, my understanding is that it's an increased
19 attention in supervision in the sense that the
20 probationer has to come to see his probation officer
21 every 14 days. There has to be documentation of
22 where they are living, where they are working. The
23 probation officer has to check to make sure, verify
24 the information that's being received. It's time

1 consuming.

2 Q. Did you ever have occasion to speak to
3 Mr. Rush about the situation that Ms. Young found
4 herself in?

5 A. No.

6 Q. Just to clarify for me, is it the probation
7 department that assigns a particular probationer to
8 a specific probation officer?

9 A. Yes.

10 Q. So the court doesn't do that?

11 A. No. I will place somebody on probation as
12 part of their sentence, but then it's up to the
13 probation department to -- the chief to assign that
14 probationer to a particular probation officer.

15 Q. Now, are you aware of an investigation that
16 was carried out by Mira Dandridge with respect to a
17 complaint against Mr. Rush?

18 A. Yes.

19 Q. I'm going to show you what we've previously
20 marked as Exhibit 1. Just to let you know,
21 we're -- we have agreed to go sequentially in the
22 deposition numbering through this case.

23 THE WITNESS: Could I trouble you for some
24 water?

1 MS. WERNER: Sure.

2 THE WITNESS: Thank you so much. That's
3 good.

4 Q. Have you seen this document before?

5 A. Yes, yes.

6 Q. When did you see it for the first time?

7 A. I think when it first came out.

8 Q. Do you believe you got a copy --

9 A. No.

10 Q. -- at that time?

11 A. No, I wasn't provided a copy. I forget who
12 showed it to me. Somebody in the probation
13 department showed it to me, but I didn't get a copy.
14 No. Excuse me. Mira Dandridge showed it to me
15 relative to my interview to make sure that it was
16 accurate. And I was also allowed to look at it, but
17 I did not receive a copy but I read it.

18 Q. On Page 5 of this document Ms. Dandridge
19 states that she met with you on January 18th, 2006.
20 You see down toward the bottom?

21 A. I see that.

22 Q. Does that accord with your recollection?

23 A. I don't remember the specific date, but I
24 know she did meet with me in the judge's lobby and I

1 knew it was shortly after the complaint had been
2 filed.

3 Q. That was the only meeting you had with her
4 to discuss this issue?

5 A. Yes, yes.

6 Q. Did you talk to her on the telephone at all
7 after that about the substance of the complaint?

8 A. Yes. When we reviewed it it was by
9 telephone. I only had one meeting with her.

10 Q. Now, if you turn over to Page 10, at the
11 very top there's a reference to a meeting between
12 you and the five women who filed the complaint.

13 A. Okay.

14 Q. Do you see that?

15 A. Yes.

16 Q. And did they request the meeting?

17 A. I never met with all five women. That's a
18 mistake on her part.

19 Q. Actually, it may have been my mistake so
20 let me just clarify. It says, "On January 9th,
21 2006, five employees informed First Justice Kathleen
22 Coffey of their concerns," et cetera. Did you hear
23 from the five women in some way?

24 A. I heard from the first three. I have never

1 had a conversation with -- I shouldn't say "never."
2 I don't remember having a conversation with Idaliz
3 Santos relative to her filing a complaint nor do I
4 have a memory of having a meeting with Felisha
5 Arnold. I did meet several times with Helen Brown
6 and Mary Tracey-Walsh and on occasion with Crystal
7 Young, but primarily I spoke to Helen Brown and Mary
8 Tracey-Walsh, the two assistant chief probation
9 officers.

10 Q. Thank you for clarifying that.

11 A. Okay.

12 Q. Now, again, in that first paragraph it
13 says, "The five employees informed you of their
14 concerns and frustrations. There had been no
15 resolution of their numerous and shared complaints
16 regarding CPO Rush's daily disrespect, hostile and
17 discriminatory treatment against them and no
18 resolution via Chain of Command." And "Chain of
19 Command" in the report is italicized.

20 Is that substantially an accurate
21 description of what you learned?

22 A. Yes. But this wasn't the first time that I
23 was learning this, but yes, that's correct.

24 Q. You anticipated my question which was going

1 to be whether you heard about issues like this
2 before.

3 A. Which isn't good.

4 Yes.

5 Q. Would you describe what you had heard
6 before from whom? I realize this was several years
7 ago, but to the extent that you can recall.

8 A. Tony Owens left as the chief of probation
9 in the spring of 2005. Commissioner O'Brien
10 appointed Jim Rush as the acting, and I think it was
11 like May of two-thousand -- no, not 2005. 2004.
12 2004. And then Jim Rush was the acting from May of
13 2004 until about Christmastime of 2004. So then in
14 2005, January, that's my best memory, that's when he
15 was appointed as the permanent chief of the
16 probation department. And that's when problems
17 began, real troubles began.

18 And initially I heard complaints from Mary
19 Tracey-Walsh, and her complaints were based
20 primarily on her child care needs. She has an
21 autistic child. And at the time he was very young
22 and the child required special therapy, and she
23 needed an accommodation in order to get her child to
24 the therapist several times a week. The former

1 Chief, Tony Owens, had given her that accommodation,
2 and Mr. Rush took away that accommodation and that
3 flexibility. And when she explained to him the
4 impact of his decision and how she thought it was
5 unfair, his response was that he wanted to see
6 medical documentation of her child's condition. At
7 the same time other male probation officers were
8 receiving accommodations in terms of their schedule.

9 One individual in particular, Kevin
10 Brennen, was allowed to come in early and leave
11 early. I don't know the reasons. This is just
12 something that he was allowed to do. Mary
13 Tracey-Walsh came to me. She was very upset.

14 That's my term, "chain of command." That's
15 something that I told all of the women who came to
16 me. I told them I would be happy, of course, to
17 listen. As the First Justice I have an open door
18 for all employees, but I also explained to them that
19 ultimately they needed to work within their
20 department in order to resolve these issues. So I
21 encouraged Mary to speak to Jim directly, and she
22 said that she had. She was extremely frustrated,
23 and in turn I suggested that she go speak to Mark
24 McHale, his supervisor. I also spoke to Mark

1 McHale. I believe there was a meeting. The issue
2 was still not resolved.

3 In turn she -- I spoke to Liz Tavaréz about
4 the situation with Mr. Rush, and I know Liz Tavaréz
5 who I believe at the time was Commissioner
6 O'Brien's, one of his -- at the time I think she was
7 the second assistant. She's since been promoted.
8 She's a very talented woman and a real asset to the
9 department. And she intervened. I know that. And
10 had a meeting with Mr. Rush. So eventually Mary
11 Tracey-Walsh's accommodation did come to fruition.
12 That was the first incident that occurred.

13 Subsequent to that, Helen Brown and Mary
14 came to me because they thought that -- well, that
15 Mr. Rush was denying them an opportunity to go into
16 the community for community supervision. Jack
17 O'Brien has done a phenomenal job in terms of
18 probation in making the probation department much
19 more geared towards being responsive to the needs of
20 the community, and he has set a whole program and
21 platform of having his probation officers active
22 participants in community groups and community
23 affairs, and in doing that it allows the probation
24 officers to be much more responsive and effective in

1 their jobs and this was a sea change from the prior
2 administration.

3 Helen and Mary were very eager to
4 participate and to continue their participation in
5 the many community programs that they were active
6 with. In particular, Mary was active with the
7 domestic violence program in Jamaica Plain, and
8 Helen I know is active in night reporting at E13 as
9 well as other programs. I think the Link Up was one
10 program that Helen was involved with at the time.

11 Jim Rush told the two of them that they
12 could no longer participate, that he did not want
13 his assistant chiefs out of the building. He saw
14 their duties confined to within the building and
15 strictly to supervise the people that they had been
16 assigned to. They thought that this was a violation
17 of their union contract and, more importantly, they
18 thought it was a violation of the whole spirit of
19 the probation department and the tenor, the
20 direction that Commissioner O'Brien was taking the
21 department.

22 And they were eager to continue with those
23 community collaborations. They came to me and I in
24 turn once more encouraged them to work within the

1 department. And I know they went to Mark McHale,
2 and I know that eventually it was resolved.

3 Q. You mentioned the E13, the night program --

4 A. Reporting.

5 Q. Would you explain to us, just to make the
6 record clear, what that is.

7 A. Okay. All right, inside baseball.
8 Probationers are required to report. When someone
9 is working a full-time job, that often can cause a
10 conflict. Night reporting is a program which allows
11 probationers who are gainfully employed to meet
12 their obligations under the probation contract
13 without losing work. It's also very important
14 because many times a probationer doesn't want to
15 have to tell his employer, or even if the employer
16 knows, that they're on probation. They certainly
17 don't want to be reminded every two weeks that the
18 person who they have within their job site is being
19 supervised for a criminal offense. So this is an
20 accepted procedure or policy, and it occurs on
21 Wednesday nights and probationers come to the police
22 station and report, and Helen had been in charge of
23 that program.

24 Q. What was the -- you mentioned Link Up?

1 A. Link Up had to do with offenders who came
2 out of -- after serving a sentence, to come out and
3 to find jobs, employment.

4 Q. Going back to the report that's Exhibit 1,
5 do you think there was a meeting on January 9th,
6 2006?

7 A. There may have been.

8 Q. Did you ever suggest to any of the women
9 who were listed here of going to the trial court's
10 Affirmative Action Equal Employment Opportunity
11 Office?

12 A. No.

13 Q. Did you tell anyone in the hierarchy of the
14 probation department -- that is, above Mr. Rush in
15 the structure -- about a meeting on or about January
16 9th?

17 A. I don't have a memory of telling the
18 hierarchy about that particular meeting of January
19 9th because I don't have -- I don't have memory of
20 the January 9th meeting.

21 Q. Now, just to clarify something that you
22 said, do you regard having the assistant chief
23 probation officers involved in community supervision
24 projects as something that's valuable?

1 A. Yes.

2 Q. Now, we know that the charges were filed
3 that led to the report that's Exhibit 1 on January
4 13th, 2006. And according to the first page of the
5 report, it was completed exactly six months later on
6 January 13th. To the extent that you can recall,
7 going back several years, during that period, that
8 six-month time when there was this investigation
9 ongoing, did you notice changes in the department;
10 that is, the probation department in the West
11 Roxbury Court, in the way women were treated?

12 A. Yes.

13 Q. What kind of changes did you observe?

14 A. I noticed that Jim Rush became more
15 argumentative, and in his dealings with me much more
16 secretive, and an unwillingness to cooperate with me
17 as the First Justice.

18 Q. Did you notice --

19 A. He --

20 Q. Sorry. Continue.

21 A. All right. No. Go ahead.

22 Q. Did you notice any change in attitudes
23 within the department toward the women who had made
24 the complaint?

1 A. By Mr. Rush, yes.

2 Q. What was his change in attitude?

3 A. His change in attitude was -- he
4 personalized it, and he was much more critical and
5 argumentative towards them. I did not observe this.
6 This is what I learned from other people. The
7 reason why I did not observe it is that -- and that
8 ties into my initial answer -- and that is his
9 dealings with me became more restrictive, limited,
10 secretive. He went out of his way not to speak to
11 me, not to communicate with me.

12 I had a practice at the court every morning
13 of my department heads meeting with the justices at
14 a quarter of nine, and we would have coffee and each
15 morning somebody would bring a bakery product. My
16 day was Monday. Judge Rufo's day was Tuesday. When
17 Tony Owens was there he had Wednesday. And Judge
18 Driscoll had Thursday, and Friday we had leftovers
19 from the week. It was a wonderful way to start each
20 morning. He -- Jim Rush participated in those
21 morning meetings for years. Tony Owens always had
22 him and Helen come up to the judges' lobby, and we
23 would start the day on a very amicable, courteous,
24 professional note, review the day's business, speak

1 about any concerns unique to an individual
2 department. The clerk magistrate also participated
3 in these meetings as well as Jack Cahill.

4 Q. Who is Mr. Cahill?

5 A. He is the chief of the court officers,
6 chief of security.

7 Once Jim Rush became the permanent head of
8 the probation department, he stopped coming to those
9 morning meetings, and he prohibited Helen from
10 attending the meetings. There was this sea change
11 in attitude towards me. Once the complaint was
12 filed, his interaction with me became even more
13 limited in terms of letting me know about changes or
14 problems or -- he became a very closed shop and a
15 hunkered-down mentality.

16 Q. You mentioned that he, Mr. Rush that is,
17 didn't come and didn't permit Ms. Brown to attend.
18 Did Mary Tracey-Walsh attend these meetings at all?

19 A. No. She never attended the meetings
20 because she came -- you see, it was just management.
21 And she became the assistant chief at the same time
22 that he was appointed to the chief, that being in
23 two-thousand -- I think it was January of 2005 or
24 February of 2005 that she was appointed.

1 Q. Okay.

2 A. All right. Mr. Rush used to tell his
3 employees, and I know in particular he used to tell
4 Mary Tracey-Walsh, "You don't work for Judge
5 Coffey" -- excuse me. "We don't work for Judge
6 Coffey. We work for the commissioner of probation."
7 And I spoke to Mark McHale about that attitude, but
8 I think that's indicative of his -- the way he
9 interacted with me and his world view of the
10 probation department and how it fit into the trial
11 court system.

12 Q. Now, Mr. Rush announced his retirement in
13 the middle of 2006. How did you learn about that?

14 A. I don't know. I don't have a memory of how
15 I learned about his retirement. He didn't have the
16 courtesy to come up and tell me that he was
17 retiring. I heard it through secondhand sources.
18 So I in turn called him, had him come up to the
19 lobby, sat down with him, extended my hand, said,
20 you know, "I wish you the best. It's been very nice
21 working with you," and I do have a memory of that.
22 But he -- and at that time he affirmed what I had
23 heard through the rumor mill, but he never informed
24 me directly. It was -- I learned through a

1 secondhand source.

2 Q. With respect to this report, did you hear
3 that the investigation had ended?

4 A. That was my sense. I did hear that. The
5 investigation had taken longer than, I think -- than
6 certainly I thought it would, but that was my sense:
7 That once he retired, then that was the end of the
8 investigation.

9 Q. And did you feel that was appropriate?

10 A. No.

11 Q. Did you make those feelings known to anyone
12 in the administrative office of the trial court?

13 A. No, nor was I asked my opinion by anyone in
14 the administrative office concerning that.

15 Q. I'm going to ask you to turn back to
16 Exhibit 1 and look at Page 19. On the bottom
17 paragraph on that page is a summary, and I would
18 like you to read that and tell me if that is an
19 accurate account of what you recall saying to
20 Ms. Dandridge.

21 A. (Witness reviews document) Including Page
22 20?

23 Q. Yes.

24 A. Yes.

1 Q. I notice that certain of the terms here
2 such as "positive," "productive," and "professional"
3 are in italics. Do you believe you emphasized
4 those?

5 A. Those are my exact words.

6 Q. Did you write this down and -- did you
7 write something down and give it to Ms. Dandridge or
8 is this a conversation?

9 A. No. That's a conversation.

10 Q. Okay.

11 A. That's a conversation. No, I didn't
12 prepare any statement, I mean written statement to
13 her.

14 Q. Now, at the time -- at sometime after
15 Mr. Rush became the chief probation officer a
16 decision was made to appoint a first assistant?

17 A. Yes.

18 Q. And am I right that previously the court
19 had not had a first assistant?

20 A. That's correct.

21 Q. Were you involved in the decision to
22 appoint a first assistant?

23 A. Yes.

24 Q. How did it come about? Did you originate

1 the idea? Did it come from the probation officer or
2 something else? I'm not putting words in your
3 mouth. I'm just interested in the genesis of that.

4 A. When I was informed that Jim Rush was
5 Commissioner O'Brien's choice for the position of
6 chief, I had a conversation with him about my
7 concerns concerning his ability to be a good chief,
8 and my concern at that time had nothing to do with
9 his treatment of women. My real concern had to do
10 with his work ethic and his lack of innovation, and
11 I also had a concern that he did not have a strong
12 belief or recognition of the importance of community
13 supervision. In the many conversations that I had
14 had with Mr. Rush, he held firm to the belief that
15 probation officers should be in their offices behind
16 the desk and probationers should be seen within the
17 confines of the probation office, and this was in
18 conflict to the whole focus and tenor and energy of
19 Jack O'Brien's department. I have the utmost
20 respect for Commissioner O'Brien, and he has done a
21 phenomenal job in terms of taking the probation
22 department in a whole new direction, and I had an
23 appreciation of the responsibilities of the job and
24 the talent and work that would be necessary in order

1 to fulfill the mission of the probation department.
2 I had real reservations about Mr. Rush, and I spoke
3 to Commissioner O'Brien about those reservations.

4 I was later informed either by -- I think
5 it might have been by either Liz Tavaréz or Mark
6 McHale that a position would be created of first
7 assistant's position to assist Mr. Rush, in essence
8 to act as a support system for him, recognizing the
9 demands and the responsibilities of being chief.
10 West Roxbury is one of the busiest courts in Suffolk
11 County. And the probation office does a terrific
12 job, but it's a very demanding clientele that we
13 serve. So that is my understanding of how
14 that -- how and why that position was created.

15 Q. So is it fair to say that you agreed with
16 the creation of the position?

17 A. Very much so.

18 Q. Are you aware that Crystal Young and Helen
19 Brown filed charges with the Commission Against
20 Discrimination?

21 A. Yes.

22 Q. Do you recall how you heard about that, how
23 you learned about that?

24 A. I don't remember.

1 Q. Was there any talk at the courthouse that
2 you heard about them having filed?

3 A. Was there talk?

4 Q. I hate to say "gossip."

5 A. There may have been.

6 Q. Comments about it that you heard?

7 A. No. I remember I learned that they had
8 filed, and my understanding was they had filed in
9 large part because of their frustration with the
10 report that had been generated by Mira Dandridge.

11 Q. Who did you hear about that frustration
12 from?

13 A. I don't -- I don't have a memory of who
14 told me, but that was my understanding, that that
15 was the next step for them.

16 Q. Once they had filed those charges, did you
17 observe any change in the behavior within the
18 department -- the probation department toward them?

19 A. No. Unfortunately, it was a continuation
20 of that negative treatment that they were receiving
21 from Jim Rush. So there wasn't a change. It was a
22 consistency but in a bad way, in a negative way.

23 Q. And at some point did you hear that they
24 had filed this lawsuit?

1 A. Yes.

2 Q. Do you recall how you learned of that?

3 A. No, I don't.

4 Q. Do you recall whether you heard any
5 comments about them having filed the lawsuit?

6 A. Yes.

7 Q. What comments did you hear, and if you can,
8 from whom?

9 A. I don't have a -- I try -- as the First
10 Justice I do my best not to get involved in -- I
11 don't want to say idle gossip because it's not where
12 it involves a violation of someone's rights. So I'm
13 not trying to minimize it, but at the same time, as
14 the First Justice, I did not at any time encourage
15 them to go forward and to file a lawsuit. At no
16 time did I encourage them to seek a legal remedy,
17 but I was always open and supportive of their
18 position.

19 So in terms of when did I learn, I don't
20 remember. They may -- Helen or Crystal may have
21 told me directly, but I don't have a memory today
22 about when it happened or who I learned it from. I
23 know that once it did occur, there was a lot of buzz
24 around the courthouse and, unfortunately, there was

1 a sense of polarization, and that's one of the
2 challenges that I've had to address within the
3 courthouse since this all occurred. And then there
4 was another event that, unfortunately, put a further
5 tailspin on this whole situation, and that had to do
6 with the naming of the rotunda in the West Roxbury
7 court as the Rush Rotunda.

8 Q. We'll come to that in a couple of minutes,
9 but I wanted to ask you -- you mentioned that there
10 was a division -- there seemed to be a division
11 within the courthouse community, if I may refer to
12 it that way. Did you notice that before the
13 complaint was filed with the Affirmative Action
14 Office?

15 A. No, I didn't.

16 Q. Did you then notice it after Ms. Young and
17 Ms. Brown filed their charges, either the charge
18 with the MCAD or the lawsuit?

19 A. It happened sometime after. It's one of
20 those things I can't give you a particular date and
21 time because you're talking about people's
22 attitudes, and they evolve over a period. So I
23 can't answer that. I mean, there was a change, but
24 I can't tell you with any specificity in terms of

1 when it occurred. Did it happen after the
2 lawsuit -- after this whole -- after the filing and
3 speaking to Mira Dandridge? Most definitely,
4 because she went -- as you see in her report, she
5 went and spoke to people. And so that identified
6 the issue and made it a -- and a controversy within
7 the courthouse.

8 Q. Now, did you have a meeting -- before I get
9 into that. After Mr. Rush was -- Mr. Rush's
10 retirement, Mark Prisco was appointed as the acting
11 chief probation officer; is that right?

12 A. Yes.

13 Q. And Mr. Prisco had been the first assistant
14 chief; is that correct?

15 A. Correct.

16 Q. Had you known him before he came to the
17 West Roxbury Court?

18 A. Yes.

19 Q. And how did you know him?

20 A. Before I came to West Roxbury I was
21 assigned to Dedham for almost three years, Dedham
22 District Court, but just as an associate justice.
23 And he at the time had worked at Dedham for part of
24 that time. So I knew him just as a line probation

1 officer and just strictly within the confines of the
2 office. I didn't know him from the outside or
3 anything.

4 Q. Did you have any part in the process by
5 which he was appointed the first assistant?

6 A. Yes.

7 Q. What was your part in that process?

8 A. If I remember correctly, it was Mark
9 McHale -- I had a vote, so to speak. It's an
10 interesting process because a posting occurs, people
11 apply, and then there are rounds of interviews and
12 candidates are selected, but the ultimate decision
13 is made by Commissioner O'Brien. So he interviewed,
14 and I was one of the interviewers, one of -- it was
15 either three or four. I don't recall now. But I
16 was one of the interviewers and made certain
17 recommendations. And then what happens is that a
18 slate goes up. I believe it's -- I think it's
19 either like the top five or the -- you have to rank
20 all of the candidates, and then the top five are
21 viewed as viable choices and -- so I was involved to
22 that extent. I had a voice but not -- but I was not
23 the ultimate decision-maker.

24 Q. And did you have any say in Mr. Prisco's

1 appointment as the acting chief after Mr. Rush's
2 retirement?

3 A. No. I did not have any say, no.

4 Q. Was that done by the commissioner's office?

5 A. Right, right.

6 Q. Now, after Mr. Rush retired, did you have a
7 meeting with Mr. Prisco and some other people to
8 talk about the situation in the department?

9 A. I did.

10 Q. Did you call that meeting?

11 A. I must have because that's the only way the
12 meeting would come about. There was a real
13 controversy with the retirement of Mr. Rush. A
14 party was held, a retirement party, and Mr. Prisco
15 was one of the organizers and not everybody was
16 invited to the retirement party. Invitations were
17 given out without my knowledge or consent within the
18 courthouse during work hours.

19 So it was the type of thing -- it was
20 almost going back to junior high where some people
21 got an invitation and some people didn't. So that
22 was -- I know I had a meeting after the retirement
23 party to address that and to address ways that we
24 could work together in a cooperative collaborative

1 fashion and to attempt to heal any wounds or
2 divisions that had been created or had occurred
3 under Mr. Rush's supervision.

4 Q. Who was at that meeting?

5 A. I don't have a memory of who was at the
6 meeting, but I know I did have a meeting.

7 Q. Was Mr. Prisco there?

8 A. Oh, obviously, yes.

9 Q. Was Ms. Brown there?

10 A. I don't have a memory of it. But I know I
11 did specifically address with Mr. Prisco the
12 retirement party and the importance of healing old
13 wounds and moving forward in a fresh direction.

14 Q. Did you discuss with him ways in which to
15 heal the wounds, you know, or move forward?

16 A. He and I both agreed that the salve would
17 be to treat people with respect and with courtesy.
18 So we did discuss it in that regard.

19 Q. And did you observe changes in the -- in
20 behavior within the probation department following
21 that meeting?

22 A. Yes. One of the big things was going back
23 to the Reinventing Justice program. Mary
24 Tracey-Walsh had been forbidden to participate in a

1 community outreach program that we have with the
2 public and parochial schools for 5th and 6th
3 graders. He had taken that away. Mr. Rush had
4 taken that away and prohibited her from actively
5 participating in that, and she was -- just as Helen
6 had been a founder for the women's -- for the
7 Mothers program, Mary Tracey-Walsh was one of the
8 founders for the Straight Ahead program. So in
9 stripping her of that authority he was sabotaging
10 the program on many levels.

11 Once Mr. Prisco was named the acting, Mary
12 was able to assume that responsibility. So that was
13 restored to her, and she was allowed to fully
14 organize and have the active role that she had had
15 for years.

16 Q. One of the issues that I understand had
17 come up during Mr. Rush's tenure was compensatory
18 time.

19 A. Yes.

20 Q. Was that something that women in the
21 probation department had discussed with you?

22 A. Helen and Mary had, yes, not Crystal.
23 Helen and Mary had both discussed that with me.

24 Q. Was it your understanding for certain work

1 they were entitled to compensatory time?

2 A. Yes.

3 Q. Did you ever discuss that issue with
4 Mr. Rush?

5 A. I did.

6 Q. And what did -- tell me the tenor of the
7 discussion.

8 A. The tenor of the discussion focused
9 primarily -- compensatory time is valued by
10 probation officers. When probation officers work
11 additional hours or outside of the building beyond
12 the regular work schedule, the trial court isn't in
13 a position to pay them overtime. So in exchange for
14 that compensation, comp. time as it's commonly
15 referred to, is awarded to individuals. And it's
16 highly valued by all the probation officers, and the
17 reason why it's highly valued is because it provides
18 them some flexibility in their schedule.

19 So when you take that away from an
20 individual, you're dramatically changing their work
21 schedule and their ability to meet outside
22 responsibilities. It's a real benefit. You're
23 depriving somebody of a benefit when you take away
24 their ability to accrue comp. time.

1 And I sat down with Mr. Rush and explained
2 that to him and spoke to him about the importance of
3 comp. time. His response was that he wanted his two
4 assistant chiefs within the building at all times.
5 And he was concerned that if they had comp. time,
6 that they would be out of the building and they
7 wouldn't be doing their job as supervisors.

8 Q. Did you discuss this before Mr. Rush's
9 departure with anyone downtown at the --

10 A. With Mark McHale I did, yes. That was one
11 of the chief complaints that Helen and Mary had.

12 Q. What was Mr. McHale's view of how comp.
13 time should be assigned or not assigned to the
14 assistant chiefs?

15 A. I don't have a memory of that. I know that
16 he did address it and I know there were meetings
17 that were held, but I don't have a memory of his
18 view.

19 Q. Now, Mr. Prisco was appointed as the chief
20 probation officer?

21 A. Acting.

22 Q. After he was the acting he --

23 A. Right.

24 Q. Was that as a result of the open posting

1 process?

2 A. Yes.

3 Q. So it was the same as it would be if
4 someone left the job and there were no acting person
5 appointed; is that right?

6 A. Exactly.

7 Q. Now, Ms. Brown was one of those who applied
8 for the chief's job; is that right?

9 A. Yes.

10 Q. Were you on the interviewing committee?

11 A. I was.

12 Q. Do you recall who else was on that
13 committee?

14 A. For the chief's position it was Judge
15 Driscoll, Judge Mary Ann Driscoll. It was Mark
16 McHale, and it was Francis Whall, the four of us.

17 Q. Who was Mr. Whall?

18 A. He works for Commissioner O'Brien. And I
19 don't know his title, but he is -- my understanding
20 is he's superior to Mark McHale.

21 Q. For the record, before you identify this
22 document, this is a four-page assembly. It's four
23 separate documents that we've stapled together to
24 offer as a batched exhibit, and they are forms that

1 are headed "Candidates Listed in Order of Rank for
2 Position of Chief Probation Officer West Roxbury
3 BMC." I think that will be No. 9.

4 (Document marked as Coffey
5 Exhibit 9 for identification)

6 Q. Now, Judge, before I actually question you
7 on this, did you regard Ms. Brown as being competent
8 for the position of chief probation officer?

9 A. Yes.

10 Q. Had she applied for that position in the
11 round of when Mr. Rush was named as the chief?

12 A. I don't remember.

13 Q. Let's go forward. You notice that the
14 names of the committee members who filled out --

15 A. I'm sorry. She did.

16 Q. That's right, she did.

17 A. She did.

18 Q. And did you -- were you on that committee
19 as well?

20 A. Yes.

21 Q. Did you regard her as competent at that
22 time?

23 A. Yes.

24 Q. As I was saying, in Exhibit 9 the names of

1 the particular committee members who filled out
2 these four pages have been blacked out. I'm going
3 to ask you if you can identify one of these sheets
4 as yours?"

5 A. I can tell by the handwriting. This is
6 mine (indicating), the third one in.

7 Q. This is one that says "Helen Brown" in the
8 No. 2 position?

9 A. Uh-huh.

10 Q. Do you know where you ranked Mr. Prisco?

11 A. No, I don't.

12 MS. WERNER: Can we go off the record for
13 just a minute?

14 MR. MARGOLIS: Certainly.

15 (Recess taken from 11:25 to 11:30 a.m.)

16 (Document marked as Coffey

17 Exhibit 10 for identification)

18 Q. Judge Coffey, what we've just identified as
19 No. 10 is a sheet that has -- it says, "Interviews"
20 on it, but there are certain percentages written
21 next to the names of the apparent interviewees.
22 Have you seen this document before?

23 A. No.

24 Q. Do you know what the percentages are?

1 A. No.

2 Q. And then am I right that you didn't prepare
3 this?

4 A. Correct.

5 Q. Now, after Mr. Prisco was appointed as the
6 chief probation officer, there was a vacancy for the
7 first assistant's position; isn't that right?

8 A. Correct.

9 Q. Were you again on the committee that
10 considered applicants for that position?

11 A. Yes.

12 Q. Concentrating on the first assistant's
13 position now, do you believe that management
14 experience is an important asset for a first
15 assistant?

16 A. Yes.

17 Q. And do you think it's important for someone
18 coming in either as -- I suppose either as a chief
19 or as an assistant chief to be familiar with a
20 particular court?

21 A. It's not -- it's a factor to be considered,
22 but it's not a disqualifier to have somebody from
23 the outside come in, but certainly it's a factor to
24 be considered.

1 Q. And do you feel that it's important for an
2 applicant to have a knowledge and perhaps contact
3 with the particular community that the court serves?

4 A. It's important, but, again, it's not a
5 disqualifier if someone doesn't have that knowledge
6 coming in.

7 Q. Now, Ms. Brown was one of the candidates
8 for this position; is that right?

9 A. Right, right.

10 Q. Would you tell me in your view as someone
11 who was on this interviewing committee Helen Brown's
12 strengths as a candidate for the first assistant's
13 position?

14 A. Her strengths were her experience, her
15 dedication, and her work ethic.

16 Q. And what, if any, do you view as her
17 weaknesses?

18 A. I don't know if it was -- if I would
19 characterize it as her weakness, but it was also
20 factored in this whole equation -- I don't think you
21 can just look at it in terms of what's her strength,
22 what's her weakness, do the strengths outweigh the
23 weakness. I didn't look at it that way.

24 Of weakness, not necessarily of Helen but

1 of the situation, was the fact that the first
2 assistant was going to have to work very closely
3 with the chief, and in essence, the way I see it,
4 almost act as like a vice-president to a president.
5 So there was going to have to be a strong working
6 relationship between the chief and the first
7 assistant.

8 Q. Now, the chief in this case was Mark
9 Prisco; isn't that right?

10 A. Correct.

11 Q. And did you believe that Mr. Prisco and
12 Ms. Brown did not have a strong working
13 relationship?

14 A. Correct.

15 Q. What's the basis for that belief?

16 A. My general sense and observation about the
17 way the two of them interacted. I think that there
18 was some disappointment on the part of Helen when
19 she did not receive the position of chief of
20 probation. I think there also was a level of
21 resentment.

22 Q. On her part?

23 A. On her part.

24 Q. Before Mr. Rush's retirement did you have a

1 chance to observe the working relationship between
2 Mr. Prisco and Ms. Brown?

3 A. Yes.

4 Q. How would you characterize that
5 relationship?

6 A. Before his retirement?

7 Q. Yes.

8 A. Mr. Prisco was very loyal to Jim Rush.

9 Q. Do you believe that had an effect on his
10 working relationship with Ms. Brown?

11 A. Yes.

12 Q. In the period of time that Mr. Prisco was
13 the acting chief probation officer, did his
14 relationship with Ms. Brown, as you were able to
15 observe it, change?

16 A. No.

17 Q. Did you speak to him about that?

18 A. I did.

19 Q. What did you say to him? What did he say
20 to you?

21 A. Mark Prisco has always been courteous in my
22 presence and respectful in my presence to Helen
23 Brown and everyone who he has supervised. It was a
24 tense, and continues to be a tense, situation for a

1 variety of reasons. One of them, of course, is this
2 lawsuit, and the other is the overriding presence of
3 Representative Mike Rush and his perceived influence
4 within the probation department.

5 Q. Representative Rush is related to James
6 Rush; is that right?

7 A. Yes.

8 Q. Is he James Rush's son?

9 A. Yes.

10 Q. How has his influence been felt to your
11 observation within your courthouse?

12 A. It has been present throughout the pendency
13 of this lawsuit. It has surfaced with intensity
14 surrounding certain events. The retirement party it
15 certainly surfaced. And then the whole rotunda
16 celebration, it was probably at its peak, but it
17 continues to be present.

18 Q. How did it make its presence known in the
19 context of the retirement party?

20 A. It was my understanding that he met with
21 Mr. Prisco at the courthouse. People would tell me
22 that they saw him at the courthouse, and he was
23 involved in selecting who would be invited, who
24 would not be invited, that type of dynamic.

1 Q. By the way, you mentioned that invitations
2 to the retirement party were distributed during
3 working hours?

4 A. Yes.

5 Q. Did you believe it was improper to
6 distribute the invitations during working hours?

7 A. Absolutely.

8 Q. Would that have been the case even if
9 everyone were invited?

10 A. No. If you're going to invite everybody,
11 then that's fine, but if you're going to exclude
12 individuals, that just causes further division and
13 resentment and hard feelings. And on a very human
14 level we all like to think that we have friends and
15 that we're welcome and that we're wanted. So on a
16 very human basic level to invite somebody and
17 exclude somebody else, that contradicts everything
18 that the trial court should be about, and it creates
19 a very negative, hostile working environment.

20 Q. This is probably obvious, but I should ask
21 it. Were Ms. Brown, Ms. Tracey-Walsh or Ms. Young
22 invited to the retirement party, to your knowledge?

23 A. No, they weren't invited, nor was I.

24 Q. Were some of your fellow justices invited?

1 A. No.

2 Q. At least they excluded all of you?

3 A. Well, actually the only one who did appear
4 was Chief Justice Johnson.

5 Q. He's the chief justice of the district
6 court?

7 A. No. Of the Boston Municipal Court.

8 Q. Thank you. Now, if we can return to the
9 appointment of a first assistant in 2006 I believe
10 it was -- 2007.

11 A. Okay.

12 Q. The ultimate appointee was Anh Vu?

13 A. Correct.

14 Q. When did you first meet him?

15 A. During the interview process.

16 Q. Had you heard anything about him before
17 that?

18 A. No.

19 Q. Would you summarize for me -- and it may be
20 difficult because we're going back -- it's almost
21 three years now, and I know you've had the
22 experience with him since then -- but to the extent
23 that you can focus on him as a candidate, what were
24 his strengths and what, if any, weaknesses did you

1 perceive?

2 A. His strengths were in essence to me he
3 epitomized the whole American success story: An
4 immigrant from Vietnam, came to this country, worked
5 hard, was raising a family, was committed to
6 community supervision, committed to working with the
7 people of all backgrounds and all different --
8 whether they were citizens or noncitizens, and I
9 thought that that was probably one of his strengths,
10 his chief strength because the West Roxbury
11 Court -- we serve a lot of immigrants newly arrived,
12 a lot of illegals, however you want to characterize
13 it. Many of the people who we supervise as well as
14 many of the people within our jurisdiction are not
15 citizens or have just been here for a short period
16 of time. So I saw that as a real strength, that he
17 would bring to the department a certain awareness
18 and sensitivity to the needs of immigrants.

19 Q. Did you perceive any weaknesses that you
20 can recall?

21 A. His -- he didn't have as much experience as
22 I would have preferred. I don't think -- I think he
23 had been -- I know he came from East Boston. I
24 don't have a -- I don't think he had been an

1 assistant chief. So in terms of his management
2 skills, that was -- they weren't as strong as
3 ideally I would have liked, but he had that other
4 strength.

5 Q. And I think we -- I don't think there's any
6 dispute that Mr. Vu is originally from Vietnam?

7 A. Right.

8 Q. And I think some of the documents produced
9 will suggest that he is fluent in Vietnamese. Is
10 there a significant Vietnamese population that uses
11 the West Roxbury Court?

12 A. No.

13 (Document marked as Coffey
14 Exhibit 11 for identification)

15 MR. MARGOLIS: This will be No. 11.

16 Q. This document is similar to Exhibit 9 in
17 being a ranking sheet, and can you identify for us
18 which of these sheets is yours?

19 A. I don't remember five people being involved
20 in the selection process.

21 Q. That was going to be one of my questions.
22 Can you recognize your handwriting on any of the
23 ones --

24 A. I do. I recognize mine as the second one.

1 Q. The second one, okay. So you ranked Mr. Vu
2 second and Ms. Brown third?

3 A. Right.

4 Q. Do you recall who you ranked first?

5 A. No.

6 MR. MARGOLIS: Ms. Werner when we were off
7 the record suggested that she thought she gave
8 me -- she produced an unredacted version of the
9 sheets that are in Exhibit 9. I suspect that
10 perhaps that's true in Exhibit 11, but if it isn't,
11 I haven't located them yet. We may come up with
12 them. I'm not blaming you, Ms. Werner. I'm blaming
13 my perhaps failure to go through all of the
14 supplemental production with sufficient care.

15 Q. Now, again, with respect to the first
16 assistant position, was that choice ultimately made
17 by the commissioner's office?

18 A. Yes.

19 (Document marked as Coffey
20 Exhibit 12 for identification)

21 Q. Take as much time as you need to read that,
22 Judge.

23 A. (Witness reviews document) Okay.

24 Q. Exhibit 12 appears to be a letter from

1 Helen Brown to Leslie Harris, Associate Justice,
2 who's listed as the chair of the Race and Ethnic
3 Advisory Board. I ask you have you seen this letter
4 before?

5 A. No.

6 Q. Were you aware that Ms. Brown had written a
7 letter such as this?

8 A. No.

9 Q. Am I right, then, that you did not hear
10 from Justice Harris or anyone on behalf of the
11 board?

12 A. Correct.

13 Q. I'm going to show you what we've previously
14 identified as Exhibit 6 which is Crystal Young's
15 responses to the Defendants' interrogatories, and
16 I'd ask you to turn to Page 11. At the bottom of
17 Page 11 you'll see -- well, actually, Page 11, the
18 whole page, which is a response to Interrogatory No.
19 13 which is on Page 10, I would like to direct your
20 attention particularly to the bullet point at the
21 bottom of Page 11 with respect to remarks made by
22 Assistant Clerk Magistrate Robert Fitzgerald that
23 are reported here.

24 Were you aware of tension between

1 Mr. Fitzgerald and Ms. Young?

2 A. Yes.

3 Q. And have you addressed that with anyone?

4 A. No. Mr. Fitzgerald had tensions with
5 several individuals.

6 Q. Is he still with the court?

7 A. No. He retired.

8 Q. When did he retire?

9 A. A year ago.

10 Q. When you say "several individuals," were
11 they all women?

12 A. No.

13 Q. And then if you look at the top bullet
14 point on Page 12 respecting Court Officer Joseph
15 Flanagan, were you ware of any problems between
16 Ms. Young and Mr. Flanagan?

17 A. No. Mr. Flanagan's son works for the
18 commissioner of probation.

19 Q. In the West Roxbury Court or another court?

20 A. No. In I believe it's the Office of
21 Community Corrections.

22 Q. Now, at the bottom of Page 12 is a
23 reference to the naming of the rotunda of the
24 courthouse after Mr. Rush, and you had referenced

1 that briefly before. How did that come about; do
2 you know?

3 A. I do. It came about as a result of the
4 representative and one of his colleagues in the
5 House of Representatives passing legislation naming
6 the rotunda in honor of his father. The retirement
7 party occurred in the early fall of 2005, and the
8 act of the legislature was passed, I think, like,
9 about three or four months later. So it was an act
10 of the -- it originated in the House of
11 Representatives and then, of course, as we all know,
12 the Senate approved it --

13 Q. And --

14 A. -- and the governor.

15 Q. So this was an actual statute?

16 A. Yes.

17 Q. Were you aware that this was ongoing before
18 it was passed? Did you know it was being
19 considered?

20 A. I had read about it in the newspaper, in
21 the local newspaper. Representative Rush serves the
22 district that I live in.

23 Q. And did you speak to him about this?

24 A. About the act itself?

1 Q. Before it was passed.

2 A. No, not before it was passed.

3 Q. Did you speak to him afterwards?

4 A. Yes.

5 Q. And what did you say to him and what did he
6 say to you?

7 A. It was not an amicable conversation. I had
8 learned through Chief Justice Mulligan that
9 Representative Rush and the trial court were
10 planning a celebration and the dedication of the
11 rotunda. Initially it was planned for June of 2007.
12 The Rush family, and the representative in
13 particular, had told Chief Justice Mulligan that
14 they did not want me to participate at all in the
15 celebration.

16 Q. How did you learn that?

17 A. From Chief Justice Mulligan. That they did
18 not want my name on the invitation. They did not
19 want me to be present and that they -- most
20 importantly, if I were going to be present I was not
21 to speak. This became known throughout the
22 courthouse that these -- not through me, but I
23 inferred or concluded that this position was being
24 promoted by Representative Rush and/or his father in

1 terms of letting everyone know that there was this
2 controversy that was brewing. Chief Justice
3 Mulligan, to his credit, was very firm with the
4 representative and told him that indeed I had to
5 participate since I was the First Justice, and they
6 wanted the celebration to take place in the court.

7 Originally Representative Rush and his
8 family wanted the dedication to occur during court
9 time. I pointed out to Chief Justice Mulligan that
10 I thought that that was extremely inappropriate
11 where this lawsuit was pending. I don't know if
12 this particular lawsuit was pending, but I knew that
13 legal action had taken place. I, of course,
14 recognized that a dedication and a recognition of
15 his service was appropriate, but I didn't -- I was
16 very firm in my position that it shouldn't take
17 place during work time because it had the potential
18 to create an environment of negativity and hostility
19 towards the individuals who had filed suit against
20 Mr. Rush. This went back and forth, back and forth.
21 According to my sources, the Rush family would not
22 back down. They were very adamant that they did not
23 want me to participate.

24 Judge Mulligan assigned the project to

1 Chief Justice Johnson, and then I began to speak to
2 Chief Justice Johnson about this whole project.
3 It's my understanding that typically when a
4 dedication occurs in a courthouse there is a state
5 office that is involved and determines where the
6 plaque is going to take place, what's going to be on
7 the plaque. That procedure was not adhered to in
8 this case. And the Rush family had complete control
9 over what was going to be placed on the plaque.
10 There was also a controversy during this whole time
11 about where the plaque was going to be placed.

12 Again, going back to our Reinventing
13 Justice project, we had been working on a project
14 with Dot Art which is a community group for young
15 artists, and we had partnered with them. And I had
16 actually gotten a grant from the Mass. Bar
17 Association to have high school students collaborate
18 with students who were on probation in the court and
19 to create murals, giant murals, 12 by 5 in size, 12
20 feet by 5 feet in size. And those murals were close
21 to completion, and they were going to be hung in the
22 rotunda. And Representative Rush wanted the plaque
23 in a place where the murals were going to be hung.
24 So that created more controversy and turmoil.

1 In June of 2007 when the celebration was
2 scheduled to go forward, Mr. Rush, unfortunately,
3 fell into some bad health and so the celebration was
4 canceled, and then it was rescheduled in April of
5 2008. So there was this hiatus where the
6 controversy subsided but then it reared again. I
7 learned that Representative Rush about a month
8 before -- so it would have been in March of 2008, I
9 learned that Representative Rush was in the
10 courthouse, and this was not unusual. I had heard
11 through different sources that he would come and
12 meet with Mr. Prisco and then leave, but nobody
13 would inform me that he was in the building, again,
14 fueling into this whole division. So I sought him
15 out. And he was in the clerk's office, and I asked
16 him if I could have a word with him in private. And
17 initially he said no, and then he agreed. And we
18 went upstairs to my lobby, and it was just the two
19 of us.

20 Now, I know Representative Rush for all the
21 reasons that I stated. I used to live around the
22 corner from the family. He is my representative.
23 We also attend the same church. We have a lot of
24 mutual friends. It's a small community. My exact

1 words to him were -- I said, "Mike, I want to extend
2 the olive branch to you. I want the celebration to
3 honor your father. I want it to be respectful and
4 to give him the credit that he deserves for his
5 years of service." I said, "I also want it to be
6 inclusive. I want all members of the West Roxbury
7 Court family to feel welcomed and to feel like full
8 participants." I said, "This is a time for you and
9 me and your father," I said -- "not you and me." "I
10 have no differences with you. I have never done
11 anything to you." I had very limited interaction
12 with him. But "I would like to put any differences
13 that I may have, any real or perceived differences
14 with your father, put them aside and go forward, not
15 for my sake but for the sake of the court." I said,
16 "And that's what I'm asking you to do." And he
17 looked at me and he said, "My family will never
18 forgive or forget what you and those women did to my
19 father." I said, "What are you talking about?" And
20 he said, "You're the one who put those women up to
21 filing suit against my father. You could have
22 stopped their action." I said, "Mike, you don't
23 know what you're talking about. You were not here.
24 You did not observe the way your father interacted

1 or worked with the female employees." And then he
2 went on to say, repeat, "My family will never forget
3 what you did," and that's how we ended it. So
4 needless to say, there wasn't a reconciliation.

5 Q. And have you had occasion to speak to
6 Representative Rush since then respecting any of the
7 events that are involved in this lawsuit?

8 A. No.

9 Q. You mentioned that you heard reports that
10 Representative Rush had met with Mr. Prisco a number
11 of times?

12 A. On a regular basis.

13 Q. Have you ever spoken to Mr. Prisco about
14 those meetings?

15 A. Yes.

16 Q. And did any of the -- well, let me try and
17 reform the question. Did you learn whether any of
18 those meetings had to do with any of the issues
19 relevant to this lawsuit?

20 A. No.

21 Q. I would like to jump forward.

22 (Document marked as Coffey

23 Exhibit 13 for identification)

24 Q. Judge, No. 13 is a sheet headed "What Anger

1 Does to People." Have you ever seen this before?

2 A. Yes, I have.

3 Q. And do you recall when you first saw it?

4 A. I saw it -- Helen Brown brought it to me in
5 October of 2008.

6 Q. And what did she tell you when she gave it
7 to you?

8 A. She told me that it had been placed in her
9 office totally unsolicited.

10 Q. Did you have any dealings with anyone in
11 the probation department, other than Ms. Brown,
12 concerning this sheet?

13 A. I did.

14 Q. Who did you have some dealing with?

15 A. Chief Prisco and Probation Officer William
16 Joyce.

17 Q. Would you tell me what the nature of your
18 discussion with them was?

19 A. Ms. Brown saw this as evidence of
20 harassment once she learned that Mr. Joyce had
21 placed it in her office. Mr. Joyce had and
22 continues to be open about his political support of
23 Representative Rush, and the placement of this by
24 him in particular Ms. Brown viewed as an extension

1 of the Rush family and in particular Jim Rush and
2 his son.

3 Q. And did you have a meeting with both
4 Mr. Prisco and Mr. Joyce?

5 A. I did. First Helen came to me. She voiced
6 the complaint, and then I met with Mr. Prisco and
7 Mr. Joyce.

8 Q. Who said what to whom at the meeting
9 between you and Mr. Prisco and Mr. Joyce?

10 A. Well, essentially I saw it as a
11 fact-finding mission. So I just asked him, first of
12 all, did he place the poem, or if you want to
13 characterize it as such, in her office, and he
14 admitted that he did. I then asked him had he
15 singled her out or whether this had been placed in
16 other offices. And the best of my memory he said
17 that he had put it in other offices but not all of
18 the offices, and he denied any intent to harass or
19 intimidate her.

20 I explained to him how his intentions were
21 just one aspect or one factor that I had to look at,
22 and I also explained to him that the importance of
23 his actions on the -- I don't want to say
24 victim -- but the person who he is directing his

1 contact towards, the importance of being more
2 sensitive and aware of the effect his conduct could
3 have on others. The trial court at that time had
4 recently passed a sexual and gender harassment
5 policy. I believe it was February of 2008 that that
6 was actually passed, and the trial court had engaged
7 in a whole series of trainings for all employees,
8 judges, managers, probation officers, clerical. So
9 this was something that was very prevalent within
10 the trial court, this need to be sensitive to the
11 response your actions can have on others in a
12 workplace.

13 So I pointed out to Mr. Joyce and to Chief
14 Prisco the importance of his and all of us in being
15 more aware of what our actions can do towards
16 others. I didn't think that this rose to the level
17 of an infraction of that policy and so -- and I made
18 that determination based in large part on the
19 representations of Mr. Joyce who I believed was
20 sincere with me when he said that he didn't intend
21 any harm.

22 Q. And did Mr. Prisco say anything during that
23 meeting?

24 A. I don't have a memory of -- well, he did.

1 After the meeting he assured me that Billy Joyce
2 didn't mean any harm and how hardworking he was, and
3 he affirmed his position within the probation
4 department, which I agree with. I mean, Mr. Joyce
5 is a very hardworking, dedicated probation officer.
6 So this was the type of innocent -- type of incident
7 that I attributed to just a misunderstanding that
8 can occur among co-workers, and that's why I didn't
9 take any additional steps other than to impress upon
10 Mr. Joyce the importance of being more sensitive and
11 aware of his actions.

12 (Document marked as Coffey

13 Exhibit 14 for identification)

14 Q. Judge, have you seen this document before?

15 A. Yes.

16 Q. I notice that you're copied at the bottom
17 of it. Do you know why you were copied as an
18 addressee in this memorandum?

19 A. No.

20 Q. Now, in the second paragraph of this memo
21 there's reference to whether -- I'm going to
22 summarize here -- whether Probation Officer Santos
23 should be paid an extra hour because she worked
24 through lunch. Do you know whether probation

1 officers have been given either pay or compensatory
2 time for working through their lunch hours?

3 A. No, I don't know.

4 Q. And then there's a reference in the next
5 paragraph to a change in the substance abuse
6 program. The phrasing is "you," and "you" would be
7 Ms. Brown, "were informed of my decision to move the
8 court's substance abuse program in a different
9 direction." Do you recall that change?

10 A. Yes.

11 Q. And what was the change that was made?

12 A. Hamilton House was run by Dr. Brown, Bob
13 Brown. And Mr. Prisco came to me in the spring,
14 early spring, late winter, and informed me that
15 there had been a disagreement between him and
16 Mr. Brown -- Dr. Brown and that he had elected to
17 terminate the program. I supported his decision. I
18 didn't challenge him. I accepted it. His reasons I
19 don't remember, but they appeared at that time
20 valid, and I had no reason to challenge or question
21 it. So that was the decision that Chief Prisco
22 made, and I supported him.

23 Q. Was there a new substance abuse program or
24 a changed program that was substituted for the one

1 that was canceled?

2 A. The one -- yes, but I can't tell you the
3 name of it. My understanding is that there is one.
4 It meets at the police station Sunday mornings, and
5 Ms. Santos is still involved, and just recently it
6 was written up in the West Roxbury Bulletin. So it
7 is ongoing. There may have been a period when it
8 wasn't in place, but my understanding is it's back
9 up and running.

10 Q. Now, in this third paragraph there is a
11 statement that Ms. Brown told Mr. Vu and Mr. Prisco
12 that she wanted his decision in writing,
13 presumably -- that "his" being Mr. Prisco's, I
14 assume -- presumably, given the paragraph being
15 about the substance abuse program, presumably the
16 decision about the substance abuse program. Do you
17 know anything improper about asking to have this
18 decision in written form?

19 A. No.

20 Q. In the final paragraph Mr. Prisco wrote,
21 "In closing I will be closely monitoring your
22 supervision of the probation officers in your unit.
23 If this pattern continues, changes will be necessary
24 in order to effectuate a more positive environment

1 as well as adequately meets the needs and the best
2 interests of the probation department." I would ask
3 you do you know what pattern is referred to here?

4 A. No.

5 (Document marked as Coffey
6 Exhibit 15 for identification)

7 A. (Witness reviews document)

8 Q. If you turn back to the first page of
9 Exhibit 15, there's a case discussed there involving
10 electronic monitoring. Are you familiar with that
11 case?

12 A. No. I may be. I might have even been the
13 judge to assign it, but I have no independent memory
14 or knowledge. I don't know what case is being
15 referred to.

16 Q. Fine. If you would look over on Page 3 of
17 the memorandum.

18 A. Last page?

19 Q. Yes.

20 A. Okay.

21 Q. And in the second paragraph it says,
22 starting with the second sentence, "Instead of
23 lengthy discussion of your self-serving interest of
24 acquiring comp. time sitting in your office hours on

1 end with the doors closed and the shades drawn and
2 only periodically leaving your office to check the
3 time sheets of selected staff to record their
4 sign-in/sign-out time, you need to display
5 leadership by reviewing and assisting those under
6 your supervision." I would ask you in your
7 experience with Helen Brown does that describe the
8 person you know?

9 A. No.

10 Q. Have you ever seen Ms. Brown exhibit a wont
11 of leadership?

12 A. No.

13 Q. Have you ever been aware of her not closely
14 supervising probation officers under her command?

15 A. No.

16 Q. In the next paragraph, that is the
17 next-to-last paragraph of this Exhibit 15, the
18 following appears: "The probation officers in the
19 court are aware that, unlike myself, FACPO Vu or
20 ACPO Tracey-Walsh, you will never assist them in
21 presenting a case before the court." In your
22 experience is that an accurate description of
23 Ms. Brown's performance?

24 A. No, it's not.

1 Q. Does she assist probation officers in
2 appearing before the court?

3 A. Yes.

4 Q. Has she appeared before you frequently?

5 A. Yes.

6 Q. Has she been well prepared?

7 A. Yes.

8 Q. Has she carried out her duties as a
9 probation officer or assistant chief probation
10 officer before the court?

11 A. Yes.

12 (Document marked as Coffey
13 Exhibit 16 for identification)

14 Q. Judge Coffey, are you familiar with Exhibit
15 16?

16 A. Yes.

17 Q. It's dated October 14th, 2009, and I'm
18 going to summarize it as a petition concerning
19 Ms. Brown's performance. When did you first see
20 this document?

21 A. October 22nd of this year, 2009.

22 Q. And who brought it to your attention?

23 A. Mr. Prisco.

24 Q. And would you describe the circumstances,

1 please.

2 A. Mr. Prisco left with my secretary at about
3 3:30 in the afternoon a packet of letters and
4 reports with a cover sheet which in essence said,
5 Judge, I'm writing to let you know of Helen Brown's
6 continued negative attitude and my decision to
7 change her work assignment. I read the packet, and
8 within the packet it referenced that Mr. Prisco had
9 received correspondence from 13 employees. I was
10 very concerned with the way it had been presented to
11 me and equally concerned that a decision had been
12 made by him to change Helen Brown's supervision and
13 work responsibilities, in essence a demotion to have
14 her not supervise probation officers.

15 So I called him -- he was still at the
16 court -- and asked him to bring to me in the judges'
17 lobby the correspondence that he had received from
18 13 employees. I asked my colleague, Judge Driscoll,
19 to sit with me during this meeting. I was surprised
20 when Mr. Prisco came up and presented this petition.
21 I believed that there would be 13 separate letters
22 speaking directly independently of the authors'
23 intersections with Helen Brown. Instead I was
24 presented with this, and I would agree with your

1 characterization, this petition, that was signed by
2 13 court employees.

3 Q. Did you ask Mr. Prisco who wrote this?

4 A. I did.

5 Q. What did he respond?

6 A. He told me he did not know who wrote it. I
7 then asked him, "Well, who delivered it to you?"
8 And he refused to divulge the identity of the person
9 who delivered it to him, at which point Judge
10 Driscoll stated, "Well, isn't it fair to infer that
11 whoever delivered it to you had a hand in writing
12 it?" And he agreed, but he refused to share the
13 identity of the person who had delivered the
14 petition to him.

15 Q. Have you spoken to anyone else about this
16 petition?

17 A. Yes.

18 Q. Who else have you spoken to?

19 A. Chief Justice Charles Johnson as well as
20 Chief Justice Mulligan.

21 Q. And what were the nature of those
22 discussions?

23 A. I sent a letter -- this occurred on October
24 the 22nd. I sent a letter that evening. I was

1 bothered by this petition, and I went home and I
2 reviewed the trial court policy on sexual and gender
3 harassment. And my reading of the policy is that I
4 have a very -- I have a vigilant duty, and I agree
5 with that, to make sure that the workplace is free
6 of any hostility or even the appearance of
7 retaliation. And I think that that policy is also
8 very clear about my obligations and duties as a
9 First Justice to report even the appearance of
10 impropriety or any violations of the policy.

11 So it was with a very heavy heart that I
12 wrote to Judge Johnson in a letter, in a written
13 letter, and I attached the petition that I had
14 received and identified it as potential violation.
15 Whether or not it is a violation, I don't know, but
16 I was concerned about the appearance of the petition
17 as well as the effect it could have on the
18 environment.

19 During the conversation with Mr. Prisco I
20 also asked him whether he had informed Helen of the
21 petition, and he stated he had not. And I told him
22 in fairness to her that he had to -- that he should,
23 especially if he was going to take action and change
24 her job responsibilities and duties based upon the

1 actions of fellow employees; that in fairness to her
2 he had to inform her of that.

3 Q. So at this time he had told you that he had
4 decided to tell -- to change Ms. Brown's
5 responsibilities?

6 A. That was in the initial packet that he gave
7 me, yes. But in the initial packet he hadn't
8 provided the petition.

9 (Document marked as Coffey
10 Exhibit 17 for identification)

11 Q. Exhibit 17 is a memo dated October 22nd,
12 2009, and I believe I'm fair if I characterize this
13 as discussing changes in assignments within the
14 probation department. Was this paper one of the
15 pieces that was in the packet that Mr. Prisco
16 delivered to you on October 22nd?

17 A. Yes.

18 Q. And am I right that he had, from what he
19 told you, not discussed this with Ms. Brown at that
20 time?

21 A. Correct.

22 Q. And did I hear you correctly that you
23 regard this change as equivalent to a demotion?

24 A. Yes.

1 Q. By the way, it says here --

2 A. I would characterize it as a demotion
3 and/or disciplinary action.

4 Q. And the last paragraph of this memo says,
5 "ACPO Brown will cover and monitor all court
6 sessions and counter." That's the counter in the
7 probation offices; is that right?

8 A. Correct.

9 Q. How many court sessions are there, criminal
10 sessions, in a typical day in your court?

11 A. Three.

12 Q. I think you said to us that you discussed
13 the petition that is Exhibit 16 with Judge Johnson
14 and Judge Mulligan?

15 A. Judge Johnson very briefly in that my
16 discussion consisted of when I saw him that morning
17 at the conference. It was a judges' conference. I
18 had prepared the -- actually, it hasn't been
19 introduced yet. I had prepared a letter and had
20 attached the petition, and I hand delivered it to
21 him and told him that this required his attention,
22 and that was the extent of the conversation. And
23 then he sent me back a letter in which he informed
24 me that he had sent a copy to Judge Mulligan and

1 also Chief Jack O'Brien, John O'Brien.

2 Q. And did you then later have a conversation
3 with Judge Mulligan about your letter and/or the
4 petition?

5 A. Yes.

6 Q. What was the substance of that
7 conversation?

8 A. It was short. Essentially I told him that
9 I was concerned about things going on in the West
10 Roxbury Division of the Boston Municipal Court.

11 Q. And how did he respond?

12 A. He just listened to me. He didn't take a
13 position. Just told me to continue to act
14 professional and with integrity and do the right
15 thing.

16 Q. In the petition -- and, again, I'm sorry to
17 skip around, but in the second paragraph of the
18 petition you see the first sentence says, "We feel
19 increasingly concerned that ACPO Brown is creating a
20 negative and hostile working environment." Do you
21 agree with that characterization of Ms. Brown from
22 your observation?

23 A. No.

24 Q. And then it says that she daily exhibits a

1 poor attitude toward fellow employees and a poor
2 attitude toward her duties in accordance with her
3 role as a supervisor. In your experience and from
4 your observation do you agree with that
5 characterization?

6 A. No.

7 (Document marked as Coffey
8 Exhibit 18 for identification)

9 Q. Judge Coffey, this document that we've
10 identified as Exhibit 18 appears to be a memo to
11 Mark McHale from Mark Prisco regarding Ms. Brown.
12 There's an account of a conference between you and
13 Mr. Prisco on October 22nd, and you've just told us
14 that you met. And if you'd look at the first four
15 paragraphs of this memo and tell me whether this is
16 an accurate recitation of what happened at that
17 conference?

18 A. No, it's not.

19 Q. In what way is it inaccurate?

20 A. I did not -- at the onset of the meeting
21 the First Justice stated that "I have a big problem
22 within the department." I never said that. I said
23 that we have a problem within the department, and
24 upon being shown the petition, I expressed my

1 concern to Mr. Prisco that this petition was
2 creating a hostile work environment to Helen and
3 Crystal.

4 I also explained to him that as a leader he
5 needed to take steps to have -- to bring unity and
6 cooperation and collaboration within the department,
7 and this type of petition had the appearance of a
8 campaign of a lynch mob mentality in which it was
9 causing polarization within the department. And I
10 attempted to impress upon him his role as the chief
11 not to allow that to occur and, most importantly,
12 not to encourage that behavior. It was then that I
13 asked him who created the document, and he claimed
14 that he didn't know. And it's then that I pursued
15 him as well. "Well, who delivered it to you?" And
16 of course he knew who delivered it to him, but he
17 refused to divulge the identity.

18 What was troublesome to me and continues to
19 be is that he's using this petition to take
20 disciplinary action against or involving Helen
21 Brown, and that was my concern and remains my
22 concern.

23 Q. At any point --

24 A. He didn't --

1 Q. Sorry. Go ahead.

2 A. He didn't fully -- he didn't understand or
3 appreciate at all what I was talking about.

4 Q. At any time since he became the
5 assistant -- the acting -- excuse me. Strike that.

6 At any time since Mr. Prisco became the
7 acting chief probation officer, has he taken any
8 steps to your knowledge to repair or reduce tensions
9 within the department that you perceive to have
10 arisen over the complaints made against Mr. Rush's
11 behavior?

12 A. I think initially he did to a certain
13 degree, but as I stated previously, I think the
14 omnipresence of Representative Rush and his
15 supporters and the fact that this lawsuit is going
16 on and his perceived allegiance to the commissioner,
17 I think that's interfered with his ability to treat
18 Helen Brown fairly. But he isn't -- I don't mean to
19 paint an improper picture of him. He has tried. He
20 is respectful. He has a very different management
21 style than Jim Rush, but, unfortunately, things have
22 not worked out well. And I was extremely
23 disappointed in having received this, and I was also
24 disappointed in his reaction and response to it.

1 Q. Which memorandum of the several I have
2 shown you is "this"?

3 A. The petition notes I'm speaking about.

4 MR. MARGOLIS: Exhibit 16, for the record.

5 Q. Now, if you look back at Exhibit 17, the
6 memo from -- to Mr. McHale dated October 28th. At
7 the bottom of the first page it states that you came
8 down to the probation department four times on
9 October 26th. Do you recall whether you did in fact
10 go to the department four times?

11 A. I may well have. I go to the department
12 all the time. I'm the First Justice. I also go to
13 the clerk's office. I walk through there all the
14 time. I also walk through the security. That's
15 part of my job and responsibilities in being a
16 supervisor of the building. So I may well have.

17 Q. There's a report here that one employee
18 stated that you met with Ms. Brown on Thursday, and
19 I'm going to suggest to you that that would have
20 been October 22nd.

21 A. I didn't meet with her. I went directly
22 home. I didn't meet with anybody.

23 Q. And then later that day it says, and I'm
24 not sure whether that was the 26th or the 22nd, but

1 later that day every employee received a handout
2 from the lobby on the trial court policy on ITRS.
3 Do you see that?

4 A. Yes.

5 Q. What's ITRS?

6 A. It has to do with the IT policy. When I
7 came back from the conference on Friday, October the
8 23rd, I had an e-mail from Judge Johnson that he had
9 sent to all of the First Justices which attached to
10 the e-mail was the IT policy concerning the use of
11 the Internet. And in that e-mail Judge Johnson
12 instructed me to distribute it to all court
13 employees to remind them of what the Internet policy
14 was. I responded to Judge Johnson, congratulating
15 him on a successful conference and assured him that
16 I would send out the IT policy first thing on
17 Monday, which I did from -- I had my secretary write
18 a cover letter, attach the policy, and everybody in
19 the building got a copy of the IT policy as I had
20 been directed to do by Chief Justice Johnson.

21 Q. On the second page of this memorandum it
22 states that "On October 27th an employee from
23 another department told me," I assume Mr. Prisco,
24 "that Judge Coffey had thanked all of the parties

1 who did not sign the letter in regards to ACPO

2 Brown." Is that accurate?

3 A. No. What I did do is that I immediately
4 met with Clerk Magistrate Walsh and court
5 officer -- I mean Chief Court Officer Jack Cahill,
6 told them about the petition, and I asked them both
7 to please speak to their staff about the importance
8 of not taking sides, and they both agreed with me
9 about the importance of not allowing the petition or
10 the lawsuit or this whole controversy to divide the
11 court. And they assured me that they would speak to
12 their staff and that they had already spoken to
13 their staff concerning this issue.

14 Q. And then there's a statement, "Later that
15 day one of the associate probation officers informed
16 me that," quote, 'Judge Coffey had thanked him for
17 not signing the letter,' close quote. "He stated to
18 her," quote, 'that he had no idea what she was
19 referring to,' end quote. Did you speak to an
20 associate probation officer and thank him for not
21 signing the petition?

22 A. I did. He's the only one I spoke to.

23 Q. Who was that?

24 A. John Dinardi.

1 Q. And did he say he had no idea what you were
2 referring to?

3 A. No. He said to me, "Judge, I have more
4 character than that."

5 Q. Did you ask him who he thought was the
6 ringleader?

7 A. Yes. And he said he didn't know. He also
8 told me that he had not been approached to sign the
9 letter.

10 Q. And then there's a statement, "I was also
11 informed by a probation officer that did not sign
12 the letter that First Justice Coffey gave a card and
13 chocolates to ACPO Brown and PO Young last week."
14 Did you do that?

15 A. I did, but it had nothing to do with this.
16 I teach at Lasalle College, and I had Helen and
17 Crystal come and speak to my class about the
18 probation department. And I had done that in -- it
19 was a Wednesday because I teach Wednesday nights
20 until -- I had them come for a 5:00 class. I asked
21 Mr. Prisco's permission to allow them to come to the
22 class, and he gave them his permission. And when
23 they left, Crystal said good-bye to him as they were
24 leaving because we all left together at 4:30. I

1 gave them chocolates and a card of thanks for coming
2 to my class and speaking to my students for two and
3 a half hours, and I gave them the chocolates on
4 Tuesday, which would have been the 19th, yes,
5 because Thursday was the 22nd. So I gave them the
6 chocolates Tuesday morning, and the card says,
7 "Thank you for speaking to my class." Two years ago
8 they also came and spoke at my class, and I gave
9 them Yankee candles, but this year I gave them
10 chocolates. So that's the context in which that was
11 presented. It had nothing to do with the petition.
12 It had nothing to do with a sign of solidarity. It
13 was just a gesture of thanks to two employees who
14 had come and spoken with much passion about their
15 dedication and about their positive experience as
16 probation officers to a group of young people.

17 Q. Judge, did you bring any documents with you
18 today?

19 A. I did.

20 Q. Are any of them documents we have not seen?

21 A. The only one would be the cover letter that
22 Mr. Prisco -- actually two. This is the cover
23 letter that was on the packet. That was delivered
24 and deposited with my packet on October 22nd. And

1 this is the -- my recollections of what occurred on
2 October -- back in October of 2008 involving
3 Mr. Joyce and Helen Brown.

4 And that's a letter acknowledging that I
5 had sent a letter to -- and I don't think you
6 introduced the letter either. Wait a second. I
7 have one more.

8 MR. MARGOLIS: This stationery loses a lot
9 when it's copied.

10 MS. WERNER: Yes. It looks like less more
11 official than the original.

12 A. I do have the letter that I sent to Judge
13 Johnson notifying him of my concerns. Just bear
14 with me. And I also have a copy of the complaint,
15 but you have that obviously. Here we go.

16 Q. If I may make copies of these?

17 MS. WERNER: Actually, I have copies of
18 this one which I was going to introduce as an
19 exhibit anyway. So I have extra copies if you want
20 one or if you -- I have enough for everybody.

21 MR. MARGOLIS: Okay. If you want to do --
22 it's just the cover letter?

23 MS. WERNER: It's just the letter to Chief
24 Justice --

1 MR. MARGOLIS: Why don't I make copies of
2 the others, then.

3 MS. WERNER: Okay.

4 MR. MARGOLIS: I'll be right back.

5 (Recess taken from 12:58 to 1:02 p.m.)

6 MR. MARGOLIS: What I propose to do is
7 identify these other three documents. First is a
8 memorandum of October 6th, 2008, from Judge Coffey
9 to Mark Prisco.

10 (Document marked as Coffey

11 Exhibit 19 for identification)

12 MR. MARGOLIS: Let's make No. 20 a
13 handwritten memorandum from Mr. Prisco to Judge
14 Coffey which she's just spoken to us about.

15 (Document marked as Coffey

16 Exhibit 20 for identification)

17 MR. MARGOLIS: And then 21 is the letter
18 from Justice Johnson to Judge Coffey.

19 (Document marked as Coffey

20 Exhibit 21 for identification)

21 Q. I think there's just one more question,
22 Judge. In Exhibit 21, Justice Johnson's letter to
23 you in response to your forwarding of the petition,
24 he states that he has forwarded it, the letter and

1 the petition, to Commissioner O'Brien. Have you
2 heard from the commissioner or his office with
3 respect to that communication?

4 A. No.

5 Q. And am I right that you haven't heard any
6 further from Judge Mulligan?

7 A. No; just what I reported to you.

8 MR. MARGOLIS: I don't think I have
9 anything further at this time. Let's go off the
10 record.

11 (Luncheon recess taken
12 at 1:04 to 1:35 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24

1 AFTERNOON SESSION

2 CROSS EXAMINATION

3 BY MS. WERNER: This is a letter dated October
4 23, Exhibit 22.

5 (Document marked as Coffey
6 Exhibit 22 for identification)

7 BY MS. WERNER:

8 Q. Judge Coffey, I'm just going to ask you to
9 identify that exhibit, Exhibit 22.

10 A. Exhibit 22, this is the letter that I wrote
11 and hand delivered to Chief Justice Johnson on
12 October the 23rd.

13 Q. In the first paragraph of the letter to
14 Chief Justice Johnson you said, "Please accept this
15 letter as notification of a possible violation
16 against assistant chief of probation Helen Brown by
17 some of the employees." In that sentence you're
18 referencing what today you've referred to as a
19 petition, right --

20 A. Correct.

21 Q. -- is that correct?

22 Why did you conclude that that was a
23 possible violation against assistant chief of
24 probation Helen Brown?

1 A. Because the lawsuit was pending and the
2 petition alleges that she is creating a hostile work
3 environment, and I knew from speaking with her,
4 reading the complaint, that that's what Helen was
5 alleging, that there was a hostile working
6 environment. I also -- I'm looking at the
7 signatures. Some of the parties are very open and
8 avid supporters of Mike Rush, the representative.

9 Q. Any other reasons you thought that it was a
10 possible violation against Ms. Brown?

11 A. The language contained within the petition.

12 Q. What specific language?

13 A. Let me look at the petition. Do you have
14 it?

15 Q. That would be Exhibit 16, and it should be
16 here.

17 A. Here we go.

18 Q. Yes.

19 A. Where it talks about conduct unbecoming a
20 trial court employee, where it talks about creating
21 a negative hostile work environment, poor attitude,
22 refuses to interview, the allegations. What
23 concerned me additionally as well as the language is
24 the timing of it. The fact that these depositions

1 are going on, and -- actually, I do have another
2 piece of correspondence that was in the packet that
3 I received. My apologies. I thought I had -- it
4 was the timing of it that bothered me, October the
5 5th. My apologies. This was included in the packet
6 as well. The packet contained a letter dated
7 October the 5th from Mr. Prisco to Mark McHale in
8 which he stated that he had attended a meeting at
9 the office of the Attorney General in preparation
10 for the lawsuit. He became aware of some of the
11 allegations, and in the letter he characterizes
12 Ms. Brown's testimony as lies and fabrication. So
13 it was the sequence of events. That letter that he
14 provided me, the other correspondence in which he
15 outlines -- October 22nd where he outlines other
16 alleged acts of negligence. I'm sorry. I probably
17 should have given you the whole thing. This is a
18 packet that I received from Mr. Prisco.

19 Q. Okay.

20 A. That and that letter --

21 Q. Okay.

22 A. -- and that cover sheet (indicating). So
23 my apologies.

24 Q. I'm going to put this aside for the moment

1 and just finish asking some questions, and maybe we
2 can get back to that.

3 A. All right. So that's -- to answer your
4 question, it is that whole totality of the
5 circumstances.

6 Q. Okay. And you said one factor was from
7 speaking with Helen Brown. What did you speak with
8 her about that led you to the conclusion that this
9 was a potential violation against her?

10 A. From speaking with her throughout the whole
11 pendency of this lawsuit.

12 Q. Meaning -- what do you mean by that
13 exactly?

14 A. She believes that she is not being treated
15 fairly.

16 Q. You also said that another reason was
17 because you knew that Helen Brown was alleging a
18 hostile environment, that that was one of the
19 reasons that led you to the conclusion. How does
20 that lead you to this conclusion, the one you wrote
21 to Chief Justice Johnson in Exhibit 22, that this
22 was a possible violation against Helen Brown?

23 A. A retaliation for her filing the suit.

24 Q. Do you have any reason to believe that the

1 particular employees who signed Exhibit 16 would
2 want to retaliate against her for filing a lawsuit?

3 A. No, which is why I characterized it as a
4 possible violation, if you look on the top.

5 Q. And we're talking Exhibit 16 now?

6 A. Right. I characterized it as a possible
7 violation.

8 Q. In Exhibit 22 in your letter -- correct?
9 Yes.

10 A. Notification of a possible sexual and
11 gender harassment.

12 Q. Right.

13 A. That it has the appearance, the potential,
14 the possibility that it could be viewed by some.

15 Q. Okay. And you also said one of the reasons
16 was that the names on Exhibit 16, the petition as
17 we're calling it, you said that some of the people
18 who signed are open and avid supporters of Mike
19 Rush?

20 A. Right.

21 Q. And that was one of the reasons?

22 A. Correct.

23 Q. Why -- who on here would you -- do you
24 think are open and avid supporters of Mike Rush?

1 A. Mr. Joyce, Mr. Giacalone, Mr. McNichols.

2 Q. And what makes you of the opinion that they
3 are supporters of Mike Rush?

4 A. Mr. Joyce has appeared in the newspaper
5 with Mike Rush, and he's known to run his campaign.

6 Q. Anything else?

7 A. No. Other than I know that he runs his
8 campaign in West Roxbury, no.

9 Q. How about Mr. Giacalone?

10 A. No.

11 Q. Any particular --

12 A. It's my understanding -- I can't give you a
13 specific occurrence, but it's my understanding that
14 he is.

15 Q. So your understanding from hearing it from
16 others?

17 A. No. With the whole rotunda incident,
18 that's where I came to that conclusion.

19 Q. How did you come to that conclusion through
20 the rotunda incident?

21 A. His enthusiasm and participation.

22 Q. Is that something you yourself observed?

23 A. Yes.

24 Q. His enthusiasm and participation?

1 A. Right.

2 Q. How about Mr. McNichols?

3 A. That I did not observe it, but it was my
4 understanding from speaking with others --

5 Q. And --

6 A. -- that he is supportive.

7 Q. Who did you speak with about him being
8 supportive of Mike Rush?

9 A. I couldn't give you a name.

10 Q. Would it be someone in the West Roxbury
11 courthouse?

12 A. Courthouse, yes.

13 Q. It sounds like there is a lot of talking
14 going on about things there. Sorry.

15 So I guess what I'm wondering, too, is you
16 concluded that Exhibit 16 is a possible violation
17 against Helen Brown?

18 A. Exhibit 16 being the petition?

19 Q. The petition.

20 A. Right. It has the appearance.

21 Q. Did you -- under the policy that you talked
22 about earlier that was passed that you reviewed, did
23 you consider under that policy that the petition
24 itself -- that you should report that to the Chief

1 Justice to be investigated? That wasn't a very
2 clear question.

3 I guess what I'm trying to ask is in
4 Exhibit 16, the petition, these probation officers
5 are saying they feel like they are in a hostile
6 environment.

7 MR. MARGOLIS: Objection.

8 MS. WERNER: They don't?

9 MR. MARGOLIS: The document speaks for
10 itself.

11 Q. What they say is -- let's see. "The
12 environment within this department is becoming a
13 hostile one." I guess what I'm wondering is if you
14 felt under the policy that that needed to be
15 investigated as well or not?

16 A. No.

17 Q. Why didn't you?

18 A. Well, I didn't look at it that way.

19 Q. Okay.

20 A. Okay. I didn't look at it that way, and
21 under the policy I thought I had met my obligation
22 by notifying my superior to have an investigation
23 take place. I attempted to be as neutral as
24 possible by characterizing the petition as a

1 possibility and not weighing in.

2 Q. So for whatever reason, you didn't think
3 that they -- did you think their perception was
4 wrong?

5 A. Yes.

6 Q. Why did you think that?

7 A. Because of my experience and interactions
8 with Helen Brown and what I have observed of her
9 past performance.

10 Q. So you didn't talk to each person on the
11 list --

12 A. No.

13 Q. -- about their perception?

14 A. No. I was also troubled that a supervisor
15 would sign such a document. Mr. Vu is her
16 supervisor. So that was another concern that I had
17 about the propriety and the tenor of the petition.

18 Q. I apologize. I thought I had this marked
19 really well. I took a lot of notes.

20 You brought up the issue of Representative
21 Rush this morning, and you talked about his
22 overriding presence at West Roxbury. I was
23 wondering if you could explain what you mean by
24 that.

1 A. Mr. Rush is on the House Ways and Means
2 Committee. Right now the trial court, and in
3 particular the probation department, faces the real
4 threat of budget cuts. There's been talk of
5 furloughs within the trial court, of layoffs, and
6 there is a fear and concern among employees that
7 they run the risk of losing their jobs if the
8 legislature doesn't fund the trial court budget and
9 in particular the probation department.

10 The probation department has a separate
11 line item than the trial court, and Jack O'Brien has
12 exclusive control over that line item. It's not
13 transferable to Chief Justice Mulligan.
14 Accordingly, it's my understanding that a lot of
15 employees believe that loyalty and allegiance to the
16 legislature, and in particular to Mr. Rush, ensures
17 job safety and protection.

18 If you want to ask me another question.

19 Q. Well, what you said earlier was that
20 there's an overriding presence of Mike Rush to this
21 lawsuit. Overriding presence of an influence by
22 Mike Rush to this lawsuit. So I was wondering what
23 you meant by "overriding presence."

24 A. That's what I meant.

1 Q. Okay. So --

2 MR. MARGOLIS: Please note my objection to
3 the last question.

4 Q. So are you saying that you, you know, think
5 that people feel they have to be loyal to him to
6 keep their jobs?

7 A. Yes.

8 Q. And how does that affect this lawsuit?

9 A. His father is being sued.

10 Q. Okay.

11 A. I think -- his father is being sued.

12 Q. Let me ask you this: How do you think
13 he -- I think what you talked about along those
14 lines was that he had come to the courthouse a
15 number of times and hadn't let you know; is that
16 accurate?

17 A. I wasn't -- I'm not suggesting that he has
18 an obligation to let me know. It's a public
19 building. It's a public building. But he was
20 there -- my understanding is that he was a frequent
21 visitor, especially during the pendency of the whole
22 rotunda. This is at the same time when he was
23 telling Judge Mulligan that he didn't want me to
24 participate at all. So he was meeting with

1 Mr. Prisco on a regular basis to plan this event.

2 Q. Do you know how many times he met with
3 Mr. Prisco?

4 A. No. Numerous.

5 Q. Do you know if he met with anyone else in
6 the courthouse?

7 A. No.

8 Q. How do you know he met with Mr. Prisco?

9 A. I was told by people who saw him.

10 Q. Who told you that?

11 A. Mary Tracey-Walsh, Helen Brown. It would
12 come up in casual conversations with people. People
13 would say, "Oh, when Representative Rush was here."
14 Or Jack Cahill reported to me several times seeing
15 him.

16 Q. You described right at the beginning of
17 this morning's questioning kind of what the
18 parameters of your position as First Justice means.
19 I just want to ask you a couple of questions about
20 that.

21 Did that change in the last few years? Did
22 the judge --

23 A. Yes.

24 Q. Could you describe that change?

1 A. Dramatically.

2 Q. Okay.

3 A. When I first was appointed I had the
4 authority to hire probation officers. In fact, I
5 hired William Joyce and David Giacalone. I also had
6 the responsibility in terms of disciplinary, any
7 grievances, that type. That changed with
8 legislation, and that authority was taken away from
9 the judges and it was vested in the office of the
10 commissioner of probation.

11 Q. Do you recall what year that was
12 approximately?

13 A. No, no. But it was -- no. I'd be -- no.

14 Q. So as part of being First Justice was it
15 part of your job to do the investigation related to
16 the anger poem that was put in Helen Brown's office?

17 A. When it was brought to my attention by
18 Helen Brown I thought I had a responsibility to
19 address it and attempt to resolve it, to ensure a
20 safe and healthy work environment. That was my
21 purpose in meeting with Mr. Joyce and meeting with
22 Mr. Prisco and trying to reach a -- trying to
23 resolve it. So I did see that as a
24 responsibility -- as a part of my responsibility, my

1 general superintendence duties.

2 Q. In part because it was brought to your
3 attention by someone as a problem?

4 A. Right.

5 Q. Okay. Do you know if -- you described Mark
6 Prisco as being loyal to Jim Rush?

7 A. Yes.

8 Q. Do you know whether they knew each other
9 before Mr. Prisco became -- came over to West
10 Roxbury?

11 A. No.

12 Q. You don't know or he didn't?

13 A. I don't know.

14 Q. What do you think of the job Mark Prisco is
15 doing as the chief probation officer?

16 A. He's an excellent probation officer and an
17 excellent chief, and I have worked well with him.
18 And he -- I have been supportive of his efforts, and
19 he has been supportive of mine. And I look forward
20 to continuing to work with him regardless of the
21 outcome of this lawsuit. He has been supportive of
22 my efforts through Reinventing Justice, and I in
23 turn have been enthusiastic and supportive of his
24 efforts with different changes in programs that he

1 has implemented.

2 Q. I'd like to -- at the beginning of the
3 questioning this morning there was a lot of
4 conversation -- a lot of questions answered about
5 Jim Rush's change in behavior when he became the
6 chief?

7 A. Yes.

8 Q. I'd like to ask you some questions or get a
9 sense from you about how much of your opinions or
10 conclusions were based on information from others
11 versus your own observations of Mr. Rush.

12 A. Okay.

13 Q. So it sounds like prior to him becoming
14 chief probation officer in terms of his interactions
15 with women was not an issue, is that correct, as far
16 as you knew?

17 A. Other than the language that he used in
18 daily conversation.

19 Q. When you say "language," do you mean when
20 he called women "girls"?

21 A. Correct.

22 Q. Did you ever report that to Mark McHale or
23 talk to Mark McHale about that?

24 A. Yes.

1 Q. What was the conversation?

2 A. I mean, I remember talking to Mr. McHale
3 about Jim Rush and speaking about my concern, but
4 that was when I learned that he had been selected to
5 be the chief.

6 Q. So you didn't -- there wasn't a special
7 phone call with regard to --

8 A. His using the term "girls"?

9 Q. Yes.

10 A. No. He used it all the time. That was
11 just part of his speech pattern. He used it all the
12 time. And I attempted to explain to him that women
13 do not like to be referred to as girls, especially
14 professional women who have worked hard to attain a
15 certain status, and they deserve respect. And when
16 you use that term, whether you intend to or not,
17 you're not showing them the respect that their
18 position deserves.

19 Q. How did he respond to that?

20 A. He just shrugged it off and continued to
21 call women "girls."

22 Q. So other than calling women "girls" until
23 he became CPO or acting, I guess, CPO, you didn't
24 observe any other issues with him?

1 A. No, no.

2 Q. Okay. So early on you mentioned that there
3 was the issue with Mary Tracey-Walsh's flex
4 schedule?

5 A. Correct.

6 Q. And you reported that or talked to Mark
7 McHale about that, correct?

8 A. Definitely.

9 Q. How did you learn of that? From Ms. Walsh?

10 A. Yes.

11 Q. Tell me what your observations were of
12 James Rush in his first six months as acting. Did
13 you observe him interact with women?

14 A. Yes.

15 Q. On a daily basis?

16 A. Yes. There was another incident during his
17 six-month pendency involving an intern by the name
18 of Angela White.

19 Q. What was that incident?

20 A. This was unfortunate. Ms. White is African
21 American. She was a volunteer with the court, and
22 she had worked with Tony Owens with the Link-Up
23 program, and she had worked with Helen Brown and
24 then she left for the summer. So she was there when

1 Tony was there. She was there for part of the time
2 when Jim was the acting, and then she left for the
3 summer.

4 Q. That would have been summer of '04?

5 A. Correct. And then she came back in
6 September of '04 and came into the court and started
7 to work as a volunteer. She came up the first day
8 to my office, and she was crying. She was in tears.
9 I had known her only because she had participated in
10 Reinventing Justice. She had come to some of the
11 meetings, and she also had volunteered with the
12 Mothers program. And she told me she had been
13 banned from the courthouse by Jim Rush, that he told
14 her that she wasn't welcome, and she had been told
15 to leave the court. So I assured her I would look
16 into it, and she left.

17 I spoke to Jim afterwards about the
18 incident, and he told me that he didn't believe in
19 interns and didn't want them there and that as the
20 acting justice he was in charge. I said, "Okay.
21 That's fine. But in the way that you communicated
22 that to somebody, you've hurt somebody's feelings.
23 You actually caused harm, and you need to
24 apologize." And he refused to apologize. I had

1 this conversation in my lobby with him, and he
2 refused to apologize. And I remember saying to him,
3 "Jim, even give a Clintonesque apology. Say that
4 you didn't intend the conduct, but if you
5 misinterpreted my language, I apologize for the
6 misinterpretation." I said, "But you have to
7 address it. You hurt somebody's feelings
8 unnecessarily, and this woman didn't do anything
9 wrong." I also pointed out to him that she was
10 African American and to use such words as "banning
11 somebody from the courthouse," it had shades of
12 the '60s, that his choice of language was not good.
13 I ended up writing her a letter of apology, and
14 invited her to speak to Mr. Rush and to see
15 if -- and I told her she was always welcome. I
16 apologized for his actions, and I think she ended
17 up -- I know she ended up writing me a letter in
18 return, but it never worked out. He was not an
19 advocate for interns.

20 Q. So did you ever observe him interact with
21 her?

22 A. No. Just what he told me and what she told
23 me, and the two accounts were consistent. It wasn't
24 the type of thing that there was a dispute in the

1 facts. He agreed that he had ushered her out of the
2 courthouse and told her to leave the property. And
3 that happened within -- to answer your question,
4 that happened within the first six months of his
5 acting as the -- being placed as the acting chief.

6 Q. Let's stick with the first six months. Did
7 you observe his interactions with Helen Brown in
8 that first six months, you yourself actually observe
9 them?

10 A. Yes.

11 Q. How frequently?

12 A. While he was acting they would still come
13 up to the judges' lobby in the forum morning
14 meetings.

15 Q. So that would be every morning?

16 A. Right, pretty much so.

17 Q. What did you observe?

18 A. They were cordial to one another. It's not
19 the type of thing that he would be openly
20 disrespectful to her in my presence because he knew
21 I would take a position. So it's not that type of
22 behavior.

23 Q. In that first six months did you observe
24 yourself his behavior towards any other women?

1 A. I don't have a memory of it. I can't
2 remember right now. I may have, and I may recollect
3 later on in another month or two months, but right
4 now I don't other than the Angela White incident
5 because that was so harmful to an individual who
6 had -- didn't deserve that treatment.

7 Q. But you heard from others about his
8 behavior, is that accurate, in that first six
9 months?

10 A. Correct.

11 Q. And who told you things about his behavior
12 that were objectionable?

13 A. Helen Brown, Mary Tracey-Walsh, and I may
14 have heard from Crystal, but I know for a fact
15 that -- no, no. I'm sorry. Not in the first six
16 months. Not in the first six months.

17 Q. Okay.

18 A. No. He was on his best behavior other than
19 the Angela White incident in the first six months.
20 I'm sorry.

21 Q. So then the period we're up to is roughly
22 when he was appointed as the permanent CPO?

23 A. Right. That's when things started to
24 change.

1 Q. That was roughly in January '05?

2 A. Yes. I think Mary was appointed in
3 February of 2005. It was after that that things
4 started to percolate.

5 Q. Can you describe to me, if you want to take
6 it in the first six months of '05 or the whole year
7 of '05, what you actually observed in terms of him
8 interacting in an objectionable manner with women?

9 A. Oh, I didn't see anything.

10 Q. Then how did you -- where did your
11 information come from?

12 A. From those sources.

13 Q. From Helen Brown, Mary Tracey-Walsh, and
14 Crystal Young?

15 A. Right.

16 Q. Did anyone talk to you about his behavior?

17 A. There were complaints from other probation
18 officers but not -- I can't give you a name. It
19 wasn't a harmonious climate, but I can't give you a
20 specific name. But they were not -- I can say that
21 they were not the only people who were reporting
22 negative comments about him.

23 Q. When you say "they were not the only
24 people," you mean Helen Brown, Crystal Young, and

1 Mary Tracey-Walsh?

2 A. Correct.

3 Q. And then the other -- the complaints from
4 other probation officers, do you recall if they were
5 women or men?

6 A. Both. I knew -- I'd say both.

7 Q. What were those complaints?

8 A. The way he spoke to people. He would lose
9 his temper, and he would yell. I was also told that
10 the two supervisors were being disciplined in front
11 of male colleagues that they were supervising and
12 that was interpreted by the assistant chiefs as a
13 way to undermine their authority, and it made their
14 job as supervisors that much more difficult because
15 their role was being diminished in front of the
16 people that they were supposed to be giving
17 direction and supervision to.

18 Q. And that was told to you by someone other
19 than the two Plaintiffs in this case or Mary
20 Tracey-Walsh?

21 A. In addition to them, yes.

22 Q. But you don't remember who that was at this
23 point in time?

24 A. No, no. It was a while ago.

1 Q. So moving from the calendar of '05 to the
2 first six months of '06 is the same thing true, that
3 you yourself didn't observe any of the interactions
4 between Mr. Rush and Ms. Brown, Ms. Young, and
5 Ms. Walsh?

6 A. Correct. That was after the complaint had
7 been filed with the trial court. No, no, no. I
8 take that back. There was an incident. It sounds
9 petty, but we have assigned parking in the back of
10 the courthouse for the managers. And Helen Brown
11 always had a parking spot because she was an
12 assistant chief. When Mr. Vu was promoted, Jim Rush
13 told Helen Brown that she was no longer to park in
14 her spot and that -- no. Mr. Prisco -- when
15 Mr. Prisco came. Excuse me. When Mr. Prisco was
16 hired, Jim Rush told Helen that she was going to
17 lose her parking spot and that Mark Prisco was going
18 to park there. So Helen came to me and said,
19 "Judge, do you want me to move? I'm happy to move,
20 but I just need to know." And I said, "No,
21 absolutely not. I have plenty of parking spots.
22 You're still a manager. You can park there, and I
23 have an extra spot for Mr. Prisco. That's not a
24 problem." I said, "I'm in charge of parking, and

1 you can continue to park there." Well, for some
2 reason Mr. Rush had this issue with Helen's parking
3 spot so he would park in her spot. It was petty.
4 It was foolish. There was no reason for him to park
5 in her spot, and that way in doing that he would
6 deny her a space. And it got to the point that it
7 happened several times, and I finally said to him, I
8 said, "Jim, what's going on? This is foolishness."
9 And he said to me, "Well, when somebody parks in my
10 spot I'm going to park in Helen's." "No. When
11 somebody parks in your spot you let Jack Cahill know
12 the license plate number. We'll run the license
13 plate number. We'll find out who is illegally
14 parked, and that will be the end of it." But that
15 was an example, to answer your question.

16 Q. Of something you observed?

17 A. Yes --

18 Q. Were the --

19 A. -- of pettiness, and I -- yes, just a
20 certain pettiness and vindictiveness. It seemed to
21 bother him that she had a parking spot.

22 Q. So did Mary Tracey-Walsh have one also?

23 A. No.

24 Q. Why didn't she have one?

1 A. She didn't have one because we ran out of
2 spots, okay? She didn't get appointed until
3 February of 2005, okay? So with Prisco was -- came
4 to the court before then.

5 Q. So that made for an extra supervisory
6 position, then, that you didn't have before?

7 A. Exactly. And Helen had been -- not to
8 belabor it, but Helen had been parking there for
9 years. So, again, it was all foolishness. It's
10 pettiness. Why are we fighting over parking spots,
11 but he had this issue with it.

12 Q. In terms of the hiring process, you
13 mentioned that you were on the initial committee
14 when James Rush was promoted to the chief probation
15 officer position, correct?

16 A. (No verbal response)

17 Q. Did you say that Helen Brown did apply for
18 the CPO?

19 A. I think she did, yes.

20 Q. Do you recall who any of the other
21 candidates were other than those two?

22 A. No. It was so long ago.

23 Q. And you also mentioned that --

24 A. It was throughout the whole system so there

1 were a lot of people.

2 Q. And the committee who interviews then sends
3 their final candidates on to the commissioner; is
4 that correct?

5 A. Right. It's a list. There's a panel, and
6 then he decides.

7 Q. And he chooses off the short list that
8 you've sent to him; is that correct?

9 A. That's my understanding.

10 Q. I mean, are you aware of any situation
11 where he hasn't chosen someone off the list provided
12 by the committee, the short list we'll call it?

13 A. No, not in my experience with him, and that
14 would be -- the short list would be like --

15 Q. Like Exhibit 9?

16 A. 9.

17 Q. Now, when the CPO position became open when
18 Jim Rush retired, Helen Brown applied for that
19 position?

20 A. Right.

21 Q. As did Mark Prisco?

22 A. Correct.

23 Q. And you did not rate Helen Brown as the No.
24 1 person in your rating?

1 A. No, I didn't.

2 Q. And I think you testified earlier one -- I
3 think one of the reasons why is that you felt there
4 was some disappointment on her part and that she was
5 somewhat maybe resentful?

6 A. Yes.

7 Q. Is that accurate?

8 A. Yes.

9 Q. So you didn't think she could work well
10 with the --

11 MR. MARGOLIS: Objection.

12 A. I had reservations about her ability to
13 work as the first assistant so that's why I
14 didn't -- I mean, she still qualified. Don't get me
15 wrong. She's still super qualified, but, again,
16 you're going through this whole ranking, and that
17 was my concern that I had.

18 Q. Was there any other reason?

19 A. And I thought it would be good to get some
20 fresh blood into the department and maybe diffuse
21 any tensions.

22 Q. Any other reason that you didn't rate her
23 first?

24 A. No. Well, No. 1 was a super candidate.

1 That's why.

2 Q. Do you recall who that was?

3 A. Yes. It was a woman by the name of Deidre
4 Kennedy. She speaks Spanish, has been an assistant
5 chief in Dorchester for years, ran a -- had actually
6 left the probation department and was running a
7 justice center in Suffolk County. She was a
8 phenomenal candidate I thought. She was very good.

9 Q. And then how about for the first assistant
10 position when that came open; again, you didn't put
11 Helen Brown as your first choice. I think you put
12 Anh Vu in front of her.

13 A. Right.

14 Q. Why?

15 A. For the reasons I just told you.

16 Q. So all the same reasons?

17 MR. MARGOLIS: Objection.

18 A. Yes.

19 Q. How often are you in the probation
20 department on a daily basis?

21 A. It varies from day to day. Sometimes I'm
22 there a lot. Sometimes I may not be there for two
23 or three days. I mean, I try and have a presence
24 within the courthouse and make myself accessible,

1 and I find the best way to do that is to walk
2 through the building.

3 Q. So when you go to the probation office, how
4 much time do you spend there when you're there?

5 A. It depends. I can't answer that question.
6 It depends.

7 Q. When you go would you say it's hours or
8 minutes?

9 A. It depends.

10 Q. It depends on the purpose that you're there
11 for?

12 A. Right. Exactly. I can't answer that
13 because it varies based upon the reason that I'm
14 there --

15 Q. Okay.

16 A. -- at any given time.

17 Q. I have no other questions for you.

18 MR. MARGOLIS: Before we conclude do we
19 want to mark these documents that the Judge handed
20 to you?

21 MS. WERNER: Well, what I would suggest is
22 I would like copies of what I don't have, but I
23 don't think we need to mark them because I don't
24 think we asked questions about them.

1 MR. MARGOLIS: Okay.

2 MS. WERNER: So I think this is the only
3 one that we don't have.

4 MR. MARGOLIS: That packet.

5 A. That's what was given to me by Mr. Prisco.

6 MS. WERNER: Here's the only concern I have
7 about these. This one looks like it contains CORI.

8 MR. MARGOLIS: Yes.

9 MS. WERNER: It's got private information.

10 MR. MARGOLIS: I think it does.

11 MS. WERNER: Which I wouldn't disclose this
12 without a court order under 66A.

13 MR. MARGOLIS: I think -- frankly, I assume
14 that there's going to be a record of this in the
15 department. I assume Mr. Prisco has it. You've
16 provided me -- we're talking here about a memo dated
17 October 22nd, 2009, to Mark McHale.

18 MS. WERNER: Which you have. That was part
19 of what I gave you last Friday, I think. I think.

20 MR. MARGOLIS: Yes, because this has the
21 name of the Defendant unredacted.

22 MS. WERNER: Should we go off the record or
23 do you want to keep it on?

24 MR. MARGOLIS: Let's keep it on the record

1 for now.

2 MS. WERNER: Okay.

3 MR. MARGOLIS: I don't think we need the
4 unredacted -- I don't need the unredacted copy. I'm
5 happy not to know the name of the Defendant.

6 MS. WERNER: That's the only thing I
7 redacted. So here's what I would suggest. We both
8 need to supplement discovery. I need to do it for
9 you and you need to do it for me, and maybe this
10 is -- I guess I could include this in my
11 supplemental but redact names, or if we could get a
12 court order if you feel you want the CORI --

13 MR. MARGOLIS: I don't think I necessarily
14 need the name identifier information. We are
15 talking about a single individual.

16 MS. WERNER: Right.

17 MR. MARGOLIS: I don't think that's a
18 problem.

19 MS. WERNER: And it's a letter that looks
20 like from a mother who has a son on probation, and
21 it has a lot of...

22 MR. MARGOLIS: You can redact that as far
23 as I'm concerned.

24 MS. WERNER: Okay. And that you have

1 (indicating).

2 MR. MARGOLIS: I do?

3 MS. WERNER: Yes.

4 MR. MARGOLIS: I don't think so.

5 MS. WERNER: No. Actually, I don't have
6 this either. Should we copy this?

7 MR. MARGOLIS: Okay. Now let's go off the
8 record.

9 (Whereupon, the deposition was
10 concluded at 2:25 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24

C E R T I F I C A T E

I, HON. KATHLEEN E. COFFEY, do hereby certify that I have read the foregoing transcript of my testimony, and further certify under the pains and penalties of perjury that said transcript (with/without) suggested corrections is a true and accurate record of said testimony.

Dated at _____, this ____ day of _____, 2009.

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Linda A. Walsh, Registered Professional
4 Reporter and Notary Public in and for the
5 Commonwealth of Massachusetts, hereby certify that
6 there came before me on the 10th day of November,
7 2009, at 10:06 a.m., the person hereinbefore named,
8 who was by me duly sworn to testify to the truth and
9 nothing but the truth of her knowledge touching and
10 concerning the matters in controversy in this cause;
11 that she was thereupon examined upon her oath, and
12 her examination reduced to typewriting under my
13 direction; and that the deposition is a true record
14 of the testimony given by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this ____ day of
21 November, 2009.

22 _____
23 Notary Public

24 My commission expires 3/5/2015

D I S C L A I M E R

This transcript in any format is a confidential communication between Doris O. Wong Associates, Inc., a professional court reporting firm, and the parties to this matter and their counsel. Any reproduction or distribution of this transcript without the express permission of the parties is a violation of this confidentiality. To fulfill any request to the court reporter for an additional copy or copies from persons or entities without standing in this matter will require the consent of the parties and/or counsel and/or a court order for such delivery.