

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL,	:	CASE NO.: 14-1905
	:	
Relator,	:	Matter Related to the Practice of
	:	Law Authorized by S. Ct. Prac. R.
-vs-	:	Section 13
	:	
ANGELA ROCHELLE STOKES,	:	
	:	
Respondent.	:	
	:	

RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF
SUSPENSION UNDER GOV. BAR. R. V(5a)(C)(1) Exhibit I through Exhibit J

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Relator

HON. ANGELA ROCHELLE STOKES
(0025650)
Cleveland Municipal Court
1200 Ontario Street
Cleveland, Ohio 44113
Respondent

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PAUL B. DAIKER (0062268)
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Counsel for Respondent

P R O C E E D I N G S

1
2 THE COURT: How about Tabbatha
3 Toon?
4 MR. HUBER: Judge, Ms. Toon did
5 come to the office.
6 THE COURT: I'm sorry, I just need
7 to scan the file. Okay. For Ms. Tabbatha
8 Toon, docket number 74, I'm sorry.
9 MR. HUBER: Judge, Ms. Toon is
10 engaging us for a continuance to allow her
11 to hire a private attorney.
12 THE COURT: Okay. Ms. Toon, when
13 will you have hired an attorney in this
14 matter?
15 THE DEFENDANT: Um, because I was
16 talking to him and everything, I asked had
17 him, he --
18 THE COURT: No, I said when.
19 THE DEFENDANT: Oh, um, well, I gotta
20 go to court in Lakewood on the 26th, so any
21 time after that.
22 THE COURT: You want the 27th, two
23 weeks from today? Your attorney must be
24 present --
25 THE DEFENDANT: Okay.

1 THE COURT: -- in this courtroom on
2 that day. Continued at defendant's
3 request. So you knew about seeking legal
4 counsel when you entered a plea on July
5 22nd?

6 THE DEFENDANT: I knew about what?

7 THE COURT: Seeking legal counsel
8 when you entered not guilty pleas.

9 THE DEFENDANT: No, I actually didn't
10 know. I just went down to the Public
11 Defender's Office because the Court --

12 THE COURT: This isn't going that
13 far.

14 You have the accident report and you'll
15 subpoena the witnesses for the next court
16 date. The next court date is the 13th, I'll
17 give you this because she's known since July
18 22nd.

19 Do you want until the 27th to subpoena?
20 Continued at defendant's request, set for a
21 pretrial, August 27th, 2013, that will be at
22 8:30 in the morning. Re-subpoena the
23 witnesses.

24 Your attorney must be present in this
25 courtroom.

1 THE DEFENDANT: Thank you, ma'am.

2 THE COURT: This is a copy of your
3 driver's license history form, please take
4 this form to the attorney who will be
5 representing you.

6 THE DEFENDANT: Okay. Thank you.

7 THE COURT: Okay, bring her back
8 into this courtroom, immediately. Just
9 place her, she's in Contempt of Court.

10 THE DEFENDANT: Please, I'm --

11 THE COURT: Excuse me. Place her
12 in that holding cell, I am not going to
13 tolerate your con -- there's nothing to say
14 to this Court or to him.

15 Put her in custody. It's outrageous,
16 her conduct in this courtroom, I am not
17 accepting it. Call a female bailiff or
18 whatever you have to do, I've had enough.

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C E R T I F I C A T E

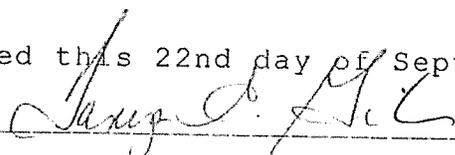
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State of Ohio,)
County of Cuyahoga,)
City of Cleveland.) SS:

City of Cleveland,)
)
 vs.)
)
Tabbatha Toon.)

I, Tanya E. Gibson, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the digitally recorded proceedings had in said Cleveland Municipal Court in the above-entitled case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the digitally recorded proceedings; that said transcript is a complete record of the digitally recorded proceedings had in the hearing of said case and constitutes a true and correct transcript of the digitally recorded proceedings had therein.

Dated this 22nd day of September, 2014.



Tanya E. Gibson

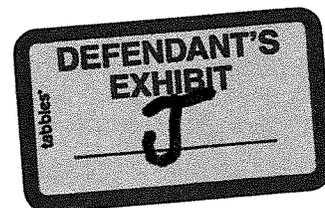
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BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCE AND DISCIPLINE OF THE
SUPREME COURT OF OHIO

THE HONORABLE ANGELA)	
ROCHELLE STOKES,)	
)	
Respondent,)	
)	
and)	Claim No. 13-057
)	
DISCIPLINARY COUNSEL,)	
)	
Relator.)	

- - -

Deposition of SCOTT R. HURLEY, called for the purpose of cross-examination before Ronald M. Rua, a Notary Public within and for the State of Ohio, taken at the offices of Zukerman, Daiker & Lear, 3912 Prospect Avenue, East, Cleveland, Ohio, commencing at 9:17 a.m., on Friday, the 16th day of January, 2015, pursuant to notice and/or stipulations of counsel on behalf of the Respondent.



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1 APPEARANCES:

2 Zukerman, Daiker & Lear, by
3 Larry W. Zukerman, Esq.
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on behalf of the Respondent;

9

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15 J.Caligiuri@sc.ohio.gov
16 A.Varwig@sc.ohio.gov,

14

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on behalf of the Relator.

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ALSO PRESENT: The Honorable Angela Rochelle
Stokes.

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SCOTT R. HURLEY, of lawful
age, called by the Respondent for the
purpose of cross-examination, as
provided by the Ohio Rules of Civil
Procedure, being by me first duly sworn,
as hereinafter certified, deposed and said
as follows:

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MR. ZUKERMAN: Good morning, Mr. Hurley.
My name is Larry Zukerman. I hope this is
okay for you to be here with us today.
THE WITNESS: I'm pleased to be here.

14 MR. ZUKERMAN: Okay. You and I have
15 known each other for about three decades.
16 Maybe I have known you probably since you
17 were ten years old.

18 THE WITNESS: That's accurate.

19 MR. ZUKERMAN: All right. Now, we are
20 here in the matter of the complaint against
21 Judge Stokes, Disciplinary Counsel versus
22 Judge Stokes, and it is a matter pending
23 before the Ohio Supreme Court. We are
24 scheduled for trial the third week of
25 February, 2015. You graciously agreed to be

4

1 here and deposed without having been
2 subpoenaed. Is that fair?

3 THE WITNESS: That is correct.

4 MR. ZUKERMAN: So do you need a
5 subpoena?

6 THE WITNESS: I do not.

7 MR. ZUKERMAN: Okay. Now, you have been
8 sworn in. Have you ever had your deposition
9 taken before?

10 THE WITNESS: Never.

11 MR. ZUKERMAN: So here are the rules.
12 I'm going to be asking you some questions.
13 If you don't understand a question, let me
14 know and I will rephrase the question. If
15 you answer the question, I will assume that
16 you understood what I asked of you and that I
17 can rely upon what you are telling me. Is
18 that fair?

19 THE WITNESS: I understand.

20 MR. ZUKERMAN: If at any point you need
21 to consult any document that I might have in
22 my possession, let me know. I will give them
23 to you, if you need to refresh your
24 recollection with them.

25 If you need to consult with counsel,

5

1 Mr. Caligiuri is not your counsel. If you
2 need to call counsel you may do so. Now I
3 was informed that you had counsel.

4 THE WITNESS: That's incorrect.

5 MR. ZUKERMAN: Okay. So does anyone

6 else at the Public Defender's Office who we
7 are going to depose have counsel?

8 THE WITNESS: I think I just might know
9 what you're referring to. I guess I can also
10 tell you that I have or that I was made aware
11 that there was county, a representative of
12 the county law department who may act as a
13 legal advisor to some of my colleagues at the
14 Public Defender's Office, that is true.

15 MR. ZUKERMAN: Was that offered to you?

16 THE WITNESS: Yes.

17 MR. ZUKERMAN: And you respectfully
18 declined?

19 THE WITNESS: Yes.

20 MR. ZUKERMAN: All right. If you need
21 counsel, let me know and we will let you
22 speak to counsel.

23 THE WITNESS: Thank you.

24

25 BY MR. ZUKERMAN:

6

1 Q All right. So, for the record, could you please

2 state your full name.

3 A Yes. My name is Scott Roger Hurley. H-U-R-L-E-Y.

4 Q How old are you, Mr. Hurley?

5 A I'm 45.

6 Q What is your date of birth?

7 A August 25th, 1969.

8 By the way for the record, my father's 33rd

9 birthday.

10 Q Yes. You were his present.

11 A Correct.

12 Q A wonderful present.

13 A Objection.

14 Q For a wonderful man.

15 A Yes.

16 Q And a wonderful woman, Ms. Patricia Hurley.

17 A Thank you.

18 Q Now, what's your educational background?

19 A High school North Royalton High School here in

20 Cuyahoga County.

21 Q What year did you graduate?

22 A '87.

23 Q And you attend college where?

24 A The American University, Washington D.C. Graduated

25 in 1991. And then you attended law school here in

1 Cleveland.

2 Q Case?

3 A Yes. Case Western Reserve University. Graduated in
4 '94.

5 Q Okay. What has your employment history been since
6 graduation?

7 A Primarily, the Cuyahoga County Public Defender's
8 Office. But, I should point out --

9 Q You left for a bit, though?

10 A I did.

11 Q For the one reason --

12 A Well, that's subject to debate, I suppose. But, I
13 did, in fact, leave the County Public Defender's
14 Office, I believe in the year 1999. I decided for a
15 variety of reasons that my talent would be better
16 used elsewhere and I chose immigration as a field of
17 law. That did not last for a variety of other
18 reasons. I was then asked to become a member of the
19 staff of what would be the criminal division of the
20 Cleveland Legal Aid Society. And that's when I began
21 to practice regularly before, not only Judge Stokes

22 but the rest of the Cleveland Municipal Court bench.

23 There would come a time years later when that
24 division of the Legal Aid Society would become a new
25 division of the County Public Defender's Office. So

8

1 there I was again a county employee with the Public
2 Defender's Office and I have been in that employment
3 in a variety of roles since.

4 Q So you graduated law school in what year?

5 A '94.

6 Q And you passed the bar in what year?

7 A '94.

8 Q And have you been a member in good standing since
9 1994?

10 A Yes.

11 Q Now, when you began your job with the Public
12 Defender's Office, in what capacity did you work
13 there?

14 A I was a law clerk, actually. I think I started in
15 '92. I was drawing my first paycheck from the County
16 Public Defender's Office was in 1992.

17 My first job as a lawyer was in the juvenile

18 division. I was there I think about two years. And
19 then I went to the appellate decision. Then I went
20 to the felony division probably within a year or so
21 of that.

22 Q Okay.

23 A And then I left. Worked primarily on municipal
24 matters through Legal Aid. Then came back to the
25 county working again mostly in that newly created

9

1 municipal division.

2 Q Okay.

3 A And by the way, in recent months I have now been
4 transferred to the felony division which is where I
5 am now.

6 Q Which is where? I saw you on Tuesday, I believe.

7 A Nineteenth floor, yes.

8 Q Okay. Now, why did you transfer out of municipal
9 court representation into felony representation?

10 A I suppose I don't know the answer to that. I was not
11 consulted. I was told that I was being transferred.
12 I can assume the reason was that there were people
13 who were struggling in the felony division who had

14 requested to be transferred to the municipal division
15 and I was the other half of that bargain.

16 Q So you are the go to guy. You do what you're told
17 and you don't complain?

18 A I guess I'm the ship rolls down hill guy. But, yes.

19 Q All right. Now, are you licensed in any other
20 states?

21 A No.

22 Q So you had indicated that when you first began
23 working in Legal Aid, that's when you first
24 encountered Judge Stokes?

25 A Correct.

10

1 Q When do you recall that occurred?

2 A 2000, I think.

3 Q Okay.

4 A It was before 2001.

5 Q How are you so definite about that?

6 A Because on September 11th of 2001 I was standing at a
7 podium in the Cleveland Municipal Court. I remember
8 that. So I think it was sometime within a year prior
9 to that that I had been back in the municipal

10 division.

11 Q So you were assigned to Judge Stokes' courtroom to
12 represent indigent accused?

13 A Correct.

14 Q Tell me about that experience?

15 A First of all, there's a staff of about a dozen
16 lawyers or there has been to kind of fit one to each
17 courtroom. Every member of that staff rotates over
18 what's normally a four month rotation in front of any
19 judge in the Cleveland Municipal Court.

20 Q Okay.

21 A I think at the time that I began there had already
22 been an accommodation because of some concerns in
23 Judge Stokes' courtroom and the length of time and
24 the issues going on as far as how labor intensive it
25 may have been that our office created kind of a half

11

1 rotation in her courtroom. And so it would be two
2 months in Judge Stokes' courtroom followed by another
3 two months which would kind of be more like an
4 initial court proceedings docket, what we called B
5 and C and D.

6 Q The traffic docket and the first appearance docket
7 for municipal court and felony court where they set
8 bond?

9 A Correct.

10 Q I'm sorry. I interrupted you.

11 A No. I was just saying so I probably I don't know
12 when I probably had a first rotation in front of
13 Judge Stokes, but sometime in the year 2000.

14 Q You used the term, labor intensive. She makes you
15 work?

16 A Correct.

17 Q Okay. And by work that means that -- strike that.

18 If you could, please describe what's going on in
19 the Cleveland Municipal Courtroom from beginning to
20 end.

21 A All right. Well, I guess I can speak from the
22 perspective of the indigent defense provider assigned
23 to that courtroom.

24 Q Yes, sir.

25 A Our office has a mechanism to receive clients and

12

1 that is they are instructed to come to our office and

2 we open a file. And that is essentially as long as
3 we are satisfied they are indigent a client that we
4 will represent.

5 There's a secondary way where our office will
6 assume responsibility for a client, which is when we
7 are in the courtroom and an issue seems to arise at a
8 moment on the record in which someone is standing
9 there who seems, number one, to be indigent and
10 number two, to have the possibility of jail hanging
11 over their head, and number three, requires
12 assistance. So those are two ways, at least for me
13 as a lawyer, where I would feel responsible for cases
14 in a courtroom.

15 Q And for the second scenario it would have been people
16 who had their initial appearance, did not request
17 counsel, or two, did not show up for their
18 appointment at your office?

19 A Well, number one, there are no appointments. They
20 just show up in a crowded stinking lobby every
21 afternoon.

22 Q Okay.

23 A And number two, people don't request counsel at the
24 first appearance. They are basically told they need

25 counsel, which is unlike the Common Pleas Division

13

1 where people show up at arraignments and they're
2 appointed a lawyer based upon their claim over
3 indigency. In the municipal division it's basically
4 you better have one before you get back here or get
5 to the Public Defender's Office.

6 Q Why do they get that admonishment, that you better
7 have one when you come to court?

8 A Because in those cases the possibility of jail time
9 exists and there are the obvious requirement if that
10 is a potential penalty that someone is entitled to
11 legal representation.

12 Q Okay.

13 A And really the only effective way to do that in the
14 high volume court system of the Cleveland Municipal
15 Court, I suppose for the time being at least, is to
16 have people funneled to our office to initiate that
17 process by coming to us.

18 Q Okay. Now, you use the modifier, high volume to
19 describe the Cleveland Municipal Court. Tell me
20 about that. Why do you use that modifier?

21 A I can be expected to represent dozens of people a day
22 in a courtroom. And in a way that diminishes my
23 ability to be as effective as I may want to be. But,
24 I have thought of ways to kind of rub the edges off
25 of that problem. And, you know, it is tied together,

14

1 I think not only with my kind of philosophy of
2 lawyering, I think even my methodology of lawyering.
3 I guess that's my answer.

4 Q Well, when you talk about representing dozens of
5 people a day and it affecting your efficacy as a
6 lawyer, how do you think it affects your ability to
7 represent people effectively?

8 A Mostly because of the number of conversations that
9 I'm required to have in a limited amount of time. If
10 I have four clients on a given day, then the due
11 process it seems to me that is commensurate with that
12 number of clients kind of expands and gives me more
13 time to be more thorough. When there are a greater
14 number of people I represent on that day, that means
15 it is going to be more difficult to try to fulfill
16 all of those obligations. And it is up to me, I

17 think in my own sense of what is justice and what
18 process is due, to try to make sure that I do my best
19 given any circumstances. And if it is a crowded day,
20 then sometimes those conversation are different than
21 if it is not a crowded day.

22 Q Now, you indicated that you have developed your own
23 style in dealing with this situation. Tell me about
24 that.

25 A Well, one example is this. And this does not

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1 necessarily apply strictly to the confines of Judge
2 Stokes' courtroom but in any courtroom. So if a
3 courtroom is crowded with a lot of people who don't
4 want to be there, who may not even trust the Public
5 Defender's Office, in many instances if I find myself
6 at the podium representing someone, then I can use
7 that moment in front of a crowded courtroom to make
8 it clear to others that, number one, I know what I'm
9 talking about, number two, I care, and number three,
10 I seem to have a better handle on what's going on in
11 the courtroom than anyone else.

12 Q You educate your target audience?

13 A Correct. That's one way of putting it.

14 Q Through your beautiful oratory skills?

15 A Objection. Subjective mind state.

16 If I can elaborate, I suppose?

17 Q Please.

18 A This is really something that I have kind of worked
19 on over the years that -- I mentioned a philosophy, a
20 methodology. My philosophy is simple. It is you
21 judge a society by how it looks after its citizens.
22 Obviously, I inherited that from my father. How you
23 do that, the method you use to do that in my mind has
24 to do with the physical space of the courtroom, has
25 to do with how that physical space is connected to

16

1 other physical spaces that we have in society. For
2 example, a classroom or a theater or a church. And
3 this idea of courtroom, classroom, theater, church is
4 nothing new to me. It's something that I've had
5 within me for many years. Maybe I didn't have it
6 when I first started. But, it has evolved over time
7 so that I can use a moment in time to educate, to
8 bring the kind of decorum to a setting that sometimes

9 maybe a situation that could be rather volatile and
10 chaotic with a lot of personalities and a lot of
11 emotions. How I handle that moment in the courtroom
12 can perhaps bring a calm to it and maybe even some
13 insight for people who are surprised that there is
14 someone like me that exists in that courtroom.

15 Q Okay.

16 A And that's what I'm talking about.

17 Q Somebody who cares for them and is going to fight for
18 them?

19 A That's one way of putting it, yes.

20 Q How would you put it?

21 A Basically, just somebody who knows what they are
22 doing and cares and -- you know, fight, fight is a
23 word I don't want to use.

24 Q Advocate for them?

25 A I try not to use sports metaphors.

17

1 Q That you will advocate for them?

2 A Better, yes.

3 Q Now, describe a typical -- I know there's no typical
4 morning in the Cleveland Municipal Court. But, on a

5 Monday morning in one of the thirteen municipal
6 courtrooms on any given day you can have over one
7 hundred cases on a docket.

8 A It is possible. I would say Monday mornings are
9 usually pretty quiet.

10 Q Tuesday mornings?

11 A Tuesday is a busy day.

12 Q All right. How many cases, on average, do you see in
13 a courtroom?

14 A Again, that's a variable. But, it is possible that
15 there could be a packed courtroom with maybe fifty to
16 eighty people who, by the way, may have multiple
17 cases. If you do the math there may be 120 or 140
18 cases on a bad day.

19 Q And you've got defendants, prosecutors, lawyers,
20 police officers, witnesses and advocates all in one
21 courtroom. Fair statement?

22 A Plus prisoners.

23 Q And bailiffs?

24 A Plus bailiffs, yes.

25 Q Probation officers?

1 A They're summoned. They are not often there.

2 Q Okay. So on a Tuesday morning you could probably
3 have eighty to ninety people in the courtroom first
4 thing in the morning?

5 A It is possible. I wouldn't say common, but, yes.
6 That was frequent, I suppose.

7 Q Okay. And the prosecutors are talking to the police
8 officers, lawyers and witnesses all at the same time
9 trying to get a handle on the morning docket,
10 correct?

11 A Yes.

12 Q The lawyers, defense lawyers are talking to the
13 prosecutors, clients and police officers trying to
14 get a handle on their cases in the morning?

15 A Yes.

16 Q And this is all while the judge is on the bench
17 calling cases trying to move the docket along?

18 A Yes.

19 Q It is a very loud process normally in the courtroom,
20 at least at the beginning of the morning, trying to
21 get the cases underway and the docket moving?

22 A You say, loud?

23 Q Everybody is talking. There's a lot of action in the
24 courtroom?

25 A I wouldn't use the word, loud.

19

1 Q How would you describe it?

2 A It is can be chaotic.

3 Q That's a better term.

4 A But people are not normally loud, I guess.

5 Q But there's a lot of action going on?

6 A Yes.

7 Q And that's not just in Judge Stokes' courtroom,
8 that's every Cleveland Municipal courtroom first
9 thing off the bat?

10 A Possibly, yes.

11 Q Now, some judges take the bench at 9:00, some take
12 the bench at 11:00 for a 9:00 docket. Fair
13 statement?

14 A Every judge has their own methods, yes.

15 Q But, in the Cleveland Municipal Court everything is
16 resolved in the courtroom. Strike that.

17 If the judge takes the bench at 9:00 everything
18 is resolved in the courtroom as the judge is on the
19 bench trying to move the docket?

20 A I mean as a generalization, yes. But, I mean there

21 are other ways things can get resolved when they're
22 not on the bench.

23 Q For example, if you called the Prosecutor's Office
24 and had an agreement with the prosecutor beforehand?

25 A Right.

20

1 Q That's not often done?

2 A No. It's mostly conversations in the moment.

3 Q In the courtroom?

4 A The parties who are necessary to a resolution are
5 physically in the same space together and that's a
6 time to have a conversation about either resolution
7 or a trial or whatever. So, yes.

8 Q Okay, all right. Now, I want to direct your
9 attention to your experiences in Judge Stokes'
10 courtroom and more particularly if you had filed any
11 complaints against her. So I guess my first question
12 off the bat here is, did you ever file any written
13 complaints against Judge Stokes pertaining to
14 anything that happened in your presence in her
15 courtroom?

16 A No.

17 Q Did you ever verbally complain to anyone about Judge
18 Stokes about anything that happened in her courtroom?

19 A You mean in the context of like a supervisor or what
20 do you mean?

21 Q Yes.

22 A No. There was no -- I don't recall circumstances in
23 which I made, took a step toward trying to initiate
24 some action that would generate a response.

25 That does not mean I didn't at some point lament

21

1 the painfulness that I was sometimes having when
2 representing the indigents in her courtroom either to
3 colleagues or family or others.

4 Q The painfulness, please tell me what you mean.

5 A Pardon?

6 Q You mentioned painfulness. Please tell me.

7 A It is before someone would begin a rotation in Judge
8 Stokes' courtroom there was the expectation that it
9 was not going to be a pleasant experience for that
10 person. And sometimes it was a sort, we will see you
11 in a couple of months kind of conversation. And in
12 that commiseration I suppose of that, you know, I may

13 have had conversations about that. I don't have any
14 specific recollections about them. But, I think your
15 initial point or initial question was, did I ever
16 really make a complaint against her. And the answer
17 I think, it is, no.

18 Q But, then you gratuitously said that you lamented the
19 painfulness being there. Tell me --

20 A I don't know that it was gratuitous. But, I would
21 say that the act of showing up and being there and
22 watching the day unfold in patterns where sometimes
23 what I think most people will consider a minute issue
24 would escalate into something that would be certainly
25 an important priority to her, but maybe that

22

1 prioritization would be obscure to everyone else. So
2 that there would now be a sense in the courtroom that
3 because matters weren't proceeding in what would seem
4 like a reasonable pace, people would get angry and
5 hostile and would sometimes turn that hostility
6 towards the only person that they would know to turn
7 it towards which would be me.

8 Q Okay. You said something that might be obscure to

9 others might be important to the judge and that would
10 slow things down. Would that be like a probation
11 report not being there at the time it was supposed to
12 there before sentencing?

13 A That's one example.

14 Q And the judge would require them to bring the
15 probation report to her?

16 A Correct.

17 Q That's not her fault that the probation report wasn't
18 there?

19 A Is that a question?

20 Q I guess, would you believe it is her fault that the
21 probation report wasn't there?

22 A No.

23 Q Would another situation that you think would be that
24 your client, that would be obscure to them, would be
25 like a court psychiatric report would not be there,

23

1 if it were supposed to have been there?

2 A That's another example.

3 Q Okay. Would another thing that would slow the
4 process down be that a file would not be in the

5 courtroom that was supposed in the courtroom?

6 A Correct.

7 Q Would another item that would slow the process down

8 be that a police officer would not show up for a

9 trial that was supposed have shown up for trial?

10 A Correct.

11 Q And another item that would slow the process down

12 would be that a party or a defendant would not be

13 there that was supposed to be there?

14 A Correct.

15 Q And another item that would slow the process down

16 would be that a lawyer, for example, a private lawyer

17 would not be there that was supposed to be there?

18 A Correct.

19 Q Or that a witness or complainant would not be there

20 that was supposed to be there for the trial?

21 A Correct.

22 Q So these were not -- this would happen frequently in

23 the Cleveland Municipal Court?

24 A In every courtroom, yes.

25 Q In every courtroom of the Cleveland Municipal Court?

1 A Yes.

2 Q And you indicated that Judge Stokes would require the
3 probation officer to bring the report, correct?

4 A Not in all cases. I don't think I would specifically
5 say that.

6 Q Okay. But, these items that would slow the process
7 down would be lost on your client? They would not
8 understand what's going on in this courtroom? Why
9 this is taking so long?

10 A Yes.

11 Q And they would find this painful, the apparent
12 inefficiency of the whole court that was slowing the
13 process down in Judge Stokes' courtroom?

14 A I suppose you would have to ask them. But, I
15 understand your point, yes.

16 Q Now, was there anything else that would slow the
17 process down other than what I didn't ask of you?

18 A Yes.

19 Q What else?

20 A Technology.

21 Q Tell me about that.

22 A Where microphones or the computer docket we are
23 working with presented problems in a way that meant

24 that matters couldn't be called.

25 Q What do you mean by that?

25

1 A There are recordation devices, there's a docket
2 management system that I don't know too much about,
3 but you scan a file and that is the file that is now
4 on the record. And if there were problems with that
5 system, that could really grind things to a halt.

6 The jail population was often something that
7 could really bring things to a halt.

8 Q Tell me about that.

9 A Well, whether it would have to do with transportation
10 of jail inmates, and I'm not quite sure how long this
11 was even attempted, but there was a push to bring
12 technology involving prisoners over television to her
13 courtroom. And while that has been utilized, I
14 think, in other courtrooms, my recollection is it
15 failed in Judge Stokes' courtroom for a variety of
16 reasons.

17 Q What were those reasons?

18 A Again, the technology was not serviceable. A
19 microphone would not work. They could not see me. I

20 would always start by saying, can you see me standing
21 at the podium? And they would say, what podium?
22 Problems like that.

23 Now, I would point out, as an aside, I have my
24 own grave concerns about those technologies. And if
25 I can recall, it kind of came to a head that wasn't

26

1 really how she was going to use that technology in
2 her courtroom, anymore.

3 Q It just didn't work?

4 A It wasn't -- yes, it caused more problems than it
5 solved.

6 Q Not because of her?

7 A I don't know. I don't know. I would not presume it
8 was because of her.

9 Q You didn't think she was pulling the wires out of the
10 visual camera so they wouldn't transmit the signals?

11 A I don't have any reason to believe that's how it
12 occurred.

13 Q All right. Tell me what other reasons court would be
14 slow.

15 I'm sorry. You were talking about prisoners.

16 Prisoners would be delivered to the Justice Center
17 but never find their way up to the courtroom?

18 A Sometimes. I guess maybe it was how ready the
19 prisoners were to take any steps in the courtroom,
20 anyway.

21 There was, as the person providing indigent
22 defense to anyone who needed it, that would usually
23 mean I'm handling eighty to ninety percent of the
24 prisoners. There would occasionally be a private
25 lawyer, I suppose, who would have somebody on a case.

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1 But, in the grand scheme of things they would be
2 people who were to be informed of their rights,
3 informed of their charges, informed of their choices
4 and that would, indeed, require my time. And if I am
5 talking to prisoners, then I'm not in the courtroom
6 and that in and of itself may cause a problem while I
7 may be needed on one matter in the courtroom, I'm
8 talking with prisoners outside of the courtroom.

9 Q Okay.

10 A Or for that matter, people who are not prisoners but
11 out on bond talking with them out in the hall while

12 another matter might require my presence in the
13 courtroom, so that I would not be able to finish the
14 conversation outside, obviously, because I was
15 required in the courtroom. Those are all issues.

16 If I can add another one or two. How about
17 when, for example, someone in the courtroom may act
18 in a way that the judge thought improper. There
19 would be thereafter kinds of discussions involving
20 that person's behavior and that could definitely
21 escalate into a new concern about contempt of court
22 or something like that. I mean that's another matter
23 that can kind of slow things down.

24 Verifying where someone may stay if they're
25 released was something that could mean that the

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1 matter would have to be put on hold until that issue
2 could be addressed.

3 So there's a whole litany. I can't think of any
4 additional ones at the moment. But, there's lots of
5 variables in a chaotic, moving, many moving parts.
6 Not just her courtroom but any courtroom in the
7 Cleveland Municipal Court.

8 Q Okay. Has Judge Stokes always been respectful to
9 you?

10 A Always? I would probably say my relationship with
11 the judge has evolved over time. And when I began my
12 first assignment or two in her courtroom as a less
13 seasoned lawyer, I suppose sometimes there would be
14 acrimony between us. Perhaps, there were many times
15 I thought that she was being disrespectful to me or
16 perhaps in those same moments she thought I was being
17 disrespectful to her.

18 I will tell you that those moments really
19 diminished over time. And in, I think my last few
20 rotations probably, somehow, maybe since I started
21 having kids, maybe that kind of brought a different
22 perspective to me in a way about how I would handle
23 my interactions with others. And I think that, you
24 know, I would say that our relationship has been both
25 cordial, professionally and personable in recent

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1 years.

2 Q Okay. If you could give me a timeframe from when you
3 first started appearing before her and you said there

4 was some acrimony. Could you tell me about that.

5 A I think one of the points that should be mentioned is
6 her strict compliance with Rule 11. Every case,
7 whether it is a misdemeanor, minor misdemeanor, even
8 a traffic matter or a domestic violence case, her
9 Rule 11 colloquy is the same colloquy.

10 Q You and I know what that means. I'm not sure that
11 everybody knows what that means.

12 A Someone is going to enter a plea.

13 Q A plea of no contest?

14 A In the vast majority of DUIs which she would require
15 a guilty plea, in that instance for the reason of it
16 being, perhaps, used later on down the line as an
17 enhancement, that was the one charge that I don't
18 think she is alone in this, but there are maybe a few
19 other judges that will require a guilty plea in the
20 context --

21 Q Of OVI?

22 A Correct. But, in the vast majority, people enter a
23 no contest plea. That would require a conversation
24 of about fifteen to twenty questions and if the
25 client didn't understand the question or gave the

1 wrong answer to the question, then that, in many
2 instances, would mean you would have to come back
3 later and go over it again.

4 Q What is the purpose of Rule 11?

5 A It is to make sure that every single person who is
6 taking the step of waiving and giving up the rights
7 that everyone has understands those rights.

8 Q Constitutional statutory rights?

9 A Sure. And the collateral consequences of plea and
10 stuff, sure.

11 Q Okay. Would you have a problem with a client
12 knowingly and intelligently waiving those rights?

13 A What do you mean, would I have a problem?

14 Q Strike that. Would you have a problem just taking a
15 client to the stand having them plead guilty to an
16 offense that you didn't inform that client of their
17 Constitutional rights?

18 A Rarely.

19 Are you saying specifically in her courtroom
20 would I have that problem?

21 Q Would you personally have, say, a problem permitting
22 a client to plead guilty if you didn't explain to
23 them their Constitutional, statutory rights?

24 A Of course I would.

25 Q For example, you had indicated collateral

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1 consequences to guilty pleas, one of which is
2 deportation?

3 A Correct.

4 Q And if a person is convicted of a sex offense in the
5 United States of America and they're not a citizen,
6 they can be automatically deported. Would that be a
7 fair statement?

8 A I think that's accurate. I don't know about
9 automatically.

10 Q There's two findings of action, what is your port of
11 entry and were you found guilty of that offense,
12 correct?

13 A Got it, yes.

14 Q Do you agree with me?

15 A Yes.

16 Q Okay. Do you find it would be important to notify
17 somebody of collateral consequences if they were or
18 were not citizens of the United States before you
19 accept a plea of guilty to any criminal offense?

20 A Yes.

21 Q And that is --

22 A Essential really, obviously.

23 Q It is statutorily required of all judges to inquire

24 of every defendant that appears before them to go

25 through this colloquy; is that correct?

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1 A The deportation colloquy?

2 Q Yes.

3 A I believe that's correct.

4 Q And Rule 11 requires the judges and the Constitution

5 requires the judges to go over their Constitutional

6 rights with them before a judge accepts his or her

7 and/or guilty or no contest plea?

8 A My understanding is that there is elasticity to that

9 with regards to misdemeanors. But, certainly no one

10 should ever be expected to enter a plea without

11 understanding those rights. Whether or not a judge

12 is required under law to engage in the colloquy that

13 occurred on every case in Judge Stokes' courtroom, I

14 suppose that's up to the Court of Appeals.

15 You know, in theory, I don't see anything wrong

16 with a judge asking those questions in every case.
17 And in fact, that seems like one of the reasons why
18 over time, because I would make sure that every
19 single person knew and understood those questions
20 were coming, that I perhaps had a more -- excuse me,
21 I perhaps had a more easier time of taking that step
22 and having people take the step of entering pleas
23 than perhaps others.

24 Can I just elaborate, please?

25 Q Sure.

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1 A The question, the first question is a yes or no
2 question and it is -- actually, it is not a yes or no
3 question. Well, it is, is it your desire to withdraw
4 your previously entered not guilty plea and in its
5 place enter a no contest plea with consent to a
6 finding of guilt to the charge. Now, that's a
7 complicated question for someone who may not be fully
8 educated to really understand. A lot of time people
9 will blurt, "no contest of guilt," and that was not
10 the answer to the question. And if you weren't aware
11 of that issue, that the question was designed to be a

12 yes or no question, then that would mean that the
13 plea would not be accepted. Then there's the rest of
14 the questions that was part of the colloquy, as well,
15 but that's the essential one.

16 I will tell you that, you know, I have had a
17 moment in time where there was a case of, and it kind
18 of ties together two of the issues we just mentioned;
19 a guy who had been kicked out of the Casino, a
20 Chinese guy is kicked out of the Casino. When I show
21 up, when I would be there, I would usually walk my
22 way through Judge Adrine's courtroom and around the
23 jail chambers and come out the door like a cuckoo
24 clock coming out of the door. And there was at the
25 podium this man and the translator and clearly a

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1 packed courtroom. There was nothing happening here
2 that anyone could really do anything about accept me.
3 So the judge asked me, this was not a client of mine.
4 I think what he wanted was an M-4, to have a
5 conversation and I did. I took the parties out
6 in the hall and I elaborated on their rights. It was
7 difficult to get a Mandarin Chinese interpreter to

8 even know how to understand the phrase, is it your
9 desire to withdraw your previously entered not guilty
10 plea and enter a no contest plea with a finding of
11 guilt without her tearing up.

12 Q Without the interpreter tearing up?

13 A Yes.

14 Q Crying?

15 A Correct. I think it was just that's the kind of
16 emotional level that, you know, occurred in these
17 courtrooms just because people just didn't understand
18 what was going on.

19 Q So the judge -- for example, you would ask the
20 defendant, is it your desire to withdraw your former
21 not guilty plea and enter a plea of no contest?

22 A Previously, not formerly. But, yes, it was a script.
23 I mean back to the theater part of what I said
24 earlier. It was a script.

25 Q And if the defendant did not appear to understand

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1 what they were doing, the judge would not take the
2 plea?

3 A Correct.

4 Q She was protecting their rights?

5 A Correct.

6 Q She wanted to make sure they knew what they were
7 doing before she permitted them to enter a plea of no
8 contest?

9 A I would not presume to know what's in her mind. But,
10 that sounds like a logical reason.

11 Q That's what it appeared to you?

12 A Sure.

13 Q I mean, there was nothing evil or nefarious about
14 what the judge was doing. She wanted to make sure
15 everybody knew what they were doing before they did
16 it?

17 MR. CALIGIURI: Objection.

18 Q It didn't appear to you that there was anything evil
19 or nefarious about what the judge was doing. She
20 just wanted to make sure that everybody knew what
21 they were doing?

22 A That's correct.

23 Q Okay. Now, did you ever have a chance to look at the
24 complaint that was filed against Judge Stokes?

25 A I did.

1 Q Did you ever have a chance to look at the amended
2 complaint that was filed against Judge Stokes?

3 A I don't recall.

4 Q Okay. Well, tell me the circumstances under which
5 you looked at the original complaint that was filed
6 against Judge Stokes.

7 A I think I printed it up and I read it myself.

8 Q Okay. Did you print it up from the Plain Dealer or
9 from the Supreme Court web site?

10 A I don't recall.

11 Q All right. Do you feel that Judge Stokes should be
12 disbarred should be disbarred?

13 A No.

14 Q Okay. Now, did you ever have any conversations with
15 anyone at disciplinary counsel about Judge Stokes?

16 A At disciplinary counsel, no. One individual, I
17 believe Mr. Coughlin, came to our office and spoke
18 with members of our staff.

19 Q So he was the disciplinary counsel?

20 A I suppose, yes.

21 Q Okay. Tell me about that. Was this pre-arranged
22 meeting that Mr. Tobik had arranged with Mr. Coughlin

23 to come speak with members of the Public Defender's
24 staff?

25 A I don't know how it was arranged. I do know there

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1 was a moment in time where it was made clear to us
2 that he was talking to our lawyers, our staff about
3 what was taking place in the courtroom and that it
4 was expected that those who had practiced in front of
5 her would be, I suppose, required to answer his
6 questions.

7 Q Okay. Do you recall who relayed this information to
8 you?

9 A I don't.

10 Q Okay. When you say, it was expected of the lawyers
11 who appeared in her courtroom, was it mandatory that
12 you meet with him?

13 A Not from any directive within my office. But, I mean
14 if the Ohio disciplinary counsel is investigating a
15 matter and I am a lawyer who chooses to remain in
16 good standing with the Supreme Court of Ohio, I will
17 avail myself to answer any questions.

18 Q So you felt it was your responsibility and your legal

19 obligation to do so?

20 A Correct.

21 Q To meet with him?

22 A Correct.

23 Q Do you recall when you met with him?

24 A No. I could maybe ballpark it to two years ago or a
25 year and a half ago. But, I don't have any specific

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1 recollection of when it was. I can say where it was.

2 It was in our conference room on the second floor.

3 But, I don't know when.

4 Q Was anyone present with you and Mr. Coughlin in the
5 room when you were interviewed?

6 A No.

7 Q Do you recall if he recorded your interview?

8 A I don't believe he did. I have no knowledge of his
9 recordation.

10 Q Okay. Do you recall if he took notes about what you
11 said to him?

12 A I don't recall.

13 Q How long did you meet with him?

14 A Twenty minutes.

15 Q Okay. And did he ask you any specifics about Judge
16 Stokes?
17 A When you say, specifics, you mean specific instances
18 or incidents?
19 Q Yes.
20 A I think one of the most volatile matters that I was
21 involved in had to do with one of my colleagues,
22 Scott, Scott Malbasa, who is no longer with our
23 office. But, there was a moment where she was
24 threatening him with incarceration or being thrown
25 into a holding cell. There was some allegations of

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1 that that I wasn't present for. And I was the lawyer
2 just out of circumstances who happened to be there,
3 to wind up on the floor that day, not knowing that
4 something terrible had just happened. I may have
5 talked about that incident and said basically that I
6 was the guy who came into the courtroom and handled
7 the docket after that for a time period, I think
8 until Malbasa may have returned to that courtroom a
9 few days later.
10 Q Did Mr. Coughlin ask you any specifics about any of

11 your clients that had appeared before Judge Stokes?
12 A I don't recall. I don't think so. You're asking if
13 he asked me about any specific cases of mine?
14 Q Of your clients.
15 A I don't recall really a discussion of any specific
16 case.
17 Q Okay. Did he ask you anything about your opinions
18 about Judge Stokes?
19 A I really don't recall the substance of his questions.
20 What I recall discussing with him were the
21 techniques that I use to cut the edges off of a
22 difficult situation and how it was that I didn't have
23 the sort of problems that other members of my staff
24 or my colleagues, I should say, had.
25 Q Okay.

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1 MR. ZUKERMAN: Can we take a short
2 break? Do you mind?

3 MR. CALIGIURI: Sure.

4 MR. ZUKERMAN: All right.

5 - - -

6 (Recess had.)

7

- - -

8

MR. ZUKERMAN: Back on the record.

9 Q All right. Mr. Hurley, I have some more questions to
10 ask of you. You had indicate that when you worked in
11 Judge Stokes -- strike that.

12 When you met with Mr. Coughlin you explained to
13 him how you could work well with Judge Stokes when
14 others could not or few others could not. Tell me
15 what you explained to Mr. Coughlin how you could work
16 well with her.

17 A I'm a big believer in decorum.

18 Q Like respecting the judge?

19 A Acting in a way that's commensurate with everyone's
20 rules.

21 I guess something else to point out that makes
22 me unique among others.

23 Q Others in your office?

24 A Others in this world. And that is this was not the
25 first courtroom in which a Judge Stokes and a Hurley

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1 practiced together. My father found himself in front
2 of Judge Carl Stokes in the '70's and the '80's and

3 in a way she and I are kind of a legacy to two
4 different traditions, I suppose, in Cleveland public
5 service. But, I don't really know, I can't begin to
6 understand how she views that. But, I view it as
7 serious, that I'm trying to fulfill a legacy of my
8 father in the same sense that perhaps she is trying
9 to fulfill a legacy of hers or her uncle, for that
10 matter. So that template gave me a different
11 perspective on how to do things in her courtroom than
12 I think others had.

13 Q Okay. You used the word, decorum --

14 A Correct.

15 Q -- to describe how you would act in her courtroom.
16 Proper decorum, could you expand upon that, please.

17 A Well, I would -- I would never say something that I
18 felt was kind of in the vernacular, look, judge,
19 could you just speed this along? I would never say
20 that. That would violate decorum.

21 Q Did other lawyers say that to her?

22 A I don't have any specific recollection of those words
23 being used. But, it just seems like the wrong thing
24 to say in a courtroom.

25 I would point out by the way, it has never been

1 lost on me at least for probably the past six or
2 eight years everything that goes on in her courtroom
3 is, in fact, recorded. So that kind of tethers
4 together with how as a person you behave and fulfill
5 your role as a lawyer in her courtroom. I understand
6 that, you know, my lawyering is subject to scrutiny
7 just like her judging is. So, you know, I would say
8 that there were plenty of times, as you know that
9 sometimes either the less you say the better or to
10 temper your emotions in a way that allows you to
11 continue on what you're trying to do.

12 Q Okay. So getting back to your meeting with Mr.
13 Coughlin. Tell me what you told him during that
14 twenty minute time period that you met with him?

15 A I can't really specifically recall.

16 Q Give me your best.

17 A Probably had to do with a lot of the things that we
18 talked about here already. I think I probably made
19 it clear that the judge had found herself in a
20 situation in which she has acrimony, acrimonious
21 exchanges with lots of people, not just defense
22 lawyers, court staff, prosecutors, police, that that

23 acrimony sometimes would escalate to the point where
24 the courtroom would disassemble in some way and
25 people would get so upset that sometimes for that

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1 reason alone the court would have to stop because
2 people were upset.

3 Q Can you give me some examples of that.

4 A Nothing specific. But, there were plenty of times
5 where, for example, maybe like the lunch hour, the
6 lunch hour was sometimes kind of a touchy subject.
7 I, for example, I think the record would be clear, I
8 generally declined to go to lunch, that I would
9 prefer so that I would not have dozens of people who
10 either I planned on representing or might have to
11 represent would be there in my absence. I would just
12 continue through the docket. The judge was always
13 gracious enough to offer the opportunity to go to
14 lunch. But, sometimes that would not be the right
15 moment to do that, as far as I'm concerned.

16 Q But that was your choice?

17 A Definitely, yes.

18 Q Okay.

19 A But, if there were a moment in time where the judge
20 would go off the bench and perhaps maybe not many
21 cases had been addressed on the record that morning,
22 that would create a kind of, you know, a puff of
23 smoke in the courtroom where everybody would be so
24 upset and kind of have an exaggerated sigh. And
25 that's when people might get loud and perhaps

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1 security would have to be enlisted to kind of calm
2 people down.

3 Q Are you saying there are riots in the courtroom?

4 A I did not say there were riots in the courtroom.

5 Q Okay.

6 A But, sometimes it would escalate to the point where
7 people might get violent. That happens sometimes.

8 Q How often did that occur?

9 A I can't put a number on it, especially given the fact
10 I'm seeing it in segments of time here.

11 If I may say, this sticks with me that, you
12 know, I've probably got no finer compliment from a
13 judge than Judge Stokes; that once she told me I
14 bring calm to her courtroom and that's why those

15 circumstances were less likely to occur when I was
16 there.

17 Q Now, you had indicated that you used certain
18 techniques, I guess, in bringing calm to her
19 courtroom. What techniques do you bring to her
20 courtroom that bring calm to her courtroom?

21 A A little bit of humor, a little bit of -- here's a
22 good example. This didn't happen every single day.
23 But, if I could, if I had the opportunity before
24 court would begin, I would make an announcement. I
25 would make it clear to people that, number one, if

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1 you have the possibility of jail hanging over your
2 head, then you have a right to a lawyer. And if you
3 have not talked to one by now, you may be required to
4 ask for a continuance so you can seek the advice of
5 counsel. I would make people know that they are
6 going to have to maintain complete silence through
7 the process, not be a distraction from any matter
8 going on at the podium or at the bench. I would make
9 it clear to people, if I could, all of the rights
10 that would be a part of perhaps Rule 11 compliance in

11 the first place. So that if, in fact, somebody who
12 you know has their second speeding ticket in a year
13 punishable by thirty days in jail wants to get it
14 over with without much further effort, they could get
15 it over with in a way that made it clear they knew
16 what they were doing. If I could make an
17 announcement like that on a given day that would
18 often alleviate the process, the tension, I think.
19 That was one technique I would often use.

20 One of the others is the judge would often
21 expect us to provide her with a list of our clients
22 in the morning and I was always reluctant to do that.

23 Q Why?

24 A Well, first of all, because sometimes I didn't know
25 who was going to be my clients. I don't know whether

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1 or not they are in the courtroom present. If the
2 reason to give that list is to somehow encourage her
3 to call those cases, I had seen evidence that that
4 was not the case. Frankly, if she's going to call
5 cases and I don't know if the person is even in the
6 courtroom or not, it seems to me then what am I doing

7 is confusing the matter by providing her a list of
8 names of people who I am not prepared to represent.
9 So what I would instead do is find out who is
10 physically in the courtroom and match that up with
11 the list of names. And maybe I wouldn't give her all
12 of those names. I could give her several and say
13 here's three people that I know are present and are
14 people who have been to our office and that you
15 should know we could probably have those cases
16 called. That wouldn't necessarily mean the cases got
17 called. At least it would mean for me that, you
18 know, she knew that I had some matters if she chose
19 to call them, that we could take some steps to try
20 and make a motion to resolve it with a plea or
21 whatever.

22 The other variable though is those jails. I
23 think in the years, probably the last four or five
24 years, there were limitations imposed upon her
25 courtroom, presumably by the Administrative and

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1 Presiding Judge, that prisoners had to have their
2 cases called by a certain time or they would be

3 returned and never to be seen again until another
4 court date. So that would be a priority that I would
5 know was in her mind that I would address.

6 Q Getting the jails done for the day?

7 A Yes. That's an issue for a variety of reasons.
8 Seems like a good idea to me to have those cases
9 called and to address them as soon as possible.

10 The problem there is another matter that did not
11 involve a jail, that had a multiplicity of parts. It
12 could often times come to the point that the clock is
13 ticking. It is fifteen minutes before the prisoners
14 are going to be taken down. What am I supposed to
15 do?

16 Q I'm sorry, you look like you were going to say
17 something else. I didn't want to interrupt.

18 A It may be off question, but I think I'm trying to
19 express that I tried to understand the judge's
20 priorities. And that's something that only you can
21 get with what I would describe as pattern
22 recognition. A lawyer like Larry Zukerman who comes
23 in there once in a while may not see the patterns
24 that a person in my position would see. I would know
25 how cases might have a better chance of getting

1 resolved swiftly. I would know about whether or not
2 she was going to expect that someone was going to be
3 dropping urine and determine whether or not they had
4 anything in their system which could completely
5 change the direction of the case. I knew those
6 things. I understood the patterns that emerged over
7 time. And that pattern recognition, combined with
8 situational awareness, and now that I'm talking about
9 all these high-falutin terms, if I can throw in
10 transactional analysis. I don't know if everyone
11 knows what that means. There's a field of inquiry of
12 inter-personal communication that's transactional
13 analysis. I'm not making this up. It has been
14 around for years. It talks about how to understand,
15 how to communicate with people, perhaps someone in
16 authority versus somebody who is not in authority.
17 All of those things kind of combine in a way that I
18 thought gave me a better chance of moving things in
19 the courtroom, primarily my client's satisfaction
20 which is really my primary concern, concordantly with
21 the court, as well as other staff who may show a sign

22 of relief that I was there as opposed to other
23 lawyers who may have a different process.
24 Q Now, you were talking about decorum, I think was the
25 word you used. Does the Cleveland Municipal Court

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1 have a policy with regards to cell phones and their
2 usage in the courtroom?

3 A Judges do specifically.

4 Q Does Judge Adrine?

5 A Yes.

6 Q Tell me about that.

7 A Mostly if they go off or ring, then they're getting
8 confiscated.

9 Q He takes them?

10 A The court staff does, but, yes.

11 I'll have to tell you that there may be more
12 bark here than bite, that more often people get their
13 phones back. I will tell you Judge Stokes was not
14 one to keep cell phones. She would definitely
15 confiscate them if they went off. But, I don't
16 recall any circumstances at the end of the process
17 someone didn't get it back.

18 Q I'm sorry, go ahead.

19 A I don't recall the judge having any prohibition
20 against using cell phones in the courtroom or other
21 technology where someone might be reading. I can
22 recall an instance or two where maybe the bailiff
23 perhaps thought someone was doing something that was
24 inappropriate in her courtroom and she would say, no,
25 they're not. That's not something that you should

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1 do. That's not distracting me that that person is,
2 you know, reading the news on their I-pad or
3 whatever. So but the ringing of phones is kind of
4 obnoxious. Even to me it is obnoxious.

5 Q Is there a video that the court plays before each
6 session commences that deals with cell phones?

7 A No, no. There's one on the third floor, I believe,
8 where people are in for arraignment where Judge
9 Adrine shows up on television and makes some
10 comments. It might include a prohibition on cell
11 phone use, perhaps.

12 Q Now, have you ever appeared before Judge Adrine where
13 he has told people, not once, not twice, not three

14 times but four times you are to turn off your cell
15 phone and if you do not, I am going to take them from
16 you?

17 A That sounds like a quote that's familiar to me, yes.

18 Q And you have, in fact, seen him or direct his staff
19 to take cell phones from people?

20 A Correct.

21 Q You know that not all the time but on occasion those
22 cell phones are donated to victims of domestic
23 violence?

24 A I don't know if that's true. But, I've heard that.

25 Q To the women's shelter?

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1 A I have heard that.

2 Q And he is the one who is the chairman of the women's
3 shelter?

4 A I don't know that.

5 Q Okay. Now, what other judges have you appeared
6 before that do not permit phones to ring in their
7 courtroom besides --

8 A All of them.

9 Q All of them?

10 A There's no judge that's happy when a phone goes off
11 in the courtroom.

12 Q Do you think it is proper decorum that a phone should
13 go off in the courtroom?

14 A No. I mean it is not an intentional thing. I think
15 most judges acknowledge that.

16 Let me rephrase this. I mean, there are some
17 judges who will ignore it but it is kind of an
18 embarrassing, weird situation, especially when it is
19 a lawyer or someone else. But -- I'm not quite sure
20 what your question was, but the bottom line is no
21 judges are happy when it happens. But, in the grand
22 scheme of things there are other courtrooms, I think
23 it was Judge Mays, who had a policy she might have a
24 posted policy on a door, a couple of them may have
25 had a posted policy on the door and they always say,

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1 turn your cell phones off.

2 Q And what were those posted policies?

3 A If your cell phone goes off, it gets confiscated.

4 Q And you have seen that happen in rooms other than
5 Judge Stokes' room?

6 A Yes. I would point out when it is confiscated it
7 would be only temporarily taken in Judge Stokes'
8 courtroom, as opposed to you will never see this
9 phone again.

10 Q You have always seen her or her staff return the
11 phone at the end of a session?

12 A I think it is fair to say always, yes.

13 Q Now, you had indicated that there was a situation
14 with Scott Malbasa -- is that the correct
15 pronunciation of his name?

16 A As far as I know, correct.

17 Q I don't know this man. I have never met him. But, I
18 believe there's a point in time when he worked for
19 the Public Defender's Office.

20 A Mm'hmm. Correct.

21 Q Would that have been under the auspices over Mr.
22 Tobik as the chief public defender?

23 A Yes.

24 Q And you had indicated that you were summoned to Judge
25 Stokes' courtroom because something and you said, bad

1 had happened?

2 A I don't think I said I was summoned.

3 Q Okay.

4 A I think I said that I just showed up to see how
5 things were going and clearly something terrible had
6 happened.

7 Q Okay.

8 A And it became obvious to me that I was going to be
9 required to be part of the solution.

10 Q Now, there were occasions other than this particular
11 instance where you helped smooth over instances where
12 public defenders were having difficulty with Judge
13 Stokes or Judge Stokes was having difficulty with
14 public defenders?

15 A Correct.

16 Q For example, Maggie Walsh. I believe Miss Walsh was
17 having problems with Judge Stokes and you helped out
18 in that situation?

19 A I don't actually know that that's true.

20 Q Okay, all right. Well, can you give me the instances
21 where you have helped out.

22 A Well, first of all, when I say, help out, I mean that
23 can mean lots of different things. For example, it
24 can be kind of a huddle with the lawyer, say, look we
25 will get you through this. I can help, whatever.

1 That may be more of a pep talk than anything, I
2 suppose to use some sort of sports metaphor. But, in
3 the grand scheme of things I don't really know too
4 many other moments in time where it was like there is
5 an actual thing happening right now and I'm required
6 to do it. It would usually be maybe the next day I
7 would be assigned to a courtroom. Maybe I wouldn't
8 even know what had taken place. I would find out,
9 here is going to be your day.

10 Q Do you have a specific recollection of when those
11 days may have occurred?

12 A No. I think perhaps maybe a circumstance involving
13 Miss Tricarchi might have been the time where things
14 distracting.

15 Q Tina Tricarchi?

16 A Correct. There was no good reason to have Miss
17 Tricarchi return to the courtroom and a decision was
18 made to substitute me. I would not be a part of
19 those decisions. I would just simply be the guy.

20 Q Were you familiar with what had transpired between
21 Judge Stokes and Miss Tricarchi?

22 A I don't know of all of them. I think there might
23 have been multiple moments.

24 I know one that kind of, you know, moved around
25 as discussion was that perhaps Miss Tricarchi had

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1 kind of been physically acting in a way that was
2 outside of decorum. And it is frankly kind of
3 embarrassing. She was kind of scratching herself in
4 way that the judge thought was offensive.

5 Q Okay.

6 A I don't even know that was true. But, there was
7 rumors that that happened. I can't really offer any
8 more than that.

9 Q Is that a particular instance where she was removed
10 from Judge Stokes' courtroom and you were asked to
11 assume the responsibilities of representing indigent
12 defendants in her courtroom?

13 A I don't know that that's specifically true. It could
14 have been that coupled with something that happened
15 later. I don't know. I guess the records would show
16 when I would be substituting in the courtroom.

17 I would also point out sometimes it was a

18 product acrimony and sometimes someone was sick or
19 someone had a death in the family. You know, I think
20 at the end there were lawyers who were assigned to
21 her courtroom that may have been contained in the
22 complaint and it seemed to be a decision that was
23 made that those lawyers should not return to her
24 courtroom. So I would be the person who would be
25 handed that docket on that day instead. So those are

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1 examples where I would resume the responsibility of
2 the duty of the Public Defender's Office in her
3 courtroom.

4 Q And when you assumed those duties, were there any
5 problems between you and Judge Stokes?

6 A None that I recall. I mean nothing. There was never
7 a time in which I felt that she was anything but
8 grateful that I was there to serve the needs that I'm
9 required to serve.

10 Q And she's never called you by your first name, has
11 she?

12 A I don't think so.

13 Q She calls you, Attorney Hurley?

14 A Yes, she does.
15 Q You never called her by her first name?
16 A Never.
17 Q You called her, Judge Stokes?
18 A Correct. Your Honor.
19 Q Has she ever raised her voice at you and yelled at
20 you?
21 A Yes.
22 Q Tell me about that.
23 A Oh, this would have been -- there was -- the word,
24 outrageous would crop up oftentimes I suppose in my
25 first few rotations there.

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1 Q This would have been in the '90's?
2 A No. Later than that. I'm talking subsequent to my
3 return.
4 Q Okay.
5 A Sometime in 2000, probably the first couple of
6 rotations there were times --
7 Q Okay.
8 A -- where she was yelling at me or directing in a loud
9 tone to me or to the situation at hand that included

10 me, I can't tell you. But, yes, sometimes voices
11 would be raised. Perhaps, I raised my voice to her
12 on the occasion which might have been the reason why
13 she was.

14 Q Saying, outrageous?

15 A Well, maybe, yes.

16 Q But, in the end you two always respected each other?

17 A Yes.

18 Q And you worked well together?

19 A I felt so, yes.

20 Q Let's talk about the Project Hope docket. You worked
21 on the Project Hope docket with Judge Stokes; is that
22 correct?

23 A I was assigned to that docket day, yes.

24 Q Can you describe for me that docket and I understand
25 that's a pretty broad question.

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1 A I can answer it.

2 Q I guess, describe your duties and responsibilities
3 when it pertains to the Project Hope docket.

4 A I think it is once a month. It was a program
5 designed to maintain and provide support to women,

6 although sometimes men, I suppose, who had been
7 charged in soliciting matters, prostitution matters,
8 trying to break the cycle docket, I suppose. And it
9 would include not only people in the community who
10 over the course of time would receive accolades and
11 certificates, but also inmates who would be brought
12 from jail to the courtroom, would sit in the jury box
13 and participate, too, go over each person's case. I
14 think it is fair to say that it is a
15 post-dispositional program.

16 Q A condition of probation?

17 A That wasn't -- yes. Maybe not always a condition of
18 probation. Sometimes people volunteered to
19 participate or maybe he would give them the
20 opportunity to participate. I'm not clear it was
21 always a condition of probation. But, yes, and it
22 was a program where it would give, I think, at least
23 a temporary sense of community to the people who
24 found themselves charged with that.

25 My role was very, very limited, I would say.

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1 First of all, it was kind of a community. It was

2 generally trying to be lighthearted feelings through
3 it. I think there would be a seminar about venereal
4 disease or how to dress for a job opportunity, other
5 typical kinds of things that might be relevant to
6 them. But, there would also be open discussions
7 amongst everybody about the kind of stressors that
8 lead to their circumstances.

9 Q Okay.

10 A There would sometimes be a celebration. Someone
11 would have a sobriety day or a birthday and the judge
12 would acknowledge that.

13 I would generally not celebrate. I felt that
14 was outside of my role and the decorum of my role to
15 clap for somebody being sober for three months. I
16 would often just be available if someone thought they
17 needed to talk to me, as opposed to advocating
18 vigorously. For the people there, it's
19 post-dispositional. If there's allegations that they
20 violated their terms of probation and the judge is
21 considering incarcerating them, as you know there's
22 two rules that work in tandem to provide that person
23 with legal representation. It does not have to give
24 someone a lawyer for a misdemeanor if it is a

25 probation matter unless they're thinking about

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1 putting them in jail for it. That's when they have
2 to give them a lawyer. I would make myself available
3 to her to do that.

4 Q Okay. Now, during the Project Hope docket and the
5 judge's regular docket, did you see her infuse her
6 Catholic religion in dealing with people and
7 counseling people?

8 A Never.

9 Q Okay. She never imparted upon them any beliefs
10 founded upon Catholicism or they should embrace Jesus
11 Christ or anything of that nature?

12 A I never saw that occur in the courtroom.

13 Q Period?

14 A Period.

15 Q Okay.

16 A If people spontaneously expressed their religiosity
17 about something, she would commiserate with that, as
18 I would, I suppose. But, there was never any
19 religiosity going on in that courtroom.

20 I would point out I think there was an article

21 that had been published before I had been engaged in
22 front of her that made a suggestion of that.
23 Although, I think it was not on the record. It was
24 kind of behind the scenes. I don't really recall.
25 But, there was that rumor of religiosity, but I never

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1 saw any of it in the courtroom on the record with me,
2 personally.

3 Q Or off the record with her?

4 A Mm'hmm. That's true.

5 Q Okay. Now, has the disciplinary counsel informed you
6 that you're going testify in this case?

7 A I don't know that they have informed me of that.

8 Q So they didn't say, you're going to testify and give
9 you a day on which you're going to testify?

10 A I have not received that information.

11 Q Now, you had indicated -- I want to get back to this
12 Scott Malbasa incident. Were you a witness to
13 anything regarding the judge and Scott Malbasa?

14 A I might have been there for the rectification. I
15 might've been there when he was back in the courtroom
16 after whatever took place.

17 Q Back from where?

18 A Back from being removed for several days. I'm saying

19 I probably was there after things had kind of died

20 down between the two of them.

21 Q What do you know about the incident that occurred

22 between the two of them?

23 A I don't really know much of anything about it, other

24 than a holding cell was used to either detain him or

25 hold him for a duration I'm not aware of.

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1 Q Now, have you ever discussed this incident with

2 Mr. Malbasa?

3 A After the fact, probably. But, more in the frame of,

4 you know, we all got to try to do this as best as we

5 can and it is difficult to do it in this courtroom,

6 but there are ways to do it. And if you want to be

7 the best lawyer that you can be in this life, then it

8 is time to fulfill your role for people who need your

9 help in that courtroom.

10 Q Okay. Now, you keep using the words, difficult to do

11 in this courtroom, yet you had no difficulty

12 representing people in Judge Stokes' courtroom.

13 MR. CALIGIURI: Objection. Misstates
14 his answer.

15 A Oh, I had plenty of difficulty.

16 Q Okay. Did she deprive your clients of any of their
17 Constitutional rights?

18 A I don't know. I mean, I don't -- I can't think of
19 any examples at the moment.

20 Q Okay.

21 A But, I guess the short answer would be, no.

22 You know, that's a pretty broad question.

23 Q You used the words, you have difficulty representing
24 clients in her courtroom. And I just want to know,
25 can you articulate one instance when she prevented

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1 you from effectively defending one of your clients.

2 A I can't think of an example at this time.

3 Let me just point out the word, difficult.

4 Difficult, it was a difficult time in my life to be
5 assigned to her courtroom because of the expectations
6 of people around me and the emotions of people around
7 me and the judge that a lot of people were going to
8 be unhappy with how the day unfolded is difficult

9 circumstances. So that's what I'm talking about when
10 I say, difficult.

11 Q I don't understand something you just said. I'm not
12 understanding, emotions that were put upon you at the
13 time. Maybe you can tell me about that.

14 A I'm sorry.

15 Q I'm not understanding the emotions that were put upon
16 you. You said your emotion and the emotions of
17 others affected you during that time period.

18 A If you were to review a video of perhaps a more
19 chaotic day in her courtroom, you would know that the
20 expectations upon the lawyer in the courtroom were, I
21 think, higher than anyone could possibly imagine. I
22 would probably say it would be the most difficult job
23 for a lawyer that I know of to try to coordinate
24 results that would satisfy the clients in the amount
25 of time that was allotted, which was a day, and

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1 cases, for example, that maybe would not get called,
2 would be continued to another day. Sometimes that
3 worked, I suppose, to someone's advantage. Maybe
4 they come back another day where things weren't so

5 chaotic and that would be a better day to kind of
6 resolve things. But, you know, it was an emotionally
7 stressful place to be because of the tension, not
8 only between, you know, lawyers and the judge, but
9 other judges and the judge and court staff and the
10 judge.

11 You know, I'm not giving you specifics, I
12 suppose, but it is the way it was in that courtroom
13 was rarely easy to fulfill my obligations. It was
14 always difficult. Even though I may be did it better
15 than others, that doesn't mean it was easy.

16 Q So it was difficult on you as a person to fulfill
17 your obligations. Would that be a fair statement?

18 A Yes, or a re-statement of what I'm saying.

19 Q But, the judge did not prevent you from doing
20 whatever to represent the client to the best of your
21 ability?

22 A She never took any affirmative steps to do that,
23 correct.

24 Q For example, if you wanted a trial, you could have a
25 trial?

1 A Well, that would depend on a lot other variables that
2 were may be out of my control.

3 Q Or the judge's control?

4 A Perhaps, her control, as well.

5 Q But, if your client wanted a trial, she never coerced
6 any of your clients to plead guilty, did she?

7 A There would, perhaps, be sidebars in which a
8 conversation would take place in which it was made
9 clear that if a trial were had and the person were
10 found guilty, that they were going to jail.

11 Q Was that just in her courtroom or was that
12 commonplace in every courtroom?

13 A I would say it was not commonplace in other
14 courtrooms.

15 Q Have you ever had a jury trial in Shirley Saffold's
16 courtroom? Did you ever try cases before Shirley
17 Saffold when she was on the municipal court bench?

18 A No, I didn't.

19 Q What about Judge Adrine?

20 A Yes.

21 Q And have you ever had anybody found guilty in front
22 of Judge Adrine?

23 A Yes.

24 Q And have you had any anyone found guilty that did not

25 go to jail?

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1 A Yes.

2 Q In Judge Adrine's courtroom.

3 A Yes.

4 Q What about Judge Mays?

5 A You know now it's hazy as far as any trial memory is
6 on other judges. I mean, you mentioned Judge Adrine.
7 I can think of at least a trial or two where no one
8 was, didn't go to jail after a trial.

9 Q After a jury trial?

10 A I don't know about a jury trial.

11 I'll tell you that I was one of a few lawyers
12 who had a jury trial with Judge Stokes on Dennis
13 Celek in the year 2008. It was a jury trial. I
14 found the transcript of it the other day.

15 Q So I presume you lost?

16 A I did, but --

17 Q Every time there's a transcript you lost.

18 A But then I appealed it and I one.

19 Q Okay.

20 A But, it had nothing to do with the judge. It was a

21 peculiar trial, a terrible trial. The point is it
22 was a criminal child enticement case and there had
23 been a Court of Appeals opinion that had found the
24 criminal enticement statute to be unconstitutional
25 between the verdict and sentencing. And, you know,

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1 the judge denied my motion and it got appealed and
2 the case ultimately overturned.

3 I guess the reason I brought it up is because I
4 don't recall anything untoward in that trial,
5 specifically.

6 Q Okay. So, again Malbasa. I keep getting back to him
7 and we never finish it or start it.

8 A I'm listening.

9 Q You said you were there at sort of the end, the tail
10 end of a matter. Tell me about what your involvement
11 was with regards to Judge Stokes and Malbasa.

12 MR. CALIGIURI: If I can just interject,
13 we keep referring to the incident and the
14 matter. Do we know what it is?

15 MR. ZUKERMAN: We don't. That's what
16 I'm trying to get from Mr. Hurley.

17 MR. CALIGIURI: I don't know if you have
18 asked what incident he's referring to. I
19 don't know.

20 THE WITNESS: I think the court ordered
21 that he be held in the holding cell.

22 MR. ZUKERMAN: Okay.

23 THE WITNESS: I don't know why. I
24 think, perhaps, it was because he had raised
25 his voice in a way that she found

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1 disrespectful. I think I'm in the ballpark
2 on that.

3 MR. ZUKERMAN: Okay.

4 THE WITNESS: As I have said a couple
5 times here, I just happened to show up and
6 realized that a problem was unfolding. I
7 think I walked into the courtroom and there
8 was a courtroom full of people who said a
9 lawyer just got thrown in jail.

10 Basically, my role for the day was to
11 kind of fulfill our obligation to protect the
12 rights of the indigent.

13 BY MR. ZUKERMAN:

14 Q While you were in the courtroom did Mr. Malbasa stay

15 in jail or was he released?

16 A I don't believe he was held at that point. I don't

17 know where he was. He was not in the courtroom.

18 Q So you just happened to be at the wrong place at the

19 wrong time?

20 A Well, I wouldn't put it that way. Maybe I was in the

21 right place at the right time for the people who

22 needed help in her courtroom.

23 Q Right. I would agree with you.

24 Did you ever discuss with Mr. Malbasa what had

25 occurred between him and Judge Stokes?

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1 MR. CALIGIURI: Objection. Asked and

2 answered.

3 Q You can answer.

4 A I don't recall the specifics of it. Maybe a pep

5 talk, a kind of pick up and, you know, start again

6 kind of a thing.

7 Q Did he admit that he had raised his voice to Judge

8 Stokes?

9 A To me?

10 Q Yes.

11 A I don't recall an admission of that sort.

12 Q What do you recall?

13 A I will tell you this, I know that like, you know,
14 nice guy. I liked this guy. He left and went to
15 Oregon or something a year or two. Soon after this
16 happens, he's gone. But, when he would kind of get
17 excited, you know, his voice would go up and it would
18 start to kind of sound like this. (Indicating.)

19 You know, that's kind of a natural thing. We
20 all have our tells, I suppose, in that kind of realm.
21 I think I kind of advised him that that's something
22 that you've got to work on.

23 Q Okay.

24 A Maybe keep an even pitch is something because
25 someone's emotional response can be misinterpreted as

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1 disrespectful, whether it is or is not in the heart
2 of the person who is acting that way.

3 I have, in many instances when I'm serious about
4 a matter, I will get louder and clearer about it as

5 that matter unfolds. So I wouldn't necessarily fault
6 him for it. But, I do think that, you know, I had
7 observed that occur at least once or twice.

8 Q And you don't raise your voice at Judge Stokes, do
9 you?

10 A I don't recall having done so in recent memory.

11 Q Okay. What about people slamming doors in
12 courtrooms. Have you even been in a courtroom where
13 somebody has slammed the courtroom door or said
14 something bad to a judge?

15 A The doors are on hinges and the doors open outside of
16 the courtroom and if someone goes through those doors
17 quickly, than that door will swing open and make a
18 noise and swing closed. So it is different from
19 slamming a door.

20 Q What if somebody just -- I've only been in that
21 courthouse for thirty-two years. I know that if you
22 just open the door, it opens. If you shove the door,
23 it smashes into the wall and then comes crashing
24 back.

25 A I would point out that doesn't mean it's an

1 intentional act. I think sometimes people are trying
2 to get out of that courtroom as fast as possible and
3 that door opens faster and makes a noise. It's
4 possible someone could mean no disrespect and make
5 that noise.

6 Q Have you ever seen somebody go to the doors in Judge
7 Stokes' room and like shove them open and slam them
8 shut?

9 A Yes.

10 Q Would you ever do that?

11 A No.

12 Q Why not?

13 A It violates decorum.

14 Q Contempt, right?

15 A I would not call it contempt.

16 Q It is disrespect to the court?

17 A Yes. But, it is not interfering with justice.

18 Q It interrupts the proceedings in the courtroom?

19 MR. CALIGIURI: Objection;

20 argumentative.

21 A I wouldn't call it, contempt.

22 Q All right. But, it interrupts the proceedings in the
23 courtroom? You have seen it interrupt proceedings

24 in the courtroom?

25 A True. Does it have to, no. But, yes, I have seen it

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1 interrupt the proceedings, yes.

2 Q Okay. Well, have you ever been in trial questioning

3 a witness when somebody has slammed the door or

4 shoved the door where it hits the wall?

5 A I don't have any specific recollection of that moment

6 occurring. But, I have certainly been distracted by

7 others in the courtroom while I'm trying to conduct

8 business on the record, if that's the question?

9 Q So it interferes your ability to proceed in court as
10 a lawyer advocate. It is a distraction?

11 A I will give you distracts.

12 Q Thank you. Have you ever seen it happen in any other

13 courtroom where people have slammed doors open or

14 shut?

15 A Yes.

16 Q And have you ever seen other judges hold people in

17 contempt for that?

18 A Yes.

19 Q Okay. What judges? Judge Adrine?

20 A I don't know if that's true. The one that comes to
21 mind is Charles Patton. I think I have seen that
22 happen a couple times in front of him. I can't
23 recall any other specifics.

24 Q Now, would you describe Judge Stokes as diligent
25 would you describe her work process as diligent?

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1 A Yes. I think I know the definition of diligence,
2 yes.

3 Q Would you consider her approach to every case as
4 thorough?

5 A Yes.

6 Q And would you consider her approach to clients as
7 caring? Not clients, but defendants, wanting to help
8 them?

9 A That definitely come into play in her courtroom more
10 than others.

11 Q And she just does not go through the process of going
12 through a docket just to get through the docket? She
13 actually wants to have, at least it is your
14 perception, she wants to have a positive impact on
15 these people and help them not come back to court?

16 A That sounds like a fair statement.

17 Q Or maybe not come back. She doesn't want them to
18 re-offend? How is that?

19 MR. CALIGIURI: Objection.

20 A Well --

21 Q Just your perception.

22 A I would expect that judges don't ever want anyone in
23 front of them to re-offend, if that's what you're
24 asking me? Do I think she's trying to improve
25 people's lives through her authority as judge, yes.

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1 Q Okay. Now, what are the most hated letters a judge
2 or excuse me, a defense lawyer hears in the
3 courtroom?

4 A I'm not sure I understand the question.

5 Q What do you think when you hear, SOE?

6 A SOE, sentence order executed?

7 Q Yes.

8 A That doesn't --

9 Q No?

10 A I don't really feel --

11 Q You don't hate those letters?

12 A I didn't hate those letters.
13 Q Do you embrace those letters?
14 A I don't embrace or hate those letters.
15 Q So for the record SOE means?
16 A Sentence ordered into execution.
17 Q And what does that mean?
18 A It means that the sentence that she has imposed is
19 about to begin, as opposed, I suppose, to a delay,
20 execution of the sentence on another subsequent day.
21 Q Or a suspended sentence?
22 A Yes.
23 Q So it means if somebody has been on probation and
24 they've violated the terms of probation, then the
25 judge has -- the judge has the authority to order the

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1 sentence into execution?
2 A Correct.
3 Q Now in the Cleveland Municipal Court is it lawful for
4 someone to smoke marijuana when they are on
5 probation?
6 A I don't believe it is. It seems to be a violation of
7 the admonishment that they shall break no laws

8 including speeding, I suppose.

9 Q Is it legal for anyone to smoke marijuana in the
10 State of Ohio?

11 A I don't think it is.

12 Q Now, when somebody is placed on active probation in
13 the Cleveland Municipal Court can they just on their
14 own move out of state?

15 A They could. But, they would probably find themselves
16 subject to a probation violation.

17 Q Why is that?

18 A I think one of the conditions of probation is that
19 they are to notify the court of any kind of movements
20 like that and seek the court's approval to do so. In
21 the absence of that, it may be a violation of the
22 terms of probation.

23 Q And if somebody moves out of court and fails to
24 return to probation?

25 A Out of state you mean?

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1 Q I'm sorry. If somebody moves out of state and fails
2 to report to probation as ordered?

3 A That's two violations.

4 Q Okay. And what happens to that person? What could
5 happen to that person?

6 A There would be a warrant for their arrest.

7 Q A *capias*?

8 A If they were retrieved or picked up on a new case,
9 then they will be brought back to the court to
10 address that matter.

11 Q Now, I think you used the term that there was
12 acrimony between other judges and Judge Stokes. Can
13 you please tell me about that.

14 A The common areas between Judge Stokes' courtroom and
15 Judge Adrine's courtroom on the 15th floor would
16 often be a source of tension, I think particularly
17 relative to the personal bailiff of Judge Adrine and
18 business that was occurring in Judge Stokes' half of
19 that area.

20 Q Well, tell me what you observed.

21 A Just annoyed inter-personal looks. I'm specifically
22 referring to Terry Armistead who is Judge Adrine's
23 personal bailiff.

24 Q His former personal bailiff?

25 A Correct. Just a hostile workplace. Just clearly

1 there was aggravation that I didn't know or
2 understand why that was present in the atmosphere.

3 Q Sort of like they ante-chamber, if you will?

4 A I'm talking about behind the courtroom there are the
5 common areas where court staff is, Judge Stokes'
6 personal bailiff would be and where Judge Adrine's
7 personal bailiff would be. I don't know that I ever
8 witnessed any actual volatile interacting between the
9 two.

10 Q Okay.

11 A But, it was clear that they weren't speaking. It was
12 clear that never the tween shall meet in my matter,
13 which would be kind of unusual for someone like me
14 because I would be moving between those two worlds,
15 so to speak, on occasion.

16 Q When did you first notice this?

17 A I don't know. I would probably put it sometime early
18 in my tenure as a municipal lawyer.

19 Q Which tenure?

20 A Yes. Talking the beginning, in 2000.

21 Q Now, you had mentioned Terry Armistead's name. What
22 would you notice that he was doing that would be
23 negative directed toward Judge Stokes or her staff?

24 A Oftentimes we would take a matter out of the
25 courtroom, have a court reporter in that area that we

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1 are talking about.

2 Q You, Judge Stokes and the prosecutor and the court
3 reporter?

4 A Yes, a witness or a defendant and that clearly
5 rankled Mr. Armistead how it was unfolding. And you
6 know, I'm talking about body language, huffing and
7 puffing and sighing and those sorts of movements. It
8 was clear that, you know, there was a problem.

9 Q Okay. Did you see anything from Judge Stokes
10 directed toward Mr. Armistead or Judge Adrine?

11 A No. Maybe a couple of knowing glances, but that's
12 about it. Basically, it was apparent that there was
13 a problem and everybody just kind of ignored that
14 problem.

15 Q Okay. I mean Judge Stokes had not done anything to
16 incite anything, at least in front of you?

17 A I would say, no.

18 Q She was just acknowledging the negative behavior
19 toward her?

20 A Yes.

21 Q Did you ever see Judge Adrine act negatively toward
22 Judge Stokes.

23 A No.

24 Q Did you ever see any of the other judges and/or their
25 personal bailiffs act negative toward Judge Stokes?

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1 A No.

2 Q Okay. Now, you had also indicate that there was
3 court staff that lacked decorum when they appeared
4 before the judge.

5 MR. CALIGIURI: Objection.

6 Q Court personnel.

7 A I'm not sure I said that. But, what's the question?

8 Q I'm sorry then. I don't mean to put words in your
9 mouth. What did you say with regards to your
10 perception of some type of problem between the judge
11 and court personnel and court staff? I'm asking you
12 please to expand upon that.

13 A Maybe if someone from the probation department or the
14 psychiatric clinic was summoned to the courtroom,
15 there could be some perception that what was really

16 taking place was someone was perhaps being taken to
17 task for not doing their job properly. And that
18 would result in a person being defensive or
19 potentially angry. I think probably the most obvious
20 examples involve either the clerk staff, who would be
21 responsible for journalizing every single journal
22 entry that the court had written, handwritten, would
23 be converted into a typed matter and there was often
24 tension about how that process unfolded or whether or
25 not that person was doing their job properly or

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1 whether or not the bailiff that was in charge, I
2 don't mean the bailiff, but what we call blue shirts,
3 the deputy staff, the courtroom staff, how they would
4 be conveying that information. There was sometimes
5 layers. It would have to go back and forth between
6 the judge maybe multiple times, the judge verifying
7 that it was done correctly and then back and forth.

8 There was also the business of the court staff
9 people, people who check people in, people who
10 maintain security, people who were responsible for
11 confiscating the phone that went off or for

12 addressing someone that the court thought was being
13 disrespectful, maybe rolling their eyes or acting in
14 a way that the court found disrespectful. So those
15 sources, the court staff, the bailiffs and the clerk
16 staff would sometimes be subject to those sort of
17 moments more I suppose than others. But, you know,
18 sometimes it would be a prosecutor who had done
19 something, you know, or the lawyers.

20 Q Okay. Now, you had indicated that there were lawyers
21 from your office that were listed in the complaint
22 against Judge Stokes and you had testified about Mr.
23 Malbasa and Miss Tricarchi inappropriately scratching
24 herself.

25 A I don't know if that's in the complaint or not. I

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1 recall there was a moment where that kind of got a
2 little bit of a giggle from others in the building.

3 Q A giggle in what way?

4 A That it was funny and kind of gallows humor, you
5 know. It was just one of those things that kind of
6 moved around the court system as it would move around
7 an elementary school if it were the case.

8 Q Does Dave Iden-Miller works in your office?
9 A Correct.
10 Q Do you know anything about an incident involving Dave
11 Iden-Miller?
12 A I don't.
13 Q What about anyone else in your office other than
14 Malbasa and Miss Tricarchi?
15 A Are you asking me if I know any of the details about
16 matters that are contained within the complaint?
17 Q Yes.
18 A No.
19 Q Did anyone discuss the matters that are contained in
20 the complaint with you?
21 A No.
22 MR. ZUKERMAN: Can you give me one
23 minute.
24 MR. CALIGIURI: Sure.
25 MR. ZUKERMAN: Thank you.

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1 - - -

2 (Recess had.)

3 - - -

4 MR. ZUKERMAN: Back on the record. Just
5 a few more questions, Mr. Hurley.

6 Q I wanted to go back to the Rule 11 colloquy. Your
7 testimony was Judge Stokes would go over the Rule 11
8 rights and immigration rights for all the accused
9 that would appear before her before she would accept
10 a guilty or no contest plea. Is that fair?

11 A It happened I think every day but one or two.

12 Q What was the practice with the other municipal court
13 judges?

14 A My experience was that it was an elastic standard
15 involving generally the seriousness of the charge.
16 If it were a less serious charge, perhaps, the Rule
17 11 colloquy would go swifter.

18 If it was a more serious charge it is fair to
19 say that most of the judges would be more thorough in
20 the same kind of questions and analysis of a person's
21 understanding of the rights as Judge Stokes.

22 Q So some judges would be as compliant as her with
23 regards to the Rule 11 colloquy and other judges
24 would be more relaxed?

25 A Correct.

1 Q And the Rule 11 colloquy takes four to five minutes?

2 A I would say five to nine.

3 Q Okay. And that's a lot of time when you are dealing
4 with a docket of forty to fifty people?

5 A Yes, it is.

6 Q Now, with regards to prisoners, you had indicated
7 that there was a rule that required prisoners to be
8 returned to the Workhouse by bus at a certain time,
9 correct?

10 A Or a rule was put in place, I would suggest that was
11 a more recent rule, that was probably a rule that had
12 been imposed in the past two or three years.

13 Q That applies to all judges?

14 A I don't know that. I don't know that it did.

15 Q Do you believe that it just applied to Judge Stokes?

16 A It could have. I don't know.

17 Q Okay. Fair enough.

18 A It was clear it was a rule that was imposed because
19 of perceived problems of prisoners languishing
20 without having their cases called in a way that lead
21 Judge Adrine to impose that rule. I suppose it was a
22 rule imposed about upon all judges, I don't know. I

23 would have to read whatever administrative order was
24 put in place.

25 Q Now, Mr. Lewis, can you tell me who is Mr. Robert

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1 Lewis?

2 A Robert Lewis is the supervisor of the Municipal
3 Division of the Cuyahoga County Public Defender's
4 Office.

5 I would point out that division didn't always
6 exist. It was previously the criminal division of
7 the Legal Aid Society. He was the supervisor for
8 that division, as well after the death of my father
9 who was the supervisor of that division until his
10 death in 1994.

11 Q Now, Mr. Lewis --

12 A -- '95. Excuse me.

13 Q Now, Mr. Lewis was your supervisor and he is to this
14 day your supervisor?

15 A Not anymore.

16 Q He retired?

17 A I got transferred to felony.

18 Q That's right. A couple week ago?

19 A Correct.

20 Q Until a couple weeks ago he was your supervisor?

21 A Correct.

22 Q Now, do you recall him coming to you and asking you
23 to go to Judge Stokes' room to help deal with lawyers
24 who did not want to be there or acted inappropriately
25 in her courtroom?

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1 A I don't recall the conversation like that. It would
2 probably be more a matter of I would discover that
3 after I was assigned to Judge Stokes' courtroom by
4 virtue of arriving or knowing from the schedule that
5 had been laid out for the following day that that was
6 going to be my role thereafter.

7 Q Mr. Lewis would assign you to Judge Stokes' room?

8 A Correct.

9 Q Did you ever inquire why?

10 A I don't recall. No, I would not -- that wouldn't
11 really be how I would respond.

12 Q Okay. Did Mr. Lewis ever discuss with you why you
13 were assigned to Judge Stokes' room?

14 A I don't really recall any specific conversations as

15 to why.

16 Q He didn't offer any instances where Judge Stokes had
17 called Mr. Lewis and Mr. Lewis assigned you to her
18 courtroom?

19 A I don't know that.

20 Q Now, with regards to delays, do you know of instances
21 where court was delayed as a result of a public
22 defender being late and you had to go substitute?

23 A That seems a likelihood. I don't have any specific
24 recollection of it unfolding in a way where someone
25 didn't show up and there's a call that comes in and

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1 somebody has to go over. That probably happened a
2 couple times. I don't have any specific recollection
3 of it.

4 Q Now, you worked -- I think you had testified you were
5 the lawyer assigned to the Project Hope docket,
6 correct, once or on several particular occasions?

7 A If I was assigned to handle the matter. It was my
8 rotation in Judge Stokes' courtroom. I made the
9 assumption that I was the lawyer that would be there
10 on that day.

11 Q And you were there?

12 A Yeah. I would show up.

13 Q Do you recall an instance before you worked with the
14 judge in trying to get a defendant from the Workhouse
15 to Columbus where she had lived.

16 A I know it very well.

17 Q Can you tell us what you and Judge Stokes did.

18 A The circumstances were that she had an active warrant
19 in Franklin County for failure to appear in drug
20 court. She was in drug court in Columbus and I think
21 it was -- well, it was drug court I was going to. It
22 was like Project Hope but it was drug court. If she
23 were to be released, there were holes, I think, that
24 it was out of the jurisdiction for them to come get
25 her, which effectively meant either she was going sit

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1 in jail and do every day that the judge had imposed
2 and then get out walk out without any consequence.

3 Q Sit in the Workhouse and do every day in the
4 Workhouse that the Columbus judge had imposed?

5 A Wrong. No.

6 Q That she was going to what?

7 A She had a case in Cleveland.

8 Q Right.

9 A My assumption was it was a prostitution case. She
10 was under sentence from Judge Stokes here, and in
11 fact it would be common for a judge to impose the
12 full duration of the sentence and then at the
13 appropriate time within the judge's discretion
14 release that person to the community. This instance
15 was unusual because the person had an active warrant
16 and was expected to be in Columbus and there was no
17 way to get her there. And the plan before I was
18 involved in the case was that someone was going to
19 buy a Greyhound bus ticket for this lady. And I
20 found out about it. This just seemed like a terrible
21 plan. This was not the way this should be. And I
22 came up with an idea, which I specifically recall the
23 judge described as brilliant, which is always nice to
24 hear when it is my idea, which was let's contact the
25 Ohio State Highway Patrol because they're going up

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1 and down 71 all day long. Get someone to transport
2 her to the border and drop her off or wait there.

3 This was just an idea that I had. It seemed like a
4 good one. She and I went into her chambers and we
5 started making phone calls and we started figuring
6 out if there was some way to get this lady where she
7 needed to be, because the alternative was she would
8 wind up getting released and would probably make
9 money the only way she knew how, which is of course
10 prostitution. So it seemed like a great idea.

11 We were rebuffed in our efforts to try to make
12 that happen. I was upset about it, not at the judge.
13 I was upset because I felt like, you know, this is a
14 problem that could be solved and despite the judge's
15 efforts in coordination with mine, it wasn't
16 happening.

17 Actually, it turned out that someone drove her
18 there. I think at some point, maybe that might have
19 been it. Someone kind of saved the day in that case.
20 That's the matter that you're talking about?

21 Q Yes.

22 A I think maybe we got an update after the fact that
23 she had not followed through with what she was
24 expected to do. I don't think it was a happy ending
25 to that matter. But, it was an example of what

1 you're asking of the judge's clear concern and
2 compassion for the lady was evident in that
3 particular case, as I saw in lots of cases.

4 MR. ZUKERMAN: Okay. I have no further
5 questions. Quick break.

6 - - -

7 (Recess had.)

8 - - -

9 MR. ZUKERMAN: Back on the record. I
10 have no further questions.

11 MR. CALIGIURI: Thanks. We are good.
12 Thank you.

13 MR. ZUKERMAN: Mr. Hurley, you have the
14 right to read the transcript or waive the
15 reading of your transcript, whatever you
16 wish.

17 THE WITNESS: I prefer to not waive.

18 MR. ZUKERMAN: So you would like to
19 read?

20 THE WITNESS: Correct.

21 MR. ZUKERMAN: You said in the most
22 verbose way.

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THE WITNESS: Two words, I guess. No
waiver.

- - -

SCOTT R. HURLEY

(Deposition concluded.

Signature not waived.)

- - -

15 the deposition given at said time and place by said
16 SCOTT R. HURLEY; that I am not a relative or attorney
17 of either party or otherwise interested in the event
18 of this action.

19 IN WITNESS WHEREOF, I hereunto set my hand and
20 seal of office at Cleveland, Ohio, this 19th day of
21 January A.D. 2015.

22

23

Ronald M. Rua, Notary Public
My commission expires: 5/12/2015.

24

25

CERTIFICATE OF SERVICE

A copy of the foregoing RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF SUSPENSION UNDER GOV. BAR R. V(5a)(C)(1), Exhibit I through Exhibit J has been filed via e-filing with the Supreme Court of Ohio and a service copy emailed this 20th day of January, 2015 to the following:

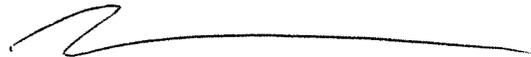
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