

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, :
of the Judiciary Law in Relation to :

E. TIMOTHY MERCER, :

a Justice of the Athens Town Court, :
Greene County. :

-----X

Commission Offices
Corning Tower, Suite 2301
Empire State Plaza
Albany, NY 12223

May 16, 2023
10:19 a.m.

B e f o r e:

DAVID M. GARBER, ESQ.
Referee

P r e s e n t:

For the Commission
S. PETER PEDROTTY, ESQ.
Senior Attorney

SHRUTI JOSHI, ESQ.
Staff Attorney

For the Respondent
HON. E. TIMOTHY MERCER
Respondent, *Pro Se*

A l s o P r e s e n t:

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

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(Matter of E. Timothy Mercer - Colloquy)

1 MR. GARBER: This is a hearing in the matter
2 of E. Timothy Mercy -- Mercer, a Justice of the Athens
3 Town Court, Greene County. And it's pursuant to Section
4 44, subdivision 4 of the Judiciary Law.

5 My name is David Garber, and I have been
6 appointed by the Commission on Judicial Conduct as
7 Referee to hear and report proposed findings of fact and
8 conclusions of law in this matter.

9 I will now take the appearances. First, for the
10 Commission.

11 MR. PEDROTTY: Peter Pedrotty, Senior
12 Attorney for Commission Counsel.

13 MR. GARBER: Mm-hmm.

14 MS. JOSHI: Shruti Joshi, Staff Attorney for the
15 Commission.

16 MR. GARBER: Okay. And I note that Mr.
17 Fitzpatrick is the Investigator -- Senior Investigator.

18 And Judge Mercer is present. And Judge, you're
19 appearing here today and in this proceeding *pro se*,
20 meaning that you are representing yourself?

21 JUDGE MERCER: That is correct, Mr. Garber.

22 MR. GARBER: Okay. And prior to today's
23 hearing, I advised you that you have the right to be
24 represented by a lawyer in this matter.

25 JUDGE MERCER: That is correct, sir.

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1 MR. GARBER: And prior to today's hearing,
2 you informed me that you wish to represent yourself in this
3 matter?

4 JUDGE MERCER: That is correct.

5 MR. GARBER: Okay. These proceedings are
6 being digitally recorded by Mr. Fitzpatrick, who will go on
7 and off the record at my direction. The recording will be
8 transcribed. And in order to facilitate a clear and accurate
9 record, please speak slowly, clearly, and directly into the
10 microphone. I will advise each of the witnesses of the
11 same.

12 Refrain, please, from moving away from the
13 microphone and talking over other speakers. Please refrain
14 from creating excessive background noise, as it becomes
15 amplified on the recording. Please turn off cell phones and
16 other electronic equipment.

17 Judge, I don't know whether you heard me speak
18 to Mr. Pedrotty and others. I have my cell phone available
19 to me if I -- in case I need to adjust my hearing aids.
20 They're done through -- and it's not because I'm --

21 JUDGE MERCER: Mm-hmm.

22 MR. GARBER: -- looking on my phone.

23 JUDGE MERCER: Right. I just -- just for the
24 record, my phone is in airplane mode.

25 MR. GARBER: Okay.

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JUDGE MERCER: And the recording mode will be used.

MR. GARBER: Okay. Investigator Fitzpatrick will keep a running list of exhibits, which will be provided to the transcriber for inclusion in the appendix to the transcript. Commission Counsel will use numbers. The Respondent's -- Judge Mercer's exhibits will be marked with letters. It is my function to clear -- to indicate clearly for the record whether or not each exhibit has been received into evidence. The investigator will mark the stickers on the exhibits with a notation indicating the exhibit was received in evidence.

At the conclusion of the hearing, the original exhibits will be forwarded to the clerk of the Commission, and the audio recording will be provided to the administrative staff for transcribing. When the transcripts are prepared, they will be distributed with copies of the admitted exhibits to Judge Mercer, Commission Counsel, and to me. At the end of the hearing, we will discuss a schedule for submitting briefs with proposed findings of fact and conclusions of law. The rules of evidence applicable to a nonjury trial will apply. I will administer an oath to each witness. Before we start, are there any other preliminary matters we should discuss? Nope. So we're --

MR. PEDROTTY: Nothing from me.

3.

1 JUDGE MERCER: Other than a revised
2 schedule with the revisions made for these. Are they to be
3 entered now?

4 MR. PEDROTTY: I think we can discuss that
5 when the time comes.

6 JUDGE MERCER: Oh, okay. All right.

7 MR. GARBER: Okay. And does the
8 Commission want to make an opening statement?

9 MR. PEDROTTY: I will waive unless
10 Respondent intends to give an opening statement. If he
11 does, then I will give a brief statement, but otherwise, I will
12 waive.

13 MR. GARBER: Judge Mercer?

14 JUDGE MERCER: I do have a written opening
15 statement, if we want to enter it into the record or I could
16 read it out loud, and --

17 MR. GARBER: Well, why don't you read it out
18 loud --

19 JUDGE MERCER: Sure.

20 MR. GARBER: -- please?

21 MR. PEDROTTY: I'll go first, then --

22 MR. GARBER: Okay.

23 MR. PEDROTTY: -- if he intends to.

24 MR. GARBER: Okay. Then that's the -- the
25 Commission goes first in opening statements.

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1 JUDGE MERCER: Completely understood.
2 MR. GARBER: Okay.
3 MR. PEDROTTY: Thank you, Mr. Garber.
4 MR. GARBER: Mm-hmm.
5 MR. PEDROTTY: The evidence of the hearing
6 will show that the Respondent took advantage of his
7 judicial position to award his private company an
8 installation contract so he could personally profit from an
9 award of Justice Court Assistance Program funds, and
10 without properly notifying town officials of the transaction
11 or his conflict of interest.
12 In his capacity as owner of his company, he
13 charged the Town over \$3,300 for the purchase and
14 installation of a camera system, which included a \$1,000
15 installation fee and a deceptive, undisclosed \$800 profit
16 markup on the system. And in his capacity as Town Justice
17 and the Court's department head, he signed a voucher
18 approving payment of the voucher to his own company,
19 knowing that it contained false information.
20 When Town officials brought to his attention the
21 impropriety of his conflict of interest, Respondent
22 continued to nevertheless demand payment to his company
23 for work that he alone authorized. In furtherance of his
24 demands, he used his judicial title and even demanded and
25 charged an interest fee for nonpayment, all after

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1 acknowledging at least an appearance of impropriety of
2 conduct.

3 The evidence will also show the Respondent,
4 while on the one hand will claim he now admits to his
5 wrongdoing, he continues to blame many others for his own
6 misconduct.

7 MR. GARBER: Thank you.

8 Judge Mercer?

9 JUDGE MERCER: Sure. Let me begin.

10 This matter comes before the Commission
11 following years of investigation, including depositions and
12 statements gathered by both the Town of Athens Justice
13 Court and the Athens Town Government. It has become
14 abundantly clear to me that the people involved in the
15 matter have provided statements that they are not truly
16 truthful and willfully omit that would clear up some of the
17 details.

18 However, I would like to make it abundantly
19 clear from the beginning of this investigation that I have
20 realized and acknowledged that I failed to avoid the
21 appearance of impropriety in my actions despite my good
22 intentions.

23 My actions were meant to safeguard and protect
24 my staff from explicit sexual harassment and innuendos
25 directed at them by the Town of Athens Bookkeeper, Mr.

1 Pierro. My hasty attempt to do so by performing the work
2 myself at the time when outside vendors were not allowed
3 into the Athens Town Court building was, in hindsight, the
4 exercise of poor judgement on my part due to COVID.

5 Because of this, I provided the Town of Athens
6 with an invoice of zero dollars and removed the cameras
7 from the court building at my own expense, instructing the
8 Town to return the JCAP funds. To date, I have no
9 personal gain and have never been in possession of any
10 remittance from the Town of Athens or from JCAP funds.

11 From the moment I stepped foot in the Town of
12 Athens Court, it was abundantly clear that there were a
13 number of interpersonal struggles between the Court
14 Officers and other members of the Town government. I
15 became aware of one individual, the Town of Athens
16 Bookkeeper, Mr. Pierro, who will be appearing, who has
17 repeatedly made sexual comments and innuendos towards
18 female clerks in the office. After witnessing this behavior
19 firsthand, and only two months into my term, I instructed
20 Mr. Pierro to remain outside of the Court Office and not to
21 talk to the clerks. Rather, if he had any business with the
22 court, it was to only speak with the judges.

23 This was all on -- going on during the first year
24 of COVID-19 pandemic. With new health and safety
25 mandates in place, it became clear that our courtroom

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1 needed some modifications for both the safety both of the
2 staff and the public who entered the court. Due to the new
3 State Department health rules, the public was lining up in
4 the hallway outside of the courtway [sic] in -- courtroom,
5 and outside -- and out of sight of the court staff.

6 Because of interpersonal issues in the building
7 and this new challenge of the public being out of sight, a
8 discussion was had between the Court Clerks, Judge Pazin,
9 and myself about how we could protect ourselves and
10 monitor the hallway when the court was in session. We all
11 agreed that a camera system would be a good idea. This
12 discussion occurred prior to the August/September 2020
13 time frame.

14 I became aware of the JCAP program and
15 believed that it would be a good opportunity to cover the
16 cost of camera system so the courts did not have to bear the
17 expense. Due to COVID protocols at that time, no outside
18 contractors or vendors were allowed inside the building. I
19 believed that this was background -- with my background in
20 general contacting [sic] -- contracting, I would be able to
21 provide this service quickly and at a lower cost than an
22 outside contractor. Rather than wait until COVID protocols
23 had lifted, I wholeheartedly acknowledge that this was a
24 mistake in reasoning, a failure to maintain the high
25 standards of judicial conduct, and against the guidelines

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1 laid out by JCAP regarding the proper usage of funds. I
2 had good intentions, though I was misguided by my
3 ignorance of the rules of the JCAP program as being a
4 newly elected judge, and acted in haste to protect my staff.

5 From reading the written complaints against me,
6 it is apparent that many other people involved in this
7 situation failed to remember when conversations were had,
8 when documents were received or submitted, or failed to
9 completely perform their duties. As a new judge, I relied
10 heavily on the experienced court staff to perform these
11 duties diligently and competently. Knowing what I know
12 now, I would have supervised their activities more closely
13 to ensure an accurate accounting and documentation of the
14 grant application packet and associated documents.

15 Of note, messages and phone calls to the court
16 offices at the time in question reveal that Judge Pazin and
17 both clerks were aware of the conversations and the need
18 for a camera system. Why they would deny this at this time
19 is baffling. Thank you for allowing me to provide my
20 testimony and present this opening statement.

21 MR. GARBER: Thank you, Judge.

22 Mr. Pedrotty, do you want to call your first
23 witness, please?

24 MR. PEDROTTY: Yes. I have a couple
25 preliminary matters --

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MR. GARBER: Oh.

MR. PEDROTTY: -- before that.

MR. GARBER: Oh, sure.

MR. PEDROTTY: Let me just grab a pen.

At this time, Mr. Garber, I'd like to offer Commission Exhibits 1 through 23, which have been premarked, into evidence based upon Judge Mercer's stipulation that he has no objection to the admission of such materials.

(Commission Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 were marked for identification)

MR. GARBER: Oh, then they're --
Judge?

JUDGE MERCER: I have no objection.

MR. GARBER: Then they are admitted. 1
through 23?
(Commission Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 were admitted into evidence)

MR. PEDROTTY: 1 through 23 are received into evidence?

MR. GARBER: Yes.

MR. PEDROTTY: And Judge Mercer has been previously provided with these exhibits.

(Matter of E. Timothy Mercer - Colloquy)

1 MR. GARBER: Okay.

2 MR. PEDROTTY: I also provided him with a
3 courtesy copy today.

4 JUDGE MERCER: Yes, he has.

5 MR. PEDROTTY: And for reference, I offer as
6 Referee's Exhibit 1 a two-page index of Commission
7 Exhibits, which provides a short description of each of the
8 Commission's 23 exhibits. This is virtually identical to
9 schedule A to my discovery letter, except that instead of
10 saying schedule A at the top, it says index of Commission
11 exhibits.

12 (Referee's Exhibit 1 was marked for identification)

13 MR. GARBER: Mm-hmm. Judge, any --

14 JUDGE MERCER: Sure.

15 MR. GARBER: Any objection?

16 JUDGE MERCER: I have no objection today.

17 MR. GARBER: Then received.

18 (Referee's Exhibit 1 was admitted into evidence)

19 JUDGE MERCER: Okay.

20 MR. PEDROTTY: I also ask, at this time, Mr.
21 Garber, if you would take judicial notice of Article 21-B of
22 the judiciary law and part 138 of the Justice of -- the Rules
23 of the Chief Administrative Judge, both of which relate to
24 the Justice Court Assistance Program.

25 MR. GARBER: Oh, yup. Let me --

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1 MR. PEDROTTY: I've provided Respondent
2 with copies of these --

3 MR. GARBER: Yeah.

4 MR. PEDROTTY: -- this morning.

5 MR. GARBER: Judge, do you have any
6 objection to my taking --

7 JUDGE MERCER: I have no objection. I was
8 provided a copy with that earlier this morning.

9 MR. GARBER: Okay. Okay.

10 JUDGE MERCER: Thank you.

11 MR. GARBER: I was going to pull out my
12 copy, but if you -- it's fine. That --

13 MR. PEDROTTY: So we can identify these?

14 MR. GARBER: Well, I'll take judicial notice.

15 MR. PEDROTTY: We can mark these as
16 Referee's Exhibits 2 and 3, or as Commission Exhibits 24
17 and 25.

18 Do you have any preference?

19 MR. GARBER: I don't. Why don't you mark
20 them as your exhibits?

21 MR. PEDROTTY: Okay.

22 MR. GARBER: And I'll take judicial notice of
23 them. That's -- you're referring to Section 849-H of the
24 Judiciary Law?

25 MR. PEDROTTY: So it's Article 21-B. That

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(Matter of E. Timothy Mercer - Colloquy)

1 includes section 849-H, section 849-I --

2 MR. GARBER: Okay.

3 MR. PEDROTTY: -- section 849-J, section
4 849/A.

5 MR. GARBER: Okay.

6 MR. PEDROTTY: And so we can mark Article
7 21-B as Exhibit 24?

8 MR. GARBER: Fine.

9 MR. PEDROTTY: Commission Exhibit 24?

10 MR. GARBER: Yes. And the other one is the
11 part 138 of the Rules of the Chief Administrative Judge?

12 MR. PEDROTTY: Correct. And we will mark
13 that as Exhibit 25.

14 (Commission Exhibits 24 and 25 were marked for
15 identification)

16 MR. GARBER: Mm-hmm. And you --
17 objection?

18 JUDGE MERCER: I have no objection, Mr.
19 Garber.

20 MR. GARBER: Okay. Received. And I'll take
21 judicial notice of them.

22 (Commission Exhibits 24 and 25 were admitted into
23 evidence)

24 MR. PEDROTTY: Thank you.

25 And with that, once Ryan is completed with all

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1 the paperwork, I would like to call my first witness.

2 JUDGE MERCER: At this time do I need Mr.
3 Pedrotty to enter into the schedule for my exhibit of -- or is
4 that already --

5 MR. PEDROTTY: So I believe that you would
6 do that on your direct case.

7 JUDGE MERCER: Okay.

8 (Recess from 10:36 a.m. until 10:41 a.m.)

9 MR. FITZPATRICK: We are back on the
10 record.

11 If everyone can just speak in the microphone,
12 make sure that I can pick you up?

13 MR. GARBER: Garber here.

14 MR. PEDROTTY: Peter Pedrotty. Testing.

15 JUDGE MERCER: Judge Mercer. Testing.

16 MR. FITZPATRICK: Okay. Everything seems
17 okay.

18 MR. PEDROTTY: Mr. Garber, at this time I'd
19 like to call my first witness, Marcia Puorro.

20 MR. GARBER: Please.

21 MR. PEDROTTY: Please take a seat.

22 (Recess from 10:42 a.m. until 10:59 a.m.)

23 MR. FITZPATRICK: We're on the record.

24 We're good to go.

25 MR. PEDROTTY: On the record right now?

1 MR. FITZPATRICK: Yes. Ms. Puorro also has
2 hearing aids that could potentially cause this problem, so if
3 need be, I'm going to monitor it, and I'll let you know if --

4 MR. PEDROTTY: Okay.

5 MR. FITZPATRICK: -- we have any particular
6 issues.

7 MR. PEDROTTY: Be right back.

8 MR. FITZPATRICK: Thanks, Judge.

9 JUDGE MERCER: You're welcome.

10 MR. GARBER: Mr. Fitzpatrick, are we ready?

11 MR. FITZPATRICK: We are on the record.

12 MR. GARBER: Okay. I'm going to advise you
13 that these proceedings are being digitally recorded. The
14 recording will be transcribed, and in order to facilitate a
15 clear and accurate record, please speak slowly, clearly, and
16 directly into the microphone.

17 Refrain from moving away from the microphone
18 and talking over other speakers. Please refrain from
19 responding until a question is completed, and answer each
20 question with words, not a nod or a gesture. Please refrain
21 from creating excessive background noise as it becomes
22 amplified on the recording. And if you have a cell phone or
23 other electronic equipment, please turn it off.

24 So if you would stand and raise your right hand,
25 please?

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1 Do you swear or affirm under the penalties of
2 perjury that the testimony you are about to give is the truth,
3 the whole truth, and nothing but the truth?

4 MS. PUORRO: I do.

5 MR. GARBER: Thank you. Please be seated.

6 Mr. Pedrotty?

7 MR. PEDROTTY: Thank you very much.

8 Good morning, Ms. Puorro.

9 THE WITNESS: Good morning.

10 MR. PEDROTTY: Thank you very much for
11 appearing today, and thank you for your patience while we
12 dealt with technical difficulties.

13

14 MARCIA PUORRO,

15 having been duly sworn, was examined and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. PEDROTTY:

19 Q. Where are you employed?

20 A. For the Town Court of Athens.

21 Q. What do you do there?

22 A. I'm the Senior Court Clerk.

23 Q. How long have you been a Court Clerk at the Town of Athens?

24 A. I just started my 24th year.

25 Q. Who are the judges in that court?

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(Marcia Puorro - Direct)

1 A. Judge Constance Pazin and Judge Timothy Mercer.

2 Q. How long has each judge been at the court?

3 A. I believe Judge Pazin's been there 38 years, and Judge Mercer,
4 approximately three.

5 Q. Are both judges part-time?

6 A. Yes.

7 Q. Does the court have another Court Clerk?

8 A. Yes.

9 Q. Who is that?

10 A. Samuel June.

11 Q. And when did he began [sic] at the court?

12 A. In October of '22.

13 Q. Who preceded him as Court Clerk?

14 A. Ruth Wittlinger.

15 Q. What period of time was she at the court?

16 A. From June the previous year until June of '22. So '21 to '22.

17 Q. Who preceded her as Court Clerk?

18 A. Vincenzina Carl.

19 Q. Do you recall her period of employment?

20 A. She was there before me, approximately two years. And she left in '21, I
21 believe.

22 Q. Do you recall what month, about?

23 A. Possibly May.

24 Q. May 2021? What are your day-to-day duties and responsibilities as
25 Senior Court Clerk?

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(Marcia Puorro - Direct)

1 A. Answering phone calls; doing fines, deposits, plea by mails, filing;
2 processing small claims, evictions; secretarial duties.

3 Q. Okay. Are you familiar with the Justice Court Assistance Program,
4 which I will refer to as JCAP?

5 A. Yes.

6 Q. What is your understanding of JCAP's purpose?

7 A. To offer help to courts for things that they might need or -- or want, to
8 help the Towns out.

9 Q. What is your understanding of who administers that program?

10 A. Meaning?

11 Q. Who oversaw the program? Which agency?

12 A. Internally or --

13 Q. Statewide?

14 A. Oh, judicial -- the judicial -- OCA.

15 Q. Is it more specifically the Office of Justice Court Support?

16 A. Yes.

17 Q. In your tenure with the court, do you have experience filling out and
18 submitting JCAP applications?

19 A. Yes.

20 Q. How many JCAP applications have you been involved in filing while
21 with the court, about?

22 A. Ten plus, possibly.

23 Q. Can you explain the typical process for filing a JCAP application, starting
24 with what usually starts the process at each annual cycle?

25 A. So first, we get a letter from the state, telling us that the grant's out there,

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(Marcia Puorro - Direct)

1 offering it to us.

2 Q. About when does usually happen each year?

3 A. October. Around October, possibly, or -- I can't remember now. October
4 or March. I can't remember the -- oh, boy. Possibly, maybe, March, we
5 get the letter, we start looking for things, and it has to be in by -- yes, I
6 remember now. Has to be in by October because usually I'm always on
7 vacation around the deadline time.

8 Q. Okay. So you get notice from the state in around March, and then the
9 application has to be submitted by October of each year --

10 A. Yes.

11 Q. -- is that correct? And then generally how -- in a typical year, how does
12 the court decide what items to include in a JCAP application and the
13 amount of funds to request for such items?

14 A. So in our office, we sit, and I let the judges know that the we got the
15 letter, telling us that the grant was out there, and start out by saying is
16 there anything that you would like me to ask for, anything that we need.
17 We all sit and think about it for a while and decide to come up with some
18 stuff. Once we decide on what we want to ask for, then I will write up a
19 letter to the Town Board, explaining to them what we're asking for. In
20 the meantime, I get estimates for things, waiting for them to give me back
21 a letter that they've either -- are giving us a resolution or rejecting it. And
22 then once that comes back, I finish filling out the application. The judges
23 sign it. It goes down to the Board for the supervisor to sign it. He returns
24 it to me. I electronically send the application, and then I fax or email
25 over the signature pages, the estimates, the resolution, the Board budget.

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(Marcia Puorro - Direct)

1 Q. Okay. When you say electronically fill out the JCAP application, how do
2 you do that?

3 A. So there's a website you can go to, and it's the application right on the
4 website. And I just start filling in all the information, caseloads that
5 we've had over the prior years, what specific things we're looking for.
6 That's basically what I have to do on the computer part of it.

7 Q. When you're filling out the application online, how do you list, like,
8 which items the court's requesting?

9 A. Priority or of importance.

10 Q. What do you -- can you explain how the priority system works? How do
11 you assign a priority?

12 A. Well, number one being most important --

13 Q. Okay.

14 A. -- that we would really want. And then from there, it goes down. So if
15 it's something that we really need, that would be, you know, top priority.
16 Just in case we don't get the full grant that we're asking for, at least,
17 maybe, they'll give us what we feel is important.

18 Q. So what was the priority ranking system? Was it 1 through 3?

19 A. Yes.

20 Q. Okay. And which was a higher need, 1 or 3?

21 A. 1.

22 Q. Who typically set the priority on the application?

23 A. I do.

24 Q. And was that based upon any input from the judges or were you doing
25 that on your own?

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(Marcia Puorro - Direct)

1 A. Just from chit-chat in the office of what we really want.

2 Q. And when you were filling in the electronic application, could you start
3 the application on a date, fill in information, save it, and then come back
4 at a later date?

5 A. Yes.

6 Q. Okay. So you didn't need to fill it in all at one time and submit it?

7 A. No.

8 Q. So after you filled in the application online and faxed the information to
9 the Office of Justice Court Support, how, typically, was the court notified
10 of the results of the application?

11 A. So once I fill in what I have to fill in, I usually print it off. I show it to
12 both the judges for them to look over, and then we wait for the resolution
13 to come back, send the application in, go through with emailing or
14 mailing out the signature pages and the resolutions, the budget, and
15 things like that. And then we wait for the state to send us a letter
16 acknowledging that we're either getting the grant or not.

17 Q. Okay. And let me step back in the process a little bit. I believe you
18 referenced some -- writing a letter to the Town Board, right? You would
19 write a letter to the Town Board about the court's JCAP application,
20 typically, each year?

21 A. Right, asking them for the resolution, telling them what we're looking for,
22 and at that time, they either reject it or acknowledge it.

23 Q. The Town Board?

24 A. Yes.

25 Q. Okay. And what, typically -- what information, typically, did you

21.

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(Marcia Puorro - Direct)

- 1 include in the letter to the Town Board?
- 2 A. Just like, the state has notified that we are able to apply for a grant again.
- 3 These are the items that the Town is looking for. Please advise if you
- 4 will make up a resolution.
- 5 Q. Did this letter typically list all the items the court intended to request in
- 6 this application?
- 7 A. Yes.
- 8 Q. And then did the Town Board members have to authorize the court to
- 9 apply for the JCAP grant before the court could submit its application?
- 10 A. Yes.
- 11 Q. You received notice that the court had received a JCAP grant. To whom
- 12 were the JCAP funds sent to? Were they sent right to court or were they
- 13 sent to somebody at the Town?
- 14 A. No, they're sent down to the Bookkeeper, I believe. I'm not sure exactly
- 15 who receives it, but he ultimately has the money.
- 16 Q. The Bookkeeper is who?
- 17 A. Don Pierro.
- 18 Q. And then once the funds were received by the Town, what was the
- 19 process by which items authorized in the grant were purchased? How did
- 20 that happen?
- 21 A. So the Bookkeeper lets us know he's received the money, and then we go
- 22 ahead and purchase what we're looking for.
- 23 Q. With what funds were the items purchased? Personal --
- 24 A. Normally --
- 25 Q. I'm sorry.

22.

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(Marcia Puorro - Direct)

1 A. Normally --

2 Q. Um-hum.

3 A. -- it's the JCAP money. If we're talking about specifically this --

4 Q. Talking under normal circumstances.

5 A. Normal circumstances is it's purchased with the JCAP money. So if we --

6 example, order a chair from Staples, I will put the order in for the chair

7 from Staples. When they give me the bill, I make up a voucher, I put at

8 the top of it "JCAP" to let the Bookkeeper downstairs know that

9 voucher's to be paid with JCAP money, not court budget money.

10 Q. So if you were to buy a chair online at Staples.com, would you use a

11 personal credit card, pay with personal money, and then submit a voucher

12 for repayment of -- from the Town Bookkeeper from the JCAP funds?

13 A. No.

14 Q. No?

15 A. I don't.

16 Q. No, okay. So you'd actually get the JCAP funds first before paying

17 Staples?

18 A. Before buying anything.

19 Q. Before buying anything, okay. Okay. So let's talk about the court's

20 JCAP grant application for the cycle of 2020 to 2021. How did that

21 process start that particular year?

22 A. Same way. Sat in the office, told everybody we got the

23 acknowledgement that there's the grant, what were we looking for, is

24 there something that we need? We decided on -- we definitely needed air

25 conditioners. Ours were just about not working. Maybe some new

23.

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(*Marcia Puorro - Direct*)

1 window blinds for the Court Office, and a new chair for the judge for the
2 bench, and a chair for the clerk at the bench.

3 Q. Were there discussions about requesting any other items?

4 A. Not at that time.

5 Q. All right. Who was involved in those discussions?

6 A. Judge Mercer, Judge Pazin, Vee Carl, and myself.

7 Q. When you say "not at that time", what did you mean by that?

8 A. Later on down the line, then there was talk about adding security
9 cameras.

10 Q. And who was involved in those discussions?

11 A. Judge Mercer, Vincenzina Carl, and myself.

12 Q. Okay. So we'll get to those, then, in a moment.

13 MR. PEDROTTY: Ryan, at this time, could you
14 please show the witness Commission's Exhibit 1 received in
15 evidence?

16 THE WITNESS: Thank you.

17 BY MR. PEDROTTY:

18 Q. Ms. Puorro, please take a look at Exhibit 1, and can you please identify
19 that as the letter you wrote to the Town Board and the Town Supervisor
20 about the court's 2020/2021 JCAP grant application?

21 A. Yes.

22 Q. At whose direction, if anyone, did you write that letter?

23 A. It's normal procedure for me to write that letter. I have to do it every
24 day -- I mean every year. And then I usually show it to the judges for
25 their approval to send it down.

24.

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(Marcia Puorro - Direct)

1 Q. Do you know if you did show that letter to the judges' approval?

2 A. Yes. I do every year.

3 Q. Did you show it to Judge Mercer for his approval?

4 A. I'm sure I did.

5 Q. Did he make any comment to you about anything being missing from that
6 letter?

7 A. No.

8 Q. Do you know, approximately, when you showed it to him for his review?

9 A. As soon as I typed it up.

10 Q. Please take a note of the date of September 21, 2020. When were the
11 court staff's discussions about what to request in the application, in
12 respect to the date of that letter?

13 A. Prior to that. Approximate date of when, I don't know that, but it
14 would've been before we wrote the letter up because we had to all talk
15 and decide what we were going to ask for.

16 Q. And when you mentioned earlier discussions between yourself, Judge
17 Mercer, and Vee Carl about the addition of a security camera system, did
18 those discussions occur after this letter was submitted?

19 A. Yes.

20 Q. Now, did you copy Judge Mercer and Judge Pazin on that letter?

21 A. Yes.

22 Q. Why does that letter include two air conditioners, new window blinds, a
23 new shredder, a desk chair, and reimbursements from COVID expenses
24 and not a security camera system?

25 A. Because this was written up before the security cameras were discussed.

25.

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1 Q. Did you mistakenly omit to include a security camera system on this
2 letter?

3 A. No.

4 MR. PEDROTTY: All right. I can take that --
5 give that back to Mr. Fitzpatrick, please.

6 And could you please show the witness Exhibit
7 2 received in evidence?

8 BY MR. PEDROTTY:

9 Q. Can you please identify Exhibit 2 for the record?

10 A. It's the letter saying that the Town Board adopted the resolution.

11 Q. What is the date on that letter?

12 A. October 6, 2020.

13 Q. Did you receive a copy of this letter at or about that time?

14 A. Yes.

15 Q. According to this letter, what did the Town Board authorize the court to
16 request in its application?

17 A. Two new air conditioners, new window blinds, a new shredder, a desk
18 chair, and reimbursement for COVID expenses.

19 Q. Did you provide Judge Mercer with a copy of this letter?

20 A. Yes, because they got copies of the entire application and everything
21 included with it.

22 Q. Did he make any comment about anything being missing on that
23 resolution?

24 A. No. No.

25 MR. PEDROTTY: Okay. You can hand that

26.

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(Marcia Puorro - Direct)

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back to Mr. Fitzpatrick, please.

Mr. Fitzpatrick, can you please show the witness

Exhibit 3?

BY MR. PEDROTTY:

Q. Do you recognize Exhibit 3?

A. Yes.

Q. On or about October 7, 2020, did you submit the court's JCAP application online to the Office of Justice Court Support?

A. I did.

Q. Do you recall when you initially started the -- filling in the application?

A. It would have been shortly after we received that we could apply, because then I'd just go in the computer and I'd put the necessary stuff in -- why everybody's deciding what we're going to ask for, like our caseloads for the past three years, things I have to look up, and then that's when I would save it. And then once we decide what we're going to ask for, then I would go back into the application and finish filling it out.

Q. Okay. So if you could put an approximate time line of when you started that in relation to its submission?

A. Probably a few week after we're -- a few weeks after we got the letter telling us we could apply for a grant, or if nothing's being talked about in the office, after a certain amount of time, I'll remind everybody we have to decide if we're going to go for a grant because things have to be done.

Q. Yeah. Okay. I'd direct your attention to page 5 of the exhibit. Under grant items, what items did you include?

A. Two air conditioners, the five court blinds -- window blinds, the shredder,

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1 desk chair, COVID reimbursement, and security system.

2 Q. Why was the security system added to the application as a grant item?

3 A. We discussed it after the fact and then added it before I sent it.

4 Q. Okay. When you say "we", who do you refer to?

5 A. Judge Mercer, Vincenzina Carl, and myself.

6 Q. Was Judge Pazin involved with those discussions?

7 A. No.

8 Q. Okay. And when you say "after the fact", what fact are you referring to?

9 A. Once the request for the grant resolution went down to the Town Board
10 and they acknowledged it and sent us back our letter and everything was
11 set to be sent to the state, that's when it was added.

12 Q. So it was sometime in between when the resolution was passed by the
13 Town Board and your submission of the application?

14 A. After they acknowledged what we were looking for and gave us the
15 resolution for all the other items.

16 Q. And "they" being the Town Board?

17 A. Yes.

18 Q. Did anyone tell you to add the security system to the application?

19 A. Not in certain words, but if we're going to ask for them, I have to add it.

20 Q. Okay. So who asked for it? Who asked for a security system to be added
21 to the application?

22 A. Judge Mercer.

23 Q. When did Judge Mercer ask for that to happen?

24 A. Approximately, in the waiting time for the supervisor at the time, Rob
25 Butler, sending me back the letter with his signature signed on it, until I

28.

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(Marcia Puorro - Direct)

1 sent it electronically.

2 Q. What did Judge Mercer say to you about asking -- or say to you about
3 adding the system?

4 A. "Let's add a security system to the application."

5 Q. What did you respond?

6 A. "Can you get me the estimates? Because I don't even know what to look
7 for in security system."

8 Q. Was there any discussion about the fact that the Town had not authorized
9 the court to apply for such an item in its application?

10 A. Yes.

11 Q. What was that discussion?

12 A. That Judge Pazin didn't know about it and the Town Board didn't know
13 that we were going to be asking for cameras.

14 Q. Well, who said that?

15 A. I did.

16 Q. You said that to Judge Mercer?

17 A. Yes.

18 Q. And what did he say?

19 A. "Let's just leave it at that. Don't worry about it. See if we get them".

20 Q. Was there any further discussion at that time?

21 A. No.

22 Q. At that time, you added the security system to the application?

23 A. Right.

24 Q. Looking at page 5 and the order of the grant items, does that have any
25 meaning to you, the fact that the security camera system was last on the

29.

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(Marcia Puorro - Direct)

1 list?

2 A. No. Personally, I just didn't feel it was a priority, but that was my own
3 thing.

4 Q. When I say "last" it is -- when you look at the page, it is the last item
5 listed, correct?

6 A. It was last -- it was lastly listed because it was added last.

7 Q. And what is the priority for the security system?

8 A. I indicated a 2.

9 Q. And why did you indicate a 2?

10 A. A security system is high priority, but we have a system in place, so that's
11 why I didn't put it as 1, I put it as 2.

12 Q. When you say you had "a system in place", what are you referring to?
13 What system do you have in place?

14 A. We have panic buttons on the bench, the clerk's desk in the courtroom,
15 two in our office, and monitor -- it monitors both stairways to let you
16 know someone's coming.

17 Q. When was that system added to the court?

18 A. I don't exactly remember that, but quite a while ago.

19 Q. Okay. Sometime before 2020/2021?

20 A. Yes.

21 Q. At or about the time you added the security camera system to the
22 application and these discussions with Judge Mercer about it, did you
23 have any discussions with him about who might install the camera
24 system?

25 A. We did. The three of us, Vincenzina Carl, and Judge Mercer, and I all sat

30.

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(Marcia Puorro - Direct)

1 and said, "Who are you going to have install them?" and the name Stone
2 Creek Electric came up. We would have him install them. He's a local
3 guy.

4 Q. Who brought up that name?

5 A. I know it wasn't me. I'm not sure who said it.

6 Q. What, if anything, did Judge Mercer say about that?

7 A. Just that we would have Frankie (phonetic) Greci, Stone Creek Electric,
8 do it.

9 Q. How do you spell Greci?

10 A. It's G-R-E- -- it's either -C-I or -C-C-I.

11 Q. And he's the owner of Stone Creek Electric?

12 A. Yes.

13 Q. Did you have any discussions at that time about Judge Mercer's company,
14 Mercer Associates, doing the installation?

15 A. No.

16 Q. Were you aware at that time that he was the owner of Mercer Associates?

17 A. Yes.

18 Q. And what was your understanding of what Mercer Associates does?

19 A. That was his business at the time. He was a contractor.

20 Q. And you testified previously that you had -- you wanted -- or you asked
21 Judge Mercer to do research about the cost of the camera system?

22 A. Right.

23 Q. Do you know if he did that?

24 A. Yes.

25 Q. Did he provide you with any documentation about the camera system?

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(*Marcia Puorro - Direct*)

1 A. He provided me with an estimate of what cameras -- the cameras would
2 cost, the camera system.

3 Q. Did you feel that the security camera system was needed for the
4 protection of yourself or anyone else working in the court?

5 A. Personally, for myself, I didn't feel the need for it. I mean, it's always
6 something nice to have, but I didn't feel a need for it.

7 Q. In your decade-plus years of experience with filing JCAP applications for
8 the court, had you ever, prior to incident, added any item to an
9 application that had not been authorized by the Town Board?

10 A. No.

11 Q. Do you have a document in front of you?

12 A. I do.

13 MR. PEDROTTY: Can you please give that
14 back to Mr. Fitzpatrick?

15 Ryan, can you please give her Exhibit 4?

16 BY MR. PEDROTTY:

17 Q. Do you recognize Exhibit 4 as containing the documents that you faxed
18 to the Office of Justice Court Support --

19 A. Yes.

20 Q. -- in support of the application?

21 A. Yes.

22 Q. Sorry. Let me just finish my question.

23 A. Sorry.

24 Q. I know you're ready to get out of here, but -- I direct you to page 2. Is
25 that the JCAP signature page?

32.

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(Marcia Puorro - Direct)

1 A. Yes.

2 Q. Do you recognize the judges' signatures on this page?

3 A. Yes.

4 Q. Do you see the date of September 21, 2020, next to each of their
5 signatures?

6 A. Yes.

7 Q. What grant items were listed on that JCAP application as of that date?

8 A. The air conditioners, the chair, the shredder, COVID reimbursement
9 expenses.

10 Q. Was the security camera system added at that time?

11 A. No.

12 Q. And do you see Town Supervisor Robert Butler's signature under this
13 certification?

14 A. Yes.

15 Q. Do you know what documents, if any, were presented to Mr. Butler when
16 he signed it?

17 A. This page and the page on the application -- the signature page and the
18 page of the application showing what we were asking for.

19 Q. Okay. So when you say the print -- are you saying the printout of the
20 online JCAP application with the list of grant items? Is that what you
21 provided to him?

22 A. Yes.

23 Q. Okay. And what was included in that printout when you gave it to Mr.
24 Butler? Was the security camera system added at that time?

25 A. No.

33.

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(Marcia Puorro - Direct)

1 Q. Okay. And who provided those documents to Mr. Butler?

2 A. I did.

3 Q. When you provided those documents to Mr. Butler, was there any
4 mention of a security camera system on any of those documents?

5 A. No.

6 Q. I direct you now to your -- your attention to pages 16 through 18 of the
7 document. At the top, you can see that there's -- they're numbered. Fax
8 cover sheet and the fax header. Are those printouts of a security camera
9 system?

10 A. Yes.

11 Q. Is that for a model CSP-4POEMX8-S?

12 A. Yes.

13 Q. Who printed out these pages?

14 A. Judge Mercer.

15 Q. And he provided them to you?

16 A. Yes.

17 Q. Looking at page 16, do you recognize the handwriting on that page?

18 A. Yes.

19 Q. Who wrote \$2,329.99?

20 A. Judge Mercer.

21 Q. Who wrote underneath, plus 1,000 installation.

22 A. I did.

23 Q. Why did you write that?

24 A. I will assume it was Judge Mercer that told me, approximately, that's how
25 much it would cost for installation.

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(*Marcia Puorro - Direct*)

1 Q. Why do you assume that?

2 A. Because I don't know that.

3 Q. You don't recall that --

4 A. No.

5 Q. -- independently? Would you have had any idea to add \$1,000
6 installation?

7 A. No.

8 Q. Assuming it was Judge Mercer, do you have any idea how he came up
9 with this amount?

10 A. I don't.

11 Q. Do you know whose handwriting is -- where they wrote
12 CSP-4POEMX8-S?

13 A. Judge Mercer.

14 Q. Now, the fax contains printouts of other items requested as part of the
15 grant. Who printed those out?

16 A. The other estimates?

17 Q. Yeah.

18 A. I would.

19 Q. Okay. You can please give that back to Mr. Fitzpatrick? Let me show
20 you Exhibit 5. I direct you to the bottom email on page 1. Did you
21 receive this email from Kathleen Roberts (phonetic) on November 25,
22 2020?

23 A. I did.

24 Q. What did you do in response to Ms. Roberts' request for more
25 information about the camera system?

35.

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(*Marcia Puorro - Direct*)

1 A. She had asked for an estimate which included breakdowns, and I asked
2 Judge Mercer for that.

3 Q. Why did you ask Judge Mercer for that?

4 A. Because he decided he was going to install the cameras.

5 Q. Is that what he communicated to you?

6 A. Yes.

7 Q. At that time?

8 A. Yes.

9 MR. PEDROTTY: Keep that to the side for
10 now.

11 And Ryan, can you please show her Exhibit 6?

12 BY MR. PEDROTTY:

13 Q. Exhibit 6 contains an email. Did you receive this email and its
14 attachment from Carrol Mercer on December 1, 2020?

15 A. Yes.

16 Q. Do you know why Carrol Mercer emailed you an estimate for Mercer
17 Associates?

18 A. Because I asked for one.

19 Q. From Judge Mercer?

20 A. Yes.

21 Q. Looking at the estimate on page 2, what is the date on that?

22 A. September 2, 2020.

23 Q. Had you seen this estimate prior to Carrol Mercer emailing it to you on
24 December 1, 2020?

25 A. No.

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(Marcia Puorro - Direct)

1 Q. Was it the document that Judge Mercer provided to you to include in
2 information to send to the Town Board --

3 A. Yes.

4 Q. -- previously? On or about when you were applying for the -- when you
5 were seeking authorization from the Town Board --

6 A. Um-hum.

7 Q. -- to apply for the JCAP grant, is this a document that Judge Mercer
8 provided to you at that time to provide to the Town Board?

9 A. No, not prior to the application. The application would have just
10 contained the estimates. Then after we got acknowledgment that we were
11 going to get the grant, that's when the cameras were purchased and
12 installed.

13 Q. Okay. I just want to be clear on your testimony, because initially you
14 said that on December 1, 2020, this is the first time you saw this estimate
15 dated September 2, 2020; is that correct?

16 A. Yes.

17 Q. Okay. And had Judge Mercer ever provided this document to you, prior
18 to December 1, 2020, to submit to anyone?

19 A. No. He would have given me this after the cameras were installed, to
20 give to the Town, to get reimbursed for.

21 Q. Okay. So you did not see an invoice like this from Judge Mercer until
22 you submitted a voucher later on for payment to Mercer Associates; is
23 that correct?

24 A. Yes.

25 Q. Okay. Now, the date of Ms. Carrol Mercer's email, December 1, 2020,

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(*Marcia Puorro - Direct*)

1 do you have any idea why the estimate that she included is dated
2 September 2, 2020, three months earlier?

3 A. I do not.

4 Q. Did you provide a copy of this Mercer Associates estimate to Judge
5 Pazin?

6 A. No.

7 Q. Why not?

8 A. It was just part of the -- it was part of the JCAP application, so anytime
9 we purchased anything, I would just say, "Okay. I'm buying the chairs".
10 The chairs would come in. They knew I was buying the chairs. Chairs
11 would come in. I'd do the voucher, send it down to the Town. So with
12 this, I would have done the same thing. I would have done up the
13 voucher and given it to the Town.

14 Q. At this time, on December 1, 2020, the court had not actually been
15 awarded a grant yet, correct?

16 A. I don't recall the exact date that we were granted the grant. I don't recall
17 that date.

18 Q. Okay. All right. Looking back at Exhibit 5 -- it's still in front of you -- I
19 direct you to the top email. By email, dated December 1, 2020, did you
20 send to Ms. Roberts a copy of the Mercer Associates estimate that Carrol
21 Mercer provided to you?

22 A. I did.

23 Q. Okay. Is this the first time that you provided this estimate, dated
24 September 2, 2020, to anybody?

25 A. I don't believe so, without looking at the -- my voucher, but this is the

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(Marcia Puorro - Direct)

1 first time I sent it to Kathleen.

2 Q. Okay. Is it the first time you sent it to anybody? So is the first time, on
3 December 1, 2020, that you had received a copy of this estimate? Could
4 you have sent it to anybody prior to that if this is the first time you
5 received it?

6 A. As soon as I received this from Judge Mercer, I would have sent it down
7 to the Town. I don't recall if it was --

8 Q. Did you --

9 A. -- prior to this date or not.

10 MR. PEDROTTY: All right. Please let me see
11 exhibit -- please give Exhibit 5 and 6 back to Mr.
12 Fitzpatrick.

13 Please show the witness Exhibit 7.

14 BY MR. PEDROTTY:

15 Q. Did you receive a letter dated on or about January 22, 2021, notifying
16 you that the Athens Town Court had been awarded a 2020/2021 JCAP
17 grant in the amount of \$3,089.99 for the purchase of a video surveillance
18 alarm system?

19 A. Yes.

20 Q. Was the court's request for funds to purchase any other items granted?

21 A. No.

22 Q. Do you have any idea why not?

23 A. I believe because -- I don't know how the state goes about picking what
24 they're going to give you.

25 Q. Okay. Who received the grant fund of \$3,089.99?

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(Marcia Puorro - Direct)

1 A. That would have went downstairs, probably, to the bookkeeping
2 department.

3 Q. And once the grant funds had been awarded, who purchased the cameras?

4 A. Judge Mercer.

5 Q. Why was it left to Judge Mercer to purchase?

6 A. He had given me the estimate for purchasing of the cameras -- the
7 estimate for what they would cost, so we left it up to him to get the
8 cameras.

9 Q. Do you know when he purchased them, about?

10 A. I don't.

11 Q. Do you know where he purchased them from?

12 A. I don't.

13 Q. Do you know how much he paid for them?

14 A. I'm assuming whatever his voucher was -- whatever his bill was for.

15 Q. Did he ever --

16 A. I can only assume that.

17 Q. Did he ever show you any documentation, how much he actually paid for
18 the camera system?

19 A. Just his bill.

20 Q. Did he ever tell you he got them at a discount?

21 A. No.

22 Q. Who installed the cameras?

23 A. He did.

24 Q. Did anybody help him?

25 A. No.

40.

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(Marcia Puorro - Direct)

1 Q. Do you recall, approximately, when he installed them?

2 A. I take that back. I do believe he checked with Anthony Proper from the
3 village on where he initially wanted the cameras to be put in the building.

4 Q. Who is Anthony --

5 A. Proper?

6 Q. -- Proper?

7 A. At the time, he was the head of the village -- the highway -- well, the
8 Village Department.

9 Q. Code enforcement?

10 A. No.

11 Q. No?

12 A. No, like --

13 Q. Who was he? I'm sorry.

14 A. He was the head of the village crew who takes care of maintenance of the
15 village.

16 Q. Okay. And you're saying that he checked with him before he installed
17 them? About what?

18 A. I guess where he planned to place them.

19 Q. Okay. Did you actually see the judge doing the work to install the
20 cameras?

21 A. Yes.

22 Q. Okay. Approximately, like, when did he do the work? Like, what time
23 of day was it?

24 A. One time, it was during work hours.

25 Q. When you say "work hours", what are work hours?

41.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Marcia Puorro - Direct)

1 A. At the time, I think it was 9:00 to 3:30, maybe, at the Town -- or at the
2 time, or it was 8:00 to 3:30 -- whenever our times changed. But he was
3 working in the office, specifically, at that time. And then I believe he
4 was trying to get it done after hours, not to interfere with work or
5 anything like that.

6 Q. All right. So you're saying it was both during work hours and afterhours?

7 A. Yes.

8 Q. Do you recall approximately how much time he spent installing the
9 cameras?

10 A. I don't know. I have no idea.

11 Q. Over how many days did you see him installing the cameras?

12 A. Just a couple days, probably.

13 Q. Did you say anything to Judge Mercer about the fact that he was
14 installing them?

15 A. I did.

16 Q. You did or didn't?

17 A. I did.

18 Q. What did you say?

19 A. That I didn't think he should do it.

20 Q. Why?

21 A. Because, number one, it didn't look good that he was doing it through his
22 business; that we should use someone not associated.

23 Q. And did you tell him? Did you communicate that to him?

24 A. I did, as did Vincenzina Carl.

25 Q. And what was his response?

42.

STATE COMMISSION ON JUDICIAL CONDUCT

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(*Marcia Puorro - Direct*)

1 A. I don't recall exactly what his response was, but he just said that he was
2 going to do it.

3 Q. Okay. Please take a look at Exhibit 13. Exhibit 13 is a two-page
4 document. Do you recognize the first page?

5 A. Yes.

6 Q. Can you tell us about this document?

7 A. That's a voucher I filled out for the Town, to reimburse Mercer
8 Associates for the installation of the cameras.

9 Q. Why did you -- what prompted you to fill this out?

10 A. Because it was completed. He gave me the bill, so now I have to send it
11 down to the Bookkeeper to write the check to reimburse it. The same as
12 if I purchased a chair from Staples and got the bill, I would fill out the
13 voucher and send it down to them to pay the Staples bill.

14 Q. Okay. Take a look at page 2. Is that what you're referring to when you
15 said Judge Mercer gave you the bill?

16 A. Yes.

17 Q. And so you filled out, on page 1, the voucher, based upon the information
18 on that bill?

19 A. Yes.

20 Q. When I asked you earlier about the September 2, 2020 estimate and you
21 said you would have sent that to the Town Board for payment, were you
22 referring to page 2 of that -- of Exhibit 13?

23 A. Well, they looked different. This one's -- the other one was vertical. This
24 one's -- whatever bill he gave me when I asked him for his estimate, I
25 would have sent to -- down to the Town.

43.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(*Marcia Puorro - Direct*)

1 Q. If page 2 of Exhibit 13 is the bill that you sent down to the Town for
2 payment, is it still your position that you sent, earlier, that September 2,
3 2020 estimate, or was it only page 2 of Exhibit 13?

4 A. At the time, I wasn't paying attention to the dates on the bills, but as soon
5 as he gave me the bill, I would have done the voucher and sent it down.

6 Q. Okay. So what is "the bill" we're referring to?

7 A. This one is dated 7/6/21.

8 Q. Okay. Now, looking at page 1 of Exhibit 13, do you recognize this
9 signature in the departmental approval box?

10 A. Yes.

11 Q. Whose is it?

12 A. Judge Mercer.

13 Q. And can you explain the attached note in the upper righthand corner
14 about how payment should be apportioned?

15 A. Yes. So I've highlighted JCAP. I've circled JCAP in red pen on my
16 vouchers. And in the past, there's been a couple times where the Town
17 has not paid attention to that and just cut a check. So it wasn't our JCAP
18 money used; it was town budget. So I included the sticky note as an extra
19 reminder this is to be paid from JCAP, and the difference to take out of
20 the Town budget -- the court's budget.

21 Q. Why was there a difference?

22 A. Because we only got a JCAP grant for \$3,089, and his bill was for 3,329.

23 Q. Who came up with this apportionment?

24 A. The difference in the amounts?

25 Q. Who came up with the idea of how to apportion the amounts this way?

44.

STATE COMMISSION ON JUDICIAL CONDUCT

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(Marcia Puorro - Direct)

1 A. We've done that in the past.

2 Q. Do you know if the amount of the security camera system on the voucher,
3 \$2,329.99, accurately reflects what Judge Mercer paid for it?

4 A. I believe so.

5 Q. Did he ever show you a receipt showing you that that's the amount he
6 paid for?

7 A. No.

8 Q. If I told you today that he paid under \$1,600 for the camera system,
9 would that be news to you?

10 A. Yes.

11 Q. Did there come a time when you learned that the Town was refusing to
12 pay the voucher?

13 A. Yes.

14 Q. When and how did you learn this?

15 A. It was after we submitted the bill. I don't exactly remember when. It
16 would have been shortly after that, I assume. And I don't recall who told
17 us. More than likely, it would have been Judge Mercer, not the Town,
18 but I don't know that.

19 Q. Do you recall Judge Mercer expressing his reaction to the nonpayment?

20 A. I believe he just said that "they're not going to pay me for the cameras".

21 Q. Did he make any comments to you about an interest charge?

22 A. Just that he said, after a certain amount of time he hadn't gotten paid, so
23 he did send the Town another bill which included interest.

24 Q. How did you know that? That he --

25 A. Just from him telling me.

45.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Marcia Puorro - Direct)

1 Q. Do you remember approximately when that was?

2 A. It would have been a few months after this had gone down, that he hadn't
3 gotten paid.

4 Q. Did Judge Mercer remove the cameras at some point?

5 A. He did.

6 Q. Do you recall when that was, approximately?

7 A. They weren't up very long. In fact, they weren't up long enough to even
8 be used. So it was shortly thereafter he installed them.

9 Q. A few months?

10 A. Possibly, yes.

11 MR. PEDROTTY: Mr. Garber, can I just take a
12 couple minutes to confer with Mr. --

13 MR. GARBER: Oh, sure.

14 MR. PEDROTTY: -- Fitzpatrick and Ms. Joshi?

15 MR. GARBER: Sure.

16 MR. PEDROTTY: Thank you.

17 Can we please go off the record?

18 MR. GARBER: Yeah. I don't know if you
19 caught -- you may.

20 MR. PEDROTTY: Thank you.

21 MR. GARBER: I was distant from the
22 microphone.

23 (Recess from 11:50 a.m. until 11:55 a.m.)

24 MR. FITZPATRICK: We are back on the
25 record.

46.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(*Marcia Puorro - Direct*)

1 RESUMED DIRECT EXAMINATION

2 BY MR. PEDROTTY:

3 Q. Ms. Puorro, I'd just like to try to clarify a few things in the record. Now,
4 can you please look again at Exhibit 6, which Mr. Fitzpatrick will provide
5 to you? Take a look at page 2, the estimate for Mercer Associates, dated
6 September 2, 2020. You testified before, you received this on December
7 1, 2020, from Ms. Mercer?

8 A. Yes.

9 Q. Did you submit, at this time, in December 2020, an invoice or a voucher
10 to the Town for payment to Mercer Associates?

11 A. If I got this first, yes, I would have.

12 Q. On December 1, 2020, was that before the cameras were installed?

13 A. No. I wouldn't have given them a bill prior to the cameras being
14 installed.

15 Q. Okay. So six months prior -- or so, prior to the cameras being installed,
16 would you have given the Town Board this estimate?

17 A. No.

18 Q. Did you give the Town Board this estimate six months prior to cameras
19 being installed and Judge Mercer providing you a bill for payment?

20 A. I did not.

21 MR. PEDROTTY: Okay. Thank you. I have
22 no further questions.

23 MR. GARBER: Judge Mercer? And Judge, as
24 we discussed in our pre-trial -- or pre-hearing conferences,
25 are you going to cross-examine the witness, Ms. Puorro?

47.

STATE COMMISSION ON JUDICIAL CONDUCT

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(*Marcia Puorro - Direct*)

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If I'm pronouncing it correctly? Did I botch it?

THE WITNESS: Close.

MR. GARBER: All right. I'm sorry.

As well as direct examination to see if we can --
so to see if we can not have to recall her during your side of
the case?

JUDGE MERCER: I am prepared to do that,
and with the permission of Mr. Pedrotty, I can review cross
from the immediate, to simplify and keep things consistent,
and then at that time, in order -- for the interest of time and
consideration to all the witnesses that we discuss in our
conference call, I would like to proceed with a -- my cross-
examination and then go through some of the witness's --
the exhibits from the State and also the exhibits that I have
supplied the Commission myself --

MR. GARBER: Okay.

JUDGE MERCER: -- which there is record of.
And if we're going to do that, would now be the time to
admit the schedule of exhibits, or did we want to do that
after the cross, as just a technical question?

MR. PEDROTTY: I believe if you have an
exhibit that you would like to offer and introduce --

JUDGE MERCER: Um-hum.

MR. PEDROTTY: -- and present to the witness,
you would do so and -- at that time.

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(*Marcia Puorro - Direct*)

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JUDGE MERCER: Okay. What I'm referring to is the schedule that you have provided first on -- this morning, we discussed my presentation of my A through J exhibits, which we have revised the numbers on. Thank you. But the schedule has not been admitted, I believe, today -- the revised schedule.

MR. PEDROTTY: If you would like to offer that as a Referee's exhibit, that schedule --

JUDGE MERCER: Um-hum.

MR. PEDROTTY: -- I have no objection to that at this time as Referee's Exhibit 2.

(Referee's Exhibit 2 was marked for identification)

MR. PEDROTTY: I'm not stipulating at this point to all of the exhibits going into evidence, but the --

JUDGE MERCER: No, no.

MR. PEDROTTY: -- the schedule --

JUDGE MERCER: I just want to --

MR. PEDROTTY: -- that's fine.

JUDGE MERCER: -- present the schedule. I'm sorry. I used the word "schedule", but you used a different word for -- so if I can present the revised --

MR. GARBER: Yup.

JUDGE MERCER: -- list.

MR. GARBER: May I see a copy of that, please?

49.

(*Marcia Puorro - Direct*)

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JUDGE MERCER: Sure. I have it. Mr. Pedrotty made a couple copies.

MR. PEDROTTY: Thank you.

JUDGE MERCER: There you go. And if that could get to Mr. Garber?

MR. GARBER: Thank you.

JUDGE MERCER: Okay. Good morning, Ms. Puorro.

MR. GARBER: Just a minute, please.

JUDGE MERCER: Sure.

MR. PEDROTTY: So --

MR. GARBER: Okay. Schedule A is a description of proposed exhibits, and it's simply the schedule, and we'll, without objection, accept it into evidence as Referee's Exhibit 3 or 2?

MR. PEDROTTY: 2. 2.

MR. GARBER: Okay.

(Referee's Exhibit 2 was admitted into evidence)

MR. PEDROTTY: Simply the schedule at this time.

MR. GARBER: Simply the schedule.

JUDGE MERCER: Correct. Right.

MR. GARBER: Please proceed.

JUDGE MERCER: Thank you.

Do you mind if I call you Marcia?

50.

(Marcia Puorro - Cross)

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THE WITNESS: I do not.

JUDGE MERCER: Okay. Thank you. Again, thank you very much for coming today. And we can finally resolve some of these issues.

I did take note of some of your comments from certain references with regard to some exhibits and that -- and I want to go through them first, and then as we discuss, I have some other questions to proceed with.

Would you be able to give Ms. Puorro Exhibit 3, which is the online application?

CROSS-EXAMINATION

BY JUDGE MERCER:

Q. In your testimony today, when using that exhibit -- again, it's the online application. In your testimony, I -- you did say that you showed that to both judges?

A. Yes.

Q. Okay. So for the record, then, Judge Pazin would have known about the cameras on October 6 of '20, the application date of when you sent that in?

A. All right. Let me -- I show you guys what the application looks like.

Q. Um-hum.

A. I don't show you all the estimates attached and all of --

Q. I understand.

A. -- and all of that stuff.

Q. Just the online applications, right?

(Marcia Puorro - Cross)

1 A. And all of that stuff.

2 Q. Right.

3 A. If I showed her this, it did not have the cameras on it.

4 Q. But it's the application that you submitted online, I believe.

5 A. I don't know if this entire group of papers is what I showed you guys, but
6 she did not know anything about the cameras, and it wasn't on --

7 Q. Okay. All right.

8 A. -- the application when she saw it.

9 Q. I want to just -- in your testimony, you said that you showed both judges?

10 A. Right.

11 Q. Okay. And Vee Carl, at this time, she would have been aware of the
12 cameras going on at that date, 10/6, when we applied for that?

13 A. She doesn't get to see the application or anything like that. But the
14 discussion within the office, with the three of us -- she knew about the
15 cameras.

16 Q. As Senior Court Clerk and JCAP Administrator in our court,
17 conversation would have been had with Vee, myself -- I'll leave it at that
18 for this moment -- about the security cameras and any other items on the
19 list itself.

20 MR. PEDROTTY: At this time, I'd just like to
21 make sure that Respondent is asking a question and not
22 testifying.

23 MR. GARBER: I'm sorry?

24 MR. PEDROTTY: At this time, I'd just like to
25 make sure Respondent is actually asking a question --

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(*Marcia Puorro - Cross*)

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MR. GARBER: Oh.

MR. PEDROTTY: -- and not testifying for himself without being under oath.

MR. GARBER: Well, what is your question, Judge?

JUDGE MERCER: She answered the question.

MR. GARBER: Okay.

JUDGE MERCER: It was regarding the online application and Vee Carl.

BY JUDGE MERCER:

Q. Was Vee Carl aware of the online application and the contents of the JCAP grant?

A. Aware of it, yes.

Q. Yes? Okay. In your testimony, you testified that Mercer Associates is a general contractor?

A. I believe, yes.

Q. All right. And in the exhibit -- I'm going to have to -- I would assume it's Exhibit 4. It shows that Judge Pazin and E. Timothy Mercer did sign on 9/21 of '20, and that was to prepare it for one of the Town Board meetings for that date?

A. Yeah.

Q. Okay.

A. Actually, not a board meeting, but for the Supervisor to sign.

Q. Okay. Would that have gone down to -- because that was a board meeting night, the 21st, I believe?

53.

(*Marcia Puorro - Cross*)

1 A. I might have given it to Linda Stacey --

2 Q. All right.

3 A. -- the Town Clerk, to give to Supervisor Butler to sign, knowing that it
4 was the application to our JCAP grant that he had to put his signature on.

5 Q. Right. And we were coming up on -- were we coming up on the deadline
6 for the application itself at that time?

7 A. Yes.

8 Q. Okay. Are there -- was it under close guidelines or did we have to have
9 Mr. Butler sign this for the application grant dated 10/7?

10 A. I usually go away the week of October 18th and 19th, somewhere in
11 there. So I wanted everything to be done --

12 Q. Okay.

13 A. -- and ready to go.

14 Q. Okay. Thank you. In Exhibit 5, if you could present -- take back 4. You
15 had stated that the first knowledge for the labor and materials to be
16 submitted from the application from Mercer Associates was required,
17 correct?

18 A. Um-hum. Yes.

19 Q. Okay. I don't have this in as evidence, but maybe we can get there if it's
20 permissible. On the 18th of November, Erika Hanks sent Judge Pazin
21 and myself an email, copied to you, regarding --

22 MR. PEDROTTY: I think I have an objection,
23 that I believe that Respondent is reading from a document
24 not in evidence.

25 JUDGE MERCER: Okay. Would I be able to

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Marcia Puorro - Cross)

1 enter this into evidence at this time, this document?
2 MR. GARBER: Show it to Mr. Pedrotty.
3 MR. PEDROTTY: Proceed.
4 JUDGE MERCER: Can I enter it in?
5 MR. GARBER: Judge, may I see it, please?
6 JUDGE MERCER: Sure. Do you mind?
7 MR. PEDTROTTY: It's not something he's
8 provided.
9 JUDGE MERCER: It's not in the -- one of -- it's
10 not on the schedule. And I only have that based on
11 testimony today.
12 MR. PEDROTTY: Do you have an unmarked
13 copy?
14 JUDGE MERCER: I'm sorry. I'm fully aware
15 of that, and I -- my notes on it.
16 MR. GARBER: Mr. Pedrotty has not objected
17 to the admissibility, but I will note for the record that the
18 yellow highlighting and the underlining and the written
19 material on it are not part of the original email.
20 JUDGE MERCER: Correct, they aren't.
21 MR. GARBER: Okay.
22 MR. PEDROTTY: And that's just a single page.
23 The page you're looking at now is in evidence --
24 MR. GARBER: Okay.
25 MR. PEDROTTY: -- as one of the

55.

(*Marcia Puorro - Cross*)

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Commission's exhibits.

MR. GARBER: Okay. Well, with that --

MR. PEDROTTY: The first page, I have no objection to it going in evidence as, at this point, Exhibit --

MR. GARBER: I guess it would be --

MR. PEDROTTY: -- K.

MR. GARBER: Oh, K?

MR. PEDROTTY: Respondent's Exhibit K --
(Respondent's Exhibit K was marked for identification)

MR. GARBER: Okay.

MR. PEDROTTY: -- with the understanding that all the handwriting markings are --

MR. GARBER: Yes.

MR. PEDROTTY: -- Respondent's own notes at this time, and is not evidence of anything.

MR. GARBER: Correct.

And Judge, would you also explain who Erika Hanks is?

JUDGE MERCER: Oh, sure. I don't have another copy of the -- obviously, wasn't prepared to enter that in as an exhibit today.

MR. GARBER: But what letter is this going to be? K?

MR. PEDROTTY: This will be K.

MR. GARBER: Okay.

56.

(*Marcia Puorro - Cross*)

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(Respondent's Exhibit K was admitted into evidence)

JUDGE MERCER: It's a letter from -- can we continue?

MR. GARBER: Please.

JUDGE MERCER: It's a letter from Erika Hanks, who is the Senior Court Analyst for the Office of Justice Support --

MR. GARBER: Okay.

JUDGE MERCER: -- Court Support. Okay? Marcia, on the -- November 18, 2020 --

MR. PEDROTTY: Would you like to show the witness the document in evidence before you ask her the questions about it --

JUDGE MERCER: Sure.

MR. PEDROTTY: -- so she can review it?

JUDGE MERCER: Um-hum.

BY JUDGE MERCER:

Q. Marcia, after reviewing that exhibit, would you agree that there was an email, prior, that asked for a new estimate to be given to the court with regards to the system, which then would follow up as to why you received an email from Mercer Associates on the 1st?

A. Yes.

Q. Okay.

A. I was asked to send estimates of the cameras, which I did, the ones that you had printed off for me.

57.

(*Marcia Puorro - Cross*)

1 Q. Correct.

2 A. That was the first step, and then the second step was the estimate from
3 Mercer Associates.

4 Q. Um-hum.

5 A. Yes.

6 MR. PEDROTTY: Before we continue, can we
7 just clarify that exhibit -- Respondent's Exhibit K is just one
8 page?

9 JUDGE MERCER: Exhibit K is one page.

10 MR. PEDROTTY: Okay.

11 MR. GARBER: Why don't you eliminate
12 page -- the second page?

13 MR. PEDROTTY: Thank you.

14 JUDGE MERCER: And then, following up on
15 that, I believe the exhibit has the email -- the State has --
16 Commission has the exhibit from Kathleen Roberts, who is
17 also from the Office of Justice Support, who is requesting
18 in -- on her document, also states -- I will get the exhibit
19 number for you.

20 MR. PEDROTTY: Exhibit 5.

21 THE WITNESS: This one? 5?

22 JUDGE MERCER: Yes, Exhibit 5.

23 BY JUDGE MERCER:

24 Q. On there, again, it states "a new estimate that includes the following
25 breakdown"?

58.

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(*Marcia Puorro - Cross*)

1 A. This email has an attached bill as well from Mercer Associates.

2 Q. Um-hum. On Exhibit 5, Judge Pazin is copied on there?

3 A. No.

4 Q. On Exhibit 5?

5 A. No. It was just from me to Kathleen. Oh, my answer. The original --

6 Q. Your end. Right.

7 A. -- email from Kathleen --

8 Q. Yes.

9 A. -- yes, has her on it.

10 Q. I believe has a couple -- has Judge Pazin?

11 A. Yes.

12 Q. So on 11/2- --

13 MR. GARBER: Excuse me. What is the
14 original email? Oh, I see. It's the email chain?

15 JUDGE MERCER: Yup.

16 THE WITNESS: And then if you answer it, it
17 pops back up to the top.

18 MR. GARBER: Yeah, I understand. Okay.

19 JUDGE MERCER: There's multiple pages --

20 MR. GARBER: Okay.

21 JUDGE MERCER: -- in the email chain in the
22 exhibit.

23 BY JUDGE MERCER:

24 Q. So on 11/25, Judge Pazin would have known that there's security
25 cameras?

59.

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Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(*Marcia Puorro - Cross*)

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MR. PEDROTTY: Objection.

MR. GARBER: What is your objection?

MR. PEDROTTY: He's asking what she -- what Judge Pazin would have known. This witness does not know what --

MR. GARBER: Yeah.

MR. PEDROTTY: -- Judge Pazin would have known.

MR. GARBER: Sustained.

BY JUDGE MERCER:

Q. Marcia, does Judge Pazin read all of her emails when they're sent to -- that she's copied to, with -- regarding her, myself, and anyone else in the court?

MR. PEDROTTY: Objection.

MR. GARBER: Sustained.

MR. GARBER: Judge Pazin's going to testify --

MR. PEDROTTY: Okay.

MR. GARBER: -- Judge, so that you can ask her that question.

JUDGE MERCER: One of the roles of Ms. Puorro is that she clerks for Judge Pazin.

MR. GARBER: Okay.

JUDGE MERCER: That's all.

MR. GARBER: Do you know whether Judge Pazin reviewed that email chain?

60.

(*Marcia Puorro - Cross*)

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THE WITNESS: I do not know.

MR. GARBER: Thank you.

JUDGE MERCER: Okay.

BY JUDGE MERCER:

Q. During your questioning today with Mr. Pedrotta (phonetic) [sic] --
Pedrotty -- sorry -- he had asked about security in the courtroom and
feeling safe and all the rest, and your reply was "no need for security".
Or with regards to the panic buttons, the motion sensors for someone who
might be walking up -- saying there's no need. Were there any other
previous events in our Court Office that would have dictated the need for
observing and/or recording anyone else in the building?

A. I do know of a couple incidents that have happened. I was not there for
either one of them. I know a defendant, rather than going after Judge
Pazin on the bench, put his head through the wall, but there were plenty
of officers there with him at that time. I do know of a defendant
threatening you, on recording, but I, again, was not there at that time.

Q. And was that threat during an afterhours arraignment, where no security
and only then the supporting officers and a Public Defender is in the
presence in the court?

A. Yes.

Q. Would you also agree or -- that the surroundings inside the hallways --
that someone could be in the stairwells while the judge, whether it be
myself or Judge Pazin, is entering or exiting the building during
afterhours and dark?

A. Yes.

(*Marcia Puorro - Cross*)

1 Q. Once we shut the lights off. All lights are on one floor, in one location?

2 A. Yes.

3 Q. On each side. Okay. Were there any other concerns that any of the Court
4 Clerks had with regards to town personnel coming in and harassing the
5 Court Clerks?

6 A. The Bookkeeper used to come up a lot, quite a lot, and ask us all kinds of
7 questions and stuff that we really couldn't answer. It was up to the
8 judges. Both you and Judge Pazin told him numerous times not to come
9 to the office and ask us questions. He still continued to do it. The
10 supervisor would come up once in a while. The cleaner -- not unless it's
11 somebody specific. I --

12 Q. Did he ever make threatening comments that would --

13 A. The --

14 Q. -- we discussed to use the security cameras for?

15 MR. PEDROTTY: Who? Who are you
16 referring to?

17 JUDGE MERCER: Mr. Pierro.

18 THE WITNESS: Did he ever make comments?

19 BY JUDGE MERCER:

20 Q. Sexual harassing comments to any of the court staff?

21 A. I believe he passed one to Ruth Wittlinger --

22 Q. Um-hum.

23 A. -- on the telephone, which she addressed with you right away. I don't
24 recall.

25 Q. Okay. In Exhibit 7, if we could -- which is the award letter that you've

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(*Marcia Puorro - Cross*)

1 previously seen, and it only states that we have been awarded for the
2 security cameras?

3 A. Right.

4 Q. And that the other items were not selected. Items that were set as a
5 number 2 priority. Do you know why the other items weren't awarded to
6 the court?

7 A. I do not. I only can assume why. Possibly, the state thought security
8 cameras more important than chairs and blinds. I don't know why.

9 Q. Would you be prepared that my position on security inside the courtroom
10 is different than blinds and chairs and possibly --

11 A. Yes.

12 MR. PEDROTTY: Objection to the question.

13 MR. GARBER: What was your question again,
14 Judge?

15 JUDGE MERCER: The level of priority for the
16 cameras being issued that was set by Ms. Puorro as a
17 number 2.

18 MR. GARBER: Overruled.

19 MR. PEDROTTY: Withdrawn.

20 JUDGE MERCER: In Exhibit 13 --

21 MR. GARBER: And I note that the witness
22 answered the question.

23 MR. PEDROTTY: Would you like to re-ask
24 that question? I'm not sure it came out due to my objection.

25 //

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(*Marcia Puorro - Cross*)

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BY JUDGE MERCER:

Q. Well, the level of priority set by yourself is not necessarily the level set for the judges, correct?

A. Correct.

Q. Each and/or either judge might have different priorities within the courtroom, correct?

A. Yes.

Q. Right. And my role as being Judge Mercer, for my clerk, I'm -- would you agree that I am interested in the security and safety of all of the Court Clerks?

A. Yes.

Q. Okay. For Exhibit 13, which is the voucher that was signed, which the Commission has stated that there's two different cameras, one from the signed voucher and one from the estimate, is that anything that you picked up on prior to submitting it to the Town?

A. No.

Q. Would you have any reason for that?

A. No.

Q. Would I blatantly just change something?

MR. PEDROTTY: Objection to the form of the question.

MR. GARBER: Sustained.

BY JUDGE MERCER:

Q. You testified that you learned a couple of days or week after about the opposition of the Town, which would have been a phone call to you from

64.

(*Marcia Puorro - Cross*)

1 Don Pierro, actually the day of the submission or the day after; is that
2 correct?

3 A. Pertaining to?

4 MR. GARBER: What is the objection that
5 you're referring to, Judge? I mean, did -- rephrase your
6 question. Or "opposition".

7 Did you use the word opposition?

8 JUDGE MERCER: Don Pierro's opposition.
9 The Bookkeeper called up on the 6th or 7th of July after
10 submitting the invoice to the Town.

11 MR. GARBER: Okay.

12 BY JUDGE MERCER:

13 Q. Correct?

14 A. Yes.

15 Q. Thank you. In that phone conversation, did you have conversation with
16 him about the JCAP process, how the court has done it prior, and how he
17 is looking at it that day, which would be -- he says, "you can't do that"?

18 A. Yes.

19 Q. He said that?

20 A. Yes.

21 Q. Right.

22 A. He said he "felt" I couldn't.

23 Q. Right. Can you explain that conversation, because it was with you, of
24 what transpired?

25 MR. PEDROTTY: Objection. Calls for

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(Marcia Puorro - Cross)

1 hearsay.

2 MR. GARBER: No. It's a question -- it's a
3 good question for the witness to be -- the witness was a
4 participant in the conversation.

5 What was the substance of the conversation that
6 you had with Mr. Pierro?

7 THE WITNESS: He basically was asking me if
8 I notified the supervisor or the Town Board on who did the
9 work or where we purchased things. I said no.

10 Then he also proceeded to ask me for Judge
11 Mercer's federal ID number for the voucher, to enter him
12 into the computer as a vendor, and that if you didn't want to
13 supply that, you could supply him with just your name and
14 social security number, and he could add you as a vendor
15 that way.

16 BY JUDGE MERCER:

17 Q. In that conversation, did you talk to him about previous JCAP grants?

18 A. A little bit.

19 Q. Okay. And the procedures that you followed as Administrator of the
20 JCAP, up until July 6th of 2021, would you have ever -- do you feel it
21 was your role to provide the Town with that information?

22 A. Information on your federal tax ID number and social security number?

23 Q. No. With regards to the billing in place --

24 A. Who does the work?

25 Q. Who does the work is right.

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(*Marcia Puorro - Redirect*)

1 A. No.

2 Q. In the process of the JCAP grant, have you ever dealt with the Town prior
3 to this of who did any work in the past?

4 A. The only time that would happen is if what we were asking for or getting
5 done exceeded the price of the JCAP grant check, that we would figure
6 out if the Town would be able to reimburse the difference.

7 JUDGE MERCER: Okay. I'll get to the 2013
8 JCAP grant when I go through my questions.

9 That's all I have from Mr. Pedrotty's --

10 MR. GARBER: Mr. Pedrotty, do you have any
11 redirect?

12 REDIRECT EXAMINATION

13 BY MR. PEDROTTY:

14 Q. Prior to 2020/2021 JCAP grant cycle, had there ever been a circumstance
15 where a judge awarded to his own private or her own private company a
16 contract to do work and be reimbursed by JCAP funds?

17 A. I do not believe so, no.

18 MR. GARBER: All right. I have some
19 questions, but I'll let you do your direct examination, and
20 then -- because they may be resolved by your direct
21 examination.

22 JUDGE MERCER: Okay.

23 MR. GARBER: So why don't you --

24 JUDGE MERCER: Oh.

25 MR. GARBER: -- proceed? It's 12:30. Do you

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(Puorro - Colloquy)

1 want to continue with your direct examination or do you
2 want to take a break for lunch?

3 Mr. Pedrotty?

4 JUDGE MERCER: It's --

5 MR. GARBER: How long were you?

6 JUDGE MERCER: It's extensive. If we want to
7 save that to least, I --

8 MR. PEDROTTY: I mean, we have a lot of --
9 you know, we have three more witnesses to get through
10 who are all going to be waiting, but --

11 JUDGE MERCER: Well, during the conference
12 call, this is -- was my --

13 MR. PEDROTTY: Okay.

14 JUDGE MERCER: -- concern. And we agreed
15 that it would be done. However --

16 MR. PEDROTTY: Well, we can. No. It's just a
17 matter of --

18 JUDGE MERCER: -- if we need to take a five,
19 ten-minute break, that's fine. Then we can go through the
20 exhibits for both things.

21 MR. GARBER: Well, I'm prepared to continue,
22 but if -- we've got a number of people in the courtroom who
23 may want to have some lunch or use the bathroom facilities.

24 MR. PEDROTTY: I'm prepared to continue at
25 this time. If we need to, we can take a five-minute break,

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(Puorro - Colloquy)

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but I'm --

MR. GARBER: Let's take a five-minute recess.

MR. PEDROTTY: Okay.

(Recess from 12:29 p.m. until 12:36 p.m.)

MR. GARBER: Now, the witness's testimony if we could.

Ms. Puorro, am I close?

THE WITNESS: You are.

MR. GARBER: Okay. Close in pronunciation.

THE WITNESS: Right.

MR. GARBER: You initially testified as to some general procedures with JCAP applications, and do the judges review the application and sign it?

THE WITNESS: Yes.

MR. GARBER: And do the judges customarily sign the application prior to the Town Board's approval of the application?

THE WITNESS: We ask for a resolution for what we want first. Once they acknowledge the resolution and make the resolution up and send it to us, then the judges usually sign the application at that time.

MR. GARBER: Um-hum.

THE WITNESS: And then I send the application back down to the board for the Supervisor.

MR. GARBER: Okay. Now, I note that, I

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(Puorro - Colloquy)

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believe -- let's see, what exhibit was it? Let's see.

Mr. Fitzpatrick, was it -- do you have the application and the signature page to the application, which I think is probably Exhibit 4?

MR. PEDROTTY: The application itself is Exhibit 3.

MR. GARBER: Yup. May I have Exhibit 3, please? Thank you.

Now, referring you to Exhibit 3.

THE WITNESS: Um-hum.

MR. GARBER: Did you show the judges Exhibit 3 prior to their execution of the signature page on September 21?

THE WITNESS: I did not. The application that they got had the chairs, the air conditioner, the shredder, and the COVID reimbursement. It did not have the cameras on it.

MR. GARBER: Um-hum. Okay. And what is the reason for the delay between the execution of the signature page on September 21 and the --
(Recess from 12:40 p.m. until 12:41 p.m.)

MR. FITZPATRICK: Okay. We are back on the record.

MR. GARBER: Okay. I'll ask my question again, Ms. -- what is the reason for the date -- or for the

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(Puorro - Colloquy)

1 delay between the execution of the signature page of the
2 application on September 21 and the adoption of the
3 Board's resolution on -- I believe on October 5th?

4 THE WITNESS: I send the application
5 signature page down to the Town Clerk to give it to the
6 Supervisor for his signature. Pertaining just to Robert
7 Butler, Supervisor, he was not in the office every day.

8 MR. GARBER: Um-hum.

9 THE WITNESS: So I had to then wait for him
10 to come in to sign the application.

11 MR. GARBER: Okay. Now, referring to the
12 Exhibit 4 --

13 THE WITNESS: Um-hum.

14 MR. GARBER: -- which are the fax
15 attachments to the application --

16 THE WITNESS: Um-hum.

17 MR. GARBER: -- the estimate cost was -- of
18 the security system was 3,329.99.

19 THE WITNESS: Um-hum.

20 MR. GARBER: Where did you get that
21 estimate from?

22 THE WITNESS: Judge Mercer.

23 MR. GARBER: And which estimate are you
24 referring to? There are two, as I recall. There is one from
25 cctvpros.com [sic].

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(Puorro - Colloquy)

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THE WITNESS: Um-hum.

MR. GARBER: And then there's another estimate dated 9/2/2020.

THE WITNESS: Um-hum.

MR. GARBER: When did you receive -- strike that.

Did you submit the estimate along with the application from cctvpros.com [sic]?

THE WITNESS: Without looking at it, I believe so.

MR. GARBER: Well, here's the attachments.

Is there one from cctvpros.com [sic]?

MR. PEDROTTY: Which exhibit is the witness referring to or --

THE WITNESS: 4.

MR. GARBER: Exhibit 4.

MR. PEDROTTY: Thank you.

THE WITNESS: This one is the one that says Blue Line NVR features (audio interference) CCTV security props by security systems online.

MR. GARBER: Okay. And take that back, please. Thank you.

And who gave you this?

THE WITNESS: Judge Mercer.

MR. GARBER: Judge Mercer.

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(Puorro - Colloquy)

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And do you recall when he gave it to you?

THE WITNESS: As soon as I asked him for it.

MR. GARBER: And would that have been before or after the Board's October 5 meeting?

THE WITNESS: After.

MR. GARBER: After. And would it refresh your recollection that there is a -- seems to be a date in the upper lefthand corner of the exhibit dated 10/6/2020? I'll show it to you.

THE WITNESS: I see that.

MR. GARBER: Yeah. So do you have a recollection that it would have been on 10/6/2020 that you received that?

THE WITNESS: I can only assume that's when he did it.

MR. GARBER: Okay. Now, there was another estimate from Mercer Associates dated 9/2/2020. Do you recall when you received that or from who received that estimate?

THE WITNESS: I would have received it from Judge Mercer.

MR. GARBER: Okay. And would that have been before or after the Town Board meeting of October 5?

THE WITNESS: I don't recall that.

MR. GARBER: Um-hum.

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(Puorro - Colloquy)

1 THE WITNESS: I know I didn't have it when I
2 sent the application in.

3 MR. GARBER: Do you recall whether you had
4 it at the time the Board reviewed the application and
5 approved it on October 5?

6 THE WITNESS: No, I did not have it at that
7 time.

8 MR. GARBER: Okay. You testified that Judge
9 Mercer requested that you include the security camera in
10 the application. Do you recall the date of that request?

11 THE WITNESS: I don't.

12 MR. GARBER: Okay. Did you discuss it with
13 Judge Pazin?

14 THE WITNESS: I did not.

15 MR. GARBER: Okay.

16 Mr. Fitzpatrick, is this still recording?

17 MR. FITZPATRICK: Yes, we're still on the
18 record.

19 MR. GARBER: Okay. As of December 1st,
20 was the security system -- security camera system installed?

21 THE WITNESS: I believe so, but I'm not 100
22 percent with that.

23 MR. GARBER: Okay.

24 THE WITNESS: I don't know exactly when
25 they were installed.

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(*Marcia Puorro - Direct*)

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MR. PEDROTTY: What year?

MR. GARBER: It would have been 2020.

THE WITNESS: I don't exactly remember when they were installed.

MR. GARBER: Okay. Generally, as a matter of procedure in the Town -- or process, who prepares the vouchers for the court?

THE WITNESS: I do.

MR. GARBER: I do. And did you prepare the voucher for the security camera system?

THE WITNESS: I did.

MR. GARBER: And then you submitted it to Judge Mercer for his signature?

THE WITNESS: Yes.

MR. GARBER: Okay. That clarifies some of my questions.

Judge, do you want to proceed?

JUDGE MERCER: Thank you. Okay.

DIRECT EXAMINATION

BY JUDGE MERCER:

Q. Marcia, in the Commission's Exhibits 1, with regards to Exhibit 1, in earlier testimony today, would you agree that you were --

MR. GARBER: Just a minute. Let me return these exhibits to Mr. Fitzpatrick before they're misplaced.

I'm sorry, Judge.

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(Marcia Puorro - Direct)

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JUDGE MERCER: No, it's okay.

BY JUDGE MERCER:

Q. You stated that you were under some constraints of time with regards to getting the application in?

A. Yes.

Q. We were bouncing between Town Board meetings, and the first Board meeting, which was actually the day that the JCAP -- or the day after -- day before the grant was due?

MR. PEDROTTY: Objection as to the form of the question. At this time, I'd like to remind Respondent that this is a direct examination --

MR. GARBER: Yeah.

MR. PEDROTTY: -- and he's leading.

MR. GARBER: Yeah. You're leading the witness, Judge. Ask the question, please, in --

JUDGE MERCER: Not purposely --

MR. GARBER: -- in a different --

JUDGE MERCER: -- for the record.

MR. GARBER: -- different form.

JUDGE MERCER: Okay. Thank you.

BY JUDGE MERCER:

Q. Would you agree that there was a time period and constraints because of -- creating an urgency to get this done at this time?

A. Yes, there was an urgency.

Q. Okay. To Exhibit 4, if we could, which is going to be, again, a copy of

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(*Marcia Puorro - Direct*)

1 the grant itself, and there is a picture of the CCTV cameras, correct?

2 A. Yes.

3 Q. There are also other pictures in there for the other submissions?

4 A. Yes.

5 Q. The blinds, the air conditioners, and such?

6 A. Yes.

7 Q. Everything that you submitted in the grant application was items that we
8 pulled off the internet, correct?

9 A. Yes.

10 Q. And/or a copy of the Staples catalog, and all the rest?

11 A. Correct.

12 Q. Okay. And that estimate that I and Mercer Associates gave you -- what I
13 call estimate -- the sheet that I gave you as we were applying. Just tear
14 sheets for numbers, correct?

15 A. Yes.

16 MR. PEDROTTY: Objection as to vague --
17 vagueness.

18 MR. GARBER: Judge, which documents are
19 you referring to?

20 JUDGE MERCER: In Exhibit 4, there are
21 copies of the air conditioners, of the blinds, of everything,
22 and they are just copies of the items that we're requesting.

23 MR. GARBER: Ask the witness what they are.

24 BY JUDGE MERCER:

25 Q. Marcia, can you tell us what is enclosed in the JCAP application that

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(*Marcia Puorro - Direct*)

1 shows pictures from the internet?

2 A. Okay. So there is a estimate from Lowe's for an air conditioner, Select
3 Blinds for the blinds, Staples for the shredder as well as the chair, a
4 Justice Court Assistance Program request for reimbursement for the
5 protective equipment --

6 Q. Um-hum.

7 A. -- everything for COVID, and then -- as well as the Etsy where we got the
8 shields, and the buy security systems online CCTV --

9 Q. Um-hum.

10 A. -- security props.

11 Q. Right. You mentioned the plexiglass.

12 A. Um-hum.

13 Q. Do you know it -- did Mr. Pierro have any problem reimbursing myself
14 for the plexiglass used for COVID in the courtroom that I installed?

15 A. I don't believe so.

16 Q. Okay. And that was prior to the JCAP application, correct?

17 A. Yes.

18 Q. Okay. Were the items in Exhibit 4 just copied to get a number to put
19 onto the JCAP grant for the application process?

20 A. Copies of?

21 Q. Just documents from the Staples and --

22 A. Oh, yeah.

23 Q. What I want to -- there was no form of compiling all the information at
24 that time, in rigid estimates and the rest. We were just trying to get
25 things done for presentation to the Board before the application deadline?

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(Marcia Puorro - Direct)

1 A. Correct.

2 Q. Okay. All right. So that was sufficient information for us to do that?

3 A. Yes.

4 Q. And as JCAP Administrator, you also know that we can just send down
5 the dollar amount to the Town Board for them to approve up to \$30,000,
6 without demonstrating or showing them any documents on what we
7 intend to do with them?

8 MR. PEDROTTY: Objection. At this time, I'd
9 just like to renew my same objection from before about
10 leading, and make sure that Respondent is not testifying,
11 himself.

12 MR. GARBER: Yeah. Judge, that form of
13 question would be proper for cross-examination. It isn't
14 proper for direct examination. So phrase your question
15 differently.

16 JUDGE MERCER: Okay. So the challenges,
17 then, I'm having here is from cross-examination to my
18 testimony now.

19 MR. GARBER: Yeah, but you can't --

20 JUDGE MERCER: In regards to --

21 MR. GARBER: -- testify for the witness in your
22 question. That's what I'm --

23 JUDGE MERCER: Keep that in mind.

24 MR. GARBER: In other words, your question
25 can't testify for the witness. You have to ask the witness --

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(Marcia Puorro - Direct)

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JUDGE MERCER: Um-hum.

MR. GARBER: -- a question, which --

JUDGE MERCER: Can I restate this?

BY JUDGE MERCER:

Q. Marcia, did I supply you, in the same capacity as the other items in the JCAP grant, with just basic knowledge for a number?

A. Yes.

Q. Thank you. In Exhibit 6, you received an email.

JUDGE MERCER: Would you be able to provide Exhibit 6, please?

MR. GARBER: May I just see Exhibit 6, please?

BY JUDGE MERCER:

Q. Marcia, is Exhibit 6 a reply from an email sent to myself and my company for additional information -- new information that was requested by Erika Hanks?

A. It's a --

MR. PEDROTTY: Objection to the form of the question.

MR. GARBER: Yeah. May I see the exhibit again, please? Thank you. Oh, thanks.

Would you please describe Exhibit 6 and identify it, please?

THE WITNESS: Okay. It is a email from

██████████@msn.com, Carrol Mercer, Estimator, Mercer

80.

(Marcia Puorro - Direct)

1 Associates, to myself. And it is an estimate for the court
2 security.

3 BY JUDGE MERCER:

4 Q. And is that email dated to you after the request from Erika Hanks? The
5 email itself?

6 A. The email itself is dated September 1, 2020.

7 Q. The email reply from Carrol Mercer, is that dated before or after Erika
8 Hanks, 11/18?

9 A. It's after.

10 Q. Thank you. Is that a new estimate that you've never seen before?

11 A. No, I've seen the estimates.

12 JUDGE MERCER: Okay. And Exhibit 8, can
13 we go to?

14 BY JUDGE MERCER:

15 Q. Exhibit 8 is the award check from JCAP --

16 A. Yes.

17 Q. -- dated February 19th, for 3,089?

18 A. Yes.

19 Q. Could you just recap what happens to that check when we got it?

20 A. So before we even see the check, it's -- and usually we never see the
21 check -- it goes down to the Town of Athens and the Bookkeeper's
22 Office.

23 Q. How does the Town treat that revenue to the Town? Is it --

24 A. That it's a grant that the court got, and they wait for our
25 acknowledgement of the grant and what to do with it there going forward.

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(Marcia Puorro - Direct)

1 Q. Is that grant a budgetary process?

2 A. It has nothing to do with our budget.

3 Q. Is it a budgetary process for the Town of Athens?

4 A. It's put into the budget as a line item --

5 Q. Um-hum.

6 A. -- but doesn't have anything to do with budget.

7 Q. So if the Town put in a line item for \$3,500 to their town budget, that we
8 would see because JCAP is a line item for the Justice Courts --

9 A. Right.

10 Q. -- they would then just back that out -- number of what you disbursed
11 from that and/or in multiple disbursements through voucher; is that
12 correct?

13 MR. PEDROTTY: Objection. Compound
14 question.

15 MR. GARBER: Sustained.

16 Judge, please break your questions down into
17 single questions.

18 BY JUDGE MERCER:

19 Q. Marcia, does the Town put the JCAP funding in as a line item in the
20 Justice Court?

21 A. Yes.

22 Q. And do you see that number in our budget?

23 A. Yes.

24 Q. Okay. And then when the process of a voucher is submitted, they take
25 that line item and disburse to the vendor, Staples --

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(Marcia Puorro - Direct)

1 A. Yes.

2 Q. -- Mercer Associates, or in that --

3 A. Yes.

4 Q. Okay. Did they ever dispense a check to Mercer Associates?

5 A. No. As far as I know, no.

6 JUDGE MERCER: Okay. Exhibit 10, please?

7 MR. GARBER: May I just see Exhibit 10,
8 please? Thank you.

9 BY JUDGE MERCER:

10 Q. You have never seen that flyer --

11 A. I have not.

12 Q. -- correct? Okay. With relation to that, after every JCAP process, you
13 have to file a reconciliation report, correct?

14 A. Yes.

15 Q. Okay. Was a reconciliation report done for this JCAP year?

16 A. Yes.

17 Q. Okay. Who signed the reconciliation report?

18 A. Judge Pazin.

19 Q. Was it consulted with Judge Mercer?

20 A. I don't believe so, at the time.

21 Q. Okay. Any reason for that?

22 MR. PEDROTTY: Objection.

23 MR. GARBER: If you know, within your own
24 knowledge.

25 THE WITNESS: I don't believe it was

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(*Marcia Puorro - Direct*)

1 mentioned to you because, at the time, there was already --
2 I don't want to say court proceedings, but questionings and
3 things like that going on.

4 And she took it upon herself to deal with the
5 Bookkeeper on getting the money back after the Town
6 was -- after we were informed, in the court, that they
7 weren't going to pay you, we needed to get that money back
8 to send it back to the state. We couldn't just hold on to it.
9 And she kept talking to the Bookkeeper, "We need the
10 money back. We need the money back. We need the
11 money back", and I believe that's why she signed the
12 reconciliation, because we put a zero on it, and she signed
13 it.

14 **BY JUDGE MERCER:**

15 Q. Is that Bookkeeper Don Pierro?

16 A. Yes, it is.

17 Q. Was he reluctant to send the money back?

18 A. It took a while to get it. Yes.

19 Q. Was he reluctant in sending it back --

20 A. Yes.

21 Q. -- for personal reasons or for whatever reasons that might have gone on
22 in --

23 MR. PEDROTTY: Objection.

24 MR. GARBER: Sustained.

25 JUDGE MERCER: Can we go to Exhibit 13?

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(Marcia Puorro - Direct)

1 MR. GARBER: Can I just -- then I can
2 understand it. Okay. Thank you.

3 BY JUDGE MERCER:

4 Q. On that voucher, there's a Post-it note on top that discusses the short pay,
5 so to speak, of the invoice and court security, correct?

6 A. Right.

7 Q. Okay. Did both of us discuss that in the Court Office?

8 A. No.

9 MR. GARBER: Who is "us"?

10 JUDGE MERCER: Judge Mercer.

11 BY JUDGE MERCER:

12 Q. Did Judge Mercer and yourself review the payment possibilities for my
13 voucher to -- with regards to the short pay?

14 A. I don't recall. I do know I discussed it with Judge Pazin.

15 Q. Okay.

16 A. I don't recall if I did discuss it with you.

17 Q. It's your understanding that I did not have anything to do with trying to
18 find more money for myself?

19 MR. PEDROTTY: Objection.

20 MR. GARBER: Sustained.

21 BY JUDGE MERCER:

22 Q. The reasons why we had more money left over in the security budget was
23 because of COVID security, correct?

24 MR. PEDROTTY: Objection. Leading.

25 MR. GARBER: Sustained.

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(Marcia Puorro - Direct)

1 BY JUDGE MERCER:

2 Q. Was there money left over in the security budget?

3 A. Yes.

4 Q. The reason for that shortage is because of what reason?

5 MR. GARBER: What is the reason for the
6 shortage, if you know?

7 THE WITNESS: COVID supplies, masks and
8 disinfectant spray, sanitizer, things as such.

9 JUDGE MERCER: Exhibit 14, please.

10 MR. GARBER: Okay. Thank you.

11 BY JUDGE MERCER:

12 Q. On Exhibit 14, this is a voucher, correct?

13 A. Yes.

14 Q. Dated July 6, 2021?

15 A. Yes.

16 Q. Did all Town Board Members approve and sign?

17 MR. PEDROTTY: Objection.

18 MR. GARBER: May I see the exhibit again,
19 please?

20 MR. PEDROTTY: I'm not sure this witness can
21 testify as to what "approve" means.

22 MR. GARBER: Yeah. I'm going to sustain. He
23 could ask her who signed this voucher, but it's --

24 BY JUDGE MERCER:

25 Q. Marcia, in reviewing that exhibit, would the names be there of Board

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(Marcia Puorro - Direct)

1 Members?

2 A. Yes.

3 Q. Okay. And also the initials of Don Pierro, correct?

4 A. I believe so, yes.

5 Q. Yeah. Does he always initial our vouchers in that location?

6 A. I believe so, yes.

7 JUDGE MERCER: Okay. Thank you.

8 Exhibit 19, please.

9 MR. GARBER: Okay. Thank you.

10 MR. PEDROTTY: Um-hum. I assume the
11 witness has never seen this document, so she should --

12 THE WITNESS: I have not.

13 MR. PEDROTTY: -- have an opportunity to
14 read it.

15 MR. GARBER: Pardon me?

16 MR. PEDROTTY: I assume the witness has
17 never seen this document, so I believe she should have
18 some --

19 MR. GARBER: Will you identify document,
20 please?

21 THE WITNESS: It's from Judge Mercer to
22 Dave Dellehunt.

23 BY JUDGE MERCER:

24 Q. Um-hum. Can you tell us who Dave Dellehunt is?

25 A. He's the Representative for the Third Judicial District.

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(*Marcia Puorro - Direct*)

1 Q. He's District Counsel --

2 A. Yes.

3 Q. -- is that correct? Thank you. I contacted him on July 21st?

4 MR. PEDROTTY: Objection. I --

5 MR. GARBER: Sustained.

6 BY JUDGE MERCER:

7 Q. Noted in the email, when did I contact --

8 MR. PEDROTTY: I object to any questions to
9 this witness about this document. If there's some
10 underlying substance, separate and apart from this email
11 chain, that he wants to get into, I -- he can do that, but this
12 is --

13 JUDGE MERCER: The substance is the dating.

14 MR. GARBER: Pardon me, sir?

15 JUDGE MERCER: The substance is the dating
16 of the letter to Judge Dellehunt.

17 MR. GARBER: Well, that's contained in the
18 document itself.

19 MR. PEDROTTY: Speaks for itself.

20 JUDGE MERCER: Thank you for answering
21 who Dave Dellehunt is.

22 That's all I have for Exhibit 19, I believe.

23 BY JUDGE MERCER:

24 Q. Approximately, when do you believe the recorders were removed?

25 MR. GARBER: Do you know when the

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(Marcia Puorro - Direct)

1 recorder was removed? The security camera you're
2 referring to?

3 THE WITNESS: Yes. I'm trying to think of --

4 MR. GARBER: Okay.

5 THE WITNESS: -- approximately when.

6 MR. GARBER: Okay.

7 THE WITNESS: Shortly after they were
8 installed. I can't recall as of when.

9 JUDGE MERCER: For the record, I would just
10 like to say, in my previous testimony, that was on
11 November 18th, I had them removed. When I removed the
12 cameras --

13 MR. PEDROTTY: Respondent is testifying.

14 BY JUDGE MERCER:

15 Q. Did you observe me removing the cameras?

16 A. I did not.

17 Q. When would I have removed the cameras and security system without --

18 MR. GARBER: Do you know when he
19 removed the cameras and security equipment?

20 THE WITNESS: I do not.

21 MR. GARBER: Thank you.

22 BY JUDGE MERCER:

23 Q. Would they have been during work hours?

24 A. You could have done them when I was not there. I don't know that.

25 Q. Okay. Is it characteristic of me to ever go in the Court Office -- I'm

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(*Marcia Puorro - Direct*)

1 sorry. Am I ever in the office alone without staff?

2 A. Only for an arraignment.

3 MR. PEDROTTY: Objection to how she would
4 know that if she was not there.

5 JUDGE MERCER: Because I've never --

6 MR. GARBER: Sustained.

7 BY JUDGE MERCER:

8 Q. Marcia, have I ever used the security system to allow me to get into the
9 Court Office, by myself, where the cameras were installed?

10 A. I don't believe so, no.

11 Q. Thank you. That would be I was not there during off hours from your --

12 MR. GARBER: No. When?

13 MR. PEDROTTY: Objection.

14 MR. GARBER: And what date? Time frame
15 which you're referring to, and if she knows.

16 I'm sorry, if Ms. Puorro knows.

17 BY JUDGE MERCER:

18 Q. Is it a habit of the judge to ever be there without court staff? Let me just
19 ask that one more time.

20 A. No.

21 Q. Thank you. And you acknowledge, under the best of your ability, that
22 Mercer Associates was never compensated for the cameras, the project?

23 A. Right.

24 Q. Okay. Do you believe that the Town, specifically, didn't like Judge
25 Mercer at the time?

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(Marcia Puorro - Direct)

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MR. PEDROTTY: Objection.

MR. GARBER: Sustained. You're asking for the state of mind of other people.

JUDGE MERCER: Right.

In the State's Exhibit 21 -- I'm sorry. I'm going to skip Exhibit 21, I believe. Exhibit 22.

MR. GARBER: Would you please identify Exhibit 22 --

THE WITNESS: Sure.

MR. GARBER: -- for the record?

THE WITNESS: This is a made-up sheet from the Bookkeeper, Don Pierro, for everyone who received a handbook, to sign, acknowledging that they received it.

BY JUDGE MERCER:

Q. Was that signed sheet a standard practice for Mr. Pierro for --

MR. PEDROTTY: Objection.

BY JUDGE MERCER:

Q. Did Mr. Pierro make these --

MR. GARBER: That's not within her knowledge. You can address that with Mr. Pierro.

JUDGE MERCER: Her signature is on the paperwork.

MR. GARBER: You're asking whether it's standard procedure.

Do you know whether it's standard procedure to

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(Marcia Puorro - Direct)

1 have a document distribution list from Mr. Pierro?

2 JUDGE MERCER: Regarding handbooks?

3 MR. GARBER: Well, that's a different question
4 than you asked.

5 THE WITNESS: This is something Mr. Pierro
6 came up with.

7 MR. GARBER: Okay.

8 THE WITNESS: We've never had to do this in
9 the past.

10 MR. GARBER: Thank you.

11 BY JUDGE MERCER:

12 Q. And in Exhibit 21, I believe --

13 MR. PEDROTTY: Exhibit 22?

14 BY JUDGE MERCER:

15 Q. 22. I'm sorry. You've never signed a handbook distribution sheet before,
16 correct?

17 A. No, the only time -- I signed a handbook when I got it, when I first started
18 to work there.

19 Q. 24 years ago; is that correct?

20 A. And then any amendments or anything like that that we were given, never
21 signed for anything.

22 Q. Okay. Did you have numerous problems with the handbook situation
23 since 2017 and the Town issuing you handbooks?

24 A. Yes.

25 Q. You have had --

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(Marcia Puorro - Direct)

1 A. Yes.

2 Q. -- issues with that?

3 A. Yes.

4 Q. Okay. Would you say the Town was upfront and forthcoming with their
5 handbooks, for you to have access to them?

6 A. No.

7 Q. Would you have to persistently ask the Town, along with other court
8 staff, to get copies of handbooks provided by --

9 A. Yes.

10 MR. PEDROTTY: I object to the relevance of
11 this line of questioning.

12 JUDGE MERCER: The relevance? May I
13 speak?

14 MR. GARBER: Yeah.

15 JUDGE MERCER: The relevance --

16 MR. GARBER: Please, respond.

17 JUDGE MERCER: -- is that there's a situation
18 is where I did not sign for a handbook. And this pretty
19 much was --

20 BY JUDGE MERCER:

21 Q. Marcia, was this the first sheet that you saw that has been circulated?

22 MR. GARBER: Overruled. Please continue.

23 BY JUDGE MERCER:

24 Q. Is that the first time you ever signed -- in that document, with your
25 signature, is it the first time you ever signed for a handbook?

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(*Marcia Puorro - Direct*)

1 A. I believe so, unless I did it initially when I --

2 Q. Initially, okay.

3 A. -- got it, when I started working there.

4 JUDGE MERCER: Okay. Exhibit 23, which is
5 the reconciliation report.

6 MR. GARBER: Thank you.

7 JUDGE MERCER: On the -- oh, I'm sorry.

8 MR. GARBER: Okay. Thank you.

9 THE WITNESS: Um-hum.

10 BY JUDGE MERCER:

11 Q. When did the Town return the JCAP funds?

12 A. It looks like in May of '22.

13 Q. Would that almost be a year later?

14 A. Yes.

15 Q. Do you know who is responsible, as JCAP Administrator, to return those
16 funds?

17 A. I don't know if our Bookkeeper has to wait for authorization from the
18 Supervisor to do it. I would believe that that is procedure, rather than the
19 Bookkeeper taking it upon himself to return it.

20 Q. Okay. Thank you. And we established in prior testimony that I was not
21 involved in the reconciliation report for the JCAP grant?

22 A. Just that -- no.

23 Q. No.

24 A. This is Judge Pazin's.

25 Q. Okay.

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(*Marcia Puorro - Direct*)

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A. No.

JUDGE MERCER: Okay. That completes my State exhibits. Now I have my exhibits. Okay? I'll try to get through these as fast as I can, with consideration of time.

MR. GARBER: Judge, please present your case. You don't have to worry about time.

JUDGE MERCER: Well, I respect the process and the witness's time also. I'll do my best.

And I'll do my best to ask a precise, persistent question for you, sir.

MR. PEDROTTY: Sorry, may I have two minutes?

MR. GARBER: Sure.

MR. PEDROTTY: Please go off the record?

MR. GARBER: Sure.

(Recess from 1:24 p.m. until 1:28 p.m.)

MR. FITZPATRICK: We are back on the record.

MR. GARBER: Thank you.

JUDGE MERCER: Okay. I'll start with Exhibit A, which lists the documents that I discussed with Mr. Pedrotty regarding previous testimony to be entered in as Exhibit A.

(Respondent's Exhibit A was marked for identification)

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(*Marcia Puorro - Direct*)

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MR. PEDROTTY: You're just asking for admission of Exhibit A into evidence? Just the emails itself?

JUDGE MERCER: The emails and the documents is what it pertained to.

MR. PEDROTTY: Well, I --

JUDGE MERCER: They were all the emails and documents I provided to the Commission prior to today.

MR. PEDROTTY: I mean, you did not separately provide those. I have no objection to Exhibit A being the three pages. Many of the documents are already in evidence --

JUDGE MERCER: Okay.

MR. PEDROTTY: -- that you have requested.

JUDGE MERCER: Okay.

MR. PEDROTTY: If there are specific --

JUDGE MERCER: Okay.

MR. PEDROTTY: -- documents listed within here, they need to be offered into evidence.

JUDGE MERCER: When we discussed, it was just making clarification that my prior testimony, my written statement, my first response, and my formal response to the complaint was entered into today's record. That was our conversation. And I've been --

(*Marcia Puorro - Direct*)

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MR. GARBER: Well, I'm not sure I'm following this. In fact, I can tell you I'm not following it.

MR. PEDROTTY: I'm not sure I'm following it either, Mr. Garber.

MR. GARBER: Judge, what is Exhibit A?

JUDGE MERCER: Mr. Pedrotty and I had a phone conversation, and we discussed previous testimony, my formal and written complaints, and also, I supplied the Commission with copies of certain documents in prior emailings [sic], and I was asking that they would all become part of the case. I'm not asking for them to be part of today's thing, but I just want for the record that documents that I provided to the Commission remain part of this case because we were starting fresh from exhibits and all the rest today.

If there are part of the record, and if my testimonies and comments and responses are in previous testimony, that will be, I'm going to say, reviewed and looked at regarding my presentation here today, my opening statement, and my closing statement. That's all. That was what Exhibit A is.

MR. GARBER: Okay.

JUDGE MERCER: And I was under the impression, as long as I provide the emails with regards to the documents I provided back in January of '22 --

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(*Marcia Puorro - Direct*)

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MR. GARBER: Well, just in the interest of time, Judge, do you intend to question Ms. Puorro about that -- Exhibit A?

JUDGE MERCER: No. I'm just starting from -- I'm going through my exhibits with them, and I just wanted to make sure Exhibit A and those documents were going to be --

MR. GARBER: Well, now is not the time to do that. When you start to present your case, or -- you can identify which documents you want to have introduced into evidence. But if you're not going to direct any questions to this witness with respect to Exhibit A, then now is not the time --

JUDGE MERCER: Okay.

MR. GARBER: -- to do it.

JUDGE MERCER: I'll request them at the closing.

MR. GARBER: Pardon me?

JUDGE MERCER: I'll request them then at closing of testimony tomorrow, in my closing statement, if possible.

MR. GARBER: Yeah. Or when --

JUDGE MERCER: Exhibit B, if we could?

MR. GARBER: May I see Exhibit B? Okay.

JUDGE MERCER: Can you show it to witness,

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please?

MR. GARBER: Judge, would you identify what Exhibit B is?

JUDGE MERCER: Exhibit B is an email from Ruth Wittlinger to Judge Mercer, Judge Pazin, Marcia Puorro.

(Respondent's Exhibit B was marked for identification)

MR. GARBER: Okay.

RESUMED DIRECT EXAMINATION

BY JUDGE MERCER:

Q. Does that email depict the truth of what happened in the office that day?

MR. PEDROTTY: Objection.

MR. GARBER: Ms. Puorro, I -- do you have personal knowledge of the incident described in proposed Exhibit B?

THE WITNESS: I do.

MR. PEDROTTY: If I have objections about this whole line of questioning, can I --

MR. GARBER: Yeah, please.

MR. PEDROTTY: -- raise them now?

MR. GARBER: Please.

MR. PEDROTTY: I believe it's not relevant to any of the issues in the formal written complaint. If you look at the date, 7/27/2021, this was after, even, the cameras were installed, the voucher was submitted.

(Marcia Puorro - Direct)

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Moreover, any alleged comments by Mr. Pierro have no relevancy to the allegations.

And the email itself, as far as he wants to submit this into evidence, it's hearsay, and hearsay by a nonwitness, Ruth Wittlinger, who is not going to testify in these proceedings.

MR. GARBER: Judge, what is the relevance of this document?

JUDGE MERCER: Marcia Puorro is the Senior Court Clerk. She has witnessed many events in the office and situations that, in my opening statement, I expressed the condition and state of our Court Office.

MR. GARBER: Um-hum.

JUDGE MERCER: And for relevance and for testimony, I have already responded to the Commission regarding -- and what I'm asking for is that the situation and current condition of the court at that time created a situation of urgency, of importance, of a judge who tries to fix things, and how people react in my court, because it plays a big role on, I feel, events here.

MR. GARBER: Pardon me? What was the --

JUDGE MERCER: On events that led up to this situation.

MR. GARBER: Well, Judge, I'm -- there are various allegations in the complaint regarding alleged --

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JUDGE MERCER: Um-hum.

MR. GARBER: -- ethical violations. How is the material discussed in proposed Exhibit B relevant to those allegations?

JUDGE MERCER: It's been a history, and the reason for the security cameras.

MR. PEDROTTY: Well, that's --

MR. GARBER: How are those allegations --

JUDGE MERCER: The allegations?

MR. GARBER: -- related to the security cameras? The security cameras are in the hallway.

JUDGE MERCER: The security cameras are in our office also. In one of the exhibits, there was a floor plan submitted where all the cameras were located, which I can get into more with Judge Pazin.

But Mr. Garber, the reasons for this -- and half of my exhibits that I have presented to the Commission and have here are allegations, if you want to say, and some documented of the behavior of a town employee that we all have discussed in our courtroom is a problem. And that was the reason for the security cameras, and we discussed those problems for months because this problem's been going on for three years.

MR. GARBER: Well, my --

JUDGE MERCER: So it would have been a --

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(Marcia Puorro - Direct)

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MR. GARBER: Go ahead, sir.

JUDGE MERCER: -- in a broad sweeping statement, is the reasons for the security cameras and not just for a panic button is for interactions with town people, with defendants, and people at the cash window where the other camera was installed. That's all. That's the relevance.

And I'm just -- I have multiple exhibits that pertain to this individual, and I believe that the witness is fully aware of all of them. So I believe they can collaborate on the events. The events are very well known in our building. That's the reasons for them, Mr. Garber.

MR. PEDROTTY: I'd just like to point out again that this incident underlying the email could not have formed the basis for wanting security cameras if it occurred after the security cameras were installed.

JUDGE MERCER: Mr. Garber, I have multiple exhibits that go back prior to the installation of the cameras, and at a time when we were just discussing the cameras.

MR. GARBER: Does [sic] the security cameras have an audio feature?

JUDGE MERCER: These cameras do.

MR. GARBER: Well --

MR. PEDROTTY: Essentially, if Mr. Garber were to be able to put in hearsay evidence like this and some of the other exhibits you would like, about Don

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(*Marcia Puorro - Direct*)

1 Pierro, it would require, essentially, a mini trial into each
2 individual instance about Mr. Pierro, who is not at trial
3 here. It's all hearsay.

4 MR. GARBER: Well, this --

5 MR. PEDROTTY: We can't cross-examine the
6 witnesses, these -- the people that made these out-of-court
7 statements. It's not relevant.

8 JUDGE MERCER: I disagree with the
9 Commission, as I believe they're all relevant as to the
10 situation that was present during the time. And if the -- if
11 you would like to accept them, I can proceed with the other
12 evidence.

13 MR. GARBER: There are a number of
14 problems, but the incident described in proposed Exhibit B
15 occurred well after the application to the state, the
16 installation and the removal of the camera, as well as, I
17 believe, the payment and the return of money to the state.
18 So I don't see the relevance of this document. I'm only
19 mentioning this ruling on this one document.

20 So I don't think it's appropriate, and we will not
21 receive it into evidence.

22 JUDGE MERCER: Okay. We'll proceed, then,
23 on --

24 MR. GARBER: Please.

25 JUDGE MERCER: -- with Exhibit C.

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(Respondent's Exhibit C was marked for identification)

MR. GARBER: Mr. Pedrotty, have you seen the -- probably?

MR. PEDROTTY: Yeah.

MR. GARBER: Oh, what is your position on it?

MR. PEDROTTY: Assuming Respondent is offering them into evidence at this time, my objection is, A, they have -- they contain hearsay. They're not relevant. They're alleged comments of behavior by Mr. Pierro. They're not relevant to the formal complaint or any of the allegations therein regarding whether Respondent engaged in self-dealing.

I'd also like to just point out that none of these reports were filed by any of the Court Clerks, so it wouldn't be a reason for the court -- even if these are true, it wouldn't be a reason for the court staff to need a security camera system.

MR. GARBER: Ms. Puorro is not the appropriate witness to lay a foundation for these documents.

MR. PEDROTTY: There's also that.

MR. GARBER: Pardon me?

MR. PEDROTTY: There's also that. Yes.

MR. GARBER: So --

JUDGE MERCER: I want to say I just object to

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1 that because Ms. Puorro could substantiate those actions in
2 the courtroom prior to the JCAP application and the need
3 for the -- in the discussion of the possibility of security
4 cameras. That is the only reason -- what I'm bringing
5 forward.

6 MR. GARBER: Then ask her those questions,
7 as to her -- and that's it.

8 BY JUDGE MERCER:

9 Q. Ms. Puorro, has there ever been situations where Town employees have
10 entered into our office and made lewd remarks that would require us, in
11 conversation, to discuss the use of cameras?

12 A. Yes.

13 JUDGE MERCER: Thank you.

14 I would like to have permission to possibly
15 reintroduce this with a future witness, if that is possible?

16 MR. GARBER: Yup. We'll address it, sir,
17 when --

18 JUDGE MERCER: Okay.

19 MR. GARBER: -- when we have the witness.

20 JUDGE MERCER: Okay. Exhibit D, could
21 you give that to Ms. Puorro?

22 (Respondent's Exhibit D was marked for identification)

23 I apologize, Mr. Garber. It's a chain email, and
24 it starts on page 3.

25 MR. GARBER: Oh.

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1 MR. PEDROTTY: At the outset, can I just say
2 again that this would not be an email that Ms. Puorro -- an
3 email chain that Ms. Puorro could authenticate, and
4 therefore, if he wants to try to get it in at a later time, fine.
5 If he wants to ask whatever questions about her own
6 personal knowledge, I have objections to relevancy about
7 the incident at all because it occurred in June 2022, after all
8 the events alleged in the complaint.

9 MR. GARBER: Well, Judge, again, Ms. Puorro
10 is not a party to -- not a participant in this email chain. And
11 I don't think she has a basis -- her knowledge.

12 Have you seen this email before, the proposed
13 Exhibit D?

14 THE WITNESS: I am very aware of it.

15 MR. GARBER: Of the email or the incident?

16 THE WITNESS: The incident.

17 MR. GARBER: Okay. Question her about the
18 incident, if you like.

19 BY JUDGE MERCER:

20 Q. Ms. Puorro, are you aware of the incident of Don Pierro calling me and
21 F-ing asshole --

22 A. Yes.

23 Q. -- as I exited the court?

24 A. Yes.

25 Q. Okay. Thank you.

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1 MR. GARBER: So it's offered but not admitted
2 at this time.

3 MR. PEDROTTY: You know what, I have no
4 objection to the admission of this.

5 MR. GARBER: Oh. Well, that makes it easy,
6 doesn't it?

7 MR. GARBER: Okay. It's admitted.
8 (Respondent's Exhibit D was admitted into evidence)

9 JUDGE MERCER: Thank you.

10 MR. PEDROTTY: I don't think it's relevant
11 based upon the fact that it occurred in June 2022, but I have
12 no objection to its admission.

13 JUDGE MERCER: Mr. Garber, I just would
14 like to say that I believe that all chain of events are relevant
15 to the situation. That's all.

16 MR. GARBER: Well, it's academic since Mr.
17 Pedrotty has agreed to it, but --

18 JUDGE MERCER: It's my judgeship also,
19 might I just -- that's the importance to me.

20 MR. GARBER: I want you to know, in
21 fairness --

22 JUDGE MERCER: Um-hum.

23 MR. GARBER: -- that I question the relevance,
24 but it's admitted now, so.

25 JUDGE MERCER: Um-hum. Thank you.

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(*Marcia Puorro - Direct*)

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Exhibit E for Ms. Puorro.

(Respondent's Exhibit E was marked for identification)

MR. GARBER: Mr. Pedrotty, have you reviewed proposed Exhibit E?

MR. PEDROTTY: I have.

MR. GARBER: And do you object to its admission into evidence?

MR. PEDROTTY: I object on the grounds of hearsay and relevance. It appears to be an email exchange that relates to a disagreement between Respondent, Mr. Butler, and Don Pierro regarding personnel issues, including pay for Vee Carl and Court Clerk hours, and what discussions are had on that topic on a March 1, 2021 Board meeting. There appears to be nothing whatsoever related to the installation of that court security system.

MR. GARBER: Judge, what is the relevance of this document to the allegations in the formal written complaint?

JUDGE MERCER: Mrs. Puorro, as Senior Court Clerk, has witnessed all of the events. And I am only asking that the events happened in that stated way and that the participants of this chain email are reason enough to be -- for Mrs. Puorro to understand the relevance of the Court Clerk -- her other Court Clerk's ability to get paid. There's a lot of information in this email here.

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MR. GARBER: But none of it is related to the installation -- to the JCAP application, the installation of the camera equipment --

JUDGE MERCER: Right.

MR. GARBER: -- and so it's offered but not admitted.

MR. FITZPATRICK: Do you have Exhibit B over there?

THE WITNESS: I think he does.

MR. GARBER: Do I?

THE WITNESS: I think you do.

MR. GARBER: Oh, yeah.

JUDGE MERCER: Can you give the witness Exhibit F, please?

(Respondent's Exhibit F was marked for identification)

MR. GARBER: Judge, this is an email from Robert Butler to Linda Stacey. Who is Robert Butler?

JUDGE MERCER: He's the Town Supervisor, and he's a witness called for later.

MR. GARBER: And who is Linda Stacey?

JUDGE MERCER: She is the Town Clerk. The relevance of this exhibit, Mr. Garber, is that it was the -- Marcia, as Senior Court Clerk, presented to the Town Board on 3/1, at a meeting, the annual budget and report, which she was present in. And we attended this meeting

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1 via Zoom, all clerks, which this brings into the exhibit prior
2 to this, as to the information which you find inadmissible.

3 MR. GARBER: What is the relevance of this
4 document, again, to the --

5 JUDGE MERCER: That I believe that the
6 problems that are --

7 MR. GARBER: -- to the allegations?

8 JUDGE MERCER: I believe that the problems
9 that arose within the court at this time -- this is prior to
10 camera installation. This is a month and a half after award
11 JCAP. It was presented to the Town Board in this annual
12 report. And the relevance would be as to intruths [sic] --
13 untruths of the -- I'm just going to --

14 I would just like to ask the witness if we had the
15 meeting, if it was Zoomed, and if there's documents or
16 records of the Zoom meeting. That's all. And then I would
17 like to just admit it into evidence because I plan on using it
18 after.

19 MR. GARBER: Are you going to call Mr.
20 Butler --

21 JUDGE MERCER: Yes.

22 MR. GARBER: -- as a witness?

23 JUDGE MERCER: Yes, sir. Well, he's part of
24 the Commission's witness list.

25 MR. GARBER: Okay. Well, why don't we wait

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- 1 until Mr. Butler testifies before seeking its admission?
- 2 JUDGE MERCER: Would it be permissible for
- 3 me to ask Ms. Puorro, while she is here --
- 4 MR. GARBER: Yeah.
- 5 JUDGE MERCER: -- if she attended the
- 6 meeting?
- 7 MR. GARBER: Yes. Go.
- 8 JUDGE MERCER: Okay. Can I just review
- 9 the --
- 10 MR. GARBER: Sure. Yeah.
- 11 JUDGE MERCER: -- highlights on it?
- 12 BY JUDGE MERCER:
- 13 Q. Marcia, did you attend and present the Town Court's annual report at the
- 14 3/1 Zoom meeting?
- 15 A. I presented the books to the Town. We did have a Zoom meeting, and it
- 16 involved other issues as well.
- 17 Q. Correct. Some of those issues pertained to --
- 18 A. Our work hours --
- 19 Q. Um-hum.
- 20 A. -- and cutting back hours for one of the clerks.
- 21 Q. It was a Zoom call meeting, correct?
- 22 A. Right. Judge Pazin sat with me at my desk.
- 23 Q. Correct.
- 24 A. You were at yours.
- 25 Q. Right.

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1 A. Vincenzina was at hers.

2 Q. And what we had seen and participated in, in the Zoom meeting, is that
3 necessarily the same thing that the Town Supervisor and Mr. Butler and
4 the Board believe happened?

5 MR. PEDROTTY: Objection.

6 MR. GARBER: Sustained.

7 JUDGE MERCER: Okay.

8 MR. GARBER: Judge, let me ask you this
9 question, please. Are you offering some of this material
10 because you were retaliated against in some way --

11 JUDGE MERCER: Absolutely.

12 MR. GARBER: -- for raising these issues?

13 JUDGE MERCER: Absolutely, sir.

14 MR. GARBER: And is it your -- is it -- and are
15 you raising these issues because you think that the issues
16 that are involved in the formal written complaint -- the
17 allegations --

18 JUDGE MERCER: Um-hum.

19 MR. GARBER: -- are a result of the various
20 members of the Town retaliating against you?

21 JUDGE MERCER: That's exactly what I stated
22 in my response to the Commission. And this evidence is to
23 support my response. That is all.

24 MR. GARBER: Um-hum.

25 JUDGE MERCER: And if I cannot

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1 substantiate, through exhibits, of incidents that have
2 occurred, my response to the Commission on the formal
3 charges are -- I cannot validate them, only through this
4 testimony. And I apologize for the lengthiness of this --

5 MR. PEDROTTY: Well --

6 JUDGE MERCER: -- but there's a lot of
7 moving targets within that. And as I state, and in the
8 interest of time and in the process, every witness that's
9 going to be called participated in this. And then there are
10 witnesses that I've called that can substantiate my response.
11 All this evidence is part of that broader picture.

12 MR. GARBER: Well, I don't believe that Ms.
13 Puorro is the appropriate witness to lay a foundation for the
14 admission of this document. When Mr. Butler testifies --

15 JUDGE MERCER: Um-hum.

16 MR. GARBER: -- you can lay the foundation
17 through him.

18 JUDGE MERCER: Okay. Since we're in -- the
19 problem with this is --

20 MR. GARBER: Right. Now, can we ask her --

21 JUDGE MERCER: -- since we're not bringing
22 back Marcia after --

23 MR. GARBER: Oh, right. That's what I'm
24 seeking to avoid.

25 JUDGE MERCER: Right. Right.

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1 MR. GARBER: You may ask her about the
2 meeting. Go ahead.

3 JUDGE MERCER: I appreciate your latitude in
4 this situation.

5 BY JUDGE MERCER:

6 Q. Marcia, is there a recording of the Zoom meeting that we all participated
7 in for March 1, 2021?

8 A. I don't know that for a fact. I do know for a fact you requested one from
9 Ofc. Butler -- I mean Supervisor Butler in front of me, and he said there
10 was none.

11 Q. Correct. So there's no documentation of what actually -- legal
12 documentation, especially an annual report from the Town Court, to be so
13 blatantly deleted. Would you agree?

14 MR. PEDROTTY: Objection.

15 MR. GARBER: Sustained.

16 MR. PEDROTTY: I want this to move forward,
17 but I --

18 MR. GARBER: Yeah.

19 JUDGE MERCER: I am --

20 MR. PEDROTTY: I have many objections to
21 relevance of all this, but at the same time, I want this to
22 move forward, so.

23 MR. GARBER: It's sustained.

24 What are you -- rephrase your question --

25 JUDGE MERCER: Sure.

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(Marcia Puorro - Direct)

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MR. GARBER: -- Judge.

BY JUDGE MERCER:

Q. At the Zoom call meeting, did the Board approve additional hours for you and the other Court Clerk?

A. Approve it?

Q. With a thumbs-up gesture?

A. Yes.

Q. Okay. Has the Town Board or any other member of the Town claimed that they did not approve what they approved?

A. Maybe. Possibly. Not necessarily from that particular meeting --

Q. Um-hum.

A. -- but yes, they've done a lot of taking and giving back.

Q. Correct. And would you -- Vee Carl, my Clerk, was seriously affected by them claiming that they did not approve those?

MR. PEDROTTY: Objection. I don't think she can testify for Vee Carl.

JUDGE MERCER: Right.

MR. GARBER: Pardon me, sir?

MR. PEDROTTY: I don't think she can testify as to Vee Carl --

MR. GARBER: Yeah. Sustained.

JUDGE MERCER: Is it the general --

MR. GARBER: Are you going to call Vee Carl as a witness?

JUDGE MERCER: We discussed that in

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1 conference, and I'm not going to be calling her.

2 BY JUDGE MERCER:

3 Q. As Senior Court Clerk, was your other Court Clerk upset at the decision
4 of -- she's the Senior Court Clerk. She understands that she's present in
5 every conversation.

6 MR. GARBER: Ms. Puorro, did you have a
7 conversation with Vee Carl?

8 THE WITNESS: Yes.

9 MR. GARBER: Regarding extra hours and --

10 THE WITNESS: Yes.

11 MR. GARBER: Okay. And when did that
12 conversation occur?

13 THE WITNESS: Right around the time period
14 of that March meeting.

15 MR. GARBER: Okay. And what was the
16 substance of that conversation?

17 THE WITNESS: First, the Board agreed to
18 extend our hours, per COVID, extra, for court. And any
19 hours that were changed were always a discussion between
20 Vee and I --

21 JUDGE MERCER: Um-hum.

22 THE WITNESS: -- because it affected us both.

23 JUDGE MERCER: That is the relevance of me
24 asking that --

25 MR. GARBER: Okay.

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(Marcia Puorro - Direct)

1 JUDGE MERCER: -- the content of your
2 questioning.

3 MR. GARBER: Okay. Proceed.

4 JUDGE MERCER: Okay.

5 BY JUDGE MERCER:

6 Q. Did Vee Carl resign because of the -- which you would be fully aware of
7 because you would have had conversations with her, as Senior Court
8 Clerk, in that situation?

9 MR. PEDROTTY: Objection.

10 MR. GARBER: Did Vee Carl resign?

11 THE WITNESS: She did.

12 MR. GARBER: And when did she resign?

13 THE WITNESS: May of '21.

14 MR. GARBER: And did you have a
15 conversation with her about the reason for her resignation?

16 THE WITNESS: I did.

17 MR. GARBER: Okay. What was the substance
18 of that conversation?

19 THE WITNESS: She was looking for additional
20 money because a lot of money was taken away from us,
21 from the Town.

22 MR. GARBER: I'm being very liberal, Judge.

23 JUDGE MERCER: I appreciate that.

24 MR. GARBER: I'm being very liberal. I don't
25 see -- the only possible relevance is that it is your assertion

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that you -- excuse me -- were retaliated against.

JUDGE MERCER: Um-hum.

MR. GARBER: And I'm not determining it's relevant --

JUDGE MERCER: Um-hum.

MR. GARBER: -- at this point, but I'm interested in moving the hearing along.

JUDGE MERCER: Okay.

MR. GARBER: So Exhibit F is offered but not admitted, subject to admission at a later time.

JUDGE MERCER: Can we proceed with Exhibit G, please?

(Respondent's Exhibit G was marked for identification)

MR. GARBER: Judge, please identify Exhibit --

JUDGE MERCER: The exhibit is --

MR. GARBER: -- G.

JUDGE MERCER: -- floor plan that we presented to Kathleen Roberts on 12/1.

MR. GARBER: Okay.

MR. PEDROTTY: I object to the description -- Respondent's description of the exhibit as to what was done with it, as far as it's a floor plan. And then after that, I believe he needs to lay a foundation with this witness, if he can, as to what it is, who prepared it, whether she has any

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1 knowledge of this document. Respondent can always try to
2 lay a foundation during his own testimony if she does not.

3 MR. GARBER: Judge, you may ask those
4 foundational questions, and then if she answer them, fine.
5 If she can't, you may introduce it -- you may seek to
6 introduce it by your own testimony in your case.

7 Was this part of the JCAP application?

8 JUDGE MERCER: Yes, it was, sir.

9 MR. GARBER: Well, isn't it already admitted
10 into evidence as part of the JCAP application?

11 JUDGE MERCER: I was going to ask the --
12 Marcia where the location of the cameras were and to
13 confirm them. That's what the --

14 MR. GARBER: Yeah, but -- okay.

15 MR. PEDROTTY: This is not in evidence. It's
16 not in any of the --

17 MR. GARBER: Was it sent to --

18 MR. PEDROTTY: -- JCAP application
19 materials.

20 MR. GARBER: Yeah. Was it in the application
21 itself, sir?

22 JUDGE MERCER: It's in the response to
23 Kathleen Roberts on 12/1. They requested a copy of the
24 floor plan for the position of the cameras.

25 MR. PEDROTTY: I believe that's testimony. It

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1 needs to come out. He needs to prove that with actual
2 testimony -- is my point.

3 MR. GARBER: Okay. Lay the foundation, sir.

4 BY JUDGE MERCER:

5 Q. Marcia, can you acknowledge that that is the floor plan of the second
6 floor in the Town of Athens?

7 A. Yes.

8 Q. On the piece of paper, I have depicted four locations where the security
9 cameras were placed?

10 A. Yes.

11 Q. Okay.

12 MR. GARBER: Let me interrupt.

13 Ms. Puorro?

14 THE WITNESS: Um-hum?

15 MR. GARBER: Is that part of the JCAP
16 application that you submitted to the state?

17 THE WITNESS: I did not submit this piece of
18 paper to the state.

19 JUDGE MERCER: Is the response to Kathleen
20 Roberts part of an exhibit or did that neglect to show the
21 floor plan of the --

22 MR. GARBER: I don't know, sir.

23 JUDGE MERCER: -- court?

24 MR. GARBER: I just don't know.

25 JUDGE MERCER: It was the information

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1 requested in my response and the exhibit for Kathleen
2 Roberts' email exchange. I believe that the State has done
3 as part of the response. It was provided.

4 MR. GARBER: Judge, I don't understand. This
5 floor plan was included in what document, to the --

6 JUDGE MERCER: I believe it would be in the
7 12/1/2020 email to Kathleen Roberts requesting floor plan
8 and a new estimate.

9 MR. PEDTROTTY: From whom?

10 JUDGE MERCER: From Marcia Puorro, which
11 I responded and gave --

12 MR. GARBER: Is that already offered into -- or
13 already --

14 JUDGE MERCER: Yes.

15 MR. GARBER: -- into evidence?

16 JUDGE MERCER: I wanted to -- I would like
17 Ms. Puorro to identify just the locations of it because it is
18 relevant --

19 MR. GARBER: Yeah.

20 JUDGE MERCER: -- and she's not going to be
21 here tomorrow.

22 MR. GARBER: Right. I understand.

23 What exhibit number that's admitted into
24 evidence?

25 MR. PEDROTTY: Exhibit 5. I believe he

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(*Marcia Puorro - Direct*)

1 wants to ask her if that document was sent by Ms. Puorro in
2 her email dated December 1, 2020, to Kathleen Roberts.

3 MR. GARBER: Do you have Exhibit 5, please?

4 MR. PEDROTTY: At this time, no foundation
5 has been laid for that. Exhibit is not in evidence.

6 MR. GARBER: Well, that document is not part
7 of Exhibit 5. Exhibit 5 --

8 JUDGE MERCER: It was a response to a
9 request.

10 MR. GARBER: Well, the request was for an
11 estimate.

12 JUDGE MERCER: And a floor plan, locating
13 the cameras, which there is relevance to the location of the
14 cameras in future testimony that Ms. Puorro might not be
15 here for -- is the reason why I'm asking today.

16 MR. GARBER: Okay. You may proceed.

17 JUDGE MERCER: Okay. Thank you.

18 BY JUDGE MERCER:

19 Q. Marcia, in Exhibit G, there are four locations of cameras?

20 A. Yes.

21 MR. PEDROTTY: He's asking her to read from
22 an exhibit that's not in evidence. There's no foundation's
23 been laid at this point for this document -- is my problem.

24 MR. GARBER: Are you familiar with proposed
25 Exhibit G?

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THE WITNESS: Yes.

MR. GARBER: And did you -- who prepared
the document?

THE WITNESS: I believe Judge Mercer.

MR. GARBER: And did Judge Mercer give it
to you to send to the JCAP?

THE WITNESS: I do not remember that.

BY JUDGE MERCER:

Q. It was a request, correct?

MR. PEDROTTY: Objection.

BY JUDGE MERCER:

Q. Marcia, would they object -- would they submit and approve a JCAP
grant without information the -- that they requested?

MR. PEDROTTY: Objection.

THE WITNESS: I don't believe I sent this with
the application, but it might have been a response to an
email after the application.

JUDGE MERCER: I can confirm that it's a
response to an email that --

MR. GARBER: Well, you can testify to it.

JUDGE MERCER: Right. Right.

MR. GARBER: But she doesn't know.

JUDGE MERCER: Right.

BY JUDGE MERCER:

Q. Marcia, did you submit documents to JCAP after the 12/1 email that I

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1 sent you?

2 A. Possibly.

3 Q. Okay.

4 MR. GARBER: May I see Exhibit 5 again,
5 please?

6 Referring you to Exhibit 5, Ms. Roberts asked
7 you for a breakdown in her -- pardon me -- in her
8 November 25, 2020 email to you, asked for a breakdown of
9 labor and itemized costs of materials as well as the exact
10 location of where each camera would be placed.

11 Did you forward to her a -- the location of where
12 each camera would be placed?

13 THE WITNESS: I do not remember that. I
14 don't remember if I sent this to her or not. I do believe I
15 sent her the additional breakdown estimate. I don't know if
16 I sent her this.

17 MR. GARBER: Judge, what -- do you have any
18 other foundational basis for this?

19 JUDGE MERCER: I believe the relevance of
20 the location --

21 MR. GARBER: No, I'm not talking about the
22 relevance. I'm talking about the cameras -- location of the
23 camera for this document, for proposed Exhibit --

24 JUDGE MERCER: Correct.

25 MR. GARBER: -- G. Do you have any

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1 foundational basis for it other than it's a floor plan?

2 JUDGE MERCER: I believe Exhibit G exhibits
3 the locations and the floor plan of the court that the JCAP
4 requested from us to proceed with the grant application,
5 which was awarded three months later.

6 MR. GARBER: Um-hum. Ms. Puorro, have
7 you seen this document before today, proposed Exhibit G?

8 THE WITNESS: I know the floor plan. I've
9 seen the floor plan before.

10 MR. GARBER: With the location of the
11 security cameras on it?

12 THE WITNESS: I don't recall. I know where
13 the cameras were placed --

14 MR. GARBER: Okay. Why don't we ask her --

15 THE WITNESS: -- but I don't --

16 MR. GARBER: -- that question?

17 JUDGE MERCER: Okay.

18 MR. GARBER: Do you know where the
19 cameras were placed?

20 THE WITNESS: I do. I do.

21 MR. GARBER: And where were they placed?

22 THE WITNESS: One in the Court Office, one
23 in the hallway, and in the courtroom.

24 MR. GARBER: And is proposed Exhibit G a
25 fair and accurate representation of where the cameras were

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(*Marcia Puorro - Direct*)

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placed? If you know.

THE WITNESS: Yes.

MR. GARBER: Yes?

THE WITNESS: Yes.

MR. GARBER: I'll admit it into evidence.

(Respondent's Exhibit G was admitted into evidence)

JUDGE MERCER: Okay. If Ms. Puorro can still look at the floor plan.

MR. GARBER: Oh.

JUDGE MERCER: I would just like to --

MR. GARBER: Go ahead.

JUDGE MERCER: -- clarify one item since she is not going to be here.

MR. GARBER: Okay. Go ahead.

JUDGE MERCER: -- for future testimony.

BY JUDGE MERCER:

Q. Can you identify the location of -- in the hallway, in the courtroom which is above the door as you enter the alleyway?

A. In the hallway?

Q. In the side.

A. Right. One is at the -- above the staircase, coming up from each direction. The other one is by the bench, looking out the door, which would catch someone coming into the courtroom.

Q. Um-hum.

A. And same as the office one.

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(*Marcia Puorro - Direct*)

1 Q. Right. And just to -- is that hallway leading into the courtroom, the side
2 hallway -- the camera was placed above center of that hallway, coming
3 in?

4 A. I believe so.

5 Q. The camera was not placed over the bench?

6 A. No.

7 Q. Okay. Thank you.

8 MR. PEDROTTY: We need to move this along
9 as quickly as we can, just FYI.

10 MR. GARBER: Well, I'm trying to avoid the
11 necessity for --

12 MR. PEDROTTY: Agreed.

13 MR. GARBER: -- Ms. Puorro having to return
14 tomorrow. I realize it's taking time.

15 MR. PEDROTTY: Um-hum.

16 JUDGE MERCER: Exhibit H. Could we --
17 (Respondent's Exhibit H was marked for identification)

18 MR. PEDROTTY: Can I just jump in and say I
19 think he wants to put this into evidence, and that's fine. I
20 have no objection to this, but I think the proper foundation
21 is Judge Pazin.

22 MR. GARBER: Well, it's your trial, Mr.
23 Pedrotty.

24 Do you object to this going into evidence?

25 MR. PEDROTTY: I have no objection.

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(Marcia Puorro - Direct)

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MR. GARBER: Okay. Proceed.

So Exhibit H is admitted.

(Respondent's Exhibit H was admitted into evidence)

BY JUDGE MERCER:

Q. Marcia, can you review Exhibit H, which reflects Judge Pazin's request for information that -- are you aware of that?

A. Yes.

Q. Okay. Do you know, approximately, when she requested that document?

A. Right after the cameras were put in.

JUDGE MERCER: After they were installed?

Okay. Thank you. Okay.

Can you please present Exhibit I, please?

MR. GARBER: Could you please identify Exhibit I, please?

JUDGE MERCER: Exhibit I is a email chain that I was involved in, Ms. Puorro was involved in, with Don Pierro, and I believe Judge Pazin was involved in this email chain. And this email chain happened right after -- a week after the cameras were installed.

(Respondent's Exhibit I was marked for identification)

MR. GARBER: Do you have any objection to its admission?

MR. PEDROTTY: I'll note it contains hearsay, but I don't object.

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1 MR. GARBER: Okay. Exhibit I is admitted.

2 (Respondent's Exhibit I was admitted into evidence)

3 JUDGE MERCER: Thank you, sir.

4 BY JUDGE MERCER:

5 Q. Are you on that email chain, Ms. Puorro?

6 A. Yeah. I sent the first one.

7 Q. Okay. Can you tell me what that depicts in that email chain of events,
8 with regards to the Town's responsibility versus the court's responsibility,
9 and the perception of the Athens Town Court of --

10 MR. PEDROTTY: Objection. I think she can
11 explain what she meant in her emails.

12 JUDGE MERCER: Um-hum. I'm
13 (unintelligible). Sure.

14 MR. GARBER: Sustained. It's --

15 THE WITNESS: I was trying to explain to the
16 Bookkeeper that the court was granted the JCAP money,
17 and it belongs to the court, not the Town, and that we
18 needed it back, to return it, if I'm not mistaken. I haven't
19 gone forward yet.

20 MR. GARBER: Do you have a recollection,
21 without looking at the email, of the events in it?

22 THE WITNESS: Yes. He argued a lot with us
23 about the grant money.

24 MR. GARBER: Who's "he"?

25 THE WITNESS: Don Pierro.

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MR. GARBER: Okay.

BY JUDGE MERCER:

Q. Okay. Upon your review of that email exchange, does the court have a different opinion than the Town on our role with the Town and --

MR. PEDROTTY: Objection.

MR. GARBER: Sustained.

Who's "the court", Judge?

JUDGE MERCER: The court would include the two Court Clerks, myself, Judge Mercer, and Judge Pazin.

MR. PEDROTTY: I think she can testify to her understanding, her --

MR. GARBER: That's correct. Um-hum.

MR. PEDROTTY: -- own feelings on it.

MR. GARBER: Yeah.

MR. PEDROTTY: I don't think she can testify to the entire court.

BY JUDGE MERCER:

Q. Is it your belief that Judge Pazin understood that there was a separation of the court and the Town, and there was no reference --

MR. PEDROTTY: Objection.

MR. GARBER: Judge, it's admitted into evidence. You can address those questions to Judge Pazin.

BY JUDGE MERCER:

Q. Marcia, do you believe that there's a separation of court and Town? She's on the email, I believe.

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1 A. Yes.

2 Q. Yes. And in your conversation with Don Pierro, did you articulate that
3 we're separate --

4 A. Yes.

5 Q. -- and that he has no, I'm going to say -- would authority be the correct
6 word?

7 A. Yes.

8 Q. Okay. And that would pretty much depict the tone and response of Mr.
9 Pierro in your conversation in this email chain?

10 A. Yes.

11 Q. Would you say that there's a lot of anxiety between Mr. Pierro and
12 Athens Town Court?

13 A. Yes.

14 MR. PEDROTTY: Objection.

15 MR. GARBER: Sustained.

16 MR. PEDROTTY: I ask that --

17 MR. GARBER: Strike the answer.

18 MR. PEDROTTY: Thank you.

19 JUDGE MERCER: I just have a couple more
20 general questions if that's the result.

21 MR. GARBER: Mr. Fitzpatrick, did the
22 machine pick up my ruling on that? I may have had my
23 hand over my mouth.

24 MR. FITZPATRICK: I could play it back, but
25 we'd have to go back off the record, just so --

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MR. GARBER: Let's proceed.

MR. FITZPATRICK: It's still picking
everything up, though --

MR. GARBER: Okay.

MR. FITZPATRICK: -- and we're still
recording.

JUDGE MERCER: These, going forward, are
general questions that I'm asking Ms. Puorro, on just basic
knowledge of procedures and interactions in the court --

MR. GARBER: Okay.

JUDGE MERCER: -- if that's okay.

BY JUDGE MERCER:

Q. As Judge Pazin's Court Clerk, and you attend on the bench with her -- is
she comfortable being recorded?

MR. PEDROTTY: Objection.

MR. GARBER: Sustained.

BY JUDGE MERCER:

Q. Is it true that Judge Pazin and I agreed to -- of turning off the cameras
when she has her court date?

A. Yes.

MR. PEDROTTY: Objection.

MR. GARBER: Overruled.

MR. PEDROTTY: Okay.

BY JUDGE MERCER:

Q. With regards to camera location, did I discuss with you the location to

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1 protect us from intrusion into the court, with the camera facing the front
2 cash window?

3 MR. GARBER: Did you have a conversation?

4 THE WITNESS: Yes.

5 MR. GARBER: When did that conversation
6 take place?

7 THE WITNESS: Around the time of the
8 installation of the cameras.

9 MR. GARBER: Okay. And what was the
10 substance of that conversation?

11 THE WITNESS: Judge Mercer was explaining
12 to us where he felt the appropriate placement of the
13 cameras to protect us and keep anybody from coming into
14 the office or at us.

15 MR. GARBER: Okay. That is the Court Clerk
16 staff?

17 THE WITNESS: The Court Clerk Office.

18 MR. GARBER: Oh, I see.

19 THE WITNESS: Well, the Court Office.

20 MR. GARBER: Okay.

21 THE WITNESS: Yes.

22 BY JUDGE MERCER:

23 Q. Have you ever seen me disrespect Judge Pazin in public or in person or in
24 the courtroom or with any other Public Defenders, Assistant District
25 Attorneys, or any other Attorneys --

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(Marcia Puorro - Direct)

1 A. No.

2 Q. -- in our court?

3 A. No.

4 Q. Ever?

5 A. No.

6 Q. Do you believe that my demeanor and attitude within the courtroom, and
7 my actions, are abusive in any way?

8 MR. PEDROTTY: Objection.

9 MR. GARBER: Well --

10 JUDGE MERCER: There's testimony that --

11 MR. GARBER: -- overruled.

12 BY JUDGE MERCER:

13 Q. When do you believe Judge Pazin became aware of the cameras?

14 MR. GARBER: No. Do you know if Judge
15 Pazin became aware of the cameras?

16 THE WITNESS: I do, and it was when you
17 were installing the one in our Court Office.

18 BY JUDGE MERCER:

19 Q. Judge Pazin never mentioned anything to emails that she was copied on?

20 A. I don't believe so, no.

21 Q. Are you aware that Judge Pazin reported the cameras to the Supervisor?

22 A. Yes.

23 Q. Okay.

24 MR. GARBER: What time frame are we talking
25 about? When?

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(*Marcia Puorro - Direct*)

1 THE WITNESS: When she found out about the
2 cameras.

3 MR. GARBER: Which would have been
4 post-installation?

5 THE WITNESS: Which would have been when
6 Judge Mercer was installing them.

7 MR. GARBER: Okay.

8 BY JUDGE MERCER:

9 Q. That would have been mid-June?

10 A. Right.

11 Q. Okay. Don called you on July 6th to review the voucher, correct?

12 A. Yes.

13 Q. Right. And you had an at-length conversation with him regarding that,
14 correct?

15 A. We had a conversation, yes.

16 Q. Right. Where you both were aware of the conversation, correct?

17 A. Yes.

18 Q. Okay.

19 A. Mr. Pierro strongly disagreed with your recollection of how the JCAP
20 grant process has been handled in the past, correct?

21 A. Yes.

22 Q. And he said -- did Mr. Pierro say to you that --

23 MR. GARBER: Go ahead.

24 BY JUDGE MERCER:

25 Q. Did he say to you that that's not going to happen anymore?

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(*Marcia Puorro - Direct*)

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MR. PEDROTTY: Objection.

THE WITNESS: No.

MR. GARBER: Um-hum.

MR. PEDROTTY: What did he say?

MR. GARBER: Well, yeah. It's answered.

MR. PEDROTTY: Okay.

BY JUDGE MERCER:

Q. From your experience in being Judge Pazin's Court Clerk, and with the knowledge of her day-to-day interactions, would you be able to say yes or no to some of the events that have transpired, as knowing what happened? And I'm only asking that because we're going to get into a case where Counsel is going to say that it doesn't pertain to the --

MR. GARBER: Well, do you have specific things in mind? I mean, you're asking --

JUDGE MERCER: Um-hum.

MR. GARBER: -- a general question.

JUDGE MERCER: I would love to, at this point, just take five minutes and just -- if we could, just discuss this between the two of us, and relevance. And I'm aware of the time at 2:30, and it's -- I would like -- while Ms. Puorro is still here, I would like to have these --

MR. GARBER: Whatever you want to discuss with counsel, go ahead.

JUDGE MERCER: Okay.

MR. PEDROTTY: Do you want to discuss with

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(*Marcia Puorro - Direct*)

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Mr. Garber?

JUDGE MERCER: I would like to have Mr. Garber, just to --

MR. PEDROTTY: Okay. So you want the witness to leave the room?

MR. GARBER: Well --

MR. PEDROTTY: Is that what you're --

MR. GARBER: -- do you want my involvement, or was this a discussion that you wanted with Mr. Pedrotty and Ms. Joshi?

JUDGE MERCER: If we could have the conversation between the two of us regarding just the next round of questions that I'm going --

MR. PEDROTTY: How much time are we talking about here?

JUDGE MERCER: They can be yes-or-no questions. It would take no more than five minutes.

MR. PEDROTTY: I think just ask the questions. If you have specific questions, I think just ask them.

JUDGE MERCER: Very specific questions.

BY JUDGE MERCER:

Q. Marcia, on February 16, this year, 2023, did you witness Judge Pazin saying that she would only send down a dollar to Mike (phonetic) [sic] Pierro -- Don Pierro, the Bookkeeper, if the Supervisor did not resolve

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(Marcia Puorro - Direct)

1 your personal and benefit package that was in question?

2 MR. PEDROTTY: Objection. Relevance.

3 MR. GARBER: Sustained.

4 JUDGE MERCER: I have no more questions.

5 MR. GARBER: Oh. Mr. Pedrotty?

6 MR. PEDROTTY: I have no further questions.

7 MR. GARBER: I have two questions.

8 If you know, did Judge Pazin attend -- pardon
9 me -- the October 5, 2020 meeting of the Town Board, in
10 which the Board approved the JCAP application? If you
11 know.

12 THE WITNESS: I do not know that.

13 MR. GARBER: Okay. And did Judge Mercer
14 attend the October 5, 2020 meeting of the Town Board in
15 which it approved the JCAP application, if you know?

16 THE WITNESS: I do not know that.

17 MR. GARBER: Okay. Thank you.

18 Any questions?

19 JUDGE MERCER: No.

20 MR. PEDROTTY: No.

21 MR. GARBER: Okay. And you've completed
22 your direct, cross, and direct examination?

23 JUDGE MERCER: I have, sir.

24 MR. GARBER: Thank you very much for
25 coming today --

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THE WITNESS: Thank you.

MR. GARBER: -- and testifying.

THE WITNESS: Thank you.

Thank you.

MR. FITZPATRICK: (Unintelligible).

THE WITNESS: I'm sure. Thank you.

MR. GARBER: Do you want to call your next witness? You want to take a five-minute, ten-minute recess?

MR. PEDROTTY: I need to take stock of where we're at with our witnesses. I think we might have a rebellion on our hands out there. Yeah.

I was planning on calling Judge Pazin next. I think, given how much time that will likely take, she will either be called last today or tomorrow, at this point.

MR. GARBER: Okay.

MR. PEDROTTY: I'd like to put on Robert Butler and Don Pierro.

MR. GARBER: Okay.

MR. PEDROTTY: I don't know how extensive their testimony will be from Respondent's standpoint, but can we take --

MR. GARBER: Let's just take a -- five minutes.

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(Donald Pierro - Direct)

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MR. PEDROTTY: -- five minutes?

MR. GARBER: Yeah.

(Recess from 2:39 p.m. until 2:54 p.m.)

MR. GARBER: On the record.

MR. FITZPATRICK: We are back on the record.

MR. PEDROTTY: The Commission calls Donald Pierro.

MR. GARBER: Thank you.

MR. PEDROTTY: Do you need your glasses?

MR. PIERRO: To look at something, yeah.

MR. PEDROTTY: Okay.

MR. GARBER: Mr. Pierro, why don't you sit?

MR. PEDROTTY: Take a seat right over there.

MR. GARBER: Please, sit down.

Mr. Pierro, I just want to advise you that these proceedings are being digitally recorded. The recording will be transcribed. In order to facilitate a clear and accurate record, please speak slowly, clearly, and into the microphone.

Try to refrain from moving away from the microphone and talking over other speakers, and please refrain from responding until a question is completed. And answer each question with words, not a nod or a gesture.

MR. PIERRO: Um-hum.

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(Donald Pierro - Direct)

1 MR. GARBER: And please refrain from
2 creating excessive background noise, as it becomes
3 amplified on the recording equipment. And we've learned
4 today, please turn off a cell phone because --

5 MR. PIERRO: Yeah, I did.

6 MR. GARBER: Oh, okay. Thank you.

7 So if you would just stand and raise your right
8 hand. And do you swear or affirm under the penalties of
9 perjury that the testimony you're about to give is the truth,
10 the whole truth, and nothing but the truth?

11 MR. PIERRO: I do.

12 MR. GARBER: Thank you, and please sit
13 down.

14 Please proceed, Mr. Pedrotty.

15 MR. PEDROTTY: Thank you, Mr. Garber.

16 Good afternoon, Mr. Pierro.

17 THE WITNESS: Afternoon.

18

19 DONALD PIERRO,

20 having been duly sworn, was examined and testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. PEDROTTY:

24 Q. Thank you for your patience with us. Where are you employed?

25 A. The Town of Athens.

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(Donald Pierro - Direct)

1 Q. And what do you do for them?

2 A. I'm in charge of finance, budget, and personnel.

3 Q. What is your title?

4 A. My civil service title is Bookkeeper to the Supervisor.

5 Q. How long have you been in that position?

6 A. Approximately four -- well, it will be four years in July. So I started in
7 July of 2019.

8 Q. What are your responsibilities and duties as Bookkeeper to the
9 Supervisor?

10 A. Day to day, I'm responsible for accounts payable, accounts receivable,
11 basically paying bills, receiving funds, bank reconciliation, journal
12 entries, reconciliation of the general ledger, preparation of the budget,
13 monitoring the budget for budget to actual purposes on a monthly basis,
14 developing monthly financial statements, payroll, payroll taxes, year-end
15 reconciliation and so on, in preparation for the outside CPA firm. Oh,
16 there's one other thing, the development of the annual report. I do a lot of
17 work on that.

18 Q. Okay. Are you involved in the processing of vouchers submitted by
19 Town Officers or employees for payment?

20 A. I am.

21 Q. Can you tell me, in your career with -- in the four years you've been
22 there, about how many of these vouchers have you been involved in
23 reviewing and processing for the Town of Athens?

24 A. It varies. Some weeks, it's as low as 25, and some weeks it can be 40 or
25 plus. The Board meets twice a month, so they get approved at those

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(Donald Pierro - Direct)

1 meetings.

2 Q. Okay. Tell us about that whole process, each step of the process for the
3 review, approval, and payment of a voucher.

4 A. It's like a ten-step -- nine or ten-step process, and I actually see the
5 vouchers twice. First, the Deputy Town Clerk opens the mail every day,
6 sorts it, and she gives me most of the invoices. She retains utilities and
7 several other office supplies. There are certain invoices she's responsible
8 for, except for the highway. The highway goes to the Superintendent of
9 Highway, then I work with him if he has questions on coding.

10 Q. Okay.

11 A. Now, after that, once that's all done, they go to the -- back to the Deputy
12 Town Clerk for the initial work-up of what we call an abstract. It's a
13 separate software that she's responsible for. And after that, they go to the
14 Supervisor for his review. And that will be the first signature in the
15 lower righthand corner of the voucher.

16 They'll be other initials on the voucher in the lefthand corner. Could be
17 from department head, myself, the Deputy Town Clerk. That's evidence
18 that we checked or assigned a coding or checked the coding to make sure
19 it's right so that all the expenditures get dropped into the right bucket.

20 Q. When in this process do you first see a voucher?

21 A. I see all the invoices that would normally come to me, right after the
22 Deputy sorts the mail.

23 Q. Do they come to you before they go to the Town Supervisor or after?

24 A. Yes. Because before they go to the Supervisor, they have to be coded,
25 and he needs to see my initials that I checked it.

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(Donald Pierro - Direct)

1 Q. Okay. So what are you doing when you're looking at a voucher? What
2 are you reviewing it for? And what do you do? And what does it --

3 A. That it appears to be a legitimate claim on the Town, and that the Town
4 owes it. You know, you're testing the math. You're testing to make sure
5 that that invoice applies to a particular department.

6 Q. How do you determine whether a claim is legitimate and the Town pays
7 it?

8 A. Well, I'm at most of the Board meetings, and I work with the Supervisor
9 every day, so it's just knowledge. And I prepare the budget, so I know
10 what's in the budget.

11 Q. In July 2020, did a voucher for payment, signed by Judge Mercer, for
12 payment to Mercer Associates come to your attention?

13 A. Yes.

14 Q. Did you have any concerns when you reviewed this voucher?

15 A. When I initially reviewed the voucher, like with many, I go through the
16 motions. I assigned a code. And I happen to remember that that
17 particular voucher didn't have enough funds in the -- a particular code,
18 and so I explained to the Senior Court Clerk that I was going to apply the
19 difference, which was only a couple hundred dollars, to another budget
20 line within the department.

21 In this particular case, it was cameras, and cameras are for security. So
22 the difference of a couple of hundred I assigned to the security line,
23 which is reasonable. The rest of the bulk of the funds were assigned to
24 the JCAP grant. Grant is -- it's a revenue, and there's a mirror-image
25 expenditure account.

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(Donald Pierro - Direct)

1 Q. Okay. So what did you do as a result of the document, if anything?

2 A. I did my part, and you know --

3 Q. You said you did your part. What did you do?

4 A. Well, I reviewed it. I looked at it. I said "Okay, this is associated with
5 the JCAP grant." I checked the math. I did what I just told you about the
6 extra -- there was a couple of hundred dollars over, so I assigned it to
7 another line. This was all before it goes to the Supervisor. So I have to
8 do all of that first, to make sure.

9 And you know, by and large, I guess what I'm looking for is to make sure
10 that any particular budget line doesn't go over budget. That's my
11 responsibility. And then twice a year, I address that, but that's a separate
12 issue. It doesn't really apply here. It's called a budget transfer.

13 Anyway, once I do that initially, I then pass them off to the Supervisor
14 for his review.

15 Q. Is that what you did in this case with this voucher?

16 A. Yeah.

17 MR. PEDROTTY: Ryan, can you please show
18 the witness Exhibit 14?

19 Actually, show him Exhibit 13 and Exhibit 14.

20 BY MR. PEDROTTY:

21 Q. Do you recognize Exhibits 13 and 14?

22 A. Yes.

23 Q. What do you recognize each to be? Like, can you explain the difference
24 between the two?

25 A. Well, 13 is the original of -- you know, the original voucher. What you

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(Donald Pierro - Direct)

1 don't see here is the coding. It's underneath this. You know, it's
2 underneath --

3 Q. That note in the right part?

4 A. It's on 14. You can see it on 14.

5 Q. Who put that coding on there?

6 A. I did. That's my handwriting. And you see that the JCAP line was
7 charged with 3,089.99, and the difference of \$240 was charged to the
8 security line. And the reason for that is because the amount of the JCAP
9 revenue was the 3,089.99, so that's a separate check. There's an audit
10 trail for that. It's pretty transparent. So that the revenue is matched by
11 the expenditure. So the net is zero. So that's what we want. We don't
12 want to go over budget.

13 Okay. So 13 is the initial. 14 is -- it walked further down the process.

14 Q. So looking first at the box for departmental approval in the bottom
15 lefthand corner of --

16 A. Right.

17 Q. -- Exhibit 14.

18 A. Right.

19 Q. Do you see Judge Mercer's signature there?

20 A. Yes.

21 Q. And then whose initials appear under that?

22 A. Mine.

23 Q. Okay. And why are your -- why did you initial it and when?

24 A. Because that's evidence to the Supervisor, when he eventually get this,
25 and then subsequently, the Board, that I check the code or that I assign

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(Donald Pierro - Direct)

1 the code, either way.

2 Q. So after you initialed it, what did you do? What action did you take with
3 respect to this?

4 A. Well, with the batch that this voucher was in -- the whole folder, after I
5 go through that step, goes to the Supervisor for his review. And there
6 would have been 20, 30 vouchers, different vendors, et cetera.

7 Q. So after you initialed it, you sent it along to the Supervisor for his
8 review?

9 A. Correct.

10 Q. When you did that, did you raise any concerns with him at that time
11 about this voucher?

12 A. Not then, no.

13 Q. Okay. Take a look at the approval for payment box in the bottom
14 righthand corner. Do you recognize those signatures?

15 A. I do.

16 Q. Okay. When in the process would those signatures have been put on
17 there in the normal course of events?

18 A. At the Board meeting, at the subsequent Board meeting -- published
19 meeting. And there's a procedure there. The first time they go to the
20 Board, the Board Members -- let's see. Let's see. I recognize three. Let's
21 see, Tony Paluch, Mary Brandow -- I'm not sure about this one. It's hard
22 to read. And the other one looks like the Supervisor's -- the former
23 Supervisor, not the current one.

24 Q. Being Rob Butler?

25 A. Correct.

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(Donald Pierro - Direct)

1 Q. Does those signatures in the approval for payment box in the bottom
2 right hand corner -- does the fact that those signatures appear on there --
3 does that mean that this payment was authorized for you to prepare a
4 check?

5 A. Not exactly. They have to go to the Board. All vouchers, regardless of
6 the fund, whether it's Highway, whether it's under the purview of the
7 Deputy Clerk, or me, they all have to go to the Board. No exceptions.
8 But that's really an internal control measure. The actual approval and
9 authorization of the vouchers occurs when the Board does a motion and a
10 second at the Board level in public. That's really the authorization to pay.
11 This, they have a -- they have several of these internal control measures.
12 For example, in this case, every voucher has to have three signatures
13 except for the primary --

14 There are certain expenses that the Supervisor of a town is authorized to
15 pay by himself. For example, we are a tenant. Rent is one of those
16 expenditures that he actually could sign by himself, and we could process
17 that payment because we're a tenant in a building that we don't own. So
18 that would -- that's just one small -- but there are others, and they're
19 called required elements.

20 In other words, to run the Town Government smoothly and so we're not
21 late with bills, so that we don't have problems down the road or an
22 absence or an interruption of service, there are several -- or a number of
23 required elements. And he could -- but that's -- absent that, three
24 signatures are required in the lower righthand corner.

25 Q. Okay. And then I believe you said that at a Town Board meeting, there

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(Donald Pierro - Direct)

1 needed to be a motion, which was seconded to pass --

2 A. To --

3 Q. Continue.

4 A. To approve.

5 Q. Okay.

6 A. And that's the --

7 Q. Did that happen in this case with respect to this voucher, to your
8 knowledge?

9 A. I don't remember. I don't remember. But I can tell you that it went to the
10 Board because these signatures don't happen except for at a Board
11 meeting. All I know is that I get -- I don't know if I'm jumping ahead, but
12 before, I said to you I see these vouchers twice? Well, after a Board
13 meeting, I get them back. And I, at that point, am tasked with preparing
14 the checks. I do it with software, and then those checks go, ultimately, to
15 the Supervisor for his signature. We have two signatories. Signature is
16 either the Supervisor --

17 And by the way, a -- it should go on the record, a Supervisor in a town in
18 the CEO and the CFO. I just work for him. That said, there was -- when
19 I went to do my part after the Board meeting, and I started --

20 Q. By do your part, you mean what? Prepare a check for payment?

21 A. Ready for processing. I check every voucher all over again. I look at
22 the code. I make sure I initialed it. If it was, say, for office supplies,
23 that's something the Deputy Town Clerk does. I look at those codes
24 because they go to -- they could go to various departments. I make sure
25 they're not over budget if they're due; it's something I got to address, and

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(Donald Pierro - Direct)

1 I do. But has nothing to do with this process per se. We still pay. We
2 still get everything out, because the assembly line can't dry up. But I
3 recall I went back to the Supervisor, because that's my chain of
4 command.

5 Q. Okay. So on your second review of this voucher, you went to the
6 Supervisor?

7 A. And I said to him, so many words, "I'm not sure about this. Can you take
8 another look at it?" It was just an instinct.

9 Q. What was it about it?

10 A. I never looked at the vendor name, Mercer Associates. And I never -- it
11 never dawned on me -- excuse me. I look at so many of these things that
12 sometimes, things can get by you, and I looked at that and I said, "wait a
13 minute. Mercer Associates. Is that Judge Mercer?" to myself. So I
14 brought it back to the Supervisor and asked him to check into it.

15 Q. Why was that a concern for you?

16 A. Because people that work for the Town in certain capacities can't do other
17 types of work for the Town. Let me think of an example. The Code
18 Enforcement Officer. He happens to be handy. I couldn't hire him to
19 paint the office. Can't do it. And there are policies that talk about that.
20 So once I question that with the Supervisor, I was out of it at that point in
21 terms of the process. And I believe --

22 Q. What did the Supervisor tell you, if anything? What discussions --

23 A. He would check with the Town Attorney and check with the judge, which
24 made sense to me. I went on about my business.

25 Q. Did you need the Town Supervisor's authorization at that point to write a

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(Donald Pierro - Direct)

1 check for Mercer Associates?

2 A. I would have in that instance, but he didn't ask me to prepare it.

3 Q. Did he tell you not to prepare one?

4 A. No. I have a question now. That means I'm not authorized, and then it's
5 up to the Supervisor to tell me to prepare a check. Do you want an
6 example?

7 Q. No, just in this case. So why didn't you prepare a check for Mercer
8 Associates?

9 A. Because when I noticed the vendor, I wasn't sure -- Mercer Associates
10 doesn't tell me that it's Judge Mercer. I don't know what Mercer
11 Associates is, so I brought it to the Supervisor's attention.

12 Q. You were aware of Judge Mercer at this point, right? You knew who he
13 was?

14 A. Oh, yeah. No, no.

15 Q. Did you have any knowledge around this time that he had any financial
16 interest in Mercer Associates?

17 A. I did not know.

18 Q. After receiving this voucher, at some point, did you contact the court to
19 request an employer identification number for Mercer Associates?

20 A. Yes. That goes in --

21 Q. Do you recall how you did that?

22 A. Well, anybody that we write a check to, for whatever the reason, I need --
23 for lack of a better word -- registration information in a digital -- or in an
24 electronic file. Part of the reason for that is 1099s.

25 Q. Which are what? What are 1099s?

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(Donald Pierro - Direct)

1 A. It's a federal form. If we pay someone over \$600 and they're not --- let's
2 see -- and they're not a corporation, they get a 1099 at the end of the year.
3 It's a tax document.

4 Q. How did you try to get this employee identification number for Mercer --

5 A. I left a message with the Senior Court Clerk.

6 Q. Did you have a conversation with her, if you recall?

7 A. I probably did at one point or another. Yeah.

8 Q. Do you recall expressing any concerns about the voucher when you spoke
9 to her --

10 A. No.

11 Q. -- in regards to that?

12 A. No. That was the Supervisor's bailiwick at that point.

13 Q. Did you have any communications with Judge Mercer about this voucher,
14 payment of it?

15 A. About a month later, he said to me "Hey, by the way, that check never got
16 paid, and it's over 30 days." And he was correct, but I had told him at
17 that time that I couldn't pay it. I wasn't authorized to pay it. And he
18 sent -- I want to say he sent another bill. The initial request, I think, was
19 July of that year, and then we got another invoice in, maybe, August --
20 mid-August to the third week of August, something like that.

21 Q. Where did that conversation take place?

22 A. Well, I was sitting at my desk and the judge was in the hallway, just with
23 my -- I leave my door open a lot. Just right there. It was no big deal.

24 Q. You said that sometime later, you got a new invoice from Mercer
25 Associates with a interest charge --

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(Donald Pierro - Direct)

1 A. Right.

2 Q. -- is that correct? During your conversation with him, did he mention
3 anything about an interest charge?

4 A. He may have said that because it wasn't paid in 30 days, that he would
5 add on interest, but it wasn't more than that. It wasn't a major issue.

6 Q. Do you recall him saying that?

7 A. Oh, yeah.

8 Q. Did he say that?

9 A. Yes, he did.

10 Q. Okay. How would you describe the judge's tone and demeanor during
11 this conversation?

12 A. Well, I mean, I could tell, for him, because he's normally, you know -- I
13 mean, I'm not a doctor, but he's normally calm, nice demeanor, but I
14 could tell he was escalating a little bit. He was irritated. I know that's a
15 strong word, but -- because he didn't get paid. I would be too. I
16 understand. I'm just saying.

17 Q. Did you report this conversation with Judge Mercer to anyone?

18 A. Yeah, the Supervisor. Everything I do goes back to the Supervisor.

19 MR. PEDROTTY: Ryan, can you please show
20 the witness Exhibit 17?

21 BY MR. PEDROTTY:

22 Q. Take a look at Exhibit 17. Let me know when you're finished.

23 A. Right. This is the result of that conversation we were just referring to.

24 Q. So on August 18, 2021, did you receive this email from Mercer
25 Associates with the attached invoice, adding a finance charge of \$66.59?

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(Donald Pierro - Direct)

1 A. Yes.

2 Q. What, if anything, did you do when you received this invoice?

3 A. I showed it to the Supervisor.

4 Q. In your capacity as the Town Bookkeeper and handling invoices, do you
5 know what a -- what is a vendor?

6 A. A vendor is a individual or company that's authorized to do business with
7 the Town.

8 Q. Are you familiar with the term "outside vendor"?

9 A. Yeah. I mean --

10 Q. What's an outside vendor in relation to the Town?

11 A. Right. An outside vendor, that's -- they're virtually interchangeable, a
12 vendor and an outside vendor.

13 Q. Okay.

14 A. We have no vendors internally, so they're all external.

15 Q. Is Mercer Associates -- is that a outside vendor?

16 A. Yes, it would be.

17 Q. Did there come a time when Supervisor Butler tasked you with
18 distributing copies of the Town Employee handbook, Town ethics code,
19 and the Town's procurement policy to all Town employees and elected
20 officials?

21 A. Yes. Later in the year. I want to say -- well, it was around Thanksgiving,
22 my guess -- my best guess. And not only did I have to distribute them, he
23 wanted me to get them to sign for it. So there's a sheet with all the people
24 that work for the Town, and their signatures are right next to it, and I put
25 a copy of each one in their personnel file.

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(Donald Pierro - Direct)

1 Q. Each what? I'm sorry.

2 A. Well, once they signed that sheet, a copy of it went in their personnel file.

3 Q. Okay. The signature page?

4 A. Yeah. Just evidence that they signed for those documents. Um-hum.

5 Q. What was your understanding of why Supervisor Butler wanted these
6 distributed? Did he have communications with you about why he
7 wanted --

8 A. Yeah. We talked about it, and I -- one of the things I was working on,
9 outside of this scenario, was constantly finding matters in the Town
10 handbook that needed to be addressed. So he authorized me to meet with
11 the Town Attorney and read it and make suggested changes and then
12 bring those suggested changes to the Board. We did it -- I've been there
13 almost four years. I bet we did it three times already, maybe four. In
14 addition --

15 Q. Did anyone -- sorry.

16 A. In addition, I said to the Supervisor -- I said, "Well, you know, we're
17 going to -- we'll do the handbook". I said, "But what about these other
18 policies? You have a procurement" -- because I know because I used to
19 be an auditor. I said, "You're going to have a procurement policy, and
20 you have a code of ethics." So he sent me to ask the Town Clerk for the
21 most current copies. Those also were sent, I believe, to the Town
22 Attorney for his opinion.

23 Q. So was it three individual documents that you were tasked with
24 distributing?

25 A. Yes.

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(Donald Pierro - Direct)

1 MS. JOSHI: You have water there if you need
2 water.

3 THE WITNESS: I do need some. Yeah. As we
4 used to say in the old days, "I'm dying over here."

5 Thank you very much.

6 MR. PEDROTTY: You're welcome.

7 BY MR. PEDROTTY:

8 Q. Did anyone refuse to accept and sign for such materials?

9 A. I actually got everybody to sign except for Judge Mercer, initially. And
10 then, I would say, maybe a couple of months later, he signed for them.

11 Q. Do you recall about when he refused to initially accept them?

12 A. Well, this was all occurring around November, you know. It was around
13 Thanksgiving. And I did get everybody's signature pretty quickly. I was
14 surprised. And I would say, approximately -- I'm going to say January,
15 but I can't be 100 percent positive. But Judge Mercer did sign --

16 Q. January was what? When he signed?

17 A. That's when he signed for those documents, and I know he received them,
18 but I can't tell you why -- you know, I don't have any background as to
19 why or why the delay or whatever. I don't know anything about that.

20 Q. Did you have any communications with him about accepting the
21 handbook?

22 A. No, no. He came by, you know. He was just walking in and out one day,
23 and I asked him about it, and he signed for them. I just can't remember
24 exactly when.

25 Q. Did he say why he wouldn't accept or sign for them?

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(Donald Pierro - Direct)

1 A. Not to my recollection.

2 Q. How many times did you attempt to get Judge Mercer to accept and sign
3 for them?

4 A. Probably twice. The first go-round, I asked everyone. Then once I had
5 everybody else's signature, I probably went back to him. I mean, that's
6 just my method.

7 Q. Did you notify anybody that Judge Mercer was not accepting a
8 handbook?

9 A. I did, only the Supervisor. Everything I do trails back to the Supervisor,
10 everything, every communication. I'm supposed to remind him of
11 everything I -- if he asks me to do something, I follow up. If he expects
12 me to do something, I make sure it's done, then I let him know. It's that
13 kind of relationship.

14 MR. PEDROTTY: Ryan, what is the exhibit
15 number?

16 MR. FITZPATRICK: 26.

17 MR. PEDROTTY: Okay. At this time, I'd like
18 to show the witness what's been pre-marked as Exhibit 26.
19 (Commission Exhibit 26 was marked for identification)

20 BY MR. PEDROTTY:

21 Q. Do you recognize that document?

22 A. Yes. This is a handbook. And this revision is dated November 4, 2021.

23 Q. Is that a copy of the handbook that you tried to get Judge Mercer to
24 accept and sign for in or about November 2021?

25 A. Yes.

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(Donald Pierro - Direct)

1 MR. PEDROTTY: Okay. At this time, I offer
2 Exhibit 26 into evidence.

3 MR. GARBER: Judge, any objection?

4 JUDGE MERCER: No objection.

5 MR. GARBER: It's admitted.

6 (Commission Exhibit 26 was admitted into evidence)

7 BY MR. PEDROTTY:

8 Q. I know you've brought some documents with you today. Did you bring
9 with you a copy of the procurement policy and the code of ethics that you
10 attempted to distribute to Judge Mercer?

11 A. Yes.

12 Q. Let's find those documents.

13 A. Okay. With respect to the procurement policy, I have the copy that we
14 initially marked up, myself and the Town Attorney. We call it markup;
15 it's a Word term -- Microsoft Word. And you can see the -- can I show
16 you, Judge?

17 JUDGE MERCER: Yes.

18 BY MR. PEDROTTY:

19 Q. Do you have the actual version that you distributed to employees?

20 A. Yes. That's the final. That's this one.

21 Q. Okay. That's all I want to see.

22 A. Okay. I hit mic. Okay. Yeah. I have a final right here.

23 MR. PEDROTTY: Okay. Can we please mark
24 that as Exhibit 27?

25 (Commission Exhibit 27 was marked for identification)

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(Donald Pierro - Direct)

1 MR. PEDROTTY: All right. Can I see that?
2 Show you?

3 JUDGE MERCER: Sure. I object to the
4 document.

5 MR. PEDROTTY: I haven't offered it yet.
6 Okay. Please show the witness Exhibit 27 for
7 identification.

8 BY MR. PEDROTTY:

9 Q. What is Exhibit 27, for identification?

10 A. What is it?

11 Q. What do you recognize it -- do you recognize it?

12 A. Yes. This is the revised version of the procurement policy. We added --

13 Q. Revised as to what date?

14 A. Say again?

15 Q. Revised as to what date?

16 A. August 2, 2021.

17 Q. Okay.

18 A. That's the night that the Board would have passed it. They passed the
19 changes, and I have the changes in case the Court wants to see it.

20 Q. Is that a copy of the procurement policy that you asked Judge Mercer to
21 accept and sign for in about November 2021?

22 A. Yeah. This final one is.

23 Q. Okay. Just Exhibit 27, please.

24 A. Right.

25 Q. Minus if there's some handwriting on there. It says final?

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(Donald Pierro - Direct)

1 A. I wrote that.

2 Q. You just wrote that recently?

3 A. Because it's -- it was in the file. I had to show -- and the other one, I
4 wrote markup so that I know the difference between the two.

5 Q. And prior to August 2, 2021, that is not the purement [sic] policy that was
6 in effect, correct?

7 A. Correct. This final one has some language added.

8 MR. PEDROTTY: Okay. I now offer Exhibit
9 27.

10 MR. GARBER: May I see it, sir?

11 THE WITNESS: Oh, sorry.

12 MR. GARBER: No. It's all right.

13 JUDGE MERCER: Mr. Garber?

14 MR. GARBER: Just one minute.

15 JUDGE MERCER: Sure.

16 MR. GARBER: Judge?

17 JUDGE MERCER: Exhibit 27, as in earlier
18 exhibits, demonstrates a time period after the event that is
19 in -- being investigated today.

20 MR. PEDROTTY: The formal written
21 complaint alleges that Respondent refused to accept and
22 sign for three different documents. That is one of the
23 documents.

24 MR. GARBER: You're not offering it for the
25 purpose of demonstrating that the judge violated this

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(Donald Pierro - Direct)

1 particular policy?

2 MR. PEDROTTY: Correct.

3 MR. GARBER: It relates to the allegations in
4 the complaint, that he didn't accept it?

5 MR. PEDROTTY: Correct.

6 MR. GARBER: Your objection is overruled,
7 Judge.

8 And it's admitted into evidence.

9 (Commission Exhibit 27 was admitted into evidence)

10 MR. GARBER: Oh, do you want Mr. Pierro's --
11 discuss it further?

12 MR. PEDROTTY: No. You can set that aside.

13 MR. GARBER: Okay.

14 BY MR. PEDROTTY:

15 Q. Mr. Pierro, do you also have a copy of the code of ethics that you asked
16 Judge Mercer to sign and accept?

17 A. Yes, I do.

18 MR. PEDROTTY: Okay. Can you please show
19 that to Mr. Fitzpatrick?

20 Please show the witness Exhibit 28 for
21 identification.

22 (Commission Exhibit 28 was marked for identification)

23 THE WITNESS: Thank you.

24 BY MR. PEDROTTY:

25 Q. Do you recognize Exhibit 28 for identification?

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(Donald Pierro - Direct)

1 A. Yes. This is ethics -- the code of ethics marked July 8, '21. That was the
2 day it was printed off.

3 Q. To your knowledge, was that code of ethics in effect prior to July 8,
4 2021?

5 A. Yes. To my recollection, we never revised it. The only thing I did for
6 my own purposes was use a yellow highlighter on paragraphs --
7 paragraph C so I didn't have to constantly go look for it.

8 Q. Is Exhibit 28, for identification, the version that you attempted to have
9 Judge Mercer accept and sign for?

10 A. Yes.

11 MR. PEDROTTY: I offer Exhibit 28- --

12 MR. GARBER: 28 --

13 MR. PEDROTTY: -- for identification into
14 evidence.

15 MR. GARBER: Judge?

16 JUDGE MERCER: Yes.

17 MR. GARBER: You have no objection?

18 JUDGE MERCER: No objection.

19 MR. GARBER: Admitted.

20 (Commission Exhibit 28 was admitted into evidence)

21 MR. PEDROTTY: Ryan, can you please --
22 sorry.

23 When you're done there, show the witness

24 Exhibit 14. Can you also please show him Exhibit 13?

25 BY MR. PEDROTTY:

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(Donald Pierro - Direct)

1 Q. Mr. Pierro, looking at Exhibits 13 and 14, do you see that the Mercer
2 Associates voucher and the attached invoice to Exhibit 13 lists the costs
3 of the security camera system as \$2,329.99?

4 A. Yes.

5 Q. Did he ever provide you with any documentation of the actual cost of the
6 camera system?

7 A. No, just the invoice and the voucher.

8 Q. So if I told you today that Judge -- the judge paid less than \$1,600 for the
9 system, would that be news to you?

10 A. That would be news to me. I did not know that.

11 MR. PEDROTTY: No further questions at this
12 time.

13 MR. GARBER: Judge?

14 JUDGE MERCER: Good afternoon, Mr. Pierro.

15 THE WITNESS: Good afternoon, Judge.

16 JUDGE MERCER: Can I call you Don? Is that
17 okay?

18 THE WITNESS: Absolutely.

19 JUDGE MERCER: Thank you.

20 We'll proceed on the basic cross again, and then
21 roll into my questioning.

22 MR. PEDROTTY: I think you only have cross
23 with this witness.

24 JUDGE MERCER: Okay.

25

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(Donald Pierro - Cross)

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MR. PEDROTTY: He's not a --

JUDGE MERCER: All right. Mr. Pierro, on

Exhibit 26 of the --

Would you give Mr. Pierro Exhibit 26?

THE WITNESS: I have it, Judge.

CROSS-EXAMINATION

BY JUDGE MERCER:

Q. Is there any correlation within the dates on that of any revision dates on or after --

A. Yeah. The version date down the bottom tells me, because I would have prepared this, that that was the night it went to the Board.

Q. Okay. What night did the Board approve that?

A. At this point, without seeing any other versions, I would say this version was approved on November 4th.

Q. Of what year?

A. '21.

Q. '21.

A. And if you don't mind, I may add that we've revised this document since I started in July of '19, at least three, four times, at least.

Q. You stated in your testimony that I was apprehensive in signing for the handbook, correct?

A. Initially only.

Q. Correct.

A. A period of time later, you did sign.

Q. Did we discuss, at that time, the judges' role and what we were trained in

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(Donald Pierro - Cross)

1 versus the -- and signing for a handbook for the Town?

2 A. I don't recall, Judge. I just was told to get everybody to sign for it. No --

3 Q. Right. But our conversation is when I met with you and I said I was not
4 going to (audio interference) ethics things? One second.

5 JUDGE MERCER: Okay?

6 MR. FITZPATRICK: We're okay.

7 JUDGE MERCER: Okay.

8 MR. FITZPATRICK: Just had a little bit of
9 static there for a second.

10 BY JUDGE MERCER:

11 Q. Did I state that, while in taking the bench, that we were told -- instructed
12 not to sign policies with the Town because we were not part of the Town
13 and that we had our own -- did we not have that conversation?

14 A. I don't recall that, but I would have -- I mean, that -- no disrespect, but
15 that doesn't make sense to me. Everyone that works there is an employee
16 of the Town.

17 Q. Right. It does make sense to me as an elected official, and --

18 A. I get that.

19 Q. -- and part of my training.

20 A. I get that, but --

21 Q. Right.

22 A. -- the wages and amount of wages and titles and all of that are all set by
23 the Town Board.

24 Q. Okay. And that revised document, Exhibit 27?

25 A. 26.

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Donald Pierro - Cross)

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JUDGE MERCER: 26. Can we have Exhibit

27?

BY JUDGE MERCER:

Q. Mr. Pierro, on that document, is the revision date 8/2/21?

A. Yes.

Q. Okay. Were any of these revisions expedited after the submittal of the voucher on 7 -- on July 7th?

A. Yes, but not to the threshold of dollars, only to additional language. And I have all the examples.

Q. What are some of the examples --

A. Well --

Q. -- if you could share?

A. -- let's take the one that applies, the very first one under paragraph 3, where it says estimated purchases of supplies or equipment less than 20,000 but greater than 3,000. Okay. And all we added was "based on departmental recommendations" and "shall be approved by the Town Board". In other words, the language that existed prior stayed the same. We just added language.

I have an extra copy of the markup if you want to see them, Judge.

Q. If I could?

A. The additions are in red.

JUDGE MERCER: Um-hum. If you want to mark it in as an --

MR. PEDROTTY: It's up to you.

JUDGE MERCER: -- as evidence or --

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(Donald Pierro - Cross)

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MR. PEDROTTY: Sure.

MR. FITZPATRICK: So this will be L, the exhibit number?

(Respondent's Exhibit L was marked for identification)

MS. JOSHI: Yes.

JUDGE MERCER: Okay.

MR. FITZPATRICK: Would you like me to give this to the witness?

JUDGE MERCER: I would like to get a copy of it.

Do you have another copy of that?

THE WITNESS: I do. You could have that one. Or here, as -- I have another one.

JUDGE MERCER: I have no more questions to direct to that.

MR. PEDROTTY: Do you want to offer it into evidence?

JUDGE MERCER: Let's offer the exhibit into evidence. Is that fine?

THE WITNESS: Here's an extra copy.

MR. GARBER: Proposed Exhibit L.

Any objection --

MR. PEDROTTY: No.

MR. GARBER: -- Mr. Pedrotty?

MR. PEDROTTY: No objection.

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(Donald Pierro - Cross)

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MR. GARBER: Admitted.

(Respondent's Exhibit L was admitted into evidence)

JUDGE MERCER: At this time, I would like to ask some of the questions that I have presented some evidence to. Is that --

MR. GARBER: Go ahead.

JUDGE MERCER: Okay.

MR. GARBER: Let me ask Mr. Pierro just one question.

JUDGE MERCER: Um-hum.

MR. GARBER: I didn't pick it up if you stated. In what year did you present these documents, the ethics code and procurement policy, to Judge Mercer? You said January, but I didn't catch the year.

THE WITNESS: It would have been -- let's see. We attempted to get signatures around Thanksgiving of '21, so I would say, possibly, January '22. That's when he signed them.

MR. GARBER: Oh, okay. Okay. So around '21. Okay.

Please proceed.

JUDGE MERCER: Okay. State Exhibit 4, please.

BY JUDGE MERCER:

Q. I'll ask you a pretty simple, straightforward, quick question if you don't --

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(Donald Pierro - Cross)

1 A. Sure.

2 Q. Are you aware that the JCAP grant process has two ways of applying to
3 the Town for a resolution to be passed for permission to apply for a
4 grant?

5 A. That would be one way. A Board resolution?

6 Q. Yes.

7 A. Yeah. That would be one way, at a published Board meeting.

8 Q. Okay.

9 A. The other way would be simply for, administratively, the court going
10 directly to the JCAP Administration. They have to fill out an application,
11 I believe, and it has to be approved.

12 Q. There is an application, but the -- for Ms. Puorro to present to that, she
13 has two options. Are you aware of her two options of presenting a JCAP
14 grant to the Town Board?

15 A. I believe the process is she would give them to the Town Clerk, and then
16 the Town Clerk gives them to the Board, and that's how it gets on the
17 agenda. That's the --

18 Q. All right.

19 A. That's all I would know about it.

20 Q. So you know the one way is how they apply is that the grant resolution
21 goes -- the letter goes down to the Town Board. And in that letter, in this
22 particular case, Marcia Puorro itemized items -- is where I want to just go
23 with -- so on -- the question would be are you aware that the court does
24 not have to inform the Town of what they're purchasing?

25 A. I'm not sure about that, Judge.

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(Donald Pierro - Cross)

1 Q. It's a very accurate statement, and --

2 A. I'm not --

3 MR. PEDROTTY: Objection. Argumentative.

4 THE WITNESS: Yeah. I'm not questioning --

5 MR. GARBER: Sustained.

6 THE WITNESS: Okay. Sorry, Judge.

7 BY JUDGE MERCER:

8 Q. Okay. We have presented in another exhibit, Exhibit 5 -- and I believe
9 we do not have a floor plan on the back of that response about --

10 A. There's an estimate back here.

11 Q. Right. You're aware that the court had to get permission for locations of
12 the cameras from --

13 A. I am not.

14 Q. Okay.

15 A. But my only role in -- you know, later in the process is, usually, Marcia
16 will ask me, "Keep an eye out for an award letter."

17 Q. Um-hum.

18 A. Because it's sometimes made out just to the Town of Athens, and the
19 check and -- it's either a check or a wire -- and I shouldn't say wire, an
20 ACH. It's one or the other. If it's a check, I make the deposits. If it's a
21 wire, I just make copies of all the documentation and leave it in the
22 judicial box where -- it's an inbox for mail to make it, you know -- just
23 for the record.

24 Q. Okay. Thank you.

25 A. Um-hum.

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(Donald Pierro - Cross)

1 Q. As a general question, the entire -- you testified that the Board had
2 approved the resolution at a Town Board meeting for the voucher for
3 payment?

4 A. They did. They did because you'll -- evidence is --

5 Q. Um-hum.

6 A. You'll see their signatures in the lower righthand corner.

7 Q. Right.

8 A. That means they looked at it and they approved it by virtue of the
9 abstract. The problem came after that --

10 Q. Um-hum.

11 A. -- you know, because then I'd get them back. And that's when I go to
12 prepare the checks. That's when I thought -- because honestly, Judge, I
13 didn't know Mercer Associates, so it could have been a brother, a cousin,
14 an uncle for all I knew. So I'm just saying I don't mean to imply -- I
15 shouldn't have said that. I apologize. But my point is it looked like
16 something I should tell the Supervisor --

17 Q. Um-hum.

18 A. -- and I did.

19 Q. I respect you --

20 A. And so --

21 Q. -- for doing that.

22 A. Yeah. So he told me "All right, get everything else paid", and then
23 he'll -- he was going to talk to Town Attorney McHugh and then you. I
24 assume that happened. I don't even know if it took place.

25 Q. You're not aware of any of the dates of the filing of the complaint to the

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(Donald Pierro - Cross)

1 Commission at this time?

2 A. Oh, no. I never was.

3 Q. Okay. Who would have known that date?

4 A. The Supervisor, I believe, and the Town Attorney because -- yeah. I
5 don't think even any Board Members would have known that unless the
6 Supervisor told them.

7 JUDGE MERCER: And then finally, for the
8 Commission's Exhibits 20, please -- could you give him it?

9 BY JUDGE MERCER:

10 Q. In referencing Exhibit 20, did you receive that invoice?

11 A. I'm not sure this is an invoice. I think this is a -- make payment
12 (unintelligible).

13 Q. It ends up being a credit voucher, correct?

14 A. Right. Right.

15 Q. Um-hum.

16 A. Because the balance is zero.

17 Q. Correct.

18 A. Right.

19 Q. Did the Town of Athens pay or authorize any payments to Judge Mercer
20 and/or Mercer Associates at that time?

21 A. Not to my knowledge. And the evidence of that is, if you look on the
22 voucher and the subsequent voucher with the interest on it, you won't see
23 a red check number in the upper righthand corner, below the coding.

24 Q. So Mercer Associates never got paid by the Town through the use of any
25 JCAP money for the installation and supplying the cameras?

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(Donald Pierro - Cross)

1 A. Correct.

2 JUDGE MERCER: Okay. If we can switch
3 over to Mercer exhibits. Would you please give Mr. Pierro
4 Exhibit B, please?

5 MR. GARBER: Judge what exhibit is that?

6 JUDGE MERCER: Exhibit B, sir.

7 MR. GARBER: Oh, thank you.

8 THE WITNESS: B, as in boy.

9 MR. GARBER: Yup. Thank you.

10 MR. PEDROTTY: Is this for identification?

11 MR. GARBER: Mark it for identification. Do
12 you want to ask the judge some questions about it?

13 JUDGE MERCER: I would like to ask Mr.
14 Pierro about them. Yes.

15 MR. GARBER: Oh, I'm sorry. I misspoke,
16 obviously.

17 BY JUDGE MERCER:

18 Q. Are you aware of the July 22nd incident --

19 A. I wouldn't --

20 Q. -- that's related in the email?

21 A. -- call it an incident, but you're talking about that exhibit that you just
22 handed me?

23 Q. Yes, sir.

24 A. Yeah, I'm aware of it.

25 Q. Okay.

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MR. PEDROTTY: I object to the relevance of this line of questioning.

MR. GARBER: May I see it again, please?
And for what purpose are you questioning Mr. Pierro?

JUDGE MERCER: With discussion prior, regarding these issues, it creates the environment that we have been involved with over the last few years. And at this time, on July 22, 2021, Ruth Wittlinger was my Court Clerk.

MR. GARBER: Judge, are you asserting that Mr. Pierro's involvement with your voucher is retaliation, for lack of a better word, of the incident described in Exhibit B?

JUDGE MERCER: Of the incident in Exhibit B and numerous other exhibits.

MR. GARBER: As in that was the reason -- are you asserting that that is the reason he didn't -- Mr. Pierro didn't approve your voucher?

JUDGE MERCER: No, sir. I'm not saying that he didn't approve the voucher for that. I'm just putting forward of what the court -- Senior Court Clerk, my Court Clerk, all experienced. And as we discussed earlier, the next few exhibits are in times when I was present or prior to the JCAP situation, and them just demonstrating that there's

(Donald Pierro - Cross)

1 a history of this.

2 MR. GARBER: A history of what?

3 JUDGE MERCER: I'm going to say intrusion
4 into the Athens Town Court, with regards to comments --
5 I'm going to -- and such.

6 MR. GARBER: I don't follow your reasoning,
7 Judge, as to the relevance of this to the allegations in the
8 formal written complaint.

9 JUDGE MERCER: Again, in my response to
10 the formal written complaint and the charges include this as
11 my testimony as to what happened.

12 MR. GARBER: That is material contained in
13 your answer --

14 JUDGE MERCER: Um-hum.

15 MR. GARBER: -- in the form of a letter. But
16 now we're here in the admissibility of evidence, and I
17 believe you have to show some relevance other than what
18 you consider to be an atmosphere.

19 BY JUDGE MERCER:

20 Q. Mr. Pierro, was there a hostile atmosphere between the court and the
21 Town?

22 A. Hostile?

23 Q. Um-hum.

24 A. No.

25 Q. Okay.

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(Donald Pierro - Cross)

1 A. Judge, may I also --

2 Q. Um-hum.

3 A. -- say something? I am limited in my capacity, with respect to personnel
4 records, as to what I could say here today.

5 Q. Um-hum.

6 A. I am only allowed to tell the Supervisor. And I will say that, not this
7 particular staffer, but another staffer was having issues up there, and she
8 came to me, and I had to let her -- not "I had to". I let her look through
9 her personnel file on two occasions to assure her that she wasn't going to
10 be fired.

11 Q. Um-hum.

12 A. I couldn't make any sense of it, but I understood her, and I accommodated
13 her any way I could. The further evidence of that particular allegation is
14 the fact that I prepare the budget, and she was in the ones that I prepared.
15 Never was going to get fired, until she voluntarily quit.

16 Q. Now that you brought that up, would that have been -- during that time
17 period --

18 A. Excuse me. I'm sorry.

19 Q. -- you referenced Town employee coming twice. Was that employee's
20 major concern over her pay?

21 A. No. At that point, she was -- before my time, she was denied the
22 opportunity to see her personnel file. I know that to be incorrect. I let
23 her see it, not once, but twice.

24 MR. PEDROTTY: I'd like to object to this line
25 of questioning at this point, that is has any relevance

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whatsoever to the charges in the --

THE WITNESS: Excuse me.

MR. PEDROTTY: -- formal written complaint.

Do you need more water?

THE WITNESS: I do.

MR. GARBER: Are you all right, sir?

THE WITNESS: One of my humps is low. I
apologize for that.

MR. GARBER: No need to apologize.

MR. PEDROTTY: I'm not sure if you heard my
objection, Mr. Garber.

MR. GARBER: Yeah, I did. I want to give the
judge some leeway.

But we really, Judge, are running far afield from
the allegations of the formal written complaint.

MR. PEDROTTY: Right.

MR. GARBER: And I'm going to sustain the
objection.

JUDGE MERCER: I'll try to tighten things up a
little bit, as best I can.

So at this time, then, if that's going to be the
case, can I enter Exhibits B, C, and D just into evidence?

MR. PEDROTTY: B was already my, I
believe -- did you offer it?

I object to B, C, and D as not being relevant,

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1 containing hearsay.
2 MR. FITZPATRICK: B is not in evidence.
3 MR. PEDROTTY: D is in evidence?
4 MR. FITZPATRICK: B is not in evidence. B,
5 C --
6 MR. GARBER: Mr. Fitzpatrick, which are not?
7 MR. FITZPATRICK: A, B, C, D, F --
8 JUDGE MERCER: Should we proceed to D,
9 then?
10 MR. FITZPATRICK: -- and J.
11 Exhibit D, you said, Judge?
12 JUDGE MERCER: Yes.
13 MR. PEDROTTY: Okay. I'm lost.
14 MR. GARBER: I'm a little lost here.
15 JUDGE MERCER: I believe it was entered in
16 when the previous witness was questioned as to --
17 MR. PEDROTTY: Which one, D?
18 MR. GARBER: Exhibit D.
19 MR. PEDROTTY: Okay. D is in -- yup.
20 MR. GARBER: Okay.
21 MR. PEDROTTY: That's fine.
22 B, I object to. C, I object to.
23 MR. GARBER: Okay. Wait. B, C --
24 MR. PEDROTTY: E, I object to.
25 MR. GARBER: -- and D?

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MR. PEDROTTY: D is in.

JUDGE MERCER: So just for the record, then, so I have some clarity in my latitude, we're objecting to anything that was circumstantial or conditions regarding the events around the court itself, correct?

MR. PEDROTTY: My objection is relevance and hearsay. If you look at, I think, B, I believe Mr. Garber already said that he would not admit it into evidence --

MR. GARBER: Yeah.

MR. PEDROTTY: -- on relevance grounds.

JUDGE MERCER: That was B. We didn't get to C and D --

MR. PEDROTTY: So C --

JUDGE MERCER: -- as evidence.

MR. GARBER: B, I'm not going to admit it into evidence.

MR. PEDROTTY: Correct. I believe you already ruled that.

And C is the three workplace violence incident forms, none of which were filed by any Court Clerks, and it was my understanding that Respondent is trying to argue that one of the reasons for the -- him wanting to have a court security system is to protect court staff from Mr. Pierro, but none of these have been filed by any court staff. It's hearsay.

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MR. GARBER: May I see -- what is it, C?
Marked for identification as C.

MR. PEDROTTY: Just like to remind
everybody that Mr. Pierro is not on trial here.

MR. GARBER: So the first page of Exhibit C
is -- which -- Exhibit C is a workplace violation -- violence,
excuse me -- incident form, filed by Anthony -- if I'm
reading it right -- Proper. And the second one is a
workplace violence incident form filed by MaryJo Winn
(phonetic) or Winn.

I'm not going to admit Exhibit C; it's not
relevant. These aren't court employees in any event.

Oh, there's a third one from -- filed by Don
Palmetier (phonetic).

Judge, the -- I'm not going to admit these on
relevancy grounds. And they really raise collateral issues,
and we'd have to take testimony from those involved in the
incidents. So Exhibit C is not admitted.

JUDGE MERCER: Does he have objection to
Exhibit D?

MR. PEDROTTY: Exhibit D is already in
evidence.

JUDGE MERCER: Okay. Can you give Mr.
Pierro Exhibit D?

That's an email correspondence, back and forth,

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(Donald Pierro - Cross)

1 regarding an incident that happened on 6/27/22, which is 11
2 months after the installation of the cameras.

3 THE WITNESS: You lied here, Judge. You
4 lied.

5 MR. GARBER: There was no question.

6 THE WITNESS: Oh, sorry, Judge.

7 BY JUDGE MERCER:

8 Q. So you object to this?

9 A. I can't object. I'm a witness, I guess.

10 Q. Well, you just --

11 MR. GARBER: Excuse me, sir. May I see it,
12 please?

13 THE WITNESS: Yeah.

14 MR. GARBER: No, don't --

15 THE WITNESS: Oh, sorry.

16 MR. GARBER: Mr. Pierro?

17 THE WITNESS: Yes, Judge?

18 MR. GARBER: Do you have a recollection of
19 the incident that's described in this email?

20 THE WITNESS: Yeah.

21 MR. GARBER: Okay. That's all.

22 You may question him on it.

23 JUDGE MERCER: Thank you.

24 MR. GARBER: He has a recollection of this
25 incident.

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JUDGE MERCER: Are you aware of --

MR. GARBER: I want to -- that it's, again, not very relevant, but go ahead. I'm trying to give you some leeway.

BY JUDGE MERCER:

Q. Did we have an encounter in the Town steps in the first floor hallway regarding this incident that you --

A. Well, I take exception to your use of that word.

Q. Okay. Did we meet with the Town Attorney and the current Town Supervisor --

A. Correct.

Q. -- Mike Pirrone? Did we discuss this like grown gentlemen and men?

A. I believe we did. I don't remember the month, but I believe --

Q. Okay.

A. -- we did.

Q. Was there resolution that came from that meeting between myself, the Town Attorney, you, and Mr. Pirrone?

A. There was a resolution.

Q. At that meeting, did you admit that you called me an F-ing asshole?

A. I did not.

Q. You didn't?

A. I said, "don't be an ass" because you kept repeating yourself. You were needling me. I was sick. I explained this. And you said, "Hello, Don. Hello, Don. Hello, Don." What are we, in kindergarten? You said it, but I never said that. I never said that. I did call you an ass, and I apologized

(Donald Pierro - Cross)

1 for that because it was inappropriate.

2 Q. Right.

3 A. No one should be called names, but I wasn't myself. Not that that was an
4 excuse, but it's true nonetheless.

5 Q. Um-hum.

6 A. And I think, since then, there haven't been any problems. Right? I
7 mean --

8 Q. No. No, there haven't.

9 A. -- since then?

10 Q. Once we involved Mr. McHugh, correct? Mr. McHugh is the Town
11 Attorney, correct?

12 A. Yes.

13 Q. So you deny calling me an F-ing asshole?

14 A. Correct.

15 JUDGE MERCER: Okay. Exhibit E is going to
16 be challenged, I believe, in relevance, so I'm not even going
17 to spare calling it, okay?

18 Exhibit F, please. If you can give Mr. Pierro --

19 MR. PEDROTTY: I think, at this time, can we
20 spare some time and save this for Robert Butler since, as
21 Mr. Garber said previously, you would be the one to --

22 JUDGE MERCER: My relevance in bringing
23 this was I was going to ask the Town Bookkeeper, who
24 pays all the vouchers and invoices, if there is a Zoom
25 contract for storage of Zoom meetings, which this was the

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1 court report for that day, 3/1/21, and I believe court
2 business was discussed at that meeting.

3 THE WITNESS: Well, that could be, Judge, but
4 my knowledge of that is that there is no separate Zoom
5 contract that I ever paid, but what there was was the -- we
6 have -- as you know, we have a separate IT vendor who
7 does all of the Town's IT work except the court. The
8 court's IT work is -- you --

9 JUDGE MERCER: Outside.

10 THE WITNESS: Well, you know.

11 JUDGE MERCER: Right.

12 THE WITNESS: All right. So -- but the IT
13 vendor arranged -- the Town decided to purchase a laptop
14 for the Supervisor. And the IT vendor arranged for any
15 tools, you know, whether it was Microsoft Word, Excel,
16 email, et cetera, et cetera -- and Zoom was part of that -- to
17 be installed on that laptop. So the bill that we would've
18 paid --

19 JUDGE MERCER: Um-hum.

20 THE WITNESS: -- for those services would've
21 been payable to ITS. That's the firm that does our IT work.
22 We have contracts with them.

23 BY JUDGE MERCER:

24 Q. Is it common practice for the Town to record its Zoom meetings,
25 especially during COVID?

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(Donald Pierro - Cross)

1 A. I'm assuming that the Supervisor would have recorded it, but I don't have
2 any direct knowledge. I never used that laptop or had any experience
3 with it. I mean, I participated in Zoom meetings, either by physically
4 being in the room or I'd be sitting in my office, watching on Zoom --

5 Q. Um-hum

6 A. -- that way. But I never paid a contract for Zoom.

7 Q. Okay. So you're unaware of any Zoom recordings stored in any other
8 place other than the laptop that the Supervisor has control over?

9 A. That would have been the only place --

10 Q. Okay.

11 A. -- it would have been recorded. Now, I can tell you -- I'll give you an
12 example. The work I do on QuickBooks, for example --

13 Q. Um-hum.

14 A. -- that's backed up --

15 Q. Correct.

16 A. -- by the IT vendor --

17 Q. Um-hum.

18 A. -- I believe, every day.

19 Q. Okay.

20 A. So --

21 Q. My question is just regarding the Zoom --

22 A. -- maybe they do.

23 Q. -- the Zoom meeting.

24 A. Yeah, so --

25 Q. So QuickBooks is different than --

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Donald Pierro - Cross)

1 A. Right.

2 Q. It pops up and says you want to back up your thing, and you hit yes then?

3 A. Yes.

4 Q. Right. Okay. I'm specifically asking, the Athens Town Court presented,
5 on 3/1/21, its annual report, which is requirement every year. She
6 presents the budgets. She --

7 A. Right.

8 Q. -- presents all the relevant documents that the state requires her to do --

9 A. Um-hum.

10 Q. -- and we have a mutual conversation during the time during the
11 presentation. And is it of your belief is that there is no Zoom recording
12 of that meeting or --

13 A. No, no. I'm not saying that. I'm just saying I don't --

14 Q. Okay. All right.

15 A. I wouldn't know.

16 Q. You don't know if there's a Zoom call recording?

17 A. Correct.

18 Q. Thank you. Okay.

19 A. That's a question for the Supervisor --

20 Q. Right.

21 A. -- at the time.

22 Q. Okay. And in your testimony, you've stated, I believe, you "simply do
23 what I'm asked to do, and I never say no to a Supervisor or a Town Board
24 Member".

25 A. Correct, I don't.

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Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Donald Pierro - Cross)

1 Q. Okay.

2 A. Sometimes at my own peril, but I don't.

3 Q. Have you ever had a conversation with Judge Pazin regarding that she
4 does not work for the Town?

5 A. Yes.

6 Q. Has those conversations gotten heated --

7 A. Huh-uh.

8 Q. -- at times?

9 A. I don't think so.

10 Q. Contradictory between the two of you?

11 A. Oh, she doesn't agree. In other words, when I --

12 MR. PEDROTTY: All right. Objection to this
13 line of questioning.

14 THE WITNESS: Yeah, we didn't --

15 MR. GARBER: Oh, wait a minute
16 (unintelligible).

17 THE WITNESS: Oops. I'm sorry. Sorry.

18 MR. GARBER: What is the relevance of this
19 line of inquiry?

20 JUDGE MERCER: The relevance is if the
21 Town assumes the position that it has nothing to do with the
22 Town Court, has nothing to do, procedurally or anything,
23 with the Town. They're a separate branch of government,
24 which is, I believe, entered in an exhibit in one of the
25 exhibits [sic] --

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(Donald Pierro - Cross)

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MR. GARBER: Well --

JUDGE MERCER: -- in an email exchange that was reviewed by the previous witness, which leads to --

MR. GARBER: Well --

JUDGE MERCER: -- if I can just continue --

MR. GARBER: Um-hum

JUDGE MERCER: -- on the relevance in here?

Which leads to the disposition and firm belief as the practice of the court while I was seven to nine months as a new judge in the court that -- the Athens Town Court, basically, doesn't listen to the Town.

MR. GARBER: Well, is your position that the Athens Town Court is a separate, distinct entity from the Town of --

JUDGE MERCER: I am. And I'm saying that the mindset of the Athens Town Court is that, in numerous matters, we don't need to ask for approval or do anything with them other than coming up with a budget, *i.e.* the JCAP grant is outside that.

BY JUDGE MERCER:

Q. Mr. Pierro, did you have a conversation with Marcia Puorro about the JCAP and how she hired vendors or how they did things in the past?

A. No.

Q. There was never a discussion about the 2013 repairs to the courtroom that the Town and the Village --

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(Donald Pierro - Cross)

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A. What year?

MR. GARBER: Sir? Sir? Judge? This is not relevant, and I -- I'm going to -- go on to something else, please.

JUDGE MERCER: All right. I rest my questions.

THE WITNESS: Judge, can I answer just that one piece?

JUDGE MERCER: I'm done.

THE WITNESS: Judge? I stipulate to you, your operational -- what I call operationally, has -- you're right.

JUDGE MERCER: Mr. Pierro --

MR. PEDROTTY: Can you --

JUDGE MERCER: -- please stop.

MR. PEDROTTY: -- there's no --

THE WITNESS: Oh, I thought you told me to go ahead.

MR. GARBER: No, no, no.

THE WITNESS: Oh, I'm sorry.

MR. GARBER: No, no. You may have misunderstood.

THE WITNESS: I did.

MR. GARBER: I wasn't clear.

THE WITNESS: I apologize.

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(Donald Pierro - Redirect)

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MR. GARBER: No need to apologize.

REDIRECT EXAMINATION BY

MR. PEDROTTY:

Q. Is it your understanding, Mr. Pierro, that there was a procurement policy in effect prior to the revision to it on August 2, 2021?

A. Yes.

Q. So looking at Exhibit L, minus the type in red, was that the version of the policy in effect prior to August 2, 2021?

A. Yes.

Q. Was it in effect throughout 2020 and up and until August 2, 2021?

A. Yes, until any previous revision, but that would have been in before my time, and I couldn't attest to it.

Q. So prior to 2019?

A. Correct.

MR. PEDROTTY: I have no further questions.

JUDGE MERCER: I have no further --

MR. GARBER: Judge, let me explain to you so you understand. Whether the procurement policy supplied to the Town Court is really a question of law, and you may inquire of Judge Pazin as to her view, and you may testify as to your view, but it's not for Mr. Pierro to testify.

JUDGE MERCER: Thank you.

MR. PEDROTTY: Is the witness discharged?

MR. GARBER: Oh. Oh, you both said --

Thank you for coming, sir.

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1 MR. PIERRO: Thank you, Judge. I appreciate
2 it.
3 It was a pleasure to meet you.
4 MR. GARBER: Stay warm.
5 MR. PIERRO: Okay. I will.
6 Good afternoon. Have a good day, everyone.
7 JUDGE MERCER: Thank you.
8 MR. PEDROTTY: You too. You have your
9 hands full, so I'd shake your hand, but --
10 MR. PIERRO: Oh, yeah.
11 MR. PEDROTTY: (Unintelligible).
12 MR. PIERRO: Thank you.
13 MR. PEDROTTY: Thank you for your time,
14 sir.
15 MR. PIERRO: Good day.
16 MR. PEDROTTY: You too. Hope you make
17 your flight.
18 MR. PIERRO: Yeah.
19 MR. PEDROTTY: I know we're all tired and
20 haven't really had a real break or any food, but I know Mr.
21 Butler is anxiously waiting to do his testimony, so --
22 MR. GARBER: Why don't you call him?
23 MR. PEDROTTY: Okay.
24 MR. GARBER: Does anybody need a brief
25 recess?

1 JUDGE MERCER: If I could have just a couple
2 of minutes to get my things together? Because he was
3 called out of order based on the time frame that it was.

4 MR. GARBER: Okay.

5 JUDGE MERCER: I'm pretty much prepared.
6 Two or three minutes.

7 MR. PEDROTTY: Five minutes?

8 JUDGE MERCER: That's fine. Yeah.

9 MR. PEDROTTY: Okay.

10 (Recess from 4:22 p.m. until 4:31 p.m.)

11 MR. FITZPATRICK: Okay. We are back on
12 the record.

13 MR. PEDROTTY: Commission calls Robert
14 Butler.

15 MR. GARBER: Please.

16 MR. PEDROTTY: See the Referee over there?
17 To the left of him. The opposite side.

18 MR. GARBER: Mr. Butler, I want to advise
19 you that these proceedings are digitally recorded. The
20 recording will be subsequently transcribed. So to facilitate
21 a clear and accurate record, please speak slowly, clearly,
22 and directly into the microphone.

23 Please refrain from moving away from the
24 microphone and talking over others. And please refrain
25 from responding until a question is completed, and answer

(Robert Butler - Direct)

1 each question with words, not a nod or other gesture. And
2 please refrain from creating excessive background noises,
3 as it's amplified into the equipment. And if you have a cell
4 phone on you or other electronic, please turn it off.

5 And then stand and just raise your right hand,
6 please. Do you swear or affirm under the penalties of
7 perjury that the testimony you're about to give is the truth,
8 the whole truth, and nothing but the truth?

9 MR. BUTLER: Yes.

10 MR. GARBER: Okay. Please be seated, sir.

11 Mr. Pedrotty?

12 MR. PEDROTTY: Thank you.

13 Good afternoon, Mr. Butler.

14 THE WITNESS: Good afternoon.

15 MR. PEDROTTY: Thank you for appearing
16 today, and sorry for the wait.

17 THE WITNESS: It's all right.

18 DIRECT EXAMINATION BY

19 MR. PEDROTTY:

20 Q. You are a former Athens Town Supervisor?

21 A. Yes.

22 Q. During what period of time?

23 A. From 2014 to 2020. No, 2016 to 2020. I think that was it. Six years. I
24 can't remember.

25 Q. Were you still the Town Supervisor in 2021?

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(Robert Butler - Direct)

1 A. Yes.

2 Q. You were?

3 A. Yeah.

4 Q. Was it the end of 2021 that your term ended?

5 A. Yes. Yup.

6 Q. What is your current employment?

7 A. I work for A. Colarusso & Son.

8 Q. Generally, what did you understand your role to be as the Athens Town
9 Supervisor?

10 A. As a supervisor, I'm responsible for all financial things regarding the
11 Town, payment of bills, you know, overseeing general problems with the
12 workforce, but mostly just CEO or CFO of the Town is ultimately what
13 I'm there for.

14 Q. Was is your role vis-a-vis the Town Board Members?

15 A. Town Board Members, again, along the same lines as that except for I
16 have the authority to sign checks. We are a board of five. Each member
17 of that Board has an equal vote. So they don't have any duties, *per se*, but
18 you know, we do get together a couple times a month, go over vouchers,
19 discuss things, laws, and possible issues that are dealing with the Town.

20 Q. What are your duties -- or what were your duties with respect to Town
21 Board meetings?

22 A. At Town Board meetings, I would set the agenda, you know, typically,
23 hand out information to the Board Members. Typically, we'd meet the
24 first and third Monday of the month. If I gave the Board Members
25 paperwork on the first meeting of the month, I would anticipate them

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(Robert Butler - Direct)

1 having it the second meeting of the month so we could discuss it. That's
2 really it. Running the meeting.

3 Meetings are pretty much straightforward. You know, what's on the
4 paperwork is typically what we go over. And at the end of every
5 meeting, although not required, I do allow public to ask questions if they
6 have questions.

7 Q. During your time as Supervisor, what role did you and the Town Board
8 play with respect to the Town Court's annual applications to receive
9 funds from the Justice Court Assistance Program, which I will refer to as
10 JCAP?

11 A. The court would usually present a letter, asking permission to inform of a
12 resolution, what they wanted to apply for the JCAP grant for, whether it
13 be, you know, new robes, new chairs, new gavels, you know, air
14 conditioners, whatever it may be. They always come before the Board,
15 and there's a resolution passed for them to go ahead and submit the
16 application.

17 Q. How was that resolution passed?

18 A. Just a Board vote.

19 Q. And then what role did you have, specifically, as Supervisor, with respect
20 to the JCAP applications?

21 A. Once we turn it over to the Town Court and let them apply for it, the only
22 other time we're involved is dispensing the funds for when the work is
23 complete. Other than that, you know -- that's how we deal with it. We
24 have, you know -- obviously, the work needs to be done, but there is a
25 procurement policy we go through. So you know, that happens, and then

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(Robert Butler - Direct)

- 1 ultimately, if that goes through, the payment, you know?
- 2 Q. Did you have to review and sign or do anything with respect to the
- 3 Court's JCAP applications?
- 4 A. If it was over a certain amount -- you mean for the work that was done, or
- 5 just in general?
- 6 A. Initially, before the court actually submitted their application --
- 7 Q. Okay.
- 8 A. -- for a JCAP grant, did you have to do anything?
- 9 Q. No, just other than pass the resolution to apply for the JCAP grant.
- 10 MR. PEDROTTY: Please show the witness
- 11 Exhibit 4.
- 12 BY MR. PEDROTTY:
- 13 Q. Mr. Butler, I refer you to page 2 of Exhibit 4.
- 14 A. Okay.
- 15 Q. Do you recognize what page 2 is?
- 16 A. Yes.
- 17 Q. What is it?
- 18 A. It's the cover sheet to the application, I believe.
- 19 Q. To the JCAP application?
- 20 A. Yes, to the JCAP application.
- 21 Q. Okay. If I called it the JCAP signature page, does that make sense to
- 22 you?
- 23 A. Yes, yes.
- 24 Q. All right. Each year, did you have to sign one of these before the court
- 25 could apply for an application?

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(Robert Butler - Direct)

1 A. If I didn't sign it, my Deputy Clerk -- Deputy Supervisor would have
2 signed it in my absence.

3 Q. How many of these did you sign, approximately?

4 A. Well, I was Supervisor for six years, so I would say probably four.
5 Because I think -- with COVID, I really don't think too much went on.
6 So I would say three or four.

7 Q. Looking at page 2 of Exhibit 4, is that your signature under the
8 certification?

9 A. Yes.

10 Q. At what point in the Town Board authorization process did you typically
11 sign these certification pages?

12 A. This would come to me before it was submitted to the state. That's when
13 this would be signed.

14 Q. Would it be after the Town Board issued its resolution?

15 A. Yes, after the Town Board. Yup. Typically, it was within a month or so
16 of when we passed the resolution.

17 Q. In the ordinary course, what would you typically review when you signed
18 these signature pages?

19 A. Honestly, we'd really never really had a lot of information given to us,
20 you know. We would take it as what they were asking for is what they
21 were going to apply for. You know, obviously, chairs and air
22 conditioners, we know they cost money, but you know, we will see a bill
23 for those when they submit the invoice. But as far as back-up
24 documentation, there was no documentation given with the signature
25 page. I don't think there ever was any information given with the

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(Robert Butler - Direct)

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signature page.

Q. Looking at page 2 still, does that date of October 7, 2020 appear accurate?

A. Yes.

Q. Do you recall who provided this page to you for your signature?

A. If I were to guess, it was probably brought down by Marcia and (audio interference) --

(Recess from 4:40 p.m. until 4:54 p.m.)

MR. FITZPATRICK: We're on the record.

RESUMED DIRECT EXAMINATION BY

MR. PEDROTTY:

Q. Did you know when you signed the signature page that the court was going to include a security camera system on the JCAP application?

A. No.

Q. Did Judge Mercer ever advise you that the court added a security camera system to its JCAP application?

A. No.

Q. Did anyone else from the court supply you with such information?

A. No.

Q. To your knowledge, did Judge Mercer or anyone from the court advise the Town Board of such information?

A. No.

Q. In 2020, were you familiar with Respondent in this case, Judge Mercer?

A. Just through being the Town Justice, yes. That's the only interaction I ever had with him.

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(Robert Butler - Direct)

1 Q. What did you know, if anything, at that time, about his interest in Mercer
2 Associates?

3 A. I didn't know anything about it. I just know he had his own business and
4 that he was self-employed. That's all I knew about Mercer Associates. I
5 don't even know -- still, to this day, I can't tell you what Mercer
6 Associates does, so I mean, nothing I can say to that.

7 Q. Did Judge Mercer ever notify you that he or Mercer Associates was going
8 to install a security camera system at the court?

9 A. No.

10 Q. Did anyone else from the court provide you with such information?

11 A. No.

12 Q. Did Judge Mercer ever notify you that he or Mercer Associates was going
13 to charge a fee for installing a security camera system at the court?

14 A. No.

15 Q. Did there come a time when you learned that Mercer Associates had
16 installed a security camera system at the court?

17 A. Yes.

18 Q. How and when did you learn this information?

19 A. I learned it when the Board had signed a voucher to approve payment.

20 After they sign it, I go through and do a final review, make sure numbers
21 and everything match on the bills, and I noticed, in this case, the name
22 Mercer Associates, so I put that to the side and asked my Bookkeeper if
23 that was Tim's business, and he said "yes". And I said, "Well, then at this
24 time, I don't feel comfortable signing this until we talk to our attorney".

25 Q. Why didn't you feel comfortable about that? What concerned you?

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(Robert Butler - Direct)

1 A. Well, we hadn't gone through procurement for it. I didn't know that they
2 were installed. Basic -- no quotes. Moreso to the fact that I know, in my
3 line of work and through the Town, because I work for a paving
4 contractor, that anytime paving came up, it was always a matter of
5 conflict of interest. So that's kind of why I set it aside, and then we
6 contacted our attorney and went from there.

7 Q. Who had authorized -- who could authorize payment of this voucher?

8 A. The Town Board. We need three signatures to approve the payment, but
9 ultimately, it falls on me. You know, we can have three people sign it,
10 but it's ultimately my signature. It's ultimately me who is held
11 responsible if there's an error with it. So ultimately, it comes up to me to
12 sign the check.

13 Q. Do you still have Exhibit 4 in front of you?

14 A. Yes.

15 Q. Still looking at page 2, can you please read into the record the paragraph
16 under the certification line?

17 A. Yup. "The following signature provides certification that, 1, any funds
18 and any goods or services awarded pursuant to this application shall be
19 used only in accordance with the provisions of Chapter 280 of the laws of
20 1999, with all rules and regulations governing the Justice Court
21 Assistance Program; 2, any goods and/or services purchased with any
22 Justice Court Assistance Program funds shall be obtained in accordance
23 with acceptable procurement practices established by the governing
24 municipality, but not limited to competitive bidding and procurement
25 policies and procedures; 3, no funds awarded pursuant to this application

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(Robert Butler - Direct)

1 shall be used to compensate Justices or nonjudicial staff, or to reduce
2 otherwise supplement funding provided by a town or village to its Justice
3 Court."

4 Q. Did you read that language when you signed this application or any other
5 of these JCAP applications previously?

6 A. Yes.

7 Q. So what was your understanding of what you were doing by certifying to
8 this document when you signed it?

9 A. Well, I was just certifying that the Town Court was going to apply for
10 funding for certain aspects of day-to-day work in the court. I believe it
11 was air conditioners, chairs, a shredder, maybe some reimbursement for
12 COVID, and I'm not sure what else -- all stuff that would be purchased
13 from, just, you know, Amazon or Staples. And the COVID things had
14 already been purchased, so that was just strictly a reimbursement.

15 Q. Did signing of this certification -- did you consider that that placed any
16 obligations upon you to make sure that the funds were used
17 appropriately?

18 A. No, because we still have our procurement policy that we have to adhere
19 to.

20 Q. Did you believe it required you to take any action if you felt like the
21 funds might not be used appropriately?

22 A. Yes. Ultimately, as the Supervisor, yeah. That's my job, financials of the
23 Town.

24 MR. PEDROTTY: Can you please show the
25 witness Exhibit 15?

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Robert Butler - Direct)

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THE WITNESS: You want this one back?

BY MR. PEDROTTY:

Q. I direct your attention to the bottom email from Judge Mercer to you, dated July 15, 2021. Did you receive this email?

A. Yes, because I believe I responded to this email.

Q. Okay. Did you respond to Judge Mercer by sending the email on the top of the document?

A. Yes.

Q. What did you mean when you wrote "We are currently reviewing everything to see if there's been a violation committed by using your own firm or any firm that you would benefit from financially"?

A. That just basically meant that I thought it could be a potential problem, so we turned it over to our attorney to let him investigate and contact to state whether or not this was going to be an issue. And we were waiting to hear back from him, which I think it took some time to hear back.

Q. Did there come a time when you learned that Judge Mercer was talking about charging the Town interest -- an interest fee due to nonpayment of the voucher?

A. Yes.

Q. How did you come -- how did that come to your attention?

A. Another voucher came across my desk for it.

Q. Okay. Who showed you that voucher?

A. More than likely would have been Don Pierro.

Q. Did there come a time when you had a telephone conversation with the judge about payment of the voucher?

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(Robert Butler - Direct)

1 A. Yes.

2 Q. What prompted that conversation?

3 A. We had emails back and forth, I believe. And I think -- I don't know if it
4 was him or myself, just, you know -- would probably be easier to discuss
5 this on the phone rather than back and forth in emails.

6 Q. Okay. Do you remember, approximately, when this conversation was?

7 How about in reference to seeing the new invoice with an interest fee?

8 A. I would say, probably, within a month. I don't think any more than that.

9 Q. Before or after the new invoice with the interest fee?

10 A. I think we might have talked before the second invoice, I believe.

11 Q. Do you recall the substance of that conversation?

12 A. Well, we just discussed, you know -- I presented my side to him on why I
13 felt the way I did, and he explained to me why he felt the way he did.

14 You know, basically --

15 Q. What did you tell him? What was your position?

16 A. My position was that, at that time, I didn't feel comfortable paying it
17 because it was his business, and I didn't think that that looked good, one,
18 because he's a judge, two, because he's an employee of the Town. But in
19 that conversation, I was trying to -- and I think I did say this in an email,
20 that you know, maybe we can work out payment for the cameras, but I
21 can't pay you for the installation.

22 You know, I was trying to work with him. And I told him on that phone
23 call, I wasn't -- this wasn't something I was trying to go after him for. I
24 didn't necessarily want it to get as big as it has. I was asking for a
25 clarification by my attorney, and then it just -- it went from there.

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(Robert Butler - Direct)

1 Q. Did the judge ever follow up with you about the possibility of the Town
2 paying for the cameras but not the labor?

3 A. No.

4 Q. And what was the judge's demeanor during this conversation?

5 A. Well, I think in the beginning, we were both kind of standoffish, but after
6 a few minutes, we were cordial, and everything went -- you know, it was
7 probably 10, 15 minute phone call, around there. You know, as far as I
8 was concerned, it ended on good terms, you know? It was, basically, I'll
9 just sit back and wait until I hear from my attorney.

10 Q. Did the judge give you any indication that he believed he was under
11 investigation at this time?

12 A. I don't believe so. At that time, I don't -- no. I take that back. He did say
13 he had been contacted by somebody from the state, but that was it. You
14 know, he didn't get into detail or anything.

15 Q. So the Mercer Associates voucher and the attached invoice listed the cost
16 of the camera as \$2,329.99?

17 A. Yes.

18 Q. Did Judge Mercer ever advise you that the camera system cost an amount
19 other than that?

20 A. No. Any costs that we were known was just what was on the invoice.

21 Q. If I told you today that the judge paid \$1,569.99 for the camera system,
22 would that be news to you?

23 A. Yes.

24 Q. If you had known this at the time, would you have offered to possibly pay
25 the judge for the cost of the camera system? The \$2,329?

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(Robert Butler - Direct)

1 A. If I had known that he paid a lesser price, I would have agreed to pay if --
2 if that would have been acceptable and it wouldn't have been a conflict of
3 any law, I would have paid him for the cost -- the actual physical cost of
4 the cameras, with proof of receipt.

5 Q. What he actually paid?

6 A. Yes.

7 Q. But not more than he actually paid?

8 A. Correct.

9 Q. In or about the fall of 2021, did you direct Don Pierro to hand out copies
10 of the Town employee handbook, code of ethics, and the procurement
11 policy to all employees and elected officials?

12 A. Yes.

13 Q. And did you direct Mr. Pierro to have each employee and official sign the
14 signature page, acknowledging receipt?

15 A. Yes.

16 Q. All right. Why did you ask elected officials to accept and sign? Why did
17 you include them in that?

18 A. Well, because we were -- ultimately, we're still employees of the Town,
19 and we still have to adhere to certain rules and, you know, code of
20 conduct -- one, just to make sure we're not doing things wrong, two, to,
21 you know -- so to prevent any idea or -- of conflict of interest and just to
22 keep everything above board, basically.

23 Q. Did there come a time where you learned that Judge Mercer was refusing
24 to accept and sign for these items?

25 A. Yeah. I knew that he didn't sign for them.

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Robert Butler - Direct)

1 Q. How did you learn that?

2 A. Don Pierro mentioned it.

3 Q. To your knowledge, did any other Town employees or elected officials
4 refuse to accept and sign for these documents?

5 A. I don't believe so.

6 Q. To your knowledge, in 2020/2021, was there any prohibition against
7 outside vendors doing work within the Town Building?

8 A. No. It's not technically owned by the Town. The building is owned by
9 the Village. So if we need to get work done, we have to clear it with the
10 Village first to make sure, one, if they're going to pay for it or if we're
11 going to pay for it. But typically, it's not an issue because we use -- we
12 have the same IT company, you know? The Town -- or the Village is
13 responsible for the utilities and the upkeep of the building, so it was never
14 an issue of having work done.

15 MR. PEDROTTY: Okay. I have no further
16 questions.

17 THE WITNESS: Okay.

18 MR. GARBER: Judge?

19 THE WITNESS: Do you want this back?

20 MS. JOSHI: Oh, yes.

21 JUDGE MERCER: How are you, Rob?

22 THE WITNESS: Good. How's it going?

23 JUDGE MERCER: Very good. I just have a
24 couple questions, and try to get out as soon as we can.

25 On State Exhibit 2 -- would you be able to give
206.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Robert Butler - Cross)

1 him --

2 CROSS-EXAMINATION BY

3 JUDGE MERCER:

4 Q. My question to you is were you present at that meeting?

5 A. No, I was not.

6 JUDGE MERCER: Okay. Would you be able
7 to give him exhibit -- State Exhibit 13?

8 MR. FITZPATRICK: 13?

9 JUDGE MERCER: Which I believe is voucher
10 288. Exhibit 13.

11 BY JUDGE MERCER:

12 Q. The voucher is dated 7/6, correct?

13 A. Yes.

14 Q. And it's a voucher that was approved by four signatures, at the night of
15 the meeting to pass the resolution?

16 MR. PEDROTTY: You might want to show
17 him Exhibit 14.

18 THE WITNESS: The copy I have has no
19 signatures on it, but it was signed by the four other Board
20 Members.

21 JUDGE MERCER: Would that be Exhibit 14?

22 MR. PEDROTTY: 14.

23 JUDGE MERCER: Okay. Can you show him?
24 Just to confirm.

25 THE WITNESS: Yeah.

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Robert Butler - Cross)

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BY JUDGE MERCER:

Q. Correct? Okay. At that time, you were present? Is your signature on the voucher?

A. My signature is not on that voucher, which is typical of the meetings. I wouldn't sign the vouchers the night of the meeting. I'd go back the next day and usually review them and then put my signature on them, approve them for payment.

Q. Okay. Approximately, on the -- on July 7th, you were aware of cameras because you would have received a voucher the day before?

A. Well, whenever I got that voucher is when I knew there was cameras up there.

Q. So let's just agree that on July 7th or 8th, you were aware of the camera install?

A. Whatever is on that voucher is the day that I learned about it.

Q. All I can see on this -- on Exhibit 14, there's no date of when it was signed?

A. Well, yeah.

Q. Okay. So we can establish that the first -- before the 10th of July, we -- you were aware of the cameras, correct?

A. Again, whenever that was submitted to the Town, that meeting. So if that was submitted on a Friday before the Monday meeting, that Monday meeting is when I would know about it. So --

Q. All right.

A. -- whatever date's on the top of that is what I would go by because that's when I would have gotten it, at that next meeting.

(Robert Butler - Cross)

1 Q. Let's go to Exhibit 15, which is a -- our lengthy email conversation, I
2 believe. And at that time, that would be our conversation through email?

3 A. That'd be one of them, yeah. I think we had a couple, couple exchanges
4 in email and then, eventually, a phone call.

5 Q. Right. When we did have that conversation or email, as I said, I would
6 get right back to you with the paperwork --

7 A. Um-hum.

8 Q. -- correct? And at that time, the response you received was from the
9 Honorable E. Timothy Mercer? When I went up into my office and I sent
10 you an email?

11 A. Yeah.

12 Q. Okay. Did you feel, at that time, I was using judicial influence on you
13 to --

14 MR. PEDROTTY: Objection.

15 MR. GARBER: Overruled.

16 A. No, I did not think you were using it -- influence over it. And as you see,
17 the response would have come from my personal work email.

18 BY JUDGE MERCER:

19 Q. Correct.

20 A. So it wasn't a matter of --

21 Q. At that time, we're both very busy people, correct?

22 A. We were just answering each other's questions and going from there.

23 JUDGE MERCER: Okay. Can we proceed to

24 Exhibit 19?

25 Exhibit 19 is a email exchange that I had with

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(Robert Butler - Cross)

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our Third District Counsel, Dave Dellehunt.

BY JUDGE MERCER:

Q. In the conversation that you -- in your testimony stated earlier, you said that I had contact with the Commission or "the state", I believe, is what you had said?

A. Um-hum.

Q. All right. For the record -- and the clarification of that is, the conversation I had with Mr. Dellehunt was regarding this, but it was not with the Commission.

MR. PEDROTTY: Objection. Respondent's testifying, for one thing.

MR. GARBER: What was your question, Judge?

JUDGE MERCER: Earlier in Mr. Butler's testimony, he says that I got word -- must have gotten word, or along that vein, that there was a -- at the time, aware of the complaint against me, which, in the emails that we had, was well before, regarding the conversation in the emails.

MR. GARBER: Are you referring to the email exhibit we just --

JUDGE MERCER: Yes.

MR. GARBER: -- discussed?

JUDGE MERCER: Yes.

MR. GARBER: Okay. Ask your question. Go

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(Robert Butler - Cross)

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ahead.

BY JUDGE MERCER:

Q. It's a challenging question to ask. I'll try to phrase it as best I can. You testified that I had word from the Commission; is that correct?

A. Yeah. You had spoken to somebody from the state.

Q. Right. Did I say who that was?

A. No.

Q. Okay. You assumed that it was from the Commission, correct?

A. Well, I just assumed it was from the state.

Q. Okay.

A. I just assumed --

Q. All right.

A. -- it was from the Office of Judicial Review. Is that who Dellehunt works for? I would assume that's who our attorney would have contacted, but I --

Q. But he wouldn't have contacted him, I believe. For the record, I wanted to show that, on Exhibit 19, the conversation with Dave Dellehunt, with regard to prior testimony of -- who I had with the state.

MR. GARBER: That isn't a question on the document. It speaks for itself.

JUDGE MERCER: Right. We'll get to that, then, I guess, in testimony.

And then can you please give him Exhibit 20 from the State?

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(Robert Butler - Cross)

1 BY JUDGE MERCER:

2 Q. In front of your is a -- I'm going to say a credit memo invoice that shows
3 a paid stamp on top of it --

4 A. Um-hum.

5 Q. -- and a zero balance to the Town. And are you aware that Mercer
6 Associates received no money or funds from the JCAP grant in this
7 procedure?

8 A. Yeah. Not because I saw this.

9 Q. Right.

10 A. I just had known you had taken the cameras down.

11 Q. Right.

12 A. And I never paid anything.

13 JUDGE MERCER: Okay. Thank you.

14 Can we go to my exhibits and start with Exhibit,
15 I believe it's 3 or C.

16 BY JUDGE MERCER:

17 Q. My question to you regarding Exhibit C would only be that -- were you
18 ever aware of any -- as Supervisor of the Town of Athens and employer
19 of Don Pierro, were you ever aware of any workplace violence reports
20 filed with -- against him?

21 MR. PEDROTTY: I object to this line of
22 questioning.

23 MR. GARBER: Well, he can answer whether
24 he was aware.

25 JUDGE MERCER: Thank you.

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Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Robert Butler - Cross)

1 MR. GARBER: Calls for a yes or no response.
2 JUDGE MERCER: Yeah.
3 THE WITNESS: What was the question again?
4 BY JUDGE MERCER:
5 Q. Were you aware of any workplace violence reports filed against Don
6 Pierro for his behavior?
7 A. Just this one, I believe, is the only one I remember. And it was --
8 MR. PEDROTTY: I --
9 MR. GARBER: No. No.
10 THE WITNESS: Oh, sorry.
11 MR. GARBER: Yes?
12 THE WITNESS: Yes.
13 MR. GARBER: Just yes or no.
14 THE WITNESS: Yes.
15 JUDGE MERCER: Thank you.
16 My Exhibit E, if you could?
17 Again, Exhibit E is just a email exchange. And I
18 just want to ask you one question in there.
19 MR. PEDROTTY: Your B, sorry.
20 MS. JOSHI: E.
21 JUDGE MERCER: E. In that email, you had
22 state -- is that --
23 MR. GARBER: Are you offering that into -- is
24 that -- you want -- has it been marked as an exhibit?
25 JUDGE MERCER: It is an exhibit, is it not? E?

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STATE COMMISSION ON JUDICIAL CONDUCT

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E?

MR. PEDROTTY: It's marked for identification.

MR. FITZPATRICK: Exhibit E?

MR. GARBER: Yeah. Has it been marked for --

MR. PEDROTTY: Exhibit E.

MR. FITZPATRICK: Yeah.

MR. PEDROTTY: It's not in evidence, correct?

MR. FITZPATRICK: Correct.

MR. GARBER: Has it been marked for identification?

MR. FITZPATRICK: Yes. I've got it here.

MR. GARBER: Okay.

BY JUDGE MERCER:

Q. The question I have -- is it true that the Town Attorney is on a retainer, and any fees that we discussed in that email would be a burden of the Town or is there no burden on the Town?

MR. PEDROTTY: I would object on relevance.

MR. GARBER: Sustained.

BY JUDGE MERCER:

Q. Did you inform me that the Town Attorney could not meet with me because he's -- it would cost additional monies?

MR. PEDROTTY: Objection. Relevance, as to what, context.

(Robert Butler - Cross)

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MR. GARBER: Sustained.

BY JUDGE MERCER:

Q. Mr. McHugh, the Town Attorney -- in that email conversation, did the tension between yourself and I get a little spicy with regards to payroll issues with my Court Clerk?

MR. PEDROTTY: Again, I object on relevance grounds.

MR. GARBER: Sustained.

BY JUDGE MERCER:

Q. In that email exchange, we discussed the Zoom call, correct?

A. Yes.

Q. Okay. And our March 31st Town Court presentation to the court -- to the Town was 3/1/21, correct?

MR. PEDROTTY: I just don't -- I'm sorry. I have the same objection to this entire line of questioning. I have a continuing objection on relevance grounds.

MR. GARBER: Yeah. What is it that you were asking about the three --

JUDGE MERCER: The relevance of a majority of the issue that's inside -- in the email that pertains to some of the conflict that the court was having with the Town -- pertains to some of the information that is on this Zoom call.

BY JUDGE MERCER:

Q. And as I am told, have the Zoom call -- are there -- is there a recording,

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(Robert Butler - Cross)

1 Mr. Butler, of the Zoom call from 3/1/21?

2 MR. GARBER: You may ask --

3 JUDGE MERCER: Right.

4 MR. GARBER: -- is there a recording.

5 THE WITNESS: To the best of my knowledge,
6 there is a recording. All of my recordings were saved onto
7 the Town server. I don't have access to those. I think
8 they've all been cataloged, and in order to get a copy of
9 those, you'd have to get permission from -- the Town
10 Supervisor would have to have the IT guy unlock them.
11 Now, there was some meetings were a Zoom meeting didn't
12 transpire because it had to go through the motion of saving
13 and backing up --

14 JUDGE MERCER: Um-hum.

15 THE WITNESS: -- and sometimes it took 25 to
16 30 minutes after reading, so I'd leave it plugged in, I'd come
17 back, and it'd be unplugged and closed, so it wouldn't have
18 been transferred. All of them should have been backed up.

19 BY JUDGE MERCER:

20 Q. Okay. Did you ever say to me that the Zoom call was deleted or erased
21 or unavailable?

22 A. I don't recall.

23 Q. In your general statement -- we can move on from that exhibit. As a
24 general question, is it true and is it accurate to say that Don does
25 whatever he is asked and he has never says [sic] no the Supervisor or any

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(Robert Butler - Cross)

1 Town Board Member?

2 A. I don't really understand what the question is.

3 Q. Well, the question is -- Mr. Pierro testified today that it's accurate to say
4 what he is asked and what he never says no -- he never says no the
5 Supervisor or the Town Board Members.

6 A. I can't answer to the Town Board Members. He's a direct employee of
7 mine. So anything that I ask of him, he should do. As far as the Board
8 Members, I don't know. He's not their employee. He solely works at the
9 discretion of the Supervisor.

10 JUDGE MERCER: Exhibit I, please.

11 BY JUDGE MERCER:

12 Q. Are you aware of the conversations that went on between Marcia, Judge
13 Pazin, and the Town Bookkeeper regarding who the Town works for,
14 who the courts are responsible for, and our roles and responsibilities?

15 A. I'm not on this email, so I don't know what I'm supposed to answer to in
16 regards to this email. I'm not in any of these messages.

17 Q. Would that email reflect a common demeanor of the Athens Town Court
18 with regards to the Town?

19 MR. PEDROTTY: Objection.

20 MR. GARBER: Sustained.

21 BY JUDGE MERCER:

22 Q. When did you authorize Mr. McHugh to file a complaint to the
23 Commission?

24 MR. GARBER: You ought to ask him if he did,
25 first.

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Robert Butler - Cross)

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BY JUDGE MERCER:

Q. Mr. Butler, did you file -- give authorization for the Town Attorney to file a complaint?

A. I asked him to move forward with it, yes.

Q. Correct. Do you know what date that was?

A. I don't know.

Q. All right. Could that date possibly be two weeks after the install of the cameras?

A. I would think that quick, no. I would say no. I asked him to check it out --

Q. Um-hum.

A. -- and talk to the state and see, you know, what the best way to go about this, but I think two weeks would have not been enough time to come up with anything.

Q. And after the filing of the complaint, how long did you have to wait from Mr. McHugh to hear back anything?

A. It was a while. The first I ever heard back was I received a call from him, asking me some questions. That's the first time I heard anything because it was just out of the blue.

Q. Do you know, approximately --

MR. GARBER: By "him", do you mean Mr. Pedrotty?

THE WITNESS: No. Sorry.

MR. GARBER: Or Mr. Fitzpatrick?

THE WITNESS: Yes.

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(Robert Butler - Cross)

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MR. GARBER: Okay.

THE WITNESS: Sorry. Ryan Fitzpatrick, right? Yeah. The quarterback, that's how I -- that's the first time I had heard after had discussed it with McHugh was when I talked to Ryan.

BY JUDGE MERCER:

Q. In testimony, Judge Pazin says that she contacted you regarding the matter?

MR. PEDROTTY: Objection. There's been no testimony by Judge Pazin.

BY JUDGE MERCER:

Q. I mean, did Judge Pazin ever contact you about the cameras in the court?

A. She mentioned them, yes. She said --

Q. Do you know when that was?

A. Again, probably not too long after they were installed.

Q. Okay.

A. You know, I don't have -- all these records, I turned over to the new Supervisor, so I don't have them readily available, but it would have been around that time -- you know, around that time. You know, I told her I would look into it.

Q. At that time, did you hear any of the problems or situations or how she tried to correct them?

MR. PEDROTTY: Vague. Objection. Vague.

MR. GARBER: Sustained.

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(Robert Butler - Cross)

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BY JUDGE MERCER:

Q. You were mentioned in testimony that Judge Pazin contacted you to discuss the problems with the JCAP grant.

MR. GARBER: Whose testimony?

JUDGE MERCER: It's in evidence from --

MR. PEDROTTY: Objection to form of the question.

MR. GARBER: Yeah. Rephrase it, please.

BY JUDGE MERCER:

Q. Did Judge Pazin come to you, looking for solutions to this problem?

A. No.

Q. You never discussed with Judge Pazin a resolution of anything that dealt with the JCAP grant claim?

A. In regards to the cameras?

Q. Yes.

A. And I don't understand exactly what you're asking, I guess.

Q. Did Judge Pazin ever contact you with -- looking to you and informing you of the cameras that were placed there?

A. Yes. She contacted me because she was not happy with the placement of them and, you know, to complain to me that they were just put in. That's really it, nothing else. I mean, we did, we discussed it, and again, I told her that I would handle anything --

Q. Okay.

A. -- with the attorney.

Q. Are you aware that the placement of the cameras had to be approved for

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Robert Butler - Cross)

1 their locations?

2 A. Yes.

3 Q. And you're aware of the locations of the cameras?

4 A. I am not.

5 Q. Okay. So Judge Pazin never asked you how you can get -- how she can
6 "get in front of this situation"?

7 MR. PEDROTTY: Objection.

8 MR. GARBER: Sustained. We've been through
9 it, Judge.

10 JUDGE MERCER: That's all I have. Thank
11 you very much.

12 THE WITNESS: Thanks.

13 (Counsel confer)

14 MR. PEDROTTY: Okay. I have no further
15 questions for this witness.

16 MR. GARBER: Yeah. I have just a couple.

17 MR. PEDROTTY: Sure.

18 MR. GARBER: May I have Exhibits 3 and 4,
19 please?

20 MR. FITZPATRICK: 3 and 4?

21 MR. GARBER: Please. Thank you very much.

22 MR. FITZPATRICK: You're welcome.

23 MR. GARBER: Mr. Butler, I'm going to show
24 you Exhibit 3, which has been designated into evidence.

25 THE WITNESS: Okay.

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(Robert Butler - Colloquy)

1 MR. GARBER: And Exhibit 3 is the electronic
2 version of the JCAP grant application.

3 THE WITNESS: Okay.

4 MR. GARBER: And did you review this
5 application?

6 THE WITNESS: Without looking at it, I can
7 tell you that I didn't review it --

8 MR. GARBER: Okay.

9 THE WITNESS: -- because I never -- again, I
10 never reviewed the handwritten stuff that they provided
11 either.

12 MR. GARBER: Okay.

13 THE WITNESS: It was just evidence.

14 MR. GARBER: Thank you. And let me see.

15 And in the ordinary course in -- from a business
16 of the -- and procedures of the Town, what is the
17 procurement policy? How does the Town procure services
18 or goods?

19 THE WITNESS: Well, depending on what it is,
20 some services, engineering and legal, we can just --
21 they're -- I forget what they're considered, but we don't have
22 to solicit for those as far as getting competitive bids, but on
23 a normal business, like our highway or the Town Clerk,
24 typically, if they're looking to purchase something over
25 2,000 or \$2,500, they have to have a couple quotes to

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Robert Butler - Colloquy)

1 present to us. And then we discuss and then, you know, we
2 make a motion and authorize them to move forward --

3 MR. GARBER: Um-hum.

4 THE WITNESS: -- with the purchase from, you
5 know, whichever vendor we feel meets the criteria.

6 MR. GARBER: And in your view, would that
7 process apply to the procurement of security cameras in the
8 amount of -- I don't -- let's see, I'll look it up here.

9 Well, approximately \$3,300? Do I have that --

10 THE WITNESS: Yeah, it's about right.

11 MR. GARBER: Yeah.

12 THE WITNESS: Yeah. So we'd follow the
13 same procurement policy, especially because the grant
14 award was for a little more than 3,000 and the cameras
15 were like 3,300, so there was a --

16 MR. GARBER: Um-hum.

17 THE WITNESS: -- a difference that would have
18 needed to be made up somewhere within their budget.

19 MR. GARBER: Um-hum.

20 THE WITNESS: So -- but it would have
21 followed standard procurement policy.

22 MR. GARBER: Okay. And my last question is
23 do you recall the date on -- that you had a telephone
24 conversation with Judge Mercer, advising him that you
25 needed to review this matter with the Town Attorney?

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Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Robert Butler - Colloquy)

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THE WITNESS: I don't recall, but around the same time, there's an email in evidence of me stating that as well. So it was in that -- within that time, we had a phone call.

MR. GARBER: That would have been after the voucher was --

THE WITNESS: Yes. Would have been after the voucher.

MR. GARBER: -- procured?

THE WITNESS: Yes.

MR. GARBER: Okay. I don't have anything further.

Mr. Pedrotty?

MR. PEDROTTY: No.

MR. GARBER: Judge Mercer?

JUDGE MERCER: Nothing else, sir.

MR. GARBER: Okay. Then I think we -- as far as -- we're off the record now?

MR. FITZPATRICK: We can go off the record.

(Proceedings concluded at 5:36 p.m.)

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EXHIBITS

COMMISSION

| | Description | Ident. | In Evid. |
|---|--|--------|----------|
| 1 | Letter from Marcia Puorro to the Athens Town Board, dated September 21, 2020. One page. | 10 | 10 |
| 2 | Letter from Linda M. Stacey to the N.Y.S Unified Court System Office of Court Administration, dated October 6, 2020. One page. | 10 | 10 |
| 3 | 2020-21 Justice Court Assistance Program Grant Application Athens Town Court, Greene County. Six pages. | 10 | 10 |
| 4 | Fax from Marcia Puorro to Office Of Justice Court Support, dated October 7, 2020. 18 pages. | 10 | 10 |
| 5 | Email exchange between Kathleen Roberts and Marcia Puorro, dated November 25, | 10 | 10 |

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| 1 | | 2020, and December 1, 2020, with | | |
| 2 | | attachment. Two pages. | | |
| 3 | | | | |
| 4 | 6 | Email from Carrol A. Mercer to | 10 | 10 |
| 5 | | Marcia Puorro, dated December 1, 2020, | | |
| 6 | | with attachment. Two pages. | | |
| 7 | | | | |
| 8 | 7 | Letter from Hon. Gerald W. Connolly to | 10 | 10 |
| 9 | | Marcia Puorro, dated January 22, 2021, | | |
| 10 | | with enclosed 2020-21 Justice Court | | |
| 11 | | Assistance Program Award Reconciliation | | |
| 12 | | Report for the Athens Town Court, Greene | | |
| 13 | | County. Two pages. | | |
| 14 | | | | |
| 15 | 8 | Check from the State of New York to the | 10 | 10 |
| 16 | | Town of Athens for \$3,089.99, dated | | |
| 17 | | February 19, 2021. One page. | | |
| 18 | | | | |
| 19 | 9 | Printout of confirmation of purchase | 10 | 10 |
| 20 | | of security camera system model: | | |
| 21 | | CSP4POEMIC8. One page. | | |
| 22 | | | | |
| 23 | 10 | Email from CCTV Security Pros to | 10 | 10 |
| 24 | | ██████████@msn.com, dated June 3, 2021. | | |
| 25 | | One page. | | |

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| 1 | | | | |
| 2 | 11 | CCTV Security Pros Packing Slip, one page. | 10 | 10 |
| 3 | | | | |
| 4 | 12 | Printout from cctvsecuritypros.com website | 10 | 10 |
| 5 | | about security camera system model: | | |
| 6 | | CSP-4POEMIC8. Six pages. | | |
| 7 | | | | |
| 8 | 13 | Town of Athens Voucher, dated July 6, | 10 | 10 |
| 9 | | 2021, with affixed note by “Marcia” and | | |
| 10 | | attached Mercer Associates Invoice, | | |
| 11 | | dated July 6, 2021. Two pages. | | |
| 12 | | | | |
| 13 | 14 | Town of Athens Voucher, dated July | 10 | 10 |
| 14 | | 6, 2021, with additional signatures. | | |
| 15 | | No attached invoice or note by | | |
| 16 | | “Marcia.” One page. | | |
| 17 | | | | |
| 18 | 15 | Email correspondence between Respondent | 10 | 10 |
| 19 | | and Robert Butler et al., dated July 15, | | |
| 20 | | 2021. Two pages. | | |
| 21 | | | | |
| 22 | 16 | Email from Respondent to Hon. David | 10 | 10 |
| 23 | | Dellehunt, dated July 21, 2021. One page. | | |
| 24 | | | | |
| 25 | 17 | Email from Respondent to Don Pierro, with | 10 | 10 |

iii.

STATE COMMISSION ON JUDICIAL CONDUCT

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|----|----|--|----|----|
| 1 | | attachment, dated August 18, 2021. Two | | |
| 2 | | pages. | | |
| 3 | | | | |
| 4 | 18 | Copy of Mercer Associates Finance Charge, | 10 | 10 |
| 5 | | dated August 18, 2021. One page. | | |
| 6 | | | | |
| 7 | 19 | Email correspondence between Respondent | 10 | 10 |
| 8 | | and Hon. David Dellehunt, dated November | | |
| 9 | | 18 and 19, 2021. Two pages. | | |
| 10 | | | | |
| 11 | 20 | Mercer Associates Invoice, dated December | 10 | 10 |
| 12 | | 30, 2021. Two pages. | | |
| 13 | | | | |
| 14 | 21 | Letter from Respondent to Peter Pedrotty, | 10 | 10 |
| 15 | | dated January 17, 2022. Three pages. | | |
| 16 | | | | |
| 17 | 22 | Town of Athens Official Document | 10 | 10 |
| 18 | | Distribution signature page. One page. | | |
| 19 | | | | |
| 20 | 23 | 2020-21 Justice Court Assistance Program | 10 | 10 |
| 21 | | Award Reconciliation Report for the Athens | | |
| 22 | | Town Court, Greene County, signed by Hon. | | |
| 23 | | Constance Pazin, dated May 23, 2022. One | | |
| 24 | | page. | | |
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| 4 | 25 | Rules of the Chief Administrative | 13 | 13 |
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v.

STATE COMMISSION ON JUDICIAL CONDUCT

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CERTIFICATION

I, Megan Dumas, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: June 13, 2023



Megan Dumas

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

----- -X

In the Matter of an Investigation :
Pursuant to Section 44, subdivision 4, :
of the Judiciary Law in Relation to :

E. TIMOTHY MERCER :

a Justice of the Athens Town Court, :
Greene County. :

----- -X

Commission Offices
Corning Tower, Suite 2301
Empire State Plaza
Albany, NY 12223

May 17, 2023
9:39 a.m.

B e f o r e:

DAVID M. GARBER, ESQ.
Referee

P r e s e n t:

For the Commission
S. PETER PEDROTTY, ESQ.
Senior Attorney

SHRUTI JOSHI, ESQ.
Staff Attorney

For the Respondent
HON. E. TIMOTHY MERCER
Respondent, *Pro Se*

A l s o P r e s e n t:

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
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(Matter of E. Timothy Mercer - Colloquy)

1 MR. GARBER: This is day 2 of a hearing in the
2 Matter of E. Timothy Mercer, Athens Town Court Justice,
3 Greene County, pursuant to Section 44, subdivision 4 of the
4 Judiciary Law. And my name is David Garber. I'm the
5 referee in this matter.

6 Mr. Pedrotty, would you state your appearance,
7 please?

8 MR. PEDROTTY: Peter Pedrotty, Senior
9 Attorney for Commission Counsel.

10 MR. GARBER: And --

11 MS. JOSHI: Shruti Joshi, Staff Attorney for the
12 Commission.

13 MR. GARBER: And Mr. --

14 MR. FITZPATRICK: Senior Investigator Ryan
15 Fitzpatrick. I'm recording the proceeding.

16 MR. GARBER: Okay. And Judge, you're
17 appearing *pro se*?

18 JUDGE MERCER: And Respondent, appearing
19 *pro se*, the Hon. Edward Timothy Mercer.

20 MR. GARBER: Thank you very much. Let's
21 begin.

22 MR. PEDROTTY: Thank you, Mr. Garber.
23 The Commission calls the Hon. Constance Pazin. Why
24 don't you set this --

25 HON. PAZIN: Where did you want me?

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1 MR. PEDROTTY: Set it right -- anywhere
2 there.

3 HON. PAZIN: Anything?

4 MR. PEDROTTY: Grab (unintelligible). Just
5 head over to that chair to the left of Mr. Garber, the
6 Referee.

7 MR. GARBER: Right here.

8 HON. PAZIN: Oh.

9 MR. GARBER: Good morning, Judge Pazin.

10 HON. PAZIN: Good morning.

11 MR. GARBER: Judge Pazin, I want to inform
12 you that these proceedings are being digitally recorded.
13 The recording will be then transcribed to facilitate a clear
14 and accurate record. Please speak slowly, clearly, and
15 directly into the microphone. Please refrain from moving
16 away from the microphone and talking over other speakers.
17 Please refrain from responding until a question is
18 completed, and answer each question with words, not with
19 nods or gestures. And please refrain from creating
20 excessive background noise as it is amplified in the
21 recording system. And please turn off a cell phone if you
22 have one --

23 HON. PAZIN: I did, actually.

24 MR. GARBER: -- and other electronic
25 equipment.

(Hon. Constance Pazin - Direct)

1 A. It is part time.

2 Q. Do you have any other nonjudicial employment?

3 A. No, I don't.

4 Q. Who is your cojudge?

5 A. Judge Mercer.

6 Q. And is his position also part time?

7 A. Yes.

8 Q. Now, are you familiar with the Justice Court Assistance Program, which I
9 will refer to as JCAP?

10 A. Yes, I am.

11 Q. How many times have you, as a justice, been involved in the filing of a
12 JCAP application for your court?

13 A. Since 2002. I have my paperwork with me.

14 Q. What is your understanding of JCAP's purpose?

15 A. JCAP is -- purpose, to me, is to help the courts. They've really, in the
16 past -- we have a large courtroom. We've gotten computers -- well,
17 computers, not now, but chairs. We've gotten conference tables. We've
18 gotten shredders. We've gotten copy machines. One year -- and I can't
19 remember the exact year -- I had a hit in my wall, and the courtroom
20 needed some sprucing up, so they paid for half of the paint -- painting of
21 it, and the Village and the Town paid the other half, which was decided
22 before we did this.

23 We had our jury section made larger, and they did fund that to us. We've
24 gotten the -- for the attorneys and -- you know, whatever, our pulpits or
25 whatever you want to call them, they've given us that. I received a new

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(Hon. Constance Pazin - Direct)

1 desk at one time after all those years. We've gotten chairs.

2 Q. Okay. Thank you, Judge.

3 A. They've really helped us a lot from not having anything at all.

4 Q. Okay. So your understanding of the purpose of the program is to give
5 funding to town or village courts in order to purchase things for the
6 court?

7 A. That are needed that the facility itself, like the town can't afford to go
8 ahead and do.

9 Q. Do you have an understanding with respect to whether judges and court
10 staff may personally benefit from JCAP funds?

11 A. No. It's written right there that we can't.

12 Q. Were you involved in the Athens Town Court's JCAP grant application
13 for the 2020 -- 2021 cycle?

14 A. 2021 cycle? Yes, I was.

15 Q. Can you describe the nature of your involvement that year?

16 A. Well, it was discussed in the office. And we needed air conditioners
17 badly for the courtroom because the courtroom was quite large and our
18 air conditioner was probably 15, 18 years old. It rattled when it went on,
19 didn't cool the courtroom off. So we did need one for the courtroom, and
20 we needed one for the side room that our ADA or attorneys use. So we
21 wanted a small one and a large one.

22 I needed a new chair. Mine fell apart. And we wanted to get curtains or
23 something for our windows in the office to clean it up just a little bit.

24 And a shredder, we needed a larger sweater [sic] -- shedder. And we also
25 wanted some reimbursement for the COVID that we had spent at that

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(Hon. Constance Pazin - Direct)

1 time.

2 Q. Okay. Who were involved in these discussions?

3 A. Well, Judge Mercer was there. Vee was there. Marcia was there. And I
4 was there.

5 Q. By "Vee", do you mean Vee Carl?

6 A. Vee Carl, yes.

7 Q. And Marcia Puorro?

8 A. Marcia Puorro.

9 Q. Where did these discussions take place?

10 A. Right in the office.

11 Q. About how many discussions were there?

12 A. Well, there were a few. We all had our thought on what we needed. We
13 did get a lot from JCAP, but we did want the air conditioners, mainly.
14 That was our main thing.

15 Q. Were you present for any discussions about including a security camera
16 system in the JCAP application?

17 A. No, I was not.

18 MR. PEDROTTY: Can you please show the
19 witness Exhibit 1?

20 BY MR. PEDROTTY:

21 Q. Judge, do you recognize Exhibit 1?

22 A. Yes. This is what we agreed to.

23 Q. When you say "this is what we agreed to," does that -- what is Exhibit 1?

24 A. Exhibit 1 is -- that was sent down to the Supervisor and the Board
25 Members requesting a resolution to be passed for the air conditioners,

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(Hon. Constance Pazin - Direct)

1 new window blinds, a new shredder, a desk chair, and reimbursement for
2 COVID expenses.

3 Q. Does Exhibit 1 accurately reflect your understanding of what was to be
4 requested in the JCAP grant?

5 A. Yes, it is. I okayed this.

6 Q. You reviewed it?

7 A. Yes, I did.

8 Q. Did you believe anything was omitted from it?

9 A. No.

10 Q. Do you know if Judge Mercer reviewed that document as well?

11 A. I assume that he did.

12 Q. Okay. Please give that back to Mr. Fitzpatrick.

13 MR. PEDROTTY: Ryan, please give the
14 witness Exhibit 4.

15 BY MR. PEDROTTY:

16 Q. Judge, I refer you to page 2. Do you recognize page 2?

17 A. Yes, I do.

18 Q. What is page 2?

19 A. This is something that we signed, myself along with Judge Mercer, that
20 was sent down to the Supervisor at that time to sign.

21 Q. What is the date of your signature on that?

22 A. 9/21.

23 Q. Is that the date you signed it?

24 A. Yes, it is.

25 Q. And at the date you signed Exhibit 4, page 2, the signature page, what

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1 was your understanding regarding the items that the Court would be
2 requesting in this JCAP application?

3 A. Exactly what we requested at that time that was sent down to the Board.

4 Q. Exactly what was in the letter?

5 A. Right.

6 Q. Exhibit 1?

7 A. Right.

8 Q. Who filled out the JCAP application online?

9 A. Marcia Puorro usually -- Marcia Puorro.

10 Q. Did you review that application at or about the time you signed page 2 of
11 Exhibit 4?

12 A. At that time, Mrs. Puorro did not make out the -- all I signed for was the
13 letter. I reviewed the resolution, signed this paper, but I did not see what
14 it was exactly put on.

15 Q. Put on the application itself --

16 A. Right.

17 Q. -- online? Judge, please give that document back to Mr. Fitzpatrick.

18 Judge, I refer you to Exhibit 3. Do you recognize Exhibit 3?

19 A. To be honest with you, I didn't see what was sent to the State. If I can
20 speak, I assumed after all these years that it went in correctly. In other
21 words, I did not see the cameras on here.

22 Q. Okay. So before Ms. Puorro submitted the JCAP application --

23 A. Right.

24 Q. -- did you have an opportunity to review the application before it was
25 sent?

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(Hon. Constance Pazin - Direct)

1 A. It was never given to me, but I didn't think anything of it.

2 Q. And why is that?

3 A. Like I said, we've been doing this since 2002, and I just assumed that it
4 was done as in the past.

5 Q. Prior to submission of the JCAP application to the Office of Justice Court
6 Support by Ms. Puorro, did you know that a security camera system had
7 been added to the application?

8 A. No, I did not.

9 Q. What is your understanding of how, when, and why a security camera
10 system was added to the application?

11 A. Well, this is going to be all hearsay.

12 Q. Just --

13 A. Due to the fact that --

14 Q. -- can you answer the question?

15 A. I understand that Judge Mercer was threatened in court. That's from what
16 I heard. I don't know of any other reason that we'd get security cameras.
17 I would have gone into the conversation if it were brought up to me, and I
18 probably would have said, "Well, let's see what happens." I've never
19 wanted security cameras in the courtroom, but I would have listened
20 and --

21 Q. Okay. Do you have an understanding of who physically added the
22 security cameras to the application?

23 A. Well, Marcia would have had to.

24 Q. Okay. Do you have an understanding of why she did that?

25 A. Because she was directed to.

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(Hon. Constance Pazin - Direct)

1 Q. By whom?

2 A. By Judge Mercer.

3 Q. Okay. And what is your understanding of that based upon?

4 A. Like I said, I think that that just came about after everything was said and
5 done with what we wanted. I don't know why he directed her to include
6 that.

7 Q. Okay. But you learned at some point that that --

8 A. I did.

9 Q. -- that happened. Approximately when did you learn that that happened?

10 A. Well, you know, the date I can't actually tell you. It did come out maybe
11 when an email came across about wanting estimates on security cameras,
12 and that's when I spoke to Mrs. Puorro.

13 MR. PEDROTTY: Ryan, can you please show
14 the witness Exhibit 5?

15 THE WITNESS: Do you want this back?

16 BY MR. PEDROTTY:

17 Q. Judge, I direct you to the bottom email on the first page of Exhibit 5 from
18 Kathleen Roberts to Marcia Puorro. And I see that you are copied on this
19 email; is that correct?

20 A. Yes, I am.

21 Q. Okay. Is this the email to which you referred to in your testimony just
22 now?

23 A. I think it was November 25th. I think there was an email that came
24 through that questioned something about the security cameras.

25 Q. Okay. And what is the date --

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(Hon. Constance Pazin - Direct)

1 A. I know this --

2 Q. -- on that bottom email, Judge?

3 A. Let's see. What's the date on it? November 25th.

4 Q. Okay. Thank you. All right. You can please give that back to Mr.
5 Fitzpatrick.

6 MR. GARBER: Mr. Fitzpatrick, what exhibit
7 number was that, please?

8 MR. FITZPATRICK: That was number 5.

9 MR. GARBER: Thank you.

10 BY MR. PEDROTTY:

11 Q. Judge, in your 20-plus years of experience as a judge overseeing JCAP
12 applications, did you ever add or direct a clerk to add a grant item to the
13 JCAP application that the Town Board had not authorized the Court to
14 apply for?

15 A. I would never do that.

16 Q. Did there come a time when you learned that Judge Mercer had
17 purchased a security camera system?

18 A. I didn't know a lot until I start hearing things, which again, like I say, is
19 hearsay. I saw the cameras when I came in and they were on the odd
20 desk that we have in the office. And I asked Marcia what they were, and
21 she told me that they were the security cameras that Judge Mercer had
22 purchased.

23 Q. Prior to that date --

24 A. What date, I can't tell you that, the date of when I saw them.

25 Q. Prior to that date, when you saw those cameras, had you had any

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(Hon. Constance Pazin - Direct)

1 communications with Judge Mercer about who was going to purchase a
2 camera system?

3 A. No, because I didn't even know they were going to be purchased.

4 Q. And at that point, did you know anything about who was going to install
5 them?

6 A. No, I did not.

7 Q. Did there come a time when you learned that Judge Mercer had installed
8 the cameras?

9 A. Yes, I did.

10 Q. How did that come to your attention?

11 A. Well, I came in, and they were installed, and he was setting up the
12 pictures of the courtroom, the hall, the office, which was directly on me,
13 and the door. And where else did we have it? I could remember three
14 different places that they were set up.

15 Q. And once you learned about the installation of the cameras, what, if
16 anything, did you know about payment to Judge Mercer or his company,
17 Mercer Associates, for --

18 A. I never --

19 Q. -- the installation?

20 A. I didn't even think of that. I found out -- I saw the invoice, if I can speak,
21 on May 5th [REDACTED]

22 [REDACTED].

23 Q. May 5th of what year, Judge?

24 A. I have it with me. It was the '20 -- it could be '21, maybe.

25 Q. If I suggest it was 2022, would that be accurate?

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Hon. Constance Pazin - Direct)

1 A. Maybe '22. [REDACTED]
2 [REDACTED].

3 Q. Okay. Was it well after -- a time well after you saw the judge installing
4 the camera systems?

5 A. Oh, yes.

6 Q. Over a year?

7 A. Probably.

8 Q. Okay. What concerns at that time, if any, did you have about Judge
9 Mercer's installation of the cameras?

10 A. I thought about it. After I saw where they were placed, I did tell Judge
11 Mercer I did not want them on when I -- on my court weeks, knowing
12 that they can't be on the bench. They can't be directly on defendants in
13 the hall. They can't be on employees in the office. They were only to be
14 on a window, an exit, and entrance, not on anyone in -- you know, you've
15 got attorneys. You've got defendants. You've got YOs. You've got --
16 you can't have it on the bench where if somebody subpoenas you for that
17 and you're carrying on a bench trial or whatever, even though there's no
18 sound on it, you can read the people's lips. And it's just -- you just can't
19 do it.

20 Q. What was your basis of knowledge for that?

21 A. I made a few phone calls, and Dave Dellehunt -- I don't know -- you must
22 know Dave Dellehunt; he's the Attorney for the Third Judicial District --
23 had sent a memo to New Baltimore as to where they're supposed to be
24 placed and whatever. They have to cover themselves when they hold court.
25 Then I called out to Cairo, and they placed them in the wrong spot, and

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(Hon. Constance Pazin - Direct)

1 they knew that Mr. Dellehunt was coming, so they were --

2 Q. Who is Carol?

3 A. -- there all night changing the cameras.

4 Q. Who is Carol? You had mentioned --

5 A. Cairo. Cairo, New York.

6 Q. Oh, Cairo.

7 A. Yeah.

8 Q. Okay.

9 A. You say Cairo, not Cairo like city people will call it.

10 Q. I see. Cairo. Got it. The town.

11 A. And what they did is they knew that they'd placed them in the wrong
12 places.

13 Q. When you say "they", who do you mean?

14 A. Well, the court clerks, Joan. She's now the judge out there. But I did call
15 them. I called around.

16 Q. Did you take any further action after that?

17 A. Well, I placed the letter from Mr. Dellehunt on Judge Mercer's desk.

18 MR. PEDROTTY: Ryan, can you show that
19 exhibit to the witness? I don't know what it -- it's a letter.
20 It's a Respondent exhibit.

21 THE WITNESS: I was going to say, I have it
22 with me.

23 MR. PEDROTTY: Mr. Dellehunt should be --

24 THE WITNESS: In my little briefcase, I have
25 one.

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Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Hon. Constance Pazin - Direct)

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MR. FITZPATRICK: I'm handing the witness
Respondent's Exhibit H.

THE WITNESS: That's the one.

BY MR. PEDROTTY:

Q. What do you recognize Respondent's Exhibit H to be?

A. This is the letter from -- or memo or whatever you want to call it -- from
Mr. Dellehunt as to cameras in the courtroom.

Q. Okay. And did you receive a copy of that Exhibit H?

A. Actually, New Baltimore sent it to me.

Q. Okay. And then what, if anything, did you do with it once you received
it?

A. I put it on Judge Mercer's desk.

Q. And did you say anything to him about it at that time?

A. No, I did not.

Q. Did you put a note on it?

A. I did not. I just put it on his desk.

Q. What was your purpose in doing so?

A. So he could see that they were placed in the wrong places.

Q. Okay. You can give that back to Mr. Fitzpatrick.

MR. PEDROTTY: Ryan, can you please show
the witness Exhibit 13?

BY MR. PEDROTTY:

Q. Judge, do you recognize Exhibit 13?

A. [REDACTED]

Q. [REDACTED]

(Hon. Constance Pazin - Direct)

1 A. [REDACTED]
2 [REDACTED].

3 MR. PEDROTTY: [REDACTED]
4 [REDACTED]

5 A. I didn't see this.

6 BY MR. PEDROTTY:

7 Q. Okay. Have you seen Exhibit 14?

8 A. I saw it, [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q. Initialing where?

13 A. On the bottom of Judge Mercer's signature.

14 Q. Okay.

15 A. And actually, that was --

16 Q. Is that your --

17 A. -- Donald Pierro.

18 Q. -- initials under Judge Mercer's signature?

19 A. No, it isn't.

20 Q. Do you recognize whose signature it is? Who --

21 A. Yes. It's Donald Pierro's, the bookkeeper.

22 Q. Okay. Other than that, did you have any involvement in the preparation
23 or authorization of Exhibits 13 or 14?

24 A. I had no involvement in any of this. I don't look at vouchers when people
25 put them in unless I sign them. I don't check every voucher. I don't feel

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(Hon. Constance Pazin - Direct)

1 that I have to check every voucher that's sent down to the bookkeeper.

2 Q. Okay. Can you please give those exhibits back to Mr. Fitzpatrick?

3 Judge, are you aware that Judge Mercer is -- has a financial interest in
4 Mercer Associates?

5 A. I know that that's his company.

6 Q. When initially did you learn that?

7 A. Oh, I've known for years.

8 Q. Do you have any financial interest in Mercer Associates?

9 A. No, I don't.

10 Q. If those vouchers, Exhibit 13 and 14, had been paid to Mercer Associates,
11 would you have personally and financially benefited in any way?

12 A. No, I wouldn't have.

13 Q. Now, did there come a time when you learned that there was an issue in
14 which the Town was not giving funds to the Court for payment related to
15 these cameras?

16 A. Well, I heard -- I didn't know it was for the cameras, but I heard that --

17 Q. What did you think it was for?

18 A. -- Don was holding a check for us.

19 Q. What did you think it was for? You said you didn't know it was for the
20 cameras.

21 A. Well, by now, I know that there's a -- Judge Mercer installed the cameras
22 and he was looking for the payment of his, I guess, the purchasing of the
23 cameras. I did not know that he purchased him. So I did -- I think there's
24 an email out there that you're speaking of.

25 Q. Well, what were your concerns at the time about the Court not receiving

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(Hon. Constance Pazin - Direct)

1 the JCAP funds --

2 A. Well, what I didn't --

3 Q. -- that they had been awarded?

4 A. What I didn't care for was Don holding money that belonged to the Court.

5 Q. And what would happen if the Court didn't get to spend those JCAP
6 funds?

7 A. The funds that I asked for?

8 Q. That had been awarded --

9 A. That had --

10 Q. -- to the Court.

11 A. Oh, that had been -- I didn't know at that time that the cameras were
12 awarded.

13 Q. Okay. I understand. But what would -- do you have an understanding of
14 what would happen if JCAP awarded funds to the Court but the Court did
15 not spend those funds?

16 A. We have to send it back.

17 Q. Send it back to who?

18 A. Send it back to JCAP.

19 Q. Okay. And then, was there any other consequence if that were to
20 happen?

21 A. Not that I know of. I know that I did sign a voucher having Don send the
22 money back.

23 MR. PEDROTTY: Ryan, can you please show
24 the witness Exhibit 23?

25 BY MR. PEDROTTY:

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(Hon. Constance Pazin - Direct)

1 Q. Judge, do you recognize Exhibit 23?

2 A. Yes. I signed this.

3 Q. Okay. Why did you sign that?

4 A. I signed it because the funds were held too long and another grant was
5 coming up, and by us holding the money and not spending it, we were not
6 allowed to apply for another grant. So I said to Marcia, "Get the forms,
7 and I'll sign it, and I want that money sent back."

8 Q. So what happened as a result of the Court's failure to spend the JCAP
9 grant funds awarded to it for the 2020/2021 cycle? What happened --

10 A. I --

11 Q. Was there a consequence to the court for the following JCAP year?

12 A. No, there wasn't. There was not. Again, we were sent that we -- the
13 grant was there, and we reapplied for this past year. So they didn't punish
14 us for holding money and not spending it. Is that what you're looking
15 for?

16 Q. So the next grant cycle would be the 2021/2022 cycle, correct?

17 A. Oh, that. Oh, I'm sorry. That we couldn't apply for any grants because
18 we held -- we had the money that we hadn't spent.

19 Q. Okay.

20 A. I think that's what you were looking for.

21 Q. Is that your testimony, Judge? Is that what happened?

22 A. Right. Since we didn't spend the money, we were not allowed to apply
23 for another grant.

24 Q. Thank you. What happened to the camera system, if you know?

25 A. Oh, I know it was removed.

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(Hon. Constance Pazin - Direct)

1 Q. By whom?

2 A. I have no idea.

3 Q. Do you know when it was removed, approximately?

4 A. Well, it was only up, I'd say, for maybe a few weeks, and then it was
5 removed, and everything was gone.

6 Do you want this back?

7 Q. Yeah.

8 MR. PEDROTTY: Ryan.

9 MR. FITZPATRICK: (Unintelligible). Okay.

10 MR. PEDROTTY: I have no further questions
11 at this time.

12 MR. GARBER: Okay. Thank you.

13 Judge Mercer?

14 CROSS-EXAMINATION

15 BY JUDGE MERCER:

16 Q. Good morning, Judge Pazin.

17 A. Good morning.

18 Q. I apologize for the delay for yesterday and tying up your day.

19 A. That's fine. Things happen.

20 Q. Can we go to exhibit -- State Exhibit 3, which, again, is going to be the
21 online application? And I just want to reaffirm -- is that in your
22 testimony, you said you did not see that application?

23 A. No, I didn't. I didn't ask to see it.

24 Q. Right.

25 A. I assumed that it went in for the things that we had asked for.

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(Hon. Constance Pazin - Cross)

1 Q. And that was --

2 A. The air conditioners --

3 Q. Would that be because you trusted --

4 A. -- and whatever the resolution said.

5 Q. Did you trust Marcia to do that?

6 A. Yes, I did.

7 Q. Okay. And --

8 A. Did you want that back?

9 Q. You had told Mr. Pedrotty in his examination that -- a couple things
10 about the locations of the cameras and things?

11 A. Correct.

12 Q. Which I'll get to in my questioning there. You did state that it -- the
13 camera was pointed at your desk, correct?

14 A. Directly. I could watch myself on the screen. It wasn't pointed -- it was
15 where it was set. You had it pointed towards the door, but I was also in it
16 and the file cabinet behind me.

17 Q. The location of the camera was -- the intent of the location of the camera,
18 would you agree, would be to record any of the transactions that went on
19 at the cash customer service door?

20 A. It should have just been on that, not on me.

21 Q. And the location of your desk is within a foot and a half of the -- is it
22 correct to say that the location of your desk --

23 A. The door's here, and my desk is this way. It's right there.

24 Q. Correct. Okay. Thank you.

25 JUDGE MERCER: Can you please show Judge
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(Hon. Constance Pazin - Cross)

1 Pazin Exhibit -- I believe it -- was it H I have? I don't know
2 why it's an H. It is actually -- that's my Exhibit H, I
3 believe. It's the memo from Mr. Dellehunt, Judge
4 Dellehunt.

5 THE WITNESS: Yes.

6 BY JUDGE MERCER:

7 Q. Okay. What is the date on that memo, Judge Pazin?

8 A. Oh, that's 2017.

9 Q. Okay.

10 A. But New Baltimore had sent me a copy of what they had received.

11 Q. And you said that you called the Town of New Baltimore Court?

12 A. Right. And that they sent me this, and I also called the Town of Cairo.

13 Q. Of Cairo.

14 A. And that was during that time.

15 Q. Okay. You requested those after the cameras were installed; is that
16 correct?

17 A. I did.

18 Q. Okay. Inside that document, a few lines down, it says that cameras are
19 generally permissible, correct?

20 A. Right, if they're put in the right place.

21 JUDGE MERCER: Okay. All right.

22 Can we go to the State's Exhibit 23, please?

23 Can you hand that back? Thank you.

24 BY JUDGE MERCER:

25 Q. What that document is going to be is the reconciliation report. And

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(Hon. Constance Pazin - Cross)

- 1 you've already testified that you're familiar with that document?
- 2 A. Yes, I am.
- 3 Q. All right.
- 4 A. I signed it.
- 5 Q. And what is the total amount that you signed for on there?
- 6 A. Well, the total of the grant was \$3,089.99.
- 7 Q. Okay. And I believe you entered a zero on that document?
- 8 A. I don't understand what you're saying.
- 9 Q. Is there a zero, no funds?
- 10 A. Yeah. Amount spent.
- 11 Q. Right.
- 12 A. Nothing.
- 13 Q. Right. Okay. Also on there, does it say to attach any invoice on there
- 14 or -- for payments?
- 15 A. There was no invoices to attach.
- 16 Q. Okay. Are you aware of an invoice that was sent to the Town --
- 17 A. No, I am not.
- 18 Q. -- for zero from Mercer Associates?
- 19 A. No. No, I'm not.

20 JUDGE MERCER: Okay. One moment.

21 MR. FITZPATRICK: Are you looking for this,

22 Exhibit 20?

23 JUDGE MERCER: Thank you.

24 MR. FITZPATRICK: Exhibit 20?

25 JUDGE MERCER: Could you show Judge

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(Hon. Constance Pazin - Cross)

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Pazin Exhibit 20? Thank you.

MR. FITZPATRICK: Sure.

BY JUDGE MERCER:

Q. Based on your testimony, you're not familiar with that document, correct?

A. No, I am not.

Q. Okay. So I'll give you a minute just to review it if you would like.

A. Question?

Q. Would you agree that that reflects a zero balance due and a credit to the
Town for all dollars requested?

MR. PEDROTTY: Objection. The document
speaks for itself.

MR. GARBER: Overruled.

A. I don't understand this.

BY JUDGE MERCER:

Q. It's a zero balance that I gave to the Town for removing the equipment,
and that -- the balance to the -- it's zero.

A. In other words, you didn't charge them to remove everything?

Q. I didn't charge them for the cameras or the installation is what that says.

MR. PEDROTTY: Objection to the form of -- it
wasn't a question. It was an argument.

MR. GARBER: Yeah, Well, overruled.

A. I --

MR. GARBER: Judge, if you don't understand
the document --

THE WITNESS: I don't.

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(Hon. Constance Pazin - Cross)

1 (Audio interference)

2 (Recess from 10:18 a.m. until 10:35 a.m.)

3 MR. FITZPATRICK: We are back on the
4 record.

5 THE WITNESS: All right. I'll go back to the
6 invoice.

7 MR. GARBER: Oh, we --

8 THE WITNESS: I'm sorry.

9 MR. GARBER: Where were we? What was
10 your last question?

11 JUDGE MERCER: We were on Exhibit 20 that
12 Judge Pazin has in her possession.

13 MR. GARBER: Oh, okay.

14 JUDGE MERCER: We were discussing Mercer
15 Associates' invoice.

16 MR. GARBER: Yeah. And --

17 JUDGE MERCER: I'll redirect the question,
18 restate the question for her.

19 MR. GARBER: Okay.

20 BY JUDGE MERCER:

21 Q. Were you aware that Mercer Associates gave the Town a zero-dollar
22 invoice to clear up the account and with no money transacted with the
23 Town, no payments were made to Mercer Associates from the Town or
24 from JCAP funds?

25 A. No, I did not.

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(Hon. Constance Pazin - Cross)

1 Q. Okay. And the date on that, again, is?

2 A. And the date on this is December 30, 2021, and it shows that it was
3 charged, it was credited, and there was --

4 Q. Correct.

5 A. -- a zero balance on it.

6 Q. Thank you. Can I have that exhibit back? And can we go to your Exhibit
7 23? So on 5/23, Judge Pazin, you signed a document that stated that the
8 funds were returned, correct?

9 A. Yes, I did.

10 Q. Okay. And was there any reason why five months after that was
11 submitted to the Town that the zero-dollar invoice was not sent in with
12 the reconciliation report? Because they asked for receipts, so if you
13 would have spent it, you would have to send an invoice.

14 A. We have to -- if we spent it, we would have to --

15 Q. So it's your --

16 A. -- send them receipts on everything we purchased.

17 Q. It's your --

18 A. If we had money left over, we would have to return the money--

19 Q. Right.

20 A. -- which we've done in the past.

21 Q. Right. So Judge Pazin, it's your belief -- is that since there was not
22 money spent, you didn't have to attach any invoices or --

23 A. Correct.

24 Q. Okay. Okay. And again, that was 5/23, almost six months after a zero
25 balance, correct?

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(Hon. Constance Pazin - Cross)

1 A. Correct.

2 Q. Okay. Did you ever consult Judge Mercer with this reconciliation report
3 that you sent in to JCAP at all?

4 A. What, this report here?

5 Q. Yes.

6 A. Is to return the money?

7 Q. Correct. Did you consult with --

8 A. No, I did not.

9 Q. Okay. Thank you. You can return it.

10 JUDGE MERCER: Can we go back to Exhibit

11 3, just for -- which is the online file, again?

12 BY JUDGE MERCER:

13 Q. Again, you've testified that that document was not reviewed by yourself
14 when Marcia sent it to --

15 A. No, I did not.

16 Q. -- the Commission. Okay.

17 A. I didn't feel I had to.

18 Q. Thank you. Can you return that and can we -- Exhibit 7? Again, that's
19 the award on the JCAP, correct?

20 A. Correct.

21 Q. And you were familiar with that document, and it was dated January 22,
22 2021, correct?

23 MR. PEDROTTY: Objection, just to compound
24 question. If Respondent could just break that up?

25 A. Are you --

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(Hon. Constance Pazin - Cross)

1 MR. GARBER: Overruled. Let's proceed.

2 A. Are you asking me if I saw this when it came back to Mrs. Puorro?

3 BY JUDGE MERCER:

4 Q. Correct.

5 A. I didn't.

6 Q. Okay. So you never saw the award letter that was sent for the JCAP?

7 A. No, I didn't, nor did I see the \$3,089.99 for the security cameras.

8 Q. Okay. Would you believe -- if you did see this document, would that
9 have been a red flag for you right away?

10 A. Well, yes, because I didn't have anything to do with ordering security
11 cameras --

12 Q. Okay.

13 A. -- and I knew nothing of it.

14 Q. Right. And Marcia had never showed you that document?

15 A. No, she didn't.

16 Q. Okay. Thank you.

17 MR. GARBER: May I see that document,
18 please? Thank you.

19 Thank you very much.

20 MR. FITZPATRICK: You're welcome.

21 JUDGE MERCER: Can we go to Exhibit H? I
22 might have mislabeled. It's actually -- one moment. Okay.
23 Exhibit H, if we could. I'm sorry.

24 THE WITNESS: I have it.

25 BY JUDGE MERCER:

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(Hon. Constance Pazin - Cross)

1 Q. You've seen the document earlier? When you stated that you requested
2 the document from the Town of New Baltimore, correct?

3 A. Yes, because they had a copy of this.

4 Q. Right. Did you call a Judge or one of the Town Clerks at the Town of --

5 A. I talked to the Clerk.

6 Q. Okay.

7 A. And she had had it in her computer as to Mr. Dellehunt emailing it to her.

8 Q. We did have a letter. I believe it's going to be an email that's asking
9 Marcia for a new invoice and a floor plan from Ms. -- actually, Erika
10 Hawks [sic] was the first one. But I'll get the exhibit number for you. I
11 believe it's --

12 MR. GARBER: It's G, isn't it, Judge?

13 MR. PEDROTTY: Is that K, Ryan? The Erika
14 Hanks email?

15 JUDGE MERCER: K was added in, correct, I
16 believe?

17 MR. FITZPATRICK: Correct.

18 JUDGE MERCER: Okay.

19 MR. FITZPATRICK: K is in evidence there.

20 JUDGE MERCER: Yes. There is some
21 highlighted things on there that we discussed yesterday
22 that --

23 BY JUDGE MERCER:

24 Q. In that email, Judge Pazin, it states to provide the JCAP a floor plan,
25 correct? For approval of the JCAP grant?

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(Hon. Constance Pazin - Cross)

1 A. It does. It asks for a new estimate.

2 Q. Right. So would you agree if the JCAP was approved for a security
3 system based on the information that we supplied Kathleen Roberts from
4 our December 1st response?

5 MR. PEDROTTY: Objection.

6 A. What are you asking me? Should they have --

7 MR. GARBER: Sustained. Rephrase the
8 question, please.

9 BY JUDGE MERCER:

10 Q. On that email, it states to --

11 A. Right.

12 Q. -- supply a floor plan, correct? For approval?

13 A. Correct.

14 Q. Correct. Was the Town of Athens awarded a JCAP grant for security
15 systems?

16 A. My problem, and I'm going to tell you with this, when we make out the
17 form, it says on it that they need the resolution, they need the Town to
18 sign. In that resolution, there were no security cameras.

19 Q. I understand that.

20 A. So whoever --

21 Q. I'm sorry. We already verified that.

22 A. Excuse me. Whoever went ahead and allowed those security cameras to
23 go through, they were nowhere on what was asked at the time that we had
24 to make the (unintelligible).

25 Q. Thank you for your report. Would you agree with the correspondence

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(Hon. Constance Pazin - Cross)

1 from Kathleen Roberts and the approval of the JCAP grant that the floor
2 plan location was approved by JCAP?

3 MR. PEDROTTY: Objection.

4 A. I --

5 MR. GARBER: I'm going to allow it, Judge,
6 but the document really speaks for itself. But I'll allow it.

7 JUDGE MERCER: The relevance is that the
8 witness has testified that they were put in the wrong
9 locations.

10 THE WITNESS: Correct.

11 MR. GARBER: Okay.

12 JUDGE MERCER: JCAP approved the
13 locations of the thing and awarded the grant. That's why
14 I'm there.

15 THE WITNESS: JCAP --

16 JUDGE MERCER: That's the relevance.

17 THE WITNESS: -- has not been into our
18 courtroom and did not see where the camera actually hit.
19 And you cannot have it on the bench, in the hallway, or on
20 an employee in an office.

21 JUDGE MERCER: At this time, I would like to
22 enter as an exhibit --

23 MR. GARBER: Judge, may I --

24 JUDGE MERCER: -- I believe --

25 MR. GARBER: Just a minute.

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(Matter of E. Timothy Mercer - Colloquy)

1 JUDGE MERCER: -- without objection.
2 MR. PEDROTTY: Two --
3 JUDGE MERCER: There's two --
4 MR. PEDROTTY: Why don't you do two --
5 JUDGE MERCER: Yes. So it would be M and
6 N.

7 MR. GARBER: Just a minute, Judge. Judge,
8 just a minute. I just want to make a note.

9 MR. PEDROTTY: Do you have them marked?
10 Ask if they'd be marked by Mr. Fitzpatrick.

11 JUDGE MERCER: Could these be marked as
12 Exhibits M and N, please? Thank you. I know I'll never
13 make it to third year. One and two were hard enough.
14 Bless your soul there.

15 (Respondent's Exhibits M, N were marked for
16 identification)

17 MR. GARBER: Thank you.

18 Mr. Fitzpatrick?

19 MR. FITZPATRICK: Do you still want this?

20 JUDGE MERCER: Yes, if you could, please.

21 Thank you.

22 BY JUDGE MERCER:

23 Q. Judge Pazin, those two pictures are camera locations, which are indicated
24 by a rectangular cover plate after I removed the cameras, but that was
25 where they were positioned, correct? The cameras?

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(Hon. Constance Pazin - Cross)

1 A. The camera --

2 Q. Right.

3 A. -- when the people were walking in, but the camera was also directly on
4 the bench. I sat right at my desk, and I saw it. That camera faced the
5 bench. And I told you at that time when I held court, I did not want the
6 cameras on and how do you turn them off.

7 Q. And Judge Pazin, is it correct that I agreed with you?

8 A. Yes. You turned them off.

9 Q. Correct. Thank you.

10 A. When I held court, I did not want them on.

11 Q. Would you agree that the location of those cameras were approved by --

12 A. JCAP approved where you were going to put them. JCAP did not know
13 that they were going to be directly on defendants and on attorneys. They
14 said, "Yes, you can put them there" --

15 Q. Can you look --

16 A. -- but they have not been in our courtroom to see what the camera was
17 actually going to be located on.

18 Q. Okay.

19 A. So what is the question?

20 Q. The question is on Exhibit N.

21 A. M or N?

22 Q. N, please.

23 MR. GARBER: What was the exhibit that we --
24 is it --

25 JUDGE MERCER: M, sir.

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(Matter of E. Timothy Mercer - Colloquy)

1 MR. GARBER: -- the first exhibit? Are there
2 two exhibits here or one?

3 JUDGE MERCER: Yes. There's two.

4 THE WITNESS: There's an M and then N.

5 MR. GARBER: Okay. I see.

6 THE WITNESS: Yes.

7 MR. PEDROTTY: Would you like to offer
8 them into evidence?

9 MR. GARBER: Now --

10 JUDGE MERCER: I would like to offer them
11 into evidence if I could.

12 MR. GARBER: Yeah. Well, let's -- please
13 identify Exhibit M, Judge.

14 JUDGE MERCER: M is the location of the
15 camera which is in the -- I call the alleyway between the
16 doors and the bench.

17 MR. GARBER: Judge Pazin, will you identify
18 this, please, as well?

19 THE WITNESS: Yes. And that is the area that
20 I -- I don't know what to call it, but that's the entryway into
21 the courtroom.

22 MR. GARBER: And N?

23 THE WITNESS: And N is just a larger picture.

24 JUDGE MERCER: Exhibit N is the location of
25 where -- at, most of the time, evening arraignments where

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1 the detainee or defendant would be sitting is from that
2 location.

3 MR. GARBER: Okay. Are you offering these
4 into evidence?

5 JUDGE MERCER: Yes, sir.

6 MR. GARBER: Any --

7 THE WITNESS: Where would --

8 MR. GARBER: Just a minute, Judge.

9 THE WITNESS: Oh, I'm -- yes.

10 MR. GARBER: Any objection, Mr. Pedrotty?

11 MR. PEDROTTY: I have no objection.

12 MR. GARBER: All right. Please go on --

13 (Respondent's Exhibits M, N were admitted into evidence)

14 THE WITNESS: Okay. Judge Mercer had said
15 that this is -- N would be where the defendant would be
16 sitting. I don't see where the -- is that what you said?

17 JUDGE MERCER: I took the picture from the
18 seat of where an arraigned defendant would be sitting
19 pending trial, pending an arraignment.

20 THE WITNESS: Okay. But this is the hall. I
21 don't see where a defendant --

22 JUDGE MERCER: That's the aisleway.

23 THE WITNESS: -- could sit. That's the
24 aisleway, but --

25 JUDGE MERCER: Mm-hmm.

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(Hon. Constance Pazin - Cross)

1 THE WITNESS: -- where -- didn't you say that
2 that's where the defendant would be sitting? Is that what
3 you said?

4 JUDGE MERCER: Yes. There's a chair right at
5 the end of that, so when we do arraignments, they come in
6 and they sit right in that chair. That's the purpose of it.

7 THE WITNESS: I don't see a chair here.

8 JUDGE MERCER: I'm sitting in it, Judge
9 Pazin.

10 MR. GARBER: You can ask her questions
11 about the photo.

12 THE WITNESS: Do you want these back?

13 BY JUDGE MERCER:

14 Q. Judge Pazin, is that the location where the camera was positioned in the
15 courtroom?

16 A. I didn't see that one. I did see -- that must have been the fourth one
17 because I --

18 Q. Judge Pazin, let me correct you --

19 A. I focused --

20 Q. -- just so we -- it's one camera in the courtroom, and it is in the ceiling in
21 the center of the alleyway.

22 A. Right. There was also one that was directly on the bench.

23 Q. No, there was not.

24 MR. GARBER: Well --

25 MR. PEDROTTY: Objection. This is

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argumentative.

MR. GARBER: Sustained.

JUDGE MERCER: Right.

MR. GARBER: Judge, can you tell me what that -- based on that photo, Exhibit N, are you familiar with the location of the camera?

THE WITNESS: This is a doorway, and this is where the --

MR. GARBER: Okay.

THE WITNESS: -- defendant comes in.

MR. GARBER: Okay.

THE WITNESS: I saw a camera -- I saw a video of this being on the bench. I'm sorry. But this is -- there's a camera here, apparently, somewhere. But that's the bench there.

MR. GARBER: Mm-hmm.

THE WITNESS: And I saw that on the bench, and that's why I wanted the cameras to be removed when I held court. I did not -- unless you switched it when I said I didn't want to have that camera on me when I held court. That could also be. I know the cameras couldn't be on the bench when I spoke to you.

JUDGE MERCER: By the documents --

THE WITNESS: But this is where the bench is, and you could see anybody that came up to the bench at

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(Hon. Constance Pazin - Cross)

1 that time. That's why I wanted them turned off me.

2 JUDGE MERCER: The cameras were installed
3 in the exact position and locations. Four cameras, one in
4 the office for the clerks. The other two were in the hallway
5 facing both staircases. And the fourth camera -- there were
6 four cameras --

7 MR. GARBER: Judge, you're --

8 JUDGE MERCER: I know I'm testifying now,
9 so --

10 MR. GARBER: You can't testify.

11 JUDGE MERCER: Right. Right.

12 MR. GARBER: Are you aware of the locations
13 of the cameras in the courtroom?

14 THE WITNESS: When Judge Mercer was
15 setting it up, you know, with the computers and all, there
16 were four --

17 MR. GARBER: Okay.

18 THE WITNESS: -- pictures. Like I said, one
19 was directly on me in the office, the file behind me, and on
20 the door if someone came in. Another one was -- there was
21 one in the hall. And I looked, and I said, "You can't have it
22 on the bench when people are up there."

23 BY JUDGE MERCER:

24 Q. So Judge Pazin, your testimony is that there were two cameras in the
25 courtroom, yes?

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(Hon. Constance Pazin - Cross)

1 A. Well, they came down faster than -- when I saw them, for some -- they
2 were gone. But I sat there, and I looked at them, and I saw where they
3 were placed. Where's the photo of the cameras in the hallway? Did you
4 put cameras in the hallway?

5 Q. I'm not on trial here with regards to your questions.

6 A. No, you're not.

7 Q. No, I'm not.

8 A. I'm not either.

9 MR. GARBER: Okay.

10 BY JUDGE MERCER:

11 Q. I'm just questioning you on the location of the cameras.

12 A. I know you are.

13 MR. GARBER: Okay. Okay.

14 THE WITNESS: I'm going to give this back.

15 JUDGE MERCER: Can we go -- we've already
16 reviewed Exhibit G with the floor plan. All right.

17 BY JUDGE MERCER:

18 Q. And you did testify that the cameras were put in the wrong locations,
19 correct?

20 A. I did.

21 Q. Okay. And can you specifically say what was incorrect with the --

22 A. The camera being on the bench, the camera being directly on me as I sat
23 at my desk in the office, and the file behind me. Cameras are not to be
24 put on staff, if you read Mr. Dellehunt's memo that we had.

25 Q. I've read Mr. Dellehunt's, and I've attended -- have you attended a

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(Hon. Constance Pazin - Cross)

1 training seminar as I -- or a magistrate's meeting with a presentation on
2 security?

3 A. Yes, I have.

4 Q. Okay. Would you agree that the document that was dated in 2017 from
5 Judge Dellehunt said that they're generally permissible?

6 A. In the right place.

7 Q. Okay. Thank you. You don't have any exhibits, correct? You have no
8 papers --

9 A. No, I haven't.

10 Q. Okay.

11 A. I did bring with me, though, when I was --

12 MR. GARBER: Judge, there's no questions.

13 THE WITNESS: Okay. Sorry.

14 MR. GARBER: No, it's quite all right.

15 THE WITNESS: I was just going to make a
16 statement.

17 BY JUDGE MERCER:

18 Q. In your testimony, in a statement that you had said, that you spoke to the
19 Supervisor?

20 A. Yes, I did.

21 Q. When did you speak with the Supervisor? Was it before or after the
22 installation of the camera?

23 A. After the installation. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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(Hon. Constance Pazin - Cross)

- 1 Q. [REDACTED]
- 2 A. [REDACTED]
- 3 Q. [REDACTED]
- 4 A. [REDACTED]
- 5 Q. Okay. In that, you discussed the steps with the Supervisor. Can you tell
- 6 me what steps you were discussing with him?
- 7 A. What do you mean by "steps"?
- 8 Q. The suggestions, "How do we deal with this?", and approximately when
- 9 did that come?
- 10 A. It came about when --
- 11 Q. It's two questions. I'm sorry. If you answer the first one, and I'll go to the
- 12 second.
- 13 A. What was the first one?
- 14 Q. The first one is, basically, the steps that you discussed with Supervisor
- 15 Butler on the camera situation after the cameras were installed.
- 16 A. I suggested with Supervisor Butler that the cameras were none of -- I had
- 17 no knowledge of them. They didn't come down as a resolution. They
- 18 didn't come back. No, I didn't review what Marcia sent in.
- 19 Q. Just regarding the --
- 20 A. But at that point --
- 21 Q. Judge Pazin, just regarding the conversation with Robert Butler about --
- 22 A. Okay. I will.
- 23 Q. -- what steps did it -- okay.
- 24 A. My steps were, after the cameras were after the cameras were put in and I
- 25 had no knowledge of -- well, I'm going back to what I was going to say.

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(Hon. Constance Pazin - Cross)

1 So --

2 Q. If you can just answer --

3 A. -- ask me again.

4 Q. The conversation you had with Rob Butler involved steps to go forward
5 and resolve this issue. Can you tell me what you discussed?

6 A. I was trying to tell you. I discussed the cameras. They were never on the
7 original request. They were never on the original paperwork that came
8 back to us. And I had no knowledge of what was going on.

9 Q. And at that point in time, did Supervisor Butler advise you that the Town
10 had filed the complaint?

11 A. No. I never knew they did.

12 Q. You don't know the date of when the complaint was filed based on your
13 conversation with Mr. Butler?

14 A. Of course not because I didn't know they did it.

15 Q. Okay.

16 MR. GARBER: [REDACTED]

17 [REDACTED]

18 JUDGE MERCER: [REDACTED]

19 [REDACTED]

20 MR. GARBER: [REDACTED]

21 JUDGE MERCER: And at that time, the
22 cameras were installed for approximately a month.

23 BY JUDGE MERCER:

24 Q. Can you tell me what your thought is on the operation of the Court and
25 the control of the Town, as a general philosophy in the courtroom itself?

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(Hon. Constance Pazin - Cross)

1 A. What do you mean with the Town and the courtroom itself?

2 Q. There was the email exchange of who runs the Town and who runs the
3 Court. And --

4 MR. PEDROTTY: Object -- sorry.

5 A. You know, let me --

6 MR. PEDROTTY: Objection. It's irrelevant.

7 MR. GARBER: Well, are you referring to a
8 particular document?

9 JUDGE MERCER: Yes. I'm going to provide
10 the exhibit.

11 MR. GARBER: Then refer to the exhibit,
12 please, and then we'll deal with the --

13 JUDGE MERCER: Sure.

14 MR. GARBER: -- relevancy issue.

15 JUDGE MERCER: Understood.

16 MR. FITZPATRICK: I think it's I.

17 JUDGE MERCER: It's Exhibit I.

18 MR. GARBER: Has Exhibit I been received
19 into evidence?

20 THE RESPONDENT: Exhibit I, yes, it has.

21 THE WITNESS: They should be starting
22 backwards, I think.

23 BY JUDGE MERCER:

24 Q. Well, email chains -- are you familiar with that document, Judge Pazin?

25 A. I beg your pardon?

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(Hon. Constance Pazin - Cross)

1 Q. Are you familiar with that document?

2 A. I didn't see the full document all together as this is, but I do remember
3 comments that I have made in it.

4 Q. Okay. And would you agree that most of the concern in there is an
5 interpretation and comments and an email that Don Pierro is involved in?

6 A. I take Don for who he is. I don't know --

7 Q. Is that an email --

8 A. But it is, yes.

9 Q. -- referencing -- thank you. What do you mean by "who he is"?

10 A. Don's a bookkeeper, financial officer. He thinks he owns the court. He
11 thinks he owns the town. I don't know how to put it, but I ignore Don a
12 lot, except when it comes down to something that I feel very strongly
13 about.

14 Q. And you felt very strongly about this, obviously?

15 A. Well, obviously, I was under the understanding that he was holding JCAP
16 money --

17 Q. Mm-hmm.

18 A. -- from the Court for the things we ordered.

19 Q. Well, in your testimony, you said that we -- you ordered air
20 conditioners -- you requested air conditioner and blinds and all the
21 other --

22 A. Right.

23 Q. -- things, but we didn't get them, so --

24 A. I found out eventually.

25 Q. Right. But at this particular time, it's just an email conversion [sic] going
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(Hon. Constance Pazin - Cross)

1 back --

2 A. I was under the understanding that Don was holding money for the stuff
3 that we had ordered, that we asked for, and we were given permission to
4 order.

5 Q. Right. Okay. So the correspondence that involved Marcia Puorro,
6 myself, you regarding Don Pierro's -- aggravated you?

7 A. Well, yes.

8 Q. Would you --

9 MR. GARBER: What document are you
10 referring to, Judge?

11 JUDGE MERCER: It's Exhibit I, and it's an
12 email exchange regarding -- the topic is Code of Ethics, and
13 it's an exchange between Marcia Puorro, the JCAP
14 Administrator and Court -- Judge Pazin's Clerk; myself; and
15 a reaction from -- a correspondence from Don and the
16 Court.

17 MR. GARBER: May I see that? Thank you.

18 THE WITNESS: You've got to start back here.

19 MR. GARBER: Yes. I understand now.

20 Has Exhibit I been admitted into evidence?

21 MR. FITZPATRICK: Yes, sir.

22 MR. GARBER: I lost track, but okay.

23 Proceed, Judge.

24 JUDGE MERCER: Okay.

25 BY JUDGE MERCER:

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(Hon. Constance Pazin - Cross)

1 Q. Judge Pazin, do you feel that Don Pierro intruded in our court?

2 A. What do you mean by "intruded in our court"? Like, give me an
3 example.

4 Q. Regards to this in his aggressiveness towards Marcia, towards past clerks.
5 When I say "aggressiveness", his continual requests for information,
6 reports, things like that that make no sense.

7 A. Well, Marcia's told him many, many times, you're to speak to the judges.

8 Q. And why would she say that?

9 A. Due to the fact that why should she be the go between, tell her and then
10 him tell us? Marcia's recorded some things when she -- so she could
11 remember correctly when he's called up and asked questions. But --

12 Q. You're saying she has --

13 A. -- Don is not the only one. We had a bookkeeper before him.

14 Q. Okay.

15 A. I don't know, he might have been worse.

16 Q. Don is the only one involved in this case, though, so that's --

17 A. I know he is, but I'm just --

18 Q. Right.

19 A. -- telling you, we always have a problem with the bookkeeper for some
20 reason. Don't ask me why.

21 Q. Would you say Don Pierro harasses the Court?

22 A. No.

23 Q. No?

24 A. I don't take it as harassment. I just take it as he doesn't know any better.

25 Q. Okay.

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(Hon. Constance Pazin - Cross)

1 A. As I listen to him since his father's been a judge since the '80s, and I
2 repeat to him, "I was a judge in the '80s also, so I know the routine."

3 Q. Has Don Pierro created struggles with knowledge about the handbooks in
4 the Court Office?

5 A. I don't understand why we're talking about Don Pierro with -- what was
6 the question you just asked me?

7 Q. Your Court Office experience, has it -- there been a struggle getting
8 copies of handbooks and him communicating revisions and other things?

9 A. No, because I go right down there and tell him what I want and he gives
10 it to me. I don't deal with drama. I don't deal with -- I run a tight ship
11 with my court, as you know, Judge Mercer.

12 Q. Mm-hmm.

13 A. I don't like to play games. I have too many other things in my life to
14 make the drama throughout the whole building.

15 Q. Let's see. In that email, you did say that --

16 A. Oh, I'll take the email back.

17 Q. -- you feel that the Town -- that you don't work for the Town, correct?

18 A. We were elected by the people --

19 Q. Mm-hmm.

20 A. -- to the Justice Court. We work for the people that elected us. We do
21 not work for the Town, as Mr. Dellehunt will tell you because I've spoken
22 to him several times. Every time we get a new supervisor, they think that
23 they're in charge of the Court. It's not a battle to me anymore. We work
24 for the people that elected us, and that's what they're told. I gave them
25 information on it.

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(Hon. Constance Pazin - Cross)

1 Q. Judge Pazin, would you agree that Supervisor Butler would say that we
2 are an employee of the Town?

3 MR. PEDROTTY: Objection.

4 A. I don't --

5 MR. GARBER: Sustained.

6 A. First of all --

7 Q. Okay.

8 A. -- why are we going into --

9 MR. GARBER: Wait a minute, Judge. Judge,
10 please.

11 Judge Mercer --

12 JUDGE MERCER: Yes, sir?

13 MR. GARBER: -- I'm giving you a lot of
14 leeway in this case, but please address your questions to
15 those issues which are relevant to the formal written
16 complaint in this matter.

17 THE WITNESS: Thank you.

18 MR. GARBER: Please proceed.

19 JUDGE MERCER: I believe I only have one
20 more thing.

21 I believe that's all, Judge Pazin.

22 THE WITNESS: Okay. Thank you.

23 MR. GARBER: Just a minute.

24 THE WITNESS: Okay.

25 MR. GARBER: Mr. Pedrotty, do you have any

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(Hon. Constance Pazin - Colloquy)

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redirect?

MR. PEDROTTY: I have no redirect.

MR. GARBER: Okay. Judge, I have just a couple of questions --

THE WITNESS: Sure.

MR. GARBER: -- please.

(Audio interference)

(Recess from 11:20 a.m. until 11:34 a.m.)

MR. FITZPATRICK: We are back on the record.

MR. GARBER: Okay. Judge Pazin --

THE WITNESS: Yes.

MR. GARBER: Pardon me. Judge Pazin, you testified that you had discussions with various people concerning items to be included in the JCAP application. And those discussions included Judge Mercer?

THE WITNESS: Correct. It was just the office, not many, many people. It was four of us.

MR. GARBER: Okay.

THE WITNESS: The two Court Clerks and myself --

MR. GARBER: Okay.

THE WITNESS: -- and Judge Mercer.

MR. GARBER: When did that discussion take place, to the best of your recollection?

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(Hon. Constance Pazin - Colloquy)

1 THE WITNESS: Probably a few weeks or so.
2 It's something when we're told that we can apply for --

3 MR. GARBER: Yeah.

4 THE WITNESS: -- the JCAP, we start putting
5 our thinking hats on --

6 MR. GARBER: Right.

7 THE WITNESS: -- saying, you know, "What
8 do we need," or whatever. Probably a few weeks before the
9 request went down to the Board.

10 MR. GARBER: Do you have a recollection of
11 the date or the --

12 THE WITNESS: Well, there --

13 MR. GARBER: -- period of time?

14 THE WITNESS: -- I'll tell you. It went down
15 on the 21st. I think the request went down on the 21st. I
16 don't have my paperwork in front of me, but I think it went
17 down on the 21st, requesting the air conditioners and the
18 shredder and --

19 MR. GARBER: Okay.

20 THE WITNESS: -- and whatever. And then I
21 think the letter that came back to us after their meeting, the
22 resolution, came back maybe a couple weeks after that.

23 MR. GARBER: Let me ask the question a
24 different way.

25 THE WITNESS: Okay.

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Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Hon. Constance Pazin - Colloquy)

1 MR. GARBER: I'm showing you Exhibit 4.

2 THE WITNESS: Okay.

3 MR. GARBER: And the signature page to the
4 JCAP application.

5 THE WITNESS: Right.

6 MR. GARBER: And you executed the your --

7 THE WITNESS: My signature on that.

8 MR. GARBER: -- the signature on September
9 21?

10 THE WITNESS: Right.

11 MR. GARBER: As of September 21, what was
12 your understanding of the items to be included in the JCAP
13 application?

14 THE WITNESS: It was the two air
15 conditioners. It was a larger shredder. We needed
16 something for the windows in the office because the other
17 ones were there for so long. I needed a chair. And we
18 needed reimbursement for COVID supplies that we had
19 bought.

20 MR. GARBER: Mm-hmm. Okay. Now,
21 referring you to the discussions that you had with four
22 people that you mentioned and Judge Mercer --

23 THE WITNESS: Mm-hmm.

24 MR. GARBER: -- would that discussion have
25 taken place before September 21?

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(Hon. Constance Pazin - Colloquy)

1 THE WITNESS: Before we sent that down --

2 MR. GARBER: Yeah.

3 THE WITNESS: -- requesting from the Board,
4 yes, we discussed --

5 MR. GARBER: Okay.

6 THE WITNESS: -- what we wanted, and we all
7 agreed, you know, that's what we could use. The air
8 conditioner was the big thing. It --

9 MR. GARBER: Okay.

10 THE WITNESS: -- gets, like, 90 in that
11 courtroom.

12 MR. GARBER: Now, showing you Exhibit 3,
13 which is the electronic --

14 THE WITNESS: Right.

15 MR. GARBER: -- version -- electronic
16 application --

17 THE WITNESS: Mm-hmm.

18 MR. GARBER: -- to -- for the JCAP grant. Did
19 you review this at all?

20 THE WITNESS: No, I didn't.

21 MR. GARBER: Okay. And you signed the
22 signature page on September 21.

23 THE WITNESS: Right.

24 MR. GARBER: The Board approved the
25 application --

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(Hon. Constance Pazin - Colloquy)

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THE WITNESS: Mm-hmm.

MR. GARBER: -- submitted by the Town.

THE WITNESS: The Town, the Court.

MR. GARBER: Yeah, on -- or the Court --
excuse me --

THE WITNESS: Right.

MR. GARBER: -- on October 5.

THE WITNESS: I'd say it was a couple weeks
after we sent it down.

MR. GARBER: There's an exhibit that indicates
the resolution was adopted on October 5.

THE WITNESS: Okay.

MR. GARBER: Do you have any knowledge as
to the reason for the time period or, I'll say, delay -- that
may be inaccurate, but -- between the date that you
executed the signature page and the approval by the Town
Board on October 5?

THE WITNESS: The Town Board meets every
two weeks.

MR. GARBER: Mm-hmm.

THE WITNESS: So that, I would assume,
would be the difference. There would be two weeks after
the fact, and then by the time the clerk downstairs sent us
the approval.

MR. GARBER: Okay. When was your first

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(Hon. Constance Pazin - Colloquy)

1 discussion -- you testified that you had a discussion with
2 Judge Mercer sometime after the cameras were installed.
3 Do you recall the date, approximate date, of that
4 discussion?

5 THE WITNESS: No, I don't.

6 MR. GARBER: Okay.

7 THE WITNESS: I don't.

8 MR. GARBER: When you had a discussion
9 with Judge Mercer about the cameras, was that your first
10 discussion --

11 THE WITNESS: That was.

12 MR. GARBER: -- with Judge Mercer?

13 THE WITNESS: About the cameras, once --

14 MR. GARBER: Okay.

15 THE WITNESS: -- I saw the videos come up.

16 MR. GARBER: Okay. And then Mr.

17 Fitzpatrick, may I have Exhibit 14?

18 MR. FITZPATRICK: 14?

19 MR. GARBER: Please. Thank you.

20 Judge Pazin, I'm going to show you Exhibit 14,
21 which is a voucher dated July 6, 2021, and it's a voucher for
22 the installation and for -- of the security cameras and the
23 security cameras themselves. And do your initials appear
24 on that document?

25 THE WITNESS: No, they do not. [REDACTED]

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[REDACTED]

[REDACTED]

MR. GARBER: Where were your initials on that document?

THE WITNESS: There isn't any.

MR. GARBER: Oh, okay. Okay. Thank you. Did you --

THE WITNESS: I never even saw it.

MR. GARBER: Okay. I thought you had testified -- and I may have misunderstood -- that your initials appeared on a document, but my --

THE WITNESS: No. [REDACTED]

[REDACTED]

[REDACTED]

MR. GARBER: Okay.

THE WITNESS: [REDACTED] I probably said that I was accused of my signature being on there --

MR. GARBER: Oh, I --

THE WITNESS: -- and okaying it, but I didn't.

MR. GARBER: Okay. So your initials don't appear on this document?

THE WITNESS: No.

MR. GARBER: Okay. I just wanted to clarify that issue.

(Matter of E. Timothy Mercer - Colloquy)

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THE WITNESS: Well, thank you.

MR. GARBER: That's all I have.

Judge Mercer, do you have any questions?

JUDGE MERCER: I have no questions, Mr.

Garber.

MR. GARBER: Mr. Pedrotty?

MR. PEDROTTY: No, no questions.

MR. GARBER: Okay. Judge Pazin, thank you
for coming. I'm sorry for the delays.

THE WITNESS: That's fine.

MR. GARBER: But I appreciate your patience.

THE WITNESS: Okay.

MR. GARBER: And you're excused.

THE WITNESS: Thank you.

MR. GARBER: Mr. Fitzpatrick, before they
disappear --

THE WITNESS: I thought I was supposed to
bring stuff with me. That's why I brought my whole log.

MR. GARBER: Are we off the record now or
we're --

MR. FITZPATRICK: No. We're still on the
record. I can go off the record.

MR. GARBER: Oh, we can go off.

(Recess from 11:43 a.m. until 11:45 a.m.)

MR. FITZPATRICK: We are back on the

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record.

MR. PEDROTTY: Thank you.

At this time, I would like to read the following statements made by Respondent under oath at his investigative appearance before the Commission on February 7, 2022, which were offered into evidence as admissions.

Beginning on page 8 at line 19 through page 9 at line 4, "My name" -- this is Judge Mercer speaking, the Respondent. "My name is Edward Timothy Mercer, and I am a duly elected Judge of the Athens Town Court. I am also the owner of Mercer Associates, a design, build, contracting company serving Columbia, Greene, and Albany Counties. I, Mercer Associates, performed a service for the Town of Athens Court that included supplying and installing a CCTV security system funded by an award from JCAP."

On page 17, line 1 through 11, question, "Now, as far as nonjudicial employment, you were the owner and sole proprietor of Mercer Associates?" Answer, "That is correct." Question, "What type of business is that?" Answer, "It's a design, build, contracting company, residential mostly." Question, "Do you do remodel and new construction?" Answer, "Remodel, renovation, and new construction, yes."

1 On page 18, starting at line 16, through page 19,
2 ending at line 7, question, "Do you have any employees?"
3 Answer, "No full-time employees." Question, "So who are
4 the associates in Mercer Associates?" Answer, "It's a group
5 of -- in the name itself. That's all. It's who I do
6 subcontracting for and/or contract out to. They would be
7 our -- considered associates." Question, "Who is Carrol
8 Mercer?" Answer, "My wife." Question, "Does she have
9 any role in the business?" Answer, "Just as estimating and
10 bookkeeping as a wife would do for her husband."
11 Question, "Is she paid a salary?" Answer, "No, sir."

12 On page 40, line 7 through 20, I'm about to refer
13 to an estimate, and this is the estimate dated September 2,
14 2020, which is in evidence. Question, "And then this
15 estimate here also includes an installation cost of \$1,000?"
16 Answer, "Correct." Question, "Which is the same amount
17 you ultimately charged, correct?" Answer, "That is
18 correct." Question, "And at this time, was that \$1,000
19 installation fee -- was that an estimate or a fixed fee?"
20 Answer, "That is a fixed fee." Question, "Based on what?"
21 Answer, "My estimate of how long it would take to
22 complete the project."

23 On page 43, line 9, through page 44, line 12,
24 question, "Judge, these pages appear to be printed out about
25 a security camera system from the website

1 cctvsecuritypros.com; is that correct?" Answer, "Yes.
2 That's what I provided when we applied for the grant."
3 Question, "There's a printout date of October 6, 2020. Is
4 that when you printed these out?" Answer, "I believe so."
5 Question, "There is some handwriting on these pages." Mr.
6 Pedrotty: "Ryan, can you please go back up?" Question,
7 "Do you recognize the handwriting on these pages?"
8 Answer, "I believe that's my handwriting on top. I believe
9 underneath that is Marcia's, and then I believe that the
10 'CSP45' is my handwriting." Question, "So when you say
11 'up top', you mean the 2,399.99? Is that your handwriting?"
12 Answer, "I believe so, yes, that I know so." Question, "And
13 then there is a line, and underneath, something else is
14 written. It looks like, 'Plus 1,000 installation'?" Answer,
15 "Yes. I believe that is Marcia's handwriting."
16 On page 48, line 13, through page 49, line 3,
17 question, "Well, this letter is dated September 21, 2020,
18 correct? Do you know when the Town was supposed to
19 vote in the resolution?" "I believe all resolutions are voted
20 the first week of the next month, which would be the first
21 week of October." Question, "So in the amount of time
22 between when this letter was submitted and when the Town
23 was to vote on that, did you at any point advise the Town
24 that the letter had made a mistake by omitting the camera
25 system?" Answer, "I didn't and don't recall seeing -- I'm

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sure that Marcia placed this on my desk or in the office."

Page 49, line 23, to page 50, line 6, question, "Well, Judge, did you tell anybody from the Town Board or the Town Supervisor that the Court intended to install cameras with JCAP funds?" Answer, "I believe they were made aware of the JCAP grant fund." Question, "Judge, that's not my question. Did you? Did you?" Answer, "I did not, no".

On page 51, line 23, through page 52, line 10, question, "So other than what Marcia had presented in her letter dated September 21, 2020, was there any communication to the Town Board Members about seeking funds for a camera system?" Answer, "No." Answer, "Not at that time, no. By myself, the only communication would have been in writing, and that's where the problem is is that it wasn't put on the first request. So obviously, they didn't pass a resolution to include that because they were only supplied with the information that Marcia had presented to them."

Page 52, line 16 through 20, question, "Prior to the JCAP funds being awarded, did the Town ever authorize the purchase of the security system with JCAP funds in a resolution?" Answer, "Probably not, that I am aware of."

On page 61, line 24, through page 62, line 2,

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question, "Ultimately, who purchased the actual video surveillance system that was installed?" Answer, "I did."

On page 62, line 11 through line 24, question, "Judge, did you purchase the system from CCTV Security Pros?" Answer, "Yes, I did." Question, "When did you purchase the system?" Answer, "In early June." Question, "June 3rd of 2021?" Answer, "Sounds correct." Question, "And the SKU in the system, according to the documents which Ryan will be able to show you soon, the CSP-4POEMIC8, I believe you said this is a different system than the one you had previously included in your estimate?" Answer, "It is a different system."

On page 63, line 18 through 22, question, "On the screen now displayed is Commission Exhibit 4, Judge. Can you please identify what this is?" Answer, "That is the system that I purchased for \$1,569.99."

On page 64, line 1 through 16, question, "Judge, \$1,569.99, that's a different amount than was on your original estimate, correct?" Answer, "That is -- well, the estimate included -- I do have an ability to get a product cheaper, and I am a businessperson, and I marked it up by --" Question, "How much did you mark up the system by?" Answer, "About 30 percent, which would have been about \$500 more, which would have brought us to \$2,000 approximately." Question, "But you ended up charging the

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1 Town \$2,329, the same as the original estimate, correct?"

2 Answer, "Right."

3 Page 64, line 20, through page 65, line 9,
4 question, "And you awarded the installation contract to
5 your own company, Judge?" "The whole estimate was my
6 company. I didn't award it to anyone." Question, "Could
7 you have had another company do the installation?"

8 Answer, "I could have possibly tried to have done it."

9 Question, "But you didn't, correct?" Answer, "I did not."

10 Question, "Did you solicit any quotes from any other
11 company to install the camera system?" Answer, "I didn't
12 solicit any other quotes."

13 On page 65, line 24, through page 66, line 9,
14 question, "So this might sound like a simple question, but
15 what's the purpose of doing a markup?" Answer, "What is
16 the purpose? The profit so I can live. I guess that's
17 personal gain." Question, "So by marking up the security
18 system, you would personally profit from this transaction?"
19 Answer, "Absolutely. I admitted to that earlier on."

20 Page 67, line 12 through 17, question, "Prior to
21 the installation, did you talk with any town officers or
22 employees about installing the contract -- about installing
23 the system yourself?" Answer, "I don't recall any
24 conversation with them about it."

25 Page 68, line 19, through page 69, line 11,

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1 question, "Do you believe in your capacity as a judge you
2 had the power to negotiate, prepare, or authorize a contract
3 with Mercer Associates for the installation of the cameras?"
4 Answer, "It's a detail I regret that I did, no." Question,
5 "You believed that you had that authority?" Answer, "I
6 didn't look at it as authority in the way as the judge. I
7 looked at it as, this was the estimate we submitted. This is
8 what we did. This is the approvals that we got, we were
9 awarded, and we proceeded forward." Question, "And then
10 you yourself installed the cameras, Judge?" Answer,
11 "Absolutely."

12 On page 71, line 23, through page 73, line 19,
13 question, "What is the document shown on Exhibit 1, page
14 8?" Answer, "That is the request for payment, the voucher
15 which shows the security system, the installation, the
16 \$3,329.99, and it will be signed by Marcia, Senior Court
17 Clerk, and it will be approved, and below that, it will be
18 signed by myself." Question, "So under Department
19 approval, what -- that's your signature?" Answer,
20 "Absolutely." Question, "It's dated July 6, 2021?" Answer,
21 "Uh-huh, yes. I signed pretty much all of the paperwork
22 that went down most of the time." Question, "Ms. Puorro
23 prepared this voucher?" Answer, "I'm sorry?" Question,
24 "Ms. Puorro prepared this voucher?" Answer,
25 "Absolutely." Question, "At whose direction?" Answer,

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1 "At no one's direction other than her role as Senior Court
2 Clerk to fill out the paperwork." Question, "Did you have
3 her fill it out?" Answer, "She filled it out and put it on my
4 desk." Question, "And you reviewed it and signed it?"
5 Answer, "I reviewed it and signed it, yes, sir." Question,
6 "Did you sign it in your capacity as a judge?" Answer, "I
7 signed it in the capacity as me being judge for the Athens
8 Town Court, yes." Question, "Did you sign it in your
9 capacity as an owner of Mercer Associates?" Answer,
10 "Unfortunately, in this particular case, I guess it is Mercer
11 Associates, but my eyes were just, I'm signing this as a
12 judge, sending it down to the town to get paid." Question,
13 "Paid to your company, correct?" Answer, "Absolutely."
14 Question, "And the voucher is for nearly \$300 more than
15 the JCAP awarded the Court, right?" Answer, "That is
16 correct."

17 On page 75, line 24, through page 76, line 14,
18 question, "When you signed this voucher, Judge, did you
19 know that the system actually cost \$1,569 and not \$2,329?"
20 Answer, "I was." Question, "And again, you said you
21 testified that you nevertheless charged \$2,329 because it
22 was a markup and you wanted to make a profit?" Answer,
23 "That was the business, yes." Question, "Why didn't you
24 reduce your invoice amount by nearly \$800 you saved in
25 purchasing the system?" Answer, "I didn't save 800 totally.

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1 But why didn't I reduce it? It's a business markup. Again,
2 I'll go -- that's what our people are in business for."

3 Page 79, line 20, through page 80, line 5,
4 question, "Did you ever contact the Office of Justice Court
5 Support and advise them that the cost of the camera system
6 ended up being nearly \$800 less than in your estimate and
7 ask for further direction?" Answer, "No, because I firmly
8 believe is -- that my costs were not less than that. That's
9 where we disagree in our opinion. I again remind you I am
10 a part-time judge with a full-time position as a Mercer
11 Associates. That's how I make my living."

12 On page 80, line 14 through 19, question, "If
13 you had not been the judge, how would Mercer Associates
14 have been awarded the job?" Answer, "I never would have
15 been in that court for business or the town unless they put it
16 out for competitive bid."

17 Page 81, line 5 through 11, question, "Sitting
18 here today, Judge, do you see a conflict of interest in the
19 fact that you as a judge awarded this job to your own
20 company?" Answer, "I -- I strongly believe is [sic] that as
21 Mercer Associates, I should not have submitted the estimate
22 for the project."

23 On page 81, line 21 through 24, question,
24 "Where does the JCAP money come from?" Answer, "The
25 taxpayer, just like we all pay taxes."

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Page 82, line 5 through 10, question, "Do you think it appeared like you were taking advantage of your judicial position to benefit your own personal financial interests?" Answer, "I believe there is the sincere look that it looks like I did, yes."

On page 84, line 23, through page 85, line 6, question, "Do you see the email from yourself dated July 15, 2021, at 1:51 p.m.?" Answer, "Uh-huh." Question, "Did you send this email?" Answer, "Absolutely." What prompted you to -- question, "What prompted you to send this email?" Answer, "Well, because again, I was looking for a request for payment."

On page 86, line 13, through page 87, line 5, question, "You sent this email from [REDACTED]@nycourts.gov?" Answer, "Uh-huh." Question, "That's your judicial email?" Answer, "That is my judicial email. Yes, it is." Question, "Before, when you said, 'Uh-huh' rather than 'yes', you sent this from emerger --" Answer, "Right." Question, "Let me finish my question." Answer, "Correct." Question, "You sent this from [REDACTED]@nycourts.gov?" Answer, "Correct." Question, "And that's your judicial email address?" Answer, "Absolutely."

On page 87, line 13 through 21, question, "So in what capacity did you send this email?" Answer, "I look at 290.

1 it -- I shouldn't have sent -- sent it from the email address. I
2 look at it as I was my company." Question, "But you sent it
3 from your judicial email account rather than your business
4 email account?" Answer, "Correct."

5 Page 88, line 8, through page 89, line 8,
6 question, after the initial conversation with Don Pierro that
7 you just testified about, did you have any other
8 conversations with him about this issue?" Answer, "The
9 project issue itself?" Question, "The payment of the
10 voucher." Answer, "This payment, or are we referring to
11 the interest charges?" Question, "Yeah, talk about that."
12 Answer, "Okay. So in my conversation with him, I told
13 him that I am going to charge him interest if he doesn't pay.
14 'It was 45 days late, and I am going to send you an invoice.'
15 And my QuickBook software goes out on the 15th. On the
16 18th, it kicked out an interest charge, which I sent him."
17 Question, "Of what month?" Answer, "Of August. At this
18 point, all I'm getting is denial. No one is saying anything.
19 So as a business owner, not as the judge, I'm out. 'When
20 am I going to get paid?'" Question, "When was that --
21 when was the conversation with Puorro about interest?"
22 Answer, "It would have to be" -- excuse me. "It would" --

23 MR. GARBER: I think that's (unintelligible).

24 MR. PEDROTTY: "It would had to have been
25 sometime in early August."

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Page 89, line 20 through 22, question,
"Otherwise, does it seem like you had this conversation on
August 5th?" Answer, "On or about, yes."

Page 90, line 7, through page 92, line 4, Mr.
Pedrotty: "Ryan, can you please mark and show an email
dated July 21, 2021, from the judge to Dave Dellehunt?"
Question, "On the screen, Judge, is Commission Exhibit 6.
Did you send this email to David Dellehunt?" Answer,
"Absolutely." Question, "Why did you contact him about
this issue?" Answer, "Because around that time, it was
starting to become evident that there was going to be a
problem with this, and I also copied my attorney also,
which is Paul Salvino there." Question, "You wrote, 'Judge
Dellehunt, it has come to my attention that my town, Town
of Athens, is looking into an ethical issue with me.' What
was the ethical issue as you understood it at the time?"
Answer, "The ethical issue that I compensated or benefitted
from being a judge." Question, "And then down below you
wrote, 'I don't feel I broke any town ethics, but do know just
the look of impropriety is enough with OCS.' What did you
mean by that statement?" Answer, "Exactly what it says, is
that a separation from the Town and the Court, but I do
know that it looked like impropriety." Question, "So as of
July 21, 2021, you recognized there was this appearance of
impropriety, but yet, you have testified that on August 5th,

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1 you again asked for payment for your services and stated
2 that there would be an interest charge by your company if
3 payment was not made. And then later that month of
4 August, August the 18th, you did, in fact, submit another
5 invoice to the town with a finance charge, correct?"
6 Answer, "Correct." Question, "Why did you continue to
7 seek payment and even add a finance charge after you
8 recognized there was a look of impropriety here?" Answer,
9 "I was still maintaining the interests of Mercer Associates."

10 Page 92, line 14 through 24, question, "What
11 takes precedence, Judge, your judicial duties or your
12 business, your private business?" Answer, "Everything in
13 life today is my judicial duties." Question, "At this time,
14 what took precedence?" "At that time?" Question, "Yes."
15 Answer, "Mercer Associates. That's my business."

16 Page 96, line 20, through page 97, line 2,
17 question, "Judge, we've learned that the Town Supervisors
18 tasked Don Pierro with distributing copies of the Town
19 Handbook, Procurement Policy, and Town Ethics Code to
20 all town officers and employees and having them sign for
21 them. Have you refused to accept these items and sign for
22 them?" Answer, "Absolutely."

23 Page 105, line 19 through 21, question,
24 "Ultimately, Judge, did the Town lose out on the JCAP
25 funding?" Answer, "I believe they lost out, yes."

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Page 105, line 24, through page 106, line 5,
question, "Are you aware of any consequences for the
Court's failure to use the funds?" Answer, "Only that we
couldn't apply this year and we had to return the money.
The Town has to return the money, so we were not able to
apply for any JCAP grants this year."

And with that, I have nothing further and rest --

MR. GARBER: Okay.

MR. PEDROTTY: -- subject to calling any
rebuttal witnesses if that -- if I deem that necessary.

MR. GARBER: Judge Mercer, do you have a
copy of --

JUDGE MERCER: I have a copy of the
transcript that Mr. Pedrotty provided me. If it's the same
transcript from that, I have copy, yes, sir.

MR. GARBER: Okay. Okay. Why don't we go
off the record for a moment?

(Recess from 12:08 p.m. until 12:35 p.m.)

MR. GARBER: Judge Mercer, please.

MR. FITZPATRICK: We are back on the
record.

MR. GARBER: Oh, okay.

JUDGE MERCER: Thank you. I'm going to
bring in Tony Paluch.

MR. PEDROTTY: Before Respondent calls Mr.

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1 Paluch in, I wonder if I could -- in the interest of time and
2 allowing myself to make a record of my objections, if any,
3 to the substance of any line of questioning and also
4 allowing you to give Respondent some leeway in
5 presenting his case, regardless, I was wondering if I could
6 ask for an offer of proof as to Mr. Paluch and then later Mr.
7 June as well so that we can put that on the record at this
8 time and then allow the testimony to go forward after?

9 MR. GARBER: Oh, that's fine.

10 MR. PEDROTTY: So at this time, I would ask
11 for an offer of proof as to Mr. Paluch's testimony.

12 JUDGE MERCER: I apologize for my
13 ignorance in serving *pro se*, but I would look to the Referee
14 to get an explanation of what we're asking for.

15 MR. GARBER: Well, he, Mr. Pedrotty, is likely
16 to object to the entire testimony of Mr. Paluch. What he is
17 requesting at this time is that you provide the substance or
18 short summary of what Mr. Paluch will testify and its
19 relevance to the -- to this proceeding. And then Mr.
20 Pedrotty will state his objection, if any, to the testimony of
21 Mr. Paluch, and then I'll make a determination as to
22 whether Mr. Paluch may testify. So it's just a very short
23 summary of the purpose of Mr. Paluch's testimony and its
24 relevance to this proceeding.

25 JUDGE MERCER: The purpose of Mr.

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Paluch's testimony --

MR. GARBER: Oh, wait. Are you speaking into the microphone?

JUDGE MERCER: Oh, I'm sorry.

The purpose for Mr. Paluch's testimony today is to -- he's an Athens Town Board Member, for many years. He was present at the signing of the documents that were there that are in exhibits that we've discussed and reviewed with every witness that's been here. He was present at the passing of the resolution. He was, I'm going to say, familiar with the circumstances that were going on within the court over the last two or three years. We can talk about the relevance of that, which is being questioned continuously.

He was present when in testimony of other witnesses -- say that I was intimidating at Board meetings, which he will vouch that I wasn't. And he attended one of our evidence meetings -- not evidence meetings. He attended one of the meetings with the current Town Supervisor of me addressing a meeting with the Town Attorney about the transition going forward from that where the -- Mr. McHugh made a statement at that meeting about the Town's willingness to even review this situation of the JCAP grant within the first two or three weeks of me installing the cameras, and there was complete refusal to do

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that. And I think the evidence has shown and the testimony shows is that Judge Mercer was not afforded any opportunity to speak with regards to Judge Pazin, with regards to Mr. Butler, the Supervisor.

In the email and in the exhibits, he has presented -- Mr. Butler presented that, you know, it's sort of like, "Well, we're looking into it." Well, a month later, after the cameras are installed and three weeks after, there's always -- already have [sic] been a filing to the Commission. It was like dangling a carrot out in front of me for almost a year that we're going to get paid -- or half a year that we're going to get -- "You're going to get paid. We just have to find out." Their disposition was, they're not going to do anything with the pay on the invoices. In testimony he said that he would have paid me for the cost of the materials. He found out that they're 1,569, and he said he would have negotiated the cost.

Where this problem falls and where I struggle with this completely is that that information was never afforded to me. I never had the opportunity to resolve my wrong for what I did. A month later, we could have removed the cameras or made revisions on the reconciliation report, which Judge Pazin testified that the reconciliation report was filled out and wasn't -- I wasn't even consulted with that, nor did she attach the invoice. So

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1 there's an ongoing gray area of information that is being
2 broadcasted in testimony that I -- some of it I feel is
3 untruthful. Going forward, I can review the questions right
4 now of what I intend to do with Mr. Paluch.

5 MR. GARBER: No, that's fine. No, I think --

6 JUDGE MERCER: But I went home last night
7 after yesterday, and I was going to send my son a letter of
8 appreciation of his third year in passing the bar and
9 knowing all these procedures. And being on the other side
10 of the bench, I'm not -- this is a different -- this side is
11 totally different than that side. And I appreciate your
12 latitude and what you have afforded myself as a *pro se* and
13 as a judge. I appreciate that.

14 The events that have transpired, the background
15 information that we question as being relevant, is the mood
16 and tone of -- eyewitness Judge Pazin testifies that there's
17 tension in there, and the tension is not caused by Judge
18 Mercer. The tension is caused by an -- and it sounds like
19 I'm giving a testimony here, and if that's --

20 MR. GARBER: So --

21 JUDGE MERCER: -- not accurate, then I can
22 just keep my mouth quiet. But this is -- these are the
23 thing -- and the most important question that I have for Mr.
24 Paluch is he witnessed -- he experienced something inside
25 the Town Office, and it just reaffirms to me -- I've admitted

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1 from day one what I did wrong. In hearing the testimony, I
2 agree to everything. I didn't cringe. I didn't say, "I
3 shouldn't have said that." I stand by everything that I said.
4 And I made some indiscretions under a tense time in our
5 courts.

6 It's tense because the players involved are just --
7 I articulated in my closing statement in that testimony --
8 and it's very frustrating to hear how this transpired. And I
9 was never once -- somebody came to me and said, "How do
10 we resolve this?" Did I ask -- did I go to the courts and say,
11 "I did a wrong"? I did not do that. Did I know after about
12 three weeks or two weeks when I contacted Dave
13 Dellehunt, our District Attorney Counsel who I've called for
14 everything from anything behind the bench, and let him
15 know, "What do I do?" -- and we had a basic conversation
16 is, "How do I get in front of this?"

17 MR. GARBER: Okay.

18 JUDGE MERCER: Now, Judge Pazin has
19 testified that she talked to Rob Butler about steps to take to
20 do it. None of them were articulated. So it's that -- it's the
21 relevance part of everybody else's testimony that becomes a
22 problem with my situation. Yes, I admitted wholeheartedly
23 in every statement that I've made. I've never denied access
24 or -- to invoices or that -- Mr. Paluch is just another person
25 who witnessed these things that we might think relevant or

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not. And I leave that up to you --

MR. GARBER: Mm-hmm.

JUDGE MERCER: -- and for Mr. Pedrotty to not allow it.

I went through last night and went back in and condensed everybody's questioning for today to a point where I took your guidance, knew where I could go, and I asked my questions. And I believe today we were a lot tighter with regards to questioning. I did the same thing with Tony. I've erased three times and rewrote three times of what I can ask and discuss with these witnesses.

And that's why I'm asking for them to be there. He's a Board Member. He was present during all of these transactions. Is he liked by the rest of the town? It doesn't make a difference. It's somebody who experienced something, and we can't deny that experience. And if that -- I don't want to go into it right this second.

MR. GARBER: Okay.

JUDGE MERCER: I know who it is. I could if you would like to.

MR. GARBER: No.

JUDGE MERCER: But it's events.

MR. GARBER: Okay.

JUDGE MERCER: That's Tony Paluch.

MR. GARBER: Yeah. Mr. Pedrotty?

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MR. PEDROTTY: That was a lot. I simply would object to any questions about any matters not related to the JCAP grant or installation of security cameras and that whole situation, basically, questions not related to the allegations in the formally made complaint. Other than that, I defer to your discretion about what you allow in and certainly to give Respondent an opportunity to present his defense.

MR. GARBER: Judge Paluch -- excuse me. I'm sorry.

JUDGE MERCER: Tony Paluch.

MR. GARBER: Judge Mercer, please call your witness. I'm going to overrule the objection at this time. And he may testify subject to objections that --

JUDGE MERCER: Mm-hmm.

MR. GARBER: -- Mr. Pedrotty may have.

JUDGE MERCER: Okay.

MR. GARBER: But please call him.

JUDGE MERCER: Thank you.

MR. GARBER: Right here, sir.

JUDGE MERCER: Could you please come in and take a seat right there by Mr. Garber?

MR. PALUCH: On the right?

MR. GARBER: Right here, sir.

JUDGE MERCER: On his left.

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MR. GARBER: Sir, right here. Please sit down.

MR. PALUCH: Good afternoon, everybody.

MR. GARBER: Good afternoon, sir. I'm going to give you some guidance to make sure that the -- your testimony is properly recorded. So we have a digital recording system here, and subsequently, the recording will be transcribed, that is, into a typed document.

So to facilitate a clear and accurate record, please speak slowly, clearly, and directly into the microphone in front of you. Please refrain from moving away from the microphone or talking over other speakers. Please refrain from responding until a question is completed. And answer each questions [sic] with words, not with a nod or a gesture. And please refrain from creating excessive background noise as it becomes amplified on the recording system. And if you have a cell phone or other electronic equipment, please turn it off.

And with that guidance, if you would stand and raise your right hand, please.

MR. PALUCH: Yes, I will.

MR. GARBER: And do you swear or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

(Anthony Paluch - Direct)

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MR. PALUCH: I do.

MR. GARBER: Thank you. Please be seated.

Yeah.

ANTHONY PALUCH,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY JUDGE MERCER:

Q. Good afternoon, Mr. Paluch. How are you today?

A. Okay.

Q. I apologize for the delay. Can you state your name and then what your role is for the Athens Town?

A. My name is Anthony Paluch. I live in the Town of Athens. And my address?

Q. No.

MR. GARBER: Sir, would you please speak up and into the microphone?

THE WITNESS: Oh, you know what it is? I just got this thing, and I have a hard time adjusting to it.

JUDGE MERCER: Another hearing aid.

MR. GARBER: Oh, that's fine. I have the same problem.

THE WITNESS: Okay. I just got it.

A. My name is Anthony Paluch, and I reside in the Town of Athens. My

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(Anthony Paluch - Direct)

1 address is [REDACTED].

2 BY JUDGE MERCER:

3 Q. And what is your role with the Town of Athens?

4 A. My role with the Town is I'm a Town Board Member.

5 Q. And how long have you been a Board Member?

6 A. This August will be eight years.

7 Q. Were you on the Board when the JCAP process was started regarding
8 the -- this investigation? You were present on the Town Board?

9 A. Yes, I was. I was present.

10 Q. Okay.

11 JUDGE MERCER: Can we just have Exhibit 2,
12 please?

13 BY JUDGE MERCER:

14 Q. Can you just look at that document? Were you present at that signing of
15 that resolution?

16 MR. GARBER: Will you identify the
17 document, please?

18 BY JUDGE MERCER:

19 Q. Exhibit 2 is the -- states for the October 5th board meeting that we --
20 passing the resolution for the JCAP grant.

21 A. Yes.

22 Q. Okay.

23 MR. GARBER: May I see that for one moment,
24 please? May I see the document --

25 THE WITNESS: Oh, yes.

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(Anthony Paluch - Direct)

1 MR. GARBER: -- just for one moment? Okay.
2 For the record, this is the resolution of October -- adopted
3 by the Town Board in its October 5 meeting approving the
4 JCAP application.

5 Go ahead Mr. -- or Judge Mercer.

6 He was present, and his name is on the
7 document. Is --

8 MR. GARBER: Yeah.

9 JUDGE MERCER: -- that it?

10 THE WITNESS: That is correct.

11 JUDGE MERCER: Thank you. Can you hand
12 that exhibit back?

13 And can you give him Exhibit 14?

14 BY JUDGE MERCER:

15 Q. Exhibit 14 is a voucher for payment for the JCAP grant, and Mercer
16 Associates is the payee, and the total is for 3,329.99; is that correct?

17 A. That is correct.

18 Q. Okay. And is that your signature on the lower right-hand corner of the
19 page?

20 A. My signature is on the left-hand upper corner of the page.

21 Q. Not on the bottom right? Is that --

22 A. No, it's not on the bottom.

23 Q. Is that exhibit --

24 A. Left-hand --

25 Q. --14?

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(Anthony Paluch - Direct)

1 A. -- upper, approval for payment.

2 Q. Can I just review that?

3 A. Yes. Right here. The top one.

4 Q. Did I say lower right? And I'm just going to --

5 JUDGE MERCER: Can you hand that back to
6 him?

7 BY JUDGE MERCER:

8 Q. Your signature is on that paper, correct, approving it?

9 A. That is correct.

10 Q. Okay.

11 A. My signature is on the paper.

12 Q. Was the Town Board ever notified or made aware of the JCAP grant and
13 Mercer Associates?

14 A. Yes.

15 Q. Approximately when?

16 A. It's got to be over three years ago. I can't recall when.

17 Q. When was the first time you became aware of the Mercer Associates
18 JCAP grant?

19 A. After this, it was a couple of weeks after we did these vouchers.

20 Q. Mm-hmm. Then you heard --

21 A. And then I -- I just heard that you were going to do cameras.

22 Q. Right.

23 A. Yep. And that's kind of --

24 Q. Where did you hear that?

25 A. I heard it from Mr. Pierro, the Bookkeeper.

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(Anthony Paluch - Direct)

1 Q. Okay. And Mr. Pierro just said to you is that, "Mercer has cameras in
2 there"?

3 A. "Oh, he's got cameras." And he wasn't happy about it, so --

4 Q. How was he not happy? How was he not happy?

5 A. Well, he was not happy. He went into a rage. That's how he is. I'm
6 sorry, but --

7 Q. Okay. Thank you. You can give back that exhibit. To your knowledge,
8 did Judge Mercer attend Board meetings as a nonjudicial person regularly
9 during this time?

10 A. I'm sorry, Mr. Mercer. Say that again?

11 Q. Did Judge Mercer attend your Athens Town Board meetings on a regular
12 basis?

13 A. Not on a regular basis, no.

14 Q. How irregular or --

15 A. Well --

16 Q. -- how often?

17 A. -- probably, maybe one out of two.

18 Q. Okay.

19 A. Yeah, maybe 50, 60 percent.

20 Q. So about 50 percent of the time I was present at Town Board meetings?

21 A. Oh, yes, you were.

22 Q. Did you ever find me intimidating?

23 A. Never.

24 Q. Did I ever say anything out of order or out of line?

25 A. Mr. Mercer, you've always been a gentleman.

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(Anthony Paluch - Direct)

1 Q. Okay.

2 JUDGE MERCER: Can you give Mr. Paluch
3 Exhibit J? Exhibit J is just a email chain with the
4 Supervisor setting up a meeting. I believe it's J.
5 (Respondent's Exhibit J was marked for identification)

6 BY JUDGE MERCER:

7 Q. You're not on that email. However, that's just -- I'm dating the time, but
8 did you participate at that meeting?

9 MR. PEDROTTY: Objection. This is not in
10 evidence at this time. Relevance, because this email relates
11 to something that occurred in January 2023, well after the
12 events alleged in the formal written complaint.

13 MR. GARBER: Mr. Paluch, may I see that
14 document, please?

15 THE WITNESS: Yes, you can.

16 MR. GARBER: For the record and for
17 clarification, proposed Exhibit J is an email chain from
18 Judge Mercer to Michael Pirrone, dated January 9, 2023,
19 and a response by Mr. Pirrone the same -- dated the same
20 day.

21 Mr. -- or Judge, excuse me, Pazin -- or Judge
22 Mercer, pardon me, for what purpose are you -- seek to
23 either introduce this into evidence or to question Mr. Paluch
24 about this? Because he is not a participant in either the
25 email chain or -- and it's nearly three years after the events

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(Matter of E. Timothy Mercer - Colloquy)

1 of this matter -- giving rise to this matter and is well after
2 the formal written complaint that was served upon you.

3 JUDGE MERCER: It is almost three years after
4 that, yes, sir.

5 MR. GARBER: Yeah. So --

6 JUDGE MERCER: The persons involved in the
7 meeting was the Town Attorney, who was present at the
8 time of the complaint, who filed the complaint. And Mr.
9 Paluch was present at this meeting with the Town Attorney
10 and the discussion of the complaint, the ethics complaint,
11 and the JCAP was discussed with -- in front of the
12 Supervisor, the Town Attorney, and Mr. Paluch.

13 MR. GARBER: Well --

14 JUDGE MERCER: That is only the first time I
15 ever had a presence or was allowed to have a presence with
16 the Town Attorney by any supervisor.

17 MR. GARBER: Is Mr. Pirrone the current
18 Town Supervisor?

19 JUDGE MERCER: Yes, he is, sir.

20 MR. GARBER: And he was not involved as the
21 Supervisor at the time of the JCAP application?

22 JUDGE MERCER: No, sir. What he was
23 involved in is -- as in the email states, is the transition of
24 the possibility -- of what possibly could happen. I was
25 informing the Town of the situation that was there and to

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1 make them aware of what the possibilities could be in
2 June -- in January. Mr. Paluch is the Court Liaison for the
3 Athens Town Court to the Town Board. That's why I felt it
4 was important for him to be there because he would be
5 involved in the discussions of judge replacement. The
6 Town Attorney was there, the Court Liaison was there, and
7 the Town Supervisor. I felt they were the only three people
8 that I needed to discuss this with.

9 MR. GARBER: But the subject of this email is
10 either -- and it's the possibility of your resignation or
11 possibility of your renewal -- removal --

12 JUDGE MERCER: Mm-hmm.

13 MR. GARBER: -- from office.

14 JUDGE MERCER: Mm-hmm.

15 MR. GARBER: How does that relate to the
16 allegations in the formal written complaint?

17 JUDGE MERCER: It relates to what comment
18 the Town Attorney said at that meeting, and that's why Mr.
19 Paluch is here.

20 MR. GARBER: Well, are you going to call the
21 Town Attorney as a witness?

22 JUDGE MERCER: No. Mr. Pedrotty and I
23 discussed the Town Attorney as a witness, and we both
24 concurred, I believe.

25 MR. PEDROTTY: Well, I --

(Anthony Paluch - Direct)

1 MR. GARBER: I didn't catch the last part.

2 MR. PEDROTTY: Respondent decided not to
3 call -- Respondent had a subpoena for the Town Attorney,
4 Mr. McHugh. He decided not to call him as a witness or
5 serve him a subpoena.

6 MR. GARBER: Yeah. That's Mr. McHugh?

7 JUDGE MERCER: Mr. McHugh, yes, sir.

8 MR. GARBER: Yeah. Well, he was available
9 to you as well to --

10 JUDGE MERCER: He was.

11 MR. GARBER: -- call as a witness.

12 JUDGE MERCER: I valued his time, sir.

13 MR. GARBER: Yeah.

14 JUDGE MERCER: And it would be one
15 question.

16 MR. GARBER: Well, Judge Mercer, I find this
17 line of inquiry highly questionable due to its relevance. But
18 I'm going to give you a little leeway, and then I may
19 interrupt and advise you that the testimony is not relevant.
20 With that understanding, you may go forward.

21 JUDGE MERCER: Okay.

22 BY JUDGE MERCER:

23 Q. This meeting with --

24 A. I'm sorry, what --

25 Q. This meeting with Supervisor Pirrone, Mr. McHugh, yourself, and me,

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(Anthony Paluch - Direct)

1 the purpose of this meeting was to discuss transition of my judgeship
2 with, I believe, the three most important people that are engaged with the
3 Athens Town Court, except for the judges and the clerks, obviously,
4 okay? Would you tell me what the Town Attorney Mr. McHugh said
5 with regards to discussing resolution or discussing the JCAP grant before
6 they filed their ethics claim?

7 MR. GARBER: Now, that --

8 MR. PEDROTTY: I have to object on hearsay.

9 MR. GARBER: Sustained.

10 MR. PEDROTTY: I have to.

11 MR. GARBER: Sustained.

12 MR. PEDROTTY: Can't not do that.

13 MR. GARBER: Mr. Paluch --

14 THE WITNESS: Can I say what --

15 MR. GARBER: No. No, you can't. No. No.

16 To your knowledge, what was the purpose of this meeting
17 requested by --

18 THE WITNESS: The purpose of this meeting
19 was to --

20 MR. GARBER: Let me finish, please.

21 THE WITNESS: Oh, I'm sorry.

22 MR. GARBER: No, requested by Judge
23 Mercer? Please.

24 THE WITNESS: Okay. The purpose of that
25 meeting was to discuss your departure, if there was going to

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1 be one. And when I discussed with Mr. McHugh, Mr.
2 McHugh told myself and the other two people that this
3 should never have happened.

4 MR. PEDROTTY: Objection.

5 MR. GARBER: Okay.

6 MR. PEDROTTY: I have to.

7 MR. GARBER: Sustained.

8 And that will be -- Judge, do you have -- Judge
9 Mercer, do you have any further questions about this
10 exhibit?

11 JUDGE MERCER: I don't have any other
12 further questions. That was my last question, sir.

13 MR. GARBER: Okay. Do you want to -- are
14 you offering proposed Exhibit J into evidence?

15 JUDGE MERCER: Is that entered already? I
16 don't have it noted. Can we enter it in as evidence?

17 MR. PEDROTTY: Again, it's my position it's
18 not at all relevant.

19 MR. GARBER: Yeah.

20 MR. PEDROTTY: I don't have any major
21 objection to it going in. I don't believe it's relevant and
22 contains hearsay. That's my objection. I'll leave it to your
23 discretion, though, and I understand that you can determine
24 for yourself what is relevant here.

25 MR. GARBER: Judge, I don't believe the

313.

1 proposed Exhibit J is relevant, and I'm not going to -- well,
2 let me rephrase that. And ordinarily, I would not accept it
3 into evidence. In this case, I will in light of the fact that the
4 Commission on Judicial Conduct reviews the record and it
5 may consider it despite the fact that -- it may wish to
6 consider it --

7 JUDGE MERCER: Mm-hmm.

8 MR. GARBER: -- despite the fact that I don't
9 believe it's relevant. So I'll admit it for that limited
10 purpose.

11 (Respondent's Exhibit J was admitted into evidence)

12 JUDGE MERCER: Okay. Thank you. And
13 that's all my questions for Mr. Paluch.

14 Tony, if you can stay there, Mr. Pedrotty will
15 have some questions.

16 THE WITNESS: Could you speak up just a
17 little bit?

18 MR. GARBER: What do you need, sir?

19 THE WITNESS: Could you just tell him to
20 speak up just a little bit?

21 MR. GARBER: Yes.

22 Mr. Pedrotty?

23 MR. PEDROTTY: Yes, sir.

24 MR. GARBER: Will you speak up --

25 THE WITNESS: Just a little bit.

(Anthony Paluch - Cross)

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MR. GARBER: -- for the witness, please?

MR. PEDROTTY: I'll do the best I can, yes.

THE WITNESS: That's good. Good.

MR. GARBER: Yeah.

THE WITNESS: (Unintelligible) this ear.

MR. GARBER: No. I understand completely.

THE WITNESS: Okay. Thank you.

CROSS-EXAMINATION

BY MR. PEDROTTY:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Can you hear me?

A. Yes, I can.

Q. Very good.

MR. PEDROTTY: Ryan, can you please show
the witness Exhibit 14?

BY MR. PEDROTTY:

Q. You've testified that your signature appears on that page?

A. Yes, I do.

Q. Exhibit 14 is a copy of the voucher submitted by Mercer Associates?

A. Yes.

Q. Do you see on there where it indicates the cost of the camera system to be
\$2,329.99?

A. Yes.

Q. Did you know that he marked up the cost of the camera system on the

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(Anthony Paluch - Cross)

1 voucher to make a personal profit from public funds?

2 A. Didn't know that.

3 Q. If I told you today that the actual cost of the camera was \$1,569.99,
4 would that be news to you?

5 A. Well, from this (unintelligible) it would be.

6 Q. Did he ever tell you it cost \$1,569.99?

7 A. No.

8 MR. PEDROTTY: Okay. Thank you. I have
9 no further questions.

10 MR. GARBER: Judge Mercer, do you have any
11 redirect?

12 JUDGE MERCER: No, I do not. No, sir.

13 MR. GARBER: Mr. Paluch?

14 THE WITNESS: Yes.

15 MR. GARBER: Did you attend -- pardon me.
16 Did you attend the October 5, 2020 meeting of the Town
17 Board approving the JCAP grant?

18 THE WITNESS: Yes. Yes.

19 MR. GARBER: Okay. And was Judge Mercer
20 present at that meeting? If you don't recall, you don't --

21 THE WITNESS: No, I don't recall.

22 MR. GARBER: Okay. Nothing further from
23 me.

24 JUDGE MERCER: That's all I have.

25 MR. GARBER: Now, Mr. Paluch --

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THE WITNESS: Yes, sir.

MR. GARBER: -- you're excused, and thank
you for coming.

THE WITNESS: May I share one thing, please?

MR. PEDROTTY: No.

MR. GARBER: No, sir, under the procedures.

THE WITNESS: I just want to tell you how the
Town operates in doing the voucher.

JUDGE MERCER: Tony, it's not the --

MR. PEDROTTY: I'm sorry. That's --

MR. GARBER: No. No.

JUDGE MERCER: It's not the place.

THE WITNESS: All right. All right.

MR. GARBER: No. I understand your --

THE WITNESS: To me, this is very important.

MR. GARBER: No. I understand your desire,
sir, but there are certain --

THE WITNESS: Okay.

MR. GARBER: -- procedures --

THE WITNESS: No, I understand.

MR. GARBER: -- and rules of evidence.

THE WITNESS: Okay.

MR. GARBER: Thank you for coming.

THE WITNESS: Well, I just want to thank
everybody here, and I hope everything goes well.

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MR. PEDROTTY: Thank you, sir.

THE WITNESS: Okay.

JUDGE MERCER: Do you want to review your other concerns, Mr. Pedrotty, over the next witness for relativity and the rest before we bring him in?

MR. PEDROTTY: Sure. My objection to the next witness is he is Sam June. He is the current Court Clerk. He began his employment many months after all the events alleged in the formal written complaint.

MR. GARBER: Okay. I'll reserve on your objection until -- what's the gentleman's name?

JUDGE MERCER: Sam June. Samuel June.

MR. GARBER: Okay. Until Mr. June testifies. You may call him.

JUDGE MERCER: Can you just come in and have a seat to the left of Mr. Garber?

MR. GARBER: Mr. June, please sit down here. Mr. June, I'm going to give you some instructions about your testimony regarding the recording system that we're using. This is a -- the proceedings are being digitally recorded. They're going to -- subsequently, they're going to be transcribed. So to facilitate a clear and accurate record, please speak slowly, clearly, and directly into the microphone in front of you.

Refrain, please, from moving away from the

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1 microphone or talking over other speakers. Please refrain
2 from responding to a question until it's completed, and
3 answer each question with words, not a gesture or a nod.
4 And please refrain from creating excessive background
5 noise as it is amplified on the recording and interferes with
6 the recording. And if you have a cell phone or other
7 electronic equipment, please turn it off.

8 So would you please -- do you have a phone
9 with you? Is it off?

10 MR. JUNE: I can turn it off.

11 MR. GARBER: Please turn it off. Okay.

12 Thank you. And if you'd stand and raise your right hand.

13 And do you swear or affirm under the penalties
14 of perjury that the testimony you are about to give is the
15 truth, whole truth, and nothing but the truth?

16 MR. JUNE: I do.

17 MR. GARBER: Okay. Please sit down.

18 Judge Mercer?

19 JUDGE MERCER: Thank you.

20

21 SAMUEL JUNE,

22 having been duly sworn, was examined and testified as follows:

23

24 DIRECT EXAMINATION

25 BY JUDGE MERCER:

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(Samuel June - Direct)

1 Q. Mr. June, can you tell us what your role is with the Athens Town Court?

2 A. Court Clerk.

3 Q. Okay. And who do you clerk for?

4 A. Judge Tim Mercer.

5 Q. Thank you. How long have you been a clerk?

6 A. Since October of 2022.

7 Q. Do you solely clerk for Judge Mercer?

8 A. No.

9 Q. Who else do you clerk for?

10 A. Judge Pazin as well.

11 Q. Okay. Who is Marcia Puorro?

12 A. She is the Senior Court Clerk of the Athens Town Court.

13 Q. And is Marcia Puorro the one who has trained you when you became a
14 new hire?

15 A. Yes.

16 Q. Do you find any of Judge Mercer's behavior in the court office
17 obstructive or disrespectful to anyone in the court office or in the
18 courtroom?

19 A. No.

20 Q. You were not present during the time of the JCAP application; is that
21 correct?

22 A. No. Well, yes, that is correct. That is correct.

23 Q. Okay. Has the topic of the JCAP grant ever come in conversation in the
24 court office while you were working?

25 A. Yes.

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(Samuel June - Direct)

1 Q. Okay. Who did you have these conversations with?

2 A. I had spoken with Marcia Puorro and Judge Mercer.

3 Q. Okay. Have the three of us discussed together, or was it separate
4 conversations you had?

5 A. They were separate conversations.

6 Q. Okay. And this was, again, during work hours while you were
7 performing your duties?

8 A. Yes.

9 Q. Correct? Okay. Tell us about a conversation that you had with Marcia
10 Puorro with regards to the JCAP grant.

11 MR. PEDROTTY: Objection. Hearsay.

12 MR. GARBER: What is the date? When did
13 you have a conversation with Ms. Puorro?

14 THE WITNESS: When?

15 MR. GARBER: Yeah. What is the approximate
16 time?

17 THE WITNESS: I mean, I've had --

18 MR. GARBER: No, just when, if you recall.

19 THE WITNESS: I'm trying to think exactly
20 when.

21 MR. GARBER: When was your first
22 conversation? Let me put it that way.

23 THE WITNESS: Even that, I'm -- if I had to
24 guess, December.

25 MR. GARBER: Of what year?

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Samuel June - Direct)

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THE WITNESS: 2022.

BY JUDGE MERCER:

Q. So that would be two months into your employment?

A. Correct.

Q. Okay.

MR. GARBER: And what was the substance of that conversation, subject to Mr. Pedrotty's objection?

MR. PEDROTTY: My objection is hearsay.

MR. GARBER: Yes. Overruled at this time.

But you may raise it again.

What was the substance of your conversation?

THE WITNESS: About what was on the JCAP grant, what is a JCAP grant, you know, one of -- we've had multiple conversations being what is a JCAP grant. As the person to train me, she's, you know, kind of -- Marcia Puorro's kind of gone down just the steps, and then she had also talked about the JCAP grant in question from a few years ago.

MR. GARBER: Okay. Go on.

BY JUDGE MERCER:

Q. And during that conversation, was there anything that Marcia Puorro discussed with you that would contradict anything that one would expect?

MR. PEDROTTY: Objection.

MR. GARBER: The question is too vague for a response, so I'll sustain the objection.

322.

(Samuel June - Direct)

1 BY JUDGE MERCER:

2 Q. Did Marcia Puorro ever discuss placing my invoice with the JCAP grant?

3 The estimate, I'm saying.

4 A. The estimate?

5 Q. Yes. In the application process, in your conversation with Marcia by
6 yourself, did she ever tell you that there was mistake made in the process
7 of doing the JCAP grant with regards to the estimate?

8 MR. PEDROTTY: Objection to the form of the
9 question.

10 MR. GARBER: Sustained.

11 BY JUDGE MERCER:

12 Q. Did Marcia say that she did not put my estimate in for the Board to
13 approve?

14 MR. PEDROTTY: Objection.

15 MR. GARBER: Sustained. Let me interrupt
16 here for a minute.

17 What exhibit number is the -- are you talking
18 about your voucher, Judge Mercer?

19 JUDGE MERCER: The letter down to the
20 editor to the Town Board was September 21st, and then the
21 next one was October 5th -- was when it was passed.

22 MR. GARBER: Okay.

23 JUDGE MERCER: Testimony has shown that
24 there was no estimate or any presentation of numbers from
25 Marcia to have that presented to the Board. It was left off.

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(Samuel June - Direct)

1 Marcia Puorro testified that she was rushing on deadlines,
2 and she was going on vacation. And it was --

3 MR. PEDROTTY: That misrepresents the
4 record.

5 MR. GARBER: Well, I --

6 JUDGE MERCER: Well, I believe she said it
7 yesterday in her testimony that --

8 MR. GARBER: Yeah. But --

9 JUDGE MERCER: -- she was going on
10 vacation and that she felt rushed through the process. I'm
11 saying that it leads to be a simple mistake that she informed
12 Mr. June with, which is why this question is here.

13 MR. GARBER: May I see Exhibit 1?

14 Mr. June, I'm referring you to Exhibit 1, which
15 is a letter dated September 21, 2020, from Ms. Puorro to the
16 Athens Town Board. And I'll show that letter to you.

17 Did you have a conversation with Ms. Puorro
18 with respect to that letter, Exhibit 1? Yes or no.

19 THE WITNESS: No.

20 MR. GARBER: Okay. May I see the
21 resolution?

22 JUDGE MERCER: Exhibit 2?

23 MR. GARBER: It's Exhibit 2?

24 JUDGE MERCER: I believe so.

25 MR. GARBER: Thank you.

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(Samuel June - Direct)

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Mr. June, I am going to show you Exhibit 2, which is a letter dated October 6, 2020, to the New York State Unified Court System Office of Court Administration. And in it, it sets forth the resolution of the Town Board, dated October 5, 2020, approving the JCAP grant. I'm going to show you that letter.

Did you have a conversation or discussion with Ms. Puorro with respect to that letter which is Exhibit 2?

THE WITNESS: Specifically the letter?

MR. GARBER: Yes.

THE WITNESS: No.

MR. GARBER: Okay. You may proceed. He did not discuss either of those --

JUDGE MERCER: Mm-hmm.

MR. GARBER: -- documents with Ms. Puorro.

JUDGE MERCER: Right.

BY JUDGE MERCER:

Q. Did Marcia admit to you that she didn't place the Mercer Associates estimate within the time frames of the Exhibit 1 -- is when -- on the 21st of June to the exhibit on the 5th?

A. Yes.

MR. PEDROTTY: Objection. I wasn't sure if he was finished -- his question. That's an objection.

MR. GARBER: What is the purpose of the question?

(Samuel June - Direct)

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JUDGE MERCER: The purpose of the question is to show is that there is a possibility, a strong possibility, based on the conversation Mr. June had with Marcia Puorro -- is that the Mercer Associates camera project was not submitted properly to the Town Board, but it submitted an online application two days later. So a lot of things had to happen between then and now, and to this day, as I've articulated in my testimony is, I don't know how that happened.

MR. GARBER: Well --

JUDGE MERCER: And the same trust of -- I want to just say, the same trust that Judge Pazin has for not reviewing the online application is the same trust I had with Marcia --

MR. GARBER: Well --

JUDGE MERCER: -- as -- I've been a Judge for seven months. She's the Senior Court Clerk. She's the administrator. My project folder was on my desk. All the data was there. Why it didn't go down is the question. And actually, that simple mistake is my judgeship, and that's why it's important to me. And I did not know that she discussed this with anybody until Mr. June.

MR. PEDROTTY: Well, if I may, again, Mr. June has no personal knowledge whatsoever of any of these events. And I think he -- Respondent is trying to impeach

(Samuel June - Direct)

1 Ms. Puorro with an inconsistent statement. However, he
2 never asked Ms. Puorro whether she said anything to Mr.
3 June about having admitted she neglected to include this
4 estimate on the Town Board. So I believe it's an improper
5 attempt to impeach her at this stage.

6 MR. GARBER: Well, I'm going to give Judge
7 Mercer leeway.

8 You may answer the question .

9 A. Can you repeat the question?

10 BY JUDGE MERCER:

11 Q. The question was did Marcia Puorro tell you that she forgot to put the
12 security cameras into the JCAP grant for the final resolution?

13 MR. PEDROTTY: I just want to object again.
14 Like, it's leading.

15 MR. GARBER: Yeah. I'm going to --

16 MR. PEDROTTY: And I want him to ask,
17 "What did she say?"

18 MR. GARBER: I'm going to rephrase it.
19 Did you have a conversation with Ms. Puorro
20 about the JCAP grant application?

21 THE WITNESS: Yes.

22 MR. GARBER: When was that conversation?
23 When did it occur?

24 THE WITNESS: Around December.

25 MR. GARBER: Of 2020?

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(Samuel June - Direct)

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THE WITNESS: Of '22. Yes, of 2022.

MR. GARBER: 2022. I'm sorry.

THE WITNESS: Yes.

MR. GARBER: And the substance of that conversation?

THE WITNESS: The contents of the JCAP grant.

MR. GARBER: Now, ask your question, please. I'm addressing that to Judge Mercer.

JUDGE MERCER: I know that. I'm trying not to run down this rabbit hole that we keep having.

BY JUDGE MERCER:

Q. Did Marcia Puorro, in conversation with yourself, tell you is [sic] that she made a mistake?

MR. GARBER: Let me rephrase the question for you. To the best of your recollection, what was the substance of your conversation with Ms. Puorro on -- in December of 2022?

THE WITNESS: So more specifically than the contents of the JCAP grant, the conversation we had discussed how she had left off the -- I'm blanking on the word -- estimate -- sorry; that's it -- the estimate that Mercer Associates had submitted. Marcia Puorro did not add anything for the cameras on the JCAP grant that was submitted to the Town Board.

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(Samuel June - Cross)

1 JUDGE MERCER: I have no other questions.

2 Thank you.

3 MR. GARBER: Mr. Pedrotty, I know your
4 objection. I make it a complete record.

5 MR. PEDROTTY: Absolutely.

6 MR. GARBER: Any questions, Mr. Pedrotty?

7 CROSS-EXAMINATION

8 BY MR. PEDROTTY:

9 Q. Mr. June, is it --

10 MR. GARBER: Are we down?

11 BY MR. PEDROTTY:

12 Q. Is it fair to say you have no personal knowledge whatsoever of what
13 occurred with respect to the JCAP application of 2020/2021?

14 A. That is not fair to say.

15 Q. You were present in 2020 and 2021 at the court and were involved in that
16 application process?

17 A. I was not there, but I have heard what happened.

18 Q. Do you know what personal knowledge means? Were you actually
19 involved in the situation?

20 A. Okay. Then, no. No.

21 MR. PEDROTTY: Okay. Thank you. I have
22 no further questions.

23 JUDGE MERCER: I have no other questions.

24 MR. GARBER: Thank you for coming, Mr.

25 June.

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(Samuel June - Cross)

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THE WITNESS: Mm-hmm.

MR. GARBER: You're excused.

THE WITNESS: Thank you. Would you like these exhibits here, sir?

MR. GARBER: Oh, yes. We'll give this --

THE WITNESS: Thank you.

UNIDENTIFIED SPEAKER: Ryan.

MR. GARBER: Judge Mercer, I just -- I'm noting for the record that Ms. Puorro testified yesterday and you had an opportunity to address the purported error she made with respect to the application, and I don't believe you addressed it with her. But I'm just making a note of that.

JUDGE MERCER: Mm-hmm.

MR. PEDROTTY: Are you saying with respect to her having said anything to Mr. June about having made an error? Is that what you mean?

MR. GARBER: With respect to Mr. June or he -- Judge Mercer had the opportunity --

MR. PEDROTTY: Yeah.

MR. GARBER: -- to question her as to whether or not there was an error.

MR. PEDROTTY: Okay. Yep. Thank you.

JUDGE MERCER: At this time, I have nothing else for the Commission or for --

MR. GARBER: Yeah.

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JUDGE MERCER: Procedurally-wise, you

can --

MR. GARBER: Judge Mercer, are you going to

testify?

JUDGE MERCER: I have a closing statement.

And --

MR. GARBER: Okay.

JUDGE MERCER: -- unless --

MR. GARBER: Well --

MR. PEDROTTY: At this time, if the

Respondent's not going to testify, I do call him as a witness.

MR. GARBER: Okay. Mr. Pedrotty, this is in

the nature of rebuttal or --

MR. PEDROTTY: Yeah. And I believe that I

am entitled to cross-examine him at this time, correct?

MR. GARBER: Yeah.

MR. PEDROTTY: As a --

MR. GARBER: And we discussed that in our

many conversations that you reserve the right to call Mr. --

or Judge Mercer if he did not testify.

MR. PEDROTTY: Yes. Yeah. And actually,

can I -- I was not really expecting this. Can I -- we take a

five-minute break?

MR. GARBER: Sure.

MR. PEDROTTY: Okay.

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(Recess from 1:35 p.m. until 1:48 p.m.)

MR. FITZPATRICK: We are on the record.

MR. GARBER: Okay. Mr. Pedrotty, I note your objection to Mr. June's testimony, and I admitted it in the nature of an offer of proof, and it was very limited testimony. When you brief this matter, you may renew your objection as to why it should not be admitted.

MR. PEDROTTY: Okay.

MR. GARBER: And give you that opportunity. I admitted it at the time to give Justice Mercer some leeway and for the Commission, but you may brief the issue if you wish as to why I should not consider.

MR. PEDROTTY: Very good. Thank you.

MR. GARBER: And Judge Mercer -- Judge, please sit down. Judge, you are in the position now of being a witness and an attorney or representing yourself --

JUDGE MERCER: Mm-hmm.

MR. GARBER: -- *pro se*. If you object to any of Mr. Pedrotty's questions, you may, stating the objection and the reason for your objection.

JUDGE MERCER: Understood.

MR. GARBER: Okay? Judge, I don't believe I need to state the admonition I gave to all the witnesses about speaking into the microphone. You've heard it --

JUDGE MERCER: I have heard it --

(Hon. E. Timothy Mercer - Direct)

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MR. GARBER: -- ad nauseum.

JUDGE MERCER: -- five times now.

MR. GARBER: So I won't repeat. And with that, would you stand and raise your right hand.

And do you swear under -- or affirm under the penalties of perjury that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

JUDGE MERCER: I certainly do.

MR. GARBER: Okay. Mr. Pedrotty, please proceed.

MR. PEDROTTY: Thank you, Mr. Garber.

HON. E. TIMOTHY MERCER,
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PEDROTTY:

Q. Good afternoon, Judge.

A. Good afternoon.

Q. Mercer Associates is a contracting company, correct?

A. Correct.

Q. You are its owner?

A. I am.

Q. The associates in Mercer Associates are subcontractors you hire on as-needed basis?

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(Hon. E. Timothy Mercer - Direct)

1 A. Correct.

2 Q. You have no employees?

3 A. No employees.

4 Q. And this was true in 2020 and 2020 [sic] as well?

5 A. The employees were let go due to COVID.

6 Q. Now, as one of the Athens Town Justices, you were involved in the
7 court's JCAP 2020 and 2021 grant application?

8 A. That is correct.

9 Q. You signed the signature page?

10 A. I did.

11 Q. You signed it on September 21, 2020?

12 A. I did.

13 Q. Now, the Court's JCAP application ultimately included a security camera
14 system, correct?

15 A. That is correct.

16 Q. And you were the one who researched security camera systems, right?

17 A. For the court grant process, yes.

18 Q. You found a security camera system online?

19 A. Yes.

20 Q. And you found it at CCTV Security Pros' website?

21 A. That is correct.

22 Q. The system you found online cost \$2,329.99?

23 A. That was the price listed.

24 Q. And you also determined that it would cost \$1,000 to install the system?

25 A. That is correct.

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Hon. E. Timothy Mercer - Direct)

1 Q. That was your estimate of how much it would cost Mercer Associates to
2 install the system, correct?

3 A. The \$1,000 was the installation cost, yes.

4 Q. For Mercer Associates?

5 A. That's correct.

6 Q. And that was a fixed fee based on your estimate of how long it would
7 take you to complete and your personal hourly rate?

8 A. Yes.

9 Q. The fee related to your own personal labor to install the system, correct?

10 A. That's correct.

11 Q. You had no employee laborers who would assist you?

12 A. I was the sole installer.

13 Q. So if you had gotten paid with the voucher that you ultimately submitted,
14 any and all profit would have gone to you, correct?

15 A. It would have gone to Mercer Associates, yes.

16 Q. And that would go to you as the owner?

17 A. Absolutely.

18 Q. Was the estimate based on any estimates from any other contracting
19 companies?

20 A. None.

21 Q. Did you seek bids from any other contracting companies?

22 A. I did not.

23 Q. Ms. Puorro included a security system in the Court's JCAP application?

24 A. She did.

25 Q. Did she enter the information about the system that you supplied to her?

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STATE COMMISSION ON JUDICIAL CONDUCT

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(Hon. E. Timothy Mercer - Direct)

- 1 A. On the electric filing online process, yes.
- 2 Q. Is it your position that she added the camera system to the application
3 because the entire court staff had agreed to add it?
- 4 A. I believe the cameras were discussed in the office amongst everyone.
- 5 Q. Okay. So is that your position that everybody had agreed it would be
6 added to the application?
- 7 A. We discussed the cameras, I believe.
- 8 Q. Okay. So you're saying there was discussions about camera?
- 9 A. At that time, Judge Pazin was not involved in the process of adding the
10 cameras to the process [sic].
- 11 Q. To the application?
- 12 A. That's correct.
- 13 Q. So Judge Pazin was not involved in the final decision to add the security
14 camera system to the application?
- 15 A. When Vee Carl, Marcia Puorro, and myself discussed it, Judge Pazin was
16 not involved in the decision to add them.
- 17 Q. The system on the application had an estimated total cost of \$3,229.99,
18 correct?
- 19 A. Correct.
- 20 Q. And that figure was based upon the camera purchase price and the
21 installation cost that you provided to Ms. Puorro, correct?
- 22 A. That is correct.
- 23 Q. On October 6, 2020, you printed out a webpage from CCTV Security
24 Pros detailing the system you found, right?
- 25 A. That is correct.

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(Hon. E. Timothy Mercer - Direct)

1 Q. At the time the application was submitted, so October 2020, did you
2 intend for Mercer Associates to install the camera system?

3 A. It was during COVID, and I'm going to say that I knew that there was a
4 possibility that I could install it, but at that time, we were in a complete
5 lockdown in New York State, I believe, or there were still some COVID
6 restrictions amongst the population.

7 Q. So yes or no, Judge, at the time the application was submitted, did you
8 intend for Mercer Associates to install the camera system?

9 A. At the time of application?

10 Q. Yeah.

11 A. It was not 100 percent. There was a possibility.

12 Q. Did you ever notify Supervisor Butler that Mercer Associates would be
13 installing a camera system at the court?

14 A. I did not.

15 Q. Did you ever notify the Town Board that Mercer Associates would be
16 installing a camera system at the court?

17 A. At what time of year? I --

18 Q. At any point.

19 A. No, I did not.

20 Q. Prior to submission of the July 6, 2020 voucher, did you ever notify
21 either the Supervisor or the Town Board that Mercer Associates would
22 charge a \$1,000 fee to install the system?

23 A. I did not.

24 Q. Did you ever notify them that this fee was to be profit for you and/or your
25 business and not any employee labor expense?

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(Hon. E. Timothy Mercer - Direct)

1 A. I did not.

2 Q. Did you ever, in connection with the security camera installation, notify
3 the Supervisor or the Board in writing of your financial interest in Mercer
4 Associates?

5 A. I did not.

6 Q. Judge, is it still your position that the September 2, 2020 estimate for
7 Mercer Associates was submitted to the Town Board?

8 A. I can't confirm that the estimate went down to the Town Board at all. I
9 assumed it was.

10 Q. But you don't know whether it was or not?

11 A. I can't confirm that, no.

12 Q. There was no mention of a security camera system in Ms. Puorro's
13 September 21, 2020 letter to the Town Board, correct?

14 A. There was not.

15 Q. And you were copied on Ms. Puorro's letter?

16 A. I did see the letter that was dated --

17 Q. September 21, 2020?

18 A. Correct. Mm-hmm.

19 Q. And did you see it at or around that time?

20 A. I did see the letter, yes.

21 Q. As a justice, it's your responsibility to supervise court staff, correct?

22 A. Yes.

23 Q. If there was an error or omission in Ms. Puorro's notice to the Town
24 Board, it was your duty to correct that, right?

25 A. I see that now, yes. I trusted Ms. Puorro just like Judge Pazin does, with

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(Hon. E. Timothy Mercer - Direct)

1 20 some-odd years' experience.

2 Q. Do you agree the Town Board never authorized the Court to include a
3 security camera system on its JCAP application?

4 A. There was not any mention of that in any of the correspondence with the
5 Town Board.

6 Q. Is it your position that you were totally transparent with the Office of
7 Justice Court Support that Mercer Associates was going to do the
8 installation of the camera system by submission of the September 2, 2020
9 estimate?

10 A. There was no indication of any contractor or vendor for the installation.
11 It was a number. On the one estimate, I believe it says, "Provide labor
12 and installation," if I'm not correct, from Mercer Associates.

13 MR. PEDROTTY: Can you please show the
14 witness Exhibit 5?

15 THE RESPONDENT: Thank you.

16 BY MR. PEDROTTY:

17 Q. So looking at Exhibit 5, do you agree that on December 1, 2020, Ms.
18 Puorro sent to the Office of Justice Court Support the attached estimate
19 from Mercer Associates dated 9/2/2020?

20 A. That is correct. That is the estimate.

21 Q. Does it state anywhere in the estimate that you were the owner of Mercer
22 Associates?

23 A. On the estimate itself, no.

24 Q. Does it state anywhere on the estimate that you have any financial
25 interest in Mercer Associates?

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(Hon. E. Timothy Mercer - Direct)

1 A. It does not state that.

2 Q. Did you sign the estimate?

3 A. My wife did.

4 Q. Does the name E. Timothy Mercer, Edward T. Mercer, or Timothy
5 Mercer appear anywhere on the estimate?

6 A. As the rep, as "ETM". That's my initials.

7 Q. Okay. Other than that, is there any --

8 A. That's the only other marking.

9 Q. Did you assume that the people in the Office of Justice Court Support
10 would know that "ETM" referred to you?

11 A. I don't see how they would know that.

12 Q. Did you ever separately notify anyone at the Office of Justice Court
13 Support that you had a financial interest in Mercer Associates?

14 A. No, I did not.

15 Q. Did you assume that representatives of the office would just know that
16 you were the Mercer in Mercer Associates?

17 A. They would have no reason to know.

18 Q. Did you consider it to be the Office of Justice Court Support's
19 responsibility to investigate your financial interest in Mercer Associates?

20 A. I don't believe so.

21 Q. Do you acknowledge it was your responsibility to disclose to the Office
22 of Justice Court Support your financial interest in Mercer Associates?

23 A. Yes, as in previous testimony, I believe.

24 Q. And that you failed to do so?

25 A. I did fail to do so, and I regret it to this day.

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(Hon. E. Timothy Mercer - Direct)

1 Q. Early 2021 you became aware that the Athens Town Court was awarded
2 a grant, correct?

3 A. Correct.

4 Q. You learned that the only item approved was a security system?

5 A. That is correct.

6 Q. And the Court's request for all other items had been denied?

7 A. That is correct.

8 Q. The Office of Justice Court Support did not award the whole amount the
9 Court had requested to purchase and install a system, correct?

10 A. That is correct, not knowing why.

11 Q. The amount was about \$200 less than requested?

12 A. That is correct.

13 Q. To cover the entire amount of your voucher, then, additional public funds
14 needed to be requested from the Court's security budget, correct?

15 A. Yes, it was.

16 Q. So if your voucher had been paid, you would have personally profited
17 from both JCAP grant funds and court funds, correct?

18 A. That is correct, sir.

19 Q. When your court received the JCAP grant, did you see bids from any
20 other contractors to see if they could do the installation for less?

21 A. I did not seek out any other bids, as I answered prior.

22 Q. Are you familiar with Stone Creek Electric?

23 A. Absolutely. He's one of my contractors.

24 Q. Did you ever discuss with Ms. Puorro having Stone Creek do the
25 installation?

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(Hon. E. Timothy Mercer - Direct)

1 A. I said it was a possible thing, but at that time, we were during COVID,
2 and all contractors were scrambling either with work or without work.

3 Q. When was that discussion?

4 A. It was -- I can't put a date on that.

5 Q. Did you ever seek a bid from Stone Creek?

6 A. No, I did not. My experience would be is I have an idea of what he
7 would have charged, and that's just from experience.

8 Q. But you never actually sought a bid?

9 A. No. He never bid on any of that, and I didn't ask him for a written bid
10 either.

11 Q. Did you lower Mercer Associates' installation cost given that the Court
12 did not receive the full amount requested in the JCAP grant?

13 A. No, I didn't.

14 Q. You kept the installation cost at \$1,000?

15 A. Yes.

16 Q. Could you have done the installation for less than \$1,000?

17 A. I could have donated it, I guess.

18 Q. Could you have decided to the --

19 THE RESPONDENT: I object to the question.

20 I object.

21 MR. GARBER: Overruled.

22 BY MR. PEDROTTY:

23 Q. Could you have decided to do the installation for free?

24 A. I could have.

25 Q. But you charged a \$1,000 installation fee because you wanted to make

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(Hon. E. Timothy Mercer - Direct)

1 money on the transaction, right?

2 THE RESPONDENT: I object to the question
3 in that he's implying that Mercer Associates and
4 judgeship -- and to ask me if I could have done it
5 cheaper -- anything in this room could be done cheaper by
6 someone. I don't understand the validity of the question.

7 MR. GARBER: Well, restate your question,
8 please, Mr. Pedrotty.

9 BY MR. PEDROTTY:

10 Q. You charged a fee because you wanted to make money on the transaction,
11 right?

12 A. Yes, I wanted to make money.

13 Q. Mercer Associates is how you make your primary means of living,
14 correct?

15 A. That is correct, sir.

16 Q. And in 2020/2021, you considered that Mercer Associates took priority
17 over your judgeship, correct?

18 A. I testified to that, yes.

19 Q. So as a judge, you saw an opportunity to make money for your private
20 business, right?

21 A. Not necessarily in that context.

22 Q. Do you agree you took advantage of your role as a judge to try to make
23 money?

24 A. I took advantage of my feelings towards the Court, and I should have just
25 walked away from it.

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(Hon. E. Timothy Mercer - Direct)

1 Q. Yes or no, Judge, you took advantage of your role as a judge to try to
2 make money?

3 A. My judgeship allowed me an opportunity to do that, yes.

4 Q. If you had not been the Judge in Athens Town Court, would Mercer
5 Associates have been hired to install a camera system there?

6 A. As I responded before, I would not have had any business to do with the
7 Town Court.

8 Q. So the only reason Mercer Associates got business in the Town Court is
9 because you, as Judge, awarded it to yourself?

10 A. That is correct.

11 Q. Do you agree that you created a conflict of interest by awarding the
12 camera installation to your own company?

13 A. Absolutely, and I've responded and testified to that many times.

14 Q. Do you agree that you engaged in self-dealing?

15 A. If you want to say that's self-dealing, yes.

16 Q. As an owner of Mercer Associates, you have an interest in maximizing
17 profits, right?

18 A. We've discussed this prior, yes.

19 Q. As a justice of the Town of Athens and recipient of a JCAP grant, you
20 have an interest in saving public funds if possible, right?

21 A. Absolutely.

22 Q. Do you agree those two interests could conflict?

23 A. They are conflicting.

24 Q. Do you agree that you did not properly notify town officials of your
25 conflict?

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1 A. I agree.

2 Q. You ended up purchasing a camera security system, right?

3 A. Yes, I did.

4 Q. You purchased it on June 3 --

5 A. It was --

6 Q. -- 2021?

7 A. I believe it was delivered on the 6th or the 9th.

8 Q. Of June?

9 A. Yes.

10 Q. Was the system you purchased the same model and price as the one on
11 the Mercer Associates estimate dated September 2, 2020?

12 A. It was not the same model due to availability and supply chain during
13 COVID.

14 Q. The camera system identified in your Mercer Associates estimate dated
15 September 2, 2020, cost \$2,329 -- \$2,329.99, right?

16 A. That is correct, sir.

17 Q. Did the system that you purchased cost that amount?

18 A. No. I provided you with documents of what the invoice was.

19 Q. You paid \$1,569.99?

20 A. Without any apprehension of sending you that invoice.

21 Q. Is that correct, Judge? You spent that amount?

22 A. I spent that amount, yes.

23 Q. Now, that's almost \$800 less than the documentation that you provided to
24 the Office of Justice Court Support, correct?

25 A. I don't have my calculator on it, but --

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1 Q. Approximately?

2 A. I would like an exact number because you've used the number a couple
3 times in testimony and --

4 Q. Okay.

5 A. -- in front of witnesses and all the rest, and it -- so whatever the
6 difference is -- I don't have my phone on me, but I could give you a very
7 accurate number.

8 Q. Okay. So whatever the difference is between \$2,329.99 and --

9 A. That is correct.

10 Q. -- \$1,569.99?

11 A. Right.

12 THE RESPONDENT: I object to the use of the
13 dollar amount that we estimate.

14 MR. GARBER: Well, you've agreed. The
15 objection is sustained insofar as there's a reference to an
16 estimate of the difference between the cost of the security
17 camera that was listed on the estimate there and the one that
18 was actually installed, and whatever the difference is, that is
19 the difference. Do you follow me?

20 MR. PEDROTTY: No, but --

21 MR. GARBER: Well, there's --

22 BY MR. PEDROTTY:

23 Q. You indicated in your estimate, Judge, the estimate for Mercer Associates
24 dated September -- all right.

25 A. What is the number? And I'll agree to the number.

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1 Q. The number --

2 A. I'm just asking for a specific --

3 MS. JOSHI: 760 --

4 BY MR. PEDROTTY:

5 Q. \$760.

6 A. Yes.

7 Q. Is the difference between the camera --

8 A. Yes.

9 Q. -- that you put in your estimate and the difference between the camera
10 that you actually purchased \$760?

11 A. That is correct, sir.

12 MR. GARBER: Okay.

13 BY MR. PEDROTTY:

14 Q. And you subsequently installed the camera system that cost \$1,569.99 at
15 the Court?

16 A. That is the system that I installed in the Athens Town Court building.

17 Q. And after installation, you approved a Town of Athens voucher in the
18 amount of \$3,329.99?

19 A. That is correct. I signed the document, and I didn't adjust any pricing.

20 Q. And that was to be paid to Mercer Associates?

21 A. That is correct.

22 Q. Of which you are the owner?

23 A. That is correct.

24 Q. And you signed the voucher in your capacity as Town Justice?

25 A. Yes.

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1 Q. Both the voucher and the invoice attached listed the cost of the camera
2 system as \$2,329.99, correct?

3 A. That is correct.

4 Q. This amount was false, right?

5 A. Repeat your question again.

6 Q. Was the amount, \$2,329.99 that was included on the voucher invoice the
7 false amount that you paid for it?

8 A. Yes.

9 Q. Did you know when you signed the voucher that it falsely listed the price
10 of the system?

11 A. It was not a representation of what I paid for it, yes.

12 Q. But you signed it anyway?

13 A. I signed it.

14 Q. Were you aware at that time that any unspent JCAP funds must be
15 returned to the Office of Justice Court Support?

16 A. Not at that time.

17 Q. Do you now recognize that to be the case?

18 A. I know it's the case, and it says it on the bottom of the document.

19 Q. Which document?

20 A. On the JCAP document.

21 Q. If you had reduced the voucher by the amount of your savings on the
22 camera purchase, there would have been leftover funds to return to the
23 Office of Justice Court Support, correct?

24 A. Yes, there would have been.

25 Q. Do you consider that submitting a voucher stating that the system cost

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1 over \$2,300 when it really cost under \$1,600 so you could financially
2 profit from the transaction to be dishonest?

3 A. I didn't do it because I wanted to be dishonest and cheat them. I didn't
4 even think at the time of doing that.

5 Q. Sitting here today, do you believe it was dishonest for you to have done
6 that?

7 A. Absolutely, as I've stated in my many responses and testimony.

8 Q. Generally speaking, do you think it is appropriate for a judge to be
9 dishonest and deceitful?

10 A. I admit that I made a tragic mistake that day when I did this deal.

11 Q. Okay. But sitting here today, do you believe it is appropriate for a judge
12 to be dishonest?

13 A. Definitely not.

14 Q. Do you think it's appropriate for a judge to be dishonest in his handling of
15 public funds?

16 A. It's not proper to be dishonest as a judge with public funds.

17 Q. Is it fair to say you did not reduce the cost of the camera system because
18 you believed you were entitled to the savings as a business or profit
19 markup?

20 A. There was a component that we've discussed in testimony.

21 Q. Is that correct? You believed you were entitled to a profit markup?

22 A. In what particular case, sir? Are we going to go --

23 THE RESPONDENT: I don't want to go down
24 this road, and I object to the question.

25 MR. GARBER: Well --

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THE RESPONDENT: It's a matter of -- if I can just state my objection, if I could.

MR. GARBER: Please.

THE RESPONDENT: As a business owner -- in every transaction that you do, no matter what it is, as a businessperson, as a law firm, there's profitability to be made. And as the -- Mercer Associates is one of my businesses. I've already testified that I put that above this situation.

Everybody is entitled to some type of markup and profit. And we've testified and gone through numbers. We've said what we're entitled to and all the rest. And I agree that I am not entitled to any markup on that. But when it comes to profit and everything, Mr. Butler here testified that he worked for Colarusso. Does he only charge for asphalt and not for pension and benefits? In my example in my previous testimony was do we now have to go to Staples and find out what an actual chair costs, and are they entitled to make profit?

At the time of the application and the grant, I was thinking, which I said I shouldn't have -- I was thinking that this is a business transaction, not as a let me -- a greed thing or a money grab. That's why I object to the questioning, because everyone in business makes a profit unless you go out of business.

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MR. GARBER: Overruled.

BY MR. PEDROTTY:

Q. Did you not reduce the cost of this camera system included in the voucher because you believed you were entitled to the savings as a business or profit markup?

A. I'm going to ask you one more time to repeat the question.

Q. Could you have, on the voucher, listed the actual price that you paid for it?

A. I could have listed it on the reconciliation report.

Q. I'm talking about the voucher.

A. The voucher, I did not adjust the price of the system.

Q. Did you not do that because you believed you were entitled to a business or profit markup?

A. On the cameras?

Q. Yes.

A. Yes.

Q. It was so you could personally profit from the transaction, correct?

A. As I stated earlier, yes.

Q. And you were charging \$1,000 for labor?

A. Mm-hmm.

Q. So if you had been paid on the voucher, you would have profited at least \$1,000 for the installation alone, right?

A. Well, that's not profit, sir. That's labor and basic materials and overhead and all the other things in the installation costs. That is not -- that is not what the actual cost is. If you want to say, "Is that what Mercer

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1 Associates is going to receive in funds," yes, it was \$1,000. Does Mercer
2 Associates -- do I, Tim Mercer, personally make \$1,000 on the
3 installation? No, because I have business overhead.

4 THE RESPONDENT: And this is the part of
5 this questioning that I object to.

6 MR. PEDROTTY: Okay.

7 THE RESPONDENT: And I would like to have
8 more clarification on where we're going.

9 BY MR. PEDROTTY:

10 Q. So Mercer Associates would have received at least \$1,000 for the labor?

11 A. That is correct. It's not profit. Somebody pays for the ladder. Somebody
12 pays for the tools. Somebody pays --

13 Q. Okay.

14 A. -- for all the other.

15 Q. Did you disclose to the Town Board Members the true cost of the camera
16 system you purchased?

17 A. No.

18 Q. You have referred to the fact that the Town Board Members signed your
19 voucher?

20 A. That is correct.

21 Q. At the time they signed it, had you provided them accurate information
22 about the cost of the camera system?

23 A. No, it reflected what the cost was on the estimate, was the invoice.

24 Q. Do you believe they had a right to know the price included a profit
25 markup?

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- 1 A. At this time, yes.
- 2 Q. Did you ever contact the Office of Justice Court Support to advise them
3 that you paid less for the camera system and to ask for further direction?
- 4 A. As in previous testimony, no, I did not call them.
- 5 Q. Did you fail to do so because you knew it was inappropriate to pocket the
6 savings from your purchase of the camera?
- 7 A. No. I never thought of not calling them to hide from anybody.
- 8 Q. Judge, if the Office of Justice Court Support had awarded your court
9 \$500 in JCAP funds to purchase a chair and you found the same chair on
10 sale or a comparable one for \$400 and you purchased it for the Court, do
11 you believe it would have been proper for you to submit a voucher to the
12 Town for \$500, get paid, and pocket the \$100 savings?
- 13 A. No, because I would have had to submit a receipt on the JCAP grant.
- 14 Q. Would that have been dishonest if you did do that?
- 15 A. Absolutely.
- 16 Q. Do you understand that JCAP funds are taxpayer money?
- 17 A. Absolutely.
- 18 Q. After submitting the voucher, you learned at some point there was an
19 issue regarding payment of it, correct?
- 20 A. Yes.
- 21 Q. And you learned that you might not receive payment on the voucher?
- 22 A. I was instructed I was not going to receive payment until it was resolved.
23 And in that stipulation from testimony and the emails from Mr. Butler, it
24 states that he will pay when this gets settled, and that would be today or
25 tomorrow or four weeks from now. He was not paying until the attorney

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1 called him back when this was settled.

2 Q. Did this upset you when you learned that you were not getting paid?

3 A. Yes, because I have an investment in materials, sir.

4 Q. You wanted to get paid for the system you purchased and your labor?

5 A. Yes.

6 Q. You felt like you had done a service for the Town and you were entitled
7 to payment?

8 A. Yes, sir.

9 Q. Who hired you on behalf of the Town?

10 A. On behalf of the Town? As I testified earlier, the Town didn't know I
11 was doing it. Of course, there was no Mercer Associates estimate or
12 anything that was sent out.

13 Q. So you hired yourself?

14 A. That would be a yes, sir.

15 Q. So if any contract existed for services rendered in exchange for payment,
16 it was between you and yourself, correct?

17 A. That's what it would be.

18 Q. In support of payment to Mercer Associates, you sent an email to
19 Supervisor Butler?

20 A. I did.

21 Q. You sent that email from [REDACTED]@nycourts.gov?

22 A. I did.

23 Q. That's your judicial email account?

24 A. Yes, sir.

25 Q. The email signature block identified you as Town Justice?

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(Hon. E. Timothy Mercer - Direct)

1 A. Yes, it did.

2 Q. Do you admit that by doing so you lent the prestige of your judicial office
3 for your private financial interests?

4 A. It's a lot of words of saying, "Yes." Yes.

5 Q. Did you send that email in your capacity of an Athens Town Justice?

6 A. No, I sent it as a capacity of the issue involved with me, with Mercer
7 Associates. I just happened to communicate with the Supervisor and was
8 going to court on a Thursday. I believe it was on a court day. And when
9 I sat down at my desk, fired up everything, I'm thinking I got to get in
10 that -- we talked in the morning. I think I responded about 12, 1 o'clock
11 in the afternoon. And that's why it came from the court email address.
12 I believe I asked Mr. Butler yesterday if he felt threatened by the email
13 coming from that, and his joke was, "I work with for Colarusso, and I
14 send a lot of emails out from my work." So I did not ever imply or use
15 that -- my feeling was to exert any judicial influence on any town
16 member.

17 Q. Do you recall Supervisor Butler replying to you in his email, "The Town
18 is holding payment on the voucher to review whether it had been a
19 violation for you to use your own business to install the cameras"?

20 A. Yes.

21 Q. And that was on July 15, 2021, correct?

22 A. Correct.

23 Q. So you knew on that date that your conduct created at least an appearance
24 of impropriety?

25 A. Yes, it did. And I testified that it did create a look of impropriety.

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(Hon. E. Timothy Mercer - Direct)

1 Q. On July 21, 2021, you sent an email to your Supervising Judge, David
2 Dellehunt, in which you acknowledged the look of impropriety of your
3 actions, correct?

4 A. That is correct.

5 Q. Did you ever notify Judge Dellehunt that you had charged more for the
6 camera system than you actually paid?

7 A. No, I did not.

8 Q. Did you fail to do so because you were afraid he would tell you that was
9 wrong?

10 A. At that time, it wasn't even a -- wasn't a thought about what the dollar
11 amounts were. It was, "Where do we go from here?"

12 Q. As of July 21, 2021, you were aware that your conduct might create at
13 least appearance to have been improper?

14 A. That is correct.

15 Q. Yeah. In early August 2021, you went to Mr. Pierro and told him that
16 Mercer Associates would charge the Town interest for nonpayment,
17 right?

18 A. Yes. Mr. Pierro was never upfront with me about anything with payment
19 on that, and he was well aware of it. He knew what was going on.

20 Q. On August 18, 2021, you emailed an invoice to Mr. Pierro that added a
21 finance charge of \$66.59?

22 A. That is correct.

23 Q. So despite being aware that your conduct was problematic, instead of
24 taking any action to ameliorate it, you charged the Town more money?

25 A. In my prior testimony, it's a function out of QuickBooks that comes up.

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(Hon. E. Timothy Mercer - Direct)

- 1 And if there's a past due amount, it goes out.
- 2 Q. But you emailed it, right?
- 3 A. Yes. It comes from QuickBooks through my email.
- 4 Q. Did you email it yourself?
- 5 A. It's an automatic thing for -- through QuickBooks the date of process.
- 6 Q. Could you have stopped it?
- 7 A. I did stop it. They only got one. And I testified that I did disengage that
- 8 function on their account in previous testimony. They got one interest
- 9 charge.
- 10 Q. Did you ever tell the Town to -- you were retracting that interest charge?
- 11 A. At that time, no. I did it on the final invoice that I sent them, full credit.
- 12 Q. In December of 2021?
- 13 A. Mm-hmm, '21. The cameras were removed in mid-January -- in mid-
- 14 November.
- 15 Q. It came to your attention in mid-July that your conduct created at least an
- 16 appearance of impropriety. Could you have done things to then attempt
- 17 to mitigate it?
- 18 A. I could have.
- 19 Q. Could you have retracted your entire invoice?
- 20 A. I could have.
- 21 Q. Did you?
- 22 A. No, I did not.
- 23 Q. Could you have retracted the \$1,000 labor cost?
- 24 A. I could have retracted anything on that estimate or invoice.
- 25 Q. Could you have charged what the camera system actually cost?

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1 A. Again, I could have done anything with that invoice.

2 Q. Could you have removed the camera system at that time and sent it back
3 for a refund?

4 A. I could have. I still have it on my shelf in a box.

5 Q. Could you have left the cameras in place, retracted your invoice, and
6 been glad you provided a good service for the Town Court?

7 A. Yes, I could have.

8 Q. But instead of doing these things, you charged the Town more money,
9 right?

10 A. I charged them an interest charge, yes, if that's what you mean "more
11 money."

12 Q. Were you concerned at all around this time that your conduct might result
13 in either sanctioning or removal by the Commission on Judicial Conduct?

14 A. I was concerned about that possibly in early July.

15 Q. Were you concerned at all about undermining the public's confidence in
16 the integrity of the judiciary?

17 A. Absolutely.

18 Q. When were you first concerned about that?

19 A. I'm going to say in probably -- for me, it started to look prevalent
20 probably in September after the interest statement and after things started
21 escalating in the Town itself.

22 Q. Was getting paid more important to you than those two concerns at that
23 time?

24 A. The environment in the Town Building and with the Court at this time
25 created sort of a situation where I felt that they should pay. And they

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(Hon. E. Timothy Mercer - Direct)

- 1 Investigator from the Commission, correct?
- 2 A. Yes.
- 3 Q. So as of November 18, 2021, you knew that the Commission might be
- 4 investigating your conduct in relation to these cameras, right?
- 5 A. Correct. Mm-hmm.
- 6 Q. So you removed the cameras after you knew you were likely being
- 7 investigated for judicial misconduct, right?
- 8 A. I think the timing is coincidental.
- 9 Q. But it is a fact, right?
- 10 A. Both events happened around the same time. And as I've testified, it was
- 11 the right thing to do. Ethically, I knew I made a mistake. I proceeded
- 12 then to generate a credit and an invoice with no personal gain.
- 13 Q. In your position throughout this that -- the reason you wanted to install
- 14 the camera system is for the safety of court staff, correct?
- 15 A. That is correct.
- 16 Q. But you removed the cameras?
- 17 A. I removed the camera system, yes.
- 18 Q. So when you didn't get paid, did you cease to care about the safety of
- 19 court staff?
- 20 A. Cared about them more.
- 21 Q. But you could have left them up, right?
- 22 A. Well, the apprehension -- I had one judge who says "shut them off", and
- 23 just the whole physical presence of the cameras in the Town Building
- 24 was possibly creating a situation that was becoming toxic with regards to
- 25 the entire court staff, and the best thing to do was to remove the cameras

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(Hon. E. Timothy Mercer - Direct)

1 and end it. That's something that I did that could have been adjusted --
2 could have been addressed with -- by a lot of people. Everybody claims
3 they did something except something that involved a conversation with
4 Judge Mercer.

5 Q. So you finally sent the Town a new invoice showing a zero-dollar
6 balance on December 30, 2021?

7 A. It was a statement generated for the end of the year.

8 Q. You've testified you still have the cameras at your house.

9 A. Yes, I just did.

10 Q. Did you try to get a refund for them?

11 A. No. I could have returned them.

12 Q. Would you have gotten a refund?

13 A. Yes.

14 Q. Ultimately, the JCAP grant money had to be returned to the Office of
15 Justice Court Support, right?

16 A. At this point, Mercer -- Judge Mercer was taken out of the picture, and
17 that was up to the Bookkeeper, the Supervisor, and/or if Judge Pazin had
18 anything involved with that.

19 Q. So you were not the one who sent the funds back?

20 A. No. I was not on the reconciliation report, and Judge Pazin never even
21 consulted me about that. And in today's testimony, I asked her about that.

22 Q. And to this date, the Court has no security camera system?

23 A. No, no security system. They just have two panic buttons and a motion
24 sensor. And it's imperative that I do -- not imperative. I'm the one who
25 does all the after-hour arraignments in that court building, and that was

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1 the main reason for conversations with Vee Carl and Marcia about
2 security cameras because the biggest concern was at night.

3 Q. Judge, were you to --

4 A. Judge Pazin does not do arraignments at night.

5 MR. PEDROTTY: I ask that the witness's
6 answer be stricken as nonresponsive.

7 MR. GARBER: Overruled.

8 BY MR. PEDROTTY:

9 Q. Looking at Exhibit 19, the top email on page 1 from yourself to David
10 Dellehunt dated November 19, 2021, did you write to Judge Dellehunt, "I
11 still feel today this is retaliation from our Town Bookkeeper over my
12 questioning many practices he used in dealing with our court"?

13 A. I still feel 100 percent on that. I know --

14 Q. So as we sit here today, do you still think that Mr. Pierro acted
15 improperly by alerting your conflict of interest to Mr. Butler's attention?

16 A. No. I feel that Mr. Pierro instigated some of the situation where we
17 couldn't resolve it.

18 Q. Do you still think it was wrong for Mr. Butler to halt payment on the
19 voucher to Mercer Associates?

20 A. Absolutely not. That's his responsibility. I just wish he was more honest
21 with me when we first communicated.

22 Q. Judge, do you believe it's the responsibility of other court staff and town
23 officials to prevent you from committing judicial misconduct?

24 A. It's no one's responsibility but my own, sir.

25 MR. GARBER: May I see that, please?

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(Matter of E. Timothy Mercer - Colloquy)

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THE RESPONDENT: Sure, sir.

MR. PEDROTTY: I have no further questions.

MR. GARBER: Judge Mercer, ordinarily, you could cross-examine yourself --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- so to speak. I won't pose upon you to ask yourself questions and then respond to the -- your questions --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- which would be in the nature of cross-examination of yourself.

THE RESPONDENT: Yes.

MR. GARBER: Do you want to give a narrative in -- which would be in the nature of cross-examination --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- in response to the issues raised in Mr. Pedrotty's direct examination?

THE RESPONDENT: I could do a narrative if you give me five minutes to compose --

MR. GARBER: Fine.

THE RESPONDENT: -- a broad process and --

MR. GARBER: Yeah. That is fine.

THE RESPONDENT: Then I'm happy with that.

MR. GARBER: Okay.

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1 MR. PEDROTTY: You can have more than
2 five minutes if you want.

3 MR. GARBER: That is fine if you --

4 THE RESPONDENT: Well, my whole
5 judgeship relies on the next 15 minutes. I'm fully aware of
6 that.

7 MR. GARBER: So if you want ten minutes,
8 take ten minutes. Whatever time you need, Judge.

9 THE RESPONDENT: Mm-hmm. Mm-hmm. I
10 will.

11 MR. GARBER: Okay.

12 THE RESPONDENT: And as in most of the
13 questions, I've answered these all truthfully and honestly
14 from the first inception of this investigation.

15 MR. GARBER: Okay.

16 THE RESPONDENT: So I'll put together
17 something and --

18 MR. GARBER: Go right ahead, sir.

19 THE RESPONDENT: Give me ten minutes,
20 and --

21 MR. GARBER: Yep.

22 THE RESPONDENT: -- I'll be able to just
23 compose --

24 MR. GARBER: Okay.

25 THE RESPONDENT: -- some bullet points,

1 and it'll keep me focused and in one direction so we don't
2 flounder --

3 MR. GARBER: Yeah.

4 THE RESPONDENT: -- for an hour and a half.

5 MR. GARBER: Yeah. Okay.

6 THE RESPONDENT: Okay.

7 MR. GARBER: We'll take a ten-minute recess,
8 unless you need more time.

9 THE RESPONDENT: Sure. If I need more, I'll
10 raise my hand and say I need more.

11 MR. GARBER: That's fine.

12 THE RESPONDENT: All right.

13 (Recess from 2:40 p.m. until 3:14 p.m.)

14 MR. FITZPATRICK: We are back on record.

15 MR. GARBER: Judge Mercer, would you
16 testify from the witness stand, please? As I mentioned a
17 few minutes ago, Judge Mercer, instead of cross-examining
18 himself with questions and answers, may give a narrative
19 in -- as a cross-examination in response to Mr. Pedrotty's
20 questions.

21 Mr. Pedrotty, if you object to any part of the
22 narrative, you may object, and then we'll rule on the
23 objection as if Judge Mercer was asking a question and then
24 answering. So --

25 MR. PEDROTTY: Understood.

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(Matter of E. Timothy Mercer - Colloquy)

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MR. GARBER: -- you may do so.

But Judge, please proceed.

THE RESPONDENT: I can ask that -- if I ask to strike a comment where I have haphazardly prepared in the last 45 minutes some of this information, I would just like to be able to proceed back to that if that's possible.

MR. GARBER: Well, Judge, you're -- I understand that you performed -- or you drafted this, but your testimony is that of today. And I understand the emotional and time pressures under which you are giving it, but your testimony today will stand. Otherwise, it would be a continuation of the hearing outside the hearing room after the close of the evidence --

THE RESPONDENT: Okay.

MR. GARBER: -- or close of the hearing. And I should say, after you finish your narrative, Mr. Pedrotty may have further questions for you.

THE RESPONDENT: Sure. And then in the process itself, are we going to be having a basic closing statement for the day or is testimony going to be my last opportunity to say anything --

MR. GARBER: No.

THE RESPONDENT: -- to the Commission
or --

MR. GARBER: Both parties may give a closing

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1 statement --

2 THE RESPONDENT: Mm-hmm.

3 MR. GARBER: -- if you so desire, or if they
4 desire, I should say. But in your closing statement -- you
5 cannot use your closing statement -- or neither party can
6 use a closing statement to, in your case, Judge, testify as to
7 something which has not been previously admitted into
8 evidence --

9 THE RESPONDENT: Mm-hmm.

10 MR. GARBER: -- or the subject of testimony.

11 THE RESPONDENT: Okay. Understood.

12 MR. GARBER: Is that clear?

13 THE RESPONDENT: Yes.

14 MR. GARBER: Whenever you're ready, you
15 may proceed.

16 THE RESPONDENT: Thank you, Mr. Garber.

17 CROSS-EXAMINATION

18 BY JUDGE MERCER:

19 THE RESPONDENT: I had multiple
20 conversations with court staff for months regarding the
21 need for security systems because of the numerous
22 incidents with town personnel and COVID-19 issues with
23 security in the halls of the court building.

24 I can see that the installation contract was self-
25 awarded. However, through the submission of the estimate

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of the JCAP grant, which clearly identifies myself as Mercer Associates as the potential contractor, I felt it was clear that I would be -- at the time of submission have an opportunity in the future to do the work.

I believe that Mr. Puorro [sic] knows full well who Mercer Associates is -- Ms. Puorro. I relied strongly on the advice and experience and help of Ms. Puorro as the JCAP administrator in my first nine months as being a justice. With regards to Ms. Puorro or anyone in the Court, I didn't once try to hide who Mercer Associates was.

I concede that I charged the Town the disclosed amount for the purchase and installation of the security camera. The estimate cost and final invoice included \$1,000 installation fee. In my practice, it is common business to include labor as a line item. And the total time required to install the camera system far exceeded the build charges and estimates.

To give some context to the \$760 markup, due to the COVID-19 pandemic and related supply chains, I was able to get the itemized security system at a reduced rate. I concede that I should have taken the \$760 and applied that back to the JCAP. I'm aware today that those rules are required, as I know now. I did not fully understand them at the time of the incident.

I did sign the Town of Athens voucher

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1 authorizing payment. However, in common business
2 practices of the Court, Ms. Puorro usually presented me
3 with invoices for my signature and as the JCAP suggested.

4 When the Town notified me that they were
5 refusing to pay the voucher, I did, in fact, send an email
6 from the court email system. This was an honest mistake. I
7 had just had a conversation with the Town Supervisor and
8 had gone to my office to send an email, and I failed to take
9 responsibility and do it from my personal account from my
10 phone. There was no intention to intimidate or invoke my
11 judicial office to persuade the Town to pay the invoice.
12 The signature line on the bottom, yes, does dictate that I am
13 the Judge of the Town of Athens. I never intended it to be
14 for that purpose.

15 With regards to the interest, it is a function of
16 the QuickBooks software, and as in previous testimony, I
17 did disengage it for that account. Possibly, if the conditions
18 with the Town were a little bit better, I might have been
19 able to filter certain anger with regards to how the Town
20 was proceeding with me at this point.

21 With regards to the handbook, we took -- when
22 we were elected for the week, we took the program taking
23 the bench to get certified as new judges. During that
24 program, we were instructed not to sign handbooks and
25 sexual harassment policy. I have stated this previously. It's

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1 one of the reasons why I did not sign the handbook that
2 Don was requiring. I believe all employees in the Athens
3 Town Court never had to sign, other than when they first
4 got hired, as Marcia Puorro testified -- ever had to sign for a
5 handbook.

6 The handbooks were revised and published
7 around the same time as this event was happening. And I
8 believe that Mr. Pierro was aggressive in the fact of getting
9 these handbooks revised with this pending invoice in front
10 of him. The invoice was given on 7/6, and his policies are
11 dated 7/8, I believe. I think it's just a common behavior of
12 Mr. Pierro to be -- to do this.

13 I believe strongly that Ms. Puorro did forget or
14 misplace applying the estimate to the packet to go down to
15 the Board. I don't know what the actual reason was. I don't
16 think it was vindictive in any way. I just think that the
17 process -- I don't understand it and never have. We all
18 discussed the security cameras, and I'm going to leave out
19 the fact of that I definitely knew Judge Pazin knew. But I
20 believe the 20-some-odd-year relationship with regards to
21 Judge Pazin and Marcia, there's not a thing that goes on in
22 that office that Judge Pazin is not aware of, whether it's a --
23 working at five feet from each other or sharing a cigarette at
24 break time. It's just totally -- I just can't understand how
25 Judge Pazin was not aware of security cameras in that

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office. My firm belief is that somehow she knew.

What happened between September 21st and October 5th is the mystery of my judgeship as of today. Is it a matter of a clerk making an error that we could have resolved prior? Doesn't exempt me from any of the ethics violations that I have admitted to today or in any response or deposition in the past.

After the JCAP grant was processed, as -- life is normal in our office. Life in normal as we have the events downstairs with the Town. At this time, we were in COVID. Things were locked down. It limited accessibility. The State was changing requirements in the courtroom every couple of weeks. It was a busy time.

Yes, Judge Pazin had an incident in her -- in her court with regards to some violence. I had an excessive verbal assault on me one night in arraignment, and that goes back to how we discussed what we need to do. And my concern for my safety and anybody else in the building were these black holes of space and locations.

And we discussed this many times. It wasn't just we got together for three weeks before the JCAP was due. The JCAP grant is released out at least four or five months prior to the due date, and there's always an ongoing conversation of what we could apply for in the next year.

So for the thought process to be is that we came up with the
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1 security cameras a day after the resolution and have it
2 mysteriously as -- be the final line, I just think the whole
3 process got caught up within the processing of the
4 application.

5 There was no vicious intent, and possibly,
6 enough red flags could have been raised after that where we
7 could have stopped it, resolved it, and there is a process
8 within the system to do that without any issues or
9 complaints. It's not their fault or anyone else's fault as
10 some of the decisions that I made that I admitted to.

11 I take full responsibility on my ethical charges.
12 I take responsible [sic] for everything that I visibly and
13 physically have done within the Town as Town Justice and
14 also as Tim Mercer. The behavior that I have been accused
15 of by Judge Pazin is so much out of character of me and my
16 relationship with my community. And when I say
17 "community," it is community.

18 I get offended when a witness says that he
19 doesn't know who Mercer Associates is when Mercer
20 Associates donated and built the food pantry in our town.
21 He was Town Supervisor at the time. I donated the labor
22 and the materials. It wasn't a selfish thing at all. It felt
23 good.

24 I walked into the Athens Town Court as a newly
25 elected judge, and as I've stated in previous testimony, it

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1 was a toxic environment between Vee Carl, Marcia Puorro,
2 and Judge Pazin, no less, a bookkeeper who continually
3 was knocking on our door for many reasons that he
4 shouldn't have been. I shouldn't have taken it upon myself
5 to try to fix something that at the end of the day was
6 unfixable.

7 We discussed over length payroll issues,
8 protection, meetings with the judge, meeting with the four
9 of us. I facilitated and tried to get the Court, between the
10 judge and the two clerks, harmonious again. It was an
11 enduring, unforgiving -- and to this day, I pay the price for
12 even trying.

13 When Marcia testified that they lost a lot of
14 money, they did lose a lot of money. They lost a lot of
15 money because the agreements that came up between Judge
16 Pazin, myself, and the Supervisor were geared towards Vee
17 Carl staying, my clerk. I fought for her. This going on
18 inside the office at the same time as when the JCAP grant
19 was going on, there was a lot of stress, anger, and one way
20 of resolving all of that was to try to create an environment
21 where everyone could be safe verbally, physically, and just
22 live on their harmony. Marcia lost a lot. Vee Carl lost a
23 lot.

24 The relevance of the Zoom meeting is important
25 only in the fact that it would demonstrate a total intrusion

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on the Town, which leads up to the application. The application and everything else that became toxic all in itself in emotions and that.

I received the cameras on the 6th or 7th of June. I was fully aware of the deadline of 180 days that they had to be installed. I was looking for the models. That's why there's a discrepancy of what was available due to COVID supply chain at -- going on at this time. And I got the replacement. Now, we can -- I agree that I should have returned the money. I shouldn't even have gotten the cameras, first of all. I should have returned the money of the difference of \$760 or so.

After the install, which I did during business hours, I never entered the court office. I've never pushed the security code for the alarm once. I've always been present in that building with all employees present. If I get there at quarter to nine and we open at nine, I sit on the bench outside. I do not go in that court office alone. That's been a practice since when I started.

So when I hear this that I did the install after hours and all that kind of -- it's untruthful. The installs were done either when I finished my tasks and duties as a judge for the day -- as I am part time, I don't have set hours. Sometimes it's as busy -- I wish I had set hours.

After the cameras are installed, they came in on
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1 the 9th. I had them up, and basically, the day I got all the
2 software hard drives and all the cameras set, I presented the
3 bill to Marcia. At that time, I was fully aware of what I
4 paid for them, as I gave that evidence in discovery
5 requested by the Commission without any resistance at all.

6 The first thing I see a couple weeks later is the
7 notice from New Baltimore on that. And it was on the
8 center desk. It wasn't on my desk. It was basically laid on
9 top of the hard drive.

10 I tried to accommodate Judge Pazin's reluctance
11 to the -- almost everything in that courtroom. I had never
12 once angrily raised my voice, as she says I'm abusive,
13 egotistical in her testimony. It hurt when I read her
14 testimony and her answered questions back to the
15 Commission. It hurt more than you could ever imagine
16 because it wasn't the person who I am.

17 She asked me to run for judge. And today I
18 couldn't have gotten the same answer if I asked her while
19 she was on the bench today. And it wasn't because I'm
20 afraid of what she would say. I know exactly what she
21 would say. She asked me to run because of my community
22 service, my work in the community with --

23 MR. PEDROTTY: Objection.

24 MR. GARBER: Overruled.

25 THE RESPONDENT: Judge Pazin asked me to
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run for office. Why we're at this point today, I don't know what actions have created that. When she left the notice on -- the 2017 notice that she got -- a memo from Dave Dellehunt -- well, she got it from New Baltimore.

MR. GARBER: I'm sorry, sir. From where?

THE RESPONDENT: From New Baltimore, the Town of New Baltimore Court.

MR. GARBER: Oh, okay.

THE RESPONDENT: So I told her that I would turn the cameras off. And as anybody who's in technology, turning things on and turning them aren't the easiest thing to do. But I respected her opinion. In her testimony, she says that I don't respect her opinions in that, and I think this is a perfect example of how I listened to her and I reacted to her in the effort and wishes that she wanted.

And I'm fully aware that there's a lot of things that are not relevant to the JCAP grant that create an environment in our courtroom that just made this pop to a point. And for clarification, "retaliation" is a very big word and sometimes misrepresented, and I might have used that incorrectly. But I believe when anybody's behaviors are changed because of certain situations -- and it's -- sometimes retaliation is an act physical harm or the other things, but if they change their behaviors because of an event that happened or they -- of an event that happens.

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When I say "retaliatory," each of the members who -- the Town Supervisor, Don Pierro, each of their behaviors changed after this event. And it was basically, "We got you, and we're going to take this to the max," which they're fully entitled to. As Town Supervisor, it's his -- I'm going to say it's his responsibility to do something with it. And I would never ask anybody to not do that.

Everyone talked about fixing it, finding steps to find a solution. I believe Mr. Butler said that he didn't talk to Judge Pazin about some of those things. When you hear that there was an opportunity a week or two after to sit down with Judge Mercer and other parties and discuss this, not to sweep it under the table, not to hide it, not to make it go away and everyone gets off -- but I think as four mature people we could have sat down at the table and said, "This is the right thing to do. Accept your mistake," which I have, continually, over and over again, not only to the Commission, but to my community.

It hurts because I wasn't afforded that, not that I'm due it, but I think as a common courtesy to people in general -- get to fix our mistakes. Maybe I been in -- dealing with people in recovery too long, but I think everybody gets a second chance. And there's a system in place, as I said, to correct this wrong.

And as a new judge, as lame of an excuse as it

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1 is, I don't have 38 years of experience, but I sure wish I had
2 38 years of experience tell me, "We got to fix this. Let's do
3 this right." It was never attempted. There was no
4 communication with Judge Mercer and Judge Pazin about
5 correcting this wrong. And when I say I was left out on a
6 desert island to fend for myself, that's where I was. That
7 does not change, again, what I admitted to in your -- I don't
8 know how many questions there were from when you did
9 your readback, but there was enough to make us all tired
10 and cotton-mouthed. And I've agreed to every one of them,
11 and it doesn't make me feel good.

12 As we progressed through the rest of the
13 summer, my experience in dealing with Mr. Pierro was
14 horrible. He has an office. Every time I go to work in the
15 morning, I come in the front door, and there's a 36-inch
16 door that's opened about eight inches. And I have to make
17 a right-hand turn to go up the staircase. And it's
18 challenging to deal with his personality every day that I'm
19 there, to the point where for me to fix this situation, the
20 court staff now parks in the back, goes up another staircase
21 not to pass his office.

22 And the relevance of Mr. Pierro's behavior,
23 whatever might be exhibited and not exhibited, is
24 challenging on the court staff. It's challenging on every
25 employee in that building. I walk in the front door and the

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1 first thing is, "Judge." Okay. Who's poking who now? "I
2 asked where the payment is."

3 Now we're getting close to a couple weeks.
4 They've already filed the report to the Commission. They
5 don't have to tell me. I could do it anonymously. No one
6 has to say anything. But no one was saying anything, and it
7 was frustrating. Judge Pazin wasn't saying anything.
8 Marcia wasn't saying anything. No one was saying
9 anything. At that point, I probably should have made
10 another phone call and said, "I have to deal with this," and I
11 didn't.

12 The August 18th invoice was generated in
13 QuickBooks. I didn't go home and pack it up. I did say I --
14 of interest, but I didn't go home and do that. I just went.
15 And in my QuickBooks, those are generated and goes [sic]
16 through my server through my email is how my
17 QuickBooks is set up. I didn't generate a interest statement
18 and send it in my aggressive behavior. I did correct it, and I
19 disengaged the function.

20 Over the next few weeks, Judge Pazin is
21 frustrated, I guess, and she's dealing with Rob Butler in a
22 capacity that I still am unfamiliar with or unaware of or
23 don't even know what they were talking about. Was it so
24 hard to discuss any of that with your cojudge at this point?
25 It wasn't discussed at all. If I said anything regarding pretty

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1 much not just JCAP at the time, but if it was anything
2 contradictory, whether it's office work, case work, or all the
3 rest, I was let known [sic] that the 38 years' experience is a
4 lot more valuable than my taking the bench the year the bail
5 reform was and having the knowledge of a system that a
6 judge was not familiar with prior to bail reform with her
7 daily habits inside the court.

8 And I was very willing to participate. I asked
9 Marcia in her testimony, "Have I ever been abusive in the
10 courtroom? Have I been that egotistical judge?" I'm not. I
11 would just be firm in that this isn't the right way to do it.
12 And when I say "firm," I wasn't reaching across her desk
13 and yelling at her.

14 So the months between installation and
15 removal -- Judge Pazin says it was a couple weeks and I
16 took them out; it wasn't; it was three months, about --
17 there's a lot of pent-up energy with regards to our court.
18 And part of that energy I know was inflicted by the JCAP
19 grant process. I'm not ignorant to that.

20 Removing the cameras was the right thing to do,
21 however it might look. It ends the process. Do I say there
22 was no personal gain? There truly wasn't a personal gain,
23 for matters of fact, and actually, I have a system sitting on
24 the shelf that cost me. That's of no concern to anybody else
25 other than myself. I had to fix the wrong, and for me,

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1 fixing the wrong without anybody else's cooperation,
2 because I wasn't having cooperation, was to just remove the
3 cameras, give a zero balance, and end that part of the
4 problem, the situation, the pink elephant, whatever you
5 want to call it, that was in the room.

6 When Judge Pazin testifies that they just
7 mysteriously, poof, vanished, it took me about three weeks
8 to remove the whole system with the monitor. I went on
9 vacation. I came back in December. That's why the zero
10 balance was in the December invoice statement. I would
11 have done them sooner. I could have done them sooner,
12 yes. I could have. If my problem-solving skills took three
13 to four weeks -- three to four months to do -- I'm glad it
14 didn't take five or six months or still be sitting here
15 complaining about getting paid because that's not what I
16 intended.

17 Going forward with the chain of events that led
18 to us here today have just been an ongoing process for
19 everyone involved from investigators to your time, even to
20 Mr. Garber's time here yesterday and today, and all the
21 other hours that we put in with conference calls. It's been
22 almost three years of added work that I could have
23 eliminated by, A, not presenting a invoice and staying
24 completely out of it.

25 I wish it would have been resolved. Even if the
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1 cameras were up on the wall, I think we all could have
2 resolved the thing. We could have filed the paperwork.
3 And I would not have thought twice with agreeing to, "This
4 has to proceed. Let's call the Commission." None of my
5 actions would have been to hide or seek other avenues to
6 resolve this.

7 The rest of the town has their own feelings,
8 issues. The Town Board was not notified for months. The
9 Town Board didn't know about the investigation or the
10 charges. I just wish I knew why the invoice wasn't
11 presented. It wouldn't have fixed the problem. It wouldn't
12 have fixed it because even if the invoice was there, I would
13 have probably proceeded because I can't say that I wouldn't
14 have. I did.

15 The last three years have been, I'm going to say,
16 not a crash course on ethics in this judicial world, it's been a
17 deep study. I see how it affects every part of our lives. It's
18 a hard lesson to learn. I did. And I'm fully aware of the
19 ramifications. I'm fully aware of what I admitted to, from
20 every detail. I say I'd love to be the poster boy at taking the
21 bench and say, "Don't do this." That's how I have learned
22 inside this issue.

23 And I do remember when I took -- when I was
24 out taking the bench, the first thing he said is, "Don't let the
25 horse out of the barn." That was the first thing he said. I

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1 had no idea what he was talking about, no idea. And I let
2 the horse out of the barn. And I let it run, not out of selfish
3 greed and all the rest; I wanted to help my court. I was
4 ignorant. How I did it was wrong.

5 With regards to any of the witnesses and their
6 testimony, can I sit here and point out who's telling the truth
7 and who isn't telling the truth? No. And I'm not even in a
8 place anymore to even do that. I know the chain of events
9 that happened. I know the people involved who were
10 involved in that, and that's for another day, for another
11 reason, for another time.

12 I don't know Sam. He came into our court six
13 months ago with no knowledge of -- friends, anybody in the
14 court. I truly believe he has no reason to do anything other
15 than speak the truth. I wasn't there for the conversation.
16 Yes, it's hearsay, and you can take that and disallow it and
17 motion it. It's hearsay. But I think there's more to it. And
18 that's the hardest part, is just knowing the backstop that
19 possibly could have been there wasn't.

20 And I think the problem could have been solved.
21 I think the wrong could have been corrected. We could
22 have -- in time's period, we could have got another
23 resolution done. The urgency could have been dealt with.
24 Why the other things were not approved, I don't think
25 anybody in this room knows why air conditioners, blinds,

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(Hon. E. Timothy Mercer - Cross)

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curtains, and other things was [sic] not approved and the security system was.

All I know is they asked for a location of the cameras, floor plan and location, and I provided them that. In evidence, the camera was set in the center aisle, center of an aisle leading to the -- which leads to the back of the courtroom. There was never two cameras installed in the courtroom, never. There's one spot. There's one hole in the ceiling. We could go there tomorrow, and there's one hole in the ceiling, and that's where it was. It was not over the bench. That just creates more angst in my mind of why are we here and doing this.

The other two cameras that we installed are all in -- and in the office are all in approved locations. They would not have approved the JCAP grant without approving the location of the cameras. The cameras were placed exactly where I told them they would be. To testify and say that these cameras are in the wrong place, they're installed wrong, well, there's -- I can't even say where that's coming from. I know where I put them. If she was able to see herself in the picture on the screen -- her desk is right near our service window, not three feet away from the doorway. The cameras were not placed there to record her at all.

The reason for the camera was to have security

(Hon. E. Timothy Mercer - Cross)

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in a video image of who is at the teller window. When somebody walks up the staircase blind, the clerks could sit at their desk like we are here and see who's coming up, not just a beep beep. That's what we put in that system.

Tony Paluch, he happens to just be an old-time Town Board Member. Yes, I know him. I buy hay from him for my horses and donkeys. He's witnessed what's gone on in the Town Office, and as Court Liaison, he knows what goes on within the Court, as much as a Board Member would know. They're not involved in a day-to-day operation, but they're a liaison between the Town Board and that. He's observed the struggles that the Court has from sitting on the Town Board. He might be hard of hearing. He might be a little bit out of style with everybody else, but he's an honest man.

And at the end of the day, I sit back and say, "Okay. I did good by supplying the zero invoice." I removed the cameras. And it might not look good in your eyes or Mr. Garber's eyes, but for me, I feel I did the right thing, and I'm regretfully sorry. I apologize to the Commission, to everyone sitting in this room, to my cojudge, I affirm and strongly believe does not like me. But I'll never hold that against her with anything that deals with any judicial issue or even anything in public.



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[REDACTED]

[REDACTED]

[REDACTED] None of us like what goes on here. None of us can go home and say that was a good thing today. Somebody gets hurt. Yes, there's -- we all have our jobs to do.

Vee Carl was not a witness. I'm not going to discuss why she's not here today. I'm only going to say is I wish you heard her story. It was so short and sweet when he called her. I can imagine it was only a half a page of notes. Actually, I think --

MR. PEDROTTY: Objection.

MR. GARBER: I'll sustain that objection with respect to Vee Carl.

THE RESPONDENT: I've agreed to all of your charges many a times [sic]. Again, I haven't changed my thought ever of knowing what I did wrong.

I believe that's all at this time.

MR. GARBER: Mr. Pedrotty?

MR. PEDROTTY: I have no -- I have nothing.

MR. GARBER: I have a few questions just to clarify for the record.

THE RESPONDENT: Sure.

MR. GARBER: Judge, I'm referring to Exhibit 1, which is Marcia Puorro's September 21 letter to the --

(Matter of E. Timothy Mercer - Colloquy)

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THE RESPONDENT: Mm-hmm.

MR. GARBER: -- Town -- 2020 Town --
September 21, 2020 letter to the Town Board listing various
items to be included in the --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- JCAP grant for Town
approval.

THE RESPONDENT: Mm-hmm.

MR. GARBER: Did you see this letter before it
was submitted to the Town Board?

THE RESPONDENT: I can't say for sure that I
did.

MR. GARBER: You don't recall whether or
not --

THE RESPONDENT: I don't recall seeing the
letter.

MR. GARBER: Okay.

THE RESPONDENT: Marcia put the packets
together just as Judge Pazin testified, and we trusted her to
do her things.

MR. GARBER: Okay. When did you first see
it?

THE RESPONDENT: Around the application
time, probably when I saw the packet of the resolution
coming back.

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MR. GARBER: All right. At that time, you would have noted the omission --

THE RESPONDENT: That is correct.

MR. GARBER: -- of the security equipment?

THE RESPONDENT: I probably would have seen that, yes.

MR. GARBER: And did you speak with anybody about the Town -- the omission?

THE RESPONDENT: I did not talk to anybody at the Town Board.

MR. GARBER: Did you talk to Ms. Puorro?

THE RESPONDENT: I don't believe I discussed that with her.

MR. GARBER: Okay. Judge, I'm referring to Exhibit 2 --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- which is really a copy of the Town Board resolution of October 5, 2020, approving the --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- JCAP application.

THE RESPONDENT: Mm-hmm.

MR. GARBER: When did you see this resolution?

THE RESPONDENT: I can't tell you an exact time, but it would have been put in probably the JCAP

1 packet with Marcia. But at this point, we had signed our
2 documents and --

3 MR. GARBER: So it was in the JCAP
4 package --

5 THE RESPONDENT: Mm-hmm.

6 MR. GARBER: -- that Ms. Puorro submitted
7 to --

8 THE RESPONDENT: Correct.

9 MR. GARBER: -- the JCAP -- the application
10 package?

11 THE RESPONDENT: Mm-hmm. Mm-hmm.
12 Mm-hmm.

13 MR. GARBER: Okay. And did you notice the
14 omission of the security camera?

15 THE RESPONDENT: I did not notice that.

16 MR. GARBER: Okay. When did you become
17 aware of the omission?

18 THE RESPONDENT: Well, I wouldn't have
19 been come [sic] truly aware of the omission, I believe, until
20 after -- at this point, Kathleen Roberts and Erika Hawks
21 [sic] are asking questions about the security cameras.

22 MR. GARBER: Okay.

23 THE RESPONDENT: It was in the online
24 application, and that's when I'm thinking that we have the
25 estimates and things in order there.

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MR. GARBER: Mm-hmm.

THE RESPONDENT: And I say "estimates."
At that point I'm going to call it a tear sheet only from
online as in the other rest of the packet.

MR. GARBER: Well, when you became aware
of the omission, did you discuss the omission with anyone?

THE RESPONDENT: Well, the biggest
awareness of the omission is when I heard that no one from
downstairs knew about the cameras itself, that it wasn't part
of the voucher system.

MR. GARBER: Well, when would that -- when
did that awareness occur? Do you recall the time --

THE RESPONDENT: I'm going to -- my total
awareness that there is no mention of Mercer Associates is
going to be when I submitted the actual --

MR. GARBER: Mm-hmm.

THE RESPONDENT: -- invoice.

MR. GARBER: Did you attend the Town Board
meeting of October 5?

THE RESPONDENT: I don't think I was there.

MR. GARBER: Okay.

THE RESPONDENT: We don't have to be
there for that. The only board meeting we're required to be
at is the annual report.

MR. GARBER: Okay.

1 THE RESPONDENT: And at that point in time,
2 there wouldn't have been a charge of intimidating them
3 either.

4 MR. GARBER: Now, Judge, I'm referring to
5 Exhibit 4, which is a CCTV Security Pros --

6 THE RESPONDENT: Mm-hmm.

7 MR. GARBER: -- I guess, online listing or --

8 THE RESPONDENT: Mm-hmm.

9 MR. GARBER: -- description.

10 THE RESPONDENT: Right.

11 MR. GARBER: And it's dated October 6, 2020.

12 THE RESPONDENT: Mm-hmm.

13 MR. GARBER: And did you provide Marcia
14 Puorro --

15 THE RESPONDENT: I testified that that's
16 mine.

17 MR. GARBER: Okay.

18 THE RESPONDENT: And yes, I did.

19 MR. GARBER: Okay.

20 THE RESPONDENT: And she would have
21 asked for that. If I can clarify --

22 MR. GARBER: Yeah.

23 THE RESPONDENT: -- she would have asked
24 for that right before she submitted the online application.

25 MR. GARBER: And that was for --

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THE RESPONDENT: Mm-hmm.

MR. GARBER: -- the 4POEMX --

THE RESPONDENT: Right.

MR. GARBER: -- 8-S?

THE RESPONDENT: Correct. Right.

MR. GARBER: Okay. And that was included
in the JCAP application?

THE RESPONDENT: That is correct. She said
that the tear sheet, the photocopy of the page would be
adequate --

MR. GARBER: Mm-hmm.

THE RESPONDENT: -- as with the others.

MR. GARBER: Now, referring to Exhibit 5, the
attachment to it is an estimate --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- for the security system --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- which was sent to Kathleen
Roberts from Ms. Puorro.

THE RESPONDENT: Yes.

MR. GARBER: And the system in it is the
4POEMX8-S --

THE RESPONDENT: Mm-hmm. Right.

MR. GARBER: -- system?

THE RESPONDENT: It's the system that we

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applied for in --

MR. GARBER: Yeah.

THE RESPONDENT: -- the JCAP grant --

MR. GARBER: Okay.

THE RESPONDENT: -- on 10/6.

MR. GARBER: And referring to Exhibit 6,
which is an -- again, an estimate provided by Carrol Mercer
to Ms. Puorro, and that's for the 4POMEX -- 4POEMX8-
S --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- system --

THE RESPONDENT: That is correct.

MR. GARBER: -- as the one you intended to
install.

THE RESPONDENT: It's still the same camera
system.

MR. GARBER: Yeah. Okay.

THE RESPONDENT: Hasn't changed yet.

MR. GARBER: Yeah. Okay. Now, referring
you to Exhibit 7, which is the JCAP award letter dated
January 22 --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- of 2021, are -- when did you
see that letter?

THE RESPONDENT: Probably a day or so

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1 after she received it. It's to Marcia, correct?

2 MR. GARBER: Correct.

3 THE RESPONDENT: Right. I would have
4 seen it.

5 MR. GARBER: Okay. And in that letter, it
6 states that if the amount you spend purchasing the items
7 approved on the enclosed JCAP reconciliation report is less
8 than the amount awarded, leftover funds are not to be used
9 to offset the cost of another grant at a set monetary amount.

10 THE RESPONDENT: That is correct.

11 MR. GARBER: Now, just referring you
12 generally or to move it along, Exhibits 9 -- do you need to
13 see the exhibits, sir?

14 THE RESPONDENT: If I just see the -- I'm
15 very, very familiar with the exhibits.

16 MR. GARBER: Okay.

17 THE RESPONDENT: But if you just -- that's
18 enough to --

19 MR. GARBER: Okay. Exhibits 9 --

20 THE RESPONDENT: Mm-hmm.

21 MR. GARBER: -- 10 --

22 THE RESPONDENT: That's the order form and
23 then the packing slip --

24 MR. GARBER: Well, I'll say it.

25 THE RESPONDENT: Right. Right.

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MR. GARBER: Yeah. The Exhibit 9 is CCTV's acknowledgment --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- of receiving your order.

THE RESPONDENT: Correct.

MR. GARBER: And it's for a different --

THE RESPONDENT: Different --

MR. GARBER: -- system.

THE RESPONDENT: That is correct.

MR. GARBER: 4POEMIC8. And the same is true of the Exhibit 10, which is an email from CCTV to you dated Thursday, June 3 --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- 2021.

And the same is true of Exhibit 11, again, which is the CCTV Security Pros invoice to you --

THE RESPONDENT: Correct.

MR. GARBER: -- for the 4POMEIC8 system.

THE RESPONDENT: Mm-hmm.

MR. GARBER: And that's the system you installed?

THE RESPONDENT: That is the system that I installed, sir.

MR. GARBER: Okay. Now, in referring to -- and the same is true of Exhibit 12 --

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THE RESPONDENT: Mm-hmm.

MR. GARBER: -- which is the -- pardon me --
CCTV Security Pros online description of --

THE RESPONDENT: Correct.

MR. GARBER: And the cost is 1,569 --

THE RESPONDENT: That is correct.

MR. GARBER: -- .99 or --

THE RESPONDENT: Mm-hmm.

MR. GARBER: Referring you to Exhibit 13,
which is your voucher dated 7 -- July 6, 2021, and the
attachment to it is an invoice for the 4POEMICX8-S
system.

THE RESPONDENT: Right. That was the
replacement, yes.

MR. GARBER: Well, that is for the X8-S --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- is not the system --

THE RESPONDENT: That is correct. Right.

MR. GARBER: -- that you installed. Do you
have an explanation for --

THE RESPONDENT: Can I see that? It was
MIX, and then the original one was --

MR. GARBER: I believe this is for the original
one.

THE RESPONDENT: This says "MICX",

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1 which is different from the first one. That is the second
2 one.

3 MR. GARBER: No, it says "X8-S", which is
4 the first system.

5 THE RESPONDENT: I believe that invoice
6 reflects the replacement, the second. I can only -- if I
7 looked at the evidence, I'd be able to tell you what was on
8 the --

9 MR. GARBER: Well --

10 THE RESPONDENT: -- original paper. That's
11 all.

12 MR. GARBER: I'm --

13 THE RESPONDENT: I believe I changed the
14 model number. I never adjusted the price column. One has
15 square cameras. One has round.

16 MR. GARBER: Well, I'm looking at the Exhibit
17 3, which is the JCAP application.

18 THE RESPONDENT: Mm-hmm.

19 MR. GARBER: And in it what was submitted --

20 THE RESPONDENT: Would be the first --

21 MR. GARBER: -- was MX8-S. And what's
22 stated in the invoice is MICX8-S. Is that a different
23 system?

24 THE RESPONDENT: That's the one I installed.

25 MR. GARBER: That's the one you installed?

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THE RESPONDENT: Right.

MR. GARBER: Thank you.

THE RESPONDENT: There were two different models.

MR. GARBER: Okay.

THE RESPONDENT: Right. But I believe the invoice you that were referencing reflects the new model number for the order.

MR. GARBER: Mm-hmm. Well, in light of the letter, which you -- from the January 22, 2021 --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- award letter to the Town that's addressed to Ms. Puorro --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- and it had the -- it provided that if the -- if there are leftover funds --

THE RESPONDENT: Correct.

MR. GARBER: -- they're not to be used to offset the --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- offset other costs. Do you have an explanation for why your voucher is for the more expensive system, \$760 more expensive system, than the system that was installed?

THE RESPONDENT: If I can try to -- the

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1 JCAP grant was a specific model that we supplied invoices
2 and all the rest for. We were awarded on the original
3 estimate numbers in the original estimate. The revision of
4 the cameras came after the award. And as I have stated in
5 testimony, is the availability of that system during COVID
6 and supply chain was limited, *i.e.* nonexistent.

7 So with working with CCTV, I was looking for
8 a replacement camera set that would do the same, if not
9 more, features. And in the model numbers, the MIC is for
10 audio through the camera, and that's the difference in the
11 models. And this model was -- there was three differences.
12 The new set has microphones, audio capability. The second
13 thing was the shape of the camera and the night vision.

14 MR. GARBER: Yeah.

15 THE RESPONDENT: And the third was yes, it
16 was -- the replacement was \$760 --

17 MR. GARBER: Yeah.

18 THE RESPONDENT: -- less. And based on
19 the letter from -- that you're reading, I should have adjusted
20 that. I agree to that.

21 MR. GARBER: Okay.

22 THE RESPONDENT: And I've testified to that
23 also.

24 MR. GARBER: Okay. Here it is.

25 Judge, I refer you to Exhibit 21 --

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THE RESPONDENT: Mm-hmm.

MR. GARBER: -- which is your January 16, 2022 affidavit --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- which you submitted to Mr. Pedrotty.

THE RESPONDENT: Correct.

MR. GARBER: And in allegation number 4, you admit the truth of the allegation that E. Timothy Mercer directed Senior Court Clerk Marcia Puorro to submit the voucher to the Town of Athens in the amount of 3,329.99 that included all services provided by Mercer Associates --

THE RESPONDENT: Mm-hmm.

MR. GARBER: -- for the purchase and installation of the security system. That was a direction to Ms. Puorro?

THE RESPONDENT: It was conversation with her.

MR. GARBER: Mm-hmm.

THE RESPONDENT: And the word "direction" I think that I agreed to was a little forceful in that, which it never was.

MR. GARBER: Okay. Now, Judge, Exhibit 24 is a copy of Judiciary Law, Article 21-B, which governs the Justice Court Assistance Program.

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THE RESPONDENT: Mm-hmm.

MR. GARBER: And I refer you to Section 849-H.

THE RESPONDENT: Mm-hmm.

MR. GARBER: And I can show it to you, but I'm referring to the last sentence, which provides, "Except as may otherwise be provided by rule of the chief administrator, funds available pursuant to this article shall not be used to compensate justices and nonjudicial court staff, nor shall they be used as a means of reducing funding by a town or village to a justice court." Are you aware of that provision, 849-H?

THE RESPONDENT: I've become very well aware of that, yes.

MR. GARBER: And when did you become aware of it?

THE RESPONDENT: It's basically written on the bottom of the first application I believe we signed for. When did I become aware of it? I didn't take notice of it the first time I signed the first document that had that on there.

MR. GARBER: Okay. Judge, I refer you to Exhibit 25, which is a copy of part 138 of the Rules of the Chief Administrative Judge, and I refer you also to Section 138.2 of that provision or of that -- of part 138, Section

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138.2, which provides that, "Funding shall not be used to compensate judges and nonjudicial staff, nor shall it be used as a means of reducing funding provided by a town or village to its Justice Court." Are you aware of that provision? Are you aware of that provision?

THE RESPONDENT: I have become very well aware of that provision.

MR. GARBER: And when did you become aware of it?

THE RESPONDENT: Probably, I became a very good study of it after this started.

MR. GARBER: Mm-hmm. But you were aware of the provisions of Judiciary Law, Section 849-H at an earlier time?

THE RESPONDENT: I don't remember the provisions by numbers and all the rest.

MR. GARBER: Okay.

THE RESPONDENT: I just know that --

MR. GARBER: Or the admonition?

THE RESPONDENT: I was not aware. Repeat your question, just so I'm clear.

MR. GARBER: Well, I believe you testified a few minutes ago that you became aware of the -- excuse me -- Judiciary Law provision --

THE RESPONDENT: Mm-hmm.

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MR. GARBER: -- early on.

THE RESPONDENT: Which was written at the bottom of the receipt of the -- whatever evidence we wanted --

MR. GARBER: Okay.

THE RESPONDENT: -- that it states it on there --

MR. GARBER: Okay.

THE RESPONDENT: -- so our signature is across that, I believe.

MR. GARBER: But you still retained the \$760 differential between the system stated in the application and the system that was installed?

THE RESPONDENT: I did not compensate in that. I wish I could have in a reconciliation report because that's when we have, up until that time. I could have fixed it in that.

MR. GARBER: Okay.

THE RESPONDENT: But I'm fully aware of what we are now entitled to and what we're not entitled to, and I admitted that I --

MR. GARBER: My question is that you were aware of the provision as a substance of the provision at -- you say at the time of the JCAP application?

THE RESPONDENT: Well, I think in previous 403.

1 testimony, I had said that I knew -- I learned that it was
2 there. I signed the document, but I know it's on that
3 document. Originally, in my testimony I believe I say
4 specifically I didn't read that at that time.

5 MR. GARBER: Okay. Well, it was on which
6 document, Judge, that --

7 THE RESPONDENT: I'm going to say I think it
8 was in my testimony, in my testimony when I appeared
9 before the Commission.

10 MR. GARBER: Okay. I don't --

11 THE RESPONDENT: Right. That's --

12 MR. GARBER: Okay. I don't have that. Okay.

13 THE RESPONDENT: I'm fully aware, though,
14 that --

15 MR. GARBER: Yeah.

16 THE RESPONDENT: -- it is on the paperwork.

17 MR. GARBER: Now, Judge, I'm going to refer
18 you to Exhibit 19. Oh, here it is. And it is your email to
19 David Dellehunt, dated November 19, 2021. And in it, you
20 state, "I still feel today this is retaliation from our Town
21 Bookkeeper", and I won't read the whole thing. You're
22 familiar with that.

23 THE RESPONDENT: I understand the content
24 of it, yes, sir.

25 MR. GARBER: Yeah. What does this refer to

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in the --

THE RESPONDENT: The retaliation component of --

MR. GARBER: "I still feel this" -- what is "this"?

THE RESPONDENT: The retaliation component?

MR. GARBER: Well, you see, "this is a retaliation". What are you referring --

THE RESPONDENT: I'm referring to --

MR. GARBER: -- to the complaint --

THE RESPONDENT: I'm referring to -- no. I'm referring to everything that wasn't relevant to this JCAP application --

MR. GARBER: Okay.

THE RESPONDENT: -- which Judge Dellehunt knows --

MR. GARBER: Okay.

THE RESPONDENT: -- what's been going on in the court.

MR. GARBER: And in your narrative testimony --

THE RESPONDENT: Yes, sir.

MR. GARBER: -- today, you discussed what you believe the retaliation to be.

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THE RESPONDENT: Briefly, yes.

MR. GARBER: Do you have anything to add to that, what you testified in your narrative testimony?

THE RESPONDENT: Mr. Garber, the items that I could add of what is irrelevant to this case could take some time.

MR. GARBER: Well, the only reason I raised it is that Mr. Pedrotty referred to the retaliation when he questioned you.

THE RESPONDENT: Mm-hmm.

MR. GARBER: And you discussed the retaliation in your narrative testimony.

THE RESPONDENT: Mm-hmm.

MR. GARBER: Is that the substance of your claim of retaliation?

THE RESPONDENT: In the email to --

MR. GARBER: No, I'm referring to what you testified today. Is that the substance of or description of the retaliation?

THE RESPONDENT: Of the retaliatory actions that they have, I believe in my testimony, is that we were not able to communicate any type of resolution. I believe the retaliation is not being able to sit down with the Town Supervisor and try to resolve it. And in two weeks of an invoice, they have it already out at the Commission.

1 The retaliation also includes the reasons why
2 they did that, is what I feel, and those are nonrelevant items
3 to the Court at this time for this charge. They include all
4 kinds of personnel, interpersonnel [sic] policy, budget
5 reporting to the controller's office, all the -- there's a whole
6 element of things that went on. Pay for an employee, we
7 lost a 24-year employee. So we have all these things going
8 on three months prior -- during three months, up until the
9 middle of June, with the Town prior to me installing the
10 cameras two weeks later. So it was a keg ready to blow of
11 Judge Mercer, and I don't play well in the sandbox -- is
12 what I was told.

13 MR. GARBER: So you're referring to the -- just
14 in summarizing, you're referring to disagreements over
15 various policies and practices --

16 THE RESPONDENT: Correct.

17 MR. GARBER: -- within the court system?

18 THE RESPONDENT: Within the Town and the
19 court system.

20 MR. GARBER: Okay.

21 THE RESPONDENT: It was very much so.

22 MR. GARBER: Okay. Judge Mercer, I have
23 one last question for you.

24 THE RESPONDENT: If I could just clear up
25 my answer, just for the --

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MR. GARBER: Go ahead.

THE RESPONDENT: I just want to make it very clear that the retaliatory nature had nothing to do with Marcia Puorro, Vee Carl, or Judge Pazin. It was the retaliatory actions of going forward and dealing with the Town over all those issues.

MR. GARBER: But how does that relate to the charges or the allegations, I should say, of the formal written complaint?

THE RESPONDENT: How do they relate to it? It's an explanation of the events that were going on at the time. For the complaint component, how I feel is that we were not able to resolve the issue, from the Attorney saying that he wanted to sit down and talk, not to hide, is how I answered. Don Pierro would never sit down with me at this point in time to discuss anything -- who's the Bookkeeper who we have our issues with that -- and Rob Butler, the Supervisor, had no concern or interest in rectifying the problem because of the irrelevant things that were going on prior to the installation of the camera. And the Bookkeeper who's got the invoice, "We got him." Well, okay. You do have me. I'm not denying you got me.

MR. GARBER: I don't know who filed the complaint --

THE RESPONDENT: Mm-hmm.

(Matter of E. Timothy Mercer - Colloquy)

1 MR. GARBER: -- with the Commission on
2 Judicial Conduct.

3 THE RESPONDENT: Mm-hmm.

4 MR. GARBER: Do you feel or do you consider
5 the filing of the complaint as part of the retaliation?

6 THE RESPONDENT: No --

7 MR. GARBER: Okay.

8 THE RESPONDENT: -- not at all.

9 MR. GARBER: Okay.

10 THE RESPONDENT: And I have the
11 complaint from the --

12 MR. GARBER: Okay.

13 THE RESPONDENT: -- Town Attorney,
14 George McHugh, who filed it under the direction of Rob
15 Butler and Don Pierro.

16 MR. GARBER: My last question is Mr.
17 Pedrotty asked in substance whether your retention of the
18 \$760 --

19 THE RESPONDENT: Mm-hmm.

20 MR. GARBER: -- differential --

21 THE RESPONDENT: Mm-hmm.

22 MR. GARBER: -- between, I'll call it, the
23 proposed system --

24 THE RESPONDENT: Mm-hmm.

25 MR. GARBER: -- in the JCAP --

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

(Matter of E. Timothy Mercer - Colloquy)

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THE RESPONDENT: Mm-hmm.

MR. GARBER: -- and the system that was installed was an act of dishonesty.

THE RESPONDENT: Absolutely.

MR. GARBER: Yeah.

THE RESPONDENT: Absolutely, sir.

MR. GARBER: Well, do you consider yourself a dishonest man?

THE RESPONDENT: No, I don't. I made a mistake --

MR. GARBER: Okay.

THE RESPONDENT: -- a one-time, very big, large mistake, and it's completely out of nature to be that way, as I believe every witness has testified to.

MR. GARBER: Okay. I have nothing further.

MR. PEDROTTY: I have nothing further.

MR. GARBER: Judge, do you have anything further?

THE RESPONDENT: I have nothing further.

MR. GARBER: Okay. Judge, you're excused as a witness.

THE RESPONDENT: Thank you.

MR. GARBER: And well, do you want -- Mr. Pedrotty, do you want to make a closing statement?

MR. PEDROTTY: Absolutely not.

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(Matter of E. Timothy Mercer - Colloquy)

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MR. GARBER: Okay. And --

JUDGE MERCER: Can I make a --

MR. GARBER: -- Judge, do you want to make a closing statement?

JUDGE MERCER: I would just like to make a --

MR. GARBER: Why don't you sit over there?

JUDGE MERCER: Sure.

MR. GARBER: And --

JUDGE MERCER: Thank you very much. Okay?

MR. GARBER: Please proceed.

JUDGE MERCER: Okay. Here's my closing statement.

Once again, I would like to express my heartfelt regret that I failed to uphold the highest standards of judicial ethics and failed to avoid the appearance of impropriety in failing to act in a manner that promotes public confidence in a judiciary.

At all times, my interest was to protect the Court and its personnel from what I perceived as threats, be it town employees or altered procedures during COVID-19. I was confronted with a situation which I felt uniquely qualified to take on the Court's behalf. I know now that my overzealous actions were wrong.

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STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

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As a newly elected judge, I failed to maintain the professional confidence and conduct expected of me and failed to adequately supervise the court staff. With my own lack of experience, I over-relied on my staff's knowledge, which does not excuse my behavior, and the experience of the JCAP process, which I have to say, I know very well now.

I also feel at this time it's important to point out that I had no personal gain. I didn't receive any funds to Mercer Associates, and I would like to ask the Commission to show leniency in whatever further actions we go forward with.

MR. GARBER: Thank you.

JUDGE MERCER: That's it.

MR. GARBER: Going forward, each of the parties will have an opportunity upon receipt of the transcript to file briefs in support of their position in this case. In briefing the case, I would ask that each of the parties address four opinions of the New York State Advisory Committee on Judicial Ethics.

And Judge, for your information, these opinions are online on the New York State Advisory Committee on Judicial Ethics.

JUDGE MERCER: I'm familiar with them, and I do have a couple of those briefs.

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MR. GARBER: Okay. And the four opinions, without going through each of them, generally state that a part-time town justice may perform work or services on a one-time or occasional basis for the town in which the justice presides. And the opinions that I'm referring to -- referring you to are as follows: Opinion 89-19, dated February 24, 1989; Opinion 95-79, dated June 29, 1995; Opinion 98-163, dated October 22, 1998; and Opinion 99-128, dated September 14, 1999.

So all the transcripts will reflect -- the transcripts will reflect those opinions. They are 89-19, 95-79, 98-163, and 99-128. And the facts of the -- within those opinions vary, but they're generally as I summarized it, and I would like each of the parties to address the applicability or inapplicability of these opinions.

I would also request that the parties brief the question of whether a Town Justice is an officer or employee of the town in which he presides for purposes -- or within the meaning of those terms as used in General Municipal Law, Article 800 and the Town Ethics Code, Town of Athens Ethics Code.

JUDGE MERCER: Mm-hmm.

MR. GARBER: Now, moving on, each of the parties will receive a transcript of the -- of this hearing with copies of the exhibits. The Commission procedures require 413.

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submission of briefs within, I believe, four weeks of the receipt of the transcript.

Judge Mercer, I would request that you email Mr. Pedrotty acknowledging the date that you received the transcript with a copy and with a copy to me where you can address the email to me. And we'll discuss by email a briefing schedule.

The four-week time provision is subject to enlargement, for want of a better word, for good cause shown, and I am aware, having practiced law for over 50 years, that matters come up, and so if there's difficulty meeting the schedule and it's justifiable, we can discuss an enlargement of the time. That's all I have.

Mr. Pedrotty, do you have anything other?

MR. PEDROTTY: I have nothing else. Thank you very much.

MR. GARBER: And Mr. -- or Judge Mercer?

THE RESPONDENT: I have nothing else, sir.

MR. GARBER: Okay. Well, with that, we'll consider the hearing closed.

(Proceedings concluded at 4:58 p.m.)

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EXHIBITS

COMMISSION

| | Description | Ident. | In Evid. |
|---|---|--------|----------|
| 1 | Letter from Marcia Puorro to the Athens Town Board, dated September 21, 2020. One page. | 10 | 10 |
| 2 | Letter from Linda M. Stacey to the N.Y.S Unified Court System Office of Court Administration, dated October 6, 2020. One page. | 10 | 10 |
| 3 | 2020-21 Justice Court Assistance Program Grant Application Athens Town Court, Greene County. Six pages. | 10 | 10 |
| 4 | Fax from Marcia Puorro to Office Of Justice Court Support, dated October 7, 2020. 18 pages. | 10 | 10 |
| 5 | Email exchange between Kathleen Roberts | 10 | 10 |

i.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223

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|----|----|--|----|----|
| 1 | | and Marcia Puorro, dated November 25, | | |
| 2 | | 2020, and December 1, 2020, with | | |
| 3 | | attachment. Two pages. | | |
| 4 | | | | |
| 5 | 6 | Email from Carrol A. Mercer to | 10 | 10 |
| 6 | | Marcia Puorro, dated December 1, 2020, | | |
| 7 | | with attachment. Two pages. | | |
| 8 | | | | |
| 9 | 7 | Letter from Hon. Gerald W. Connolly to | 10 | 10 |
| 10 | | Marcia Puorro, dated January 22, 2021, | | |
| 11 | | with enclosed 2020-21 Justice Court | | |
| 12 | | Assistance Program Award Reconciliation | | |
| 13 | | Report for the Athens Town Court, Greene | | |
| 14 | | County. Two pages. | | |
| 15 | | | | |
| 16 | 8 | Check from the State of New York to the | 10 | 10 |
| 17 | | Town of Athens for \$3,089.99, dated | | |
| 18 | | February 19, 2021. One page. | | |
| 19 | | | | |
| 20 | 9 | Printout of confirmation of purchase | 10 | 10 |
| 21 | | of security camera system model: | | |
| 22 | | CSP4POEMIC8. One page. | | |
| 23 | | | | |
| 24 | 10 | Email from CCTV Security Pros to | 10 | 10 |
| 25 | | ██████████@msn.com, dated June 3, 2021. | | |

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|----|----|--|----|----|
| 1 | | One page. | | |
| 2 | | | | |
| 3 | 11 | CCTV Security Pros Packing Slip, one page. | 10 | 10 |
| 4 | | | | |
| 5 | 12 | Printout from cctvsecuritypros.com website | 10 | 10 |
| 6 | | about security camera system model: | | |
| 7 | | CSP-4POEMIC8. Six pages. | | |
| 8 | | | | |
| 9 | 13 | Town of Athens Voucher, dated July 6, | 10 | 10 |
| 10 | | 2021, with affixed note by “Marcia” and | | |
| 11 | | attached Mercer Associates Invoice, | | |
| 12 | | dated July 6, 2021. Two pages. | | |
| 13 | | | | |
| 14 | 14 | Town of Athens Voucher, dated July | 10 | 10 |
| 15 | | 6, 2021, with additional signatures. | | |
| 16 | | No attached invoice or note by | | |
| 17 | | “Marcia.” One page. | | |
| 18 | | | | |
| 19 | 15 | Email correspondence between Respondent | 10 | 10 |
| 20 | | and Robert Butler et al., dated July 15, | | |
| 21 | | 2021. Two pages. | | |
| 22 | | | | |
| 23 | 16 | Email from Respondent to Hon. David | 10 | 10 |
| 24 | | Dellehunt, dated July 21, 2021. One page. | | |
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| 1 | 17 | Email from Respondent to Don Pierro, with | 10 | 10 |
| 2 | | attachment, dated August 18, 2021. Two | | |
| 3 | | pages. | | |
| 4 | | | | |
| 5 | 18 | Copy of Mercer Associates Finance Charge, | 10 | 10 |
| 6 | | dated August 18, 2021. One page. | | |
| 7 | | | | |
| 8 | 19 | Email correspondence between Respondent | 10 | 10 |
| 9 | | and Hon. David Dellehunt, dated November | | |
| 10 | | 18 and 19, 2021. Two pages. | | |
| 11 | | | | |
| 12 | 20 | Mercer Associates Invoice, dated December | 10 | 10 |
| 13 | | 30, 2021. Two pages. | | |
| 14 | | | | |
| 15 | 21 | Letter from Respondent to Peter Pedrotty, | 10 | 10 |
| 16 | | dated January 17, 2022. Three pages. | | |
| 17 | | | | |
| 18 | 22 | Town of Athens Official Document | 10 | 10 |
| 19 | | Distribution signature page. One page. | | |
| 20 | | | | |
| 21 | 23 | 2020-21 Justice Court Assistance Program | 10 | 10 |
| 22 | | Award Reconciliation Report for the Athens | | |
| 23 | | Town Court, Greene County, signed by Hon. | | |
| 24 | | Constance Pazin, dated May 23, 2022. One | | |
| 25 | | page. | | |

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| 24 | Judiciary Law Article 21-B, Justice Court Assistance Program. Nine pages. | 13 | 13 |
| 25 | Rules of the Chief Administrative Judge Part 138, Justice Court Assistance Program. Three pages. | 13 | 13 |
| 26 | Town of Athens Employee Handbook Version 11.04.2021. 37 pages. | 157 | 158 |
| 27 | Town of Athens Procurement Policies and Procedures, Revised August 2, 2021, “Final”. Three pages. | 158 | 161 |
| 28 | Town of Athens Ethics Code, Chapter 19. Three pages. | 161 | 162 |

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EXHIBITS

RESPONDENT

| | Description | Ident. | In Evid. |
|---|--|--------|----------|
| A | Commission documents supplied for February 7, 2022, investigative appearance. Three pages. | 95 | |
| B | Email from Ruth Wittlinger dated July 27, 2021. One page. | 99 | |
| C | Workplace violence incident forms. Three pages. | 104 | |
| D | Emails between Michael Pirrone and Judge Mercer. Three pages. | 105 | 107 |
| E | Emails between Robert Butler, Donald Pierro and Judge Mercer. Four pages. | 108 | |
| F | Email from Robert Butler to Linda Stacey dated March 1, 2021. Three pages. | 109 | |
| G | Court floorplan with camera locations. One page. | 118 | 126 |

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|----|---|--|-----|-----|
| 1 | H | Memorandum from David Dellehunt to Town | 127 | 128 |
| 2 | | and Village Justices and Court Clerks. One page. | | |
| 3 | | | | |
| 4 | I | Emails between Judge Mercer, Judge | 128 | 129 |
| 5 | | Pazin and Marcia Puorro. Two pages. | | |
| 6 | | | | |
| 7 | J | Emails between Michael Pirrone and Judge | 308 | 314 |
| 8 | | Mercer dated January 9, 2023. One page. | | |
| 9 | | | | |
| 10 | K | Email from Erika Hanks dated | 56 | 57 |
| 11 | | November 18, 2020. One page. | | |
| 12 | | | | |
| 13 | L | Town of Athens Procurement Policies | 167 | 168 |
| 14 | | and Procedures, Revised August 2, | | |
| 15 | | 2021, “Mark-Up”. Three pages. | | |
| 16 | | | | |
| 17 | M | Photograph of Athens Town Court. One page. | 256 | 259 |
| 18 | | | | |
| 19 | N | Photograph of Athens Town Court. One page. | 256 | 259 |
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EXHIBITS

REFEREE

| | Description | Ident. | In Evid. |
|---|--|--------|----------|
| 1 | Index of Commission Exhibits. Two pages. | 11 | 11 |
| 2 | Index of Respondent Exhibits. One page. | 49 | 50 |

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CERTIFICATION

I, Joy Rako, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: June 7, 2023



Joy Rako