

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

**JAMES P. CURRAN,**

a Justice of the Hebron Town Court,  
Washington County.

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**AGREED  
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

**IT IS HEREBY STIPULATED AND AGREED** by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and James P. Curran (“Respondent”), who is representing himself in this matter, that further proceedings are waived and that the Commission shall make its determination upon the following facts and exhibits, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1992. He has been a Justice of the Hebron Town Court, Washington County, since January 1, 2012. Respondent’s current term expires on December 31, 2019.

2. Respondent was served with a Formal Written Complaint dated June 16, 2017. He filed an Answer dated September 5, 2017.

**As to Charge I**

3. In 2015, in presiding over *People v Michael T. Eastman*, Respondent failed to avoid impropriety and the appearance of impropriety; engaged in, considered and failed to report improper *ex parte* communications; and conveyed the appearance of bias against

the defendant and/or the alleged victim in the case.

**As to the Specifications to Charge I**

4. Respondent's wife, Virginia Curran, owns the Bedlam Corners General Store in Hebron, New York. She also serves as Respondent's court clerk.

5. From August 2014 through September 2014, S [REDACTED] M [REDACTED] had been employed by Respondent's wife at the Bedlam Corners General Store. Respondent was aware that Ms. M [REDACTED] had been so employed.

6. On February 25, 2015, Michael T. Eastman was charged with criminal obstruction of breathing, in violation of Penal Law Section 121.11, assault in the third degree, in violation of Penal Law Section 120.00(1), and criminal mischief in the fourth degree, in violation of Penal Law Section 145.00(1). The alleged victim was Ms. M [REDACTED], with whom the defendant was or had been engaged in a personal relationship.

7. On February 25, 2015, Respondent arraigned Mr. Eastman and issued a temporary order of protection directing him to stay away from Ms. M [REDACTED]. A transcript of the *Eastman* proceedings held on February 25, 2015, March 30, 2015, April 20, 2015, and July 20, 2015, is appended as Exhibit A.

8. By letter dated March 5, 2015, Senior Crime Victim Specialist Rebecca A. Evansky of the Washington County District Attorney's Office notified Respondent that Ms. M [REDACTED] had made a written request to modify the order of protection, and she enclosed a copy of the request.

9. On March 30, 2015, Mr. Eastman appeared before Respondent with his attorney, John K. Oswald. Assistant District Attorney ("ADA") Brandon Rathbun was

also present. Mr. Oswald orally moved for Respondent's recusal on the basis that Ms. M■■■■, who was present in court, had previously worked at a business owned by Respondent. Respondent denied the motion, stating:

The person worked for my wife, not for me. I don't own the store. I have an office located upstairs. I had no contact with the person, didn't hire her, didn't interview her, and if I've seen her at the store twice and spoken to her twice, that was--that was a lot.

Mr. Oswald stated that, "[w]ith that understanding," he was withdrawing his motion at that time.

10. On April 20, 2015, Mr. Eastman appeared before Respondent with Mr. Oswald. ADA Rathbun was also present. The following occurred:

- A. Mr. Oswald stated that he had prepared a motion to dismiss based on the affirmative defense of mental defect, pursuant to Penal Law Section 40.15, but had not filed it because a plea agreement had been reached.
- B. Mr. Oswald then listed the terms of the proposed plea agreement, which included, *inter alia*, a "non-violent" order of protection.
- C. Respondent said he could not agree to a "non-violent" order of protection.
- D. Mr. Oswald stated that the "non-violent" order of protection was the "principal reason" his client had been willing to plead guilty, and he summarized his argument to dismiss the charges.
- E. Respondent set a schedule for the prosecution to file opposition papers and for Mr. Oswald to file a reply.

F. ADA Rathbun advised Respondent that Ms. M [REDACTED] had requested that the charges be dropped, but that the prosecution was prepared to go forward.

G. Respondent replied that he had seen Ms. M [REDACTED]'s letter, and the proceeding concluded.

11. On April 20, 2015, several minutes after Mr. Eastman and Mr. Oswald had left the court, Respondent and ADA Rathbun joked about Mr. Oswald having inquired of ADA Rathbun about rumors that he and Respondent went to dinner together. With respect to the motion to dismiss, Respondent told ADA Rathbun, "Just get me your papers. You can give it to me when we go out to dinner, but it's going to be a pretty easy decision for me to write."

12. On May 4, 2015, ADA Rathbun filed his papers in opposition to the defendant's motion to dismiss.

13. By decision and order dated May 15, 2015, Respondent denied the defendant's motion and scheduled the matter for a pre-trial conference.

14. By motion dated June 11, 2015, Mr. Oswald renewed his request for Respondent's recusal, based on a sworn affidavit by Ms. M [REDACTED] that *inter alia* (A) elaborated on her alleged relationship with Respondent and Respondent's wife while employed at Bedlam Corners General Store and (B) asserted that Respondent and his wife had made denigrating comments to her about Mr. Eastman.

15. By letter dated June 29, 2015, ADA Rathbun wrote in response to Mr. Oswald's motion, "the People will defer to the discretion of [Respondent] on this matter."

16. By decision and order dated June 29, 2015, Respondent denied the motion, finding that Ms. M■■■■'s affidavit was "inaccurate and clearly prepared to bolster the motion."

17. On July 11, 2015, a man who identified himself to Respondent as Ms. M■■■■'s husband and the father of her children approached Respondent at a gas station and claimed, in sum or substance, that Mr. Eastman and Ms. M■■■■ had been traveling to Vermont to engage in trysts, and that the children had traveled with them. Respondent did not know the man, and did not know whether the information he relayed was true. Respondent did not disclose this conversation to defense counsel or the prosecutor.

18. On July 17, 2015, Respondent received a voicemail message on his cell phone from an anonymous female caller who repeated, in sum or substance, essentially the same allegation raised by the man who had approached Respondent at the gas station. Respondent did not disclose to defense counsel or the prosecutor that he had received this voicemail.

19. On July 20, 2015, during a pre-trial conference in the *Eastman* case, the following occurred:

- A. Respondent incorrectly accused Mr. Eastman of having violated the order of protection by impregnating Ms. M■■■■ after the order of protection had been issued.
- B. When Mr. Oswald attempted to refute the accusation, Respondent questioned whether the pregnancy was the result of "the immaculate conception" and asserted that "someone perjured themselves."

- C. Although Respondent subsequently acknowledged his error after both attorneys and Mr. Eastman corrected him as to the date of the issuance of the order of protection, Respondent nevertheless continued to accuse Mr. Eastman of having violated the order of protection, stating: “I’m aware there’s been multiple violations of the order of protection. Multiple.” Respondent did not disclose how he was aware of these alleged “multiple violations,” even after Mr. Oswald questioned the propriety of Respondent presiding over the case in light of such knowledge.
- D. Subsequently, Respondent twice directed Mr. Oswald to tell Mr. Eastman that he (Respondent) was aware of multiple violations of the order of protection.
- E. Respondent told Mr. Oswald, “I don’t trust your client and I don’t trust [Ms. M■■■■], that’s the problem, and I’m not letting them off the hook.”

20. On July 20, 2015, after the pre-trial conference, Respondent (A) accepted Mr. Eastman’s guilty plea to the charge of criminal obstruction of breathing, in satisfaction of all charges, (B) sentenced him to a conditional discharge with the conditions that he complete 50 hours of community service and anger management training and (C) imposed a fine of \$800 and a surcharge of \$205. Respondent also issued a six-month “stay-away” order of protection in favor of Ms. M■■■■, with leave for Mr. Eastman to apply for an 18-month “non-violent” order of protection upon the birth of Ms.

M[REDACTED] and Mr. Eastman's child, and a "non-violent" order of protection in favor of Ms. M[REDACTED]'s sister.

21. On July 20, 2015, after pronouncing the sentence, Respondent said the following to Mr. Eastman:

Let me tell you this, all right? And we're still on the record. I'm aware that you violated that order of protection on multiple occasions since it was issued.

22. When Mr. Oswald directed Mr. Eastman not to respond, Respondent stated:

And I don't want you to say anything, but I'm aware that you violated it and I'm aware that [Ms. M[REDACTED]] knowingly violated it with you, so you can't-- just because you go to Vermont and you're not in New York when you do the violation, that doesn't mean it doesn't count. All right? So, don't violate it again, because if you come back here and you violated it again and you're found guilty after a hearing, you're going to get the maximum.

23. Respondent did not disclose how he was aware of the information he related in the preceding paragraph.

24. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and

diligently, in that he failed to perform judicial duties without bias or prejudice against or in favor of any person and, by words or conduct, manifested bias or prejudice, in violation of Section 100.3(B)(4) of the Rules, and failed to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law and permitted or considered *ex parte* communications, or considered other communications made to the judge outside the presence of the parties or their lawyers concerning a pending proceeding, in violation of Section 100.3(B)(6) of the Rules.

**Additional Factors**

25. Respondent acknowledges that he should have disclosed to the parties the sources and substance of the two unsolicited *ex parte* communications he received about the defendant's alleged violations of the order of protection. Respondent also acknowledges that he should not have repeatedly accused Mr. Eastman of having violated the order of protection based upon such unsubstantiated *ex parte* allegations.

26. Respondent acknowledges that, after disclosing the source and substance of the *ex parte* information to the parties, he should then have entertained objections regarding his continuing to preside over the case.

27. Respondent avers that his statements to the defendant were intended as a warning to Mr. Eastman against violating the order of protection in the future. Respondent nevertheless acknowledges that it was inappropriate to rely on such unsubstantiated and undisclosed *ex parte* information in this manner.

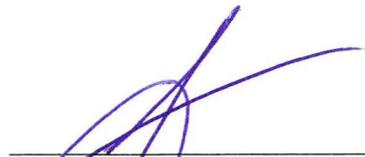
**IT IS FURTHER STIPULATED AND AGREED** that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

**IT IS FURTHER STIPULATED AND AGREED** that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Admonition based upon the judicial misconduct set forth above.

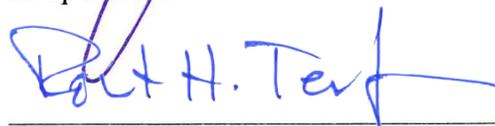
**IT IS FURTHER STIPULATED AND AGREED** that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated:

10/15/17

  
\_\_\_\_\_  
**Honorable James P. Curran**  
Respondent

Dated: October 17, 2017

  
\_\_\_\_\_  
**Robert H. Tembeckjian**  
Administrator & Counsel to the Commission  
(**Cathleen S. Cenci** and **S. Peter Pedrotty**, Of  
Counsel)

**Transcript of Proceedings in *People v Michael T. Eastman* held**

**February 25, 2015 (5:12 AM to 5:18 AM)**

**March 30, 2015 (1:07 PM to 1:09:30 PM)**

**March 30, 2015 (1:16 PM to 1:19 PM)**

**April 20, 2015 (2:04 PM to 2:12 PM)**

**April 20, 2015 (2:18 PM to 2:20 PM)**

**July 20, 2015 (1:23 PM to 1:36 PM)**

**July 20, 2015 (1:39 PM to 1:59 PM)**

**Before Hon. James P. Curran, a Justice of the  
Hebron Town Court, Washington County**



(February 25, 2015 5:12 AM to 5:18 AM)

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Judge Curran: Okay. We're here tonight for the purposes of an arraignment. You're Michael T. Eastman?

Mr. Eastman: Yes, junior.

Judge Curran: Your date of birth is [REDACTED]?

Mr. Eastman: Yep.

Judge Curran: Okay. You're here tonight for the purposes of arraignment. You've been charged with one count of assault in the third degree with intent to cause physical injury that on or about 2/25/2015 at 1:11 AM in the Town of Hebron, County of Washington, you did intentionally cause physical injury to S [REDACTED] [REDACTED]. M [REDACTED]. Defendant did knee M [REDACTED] in the mouth, causing her teeth to puncture her inside lip. You also have a charge of criminal obstruction of breathing, that on or about 2/25/2015 at 1:11 AM, in the Town of Hebron, County of Washington, that you did intentionally, knowingly and unlawfully apply pressure to the neck of S [REDACTED] [REDACTED]. M [REDACTED] during physical altercation. You have another charge of criminal mischief, intent to damage property, that on or about 2/25/2015 at 1:11 AM, Town of Hebron, County of Washington, you did intentionally damage the property of another, you did put a hole in the wall at [REDACTED] in the Town of Hebron.

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1 I'm going to enter a not guilty plea on your behalf  
2 with respect to all of these charges. You are entitled  
3 to an attorney at every stage of the proceeding. If  
4 you cannot afford an attorney, one will be appointed  
5 for you. Are you currently employed?  
6 Mr. Eastman: What's that?  
7 Judge Curran: Are you currently employed?  
8 Mr. Eastman: Yes.  
9 Judge Curran: What do you do?  
10 Mr. Eastman: I work for Jerry Madison.  
11 Judge Curran: Okay. How much do you earn a week?  
12 Mr. Eastman: Well, it depends on how much we work.  
13 Judge Curran: How much did you earn last week?  
14 Mr. Eastman: Not very much. We only worked two days.  
15 Judge Curran: Okay. I'm going to issue an order of protection in  
16 favor of S█████ M█████. You cannot have any contact  
17 with her. You can't go to her residence. You can't  
18 phone her. You can't contact her. You can't have a  
19 third party contact her. Do you understand that?  
20 Mr. Eastman: Yes.  
21 Judge Curran: If you violate the order of protection, it's a charge of  
22 criminal contempt. There will be an additional  
23 charge to what you have here. Do you understand  
24 that?  
25 Mr. Eastman: Okay. I won't.

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1 Judge Curran: My policy is if you violate the order of protection or  
2 contact her in any way that when you come back  
3 here for arraignment, you go to the Washington  
4 County Jail for the length of your case. Do you  
5 understand that?  
6 Mr. Eastman: Yes, sir.  
7 Judge Curran: So there's no second chances. You violate the order  
8 of protection, you come back here, you go to the  
9 Washington County Jail. Do we understand that?  
10 Mr. Eastman: Yes, sir.  
11 Judge Curran: Okay.  
12 Mr. Eastman: How do I go about getting the rest of my stuff out of  
13 there, sir? I've got four-wheelers, some more  
14 clothes. I've got all kinds of stuff there still.  
15 Judge Curran: You can call the sheriff or the troopers and they'll let  
16 you go back--  
17 Mr. Eastman: --Only with them, right?  
18 Judge Curran: One time. That's it.  
19 Mr. Eastman: Okay.  
20 Judge Curran: To retrieve your personal property. And I'm going  
21 to put that in here.  
22 Mr. Eastman: Okay. Thank you, very much.  
23 Judge Curran: When you go back there to get your stuff, you're not  
24 going to be there for a couple hours and tie them up.  
25 Mr. Eastman: Just grab my stuff and then I'm out of there--

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1 Judge Curran: --15 minutes, you get your stuff and you leave. Do  
2 you understand that?  
3 Mr. Eastman: Yep. It may take me a little bit longer than 15  
4 minutes just to get my snow-- or my four-wheeler  
5 out of the snowbank. Is that okay?  
6 Judge Curran: That's up to the-- I'm just telling you, if they tell  
7 you 15 minutes, that's what it is.  
8 Mr. Eastman: Okay.  
9 Judge Curran: It's up to them how long they give you. This is a  
10 copy of the charges. I'm just going to have him sign  
11 the order of protection.  
12 Unidentified Female: (Unintelligible).  
13 Mr. Eastman: I'm left-handed.  
14 Judge Curran: Sign right there.  
15 Mr. Eastman: Where, sir?  
16 Judge Curran: Right here. Right above "defendant," right there.  
17 Mr. Eastman: Mm-hmm.  
18 Judge Curran: These are yours. Take them. What's the address  
19 you're going to be staying at?  
20 Mr. Eastman: [REDACTED].  
21 Judge Curran: Do you have a phone number?  
22 Mr. Eastman: [REDACTED].  
23 Judge Curran: A copy of the order of protection for you. Can you  
24 take care of getting one to her across the street?  
25 Unidentified Female: Yes.

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1 Judge Curran: A copy. There's one for you and one for her. I'm  
2 going to release you on your own recognizance,  
3 okay? But, if you come back here on violating the  
4 order of protection, like I told you, you're going  
5 straight to the Washington County Jail. Do you  
6 understand that?

7 Mr. Eastman: Yes, sir.

8 Judge Curran: Your next court date's going to be March 30<sup>th</sup>.

9 Mr. Eastman: Okay.

10 Judge Curran: You'll get a letter in the mail. In the mail, you're  
11 also going to get an application for the public  
12 defender's office.

13 Mr. Eastman: Okay.

14 Judge Curran: As soon as you get that, you'll get that this time--  
15 sometime this week, you have to contact the public  
16 defender's office and make an appointment to go  
17 there. When you come on the 30<sup>th</sup>, don't tell me that  
18 you didn't go to the public defender's office and  
19 make an appointment. Do you understand?

20 Mr. Eastman: Yes, sir.

21 Judge Curran: Okay. See you on the 30<sup>th</sup>.

22 Mr. Eastman: All right. Thank you, very much.

23 Judge Curran: All right. I'm not shaking. I don't shake hands with  
24 handcuffs on it.

25 Mr. Eastman: (Unintelligible).

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1 Judge Curran: Have a good day.  
2 Unidentified Female: All right. Let's go.  
3 (March 30, 2015 1:07 PM to 1:09:30 PM)  
4 Judge Curran: Do you have all the paperwork, John, for this? The  
5 information and all that stuff?  
6 Mr. Oswald: Yeah, I believe so, Judge. May I approach on that?  
7 Judge Curran: Yeah, sure.  
8 Mr. Oswald: Hey. Good morning.  
9 Mr. Eastman: (Unintelligible). Good. How are you?  
10 Mr. Oswald: Good. Thanks. Good afternoon, Judge. John  
11 Oswald, here on behalf of Michael Eastman, Jr.  
12 Judge, just some housekeeping in order, it is my  
13 understanding that the complainant here, a J■■■■-- A  
14 S■■■■--  
15 Judge Curran: All right. Hold on. Let me just put us on the record,  
16 first, John.  
17 Mr. Oswald: Okay. Thanks, Judge.  
18 Judge Curran: We're on the record, docket number 1502004 of  
19 2014 [sic], *People v Michael T. Eastman*. Mr.  
20 Eastman is present with his attorney, John Oswald,  
21 and the people are represented by ADA Brandon  
22 Rathbun.  
23 Mr. Oswald: Again, thank you, Judge. John Oswald, on behalf of  
24 Mr. Eastman. Judge, it's my understanding that the  
25 complainant herein, a S■■■■ M■■■■, formerly

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1 worked for Your Honor at your business here in the  
2 village as early as November or December of this  
3 past year. Judge, in light of that, and in all due  
4 respect, Judge, we will be asking for a change and  
5 that the court recuse himself and appoint or send this  
6 matter to another court, or have another judge  
7 substitute Your Honor for these proceedings.

8 Judge Curran: Okay. That application is denied. The person  
9 worked for my wife, not for me. I don't own the  
10 store. I have an office located upstairs. I had no  
11 contact with the person, didn't hire her, didn't  
12 interview her, and if I've seen her at the store twice  
13 and spoken to her twice, that was-- that was a lot.

14 Mr. Oswald: All right. With that understanding, Judge, we won't  
15 be making a motion. We withdraw that motion at  
16 this time--

17 Judge Curran: --Okay.

18 Mr. Oswald: --in light of those facts. I just need to speak with Mr.  
19 Rathbun, please.

20 Judge Curran: Okay.

21 Mr. Rathbun: The people just want to file a notice of readiness.

22 Mr. Oswald: Yeah. And if I could get a few minutes, Judge?

23 **(March 30, 2015 1:16 PM to 1:19 PM)**

24 Judge Curran: All right. We're back on the record in docket  
25 number 1520004 of 2015.

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1 Mr. Oswald: Thank you, Judge, for that brief recess. Your Honor,  
2 I don't have copies of all the statements. I just  
3 double checked my file here. I have-- Just for the  
4 record, what I have are three charges, criminal  
5 obstruction of breathing, criminal mischief and  
6 assault in the third degree.

7 Judge Curran: Yep.

8 Mr. Oswald: I don't have any supporting depositions. The DA  
9 has indicated that there are statements out there. If I  
10 can just have those to review with my client? Judge,  
11 we did speak about some mitigating factors here.  
12 The DA's office was going to provide me with some  
13 additional information. If we can adjourn this matter  
14 out to the next court appearance, time chargeable to  
15 the defense for 30.30 purposes, we would appreciate  
16 it.

17 Judge Curran: Where is Brandon?

18 Mr. Oswald: Out back.

19 Judge Curran: Could you just tell him come out here while we're on  
20 this? Here's one, John.

21 Mr. Oswald: Thank you.

22 Judge Curran: Brandon, I was reading the supporting deposition. Is  
23 there only one complainant here, because the  
24 supporting deposition says he assaulted the sister,  
25 too.

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1 Mr. Rathbun: Sister-- Well, yeah. They were not-- The sister  
2 wasn't named in either of the complaints, but she  
3 does give a statement to the police. If you don't  
4 have a copy--  
5 Judge Curran: --All right.  
6 Mr. Rathbun: --I can get a copy to you.  
7 Judge Curran: So, there's no-- But there's no charges with respect  
8 to her? It's just with respect to the other person--  
9 Mr. Rathbun: Not with-- Not with respect to her. Obviously, we  
10 can fix that with a prosecutor's information before  
11 the next court date. (Unintelligible).  
12 Judge Curran: I just want to make sure. I only have one order of  
13 protection here. I just wanted to make sure I was  
14 only supposed to have one.  
15 Mr. Rathbun: Yeah, no. She was not included in the original  
16 charge, for some reason. For that reason,  
17 (unintelligible).  
18 Judge Curran: Okay.  
19 (Unintelligible attorney-client conversation)  
20 Judge Curran: Those are the only two I have.  
21 Mr. Oswald: Great, thank you, Judge.  
22 Judge Curran: I'll let him know you said that. He'll appreciate that.  
23 Mr. Oswald: Coming from me, they'd appreciate it.  
24 Judge Curran: All right. So, we're adjourning this to 4/20?  
25 Mr. Oswald: 4/20, time to defense. If we can't work on our

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1 resolution at that time, Judge, we'll be on seeking  
2 motions from that point.

3 Judge Curran: Well, motions 45 days from the date of arraignment.

4 Mr. Oswald: That's fine. We'll ask for motions if needed at that  
5 time. I'll take it into consideration the time from  
6 today until that day.

7 Judge Curran: Okay. So, we're adjourned until April 20<sup>th</sup>. Time to  
8 the defendant.

9 Mr. Oswald: Thank you, Judge.

10 (April 20, 2015 2:04 PM to 2:12 PM)

11 Judge Curran: Do you have the files, John? You've got to get them  
12 from him.

13 Unknown Female: Yes.

14 Judge Curran: Okay. All right. We're on the record, docket  
15 number 1502004 of 2015, *People v Michael*  
16 *Eastman*. Let's-- Mr. Eastman is present with his  
17 attorney, John Oswald, and the people are  
18 represented by ADA Brandon Rathbun.

19 Mr. Oswald: Thank you, Judge. Your Honor, after consulting  
20 with the DA's office and my client, there appears to  
21 be a resolution, subject to court approval. Just for  
22 the record, Judge, I have advised my client of his  
23 rights to file a motion to contest the charges here and  
24 in fact, I did prepare motions, have not filed them,  
25 because of the aforesaid agreement. I do believe my

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1 client may have a defense under 40.15 of the Penal  
2 Law. That defense notwithstanding, Judge, my  
3 client indicates he wants to resolve this matter. He  
4 and the complainant are a long-time boyfriend and  
5 girlfriend and he wants to resume that relationship,  
6 which this plea agreement would permit. Judge, the  
7 offer here is plea to one count of obstructing  
8 breathing, in full satisfaction of all charges and in  
9 full satisfaction of any charges that could have been  
10 filed concerning this matter. The people are looking  
11 for 50 hours of community service, anger  
12 management and they've indicated that an anger  
13 management program from sats-- from Saratoga  
14 County would satisfy them for such purposes. And  
15 modifying the current order of protection to a two-  
16 year, non-violent order of protection pertaining to the  
17 complainant and her sister. Now, my client is aware  
18 of all those rights, Judge, and he's prepared to waive  
19 those in consideration of the people's offer.

20 Judge Curran: And you said his affirmative defense was Penal Law  
21 Section 40.15?

22 Mr. Oswald: Yes, Judge, and we believe that there was factors  
23 involved in this case which I was exploring as a  
24 viable defense. My client's aware-- is aware of that.  
25 He's prepared to proceed, that potential defense



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1 so ...

2 Mr. Oswald: Again, Judge, as I was alluding to, we do believe that

3 there was a complete defense here with respect to the

4 conduct of my client. I think it's clear that my client

5 was given-- something was put in his drink, which

6 was prescribed medication, whether it was Xanax or

7 a combination of Xanax, we don't know. All we

8 know is it resulted in alleged conduct to my client.

9 He doesn't recall what occurred, quite frankly.

10 There appears to be evidence to that effect. The

11 complainant actually saw the residue in the bottom

12 of his glass, because she was trying to figure out

13 what had caused him to act this way. We believe he

14 was still in a state of delirium at the time the police

15 arrived. My client has no prior criminal record. He

16 has no record of assaulting any women. My client--

17 This is completely out of character for him and the

18 only explanation we have-- Again, he doesn't even

19 know what occurred. Assuming these allegations are

20 true, the only explanation we can-- my client can

21 determine here is that he was-- something was put in

22 his drink, because the individual wanted to share his

23 medications with everyone that very night.

24 Judge Curran: Do you want to be heard, Brandon, or do you want to

25 put in opposition papers?

1 Mr. Rathbun: With respect to everything that Mr. Oswald just said,  
2 as far as the alleged incidence, I mean I think we  
3 have plenty of proof of that. As far as the alleged  
4 use of whatever drugs that were put in the drink, we  
5 were informed by the victim in the case that-- Can't  
6 recall the sister's boyfriend's name, did place what  
7 they believe was a Xanax pill in the defendant's  
8 drink at some point in the night.

9 Mr. Oswald: And again, Judge, whether it was a Xanax, more than  
10 one Xanax, or a combination of something with  
11 Xanax, whatever was put in there resulted in conduct  
12 my client cannot recall. Again, it's behavior that  
13 he's never evinced in the past, he has not evinced  
14 since. He's not a young man with a history of  
15 criminal conduct. In fact, he stands before the court  
16 without any criminal conviction. And to the people's  
17 credit, Judge, they're the one that advised me of the  
18 issue with respect to the drugs being put in my  
19 client's drink without his knowledge.

20 Judge Curran: Okay. So, I'll wait to get something in writing from  
21 them and I'll write a decision. I'm not going to rule  
22 on it without seeing their papers.

23 Mr. Oswald: New control date?

24 Judge Curran: How much time do you need, Brandon, to put yours  
25 in?

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1 Mr. Rathbun: I can get it to you within a week, Judge.  
2 Judge Curran: Okay. Are you going to put in a reply, John?  
3 Mr. Oswald: Yeah, I might put in a reply, Judge. Yeah.  
4 Judge Curran: All right. So, if I put it-- If I put it off to May 18<sup>th</sup>,  
5 that gives everybody plenty of time?  
6 Mr. Oswald: Yes.  
7 Judge Curran: Because I can have a decision for you on that date.  
8 Mr. Oswald: May 18<sup>th</sup>.  
9 Mr. Rathbun: Judge and John, since we seem to know little about  
10 the defendant, is this something where we would  
11 want to also order a presentence?  
12 Mr. Oswald: That's perfectly fine. Again, Judge, my  
13 understanding is my client has never evinced this  
14 type of behavior in the past. We have no problem  
15 with a pre-plea investigation. I think it will show  
16 everything I've reported, no record, hardworking  
17 young man, and this is an aberration. He have  
18 evidence to suggest he was given a mickey, I don't  
19 know how else to explain it, and that it resulted in  
20 conduct he was not even aware of. Again, assuming  
21 this occurred, and to my understanding, Judge, the  
22 complainant does not want to see the matter even  
23 prosecuted, so I didn't-- I didn't raise that with the  
24 court, but I mean--  
25 Mr. Rathbun: --Judge, I can state that I have received a letter from

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1 the complainant. She does wish to drop the charges.  
2 That being said, the people are under a duty to  
3 prosecute this matter, which is why we did not  
4 dismiss the charges.  
5 Judge Curran: Right.  
6 Mr. Rathbun: And we do have independent proof.  
7 Judge Curran: I understand.  
8 Mr. Rathbun: But, what I can say is that I do have a letter if the  
9 court needs a copy of it.  
10 Judge Curran: I saw the copy in the file.  
11 Mr. Rathbun: Okay.  
12 Judge Curran: All right. So then, we're adjourned until 18<sup>th</sup>.  
13 Mr. Rathbun: Thank you. Judge, can I just mail the response to  
14 your office or fax it here?  
15 Judge Curran: You can fax it here.  
16 **(April 20, 2015 2:18 PM to 2:20 PM)**  
17 Court Clerk: What time is that dinner plan tonight with Brandon?  
18 He wants to know.  
19 Mr. Rathbun: Yeah.  
20 Judge Curran: For what?  
21 Court Clerk: Oswald said--  
22 Mr. Rathbun: Oswald goes, he says, "Is there any truth-- I've been  
23 told that you," as in me, "you and the judge go out to  
24 dinner on a regular basis?" I was like, well--  
25 Court Clerk: You should-- You know what you should have said

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1 to him? No, the truth is--  
2 Mr. Rathbun: --No, because he won't pick up the check.  
3 Court Clerk: No, you know what you should have said to him?  
4 "The truth is, John, I'm-- he's going to be my father-  
5 in-law," and then see what he does.  
6 Mr. Rathbun: That's-- I said, "John, I've never even ran into him  
7 by chance outside of the courtroom."  
8 Judge Curran: I think John was being facetious.  
9 Mr. Rathbun: No, he said-- I go, "John, who told you that? I want  
10 to know." I was like, "John, who told you?" He was  
11 like, "It's not who told me, someone told them." I  
12 said, "Well, whoever it was, now you know for a fact  
13 that they just make things up to make things up."  
14 He's like, "Well, maybe." I go, "No, John."  
15 Judge Curran: I would have remembered it, because I would have  
16 made you pay.  
17 Mr. Rathbun: Not just once, on a regular basis.  
18 Unknown Male 1: Well, you know, when all else fails, I guess.  
19 Unknown Male 2: What did he say last time when something happened  
20 or whatever?  
21 Court Clerk: She worked in the store.  
22 Mr. Rathbun: I forgot about that ...  
23 Unknown Male 2: Right. And Your Honor said-- He goes, "No, I have  
24 nothing to do with this. My wife worked the store  
25 and my office is next door, so I'm not going to



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1 couple of months ago. My client has no prior  
2 criminal history. Again, we believe there was  
3 mitigating factors with respect to the incident. It's  
4 my understanding that complainant is-- does not  
5 want to see the matter prosecuted. It's my  
6 understanding she's-- She's informed me, Judge,  
7 that she doesn't want to participate in the prosecution  
8 of this case. The people are looking for some sort of  
9 disposition on it. They have required a plea, I  
10 believe to a misdemeanor count. I believe the only  
11 thing the court was-- took umbrage with was the  
12 order of protection component. Again, Judge, no  
13 prior record. The allegations here are totally out of  
14 character for my client. He did provide an affidavit  
15 to that respect in my moving papers. We would ask  
16 the court to reconsider, accept the plea disposition  
17 that was presented before, about a month and a half  
18 ago.

19 Mr. Rathbun: Firstly, with respect to the victim not wanting to  
20 press charges, I can say she came in originally, said  
21 she wanted the charges-- all charges dropped. Our  
22 office informed her we would not be dropping the  
23 charges outright. We made the offer we made. With  
24 respect to any pre-trial issues, there are no  
25 convictions so there are no-- there will be no



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1 client's submissions raised that issue, because when I  
2 went through the file and I started putting everything  
3 together, he has an aff-- There's affidavits in there  
4 that say the two of them were together when-- after  
5 the stay-away order of protection was issued.

6 Mr. Oswald: No.

7 Judge Curran: Yes.

8 Mr. Oswald: No. That's not true at all.

9 Judge Curran: Okay.

10 Mr. Oswald: Judge, Ms. M [REDACTED] was pregnant prior to the filing  
11 of-- prior to my appearance in this case.

12 Judge Curran: Okay. I issued the order of protection December  
13 26<sup>th</sup>, okay? That's when he was arraigned. That's  
14 when I issued the order of protection. December  
15 26<sup>th</sup>, 2014. If he's the father of the child, they had to  
16 have relations sometimes-- some time in January or  
17 February if she's due in October.

18 Mr. Oswald: Judge--

19 Judge Curran: --Unless it's the immaculate conception?

20 Mr. Eastman: No. It was in February.

21 Mr. Oswald: Judge, there was no contact in violation. If this--

22 Judge Curran: --Well, then the-- then the aff-- then someone  
23 perjured themselves in an affidavit. I don't know  
24 who it was.

25 Mr. Rathbun: Judge, I'll just say, just so you're aware, our file has

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1 the arrest date in February, February 25<sup>th</sup>. I can call  
2 my office and check. I don't have--  
3 Judge Curran: --No, I have the paperwork here. No copy of the OP,  
4 Gin?  
5 Court Clerk: A copy? No.  
6 Mr. Oswald: Judge, the incident didn't take place until February  
7 2015, as set forth in the accusatory instrument.  
8 There had been no contact whatsoever. I don't know  
9 how the court could issue an order of protection in  
10 December when these charges weren't filed until  
11 February.  
12 Judge Curran: The order of protect-- That was my error. The order  
13 of protection was issued on 2/25/2015.  
14 Court Clerk: Right.  
15 Mr. Oswald: No contact, Judge.  
16 Judge Curran: I'm not changing from a stay-away order of  
17 protection. That's what I said I was doing the first  
18 time, and I'm staying with that. If you want to  
19 conference with the DA and see if you can do a  
20 different term other than a two-year stay-away order  
21 of protection, that's fine, but no one ever asked me  
22 that.  
23 Mr. Oswald: Asked you what?  
24 Judge Curran: Asked me to change the term of the order of  
25 protection.

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1 Mr. Rathbun: Which (unintelligible) one.  
2 Judge Curran: Not even a one. If you want to have some discussion  
3 with him about it?  
4 Mr. Oswald: All right.  
5 Judge Curran: And I'll listen to you, but ...  
6 Mr. Oswald: Thank you, Judge. Have a seat.  
7 Judge Curran: Gin? Where did I get December on this form?  
8 Court Clerk: I don't know, I just-- (Unintelligible). Order of  
9 protection (Unintelligible)?  
10 Judge Curran: Hold on, let me straighten this out (unintelligible).  
11 Okay?  
12 Mr. Rathbun: Judge, can we approach on this really ...  
13 Judge Curran: Yep.  
14 Mr. Rathbun: Judge, Brandon Rathbun for the people. I had an  
15 opportunity to speak with Mr. Oswald again. The  
16 offer would be everything else remains the same,  
17 conditional discharge, community service. There  
18 was one other-- Oh, it was the order of protection  
19 would be a six-month stay-away order of protection--  
20 Judge Curran: --Okay.  
21 Mr. Rathbun: --for the victim.  
22 Judge Curran: From today's date?  
23 Mr. Rathbun: From today's date. Yeah.  
24 Judge Curran: And I'm aware there's been multiple violations of  
25 the order of protection. Multiple.

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1 Mr. Oswald: Judge-- Judge, if you're aware of these multiple  
2 violations, then obviously, you can't be sitting where  
3 you are. I'll go back to my client, Judge, with the six  
4 months. The only problem I see is that she's  
5 pregnant, I don't know when the date of birth is  
6 going to be-- the expected birthdate's going to be.  
7 Judge Curran: She said in October in her affidavit.  
8 Mr. Rathbun: Judge, I didn't know. I just clarified from my own  
9 notes. Is there an anger management part of this plea  
10 or not?  
11 Judge Curran: Yes, community service, 50 hours, fine per court,  
12 conditional discharge, anger management and a two-  
13 year-- it was a two-year non-violent. So, now  
14 you're saying it's a six-month stay-away?  
15 Mr. Rathbun: Stay-away.  
16 Judge Curran: But there's a second person on here. What's  
17 happening with the second person?  
18 Mr. Rathbun: That would still remain a--  
19 Judge Curran: --Two-year non-violent?  
20 Mr. Rathbun: --two-year non-violent for--  
21 Mr. Oswald: --We have-- We have no problem with that--  
22 Mr. Rathbun: --From our understanding, speaking with various  
23 people, we actually haven't been able to speak with  
24 her, is they don't have contact to begin with.  
25 Judge Curran: Right.

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1 Mr. Rathbun: From what we're told.  
2 Mr. Oswald: Yeah.  
3 Judge Curran: Right.  
4 Mr. Rathbun: No evidence, one way or the other, from what we're  
5 told.  
6 Mr. Oswald: I'll speak with my-- about the six months.  
7 Judge Curran: And that-- Wait a minute, it's-- But, it's six months,  
8 but then the additional time is tacked on for a non-  
9 violent OP, right?  
10 Mr. Rathbun: So, it would be a year and a half non-violent?  
11 Mr. Oswald: I don't care, Judge. My client's principal concern is  
12 to resume a relationship with Ms. M [REDACTED] as soon as  
13 possible. Again, she's pregnant with his child.  
14 Could you do four months? Judge, would you accept  
15 four months? Again, there's no prior record.  
16 Mr. Rathbun: Here's-- It would be my recommendation leave it at  
17 six months. If in fact, you know, if she's having the  
18 kid, she can apply to have it-- I mean, first of all it's  
19 not going to affect him seeing his child whatsoever,  
20 because you can't have an order of protection for an  
21 unborn child, so that's not going to be affected. I  
22 understand what you're saying. If-- Maybe-- I  
23 guess I'd work-- We'd be fine with four months. I  
24 mean, I'm not going to--  
25 Judge Curran: --Okay. Four months and-- So, four months and the

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1 remaining time goes to a non-violent OP, and you  
2 can tell your client that I'm aware of multiple  
3 violations of the order of protection to stay away.  
4 Mr. Rathbun: And just so we're clear, are we going to need to  
5 bring him back in when we modify it or it's  
6 something we file, or something-- *Do sua sponte*  
7 here?  
8 Judge Curran: We're doing-- We're doing four-- Well, here's--  
9 Here's what we'll do. We'll do the six months. If  
10 there's no violation of the order of protection  
11 between now and when she has the birth, then it can  
12 be a letter application to modify.  
13 Mr. Rathbun: Okay.  
14 Mr. Oswald: All right, so you--  
15 Judge Curran: And then it's all your consent.  
16 Mr. Rathbun: Okay.  
17 Mr. Oswald: All right, and that's not going to be a problem with  
18 the court?  
19 Judge Curran: And-- But he's got to then come in, he's got to sign  
20 a new OP that goes from a non-violent-- a stay-away  
21 to a non-violent.  
22 Mr. Oswald: All right. So, date of birth, then he applies? We do  
23 it that way?  
24 Judge Curran: It would be on a letter application.  
25 Mr. Oswald: Thank you, Judge.

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1 Judge Curran: And tell your client I'm aware of multiple violations  
2 of the OP.

3 Mr. Oswald: I'll speak to him, Judge.

4 **(July 20, 2015 1:39 PM to 1:59 PM)**

5 Mr. Rathbun: October is the date in which the baby is going to be  
6 born.

7 Mr. Oswald: Judge, can we make an application to the court,  
8 assuming there's no other-- there's no violations or  
9 rumors of violations between now and the delivery  
10 date. Can we make an application a few days before  
11 delivery so he can be present at the hospital?

12 Judge Curran: Well, how are you going to know what the delivery  
13 date is? Is she having a C-section or something  
14 controlled where--

15 Mr. Oswald: --Well, we have-- I'll speak with her. I'll advise--

16 Judge Curran: --I don't trust your client and I don't trust her, that's  
17 the problem, and I'm not letting them off the hook,  
18 so unless she has a controlled date to go in, I'm not  
19 doing that.

20 Mr. Oswald: If there's a control date, Judge, I'll put another  
21 application to the court and to the people with  
22 respect to that date and time. If the court wants to  
23 sign-- is agreeable to modifying it from the full stay-  
24 away to the refrain-from--

25 Judge Curran: --If there's no violation between now and when you

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1 make your letter of application, I'm going to change  
2 it.  
3 Mr. Oswald: Okay. Okay.  
4 Mr. Rathbun: The people are fine with that.  
5 Mr. Oswald: All right. Then we're ready to proceed.  
6 Judge Curran: So, this-- Wait. Let me-- I've got to change the  
7 paperwork.  
8 Mr. Rathbun: Her name is-- It was two girls. What was her name?  
9 Judge Curran: S█████ M█████ and--  
10 Mr. Oswald: --Yeah.  
11 Judge Curran: --I think it's H█████.  
12 Mr. Rathbun: No, no, no. This is for a notice of app-- change.  
13 Unknown Male: Yeah.  
14 Mr. Rathbun: For change of attorney.  
15 Unknown Male: No problem. Done.  
16 Mr. Rathbun: All right. Thanks.  
17 Unknown Male: Do you want this, John?  
18 Mr. Oswald: Yeah, whatever you have, I'll take.  
19 Unknown Male: It's probably just tickets.  
20 Mr. Rathbun: Judge, I'll let your clerk know just when she gets  
21 done with the paperwork notice that on 4/20, there  
22 was a PTI order, so I'm (unintelligible) came back.  
23 So, I'll give you this.  
24 Mr. Oswald: Okay.  
25 Mr. Rathbun: And I'll just put a note on it that 7/20 ...

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1 Mr. Oswald: Yeah. I'll get a copy of this and I'll send it to the  
2 office as well.  
3 Mr. Rathbun: Actually, I was going to ask for that right now and  
4 see if Ginny can help out.  
5 Mr. Oswald: Okay. All right.  
6 Mr. Rathbun: Should I just throw that in the file? (Unintelligible)?  
7 Mr. Oswald: All right. Thanks. Yep. Mike? (Unintelligible)?  
8 Judge Curran: All right. We're back on the record in the matter of  
9 *People v Eastman*. We've had two conferences with  
10 counsel and the district attorney's office and I've  
11 been handed a plea agreement. Mr. Eastman, is that  
12 your signature on the plea agreement?  
13 Mr. Eastman: Yes.  
14 Judge Curran: You have to speak up.  
15 Mr. Eastman: Yes, sir.  
16 Judge Curran: Have you had an opportunity to discuss the plea  
17 agreement with your attorney?  
18 Mr. Eastman: Yes, sir.  
19 Judge Curran: Do you have any questions of myself or your  
20 attorney regarding the plea agreement?  
21 Mr. Eastman: No, sir.  
22 Judge Curran: Okay. Is any intent-- Is it your intention to go  
23 forward with this plea agreement today?  
24 Mr. Eastman: Yes, sir.  
25 Judge Curran: Okay. Based upon the conversations I've had with

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1 the district attorney and your attorney, you're going  
2 to plead guilty to a charge of Penal Law Section  
3 121.11 and in connection with pleading guilty,  
4 you're going to get the following sentence. You're  
5 going to have community service of 50 hours.  
6 You're going to have a fine per the court. I'll tell  
7 you what the fine's going to be in a minute. It's  
8 going to be a conditional discharge, you have to  
9 complete anger management within 60 days. There's  
10 going to be two orders of protection here, there's  
11 going to be a two-year non-violent order of  
12 protection in favor of H [REDACTED] L [REDACTED] (phonetic)--  
13 Mr. Eastman: --C [REDACTED].  
14 Judge Curran: --and there's going to be a second order of  
15 protection--  
16 Mr. Eastman: --It's C [REDACTED].  
17 Mr. Oswald: Sir, that should be C [REDACTED], rather than L [REDACTED].  
18 Judge Curran: With a C?  
19 Mr. Eastman: Yes, sir.  
20 Mr. Oswald: Yes.  
21 Judge Curran: H [REDACTED] C [REDACTED]. There's going to be a second order  
22 of protection for S [REDACTED] M [REDACTED]. It's going to be a  
23 six-month stay-away order of protection and an 18-  
24 month, non-violent order of protection. The  
25 discussion I had with your attorney is that it's my

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1 understanding that the person that has the order of  
2 protection is pregnant with your child and is due  
3 sometime in October?  
4 Mr. Eastman: Yes, the beginning of October, end of September.  
5 Judge Curran: Okay. So, what I told your attorney is when the child  
6 is born, he can send a let-- fax a letter application to  
7 the court for me to modify the order of protection for  
8 the six-month stay-away to roll over into the 18-  
9 month non-violent order of protection.  
10 Mr. Eastman: Okay.  
11 Judge Curran: That's provided there's no violations of the order of  
12 protection at all within that time period.  
13 Mr. Eastman: Yes, sir.  
14 Judge Curran: Okay? You don't have to appear. You'll have to  
15 come in that day and sign a new order of protection  
16 that's going to be an 18-month stay-- non-violent,  
17 plus whatever remaining time is from the stay-away.  
18 Do you understand that?  
19 Mr. Eastman: Okay. Thank you, sir.  
20 Judge Curran: Okay. Are there-- Are you under the influence of  
21 any narcotics or alcohol today that would impair  
22 your ability to enter into this?  
23 Mr. Eastman: No, sir.  
24 Judge Curran: Has anybody made you any promises or coerced you  
25 in any way to enter into this plea agreement, other



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1 | was for-- that there was Saturdays and Sundays  
2 | available.  
3 | Mr. Oswald: Here's C [REDACTED]'s.  
4 | Judge Curran: Gin, do you remember what Roger said? Did he say  
5 | it could be-- the community service at 5:30 and  
6 | Saturday and Sunday? Is that what he said?  
7 | Unknown Male: Yeah. Yeah.  
8 | Court Clerk: I didn't catch a time when he was telling me.  
9 | Judge Curran: I think we have someone that can-- What time do  
10 | you get out of work?  
11 | Mr. Eastman: Varies from 2:00 to 6:00.  
12 | Judge Curran: Okay.  
13 | Mr. Eastman: Depends on how busy we are.  
14 | Judge Curran: All right. Here's the one for C [REDACTED].  
15 | Mr. Oswald: All right. This is the order of protection that's going  
16 | to remain in effect for two years regarding H [REDACTED]  
17 | C [REDACTED]. You can't have any communication, contact.  
18 | Judge, I thought the C [REDACTED] OP was just a refrain-  
19 | from?  
20 | Judge Curran: It is. I don't believe I hit the stay-away box on there.  
21 | Mr. Oswald: It says "refrain from--"  
22 | Judge Curran: Did I check stay-away?  
23 | Mr. Oswald: It says, "Refrain from communication." I mean, he  
24 | can have contact with H [REDACTED], but no assault.  
25 | Judge Curran: I thought you guys told me that he had no contact

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1 with her whatsoever? That he didn't want to have  
2 contact with her?  
3 Mr. Oswald: He doesn't want to have contact, but I thought it was  
4 a-- it was a refrain-from, not a stay-away from. That  
5 prohibits any communication with her.  
6 Judge Curran: Right. Did I misunderstand--  
7 Mr. Oswald: (Unintelligible).  
8 Judge Curran: --when he said, "I don't have and I don't want to  
9 have contact with her"? Did I misunderstand what  
10 he said?  
11 Mr. Eastman: I don't want to talk to her.  
12 Mr. Oswald: Okay. Then that's fine, Judge. He's aware. Okay?  
13 You can't have any-- You can't even speak with her.  
14 Okay?  
15 Mr. Eastman: Okay.  
16 Mr. Oswald: Okay? But more importantly, you can't have--  
17 engage in any assault, striking, harassment,  
18 aggravated harassment, menacing, endangerment,  
19 strangulation, any criminal contact-- conduct with  
20 her.  
21 Mr. Eastman: Okay.  
22 Mr. Oswald: Do you understand? Yeah, sign right there. Okay.  
23 This is the order regarding S [REDACTED]. No contact with  
24 her, stay away from her, okay?  
25 Mr. Eastman: Mm-hmm.

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1 Mr. Oswald: Even if she initiates any contact, you can't make  
2 contact with her. Okay? This is going to run for six  
3 months.  
4 Mr. Eastman: January 20<sup>th</sup>.  
5 Mr. Oswald: Okay? But the judge is willing to modify that to  
6 allow contact, provided there's no violation of this  
7 order or the other order at the time the child is born.  
8 Mr. Eastman: Okay.  
9 Mr. Oswald: Do you understand?  
10 Mr. Eastman: Yes, sir.  
11 Mr. Oswald: Any questions?  
12 Judge Curran: And there's a mandatory DNA in this as well.  
13 Mr. Oswald: Okay, and there's a \$50 additional charge above and  
14 beyond the court fines and surcharges. If you have  
15 no prior record, they've got to get a DNA sample  
16 from you.  
17 Mr. Eastman: Okay.  
18 Mr. Oswald: Okay? Probation will contact you regarding that.  
19 Mr. Eastman: All right.  
20 Mr. Oswald: Date and time when to show up for that to happen.  
21 Mr. Eastman: Okay.  
22 Mr. Oswald: It's just essentially a swab.  
23 Judge Curran: But the DNA fee has to be paid here, because he's  
24 not on probation.  
25 Mr. Oswald: All right. So, do you have \$50 on you today?

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1 Mr. Eastman: Not on me.  
2 Judge Curran: All right. So, he'll do the DNA within 30 days?  
3 Mr. Oswald: Within 30 days.  
4 Mr. Eastman: Yes, sir.  
5 Mr. Oswald: You've got to pay here first, Judge, before he goes  
6 over?  
7 Judge Curran: Yep. Yep.  
8 Mr. Eastman: So, I can stop in here any Monday or--  
9 Judge Curran: --Yep. 1:00.  
10 Mr. Eastman: Thank you.  
11 Judge Curran: Okay. The fine is \$800, the surcharge is \$205. How  
12 long does he need?  
13 Mr. Oswald: That's \$1,000 and change so, you need-- can you  
14 pay it in two months?  
15 Mr. Eastman: Yes, two months.  
16 Judge Curran: Just have your client initial all of those changes.  
17 Mr. Oswald: Okay. Initial here and here, representing the changes  
18 in the original plea sheet.  
19 Mr. Eastman: So what is it? \$1,250? Bear with me.  
20 Mr. Oswald: It was \$800 and \$205, so it's \$1,005, plus \$50--  
21 You've got to pay the \$50.  
22 Mr. Eastman: Yes. I'll be here Monday.  
23 Mr. Oswald: This coming Monday?  
24 Mr. Eastman: This coming Monday, with the \$50, Your Honor.  
25 Judge Curran: Let me tell you this, all right? And we're still on the

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1 record. I'm aware that you violated that order of  
2 protection on multiple occasions since it was issued.  
3 Mr. Oswald: Don't say anything.  
4 Judge Curran: You don't have to say anything.  
5 Mr. Oswald: Don't say anything.  
6 Judge Curran: And I don't want you to say anything, but I'm aware  
7 that you violated it and I'm aware that she knowingly  
8 violated it with you, so you can't-- just because you  
9 go to Vermont and you're not in New York when  
10 you do the violation, that doesn't mean it doesn't  
11 count. All right? So, don't violate it again, because  
12 if you come back here and you violated it again and  
13 you're found guilty after a hearing, you're going to  
14 get the maximum. The only reason you're getting  
15 this deal is because your lawyer was persistent about  
16 it. That's the only reason.  
17 Mr. Oswald: Don't say anything.  
18 Judge Curran: These are copies of the OP for him.  
19 Mr. Oswald: Okay. These are your copies.  
20 Mr. Eastman: Okay.  
21 Mr. Oswald: Again, like the judge just admonished. Okay? No  
22 violation, okay?  
23 Mr. Eastman: Okay.  
24 Mr. Oswald: Judge, I need a copy of the plea sheet.  
25 Judge Curran: I'll give it to you in one minute. Okay. That's it.

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1 We're done with this.

2 Mr. Eastman: Thank you, Judge.

3 Mr. Oswald: Okay. We'll be in contact. Make sure you swing by  
4 Monday with that \$50.

5 Mr. Eastman: Yes, I will be here Monday with \$50. Is-- Could I  
6 have my mother drop it off?

7 Judge Curran: Anybody can drop it off.

8 Mr. Eastman: Okay.

9 Judge Curran: We'll give her a receipt.

10 Mr. Eastman: All right. Thank you, Your Honor. Thank you,  
11 John.

12 Mr. Oswald: See you, Mike. Do you want me to wait for the next  
13 case, Judge?

14 Judge Curran: Do you have another case?

15 Mr. Oswald: Yeah, I just got-- I just picked up D [REDACTED]  
16 T [REDACTED]: Your Honor, I apologize for the hand-  
17 written note I left. I was-- I left his file back at the  
18 office.

19 Judge Curran: Okay. Did you fill out a notice of appearance?

20 Mr. Oswald: Yes, I did.

21 Judge Curran: Okay. Were you looking for an adjournment?

22 Mr. Oswald: Just an adjournment. I just got the paperwork from  
23 Scott today.

24 Judge Curran: 8/17.

25 Mr. Oswald: 8/17. Thank you, Judge.

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1 Court Clerk: Well, she's here. (Unintelligible).  
2 Unknown Male: Judge, do you need to see my client?  
3 Judge Curran: 8/17.  
4 Unknown Male: Your Honor, do you need to see my client?  
5 Judge Curran: I don't need to see him.  
6 Unknown Male: (Unintelligible).  
7 Court Clerk: It's 8/17?  
8 Judge Curran: Gin? Just call Oswald back a minute.  
9 Court Clerk: Mr. Oswald, (unintelligible).  
10 Judge Curran: Eastman has to contact alternative sentencing to do  
11 his community service.  
12 Mr. Oswald: Okay.  
13 Judge Curran: Gin, do you have an alternative sentencing form? Is  
14 he still here or is he gone?  
15 Mr. Oswald: I think he's gone.  
16 Judge Curran: Do we have a phone number for him?  
17 Mr. Oswald: Yes, [REDACTED]. That's his parents' place where he  
18 lives.  
19 Judge Curran: [REDACTED]?  
20 Mr. Oswald: [REDACTED].  
21 Judge Curran: What's his address where he's living now?  
22 Mr. Oswald: I have [REDACTED]  
23 [REDACTED].  
24 Judge Curran: Tell him to give it a day before he contacts them.  
25 Mr. Oswald: I'm sorry?

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1 Judge Curran: Give it a day before he contacts them. I have to pass  
2 that along.

3 Mr. Oswald: Okay. Anything else?

4 Judge Curran: That's it.

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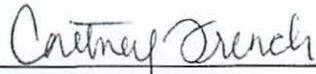
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CERTIFICATION

I, COURTNEY FRENCH, a Secretary II of the State Commission on Judicial Conduct, 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: May 22, 2017

  
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Courtney French