

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

**DAVID J. EVANS,**

**STIPULATION**

a Justice of the Norwich Town Court,  
Chenango County.

----- X

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (hereinafter "Commission"), the Honorable David J. Evans, the respondent in this proceeding, and his attorney, David E. Sonn.

1. This Stipulation is presented to the Commission in connection with a formal proceeding pending against respondent.
2. Respondent has been a Justice of the Norwich Town Court, Chenango County, since 1994. His current term expires on December 31, 2011. Respondent is not an attorney.
3. Respondent was served with a Formal Written Complaint dated February 11, 2010, a copy of which is annexed as Exhibit A, containing four charges.
4. Respondent filed an Answer, dated April 7, 2010, a copy of which is annexed as Exhibit B.
5. On April 29, 2010, the Commission designated Honorable Frank J. Barbaro as Referee to hear and report proposed findings of fact and conclusions of law.

A hearing was held in Albany on July 19, 2010. A transcript of the hearing, and the exhibits admitted into evidence are attached as Exhibit C. In a report dated December 13, 2010, the Referee submitted his proposed findings of fact and conclusions of law, a copy of which is annexed as Exhibit D.

6. The matter is currently scheduled for oral argument before the Commission on March 17, 2011.

7. Respondent tendered his resignation as Norwich Town Justice, dated January 19, 2011, effective April 1, 2011. A copy of respondent's letter of resignation is annexed as Exhibit E.

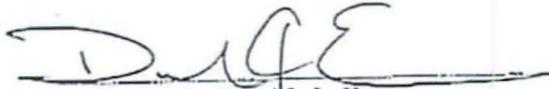
8. Respondent affirms that he will neither seek nor accept judicial office at any time in the future.

9. Respondent understands that, should he remain on the bench beyond April 1, 2011, or return to the bench at any time, or otherwise abrogate the terms of the Stipulation, the proceedings upon the Formal Written Complaint will be revived and proceed.

10. All parties to this Stipulation respectfully request that the Commission close the pending matter based upon this Stipulation.

11. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law to the limited extent this Stipulation will be made public if accepted by the Commission.

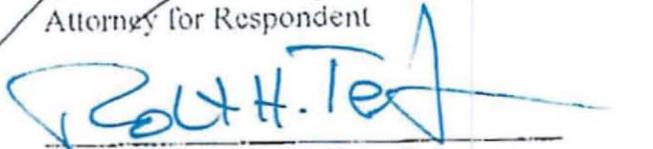
Dated: 1/19/2011

  
Honorable David J. Evans  
Respondent

Dated: 1/19/2011

  
David E. Sonn, Esq.  
Attorney for Respondent

Dated: 1/19/2011

  
Robert H. Tembeckjian, Esq.  
Administrator & Counsel to the Commission  
(Charles F. Farcher, Of Counsel)

# EXHIBIT A

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

**DAVID J. EVANS,**

a Justice of the Norwich Town Court,  
Chenango County.

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**NOTICE OF FORMAL  
WRITTEN COMPLAINT**

NOTICE is hereby given to respondent, David J. Evans, a Justice of the Norwich Town Court, Chenango County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon respondent the annexed Formal Written Complaint; and that, in accordance with said statute, respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Albany office, Corning Tower, Suite 2301, Albany, New York 12223, with his verified Answer to the specific paragraphs of the Complaint.

Dated: February 11, 2010  
New York, New York

**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel  
State Commission on Judicial Conduct  
61 Broadway  
Suite 1200  
New York, New York 10006  
(646) 386-4800

To: David E. Sonn, Esq.  
Attorney for Respondent  
72 S. Main Street  
Earlville, New York 13378

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

**DAVID J. EVANS,**

a Justice of the Norwich Town Court,  
Chenango County.

---

**FORMAL  
WRITTEN COMPLAINT**

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon David J. Evans (“respondent”), a Justice of the Norwich Town Court, Chenango County.

3. The factual allegations set forth in Charges I through IV state acts of judicial misconduct by respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).

4. Respondent has been a Justice of the Norwich Town Court, Chenango County, since 1994. His current term expires on December 31, 2011. Respondent is not an attorney.

## CHARGE I

5. On or about November 20, 2008, in *People v. Larry Bates*, respondent granted and/or appeared to grant special consideration to the defendant after Guilford Town Justice David P. Daniels intervened on Mr. Bates' behalf, and conveyed the impression that Judge Daniels was in a special position to influence him, by: (1) dismissing the charge against Mr. Bates, (2) dismissing the charge against Mr. Bates in the absence of any motion by either the defendant or the prosecution, as required by law, (3) dismissing the charge against Mr. Bates notwithstanding that Mr. Bates did not appear, was never arraigned and did not enter a plea, as required by law and (4) dismissing the charge against Mr. Bates without setting forth his reason for doing so on the record, as required by law.

### Specifications to Charge I

6. On or about October 7, 2008, Larry Bates was involved in a motor vehicle accident while operating a school bus for the Norwich City School District.

7. Guilford Town Justice David P. Daniels was called to the scene of the accident in his capacity as Transportation Director for the Norwich City School District and as Mr. Bates' supervisor.

8. Mr. Bates was charged by the New York State Police with Failure to Yield the Right of Way. He was issued a uniform traffic ticket ("ticket") returnable in the Norwich Town Court. Judge Daniels took possession of the ticket from Mr. Bates at the scene of the accident.

9. In or about November 2008, Judge Daniels traveled to the Norwich Town Court, delivered the ticket to the court and while there, displayed to Norwich Town Court Clerk Faye Pierce and others a video purportedly depicting the accident scene. Judge Daniels narrated the video while it was being played and, in words or substance, stated his view that Mr. Bates was not at fault.

10. On or about November 20, 2008, after he learned of Judge Daniels' visit to the court and discussion of the *Bates* case, respondent dismissed the charge against Mr. Bates in the absence of any motion by either the defendant or the prosecution, notwithstanding the requirements of Sections 170.30, 170.40, 170.45 and 210.45 of the Criminal Procedure Law.

11. Respondent dismissed the charge against Mr. Bates despite the fact that Mr. Bates never appeared in court, was never arraigned and did not enter a plea, notwithstanding the requirements of Sections 170.30, 170.40, 170.45, 170.60 and 210.45 of the Criminal Procedure Law.

12. Respondent dismissed the charge against Mr. Bates without setting forth the reasons for the dismissal on the record, notwithstanding the requirements of Section 170.40 of the Criminal Procedure Law.

13. 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, allowed a family, social, political or other relationship to influence the judge's judicial conduct or judgment, in violation of Section 100.2(B) of the Rules, and lent the prestige of judicial office to advance the private interest of another and conveyed the impression that another was in a special position to influence the judge, in violation of Section 100.2(C) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to accord the prosecution the right to be heard according to law, in violation of 100.3(B)(6) of the Rules.

### **CHARGE II**

14. On August 13, 2009, respondent gave testimony under oath before the Commission that was false, misleading, and evasive, concerning his dismissal of the charge in *People v. Larry Bates*.

#### **Specifications to Charge II**

15. On August 13, 2009, respondent gave sworn testimony during the Commission's investigation of, *inter alia*, his handling of *People v. Larry Bates*.

16. Respondent testified falsely, misleadingly, and evasively: (1) that he spoke with Assistant District Attorney Stephen Dunshee regarding the ticket issued in *People v. Larry Bates*, (2) that ADA Dunshee told him that he would have to confirm

whether all the insurance claims had been settled, (3) that in a subsequent conversation, ADA Dunshee told him that he had confirmed that all the insurance claims had been settled and (4) that ADA Dunshee told him he consented to the dismissal of the ticket.

17. In fact, respondent had not spoken to ADA Dunshee about *People v. Larry Bates*; ADA Dunshee did not tell respondent either that he would confirm or had confirmed that all insurance claims had been settled in the matter; and ADA Dunshee did not tell respondent that he consented to the dismissal of the ticket in *People v. Larry Bates*.

18. 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; and 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.

### **CHARGE III**

19. Since in or about January 2008, respondent presided over criminal cases without disclosing that Stephen Dunshee, the Assistant District Attorney assigned to prosecute such cases in respondent's court, personally represented respondent in 2004 in a proceeding before the Commission.

20. 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 permitted others to convey the impression that they were in a special position to influence him, in violation of Section 100.2(C) of the Rules; and failed to perform the duties of judicial office impartially and diligently in that he failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

#### **CHARGE IV**

21. From on or about June 16, 2008 through in or about November 2008, respondent failed to mechanically record court proceedings, as required by Section 200.23 of the Recordkeeping Requirements for Town and Village Courts and an Administrative Order of the Chief Administrative Judge of the Courts dated May 21, 2008.

22. 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 be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules, and failed to require court staff to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3(C)(2) of the Rules.

**WHEREFORE**, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: February 11, 2010  
New York, New York



**ROBERT H. TEMBECKJIAN**  
Administrator and Counsel  
State Commission on Judicial Conduct  
61 Broadway  
Suite 1200  
New York, New York 10006  
(646) 386-4800

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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

VERIFICATION

**DAVID J. EVANS,**

a Justice of the Norwich Town Court,  
Chenango County.

STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF NEW YORK        )

ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of the State Commission on Judicial Conduct.

  
\_\_\_\_\_  
Robert H. Tembeckjian

Sworn to before me this  
11<sup>th</sup> day of February 2010

  
\_\_\_\_\_  
Notary Public

**KAREN KOZAC**  
**NOTARY PUBLIC, State of New York**  
No. 02K06171500  
Qualified in Westchester County  
Commission Expires July 23, 20    //

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

**DAVID J. EVANS,**

a Justice of the Norwich Town Court,  
Chenango County.

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**MANDATORY: Judge's Home Address**

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon the judge in accordance with Judiciary Law §44, subd. 7, the Court of Appeals has asked the Commission to provide the judge's home address.

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Judge's Home Address

**OPTIONAL: Request and Authorization to Notify Judge's Attorney of Determination**

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon me in accordance with Judiciary Law §44, subd. 7, the undersigned judge or justice:

(1) requests and authorizes the Chief Judge to cause a copy of my notification letter from him and a copy of the determination to be sent to my attorney(s) by mail:

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Attorney's Name, Address, Telephone

(2) requests and authorizes the Clerk of the Commission to transmit this request to the Chief Judge together with the other required papers.

This request and authorization shall remain in force unless and until a revocation in writing by the undersigned judge or justice is received by the Commission.

Dated:

\_\_\_\_\_  
Signature of Judge or Justice

Acknowledgment:

\_\_\_\_\_  
Signature of Attorney for Judge or Justice

**SEND TO:** Clerk of the Commission  
NYS Commission on Judicial Conduct  
61 Broadway (Suite 1200)  
New York, NY 10006

# EXHIBIT B

**DAVID E. SONN**  
ATTORNEY AT LAW

72 South Main Street  
P.O. Box 408  
Earlville, New York 13332

Telephone: 315-691-9849  
Facsimile: 315-691-4815  
E-mail: [desonnlaw1@yahoo.com](mailto:desonnlaw1@yahoo.com)

April 7, 2010

**VIA EXPRESS MAIL**

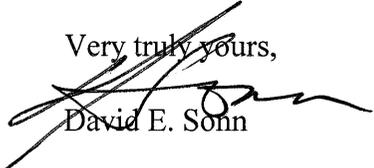
Cathleen S. Cenci  
Deputy Administrator  
New York State  
Commission on Judicial Conduct  
Corning Tower, Suite 2301  
Empire State Plaza  
Albany, New York 12223

Re: In the Matter of the Proceeding Pursuant to Section 44, Subdivision 4,  
of the Judiciary Law in Relation to  
**DAVID J. EVANS,**  
a Justice of the Norwich Town Court  
Chenango County

Dear Ms. Cenci:

Enclosed herewith, please find Verified Answer of David J. Evans in the referenced matter together with an Affidavit of Service of the same.

Very truly yours,

  
David E. Sonn

DES/md

Encs. as noted

cc: David J. Evans

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

---

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

DAVID J. EVANS

a Justice of the Norwich Town Court  
Chenango County

---

ANSWER TO  
FORMAL  
WRITTEN COMPLAINT

STATE OF NEW YORK :  
COUNTY OF MADISON : ss:

The Respondent, DAVID J. EVANS by his attorney, David E. Sonn, for his Answer to the Formal Written Complaint herein.

1. Admits upon information and belief the allegations set forth in Paragraph 1.
2. Admits upon information and belief the allegations set forth in Paragraph 2.
3. Regarding Paragraph 3, admits upon information and belief that if the factual allegations set forth in Charges I through IV stating alleged acts of judicial misconduct by respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct actually occurred and were intentionally done then there might have been violations of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct.
4. Admits the allegations set forth in Paragraph 4.

CHARGE 1

5. Regarding Paragraph 5, denies that he granted and/or appeared to grant special consideration to Larry Gates by (1) dismissing the charge against Mr. Gates, (2) dismissing the charge against Mr. Bates in the absence of any formal motion by either defendant or prosecution, (3) dismissing the charge against Mr. Bates notwithstanding that Mr. Bates did not appear, was never arraigned and did not enter a plea, (4) dismissing the charge against Mr. Bates without setting forth the reason for doing so on the mechanical record. The dismissal was written on the accusatory instrument and filed in the Court file.

Specifications to Charge I

6. In reliance on the simplified traffic information he admits Larry Bates was involved in a property damage accident.

7. Lack actual knowledge sufficient to admit or deny.

8. Admit Mr. Bates was charged with Failure to Yield the Right of Way and was issued a uniform traffic ticket returnable in the Norwich Town Court. Lack actual knowledge to admit or deny if Judge Daniels took possession of the ticket from Mr. Bates at the scene of the accident.

9. Lack actual knowledge to admit or deny the allegations in Paragraph 9.

10. Denies the allegations set forth in Paragraph 10 insofar as it alleges he dismissed the charge against Mr. Bates in the absence of any motion after he learned of Judge Daniels visit to the Court and discussion of the Bates case.

11. States that, following past Court and District Attorney procedures regarding dismissal of property damage incidents covered by insurance, he dismissed the charge against Mr. Bates.

12. Admit allegations set forth in Paragraph 12 except, he did record the dismissal in the Court files.

13. Denies the allegations set forth in Paragraph 13.

#### CHARGE II

14. Denies the allegations set forth in Paragraph 14, he has always testified truthfully, honestly and fully to the best of his recollection at the time.

#### Specification to Charge II

15. Admits allegations in Paragraph 15.

16. Denies allegations in Paragraph 16.

17. Denies allegations in Paragraph 17.

18. Denies allegations in Paragraph 18.

#### CHARGE III

19. Admits that after a review of the law and a determination that only a two year period of disclosure was required, since on or about January 2008 respondent presided over criminal cases without disclosing that Stephen Dunshee personally represented him in 2004 in a proceeding before the Commission.

20. Denies the allegations in Paragraph 20.

#### CHARGE IV

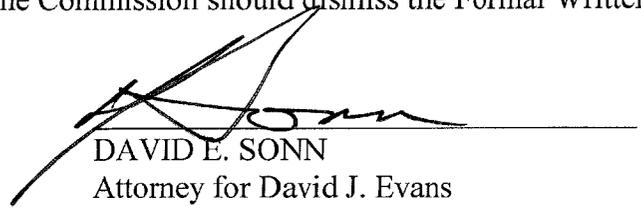
21. Admits that, after a period of mechanically recording court proceedings, during a period when the Courtroom was under renovation and lacked sufficient electric service he failed to

mechanically record court proceedings. Upon completion of renovations and installation of adequate electric service he has mechanically recorded all court proceedings.

22. Denies the allegations set forth in Paragraph 22.

WHEREFORE, by reason of the foregoing, the Commission should dismiss the Formal Written Complaint against David J. Evans

Dated: 4/2/11



Handwritten signature of David E. Sonn in black ink, written over a horizontal line.

DAVID E. SONN  
Attorney for David J. Evans  
Office and Post Office address:  
72 South Main Street  
P.O. Box 408  
Earlville, New York 13332  
Telephone: (315) 691-9849  
Facsimile: (315) 691-4815

To: Cathleen S. Cenci  
Deputy Administrator  
New York State  
Commission on Judicial Conduct  
Corning Tower, Suite 2301  
Empire State Plaza  
Albany, New York 12223



STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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

AFFIDAVIT OF MAILING of  
ANSWER TO  
FORMAL  
WRITTEN COMPLAINT

DAVID J. EVANS,

a Justice of the Norwich Town Court  
Chenango County

STATE OF NEW YORK:        )  
  ) SS:  
COUNTY OF MADISON        )

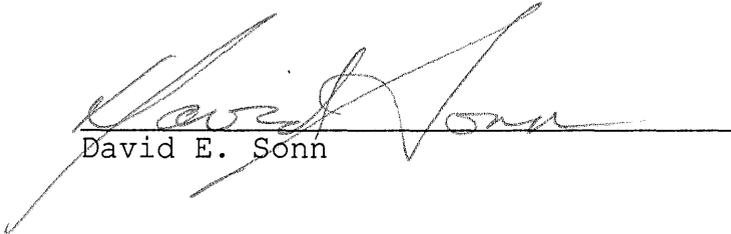
I, David E. Sonn, being sworn, say:

1. That I am not a party to this action, am over 18 years of age and reside in Hamilton, New York 13346.

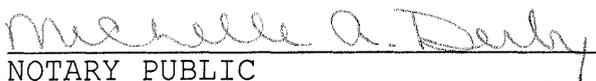
2. That on April 7, 2010, I served a copy of the Answer to Formal Written Complaint for the Respondent by delivering same to the US Post Office, 20 East Main Street, Norwich, New York 13815 to be delivered via **EXPRESS MAIL** to the following person at the last know address set forth herein:

To be overnight delivery

Cathleen S. Cenci  
Deputy Administrator  
New York State  
Commission on Judicial Conduct  
Corning Tower, Suite 2301  
Empire State Plaza  
Albany, New York 12223

  
\_\_\_\_\_  
David E. Sonn

Subscribed and sworn to before me  
this 7th day of April, 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC

MICHELLE A. DERBY  
Notary Public in the State of New York  
Qualified in Madison County 01DE6050349  
My Commission Expires Nov. 6, 2010

# EXHIBIT C

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

----- X

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

**DAVID J. EVANS,** :

a Justice of the Norwich Town Court, :  
Chenango County. :

----- X

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

July 19, 2010  
10:15 A.M.

B e f o r e:

HON. FRANK J. BARBARO  
Referee

P r e s e n t:

For the Commission

CHARLES F. FARCHER, ESQ.  
Staff Attorney

CATHLEEN S. CENCI, ESQ.  
Deputy Administrator

For the Respondent

DAVID E. SONN, ESQ.  
Attorney for the Witness  
72 S. Main Street  
Earlville, New York 13378

HON. DAVID J. EVANS  
Respondent

Also Present:

RYAN FITZPATRICK  
Investigator and ESR Operator

## INDEX OF WITNESSES

### For the Commission

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Faye Pierce	52	58	---	---
Officer Kent Smith	68	73	79	---
Stephen Dunshee, Esq.	80	93	---	---
Hon. David P. Daniels	108	126	132	---
Joseph Gallagher	135	143	146	148
Marie Bussonnais	150	156	158	161

### For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Hon. David J. Evans	184	208	227	234

(Hon. David J. Evans)

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THE REFEREE: Raise your right hand. Do you swear or affirm to tell the whole truth and nothing but the truth so help you?

THE RESPONDENT: Yes, sir. I do.

HONORABLE DAVID J. EVANS,

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

THE REFEREE: Okay, be seated. Could we have the appearances, please?

MR. FARCHER: This is Charles Farcher for the Commission. With me is Deputy Administrator Cathleen Cenci and Investigator Ryan Fitzpatrick.

THE REFEREE: Mr. Sonn?

MR. SONN: And David Sonn, attorney representing the Honorable David Evans. I seem to have the jug. Did you want water, Charles?

MR. FARCHER: I'm all set. Thank you.

THE REFEREE: We need to do some housekeeping. Mr. Sonn, would you like to make your application as to schedule?

MR. SONN: Well, I had mentioned, I think earlier, that I do have a very sensitive sentencing in the morning in Wampsville and I was asking that if we should go over

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today, if we could resume after lunch tomorrow instead of the morning?

THE REFEREE: Any problem with that?

MR. FARCHER: The Commission has no objection. We anticipated it.

THE REFEREE: Okay. So ordered. So we'll do that.

MR. SONN: Thank you, your Honor.

THE REFEREE: Okay. Okay, you want to proceed?

MR. FARCHER: Oh yes, Judge, before we--

THE REFEREE: Oh, wait a minute. Before we go. I've been appointed by the Commission to serve as a referee in this hearing pursuant to the rules of the Commission, the Judiciary Law, the Executive Law, and the Constitution of the State of New York. Okay? And my duty has been to hear and report and make a conclusions of fact and findings of law-- findings of fact and conclusions of law.

MR. FARCHER: Just a quick housekeeping matter, if I could, Judge. I had sent Mr. Sonn some discovery materials and I haven't had a chance to communicate. Is there any way we can stipulate to some of these in terms of--

MR. SONN: Yeah, certainly. All of these copies rather than requiring the originals or any foundation for the

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originals. We're all familiar with the documents. We've seen them many times.

THE REFEREE: Would you just identify them for me just--

MR. FARCHER: Yes, Judge. Let me have these. We'll just mark them one at a time. What's being marked as Exhibit 1 for identification is a copy of a police accident report. It is two-- three pages in length. At the end of the police accident report is a Uniform Traffic Ticket that was written in the name of Larry Bates by trooper Brandon Brigham.

THE REFEREE: Is that on Exhibit 1?

MR. FARCHER: Yes, that's all part of Exhibit 1, Judge.

THE REFEREE: Okay.

MR. FARCHER: Mr. Sonn have you had a chance to take a look at that?

MR. SONN: Yes, I have, thank you. I assume that's the same as I was forwarded so--

MR. FARCHER: Yes.

MR. SONN: Yep.

MR. FARCHER: If-- well, Mr. Sonn, if you don't have any objection I'd like to move to have it admitted into evidence now if there's no foundation issues.

(Hon. David J. Evans)

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MR. SONN: Sure. Certainly. No, I think we'd want that there. It's critical.

MR. FARCHER: Then I move to have this submitted to evidence at this time, Judge.

THE REFEREE: Any objection?

MR. SONN: No, your Honor.

THE REFEREE: It's admitted.

MR. FARCHER: What's being marked for identification as Exhibit 2 is a copy of a Simplified Information written in the name of Larry Bates. And again, Mr. Sonn, if you don't have any objection, I'd move to have this admitted into evidence as well.

MR. SONN: That's fine.

THE REFEREE: No objection. It's admitted.

MR. FARCHER: What's being marked for identification as Exhibit 3 is a Notice of Appearance dated October 25, 2004, by Stephen Dunshee on behalf of the Honorable David J. Evans. Mr. Sonn?

MR. SONN: Yeah.

THE REFEREE: Any objection?

MR. SONN: No. I've seen this as well. That's fine.

THE REFEREE: It's admitted.

MR. FARCHER: All right. I just have two more-- uh, three more. What's being marked as Exhibit 4 for identification is a letter from Stephen M. Dunshee to the

(Hon. David J. Evans)

1 Honorable Lawrence S. Goldman, Commission on Judicial  
2 Conduct, dated January 5, 2005. The letter is one page in  
3 length.

4 THE REFEREE: Is there any objection to admitting  
5 that?

6 MR. SONN: I'd like to glance at it, if I could. I'm  
7 sure there's none. No, that's fine, thank you.

8 THE REFEREE: Okay. It's admitted.

9 MR. FARCHER: What's being marked for  
10 identification as Exhibit 4 is an Administrative Order of the  
11 chief administrative judge of the courts.

12 MR. SONN: I'm sorry--

13 MS. CENCI: 5.

14 THE REFEREE: Isn't that 5?

15 MR. FARCHER: Yes. My apologies, Exhibit 5 is  
16 an Administrative Order of the chief administrative judge of  
17 the courts. It is dated May 21, 2008. One page in length as  
18 well.

19 MR. SONN: Yep, that's fine.

20 THE REFEREE: Okay, you're moving to admit it?

21 MR. FARCHER: Yes.

22 THE REFEREE: It's admitted.

23 MR. FARCHER: And finally, your Honor, what's  
24 being marked for identification as Exhibit 6 is a call log

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(Hon. David J. Evans)

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from Utica National. The call log is eight pages in length and it relates to claim number 0001115610.

MR. SONN: Yeah again, your Honor, this has been provided to me in advance and it's fine.

THE REFEREE: Okay, it's admitted.

MR. FARCHER: As far as stipulations or preliminary matters, that's all the Commission has, your Honor.

THE REFEREE: Mr. Sonn, you have anything?

MR. SONN: No, thank you.

THE REFEREE: Okay, are we ready to go?

MR. SONN: Mm-hmm.

THE REFEREE: First witness?

MR. FARCHER: At this time I'd like to make an opening statement if I might your Honor?

THE REFEREE: Okay.

MR. FARCHER: I'll do so from the podium if that's all right?

THE REFEREE: Yeah.

MR. FARCHER: Judge Barbaro, ticket fixing is a form of favoritism that has long been condemned by both the Commission and the Court of Appeals. The granting of special consideration to particular defendants subverts the entire justice system and undermines the judiciary as a whole. The evidence presented over the course of this

(Hon. David J. Evans)

1 hearing will show that Judge Daniels, a judge in the  
2 neighboring town from Norwich, the Town of Guilford,  
3 intervened in a pending traffic matter in Judge Evans' court  
4 on behalf of Larry Bates and that Judge Evans responded to  
5 that intervention by dismissing Mr. Bates' traffic ticket.  
6 You'll hear from Larry Bates, a school bus driver for the  
7 Norwich School District, who will tell you he was involved  
8 in a traffic accident on October 7, 2008. He was involved  
9 in an accident while transporting a bus full of school  
10 children and he was ticketed by Brandon Brigham for  
11 Failure to Yield the Right of Way. The evidence will show  
12 that Judge Daniels arrived on the scene shortly thereafter,  
13 took possession of the ticket that was issued to Mr. Bates,  
14 and told Mr. Bates that it would be taken care of. You'll  
15 hear from Norwich Town Court clerk Faye Pierce and  
16 Officer Kent Smith who will both testify as shortly  
17 thereafter, several weeks later, Judge Daniels visited the  
18 Norwich Town Court on an off court night. Ms. Pierce and  
19 Officer Smith will tell you that when Judge Daniels arrived  
20 at the court, he came there looking for Judge Evans, but  
21 when he could not locate Judge Evans he displayed a video  
22 depicting the accident for which Mr. Bates was ticketed and  
23 asserted that the video showed that Mr. Bates wasn't at  
24 fault. You'll hear testimony that prior to leaving that  
25 evening, Judge Daniels asked both Ms. Pierce and Officer

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(Hon. David J. Evans)

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Kent Smith to let Judge Evans know of his visit. Now the evidence will show that Mr. Bates' ticket was dismissed by Judge Evans shortly thereafter, after Judge Daniels' visit, notwithstanding that Mr. Bates never entered a plea, was never arraigned on the charge, never spoke to the ticketing officer or the district attorney. Trooper Brigham will be here and Trooper Brigham will testify that he has no knowledge of what became of the ticket he issued to Mr. Bates because no one ever contacted him to appear in court or asked him for a reduction with regard to that ticket. You'll also hear from assistant attorney-- assistant district attorney Stephen Dunshee, and he'll tell you that he has no recollection of Mr. Bates' ticket but that he generally requires a driver's abstract, confirmation that any and all insurance claims have been settled before consenting to the dismissal of a ticket issued after an accident. Mr. Dunshee will tell you he has no recollection of having obtained any of those records from Mr. Bates or even having spoken to Mr. Bates. And finally, you'll also hear from Joe Gallagher and Marie Bussonnais who will testify that as employees of Utica National Insurance Company, the insurance company for the Norwich City School District, that no one contacted them to confirm that pending insurance claims had been settled and in fact, a personal injury claim was open and pending until March of that year that Mr. Bates was

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(Hon. David J. Evans)

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ticketed, months later. The evidence presented today will also show that when questioned about his reason for dismissing Mr. Bates' Uniform Traffic Ticket by the Commission on a prior date, Judge Evans told Commission staff that he and district attorney Dunshee had talked about this specific ticket and that ADA Dunshee had specifically consented to its dismissal, after assistant district attorney had confirmed that all pending insurance claims had been settled. ADA Dunshee will tell you he had no recollection of that conversation and that he has no recollection of obtaining any insurance information with regard to Mr. Bates. The evidence will show that Judge Evans has failed to record his court proceedings so there is no way we can be sure of what he claims occurred in court. Now finally the evidence will show that Judge Evans has failed to disclose to those appearing before him in his court, a district attorney Stephen Dunshee, who is here to testify, acted as his personal attorney in the past. He failed to disclose that information to those appearing before him as required to do so. Based upon the evidence presented, Judge Barbaro, Commission counsel requests that you make that a finding that all four charges of the Formal Written Complaint had been sustained by a preponderance of the evidence and that Judge Evans has, in fact, committed judicial misconduct.

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THE REFEREE: Mr. Sonn, do you have anything you'd like to say?

MR. SONN: Yes, thank you, your Honor, if I may from here?

THE REFEREE: Okay. Sure.

MR. SONN: I certainly appreciate and Judge Evans certainly appreciates the concerns that the Commission would have and that anybody involved in the traffic control system would have with ticket fixing, after all that's an important function of keeping our roads safe. We will however disagree with what the evidence will show, we're going to show that, you know, there's reasonable doubt here as to what happened. Unfortunately there is no-- there are no absolute answers of exactly what happened that night. We have a theory. The Commission has a theory and I think those theories are going to have to be compared to determine what's appropriate under the circumstances. We will show, or the Commission will fail to show, that Evans was influenced and we'll show instead that Mr. Evans did follow his proper procedures and his proper legal procedures in coming to an appropriate conclusion that this ticket should be dismissed and that that decision was, again, not influenced by anything that Mr. Daniels did or in fact any way of his not following proper legal procedure in reaching that conclusion. And on that basis we would hope

(Trooper Brigham - Direct)

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that the finding of facts will show that there was no judicial misconduct in this case.

THE REFEREE: Okay. Proceed.

MR. FARCHER: The first witness is Trooper Brandon Brigham. Judge, if it's okay with you, I'd like to continue examining from the podium.

THE REFEREE: No problem.

MR. FARCHER: Judge, do you want to swear the witness?

THE REFEREE: Yes. Would you stand up, please? Do you swear or affirm that you will tell the truth, the whole truth, and nothing but the truth, so help you?

MR. BRIGHAM: Yes.

THE REFEREE: Be seated.

BRANDON LEON BRIGHAM,

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

DIRECT EXAMINATION

BY MR. FARCHER:

Q. Trooper, could you state your name and business address for us?

A. My name is Brandon Leon Brigham. I work at 5354 State Highway 12, Town of Norwich, State Police Barracks.

THE REFEREE: What was that?

THE WITNESS: 5354.

(Trooper Brigham - Direct)

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THE REFEREE: 5354, yeah, go ahead.

THE WITNESS: State Highway 12, Norwich.

BY MR. FARCHER:

Q. Okay. And will you tell us a little about your current employment?

A. Trooper with the New York State Police responsible for vehicle and traffic enforcement, criminal proceedings and so forth.

Q. And how long have you been employed by the New York State Police, Trooper?

A. For over four years.

Q. And are you stationed at a particular barracks?

A. Yes.

Q. Okay. Could you tell us where that is?

A. The State Police barracks in Norwich.

Q. All right. And would that include the Town of Norwich as well?

A. Yes it would.

Q. Okay. What geographical area are you responsible for?

A. Chenango County.

Q. Okay. Trooper, let me direct your attention to a particular date, October 7, 2008. Were you called to respond to a motor vehicle accident on that date?

A. Yes, I was.

Q. All right. And could you tell us a little about that accident you responded to?

(Trooper Brigham - Direct)

1 A. It was involved in a trailer park at an intersection-- a T-intersection  
2 with a stop sign. It was involving a school bus and a car.

3 Q. Okay. Do you know who was driving the school bus?

4 A. Yes, I do.

5 Q. Could you tell us who that was?

6 A. Larry Bates.

7 Q. And do you know who was driving the other car?

8 A. I can't remember at this time.

9 Q. Okay. Could you describe the other vehicle?

10 A. It was a four-door tan sedan.

11 Q. Okay. Do you remember if Mr. Bates had any passengers at the time  
12 of the accident?

13 A. Yes, he did.

14 Q. Do you know who they were?

15 A. School children.

16 Q. All right. Could you tell us about how many?

17 A. Approximately 18 to 20.

18 Q. All right. And after you arrived at the scene of the accident, could you  
19 tell us what it is you did?

20 A. Well, I investigated, I talked to both parties and they were involved in  
21 the accident. And from the scene of the accident and the damage on  
22 the vehicles, I determined that the driver of the school bus, Mr. Bates,  
23 had pulled from a stop sign, the other car was coming through, did not  
24 have a stop sign, and he had struck the car in the rear of the vehicle.

25 Q. Okay. Did you make a-- Did you write up an accident report?

15.

(Trooper Brigham - Direct)

- 1 A. Yes, I did.
- 2 Q. Okay. Let me show you what has been entered into evidence as  
3 Exhibit 1, Trooper. Do you recognize that document, Trooper  
4 Brigham?
- 5 A. Yes, I do.
- 6 Q. Okay. Could you tell us what it is you recognize it to be?
- 7 A. The MV-104A that I completed for that accident.
- 8 Q. Is that an accident report?
- 9 A. Yes it is.
- 10 Q. Okay. If you look at the last page of that accident report, Trooper, you  
11 recognize the last page of that? Is that-- I'm sorry the-- it would be  
12 the Uniform Traffic Ticket.
- 13 A. Okay.
- 14 Q. That' a--
- 15 A. Yes, I do.
- 16 Q. Okay. That's a Uniform Traffic Ticket, correct?
- 17 A. Yes it is.
- 18 Q. All right. Did you issue that traffic ticket?
- 19 A. Yes, I did.
- 20 Q. Could you tell us who you issued that to?
- 21 A. To Mr. Bates.
- 22 Q. All right. And why did you issue that ticket to Mr. Bates?
- 23 A. Failure to Yield Right of Way at a stop sign.
- 24 Q. Okay.
- 25 A. Or intersection, I'm sorry.

16.

(Trooper Brigham - Direct)

1 Q. After observing the accident and based on your conclusion, who did  
2 you determine was at fault for the accident?

3 A. Mr. Bates.

4 Q. All right. Was the other driver ticketed?

5 A. No, he was not.

6 Q. If you could just briefly describe the process of issuing that ticket,  
7 how it works now.

8 A. It's all done on computer with a TRACS program.

9 Q. Okay.

10 A. It's basically-- If they have their license you can scan their license in,  
11 the registration can be scanned in, and then you will type the different  
12 information, you know, we review it prior to actually confirming that  
13 everything's been verified that it is correct. And then once that we see  
14 it's been correct, we'll validate it and then we'll print it out and then  
15 we'll get the copy at that point in time.

16 Q. When you were at the scene of the accident, what would Mr. Bates be  
17 handed?

18 A. The same exact thing that's right here.

19 Q. Okay. So, it's a Uniform Traffic Ticket?

20 A. Yes, he would.

21 Q. And what would the court receive?

22 A. They would receive-- It's a court copy of it which basically is a  
23 Uniform Traffic Ticket but the court--

24 Q. Let me show you what's been entered into evidence as Exhibit 2,  
25 Trooper. Are you familiar with that document?

17.

(Trooper Brigham - Direct)

1 A. Yes, I am.

2 Q. Okay. Could you tell us what that is?

3 A. This would be the court copy of the Uniform Traffic Ticket.

4 Q. All right. And how is that transmitted to the court?

5 A. They receive it, I guess, by the Internet I would say.

6 Q. Okay.

7 A. It's downloaded into their system.

8 THE REFEREE: Mr. Farcher, that's evidence which  
9 has been admitted?

10 MR. FARCHER: Yes.

11 THE REFEREE: Would you like to just indicate  
12 what exhibit it is?

13 MR. FARCHER: Yes, that's been marked and  
14 entered into evidence as Exhibit 2, Judge.

15 THE REFEREE: Okay.

16 MR. FARCHER: Thank you, your Honor.

17

18 BY MR. FARCHER:

19 Q. I'm sorry, Trooper. How would the court receive that copy?

20 A. The court would download it. Once we-- At the end of our shift we  
21 go and we download all the tickets, accident reports, any kind of  
22 forms that we've done into our system, and then the court is able to  
23 access that and download that information to theirs.

24 Q. So, the Simplified Information that you have there, you wouldn't  
25 personally deliver that?

18.

(Trooper Brigham - Direct)

1 A. No, I would not.

2 Q. Okay. Now, Trooper, going back to the scene of the accident, do you  
3 recall if Dave Daniels was there?

4 A. Yes, he was.

5 Q. Okay. Did you speak with Mr. Daniels?

6 A. Briefly.

7 Q. Okay. Do you recall what the-- what your conversation was about?

8 A. Just about the accident because he is the supervisor for the school bus  
9 operator, Mr. Bates.

10 Q. Okay. And when you ticketed Mr. Bates, do you recall who you  
11 handed the ticket to?

12 A. Mr. Bates.

13 Q. All right. Do you know who left the scene of the accident with  
14 possession of that ticket?

15 A. I believe Mr. Bates.

16 Q. All right. Now, Trooper, could you just tell me who generally  
17 prosecutes the tickets that you issue?

18 A. In the Town of Norwich, Mr. Dunshee.

19 Q. Okay.

20 A. The ADA for them.

21 Q. All right. Was there ever a time when the New York State Police  
22 prosecuted their own tickets?

23 A. Not to my knowledge since I've been working there.

24 Q. All right. So, Trooper, would you have prosecuted this ticket?

25 A. Dep-- Only if I had been called as a witness--

(Trooper Brigham - Direct)

1 Q. Okay.

2 A. --for my ticket.

3 Q. So, you would potentially would have been called as a witness?

4 A. If it had gone to-- had been prosecuted, I would have been there.

5 Q. Were you ever contacted with regard to this ticket?

6 A. No, I was not.

7 Q. Do you know what happened to that ticket that you wrote?

8 A. No, I don't, other than what is stated on this form right here.

9 Q. Okay. And you're indicating what is stated on--

10 A. On the-- Exhibit 2.

11 Q. Exhibit 2.

12 A. Yes.

13 Q. Okay. And then looking at Exhibit 2, do you know what happened to  
14 that ticket?

15 A. It was dismissed.

16 Q. Okay. After issuing the ticket to Mr. Bates, could you tell us what  
17 contact-- or what actions you took at all with regard to that ticket?

18 A. We don't-- Other than going back and downloading them into our  
19 system--

20 Q. Nothing.

21 A. --nothing else.

22 MR. FARCHER: One second, your Honor?

23 THE REFEREE: Yep.

24

25

20.

(Trooper Brigham - Cross)

1 BY MR. FARCHER:

2 Q. Trooper, do you know why the ticket was dismissed that you issued?

3 A. No, I do not.

4 Q. I've no further questions for this witness, your Honor.

5 THE REFEREE: Mr. Sonn.

6 MR. SONN: Yes, thank you. Good morning,  
7 Trooper.

8 THE WITNESS: Good morning.

9 MR. SONN: How are you today?

10 THE WITNESS: Good. How are you?

11 MR. SONN: Good, thanks.

12

13 CROSS EXAMINATION

14 BY MR. SONN:

15 Q. You testified that it is common-- I mean you testified that you did not  
16 know of the disposition of this ticket?

17 A. Correct.

18 Q. Isn't it common you don't typically know the disposition of any  
19 tickets?

20 A. Yes, that is correct.

21 Q. So this was nothing unusual?

22 A. No.

23 Q. When you spoke with Mr. Daniels, did he in any way attempt to  
24 defend Mr. Bates' behavior?

25 A. No, he did not.

21.

(Trooper Brigham - Cross)

1 Q. Okay. And did he try to influence you not to give him a ticket at that  
2 time?

3 A. No, he did not.

4 Q. You did not observe the incident itself?

5 A. No, I didn't.

6 Q. You interviewed the parties and relied upon their information?

7 A. Correct.

8 Q. Were you told that there was a video of that incident?

9 A. No, I was not.

10 Q. Okay. So, nobody told you there was a video that would either  
11 confirm or deny the incident occurring?

12 A. That is correct.

13 Q. Okay. If there was a video that would have denied the accident,  
14 would that probably have been presented to you at that time?

15 A. If there was a video that denied accident.

16 MR. FARCHER: Objection, your Honor.

17 THE REFEREE: I think you need to rephrase that  
18 question. And also deal with "If there were." That's  
19 speculation.

20 MR. SONN: Mm-hmm.

21 THE REFEREE: So, try to rephrase it.

22 MR. SONN: Okay.

23

24 BY MR. SONN:

25 Q. Well, you're unaware that there was a video either way?

22.

(Trooper Brigham - Cross)

1 A. That is correct.

2 Q. Okay. Was there any personal injury reported to you at that time?

3 A. No, there was not.

4 Q. Now, what you issued to the defendant is commonly known as a  
5 traffic ticket?

6 A. Yes, it is.

7 Q. Does it have a proper name?

8 A. Uniform Traffic Ticket.

9 Q. Okay. Or a Simplified Information?

10 A. Yes. Correct.

11 Q. Do you have the doc-- You're familiar with that phrase or do you  
12 need the document?

13 A. Yes. I do-- No, I do know what you're talking about. Correct.

14 Q. Okay. So, it's known as a Simplified Information--

15 A. Yes.

16 Q. --or a Simplified Traffic Information?

17 A. Mm-hmm.

18 Q. Okay. On that document there's an area that is completed that states--  
19 and do you need to see the document?

20 A. Yes, I would.

21 MR. FARCHER: Which one are you looking for,  
22 David?

23 MR. SONN: The Uniform-- the Simplified  
24 Information.

25 THE RESPONDENT: The defendant's--

23.

(Trooper Brigham - Cross)

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MR. FARCHER: Well, the--

THE WITNESS: The court copy or--

MR. FARCHER: Yeah. There are two. There's the  
Uniform Traffic Ticket--

MR. SONN: Either one is fine for this purpose.

THE REFEREE: Can we identify which exhibit  
we're dealing with, please?

MR. SONN: Okay. Let's stick with Exhibit 2.

THE REFEREE: Okay.

BY MR. SONN:

Q. Okay. Now, with Exhibit 2, the Simplified Information, there is a box  
about three quarters of the way down that talks about how this ticket  
must be communicated by the defendant to the court.

A. Correct. I believe that's on Exhibit 1.

MR. FARCHER: You think that's--

THE RESPONDENT: That's going to be the  
defendant's copy.

MR. SONN: Well, it's--

THE RESPONDENT: That's correct. The  
defendant's copy.

MR. SONN: Oh, I'm sorry. It's not on the court  
copy?

THE RESPONDENT: It would be on the  
defendant's copy.

(Trooper Brigham - Cross)

1 THE REFEREE: Now, which exhibit is that?

2 THE WITNESS: Exhibit 2-- or Exhibit 1, your  
3 Honor.

4 THE REFEREE: One?

5 THE WITNESS: Yes.

6

7 BY MR. SONN:

8 Q: Okay. I apologize for mixing these-- this up. That's the same-- but  
9 what does it say about his requirement? What does he have to do with  
10 his ticket?

11 A. He can either reply by mail or he can show up in person.

12 Q. Okay. And who selected that spot?

13 A. He does that. We don't have anything to do with that. They choose--

14 Q. No. He selects which of those alternatives to choose. Isn't that  
15 correct?

16 A. Yes, he does.

17 Q. But you have a choice between advising him to return by mail before  
18 or in person on the 11th-- on the 13th of November, or you must  
19 appear in person.

20 A. That's correct. We do advise them that--

21 Q. You make that choice.

22 A. Well, we advise them that they have to do either. We don't tell them  
23 to show up or mail in.

24 Q. No. There's two boxes down there.

25 A. Right.

25.

(Trooper Brigham - Cross)

1 Q. And one of them says they must appear in person--

2 A. Yes.

3 Q. Correct?

4 A. That's correct.

5 Q. And you chose instead return by mail before or in person.

6 A. Only if it's above a traffic infraction. If it's a misdemeanor ticket,  
7 they have to appear in person.

8 Q. Right.

9 A. Or anything higher. If it's a traffic infraction they have the choice to  
10 whether show up in person or mail it in.

11 Q. Mm-hmm. So, the program makes that determination or you make  
12 that determination? Your computer program determines which box to  
13 complete or you do?

14 A. Correct. I mean I don't actually click-- select a box when I'm filling  
15 out the ticket.

16 Q. So, the nature of this ticket-- the procedure is they can return it by  
17 mail before or in person?

18 A. Correct.

19 Q. Okay. And at that time they can also can plead innocent or guilty-- or  
20 guilty or not guilty? Isn't that correct?

21 A. Yes.

22 Q. Okay. And is it your understanding that that ticket-- well, if they  
23 were to plead guilty a deter-- and if that guilty plea was accepted by  
24 the court, an appropriate fine and penalty would be imposed?

25 A. Yes.

26.

(Trooper Brigham - Cross)

1 Q. And that would all occur without the defendant ever going to the  
2 court, being formally arraigned, or pleading in person. Isn't that  
3 correct?

4 A. That is possible.

5 Q. And doesn't-- Are you familiar with section 170.10 of the criminal  
6 procedure law?

7 A. No, I'm not.

8 Q. Okay. But you are aware that that is an acceptable procedure?

9 A. Without--

10 THE REFEREE: No.

11

12 BY MR. SONN:

13 Q. That any individual--

14 MR. FARCHER: Objection. Outside the--

15 THE REFEREE: You need to-- He's object-- You  
16 need to tell him what the provision provides before you can  
17 ask him where-- if it's correct.

18 MR. SONN: Okay. Okay.

19 THE REFEREE: Okay.

20

21 BY MR. SONN:

22 Q. Section 170.10 states, "A defendant must appear personally at  
23 arraignment except under the following circumstances--" Okay?

24 A. Mm-hmm.

25

27.

(Trooper Brigham - Cross)

1 Q. "Any case where a Simplified Information is filed--" and that's what  
2 is this, right? "And a procedure is provided by law which is  
3 applicable to all offenses charged in that Simplified Information--"  
4 okay, and what you have got here is a statement that, "Can return by  
5 mail before or in person--" Okay?

6 A. Mm-hmm.

7 Q. "And if followed would dispense with the arraignment or personal  
8 appearance." So, we've already testified that he mails this in or,  
9 okay--

10 A. Right.

11 Q. --he can dispense with appearance and arraignment--

12 A. Correct.

13 Q. And, okay, if that's the case, if we have such a situation, nothing  
14 contained in the section requiring a personal appearance is affected  
15 by-- excuse me, "Nothing contained in this section affects the validity  
16 of the procedure." So, in other words, that's a valid procedure.

17 MR. FARCHER: I object. He's asking the trooper  
18 to testify to legal conclusions here.

19 THE REFEREE: I'll take judicial notice of this  
20 section.

21 MR. SONN: Thank you, your Honor.

22  
23 BY MR. SONN:

24 Q. Now, wouldn't you consider it to be a fundamental right that says an  
25

(Trooper Brigham - Cross)

1 individual can appear at court if he's charged with a-- some kind of  
2 an improper action?

3 A. Yes, I would.

4 Q. And he has the right to waive that?

5 A. Yes.

6 Q. Okay. And there are many rights an individual can waive in the  
7 process.

8 MR. FARCHER: Object, your Honor.

9 THE REFEREE: Wait. What do you mean he has  
10 the right to not appear in court? Restate your question. I do  
11 not understand your question.

12

13 BY MR. SONN:

14 Q. Okay. If an individual follows the instructions set forth on this  
15 Simplified Information that he's received and returns the ticket by  
16 mail rather than in person, okay, isn't he waiving his right to appear if  
17 he chooses to appear by mail?

18 MR. FARCHER: Objection.

19 THE REFEREE: I'm going to sustain it. It's not a  
20 right to appear. The statute says he can appear in person or  
21 he can mail it in.

22 MR. SONN: Mm-hmm.

23 THE REFEREE: Period. That's it.

24 MR. SONN: Right.

25 THE REFEREE: Okay?

29.

(Trooper Brigham - Cross)

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MR. SONN: Right.

THE REFEREE: All right. Go ahead.

BY MR. SONN:

Q. And isn't this option that the defendant is given a very valuable option, both for the individual but also an important option for the courts?

MR. FARCHER: Objection.

THE REFEREE: I'm going to sustain it. He's not qualified to testify as to quality of it. Of the procedure.

MR. SONN: Okay. Mm-hmm.

BY MR. SONN:

Q. What would happen to a court if no tickets could be sent in by mail? All tickets had to be handled by personal appearance?

MR. FARCHER: Object to speculation.

THE REFEREE: I'm going to sustain that. Do you want to say that this procedure helps the court in its proceedings?

MR. SONN: Mm-hmm. That's what I was trying to get. Yeah. Yeah.

THE REFEREE: Well, ask him.

BY MR. SONN:

Q. Do you think this procedure helps the court in this proceedings?

(Trooper Brigham - Cross)

1 A. Yes.

2 Q. And do you think it also serves the defendant?

3 A. Yes.

4 Q. Well, okay. I mean, what if the defendant lived in Buffalo and had to  
5 come to Norwich?

6 MR. FARCHER: Again, your Honor.

7 THE REFEREE: I'm going to let you ask this  
8 question but these are all not really relevant to what the  
9 statute says how a person can answer the ticket.  
10 Understand what I'm saying?

11 MR. SONN: Yeah. May I speak to the relevance  
12 or--

13 THE REFEREE: If you'd like to. Go ahead.

14 MR. SONN: I mean I would just speak to the  
15 relevance in the sense that what we're-- One of our charges  
16 is that we didn't-- that the defendant did not appear-- was  
17 not arraigned in person and did not plead in person. And  
18 what our position is, obviously, that that's not necessary.  
19 This statute does away with that.

20 THE REFEREE: But then it's not relevant. If he's  
21 not sup-- If he doesn't have to so that's the end of it. I  
22 don't know what you're trying to say.

23 MR. SONN: It's relevant to answering that charge, I  
24 believe, your Honor.

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31.

(Trooper Brigham - Redirect)

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THE REFEREE: I don't think so but you can answer that question and then let's move on. Okay?

MR. SONN: Okay. Thanks.

BY MR. SONN:

Q. In your experience, have you ever had any problems with the way tickets have been handled in the Town of Norwich?

A. No. I have not.

Q. Okay. And have you had any discussions with any other police officers?

A. Yes.

Q. Regarding-- And have you ever heard any complaints from anybody else?

A. About the tickets?

Q. Right.

A. No. I have not.

MR. FARCHER: Object to hearsay, your Honor.

THE REFEREE: Sustained. That's hearsay.

MR. SONN: Okay. Nothing further from this witness at this time. Thank you.

REDIRECT EXAMINATION

BY MR. FARCHER:

Q. One question-- One or two questions on redirect. Trooper, what are a defendant's options when he is issued a Uniform Traffic Ticket?

(Trooper Brigham - Redirect)

1 A. He's advised-- I personally advise him every time that he can either  
2 reply by mail or he can show up in person on the date that's-- I've  
3 assigned to him.

4 Q. Are those the only two ways to answer a Uniform Traffic Ticket?

5 A. Yes, they are.

6 Q. Okay. So, appear in person or send the ticket in by mail.

7 A. Correct.

8 Q. No further questions, your Honor.

9 THE REFEREE: Okay. Thank you, Judge.

10 MR. FARCHER: Commission will call Larry Bates,  
11 your Honor.

12 THE REFEREE: Hello, Mr. Bates.

13 MR. BATES: Good Morning.

14 THE REFEREE: Raise your right hand. Do you  
15 swear or affirm to tell the truth, the whole truth, and nothing  
16 but the truth, so help you?

17 MR. BATES: Yes, sir. I do.

18 THE REFEREE: Be seated, please.

19

20 LARRY BATES,

21 having been duly sworn, was examined and testified as follows:  
22  
23  
24  
25

(Bates - Direct)

1 DIRECT EXAMINATION

2 BY MR. FARCHER:

3 Q. Good morning, sir. Would you just state your name and address for  
4 the record again?

5 A. My name is Larry Bates. I live at 174 County Route 33, Norwich,  
6 New York, 13815.

7 Q. And are you currently employed, Mr. Bates?

8 A. Yes, sir.

9 Q. All right. Could you tell us where you're employed?

10 A. Norwich City Schools.

11 Q. And what is it that you do for the Norwich City School?

12 A. I drive a school bus.

13 Q. Okay. And how long have you been employed in that capacity, Mr.  
14 Bates?

15 A. 24 years.

16 Q. All right. And would you just basically describe your job duties?

17 A. Pardon?

18 Q. Would you describe what it is you do in the course of your  
19 employment.

20 A. I drive a school bus.

21 Q. And who are your general passengers?

22 A. I transport pre-K through 12.

23 Q. Now, Mr. Bates, do you have a supervisor?

24 A. Yes, sir.

25 Q. All right. Could you tell us who your supervisor is?

34.

(Bates - Direct)

1 A. Mr. Dave Daniels.

2 Q. And how long has David Daniels been your supervisor?

3 A. Approximately four or five years.

4 Q. Okay. Prior to becoming your supervisor, how long had you worked  
5 with Mr. Daniels?

6 A. 24 years.

7 Q. Okay. In what capacity before becoming your supervisor did you  
8 work with him?

9 A. Well, we went on school trips together.

10 Q. Prior to being your supervisor, what was Mr. Daniels' position?

11 A. A school bus driver.

12 Q. Okay. How often would you say you see Judge Daniels at work?

13 A. Every day there's school or if I'm not sick, you know, out sick or  
14 something. But every day on a daily basis.

15 Q. And are you given work evaluations?

16 A. Yes, sir.

17 Q. Could you tell us who handles those?

18 A. Mr. Daniels.

19 Q. All right. And how often are you evaluated, Mr. Bates?

20 A. Once a year.

21 Q. And who do you report to at work?

22 A. Dave Daniels.

23 Q. Mr. Bates I want to direct your attention now to October 7, 2008.

24 Were you involved in a motor vehicle accident on that day?

25 A. Yes, sir.

35.

(Bates - Direct)

1 Q. All right. Could you tell us what you were driving at the time of the  
2 accident?

3 A. A 66-passenger school bus.

4 Q. All right. And who were you driving that school bus for?

5 A. Norwich City Schools.

6 Q. Did you have any passengers?

7 A. Yes, sir.

8 Q. Could you tell us who they were? Just describe them? How many  
9 passengers did you have, Mr. Bates?

10 A. Approximately five or six.

11 Q. Okay. And how old were they?

12 A. In the neighborhood of third through fifth.

13 Q. They're school children?

14 A. Yes.

15 Q. Okay. Now tell us what happened with the accident, Mr. Bates.  
16 Could you describe that for us?

17 A. It was in a trailer park. I came to a T and it was foggy that morning. I  
18 stopped, I looked both ways, and I didn't see a vehicle coming, and I  
19 pulled out and I hit the rear end of the car.

20 Q. Okay. Where did you strike the other vehicle?

21 A. Between the passenger back door to the bumper.

22 Q. Okay. Now, after the accident occurred, could you tell us what you  
23 did?

24 A. I called the office. My boss's secretary was there and she answered it.  
25 I told her I was involved in a motor vehicle accident. She called the

36.

(Bates - Direct)

1 state troopers. The troopers came. My boss came. While I was  
2 waiting for them, I took down the names of the students, the seats they  
3 were sitting in--

4 Q. Let me stop you for one moment, Mr. Bates. Could you tell me-- You  
5 said you called the base, you spoke to your boss's secretary. Who is  
6 your boss?

7 A. Dave Daniels.

8 Q. Okay. And who is his secretary?

9 A. Jan Miles.

10 Q. All right. So, you contacted Jan. Now, after you contacted Jan, you  
11 were saying you took down the names and seats-- you can proceed  
12 from there. What did you do after taking down the names of the  
13 students?

14 A. Made sure that there was no injuries or anything. That was not a  
15 serious accident so I knew there was no seriousness but when the--  
16 The kids have to be transported back to school to get checked out by  
17 the nurse and by this time my boss showed up, and we were talking to  
18 the driver of the car to make sure he was all right.

19 Q. So, Dave Daniels arrived on the scene?

20 A. Yes, sir.

21 Q. Okay. All right. Did there come a point in time, Mr. Bates, where  
22 you were informed you were being issued a ticket?

23 A. At what time?

24 Q. No, were you informed that you were going to be ticketed?

25 A. Yes, sir.

37.

(Bates - Direct)

- 1 Q. Okay. Who told you that?
- 2 A. The officer.
- 3 Q. All right. Mr. Bates, I want to show you what's part of-- what's been  
4 entered into evidence as Exhibit 1, the last page. Mr. Bates, that's a  
5 photocopy of a Uniform Traffic Ticket written in your name. Have  
6 you seen that ticket before?
- 7 A. Probably. If this is the one that was issued to me.
- 8 Q. Okay. And could you tell us what it is you were ticketed for?
- 9 A. Failed to Yield Right of Way.
- 10 Q. Now, after you received that ticket, could you tell us what happened to  
11 it? I'll take that back from you, Mr. Bates. What happened to the  
12 ticket that you were issued, Mr. Bates?
- 13 A. Mr. Daniels said that he would drop it off to Judge Evans.
- 14 Q. Okay. When you left the scene of the accident, who had the ticket?
- 15 A. Dave Daniels.
- 16 Q. Okay. Did you ever enter a plea on that ticket?
- 17 A. No, sir.
- 18 Q. Did you ever enter a plea of not guilty?
- 19 A. No, sir.
- 20 Q. Did you ever enter a plea of guilty?
- 21 A. No, sir.
- 22 Q. Did you ever mail that ticket in?
- 23 A. No, sir.
- 24 Q. Do you know what happened to that ticket, Mr. Bates?
- 25 A. No, sir.

38.

(Bates - Direct)

- 1 Q. Did you ever ask Judge Daniels-- Dave Daniels what happened to the  
2 ticket?
- 3 A. Yes.
- 4 Q. And what did he say?
- 5 A. That Judge Evans had it.
- 6 Q. Was there a court date on that ticket?
- 7 A. I would imagine so.
- 8 Q. Did you ever appear in court, Mr. Bates?
- 9 A. No, sir.
- 10 Q. Could you tell us why you never appeared in court?
- 11 A. I was never informed to go.
- 12 Q. Did you ever speak to the district attorney about this ticket?
- 13 A. No, sir.
- 14 Q. Did you ever speak to the ticketing officer about this ticket?
- 15 A. No, sir.
- 16 Q. Did you ever ask either one of them to disMs. this ticket?
- 17 A. No, sir.
- 18 Q. Mr. Bates, aside from handing the ticket to Judge Daniels, what did  
19 you do with regard to this ticket?
- 20 A. I didn't do anything.
- 21 Q. Mr. Bates, when was the next time you heard anything about this  
22 ticket?
- 23 A. One day he said it was-- I didn't have to go to court.
- 24 Q. When did Dave tell you you didn't have to go to court?
- 25 A. I'm not sure when.

39.

(Bates - Direct)

1 Q. When you say Dave, are you referring to Dave Daniels?

2 A. Dave-- yes.

3 Q. Okay. Were you ever notified that the ticket was dismissed, Mr.  
4 Bates?

5 A. I'm not sure how Dave said-- He decided I didn't have to go to court.

6 Q. Okay.

7 THE REFEREE: Wait a minute. When did he tell  
8 you you didn't have to go to court?

9 THE WITNESS: I'm not sure exactly when.

10 THE REFEREE: Was it after the accident?

11 THE WITNESS: Yes, sir.

12 THE REFEREE: Do you remember about how  
13 much time?

14 THE WITNESS: It was probably maybe two weeks.

15 THE REFEREE: Okay. Thank you.

16

17 BY MR. FARCHER:

18 Q. Mr. Bates, did you ever contact the insurance company with regard to  
19 this ticket?

20 A. They contacted me.

21 Q. Okay. What was the purpose of that communication?

22 A. I had to talk to the school's insurance company. Told them what  
23 happened. They took care of the repairs on the other vehicle.

24 Q. Mr. Bates did you ever obtain any documents from the insurance  
25 company?

40.

(Bates - Direct)

1 A. No, sir.

2 Q. Did you ever ask them for confirmation at all, the pending claims had  
3 been settled?

4 A. No, sir.

5 Q. Now, Mr. Bates when you were--

6 A. Mr. Daniels said that the insurance took care of it.

7 Q. Okay. Mr. Bates, when you originally contacted the Commission, you  
8 gave us a slightly different story, is that correct? When you originally  
9 spoke to Mr. Fitzpatrick?

10 THE REFEREE: I think you need to rephrase that  
11 question.

12 MR. FARCHER: Okay.

13 MR. SONN: I would object, your Honor, if he's  
14 just going to ask him to rephrase it.

15 THE REFEREE: That's why I asked him to rephrase  
16 it.

17 MR. SONN: Thank you.

18 THE REFEREE: Go ahead.

19

20 BY MR. FARCHER:

21 Q. Mr. Bates, what did you originally tell Mr. Fitzpatrick when you were  
22 contacted by the Commission?

23 MR. SONN: I'll still object. He's--

24 THE REFEREE: No. Overruled.

25

(Bates - Cross)

1 BY MR. FARCHER:

2 A. I told him that I went to court.

3 Q. Did that ever happen?

4 A. That's what you wanted to hear?

5 Q. I'm asking what you told him, yes.

6 A. Yep.

7 Q. Why did you tell him that, Mr. Bates?

8 A. Because I didn't know what to say.

9 Q. Did you actually ever go to court, Mr. Bates?

10 A. No, sir.

11 Q. No further questions, your Honor.

12 THE REFEREE: Mr. Sonn?

13 MR. SONN: Yeah. Thank you. Good morning, Mr.

14 Bates.

15

16 CROSS EXAMINATION

17 BY MR. SONN:

18 Q. Mr. Bates, do you know Judge Evans?

19 A. No, sir.

20 Q. Okay. Have you ever seen him before today?

21 A. I'm not sure. I went to school with his brother.

22 Q. Mm-hmm. Mm-hmm. Are you-- I say that because are you aware  
23 now this gentleman to my right is Mr. Evans or do you just assume  
24 that?

25 A. I assume because he looks like an Evans.

42.

(Bates - Cross)

1 Q. Okay. Thank you. So, you have no special relationship with Mr.  
2 Evans?

3 A. No, sir.

4 Q. Okay. And he's not beholden to you or there's no obligation on  
5 behalf of Evans to you?

6 A. No, sir.

7 Q. He doesn't owe you any favors?

8 A. No, sir.

9 Q. Now, we heard you received a ticket for Failure to Yield. That's  
10 correct, you acknowledged that. Right. Were you given any other  
11 tickets that day?

12 A. No, sir.

13 Q. Okay. Were you tested in any way that day?

14 A. Drug and alcohol.

15 Q. Okay. And how was-- What were the results of that?

16 A. They only contact you if it's-- if you've taken it and I was never re--  
17 got a response.

18 Q. Okay. And that was just standard procedure?

19 A. Yes.

20 Q. There were no special indications?

21 A. No, sir.

22 Q. Did you have any-- I mean anybody who gets a ticket has a concern,  
23 but did you have any special concerns regarding this ticket that you  
24 needed to have it taken care of?

25 MR. FARCHER: Object, your Honor.

43.

(Bates - Cross)

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THE REFEREE: Sustained.

THE WITNESS: I don't understand your question.

MR. SONN: That was the problem with the question.

THE WITNESS: Oh.

THE REFEREE: Try to rephrase it.

BY MR. SONN:

Q. Would this ticket have any negative consequences to you beyond the penalty on the ticket?

A. No, sir.

Q. And are you familiar what the penalties that are on this ticket?

A. No, sir.

Q. Okay. Did you ask Judge Daniels to take the ticket?

A. No, sir.

Q. To take care of it? He volunteered.

A. Yes, sir.

Q. And he said he would drop it off?

A. Yes, sir.

Q. Did he make any other statements about what might occur with that ticket if you gave it to him?

A. No, sir.

Q. Did he say he would fix it?

A. No, sir.

(Bates - Cross)

1 Q. Now when-- you felt good you wouldn't have to appear on this  
2 ticket? Isn't that correct?

3 MR. FARCHER: Object to the felt statement.

4 THE REFEREE: Sustained. Rephrase it.

5  
6 BY MR. SONN:

7 Q. How did you feel when you learned you wouldn't have to appear on  
8 this ticket?

9 MR. FARCHER: Object to relevance.

10 THE REFEREE: Sustained. You can rephrase it.

11 Did you have any reaction when you were not contacted by  
12 the court to go?

13 THE WITNESS: No more than coming here, I  
14 guess.

15 THE REFEREE: I'm sorry?

16 THE WITNESS: No more than being excited about  
17 coming here. You know I don't get excited.

18 THE REFEREE: No, the question is did you have  
19 any thoughts after you found you were not contacted by  
20 the court?

21 THE WITNESS: I just thought because of the  
22 situation of the accident, you know, it was foggy--

23 THE REFEREE: Okay. That's good.  
24  
25

45.

(Bates - Cross)

1 BY MR. SONN:

2 Q. Did Mr.-- When you gave the ticket to Mr. Daniels, had you pled not  
3 guilty on that ticket?

4 A. No, sir.

5 Q. Or guilty on that ticket?

6 A. No, sir.

7 Q. Did Mr. Daniels comment on that to you-- that it had not been marked  
8 guilty or not guilty?

9 A. No, sir.

10 MR. FARCHER: Object to what Mr. Daniels said.

11 THE REFEREE: Sustained.

12

13 BY MR. SONN:

14 Q. Have you gotten tickets before?

15 A. Couple of times.

16 Q. Mm-hmm. And have you appeared on those?

17 A. Yes, sir.

18 Q. Have you mailed them in?

19 A. One I mailed in in the Town of Greene--

20 Q. Mm-hmm.

21 A. --and that was a Speeding ticket, and I'm just trying to recall the other  
22 ticket. It's been a while since I--

23 Q. Okay. Did you ever drop a ticket off as opposed to mail it in or  
24 appear?

25 MR. FARCHER: Object to relevance, your Honor.

46.

(Bates - Cross)

1 THE REFEREE: Yeah, sustained.  
2

3 BY MR. SONN:

4 Q. Did you actually mail the ticket or did somebody mail the ticket for  
5 you?

6 A. The one in the Town of Greene, I mailed myself.

7 Q. You personally brought it to the post office?

8 A. Yes, sir. Well, they told me I could mail-- On the ticket it was-- I  
9 can mail it in.

10 Q. Right, but somebody else could have mailed it in. Somebody else  
11 could have brought it to the post office for you.

12 THE REFEREE: Sustained. Sustained.  
13

14 BY MR. SONN:

15 Q. You were ultimately advised that the insurance company had taken  
16 care of any kind of civil damages that might be there as a result of the  
17 ticket for the accident?

18 A. Well, they-- Yes.

19 Q. And were you aware that there was a video in your--

20 A. Yes, sir.

21 Q. And did you ever observe that video?

22 A. Personally, no.

23 Q. No.

24 A. Ah! Yes, I did. Dave showed it.

25 Q. Mm-hmm. Mm-hmm. And what did it show?

47.

(Bates - Cross)

1 A. That I stopped, but in the camera it showed the car there.

2 Q. Mm-hmm.

3 A. It showed that I stopped and then I proceeded to take a-- to go.

4 Q. Mm-hmm. What color was that car?

5 A. I think it was gold color.

6 Q. Pale gold or dark gold or--

7 A. It was light brown I would say.

8 Q. The color have anything to do with your not observing it?

9 A. It was foggy. He could have been in my blind spot between the mirror  
10 of the school bus at the corner post--

11 THE REFEREE: I'm going to have to ask you to  
12 consider the relevance of these questions. You know what I  
13 mean?

14 MR. SONN: Yes, sir.

15 THE REFEREE: Because you're right on the line  
16 that I don't think they're proper.

17 MR. SONN: Okay.

18 THE REFEREE: But think about it. I don't want to  
19 restrict you--

20 MR. SONN: Sure.

21 THE REFEREE: --but I think-- I'm saying this to  
22 both sides now. There are issues, there are charges in this  
23 proceeding, and the questions should be related to the  
24 charges with some leeway, of course. Okay?

25 MR. SONN: Yes, sir. I can appreciate that.

48.

(Bates - Cross)

1 BY MR. SONN:

2 Q. Were there any personal injuries to the children?

3 A. No, sir.

4 Q. And were you aware, at that time, of any personal injuries to the other  
5 parties?

6 A. There was no injuries to the other party.

7 Q. Okay.

8 A. There was only one-- The driver was the only one in the car.

9 Q. I have no further questions. Thank you, your Honor.

10 THE REFEREE: Any redirect?

11 MR. FARCHER: Nothing further, your Honor.

12 THE REFEREE: Thank you, Mr. Bates, you can go.

13 THE WITNESS: That means I can go home?

14 THE REFEREE: You can go home.

15 MR. FARCHER: Thank you, Mr. Bates.

16 Commission counsel will call--

17 THE REFEREE: Before we call the witness I want  
18 to ask a question. Can either side explain to me why we're  
19 spending time as to whether there were injuries, what the  
20 outcome of the insurance claims was? What relevance does  
21 it have to the charges?

22 MR. SONN: I believe--

23 THE REFEREE: I'm talking to both sides,  
24 now.

25 MR. SONN: Oh, yeah.

49.

(Hon. David J. Evans)

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MR. FARCHER: Go ahead, Mr. Sonn.

MR. SONN: I believe the relevance in those is that this is the basis upon which the ticket was dismissed. That there were, you know, that the civil damages were taken care of and we're unaware of any personal injuries so-- that's one of the factors in dismissing the ticket.

MR. FARCHER: Your Honor, Judge Evans has previously testified that the basis of the dismissal was that the insurance claims had been settled based upon proof that the insurance claims had been settled--

THE REFEREE: Well, we can't talk about Evans. We have to speak about this case.

MR. FARCHER: Well, this is Judge Evans, your Honor.

THE REFEREE: Oh, I'm sorry.

MR. SONN: It gets confusing for all of us, thank you, your Honor.

THE REFEREE: I registered Daniels, I'm sorry.

MR. SONN: Yes.

THE REFEREE: Well, look.

MR. SONN: We'll certainly tighten up our questions--

THE REFEREE: The two of you need to tighten up your questions and relate them to the charges. All right?

MR. FARCHER: Yes, your Honor.

(Hon. David J. Evans)

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THE REFEREE: Okay.

MR. SONN: I thought that's what tomorrow was for, your Honor. So we could kind of--

MR. FARCHER: Your Honor, could we take a--

THE REFEREE: Yeah. I meant to say that. I have a problem. I don't take recesses. Any time you need a break-- You need a break?

MR. FARCHER: Just a brief five minute break.

THE REFEREE: Okay. Let's take a break.

MR. SONN: Mr. Evans asked also as well, so--

THE REFEREE: Okay.

(OFF THE RECORD)

MR. FARCHER: At this time Commission counsel would call Faye Pierce.

THE REFEREE: All right, Ms. Pierce, could you stand, please? Raise your right hand. Do you swear to tell the truth, and the whole truth, and nothing but the truth, so help you?

MS. PIERCE: Yes, I do.

FAYE PIERCE,

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

(Pierce - Direct)

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THE REFEREE: Be seated.

MR. FARCHER: Your Honor, could the record please reflect that also in the room with us currently is Lisa Natoli, attorney for Ms. Pierce?

THE REFEREE: Is that correct?

MS. NATOLI: Yes.

THE REFEREE: Okay.

DIRECT EXAMINATION

BY MR. FARCHER:

Q. Ms. Pierce could I just have you state your name and address for the record?

A. Faye Pierce, 188 Beaver Meadow Road, Plymouth, New York, 13832.

Q. Now you currently employed Ms. Pierce?

A. Yes. I am.

Q. Could you tell us where it is you're employed?

A. For the Norwich Town Court through the Town of Norwich.

Q. All right. And what is it that you do for the Norwich Town Court, Ms. Pierce?

A. I'm the court clerk.

Q. And how long have you been employed in that capacity?

A. For eight years, since 2002.

Q. And would you describe your duties, tell us what you do?

A. Paperwork, filing, answering the phones, computer entry.

(Pierce - Direct)

1 Q. Okay. Do you also-- Would that also include the disposition of traffic  
2 tickets?

3 A. Yes.

4 Q. And at whose direction would those--

5 A. Judge Evans.

6 Q. Okay. You work with a particular judge?

7 A. Judge Evans.

8 Q. Okay, is that the respondent in this matter, Judge Evans?

9 A. Yes.

10 Q. Okay. Now, Ms. Pierce, could you tell us where you generally sit  
11 while court is in session?

12 A. The courtroom has changed. Do you want me to tell you where I used  
13 to sit?

14 Q. No, that's it. Let me withdraw that. Are you able to see who comes  
15 and goes from the courtroom?

16 A. Yes.

17 Q. Okay. Now, Ms. Pierce, are you familiar with Guilford Town Justice  
18 David Daniels?

19 A. Yes. I am.

20 Q. Okay. Could you tell us how you're familiar with Judge Daniels?

21 A. Judge Daniels helped me-- was training me on how to use the  
22 computer for the SEI program-- SEI program.

23 Q. Okay. And how many times has that training occurred?

24 A. Handful of times. Maybe four or five times. Not very many.

25 Q. Now are you familiar with--

(Pierce - Direct)

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THE REFEREE: Could you speak a little louder?

You know what? Turn your chair and push yourself in.

THE WITNESS: Better?

THE REFEREE: Move closer. Okay.

BY MR. FARCHER:

Q. Ms. Pierce, are you familiar with Larry Bates?

A. Just through this matter.

Q. Okay. Had you ever met Mr. Bates prior to this matter?

A. No.

Q. Have you ever met Mr. Bates personally?

A. No.

Q. Have you ever seen Mr. Bates in court?

A. No.

Q. Ms. Pierce, did there come a time when Judge Daniels came to the Norwich Town Court with regard to Mr. Bates?

A. Yes.

Q. Okay. Could you tell us about that?

A. Judge Daniels came in, I believe he had his laptop with him, he-- there was a traffic matter where there was a bus accident. Larry Bates was one of the bus drivers and he wanted-- he stopped in to see if Judge Evans was around or-- and he had these-- there was a new video system on the bus that he-- I think he was kind of proud of to show off.

(Pierce - Direct)

1 Q. Do you know approximately when this visit occurred? What time of  
2 year?

3 A. It was late fall.

4 Q. Okay. Do you know what year it was?

5 A. 2008.

6 Q. All right. When Judge Daniels arrived at the Norwich Town Court,  
7 did he indicate who he was looking for?

8 A. He just stopped in. It was, I believe, it was a Wednesday evening. He  
9 just thought that he would stop and see if Judge Evans was in.

10 Q. Okay. So, he indicated he was looking for Judge Evans?

11 A. To show him the video, yes.

12 Q. Okay. Was Judge Evans present?

13 A. No.

14 Q. Could you tell us who was?

15 A. It was myself and Deputy Smith.

16 Q. Court Officer Kent Smith?

17 A. Court Officer Smith.

18 Q. Did Judge Daniels have a prior appointment to appear that evening?

19 A. No.

20 Q. Okay. Had you contacted Judge Daniels and asked him to come  
21 down?

22 A. No. Not that I recall, no.

23 Q. Judge Daniels just showed up?

24 A. Yep.

25 Q. Okay. Had you asked him to bring that video down?

55.

(Pierce - Direct)

1 A. No.

2 Q. Now when Judge Daniels got there could you tell us what he did?

3 A. He talked for a few minutes and then he showed the video and he was  
4 just narrating it. Like I said, I think he was excited about the video  
5 process.

6 Q. Okay. What did the video depict?

7 A. From what I saw of it, you see the bus accident, I mean, the bus  
8 stopping at a stop sign and then pulling out and they-- obviously there  
9 was an accident.

10 Q. Mr-- Did Mr. Daniels ever indicate who was driving the bus?

11 A. He may have. I don't recall. I don't know.

12 Q. Okay. Did Judge Daniels ever indicate that the purpose of the video  
13 was to show Larry Bates wasn't at fault for the accident?

14 A. That's the way I understood it.

15 Q. Could you tell us approximately how long that video was, Ms. Pierce?

16 A. Not very-- not very long, no. A few minutes, ten--

17 Q. Okay. And after Judge Daniels finished displaying that video, what  
18 happened?

19 A. He chitchatted for a few minutes and then he left.

20 Q. Okay. Did he conduct any training that night?

21 A. No.

22 Q. Did Judge Daniels ever ask you to let Judge Evans know he stopped  
23 by?

24 A. He may have but--

25 Q. Did you ever tell Judge Evans that Judge Daniels had stopped by?

56.

(Pierce - Direct)

- 1 A. I probably did. I mean, it wouldn't have been out of the norm.
- 2 Q. Okay. Do you recall what it is that you told Judge Evans?
- 3 A. No.
- 4 Q. Ms. Pierce, do you know what happened to the Larry Bates ticket?
- 5 A. It was dismissed.
- 6 Q. Let me show you what has been entered into evidence as Exhibit 2.
- 7 This is a photocopy of a Simplified Information, Ms. Pierce.
- 8 A. Yes.
- 9 Q. Okay. Do you recognize that ticket?
- 10 A. Yes. That came through the court.
- 11 Q. All right. And could you tell us who that ticket-- whose name it's
- 12 written in?
- 13 A. Larry Bates.
- 14 Q. Okay. And by looking at that ticket, can you tell what the disposition
- 15 was?
- 16 A. Yes. It was dismissed.
- 17 Q. Okay. Who dismissed that ticket?
- 18 A. That's the judge's hand-- Judge Evans' handwriting.
- 19 Q. Okay. Do you know approximately how long after Judge Daniels'
- 20 visit that that ticket was dismissed?
- 21 A. No. I don't remember the date that-- I just remember know it was in
- 22 late fall.
- 23 Q. Okay. And what's the date of dismissal on that ticket?
- 24 A. November 20, 2008.
- 25

57.

(Pierce - Cross)

1 Q. Okay. Ms. Pierce, would you normally notify the district attorney of a  
2 ticket dismissal like this?

3 A. No.

4 Q. Okay. Would the ticketing officer be notified?

5 A. No.

6 Q. What about Mr. Bates?

7 A. No. We don't usually.

8 Q. Okay. Ms. Pierce, have you ever seen Mr. Bates appear in court?

9 A. Not that I know of. No.

10 Q. Okay. Ms. Pierce, when you were initially contacted by Commission  
11 staff, you gave a slightly different version of events. Could you tell us  
12 what you told our staff originally?

13 A. I had thought Judge Evans was there at the court when Judge Daniels  
14 stopped in, but it was actually Officer Smith that was there.

15 Q. Okay. I have no further questions, your Honor.

16 THE REFEREE: Cross.

17 MR. SONN: Yes, thank you, your Honor.

18 THE WITNESS: Hey, Dave.

19

20 CROSS EXAMINATION

21 BY MR. SONN:

22 Q. Ms. Pierce, what do the-- You saw the video?

23 A. Yes.

24 Q. Were you working at the same time--

25 A. Yes, I was.

58.

(Pierce - Cross)

1 Q. --or were you focused on the video?

2 A. No. I was working and I'd glance up and watch for a minute and--

3 Q. Do you recall what the video actually showed?

4 A. The only part I remember of it was the bus pulling up, stopping, going  
5 to turn and then obviously an accident.

6 Q. Did you draw the conclusion from that video that the driver was not  
7 responsible?

8 MR. FARCHER: Objection.

9 THE REFEREE: Sustained.

10

11 BY MR. SONN:

12 Q. How did Mr. Daniels express that this was going to vindicate his  
13 client-- his driver?

14 A. I don't know if he did. I mean, he explained the video--

15 Q. Mm-hmm.

16 A. --of what was going on but I don't think he ever-- not that I know of.

17 Q. I think earlier you testified, if I'm correct here, that he intended this to  
18 vindicate his driver?

19 A. That's what I had thought that's what he had meant when he brought  
20 in the video.

21 Q. That was totally within--

22 A. That it was to show--

23 Q. He never expr--

24 A. He never expressed that it was--

25 Q. You just couldn't think of why else he would--

59.

(Pierce - Cross)

1 A. Right. Yeah.

2 Q. Okay. Did he-- He asked you to tell the judge stopped in?

3 A. Probably, yes. I mean I don't--

4 Q. You don't recall, so he may not have?

5 A. He may not have but it wouldn't be unusual for him, you know.

6 Q. Well, if he had told you to convey something to the judge regarding  
7 the video or the conclusion drawn from the video, you'd recall that,  
8 wouldn't you?

9 A. Yes, because I would've wrote it down.

10 Q. That would be a special event.

11 A. Mm-hmm.

12 Q. Okay. So, he never did that?

13 A. Not that I can recall. No.

14 Q. Now, you would not notify a-- the DA of a disposition of a ticket?

15 A. No.

16 Q. All right. But the DA would be involved in the disposition of the  
17 ticket?

18 A. Yes.

19 Q. So, the DA would know from his involvement what the disposition  
20 was.

21 A. Right.

22 MR. FARCHER: Object to what the DA would  
23 know.

24 THE REFEREE: Yeah, can we be a little more  
25 specific in the question?

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(Pierce - Cross)

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MR. SONN: Mm-hmm.

THE REFEREE: Rephrase it.

BY MR. SONN:

Q. Was the DA-- To your knowledge, was the DA involved in the Bates ticket decision? The decision to dismiss the base ticket?

A. Not to my direct knowledge. No.

Q. Okay. Would the DA typically be involved in a decision to dismiss any property damage ticket?

MR. FARCHER: Objection again, your Honor, as to what the DA would typically be involved with.

THE REFEREE: Sustained. You know, at this point, I have to ask both sides-- all right, I'll take care of that later. Go ahead, continue. I'm sorry.

BY MR. SONN:

Q. The night that Mr. Daniels came to the court and you and Mr. Smith were there but Mr. Evans was not, what were you doing that night?

A. Paperwork.

Q. And paperwork-- were you processing tickets?

A. Yes. Processing tickets and doing computer work.

Q. Mm-hmm. Were there different piles of tickets involved?

A. Oh, yeah. Yes.

Q. Okay.

A. What were the different piles of tickets for?

(Pierce - Cross)

1 Q. There would be piles to put in the fine notice book, there would be  
2 piles to enter into the system, dismissals to be filed in the drawer. It's  
3 a whole different place of new things. No shows.

4 A. Mm-hmm. Did Mr. Bates tell you he had-- that-- excuse me, did Mr.  
5 Daniels tell you he had Mr. Bates' ticket with him?

6 MR. FARCHER: Object, your Honor. Hearsay.

7 THE REFEREE: Yes.

8

9 BY MR. SONN:

10 Q. Were you aware that Mr. Daniels had Mr. Bates's ticket with him?

11 A. No.

12 Q. Were you ever asked where that ticket might be placed?

13 MR. FARCHER: Object, your Honor. Hearsay.

14 THE REFEREE: No. That's okay. Overruled.

15

16 BY MR. SONN:

17 A. No.

18 Q. Is it possible that ticket could have been placed on any one of these  
19 different stacks?

20 MR. FARCHER: Object to what's possible.

21 THE REFEREE: Sustained. Speculation.

22

23 BY MR. SONN:

24 Q. Was there a stack of tickets out that night to be given to the DA?  
25

62.

(Pierce - Cross)

1 A. I have a folder that all the tickets for the DA to look at, or the ADA, is  
2 put in that folder.

3 Q. Is it possible Mr. Bates might have put the ticket-- Mr. Daniels might  
4 have put the ticket there?

5 A. It's possible that it could be in a pile that was-- I was ready to put into  
6 the folder. I'm not sure.

7 Q. You never saw Mr. Bates' ticket?

8 A. No.

9 Q. And you never gave Mr. Bates' ticket to Mr. Evans?

10 A. No.

11 Q. So, you wouldn't know if he had pled on it or not?

12 A. Right. Correct.

13 Q. You're not in the same court room that you were when you first  
14 started work there. Is that correct?

15 A. That's correct.

16 Q. Did there come a time when you started mechanically recording  
17 testimony in a-- proceedings in a smaller courtroom?

18 A. In the smaller courtroom? Yes, but not for very long. We had just  
19 started before we moved.

20 Q. Okay. And was that the court's initiative to start recording, or was he  
21 told-- was the court directed to record?

22 A. The court, I believe, was directed.

23 Q. Was there any reluctance on the court's part to record?

24 A. Not a lot, no. I mean, it was different.  
25

63.

(Pierce - Cross)

1 Q. Did there come a time when you stopped recording in the small  
2 courtroom?

3 A. In the small courtroom? When we were getting ready to move into the  
4 bigger courtroom, yes.

5 Q. Okay. And where was the transcription equipment placed at that  
6 time?

7 A. In the small courtroom, I believe that was on the judge's desk.

8 Q. But when-- during the transition from the small courtroom to the big  
9 courtroom, where was the trans-- where was the equipment?

10 A. In the vault, I believe.

11 Q. And the vault is reserved for valuable things?

12 A. It's a locked room. It has all the old files and cases in there.

13 Q. Did there come a time when transcription started again in the big  
14 courtroom?

15 A. Once we moved into the big courtroom, there was a mistake made in  
16 the-- electricity outlets were not installed. We had just one outlet, so  
17 we ran an extension cord from my computer. So, it was a while  
18 before we started transcribing again once we got electric into this  
19 room, I'm not sure, maybe a couple of months. I'm not positive.

20 Q. Was the delay in transcribing because of the lack of electric or  
21 because the court had determined not to transcribe proceedings?

22 A. Due to the lack of electrical outlets.

23 Q. And has the court been recording since that time?

24 A. Yes, we have.

25 Q. No further.

(Pierce - Cross)

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THE REFEREE: This move, did it take place before or after October 7, 2008?

THE WITNESS: I believe it was before. Yes.

THE REFEREE: All right.

THE WITNESS: Or no. Before we moved? No, we were already moved in the courtroom when that took place.

THE REFEREE: So, you were in the new courtroom?

THE WITNESS: Yes.

THE REFEREE: And how is the transcription done? The transcription was working?

THE WITNESS: Not-- I'm not sure. I can't remember when the electricity was actually installed in there. I know we were-- I used an extension cord for a while for my computer. I'm not sure. But there wouldn't have been any transcriptions going on that evening anyways, because court wasn't being held. I was in there doing paperwork.

THE REFEREE: Well, what I'm speaking about is-- The accident was on October 8, 2008.

THE WITNESS: Okay.

THE REFEREE: And at that time, where were you working? Which court? Which room?

THE WITNESS: In the new courtroom.

(Pierce - Cross)

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THE REFEREE: In the new courtroom?

THE WITNESS: Mm-hmm.

THE REFEREE: And how long had you been in the new courtroom?

THE WITNESS: I real-- Honestly, I can't remember. I'm not good--

THE REFEREE: Some time? A week? A month?

THE WITNESS: Oh, yeah, at least a week. We've moved in late summer--

THE REFEREE: All right.

THE WITNESS: --early fall, so--

THE REFEREE: And what was the procedure as to the use of this recording equipment?

THE WITNESS: When the court was in session-- once the electric was installed, and the electrical outlets, when court was in session, the judge would run the digital recording.

THE REFEREE: So, your testimony is that after October 7, 2008, you were in a new courtroom, there was electricity, and the proceedings were being recorded.

THE WITNESS: I believe so.

THE REFEREE: Could anyone direct you-- or did anyone direct you to not record anything?

THE WITNESS: No. I don't-- I do not do the recording.

(Pierce - Cross)

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THE REFEREE: Who does the recording?

THE WITNESS: The judge does.

THE REFEREE: Okay. Good. Any more questions. Anybody?

MR. FARCHER: No more questions, your Honor. No.

MR. SONN: No, thank you.

THE REFEREE: Okay. Before we call the next witness--

MR. FARCHER: Yes.

MR. REFEREE: Can either of you tell me why we're going into the insurance claim? Whether or not it was paid or not?

MR. FARCHER: Yes, again your Honor, the point of the insurance claim is that Judge Evans has maintained that one of the basis for dismissing Mr. Bates' ticket was the payment of insurance claims.

THE REFEREE: Okay. All right. Next witness.

MR. FARCHER: At this time, your Honor, Commission counsel would call Officer Kent Smith.

THE REFEREE: Stay-- remain standing, please. Do you swear or affirm to tell the whole truth and nothing but the truth, so help you?

MR. SMITH: I do.

(Smith - Direct)

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KENT SMITH,

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

THE REFEREE: Okay. Be seated.

MR. FARCHER: Your Honor, please let the record reflect that Ms. Natoli is still in the room and she's also the attorney for Officer Kent Smith.

THE REFEREE: So noted.

DIRECT EXAMINATION

BY MR. FARCHER:

Q. Sir, would you please state your name and address for the record?

A. Kent Smith. 161 County Route 31, Norwich, New York.

Q. And are you currently employed, Mr. Smith?

A. Yes, I am.

Q. Okay. Could you tell us what it is you do?

A. My full-time job is with the New York State Unified Court System. I provide court security for Supreme Court judge. My two part-time jobs are with Chenango County Sheriff's Office and the Town of Norwich Court.

Q. Could you tell us when you started working at the Norwich Town Court?

A. Approximately '93 or '94.

Q. Okay. And while you're there, do you work with a particular judge?

A. Yes, I do.

(Smith - Direct)

1 Q. Could you tell us who that is?

2 A. The judge's name is David Evans.

3 Q. Is that the respondent in the room?

4 A. Yes, it is.

5 Q. Okay. Are there any other judges in that court?

6 A. Not at this time. No.

7 Q. Okay. Could you tell us when the last time there were more than one  
8 judge in that court?

9 A. I believe it was around 2003, 2004.

10 Q. Okay. Now, would you describe your duties while you were at the  
11 Norwich Town Court?

12 A. I provide security for Judge Evans and I call the calendar.

13 Q. Okay. Would you elaborate when you say call the calendar?

14 A. He hands me the case files or the docket, and I call the names and  
15 bring the people into the courtroom.

16 Q. Okay. So, if a defendant were to be called into the court, you would  
17 be the one to call his name?

18 A. That's correct.

19 Q. Okay. Are you generally present for all court proceedings?

20 A. With the exception of a few night-time arraignments.

21 Q. What about every day traffic matters? Would you be present for  
22 those?

23 A. Most of them until recently.

24 Q. When you say recently, can you be more specific?  
25

(Smith - Direct)

1 A. The judge changed his court hours and some of the traffic stuff is  
2 done before I arrive.

3 Q. When did that change occur?

4 A. I believe 2009.

5 Q. Okay. All right. Now, during court appearances, are you able to see  
6 who comes and goes from the courtroom?

7 A. Yes, I am.

8 Q. Officer Smith, have you ever visited the Norwich Town Court on an  
9 off court night?

10 A. Yes, I have.

11 Q. Okay. Could you tell us what's your purpose-- the purpose of your  
12 visit would be?

13 A. I stop in from time to time if it's quiet and visit with Mrs. Pierce, the  
14 court clerk, and have either a coffee or a soft drink.

15 Q. Okay. Could you tell us how often that occurs?

16 A. That all depends on my schedule at the sheriff's office and how busy it  
17 is.

18 Q. Okay. Now, are you familiar with David Daniels? Judge Daniels?

19 A. Yes, I am.

20 Q. Okay. Could you tell us how you're familiar with Judge Daniels?

21 A. He's a judge in the Town of Guilford in Chenango County.

22 Q. Okay. Have you ever appeared before him in the past?

23 A. Yes, I have and not really part of my career.

24 Q. Okay. Are you familiar with Larry Bates?

25 A. Yes, I am.

70.

(Smith - Direct)

1 Q. Could you tell us how you're familiar with Mr. Bates?

2 A. Early in my career I issued him a citation for a seat belt violation, and  
3 he's a local bus driver for the Norwich City Schools System.

4 Q. And how are you aware of that fact?

5 A. I've seen him driving the buses.

6 Q. Mr. Smith, did there come a point in time when Judge Daniels visited  
7 the Norwich Town Court with regard to Larry Bates?

8 A. Yes, he did.

9 Q. Okay. Could you tell us what happened?

10 A. I don't recall whether it was a court night or an off court night, but  
11 Judge Daniels came in with a laptop and a DVD player.

12 Q. Okay.

13 A. No, I'm sorry, not a DVD player, a DVD disc.

14 Q. Did Judge Daniels indicate who he was looking for?

15 A. He had asked if Judge Evans was around.

16 Q. Okay. And was Judge Evans present?

17 A. No. He wasn't.

18 Q. Could you tell us who was there?

19 A. Myself and Mrs. Pierce.

20 Q. All right. And what happened after Judge Daniels arrived with this  
21 laptop and this video?

22 A. He played the DVD for myself and Mrs. Pierce.

23 Q. And what did the DVD depict?

24 A. An accident.

25 Q. Do you know who was involved in the accident?

71.

(Smith - Direct)

1 A. At the time, I did not. No.

2 Q. If you could just describe what was on that video for us?

3 A. I don't recall it in detail other than that it was an accident.

4 Q. Okay. And what was Judge Daniels doing while this video was  
5 playing?

6 A. Narrating and talking.

7 Q. Okay. Did Judge Daniels indicate that the purpose of the video was to  
8 show that his driver was not at fault?

9 A. Not that I recall.

10 Q. After the video was concluded, what did Judge Daniels do then?

11 A. I don't know. I left early thereafter.

12 Q. Okay. Did Judge Daniels ever ask you to let Judge Evans know he  
13 had stopped by?

14 A. Yes, he did.

15 Q. Did you convey that message?

16 A. I don't recall.

17 Q. Did you ever tell Judge Evans that you had seen a video played by  
18 Judge Daniels?

19 A. I don't recall if I even told Judge Evans that Judge Daniels was  
20 looking for him.

21 Q. Did you ever discuss Judge Daniels' visit with Judge Evans at all?

22 A. Not that I recall.

23 Q. Okay. Mr. Smith, did Judge Evans ever say to you, "If he thinks I'm  
24 going to dismiss this, he's nuts?"

25 A. He did make that comment. Yes.

72.

(Smith - Cross)

1 Q. Okay. Could you tell us in what context that comment was made?

2 A. I don't recall the whole context of the conversation.

3 Q. Was it with regard to Mr. Bates' ticket?

4 A. I don't recall the context of the conversation.

5 Q. Do you know approximately when that statement was made in relation  
6 to Judge Daniels' visit?

7 A. A week, maybe two weeks.

8 Q. After?

9 A. Yes.

10 Q. Mr. Smith, you said you're present for pretty much all court  
11 appearances. Have you ever seen Mr. Bates appear in court?

12 A. No. I have not.

13 MR. FARCHER: No further questions, your Honor.

14 THE REFEREE: Direct. Redirect-- Cross.

15 MR. SONN: Thank you, your Honor.

16

17 CROSS EXAMINATION

18 BY MR. SONN:

19 Q. When Mr. Daniels was heard to-- well, excuse me, when Judge Evans  
20 was heard to have said, "If he thinks I'll dismiss this ticket, he must be  
21 nuts," you have no idea what ticket he was talking about?

22 A. No. I don't.

23 Q. And you have no idea who he was talking about that when he said, "If  
24 he thinks?"

25 A. No. I don't.

73.

(Smith - Cross)

1 Q. During the time that Mr.-- that Judge Daniels was present with the  
2 video, did you observe that he had a traffic ticket with him at the  
3 time?

4 A. No. I did not.

5 Q. Did he tell you he had a traffic ticket with him?

6 A. No. He did not.

7 Q. Were there traffic tickets about the office in piles?

8 A. I don't recall that.

9 Q. Okay. Was Faye doing her administrative duties at that time?

10 A. I don't recall.

11 Q. Was she processing tickets at that time?

12 A. I don't recall that.

13 Q. What was the substance of Mr. Bates' narration of the film? Do you  
14 recall?

15 A. Judge Daniels?

16 Q. Excuse me, Judge Daniels.

17 MR. FARCHER: Objection. Hearsay.

18 THE REFEREE: Sustained.

19

20 BY MR. SONN:

21 Q. Did he give you any-- Did Judge Daniels give you any message for  
22 Judge Evans?

23 A. Just that he'd stopped in.

24 Q. Okay. Not relating to any ticket?

25 A. No, sir.

74.

(Smith - Cross)

1 Q. Had he ever come in and relayed any information on any ticket that  
2 was pending in front of Judge Evans?

3 MR. FARCHER: Objection.

4 THE REFEREE: Overruled.

5  
6 A. I'm sorry, could you repeat the question?

7 Q. Did Judge Daniels ever come in and commented on any ticket that was  
8 pending before Judge Evans prior or subsequent to this night?

9 A. No.

10 Q. In the time that you have been in the courtroom, have you ever seen  
11 Judge Evans dismiss a ticket involving property damage without  
12 consulting the DA?

13 A. Not that I can recall.

14 Q. How do the defendants' tickets-- Are there various ways defendants'  
15 tickets might get to the judge?

16 MR. FARCHER: Objection, your Honor. This  
17 witness isn't qualified.

18 THE REFEREE: Sustained. What is the procedure  
19 by which tickets get to the judge?

20 THE WITNESS: The is a court--

21 THE REFEREE: Or is there a procedure?

22 THE WITNESS: Yes, sir.

23 THE REFEREE: And what is that procedure?

24 THE WITNESS: There is a court drop box located  
25 by the front door, there's the U.S. Postal Service, and

75.

(Smith - Cross)

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occasionally police agencies will slide them under the front door.

THE REFEREE: Continue.

BY MR. SONN:

Q. And of course, when the tickets are being dropped off at the drop box or in the mail, you don't know that it's the actual defendant doing that, do you?

A. No, sir.

Q. Are there times when tickets are disposed of without a person appearing?

MR. FARCHER: Your Honor, we just ask that we clarify which ticket we're talking about? The Uniform Traffic Ticket or the Simplified Information? There's two separate tickets, which one are we talking about?

THE REFEREE: Sustained.

MR. SONN: Okay. The traffic tickets known as Simplified Informations in which a person can-- well, okay, it's the Uniform Traffic Ticket is just another copy? Isn't it?

MR. FARCHER: No. One's the court's copy and one's the defendant's copy.

MR. SONN: Right. Okay.

(Smith - Cross)

1 BY MR. SONN:

2 Q. Regarding the Uniform Traffic Ticket-- you are familiar with them?

3 A. Yes, sir.

4 Q. Okay. And are there times that those are disposed of without the  
5 individual ever appearing?

6 A. If there's what's referred to as a fix-it slip with them, which is like a  
7 headlight violation, the officers issue--

8 THE REFEREE: What slip-- excuse me, what slip  
9 did you say?

10 THE WITNESS: In police terms, it's referred to as a  
11 fix-it slip. I don't know the proper state number for it.

12 THE REFEREE: What's it mean, between you and  
13 I?

14 THE WITNESS: What it means is that, for example,  
15 a headlight ticket, it is replaced and then it's inspected by  
16 either a police officer or a licensed garage. The slip is filled  
17 out.

18 THE REFEREE: If he fixes itself, the charge is  
19 dismissed?

20 THE WITNESS: Yes. The slip is filled out and then  
21 it's sent in to the court.

22 THE REFEREE: Okay.

23  
24 BY MR. SONN:

25 Q. You're aware that when a ticket is issued an individ-- a police agency

77.

(Smith - Cross)

1 has the choice of noting that the ticket is to be returned by mail or in  
2 person, or alternatively that the ticket must be returned, that the person  
3 must be appear in person. You're aware of that?

4 A. That's correct depending on the nature of the ticket.

5 Q. Right. And do you know with a Failure to Yield, a minor traffic  
6 ticket, would that require a person to appear in person?

7 A. No. They could handle it by mail.

8 Q. Mm-hmm. And as court personnel, what would be the impact on the  
9 court if everybody had to show on every ticket?

10 MR. FARCHER: Objection.

11 THE REFEREE: Sustained.

12

13 BY MR. SONN:

14 Q. Is this alternative for the convenience of the court?

15 A. I'm sorry, I don't understand what you're asking?

16 Q. Meaning the alternative, like return by mail, is that for the  
17 convenience of the court?

18 A. I have no idea, sir.

19 Q. Does that work for the benefit of the defendant as well?

20 THE REFEREE: I'm going to sustain those  
21 objections. It's irrelevant.

22 MR. SONN: No further questions at this time.

23 THE REFEREE: Thank you. Any redirect?

24 MR. FARCHER: Just briefly.

25

78.

(Smith - Redirect)

1 REDIRECT BY

2 MR. FARCHER:

3 Q. When you just referred to a fix-it ticket slip, are you referring to  
4 correctable offenses?

5 A. Yes.

6 Q. Okay. That's what you mean by a fix-it ticket slip?

7 A. Yes. I'm sorry. That's just police jargon that-- it's referred to as a  
8 fix-it ticket.

9 Q. Okay. No further questions, your Honor.

10 THE REFEREE: Okay. Next witness. Before you  
11 get the next-- Before we see the next witness, before I  
12 forget, are you both interested in stipulating to a certain set  
13 of facts?

14 MR. FARCHER: What facts?

15 THE REFEREE: On this matter.

16 MR. FARCHER: I think at this point, your Honor,  
17 we have the witnesses here. I would just assume call them  
18 and let them testify.

19 THE REFEREE: No, no. I'm saying, after the  
20 testimony.

21 MR. FARCHER: No. I mean that the Commission's  
22 position is that we would handle it by post-hearing  
23 submissions, briefs, and let your Honor decide the matter.

24 THE REFEREE: Okay, fine. Very good. Next  
25 witness.

79.

(Dunshee - Direct)

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MR. FARCHER: Your Honor, at this time counsel would call Assistant District Attorney Stephen Dunshee.

THE REFEREE: Raise your right hand, please. State your name.

MR. DUNSHEE: Stephen Dunshee.

THE REFEREE: And do you swear to tell the truth, the whole truth, and nothing but the truth?

MR. DUNSHEE: I do.

STEPHEN DUNSHEE, ESQ.

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

THE REFEREE: Be seated, please.

MR. FARCHER: Your Honor, will the record please reflect that Lisa Natoli has left the room with the last witness, Kent Smith.

DIRECT EXAMINATION

BY MR. FARCHER:

Q. Sir, I'm sorry, could you state your name and address one more time for the record?

A. Stephen Dunshee. D-U-N-S-H-E-E. Stephen, S-T-E-P-H-E-N. 43 East State Street, Sherburne, New York, S-H-E-R-B-U-R-N-E.

Q. Now, are you currently employed, Mr. Dunshee?

A. I am.

(Dunshee - Direct)

1 Q. Okay. Could you tell us a little about your employment?

2 A. At this time I'm a full-time first assistant district attorney. I've been  
3 appointed-- I've been employed and appointed the first assistant since  
4 2008, January. I joined the district attorney's office full-time. Before  
5 that I had a private law practice which I was with the district  
6 attorney's office three or four years. And before that I was an  
7 assistant public defender with a private law practice.

8 Q. Could you tell us what county it is that you're an assistant district  
9 attorney?

10 A. Chenango County. C-H-E-N-A-N-G-O.

11 Q. And how long have you been employed as an assistant Chenango  
12 County DA?

13 A. Probably overall, seven years.

14 Q. Okay.

15 A. That's a guess.

16 Q. And are you currently assigned to a certain number of courts?

17 A. Yes.

18 Q. Could you tell us how many?

19 A. Eighteen.

20 Q. I won't ask you to name them all but could you tell me is the Town of  
21 Norwich included in that list?

22 A. It is.

23 Q. And could you just describe your duties in the Norwich Town Court  
24 for us, briefly?

25

81.

(Dunshee - Direct)

1 A. I'm the prosecutor in the Town of Norwich, as the assistant district  
2 attorney.

3 Q. Okay. Does that include the handling or the dispositions of traffic  
4 tickets, traffic matters?

5 A. Traffic matters, misdemeanors, initial appearances on felonies, felony  
6 hearings, yes.

7 Q. Now, Mr. Dunshee, are you familiar with Judge David Evans?

8 A. I am.

9 Q. The respondent in the room? Do you appear before him?

10 A. Yes. Twice a month we have public defender ADA night, and then  
11 we have the ADA night with other attorneys. We do that to speed  
12 things up. I think we just began that within a year or two. Before we  
13 only had one ADA night. We used to go from 4:30ish until 8:30,  
14 9:00.

15 Q. So currently, you appear before Judge Evans? Twice a month, is that  
16 what you said?

17 A. Yes.

18 Q. Okay. And did you have any relationship with Judge Evans prior to  
19 appearing before him?

20 A. Before that, I represented him as retained counsel. In this  
21 organization we appeared from a letter from-- David Roosa wrote a  
22 crank letter and the Judic-- and this organization had some questions,  
23 and then followed up, and then had other questions. We came up  
24 here, we spoke to some people. You were located in another location,  
25

82.

(Dunshee - Direct)

1 so I represented him. I'm pretty sure I was paid by the town, I'm  
2 almost certain I was paid by the town--

3 Q. When you say this organization, you're referring to the Commission.  
4 You represented Judge Evans in a prior Commission proceeding?

5 A. Yes, sir.

6 Q. Okay. And you said you had accompanied him, for some testimony?

7 A. We-- I believe we stipulated to whatever occurred and then we got a  
8 letter and I wrote back that we accepted the position of the  
9 Commission.

10 Q. Okay. Do you remember approximately when that representation  
11 began?

12 A. I don't-- No. I don't.

13 Q. Mr. Dunshee, I'd like to show you what's been entered into evidence  
14 as Exhibit 3, if I could. Do you recognize that document, Mr.  
15 Dunshee?

16 A. Yes, Judge. I mean, yes, sir.

17 Q. Could you tell us what that is?

18 A. It's a Notice of Appearance. I must have filled out your form, the  
19 Commission's form, when I came up here.

20 Q. Okay, could you tell us what the date on that form is, sir?

21 A. Well, let me strike that. When I was sent some forms, I was asked to  
22 sign a Notice of Appearance. It's dated October 4, 2004. Judge  
23 Evans signed it and I signed it.

24 Q. Okay. Is it fair to say you were representing Judge Evans in 2004?

25 A. Yes.

83.

(Dunshee - Direct)

1 Q. Okay. Do you know when your representation of Judge Evans  
2 concluded?

3 A. Maybe end of 2007. I think I wrote a letter in January-- I don't  
4 remember.

5 Q. Okay.

6 A. I just don't remember the date.

7 Q. Let me just show you what's been entered into evidence as Exhibit 4,  
8 Mr. Dunshee.

9 A. Okay. That's a letter from me to the Honorable Goldman, dated  
10 January 5, 2009, where we accepted a letter from the Commission of  
11 Dismissal and Caution, and my representation ended December 16,  
12 2004. The letter is dated January 5th.

13 Q. The letter is dated January 5, 2005, is that correct?

14 A. Yes, sir. I'm sorry. Yes.

15 Q. So, is it fair to say that you had written that letter on behalf of Judge  
16 Evans, January of 2005?

17 A. Yes, sir. That's my handwriting.

18 Q. Okay.

19 A. Bad as it is.

20 Q. Can you tell us when you began appearing in the Town of Norwich  
21 Court as an assistant district attorney?

22 A. I think it was January of '08 when I began a full-time assistant. And  
23 the reason I wasn't assigned there before was, one, that was already an  
24 assistant district attorney and my representation of Judge Evans  
25 precluded me from being in his court as I represented him, and the

84.

(Dunshee - Direct)

1 position of the district attorney was and is that I had to wait at least  
2 two years.

3 Q. Okay.

4 A. So, it would have been three years-- two years and pretty close to  
5 three years.

6 Q. All right. And what did you base your opinion on the three-year  
7 period?

8 A. I did some research, found some cases.

9 Q. Okay.

10 A. I'm relatively sure I wrote a letter regarding that. I don't know what--

11 Q. So, was-- you were of the opinion that you had to wait at least two  
12 years before you could appear there?

13 A. Yes, sir. And it was over two years.

14 Q. Okay. And you did, in fact, wait three years?

15 A. Yes, sir. Yes, sir.

16 Q. Okay. After you began to appear, do you recall Judge Evans ever  
17 disclosing your prior relationship to the attorneys in his court?

18 A. Yes. He-- I saw him mention that several times and then it became  
19 less and less as time went on. And he didn't do it to everyone.  
20 Normally it was people who were unfamiliar with me or unfamiliar  
21 with a judge. Somebody out of the area.

22 Q. Mr. Dunshee, you gave us a prior statement didn't you?

23 A. Yes.

24 Q. Yes. In your prior statement you had testified slightly different,  
25 hadn't you?

85.

(Dunshee - Direct)

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THE REFEREE: Can you please read what he testified to? Do you have it?

MR. FARHER: Yes. Mr. Dunshee, and let me just-- David, I'm going to look at page 10 of Stephen Dunshee's prior transcript.

MR. SONN: Mm-hmm.

MR. FARCHER: On page 10 that line--

MR. SONN: Your Honor, I object, he's impeaching his own witness. I believe it's really inconsistent statements.

THE REFEREE: No. It's overruled.

BY MR. FARCHER:

Q. On line 1 with the question is, "Did Judge Evans ever disclose your relationship or was there the disclosure on your part? Answer: I don't remember Judge Evans saying anything." Question right below that, "Okay. So you made the disclosure, not Judge Evans? Answer: Right." Mr. Dunshee, do you remember giving--

A. Who's you? You is me or you is--

Q. Yes. No, the question is by me. "Did Judge Evans ever disclose your relationship or is the disclosure on your part? Answer--" It would be you, Mr. Dunshee-- "I don't remember Judge Evans saying anything. Question: Okay. So you made the disclosure and not Judge Evans. Answer: Right."

(Dunshee - Direct)

1 A. But, you know, since we had that conversation, I do remember the  
2 judge saying-- it was a *de minimis* amount.

3 MR. FARCHER: Okay. Your Honor, I move to  
4 strike the witness' testimony after that last answer.

5 THE REFEREE: Just now?

6 MR. FARCHER: Yes. It's not responsive, there's  
7 no question.

8 THE REFEREE: All right. Sustained. But that's  
9 not going to preclude Mr. Sonn.

10

11 BY MR. FARCHER:

12 Q. Mr. Dunshee, let me ask you a few questions about your handling of  
13 traffic tickets. Prior to consenting to reduce a defendant's ticket,  
14 could you tell us what you would generally require?

15 A. Generally require they produce an abstract of driving record for a  
16 couple of reasons. One, I can see if they have prior history of traffic  
17 infractions. Two, if in the future they get an Aggravated Unlicensed  
18 charge, it's almost impossible to prove with DMV that they knew they  
19 had or didn't have a license. So, that goes into the court record and  
20 it's offer approved. I don't normally do it with seat belts, that's a  
21 recent occurrence because there are so many seat belt tickets issued, it  
22 would just take too long. Tie everybody down.

23 Q. A driving abstract is what you--

24 A. Yeah. It's a DMV produced-- For \$10 they have to pay it, driving  
25 record to show what their record of the last three years is.

87.

(Dunshee - Direct)

1 Q. Would you generally speak to the defendant prior to agreeing to--

2 A. They either write me-- They write me a letter or they speak to me at  
3 court. I do 25 to 30 lett-- 20 to 30 letters a week just in my office  
4 answering. And when I go to night court, at the end of the regular  
5 court, after the criminal matters, the defendants will want to speak to  
6 me regarding tickets.

7 Q. All right. And Mr. Dunshee, what if a defendant is charged with a  
8 moving violation and under what circumstances would you agree to  
9 dismiss a moving violation?

10 A. I have to see their abstract. I'd have to get releases from the insurance  
11 companies, both of them, that there was no dam-- uncovered damages  
12 and most important, that the matter's settled. That the-- Let's say  
13 some defendant was in an accident and there's going to be a personal  
14 injury afterwards. No, no, no. I'm not settling that--

15 Q. Okay.

16 A. --because as you know, you can take *collateral estoppel* or *res*  
17 *judicata*-- you can take the results of a criminal matter and use it in  
18 civil court. So, I don't get involved in that.

19 Q. Okay. So, you said, in case there was an open personal injury claim,  
20 how would that affect your dismissal or reduction of a--

21 A. I wouldn't-- I wouldn't dismiss it. I probably wouldn't even reduce  
22 it.

23 Q. Okay.

24 A. I'd probably make him plea to it or have a trial.  
25

(Dunshee - Direct)

1 Q. And if an application to dismiss or reduce a ticket is going to be made,  
2 who would generally make that? Does the DA's office do that *sua*  
3 *sponte*, or does that have to come from the defendant? Who  
4 generally-- I'm sorry, let me just withdraw that. Who generally  
5 makes the request for a reduction or dismissal?

6 A. Defendant's lawyer or defendant.

7 Q. Okay.

8 A. Sometimes the court will have a pile of correspondence they get and  
9 the court will give it to me.

10 Q. Okay. And if you were to obtain an abstract or clearance from an  
11 insurance company, would you note that somewhere?

12 A. I don't obtain the abstract, the defendant obtains an abstract and when  
13 the defendant obtains the abstract, I look at their abstract, I compare it  
14 to what the infractions-- the traffic ticket's for, and then with a blue  
15 pen I'll write on the abstract, and then they use that for the court. I  
16 submit it to the court.

17 Q. And again, Mr. Dunshee, could you tell us what would be the purpose  
18 of obtaining the insurance confirmation that the matter had been  
19 settled. What's the point of that?

20 A. If it's a serious accident or if there's someone got hurt, I don't want to  
21 settle an insurance company's legitimate claim or be a part of that  
22 process. I'm out of that. If it's a serious matter and someone got hurt,  
23 then they probably should be prosecuted or have a trial.

24 Q. Mr. Dunshee, let me ask you if you're familiar with a man by the  
25 name of Larry Bates?

89.

(Dunshee - Direct)

1 A. No.

2 Q. Have you ever--

3 A. I saw him this morning.

4 Q. Okay. Prior to this morning, have you ever met Mr. Bates?

5 A. No. No.

6 Q. Have you ever spoken with Mr. Bates?

7 A. No. Not to my recollection.

8 Q. Are you aware that Mr. Bates was ticketed in October of 2008 for  
9 Failure to Yield Right of the Way?

10 A. Yes.

11 Q. Okay. Could you tell us when it was you became of that?

12 A. When you met with me last week.

13 Q. Okay. Were you aware of it prior to that?

14 A. No.

15 Q. To the best of your recollection, Mr. Dunshee, were you ever  
16 communicated-- did you ever have any communication with Judge  
17 Evans regarding Mr. Bates' ticket?

18 A. I don't remember it. He might-- I don't remember it.

19 Q. Okay. Were you aware that Mr. Bates' ticket was dismissed?

20 A. No.

21 Q. Were you ever provided notice by the Norwich Town Court that Mr.  
22 Bates' ticket was dismissed?

23 A. No.

24 Q. To the best of your recollection, Mr. Dunshee, did you consent to the  
25 dismissal of Mr. Bates' ticket?

90.

(Dunshee - Direct)

1 A. I don't remember doing anything with it.

2 Q. Does the district attorney's office have a file for Mr. Bates?

3 A. No.

4 Q. Does it have any records for Mr. Bates?

5 A. Just recently, January this year, we keep copies of the abstracts after I  
6 write on them and send them back to the defendants, or in court I'll  
7 keep a copy, make a copy, sometimes, but we don't normally keep  
8 copies of defendants'-- what happened with traffic tickets.

9 Q. Okay.

10 A. And we don't have one-- we don't have one on anyone and we don't  
11 have one on Mr. Bates.

12 Q. To the best of your recollection, did Mr. Bates ever provide you with a  
13 driver's abstract?

14 A. No. I never-- I don't ever remember meeting him or ever seeing his  
15 abstract.

16 Q. Ever provide you with proof that he had settled insurance matters--  
17 obtained insurance documents?

18 A. I don't remember talking to him at all.

19 Q. Okay. Did you ever speak specifically about this Mr. Bates matter  
20 with Judge Evans?

21 A. No.

22 Q. Did you ever specifically tell him that you had contacted an insurance  
23 company or obtained confirmation that insurance matters had been  
24 settled?

25

91.

(Dunshee - Direct)

1 A. I don't remember that. Let me just explain-- I do a lot of tickets. I do  
2 500 to 1,000 a year. And traffic tickets-- I do a lot. I just--

3 Q. Okay. Mr. Dunshee, do you recall ever contacting Mr. Bates'  
4 insurance company and obtaining an abstract on your own?

5 A. I-- Sometimes I'll-- No, I did not-- I don't recall obtaining an  
6 abstract for Mr. Bates and I normally as an assistant district attorney, I  
7 wouldn't have contacted the insurance company. That's not my job.

8 Q. Okay.

9 A. And I did not contact the insurance company for Mr. Bates.

10 Q. I've no further questions for this witness, your Honor.

11 THE REFEREE: Just one thing. When you say, "I  
12 don't remember," what does that mean? That you didn't?

13 THE WITNESS: I just-- I just don't know-- I don't  
14 remember--

15 THE REFEREE: You don't know?

16 THE WITNESS: Correct. I don't know.

17 THE REFEREE: Either way?

18 THE WITNESS: Yeah. Let me explain, Judge. I  
19 opened my big--

20 THE REFEREE: You don't have to explain. I  
21 know. That's all I wanted to know.

22 THE WITNESS: I opened my big trap before and I  
23 just have no recollection. I don't remember nothing about  
24 it.

25

92.

(Dunshee - Cross)

1 THE REFEREE: Okay. Fine. Cross.  
2

3 CROSS EXAMINATION

4 BY MR. SONN:

5 Q. Okay, Mr. Dunshee, you've testified you had-- you've had difficulty  
6 remembering the exact details--

7 A. About what?

8 Q. --rising out of the Bates ticket, in particular.

9 A. Yeah. I have no recollection of it.

10 Q. And just like you had also, if I could, you had a difficulty in  
11 recollection of exactly how the disclosure was handled of your prior  
12 relationship with the judge. In other words, your testimony has  
13 changed as you think more about it.

14 A. Yeah. That happens sometimes. Yes. That would be a fair statement.

15 Q. All right. So, sometimes somebody's first comment is more accurate  
16 because they are closer to the event, sometimes the later comment is  
17 more accurate because they've had more time to reflect on it?

18 A. Yes.

19 Q. To the best of your recollection and information at this point in time,  
20 you don't know what happened with the Bates ticket?

21 A. That's a pretty fair statement. Yes.

22 Q. Is it possible that you could have been consulted about this and  
23 responded to it?

24 MR. FARCHER: Object to what's possible, your

25 Honor.

93.

(Dunshee - Cross)

1 THE REFEREE: Overruled.

2

3 A. By whom? By the judge?

4 Q. Yes, by the judge.

5 A. It's possible.

6 Q. Because you say you have 500 to 1,000 cases and--

7 A. Anything's possible.

8 Q. Names get confused, you could have been responding.

9 A. I have a-- I have a very, very good memory.

10 Q. Mm-hmm.

11 A. But occasionally I'll make a mistake and say I never saw somebody,  
12 or never represented him-- I don't do that anymore. I look pretty  
13 stupid, so-- If I recollect, I do, if I don't, I don't. I just can't-- I don't  
14 have no-- I don't know.

15 Q. Okay. There have been other instances of moving violations being  
16 dismissed once you're satisfied both with the driver's abstract and the  
17 insurance?

18 A. Yes. If the abstract comes back and shows the defendant doesn't have  
19 a prior history and both insurance companies release and say there's  
20 no further action on this, there's-- They'll-- typically they'll say,  
21 "Personal property has been settled and there is no pend-- pending  
22 personal property action." And defendants always complain that  
23 that's impossible to get and they go to the insurance companies and  
24 they get the letter and I see it. So, it's not that impossible.

25

94.

(Dunshee - Cross)

1 Q. Okay. So, it is the defendant's responsibility to contact the insurance  
2 company. It's not yours?

3 A. Always. I never-- I don't-- I never remember, as a prosecutor,  
4 contacting an insurance company. I don't remember that. Obviously,  
5 some insurance companies will contact me regarding certain claims. I  
6 have no recollection of this Bates company calling. Mr. Bates or the  
7 other person contacting me.

8 Q. And not only is it your position that a ticket can be dismissed upon  
9 your recommendation of these circumstances, but also you've given  
10 the judge discretion if he's met those criteria?

11 A. I give-- I've given Judge Evans that discretion. I've given some  
12 judges that discretion. They come in and I'll say to them, "Judge, if a  
13 defendant comes in with an abstract and shows they have a clean  
14 record, not talking about a seat belt, and everything looks good, and  
15 the insurance is released, go ahead and take care of it." Some judges I  
16 don't because I don't trust them. Other judges that I've consented to I  
17 trust them blessedly. So, I do remember saying that to Judge Evans.

18 Q. Has that-- Has he ever exercised that discretion to your knowledge?

19 A. I'm sure he has. Yeah.

20 Q. To your knowledge, he has?

21 A. I really can't say. I didn't have any-- He'll say to me, somebody  
22 came in-- and I do have a vague recollection, somebody came in and I  
23 took care of that. He was clean and such and such. Okay. But it's  
24 very rare for them to do that. This year, probably no one does that.  
25 We don't do that anymore.

95.

(Dunshee - Cross)

1 Q. Have you changed your procedure?

2 A. No. The courts have-- The courts-- The judges have gotten more and  
3 more formal. They put everything on the record. They have a  
4 recorder in the courtroom where two years ago they didn't have that.  
5 In all the courts. So, no, I think the judges have gotten more formal  
6 and they want to have the district attorney-- the assistant district  
7 attorney's recommendation right then and there or they want to put it  
8 on the record.

9 THE REFEREE: When did that new procedure take  
10 place?

11 THE WITNESS: Last two or three years.

12 THE REFEREE: Give me a date, if you can.

13 THE WITNESS: '08. '09. I would say by '09  
14 everybody has one. Everybody uses them.

15 THE REFEREE: Okay.

16

17 BY MR. SONN:

18 Q. And you've been signing-- you said you signed the driver's abstracts,  
19 do you sign the tickets when they're dismissed now?

20 A. Sometimes I'll sign the tickets, some-- If it's a-- Sometimes I'll write  
21 in the margin of the ticket. If it's like a seat belt or something very  
22 innocuous-- a seat belt or if it's anything else, I'll sign the abstract.  
23 I'll say, "I consent this to reduce this Failure to Keep Right to an  
24 1110(A) or a 375.42, Unlawful Speedometer. Depends on the clean  
25 record and there's no other extenuating circumstances.

96.

(Dunshee - Cross)

1 Q. So, the driver's abstract is just the document you use to put your  
2 recommendation on to this part of the file.

3 A. Yes, it is. Yes. One-- Yes.

4 Q. Because there is no place on the ticket.

5 A. No. I do it again, for two reasons. One, so later on they can't prove  
6 that they didn't know they didn't have a license or they weren't  
7 involved in something. And then, two, the local judges have taken  
8 that, one judge calls it the "pen of God." It's a blue fountain pen  
9 that's hard to read, and now all the judges know it's my handwriting.  
10 A couple of months ago I had my secretaries do it, and the judges sent  
11 them back because they weren't signed by me. Okay. So, I sign them.

12 Q. And you're aware that it's not necessary for a defendant to appear in  
13 court under all circumstances. Isn't that correct?

14 A. Yes, I've learned that. Yes.

15 Q. Well, isn't that even set forth right on the Uniform Traffic Ticket?

16 A. Yeah. And it's also part of the vehicle and traffic law. One of the  
17 defense lawyers educated me on that. Defendants don't have to be in  
18 court to settle a ticket.

19 Q. Mm-hmm. And that works well for the efficiency of the court as well  
20 as the defendants, doesn't it?

21 A. Yeah. We'd be there until midnight if we--

22 Q. How is-- in the ordinary course, how do we get to either reduce or  
23 dismiss a ticket? Is it you alone, the judge alone?

24 A. Basically two ways. One, they write me a letter and they stack up on  
25 my desk in a big pile, and once a week, twice a week, I get to them.

97.

(Dunshee - Cross)

1 20 to 30 a week. Two, after we finish criminal court, eight-- seven,  
2 eight, 9:00 at night, the defendants come up to me and give me their  
3 spiel. They want a reduction. I tell them I want an abstract of driving  
4 record. A quarter or a half of them have the abstract, and I'll take out  
5 my pen and we'll talk and I'll see the ticket and I'll consent to reduce  
6 it.

7 Q. Mm-hmm.

8 A. Or they'll-- I tell them then you send me the letter at the DA's office  
9 or I'll meet you next month, right here with your abstract. I'm pretty  
10 insistent upon the abstract.

11 Q. Okay. So, the request typically would come from the defendant, that  
12 he wants a reduction?

13 A. All-- Defendant or defense lawyer. Yes.

14 Q. Right. Mm-hmm. And then you would consent to that and make a  
15 recommendation to the judge?

16 A. Yes. And sometimes the court-- I'll get to court and the court will get  
17 a letter of some *ex parte* letters that the defendant wrote the judge and  
18 asked for a reduction and they'll say, "Mr. Dunshee, I got a pile of six  
19 letters here, can you look at these?" So, that happens, too.

20 Q. Is there ever a formal motion where, you know, the defendant actually,  
21 or the defendant's attorney actually moves the court for a disposition?

22 A. Yeah. Once or twice. Once or twice every two years. Yeah.

23 Q. Mm-hmm.

24 A. Mostly it's that informal process that I just mentioned.  
25

(Dunshee - Cross)

1 Q. Mm-hmm. And that's the equivalent of a motion as far as the  
2 procedure?

3 A. Sure.

4 Q. Did you advise Judge Evans that it was not necessary for him to  
5 disclose the relationship after a couple of years? You represented  
6 Judge Evans. After a couple of years had passed and you were then  
7 going to become the assistant district attorney prosecuting in his court,  
8 did you advise him it wasn't necessary to make disclosure to other  
9 attorneys?

10 A. I don't remember that. I remember telling him that I had to wait two  
11 years before I could come back in his court. Before I could appear in  
12 his court. And why I would appear in his court is because he has a  
13 very busy court and I'm the first assistant so it's expected I'm  
14 supposed to-- that's not a problem-- do most of the workload. I don't  
15 remember ever telling him that. I just don't recall.

16 Q. Okay. And you advise various attorneys?

17 A. Yes.

18 Q. And you testified that he did as well.

19 A. That he did what?

20 Q. That he also advised on occasion of the conflict?

21 A. Yeah. I know-- I know that was an unfair change in my testimony,  
22 but after I thought about it or when the question came up, I thought  
23 about it and yeah, I do remember somebody saying something. But,  
24 maybe I could be wrong. I don't-- I have a recollection for a very  
25 brief time, maybe I didn't but the judge might have said something to

(Dunshee - Cross)

1           somebody. The judge-- Evans is very cautious especially when we  
2           get somebody out of the area, new to the area. He introduces  
3           everybody, makes sure he knows who's who, why they're there in the  
4           room, etcetera.

5    Q.    Mm-hmm. Now you gave Judge Evans discretion that you may not  
6           have given other judges?

7    A.    Yes.

8    Q.    What's your opinion of Judge Evans?

9                           MR. FARCHER: Object.

10                          THE REFEREE: Whoa. Sustained. You got a  
11                          double question, this. Rephrase your question.

12

13   BY MR. SONN:

14    Q.    Do you find Judge Evans to be a fair and cautious judge?

15                           MR. FARCHER: Object.

16                          THE REFEREE: Sustained.

17

18   BY MR. SONN:

19    Q.    Do you have any concerns with any matters that are handled in  
20           Judge's-- in Judge Evans' court?

21                           MR. FARCHER: Again, object.

22                          THE REFEREE: Sustained.

23

24

25

100.

1 MR. SONN:

2 Q. You are very cautious about reducing or dismissing tickets that have  
3 property damage involved?

4 A. Property or personal injury, correct.

5 Q. Okay. Why, again is that?

6 A. Somebody gets hurt and there's a lot-- there's civil liability attached.  
7 If they get a criminal conviction in a criminal court, you could use that  
8 in a civil court. A civil court conviction obviously you can't use in a  
9 criminal court, so I don't want to make some mistake and settle a case  
10 that there's serious physical injury or serious property damage, by me  
11 going, "Yeah, dismissed." I want to make sure I know all the facts.

12 Q. Mm-hmm. But when it is appropriate, you do?

13 A. Yes.

14 Q. Nothing further.

15 THE REFEREE: I have a question. How long have  
16 you been an ADA in front of Judge Evans?

17 THE WITNESS: Since January of '08.

18 THE REFEREE: And do you have any knowledge  
19 as to his reputation for honest and principled work?

20 THE WITNESS: Yes.

21 THE REFEREE: And what is that?

22 THE WITNESS: He is absolutely honest. Doesn't  
23 do anything afoul. He has a solid Christian position. I find  
24 him to be-- any-- He doesn't exaggerate, he always tells  
25 the truth.

(Hon. David J. Evans)

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THE REFEREE: Okay.

THE WITNESS: Judge, could I have a drink of water?

MR. SONN: Do you trust me?

THE REFEREE: Watch out, there's no cover on it. Any redirect?

MR. FARCHER: None, your Honor.

THE REFEREE: Okay. Thank you. You folks-- go ahead.

THE WITNESS: Thank you.

MR. FARCHER: We don't need Mr. Dunshee, Faye Pierce, or Kent Smith any longer, do we? Can we excuse them?

MR. SONN: No. Sure.

MR. FARCHER: Thank you.

THE REFEREE: How many more witnesses do we have?

MR. FARCHER: I have three, Judge.

THE REFEREE: That's it?

MR. FARCHER: That's all I have. I have three more.

THE REFEREE: And we're finished?

MR. FARCHER: I don't know.

MR. SONN: Well, and Mr. Evans.

(Hon. David J. Evans)

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MR. FARCHER: Oh, yes. We have three witnesses, we have admissions, and Judge Evans' testimony.

THE REFEREE: All right. You want to continue? Does anybody want a break?

MR. FARCHER: Leave it up to your discretion, your Honor.

THE REFEREE: No. No. I'm asking you. I'm no dictator.

MS. CENCI: Five minutes?

THE REFEREE: Five minutes. Take a five minute break.

(OFF THE RECORD)

MR. FARCHER: Your Honor, before I call my next witness, I'd like to make an application. Our next witness is Judge Daniels, the respondent in the companion matter, and I would like to make an application to have him treated as a hostile witness. I would like the ability to use leading questions with Judge Daniels. He's the respondent in the related matter to this and I have a few cases with me that say where you call the respondent, he should be treated as a hostile witness.

THE REFEREE: Put them on the record, please.

(Hon. David J. Evans)

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MR. FARCHER: Sure. Your Honor, I would cite *Jordan v. Parrinello*, it's an Appellate Division case, 144 AD 2d 540.

THE REFEREE: What department?

MR. FARCHER: That's out of the Second Department. *Marzuillo v. Isom*, that's another Appellate Division case, Second Department, year 2000. The cite is 277 AD 2d 362.

THE REFEREE: Department?

MR. FARCHER: Second Department as well, your Honor. And I have a Appellate Division, First Department case here, *Myers v. New York City Transit Authority*, 50 AD 3d 263 854. It's an odd citation. 263, I apologize. 50 AD 3d 263. I would like to take a moment to look at those, also--

THE REFEREE: What department?

MR. FARCHER: That's the First Department. I would also rely on *Richardson on Evidence*.

THE REFEREE: Which says? Put it on the record.

MR. FARCHER: One moment, your Honor. *Richardson on Evidence* says, quote, "A hostile witness conceals as much and reveals as little of the truth as conscience--"

THE REFEREE: Whoa. Just go slower, please?

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MR. FARCHER: Sure. "As a hostile witness conceals as much and reveals as little of the truth as conscience or skill will permit, there's little danger of coloring the witness's testimony by suggesting the desired answers." And again, your Honor, I would submit that Judge Daniels is a hostile witness. He's the respondent in this companion matter facing a finding of misconduct.

THE REFEREE: Okay. What you have-- What you're going to have to do is when you reach a point, you make an application to me to declare him a hostile witness, and then you can cross examine.

MR. FARCHER: Thank you, your Honor.

THE REFEREE: You have any problem with that?

MR. SONN: No, I agree with that procedure, your Honor. We-- It's his witness, he should rely upon his witness until such time as he's proven hostile.

MR. FARCHER: Well, again, that's my argument. There should be a presumption that he is hostile before having to make a showing that he is a hostile witness. And that's where these cases stand, where there's a presumption that he's going to be a hostile witness.

MR. SONN: Well, I find it hard-- I mean, you bring somebody as your witness knowing they're going to be hostile and then declaring them hostile before they even testify. I mean if it's a hostile witness why are you--

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THE REFEREE: My thinking is that the witness's testimony is very important--

MR. SONN: Yes.

THE REFEREE: --for the court to make a decision, while at the same time, I have to be careful to make sure that the finding of a hostile witness is in fact, the fact.

MR. FARCHER: Correct.

THE REFEREE: And then I would allow cross-examinations. So, Mr. Farcher, I'm warning you, at the beginning should not be any cross-examination.

MR. FARCHER: Okay. Absolutely, your Honor. Like I said, if I could just rely on *Jordan v. Parrinello*, the Second Department case, and it says, quote, "Adverse party is called as a witness it may be assumed that such party is a hostile witness." And that's the presumption I'm operating under.

THE REFEREE: It's a rebuttable presumption.

MR. FARCHER: Okay.

THE REFEREE: It's not--

MR. SONN: We're talking about an adverse party in another matter.

MR. FARCHER: Well again, Judge Daniels is the adverse party in the companion matter that's related to this.

THE REFEREE: Yeah. I'm taking all that into consideration.

(Daniels - Direct)

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MR. FARCHER: Okay. At this time, your Honor, then Commission counsel would call Judge David P. Daniels.

THE REFEREE: Okay. Is he coming with his attorney? That's good. That answers my concern. Gentlemen? Judge Daniels, would come here, please and remain standing? Raise your right hand. Do you swear or affirm that you will tell the truth, the whole truth, and nothing but the truth, so help you?

JUDGE DANIELS: I will.

DAVID P. DANIELS,

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

THE REFEREE: Be seated, please. State your name for the record.

THE WITNESS: David Daniels

MR. FARCHER: Your Honor, I would ask that the record reflect that also in the room with us is Scott Clippinger, the attorney for Judge Daniels.

THE REFEREE: Yes. So noted.

MR. CLIPPINGER: How are you, Judge?

THE REFEREE: Good.

MR. CLIPPINGER: Good to see you.

(Daniels - Direct)

1 DIRECT EXAMINATION

2 BY MR. FARCHER:

3 Q. Judge, I'm sorry, for the record, will you just give us your name and  
4 business address?

5 A. I'm David Daniels. My home address is 678 Wahlberg Road,  
6 Norwich, New York.

7 Q. Now, are you currently employed, Judge Daniels?

8 A. Yes, I am.

9 Q. Could you describe your employment for us?

10 A. I'm employed with Norwich City Schools, director of transportation.

11 Q. Okay. And do you also carry another position? Are you employed in  
12 any other capacity?

13 A. I work for the Town of Guilford as a judge.

14 Q. Okay. And if you could just describe your duties with regard to being  
15 the director of transportation for the Norwich School District.

16 A. Arranging safe transportation for all my kids.

17 Q. Okay. Do you have oversight with regard to the bus drivers that are  
18 there?

19 A. Repeat, please?

20 Q. Do you--

21 A. I'm having trouble hearing you.

22 Q. Sure. Sure. Do you have oversight with regard to the bus drivers?

23 THE REFEREE: Hold on a minute. Could you,  
24 Judge, turn around, please, and get that closer to your  
25 mouth, like a popstar?

108.

(Daniels - Direct)

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THE WITNESS: Is that better?

THE REFEREE: Yeah.

BY MR. FARCHER:

Q. Let me repeat that question. Are you responsible for overseeing the bus drivers who work for the Norwich City School?

A. That is correct.

Q. Okay. And Judge Daniels, are you familiar with a man by the name of Larry Bates?

A. Yes, I am.

Q. Okay. Could you tell us how long you've worked for him-- worked with him?

A. Roughly 20 years. A little better.

Q. Okay. And are you currently his supervisor?

A. That's correct.

Q. And how long have you been his supervisor for?

A. Six years.

Q. Do you submit reviews on Mr. Bates' performance?

A. Yes.

Q. Okay. And how often does that happen?

A. Yearly.

Q. All right. And who does Mr. Bates report to at work?

A. Myself.

Q. I want to direct your attention to October 7, 2008, Judge. Were you made aware of an automobile accident?

(Daniels - Direct)

1 A. Yes.

2 Q. Okay. Were you called down to the scene?

3 A. Yes.

4 Q. Okay. And who did the call come from?

5 A. It came from my bus driver.

6 Q. Okay. And who's that?

7 A. That would be Larry Bates.

8 Q. All right. Did you go out to the scene?

9 A. Yes, I did.

10 Q. All right. And when you got to the scene, did you observe what was--  
11 what had occurred there?

12 A. I observed what was left over.

13 Q. Okay. And what did you observe?

14 A. I had one of my buses parked behind another vehicle.

15 Q. Okay. When you say parked was-- Let me withdraw that. When you  
16 say parked, could you be more specific?

17 A. They were pulled off to the right side of the roadway.

18 Q. Okay. Was there an accident?

19 A. Yes.

20 Q. Okay. Did you see any damage to the bus?

21 A. No.

22 Q. Was there damage to the other car?

23 A. Yes.

24 Q. Could you tell us where the damage on the other car was?  
25

(Daniels - Direct)

- 1 A. Behind the right rear wheel to the-- behind the right rear wheel back  
2 toward the taillight.
- 3 Q. Okay. Now, did you check for injuries?
- 4 A. Yes.
- 5 Q. And, after you checked for injuries, did you help get the kids on their  
6 way?
- 7 A. I had another unit there to transfer the kids over.
- 8 Q. At some point, were the State Police notified?
- 9 A. Yes.
- 10 Q. And did the State Police arrive on the scene?
- 11 A. Yes.
- 12 Q. Did you talk with anyone from the State Police?
- 13 A. No more than normal.
- 14 Q. Do you recall the crux of your conversation with the State Police?
- 15 A. No, I don't.
- 16 Q. Okay. Was Mr. Bates ticketed?
- 17 A. Yes.
- 18 Q. Could you tell us what he was ticketed for?
- 19 A. I believe, Improperly Entering an Intersection.
- 20 Q. It's your recollection that Mr. Bates was ticketed for Improperly  
21 Entering an Intersection?
- 22 A. That's correct.
- 23 Q. Let me show you what's been marked-- Let me show you what's been  
24 marked and entered into evidence as Exhibit 1. Just take a look at that  
25 last page, Judge. Do you recognize that document?

111.

(Daniels - Direct)

- 1 A. I've seen it-- similar.
- 2 Q. Okay. Could you tell us what that is?
- 3 A. Standard vehicle and traffic ticket.
- 4 Q. And who was that issued to?
- 5 A. Larry Bates.
- 6 Q. All right. And can-- By looking at the front of that ticket, can you tell  
7 what he was charged with?
- 8 A. Failure to Yield Right of Way at an Intersection.
- 9 Q. Okay. So, is it fair to say Mr. Bates was ticketed for Failure to Yield  
10 the Right of Way?
- 11 A. That's what you just said.
- 12 Q. Right. I'm asking you. Is that what--
- 13 A. That's what this indicates. Yes.
- 14 Q. Okay. Thank you. I'll take that back from you, Judge. Now Judge, at  
15 the scene of the accident, who did the State Police hand that ticket to?
- 16 A. I do not know.
- 17 Q. Okay. Did there come a point in time when Mr. Bates gave that ticket  
18 to you?
- 19 A. Yes.
- 20 Q. Okay. Do you know when that ticket was returnable?
- 21 A. No, I do not.
- 22 Q. Was it returnable in the Norwich Town Court?
- 23 A. I believe so. Yes.
- 24 Q. When did Mr. Bates give you that ticket, Judge Daniels?
- 25 A. When we were en route for drug and alcohol testing.

112.

(Daniels - Direct)

- 1 Q. Okay. And at the time he gave you that ticket, what did he say?  
2 A. Not much of anything.  
3 Q. Okay. Did you ask him for that ticket?  
4 A. No. I did not.  
5 Q. All right. Did you notice whether or not Mr. Bates had entered a plea  
6 on his ticket?  
7 A. No. I did not.  
8 Q. Have you seen tickets like that before?  
9 A. Yes.  
10 Q. Okay. The place to enter a plea is right on the front of it?  
11 A. Yes.  
12 Q. Okay. You didn't notice if Mr. Bates had pled guilty or not guilty?  
13 A. I did not look at it.  
14 Q. What was the purpose of you taking the ticket?  
15 A. I just held onto it until we got through the drug and alcohol testing at  
16 that time.  
17 Q. Okay. And after that, what happened to the ticket?  
18 A. It was placed in his file.  
19 Q. All right. Did there come a point in time when you delivered the  
20 ticket to Norwich Town Court, Mr.-- Judge--  
21 A. Yes.  
22 Q. How long after the accident was that?  
23 A. That I can't answer. Whatever the due date was.  
24 Q. Was it a day after the accident? A week after the accident? Two  
25 weeks?

113.

(Daniels - Direct)

1 A. More than that.

2 Q. General time frame. A month?

3 A. I don't know, 10 days, 12 days. I don't know.

4 Q. When you say the due date--

5 THE REFEREE: He said it was at the time the  
6 returnable date. Around that time.

7

8 BY MR. FARCHER:

9 Q. Around the returnable date of the ticket?

10 A. Yes.

11 Q. Okay. Did you offer to deliver Mr. Bates' ticket to the Norwich Court  
12 for him?

13 A. Yes, I did.

14 Q. Okay. Now, Judge, if Mr. Bates had wanted to plead not guilty, how--  
15 what were his options for doing that?

16 A. Same as anybody else.

17 Q. Okay. And what are those options?

18 A. He'd had to run in and, you know, enter the plea, put it in writing,  
19 contact the ADA, contact the judge.

20 Q. Okay. Is it fair to say that Mr. Bates could have pled not guilty either  
21 by mail or in person?

22 A. That's correct.

23 Q. That's the proper procedure, correct?

24 A. As far as I know.

25

114.

(Daniels - Direct)

- 1 Q. And if he wanted to plead guilty, he would have to do that by mail or  
2 in person as well. Isn't that correct?
- 3 A. That is correct.
- 4 Q. You're not an attorney, are you, Judge?
- 5 A. No, I'm not.
- 6 Q. You couldn't represent Mr. Bates on this matter?
- 7 A. No, I would not.
- 8 Q. So, any action that you might have taken for him in a court would be  
9 improper. Is that correct, Judge?
- 10 A. I didn't take any action.
- 11 Q. Judge, would the Town of Norwich-- let me withdraw. As a Guilford  
12 Town Justice, does your court need the defendant's copy of a ticket to  
13 proceed on a matter?
- 14 A. No, to have jurisdiction.
- 15 Q. Doesn't the court have its own copy?
- 16 A. Yes, it does.
- 17 Q. Can't you proceed on that copy of the ticket?
- 18 A. Yes, I can.
- 19 Q. Judge, let me have you take a look at this Uniform Traffic Information  
20 one more time. Judge, looking at Exhibit 1, the Uniform Traffic  
21 Ticket that was issued to Larry Bates. On the right side is the location  
22 to enter a plea of guilty or not guilty. Is that correct?
- 23 A. That is correct.
- 24 Q. Okay. Looking at Mr. Bates'-- a copy of Mr. Bates' ticket, was a plea  
25 entered on that ticket?

115.

(Daniels - Direct)

1 A. I do not see it on here.

2 Q. Okay. So, is it fair to say there was no plea entered on that ticket?

3 A. On this one, yes.

4 Q. Okay. What would be the purpose of delivering a ticket to a court  
5 with no plea on it?

6 A. I didn't look at it. I just delivered it.

7 Q. What good is a ticket-- Judge, if you were to receive a ticket in your  
8 court with no plea on it, what good is that to you?

9 A. I would normally send it back to him.

10 Q. All right, Judge, let me move to the date that you traveled to the  
11 Norwich Town Court. You said it was around the time of the return  
12 date of the ticket?

13 A. Yes.

14 Q. Okay. When you arrived that night was court in session?

15 A. No. It was not.

16 Q. Okay. Now, could you tell us who was at the court when you got  
17 there?

18 A. His court clerk, I don't know what her name is, and a deputy.

19 Q. Okay. Is the court clerk Faye Pierce?

20 A. What's that?

21 Q. Court clerk Faye Pierce?

22 A. Faye-- I don't know her last name.

23 Q. Okay. Do you know which deputy it would be? Do you know who  
24 that is?

25 A. Smith.

(Daniels - Direct)

1 Q. Kent Smith? Was there anyone else there?

2 A. No.

3 Q. Okay. Now, when you got to the court you delivered Mr. Bates'  
4 ticket, didn't you?

5 A. Yes. I did.

6 Q. Who did you deliver the ticket to?

7 A. I put it on the desk.

8 Q. Did you tell Ms. Pierce you were delivering the ticket?

9 A. No. I did not.

10 Q. Did you hand it to Ms. Pierce?

11 A. No. I did not.

12 Q. Was Ms. Pierce aware that you were bringing the ticket there?

13 A. That I can't answer.

14 Q. Did you leave a note for Judge Evans indicating you had left him a  
15 ticket?

16 A. No. I did not.

17 Q. Okay. Now, after you delivered Mr. Bates' ticket, you talked to Ms.  
18 Pierce for a little bit?

19 A. That's correct.

20 Q. Okay. Did you discuss the Bates case?

21 A. No. I did not.

22 Q. Did you discuss the accident?

23 A. Yes. I did.

24 Q. Okay. You described the recording equipment?

25 A. Yes. I did.

117.

(Daniels - Direct)

1 Q. Number of cameras?

2 A. There was four.

3 Q. Types of lenses, angles, that type of stuff?

4 A. Mm-hmm.

5 Q. Okay. Did you ask Ms. Bates and Mr. Smith if they wanted to see a  
6 video of Mr. Bates' acc-- I'm sorry, I'm going to withdraw. Did you  
7 ask Ms. Pierce and Mr. Smith if they wanted to see a video of a bus  
8 accident?

9 A. Yes. I did.

10 Q. Okay. Was that the Larry Bates bus accident?

11 A. That is correct.

12 Q. Okay. Did you happen to bring that--

13 MR. SONN: Your Honor, I believe we're moving  
14 into--

15 THE REFEREE: Yeah. We're getting close. Go  
16 ahead.

17

18 BY MR. FARCHER:

19 Q. Where was that video contained?

20 A. It was out in my car on the laptop.

21 Q. Okay. And what'd you do?

22 A. I went out and got it.

23 Q. Okay. And then after you brought the laptop back in, what happened?

24 A. I just run that short clip.

25 Q. And what was on that clip? What did it depict?

118.

(Daniels - Direct)

- 1 A. Just showed the bus colliding with the vehicle. This was new  
2 technology. I was pretty excited. We just got the darned things.
- 3 Q. Judge, the video that you showed, did it relate to the ticket that you  
4 had just delivered?
- 5 A. I'm not sure what you're asking on that?
- 6 Q. Judge, who was involved in the video?
- 7 A. The video?
- 8 Q. Yes.
- 9 A. It showed the bus driver.
- 10 Q. Who was the bus driver?
- 11 A. Larry Bates.
- 12 Q. Okay. And who's ticket did you deliver that evening?
- 13 A. That was Larry Bates.
- 14 Q. Okay. When you showed the video was the district attorney there?
- 15 A. No. He was not.
- 16 Q. The defense attorney?
- 17 A. I don't even know who they are for that court.
- 18 Q. Okay. Was Mr. Bates--
- 19 A. There was nobody in there but Faye, his court clerk.
- 20 Q. And the deputy?
- 21 A. And the deputy.
- 22 Q. Okay. Have you ever shown that video to the district attorney's  
23 office?
- 24 A. No. I have not.
- 25 Q. To the State Police?

119.

(Daniels - Direct)

1 A. No.

2 Q. To the other party of the accident, Harold Hill?

3 A. No.

4 Q. Did you ever turn over a copy to the district attorney's office?

5 A. No.

6 Q. Did you ever preserve a copy?

7 A. No.

8 Q. What happened to that video, Judge Daniels?

9 A. Once I knew that the insurance company had covered the damages on  
10 the car and stuff, it was deleted.

11 Q. How long after you showed the video to Faye Pierce, did you delete  
12 it?

13 A. I'm going to say probably 12, 15 days.

14 Q. Is that before or after Mr. Bates' ticket was dismissed?

15 A. That I do not know.

16 Q. Did you narrate while the video was playing, Judge Daniels?

17 A. Yes.

18 Q. Did you ever convey to Faye Pierce that the video showed Larry Bates  
19 wasn't at fault?

20 A. Quite the opposite. That showed definitely that our driver was fault.

21 Q. Have you ever played any other videos in that court, Judge Daniels?

22 A. No. I have not.

23 THE REFEREE: Did you just say the video showed  
24 that your driver was at fault?

25 THE WITNESS: Yes. I did.

120.

(Daniels - Direct)

1 THE REFEREE: Okay. Continue.

2

3

BY MR. FARCHER:

4

Q. Have you ever shown any other videos in that court, Judge Daniels?

5

A. No. I have not.

6

Q. Is this the only one?

7

A. That's correct.

8

Q. Have you ever demonstrated the bus recording equipment in that court at any other time?

9

10

A. No. I have not.

11

Q. This is the only time?

12

A. That's correct.

13

Q. Did you ever ask the court clerk to let Judge Evans know you stopped by?

14

15

A. When I was leaving I probably said to her-- like any of us would, I probably would have said, "Hey, let Mr. Evans know I was here."

16

17

Q. Did you ever ask the court deputy to let Judge Evans know you had stopped by?

18

19

A. No.

20

Q. Judge, have you spoken to Judge Evans about this matter?

21

A. No. I have not.

22

Q. Have you since spoken to him since the Commission's investigation began?

23

24

A. On one occasion.

25

Q. Okay. Could you describe that for us?

121.

(Daniels - Direct)

1 A. Yeah. We were at the gas station, he says, "I don't know if I dare  
2 shake your hand."

3 Q. Okay.

4 A. That was the extent of it.

5 Q. All right. Did you ever sign a notarized statement for Judge Evans?

6 A. Yes. I did.

7 Q. Okay. Attesting to the fact that you and him haven't discussed the  
8 Bates matter?

9 A. No. What it said was, the notarized one from the insurance company  
10 saying that the coverage had been taken care of.

11 Q. Judge, I'm sorry, you signed a notarized state-- Well--

12 A. I signed a statement from the insurance carrier stating that the damage  
13 to that vehicle had been taken care of.

14 MR. FARCHER: May I have one moment, your  
15 Honor? Just to find something in a file. Your Honor, could  
16 I have one moment just to make a copy of a document?

17 THE REFEREE: Okay. I'm going to take a break,  
18 anyway.

19 MR. FARCHER: All right.

20 THE REFEREE: So, you folks do that and I'll be  
21 back.

22 (OFF THE RECORD)

23

24

25

(Daniels - Direct)

1 BY MR. FARCHER:

2 Q. Judge Daniels, you signed a notarized statement on behalf of Judge  
3 Evans, didn't you?

4 A. Can I see a copy of it to recollect?

5 Q. Let me show you what's being marked for identification as Exhibit 1.  
6 Oh, sorry, Exhibit 7.

7 THE REFEREE: That's 7?

8 MR. FARCHER: Yes.

9  
10 BY MR. FARCHER:

11 Q. Judge, do you recognize that document?

12 A. Yes. I do.

13 Q. Could you tell us-- Did you write that?

14 A. I did not write it.

15 Q. Okay. Is your signature on the bottom of that?

16 A. That is correct.

17 Q. All right. You stand by what that says?

18 A. Yes. I do.

19 Q. Okay. Could you describe the circumstances under which that was  
20 created?

21 A. I was called and asked to stop in on that-- and sign a statement stating  
22 that we had had no communications as far as that case goes.

23 MR. FARCHER: Your Honor, I would move to  
24 have Exhibit 7 admitted into evidence.

25 THE REFEREE: Any objections?

123.

(Daniels - Direct)

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MR. SONN: No.

THE REFEREE: Okay. It's admitted.

BY MR. FARCHER:

Q. Tell me about the circumstances under which that was created, Judge Daniels. You said you were called? Who called you to come down and create that statement?

A. Mr. Evans.

Q. Okay. Judge Evans contacted you?

A. Yes.

Q. And where did you go to complete that statement?

A. To the Norwich Town Hall.

Q. Who was there while you were filling that out?

A. I can't answer that.

Q. Was it just you and Judge Evans?

A. No.

Q. Okay. And that stat--

A. There were several persons there and I don't know who they are.

Q. Okay. Could you tell us when that was?

A. No. I can't.

Q. Was the date on that statement?

A. The date on here, August 11th.

Q. What year is that?

A. 2009.

(Daniels-Direct)

1 Q. Okay. Was that at the time Judge Evans was under investigation by  
2 the Commission?

3 A. I have no idea on that part.

4 Q. Were you under investigation by the Commission at that time?

5 A. That I don't know.

6 Q. Judge, you communicated with Judge Evans after the fact. You filled  
7 out a statement indicating that you never had any *ex parte*  
8 communication with him with regards to Mr. Bates.

9 A. That's correct.

10 Q. But you never communicated with him prior to that about the Mr.  
11 Bates incident?

12 A. No, I did not.

13 Q. That's the first communication you've ever had with him about Mr.  
14 Bates?

15 A. That's correct.

16 Q. Judge, when you said you had delivered Mr. Bates' ticket, you said  
17 you had put it on the desk. Could you tell us-- Can you be more  
18 specific, whose desk?

19 A. I'm not sure. There was two desks. Court clerk was to my immediate  
20 left of the desk here. I placed it there.

21 Q. Did you place it at the desk that the court clerk was at?

22 A. No.

23 Q. The other desk?

24 A. That's correct.  
25

125.

(Daniels-Cross)

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MR. FARCHER: I have no further questions at this time, your Honor.

THE REFEREE: Any questions?

MR. SONN: Yes. Thank you, your Honor.

THE REFEREE: Fine.

CROSS-EXAMINATION

BY MR. SONN:

Q. You've testified you're Larry Bates' supervisor?

A. That's correct.

Q. Okay. Do you have any other relationship with him? Are you friends, relatives?

A. No.

Q. Are you obligated to him in anyway?

A. No.

Q. Are you concerned for him as a fellow driver having a traffic ticket?

A. No.

Q. Are you-- Now you've testified you're not aware of what the charge was, actually?

A. At that time I was not.

Q. Okay. Did you think that it was a significant ticket at the time?

A. No.

Q. Were there any other tickets issued at that time?

A. Not to my knowledge.

Q. Did you tell him you'd take care of the ticket?

(Daniels-Cross)

1 A. No. I told him I would deliver it down to the court because I was  
2 going down to the court that night. I was working with the court clerk  
3 on the new SEI program.

4 Q. Now you're aware that the ticket can be presented to the court either  
5 by mail or in person?

6 A. That's correct.

7 Q. Okay. Is it customary for a person to substitute mail for personal  
8 delivery?

9 A. On occasions.

10 Q. They do it in your court?

11 A. Yes, they do.

12 Q. Do you have a means for that or a drop box or?

13 A. Yes.

14 Q. Okay. And you can't tell when that's being dropped off if it's by the  
15 defendant or some--

16 A. --No, I have no way.

17 Q. Then you don't care as long as you get the ticket?

18 A. Nope, that's correct.

19 Q. Did you tell Mr. Bates the conclusions you drew from that video?

20 A. Definitely.

21 Q. And what were your conclusions?

22 A. Car got hid behind his mirrors or somewhere. He stopped and started  
23 into the intersection and hit the other vehicle. He was definitely in the  
24 wrong.

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127.

(Daniels-Cross)

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THE REFEREE: Are you saying Bates was in the wrong?

THE WITNESS: Yes.

BY MR. SONN:

Q. Are there occasions when a ticket will be reduced or dismissed even if the individual is wrong?

A. It happens, yes.

MR. FARCHER: Object, your Honor, to "occasions." Be more specific.

THE REFEREE: Just be a little more specific, if you can.

BY MR. SONN:

Q. Have you in coordination with the district attorney dismissed tickets on prior occasions when the individual actually committed the offense?

A. Um-hmm. Yes.

MR. FARCHER: Again, object, your Honor. Move to strike. It's irrelevant.

THE REFEREE: Yeah, I'm going to strike that, and I think you need to sharpen up the question.

BY MR. SONN:

Q. There are on occasion equitable considerations in dealing with tickets?

(Daniels-Cross)

1 A. Yes, there is.

2 Q. And those equities might cause either a reduction or a dismissal?

3 A. Yes, they could.

4 Q. In this particular case, you observed property damage?

5 A. That's correct.

6 Q. Would you dismiss such a ticket without discussing it with the district  
7 attorney?

8 MR. FARCHER: Objection, your Honor.

9 THE WITNESS: Without having--

10 THE REFEREE: Overruled.

11 THE WITNESS: Without having all of the specifics,  
12 I can't make a statement on that.

13 THE REFEREE: What does that mean, Judge?

14 THE WITNESS: In other words, not knowing. You  
15 asked me hypothetically what-- if I would reduce or deliver  
16 a ticket. I didn't know what the circumstances were.

17 THE REFEREE: All right. Go on.

18

19 BY MR. SONN:

20 Q. Okay. Even if there's property damage, you may not consult with the  
21 district attorney?

22 A. Um-hmm.

23 Q. Would you expect another judge to dismiss a ticket without  
24 discussing--

25 A. --I can't speak for another judge.

129.

(Daniels-Cross)

1 Q. Would you have expected Judge Evans to discuss-- dis--

2 A. I can't speak for him.

3 MR. FARCHER: Objection, your Honor.

4

5 MR. MR. SONN:

6 Q. Did you ask him to--

7 THE REFEREE: I'm going to sustain that question.

8

9 A. Repeat that.

10 Q. Did you ask Mr. Evans to dismiss that ticket?

11 A. No, I did not.

12 Q. Did you show Mr. Evans a video?

13 A. No, I did not.

14 Q. Did you have any thoughts or concerns that night where you had both  
15 the ticket from Larry Bates and the video--

16 MR. FARCHER: --Objection as to his thoughts and  
17 concerns.

18 THE REFEREE: Sustained. Be more specific.

19

20 BY MR. SONN:

21 Q. What was the purpose of showing the video?

22 A. I was just excited about this new technology. We just got it. Never  
23 before have we had something that, you know, was verifiable  
24 evidence.

25

130.

(Daniels-Cross)

- 1 Q. And did that relate in any way to the ticket you were delivering that  
2 night?
- 3 A. No, it did not.
- 4 Q. Did you tell Faye Pierce where you put that ticket that night?
- 5 A. No, I did not.
- 6 Q. Did you tell Officer Smith where you put that ticket that night?
- 7 A. No.
- 8 Q. There were other tickets where you placed it?
- 9 A. I have no idea. There was normal clutter. I'm going to call it clutter.  
10 I'm not sure what those are.
- 11 Q. Did you ever follow up with Judge Evans regarding the disposition of  
12 the ticket?
- 13 A. No, I did not.
- 14 Q. Did you communicate to Larry Bates the ticket had been dismissed?
- 15 A. No, I did not.
- 16 Q. Did you ask Faye Pierce to deliver any message to the judge regarding  
17 the Faye-- regarding the Larry Bates ticket?
- 18 A. No, I did not.
- 19 Q. Did you convey any message to Deputy Smith that you wanted  
20 conveyed to the judge?
- 21 A. No, I did not.
- 22 Q. Did you ever expect special handling for that ticket?
- 23 A. No.
- 24 Q. Would you expect special handling for any ticket by Judge Evans?
- 25 A. No. No.

131.

(Daniels-Redirect)

1 Q. No further.

2 THE REFEREE: Judge, when you-- Do you have  
3 any redirect?

4 MR. FARCHER: Briefly, your Honor, but--

5 THE REFEREE: Go ahead. Go ahead.

6

7 REDIRECT EXAMINATION

8 BY MR. FARCHER:

9 Q. Judge Daniels, when you displayed that video, what was on that  
10 video?

11 A. As far as?

12 Q. What was on the video? Was it just the Larry Bates accident?

13 A. That's all. About a three second clip.

14 Q. This isn't a continuous-- continually running camera?

15 A. Yes.

16 Q. The only portion of the video you displayed was the accident?

17 A. That's correct.

18 Q. And you said you haven't displayed any other videos?

19 A. That's correct.

20 Q. And you also said when you placed the ticket, you testified you placed  
21 it in clutter?

22 A. I just put it on his desk.

23 Q. With-- Again, when you say you put it on the desk, was there any  
24 note? Did you leave any note that you had left the ticket--

25 A. --No, no.

132.

(Daniels-Redirect)

1 Q. Any indication that you had left the ticket there?

2 A. No.

3 Q. You said "the desk," do you know whose desk it is?

4 A. No, I don't. When I said earlier, there's a desk on the right where the-  
5 - because I'm facing on the left, which is where-- The court clerk,  
6 anyway-- I can't think of her name-- was at the other desk was here.

7 Q. So you placed the ticket on the desk next to the court clerk's desk?

8 A. That's correct.

9 MR. FARCHER: Nothing further, your Honor.

10 THE REFEREE: Judge, when you-- Any recross?

11 Any recross?

12 MR. SONN: No, thank you.

13 THE REFEREE: Judge, when you showed the  
14 video, you said it showed that the driver was at fault?

15 THE WITNESS: That's correct.

16 THE REFEREE: Okay. When you delivered the  
17 ticket summons to the court--

18 THE WITNESS: Okay.

19 THE REFEREE: --between the time that you had it  
20 in your hand to the time that you delivered it, did you ever  
21 read it?

22 THE WITNESS: No, I did not.

23 THE REFEREE: Okay. Thank you.

24 MR. FARCHER: I have nothing further for the  
25 judge, your Honor.

133.

(Gallagher-Direct)

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THE REFEREE: Okay. It's 1:00. What would you like to do?

MR. SONN: I have two witnesses, your Honor.

THE REFEREE: You can go, judge. Thank you.

MR. FARCHER: Well, we'll probably take about 15 to 20 minutes each.

THE REFEREE: Let's do it.

MR. FARCHER: This way they can get on their way home--

THE REFEREE: Yeah.

MR. FARCHER: --rather than make them wait an hour for us to each lunch. Thank you, Scott.

MR. CLIPPINGER: Judge, thank you very much.

THE REFEREE: Take care of yourself.

MR. FARCHER: Your Honor, at this time the Commission will call Joe Gallagher.

THE REFEREE: Joe Gallagher. Hi, Mr. Gallagher. Raise your right hand, please. Do you swear or affirm that the testimony you will give today will be the truth, and the whole truth and nothing but the truth?

MR. GALLAGHER: I do.

JOSEPH GALLAGHER,

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

(Gallagher-Direct)

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THE REFEREE: Be seated, please. State your name and address?

THE WITNESS: Joe Gallagher, 535 East Albany Street, Herkimer, New York, 13350.

THE REFEREE: Thank you. Go ahead.

MR. FARCHER: Your Honor, would the record please reflect that Mr. Clippinger, the attorney for Judge Daniels, has also left the room as well.

DIRECT EXAMINATION

BY MR. FARCHER:

Q. I'm sorry, sir. Would you state your name and address one more time? I missed it.

A. Joe Gallagher, 535 East Albany Street, Herkimer, New York.

Q. Okay. And are you currently employed, Mr. Gallagher?

A. Yes.

Q. Okay. Could you tell us where it is you're employed?

A. Utica National Insurance.

Q. And what is it that you do for Utica National Insurance?

A. I'm a claims supervisor.

Q. How long have you been employed as a claims supervisor?

A. Supervisor, about two and a half years.

Q. Okay. And what exactly is it that you do as a claims supervisor?

A. I have three people that work in my unit. Basically, I review their work, give direction on claim files where need be.

(Gallagher-Direct)

1 Q. When you say you review their work, are you still involved in their  
2 claims?

3 A. Yeah. I keep what you call a diary on their claims, basically check the  
4 file every two weeks to a month, somewhere in there just to see the  
5 progress on claims. So I don't do the hands-on handling, you know,  
6 calling people, taking statements, things like that. But if I see a need  
7 for a direction or documentation in a file and basically give a message  
8 to the claim rep handling it to follow up.

9 Q. And, Mr. Gallagher, could you explain or describe the relationship  
10 between Utica National and the Norwich School District?

11 A. Norwich School District is insured with Utica National. I believe we  
12 have a package policy with them, meaning that we'd have their  
13 property coverage, auto coverage, general liability coverage.

14 Q. Would that include insuring their buses in case of a bus accident?

15 A. Yes.

16 Q. And if one of Norwich School District's bus drivers had an accident,  
17 would they contact you?

18 A. They or their agent would file a claim.

19 Q. You said, "their agent." In this case, could you tell us who Mang  
20 Insurance is?

21 A. I know they're located out of Norwich, and I believe they are the  
22 agent of record for the school district.

23 Q. Okay. And just to be clear because it's a little confusing. I know it  
24 was for me. Could you describe how it works between Utica National  
25

(Gallagher-Direct)

- 1 and Mang Insurance in this case with the Norwich School District  
2 being the insured?
- 3 A. Basically, you know, agent-based insurers, a lot of times what they'll  
4 do if they have any type of claim, they'll contact their agent first rather  
5 than calling the-- like a 1-800 number to report a claim. So they'd  
6 report it to the agent, the agent in turn fills out a loss accord basically  
7 to-- basic information on it and would fax or e-mail it into our  
8 company, which would start the process of us opening a claim,  
9 assigning a claim number and a claim rep to investigate whatever  
10 happened.
- 11 Q. So just to be clear, Mr. Gallagher, the Norwich School District would  
12 be the insured?
- 13 A. Um-hmm.
- 14 Q. Mang would be the agent?
- 15 A. The agent.
- 16 Q. And your company, Utica National, would be the carrier?
- 17 A. Correct.
- 18 Q. Okay. Now if the agent in this case, Mang, wanted information  
19 regarding a pending claim, where would that information generally  
20 come from?
- 21 A. For different accounts, they can come different ways. I mean, they  
22 can always call anybody at the-- anyone in the claims department to  
23 ask a specific question. They can-- Most agents have the ability for  
24 certain accounts to run, you know, like, claim runs to see, like, what  
25 claim activity there's been in the last year, you know, basically a

137.

(Gallagher-Direct)

1 computer program where they can type in for a policy period or from a  
2 certain date to a certain date. And they can get a run for open claims,  
3 how much has been paid on a claim, things like that.

4 Q. So let's-- If a bus accident were to occur, then can you tell me the  
5 process of how you would open a claim, what would happen?

6 A. In a case like this, like I said, they would send that loss accord in. It  
7 gets put into what we call a bucket, a first notice of loss bucket, where  
8 a claim supervisor like myself reviews the general information,  
9 decides which claim rep to assign it to, and basically we send a note to  
10 the home office department, you know, like data processing, to say,  
11 you know, "Set up this claim with a collision line of business or  
12 property damage line of business and assign it to this specific rep."

13 Q. All right. Let me direct your attention to a specific accident, Mr.  
14 Gallagher, that occurred in 2008. The driver would have been Larry  
15 Bates, and I believe the claimant would have been Harold Hill. Do  
16 you recall a claim coming into your office with regard to Larry Bates?

17 A. I mean, I don't recall this specific claim at this point, other than, you  
18 know, looking at it recently.

19 Q. Was your office made aware of a claim regarding Larry Bates and  
20 Harold Hill?

21 A. Yes, that I know that we had a claim for them.

22 Q. And who in your office was that claim assigned to?

23 A. Marie-- It may have been Merrick at the time. It's Marie Bussonnais  
24 now.

25 Q. And again, what is your relationship with Ms. Bussonnais?

138.

(Gallagher-Direct)

1 A. She's one of the claim reps that works in my unit.

2 Q. Are you her supervisor?

3 A. I'd be her supervisor, yes.

4 Q. Okay. So she would-- Well, let me actually withdraw that. So who  
5 would handle the day to day with regard to that-- with regards to  
6 Larry Bates'?

7 A. That would be Marie's.

8 Q. Okay. And what would your role be in that ?

9 A. Like I stated before, just-- What I normally have is like two weeks  
10 after the claim is open, there'll be a diary set for me to just check on  
11 the progress of the claim and give any direction--

12 THE REFEREE: Mr. Farcher, excuse me, but can  
13 we get to what the disposition of this claim was?

14 MR. FARCHER: Getting there right now, judge.

15

16 BY MR. FARCHER:

17 Q. Mr. Gallagher, can you tell us when that claim was filed?

18 A. I think it was shortly after the accident. It was the date of loss, '08,  
19 October '08.

20 Q. Okay. Let me show you what's been marked and entered into  
21 evidence as Exhibit 6. Take a look at that and see if that refreshes  
22 your recollection.

23 A. Okay. The first note on the file is the note, like I said, that we send to  
24 the home office to set it up.

25 Q. Could you tell me when that claim was filed?

139.

(Gallagher-Direct)

1 A. That would have been October 7, 2008.

2 Q. And could you tell us what type of claim it is?

3 A. I believe it was opened as-- let's see. So there was no collision  
4 coverage on the vehicle, so it was probably opened as property  
5 damage only for the other vehicle.

6 Q. Okay. And were any other claims later added?

7 A. Having gone through this, I know that about a short time after the  
8 claim was originally opened, the driver of the other vehicle mentioned  
9 to Marie that he was sore and thinking about going to get treated. So a  
10 request was made to open up a what you call a sub-claim, a second  
11 line of business for the same claim so that Marie could monitor the  
12 potential of a bodily injury claim.

13 Q. So the second claim would have been a bodily injury claim?

14 A. It was-- Yeah, monitoring for a potential. He didn't retain an attorney  
15 or file a notice of claim or anything, but he mentioned his treating.

16 Q. And when did that monitoring of a potential bodily injury claim  
17 begin?

18 A. It's like on October 13, 2008, he had called Marie, and so she had that  
19 line of business open so she could monitor his treatment.

20 Q. Can you tell us what the disposition or what happened to the property  
21 damage claim?

22 A. I know we accepted liability, appraised the damages to the other  
23 vehicle and paid for the claim.

24 Q. Do you know when that property damage was paid?  
25

140.

(Gallagher-Direct)

1 A. It looks like, according to the notes, it would have been paid on or  
2 about October 27, 2008.

3 Q. And do you know what happened to the bodily injury claim?

4 A. Basically he had collected-- looks like she collected records, had a  
5 couple more contacts with him at which point he had said he wasn't  
6 treating anyone, was okay. She actually closed the file and then after  
7 the file was closed, I know the carrier for the other vehicle had paid--  
8 I forget the exact-- like \$170.

9 Q. Mr. Gallagher, when did-- When does it indicate-- under the notes  
10 there, indicate Mr. Hill stopped treating?

11 A. When she spoke to him on March 5<sup>th</sup> of '09, he said, you know,  
12 through a couple of contacts in between when he first talked about it  
13 where he said he was still treating and was starting to go down to  
14 about once a month in which she spoke to him on March 5<sup>th</sup> of '09, he  
15 said he hadn't treated.

16 Q. You looking at the first page of that document?

17 A. Yes. Said he hadn't treated it since January of '09.

18 Q. So by looking at the document is it fair to say Mr. Hill was obtaining  
19 treatment until at least January of '09?

20 A. That's what the note did say, yep.

21 Q. Now, Mr. Gallagher, are any records kept with regard to contact  
22 made? If someone were to contact you during an open claim, would  
23 there be a record of that?

24 A. Most any activity that's germane to the file, you know, these notes.  
25 You're basically jotting down your day-to-day activity in the file and

141.

(Gallagher-Direct)

1 your intentions of what you're going to do next, you know, like a plan  
2 of action. So most any correspondence that would come into the file  
3 would be recorded in this.

4 Q. Can those records be changed or altered?

5 A. When you put a note in yourself, you can change it that same day.  
6 After over night, you can't change it. Nobody can change any note  
7 that you do. So you can only change your own notes for basically the  
8 first 24-- not even 24 hours. As soon as midnight passes, then the  
9 notes can't be changed.

10 Q. So after that business day, they can't be changed?

11 A. After the business day, they can't be changed at all.

12 Q. With regard to Mr. Bates' claim, do you know if your office was ever  
13 contacted by the district attorney's office?

14 A. In the notes in this, I don't see that we ever were.

15 Q. Were you ever contacted by a local court, a Norwich Town Court?

16 A. I'm sure I wasn't.

17 Q. Okay. Do the notes indicate there was any contact with regard to that  
18 claim?

19 A. No.

20 Q. What about the Norwich Town Court staff?

21 A. Nope.

22 Q. What about the state troopers? Any contact from the state troopers?

23 A. Nope.  
24  
25

(Gallagher-Cross)

1 Q. Just a few more questions, Mr. Gallagher. Mr. Gallagher, does your  
2 office provide confirmation that insurance claims have been settled to  
3 defendants in traffic matters?

4 A. Yeah, we get requests for-- lots of times for whether or not we  
5 accepted liability and disposition of the claim or the current status of  
6 the claim. A lot of times claims can still be open when someone is  
7 going for a traffic ticket. But basically, we'll write simple letters  
8 saying the status of the claim, whatever it would be at that point.

9 Q. So the form of that confirmation would be a letter?

10 A. Yeah.

11 Q. Okay. Is there any indication that that was done in this case?

12 A. No.

13 MR. FARCHER: No further questions, your Honor.

14 THE REFEREE: Cross?

15 MR. SONN: Yes, please. Thank you, your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. SONN:

19 Q. How many claims-- You have-- You're a claims supervisor, correct?

20 A. Um-hmm.

21 Q. And you have three persons working for you?

22 A. Correct.

23 Q. And how many claims are you processing at any given time?

24 A. Like how many open claims are there at one time? As we sit here  
25 right now, there's probably about 400.

143.

(Gallagher-Cross)

- 1 Q. Has there ever been-- And you've been a claims supervisor for three  
2 and a half years?
- 3 A. I said two and a half, I believe.
- 4 Q. Two and a half.
- 5 A. I've been with Utica National about four and a half.
- 6 Q. Has there ever been a time when an inquiry has failed to get recorded?
- 7 A. I'm sure that could happen, yeah.
- 8 Q. Just to get straight here. I wasn't sure how this was going to--  
9 Norwich School is the insured?
- 10 A. Correct.
- 11 Q. And Mang is the agent, and you're the carrier?
- 12 A. Correct.
- 13 Q. Who pays the agent?
- 14 A. The agent I believe they get out of a premium. However many  
15 premium dollars, they get a percentage of that.
- 16 Q. Right. So in other words, Utica Mutual pays the agent?
- 17 A. Out of the premium, yes.
- 18 Q. They're your agent for selling insurance?
- 19 A. Correct.
- 20 Q. They're not Norwich's agent for finding-- for placing insurance?
- 21 A. I can't really speak to the relation with Norwich. I don't know if they  
22 have a relation. But basically, they're intermediary.
- 23 Q. They work for you. Well, they're your agency. They combined you,  
24 correct? They're your agent, legal agent. You pay them a premium.
- 25 A. I don't hand that portion. They make money on renewals. They make

144.

(Gallagher-Cross)

1 money on placing insurance. It's a business relationship. They get  
2 paid their money.

3 Q. Now who would be-- If the Norwich School District places the  
4 insurance with Mang and then they place it with you, who would be  
5 the first place that you would expect Norwich School to contact  
6 regarding status of insurance?

7 A. Most people have a relationship with their agents because they're  
8 local agents, so most people, businesses contact their local agent first.

9 Q. And you said that Marie Bussonnais, she really handles the day-to-day  
10 activity?

11 A. On this particular claim, yeah.

12 Q. Okay. And your information on this claim is through the records you  
13 have before you?

14 A. Correct.

15 Q. You've had no personal contact with either Mang or with Norwich  
16 School District or with the Larry Bates in this matter?

17 A. On this particular claim, I-- no, I don't think so.

18 Q. The property damage which was the original claim, that was closed on  
19 October 27. Is that correct?

20 A. I believe so, yes.

21 Q. You don't know when the ticket was dismissed?

22 A. No.

23 THE REFEREE: When did you say the property  
24 claim was--

25 THE WITNESS: Closed?

145.

(Gallagher-Redirect)

1 THE REFEREE: --closed.

2 THE WITNESS: October 27, 2008.

3  
4 BY MR. SONN:

5 Q. And really, your business is insurance, correct? You're not defense  
6 counsel or involved in any kind of claims, litigation?

7 A. No, I've been in insurance claims for years.

8 Q. So you have no interest in the traffic tickets?

9 A. No.

10 Q. You don't monitor those, find out the disposition of them?

11 A. No.

12 Q. And the fact that, you know, Utica Mutual was never advised of this  
13 disposition is nothing out of the ordinary?

14 A. No, no.

15 Q. In fact, it's common?

16 A. Yeah, no, no. Probably more common place.

17 MR. SONN: No further.

18 MR. FARCHER: Just one question on redirect.

19  
20 REDIRECT EXAMINATION

21 BY MR. FARCHER:

22 Q. Mr. Gallagher, can you tell us whether or not a payment was actually  
23 made on the personal injury?

24 A. There was no bodily injury claim filed. And the notes here, it doesn't  
25 get into the final disposition. I think I was going to mention there was

146.

(Gallagher-Redirect)

1 loss transfer, a reimbursement of medical bills was paid to the other  
2 driver's insurance company. They submitted 170 some dollars, which  
3 I-- insurance law, I think it's Section 5105. If one of the vehicles is  
4 over 6,500 pounds, they have a right to collect back medical bills.  
5 And so that was done at some point after the file was originally  
6 closed.

7 Q. Does that indicate that Mr. Hill had medical bills?

8 A. Yes, that his no-fault carrier, you know, paid 170 some dollars in  
9 medical bills and then eventually submitted to us for reimbursement,  
10 which we paid. So we reopened the file long enough to pay that bill.

11 THE REFEREE: So, what-- I'm sorry. Go ahead.

12

13 BY MR. FARCHER:

14 Q. So when was the personal injury line actually closed out?

15 A. In terms of not expecting any actual bodily injury, that's when she  
16 spoke to him, March 5<sup>th</sup> of '09.

17 Q. March 5<sup>th</sup> of '09?

18 A. He had not filed a notice of claim against the school district. He had  
19 stopped treating, so the file was closed without any payment.

20 MR. FARCHER: Nothing further, your honor.

21 MR. SONN: May I?

22 THE REFEREE: Go ahead.

23

24

25

147.

(Gallagher-Recross and Redirect)

1 RE CROSS EXAMINATION

2 BY MR. SONN:

3 Q. So there was no notice of claim, so there was no personal injury claim  
4 filed?

5 A. Correct.

6 Q. And there was no subsequent litigation or anything?

7 A. No.

8 Q. It was just under the no fault?

9 A. Yeah, he had the no fault, like I said, from our end--

10 Q. Medical was covered.

11 A. --we opened the bodily injury sub-claim to monitor for potential.

12 Q. Um-hmm. For protection.

13 A. It doesn't mean they're actually pursuing. We'd rather know what is  
14 going on than to be blindsided months down the line.

15 MR. FARCHER: One more question, your Honor.

16 THE REFEREE: Okay, go ahead.

17

18 REDIRECT EXAMINATION

19 BY MR. FARCHER:

20 Q. If you know, Mr. Gallagher, how long does the claimant have to file a  
21 notice of claim?

22 A. Ninety days by statute.

23 Q. Okay. Would a PI-- No further questions.

24 THE REFEREE: Any questions?

25 MR. SONN: No. Thank you.

148.

(Gallagher-By The Referee)

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THE REFEREE: Does that report on your desk indicate whether or not a letter was sent to anyone that the claim was satisfied?

THE WITNESS: Nowhere in these notes does it mention a letter, no.

THE REFEREE: Is it part of your business practice that when there's a claim such a letter goes out that the claim has been satisfied?

THE WITNESS: No. We wouldn't normally send out a letter unless it was requested.

THE REFEREE: So someone has to request it?

THE WITNESS: Correct.

THE REFEREE: Does that file show that there was a request?

THE WITNESS: No.

THE REFEREE: Okay. Okay. Thank you.

MR. FARCHER: I have just one more witness, your Honor, Marie Bussonnais.

THE REFEREE: Okay. Hi. Please remain standing and raise your right hand. Do you swear to tell the truth or affirm to tell the truth so help you God?

THE WITNESS: Yes.

THE REFEREE: Thank you. Have a seat.



(Bussonnais-Direct)

1 Q. Does liability include personal injury, Ms. Bussonnais?

2 A. Yes.

3 Q. And how long have you been employed in the capacity?

4 A. Handling claims, you mean?

5 Q. Yes.

6 A. Probably about six or seven years.

7 Q. Ms. Bussonnais, the questions I have for you are about a specific  
8 accident, a specific claim. So I'm going to direct your attention to  
9 around October of 2008--

10 A. Um-hmm.

11 Q. --a claim involving Larry Bates, a bus driver for the Norwich City  
12 School District and the claimant would be Harold Hill. Do you recall  
13 that claim?

14 A. Yes.

15 Q. Okay. Can you tell us who that claim was assigned to in your office?

16 A. It was assigned to me.

17 Q. All right. And if you could, just give us a little of the detail about the  
18 claim?

19 A. I believe our insured driver, Mr. Bates, had pulled out into an area  
20 while the claimant was driving by. He failed to yield the right of way  
21 and hit the rear end of his vehicle.

22 Q. Okay. Do you know when that claim was filed?

23 A. It was in I believe October of 2008.

24 Q. Do you know the date that the claim was filed, Ms. Bussonnais?

25 A. The date of the accident itself?

151.

(Bussonnais-Direct)

- 1 Q. Okay.
- 2 A. I think it was the 7<sup>th</sup> or something like that.
- 3 Q. Ms. Bussonnais, let me just have you take a look to what's been  
4 entered into evidence. I'm sorry.
- 5 A. Right here?
- 6 Q. That's Exhibit 6. Are you familiar with that document?
- 7 A. Yes.
- 8 Q. Okay. Could you just tell us what that is?
- 9 A. This is just a photocopy of the remarks from the file.
- 10 Q. Okay. And just because there's a little bit of confusion, when you  
11 read those remarks, where do you start? Do you start on the front?
- 12 A. You would start way back here.
- 13 Q. You start at the back page and--
- 14 A. You start at the bottom and go up.
- 15 Q. Okay. Looking at that form, can you tell us the date that the claim  
16 was filed?
- 17 A. It looks like it was entered into our system on October 7<sup>th</sup>.
- 18 Q. Do you know who filed that claim?
- 19 A. I can't tell from looking here, but I believe it was our insured.
- 20 Q. And what type of claim was filed?
- 21 A. It was an automobile.
- 22 Q. Property damage?
- 23 A. Property damage.
- 24 Q. All right. Was any other type of claim later added?
- 25 A. We added a bodily injury line later for potential only.

152.

(Bussonnais-Direct)

1 Q. Could you tell us when that was added?

2 A. I think maybe a week later possibly, somewhere around there.

3 Q. If you look at Exhibit 6, could you be specific with the date?

4 A. Sure. It would be on October 13, 2008.

5 Q. What page are you on there, Ms. Bussonnais?

6 A. I am on page 6.

7 Q. Okay. You said-- I'm sorry. What was the date again, October 13?

8 A. October 13.

9 Q. And can you tell us when the property damage--

10 THE REFEREE: Excuse me. What year?

11 THE WITNESS: 2008.

12 THE REFEREE: Okay. Go ahead.

13

14 BY MR. FARCHER:

15 Q. Can you tell us when the property damage was closed?

16 A. The property damage was closed on October 27<sup>th</sup>.

17 Q. All right. And the next question will be, when was the bodily injury  
18 claim closed?

19 A. Bodily injury, I believe that was in March-- March 11, 2009.

20 Q. Okay. Which page are you on?

21 A. I'm on page 1. I'm sorry, March 5<sup>th</sup> is when I suggested to close the  
22 file.

23 Q. Okay.

24 THE REFEREE: March 2009?

25 THE WITNESS: Yes.

153.

(Bussonnais-Direct)

1 THE REFEREE: Okay.

2

3 BY MR. FARCHER:

4 Q. Now are there any records kept of contact made with regard to a file?

5 A. These are the records right here.

6 Q. Okay. If say a district attorney were to contact you with regard to this  
7 claim, would it be noted in there?

8 A. It should be, yes.

9 Q. Can those records be changed or altered, Ms. Bussonnais?

10 A. No.

11 Q. Is there a period when they can be changed or altered?

12 A. Only the very same day that you key them in. Once it goes overnight,  
13 you can't change them.

14 Q. Either from your own recollection or by looking at those records, can  
15 you tell us were you ever contacted by the district attorney's office  
16 with regard to this claim?

17 A. No, I was not.

18 Q. Were you ever contacted by a local court?

19 A. No.

20 Q. Any court staff?

21 A. No.

22 Q. Were you ever contacted by the New York State Police?

23 A. No.

24 Q. Can you tell us, did you ever provide a letter or any other confirmation  
25 that all of the claims had been settled or closed out?

154.

(Bussonnais-Direct)

1 A. No.

2 Q. Is there any indication that a letter was ever created confirming that  
3 the claims had been closed out?

4 A. In these remarks?

5 Q. Yes.

6 A. No.

7 Q. What about from your own recollection?

8 A. From my own recollection, later, much later on, I believe there was a  
9 letter.

10 Q. When you say much later on, can you give us a general timeframe?

11 A. I think probably five or six months after this-- after the property  
12 damage was closed. So I would say around August.

13 Q. Of what year?

14 A. Of '09.

15 Q. Okay. Thank you, Ms. Bussonnais. What's that? One second, your  
16 Honor. You said there was a letter created in August of 2009. Could  
17 you tell us what letter that was?

18 A. I'm assuming it's the letter that-- regarding we have paid the claim or  
19 we insured the insured and we have paid the claim. I'm assuming  
20 that's the letter you're speaking of?

21 Q. Yeah.

22 A. Okay.

23 Q. Is that standard-- I mean, I don't know. I'm asking you what letter.  
24 Actually, let me withdraw all that. I'm asking you what letter would  
25 be created in August of '09?

155.

(Bussonnais-Cross)

1 A. Okay. If that's the letter you're talking about, it's the same letter I'm  
2 talking about.

3 Q. Okay. What letter is that?

4 A. A letter that stated we are the insurance company for our insured and  
5 that all claims had been paid.

6 Q. Okay. And why would that letter be created at that time?

7 A. I did not create the letter. So I'm a little confused at your question.

8 Q. Okay. Well, I don't-- You don't have a copy of that letter with you  
9 now, do you?

10 A. I do not.

11 Q. All right. But again, that letter wouldn't be created until much later,  
12 you said August of '09?

13 A. Apparently it was not created until much later. I did not create the  
14 letter.

15 MR. FARCHER: No further questions, your Honor.

16 THE REFEREE: Cross?

17 MR. SONN: Yes. Thank you, your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. SONN:

21 Q. You work for Utica Mutual?

22 A. Yes.

23 Q. And there's a Mang Insurance Agency?

24 A. Um-hmm.

25

(Bussonnais-Cross)

1 Q. And the insurance is placed first with Mang Insurance Agency and  
2 then they place it with you?

3 A. Okay.

4 Q. Isn't that correct?

5 A. Yes.

6 Q. So the-- for all intents and purposes, many persons would want to  
7 deal with Mang on any inquiries regarding the insurance. Isn't that  
8 correct?

9 A. It's possible.

10 Q. This letter of August of '09, did that letter come out of Mang?

11 A. If this is the same letter we're talking about?

12 Q. Yes.

13 A. Okay, yes.

14 THE REFEREE: Wait a minute. Hold on. All right,  
15 go. You continue. I'll ask my question later.

16  
17 BY MR. SONN:

18 Q. Now we heard something about a bodily injury claim. There was no  
19 bodily injury claim actually was there?

20 A. No.

21 Q. You opened the file for a potential claim?

22 A. That's right.

23 Q. And there was some payment under the no-fault insurance?

24 A. The claimant's no-fault made some medical payments, yes.

25 Q. So when you closed that, you just closed it as you closed the potential?

157.

(Bussonnais-Redirect)

1 A. Yes.

2 Q. Your organization is involved in paying insurance claims. They're not  
3 involved in traffic tickets or any type of activity like that that comes  
4 out of an incident?

5 A. No.

6 Q. So you wouldn't be getting updates on traffic tickets, when they're  
7 being disposed of or--

8 A. No.

9 MR. SONN: I have no further.

10 MR. FARCHER: Just a few redirect, your Honor.

11 THE REFEREE: Okay, go ahead.

12

13 REDIRECT EXAMINATION

14 BY MR. FARCHER:

15 Q. Ms. Bussonnais, you had said that the claimant's no-fault made  
16 medical payments?

17 A. Mm-hmm.

18 Q. How would you be made aware of that?

19 A. Because later on, after we had closed the claim, we hadn't considered  
20 the loss transfer for the no-fault. So later on, we received that  
21 information through the mail and then we ended up taking on the  
22 payments for the no-fault, the reimbursement of that.

23 Q. Just to be clear. You monitored a potential medical claim until March  
24 of '09?

25 A. Mm-hmm.

(Bussonnais-By The Referee)

1 Q. And it was closed?

2 A. Mm-hmm.

3 Q. Okay. Then you ultimately-- What was Utica National's role? Did  
4 you pay out money as well?

5 A. We did end up paying money because-- basically because our vehicle  
6 was over 6,500 pounds and so therefore, there's the opportunity for  
7 the no-fault carrier to get reimbursed for their medical payments, and  
8 that's what we paid them for.

9 Q. Okay. So what were those payments for? They for Mr. Hill's  
10 medical treatment?

11 A. Yeah.

12 Q. Do you know what type of treatment Mr. Hill was receiving?

13 A. I think it was maybe some chiropractic or physical therapy, something  
14 like that.

15 MR. FARCHER: No further questions, your Honor.

16 THE REFEREE: Okay. Let me ask you something.

17 From the notes that you have there, okay, can you tell me  
18 again, did a letter go out from your office indicating that all  
19 claims had been paid?

20 THE WITNESS: No.

21 THE REFEREE: Could a letter like that go out from  
22 the agent?

23 THE WITNESS: It could.

24 THE REFEREE: Do you know whether the agent  
25 sent out such a letter?

159.

(Bussonnais-By The Referee)

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THE WITNESS: I believe it did, and there's a copy of it in my file.

THE REFEREE: And what was the date?

THE WITNESS: I believe it was August of '09.

THE REFEREE: That all claims were paid?

THE WITNESS: Mm-hmm.

THE REFEREE: And you got that information from the agent?

THE WITNESS: Yes.

THE REFEREE: How would you get that?

THE WITNESS: By a phone call.

THE REFEREE: So there was a phone call?

THE WITNESS: Mm-hmm.

THE REFEREE: And you remember you got the phone call?

THE WITNESS: You know, I actually didn't remember I had the phone call until after I was reviewing the file for this meeting today.

THE REFEREE: Okay. So you received a phone call from the agent on August-- in August of '09 that all claims had been paid?

THE WITNESS: That she had written the letter to the insured that the claims had been paid and the file was closed.

(Bussonnais-Recross)

1 THE REFEREE: All claims had-- All right. Good.  
2 Okay. I'm through. You're excused. Thank you.

3 MR. SONN: May I have one question on that, your  
4 Honor?

5 THE REFEREE: All right. Go ahead.

6

7 RECROSS-EXAMINATION

8 BY MR. SONN:

9 Q. Did that letter state that all claims had been paid as of a certain date?

10 A. I can't remember unless I see the letter.

11 Q. Do your records show when you closed that?

12 A. When I closed?

13 Q. When you closed the--

14 A. --the entire file?

15 Q. No, the personal-- the property damage. When you closed the  
16 property damage because everything had been paid?

17 A. The property damage had been closed on October 27, 2008.

18 Q. And that-- You wouldn't recall if that was the date reflected in that  
19 letter that you refer to?

20 A. I don't remember that.

21 MR. SONN: No further.

22 MR. FARCHER: Your Honor, could I have one  
23 moment before we excuse this witness, just to confer co-  
24 counsel?

25 THE REFEREE: Sure. Go ahead.

(Bussonais-Redirect)

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MR. FARCHER: Your Honor, can I ask just a couple of more questions from this witness before we excuse her?

THE REFEREE: Yeah. Go ahead.

REDIRECT EXAMINATION

BY MR. FARCHER:

Q. Ms. Bussonais, there's been a lot of talk about a letter written in August '09. I just want to show you what's been identified as Exhibit 8. Is that the letter you're referring to?

A. Yes.

Q. Okay. Did you write that letter?

A. I did not.

Q. Can you tell us who wrote that letter?

A. Diane Edwards wrote that letter.

Q. Do you know what the purpose of that letter was?

A. I believe it's just a basic letter that we sometimes write. I don't know what her purpose was, but sometimes we do write those letters just to say that we have concluded our file.

Q. Is there any reference to personal injury in that letter?

A. No, there is not.

Q. Just property damage?

A. Yes.

THE REFEREE: Now you said the date of that letter was August 8<sup>th</sup>?

(Bussonais-Redirect)

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THE WITNESS: August 11<sup>th</sup>, 2009.

THE REFEREE: August 11. Okay.

MR. SONN: Your Honor, I don't have that exhibit down on my list. Was that admitted as evidence, the August-- We move that that be admitted at this time if it isn't as Exhibit 8.

MR. FARCHER: Well, it is Exhibit 8, your Honor. But, unfortunately, I would object because we don't have Diane Edwards here who was subpoenaed.

THE REFEREE: Well it was you who inquired of this witness.

MR. FARCHER: Your Honor, if Mr. Sonn is willing to agree and stipulate that it was his client who obtained and provided this letter at his investigative appearance then the Commission has no objection it being entered into evidence.

MR. SONN: My client did not make that request.

MR. FARCHER: No, but it was your client who produced this letter during the investigative stages of this hearing. That's how it came into our possession.

MR. SONN: Well, we have no problem--

THE REFEREE: Okay. I'll take testimony that it was presented at the investigative conference by Judge Evans, okay? Can we end this now?

MR. FARCHER: Okay. Yes.

(Bussonais-Redirect)

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THE REFEREE: We done?

MR. FARCHER: Yes.

THE REFEREE: Thank you very much. Have a good day.

MR. FARCHER: Your Honor, I have no more witnesses at this time. I would I guess maybe ask or request that we break for lunch, and then we just have admissions and the judge's testimony unless--

THE REFEREE: That's fine. Okay. I just want to read this letter. Is this admitted?

MR. FARCHER: Yes.

MR. SONN: Yeah.

THE REFEREE: And it's 8?

MR. SONN: Yes, coincidentally.

THE REFEREE: Okay, have a good lunch.

(OFF THE RECORD.)

THE REFEREE: Let the record show that we left at, what time was that, 2?

MR. SONN: 2:40.

THE REFEREE: 2:40 and we are now back at 3:40-- No, 2:40.

MR. FARCHER: We left at 1:40 and we're back--

(Hon. David J. Evans)

1 THE REFEREE: We left at 1:40 and we're back  
2 2:40.

3 MR. FARCHER: Your Honor, at this time, the  
4 Commission has no further witnesses. Before we close our  
5 direct case, I would like to read into the record a portion of  
6 Judge Evans' prior testimony as admissions. Mr. Sonn?

7 THE REFEREE: Well, you can read them. If  
8 they're not admissions, you can object, all right? Go ahead.

9 MR. FARCHER: Do you have a copy of the  
10 transcript? All right, I have another one here.

11 MR. SONN: August 13?

12 MR. FARCHER: That's the one.

13 THE REFEREE: Before we start, that book on  
14 evidence you have--

15 MR. FARCHER: Yes.

16 THE REFEREE: Who wrote it?

17 MR. FARCHER: Richardson.

18 THE REFEREE: That's Richardson? No.

19 MS. CENCI: Prince.

20 MR. FARCHER: Prince, isn't it?

21 THE REFEREE: Prince.

22 MR. FARCHER: Oh, yeah.

23 THE REFEREE: That's Prince, yeah. Excellent  
24 book. Excellent.

25 MR. FARCHER: Keep it with us at all times, judge.

165.

(Hon. David J. Evans)

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THE REFEREE: It got me through the bar exam, which was a long time ago.

MR. FARCHER: Judge, what I'm reading from is a transcript of the testimony that was given by the Honorable David J. Evans on August 13, 2009. The referee during that investigative appearance was Edward Flink. The questioning was done by myself. Judge Evans was there with his attorney, Mr. Sonn, and also present was Cathleen Cenci and Ryan Fitzpatrick. David, the first one I'm looking at is on page 39, and it starts at line 17. At line 17 the question is:

"Okay with regard with your prior Letter of Caution, did Mr. Dunshee represent you on that matter?"

"Answer: Yes. He did."

Moving to line 22:

"Okay. So was that the one and only time he represented you?"

"Answer: Yes, sir."

"Question: All right. And that would have been-- looks like 2004?"

"Answer: Yes."

Continuing on to page 40, David:

"Question: Now, you said Mr. Dunshee became a district attorney in 2008. Did he immediately begin appearing in your court in 2008?"

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“Answer: He-- I believe it was January when he started-- January or February when he started.

“Question: Okay. And how often does Mr. Dunshee generally appear in your court?

“Answer: Twice a month.”

Last line on that pa-- Second to the last line, David. Twenty-four on that page.

“Question: Okay. Now you said he began appearing in 2008 when he became a district attorney?”

Continuing on the next page:

“Answer: Yes.

“Question: Was there any disclosure of his prior representation of you?

“Answer: No.

“Question: Not for any period of time?

“Answer: No.

“Question: Okay. So there-- As far as you know, in terms of disclosure in your court, there’s never been any?

“Answer: No.”

Moving on to page 44:

“Question:”--

--Oh, I’m sorry, David. It’s line 1 on page 44:

“Question: I’m just wondering has there ever been any disclosure to the attorneys appearing before you?

“Answer: Not that I’m aware of.

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“Question: Okay. So aside from again Mr. Dunshee’s letter which indicates that the attorneys are aware, do you have any indication that they are--

“Answer: I have not disclosed anything to anybody, myself.

“Question: Okay. Has there ever-- Has there been any indication from the attorneys that they’re aware that Mr. Dunshee represented you at one point in time?

“Answer: Not that they have-- They do or they don’t know, no.”

David, from there I’m moving to page 60.

MR. SONN: Will you let me know if there is any of this, okay?

MR. FARCHER: Page 60, line 17:

“Question: Okay. Mr. Oefelein’s arraignment was in September, you said the electric had been completed about July--

“Answer: July 30<sup>th</sup>. Yep.

“Question: So after July, September you said at that point you just forgot?

“Answer: I was just-- Yeah. I had-- It was actually in the case in the vault.

“Question: I’m sorry. His arraignment was in July, his appearance was in September. Excuse me.

“Answer: Yeah.”

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Continuing on the next page:

“Question: But his arraignment would have been in July, so are you saying you didn’t record his arraignment because of electrical problems and just forgetting?”

“Answer: That’s correct.

“Question: Okay. And as to-- with regard to his September 18<sup>th</sup> appearance, that wasn’t recorded again?”

“Answer: There were no-- There was no recording done from, I believe, April or May, whenever we started working in the new courtroom, from then until November, I believe.”

Sixty-five, David, line 17:

“Question: Okay. Now, you said that there were no recordings essentially from April 2008 until November of 2008?”

“Answer: That’s correct.”

Next page, 66, David, line 7:

“Question: Okay, Judge, if you could just clarify for us, specifically, when you set up the laptop and the recording equipment, when it was set up and capable of recording? I know you said there were no recordings from April to November, but when was the laptop actually plugged into the wall?”

“When could we have?”

“Question: Yes.

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“Answer: When was the room ready to-- where we could have plugged in started?”

“Question: Yes.

“Answer: It would have-- after that July 30<sup>th</sup> date.

“Question: Okay. And when was the laptop and the recording equipment actually brought to that room? Was it brought at the same time?”

“Answer: No, it wasn’t in there until, it must have been about November when it was brought in.”

Page 70, David, line 15:

“Question: Okay. And, just for the record, the ticket has been identified as Exhibit 2, that’s part of 2, Exhibit 2H. Yes. Keep this one with you, Judge, for a second just in case you need to refresh your recollection. Now, Judge, Mr. Bates appeared to have been ticketed on October 7<sup>th</sup>, 2008. Can you see that?”

“Answer: That’s correct.

“Question: Okay. This ticket came to your court?”

“Answer: Yes.”

And I would just ask that Mr. Sonn stipulate that the exhibit being referenced in here, 2H, is the same exhibit that we have currently in evidence-- that’s currently in evidence as Exhibit 2, there’s 2H. Let me just see. That’s 2H, David, and that’s 2 that’s currently in evidence.

MR. SONN: This one here, right?

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MR. FARCHER: Let me just have you stipulate that they're the same.

MR. SONN: Yep.

MR. FARCHER: Okay. Next one is one page up, page 71, line 12:

“Question: Okay. Can you tell us what happened to that ticket in your court by looking at it?”

“Answer: Yes.

“Question: Okay.

“Answer: It was dismissed a week after that which would have been our regular DA night.

“Question: Okay. Do you know on what basis it was dismissed?”

“Answer: Yes. It was dismissed on the basis that-- When we originally had done the arraignment, had spoken to Mr. Dunshee about the ticket, and he was-- I don't know what the interaction was to Mr. Dunshee, but he had indicated that he needed to check and see if the insurance had been settled on this before any dismissal was done.

“Question: Okay. So you had spoken to Mr. Dunshee specifically about this ticket?”

“Answer: Yeah. It would have been, yeah. Yes, specifically about this ticket, I mean, I would have any of the tickets that came in that night, if they're looking for a dismissal or reduction.”

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Moving down to line 15 on that page, David:

“Question: Okay. So it’s your recollection that Mr. -- both Mr. Bates and Mr. Dunshee appeared in court on this ticket? Is that what you’re conveying to me?”

“Answer: Well, I know Mr. Dunshee was there. And, I assuring Mr. Bates was there.”

THE REFEREE: What did you say?

THE RESPONDENT: That-- Can I say anything yet?

THE REFEREE: What did you say?

MR. FARCHER: It says, “And, I assuring.”

THE REFEREE: I assuring?

THE RESPONDENT: I’ve gone through this. “I’m assuming.”

MR. FARCHER: It’s a typo?

THE RESPONDENT: Yes.

MR. FARCHER: We’ll agree to that, that it should be, “And, I’m assuming Mr. Bates was there.”

THE RESPONDENT: Correct, not “I’m assuring.”

MR. FARCHER: Line 20 continuing on that same page, David:

“Question: Okay. And go ahead, if you can just give me your recollection of what happened with the ticket. I’ll let you go ahead and tell the story.”

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“Answer: Okay. At that point, Mr. Dunshee stated that he had to check and see if the insurance had been settled, because he indicated that it was a bus accident. And so I contacted him the next Thursday night, and he indicated it had been taken care of and it was okay to dismiss--”

Continue on the next page:

“--ticket. And I spoke to Mr. Dunshee since then, and he said, ‘I honestly don’t recall’-- ‘I honestly can’t recall.’” Excuse me.

Continuing on that same page, David, that whole page there, starting at line 3:

“Question: Okay. So this ticket was-- on the court night Mr. Dunshee said he had to check the insurance. What would happen to the ticket at that point? Would it just be held over?”

“Answer: It would just be adjourned, yes.

“Question: Okay. And so it was held over and then--”

MR. SONN: I’m sorry. I was just trying to catch this. I was way back on page 73, at line 1.

MR. FARCHER: I apologize--

MR. SONN: I’m just trying to pull together that thought.

MR. FARCHER: Okay.

MR. SONN: And where are you after--

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MR. FARCHER: I'll start again on--

MS. CENCI: The whole page.

MR. FARCHER: Yes, we're going to go down the whole page. I started at line 1. Did you get the beginning of that?

MR. SONN: Yeah.

MR. FARCHER: Okay. So I'll start on the first question, line 3.

THE REFEREE: Just go a little slower.

MR. FARCHER: Sure.

"Question: Okay. So this ticket was-- on the court night Mr. Dunshee said he had to check the insurance. What would happen to the ticket at that point? Would it just be held over?

"Answer: It would just be adjourned, yes.

"Question: And so it was held over, and then the date it was dismissed is?

"Answer: The following Thursday.

"Question: Which is November 20<sup>th</sup>?

"Answer: Mm-hmm.

"Question: That would have been another court night?

"Answer: That's correct.

"Question: Okay. So this ticket was dismissed on a subsequent court night. Was Mr. Dunshee present for that?

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(Hon. David J. Evans)

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“Answer: No.

“Question: No?

“Answer: No, he was not.

“Question: Okay. And how did Mr. Dunshee convey to you that the insurance had been settled or how did that information--

“Answer: I’d indicated-- Because when he said that he was going to check into him, I indicated that I would contact him to find out if indeed-- before I dismiss the ticket, that it had been taken care of. That the insurance had been taken care of.

“Question: And did you subsequently contact him?”  
Continuing on the next page, David:

“Answer: Yes, I did.

“Question: Okay. What that by phone or in person”--I believe that should be, “Was that by phone or person?”

“Answer: By phone.

“Question: Okay. And Mr. Dunshee indicated to you that what he confirmed with the insurance was--

“Answer: That he, yes. He confirmed that the insurance had been taken care of.”

Moving down to line 14 on that page, David:

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“Question: Okay. Now when you say you wanted to be sure that the insurance had been corrected, what exactly do you mean by that?”

“Answer: That there wasn’t going to be something that could possibly be a, you know, a lawsuit or something coming down, you know, some other consequence from the standpoint of the victim in this case.”

Moving to the next page, David, line 13:

“Question: Okay, okay. So after you got a letter from us, you contacted Dave Daniels?”

“Answer: Yes.

“Question: All right. For what purpose?”

“Answer: First I contacted Mr. Dunshee, and he said he didn’t recollect this particular ticket. And so I contacted Dave Daniels, who is a superintendent of the Norwich Schools, and told, you know, asked him if he remembered the ticket, and he had indicated that he remembered the ticket. And I asked him if there was a way that I could show that that was taken care of because Mr. Dunshee had indicated at the time it was.

“Question: At the time you dismissed the ticket, did you have any proof that--

“Answer: No. Just what Mr. Dunshee told me.”

Continuing on the next page, David:

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“Question: Okay. So those insurance documents weren’t part of the court file at the time?”

“Answer: That’s correct.

“Question: Did Mr. Bates ever enter a plea when he came to the initial appearance?”

“Answer: No.

“Question: Okay. So no plea was ever entered, either guilty or not guilty?”

And the answer is, “No, no.”

And stop there. Moving on to page 80, David. I only have a few more. Oh, sorry, 79, correct. Seventy-nine, line 2:

“Question: Okay. Are you aware or did Judge Daniels ever come there and play a video?”

“Answer: They-- It was indicated there was a video played, yes.

“Question: Who indicated that to you, Judge?”

“Answer: The court clerk and the court security officer.

“Question: Okay. They had indicated that Dave Daniels came to your court to play a video?”

“Answer: That he had a video. Yep.”

Page 80, line 3:

“Question: Your court clerk had mentioned Judge Daniels had stopped by?”

“Answer: Yes.”

(Hon. David J. Evans)

1 Moving down to line 13, David:

2 "Question: Okay. Did Deputy Smith mention that  
3 Judge Daniels had stopped by the court?

4 "Answer: Yes."

5 And then from there, page 83-- Sorry, 82. One page back,  
6 sorry. David, 82, line 1:

7 "Question: Okay. Did you ever at any time discuss  
8 Dave Daniels' appearance with Deputy Smith? What I  
9 mean, you'd indicated that Deputy Smith told you he  
10 stopped by.

11 "Answer: He had said-- Yeah. He said that he  
12 stopped by.

13 "Question: Okay.

14 "Answer: And he said that he had a video."

15 Now page 83, line 2:

16 "Question: Are you aware that Larry Bates is a bus  
17 driver for the Norwich School District?

18 "Answer: Yes. I am now.

19 "Question: Are you aware that Judge Daniels is his  
20 boss or his supervisor?

21 "Answer: Yes.

22 "Question: Did you have that knowledge at the  
23 time?

24 "Answer: I had the knowledge.  
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“Question: Did you know that Judge Daniels was his supervisor at the time?”

“Answer: I knew. Yes, yes.”

Page 87, line 3:

Okay. Now-- “Question: Okay. All right. Now, again, I just want to clarify, if you could give me the basis for the ticket dismissal. If I understand you correctly, it’s because the insurance company had to pay for whatever property damage?”

“Answer: Property damage, yeah.”

“Question: Okay. Was that the basis of the ticket dismissal?”

“Answer: Yes.”

“Question: Okay.”

“Answer: Yes.”

“Question: That the insurance cover property damage?”

“Answer: Yes. That the-- And, at the time, I didn’t mean I knew that there was some type of property damage but I didn’t know what it-- what the reason-- you know, other than the fact when I talked to Mr. Dunshee and he said everything had been taken care of. It was okay to dismiss it.”

Now I moving to page 114, David, line 22:

1 "Question: How long have you known Dave  
2 Daniels?

3 "Answer: As long as I've been a justice or longer."  
4 And the last one is on page 120, line 12:

5 "Question: I just have two questions at this point.  
6 Judge, in response to some of Mr. Sonn's questions, you  
7 had mentioned that there may not have been a need to  
8 disclose because some attorneys in the area might have been  
9 aware of your previous representation, Mr. Dunshee's  
10 previous representation of you. Are you aware of what, if  
11 any, attorneys are aware of that representation?

12 "No. Like I said before, I don't know if they knew  
13 or didn't know or so--

14 "Question: Would there be any way for those  
15 attorneys to know that Mr. Dunshee had represented you on  
16 a previous matter without disclosure?

17 "Answer: I don't believe so. I mean, unless Mr.  
18 Dunshee told them.

19 "Question: Is there any indication that Mr. Dunshee  
20 has disclosed to those attorneys?

21 "Answer: No. Yet-- There's no indication to me."

22 MR. FARCHER: That concludes the admissions I  
23 have, Judge Barbaro.

24 THE REFEREE: Okay.

25 MR. SONN: Now, I guess I object to the concept of

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1 moving these in as admissions. They're certainly  
2 statements my client made under oath. And they can be  
3 compared to statements going to be made today, and they  
4 can be used by way of impeachment because they've been  
5 stated under oath. But as far as admin-- What is the  
6 purpose of the admission? If these are admissions, I mean,  
7 he's admitting these statements?

8 THE REFEREE: I don't feel that he laid a  
9 foundation to let them in as admissions.

10 MR. FARCHER: Your Honor, these are statements  
11 that are not necessarily contrary to Judge Evans' position  
12 here. But he has taken a certain stance as to his basis for  
13 the dismissal, and these are admissions that are contrary to  
14 that position, in essence.

15 THE REFEREE: Yeah, but what you're asking me  
16 to do is accept your position on the law that these are  
17 admissions. I don't see them as admissions. Don't see  
18 them. I don't think you've laid the proper foundation. Is  
19 Mr.-- Is the judge going to testify?

20 MR. SONN: Yes.

21 THE REFEREE: Well, the judge is going to testify  
22 and at that time, you can--

23 MR. FARCHER: Your Honor, these statements  
24 relate to, one, not only the primary charge, which is that  
25 Judge Evans dismissed this ticket which these statements

(Hon. David J. Evans)

1 seem to admit even if it's with justification, if that's Mr.  
2 Sonn's position. There's an admission that this ticket was  
3 dismissed. And they also relate to a lack of candor charge  
4 that the testimony that Judge Evans originally gave is--

5 THE REFEREE: Well, how am I going to know?  
6 You're saying it. When I get the transcript on what you're  
7 telling me alone, I have no way of knowing. The judge  
8 hasn't testified yet. Let the judge testify. On cross-  
9 examination, you can ask him, okay? Judge going to  
10 testify?

11 THE RESPONDENT: Yes, sir.

12 MR. SONN: Yes.

13 THE REFEREE: All right. That's the way to do it.

14 MR. SONN: This is deposition. This is deposition.  
15 This is not admissions. He's welcome to use them to cross-  
16 examine.

17 THE REFEREE: Okay?

18 MR. FARCHER: Well, judge, it's our position that  
19 we have to show that Judge Evans testified falsely on our  
20 direct case. Cross-examination isn't affirmative proof and--

21 THE REFEREE: I understand that, but the rules of  
22 evidence preclude you from doing it at this point. There's  
23 no foundation. There's no foundation of a conflicting  
24 testimony which would bring them in as admissions. When  
25 Judge Evans testifies--

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(Evans-Direct)

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MR. FARCHER: Well, in our proceedings, your Honor, the judge doesn't even have to testify. I mean, he could not testify in which case, these statements probably-- You know, I mean, under the rules of law you're enunciating, we wouldn't be able to put any of these statements in that way.

THE REFEREE: Well, the rules of evidence are the guaranteed due process. So what you're telling me is I should make an exception. I cannot let those in as admissions because there has not been a foundation. The judge is going to testify. When he testifies, then you can offer them, okay?

MR. FARCHER: Yep.

THE REFEREE: Okay, judge, are you ready?

THE RESPONDENT: Yes, sir.

THE REFEREE: Raise your right hand, please.  
What's your name?

THE RESPONDENT: David Evans.

THE REFEREE: Judge, do you swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you?

THE RESPONDENT: Yes, sir.

HONORABLE DAVID J. EVANS,  
having been duly sworn, was examined and testified as follows:

(Evans-Direct)

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THE REFEREE: Have a seat. State your name,  
Judge Evans.

THE RESPONDENT: David J. Evans.

THE REFEREE: You ready?

MR. FARCHER: It's his witness, your Honor.

MR. SONN: Yes, I know. I'm ready.

THE REFEREE: Yeah, are you ready? Let's go.

DIRECT EXAMINATION

BY MR. SONN:

Q. Mr. Evans, would you state your full name and address for the record,  
please?

A. David J. Evans, 503 Southern State Highway 23, Norwich, New York.

Q. And what is your age, sir?

A. Forty-eight.

Q. And what is your education?

A. High school diploma.

Q. And your profession?

A. Self employed is my full-time profession, and Norwich Town Justice  
is my secondary profession.

Q. Have you had any special training as a judge?

A. Yes, sir.

Q. And what would that be?

(Evans-Direct)

- 1 A. It would be the initial court certification and then the updates that we  
2 have every year, twice a year.
- 3 Q. And the updates twice a year, do you travel for those?
- 4 A. Yes, I do.
- 5 Q. Okay. How many years have you served as a judge?
- 6 A. Sixteen years last week.
- 7 Q. When were you first elected as a judge?
- 8 A. I was appointed in 1994, and then elected the next year.
- 9 Q. Have you served continuously then since 1995 or 1994?
- 10 A. Yes, sir.
- 11 Q. And what is your court?
- 12 A. It's Norwich Town Court.
- 13 Q. And is that a justice court?
- 14 A. Justice court, yes.
- 15 Q. Do you know a Judge Daniels, Dave Daniels?
- 16 A. Yes, I do.
- 17 Q. Where is his court?
- 18 A. His court is the Town of Guilford.
- 19 Q. Do you have a special relationship with Judge Daniels?
- 20 A. No.
- 21 Q. How about as far as covering each other's courts or anything of that  
22 nature? Do you have any kind of special relationship with him?
- 23 A. No, we do not.
- 24 Q. No different than any other judge?
- 25 A. That's correct. No different.

185.

(Evans-Direct)

- 1 Q. Do you have any obligations to him?
- 2 A. No, I do not.
- 3 Q. Do you know an individual by the name of Larry Bates?
- 4 A. Just through our court proceedings.
- 5 Q. Okay. So you're aware of the ticket against him?
- 6 A. That's correct.
- 7 Q. Have you ever seen the man before today?
- 8 A. I have never seen him before.
- 9 Q. So I take it you don't have a special relationship with him, either?
- 10 A. I do not.
- 11 Q. And do you have any obligations to him, anything that you owe him?
- 12 A. I do not.
- 13 Q. Now did there come a time when there was a ticket against Mr. Bates?
- 14 A. Yes, sir.
- 15 Q. Do you recall when that ticket was issued?
- 16 A. I believe it was issued October 7<sup>th</sup> or 8<sup>th</sup> of '08-- I'm sorry-- October
- 17 7<sup>th</sup> or 8<sup>th</sup> of '08.
- 18 Q. Okay. And was his ticket was ultimately disposed of?
- 19 A. Yes, it was.
- 20 Q. And how was that?
- 21 A. It was dismissed.
- 22 Q. Okay. Now did you make that decision to dismiss that ticket
- 23 unilaterally?
- 24 A. No, I did not.
- 25

186.

(Evans-Direct)

1 Q. Did you make that decision to dismiss that ticket in concert with  
2 anything coming from Judge Daniels?

3 A. No, I did not.

4 Q. Did you ever discuss this ticket with Mr. Bates?

5 A. No, I did not.

6 Q. Did you ever discuss the ticket with Mr. Daniels?

7 A. No, I did not.

8 Q. Were you ever advised by your court assistant that Mr. Daniels had  
9 been in your office?

10 A. Yes. She just mentioned that he had been there.

11 Q. And with this ticket?

12 A. I don't know in regards to the ticket. In regards to the video.

13 THE REFEREE: Did you answer yes or no?

14 THE WITNESS: No to the ticket if that's  
15 specifically what it was for.

16 THE REFEREE: Okay.

17

18 BY MR. SONN:

19 Q. Did you have any discussions with Deputy Smith regarding Mr.  
20 Daniels' bringing the ticket over?

21 A. No.

22 Q. Did there come a time when you discussed the Bates tickets with Mr.  
23 Dunshee?

24 A. Yes, two different occasions.

25 Q. What was the substance of that first discussion?

187.

(Evans-Direct)

1 A. The first discussion was on November 13<sup>th</sup> of '08, which would have  
2 been our regular ADA night in the Town of Norwich. When Mr.  
3 Dunshee had-- We have a folder of tickets that the court clerk will put  
4 together for the court, and we either discuss them prior to court or at  
5 the end of court, depending on what the court calendar is, and at that  
6 time that ticket was in that court file, and that was the initial time that  
7 we spoke about that.

8 Q. Okay. And why did you speak about it that date?

9 A. Because the tickets in there are tickets to be dismissed or to be looked  
10 at to be dismissed. And so, that's why we spoke about it at that point.

11 Q. On that particular date, though, why that date?

12 A. Because that was the night that he was in court and that's the night  
13 that the-- that he was due in court, Mr. Bates was.

14 Q. Were you able to resolve any issues regarding that ticket that night?

15 A. No, we were not.

16 Q. What remaining issues were there?

17 A. There was still a question of whether any insurance had been taken  
18 care of on it. It was a Following Too Closely ticket-- Failed To Yield  
19 The Right Of Way-- I'm sorry-- and it was a property damage  
20 accident, and their question was whether the insurance had been taken  
21 care of in regards to that ticket, you know. And so Mr. Dunshee had  
22 indicated that he had to check in to see if that had been-- if the  
23 insurance had been taken care of.

24 Q. Okay. And what was your comment on that?  
25

188.

(Evans-Direct)

1 A. We just-- We adjourned the case that night, and I told him that I  
2 would call him the next week.

3 Q. And did you call him the next week?

4 A. Yes, I did.

5 Q. And what was the substance of your conversation with Mr. Dunshee  
6 the next week?

7 A. I asked Mr. Dunshee if he had contacted the insurance company. He  
8 indicated that he--

9 MR. FARCHER: Object to what Mr. Dunshee said,  
10 Judge.

11 THE REFEREE: Sustained.

12 THE RESPONDENT: I contacted Mr. Dunshee and  
13 there was indication that the ticket had been--

14 MR. FARCHER: Again, same objection, your  
15 Honor.

16 THE REFEREE: Sustained.

17

18 BY MR. SONN:

19 Q. Did you determine at that time that the insurance had been taken care  
20 of in that conversation with Mr. Dunshee?

21 A. Yes.

22 Q. To your satisfaction?

23 A. Yes, it was.

24 Q. And what action did you take at that time?

25 A. I dismissed the ticket.

(Evans-Direct)

1 Q. Did you yourself call the insurance company?

2 A. No, I did not.

3 Q. Do you ever call the insurance company?

4 A. No, I do not.

5 Q. Did you have any proof in your file that that insurance had been taken  
6 care of?

7 A. No, I do not.

8 Q. Did you eventually ask Mr. Daniels to check with the insurance  
9 company?

10 A. Yes, I did, because I had-- Once I received a letter from the  
11 Commission that I was under investigation, I contacted Mr. Daniels--  
12 Let me regroup here. I contacted Mr. Dunshee to ask him if he  
13 remembered our conversation about this ticket, and he had said that he  
14 didn't recall, you know, he didn't know. So I contacted Judge  
15 Daniels, Mr. Daniels, and asked him if-- If we could get a letter, you  
16 know, determining that the insurance indeed had been taken care of.

17 Q. Okay. Now you said you contacted Judge Daniels. Did you contact  
18 David Daniels in his capacity as a judge?

19 A. No, I did not. I contacted Mr. Daniels in the context of his supervisor  
20 as the Norwich superintendent.

21 THE REFEREE: Okay. Can I ask you a question at  
22 this point?

23 THE RESPONDENT: Yes, sir.

24 THE REFEREE: You said you did not dismiss the  
25 ticket. Correct?

190.

(Evans-Direct)

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THE RESPONDENT: No, I did dismiss the ticket.

THE REFEREE: No, but until you spoke to  
Dunshee?

THE RESPONDENT: That's correct.

THE REFEREE: And Dunshee told you what?

THE RESPONDENT: He told me that he had taken  
care of checking with the insurance company and that  
insurance--

THE REFEREE: The ADA said that?

THE RESPONDENT: Yes. And that the insurance  
had been taken care of and requested it be dismissed, and I  
dismissed it.

THE REFEREE: And did you dismiss it in court?

THE RESPONDENT: I dismissed it in court.

THE REFEREE: With Bates present?

THE RESPONDENT: No, Mr. Bates was not there.

THE REFEREE: So Bates was not there?

THE RESPONDENT: He was not there.

THE REFEREE: And you dismissed it on your  
own?

THE RESPONDENT: After speaking with Mr.  
Dunshee, yes.

THE REFEREE: Okay. Go ahead.

(Evans-Direct)

1 BY MR. SONN:

2 Q. And why did you ask David Daniels to get that proof of insurance?

3 A. Because I had spoke with Mr. Dunshee and let him know that I'd been  
4 contacted by the Commission and that this is one of the items that they  
5 were looking into and asked him if he remembered our conversation  
6 that we had on the 20th. And he said that-- his words were that he  
7 had so many tickets and he did not--

8 MR. FARCHER: Again, your Honor, object to what  
9 Mr. Dunshee said.

10 THE REFEREE: That's sustained.

11

12 BY MR. SONN:

13 Q. Why did you contact Mr. Daniels to obtain this information?

14 A. Because he was the superintendent of the bus-- of the buses, and so  
15 he's the one I would contact.

16 Q. For insurance issues?

17 A. For-- just to find out if we can get that information.

18 Q. Has there been any action or change in procedure in your office or in  
19 your court to avoid this kind of confusion in the future?

20 A. Yes, there has.

21 Q. What action have you taken?

22 A. What we have done since last August, since we were here for the  
23 initial interview, Mr. Dunshee not only asks for the dismissal, he  
24 makes the motion for the dismissal, but I make him sign either every

25

192.

(Evans-Direct)

1 ticket or abstract that comes through the office so there will never be  
2 this confusion again.

3 Q. Would you have dismissed this ticket without Mr. Dunshee's  
4 approval?

5 A. No, I would not have.

6 Q. Why not?

7 A. Because there's a chance that it could be an on-going lawsuit going on  
8 and I don't want to make that determination.

9 Q. Well, what impact does a ticket have to do with an on-going lawsuit?

10 A. That if the-- That if somebody-- What does a dismissal have? I'm  
11 trying--

12 Q. Yeah.

13 A. As far as the investigation? Can you restate that?

14 Q. What impact-- You're saying that you would not dismiss a ticket if  
15 there's an on-going property claim.

16 A. Because of liability, the liability.

17 Q. The liability. Can you describe that?

18 A. The liability to myself, the liability to the town.

19 Q. What liability would there be to you and the town?

20 A. If the ticket was-- If I did not have any authority through the DA's  
21 office? Just for lawsuit-- for lawsuit purposes.

22 Q. Why didn't you just call the insurance agency yourself rather than ask  
23 Mr. Daniels?

24 A. Because I didn't know where to get the information.

25 Q. This ticket was Failure To Yield?

(Evans-Direct)

1 A. Yes.

2 Q. And how many points is that?

3 A. I believe three points.

4 Q. And what would the fine be for that ticket?

5 A. Up to \$150 and plus surcharge.

6 Q. Have you dismissed these types of property damage claims in the past  
7 upon these circumstances?

8 A. With the approval of the DA's office.

9 Q. Could you describe for the court how tickets are processed through  
10 your court?

11 A. Yes. The tickets now-- Well, they go back to that time. The tickets  
12 were either-- would either be brought in by the sheriff's department  
13 or the State Police.

14 Q. All right. First of all, are there multiple copies of this ticket?

15 A. Yes, there are.

16 Q. What are those copies?

17 A. I know the defendant has a copy, the court has a copy and I'm  
18 assuming that the police agencies would have a copy.

19 Q. Okay. So we're talking about the court copy, right, how that's  
20 processed?

21 A. Yes, yes. The ticket would be at that point would have been dropped  
22 off by either the sheriff's department or the State Police to the court in  
23 a drop box on a designated night. And then the court clerk will then  
24 take those tickets and she would arrange them in alphabetical order,  
25 put them in a notebook according to the court date and then,

194.

(Evans-Direct)

1 obviously, as the court date come, you know, we'll pull those tickets  
2 out.

3 Q. When you're saying the court date, are you referring to the return date  
4 on the tickets, appearance dates?

5 A. The return date. Yes, sir. Yes.

6 Q. Okay. And then what about the defendant's ticket, does that come to  
7 your attention as well?

8 A. It can. The defendant can either drop the ticket. It can be mailed into  
9 the court. They can drop them in a drop box that's outside the court or  
10 they can appear in court.

11 Q. When the individual does not make a personal appearance, is it always  
12 the individual that gets that ticket to you or sometimes, has a surrogate  
13 delivers it?

14 A. It's hard to say. I don't know. It could be anybody could drop it off.

15 Q. What happens when that ticket gets to your office, the defendant's  
16 ticket?

17 A. Well, if the defendant is going to drop it off, it would be either mailed  
18 or it would go into the drop box in normal circumstances. And then  
19 Mrs. Pierce would then take that ticket and she would open it, and she  
20 would attach it to the original ticket and then it will be processed, you  
21 know, accordingly. If it was a, you know, like an inspection ticket or  
22 registration ticket or something like that, one that could possibly, you  
23 know, it could be dismissed with the DA's approval, it will go into a  
24 file folder. If it's equipment violation, a lighting, taillight or  
25

195.

(Evans-Direct)

1 something like a muffler ticket, then when the fix-it slip that comes in,  
2 then the court can just dismiss it.

3 Q. Is that what happened with Mr. Bates' ticket? How did Mr. Bates'  
4 ticket get to your office?

5 A. I can only give you a-- my assumption of what happened.

6 MR. FARCHER: Object to any assumption.

7 THE REFEREE: Sustained.

8

9 BY MR. SONN:

10 Q. Have you read Mr. Daniels' testimony?

11 A. Yes.

12 Q. And what has he said when you--

13 MR. FARCHER: Object to what Mr. Daniels said.

14 THE REFEREE: Sustained.

15

16 BY MR. SONN:

17 Q. Was there testimony today as to how that ticket got to your office?

18 A. Yes.

19 Q. And what did we learn?

20 A. We learned that--

21 MR. FARCHER: Again, your Honor, I object. The  
22 testimony--

23 THE REFEREE: Based upon the testimony today,  
24 do you know how that ticket got to you?

25 THE RESPONDENT: Yes, I do.

196.

(Evans-By The Referee)

1

THE REFEREE: And how was that?

2

THE RESPONDENT: Mr. Daniels brought the ticket, and he brought it into my office when I was not present and put it on my desk somewhere where Mrs. Pierce had been working and had several piles of tickets.

4

5

THE REFEREE: You say on your desk?

6

7

THE RESPONDENT: On one of the desks, and the way Mr. Daniels indicated it had been my desk but where Mrs. Pierce-- On a night-- if I can explain. On nights when I'm not down there working, Mrs. Pierce then lays files out on my desk and her desk, you know, and there's files all over the desk. And it got laid on one of the desks which one of them saying it was the DA's files where it got laid into that was going to the DA.

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THE REFEREE: Okay. So when the tickets come in, the secretary, the clerk, she looks them over?

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THE RESPONDENT: Normally, yes.

18

19

THE REFEREE: And if she finds one that there's no plea, what does she do?

20

21

THE RESPONDENT: If there was one that was no plea--

22

THE REFEREE: Nothing.

23

24

THE RESPONDENT: --then she would send it back to the defendant but this-- Can I continue?

25

THE REFEREE: Yeah.

197.

1 THE RESPONDENT: But this particular ticket, she  
2 had never seen. And he came in and indicated he laid it on  
3 the desk and when I originally had the hearing a year ago,  
4 the question was asked of me several times about Mr. Bates,  
5 you know, did I know whether Mr. Bates was there, wasn't  
6 there, and I assumed so. And I don't know and until we  
7 read Mr. Daniels' testimony that he had here two weeks ago  
8 in the transcript, it said in there that he laid it on my in box  
9 on my desk. We don't have an in box; we have several files  
10 that Mrs. Pierce would have had on the desk.

11 THE REFEREE: Yeah, but what I'm trying to find  
12 out, though, is the procedure is that the tickets go on the  
13 desk and somehow there's action taken. It could be plead  
14 guilty.

15 THE RESPONDENT: Correct.

16 THE REFEREE: Then what happens?

17 THE RESPONDENT: If they plead guilty, they  
18 would have a fine sent to them.

19 THE REFEREE: You would decide that fine?

20 THE RESPONDENT: We set the fine, yes, sir.

21 THE REFEREE: Now if they plead not guilty?

22 THE RESPONDENT: If they pled not guilty, then  
23 we'd set up a trial.

24 THE REFEREE: You'd set up a trial date?

25 THE RESPONDENT: Correct.

(Evans-By the Referee)

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THE REFEREE: If neither plea was entered?

THE RESPONDENT: It would then be sent back,  
but neither her nor I had-- Oh, okay.

THE REFEREE: It would be sent back?

THE RESPONDENT: It would be sent back to the  
defendant so the defendant then would make a plea on that  
ticket.

THE REFEREE: Okay. Now when you decided to  
dismiss the case, did you look at the ticket?

THE RESPONDENT: I never saw the ticket.

THE REFEREE: So you decided the case without  
looking at the ticket?

THE RESPONDENT: I'd never seen the ticket, your  
Honor, yes.

THE REFEREE: Okay. Go ahead.

MR. SONN: You had seen your copy of the ticket,  
however?

THE RESPONDENT: I had seen my copy.

THE REFEREE: Oh, your copy. All right. Did you  
look at your copy?

THE RESPONDENT: Yes, my copy.

THE REFEREE: What did it show as to plea?

THE RESPONDENT: Well, there was no plea on  
there because on his copy of the ticket-- There are two  
different copies of the ticket, the defendant's copy--

(Evans-Direct)

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MR. FARCHER: Your Honor, could we clarify between the different tickets?

THE REFEREE: Yeah, okay. The ticket that is in your office, does that indicate a plea?

THE RESPONDENT: Not by the defendant, no.

THE REFEREE: Well, then how could you impose the fine?

THE RESPONDENT: Because they would have to have their copy of the ticket to me so I could see it, or they would have to appear on Thursday.

THE REFEREE: Oh, all right. Okay. But you didn't see that copy of the ticket?

THE RESPONDENT: No, sir.

THE REFEREE: So, therefore, you don't know how he pled?

THE RESPONDENT: That's correct.

THE REFEREE: And since you didn't know how he pled, but you dismissed it based upon discussions with Dunshee?

THE RESPONDENT: Correct.

THE REFEREE: Okay.

BY MR. SONN:

Q. Now would you assume that Dunshee had a copy of the ticket in his file to discuss it with you?

(Evans-Direct)

1 A. I would assume once Mr. Dunshee brought it up--

2 MR. FARCHER: Object, your Honor, to any  
3 assumption of what Mr. Dunshee did or did not--

4 THE REFEREE: No, I'll allow that. Go ahead. Not  
5 what he said, but you had a discussion. What did you do?

6

7 A. Okay. The discussion that we had was the file that Mr. Dunshee had  
8 on ADA night which was the week-- probably was the 13<sup>th</sup> of  
9 November, and the discussion we had is Mr. Dunshee had a copy of  
10 Mr. Bates' ticket. And at that point, when we were discussing this,  
11 my assumption then was that he had spoke with Mr.-- would have  
12 been-- He spoke with Mr. Bates. His assumption was that I had seen  
13 Mr. Bates, and I hadn't seen him. He hadn't been in court--

14 MR. FARCHER: Object to all the assumption, your  
15 Honor.

16 THE REFEREE: Okay. Let's move on. That  
17 objection is sustained.

18 MR. SONN: Okay.

19

20 BY MR. SONN:

21 Q. And that's at the point where he said, "Put it on hold till I check it  
22 out"?

23 A. That's correct.

24 Q. How do-- What is the procedure for getting to a dismissal of a ticket  
25 or disposition of a ticket? Is there a formal motion on every ticket?

201.

(Evans-Direct)

1 A. No. I mean, there would be just-- they make a request or it wouldn't  
2 be a formal motion made.

3 Q. What's the ADA's role in that discussion?

4 A. They would make the request of the dismissal.

5 Q. And what's the judge's role in that discussion?

6 A. Well, then the judge can either agree with it or disagree with it, and  
7 either dismiss it or not dismiss it.

8 Q. Prior to the mechanical recording of these discussions, how was the  
9 court record kept that such a discussion occurred and a decision was  
10 made?

11 A. Prior to when we had a recording device in the court, it would all have  
12 been according to the record that you set forth any notes or notes on  
13 the file. If there's a criminal case--

14 Q. So is that one of the reasons why the OCA moved toward the  
15 mechanical recordings?

16 A. That I don't--

17 THE REFEREE: Objection. This is sustained. Did  
18 you have conversations with Dunshee alone?

19 THE RESPONDENT: On this ticket?

20 THE REFEREE: Yeah.

21 THE RESPONDENT: Yes.

22 THE REFEREE: You had conversations with him?

23 THE RESPONDENT: Yes, absolutely.

24 THE REFEREE: Was any-- Bates present or his  
25 attorney present?

202.

(Evans-Direct)

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THE RESPONDENT: No.

THE REFEREE: Okay. Go ahead.

BY MR. SONN:

Q. You're aware of the option on the simplified information that an individual can return the ticket by mail as opposed to personal appearance?

A. Yes, sir.

Q. And you know that's a proper legal procedure?

A. Yes, sir.

Q. What would happen to the court if everybody appeared on every ticket?

MR. FARCHER: Object, your Honor.

THE REFEREE: Sustained. Sustained.

BY MR. SONN:

Q. Are you aware of any other instance where a ticket just got dropped off in your office without anybody realizing it?

THE REFEREE: Did you hear that question, Mr. Farcher?

MR. FARCHER: I didn't, your Honor.

THE REFEREE: You did?

MR. FARCHER: No, I did not.

THE REFEREE: Would you repeat it, please?

(Evans-Direct)

1 BY MR. SONN:

2 Q. Yeah. Are you aware of any other instance where a ticket just got  
3 dropped off in the office and nobody in your court was aware of its  
4 appearance?

5 MR. FARCHER: Objection.

6 THE REFEREE: Sustained.

7 MR. SONN: I have no further questions. Oh,  
8 excuse me, I'm sorry, your Honor. We have other charges.

9 THE REFEREE: Go ahead.

10 MR. SONN: That's the ticket. Okay.

11

12 BY MR. SONN:

13 Q. Mr. Dunshee represented you back in 2004?

14 A. That's correct.

15 Q. And, eventually, he became the ADA for your court?

16 A. That's correct.

17 Q. And that was when?

18 A. January or February of 2008.

19 Q. Did you discuss with him the need to disclose that relationship to  
20 other attorneys and defendants?

21 A. Yes, I did.

22 Q. And what was his advice to you?

23 A. He said that if it was over the two-year period, we wouldn't need to  
24 disclose.

25 Q. And based on that, did you ever disclose?

204.

(Evans-Direct)

1 A. I did not ever disclose.

2 Q. Is that the reason why you never disclosed?

3 A. That's the reason why I never did.

4 Q. Now there was certain information that you gave during your  
5 deposition on August 13<sup>th</sup> to the effect, and I have to refer to this  
6 because this is the charge if I can, your Honor, that you were--

7 THE REFEREE: Are you saying what the charge is?

8 MR. SONN: Yeah.

9 THE REFEREE: All right. So you're going to read  
10 the charge?

11 MR. SONN: Right, essentially.

12 THE REFEREE: Go ahead.

13

14 BY MR. SONN:

15 Q. I'll paraphrase it. You told Mr. Dunshee about the ticket. He said  
16 he's check it out. He said he checked it, and he approved the  
17 dismissal.

18 A. That's correct.

19 Q. Is that your testimony here today as well?

20 A. Yes, it is.

21 Q. You're aware that there's a requirement for you to mechanically  
22 record all testimony in your court?

23 A. Yes, I am.

24 Q. Okay. And where did that requirement come from?

25 A. Through the Office of Court Administration.

205.

(Evans-Direct)

1 Q. Okay. And did they assist you in implementing that?

2 A. Yes, they did.

3 Q. And what did they do?

4 A. They actually got us-- They trained us as far as on the recording  
5 device, and then they provided a recording device. And we started  
6 using that in April of 2008.

7 Q. Was there any delay from the time of their giving you the equipment  
8 and the training until you started using in April?

9 A. Yes, there was.

10 Q. What was that delay?

11 A. There was a delay when we started-- We put a new court--

12 Q. No, I'm saying was there-- initially was there a delay?

13 A. Oh, initially, no, no. Not initially, nope.

14 Q. And did you support the idea of recording all appearances?

15 A. Absolutely.

16 Q. Did there come a time when you stopped?

17 A. Yes.

18 Q. And what circumstances caused you to stop?

19 A. There was a-- We were building a-- They were putting in a new  
20 courtroom for us. The Office of Court Administration had had grants  
21 and the town applied for the grant and received a grant. And, so, they  
22 went ahead and put that in and made the office larger, the courtroom  
23 larger than it was before.

24 Q. Right. So you had two requirements at the court from the Office of  
25 Court Administration at the same time. One is record all hearings--

206.

(Evans-Direct)

1 A. That's correct.

2 Q. --and the second is you move to a larger office?

3 A. That's correct.

4 Q. Was it possible to do both at the same time?

5 A. To move and to--?

6 Q. Yes.

7 A. Well not when it was under construction.

8 Q. Right. So you stopped at that point in compliance with the OCA's  
9 direction to move offices?

10 A. Yeah, we had stopped recording because we're under construction.

11 Q. Okay. Did there come a time when construction was finished?

12 A. Yes, but if I could back up. The reason that the construction-- the  
13 construction is finished, but they had not put electricity in the  
14 courtroom. And so at that point, we did not record from-- I don't  
15 remember the exact dates-- until the end of July when the electric was  
16 completed. And then from that time until the end of November, I--  
17 the recorder was in the vault and I just forgot to bring it out.

18 Q. How did you-- Do you have any idea what caused you to bring it out?

19 A. We were researching a disposition I believe on a case, and it was in  
20 the vault. The vault is in a room where the records are kept. So we  
21 were just in there, and we saw it there, and I just brought it back out,  
22 and we started again.

23 Q. Okay. And have you used it continuously since?

24 A. Yes, I have.

25

207.

(Evans-Cross)

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MR. SONN: Nothing further, your Honor. Thank  
you.

THE REFEREE: Mr. Farcher?

CROSS-EXAMINATION

BY MR. FARCHER:

Q. Judge, can we agree that Assistant District Attorney Dunshee was  
your personal attorney at some period in time?

A. Yes, sir.

Q. Okay. He represented you in 2004?

A. Yes.

Q. Until approximately January of 2005?

A. That's correct.

Q. The extent of his representation was in a Commission proceeding?

A. That's correct.

Q. Did he accompany you to provide testimony to the Commission?

A. Yes.

Q. Did he fill out, send correspondence on your behalf?

A. Yes, he did.

Q. And did he accept a private letter of caution on your behalf, as well?

A. Yes, he did.

Q. Was that the conclusion of that matter?

A. Yes.

Q. If I could just have you take a look at Mr. Dunshee's letter, which is

Exhibit 3-- sorry-- Exhibit 4. By taking a look at Mr. Dunshee's

(Evans-Cross)

1 letter, can you determine the date approximately when Mr. Dunshee's  
2 representation would have ceased?

3 A. That was January 5<sup>th</sup>, 2005.

4 Q. Thank you, Judge. And now after he represented you, as an ADA,  
5 when did Mr. Dunshee begin to appear in your court again?

6 A. It was either January or February of 2008.

7 Q. Three years later?

8 A. Yes.

9 Q. All right. And why did you and Mr. Dunshee pick 2008?

10 A. That's when he got-- He got assigned up here, and I didn't realize  
11 before, but apparently the district attorney asked him about coming on  
12 board before that but he stated that he couldn't because the time  
13 period that he indicated to me hadn't elapsed yet that it needed to.

14 Q. Did you ever discuss a continuing need to disclose your  
15 representation?

16 A. No.

17 Q. Mr. Dunshee just informed you that he couldn't appear for several  
18 years?

19 A. For, I believe, it was two years he had stated.

20 Q. Now when Mr. Dunshee began to appear before you on January of  
21 2008, did you ever disclose that relationship?

22 A. I did not, no.

23 Q. No disclosure orally or in writing?

24 A. No.

25 Q. Is Mr. Dunshee still appearing before you now?

209.

(Evans-Cross)

1 A. Yes, he is.

2 Q. And how often does Mr. Dunshee currently appear before you?

3 A. Twice a month, first and third Thursdays.

4 Q. Now, Judge, with regard to the recording issue, did you mechanically  
5 record court proceedings between of April of 2008 and November of  
6 2008?

7 A. We had recorded April-- There was a time period when we started  
8 and then when the court was starting to be built, we stopped. It might  
9 have been-- I don't remember. But then there was a time lapse or  
10 maybe it was prior. Maybe we recorded March, then stopped April to  
11 November, but there was--

12 Q. If I showed you a prior statement, Judge, would it refresh your  
13 recollection?

14 A. That would be-- Yes.

15 THE REFEREE: Read it into the record, please.

16 MR. FARCHER: You want me to read it into the  
17 record?

18 THE REFEREE: Yes. That's in evidence, isn't it?

19 MR. FARCHER: No, it's not, your Honor. This is  
20 a-- Let me have this marked for identification. This is a  
21 transcript of Judge Evans' prior testimony, again, given on  
22 August 13, 2009. Judge, you said you don't remember  
23 when the recording--

24 THE RESPONDENT: --I don't remember the exact.  
25 I know it was November when we started again.

210.

(Evans-Cross)

1 THE REFEREE: Do you want offer it into evidence?  
2 You intend to use it?

3 MR. FARCHER: No, I don't want to offer it, your  
4 Honor. At this time, I just want to use it to refresh Judge  
5 Evans' recollection.

6 THE REFEREE: Any objection?

7 MR. SONN: No.

8 THE REFEREE: Go ahead.

9  
10 BY MR. FARCHER:

11 Q. Judge, could you us again was-- essentially, was there any recording  
12 in your court between April of 2008 and November of 2008?

13 A. No, sir.

14 Q. Were you aware that you were required to record?

15 A. Yes.

16 Q. Did you receive a copy of the administrative order directing you to do  
17 so?

18 A. Yes, I did.

19 Q. And you said at the time you were having the court renovated?

20 A. Yes.

21 Q. And there were some electrical issues?

22 A. Yes, from April through July.

23 Q. Was the issue that the court didn't have any electric or just didn't have  
24 outlets?

25 A. It didn't have any outlets. There was an extension cord that they ran

211.

(Evans-Cross)

- 1 from the other room to plug in the computer for Mrs. Pierce's  
2 computer, but that was the extent of the electric that we had in there.
- 3 Q. Now you said the court was being renovated from April to July?  
4 A. Yes.
- 5 Q. So you could have recorded from July onward. Is that correct?  
6 A. Yes, I could have.
- 7 Q. Okay. And is it your testimony you didn't do so because you forgot?  
8 A. I just simply forgot, yes.
- 9 Q. Now, Judge Evans, you had stated you're familiar with Judge  
10 Daniels?  
11 A. Yes.
- 12 Q. Okay. Could you tell us how long you've known him?  
13 A. As long as I've been a justice.
- 14 Q. And how long is that approximately?  
15 A. Sixteen years.
- 16 Q. When you say you know him, could you tell us in what capacity?  
17 A. Just as a co-judge.
- 18 Q. Have you ever attended any magistrate's training with him?  
19 A. Yes. Actually, we've been down in Binghamton, yep.
- 20 Q. How many times would you say?  
21 A. Four, five.
- 22 Q. Do you travel together when you go to the magistrate's trainings?  
23 A. Yes.
- 24 Q. Stay in the same hotel?  
25

212.

(Evans-Cross)

1 A. Oh, we don't. We'd just drive just from Binghamton. Norwich to  
2 Binghamton.

3 Q. Now he's come to your court to conduct some training with your  
4 clerk?

5 A. Yes.

6 Q. Do you know how many occasions that's occurred?

7 A. I honestly don't know. Half a dozen, maybe.

8 Q. Now, Judge, you had testified that you're also familiar with the Larry  
9 Bates ticket?

10 A. Yes.

11 Q. Okay. Have you ever met Mr. Bates?

12 A. No, I have not until today.

13 Q. Judge, you testified that you knew he was a bus driver. How did you  
14 know Mr. Bates was a bus driver if you never met him?

15 A. The-- I testified he was a bus driver? I don't know. I mean, I never  
16 met him before. I don't know how.

17 Q. Well, you knew that Judge Daniels was his supervisor, didn't you?

18 A. Yeah.

19 Q. How did you know that Judge Daniels was his supervisor?

20 A. I don't know. I don't recall.

21 Q. Now, Judge, you said you had found Mr. Bates' ticket on a desk in  
22 your court?

23 A. No, no. I didn't find it. Nope.

24 Q. Okay. It was-- Sorry, go ahead.

25 A. They-- Can I try to clarify that?

213.

(Evans-Cross)

1 Q. Sure. Where was the ticket found, Judge?

2 A. The ticket was actually found in Mr. Dunshee's-- Mr. Dunshee had  
3 the ticket in his file. There's a file that Mrs. Pierce puts together  
4 every ADA night for the DA. And it was in that file, and I didn't  
5 know that until Mr. Dunshee brought his name up.

6 Q. Is that the dismissed pile you were referring to earlier?

7 A. Yes, I am.

8 Q. Okay. Can you tell us why Mr. Bates' ticket was in the dismissed  
9 pile?

10 A. I do not know.

11 Q. Now you said you had some communications with Mr. Dunshee  
12 regarding Mr. Bates' ticket?

13 A. Yes.

14 Q. You had specially spoken to him about this ticket?

15 A. Yes.

16 Q. Okay. Was Mr. Bates present for any of those communications?

17 A. No.

18 Q. Was Mr. Bates' attorney present for any of those communications?

19 A. No, he was not.

20 Q. Judge, would you consider those to be *ex parte* communications?

21 A. With just Mr. Dunshee, no.

22 Q. Judge, you were communicating about a pending matter with just the  
23 district attorney without the defendant or his defense counsel?

24 A. Then I-- Yeah, I guess I-- Yes, that's correct.  
25

214.

(Evans-Cross)

- 1 Q. Now, Judge, Mr. Bates was ticketed for Failure To Yield The Right  
2 Of Way. Is that correct?
- 3 A. Yes.
- 4 Q. Okay. I take it it was the result of a bus accident?
- 5 A. Yes.
- 6 Q. And that ticket was returnable in your court?
- 7 A. That's correct.
- 8 Q. I take it it was ultimately dismissed by you?
- 9 A. Yes.
- 10 Q. And prior to the dismissal, did you learn that Judge Evans had visited  
11 your court?
- 12 A. Judge Daniels, you mean?
- 13 Q. I'm sorry. Judge Daniels, yes.
- 14 A. Yes.
- 15 Q. Okay. So prior to dismissing Mr. Bates' ticket, you were made aware  
16 of Judge Daniels' visit to your court?
- 17 A. Yes.
- 18 Q. Your clerk informed you of that, Faye Pierce?
- 19 A. Yes, I believe both Faye and Deputy Smith.
- 20 Q. Okay. Did Ms. Pierce tell you that Judge Daniels had played a video  
21 while he was there?
- 22 A. No. No, I don't remember anything, not the video. No, I don't  
23 remember that.
- 24 Q. Okay. If I showed you a prior statement, Judge, would it help you?
- 25 A. Yep. Yep.

215.

(Evans-Cross)

1 Q. Judge, let me just read the question that was asked to you. This is on  
2 page 79, Mr. Sonn, if you care to follow.

3 MR. SONN: I'm not sure what we're-- I'm  
4 objecting to this procedure. I thought you were going to  
5 show him something to refresh his recollection. Now,  
6 you're reading questions from the transcript.

7  
8 BY MR. FARCHER:

9 Q. Well, let me ask you this, Judge Evans. Do you recall your court clerk  
10 telling you about Judge Daniels bringing a video?

11 A. I don't recall.

12 Q. Then let me show you a prior statement, page 79, Mr. Sonn. This is--  
13 Yes, it's been identified as Exhibit 9.

14 THE REFEREE: Page?

15 MR. FARCHER: Seventy-nine, starting at line 4.

16 THE RESPONDENT: Four? Okay. Yep, then I did  
17 state that.

18 THE REFEREE: What is it you said?

19  
20 BY MR. FARCHER:

21 Q. Judge Evans, was it indicated to you by Faye Pierce that a video was  
22 played when Judge Daniels stopped by?

23 A. Yes.

24 Q. Was it also indicated to you that a video was played by court officer  
25 Kent Smith?

216.

(Evans-Cross)

- 1 A. Yes.
- 2 Q. During Judge Daniels' visit?
- 3 A. Yes.
- 4 Q. Okay. Did Ms. Pierce or Mr. Smith ever describe that video for you?
- 5 A. No, they did not.
- 6 Q. Did they ever discuss why Judge Daniels had stopped by your court?
- 7 A. No, other than-- Just that he had a video.
- 8 Q. Did you ever ask Ms. Pierce what Judge Daniels had wanted?
- 9 A. No, I did not.
- 10 Q. Did you ever ask Officer Smith?
- 11 A. No, I did not.
- 12 Q. Did Judge Daniels ever leave a note for you letting you know that he
- 13 was dropping off a ticket?
- 14 A. No, he did not.
- 15 Q. Did he ever leave a note letting you know that he had displayed a
- 16 video with regard to Mr. Bates?
- 17 A. No, he did not.
- 18 Q. Did Judge Daniels leave a copy of that video for you?
- 19 A. No, he did not.
- 20 Q. Did you ever contact Judge Daniels to find out why he had stopped
- 21 by?
- 22 A. No, I did not.
- 23 Q. Did you ever contact him to ask him what the video was with regard
- 24 to?
- 25 A. No, I did not.

217.

(Evans-Cross)

- 1 Q. Judge, your court clerk and the court officer both told you that Judge  
2 Daniels had stopped by and played a video--
- 3 A. Yes.
- 4 Q. --but you never followed up with Judge Daniels to ask why or what it  
5 was about?
- 6 A. No, I did not.
- 7 Q. You never followed up to see if there was something in particular that  
8 Judge Daniels needed?
- 9 A. Nope. Nope.
- 10 Q. Judge Evans, after Judge Daniels' visit, did you ever tell court officer  
11 Kent Smith, "He's crazy if he thinks I'm going to dismiss this ticket"?
- 12 A. No, I did not.
- 13 Q. You don't recall making that statement or you didn't make it?
- 14 A. I don't recall. I don't recall making that statement.
- 15 Q. Judge Daniels, the basis for the dismissal of Mr. Bates' ticket, was  
16 that ever placed on the record anywhere?
- 17 A. Other than what I wrote on the ticket.
- 18 Q. Let me just show you a copy of the ticket. I'm sorry, David, do you  
19 have it down there? Is that Exhibit 2? Judge, what is the-- Is there a  
20 basis for dismissal indicated on that?
- 21 A. Basis, no.
- 22 Q. What does it say there for dismissal?
- 23 A. It just said dismissal 11-20-08.
- 24 Q. Okay. So was the basis of the dismissal ever indicated anywhere else?  
25 Was there any record of that?

218.

(Evans-Cross)

1 A. No.

2 THE REFEREE: Is that your handwriting?

3 THE RESPONDENT: Yes, it is.

4

5 BY MR. FARCHER:

6 Q. There's no recording of Mr. Bates' proceeding, is there?

7 A. No, sir.

8 Q. You weren't recording at that time?

9 A. No, we were not.

10 Q. Now, Judge, are you familiar with Criminal Procedure Law 170.30,  
11 the section of the law which sets the basis for dismissing a Simplified  
12 Information in a local court?

13 A. Yes.

14 Q. Okay. Judge, can you tell me was Mr. Bates' ticket defective or  
15 insufficient on its face?

16 A. No.

17 Q. Was Mr. Bates offered immunity from prosecution?

18 A. No.

19 Q. Was prosecution barred by previous prosecution or double jeopardy?

20 A. No.

21 Q. Was it time barred, prosecution time barred?

22 A. Nope.

23 Q. Was Mr. Bates denied a right to a speedy trial?

24 A. No.

25 Q. Was there some sort of jurisdictional defect with the ticket?

219.

(Evans-Cross)

- 1 A. No, there was not.
- 2 Q. Well, was the basis of dismissal the interest of justice?
- 3 A. In the interest of justice, that's correct.
- 4 Q. Okay. Was there a motion to dismiss it in the interest of justice?
- 5 A. There was just a motion that was-- an informal motion that Mr.
- 6 Dunshee had made. He made a request to dismiss it after he had
- 7 checked-- He had indicated that he had checked with the insurance
- 8 company.
- 9 Q. Was there any record of Mr. Dunshee's motion?
- 10 A. No.
- 11 Q. Was that motion made in writing?
- 12 A. No, it was--
- 13 Q. An oral motion?
- 14 A. Just an oral motion.
- 15 Q. Why would the district attorney move to dismiss a ticket?
- 16 A. Because that's consistent to his policy with these tickets.
- 17 Q. Well, in your regular practice, isn't it a defendant who normally
- 18 moves to dismiss a ticket?
- 19 A. Not necessarily. Not with these tickets.
- 20 Q. Was there ever a trial in Mr. Bates' case?
- 21 A. No, there was not.
- 22 Q. Witness testimony?
- 23 A. No.
- 24 Q. No evidence presented?
- 25 A. No.

220.

(Evans-Cross)

1 Q. Did the court ever obtain a driving abstract from Mr. Bates?

2 A. No.

3 Q. Were you ever provided any insurance documents?

4 A. Not to the court, no.

5 Q. Now, Judge, you testified that Assistant District Attorney Stephen  
6 Dunshee had consented to dismiss the ticket after confirming the  
7 insurance claims had been settled?

8 A. Yes.

9 Q. Can you tell us what the insurance claims have to do with Mr. Bates'  
10 guilt or innocence?

11 A. It's just that that's the policy of the DA's office to make sure that the  
12 insurance claim is settled before they ask for dismissal on it.

13 Q. Well, surely not every case in which the insurance claims are settled  
14 the tickets are dismissed, though?

15 A. Yes, they are.

16 Q. Judge, you heard Mr. Dunshee state that he has no recollection of this  
17 matter, didn't you?

18 A. I do.

19 Q. Okay. Did you hear him testify that he has no recollection of  
20 confirming the insurance?

21 A. I did hear that.

22 Q. Did you hear Ms. Bussonnais and Mr. Gallagher testify today?

23 A. Yes, I did.

24 Q. Okay. Did you hear them say that they had no record of any contact  
25 from the district attorney?

221.

(Evans-Cross)

- 1 A. Yes.
- 2 Q. Did you hear them testify that there were on-going bodily injury  
3 claims or the monitoring of a bodily injury claim until March of '09?
- 4 A. Through March, yes.
- 5 Q. Did you hear Larry Bates testify that he's never appeared in court?
- 6 A. Yes, I did.
- 7 Q. Never entered a plea on this ticket?
- 8 A. Yes.
- 9 Q. Never mailed in the ticket?
- 10 A. Yes.
- 11 Q. Spoke to a prosecutor?
- 12 A. Mm-hmm, yes.
- 13 Q. Judge, isn't the truth that you dismissed the ticket after talking to  
14 Judge Daniels?
- 15 A. No, it is not. I never spoke with Judge Daniels.
- 16 Q. You never asked him about this matter?
- 17 A. I have never spoke with him once about this.
- 18 Q. And yet you don't know how you knew that Larry Bates was a bus  
19 driver?
- 20 A. I don't recall how I-- I don't know how--
- 21 Q. You knew that Larry Bates' supervisor was Judge Daniels?
- 22 A. Yeah. I mean, I don't know anything about him. I mean--
- 23 Q. Just that he's a bus driver?
- 24 A. Yep, but I don't know how. We had no conversation about this ticket.
- 25 Q. Okay. Now, you did have some conversation after the dismissal of the

222.

(Evans-Cross)

1 ticket about this matter, didn't you? I mean, you asked Judge Daniels  
2 to provide a notarized statement?

3 A. Yes.

4 Q. Okay. You-- With regard to that, you contacted him and asked him to  
5 come down to the court?

6 A. Yes, I did.

7 Q. Okay. And while he was there, you had him sign a notarized  
8 statement attesting to the fact that you had never had any *ex parte*--

9 A. Any contact.

10 Q. --communication in the Bates matter?

11 A. That's correct. Yep.

12 Q. You produced that statement in response to the Commission's  
13 investigation?

14 A. Yes, I did.

15 Q. Okay. And you also asked Judge Daniels to subsequently obtain a  
16 letter from Mang Insurance?

17 A. Yes. No, not-- I asked if-- how we could find out, you know, about  
18 the ticket because I had spoke with Mr. Dunshee and he didn't recall  
19 that. So I asked him if there was a way to get a hold of the-- get that,  
20 and he provided the letter from Mang.

21 Q. Judge, let me show you what's been marked and entered into evidence  
22 as Exhibit 7, Exhibit 8. Let's take a look the first one, which is  
23 Exhibit 7. Is that the letter that you asked Judge Daniels to sign for  
24 you?

25 A. Yes it is.

223.

(Evans-Cross)

- 1 Q. And is that the letter that Judge Daniels provided in response to your  
2 request?
- 3 A. Yes, it is.
- 4 Q. Okay. Exhibit 8, is that the letter that was provided to you by Judge  
5 Daniels?
- 6 A. I'm trying to think if it was provided by Judge Daniels or if Diane  
7 Edwards sent it to me. I don't recall.
- 8 Q. How did you obtain that letter?
- 9 A. That's-- I retained-- I obtained that by the fact that Judge Daniels  
10 had-- Mr. Daniels had spoke to this Diane Edwards and had her send  
11 the letter.
- 12 Q. You didn't personally elicit or go get that?
- 13 A. No, I did not personally.
- 14 Q. You asked Judge Daniels to obtain it on your behalf?
- 15 A. Yes-- Mr. Daniels.
- 16 Q. And either he brought it to you or Ms. Edwards sent it to you?
- 17 A. I don't know whether she'd sent it or--
- 18 Q. Okay. But it was obtained in response to your request of Judge  
19 Daniels?
- 20 A. To Mr. Daniels, yes.
- 21 Q. Now, Judge, if you would just take a look at-- I'm sorry, one more  
22 time-- letter, the exhibit that's number 8 there, the letter from Diane  
23 Edwards. Could you tell us the date on that letter?
- 24 A. August 11, 2009.
- 25

224.

(Evans-Cross)

- 1 Q. Okay. I'm just going to show you what's already been identified as  
2 Exhibit 9, which again is a copy of your prior testimony.
- 3 A. Okay.
- 4 Q. If you could just take a look at the cover page and tell us when it was  
5 you testified for the Commission at a Commission hearing?
- 6 A. That's August-- This says July 19<sup>th</sup>. July--
- 7 Q. --It says August 13<sup>th</sup>?
- 8 A. No, because it shows July. Oh, I'm sorry. It was marked in in July?
- 9 Q. That's today's date.
- 10 A. Oh, today. Okay, yes, August 13<sup>th</sup>.
- 11 Q. So you obtained the letter from Mang Insurance or Judge Daniels  
12 obtained it for you on August 11<sup>th</sup>. Correct?
- 13 A. That's correct, yep.
- 14 Q. You testified for-- at a Commission investigation on August 13<sup>th</sup>?
- 15 A. Yes.
- 16 Q. Okay. And could you take a look at the date on Judge Daniels' letter?  
17 Could you tell us when that is dated, the notarized statement?
- 18 A. That was August 11<sup>th</sup>.
- 19 Q. Okay. Those were-- So the letter and Judge Daniels' statement were  
20 both obtained two days prior to your testimony before the  
21 Commission?
- 22 A. That's correct.
- 23 Q. Now, Judge, the letter from Diane Edwards speaking about the  
24 property damage, that's dated August 11<sup>th</sup>, 2009. Did you have that at  
25 the time you dismissed Mr. Bates' ticket?

225.

(Evans-Cross)

1 A. No, I did not. Nope.

2 Q. Was there any proof or insurance claim that you had at the time you  
3 dismissed his ticket?

4 A. No, other than speaking with Mr. Dunshee. There's no-- I had no--  
5 nothing from the insurance company.

6 Q. Judge, you had spoken with Dave Daniels with regard to your  
7 testimony here, in terms of you asked him to obtain a letter for you  
8 and sign a notarized statement. That's correct?

9 A. Yes.

10 Q. Okay. Did you tell him why you needed the notarized statement?

11 A. I just told him that we were-- based on an investigation that the  
12 Commission was having.

13 Q. Okay. And did you tell him why you needed the letter from Diane  
14 Edwards?

15 A. I'm-- Yes, because I had to let him know I had spoke to Steve  
16 Dunshee and Steve didn't remember. So, yes.

17 Q. Okay. Did you tell him it was in regard to an investigation by the  
18 Commission?

19 A. Yes.

20 Q. All right. Judge, you had significant contact with Judge Daniels after  
21 the Commission's investigation began. But is it still your testimony  
22 today that you had no contact with him prior to dismissing Mr. Bates'  
23 ticket?

24 A. I had no contact with him prior to me asking him to sign that letter.

25 Q. You testified that you didn't have the insurance documents at the time

226.



(Evans-Redirect)

1 A. I don't believe so. I don't remember any conversation with anybody  
2 on that.

3 Q. Did you ever say anything like that regarding any request from Mr.  
4 Daniels?

5 A. No. No, I do not recall saying anything like that.

6 Q. For years until the OCA required us to mechanically record all  
7 proceedings, wasn't it common to have just discussions on tickets?

8 A. Yes.

9 Q. And dismiss them or reduce them or--

10 MR. FARCHER: Objection, your Honor.

11 THE REFEREE: Sustained as to the form.

12

13 BY MR. SONN:

14 Q. Prior to recording, was there always a record of every decision to  
15 reduce or discuss the ticket?

16 MR. FARCHER: Same objection.

17 THE REFEREE: It's sustained as to the form.

18

19 BY MR. SONN:

20 Q. Were tickets discussed without a formal record prior to recording?

21 A. Yes.

22 Q. And the reason for the dismissal was that part of the conversation?

23 A. Can you restate that?

24 Q. Was there ever a dismissal without a reason?

25 A. Without a reason?

228.

(Evans-Redirect)

- 1 Q. Hmm.
- 2 A. Not-- No.
- 3 Q. And that reason would have been agreed to with the DA and the judge
- 4 and the defendant?
- 5 A. That's correct.
- 6 Q. Now isn't it routine to-- fairly routine to reduce and dismiss tickets?
- 7 They're not always prosecuted to their-- to the stated charge?
- 8 A. That's correct.
- 9 Q. And when you state that you never spoke to Mr. Daniels about the
- 10 situation, it was prior to the dismissal you never did?
- 11 A. That's correct.
- 12 Q. And then also prior to his letter stating that he never did?
- 13 A. That's correct.
- 14 Q. But you have had discussions since then?
- 15 A. Yes.
- 16 Q. And the reason why you asked Mr. Bates to follow up with the
- 17 insurance information was just to confirm what you remembered Mr.
- 18 Dunshee telling you?
- 19 A. Mr. Daniels, you mean?
- 20 Q. Did you ask Mr. Daniels to follow up--
- 21 A. Yes.
- 22 Q. --because you were concerned about what-- wanted to confirm what
- 23 Mr. Dunshee had told you?
- 24 A. Yes, that is correct.
- 25 MR. SONN: Nothing further.

229.

(Evans-By The Referee)

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THE REFEREE: Anything? I have a question, just a couple of questions. You stated it was difficult or impossible to get electricity to the computer, correct, to the new equipment? There was no outlet.

THE RESPONDENT: That's correct. They'd run one extension line in for the computer. One extension cord in from the other room to the computer.

THE REFEREE: Were there any other outlets that you could have used?

THE RESPONDENT: No.

THE REFEREE: In the whole court?

THE RESPONDENT: No, there wasn't any-- They built this courtroom without outlets in it, and they had to go through afterwards to put them back in.

THE REFEREE: All right. I'm a little unclear on your testimony as to discussions with ADA Dunshee, all right?

THE RESPONDENT: Okay.

THE REFEREE: Tell me the first discussion you had with him regarding this ticket?

THE RESPONDENT: It was November 13<sup>th</sup>.

THE REFEREE: Ah-hah.

THE RESPONDENT: It was the day that Mr. Bates, according to this ticket, was due in court.

THE REFEREE: Right.

230.

(Evans-By The Referee)

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THE RESPONDENT: And it had to do-- Mr. Dunshee had the copy of Mr. Bates' ticket, which was in the file, we call it-- it was like the dismissal file, and Mr. Dunshee pulled Mr. Bates' ticket out, and he had said that--

THE REFEREE: --Said, told you?

THE RESPONDENT: Told me. That-- He said -- We were tal-- He brought Mr. Bates' name on me and he said this is a property, property damage accident. He said, "This can't be dismissed," he said, "until I confirm that the insurance had been taken care of."

THE REFEREE: Okay. And at that time, did you look at the ticket?

THE RESPONDENT: I did not. I had the court's copy, and he had the defendant's copy, apparently.

THE REFEREE: Did you ask to look at it?

THE RESPONDENT: No, I did not.

THE REFEREE: Okay. When is the next time you discussed it?

THE RESPONDENT: A week later.

THE REFEREE: And what was that?

THE RESPONDENT: I contacted him, like I indicated I would, on the phone, and asked him if he had contacted the insurance company, which he had stated to me at that time that he had and he had--

THE REFEREE: --Did he tell you what they said?

(Evans-By The Referee)

1 THE RESPONDENT: He just said that it had been  
2 taken care of.

3 THE REFEREE: The problem?

4 THE RESPONDENT: Yes.

5 THE REFEREE: The claim?

6 THE RESPONDENT: The claim had been--

7 THE REFEREE: --He told you that?

8 THE RESPONDENT: Yes.

9 THE REFEREE: All right. And then what  
10 happened?

11 THE RESPONDENT: And then he just made a  
12 request that it be dismissed.

13 THE REFEREE: He requested that it be dismissed?

14 THE RESPONDENT: Yes.

15 THE REFEREE: Okay. And based on that, you  
16 dismissed it?

17 THE RESPONDENT: Yes, sir.

18 THE REFEREE: You wrote on it "dismissed"?

19 THE RESPONDENT: I wrote the "dismissed" on it.

20 THE REFEREE: Okay. Anything else?

21 MR. FARCHER: Your Honor, just at this time, I  
22 would renew my application to have the admissions put into  
23 evidence to be accepted.

24 THE REFEREE: No. Denied.

25 MR. FARCHER: Your Honor, the only thing I

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(Evans-By The Referee)

1 would point out is that a portion of our charge is that Judge  
2 Evans' prior testimony-- Judge Evans' prior testimony in  
3 comparison of today's testimony, there's a lack of candor  
4 charge.

5 THE REFEREE: Well, ask him. Ask him if on the  
6 prior occasion, he testified as to X. And if he says yes or  
7 no, if he says yes, then you got it; if he says no, show it to  
8 him. That's the procedure. Do you want to open up?

9 MR. FARCHER: Well, I guess we better go back on  
10 redirect, then. If none of the admissions are going to be  
11 accepted, then we need to ask just a few more questions.

12 THE REFEREE: Go ahead. Unless, Mr. Sonn,  
13 you're ready to stipulate?

14 MR. SONN: No, I wouldn't stipulate. I mean, he's  
15 asking him to enter a part of a transcript in, I mean. If it all  
16 goes in, it's--

17 THE REFEREE: In isolation.

18 MR. SONN: Yeah. And I think Mr. Daniels-- Mr.  
19 Evans is pretty much corroborated what he said in there. I  
20 don't think he's changed his story.

21 THE REFEREE: Well, I'm not going there.

22 MR. SONN: Yeah. And that's the procedure.

23 THE REFEREE: You know, you can ask him  
24 questions from there. You don't have to go to the podium,  
25 if you want. It's up to you.

233.

(Evans-Recross)

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MR. FARCHER: Well, no, your Honor. I mean, I guess we can try and lay foundation for a respondent's prior testimony and offer it into evidence at this time, the entire transcript.

THE REFEREE: Ask him if he testified as that's indicated?

MR. FARCHER: Yes.

THE REFEREE: And if he says no, then show it to him and then ask him. Or ask him-- Show it to him first.

MR. FARCHER: I guess the proper procedure--

MS. CENCI: Can we consult just for a minute?

THE REFEREE: Sure.

(OFF THE RECORD.)

MR. FARCHER: I'll move to the podium for a moment if I could.

RECROSS-EXAMINATION

BY MR. FARCHER:

Q. Judge, could I have you take a look at Exhibit 9? It's been marked for identification.

A. Yes, sir.

Q. Would you look at--

MR. SONN: That has not been accepted into evidence.

THE REFEREE: It's not in evidence.

(Evans-Recross)

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MR. FARCHER: It's just identified. I'm just having him look at it. I'm not having him test-- I'm not offering.

THE REFEREE: --He can look at it.

MR. FARCHER: Yeah, right. Would you just look at page 39, Judge?

MR. SONN: Well, I'll object, your Honor.

THE REFEREE: Well, let's see what he's asking.

MR. SONN: He's got to ask him to have it inconsistent.

THE REFEREE: Just wait a minute.

BY MR. FARCHER:

Q. Judge, the date of that testimony is August 13, 2009?

THE REFEREE: You object?

MR. SONN: Object.

THE REFEREE: The objection is sustained.

Q. Judge, did you provide--

THE REFEREE: --I think what I would like you to do is ask him a question as to testimony today and move this into evidence. Ask him to read the section you're interested in and then ask him is that your testimony of today. If he says no, then you read it in.

MR. FARCHER: You want me to lay a foundation for the entire transcript? Is that what you're telling me?

235.

(Evans-Recross)

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THE REFEREE: Yeah.

BY MR. FARCHER:

Q. Judge Daniels, did you provide-- Judge Evans, did you provide testimony on August 13, 2009?

A. Yes, sir.

Q. Were you represented by your attorney, Mr. Sonn?

A. Yes, sir.

Q. Okay. Is that an accurate-- Were you provided a copy of the transcript of that testimony?

A. Yes.

Q. Okay. Now have you had a chance to look that testimony over?

A. Yes.

MR. SONN: Well--

THE REFEREE: --You have an objection, state it.

MR. SONN: Yes. I object. I mean, you can look it over. He just had it for just one moment here. I don't know if--

THE REFEREE: --Well, that's not the point. He had it, okay?

MR. SONN: Yeah.

THE REFEREE: And you received and you, Mr. Sonn, received it, too?

MR. SONN: Yes.

236.

1 THE REFEREE: Are you offering it into evidence  
2 now?  
3 MR. FARCHER: Yes.  
4 THE REFEREE: It's admitted.  
5 MS. CENCI: Your Honor, may I be heard?  
6 THE REFEREE: State your position.  
7 MR. SONN: Well, I think I'm going to have to  
8 object. I mean, we have co-counsel. We have one attorney  
9 that speaks for one client here. We don't take turns talking  
10 from the same counsel table.  
11 THE REFEREE: Are you challenged? Are you  
12 intimidated by this?  
13 MS. CENCI: I'm not questioning your client.  
14 MR. SONN: Speak. Go right ahead.  
15 MS. CENCI: I'm making an application--  
16 MR. SONN: --I understand, but--  
17 MS. CENCI: The entire transcript is not admissible,  
18 your Honor, because it contains hearsay and a lot of other  
19 matters about which we're not even inquiring today.  
20 THE REFEREE: Okay.  
21 MS. CENCI: Only those portions which are in your  
22 evaluation but which we have offered as admissions would  
23 be offered into evidence.  
24 THE REFEREE: Yes. I thought-- Okay.  
25 MS. CENCI: Just so that the record is clear as to--

1 THE REFEREE: --Okay. You understand what I'm  
2 saying?

3 MR. SONN: But they would have to be in one at a  
4 time.

5 THE REFEREE: No.

6 MR. SONN: Not a blanket.

7 THE REFEREE: No. He will read portions of that,  
8 okay, and then offer it into evidence if he disagrees. You  
9 ask him a question and if he says no, then you show him the  
10 transcript.

11 MR. SONN: Yes. Correct.

12 THE REFEREE: And if he still says no, then you  
13 read the transcript.

14 MR. SONN: Right, but not several--

15 THE REFEREE: No.

16 MR. SONN: One thing at a time?

17 THE REFEREE: Yeah, one thing at a time.

18 MR. SONN: He has one question and one reading?

19 THE REFEREE: Yeah.

20 MR. SONN: Yeah.

21

22 BY MR. FARCHER:

23 Q. Can we start at page 39 then, Judge Evans?

24 A. Yes.

25 Q. Line 7.

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THE REFEREE: Excuse me a minute. If we go over, do either of you have a problem staying over to finish?

MR. FARCHER: It's only 4:00, is that correct?

THE REFEREE: Yeah, I understand but I--

MR. FARCHER: No objection here, your Honor.

THE REFEREE: Clocks run much faster than advocates think when they say that. So we have no problem staying over a little more? Okay, go ahead.

MR. FARCHER: No objection, your Honor.

BY MR. FARCHER:

Q. Line 39. Judge Evans, on the date that you gave your prior testimony on August 13, 2009, were you asked a question, "Okay, with regard to your prior letter of caution, did Mr. Dunshee represent you on that matter?" And did you give the answer--

A. Okay, what question-- Where are we? We're on page 39?

Q. Yes, line 17.

THE REFEREE: Wait a minute. You want to show inconsistency or a past-- prior admission, correct?

MR. FARCHER: Yes.

THE REFEREE: Now, how are you going to show a prior admission?

MR. FARCHER: I'm going to ask Judge Evans if he gave these prior statements, ask him if they're true and

(Evans-Recross)

1 accurate statements and show that they're inconsistent with  
2 his position at trial.

3 THE REFEREE: Okay. Go ahead then.  
4

5 BY MR. FARCHER:

6 Q. Judge, I'm looking at page 39, line 17. Cathy, can I have that Formal  
7 Written Complaint? Judge, page 39, line 17, were you asked a  
8 question, "Okay, with regard to your prior letter of caution, did Mr.  
9 Dunshee represent you on that matter?" Did you give the answer,  
10 "Yes, he did"?

11 A. Yes.

12 Q. Line 24-- Sorry, line 22, were you asked the question, "Okay, so was  
13 the one and only time--"

14 MR. SONN: Your Honor, is this an inconsistent  
15 statement from something he said in testimony?

16 THE REFEREE: He's talking about admissions  
17 contrary to his position at trial. That's what he's using to  
18 get them in.

19 MR. SONN: But is this cont-- This is not contrary  
20 to his position at trial.

21 THE REFEREE: That's right. So you have an  
22 objection?

23 MR. SONN: I guess not.  
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240.

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THE REFEREE: You don't. Okay, he doesn't, so go ahead. What he's saying, Mr. Farcher, is that you can't say it's contrary if that's what he testified to today.

MR. FARCHER: I understand, your Honor.

MR. SONN: I don't know why we're going-- You know, if we've had him here, he's testified to these things. Why we're going through--

THE REFEREE: It's called buttressing.

MR. FARCHER: Your Honor, the only admissions I really need to offer are as to Judge Evans' prior testimony with regard to Mr. Dunshee. And for the purpose that there's a lack of candor charge, in order to establish a lack of candor charge, you have to know what Judge Evans testified to on a previous occasion. He's been charged that his prior testimony before this Commission was not truthful. In order to establish that charge, your Honor, you need to know what his prior testimony was.

THE REFEREE: My difficulty is that the rules of evidence apply regardless of the charge. You can't use the charge to violate the rules of evidence. Now, if you-- Do you want to get in admissions? Is that what you're saying?

MR. FARCHER: Yes, your Honor.

THE REFEREE: So get them in through the procedure of getting an admission in. If you want to use

(Evans-Recross)

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inconsistent testimony, use that. And, Judge Evans, you signed that, correct, that document?

THE RESPONDENT: No.

THE REFEREE: You didn't sign it? But he signed the original?

THE RESPONDENT: No.

THE REFEREE: No?

BY MR. FARCHER:

Q. Judge Evans, did you previously testify that you had spoken with Assistant District Attorney Stephen Dunshee with regard to the Larry Bates matter?

A. Well, when? I mean--

THE REFEREE: Today?

BY MR. FARCHER:

Q. August 13, 2009, did you previously give testimony that you had spoken with Mr. Dunshee with regard to the Larry Bates matter?

A. I don't under-- Previously spoken to him. At what point?

THE REFEREE: I think he's saying what you testified to today.

BY MR. FARCHER:

Q. Page 71 at line 12. Judge, take a look at that question. I'm sorry. Move right down to line 19. Did you previously testify that, "Yes, it

(Evans-Recross)

1 was dismissed on the basis-- When I originally had done the  
2 arraignment, I spoke to Mr. Dunshee about--”

3 THE RESPONDENT: I’m sorry.

4 THE REFEREE: Are you lost?

5 THE RESPONDENT: Yeah.

6 THE REFEREE: Give him the line, please.

7

8 BY MR. FARCHER:

9 Q. Sorry, line 19.

10 A. Page 71, line 19?

11 Q. Yes. Judge, did you previously testify that, “Yes, it was dismissed on  
12 the basis that--”

13 MR. SONN: --Oh, I’m sorry. When you’re saying,  
14 “Did you previously testify,” that’s what you’re saying  
15 now? I knew we were coming into this. I’m sorry. That’s  
16 where I was getting thrown off. I apologize.

17 THE REFEREE: Okay, go ahead.

18

19 BY MR. FARCHER:

20 Q. Judge, was your prior testimony:

21 “Answer: Yes. It was dismissed on the basis that--  
22 When we originally had done the arraignment, I had spoke  
23 to Mr. Dunshee about the ticket, and he was-- I don’t know  
24 what the interaction was to Mr. Dunshee, but he had

25

243.

(Evans-Recross)

1 indicated that he needed to check and see if the insurance  
2 had been settled on this before any dismissal was done.”

3 A. Yes, I did.

4 THE REFEREE: Okay.

5  
6 BY MR. FARCHER:

7 Q. Did you testify on page 72:

8 “Answer: Yeah. It would have been, yeah. Yes,  
9 specifically about this ticket, I mean, I would have any of  
10 the tickets that came in that night, if they’re looking for a  
11 dismissal or reduction.”

12 Q. I’m sorry, Judge, let me--

13 MR. SONN: Page 72, line 1.

14

15 BY MR. FARCHER:

16 Q. Let’s start at line 71. In response to the question, “Okay.” On page  
17 71, line 24: In response to the question:

18 “Okay. So had you spoken to Mr. Dunshee  
19 specifically about this ticket?”

20 Did you reply:

21 “Answer: Yeah. It would have been, yeah. Yes,  
22 specifically about this ticket. I mean, I would have any of  
23 the tickets that came in that night, if they’re looking for a  
24 dismissal or reduction”?

25 A. Yes.

244.

(Evans-Recross)

1 Q. At line 20, "Question: Okay"-- Sorry. Same page, line 20, Judge.

2 A. Okay.

3 Q. "Question: Okay. And go ahead, if you can just give me your  
4 recollection of what happened with the ticket. I'll let you go ahead  
5 and tell the story."

6 Did you testify:

7 "Answer: Okay. At that point, Mr. Dunshee stated  
8 that he had to check and see if the insurance had been  
9 settled, because he indicated that it was a bus accident.  
10 And, so I contacted him the next Thursday night, and he  
11 indicated it had been taken care of and it was okay to  
12 dismiss the ticket. And, I spoke to Mr. Dunshee since then,  
13 he said, 'Honestly I can't recall.'"?

14 A. Yes, just like I stated today.

15 Q. Continuing, Judge, line 3:

16 "Question: Okay. So, this ticket was-- on the court  
17 night Mr. Dunshee said he had to check the insurance.  
18 What would happen to the ticket at that point? Would it  
19 just be held over?"

20 Did you testify:

21 "Answer: It would just be adjourned. Yes."?

22 A. Yes, that's correct.

23 Q. Line 7:

24 "Question: Okay. And so it was held over, and then  
25 the date that it was dismissed is--

245.

(Evans-Recross)

1 "Answer: The following Thursday" ?

2 A. Yes.

3 Q. "Question: Which is November 20<sup>th</sup>.

4 "Answer: Mm-hmm."

5 Did you testify to that as well, Judge?

6 A. Yes.

7 Q. "Question: That would have been another court night?

8 "Answer: That's correct."

9 Judge, did you testify to that?

10 A. Yes, I did.

11 Q. Judge, move down to line 19. Did you testify in response to the  
12 question:

13 "Okay. And, how did Mr. Dunshee convey to you  
14 that the insurance had been settled or how did that  
15 information--

16 "Answer: I'd indicated-- Because when he said that  
17 he was going to check into him, I indicated that I would  
18 contact him to find out if indeed-- before I'd dismiss the  
19 ticket, that it'd been taken care of. That the insurance had  
20 been taken care of."

21 A. Yes.

22 Q. Line 25:

23 "Question: Did you subsequently contact him?

24 "Answer: Yes, I did."

25 A. Yes.

246.

(Evans-Recross)

1 Q. "Question: Okay. Was that by phone or in person?

2 "Answer: By phone."

3 A. Yep.

4 Q. "Question: Okay. And, Mr. Dunshee indicated to you that what he  
5 confirmed with the insurance was--

6 "Answer: That he-- Yes. He confirmed that the insurance had been  
7 taken care of."

8 A. That's correct.

9 Q. Let's move down to line 14, Judge.

10 "Question: Okay. Now when you say you wanted to  
11 be sure that the insurance had been corrected, what exactly  
12 do you mean by that?

13 "Answer: That there wasn't going to be something  
14 that could possibly be a, you know, a lawsuit, or something  
15 coming down, you know, some other consequence from the  
16 standpoint of the victim in the case."

17 A. Yes, that's correct.

18 Q. Judge, just move over to page 87, line 3.

19 "Question: All right. Now again, I just want to  
20 clarify, if you could give me the basis for the ticket  
21 dismissal. If I understand you correctly, it's because"--

22 A. --Hold on. Hold on. I'm not there yet.

23 Q. Oh, sorry.

24 A. Okay, what number?

25 Q. It's page 87, line 3.

247.

(Evans-Recross)

1 A. Okay.

2 Q. "Question: Okay. All right. Now again, I just want to clarify, if you  
3 could give me the basis for the ticket dismissal. If I understand you  
4 correctly, it's because the insurance company had to pay for whatever  
5 property damage?

6 "Answer: Property damage, yeah."

7 A. Yeah.

8 Q. "Question: Okay, was that the basis of the ticket dismissal?

9 "Answer: Yes."

10 A. Okay. Yep.

11 Q. "Question: Okay.

12 "Answer: Yes.

13 "Question: That the insurance company cover property damage?

14 "Answer: Yes. That the-- And, at the time, I didn't, I mean I knew  
15 that there was some type of property damage but I didn't know what--  
16 what the reason. You know, other than the fact when I talked to Mr.  
17 Dunshee and he said everything had been taken care of. It was okay  
18 to dismiss."

19 Did you testify to that, Judge?

20 A. Yes, I did.

21 MR. FARCHER: That's it, your Honor.

22 THE REFEREE: Any?

23 MR. SONN: No.

24 THE REFEREE: No? Fine. Okay. Judge, I want to  
25 ask you a question.

248.

(Evans-By The Referee)

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THE RESPONDENT: Yes, sir.

THE REFEREE: If a ticket comes before you for your action and you see that the plea part is blank, what do you do?

THE RESPONDENT: I would send the ticket back to the defendant.

THE REFEREE: You send the ticket back to the defendant?

THE RESPONDENT: Yes, if I see it.

THE REFEREE: If you see it?

THE RESPONDENT: Yes.

THE REFEREE: And you do look for it, right? You need to know what the plea is?

THE RESPONDENT: Yeah. I'm saying if I see the ticket. If I didn't see the ticket, then I couldn't send it back. I didn't see this ticket.

THE REFEREE: Well, how do you proceed when you don't know what the plea is?

THE RESPONDENT: Because Mr. Dunshee had the ticket--

THE REFEREE: --Well, forget about Dunshee. I'm talking about procedure.

THE RESPONDENT: Okay. If I didn't see the ticket--

THE REFEREE: Yep.

(Evans-By The Referee)

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THE RESPONDENT: --how do I proceed?

THE REFEREE: Yeah.

THE RESPONDENT: I would just go on the basis of Mr. Dunshee, speaking with him about-- Any ticket-- I'm sorry. I guess I don't understand the--

THE REFEREE: I'm talking about your secretary or the clerk--

THE RESPONDENT: Okay.

THE REFEREE: --gets all the tickets--

THE RESPONDENT: Yes.

THE REFEREE: --in a box--

THE RESPONDENT: Yep.

THE REFEREE: --and then looks through them, correct?

THE RESPONDENT: Correct. Yes.

THE REFEREE: Those that have pled guilty are in one bundle?

THE RESPONDENT: Yes.

THE REFEREE: Those that have pled guilty-- not guilty, are in another bundle?

THE RESPONDENT: That's correct.

THE REFEREE: Do you ever get any that are not marked, no plea?

THE RESPONDENT: Yes.

THE REFEREE: What do you do with that?

250.

(Hon. David J. Evans)

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THE RESPONDENT: We would send them back to the defendant to make a plea.

THE REFEREE: Well, who makes that decision? You?

THE RESPONDENT: Yes, or she would be instructed to do that.

THE REFEREE: But she tells you?

THE RESPONDENT: She would tell me, yes.

THE REFEREE: Tells you that this has not pleaded?

THE RESPONDENT: That's correct.

THE REFEREE: In which case, you would direct her to send it back?

THE RESPONDENT: That is correct.

THE REFEREE: Okay. Good. I'm finished.

THE RESPONDENT: Okay.

MR. FARCHER: Your Honor, if we could just put on the record the schedule for the post-hearing submissions?

THE REFEREE: Yeah.

MR. FARCHER: Generally, it's 30 days after receipt of the transcript. It usually takes our office about two weeks to produce the transcript.

THE REFEREE: Well, let's give a little leeway, like a week or so, huh?

251.

1 MR. FARCHER: Okay. When you say a little  
2 leeway, you mean 30 days plus a week for the post-hearing  
3 submissions?

4 THE REFEREE: Okay. When will you be ready?

5 MR. FARCHER: When will the transcripts be  
6 ready?

7 THE REFEREE: Thirty days after.

8 MR. FARCHER: Okay. Yep.

9 THE REFEREE: What are you proposing?

10 MR. FARCHER: Just that, that our post-hearing  
11 submissions be exchanged simultaneously and served on the  
12 referee, yourself, at the same date.

13 THE REFEREE: Thirty days after receipt of  
14 minutes?

15 MR. FARCHER: Correct.

16 THE REFEREE: Okay. Now, if you would like to  
17 respond to one of the positions in the memo?

18 MR. FARCHER: Usually we do 14 days for reply  
19 briefs.

20 THE REFEREE: Is that what you want?

21 MR. FARCHER: Mr. Sonn?

22 THE REFEREE: Mr. Sonn?

23 MR. SONN: It will be fine with me.

24 THE REFEREE: Fourteen days?

25 MR. SONN: Mm-hmm.

(Hon. David J. Evans)

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THE REFEREE: Okay. It's all I got. Anybody  
else? Okay. Have a good drive back.

MR. SONN: Thank you, your Honor.

(Whereupon, the proceeding of July 19, 2010, was concluded at 4:24 P.M.  
this date.)

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EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1	Police Accident Report and Uniform Traffic Ticket (4 pages).	5	6
2	Simplified Information in <i>People v. Larry Bates</i> (1 page).	6	6
3	Notice of Appearance signed by Stephen M. Dunshee dated October 25, 2004 (1 page).	6	6
4	Letter from Stephen M. Dunshee to the Commission dated January 5, 2005 (1 page).	6	7
5	Administrative Order of the Chief Administrative Judge dated May 21, 2008 (1 page).	7	7
6	Notes from Utica National Insurance (8 pages).	7	8
7	Notarized statement of Judge Daniels dated August 11, 2009 (1 page).	123	124
8	Letter from Diane Edwards, Executive Claims Associate, Mang Insurance, dated August 11, 2009 (1 page).	162	164
9	Transcript of Judge Evans' testimony of August 13, 2009.	216	--

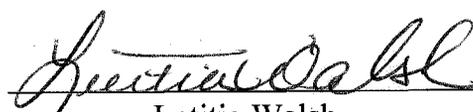
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CERTIFICATION

I, LETITIA WALSH, a Secretary of the State Commission on  
Judicial Conduct, do hereby certify that the foregoing is a true and accurate  
transcript of the tape recording of the proceeding transcribed by me, pages 1  
to 124, to the best of my knowledge and belief, in the matter held on  
July 19, 2010.

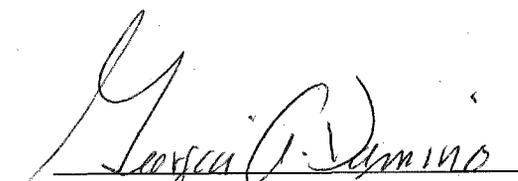
Dated: August 5, 2010

  
\_\_\_\_\_  
Letitia Walsh

CERTIFICATION

I, GEORGIA A. DAMINO, an Assistant Administrative  
Officer of the State Commission on Judicial Conduct, do hereby certify that  
the foregoing is a true and accurate transcript of the tape recording of the  
proceeding transcribed by me, pages 125 to 253, to the best of my knowledge  
and belief, in the matter held on July 19, 2010.

Dated: August 5, 2010

  
\_\_\_\_\_  
Georgia A. Damino

# POLICE ACCIDENT REPORT

MV-104A (3/04)

Local Codes
2715121
SP1C44000277

AMENDED REPORT

1	Accident Date	Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	20
	Month 10 Day 7 Year 2008	Tuesday	07:48	2	0	0	Accident Reconstructed <input type="checkbox"/>			

VEHICLE 1  VEHICLE 2  BICYCLIST  PEDESTRIAN  OTHER PEDESTRIAN

2	VEHICLE 1 - Driver License ID Number 602120420	State of Lic. NY	VEHICLE 2 - Driver License ID Number 157068782	State of Lic. NY	21
	Driver Name - exactly as printed on license BATES, LARRY R		Driver Name - exactly as printed on license HILL, HAROLD J		
	Address (Include Number and Street) 174 CO RD 33	Apt. No.	Address (Include Number and Street) PO BX213	Apt. No.	
	City or Town NORWICH State NY Zip Code 13815		City or Town NORWICH State NY Zip Code 13815		22

3	Date of Birth Month 9 Day 14 Year 1949 Sex M Unlicensed <input type="checkbox"/> No. of Occupants 01 Public Property Damaged <input type="checkbox"/>	Date of Birth Month 6 Day 9 Year 1927 Sex M Unlicensed <input type="checkbox"/> No. of Occupants 01 Public Property Damaged <input type="checkbox"/>	23
	Name - exactly as printed on registration NORWICH CITY SCHOOL	Name - exactly as printed on registration HILL, WANDA E	
	Address (Include Number and Street) 19 EATON AVE	Address (Include Number and Street) PO BOX 213	
	City or Town NORWICH State NY Zip Code 13815	City or Town NORWICH State NY Zip Code 13815	24

4	Plate Number M22135 State of Reg. NY Vehicle Year & Make 2008 THMS Vehicle Type BUS Ins. Code 152	Plate Number ANX9780 State of Reg. NY Vehicle Year & Make 2000 MERC Vehicle Type 4DSD Ins. Code 011	25
---	---	---	----

5	Ticket/Arrest Number(s) 1C4402CJSP	Ticket/Arrest Number(s)	25
	Violation Section(s) 1140A	Violation Section(s)	

6	VEHICLE 1 DAMAGE CODING	VEHICLE 2 DAMAGE CODING	ACCIDENT DIAGRAM	26
7	Box 1 - Point of Impact	Box 1 - Point of Impact	See the last page of the MV-104A for the accident diagram.	27
6	Enter up to three more damage codes	Enter up to three more damage codes	Cost of repairs to any one vehicle will be more than \$1000. <input checked="" type="checkbox"/> Unknown/Unable to determine <input type="checkbox"/> Yes <input type="checkbox"/> No	28

Reference Marker	Coordinates (if available)	Place Where Accident Occurred:	29
	Latitude/Northing: 4704779	County CHENANGO <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of NORWICH	
	Longitude/Easting: 456359	Road on which accident occurred BOURBON ST (Route Number or Street Name)	
		at 1) intersecting street ROYAL AVE (Route Number or Street Name)	
		or 2) _____ of _____ (Milepost, Nearest Intersecting Route Number or Street Name)	

Accident Description/Officer's notes  
 V-1 TRAVELING WEST ON ROYAL AVE AND STOPPED AT STOP SIGN AT THE INTERSECTION WITH BOURBON ST  
 V-2 TRAVELING NORTH ON BOURBON ST. OPERATOR OF V-2 FAILED TO NOTICE V-1 TRAVELING THROUGH THE INTERSECTION AND ATTEMPTED TO MAKE A RIGHT TURN ONTO BURBON ST HEADING NORTH. OPERATOR OF V-1 STRUCK V-2 IN REAR PASSENGER SIDE OF VEHICLE CAUSING DAMAGE TO SAME. ALL 22 OCCUPANTS OF V-1 AND THE ONE OCCUPANT OF V-2 WERE NEGATIVE FOR INJURIES. BOTH VEHICLES DRIVEABLE FROM SCENE.

ALL INVOLVED	8	9	10	11	12	13	14	15	16	17 BY	TO 18	Names of all involved	Date of Death Only
A	1	1	4	1	59	M	-	-	-			BATES, LARRY R	
B	2	1	4	1	81	M	-	-	-			HILL, HAROLD J	
C													
D													
E													
F													
Officer's Rank and Signature		TROOPER <i>[Signature]</i>		Badge/ID No.	5326	NCIC No.	10801	Precinct/Post Troop/Zone	C1	Station/Beat Sector	51	Reviewing Officer	North, G P
Print Name in Full		BRANDON L BRIGHAM										Date/Time Reviewed	10/9/2008 22:10

**EXHIBIT**  
 ID ✓  
 EV ✓  
 Evans 7/17/10

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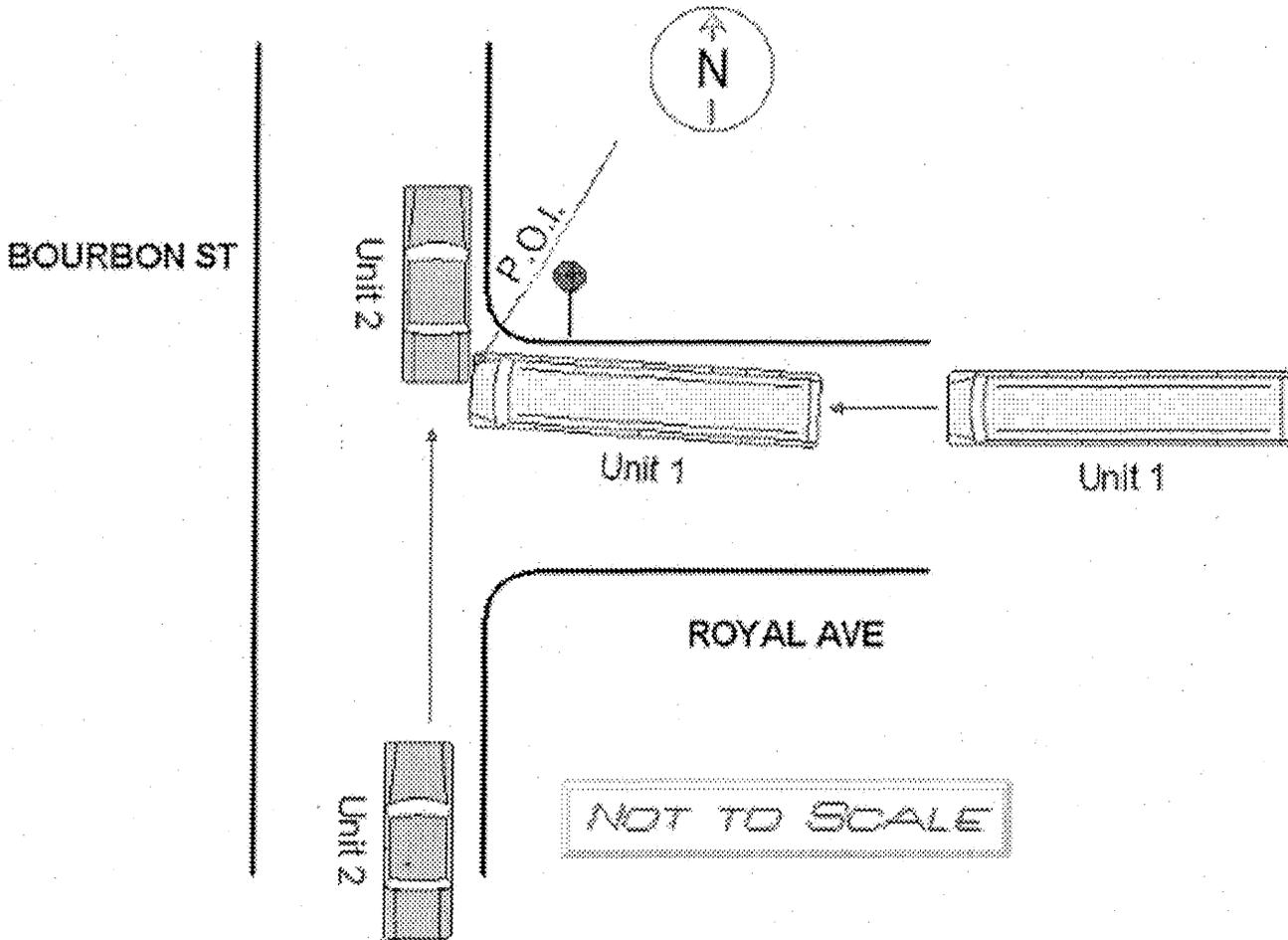
USE COVER SHEET  
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New York State Department of Motor Vehicles  
**POLICE ACCIDENT REPORT**  
MV-104A (3/04)

Local Codes
2715121
SP1C44000277

**AMENDED REPORT**

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Month	Day	Year						Accident Reconstructed <input type="checkbox"/>		
10	7	2008	Tuesday	07:48	2	0	0			



1. Agency C1 TROOP C - ZONE 1	2. Div/Precinct C151	New York State <b>INCIDENT REPORT</b>	3. ORI NY1380100	5. Case No.	6. Incident No. 2715121
7,8,9. Date Reported (Day, Date, Time) TUESDAY 10/07/2008 07:48		10,11,12. Occurred On/From (Day, Date, Time) TUESDAY 10/07/2008 07:48		13,14,15. Occurred To (Day, Date, Time)	
16. Incident Type ACCIDENT-PROPERTY DAMAGE			17. Business Name		
19. Incident Address (Street Name, Bldg. No., Apt. No.) BORBON ST					
20. City/State/Zip NORWICH NEW YORK 13815					
21. Location Code (TSLED) NORWICH TOWN 0961		23. No. of Victims 0	24. No. of Suspects 0	26. Victim also Complainant?	
Location Type STREET					

### NARRATIVE

Date of Action	Date Written	Officer Name & Rank
10/07/2008	10/07/2008	BRIGHAM, BRANDON (TPR)
Narrative		
INITIAL/CLOSING ENTRY-		
REF Tracs # SPIC44000277 - Investigated a car/school bus property damage accident that occurred at the intersection of Royal Ave and Bourbon St in the T/Norwich. Sgt North/Zone notified. Required notifications per manual made by Sgt. North. Closed.		

### ADMINISTRATIVE

74. Inquiries	75. NYSPIN Message No.	76. Complainant Signature	
77. Reporting Officer Signature (Include Rank) TPR BRANDON BRIGHAM	78. ID No. 5326	79. Supervisor Signature (Include Rank) SGT GARY NORTH	80. ID No. 441
81. Status CLOSED BY INVESTIGATION	82. Status Date 10/08/2008	83. Notified/TOT SPIC44000277	
			Solvability Total 0

COPY

**1C4402CJSP**

POLICE AGENCY

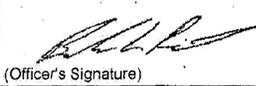
To be completed by Police Officer  
and given to Motorist

NEW YORK STATE POLICE

Local Police Code

Last Name(Defendant) <b>BATES</b>		First Name <b>LARRY</b>		M.I. <b>R</b>
Number and Street <b>174 CO RD 33</b>			Apt. No.	Photo Lic Shown <input checked="" type="radio"/>
City <b>NORWICH</b>	State <b>NY</b>	Zip Code <b>13815</b>	Owner Oper. <input type="radio"/>	Lic. Class <b>BM</b>
Client ID Number <b>602120420</b>		Sex <b>M</b>	Date Expires <b>9/14/2010</b>	
Lic. State <b>NY</b>	Date of Birth <b>9/14/1949</b>	Veh. Type <b>2</b>	Year <b>2008</b>	Make <b>THMS</b>
Plate Number <b>M22135</b>		Reg. State <b>NY</b>	Registration Expires	
Color <b>YW</b>				

**THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS**

Time <b>7:48 AM</b>	Date of Offense <b>10/7/2008</b>	IN VIOLATION OF <b>NYS V AND T LAW</b>		
Section Sub Section <b>1140A</b>	Tr Inf <input checked="" type="radio"/>	Misd <input type="radio"/>	Felony <input type="radio"/>	MPH Zone
Description of Violation <b>FLD TO YLD RT-OF-WAY @ INTERSECTION</b>		US DOT#		
Place of Occurrence <b>BOURBON ST</b>		Hwy. No.	Loc. Code <b>0961</b>	
C/TV Name <b>NORWICH, TOWN OF - 0961</b>	County <b>CHENANGO</b>	Hwy Type <b>4</b>	NCIC/ORI <b>10801</b>	
AFFIRMED UNDER PENALTY OF PERJURY		Date Affirmed <b>10/07/2008</b>	Off Assign <b>C 1 51</b>	
		Arrest Type <b>5 - PROPERTY DAMAGE A</b>		
(Officer's Signature)		Badge/Shield <b>5326</b>		
Officer's Last Name <b>BRIGHAM</b>	First Name <b>BRANDON</b>	M.I. <b>L</b>		

Radar Officer's Signature

**THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW**

NORWICH TOWN COURT		
Address <b>157 COUNTY RD 32A</b>		
City <b>NORWICH</b>	State <b>NY</b>	Zip <b>13815</b>
<input checked="" type="radio"/> RETURN BY MAIL BEFORE OR IN PERSON ON:		Date <b>11/13/2008</b>
<input type="radio"/> MUST APPEAR IN PERSON		Time <b>5:30 PM</b>

**A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. IF YOU ARE CONVICTED, NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION YOUR LICENSE TO DRIVE A MOTOR VEHICLE OR MOTORCYCLE, AND YOUR CERTIFICATE OF REGISTRATION, IF ANY, ARE SUBJECT TO SUSPENSION AND REVOCATION AS PRESCRIBED BY LAW.**

Conviction may subject you to a mandatory surcharge and/or Driver Responsibility Assessment as prescribed by law.

Your failure to respond may result in a warrant for your arrest or suspension of your driver's license and/or a default judgement against you.

**TO PLEAD BY MAIL  
(NOT TO BE USED FOR MISDEMEANORS OR FELONIES)**

- If you are pleading "GUILTY" by mail, place an "X" through SECTION B, then complete and sign SECTION A.
- If you are pleading "NOT GUILTY" by mail, place an "X" through SECTION A, then complete and sign SECTION B.
- Mail this form to the Court noted on this ticket by Registered, Certified, or First Class Mail, with Return Receipt Requested.
- DO NOT use this form for Misdemeanors or Felonies or for a third or subsequent speeding violation in an 18 month period, instead you must appear in the Court noted on this ticket in person.
- If the Court denies your plea, you will be notified by mail to appear in the Court noted on the front of this ticket.

**SECTION A - PLEA OF GUILTY**

To the Court listed on the other side of this ticket:

I, \_\_\_\_\_ residing at \_\_\_\_\_ have been charged with the violation as specified on the other side of this ticket. I acknowledge receipt of the warning printed in bold type on the other side of this ticket, and I waive arraignment in open court and the aid of an Attorney. I plead GUILTY to the offense as charged and request that this charge be disposed of and a fine or penalty fixed by the court.

Additionally, I make the following statement of explanation (optional):

All statements are made under penalty of perjury:

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

**SECTION B - PLEA OF NOT GUILTY**

The following notice applies to you if the officer did not issue you a supporting deposition with your ticket.

**NOTICE: YOU ARE ENTITLED TO RECEIVE A SUPPORTING DEPOSITION FURTHER EXPLAINING THE CHARGES PROVIDED YOU REQUEST SUCH SUPPORTING DEPOSITION WITHIN THIRTY (30) DAYS FROM THE DATE YOU ARE DIRECTED TO RESPOND TO THE COURT NOTED ON THE OTHER SIDE OF THIS APPEARANCE TICKET. DO YOU REQUEST A SUPPORTING DEPOSITION?**

SUPPORTING DEPOSITION PROVIDED WHEN THIS TICKET WAS ISSUED? YES  NO  SPEEDING (Gen 101)  GENERAL (Gen 101A)

Signature \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

NOTE: Mail this NOT GUILTY Plea within 48 hours. The court will notify you by First Class Mail of your appearance date.

**APPLICANTS UNDER 18 YEARS OF AGE MUST SUBMIT NAME AND ADDRESS OF PARENT OR GUARDIAN BELOW.**

Name of Parent or Guardian \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

FAILURE TO ANSWER THIS TICKET WILL RESULT IN THE SUSPENSION OF YOUR LICENSE AND A DEFAULT JUDGEMENT AGAINST YOU.

NEW YORK STATE POLICE

The people of The State of New York  
VS.

Local Police Code \_\_\_\_\_ Date of Arraignment \_\_\_\_\_

Last Name (Defendant) <b>SATES</b>	First Name <b>LARRY</b>	M.I. <b>R</b>	Court Adjudgment Record	Docket Number <b>08110021</b>
Number and Street <b>174 CO RD 33</b>	Apt. No.	Photo Lic Shown <input checked="" type="checkbox"/>	Date From	Code
City <b>NORWICH</b>	State <b>NY</b>	Zip Code <b>13815</b>	Date To	Requested By
Client ID Number <b>602120420</b>	Sex <b>M</b>	Date Expires <b>9/14/2010</b>		
Lic State <b>NY</b>	Date of Birth <b>9/14/1949</b>	Veh. Type <b>2</b>	Year <b>2008</b>	Make <b>THMS</b>
Plate Number <b>M22135</b>	Reg. State <b>NY</b>	Registration Expires		

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

Time <b>7:48 AM</b>	Date of Offense <b>10/7/2008</b>	IN VIOLATION OF <b>NYS V AND T LAW</b>
Violation Section <b>1140A</b>	Traffic Infraction <input checked="" type="checkbox"/>	Misd <input type="checkbox"/>
Description of Violation <b>FLD TO YLD RT-OF-WAY @ INTERSECTION</b>	MPH	MPH Zone
	US DOT#	
	Comm Veh <input type="checkbox"/>	Bus <input type="checkbox"/>
	HazMet <input type="checkbox"/>	
C/TN Name <b>NORWICH TOWN OF - 0961</b>	County <b>CHENANGO</b>	Hwy. No.
Street Name <b>BOURBON ST</b>	Hwy Type <b>4</b>	Loc Code <b>0961</b>
		NCIC/ORI <b>10801</b>

AFFIRMED UNDER PENALTY OF PERJURY

*[Signature]*  
(Officer's Signature)

Date of Affirmation <b>10/07/2008</b>	Arrest Type <b>5 - PROPERTY DAMAGE</b>	Badge/Shield <b>5326</b>	Officer's Com./Div./Stat. <b>C151</b>
--	---	-----------------------------	--

Officer's Last Name  
**BRIGHAM**

First Name  
**BRANDON** M.I.  
**L**

**THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW IN:**  
**NORWICH TOWN COURT**

Address  
**157 COUNTY RD 32A**

City  
**NORWICH** State  
**NY** Zip  
**13815**

Return by mail before or in person on: Date  
 Must appear in person on: **11/13/2008** Time  
**5:30 PM**

FOR COURT USE ONLY

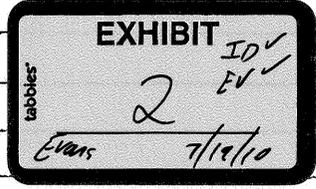
Court Code <b>0801</b>	Justice Code <b>08371E</b>	Date Adjudicated	Date Sentence Imposed
Charge Convicted of <input type="radio"/> AS ABOVE <input type="radio"/> VTL <input type="radio"/> Other	Disposition/Sentence <b>Dis m</b>	Fine \$	Surchage \$

Bail Forfeiture Amount \$	Date	<input type="radio"/> LIC <input type="radio"/> REG <input type="radio"/> Rev <input type="radio"/> Susp <input type="radio"/> Mand. <input type="radio"/> Perm
---------------------------	------	---

DWI Test Type	DWI Test Results
---------------	------------------

Supporting Deposition Issued: None  Speeding(Gen101)  Non - Speeding(Gen101a)

Amount	Date	Receipt No.
Bail		
Refund		
Fine		
Surcharge		



SECTION 1807 OF THE VEHICLE AND TRAFFIC LAW PROVIDES THAT THE DEFENDANT, IN CERTAIN CASES, MUST BE INFORMED IN SUBSTANCE AS FOLLOWS:

"A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motorcycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law."

To Judge or Clerk of Court: Checkmark the appropriate box or boxes below.

I HEREBY CERTIFY THAT:

- Upon arraignment, that the above instruction was given orally to the defendant.
- The defendant appeared in response to a ticket upon which the above instructions were printed in bold type, in accordance with Section 1807 of the Vehicle and Traffic Law.
- Defendant entered a plea of guilty in writing pursuant to Section 1805 of the Vehicle and Traffic Law.

I hereby certify that the information given on this certificate is a true abstract from the records of this court.

Signature of Judge or Clerk of Court <i>Faye J. Pierce</i>	Date <b>11/20/08</b>
Name of Judge <i>David J. Evans</i>	

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE, that I (~~we~~) have been retained by the  
Honorable David S. Evans, whose conduct is the subject of a  
complaint(s) before the State Commission on Judicial Conduct.

Dated: 10/25/04

Yours, etc.

Print Name\*

Stephen M. Dunshee

Signature (By)

[Handwritten Signature]

Address

6 West Park Place

Hawick, NY 13815

Telephone

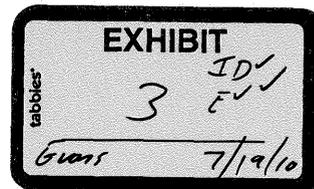
(607) 336-8863

Approved:

[Handwritten Signature]

Judge's Signature

TO: State Commission on Judicial Conduct  
801 Second Avenue  
New York, New York 10017



\*Please indicate the law firm name if the firm is representing the judge.

03/A-102

STEPHEN M. DUNSHEE  
ATTORNEY AT LAW  
6 WEST PARK PLACE  
NORWICH, NEW YORK 13815

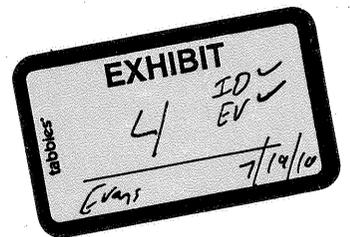
13 NORTH MAIN STREET  
SHERBURNE, NEW YORK  
(607) 674-6760

(607) 336-8863  
FAX (607) 336-8864

REPLY TO:  
NORWICH OFFICE

COUNTY ROUTE 20  
SOUTH EDMESTON, NEW YORK  
(607) 847-6375

January 5, 2005



Honorable Lawrence S. Goldman  
Commission on Judicial Conduct  
61 Broadway  
New York, New York 10006

RE: Hon. David L. Evans

Dear Hon. Lawrence S. Goldman:

My client, Hon. David L. Evans, and I received His Honor's December 16, 2004, Letter of Dismissal and Caution.

We have reviewed and understand the letter's contents and implications.

My client and I accept this letter of dismissal and caution and do not request a formal hearing.

We thank the Commission for its diligence and resolve.

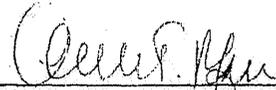
Very truly yours,

Stephen M. Dunshee  
SMD:kw  
cc. Hon. David L. Evans

Hon. David L. Evans

ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me under section 30.1 of the Rules of the Chief Judge, I hereby require each town and village court of the Unified Court System to mechanically record all proceedings that come before that court. This order shall be effective beginning June 16, 2008.



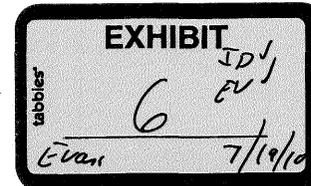
Chief Administrative Judge of the Courts

Dated: *May 21, 2008*

AO 245 108



-----  
TYPE REMARK..... A I SPOKE W/RYAN AT COMM OF JUD CONDUCT. HE STATES  
SUBCLAIM..... IT WILL BE OK TO OVERNIGHT COPY OF FILE TODAY SO  
LOB..... THEY CAN RECV IT BY MONDAY. MDB  
CREATE DATE..... 2009/09/25  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A RECD SUBPOENA FOR CLAIM FILE DATED 9/15/09 IN MY  
SUBCLAIM..... REGULAR MAIL LATE YESTERDAY AFTERNOON. EMAIL COPY  
LOB..... TO DARRYL RAHN IN H.O. FOR REVIEW & INSTRUCTION.  
CREATE DATE..... 2009/09/25 FILE WAS TO BE PRODUCED FOR 9/25 (TODAY). MDB  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A RECD CALL FROM CHARLES AT THE COMMISSION ON  
SUBCLAIM..... JUDICIAL CONDUCT. HE ASKED MANY QUESTIONS RELATED  
LOB..... TO THE IVD & THE TICKET HE WAS ISSUED. HE IS GOING  
CREATE DATE..... 2009/09/03 TO SEND SUBPEONA FOR COPY OF OUR FILE. HE STATES  
SERVICES ID..... HIS AGENCY INVESTIGATES MISCONDUCT COMMITTED. THEY  
TECHNICAL ID..... G102T0B78 ARE ALERTED TO IT BY WAY OF A COMPLAINT OF SOME  
SORT. MDE  
-----  
TYPE REMARK..... V CONFIRMED F/U W/ CLMT AND NO FURTHER TX. NO NOC  
SUBCLAIM..... FILED AND NO APPARENT BI EXPOSURE. FILE CLOSED  
LOB..... ACCORDINGLY. REMOVED SUPV DIARY AS WELL. JG  
CREATE DATE..... 2009/03/11  
SERVICES ID.....  
TECHNICAL ID..... G102T0K92  
-----  
TYPE REMARK..... A 002-I SPOKE W/CLMT. HE STATES HE HAS NOT TREATED  
SUBCLAIM..... 002 SINCE HIS LAST APPT IN JANUARY & HAS BEEN FEELING  
LOB..... 1111 PRETTY GOOD. HE STATES DR TOLD HIM TO COME BACK IF  
CREATE DATE..... 2009/03/05 IT STARTS TO ACT UP AGAIN. SINCE THEN HE HAS NOT  
SERVICES ID..... HAD ANY PROBLEMS. NO NOC TO DATE. WITH THIS, I  
TECHNICAL ID..... G102T0B78 FEEL CONFIDENT TO CLOSE FILE. LOWERING INC TO \$0.  
MDM  
-----  
TYPE REMARK..... D STATUS  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2009/03/05  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A 002-RECD UPDATED MEDS FROM CHIRO. CLMT CONTINUED  
SUBCLAIM..... 002 W/SPINAL MANIPULATION & AS OF 1/20/09 SYMPTOMS  
LOB..... 1111 WERE MINIMAL & THERE WERE NOT FURTHER TREATMENTS  
CREATE DATE..... 2009/02/05 SCHEDULED. AT NEXT DIARY & CLMT CONTACT IF NO  
SERVICES ID..... FURTHER TREATMENT WAS SOUGHT I WILL CLOSE FILE.  
TECHNICAL ID..... G102T0B78 MDM



TYPE REMARK.....	V	NOTE F/U FOR UPDATED MEDS, AND W/ CLMT CONFIRMING
SUBCLAIM.....		HE IS FEELING PRETTY GOOD. NOTE CLMT IS RETIRED
LOB.....		AND 82 YR OLD. DOUBTFUL EXPOSURE ON DIARY FOR
CREATE DATE.....	2009/02/05	FURTHER F/U FOR MEDS AND INJ/TX STATUS. IF ALL
SERVICES ID.....		INJURIES RESOLVE AND NO PURSUIT OF BI, WE COULD
TECHNICAL ID.....	G102T0K92	LOOK TO CLOSE FILE. JG
TYPE REMARK.....	A	002-I CALLED CLMT. HE STATES HE IS FEELING PRETTY
SUBCLAIM.....	002	GOOD. HE IS STILL TREATING W/CHIRO 1/MO. HE STATES
LOB.....	1111	HE IS FEELING MUCH BETTER. CLMT IS 82 YRS OLD & IS
CREATE DATE.....	2009/02/02	RETIRED. MDM
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	A	002-UPDATED MEDS NOT RECD YET. I CALLED CHIRO
SUBCLAIM.....	002	OFFICE & SPOKE TO DR WANSER. HE STATES MY REOT FOR
LOB.....	1111	UPDATED MEDS IS ON HIS DESK & HE WILL BE GETTING
CREATE DATE.....	2009/02/02	TO IT SHORTLY. MDM
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	D	STATUS
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2009/02/02	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	V	... DETERMINE IF HE HAS A QUALIFYING INJURY.
SUBCLAIM.....		FURTHER MEDS REQUESTED. JG
LOB.....		
CREATE DATE.....	2009/01/09	
SERVICES ID.....		
TECHNICAL ID.....	G102T0K92	
TYPE REMARK.....	V	NOTE POL REPORT RECD AND CONFIRMS INSD LIAB FOR
SUBCLAIM.....		FTYROW. A/C CONFIRMS PIP STILL OPEN. CLMT CONFIRMS
LOB.....		STILL TX 1 TIME PER MONTH W/ CHIRO. NOMINAL INC
CREATE DATE.....	2009/01/09	STILL OKAY AS WE ARE JUST PATS 90 DAYS FROM LOSS
SERVICES ID.....		AND VERY LIMITED TX. STILL NEED TO CONFIRM CLMT
TECHNICAL ID.....	G102T0K92	WORK STATUS AND WHETHER INJURY HAS AFFECTED HIS
		WORK OR ANY OTHER NORMAL ACTIVITIES TO HELP ...
TYPE REMARK.....	Z	002-REQ UPDATED MEDS FROM DR. WANSOR DAF
SUBCLAIM.....	002	
LOB.....	1111	
CREATE DATE.....	2009/01/06	
SERVICES ID.....	G11705DAF	
TECHNICAL ID.....		

TYPE REMARK.....	A	002-I SPOKE W/CLMT. HE STATES THAT HE IS STILL
SUBCLAIM.....	002	TREATING W/CHIRO. BUT ONLY 1/MONTH NOW. HE IS
LOB.....	1111	FEELING BETTER BUT STILL HAS SOME BACK PAIN. I
CREATE DATE.....	2008/12/31	WILL HAVE SVCS REQ UPDATED MEDS & REDIARY 1 MONTH
SERVICES ID.....		FOR STATUS. MDM
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	D	90 DAY REPORT
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2008/12/31	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	A	002-A/C CALLED BACK & STATED THEIR NF FILE STILL
SUBCLAIM.....	002	OPEN & CLMT STILL TREATING. NO OTHER INFO GIVEN.
LOB.....	1111	MDM
CREATE DATE.....	2008/12/17	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	A	002-I PHONED A/C FOR STATUS OF NF FILE, PTD'S. I
SUBCLAIM.....	002	HAD TO LEAVE VM MSG FOR CALL BACK. MDM
LOB.....	1111	
CREATE DATE.....	2008/12/10	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	A	PR RECD & CONF FOL. IVD TICKETED FOR FTYROW. INSD
SUBCLAIM.....		LIAB. MDM
LOB.....		
CREATE DATE.....	2008/12/10	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	A	I SPOKE W/DAVID @ INSD BUS GARAGE. HE IS GOING TO
SUBCLAIM.....		TAKE PHOTO OF IV INVOLVED TO SHOW NO DMG. HE IS
LOB.....		GOING TO CALL BACK TOMORROW AS HIS COMPUTER SYSTEM
CREATE DATE.....	2008/12/10	HAS BEEN DOWN ALL DAY. MDM
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	V	NOTED RECENT CONTACT TO CLMT AND INDICATION HE IS
SUBCLAIM.....		DOING BETTER AND TX MAY BE WINDING DOWN. STILL
LOB.....		NEED TO COMMENT ON ANY PRIOR CONDITIONS THAT CLMT
CREATE DATE.....	2008/12/08	MAY HAVE HAD AND HIS CURRENT WORK STATUS (WHETHER
SERVICES ID.....		HE LOST ANY TIME DUE TO INJURY) AND TO F/U FOR I/V
TECHNICAL ID.....	G102T0K92	PHOTOS TO SHOW NO DAMAGE. JG
TYPE REMARK.....	A	002-I SPOKE W/CLMT. HE STATES HE IS FEELING BETTER
SUBCLAIM.....	002	& HAS 2-3 MORE TREATMENTS W/CHIRO. I WILL CHECK UP
LOB.....	1111	AGAIN IN 1 MONTH. HE AGREED. MDM
CREATE DATE.....	2008/11/26	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	

TYPE REMARK.....	D	STATUS
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2008/11/25	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	V	FURTHER REVIEW- SHOULD ALSO F/U FOR I/V PHOTOS TO CONFIRM LITTLE OR NO DAMAGE. JG
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2008/11/11	
SERVICES ID.....		
TECHNICAL ID.....	G102T0K92	
TYPE REMARK.....	V	... COMMENT ON ANY PRIOR INJURIES, AND COMMENT ON CLMT WORK STATUS (CONFIRM WHAT TYPE OF WORK CLMT DOES, AND WHETHER HE HAS MISSED ANY TIME DUE TO INJURY). THANKS JG
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2008/11/10	
SERVICES ID.....		
TECHNICAL ID.....	G102T0K92	
TYPE REMARK.....	V	NOTED EST AND DOP RECD AND PD CLAIM PAID AND CLOSED. ALSO NOTED SOME MEDS RECD SHOWING CHIRO TX. CLMT F/U CONFIRM HE HAS BEEN TX AND INTENDS TO TX 3-4 MORE WEEKS. INC INCREASED TO 1500 TO ACCOUNT FOR CONTINUED SOFT TISSUE COMPLAINTS. MARIE ON NEXT DIARY- F/U W/ CLMT FOR INJ/TX STATUS
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2008/11/10	
SERVICES ID.....		
TECHNICAL ID.....	G102T0K92	
TYPE REMARK.....	D	B78- HILL/NORWICH- DRP P/W, PD SETTLED/CLOSED? INJ/TX STATUS? PRIORS? L/W? INC RAISED? MEDS RECD/REVD? RECD 10/7/08 90 & 180
SUBCLAIM.....		
LOB.....		
CREATE DATE.....	2008/11/10	
SERVICES ID.....		
TECHNICAL ID.....	G102T0K92	
TYPE REMARK.....	A	002-MED RECORDS RECD FROM CHIROPRACTOR. CLMT C/O BACK ACHING. TREATMENT IS SPINAL MANIPULATION. I CALLED & SPOKE W/CLMT. HE STATES HE HAS BEEN TREATING W/CHIRO FOR 4-5 WEEKS NOW & WILL BE FOR ANOTHER 3-4 WEEKS. HE IS FEELING A LITTLE BETTER EVERYDAY. I WILL SET INC AT \$1500 AT THIS TIME. MDM
SUBCLAIM.....	002	
LOB.....	1111	
CREATE DATE.....	2008/11/06	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	
TYPE REMARK.....	A	001-RECD FINAL BILLING FOR \$2079.93. DOP & PHOTOS INCLUDED. RENTAL INV FOR \$91.50 FOR 3 DAYS @ \$26.99/DAY + TAX. WILL RAISE INC TO \$2171 & ISSUE THESE PMTS. CLOSE 001/1121. MDM
SUBCLAIM.....	001	
LOB.....	1121	
CREATE DATE.....	2008/10/27	
SERVICES ID.....		
TECHNICAL ID.....	G102T0B78	

-----  
TYPE REMARK..... A  
SUBCLAIM..... 001  
LOB..... 1121  
CREATE DATE..... 2008/10/24  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... D  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/24  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... Z  
SUBCLAIM..... 002  
LOB..... 1111  
CREATE DATE..... 2008/10/22  
SERVICES ID..... G11705DAF  
TECHNICAL ID.....  
-----  
TYPE REMARK..... V  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/22  
SERVICES ID.....  
TECHNICAL ID..... G102T0K92  
..... RESOLVE PD CLAIM. NEED TOP F/U W/ CLMT FOR  
INJ/TX STATUS, IF ANY F/U TX PLANNED. INC SHOULD  
BE INCREASED, SHOULD ALSO ADDRESS ANY PRIORS, AND  
WORK STATUS, CONFIRM WHAT HE DOES AND IF ANY  
LOST TIME. F/U FOR MEDS, AS NEEDED. JG  
-----  
TYPE REMARK..... V  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/22  
SERVICES ID.....  
TECHNICAL ID..... G102T0K92  
..... TIMELY FOR PD AND RENTAL. WAITING ON FINAL  
DRP P/W FOR RESOLUTION. CLMT INITIALLY RPBORTED  
NO INJURIES. C/B ON 10/13, AND ADVISED SORE AND  
CONSIDERING SEEING DR. BI S/C OPENED AND INC  
NOTED AS LEFT AT 0, AS NO TX. MED AUTH REFERRED  
AND RETURNED W/ ONE DR LISTED. MEDS BEING  
REQUESTED. ON DIARY TO F/U FOR DRP P/W AND TO...  
-----  
TYPE REMARK..... V  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/22  
SERVICES ID.....  
TECHNICAL ID..... G102T0K92  
INITIAL SUPV REVIEW-  
COVERAGE CONFIRMED. NO CL COVERAGE. CONTACTS  
TIMELY. R/S FROM BOTH DRIVERS CONFIRM I/V AT T IN  
ROAD, DOD NOT SEE C/V COMING FROM LEFT. I/V  
PULLED OUT AND STRUCK C/V ON RT SIDE. LIABILITY  
ADVERSE TO I/V. OR FILED FOR U/L/D AND I/D  
TICKETED FOR FTYROW. CLMT USING DRP. PD INC SET..  
-----  
TYPE REMARK..... D  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/22  
SERVICES ID.....  
TECHNICAL ID..... G102T0K92  
SUPERVISOR'S INITIAL DIARY  
-----

-----  
TYPE REMARK..... A  
SUBCLAIM..... 002  
LOB..... 1111  
CREATE DATE..... 2008/10/21  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A  
SUBCLAIM..... 002  
LOB..... 1111  
CREATE DATE..... 2008/10/14  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... Z  
SUBCLAIM..... 002  
LOB..... 1111  
CREATE DATE..... 2008/10/13  
SERVICES ID..... G11705AMR  
TECHNICAL ID.....  
-----  
TYPE REMARK..... A  
SUBCLAIM..... 002  
LOB..... 1111  
CREATE DATE..... 2008/10/13  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A  
SUBCLAIM..... 002  
LOB..... 1111  
CREATE DATE..... 2008/10/13  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/09  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/09  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
-----

002-RECD SIGNED MED RELEASE. SENT TO SVCS TO  
ORDER MED REPORTS. MDM

002-CIB RECD & IDENTIFIES THIS CLAIM & NF CO,  
FILE # & ADJ. INJURY DESCRIBED AS "SORE". NO  
OTHER CLAIMS FOUND. MDM

SENT OUT MED RELEASE TO CLMT DRIVER HAROLD HILL  
ALONG WITH COVER LTR - AMR

CONT-FORMS FOR HIM TO SIGN & HE AGREED. SENT  
REQTS TO CCS & SVCS. LEAVING INC AT \$0. MDM

002-RECD CALL FROM CVD HAROLD. HE STATES A FEW  
DAYS AFTER THE ACC HE WAS SO SORE HE COULD HARDLY  
GET OUT OF BED. HE IS CONSIDERING GOING TO THE  
DR. I ADVISED HIS MEDICAL BILLS WOULD BE PAID FOR  
BY HIS NF INS & THAT HE SHOULD SUBMIT A CLAIM  
UNDER IT. HE UNDERSTOOD. I WILL HAVE BI LINE  
ADDED. I ADVISED CLMT I WOULD SEND MED REL...

INSD CONTACT DAVID CALLED. HE STATES THERE WAS NO  
DMG TO INSD VEH. IVD TOLD HIM THAT HE JUST DIDN'T  
SEE CV COMING. HE DOES NOT DISPUTE INSD  
NEGLIGENCE. MDM

SCENE PHOTOS RECD. BOURBON ST IS A THROUGH STREET  
WITH NO TRAFFIC SIGNS. ROYAL AVE MEETS W/BOURBON  
& ALSO DOES NOT HAVE ANY TRAFFIC SIGNS.  
LOGICALLY, TRAFFIC ON ROYAL AVE WOULD YIELD TO  
STRAIGHT TRAFFIC ON BOURBON. I ATTEMPTED TO EMAIL  
PHOTOS BUT WEB IS DOWN & I WAS UNABLE TO DO SO.  
WILL TRY AGAIN TOMORROW. MDM

-----  
TYPE REMARK..... A  
SUBCLAIM..... 001  
LOB..... 1121  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
001-I SPOKE W/CLMT & ADVISED. HE WILL NEED RENTAL  
WHILE VEH REPAIRED. I WILL RAISE INC TO \$2372 FOR  
REPAIR & POSSIBLE 6 DAYS RENTAL. ASSIGNED REPAIR  
PROCESS TO LYNX AS B/S IS OUR DRP SHOP. MDM  
-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
THIS IS INSD LIAB. IV PULLED OUT INTO PATH OF  
ONCOMING VEH. IVD RECD TICKET. MDM  
-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
CONT-THERE WERE 11 STUDENTS ON THE BUS. ALL WERE  
CHECKED OUT BY SCHOOL NURSE & WERE OK. MDM  
-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
IVD LARRY CALLED & GAVE RS. HE STATES HE WAS ON  
ROYAL AVE AT THE "T" INTERSECTION W/BOURBON ST.  
THERE IS NO TRAFFIC CONTROLS THERE. HE WAS  
ATTEMPTING TO MAKE A RIGHT HAD TURN & DID NOT SEE  
CV COMING FROM HIS LEFT. IVD PULLED OUT & STRUCK  
THE RT REAR SIDE OF CV. POLICE CALLED & RESPONDED  
TAKING RPT. IVD RECD TICKET FOR FTYROW...  
-----  
TYPE REMARK..... A  
SUBCLAIM..... 001  
LOB..... 1121  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
CONT-NO PASSENGERS, NO INJURY. POLICE CALLED &  
RESPONDED. RPT TAKEN. CLMT THINKS IVD RECD  
TICKET. CV IS DRIVEABLE. EST FROM OUR DRP  
BENEDICTS FOR \$2172.43. I ADVISED I WOULD CALL  
HIM BACK ONCE I HAVE COMPLETED MY INVESTIGATION.  
HE AGREED. SETTING INC AT \$2173 AT THIS TIME. MDM  
-----  
TYPE REMARK..... A  
SUBCLAIM..... 001  
LOB..... 1121  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
001-I SPOKE W/CVD HAROLD & TOOK RS. HE STATES HE  
WAS TRAVELING N ON BOURBON ST. IV WAS SITTING  
STOPPED WHERE IT INTERSECTS W/ROYAL AVE. HE DOES  
NOT KNOW IF THERE IS A STOP SIGN THERE. BOURBON  
ST DOES NOT HAVE ANY TRAFFIC CONTROLS. AS HE WAS  
PASSING BY ROYAL AVE, IV PULLED OUT & STRUCK HIS  
VEH. DMG TO PASS SIDE REAR FENDER...  
-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
I CALLED INSD CONTACT DANIEL & HE WAS NOT IN. I  
LEFT MSG FOR CALL BACK. ALSO MSG FOR IVD TO CALL  
BACK. MDM

-----  
TYPE REMARK..... A  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/08  
SERVICES ID.....  
TECHNICAL ID..... G102T0B78  
RECD NEW LOSS AFTER MY WORK HOURS. COV CONF IN  
RUMBA & POL SYST FOR 2008 THOMAS BUS VIN 70647  
SCHED VEH #162 ON PO. NO LIEN. DOL FALLS W/IN EFF  
DT 7/1/08-09. CA0001 7/97 APPLIES W/SYMB 1 LIAB  
\$1MIL CSL; NO COLL COV. DRIVER NOT LISTED. WILL  
ORR FOR THIS & IVD TICKETED. COPY OF POLICY  
DROPPED TO CWS. SCENE PHOTOS ORDERD FROM SD. MDM  
-----  
TYPE REMARK..... F  
SUBCLAIM..... 001  
LOB..... 1121  
CREATE DATE..... 2008/10/07  
SERVICES ID.....  
TECHNICAL ID..... P102T0B78  
FORM/LETTER 260018 MAILED ON 10/08/2008  
STATEMENT OF CLAIM FORM  
-----  
TYPE REMARK..... F  
SUBCLAIM..... 001  
LOB..... 1121  
CREATE DATE..... 2008/10/07  
SERVICES ID.....  
TECHNICAL ID..... P102T0B78  
FORM/LETTER 260008 MAILED ON 10/08/2008  
CLAIMANT ACKNOWLEDGEMENT LETTER  
-----  
TYPE REMARK..... Z  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/07  
SERVICES ID..... U11705JXM  
TECHNICAL ID.....  
NO INJS. SCENE PHOTOS NEEDED. NOTE INSD DRIVER  
RECD TICKET. FILE OR. OTHER DRIVER RECEIVE TICKET  
? SCENE PHOTOS NEEDED. CONFIRM NO COLL COVG FOR  
INSD. CLMT VEH DRIVEABLE ? ETP ? DETERMINE &  
DOCMUMENT LIABILITY. EVAL, RESERVE & RESOLVE.  
THANKS, GEN  
-----  
TYPE REMARK..... Z  
SUBCLAIM.....  
LOB.....  
CREATE DATE..... 2008/10/07  
SERVICES ID..... U11705JXM  
TECHNICAL ID.....  
SENT TO CCS THANKS, GEN CAHILL 10/7/20083:59:56  
PMPLEASE ASSIGN MMERRICK(B78). PLEASE SET SUPV  
DIARY @ 15 DAYS.  
MARIE, REV & RMK REGARDING COVG. 24HR CONTACT TO  
INSD & CLMT. SECURE STATEMENTS ON FACTS OF THE  
LOSS. IMPACT POINTS. EXTENT OF THE DAMAGES. ENSURE

I, David P. Daniels, Guilford Town Court Justice, state that there was never any *ex parte* communication between myself and David Evans, Norwich Town Court Justice, pertaining to any Court case, but specifically to the dismissal in question of Larry Bates' traffic ticket.

David P. Daniels

David P. Daniels

8-11-09

Date

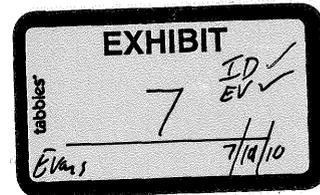
On this date August 11 of 2009

David P. Daniels appeared before me

Susan Granquist

Notary Public

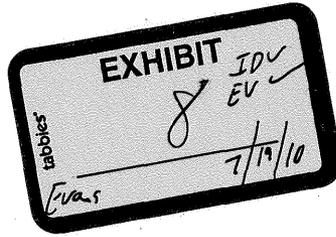
SUSAN GRANQUIST #01GR6131404  
Notary Public, State of New York  
Qualified in Chenango County  
Commission Expires Aug 1, 2013





66 SOUTH BROAD STREET  
NORWICH, NEW YORK 13815  
PHONE: 607.334.4444  
FAX: 607.334.4162

August 11, 2009



Norwich City School  
89 midland Drive  
Norwich NY 13815

RE: Auto accident on 10-7-08

To Whom It May Concern:

We are the insurance agent for Norwich City School. They have a commercial auto policy through our agency with Utica National Insurance Company, policy # BAC1357614 policy term 7-1-08 to 7-1-09

Utica National has paid in full Ms. Wanda Hill for her auto damage to her 2000 Mercury Utica National's check # 460937 was issued on 10-27-08 for a total of \$2079.93.

The claim with Utica National Insurance Company is now closed with the payment in full to Ms. Hill. If there are any questions that I can help you with please feel free to contact me directly at: 607-337-4403

Sincerely,

Diane Edwards  
Executive Claims Associate

OFFICES



CAMILLUS	COOPERSTOWN	DOLGEVILLE	GLOVERSVILLE	GREENE	NORWICH	SHERBURNE	VESTAL
CLIFTON PARK	DELHI	FLEISCHMANN'S	GRAND GORGE	HAMILTON	ONEONTA	SIDNEY	WALTON

# EXHIBIT D

STATE OF NEW YORK

COMMISSION ON JUDICIAL CONDUCT

\_\_\_\_\_x

In the Matter of the Proceeding Pursuant to  
Section 44, Subdivision 4, of the Judiciary Law

In relation to

David J. Evans

Justice of the Norwich Town Court,  
Chenango County

\_\_\_\_\_x

**FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW**

**APPEARANCES**

**BEFORE:**

**FOR THE COMMISSION**

Cathleen Cenci  
Deputy Administrator

Charles P. Farther, Esq.  
Staff Attorney

**FOR THE RESPONDENT**

Scott J Clippinger, Esq.

Frank J. Barbaro  
Referee

## PRELIMINARY STATEMENT

By order dated April 29, 2010, I was designated to serve as a Referee to Hear and Report Proposed Findings of Fact and Conclusions of Law to the Commission, with regard to charges of misconduct brought against Justice David J. Evans, hereinafter referred to as "Respondent".

A hearing was held before me on July 19, 2010 in Albany, New York at the offices of the Commission on Judicial Conduct, hereinafter referred to as the "Commission".

The "Commission" called eight witnesses, including the "Respondent". The "Respondent" testified on his own behalf.

Counsel for the "Commission", and counsel for the "Respondent" submitted pre-hearing and post-hearing memoranda. The "Commission" submitted a rebuttal post-hearing memorandum.

## FORMAL WRITTEN COMPLAINT

The "Commission" alleges acts of judicial misconduct, by the "Respondent", in its Complaint, pursuant to:

(1) "Article 6, Section 22 of the Constitution of the State of New York, establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served on a Judge."

(2) "The Commission directed that a Formal Written Complaint be drawn and served on David J. Evans ("Respondent"), a Justice of the Norwich Town Court in Chenango County."

(3) " The factual allegations set forth in Charges I through IV state acts of judicial misconduct by respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rule")."

(4) "Respondent" has been a justice of the Norwich Town Court, Chenango County, since 1994. His current term expires on December 31, 2010. "Respondent" is not an attorney."

#### CHARGE 1

(5) "On or about November 20, 2008, in *People v. Larry Bates*, respondent granted and/or appeared to grant special consideration to the defendant, after Guilford Town Justice David P. Daniels intervened on Mr. Bates' behalf, and conveyed the impression that Judge Daniels was in a special position to influence him, by: (1) dismissing the charge against Mr. Bates, (2) dismissing the charge against Mr. Bates in the absence of any motion by either the defendant or the prosecution, as required by law, (3) dismissing the charge against Mr. Bates notwithstanding that Mr. Bates did not appear, was never arraigned and did not enter a plea, as required by law and (4) dismissing the charge against Mr. Bates without setting forth his reason for doing so on the record, as required by law."

## SPECIFICATIONS TO CHARGE 1

(6) "On or about October 7, 2008, Larry Bates was involved in a motor vehicle accident while operating a school bus for the Norwich City School District."

(7) "Guilford Town Justice David P. Daniels was called to the scene of the accident in his capacity as Transportation Director for Norwich City School District and as Mr. Bates' supervisor."

(8) "Mr. Bates was charged by the New York State Police with Failure to Yield the Right of Way. He was issued a uniform traffic ticket ("ticket"), returnable in the Norwich Town Court. Judge Daniels took possession of the ticket from Mr. Bates at the scene of the accident."

(9) "In or about November 2008, Judge Daniels traveled to the Norwich Town Court, and delivered the ticket to the court and while there, displayed to Norwich Town Court Clerk Faye Pierce and others a video purportedly depicting the accident scene. Judge Daniels narrated the video while it was being played and, in words or in substance, stated his view that Mr. Bates was not at fault."

(10) "On or about November 20, 2008, after he learned of the Judge Daniels' visit to the court and discussions of the "*Bates*" case, respondent dismissed the charge against Mr. Bates in the absence of any motion by either the defendant or the prosecution, notwithstanding the requirements of Sections 170.30, 170.40, 170.45, and 210.45 of the Criminal Procedure Law."

(11) "Respondent" dismissed the charge against Mr. Bates despite the fact that Mr. Bates never appeared in court, was never arraigned and did not enter a

plea, notwithstanding the requirements of Sections 170.30, 170.40, 170.45, 170.60 and 210.45 of the Criminal Procedure Law”.

(12) “Respondent” dismissed the charge against Mr. Bates without setting forth the reasons for the dismissal on the record, notwithstanding the requirements of Section 170.40 of the Criminal Procedure Law.”

(13) “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 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, allowed a family, social, political or other relationship to influence the judge’s judicial conduct or judgment, in violation of Section 100.2(B) of the Rules, lent the prestige of his judicial office to advance the private interest of another and conveyed the impression that another was in a special position to influence the judge, in violation of Section 100.2 (C) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B) (1) of the Rules, and failed to accord the prosecution the right to be heard according to law, in violation of 100.3(B) (6) of the Rules.”

## CHARGE 2

(14) "On August 13, 2009, "Respondent" gave testimony under oath before the "Commission" that was false, misleading, and evasive, concerning his dismissal of the charge in *People v. Larry Bates*."

### SPECIFICATIONS TO CHARGE 2

(15) "On August 13, 2009, "Respondent" gave sworn testimony during the "Commission's" investigation of, *inter alia*, his handling of *People v. Larry Bates*."

(16) "Respondent" testified falsely, misleadingly, and evasively: (1) that he spoke with Assistant District Attorney Stephen Dunshee regarding the ticket issued in *People v. Larry Bates*, (2) that ADA Dunshee told him that he would have to confirm whether all the insurance claims had been settled, (3) that in a subsequent conversation, ADA Dunshee told him that he had confirmed that all the insurance claims had been settled and (4) that ADA Dunshee told him he consented to the dismissal of the ticket".

(17) "In fact, "Respondent" had not spoken to ADA Dunshee about *People v. Larry Bates*; ADA Dunshee did not tell "Respondent" either that he would confirm or had confirmed that all insurance claims had been settled in the matter; and ADA Dunshee did not tell "Respondent" that he consented to the dismissal of the ticket in *People v. Larry Bates*."

(18) "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; and 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”.

### CHARGE 3

(19) “Since in or about January 2008, “Respondent” presided over criminal cases without disclosing that Stephen Dunshee, the Assistant District Attorney assigned to prosecute such cases in the “Respondent’s” court, personally represented “Respondent” in 2004 in a proceeding before the Commission.”

(20) “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 permitted others to convey the impression that they were in a special position to influence him, in violation of section 100.2(C) of the Rules; and failed to perform the duties of judicial office impartially and diligently

in that he failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in violation of Section 100.3(E) (1) of the Rules.”

#### CHARGE 4

(21) “From on or about June 16, 2008 through in or about November 2008, “Respondent” failed to mechanically record court proceedings, as required by Section 200.23 of the Recordkeeping Requirements for Town and Village Courts and an Administrative Order of the Chief Administrative Judge of the Courts dated May 21, 2008.”

(22) “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 be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B) (1) of the Rules, failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C) (1) of the Rules, and failed to require court staff to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3 (C) (2) of the Rules.”

## ANSWER

"The "Respondent", DAVID J. EVANS by his attorney, David E. Sonn, submits for his Answer to the Formal Written Complaint herein.

1. Admits upon information and belief the allegations set forth in paragraph numbered 1.

2. Admits upon information and belief the allegations set forth in paragraph numbered 2

3. Regarding paragraph 3, admits upon information and belief that if the factual allegations set forth in Charges 1 through 4 sating alleged acts of judicial misconduct by respondent in violations of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct actually occurred and were intentionally done then there might have been violations of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct.

4. Admits the allegations set forth in Paragraph 4".

## CHARGE 1

5. Regarding Paragraph 5, denies that he granted and/or appeared to grant special consideration to Larry Bates by (1) dismissing the charge against Mr. Bates, (2) dismissing the charge against Mr. Bates in the absence of any formal motion by either defendant or prosecution, (3) dismissing the charge against Mr. Bates notwithstanding that Mr. Bates did not appear, was never arraigned and did not enter a plea, (4) dismissing the charge against Mr. Bates without setting forth

the reason for doing so on the mechanical record. The dismissal was written on the accusatory instrument and filed in the Court file.

Specifications to Charge 1

6. In reliance on the simplified traffic information he admits Larry Bates was involved in a property damage accident.

7. Lack actual knowledge sufficient to admit or deny.

8. Admit Mr. Bates was charged with Failure to Yield the Right of Way and was issued a uniform traffic ticket returnable in the Norwich Town Court. Lack actual knowledge to admit or deny if Judge Daniels took possession of the ticket from Mr. Bates at the scene of the accident.

9. Lack actual knowledge to admit or deny the allegation in Paragraph 9.

10. Denies the allegations set forth in Paragraph 10 insofar as it alleges he dismissed the charge against Mr. Bates in the absence of any motion after he learned of Judge Daniels visit to the Court and discussion of the Bates case.

11. States that, following past Court and District Attorney Procedures regarding dismissal of property damage incidents covered by insurance, he dismissed the charge against Mr. Bates.

12. Admits allegations set forth in Paragraph 12 except, he did record the dismissal in the Court files.

13. Denies the allegations set forth in Paragraph 13.

## CHARGE 2

14. Denies the allegations set forth in Paragraph 14, he has always testified truthfully, honestly and fully to the best of his recollection at the time.

### Specification to Charge 2

15. Admits allegations in Paragraph 15.

16. Denies allegations in Paragraph 16.

17. Denies allegations in Paragraph 17.

18. Denies allegations in Paragraph 18.

## CHARGE 3

19. Admits that after a review of the law and a determination that only a two year period of disclosure was required, since on or about January 2008 "Respondent" presided over criminal cases without disclosing that Stephen Dunshee personally represented him in 2004 in a proceeding before the Commission.

20. Denies the allegations in Paragraph 20.

## CHARGE 4

21. Admits that, after a period of mechanically recording court proceedings, during a period when Courtroom was under renovation and lacked sufficient electric service he failed to mechanically record court proceedings. Upon completion of renovations and installation of adequate electric service he has mechanically recorded all court proceedings.

22. Denies the allegations set forth in Paragraph 22.

### EXHIBITS

Before taking testimony, the "Commission" marked nine exhibits for identification, and moved that they be admitted into evidence. There being no objection, they were admitted into evidence. The exhibits were:

1. Police Accident Report and Uniform Traffic Ticket.
2. Simplified Information in *People v. Larry Bates*.
3. Notice of Appearance signed by Stephen M. Dunshee dated October 25, 2004.
4. Letter from Stephen M. Dunshee to the Commission dated January 5, 2005.
5. Administrative Order of the Chief Administrative Judge dated May 21, 2008.
6. Notes from Utica National Insurance.
7. Notarized statement of Judge Daniels dated August 11, 2009.
8. Letter from Diane Edwards, Executive Claims Associate, Mang Insurance, dated August 11, 2009.
9. Transcript of Judge Evans' testimony of August 13, 2009.

## TESTIMONY

### DIRECT TESTIMONY OF TROOPER BRANDON LEON BRIGHAM BY FARCHER

Trooper Brandon Leon Brigham, hereinafter referred to as "Trooper Brigham", testified that on or about October 7, 2008 he was called to the scene of an accident at the intersection, of Bourbon Street and Royal Avenue, in the Town of Norwich. After, an investigation and speaking with the parties involved, he issued a Traffic Ticket to Larry Bates, hereinafter referred to as "Bates", for Failure to Yield the Right of Way. A copy of the Ticket was delivered to the Town Court of Norwich by internet. (Exh. 2)

While writing out the Ticket for "Bates", David Daniels, hereinafter referred to as "Daniels", arrived at the scene; and spoke to "Trooper Brigham" briefly. When the Ticket was completed, he handed it to "Bates". Traffic Tickets are prosecuted by the Stephen Dunshee, hereinafter referred to as "Dunshee", the A.D.A. for the Town of Norwich. The Trooper did not know who ultimately ended up with possession of the Ticket.

### CROSS EXAMINATION OF "TROOPER BRIGHAM" BY SONN

"Trooper Brigham" testified that it was not unusual for Troopers to not know what the outcome of a Traffic Ticket is, and that "Daniels" did not attempt to defend "Bates" or attempt to influence him to drop the Ticket.

The Ticket is known as a Simplified Traffic Information. A person who receives one must plead guilty or not guilty on the ticket, sign it and either mail it to the Town Court or deliver it there personally. Troopers always give this information to drivers who receive tickets.

If a guilty plea is accepted by the Court, a fine or penalty will be imposed on the defendant. By mailing in a completed ticket, a person can avoid a court appearance.

DIRECT EXAMINATION OF LARRY BATES BY FARCHER

Larry Bates, hereinafter referred to as "Bates", has been a School Bus Driver for the Town of Norwich for 24 years. "Daniels" was his co-worker for 20 years, before he became his supervisor for four or five years.

On October 7, 2008, while driving a School Bus he struck a passenger vehicle at the intersection of Bourbon Street and Royal Avenue, in the Town of Norwich; on the right side between the back door and the bumper. After the accident, he called the Bus Company office; and spoke to the secretary. She reported the accident to "Daniels" and the State Troopers. "Daniels" arrived at the location of the accident, while "Trooper Brigham" was issuing him a ticket. "Daniels" took the Ticket from him and said he would drop it off at the Court.

When shown a copy of Exhibit (1), Uniform Traffic Ticket, he testified that it was a copy of the Ticket he had received; for Failure to Yield the Right of Way. He did not enter a plea on it because "Daniels" took it; he did not know what happened to it. When asked if he ever asked "Daniels" what happened to the Ticket, his response was that Judge Evans, hereinafter referred to as "Respondent" had it. There was a Court date on the Ticket, but he did not appear because "he was never informed to go", and was told by "Daniels" "that there was no need to go to Court".

When confronted with a prior inconsistent statement he made to "Fitzgerald" of the "Commission", that he had in fact gone to the Court, he admitted that he had not gone to Court. When asked by "Farcher" the reason for the inconsistency, his response was that he did not know what to say to "Fitzgerald".

#### CROSS EXAMINATION OF "BATES" BY SONN

"Bates" did not know the "Respondent"; and was not beholden to him for any reason. "Daniels" took the Ticket and volunteered to drop it off, but did not say that he would fix it. When "Daniels" took the Ticket from him, he had not plead or signed it. "Daniels" said nothing and just took it from him. The Court did not contact him to appear on the Ticket.

He had received tickets before; and appeared on them. One was mailed to the "Town of Green" for speeding, but he could not remember the details of the other one. A video camera on his bus, showed the accident.

#### DIRECT EXAMINATION OF FAYE PIERCE BY FARCHER

Faye Pierce, hereinafter referred to as "Pierce", has been the Court Clerk for the Town Court of Norwich, since 2002. Her duties include doing paper work, filing, answering telephones, and doing computer entry, which includes disposition of Traffic Tickets.

She can see who comes and goes from the Court room, and is familiar with "Daniels", since he trained her on how to run the S.E.I. Computer Program, on four or five occasions.

In the late fall of 2008, "Daniels" paid an unscheduled visit to the Court, with a video CD clip of the accident. His purpose was to show it to the "Respondent", but since it was a non-Court night, the "Respondent" was not there. As a result, he ran the clip for "Pierce", and Deputy Kent Smith, hereinafter referred to as "Smith", who was present. While running the video, "Daniels" said "Bates" was not at fault, and left asking "Pierce" and "Smith" to tell the "Respondent" of his visit.

The "Bates" Ticket was ultimately dismissed by "Respondent" on November 20, 2008. She knew he wrote "dismissed" on it, because she knew his signature.

#### CROSS EXAMINATION OF "PIERCE" BY SONN

"Pierce" said that "Dunshee" would have been part of the process by which the Ticket was dismissed.

On the night that "Daniels" arrived at the Court, she was processing tickets. They were separated into different piles; some would go into the Fine Notice book, some would go into the system, and dismissals would be filed in a drawer. She was not certain if the "Bates" Ticket could have been put into a folder for the ADA to process. Never having seen the "Bates" Ticket, she did not know if "Bates" had pled or signed it.

She was not concentrating on the video, but looked up and saw the accident taking place. She probably told "Evans" that "Daniels" had visited the Court looking for him.

## DIRECT EXAMINATION OF OFFICER KENT SMITH BY FARCHER

Officer Kent Smith, hereinafter referred to as "Smith", is employed as the Court Officer for the Norwich Town Court. His duties include providing security for the "Respondent" and calling his calendar to inform people that their case is ready. He visits the Court when it is not in session, in order to visit with "Pierce". They drink either coffee or soft drinks together, and chit chat.

He knows "Daniels" because he appeared before him previously, and knows "Bates" because he issued him a ticket for a traffic violation. While working as a part-time Deputy Sheriff he has seen "Bates" driving a School Bus, but could not remember if "Daniels" visited the Court Room on a Court night or a non-Court night. "Daniels" played the video clip of the accident for him and "Pierce", and said that "Bates" was not at fault.

With the exception of questions numbered 2, 10 and 11, his responses to "Farchers" questions were evasive.

1) Question: Did Judge Daniels indicate that the purpose of the video was to show that his driver was not at fault?

Answer: Not that I recall.

2) Question: Did Judge Daniels ever ask you to let Judge Evans know he had stopped by?

Answer: Yes, he did.

3) Question: Did you convey that message?

Answer: I don't recall.

4) Question: Did you ever tell Judge Evans that you had seen a video played by Judge Daniels?

Answer: I don't recall if I even told Judge Evans that Judge Daniels was looking for him.

5) Question: Did you ever discuss Judge Daniels' visit with Judge Evans at all?

Answer: Not that I recall.

6) Question: Mr. Smith, did Judge Evans ever say to you, "If he thinks I'm going to dismiss this, he's nuts?"

Answer: He did make that comment. Yes. (H.T.R. p. 72, L23-24)

7) Question: Could you tell us in what context his comment was made?

Answer: I don't recall the whole context of the conversation.

8) Was it with regard to Mr. Bates' ticket?

Answer: I don't recall the context of the conversation.

9) Question: Do you know approximately when that statement was made in relation to Judge Daniels' visit? (H.T.R. p.73, L1-10)

Answer: A week, maybe two weeks.

10) Question: After?

Answer: Yes.

11) Question: Mr. Smith, you said you're present for pretty much all Court appearances. Have you ever seen Mr. Bates appear in Court?

Answer: No. I have not.

CROSS EXAMINATION OF "SMITH" BY SONN

On direct examination "Smith" said he heard the "Respondent" say "If he thinks I'm going to dismiss this ticket, he's crazy." However, he refused to say in what context it was said.

He did not notice if "Daniels" had a Traffic Ticket with him or say that he had the Ticket with him. All tickets were placed in piles, on a table in the Court room.

The "Respondent" never dismissed a ticket, without approval from the A.D.A.

His responses to the following questions were evasive and protective of the "Respondent":

1) Question: During the time that Mr.—that Judge Daniels was present with the video, did you observe that he had a traffic ticket with him at the time?

Answer: No. I did not.

2) Question: Did he tell you he had a traffic ticket with him?

Answer: No. He did not.

3) Question: Were there traffic tickets about the office in piles?

Answer: I don't recall.

4) Question: Okay. Was Faye doing her administrative duties at that time?

Answer: I don't recall.

5) Question: Was she processing tickets at that time?

Answer: I don't recall?

6) Question: Did he give you—Did Judge Daniels give you any message for Judge Evans?

Answer: Just that he's stopped in.

7) Question: Okay. Not relating to any ticket?

Answer: No, sir.

DIRECT EXAMINATION OF ASSISTANT DISTRICT ATTORNEY STEPHEN DUNSHEE BY  
FARCHER

Stephen Dunshee; hereinafter referred to as "Dunshee", is a full-time First Assistant District Attorney for the Town of Norwich and is assigned to the Norwich Town Court. Among his duties are, processing Traffic Tickets and appearing before the "Respondent" twice a month on Traffic matters, Misdemeanors, and Felony Hearings.

Before becoming an A.D.A. he represented the "Respondent" in a Judicial Commission matter, and signed a Notice of Appearance on October 4, 2004.

Thereafter, on January 5, 2005, both of them signed a letter the

"Commission" mailed to them asking that they confirm they had accepted the Commissions "Dismissal and Caution" letter ending the proceeding.

When asked what his requirements were for the dismissal of Tickets, he set out four requirements:

- 1) the defendant had to produce his/her driving record to show that there was no history of Traffic infractions,
- 2) no aggravated unlicensed driving charge,
- 3) the defendant had to obtain a letter from his/her Insurance Company that all property damage claims were settled, and that
- 4) there was no bodily injury claim.

Requests for reductions or dismissals come from the driver or his/her attorney. There were times when the Court gave him correspondence it had received, in which case, he wrote his decision, with a blue pen, on the abstract, and submitted it to the Court.

This practice was not followed if there was a serious accident, or someone was hurt. In such a case the defendant had to plead or go to trial.

He never saw "Bates", prior to his presence at the Formal Hearing, and never spoke to him, but was aware that "Bates" had been ticketed, in October of 2008, for "Failure to Yield". "Farther" gave him this information when they met the previous week. There never was any discussion with "Evans" about the "Bates" Ticket, and he did not receive any notice that the "Bates" Ticket had been dismissed.

No traffic abstract from "Bates, was ever provided or proof that the insurance claim was settled. There was never any conversation with "Evans" about the "Bates" Ticket, and no contact with the Norwich insurance company that all claims were settled.

The former procedure of how tickets were dismissed is not followed anymore. Now it is more formal, Judges must put everything on the record and his recommendation is written on the margin of the ticket for the Judge to see.

It is not necessary for a defendant to appear in Court, under all circumstances to settle a ticket. A request can come from either the defendant or her/his defense attorney.

"Dunshee" began appearing in the Norwich Town Court, as an Assistant District Attorney in January of 2008. Representing "Evans" sooner was precluded, because he had represented "Evans" in January 5, 2005, and the rules required a waiting period of two years.

Most of the time, "Evans" made disclosure of "Dunshee's" representation to attorneys who were from out of the area. When read a prior statement that "he did not remember "Evans" saying anything": His response was evasive saying that he made the disclosures, a deminimus amount of times.

#### CROSS EXAMINATION OF "DUNSHEE" BY SONN

"Dunshee" had no recollection of anything happening to the "Bates" Ticket, or anything relating to the Insurance Company. His practice, with Judges that he trusted, was to tell them it was alright to dismiss a ticket, if the insurance claim was settled, the defendant had a clean record, and there was no personal injury.

He had no memory of telling the "Respondent", that after a couple of years, there was no need to disclose their prior relationship or wait two years before appearing before him. He did not advise "Evans" of his need to make disclosure to other attorneys, but does remember that "Evans" might have said something to "somebody".

The "Respondent" was "especially cautious when lawyers from out of the area appeared before him. In such a case, he introduced everyone, made sure who was who, and why they were in the room; he did not remember telling "Respondent" that there was no need to disclose to attorneys of their prior relationship. He did remember telling "Evans" he had to wait two years before he could appear before him. There might have been some disclosure by the "Respondent".

In his opinion, "Evans" has a reputation for being absolutely honest; is a Christian and does nothing illegal.

#### DIRECT EXAMINATION OF "DANIELS" BY FARCHER

"Daniels" is the Director of Transportation for the Norwich City School District, and is also a Town Justice for Norwich. "Bates" was a fellow School Bus driver for twenty years and has supervised him for the last four years.

On October 7, 2008, his office was notified that "Bates" had been involved in a collision with a passenger vehicle, and struck it on "the right rear side, and tail light". On arriving at the scene of the accident, "Trooper Brigham" was in the process of issuing "Bates" a standard vehicle and traffic ticket for improperly entering an intersection, and Failure to Yield Right of Way. (Exhibit 1)

"Bates" gave "Daniels" the Ticket he received, but did not examine it to determine if "Bates" had entered his plea on it. The Ticket was put into his "Bates" file, and delivered to the Town Court on the due date; but he could not remember when it was due.

When confronted with the fact that "Bates" had not entered a plea on the Ticket, his comment was, "I did not look at it I just delivered it." "If a ticket is received in his Court, without a plea, it is mailed back to the defendant."

His visit to the Norwich Town Court was around the time of the return date printed on the Ticket. It was November 13, 2008. The Court was not in session, but "Pierce" the Court Clerk was in the Court room with "Smith". They discussed the accident, but not the "Bates" Ticket.

"Daniels" told "Pierce" and "Smith" about his video recording of the accident; asked them if they wanted to view it. While showing the video clip he narrated and said "Bates" was not at fault. He placed the Ticket in a box that was on a desk near the Court Clerk.

There was no discussion with the "Respondent" about the Ticket. They did speak at a gas station; the "Respondent" said, "I don't know if I dare shake your hand".

"Daniels" signed a notarized statement for "Evans" (Exhibit 7) that stated there was no prior *Ex Parte* communication between them regarding the "Bates" Ticket.

CROSS EXAMINATION OF "DANIELS" BY SONN

"Daniels" delivered the "Bates" Ticket to the Court, because he was going there to train "Pierce" on the SEI computer program. While showing the accident video he said that "Bates" was not at fault; but did not make a request to show it to the "Respondent", ask him to dismiss the Ticket, or tell anyone where he put the Ticket when he visited the Court.

"Bates" was not told that his Ticket was dismissed. "Pierce" and "Smith" were not asked to tell the "Respondent" about his visit.

RE-DIRECT OF "DANIELS" BY FARCHER

The Ticket was left on the desk next to the Court Clerk, but never read by him.

DIRECT OF JOE GALLAGHER BY FARCHER

Joe Gallagher, hereinafter referred to as "Gallagher", is employed by the Utica National Insurance Company, as a claims supervisor. The Norwich School District is insured by his Company, with a package policy, which includes automobile liability. His staff reviewed the file of the accident and paid for the property damage to the automobile that "Bates" collided with. The No Fault insurance carrier for the other vehicle paid \$1200. for medical treatment, as per the No Fault Law. (Exh. 6)

His company was never contacted by: 1) the Norwich Town Court staff; 2) the Norwich School District office, 3) State Troopers, 4) "Dunshee" or 5) the "Respondent".

### DIRECT OF BUSSONNAIS BY FARCHER

No request was made by the Norwich District's attorney's office, for information regarding payment of the claim. She did not send a letter that the claim was settled and closed out. The letter was sent by Diane Edwards the Executive Claims Associate for Mang Insurance dated August 11, 2009.

After the "Bussonnais" testimony was completed, "Farcher" had no further witnesses, whereupon he made a motion to read into the record admissions made by "Respondent", at the Commission Investigative Conference held on August 13, 2009. A discussion followed as to whether the statements were admissions or prior inconsistent statements. They were admitted as admissions.<sup>1</sup>  
(TR. p.242-249)

### ADMISSIONS READ INTO THE RECORD BY FARCHER

"Farcher" then read portions of the "Respondents" admissions that:

- 1) "Dunshee" represented him at a Commission hearing about 2004. This was the only time he represented him. At that time, both of them received and signed a Letter of Caution and Dismissal from the Commission.
- 2) "Dunshee" began to appear in his Court in January or February 2008.
- 3) His Court meets twice a month.
- 4) He did not disclose that "Dunshee" had previously represented him.

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<sup>1</sup> After the discussion, they were admitted as admissions, pursuant to CPLR3117 (a) (2). However, they were also n admitted as admissions because the transcript of the testimony became a public document, and judicial notice was taken of them.

5) There was no indication from attorneys who appeared in his Court, that they ever knew that "Dunshee" had represented him.

6) Mr. Oefelein was arraigned on July 30 or September, but he forgot to transcribe testimony.

7) There was no recording of the arraignment because of electrical problems, and when it was available he forgot to record it.

8) The Court Room was ready for recording on July 2008 but he did not record testimony in the new Court Room until November 2008.

9) The laptop and the recording equipment were brought to his Court in about November of 2008.

10) When asked to examine the Ticket that "Bates" received he agreed that it was served on October 7, 2008, that it came to his Court; and was dismissed, a week after "that which would have been our regular D.A. night". "Dunshee" was satisfied that the Towns Insurance Company had paid the claim that resulted from the accident. "Respondent" spoke to "Dunshee" specifically about the Ticket and others "where there was a request for a dismissal or reduction".

11) "Dunshee" was in his Court the night of November 11, 2008 and he assumed that "Bates" was there also.

12) "Dunshee" told him he would check with the Insurance Company to make sure that the claim had been settled. The next Thursday night, he telephoned him to make certain that the claim had been settled. "Dunshee" told

him it had been taken care of and it was okay to dismiss the Ticket". The following Thursday, November 2008, he dismissed the Ticket.

13) "Dunshee" was not present when he dismissed the Ticket.

14) After receiving a letter from the Commission about the "Bates" Ticket, he called "Dunshee" about the Ticket; but he could not remember it. He asked "Daniels" if there was any way to show "that the ticket was taken care of, and could be dismissed".

15) "Bates" did not enter any plea at his initial appearance.

16) The security officer told him that "Daniels" had appeared in his Court and played a video for him and the Clerk.

17) Deputy Smith told him that "Daniels" had stopped by.

18) The basis for his dismissal of the Ticket was that the Insurance Company had paid the claim for property damage, and that "Dunshee" had informed him that it was okay to dismiss the Ticket.

19) He did not know which attorneys were aware that "Dunshee" had represented him previously. There was no way for attorneys to know of the "Dunshee" prior representation unless Mr. Dunshee told them. He did not know if "Dunshee" had told anyone about his prior representation.

(20) There was no recording in his Court Room between April of 2008 and November 2008.

(21) He could not record for the period from April through July, because there were no electrical outlets in the room. However, he could have recorded from July when the outlets were installed, but he "just forgot" to record.

(22) Both "Bates" and "Dunshee" appeared in his Court in response to the Ticket,

DIRECT EXAMINATION OF "RESPONDENT" BY SONN

"Respondent" has served as a Justice for the Norwich Town Court for sixteen years, but has had no special relationship with "Dunshee". A Traffic Ticket was served on "Bates", but he did not appear in Court when it was dismissed. The decision to dismiss was not made unilaterally; there were discussions with "Dunshee", but not with "Daniels".

The discussions with "Dunshee" took place on two occasions.

The first conversation took place on November 13, 2008, the night the Ticket was due. They discussed tickets that were on the calendar for that night, in order to decide which could be dismissed. The "Bates" Ticket was discussed, but they were not able to decide what to do with it, because "Dunshee" had to check to see whether or not the insurance claim had been resolved. As a result, the case was adjourned to allow "Dunshee" to check to see if the insurance claim had been settled and then call him in a week to advise him of the results.

The second conversation, was when he called "Dunshee" to learn the status of the insurance claim. "Dunshee" told him that the insurance claim had been settled, and he could dismiss the Ticket.

After the Commission investigation began, "Respondent" called "Dunshee" and asked him if he remembered the conversations they had about the Ticket, but "Dunshee" did not remember it. As a result, he contacted "Daniels" to ask if he would obtain a letter from the Insurance Company, as the Transportation Supervisor for the Town of Norwich, to confirm that the insurance claim had been settled. The letter is marked Exhibit 8.

After the August of 2008 interview at the Commission, he reorganized his Court procedures to insure that further proceedings were orderly. Now, the Court Clerk takes tickets, received by the Court, and arranges them in alphabetical order, and then she puts all of them in a notebook according the return dates.

A defendant can either drop his/her ticket at the Court House or mail it in, or dropped off there by anyone. After it is received "Pierce" attaches it to the original ticket, and it is placed in a folder. Now, if the Court Clerk finds a ticket with no plea on it; she sends it back to the defendant. There must be a motion to reduce or dismiss a ticket by the defendant, and "Dunshee" whose signature must be on the ticket.

In spite of the fact there was no plea on the Ticket "Bates" received, it was adjourned to November 20, 2009.

"Dunshee" represented him in 2004, prior to his becoming the ADA for the Town Court of Norwich, in January or February of 2008. They discussed his need to disclose his prior representation by "Dunshee". If it was over two years or more, there was no further need for him to disclose the prior representation.

## CROSS EXAMINATION OF "RESPONDENT" BY FARCHER

"Dunshee" represented the "Respondent" from October 25, 2004 to January 5, 2005, in a Commission Proceeding. It was closed out on January 5, 2005, when they both accepted a Letter of Dismissal and Caution. This marked the end of his legal representation by "Dunshee".

"Dunshee" began to appear in his Court Room sometime between January and February of 2008. He could not have appeared sooner, because the required two years had not passed.

When "Dunshee" began to appear before him, he did not disclose their prior relationship either orally or in writing to lawyers who appeared before him on a regular basis.

The "Bates" Ticket was in the "Dunshee" file, but not discussed until "Dunshee" brought it up to him. He did not know how it got into the dismissal pile or the reason for the dismissal.

In his opinion, the discussion with "Dunshee" about the Ticket was not *Ex Parte*, even though "Bates" or his attorney(s) were not present. Later, he admitted that these discussions with "Dunshee" were *Ex Parte*.

Prior to his dismissal of the Ticket, both "Pierce" and "Smith" told him that "Daniels" had visited his Court room, but denied "Pierce" telling him "Daniels" had played the video for her and "Smith". When prior statements were read to him, he admitted that "Pierce" had told him about the video, and the "Daniels" visit.

Thereafter his answers were evasive:

1) Question: "Did they tell you why "Daniels" stopped by?"

Answer: "No".

2) Question: "Did you ask "Pierce" what "Daniels" wanted?"

Answer: "No".

3) Question: "Did you ask "Smith"?"

Answer: "No".

4) Question: "Did "Daniels" leave a note that he was dropping of a ticket?"

Answer: "No".

5) Question: "Did he leave you a note that he had displayed a video?"

Answer: "No".

6) Question: "Did "Daniels" leave a copy of the video?"

Answer: "No".

7) Question: "Are you familiar with section 170.30 of the Criminal Procedure Law that sets out reasons for dismissing a Simplified Ticket?"

His answer was: "No"; but he did not dismiss the Ticket because:

1) it was defective or insufficient on its face.

2) "Bates" was offered immunity from prosecution.

3) the Ticket was time bared.

- 4) of double jeopardy.
- 5) "Bates" was denied a speedy trial.
- 6) There was a lack of a jurisdiction or it was dismissed in the Interest of Justice.

An oral motion was made for him to dismiss the Ticket, but there is no record of a motion being made before the Ticket was dismissed.

The "Respondent" argued that the dismissal was proper even though:

- 1) "Dunshee" denied any involvement in the dismissal.
- 2) Ms. Bussonnais and Mr. Gallager, from the Town Insurance Company, that processed the claim, said they had no contact with "Dunshee".
- 3) "Bates" never mailed the Ticket in, appeared in Court, entered a plea, spoke to a prosecutor, or made a motion for relief.

"Respondent" denied ever speaking to "Daniels" about the Ticket, but could not answer how he knew that "Bates" was a Bus Driver. His answer was, "I don't recall how...I do not know how..."

He admitted:

- 1) That he knew "Daniels" was "Bates" supervisor.
- 2) Having a conversation with "Daniels", and asking him to provide a notarized statement that they never had an *Ex Parte* communication in the "Bates" matter. (Exhibit 7)

3) Asking "Daniels" to obtain a letter for him from the Utica Insurance Company that the claim against the Town of Norwich had been closed with full payment of the property damage bill.

4) The notarized statement from "Daniels" dated August 11, 2009, stated there were no *ExParte* communications between them regarding the "Bates" ticket. (Exh. 7)

5) At the Commission Investigative Conference, he said there was no contact with "Daniels" prior to dismissing the ticket. Other than speaking to "Dunshee", he had no information that the insurance claim was closed.

#### RE-DIRECT OF "EVANS" BY SONN

When a defendant enters a plea on his/her Ticket, and mails it to the court, there is a discussion with the ADA, and then a decision is made on what the penalty should be. This would be an *Ex Parte* decision. There was never a dismissal without a reason; it would have to be agreed to by the ADA, and the defendant, or her/his attorney.

There were no discussions with "Daniels" prior to his dismissal of the "Bates" Ticket, but they did have discussions after the dismissal.

The first time he discussed the "Bates" ticket with "Dunshee" was on November 13<sup>th</sup>, the day "Bates" was due in Court. "Dunshee" took the ticket from the dismissal file, and told him it was a property damage accident case and could not be dismissed until he confirmed that the "insurance had been taken care of".

"Respondent" did not ask to see the defendant's copy of the Ticket. It was dismissed a week later, when "Dunshee" told him that all issues were resolved and the Ticket could be dismissed.

#### RE-CROSS EXAMINATION OF "RESPONDENT" BY FARCHER

On August 13, 2009 "Respondent" gave sworn testimony, at a Commission Investigative Conference:

1) "Respondent" spoke to "Dunshee" about the "Bates" Ticket, but it was adjourned to the next Thursday Court night, because "Dunshee" had to confirm that the insurance claim "was taken care of.

2) He contacted "Dunshee" on the Thursday Court night, and was told that the insurance claim had been taken care of and the Ticket could be dismissed.

3) The basis for dismissing the Ticket was that the claim had been settled by the insurance company, and closed out.

#### CHARGE 1

The central issue in this charge, is did "Respondent" wrongfully dismiss the "Bates" ticket?

It is uncontested that:

1) The events leading up to the dismissal of the "Bates" Ticket, began on or about October 7, 2008 when "Bates", driving a school bus struck an automobile, at the intersection of Bourbon Street and Royal Avenue in the Town of Norwich; causing damage to the right rear panel of the automobile, and personal injury to Harold Hill. (Exh. 1 and 6)

2) After the accident "Bates" called the School Bus office, and informed the Secretary about the accident, who gave this information to "Daniels", the Director of Transportation for the Town of Norwich. On arriving at the scene of the accident "Trooper Brigham" was in the process of issuing a Ticket to "Bates", for Failure to Yield the Right of Way.

3) "Brigham" gave the Ticket to "Bates", and informed him he could either enter a plea of guilty on it, mail it to the Court, and wait to be notified what his fine was going to be. The other option was to enter a plea of not guilty and appear in Court on November 20, 2008.

4) "Daniels" took the Ticket from "Bates, to "drop it off" at the Court.

5) "Bates" did not enter a plea, or sign the Ticket. (Exh. 1)

6) "Daniels" visited the Town Court of Norwich, and dropped it off on a non-Court night.

7) "Daniels" played a video of the "Bates" accident for "Pierce" and "Smith".

8) The Simplified Information Ticket that "Bates" received was dismissed on November 20, 2008. (Exh. 2)

9) The Ticket as per section 1807 of the Vehicle and Traffic Law required either the Judge or Court Clerk to certify that:

a) On arraignment the defendant was given instructions on how to plead, or

b) the defendant appeared in Court, or

c) the defendant pleaded guilty. (Exh. 2)

10) Neither the Judge nor the Court Clerk made the required certification. (Exh. 2)

11) "Respondent" had an *Ex Parte* discussion with "Dunshee" about the "Bates" Ticket.

### TESTIMONY

"Respondent" argues that the dismissal of the Ticket was: (1) was not unlawfully dismissed, and (2) defendants are required to make a Motion for a Dismissal or a Reduction and provide:

1) His/her driving abstract to "Dunshee" that showed no history of past traffic infractions,

2) proof that there was no charge of an aggravated unlicensed driving charge on his/her ticket, and

3) provide a letter from her/his insurance company that all property claims for damages were settled, and there is no bodily injury claim pending.

"Respondent" testified that on the night of November 13, 2008, the return date of the Ticket, he had a discussion with "Dunshee"; where they agreed to adjourn it for a week to provide "Dunshee" with time to learn if all the requirements for dismissal had been met. A week later he called "Dunshee", who told him it was "okay" to dismiss the Ticket. It was dismissed on November 20, 2008.

"Dunshee" presented a completely different version of the events leading up to the dismissal of the Ticket:

(1) There was no discussion with the "Respondent" about the "Bates" Ticket. He did not agree to obtain the "Bates" driving abstract, or contact the Utica Insurance Company. In fact, he was not even aware of the Ticket.

(2) It was not his job to check a defendant's driving record. It was the duty of the defendant or his/her attorney to obtain the required documents; and make a motion for dismissal or reduction.

(3) Harold Hill, the driver of the automobile that "Bates" struck, did in fact suffer a bodily injury and was treated by a chiropractor from October 7, 2008 to February 5, 2009 for the injuries he sustained. (Exh. 6)

(4) He testified that the "Respondent" said "If he thinks I'm going to dismiss the Ticket he is nuts". This remark obviously was intended to refer to "Daniels" efforts to prevail upon him to dismiss the Ticket.

On cross examination "Sonn" asked "Dunshee" in what context the "Respondent" made the remark, as if this was necessary, his response was evasive and not responsive. It is not difficult to infer that he did not want to perjure himself, but also wanted to protect the "Respondent".

(5) "Respondent's" contention that "Dunshee" checked with the insurance company and said it was "okay" to dismiss the ticket, is contradicted by the testimony of "Gallagher" a supervisor at the Utica National Insurance Company. His records revealed that his company paid for property damage and the no fault insurance company paid \$1,200. for medical treatment (Exh. 6)

His Company was never contacted, by anyone, including "Dunshee" regarding the "Bates" Ticket.

"Respondent" was also contradicted by "Bussonnais" who testified that there was no request from "Dunshee" for information regarding a property damage claim. Further, she did not send a letter that said it was okay to dismiss the "Bates" Ticket, or that the claim was settled or closed out.

### CHARGE 2

"On or about August 13, 2009, Respondent gave testimony, under oath before the Commission that was false, misleading, and evasive.

The "Respondent" contends that his testimony was truthful and not evasive, or false.

It is uncontested that:

- 1) "Respondent" gave sworn admission testimony during the Commission's investigation of his dismissal of the Larry Bates Ticket,
- 2) "Dunshee" contradicted the "Respondent's" testimony that the dismissal was lawful.

This charge would not have been brought against the "Respondent" if "Daniels" had not interfered with "Bates" entering his plea on the Ticket and allow him to mail it to the Court, or appear in person on the return date on the Ticket. "Daniels" should have known it was improper to take the Ticket from "Bates".

"Bates" a bus driver for twenty four years, had received at least two prior tickets, and was well aware of how to answer a traffic ticket, but he agreed to the "Daniels" plan.

"Daniels" said he was going to the Norwich Court House in order to train "Pierce" on the SEI Computer Program; and while there would "drop off" the Ticket. But why would "Daniels", a Judge, accept an incomplete ticket to drop off at a Court House? His purpose was to show the video clip to the "Respondent"; but since he was not in Court he showed it to "Pierce" and "Smith". While showing the video, he said that, "Bates" was not at fault". This was inconsistent with his testimony at the Formal Hearing that "Bates" was at fault.

"Pierce" testified that "Daniels" had previously trained her on the SEI Computer Program four or five times, but she was not due for a training session. The reason for the visit was to show the clip to them.

"Bates" followed the plan when he said he never appeared in Court because he was not contacted to appear and "Daniels" told him the Ticket was taken care of. The "Bates" Ticket was not mailed back to him; and is proof that "Respondent" was following the "Daniels" plan.

When the "Respondent" was notified by the "Commission" of its investigation, he asked "Daniels" to provide him with an affidavit that there were no Ex Parte discussions between them regarding the "Bates" Ticket. This was not true. The affidavit was dated August 11, 2008. (Exh. 7) However, this is compelling evidence that "Daniels" prevailed to the "Respondent" to dismiss the Ticket.

The testimony that "Bates", "Pierce", "Smith", "Bussonnais", "Gallagher" and the "Respondent" gave confirm his being caught up in the "Daniels" plan to prevail on him to unlawfully dismiss the Ticket.

"Bates" gave some testimony that was credible; and disproves the "Respondent's" contention that the dismissal was proper:

1) he did not complete his Ticket, 2) did not appear in the "Respondent's" Court, 3) did not make a motion to dismiss or reduce the Ticket and 4) "Daniels" told him the Ticket was dismissed.

"Pierce" contradicted the explanation that "Daniels" gave for his visit to the Town Court. Further, both she and "Smith", heard "Daniels" say that "Bates" was not at fault when he narrated the video.

"Daniels" testimony was inconsistent and raises serious doubts about his credibility but supports the inference that he planned to prevail on the "Respondent" to dismiss the Ticket.

On that other hand, the "Dunshee" testimony was clear and unequivocal:

1) He did not agree to check if the "Bates" Motor Vehicle Abstract was clear, all property damage claims were settled, and there was no personal injury claim outstanding. His testimony directly contradicted the testimony the "Respondent" gave at the Commission Investigative Conference for dismissing the Ticket.

In addition, both "Gallagher" and "Bussonnais" testified that no inquiry had been made regarding the "Bates" accident by "Dunshee" or any other person.

When all testimony, together with the exhibits, and admissions they paint the picture that "Evans" agreed to dismiss the Ticket. When the Commission called on him to explain his conduct, he gave testimony that was evasive, false and untruthful to save himself.

### CHARGE 3

Beginning in January of 2008, the "Respondent" failed to disclose to attorneys who appeared before him, in criminal matters, that "Dunshee" had represented him in a proceeding before the "Commission".

It is uncontested that the:

1) "Respondent" did not disclose his prior representation by "Dunshee"; to lawyers who appeared before him.

2) The Rules prevented "Dunshee" from appearing before the "Respondent" until two years elapsed, subsequent to his representation of the "Respondent".

The "Respondent" argues that "Dunshee's" two years satisfied his duty to disclose, but he is incorrect. The duty of "Dunshee" and his compliance, did not free him from his duty to disclose. His duty was separate and distinct from that of "Dunshee".

The reason for this duty is that (1) all lawyers have the right to be informed if there has been prior representation, (2) if there was the right to ask the Judge to recuse herself/himself, (3) by requiring the Judge to open the inquiry, it

relieves any concern that a lawyer might have to be the one to broach the subject.

This is important because the "Respondent" presided over Misdemeanor and Felony hearings; where a persons' liberty is at stake. These hearings can be crucial in the final outcome of a criminal matter.

"Dunshee" tried to help the "Respondent", by testifying that the "Respondent" did not disclose to attorneys who were familiar with him, but did to those attorneys who came from out of the area. "Dunshee" is not correct, because the rule is to give all attorneys the opportunity to ask "Respondent" to recuse himself/herself the option is that of the attorney, not the Judge.

"Respondent" did not honor this rule either because he was not familiar with it or because he chose not to. In either case, the "Respondent's" failure worked to the detriment to those attorneys who appeared before him.

The right of a defendant to be secure in the knowledge that she/he is going to receive due process is a basic tenet of our judicial process. The Rule is designed to guarantee due process and must be honored.

#### CHARGE 4

The "Respondent" is charged with failing to mechanically record all Court proceedings by June 16, 2008, as directed by the Chief Administrative Judge, in a letter dated May 21, 2008.

The "Respondent" argues that there was no electrical power available to operate the equipment, as his reason for not recording proceedings in his Court.

It is uncontested that the "Respondent" was directed to record all Court proceedings commencing on June 16, 2008. (Exh. 5)

"Pierce" testified that some recording was done, but it stopped when we moved to a larger renovated Court room, that did not have any outlets installed. To solve this problem, an electric extension cord was run into the room for "Pierce" to could operate her computer.

Power was restored in July of 2008, but the "Respondent" did not record until November of 2008. His reason for not recording was that he "just forgot".

The "Respondent", either by design, or by negligence, failed in his duty to comply with the order.

The Chief Administrative Judges' directive was a concern that all Court proceedings be accurately recorded. This requirement is crucial in general, but especially in Misdemeanor and Felony hearings. This requirement would have been helpful in the "Bates" proceeding. It would have provided important information to arrive at the conclusion of what happened to the "Bates" Ticket.

The rationale that the "Respondent" "just forgot" to use the recording equipment is not a valid defense. It reflects at best, a cavalier attitude towards his duty to insure that all Court proceedings are orderly, fair, and transparent and at worst, he intentionally decided to ignore the Chief Administrative Judges' court order. The evidence points to the fact that he did not want disclosure of what he was doing.

Judicial notice can be taken of the simple fact that electrical extension cords are available to accommodate more than one piece of equipment. The

conclusion is inescapable that the "Respondent" intentionally ignored the directive.

### FINDING OF FACTS

Based on all the testimony and exhibits in evidence I make the following Finding of Facts:

#### CHARGE 1

- 1) On or about October 7, 2008, "Bates" was driving a School Bus in the Town of Norwich, and struck an automobile being driven by Harold Hill, at the intersection of Bourbon Street and Royal Avenue.
- 2) After the accident "Trooper Brigham" arrived at the scene of the accident, and while in the process of issuing a traffic ticket to "Bates", "Daniels" arrived.
- 3) After "Bates" received the ticket, "Daniels" took it from him and said, "He would drop it off at the Norwich Town Court."
- 4) "Bates" had not entered his plea on the ticket.
- 5) The ticket that "Daniels" took pointed out that "Bates" could answer in person on November 13, 2008, or by mail.
- 6) Harold Hill suffered property damage and bodily injury.
- 7) "Respondent" dismissed the "Bates" Ticket; in spite of the fact that he did not appear in Court or answer the ticket by mailing it to the Court or make a motion to have it dismissed.

8) The (Simplified information) that "Bates" received had a bold face notice printed on its face that required the "Respondent" or the Clerk of the Court to certify that they had informed the defendant:

- 1) What the penalties could be for a plea of guilty.
  - 2) The defendant could appear in person (pursuant to Vehicle and Traffic Law 1807) to the ticket she/he received.
  - 3) Had entered a plea of guilty (pursuant to section 1807 of the Vehicle and Traffic Law).
  - 4) The "Respondent" and the Court Clerk signed the certification, but neither of them checked off any of the three options that were on the Ticket.
- 9) "Daniels" prevailed on the "Respondent" to unlawfully dismiss the "Bates" Ticket in violation of the Law and Rules.

## CHARGE 2

- 1) "On or about August 13, 2009, the "Respondent" gave testimony, under oath, before the Commission that was false, misleading, and evasive, concerning his dismissal of the Ticket in *People v. Bates*,
- 2) His testimony that "Dunshee" agreed to check whether or not he could dismiss the "Bates" Ticket was untrue. "Dunshee" never agreed to obtain this information for the "Respondent", and
- 3) "Dunshee" never told the "Respondent" that it was "okay" to dismiss the "Bates" Ticket.

### CHARGE 3

Commencing in January of 2008, the "Respondent" did not disclose to attorneys who appeared before him in criminal matters, that "Dunshee" had represented him in a proceeding before the "Commission".

### CHARGE 4

"Respondent" failed to comply with an Order of the Chief Administrative Judge of the Courts dated May 21, 2008 that required that all Court proceedings to be mechanically recorded.

## CONCLUSIONS OF LAW

### CHARGE 1

By a Preponderance of evidence, the "Commission" has sustained Charge 1 in its complaint.

### CHARGE 2

By a Preponderance of Evidence, the "Commission" has sustained Charge 2 in its complaint.

### CHARGE 3

By a Preponderance of Evidence, the "Commission" has sustained Charge 3 in its complaint.

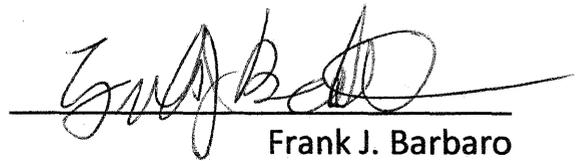
CHARGE 4

By a Preponderance of Evidence the "Commission" has sustained Charge 4 in its complaint.

The "Commission" has sustained its Charges 1 through 4.

Dated: December 13, 2010  
Albany, New York

Respectfully,

A handwritten signature in black ink, appearing to read 'Frank J. Barbaro', is written over a horizontal line. The signature is stylized and cursive.

Frank J. Barbaro  
Referee

# EXHIBIT E

Norwich Town Board

January 19, 2011

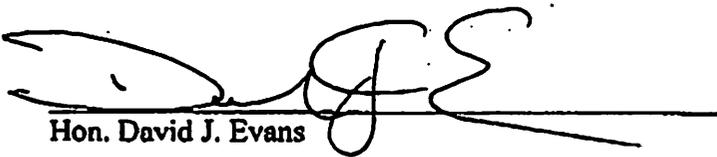
Attention: David Law, Town Supervisor

Gentlemen:

Please accept my resignation as Town Justice for the Town of Norwich effective April 1, 2011.

I have enjoyed my 16 years of service to the citizens of the Town of Norwich.

Thank you for your support during my tenure as Town Justice.

  
Hon. David J. Evans