

MICHAEL DALEY, ESQUIRE
Attorney I.D. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326 Fax: (215) 560-5486

*Attorneys for the 38th
Judicial District, the
Hon. Carolyn T.
Carluccio, and Michael
R. Kehs, Esq.*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

_____	:	
AMY MCFALLS, <i>et al.</i>	:	
	:	
<i>Petitioners</i>	:	
	:	NO. 4 MD 2021
v.	:	
	:	
38th JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents</i>	:	
_____	:	

**Respondents the 38th Judicial District, the Honorable
Carolyn T. Carluccio, and Michael R. Kehs, Esquire’s
Application for Summary Relief**

Respondents the 38th Judicial District, the Honorable Carolyn T. Carluccio, and Michael R. Kehs, Esquire, apply for summary relief in the form of summary judgment under Pa.R.A.P. 1532(b) against Petitioners as set forth below and in the accompanying Brief:

1. Petitioners commenced this action on January 5, 2021, asserting that in the 38th Judicial District, statutory costs assessed upon a conviction are sometimes imposed more than once per case.

2. President Judge Carluccio and Court Administrator Kehs are sued in their official capacities only. Hence, the claims against them are against the 38th Judicial District.

3. Judicial Respondents are entities of the Unified Judicial System of Pennsylvania.

4. Co-respondent is Lori Schreiber, the Clerk of Courts for Montgomery County.

5. As it pertains to the Judicial Response, Petitioners claim that they are liable because they “allow” judges in their judicial discretion in individual cases to order costs on more than one count. (Petition for Review ¶ 36.)

6. Petitioners assert that assessing costs on more than one count is *ultra vires* and violates equal protection, as well as claiming that due process requires defendants to be provided with a bill of costs at sentencing.

7. Petitioners seek the following declaratory and injunctive relief:

- a. a declaration that imposing costs on multiple charges in a single criminal proceeding is unlawful, and such costs against Petitioners are null and void;
- b. a declaration that a court cannot impose costs on a criminal defendant unless it provides a bill of costs to defendant and counsel at sentencing;
- c. injunctive relief to include ceasing the imposition and collection of such costs, including voiding outstanding balances;
- d. an injunction ordering Judicial Respondents to develop various programs for the itemization and production of any court costs prior to sentencing; and
- e. an injunction ordering Judicial Respondents to notify credit reporting agencies of adjustments to credit reports of the proposed class.

(Petition for Review, Wherefore Clause.)

8. In the 38th Judicial District, as elsewhere in Pennsylvania, part of a criminal sentencing involves the sentencing judge ordering financial aspects of a sentence, including statutorily mandated costs. In the 38th Judicial District, the judge orally announces the sentence they are ordering on each count and, for each count, states that “costs” are to

be paid by the defendant on that count. (Joint Stipulation of Facts and Law, at 3-4 ¶¶ 6, 9; Hasapes Dep. at 53-59.)¹

9. Ali Hasapes, a Judicial District designee and a Court Clerk supervisor, testified that the sentencing judge puts the “costs on the record” by saying “defendant’s to pay court costs,” and that “costs are always address by the judge.” (Hasapes Dep. at 54, 56, 59).

10. When a defendant has pled guilty to or been convicted of more than one offense, the sentencing judge may order that the defendant pay costs on more than one count. (Joint Stipulation of Facts and Law, at 3 ¶ 6.)

11. A Court Clerk is present in the courtroom and records the judge’s sentencing orders on a Disposition Sheet. (Joint Stipulation of Facts, at 4 ¶ 11; Hasapes Dep. at 18-19.)

12. The Disposition Sheet also memorializes which count the judge orders costs to be imposed on. (Kehs Affidavit, Exhibit 2)²

¹ The Joint Stipulation is attached hereto as Exhibit “A.” The Deposition of Ali Hasapes dated March 31, 2022 is attached hereto as Exhibit “B.”

² Affidavit of Michael Kehs, District Court Administrator is attached hereto as Exhibit “C.”

13. The Court Clerk does not indicate on the Disposition Sheet that costs are to be assessed on a count unless the judge ordered it. (Joint Stipulation of Facts and Law, at 5 ¶ 13; Hasapes Dep. at 59, 66-68, 76, 95-96, McMullen Dep. at 51-52.)³

14. In June 2022, the Court revised the criminal Sentencing Disposition Sheet to incorporate several updates, including the following section related to the imposition of costs:

The Court finds that Count(s) _____ are separate criminal conduct and costs are imposed on Count(s) _____.

(Kehs Affidavit ¶ 4; Exhibit 1)

15. This section memorializes a Judge’s finding that separate counts constitute separate conduct when they are imposing costs on more than one count. (Kehs Affidavit ¶ 5.)

16. The completed Disposition Sheet, which states which count(s) the judge ordered costs on, is given to the defendant after sentencing. (Hasapes Dep. at 53-56.)

³ The Deposition of Meg McMullen dated April 20, 2022 is attached hereto as Exhibit “D.”

17. For defendants who are not incarcerated, they receive it at the probation department, where they are directed to go right after sentencing. (Hasapes Dep. at 51-52.)

18. If a defendant is incarcerated, the Disposition Sheet is sent “immediately” to the prison. (Hasapes Dep. at 52-53.)

19. The next step in memorializing judge’s sentencing order involves the Criminal Court Assistant. About the count(s) on which the judge ordered costs assessed as recorded on the Disposition Sheet, they indicate in the statewide Common Pleas Case Management System (“CPCMS”) “defendant to pay costs” on each count for which the judge ordered costs. (Joint Stipulation of Facts and Law, at 6 ¶ 19.)

20. The Criminal Court Assistant does not indicate in CPCMS that a defendant is to pay costs on a count unless ordered by the sentencing judge. (Joint Stipulation of Facts and Law, at 7 ¶ 20.)

21. While the Criminal Court Assistant selects which *counts* the judge ordered costs on, they do not select which specific statutory costs are assessed on a count. (McMullen Dep. at 66-68.)

22. Instead, consistent with case law, assessing specific statutory costs per count is done by the Clerk of Courts.

23. Once the file containing the Disposition Sheet is delivered to the Clerk of Court's office, a Clerk of Courts' employee updates the financial section of the case file in CPCMS, which includes assessing costs. (Jenkins-Phongphachone Dep. at 55-56, 60-61, 67-75; McMullen Dep. at 24-25, 67-68, Joint Stipulation of Facts and Law, at 8 ¶ 25.)⁴

24. The Clerk of Courts selects which costs to add or subtract on each count that the judge ordered costs to be imposed on. (Jenkins-Phongphachone Dep. 53-54, 72, 79.)

25. After the Clerk of Courts enters the financial information into CPCMS, it notifies defendants of the amount owed. (Jenkins-Phongphachone Dep. at 76-78.) The Clerk of Courts is responsible for collecting cost, fines, and restitution. (Joint Stipulation of Facts and Law, at 9 ¶ 29; Jenkins-Phongphachone Dep. at 76-78.)

26. The Clerk of Courts will provide an itemized list of costs if asked. (Joint Stipulation of Facts and Law, at 10 ¶ 31.)

27. Summary relief should be granted for Judicial Respondents on all claims because their right to relief is clear for the following reasons, as set forth more fully in the accompanying Brief:

⁴ The Deposition of Melissa Jenkins-Phongphachone dated April 20, 2022 is hereto attached as Exhibit "E."

a. The evidence establishes that Judicial Respondents are not responsible for assessment of specific statutory costs.

Instead, the uncontroverted evidence is that the sole responsibility to assess specific statutory costs belongs to the Clerk of Courts. Thus, Judicial Respondents cannot be liable for the *Ultra Vires* claim.

b. Petitioners fail to establish a violation of equal protection because Judicial Respondents do not assess specific statutory costs, and Petitioners' claim is based on alleged unequal treatment of statutes, not similarly situated people.

c. Petitioners cannot state a due process claim as a matter of law because they had notice that costs would be imposed, and case law holds that an itemization of costs is not required at sentencing.

WHEREFORE, Judicial Respondents respectfully request this Honorable Court to enter judgment in their favor on all counts.

Respectfully submitted,

s/Michael Daley, Esquire

Michael Daley, Esquire

Nicole Feigenbaum, Esquire

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, *et al.* :
 :
 Petitioners :
 : NO. 4 MD 2021
 v. :
 :
 38th JUDICIAL DISTRICT, *et al.* :
 :
 Respondents :
 :
 _____ :

Order

AND NOW, this _____ day of _____, 2024,
upon consideration of the Application for Summary Relief of
Respondents the 38th Judicial District, the Honorable Carolyn T.
Carluccio, and Michael R. Kehs, Esquire, and Petitioners' response, it is
ORDERED that Respondents' Application for Summary Relief is
GRANTED.

JUDGMENT IS ENTERED IN FAVOR of Respondents the 38th
Judicial District, the Honorable Carolyn T. Carluccio, and Michael R.
Kehs, Esquire against all parties on all counts.

J.

MICHAEL DALEY, ESQUIRE
Attorney I.D. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326 Fax: (215) 560-5486

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38th JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents</i>	:	
	:	

**Brief in Support of Respondents the 38th Judicial District,
the Honorable Carolyn T. Carluccio, and Michael R. Kehs,
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I. Introduction

Petitioners, a certified class of criminal offenders, bring this suit against the 38th Judicial District and its leaders for allegedly having violated their rights via the imposition of “duplicative costs” attendant to their judgments of sentence.

But the Judicial District adheres to this Court’s precedent holding that the calculation of the amount of costs imposed in a criminal case is a ministerial role appropriate for a county (*i.e.*, executive-branch) clerk of courts. *See Saxberg v. Pa. Dept. of Corr.*, 42 A.3d 1210, 1213 (Pa. Cmwlth. 2012) (citing *Richardson v. Pa. Dept. of Corr.*, 991 A.2d 394, 397 (Pa. Cmwlth. 2010); *accord McFalls v. 38th Judicial District*, 4 M.D. 2021, at 23, 2021 WL 3700604, at *8 (Pa. Cmwlth. Aug. 6, 2021)(unpublished). For this foundational reason, Petitioners’ cost-duplication claims against *the judiciary* are entirely unfounded.

Petitioners also raise constitutional claims that are meritless and not supported by the evidence, and therefore summary relief for Judicial Respondents is warranted.¹

II. Statement of Facts and of Factual Disputes

As noted in the Judicial Respondents' Brief in Opposition to Petitioners' Application for Summary Relief, Petitioner and Judicial Respondents largely agree with the mechanics of the process by which cost imposition may be initially directed by sentencing judges and subsequently calculated and assessed by the Montgomery County Clerk of Courts Office. *See* Brief in Support of Petitioners' Application for Summary Relief, at 4-8. In the most general terms, sentencing judges designate the relatively few instances in which costs will be assessed on multiple counts of a criminal complaint, information, or indictment yielding a conviction or convictions. And judicial personnel then record the judge's determinations and enter them into the Common Pleas Case Management System (CPCMS) without addressing the specific costs

¹ For clarity, "Judicial Respondents" are the 38th Judicial District, the Honorable Carolyn T. Carluccio, and District Court Administrator Michael R. Kehs, Esquire.

that will be assessed. *See id.* (Joint Stipulation of Facts and Law ¶¶ 11, 13, 19, 20; Hasapes Dep. at 59, 66-68, 76, 95-96; McMullen Dep. at 51-52.²)

Thereafter, the Montgomery County Clerk of Courts Office handles the ministerial tasks of calculating and assessing the specific costs about which Petitioners complain. *See* Petitioners' Brief in Support of Summary Relief, at 6 ("The costs imposed in a specific case are not actually determined until a Clerk of Court's office employee, known as a disposition clerk, accesses [CPCMS], and, using the sentencing order, manually adds the costs in the electronic case file.") (citing, *inter alia*, Joint Stipulation of Facts and Law Submitted for the January 5, 2023 Class Certification Hearing (hereinafter "Joint Stipulation"), at ¶¶ 8, 25-27)(Jenkins-Phongphachone Dep. at 53-56, 60-

² The Joint Stipulation is attached hereto as Exhibit "A." The Deposition of Ali Hasapes dated March 31, 2022 is attached hereto as Exhibit "B." The Deposition of Meg McMullen dated April 20, 2022 is attached hereto as Exhibit "D."

61, 67-75, 79³; McMullen Dep. at 24-25, 67-68.)⁴ Again, this allocation of the cost-calculation and assessment function to the county Clerk of Courts has been sanctioned by this Court. *See Saxberg*, 42 A.3d at 1213. And Petitioners do not complain about this division of responsibility.

Where Petitioners and the Judicial Respondents materially part ways lies in Petitioners' efforts to draw a nexus between interpretive guidance issued by the Judicial District and Petitioners' claim of cost duplication. Initially, in 2015, the Judicial District advised the Montgomery County Clerk of Courts Office that "if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all *offense-related* costs on those counts." (Joint Stipulation, at 7 ¶ 23 (emphasis added).)

³ The Deposition of Melissa Jenkins-Phongphachone dated April 20, 2022 is hereto attached as Exhibit "E."

⁴ The Clerk of Courts also notifies defendants of the amount owed and is responsible for collecting financial obligations. (Jenkins-Phongphachone Dep. at 76-78; Joint Stipulation of Facts and Law ¶ 29.)

The 2015 meeting came about because the Clerk of Courts sought guidance on interpreting the Disposition Sheet pertaining to consecutive or concurrent costs. (Jenkins-Phongphachone Dep. at 56-57.) The only evidence Petitioner's cite to of what "offense related" may mean comes from Ms. Jenkins-Phongphachone's deposition. And those references were not about the 2015 meeting or any direction from the Judicial District, but instead concerned how the Clerk of Courts interprets CPCMS and an AOPC workbook when it is assessing specific costs. (Jenkins-Phongphachone Dep. at 39, 47, 51, 66, 72.)

According to Petitioners, however, via this meeting and the sole phrase "offense related," the Judicial Respondents have somehow directed the Clerk of Courts to implement an irrational cost assessment practice "often" resulting in the assessment of 19 of 25 sets of statutorily-prescribed costs contrary to the specific terms of each of the discrete, underlying statutes. Petitioners' Brief, at 6-10, 17.⁵

⁵ The above recitation represents merely a summary of Petitioners' argument. The Judicial Respondents by no means agree with Petitioners' self-serving portrayal of the Judicial District's guidance or their construction of the cost-imposing statutes involved here. Indeed, the Judicial Respondents are concerned that any fair resolution of the extent to which costs have been duplicated will involve full-blown

Petitioners seem to trace the issue to an asserted disconnect between the concept of offense-relatedness in a definitional sense and its use to purportedly different ends in CPCMS. *See id.*

The Judicial Respondents squarely refute Petitioners' assertions about their involvement in selecting 19 of 25 costs to "often" impose on

statutory construction of the 25 relevant statutes without participation by at least one entity that has an advocacy interest in collecting costs, *i.e.*, the Commonwealth government. *See, e.g.*, 42 Pa.C.S. § 3571 (addressing the Commonwealth portion of cost assessments). And significantly, Petitioners concede that at least some costs may be imposed on different counts in a single case. *See, e.g.*, Petitioners' Brief in Support of Summary Relief, at 29-31. Thus, the results of the Court's construction of 25 statutes must be applied to each class members' individual circumstances before it can be determined whether each discrete cost was, in fact, properly imposed. And, of course, any failure to impose a cost designated by the Legislature as mandatory would be unlawful. *See, e.g.*, 42 Pa.C.S. §§ 9721 (c.1) and 9728 (b.2). For these reasons and others, the Judicial Respondents maintain that class-action treatment of this case is completely unmanageable, and the Petitioners should be held to raise any issues they have with cost imposition in their individual cases. *See* Brief in Support of the Judicial Respondents' Preliminary Objections to the Petition for Review, at 20-23; Respondents' Brief in Opposition to Petitioners' Application for Class Certification, at 27-30. Indeed, now fully three years into this litigation, Petitioners continue to refrain from advising the Court of the full measure of relief they are seeking against the Judicial Respondents. *See, e.g.*, Proposed Order Granting Petitioners' Application for Summary Relief, at 2 (positing that "[f]urther relief with respect to Count I shall be determined in a subsequent proceeding before this Court"); 3 (same for Counts II, III, and IV).

criminal offenders when sentencing judges direct for costs to be imposed on multiple counts. Instead, as noted, in the 38th Judicial District the calculation and assessment of costs is treated as a ministerial matter handled by the county (*i.e.*, executive-branch) clerk of courts. *See* Kehs Declaration ¶ 12.⁶ The Judicial Respondents are also without knowledge or information about the treatment of the terms “Offense-Related Assessment” and “Non-Offense-Related Assessment” in CPCMS. *See id.* ¶¶ 11-12. Quite simply, when it provided its guidance, the Judicial District considered the words used in their ordinary sense.

Because there is no evidence of or justiciable nexus between the allegedly inappropriate cost assessments and the Judicial Respondents, Petitioners resort to inappropriately blurring the distinct roles of the judicial district and the county clerk’s office. For example, Petitioners discuss actions alleged by “Respondents” collectively when, in fact, the subject actions were performed by a single distinct entity. *Compare, e.g.*, Petitioners’ Brief at 1 (“*Respondents*, not the sentencing judge, choose which costs to impose and how many times each cost will be

⁶ Affidavit of Michael Kehs, District Court Administrator is attached hereto as Exhibit “C.”

imposed.”), *with McFalls*, 4 M.D. 2021, at 23, 2021 WL 3700604, at *8 (explaining that cost imposition is accomplished “through administration actions of the *clerk of courts*”) (emphasis added). Such inapt entanglement by Petitioners—occurring throughout their submissions—spotlights the weakness of their claims against the Judicial Respondents and is irreconcilably inconsistent with the prior decisions of this Court recognizing the distinct roles at play here. *See id.*

III. Procedural History

The procedural history is as stated by Petitioners. *See* Petitioners’ Brief in Support of Summary Relief, at 12-13. The court has certified this case as a class action to adjudicate Petitioners’ claims of asserted “cost duplication.” *See id.*

Petitioners and Judicial Respondents have filed respective Applications for Summary Relief.

IV. Statement of Questions Involved

1. Is the task of calculating costs attending a judgment of sentence ministerial in nature and thus properly administered by county (*i.e.*, executive-branch) clerks of courts?

Answer: Yes.

2. Does the Judicial District's statement that any assessment of costs on more than one count should be offense-specific violate any statute or principle of common law or the federal or state constitutions or otherwise implicate summary, declaratory, and/or injunctive relief?

Answer: No.

3. Is Petitioners' equal protection claim also meritless because it is based not on the treatment of similarly situated criminal defendants, but instead on purported similarly situated statutes, which is not what equal protection covers?

Answer: Yes.

4. Does Petitioners' due process claim fail where criminal defendants have notice that costs will be imposed and already receive adequate process as a matter of well-established legal precedent?

Answer: Yes.

V. Argument

Summary relief is reserved for disputes that are legal rather than factual, and this Court resolves all doubts about the existence of disputed material fact against the moving party. *Rivera v. Pa. State*

Police, 255 A.3d 677, 681 (Pa. Cmwlth. 2021). Summary relief may be granted only “if a party’s right to judgment is clear and no material issues of fact are in dispute.” *Leach v. Turzai*, 118 A.3d 1271, 1277 n.5 (Pa. Cmwlth. 2015), *aff’d*, 141 A.3d 426 (Pa. 2016). Thus, a court must deny summary relief where: 1) material issues of fact are in dispute, or 2) if it is not clear that the movant is entitled to judgment as a matter of law. *Naylor v. DPW*, 54 A.3d 429, 431 n.4 (Pa. Cmwlth. 2012), *aff’d*, 76 A.3d 536 (Pa. 2013).

Even when facts are undisputed, the moving party has the burden of proving “that its right to relief is so clear as a matter of law that summary relief is warranted.” *Id.*

A. Cost calculation is ministerial in nature and is thus properly administered by county (*i.e.*, executive-branch) clerks of courts.

In the more recent stages of this litigation, Petitioners have been careful not to impugn the practices of sentencing judges in the 38th Judicial District. *See, e.g.*, Petitioners’ Application for Summary Relief, at 1, ¶ 3 (“[The] duplication of costs results . . . *not from any court*

order.”) (emphasis added).⁷ Indeed, this Court has recognized that it would exceed its jurisdiction were it to entertain a direct attack on the orders of sentencing judges. *See McFalls*, 4 M.D. 2021, at 18, 2021 WL 3700604, at *8. Thus, the Court has exercised jurisdiction solely over “the method through which . . . costs are *subsequently* calculated.” *Id.* (emphasis added); *see also id.* (“This *administrative process* is thus the spring from which Petitioners’ action flows, which thereby vests this Court with the ability to consider it as an original jurisdiction action.”) (emphasis added).

Consistent with this Court’s precedent, *see, e.g., Saxberg*, 42 A.3d at 1213, the administrative process by which costs are calculated and assessed is handled by the Montgomery County Clerk of Courts Office and *not by the Judicial Respondents*. *See, e.g.,* Petitioners’ Brief in Support of Summary Relief, at 39 (“It is the Clerk of Courts that assesses court costs[.]”). As this Court has explained:

[T]ypically not even the sentencing judge mandates what costs will be imposed at all. This

⁷ This is a sea change from the Petition for Review, where Petitioners allege that Judicial Respondents should be liable because they “allow” judges the judicial discretion in individual cases to impose costs on more than one count when imposing a sentence. (Petition for Review ¶ 36.)

is accomplished through administrative actions of the court clerk.

McFalls, 4 M.D. 2021, at 23, 2021 WL 3700604, at *10; *see also Richardson*, 991 A.2d at 397 (“[T]he practice of a judge ordering a defendant to pay costs, and leaving the assessment of the amount to the clerk appears to be a common one[.]”). And clerk of court’s offices are *county—i.e., executive-branch—entities separate and apart from the judiciary. See Pa. State Ass’n of Jury Commissioners v. Commonwealth*, 78 A.3d 1020, 1035 & n.16 (Pa. 2013).

Thus, first and foremost, the lack of any role of the Judicial Respondents in ministerially calculating and assessing costs against Petitioners fatally undermines their cost-duplication claims against the Judicial Respondents.

B. The Judicial District’s 2015 statement that any assessment of costs on more than one count should be offense-related does not violate any statute or principle of common law or the federal or state constitutions and does not otherwise implicate summary, declaratory, and/or injunctive relief.

Given the above, undisputed background, Petitioners attempt to draw a nexus between the Judicial Respondents and the ministerial cost assessments about which they complain. They do so by pointing to 2015 guidance provided by the Judicial District that “if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all *offense-related* costs on those counts,” (Joint Stipulation, at 7 ¶ 23 (emphasis added).) *See* Petitioners’ Brief in Support of Summary Relief, at 6-10, 17. Importantly, this is the sole basis per which Petitioners claim a right to relief against the Judicial Respondents relative to their claims of cost duplication.

But there is simply nothing wrong with the Judicial District’s statement that assessment of costs on more than one count should be offense related. Indeed, such directive is consistent with Petitioners’ own position concerning when costs may be lawfully imposed across multiple counts, *i.e.*, when a statute specifies that those additional costs

are implicated on account of the commission of “*specific offenses*.” Petitioners’ Brief in Support of Summary Relief, at 29 (emphasis added); *accord id.* at 30 (explaining that unique costs that “arise from *offenses* named in the second (or third, or fourth) count”—*i.e.* costs that are *offense-related*—may lawfully be assessed) (emphasis added).

For example, the Commonwealth Cost statute, *inter alia*, directs to the Commonwealth assessments in the amount of \$10 for certain summary convictions, \$13 for misdemeanors, and \$20 for felonies. *See* 42 Pa.C.S. § 3571(c)(2); *see also* 42 Pa.C.S. § 1725.1(b) (providing for the collection of these costs in the first instance). It is implausible to suggest that the Legislature would have intended for a defendant who committed multiple gradations of offenses to receive a volume discount merely because those crimes were vindicated via a single charging document. *Accord Commonwealth v. Kimmel*, 125 A.3d 1272, 1283 (Pa. Super. 2015)(Bowes, J. concurring) (inferring that the General Assembly wished to prevent volume discounts on crime) (citing *Commonwealth v. Anderson*, 650 A.2d 20, 22 (Pa. 1994)). Rather, the statute straightforwardly recognizes the assessment of multiple costs in multiple-offense scenarios. Thus, Petitioners’ reliance on the 2015

meeting that costs imposed on additional counts should be offense-related reconciles squarely with this plain-meaning interpretation.⁸

Moreover, regardless of how the “offense-related” designation may have been otherwise construed *by others*, the obvious effect should be a *narrowing*—and not a broadening—of the categories of cost subject to assessment. In other words, the Judicial Respondents can hardly be faulted by criminal offenders for administratively *restricting* the costs being ministerially assessed by the Clerk of Courts. It is, after all, the sentencing judges’ orders that directs that costs must be imposed on additional counts, and for good reason, Petitioners have repeatedly disavowed any intention to challenge such orders. *See, e.g.*, Petitioners’ Application for Summary Relief, at 1, ¶ 3 (“[The] duplication of costs results . . . *not from any court order.*”) (emphasis added).

⁸ The phrase “offense related” is also consistent with those costs statutorily defined as for “the offense,” “per conviction,” “per crime,” or “misdemeanor or felony.” Numerous statutes refer to costs with such terms. *See* 18 P.S. § 11.1101(a), (a)(1); 42 Pa.C.S. § 1725.1(b); 42 Pa.C.S. § 3571(c)(2); 71 P.S. § 611.13; 75 Pa.C.S. § 3121; 75 Pa.C.S. § 6506(a)(7). Although Petitioners claim that there are irrational disparities in the ministerial administration of these statutes conducted by the Montgomery County Clerk of Courts, none of these can reasonably be traced to the Judicial District’s statement that costs assessments on additional counts should be offense-related in the ordinary sense of those words.

Thus, for their own strategic reasons, Petitioners are willing to afford sentencing judges the benefit of the doubt that they didn't intend or perpetrate any illegality. But Petitioners misguidedly urge the Court not to make the same sound and supported inference relative to the Judicial Respondents, who also—consistent with this Court's authority—simply do not calculate and assess costs. Petitioners' inconsistent approach, in this respect, should be rejected.⁹

Petitioners also vaguely seem to suggest that the Judicial Respondents should be held responsible for an asserted disconnect between the concept of offense-relatedness in a definitional sense and the use of the term in CPCMS. *See* Petitioners' Brief in Support of

⁹ The Judicial Respondents stress that their status as defendants has ramifications beyond whether Petitioners secure substantive relief relative to their cost-duplication claims. Petitioners assert cost-shifting claims. It is therefore not implausible that Petitioners will seek substantial attorneys' fees. The Judicial Respondents believe they should not be exposed to such extraordinary liability when they proceeded in a manner that is entirely consistent with the decisions of this Court sanctioning ministerial cost calculation and assessment by the clerk of courts. *See Saxberg v. DOC*, 42 A.3d at 1213.

Summary Relief, at 6-10, 17.¹⁰ But they have proffered no evidence that the Judicial Respondents were even aware of how CPCMS classifies “Offense-Related Assessments” and “Non-Offense-Related Assessments” at the time of the 2015 meeting. Accordingly, the Court should take at face value that the Judicial District meant “offense related” costs to mean costs related to a distinct, specific offense. That is precisely what those words mean.

Again, the Judicial Respondents are entitled to rely on this Court’s precedent holding that the calculation and assessment of costs is a ministerial function appropriate to be handled by a county clerk of courts. *See Saxberg v. DOC*, 42 A.3d at 1213. And nothing in the 2015 meeting or embedded in CPCMS should alter this straightforward conclusion.

Given that the 2015 meeting is the sole predicate for Petitioners’ misplaced claims of cost duplication by the Judicial Respondents,

¹⁰ Here again, Petitioners conflate the Judicial Respondents and the Montgomery County Clerk of Courts by referring to them collectively as “Respondents” while discussing conduct attributable only to the latter.

Petitioners cannot establish a cognizable claim, and Judicial

Respondents are entitled to summary relief.¹¹

- C. Petitioners’ equal protection claim is also meritless, *inter alia*, because it is based not on the treatment of similarly situated criminal defendants, but instead on purported similarly situated statutes, which is not what equal protection covers.**

Petitioners’ equal protection claim against the Judicial

Respondents fails, in the first instance, because the Judicial

Respondents simply were not responsible for the “method through

which . . . costs are subsequently calculated,” which is the sole basis on

which the Court has permitted this litigation to proceed. *McFalls*, 4

¹¹ In their Application for Summary Relief, Petitioners also advance an argument grounded on a repealed statute and the effect of the savings claims reposed in the Judiciary Act Repealer Act in terms of preserving that statute as part of the common law. *See* Petitioners’ Brief in Support of Summary Relief, at 31-35. But the more specific requirements of the cost-imposing statutes in issue here prevail over the common law. Thus, the Judicial Respondents reiterate the concerns previously expressed about the unmanageability of this case in terms of undertaking statutory construction of 25 cost-imposing statutes and applying such interpretations to the many different circumstances of the class members. *See supra* note 1; *cf. McFalls v. 38th Judicial District*, No. 4 M.D. 2021, 2023 WL 3513283, at *6 (Pa. Cmwlth. Apr. 6, 2023) (“It is certainly true that *all* the putative members of the class do not find themselves in precisely identical situations, as undoubtedly there are differences between the putative costs that were imposed against each prospective member as a result of their respective sentences.”).

M.D. 2021, at 18, 2021 WL 3700604, at *8. As previously explained, this was a task properly assigned to the executive branch. *See supra* § V(B). And, although 38th Judicial District sentencing judges ordered assessments to be entered on multiple counts, Petitioners themselves assiduously deny that their claims derive from the sentencing orders. *See, e.g.*, Petitioners’ Application for Summary Relief, at 1, ¶ 3 (“[The] duplication of costs results . . . *not from any court order.*”) (emphasis added).

Also, as noted, the upshot of the 2015 meeting was that the discussion about costs on subsequent counts to the Clerk of Courts was appropriate based on the plain meaning of the words used. *See supra* § V(B). Moreover, that only *narrowed* the categories of costs subject to assessment. *See id.*

Turning to the substantive issue, “[p]ersons,’ not objects, are entitled to equal protection.” *Thomas v. Smith*, No. 235 M.D. 2022, 2023 WL 6886535, at * 4 (Pa. Cmwlth. 2023)(unpublished).

Despite this Court’s recent restatement of what equal protection protects, Petitioners make a unique – and incorrect – equal protection claim. They do not claim that similarly situated people are treated

differently. Instead, Petitioners argue that similarly situated *statutes* should be treated the same. But that’s not what equal protection covers. Equal protection doesn’t apply to statutes – it applies to people. And according to Petitioners, all defendants with costs on more than one count receive the same costs. Petitioners do not offer any evidence that similarly situated *persons* are being treated differently. See Petitioners’ Brief in Support of Summary Relief, at 36-39.

Equal protection requires that “like *persons* in like circumstances will be treated similarly” under the law. *M. T. v. Pennsylvania State Police*, 298 A.3d 466, 472 (Pa. Cmwlth. 2023) (Ceisler, J.) (emphasis added). That Petitioners assert a class of one equal protection claim does not change that requirement.

Even in a class of one context, a plaintiff must establish that they were intentionally “treated differently from *others* similarly situated.” *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 198 (Pa. 2003); *M.T.*, 298 A.3d at 472 (a class of one claim requires showing one was treated differently from “others similarly situated”).¹²

¹² The equal protection provision of the Pennsylvania Constitution is analyzed under the same standards used by the United States Supreme

This Court in *Thomas* confirmed this. There, the petitioner alleged that the Department of Corrections violated equal protection not by treating him differently from other inmates, but by banning “word processor typewriters with memory capability but allowing other electronic devices with memory capability[.]” *Thomas*, 2023 WL 6886535, at *4. In other words, the focus was not on treating inmates differently – the policy applied to all inmates – but instead on treating objects differently. This Court held that equal protection could not be violated in such a situation. *Id.* Here, Petitioners’ claim that Respondents treat statutes differently is no different from the argument that *Thomas* rejected.¹³

Flowing from these holdings is the unremarkable conclusion that if similarly situated persons are not treated differently, then an equal protection claim fails. Thus, where all people are treated the same,

Court when reviewing equal protection claims under the Fourteenth Amendment. *Fouse v. Saratoga Partners, L.P.*, 204 A.3d 1028, 1034 (Pa. Cmwlth. 2019).

¹³ In *Thomas*, whether the Department had a rational or valid reason for banning some devices and not others is a separate question from whether equal protection applied. Even if the ban was improper, it could not establish an equal protection claim.

equal protection is not violated. In *Commonwealth v. Parker White Metal Co.*, the Supreme Court noted that the “starting point of equal protection” is “whether the State *has created a classification* for the unequal distribution of benefits or imposition of burdens.” 515 A.2d 1358, 1363 (Pa. 1986). There, the statutes at issue applied “equally and across the board to any and all potential violators[.]” *Id.* Hence, the “short and sufficient answer” to equal protection was that the statutes did not create the necessary classifications of persons. *Id.*

Likewise, the Superior Court held that a statute that “applies across the board to any and all violators” cannot violate equal protection. *Commonwealth v. Grove*, 170 A.3d 1127, 1145-46 (Pa. Super. 2017), *alloc. denied*, 185 A.3d 967 (Pa. 2018). As did the Supreme Court, the Court held that the “threshold question” is whether a classification has been created. *Id.*

Here, if the Clerk of Courts levies some costs that could be imposed more than once but not others for all criminal defendants, then it does not treat similarly situated criminal defendants differently. All defendants that have costs assessed on more than one count receive the

same treatment, and no classification is created.¹⁴ To the extent Petitioners might have rested their equal protection claim on the fact that some criminal defendants are ordered by a sentencing judge to pay costs on more than one count while others are not, that fails to state an equal protection claim.

This Court addressed and rejected such a claim in *Correll v. Com., Dept. of Transp.*, 726 A.2d 427 (Pa. Cmwlth. 1999)(*en banc*), holding that equal protection is not violated where “criminal defendants charged with the same conduct are sometimes treated differently.” *Id.* at 431. In *Correll*, the petitioner alleged that the Interstate Compact violated equal protection because it treated Pennsylvania drivers convicted out-of-state differently than those convicted in state – namely, that in-state violators could obtain ARD while out-of-state violators

¹⁴ The Judicial Respondents acknowledge Petitioners’ argument that costs are “often—but not always” duplicated where sentencing judges direct costs across multiple counts. Petitioners’ Brief in Support of Summary Relief, at 17. But Petitioners do not attempt to draw a classification relative to those instances in which “duplicative” costs aren’t assessed in these scenarios. This harkens back to the concern that Petitioners would need to prove that there wasn’t a separate, lawful basis for the differential treatment by addressing the individualized circumstances of both offenders who did and did not receive the additional assessments. *See supra* notes 1 & 4.

couldn't. The Court first held that the Compact was facially neutral – it applied to all persons convicted, no matter when the offense occurred.

Id. at 430-31.

Next, the Court held that no discriminatory effect existed:

[A]ll that can be said is that from state to state, county to county and judge to judge, criminal defendants charged with the same conduct are sometimes treated differently. This is simply a fact of life; plea bargains, downgrading of offenses, diversion programs and sentencing alternatives are necessarily subject to the vagaries of individual discretion. If this were a violation of equal protection, all those receiving treatment harsher than some statistical average could mount successful constitutional challenges to their convictions. The absurdity of such a notion is self-evident, but this is precisely the argument Correll is making.

Id. at 431.

Here, the undisputed evidence is that costs are imposed on a count only if the sentencing judge orders it in their judicial discretion. Even more, the Judicial Respondents have no role in a sentencing judge's determination of which defendants are assessed costs on more than one count.

Petitioners' cited cases in their Brief in Support of Summary Relief are distinguishable because – as expected for equal protection – they concern different treatment of similarly situated *people*. In *Downingtown Area Sch. Dist. v. Chester Co. Bd. of Assessment Appeals*, which involved property taxes, the question was whether “similarly situated *taxpayers*” were treated the same. 913 A.2d 194 (Pa. 2006). The Supreme Court noted that “federal law clearly contemplates the seasonable attainment of rough equality in treatment among similarly situated *property owners*.” *Id.* at 201.

In *Uniontown Newspapers, Inc.*, a newspaper reporter alleged that he was denied access to records “given to other similarly situated *reporters*.” 839 A.2d at 198 (emphasis added). Thus, while the court recognized a class of one, it did so because the plaintiff was alleging that he was treated differently from other reporters.

The *Haveman v. Bureau of Professional & Occupational Affairs* case is no different: The issue involved a moral character requirement for cosmetology licenses, but not for barber licenses. 238 A.3d 567, 577 (Pa. Cmwlth. 2020)(*en banc*). This Court held that because similarly

situated *licensed professionals* were treated differently, equal protection under the Pennsylvania Constitution was violated. *Id.* at 579.

All in all, Petitioners' cases reaffirm that the operative question is whether similarly situated people are treated differently. And Petitioners provide no evidence of disparate treatment for similarly situated people. Thus, Judicial Respondents are entitled to summary relief.¹⁵

D. Petitioners' due process claim fails where criminal defendants have notice that costs will be imposed and already receive adequate process as a matter of well-established legal precedent.

Petitioners next claim that Judicial Respondents violated due process by not providing "adequate and timely notice of the imposition of all court costs at the time of sentencing in the form of a bill of costs. Petition for Review ¶¶ 106, 113; Petitioners' Brief in Support of Summary Relief, at 39-48. At the same time, Petitioners correctly acknowledge that "[i]t is the Clerk of Courts that assesses Court

¹⁵ See *T.L.P.*, 249 A.3d at 5; *Correll*, 726 A.2d at 431 (holding that the issue is whether "*persons* similarly situated" were treated differently), *aff'd*, 769 A.2d 442 (Pa. 2001).

costs[.]” *Id.* at 39. Since per Petitioners’ own argument the ministerial activity performed by the Montgomery County Clerk of Courts office underpins their claim, no relief can be due from the Judicial Respondents. *Accord supra* § V(A). Again, Petitioners’ entire argument against the Judicial Respondents is premised on characterizing them under the umbrella of “Respondents” and blurring the material distinction between the judicial and county actors. *See supra* § II.

Petitioners’ due process argument also fails because it is predicated upon the errant factual premise that defendants must receive an itemized list of costs, along with an explanation of how to challenge these costs, to satisfy their due process rights. This Court has already adjudicated this challenge and concluded to the contrary several times, including in *Richardson v. Pa. Dept. of Corr.*, 991 A.2d 394 (Pa. Cmwlth. 2010) and *Sherwood v. Pa. Dept. of Corr.*, 268 A.3d 528 (Pa. Cmwlth. 2021).

In *Richardson*, this court examined the issue of due process raised by a prisoner who alleged he was denied his constitutional rights for lack of a hearing to assess his ability to pay court-ordered costs and restitution. *See Richardson*, 991 A.2d at 396. There, this Court rejected

this claim based on the Pennsylvania Supreme Court’s decision in *Buck v. Beard*, 879 A.2d 157 (Pa. 2005), which held that the sentencing hearing provides all the due process required before deductions for costs are made from an inmate’s account. *Richardson*, 991 A.2d at 396.¹⁶

Sherwood involved challenges to the collection of costs without an itemized breakdown of costs, and here, applying *Richardson*, this Court found no error. *Sherwood v. Pennsylvania Dept. of Corr.*, 268 A.3d 528, 546 (Pa. Cmwlth. 2021). (“Therefore, a sentencing judge is not required to explicitly enumerate every type of court cost or cost of prosecution in a sentencing order to authorize a clerk of court to include such costs and for them to be deducted from an inmate’s account by DOC. A general order ordering a defendant to pay costs is sufficient.”).

Applied here, the legal holdings in *Buck*, *Richardson* and

¹⁶ The Third Circuit Court of Appeals decision in *Montanez v. Secretary of Pa. Dept. of Corr.*, 773 F.3d 472 (3d Cir. 2014) discusses but does not limit *Buck*’s holding that sentencing provides sufficient notice and due process. Notably, *Montanez* notes that the decision did not implicate the due process provided by the Pennsylvania courts. *Id.* at 482. Further, the Pennsylvania Supreme Court’s recent decision in *Washington v. Pa. Dept. of Corr.*, 306 A.3d 263 (Pa. 2023), favorably cites the *Buck* decision for the factual history and holding that the sentencing hearing provides adequate pre-deprivation due process. *Id.* at 286.

Sherwood operate to rebut Petitioners’ due process argument for all Petitioners and class members who were assessed costs and participated in a sentencing hearing. In fact, the very processes that Petitioners here complain about—where the sentencing judge orders costs and the clerk of courts assesses them—were noted with approval by the *Sherwood* and *Richardson* courts. *See, e.g., Sherwood*, 268 A.2d at 546.

Likewise, Petitioners’ Brief in Support of Summary Relief cites to *Commonwealth v. Coder*, 415 A.2d 406, 410 (Pa. 1980), and *Commonwealth v. Allshouse*, 924 A.2d 1215 (Pa. Super. 2007), for the idea that defendants who are assessed statutory costs must receive an itemized list. Yet these cases are distinguishable. In *Coder*, unlike here, the petitioner complained about not receiving the *costs of prosecution* in the form of a bill of costs filed by the District Attorney that complied with 16 P.S. § 1403.¹⁷ *Coder*, 415 A.2d at 410.

¹⁷ 16 Pa. Stat. Ann. § 1403 provides:

All necessary expenses incurred by the district attorney or the district attorney's assistants or any officer directed by the district attorney in the investigation of crime and the apprehension and

The *Coder* court held that the District Attorney is obligated to provide a defendant who is charged with such costs, a reasonably specific bill of costs and show how such costs were necessary to the prosecution. *Id.* at 410. The court found that the burden was impermissibly shifted to the defendant (to show the costs were unnecessary) and the bill of costs was insufficiently specific to meet the Commonwealth's burden of proof, thus leading to remand on the bill of costs. *Coder*, 415 A.2d at 410. For the same reason, *Allshouse* does not help Petitioners as that case also addressed the District Attorney's variable costs under 16 P.S. § 1403, not the fixed statutory costs that are at issue here. *See Allshouse*, 924 A.2d at 1229.

prosecution of persons charged with or suspected of the commission of crime, upon approval thereof by the district attorney and the court, shall be paid by the county from the general funds of the county. *In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant.* (emphasis added).

Petitioners incorrectly stretch the bill of costs notice obligations that attach pursuant to 16 P.S. § 1403 and *Coder* beyond permissible limits. Unlike the varying costs of prosecution found in *Coder* and *Allshouse*, the statutory costs ordered by the trial judges and assessed by the clerk of courts are contained in statutory language, imposed by statutory mandate, and not subject to any burden of proof obligations that require additional notice.

By way of example, in addition to the authorizing language in each of the twenty-five statutes that Petitioners highlight in their Application for Summary Relief, it is legally clear that each Petitioner and member of Petitioners' class are liable for costs unless the court determines otherwise:

(b.2) Mandatory payment of costs.--Notwithstanding any provision of law to the contrary, in the event the court fails to issue an order under subsection (a) imposing costs upon the defendant, the defendant shall nevertheless be liable for costs, as provided in section 9721(c.1), unless the court determines otherwise pursuant to Pa.R.Crim.P. No. 706(C) (relating to fines or costs). The absence of a court order shall not affect the applicability of the provisions of this section.

42 Pa. S.C.A. § 9728 (describing the sentencing process for imposing costs).

In this respect, then, statutory notice plainly notifies all criminal defendants of the obligations upon defendants for the statutory costs associated with their convictions and/or guilty pleas, with or without a court order. In addition to statutory notice, defendants also have actual, physical notice about assessed costs in that the sentencing judge orally announces that costs are imposed at the sentencing hearing (in their presence), and on which count. Thus, even if a defendant was somehow not aware that costs would be imposed (despite statutory notice and counsel), they are notified in front of the judge. (Joint Stipulation, at 3-4 ¶¶ 6, 9, Hasapes Dep. at 53-59.) Next, the Disposition Sheet, which is provided to Defendants right after sentencing, states that costs are imposed, and on which count. (*See id.* ¶ 11; Hasapes Dep. at 51-56.) Finally, as Petitioners' Application for Summary Relief exhibits pervasively reflect, the public dockets list the costs on the case.¹⁸

The Pennsylvania Superior Court's jurisprudence mirrors this Court's and that of the Pennsylvania Supreme Court. In *Commonwealth v. Dipietro*, 2016 WL 2910092, at *5 (Pa. Super. 2016),

¹⁸ Petitioners have no evidence that they ever sought a bill or itemization or that if they had, it would not have been provided.

the defendant argued that the costs and fines imposed at sentencing were illegal because each cost was not specifically mentioned at sentencing or in the sentencing order. The defendant, who pled guilty, wanted the sentence vacated so he could “renegotiate a plea that is not ambiguous regarding fines and costs.” *Id.*

The *Dipietro* Court disagreed: “[a]ppellant cites no law indicating he is immune from payment of statutorily mandated court costs *simply because his plea bargain did not expressly delineate each line item.*” *Id.* (emphasis added). More recently, the Superior Court reiterated that a sentence is not illegal where a sentencing order referenced costs but did not specifically itemize them. *Commonwealth v. Abbott*, 304 A.3d 719, 719 n.2 (Pa. Super. 2023).

In sum, the law and the facts here clearly rebut Petitioners’ due process complaints. Also, it would be an odd result, bordering on contradictory, where statutory language and case law provides that a clerk of courts may assess statutory costs even if a sentencing judge does not list each one or issue an order, yet the courts are required to provide a list of such costs.

VI. Conclusion

Based on the above, Judicial Respondents respectfully request this Honorable Court to grant their Application for Summary Relief and enter judgment in their favor on all counts.

Respectfully submitted,

s/Michael Daley, Esquire

Michael Daley, Esquire

Nicole Feigenbaum, Esquire

*ATTORNEYS FOR JUDICIAL
RESPONDENTS*

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

EXHIBIT A

COMMONWEALTH COURT OF PENNSYLVANIA

*Amy McFalls, et al., on behalf
of themselves and all others
similarly situated,*

Petitioners,

v.

38th Judicial District, et al.,

Respondents.

No. 4 M.D. 2021

Class Action

Original Jurisdiction

Judge: Hon. Ellen Ceisler

**JOINT STIPULATIONS OF FACT AND LAW SUBMITTED FOR
THE JANUARY 25, 2023 CLASS CERTIFICATION HEARING**

Joint Stipulations of Fact

1. The Common Pleas Case Management System (CPCMS) provides case management, accounting and reporting functions to the criminal division of the Courts of Common Pleas. The Information Technology Department of the Administrative Office of Pennsylvania Courts creates, maintains and updates statewide case management systems for all three levels of Pennsylvania courts and its administrative offices.

2. CPCMS is used to capture case events in a criminal case in the Pennsylvania courts of common pleas. Each case event is recorded in CPCMS as the case progresses through the system.
3. The public can view public web docket sheets for criminal cases docketed in the courts of common pleas. The public docket sheets for common pleas cases reveal some, but not all, of the information entered into CPCMS.
4. When a defendant pleads guilty or is convicted in a criminal case in the Court of Common Pleas for the 38th Judicial District, a judge will hold a sentencing hearing at which the judge will sentence the defendant and may order the defendant to pay a fine or restitution.
5. By law, the defendant will also be required to pay certain costs that are authorized by statute. These costs will apply to the case whether or not the sentencing judge ordered them, unless they are waived or reduced by the court's finding or order. 42 Pa. C.S. § 9728(b.2).

6. In the 38th Judicial District, it is routine for the presiding judge at a sentencing hearing to order the payment of “costs.” Sometimes, when the defendant has pleaded guilty to or been convicted of more than one offense, the sentencing judge will order that the defendant pay costs on more than one offense or count in the case.
7. Prior to 2018, judges in the 38th Judicial District would sometimes order that the defendant pay “costs” on counts that were *nolle prossed* pursuant to a plea agreement. This ceased after the American Civil Liberties Union wrote to the Judicial District to say that imposing costs on charges that had been dismissed violated the law.
8. The costs to be paid by a specific defendant in a specific case, which are set by statute, are not actually determined until a disposition clerk in the Clerk of Courts Office uses CPCMS to assess costs in the case based on the direction of the Disposition Sheet.

9. In general, at sentencing hearings in criminal cases, judges in the 38th Judicial District orally announce the sentence they are ordering on each count that the defendant has pleaded to or been found guilty of and, for each count, may state that “costs” are to be paid by the defendant on that count.
10. Other than specifying the counts on which costs are to be paid, Judges in the 38th Judicial District do not as a matter of standard practice or routine identify or discuss the specific costs that they have ordered a criminal defendant to pay or the dollar amount associated with those specific costs.
11. In the 38th Judicial District, Court Clerks, who are in the courtroom, record all the orders and instructions that a judge issues during a sentencing hearing on a paper form that may be referred to alternatively as a Disposition Sheet, a Sentencing Sheet, or a Green Sheet (hereinafter “Disposition Sheet”).
12. Exhibit 7 to Petitioners’ deposition of Ali Hasapes is a true and correct copy of the Disposition Sheet that was in use in

the 38th Judicial District on March 31, 2022, when Ms. Hasapes was deposed.

13. Court Clerks record on the Disposition Sheet the counts on which the presiding Judge ordered the criminal defendant to pay costs.
14. Neither the specific costs a criminal defendant legally must pay nor the dollar amount associated with those specific costs is recorded on the Disposition Sheet.
15. If the presiding judge orders costs to be waived in a case, the Court Clerk records that order by writing a note at the bottom of the Disposition Sheet.
16. In most cases, the Disposition Sheet is the only record, apart from the transcript, of what a judge has ordered in a specific case concerning costs. But a judge may issue a separate order addressing costs as the result of a motion from a defendant.
17. As a matter of standard practice or routine, the Court Clerks who record the orders given at the sentencing hearing on the

Disposition Sheet are not the persons who enter such information into CPCMS.

18. Instead, once the Court Clerk completes the Disposition Sheet and the judge signs it, the completed sheet is scanned and electronically delivered to different offices—such as the Probation Office or prison—that need the sentencing information. The sheet is also given to an employee of the 38th Judicial District (the “Criminal Court Assistant”), who updates the case file in CPCMS with certain of the judge’s orders, including any term of imprisonment or probation, as well as conditions of sentence or probation imposed by the judge.
19. The Criminal Court Assistant performs one task with respect to the costs recorded on the Disposition Sheet. Referencing the Disposition Sheet, the Criminal Court Assistant indicates “defendant to pay costs” on each count for which the judge ordered costs.

20. The Criminal Court Assistant does not indicate in CPCMS that a defendant is to pay costs on a count unless ordered by the sentencing judge.
21. Once the Criminal Court Assistant performs these updates of the case file, she adds her initials to the Disposition Sheet, scans it, and the case file along with the Disposition Sheet is delivered to the Clerk of Court's office.
22. CPCMS does not contain information as to why a judge ordered costs on more than one count in a case.
23. The Clerk of Courts was told in approximately 2015 by then-Judicial District leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all offense-related costs on those counts. An example of this is on page two of the sentencing sheet for Plaintiff Esposito, included in Exhibit 16 to Ms. Jenkins-Phongphachone's deposition. This instruction has not been modified or rescinded.

24. Beginning in 2017 or 2018, the 38th Judicial District began training court clerks to perform the work of the Criminal Court Assistant, i.e., to update the case file in CPCMS with the information recorded on the Disposition Sheet. Because of the disruption caused by the pandemic, that practice has been suspended. For the last two years, and as a current practice, Megan McMullen is the only employee of the 38th Judicial District who serves as a Criminal Court Assistant and updates CPCMS with certain information from the Disposition Sheet.
25. Once the file containing the Disposition Sheet is delivered to the Clerk of Court's office, an employee of the Clerk of Courts (the "Disposition Clerk") will update the financial section of the case file in CPCMS. This includes assessing costs.
26. In cases in which a criminal defendant has been found guilty of more than one count and the Disposition Sheet orders costs on more than one count, employees of the Clerk of Court's office, when assessing costs on the nonlead count, routinely deselect costs that CPCMS selects by default that such an employee knows does not apply.

27. Pursuant to the criminal division judges' directions, the Disposition Clerk or other relevant employee of the Clerk of Court's office will not assess any costs associated with a charge that has been *nolle prossed*, even if the Disposition Sheet records that the presiding Judge ordered the criminal defendant to pay costs on the *nolle prossed* count.
28. All Disposition Clerks in the Clerk of Court's office have been trained to read Disposition Sheets in the same manner and to apply costs in the same manner. In addition, the Clerk of Court's Office employs "verifiers" who check the information entered into CPCMS to ensure that the Disposition Clerk has assessed costs in compliance with the direction of the Disposition Sheet.
29. In the 38th Judicial District, the Clerk of Courts is responsible for collecting fines, costs, and restitution imposed on criminal defendants.
30. In the 38th Judicial District, the court does not administratively provide the criminal defendant or counsel at

sentencing any document that itemizes the costs being imposed and the charges to which they relate.

31. The Clerk of Courts office does not have a practice of automatically providing criminal defendants or their counsel a document that itemizes the assessments that have been put on their case. However, such an itemized list of assessments may be provided upon request of the defendant, and itemized costs can be viewed on online dockets.

32. Petitioners do not have any pending criminal charges against them in Montgomery County.

33. Petitioners have already been sentenced for their cases in Montgomery County.

Joint Stipulations of Law

Class certification in this matter is governed by Rules 1702-1709 of the Pennsylvania Rules of Civil Procedure, The initial burden of proof in a class certification motion is on the proponent.

Dated: January 13, 2022

Respectfully submitted,

/s/ John J. Grogan

John J. Grogan
Mary Catherine Roper
Kevin Trainer
LANGER, GROGAN & DIVER P.C.
1717 Arch St., Ste 4020
Philadelphia, PA 19103
Tel: (215) 320-5660
jgrogan@langergrogan.com
mroper@langergrogan.com

Andrew C. Christy
ACLU OF PENNSYLVANIA
P.O. Box 60173 Philadelphia,
PA 19102 Tel: (215) 592-
1513 Fax: (215) 592-1343_
achristy@aclupa.org

Seth Kreimer
3501 Sansom Street
Philadelphia, PA 19104
(215) 898-7447
skreimer@law.upenn.edu

Attorneys for the Petitioners

/s/ Michael Daley

Michael Daley
Nicole Feigenbaum
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326
Fax: (215) 560-5486

*Attorneys for Respondents 38th Judicial District, the Honorable Thomas
M. Del Ricci, and Michael R. Kehs, Esquire*

/s/ Lauren A. Gallagher

Lauren A. Gallagher Michael

L. Barbiero

Gregory R. Heleniak

Rudolph Clarke, LLC 7

Neshaminy Interplex

Suite 200

Trevose, PA 19053

lgallagher@rudolphclarke.com

mbarbiero@rudolphclarke.com

gheleniak@rudolphclarke.com

Attorneys for Respondent Lori Schreiber

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents

/s/ Mary Catherine Roper

EXHIBIT B

In the Commonwealth Court of Pennsylvania
 -----x
 Amy McFalls, et al.,
 Petitioners
 vs No. 4 M.D. 2021
 Class Action
 38th Judicial District, Original Jurisdiction
 Hon. Thomas M. Delricci,
 President Judge
 (in his official capacity),
 Michael R. Kehs, Esquire,
 Court Administrator
 (in his official capacity) and
 Lori Schreiber, Clerk of Courts
 (in her official capacity),
 Respondents
 -----x

MARCH 31, 2022
 VIDEO DEPOSITION OF: ALI HASAPES
 called for oral examination by counsel for the
 Petitioners, pursuant to Notice at One Montgomery
 Plaza, Conference Room 1, 18th Floor, Norristown, PA
 before Hillary Hazlett Walsh of KIW Court Reporters
 & Litigation Support, a Notary Public in and for the
 Commonwealth of Pennsylvania, beginning at 12:36
 p.m., when were present on behalf of the respective
 parties.

1 A P P E A R A N C E S
 2 On behalf of the Petitioners:
 3 Langer, Grogan & Diver, P.C.
 4 By: Mary Catherine Roper, Esquire
 5 John J. Grogan, Esquire
 6 Kevin Trainer, Esquire
 7 1717 Arch Street, Suite 4020
 8 Philadelphia, PA 19103
 9 (215) 320-5660
 10 mroper@langergrogan.com
 11 jgrogan@langergrogan.com
 12 ktrainer@langergrogan.com
 13
 14 ACLU of Pennsylvania
 15 Andrew C. Christy, Esquire
 16 PO Box 60173
 17 Philadelphia, PA 19102
 18 (215) 592-1513
 19 achristy@aclupa.org
 20 On behalf of the Respondents:
 21 Administrative Office of PA Courts
 22 By: Michael Daley, Esquire
 23 Nicole Feigenbaum, Esquire
 24 1515 Market Street, Suite 1414
 25 Philadelphia, PA 19102
 (215) 560-6326
 michael.daley@pacourts.us
 nicole.feigenbaum@pacourts.us
 Rudolph Clarke, LLC
 By: Lauren A. Gallagher, Esquire
 Derek A. Keightly, Esquire
 7 Neshaminy Interplex
 Suite 200
 Trevoese, PA 19053
 (215) 633-1890
 lgallagher@rudolphclarke.com
 dkeightly@rudolphclarke.com
 ALSO PRESENT:
 Mitch Berger, Video Technician

1 I N D E X
 2 EXAMINATION
 3 DEPOSITION OF PAGE
 4 Ali Hasapes
 5 By Ms. Roper 5
 6
 7 EXHIBITS
 8 EXHIBIT NO. MARKED
 9 1 - Amended Deposition Notice 19
 10 2 - Court Clerks Manual 25
 11 3 - AOPC Training Manual on Assessments 35
 12 4 - AOPC Training Manual on Sentencing 35
 13 5 - AOPC Training Manual on Dispositions 35
 14 7 - Blank Montgomery County Sentencing Sheet 38
 15 8 - Blank AOPC Sentencing Worksheet 38
 16 12 - Listing of Court Costs 62
 17 13 - 5/29/2018 ACLU Letter 92
 18 14 - Sentencing Sheet (with pen marks) 44
 19
 20
 21
 22
 23
 24
 25

1 S T I P U L A T I O N
 2 It is hereby stipulated by and between
 3 counsel for the respective parties that sealing,
 4 certification, and filing are waived and that
 5 all objections except as to the form of the
 6 question are reserved to the time of the trial.
 7 VIDEO TECHNICIAN: We are now on the
 8 record. My name is Mitch Berger, and I'm the
 9 videographer retained by On the Record.
 10 This is a video deposition for the
 11 Commonwealth Court of Pennsylvania, Case No.
 12 4 MD 2021.
 13 Today is March 31st, 2022. The time is
 14 approximately 12:36 p.m.
 15 This deposition is being taken at One
 16 Montgomery Plaza in Norristown, Pennsylvania in
 17 the matter of Amy McFalls, et al, versus 38th
 18 Judicial District, et al.
 19 The deponent is Ali Hasapes. All
 20 counsel will be noted on the stenographic
 21 record.
 22 The court reporter is Hillary Walsh from
 23 Kaplan, Leaman & Wolfe and she will now swear in
 24 the witness.
 25 THE REPORTER: Would you please raise

Page 5

1 your right hand?
 2 Do you swear to tell the truth, the
 3 whole truth, and nothing but the truth?
 4 THE WITNESS: I do.
 5 VIDEO TECHNICIAN: Please proceed.
 6 MS. ROPER: Thank you.
 7 EXAMINATION BY
 8 MS. ROPER:
 9 Q Good morning --
 10 A Good morning.
 11 Q Good afternoon, Miss Hasapes --
 12 A Hasapes.
 13 Q Hasapes. Thank you. I will get it
 14 correctly from now on. Hasapes.
 15 My name is Mary Catherine Roper and I
 16 represent the Petitioners in this case. We --
 17 my first question to you is have you ever been
 18 deposed before?
 19 A I have not.
 20 Q Okay. The procedure is pretty
 21 straightforward. I will ask you questions. You
 22 will answer them to the best of your ability.
 23 The court reporter is taking down
 24 everything that we say. That is very important
 25 because it is going to change a couple of things

Page 7

1 Q Thank you.
 2 If your -- if the attorney for the
 3 Judicial District objects to any of my
 4 questions, just hold tight. You have seen this
 5 in court.
 6 There will be some discussion between
 7 us; and at some point, someone will tell you
 8 to -- to answer or not answer.
 9 A Sounds good.
 10 Q Okay. If you need a break -- we will be
 11 taking some breaks for the purposes of the
 12 videographer and so that all of us don't melt.
 13 But if you need a break for any reason,
 14 please just say so. If I have just asked you a
 15 question, I will ask you to try to answer that
 16 before we take a break.
 17 A Okay.
 18 Q If you have any need to speak to counsel
 19 again, I would ask you to try to answer whatever
 20 questions I have asked, if possible, before you
 21 take a break to speak with counsel.
 22 A Okay.
 23 Q Is all of that clear to you?
 24 A Very clear.
 25 Q Okay. Terrific.

Page 6

1 about how we conduct our conversation. And the
 2 first thing is that nodding won't work.
 3 A I am fully aware.
 4 Q Okay.
 5 A I have been in a courtroom for several
 6 hundreds of trials probably at this point.
 7 So --
 8 Q Of course you have.
 9 And so you also know that when I'm
 10 asking you a question, even though it -- I
 11 promise you it may be painfully obvious where
 12 I'm going with it, you need to wait until I'm
 13 finished speaking.
 14 A Understood.
 15 Q And I will try to wait until you are
 16 finished speaking.
 17 A Sounds good.
 18 Q Now, I -- when I ask you questions, I
 19 will try to be clear and straightforward but
 20 that doesn't always happen and you have to tell
 21 me if what I asked you is confusing or unclear.
 22 If you do answer a question without
 23 asking for clarification, I'm just going to
 24 assume you understood it and -- and keep moving.
 25 A Okay.

Page 8

1 Is there any reason, whether it is from
 2 illness or any medication or anything else that
 3 would impair your ability to remember and
 4 testify fully and truthfully today?
 5 A No.
 6 Q Okay. Thanks.
 7 You knew, of course, you were coming to
 8 a deposition today?
 9 A I did.
 10 Q What did you do to prepare for the
 11 deposition?
 12 MR. DALEY: Mary Catherine, I don't
 13 know, was she sworn in?
 14 THE WITNESS: I was.
 15 MR. DALEY: Oh, okay. I missed that.
 16 Just wanted to make sure.
 17 THE WITNESS: I spoke with counsel
 18 twice, once last week I believe and once this
 19 week and just kind of went over the general
 20 gist.
 21 BY MS. ROPER:
 22 Q You don't need to tell me what -- what
 23 you discussed with counsel. That is not -- that
 24 is something that you should keep to yourself.
 25 But I will ask you, did you look at any

Page 9

1 documents when you were preparing?
 2 A I did.
 3 Q What did you look at?
 4 A I was given one of the disposition
 5 sheets that was in question.
 6 Q Okay.
 7 A I was also given a little guide as to,
 8 you know, this process as well as some answers
 9 to one of your documents.
 10 Q Okay. We may try to have you identify
 11 that document later on as we go through things.
 12 Apart from speaking with counsel, did
 13 you speak to anyone else about coming to this
 14 deposition? Anyone you work with?
 15 A I did.
 16 Q Who was that?
 17 A Michael Kehs and Andrea Grace, who are
 18 my -- Andrea Grace is my direct supervisor.
 19 Q And when did you speak to them?
 20 A I would say maybe last -- two weeks ago
 21 or a week ago.
 22 Q Okay.
 23 A Recently.
 24 Q And what do you remember of the -- I'm
 25 sorry. Let me ask you one at a time.

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1 it was mostly just this about the cost situation
 2 and that I would be here today.
 3 Q Okay. Well, tell me then the gist of
 4 what you understand this lawsuit to be about?
 5 A The -- the biggest thing I seem to be
 6 understanding, and I could be wrong, was is that
 7 it is the imposition of costs on multiple
 8 counts.
 9 So if there is -- if there is a --
 10 someone who is pleading guilty or whatever the
 11 case may be, if there is a lead charge and then
 12 the second charge, whether the second charge has
 13 costs on it. That seems to be -- that is kind
 14 of what was driven home to me.
 15 Q Okay. Great.
 16 Did you ask questions during that
 17 meeting?
 18 A I don't -- I actually don't think I did.
 19 Q Okay.
 20 A Yeah. It was kind of just the sitting
 21 there and listening to what they were having to
 22 say.
 23 Again, I have only been in the position
 24 for two weeks -- or two months. I'm kind of
 25 getting used to dealing with those people. So I

Page 10

1 Did you speak to them together?
 2 A Yes.
 3 Q Okay. And what do you recall of that
 4 conversation?
 5 A It was just I -- I recently came into
 6 this -- my position, so I was unaware of this
 7 case.
 8 So it was basically just kind of
 9 informing me the concept of the -- the case and
 10 exactly what was going on and that I was going
 11 to be deposed and that was kind of about it.
 12 Q Okay. More specifically, let me start
 13 with Mr. Kehs.
 14 A Okay.
 15 Q What do you recall him telling you?
 16 A Specifically? It was -- it -- I
 17 can't -- I'm not going to be able to give you
 18 specifics.
 19 It was kind of a general conversation
 20 between the three of us. It was a very fluid
 21 conversation.
 22 So I don't know if I could give you a
 23 specific as to he said, you know, you are going
 24 to be deposed, this is what it is about, blah,
 25 blah, blah. It was kind of back and forth. So

Page 12

1 probably just sat there. I don't remember
 2 actually answering questions -- or asking
 3 questions.
 4 Q Well, that is actually what I was going
 5 to go to next. Congratulations on the new
 6 position.
 7 A Thank you.
 8 Q Tell me how it came about that you got
 9 this position and what this position is compared
 10 with your last one.
 11 A So I have been a court clerk for about
 12 14 years. I have worked for the same judge for
 13 11.
 14 My previous supervisor got a new
 15 position and this opened up and the timing was
 16 right for me with certain things, so I decided
 17 to apply for it. I interviewed and I got it.
 18 But most of my time has been spent as a
 19 court clerk in the criminal division. So for
 20 this -- for these purposes, I'm probably a good
 21 person to be here. So --
 22 Q It sounds like you are the perfect
 23 person.
 24 And what judge did you work for?
 25 A Judge Branca and Judge Tressler for

Page 13

1 about eight months prior to Judge Branca.
 2 Q So tell me what the duties are in this
 3 new position.
 4 A Just supervising the clerk courts,
 5 making sure that they are aware of procedural
 6 policies, and making sure that the courtrooms
 7 are all staffed appropriately.
 8 If anyone has a question as to any sort
 9 of how to actually do the job, I would -- I
 10 would make sure they found the correct answer.
 11 But it is mostly just staffing and
 12 making sure that each courtroom has a court
 13 clerk who knows what they are doing and making
 14 sure the court clerks are educated properly
 15 in -- in how to do the job.
 16 Q Okay. And how many court clerks do you
 17 supervise?
 18 A I want to say it is mid-30s. We have
 19 had a lot of people leave recently. So I don't
 20 know the exact number. It is between 30 and 35,
 21 I would say at the moment.
 22 Q And how many courtrooms are you
 23 staffing?
 24 A Twenty-one? Maybe more. Maybe it is
 25 more than that. We had -- oh, I'm sorry. There

Page 15

1 A Since July of 2008.
 2 Q Okay. And did you have a job in the
 3 court system before that?
 4 A I did not. It was -- this is my first
 5 adult job after school. My education was a
 6 paralegal background, but this was my first
 7 legal job.
 8 Q Okay. So in your two months in this
 9 position, have you gotten to train new court
 10 clerks?
 11 A No. I don't think I have.
 12 Q Okay.
 13 A We have some new ones coming in soon. I
 14 don't know if I have had anyone new since I
 15 started. I don't believe so off the top of my
 16 head, no.
 17 Q Okay. When was the last time you
 18 attended a training for a new court clerk?
 19 A Attended? I -- actually, let me correct
 20 myself. There was a time maybe in late February
 21 where there was a judicial conference and I had
 22 some other clerks host training sessions that I
 23 did pop in on but I wasn't actually in charge of
 24 training and I had other clerks training. So
 25 they weren't new clerks. So -- so late

Page 14

1 was more than that.
 2 Gosh. It is -- it might be closer to
 3 28, somewhere around there.
 4 Q Okay. And you said that Miss Grace is
 5 your immediate supervisor?
 6 A Correct.
 7 Q What is her position?
 8 A She is the civil -- you're going to put
 9 me on the -- I don't know her exact title.
 10 Civil court administrator.
 11 She is directly under Michael Kehs, but
 12 I think her official title is civil court
 13 administrator for Stephanie.
 14 Q Okay. And what is your formal title?
 15 A Court clerk supervisor.
 16 Q And who was your predecessor in that?
 17 A Matt Pio.
 18 Q What is that last name?
 19 A Pio, P-i-o. I'm sorry.
 20 Q Thank you.
 21 So what was the title of your last
 22 position?
 23 A Court clerk.
 24 Q Court clerk.
 25 And you were that for?

Page 16

1 February, there were some training sessions.
 2 Q And what were those training sessions
 3 about?
 4 A They were divisionally based. So one
 5 was on disposition sheets. One was on family
 6 law. One was on PFA hearings. It kind of -- it
 7 was a bunch of them. There was one on
 8 disposition sheets.
 9 Q And you said this was at a conference?
 10 A The judges were at a conference, which
 11 means we had availability for clerks to have
 12 training. So court was slow that day, so I made
 13 sure that other people were training.
 14 Q But this was a Montgomery specific
 15 training?
 16 A Correct. Correct.
 17 Q Okay.
 18 A The training -- the training was held by
 19 Clerk of Courts. Actually, the criminal one was
 20 in the courtroom right over there.
 21 So it was -- I had my senior clerk
 22 courts training the newer clerks. They weren't
 23 brand new but they were newer.
 24 Q Okay. So then would it be 14 years ago
 25 that you last saw the training for a brand new

Page 17

1 court clerk?

2 A Oh, no. I have trained court clerks in

3 my previous position. I have trained -- I want

4 to say the last time I trained someone was

5 during COVID.

6 Q Okay.

7 A So we received, I want to say, two or

8 three new clerks over COVID, maybe more. One

9 specifically, I did train for a brief amount of

10 time; but I did train her.

11 I don't know if I trained the other two.

12 I don't think I did, but I did train one new

13 court clerk maybe two years ago.

14 Q Okay. And how long have you been

15 considered a senior member of the court clerks?

16 A I think it depends on who you ask.

17 Q Okay. Let me ask a different way. How

18 many times have you trained new clerks, brand

19 new clerks?

20 A Several. I would say I have been

21 involved in training for at least ten maybe.

22 Q Okay.

23 A We have had a lot of turnover. So there

24 has been a lot of people. I don't do a lot of

25 the training.

Page 19

1 talking about paper? Are we talking about

2 electronic documenting? Are we talking both

3 things?

4 A I mean, right now, we are in a

5 transition where it would be -- also we are

6 trying to get away from physical paper but for

7 the most part it is Orders, physical paper that

8 we then send to different departments.

9 They would like us to use those Orders

10 within the CPCMS system but right now, it is

11 just physical paper.

12 Q Okay. I'm going to show you what we

13 have marked as Exhibit 1, and I have copies for

14 other people.

15 (Exhibit No. 1 was marked for

16 identification.)

17 BY MS. ROPER:

18 Q All right. I'm going to start by

19 referring to the first three pages of this

20 document.

21 A Um-hum.

22 Q Have you seen this before?

23 A I don't actually think I have; and if I

24 did, if it was sent to me, I didn't read it.

25 Q Okay. I'm going to ask you to turn to

Page 18

1 A lot -- there are other clerks that are

2 who are more training purposed. So there

3 were -- over the years that I have been here,

4 there have been maybe ten clerks that I have

5 been directly involved in their training.

6 Q Okay. And when you were a court clerk,

7 tell me what you did during a day.

8 A Whatever was happening in court. So if

9 we had -- we could have pre-trial conferences

10 where we had a list of maybe 80 people come

11 through.

12 It was a status conference. They can

13 either plead guilty, get a trial date, you know,

14 not appear and get a bench warrant.

15 If we have trials, I'm involved with --

16 depends on the jury -- if we have a jury, I'm

17 involved with making sure that they are kind of

18 under control and just documenting whatever

19 happens throughout the day, whatever the judge

20 wants me to do.

21 Q Okay.

22 A But I am -- court clerks are in charge

23 of every case that comes through within that

24 day, whatever happens, documenting.

25 Q And when you say documenting, are we

Page 20

1 the second page. You have been invited here in

2 order to respond to certain questions that we

3 have on behalf of the Judicial District.

4 A Um-hum.

5 Q So I want to go through this list of

6 questions to see what you are going to be able

7 to answer for us.

8 A Um-hum.

9 Q All right?

10 So let's -- let's begin with the first

11 one. Are you able to tell us about the

12 procedure used in 38th Judicial District to

13 record information on the disposition sheet

14 including the information about court costs and

15 who performs each step of that procedure?

16 A So the way that a court clerk receives

17 the information is if it is an agreed-upon

18 sentence, we get the -- what is called the terms

19 in advance on a piece of paper from the District

20 Attorney's Office. It is the agreement that

21 they have both come to.

22 We then put it on the disposition sheet

23 exactly how it is written. And then we -- we

24 give it to the judge during the hearing; and if

25 they agree with what is on there, fine. If they

Page 21

1 change it, we correct it.
 2 And then that is then sent to different
 3 departments, one being Meg McMullen who does the
 4 entering in CPCMS, the probation department,
 5 chambers. And then ultimately the paper is then
 6 sent to the Clerk of Courts.
 7 Q I'm going to have more questions about
 8 that. Right now, I'm -- it is very clear to me
 9 the answer is yes --
 10 A Oh.
 11 Q -- you can very well answer questions
 12 about Point No. 1.
 13 A Yes.
 14 Q That is something you --
 15 A I'm sorry.
 16 Q -- you are very clear quite an expert
 17 in. Okay?
 18 Question No. 2, the steps taken and the
 19 fields used in CPCMS to -- I will shorten
 20 this -- essentially record the information that
 21 comes out of a sentencing hearing.
 22 A I'm sorry. Repeat that for me. I was
 23 reading as you were -- I wasn't listening.
 24 Q Transferring information that comes out
 25 of a sentencing hearing into CPCMS, is that

Page 23

1 The fifth one, if a sentencing judge
 2 determines that the charges in a case describe
 3 more than one criminal incident, how that is
 4 recorded or -- or how notice is given to the
 5 parties about that?
 6 A I don't think there is a process, but I
 7 could probably give you a reason as to why.
 8 Q Okay. I will -- I will ask you about
 9 that at the right time.
 10 And actually, I don't expect that you
 11 have information about the probation
 12 department's --
 13 A No.
 14 Q -- role? Okay. That is fine.
 15 MR. DALEY: Can we go off the video for
 16 a second?
 17 MS. ROPER: Sure.
 18 VIDEO TECHNICIAN: We are now going off
 19 the record.
 20 (Off the video record.)
 21 MR. DALEY: Obviously, you can ask her
 22 about these and other things. We identified her
 23 as a designee for No. 1, right -- so we
 24 identified as an identifier for No. 1, I believe
 25 No. 3, and 5 I think. Because No. 2 was -- is

Page 22

1 something you are able to answer questions
 2 about --
 3 A Yes.
 4 Q -- and explain?
 5 A Yes.
 6 Q Okay. The third thing we want to ask
 7 about is the notice that is given to criminal
 8 court defendants and their counsel about fines,
 9 costs, and restitution?
 10 A I would say to an extent.
 11 Q Okay. We'll see what -- what you do
 12 know and what you don't know.
 13 A Okay.
 14 Q The fourth is the policy that authorizes
 15 what we call duplication of costs but costs on
 16 more than one count when a judge determines that
 17 there are multiple criminal incidents in the
 18 case.
 19 Is that something that you are familiar
 20 with?
 21 A To an -- also to an extent but not --
 22 Q Okay.
 23 A To an extent, I'll say that.
 24 Q Okay. We will -- we will see how far
 25 that goes.

Page 24

1 Meg depending on how super in depth you want to
 2 get on that, you know.
 3 MS. ROPER: No. I do understand that
 4 Meg is the one that we would go in great in
 5 depth for especially since we already heard from
 6 the witness that Meg is the one doing most of
 7 the entering into CPCMS.
 8 MR. DALEY: Yeah.
 9 MS. ROPER: I'm not going to duplicate
 10 what we plan to ask Meg about that.
 11 MR. DALEY: So I just want to clarify
 12 that for the record as someone who we identified
 13 as our designee just for those points.
 14 MS. ROPER: Yes, on No. 2. I -- I
 15 promise you, we will reserve the more detailed
 16 questions on that for Miss McMullen.
 17 MR. DALEY: I just wanted that for the
 18 record. I have to look. I think it was 1, 3,
 19 and 5 that we identified her for but I would
 20 have to go back and look.
 21 MS. ROPER: Okay.
 22 MR. DALEY: Just to clarify. Thanks.
 23 MS. ROPER: Thank you.
 24 VIDEO TECHNICIAN: Ready to go back on?
 25 Please wait for my cue.

Page 25

1 12:56, please proceed.
 2 BY MS. ROPER:
 3 Q Thank you. I'm going to show you
 4 something we have marked as Exhibit 2.
 5 A Um-hum.
 6 MR. DALEY: Thanks.
 7 MS. ROPER: Sure.
 8 (Exhibit No. 2 was marked for
 9 identification.)
 10 BY MS. ROPER:
 11 Q Miss Hasapes, we asked counsel for the
 12 Judicial District for training materials that
 13 were used to train court clerks and they
 14 produced to us the documents you see here.
 15 We put them in a binder. We put the
 16 tabs on there. We were trying to duplicate what
 17 we thought those materials came from; but if it
 18 is different from what you are familiar with,
 19 please don't hesitate to tell me that.
 20 A It looks very similar.
 21 Q Okay.
 22 A Very similar.
 23 Q We did well then.
 24 A Correct.
 25 Q Thank you.

Page 27

1 COVID.
 2 Q Okay.
 3 A This was a pre-COVID thing. So her name
 4 is Suzanne Hayes.
 5 Q And Miss McMullen?
 6 A Correct.
 7 Q Do you know what Miss Hayes is doing
 8 now?
 9 A She is now a court clerk.
 10 Q Okay.
 11 A She was -- she was the supervisor. Now,
 12 she is going back to -- back to being just a
 13 court clerk.
 14 Q Okay. Do you know why she went back to
 15 being just a court clerk?
 16 A I believe she was asked to step down.
 17 Q Okay. I don't need further details.
 18 A I don't know them. So --
 19 Q Who is responsible for keeping this
 20 manual updated?
 21 A I don't believe it has been updated
 22 since it was first created. I guess technically
 23 speaking, it would be my possibility to make
 24 sure that the information in here is correct.
 25 I would rely on Meg McMullen to give me

Page 26

1 So the first question is, do you
 2 recognize other -- perhaps then the type of
 3 binder it is in what I have handed you?
 4 A I do.
 5 Q And what is that?
 6 A It was the Court Clerk Manual for
 7 Disposing of Sentencing -- and Sentencing Cases
 8 in CPCMS.
 9 Q Okay. And am I right that this is a
 10 manual created in -- created by and for people
 11 in Montgomery County?
 12 A Correct.
 13 Q All right. This did not come from AOPC?
 14 A I was not involved with the creating of
 15 this book, so I can't say one way or another. I
 16 don't believe it was.
 17 Q Okay.
 18 A I believe it was created by my previous
 19 department head and Meg McMullen.
 20 Q That was exactly my question.
 21 Can you remind me of the name of your
 22 previous department head?
 23 A Actually, this was -- a previous
 24 department head -- there is -- because the last
 25 guy Matt Pio became department head during

Page 28

1 any updates in CPCMS because she is our -- kind
 2 of our go-to for that.
 3 But right now, she is -- she is kind of
 4 the one that would be my -- my go-to for any
 5 updates.
 6 Q Okay.
 7 A So technically speaking, it is my
 8 responsibility; but I would go to Meg for the
 9 information and rely on her to tell me if there
 10 were updates.
 11 Q So is it fair to say it would be your
 12 call as to whether something in here got
 13 changed?
 14 A Yes.
 15 Q All right. But Meg could suggest to you
 16 and you would trust --
 17 A Correct.
 18 Q Okay. What is the -- what is this
 19 manual used for?
 20 A So before COVID, we started to have the
 21 court clerks enter into CPCMS the dispositions.
 22 They wanted -- Andrea Grace and -- I'm going to
 23 blank on her name -- Denise Vicario, who was the
 24 old Andrea Grace. There has been some movement
 25 in positions.

<p style="text-align: right;">Page 29</p> <p>1 They really wanted to start having the 2 dispositions entered into CPCMS live. So they 3 put this book together as a training manual to 4 have the court clerks learn how to do it. 5 There were a hand -- the way that it 6 ended up working is there were a handful of 7 court clerks that were doing it, and they would 8 sit in a jury room behind the very active 9 courtrooms and they would enter and then COVID 10 hit and that all kind of went away because we 11 were not working in the courtroom. 12 We were doing a lot of things from home 13 and back and forth, and we have not gotten fully 14 back to this. 15 I do have a court clerk or two that can 16 do it in case Meg is on vacation or whatever; 17 but for the most part right now, Meg is doing it 18 all. So this was -- this was a step they wanted 19 to take that we then went backwards with. 20 Q Okay. Let me see if I understand who is 21 doing what in these different time periods. 22 When you say that you wanted the 23 disposition information entered live, what do 24 you -- you don't mean sitting in the courtroom 25 during the sentencing hearing, do you?</p>	<p style="text-align: right;">Page 30</p> <p>1 A They actually wanted to try and do that. 2 Q Okay. 3 A And ironically enough, I was sent with 4 Meg McMullen to Lancaster because they were 5 quote/unquote doing it live. 6 When we got there, we realized that it 7 wasn't actually sitting in the courtroom putting 8 it into CPCMS the way they thought. 9 So that is where they came up with the 10 system of having -- having the disposition sheet 11 filled out in the courtroom like usual and then 12 have that information given to the court clerk 13 in the back to -- to enter. So live doesn't 14 mean as the hearing is happening. Live means 15 within an hour or two. 16 Q Okay. When was your trip to Lancaster? 17 A 2018, I would say. Maybe early 2019. 18 Q So the intention was that the court 19 clerk sitting in the courtroom would not only 20 capture all of the information that happened 21 during the sentencing hearing but also get all 22 of that input into CP -- CPCMS and it turned out 23 that that really wasn't going to happen all in 24 one step? 25 A Correct.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q All right. So what happens instead? 2 A So now, we are taking the information, 3 putting it onto the disposition sheet, scanning 4 and e-mailing it to Meg McMullen, who was then 5 entering all of the information into CPCMS. 6 Q Okay. And before COVID happened, who 7 was doing this entering? 8 A Meg McMullen as well as a handful -- one 9 woman's name is Lisa Marie Morris. She has been 10 out on, I believe, workman's comp since August 11 of 2019, which she was involved before that. 12 We had a couple -- a handful of clerks. 13 I couldn't tell you their names off the top of 14 my head. I would have to actually think about 15 because it has been a long time. There were a 16 handful that were kind of designated as that -- 17 that -- that person. 18 Q So when you tell me that there is a 19 handful of clerks who were doing this entry 20 immediately after hearings as close to live as 21 you could get, that means it wasn't that the 22 clerk who sat in the courtroom then ran back and 23 did the entry? 24 A No. 25 Q Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 A Under certain -- it depends on how -- 2 let me correct. It depends on how busy the 3 courtroom was. 4 There were times if your courtroom -- if 5 you had one matter, let's just say you had a 6 trial that turned into a guilty plea, you had 7 the time to do that. It was when the courtrooms 8 were busier that they had other people do it. 9 Q Okay. Are you hoping to get back to the 10 practice of having a corps of clerks who are 11 doing this entry very quickly after the 12 hearings? 13 A It has been discussed, but it is not -- 14 we are not near it at the moment. There are 15 other steps we would like to take first to kind 16 of get everyone back into the habit of using 17 CPCMS. 18 Two years is a long time not to use it. 19 So a lot of the Court clerks need a refresher 20 but it -- it is in -- it has been discussed. It 21 is not in the immediate future. 22 Q Okay. What training do court clerks get 23 for what they are doing in the -- the courtroom 24 if -- if it doesn't come from this manual, which 25 is about CPCMS?</p>

1 A All of our training is hands on. So if
 2 a new clerk -- say I have a new clerk coming in
 3 April 11th. She is actually a court clerk in
 4 Philadelphia. So I am lucky that she has some
 5 knowledge base.
 6 But we have special -- obviously special
 7 forms. So my plan is to put her with a senior
 8 court clerk and depending upon what that senior
 9 clerk court has scheduled, they will go sit
 10 there and they go through forms and they go
 11 through our process and they will go through
 12 kind of the flow of the courtroom and -- and
 13 train them kind of a hands on -- more of a hands
 14 on as opposed to a classroom setting.
 15 So in terms of disposition sheets, lots
 16 of times what we do is -- it is more of a
 17 classroom setting.
 18 You have -- for a day or so, you have a
 19 senior court clerk kind of just throw terms at
 20 them, guilty plea terms at them and have them
 21 practice writing on the sheet and then within a
 22 day or so, we put them in the courtroom.
 23 And they do it kind of as the court is
 24 going with the senior court clerk sitting with
 25 them and to see if they can kind of continue to

1 follow along and that senior clerk court would
 2 check the sheet obviously before handing it to
 3 the judge. So it is a very hands-on process.
 4 Q And that sounds like the least fun game
 5 show I have ever heard of.
 6 Were you ever one of those clerks who
 7 entered other people's sentencing information
 8 into CPCMS?
 9 A I was not. Other people's, no.
 10 Q Did you enter your own?
 11 A A handful -- over the -- again, on days
 12 that we were slow, I did.
 13 Q Okay. Have you ever had -- all right.
 14 Let me try that question again.
 15 Do you use this manual?
 16 A Not right now, no.
 17 Q You did use this manual?
 18 A I did.
 19 Q Okay. And how were you trained to do
 20 the entry into CPCMS?
 21 A I honestly can't remember. We may have
 22 had -- we had AOPC come out once. That was for
 23 something else. How did I get trained on this?
 24 I don't remember.
 25 Q Okay. The sad thing about this process

1 is that we kill a lot of trees. I'm going to
 2 hand you what we have marked as Exhibit 3, 4,
 3 and 5.
 4 A Thank you.
 5 (Exhibit Nos. 3, 4 and 5 were marked for
 6 identification.)
 7 MR. DALEY: Thanks.
 8 BY MS. ROPER:
 9 Q Have you seen these before?
 10 A I have.
 11 Q And what is your understanding of what
 12 they are?
 13 A Just I believe they are printouts
 14 from -- actually from CPCMS. I found these
 15 actually when I was -- our office was recently
 16 moved this week and I found them while cleaning
 17 out the office.
 18 I do believe I received them years ago,
 19 but I don't remember -- I don't remember where
 20 we got them from and I don't remember ever
 21 actually using them.
 22 Q And is it fair to say you have never
 23 trained anyone from these manuals?
 24 A No.
 25 Q When you -- or let me -- let me ask a

1 different question. I'm sorry.
 2 At this point, is it still the case that
 3 if it -- if the day is slow, you will do your
 4 own entry into CPCMS?
 5 A No.
 6 Q So right now, all of the disposition
 7 sheets go to Miss McMullen?
 8 A Correct.
 9 Q Okay. At the point when you -- well,
 10 not you because you are no longer a clerk in the
 11 courtroom.
 12 But at the point when courtroom clerks
 13 are, again, entering into CPCMS as they have
 14 time, who will train them to do that?
 15 A Most likely Meg McMullen.
 16 Q Okay. When you train court clerks for
 17 all of their various duties, am I correct that
 18 you are training them in a -- a set of protocols
 19 that is expected to be fairly consistent?
 20 A Yes.
 21 Q Okay. A judge may ask for a certain
 22 different thing in a courtroom; but other than
 23 that, you want all of the court clerks to
 24 perform their jobs in a consistent fashion?
 25 A Yes.

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1 Q And if you saw someone doing something
 2 out of the ordinary, you would ask about that?
 3 A I would.
 4 Q And unless there was good reason for it,
 5 you would tell them to do the thing that -- that
 6 everybody else is doing?
 7 A I would.
 8 Q Okay. And I understand that you are
 9 fairly new in this position but what -- what
 10 sort of quality control techniques do you have?
 11 How -- how do you supervise clerks after they
 12 are trained?
 13 A I check in with the clerks that trained
 14 them to kind of get an understanding of how they
 15 are grasping things and, you know, then when
 16 they move away from that senior clerk, then they
 17 go work behind another clerk as what is called a
 18 second seat clerk.
 19 So the first seat clerk is assigned to
 20 one judge and then they have a second seat clerk
 21 in those high-traffic courtrooms.
 22 I always touch base with that clerk, the
 23 first seat clerk to see how that second seat
 24 clerk is doing.
 25 If they notice a consistent mistake, if

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1 Exhibit 7.
 2 Can you tell me what that is?
 3 A This is what we refer to as the green
 4 sheet because it is physically green. It is a
 5 disposition sheet.
 6 Q Okay. I have seen references in the
 7 manual to a blue sheet. Is this a multi-part
 8 form?
 9 A No. The blue sheet is for violations.
 10 Q Okay.
 11 A So if someone violates a probation or
 12 parole, it is very similar. It is just
 13 directed -- directed more towards the
 14 violations.
 15 Q Now, I see at the bottom of this form it
 16 says revised July 2020. Are you aware of the
 17 process that led to this being revised?
 18 A The judges periodically will review a
 19 green sheet kind of based upon the needs of it
 20 and if there is new law or if there is new --
 21 different things, they -- they will change it to
 22 whatever they feel needs to be addressed.
 23 Q Okay. Do you know who initiated the
 24 process of -- getting -- that resulted in this
 25 being revised in July of 2020?

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1 they thought that that person needed additional
 2 training and I rely on the first seat clerks who
 3 are all mostly senior clerks to kind of give me
 4 feedback.
 5 Q Okay. And how about the process of
 6 court clerks entering information into CPCMS?
 7 What -- how did you make sure that that was
 8 being done properly -- or I'm sorry, this was
 9 before you were the supervisor?
 10 A Correct.
 11 Q But you were one of those clerks. How
 12 did -- how was your work checked?
 13 A I don't know.
 14 Q Okay.
 15 A Because I wasn't -- I wasn't in that
 16 position. So I honestly don't know how they
 17 checked it.
 18 Q Okay.
 19 MS. ROPER: Could I have 7? Sorry. I
 20 should have asked sooner. And I'll want 8 in a
 21 few minutes.
 22 (Exhibit No. 7 and 8 was marked for
 23 identification.)
 24 BY MS. ROPER:
 25 Q I'm handing you what we have marked as

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1 A I could guess, but I couldn't give you a
 2 specific answer.
 3 Q What is your guess?
 4 A My guess would be Judge O'Neill and
 5 Judge Branca because Judge Branca was the
 6 administrative criminal judge at the time and
 7 Judge O'Neill was the administrative criminal
 8 judge before Judge Branca and was still very
 9 hands on with a lot of different things. So I
 10 would -- I -- I believe that is who it was. I'm
 11 not 100 percent certain.
 12 Q Okay. And you don't have any specific
 13 information about this change?
 14 A No.
 15 Q Okay. I'm going to show you what we
 16 marked as Exhibit 8, and I will represent to you
 17 that this is a disposition sheet that prints out
 18 from CPCMS.
 19 A Okay.
 20 Q Do you know of any reason why Montgomery
 21 County doesn't use this disposition sheet
 22 instead?
 23 A I do not. I know that when we enter
 24 into CPCMS, the disposition sheet that is
 25 created does not look like this.

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1 Q Okay.

2 A So I -- I wouldn't be -- I'm not sure

3 why it was chosen to use the other one as

4 opposed to this one.

5 Q Okay. Other than your -- your trip to

6 Lancaster, are you -- have you talked to clerks

7 in other judicial districts about how they

8 handled sentencing and dispositions?

9 A I have not.

10 Q Okay. When you went to Lancaster, were

11 they -- it sounded like they were also using a

12 paper disposition sheet?

13 A They had one of those -- I'm going to

14 blank on what it is called, one of those things

15 where -- forms where you write on it and it

16 creates multiple copies of it.

17 Q Okay.

18 A So they would give that to the judge.

19 It was more of a checklist kind of thing and

20 then someone would enter it into CPCMS after the

21 fact. So it was a similar process but slightly

22 different.

23 Q Okay. All right. I'm going to go back

24 to the Montgomery County disposition sheet. You

25 can put the other one aside.

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1 Attorney.

2 Q Okay. Let's start with if there is an

3 agreement.

4 A Okay.

5 Q You mentioned that you would get the

6 terms of a negotiated plea ahead of time?

7 A Correct.

8 Q What form would that -- would that come

9 in?

10 A We have a paper that kind of has a

11 very -- like, you know, checkboxes for them to

12 fill out.

13 And they kind of chicken scratch it

14 together, and we have to figure out what it says

15 and then we put it on the green sheet.

16 Q Okay. And what -- looking at this

17 exhibit, let's start with which lines -- and I'm

18 actually going to -- first, I'm going to give

19 you another one of these sheets but it is going

20 to have a new exhibit number on it.

21 MS. ROPER: Counsel, I'm just going to

22 have her create a demonstrative and we will make

23 copies of it later. I'm going to ask her to

24 make notes on this blank sheet.

25 MR. DALEY: Okay.

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1 So you started answering this earlier

2 when I -- when I pointed you to our list of

3 questions.

4 So now, I'm going to go sort of in

5 slower detail over what you have told me about

6 how this document is -- is used.

7 A Okay.

8 Q Let's start with, who is the first

9 person to print out one of these or -- or touch

10 one of these?

11 A Court clerk.

12 Q And what does the court clerk do in

13 that -- the very first thing?

14 A We -- we -- so we prepare files in

15 advance. So we would get a stack of files. We

16 would take the green sheet. We would caption it

17 off the bills of information that are in the

18 file.

19 You put the defendant's name and all of

20 their charges would go in this top part. That

21 is the initial usage of the green sheet.

22 Then when it is time for the Court

23 hearing, we would then take it and update it

24 with the information provided either by the

25 judge or if there is an agreement, the District

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1 MS. ROPER: And what number would we be

2 up to in terms of our --

3 MR. GROGAN: Fourteen 14, I think.

4 MS. ROPER: We are going to call this

5 Plaintiff Exhibit 14.

6 (Exhibit No. 14 was marked for

7 identification.)

8 BY MS. ROPER:

9 Q It is a blank version of what you had in

10 front of you. I'm going to hand you a pen.

11 A Thank you.

12 Q And would you put just the number one by

13 any of the lines that you, as a court clerk,

14 would have filled out before you -- before

15 anything, before you even get the information

16 from the party --

17 A So to prepare the document?

18 Q Yes. To prepare the document?

19 A This area and this area.

20 Q Okay. And if you have a negotiated plea

21 and you get some chicken scratch form from the

22 DA and the defense attorney, could you put a 2

23 in the areas of this form that you would fill in

24 based on the information provided on that

25 document?

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1 A So do you want me to do it as a
 2 negotiated plea or --
 3 Q Let's start that way. Yes.
 4 A So we would fill this block out, this
 5 block out, this area here, this area here. If
 6 there are counts that are being nolle prossed,
 7 you would do this section here.
 8 It -- if it is a probation sentence, you
 9 would do this part here. And then based upon
 10 the terms of the -- of the sentence if it
 11 were -- for this example, I will do it if it is
 12 a probationary sentence and then this section
 13 down here, it is term specific.
 14 So if they were ordering domestic
 15 violence counseling, if they were ordering, you
 16 know, community service, there are different
 17 boxes down here but these two are always
 18 checked.
 19 Q When you say this section here, you are
 20 talking about the special conditions section?
 21 A Correct. This section down here.
 22 Q Great.
 23 Okay. So it sounds like you would get a
 24 lot of information about the negotiated -- the
 25 terms of negotiation. You would get to fill out

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1 I would then hand it to the judge so
 2 they could review it as well. That doesn't mean
 3 that he is not going to change what is on there.
 4 That happens all the time.
 5 But I would put the initial agreement on
 6 here. It is not unusual for a judge to say I
 7 think we need a PSI evaluation and I would be
 8 listening for those changes.
 9 And some judges would make the changes
 10 themselves and some judges expect the court
 11 clerk to make the change.
 12 Q All right. So this piece of paper
 13 would -- could literally be in the judge's hands
 14 while you are making notes elsewhere of what the
 15 judge is saying?
 16 A Correct.
 17 Q All right. Does the judge sign it then
 18 before giving it back to you?
 19 A Depends on the judge.
 20 Q Okay. Tell me what your -- and I
 21 understand, you know, different judges would do
 22 different things and different things might
 23 happen in different hearings but what was the
 24 procedure you would hope to follow?
 25 A Hope to follow or I -- what I

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1 most of the boxes and sections of this form?
 2 A I don't know if I would call it most.
 3 It -- it is case dependent.
 4 Q Okay.
 5 A But you can -- I mean, it depends. So,
 6 like, this section here in the front is only
 7 used for trial. So we wouldn't touch that if it
 8 is negotiated. You know, this whole area here.
 9 This area down here is if the sentence
 10 is deferred. You wouldn't touch that in a
 11 negotiated. There are sections of this that are
 12 kind of just case specific.
 13 Q I understand.
 14 So is there any other part of this form
 15 that gets filled out before the Court hearing?
 16 A No. Just this top part where I
 17 indicated where the ones are.
 18 Q Okay. So once you are in -- let me --
 19 let me not put words in your mouth. You said
 20 you then give this form to the judge?
 21 A Correct. Well, when the terms -- it is
 22 judge specific. However, my practice as a court
 23 clerk was always to hold it as the terms were
 24 being announced on the record so that I could
 25 check on that I would put on here was correct.

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1 followed -- what I would do is that the judge
 2 who I worked for for 11 years would sign it and
 3 then get it back to me, knowing that I would
 4 make the changes and then he would follow up
 5 with me and say, did you get that change? Did
 6 you get that change?
 7 Q Would he physically review it a second
 8 time after he had signed it and handed it back
 9 to you?
 10 A Depends on the length of the change.
 11 Q Okay. Would you ever ask him to review
 12 it?
 13 A Yes.
 14 Q Is there anybody else in the courtroom
 15 who touches this form during, let's say, just up
 16 to the end of the -- the hearing, the sentencing
 17 hearing?
 18 A Me, the court clerk, the judge, we used
 19 to have what is called tipstaff after the case
 20 was heard, the document was signed, they used to
 21 make -- take the -- make copies and then take
 22 the copies to the different departments.
 23 We have gotten rid of them because of
 24 COVID. And so now, no, I'm now the only person
 25 that handles it from the time it is in the

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1 courtroom would be the judge and the court clerk
 2 and then the court clerk takes to the Clerk of
 3 Courts and it is disbursed from there.
 4 Q Okay. All right. And obviously, as you
 5 pointed out, some boxes are checked off if this
 6 is a disposition from a plea and different boxes
 7 are checked off if this is a disposition after a
 8 trial?
 9 A Correct.
 10 Q Okay. Once that disposition sheet
 11 leaves the courtroom and if we are talking about
 12 the current period of time, it goes to
 13 Miss McMullen, would there be any changes made
 14 to it?
 15 A The only time that we would ever -- I'm
 16 going to use the word correction.
 17 Q Okay.
 18 A A disposition sheet, if it is fine and
 19 it is a legal sentence and it is -- there is not
 20 something missing would never be changed.
 21 If it -- if it goes to Meg -- this
 22 happens all the time. Let's say it goes to Meg
 23 and the -- the grading we received from the
 24 District Attorney for the count that was being
 25 pled to was incorrect or if they tried to amend

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1 then they go back and change it.
 2 Q What do you mean they go back and change
 3 it?
 4 A The court clerk, they would update the
 5 sheet to reflect the correct terms that were put
 6 on the record. So it -- it kind of depends on
 7 the severity of the -- of the correction that is
 8 needed.
 9 Q Okay. But if Meg doesn't flag anything
 10 wrong with this sheet, would the court clerk
 11 normally check this sheet against the
 12 transcript?
 13 A No. No.
 14 Q Do the parties review this sheet at any
 15 point?
 16 A The -- the defense counsel and defendant
 17 do get a copy of it. So whether they review it
 18 or not is on them, but they receive a copy after
 19 the fact.
 20 Q How do they get that copy?
 21 A They go to the probation department. So
 22 after every case is heard, they are directed to
 23 go to the probation department because they have
 24 to register for their supervision.
 25 We are in the process of scanning and

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1 it by agreement and it can't be amended that
 2 way, Meg would catch that right away because she
 3 is putting it into CPCMS and CPCMS would say you
 4 can't do this. It would give you a prompt. It
 5 is never changed after the judge signs it just
 6 to change it.
 7 Q Okay. But if Meg found one of these
 8 things that was wrong, such that it just
 9 literally couldn't be entered that way, what is
 10 the process then?
 11 A She would e-mail the clerk that was
 12 involved. That clerk would then reach out to
 13 all of the parties and say, hey, this was
 14 brought to my attention, please review it.
 15 It depends on what the correction is.
 16 Sometimes they can submit an agreed-upon Order
 17 to the judge to make the correction. Sometimes
 18 it can just be as -- sometimes it can be as
 19 simple as a date. You know, you can go and fix
 20 the date after the fact.
 21 If it is something legally, then they
 22 would rather check -- check the notes of
 23 testimony to see exactly what the correct thing
 24 was, if -- if it was put on the sheet
 25 incorrectly but put on the record correctly,

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1 e-mailing all dispositions immediately to --
 2 again, several departments, one of them being
 3 the probation department.
 4 They are provided a copy there, I
 5 believe. They used to be provided in the copy
 6 when it was in the courthouse, again pre-COVID.
 7 I'm under the -- I'm under the understanding
 8 that they are still given a copy.
 9 Q Okay. And what if they aren't being put
 10 on probation?
 11 A Well, if they are being -- well, if they
 12 are incarcerated, we also send this to the
 13 prison. So the prisoner gets it as well.
 14 Q Okay. When does that happen?
 15 A When does what happen?
 16 Q So when is this sent to the prison?
 17 A Immediately. The case is heard, the
 18 court clerk literally goes to the copier at that
 19 time, scans it in.
 20 We all have access to the scanners in
 21 the courtroom. If -- if it is not within a
 22 minute, it is within two hours.
 23 Q Okay.
 24 A So by the time -- and realistically the
 25 Defendants that are in the courthouse aren't

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1 transported back until the afternoon anyway. So
 2 the paperwork is there waiting for them when
 3 they get there.
 4 Q Okay. Does it separately go to counsel?
 5 A No.
 6 Q Just to the criminal Defendant?
 7 A Well, it depends -- correct, yes. It
 8 would go -- in that -- in the scenario where it
 9 is -- if the person is incarcerated, it goes to
 10 the prison. So it only goes to the Defendant.
 11 It does not go to counsel, unless requested.
 12 Sometimes they do request it.
 13 If they are on probation, if counsel
 14 asks for a copy at probation, I'm sure they are
 15 provided one but I don't know.
 16 Q Okay. So when there is a negotiated
 17 plea --
 18 A Um-hum.
 19 Q -- you have recorded the terms that have
 20 been given to you on this sheet and then you
 21 give it to the judge?
 22 A Correct.
 23 Q Does the judge still say out loud, for
 24 instance, if there is a -- does the judge say
 25 out loud what the sentence is?

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1 Q You are on the back page.
 2 A I'm on the front. Go ahead.
 3 Q No. That is all right.
 4 So I guess I'm presuming the judge
 5 starts on the front?
 6 A Correct. Yes, he does. Correct. So he
 7 announces -- lots of them honestly base -- they
 8 know it off the top of their heads most of them
 9 at this point.
 10 But most of them will read this kind of
 11 section by section. So they start with whatever
 12 the Defendant is pleading guilty to, the charge,
 13 the count, the grading, that they accept the
 14 plea agreement, that all other counts that are
 15 nolle-prossed, costs on the county, and then
 16 they would flip to the back.
 17 Again, dependent upon that else is
 18 checked down here; but they kind of -- it is --
 19 it is in the order of how they would say it --
 20 Q Okay.
 21 A -- top to bottom.
 22 Q Then we flip to the back and we got the
 23 checkboxes that begin with imprisonment first to
 24 state -- state sentence, then a county sentence,
 25 and then we have a checkbox for probation and

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1 A Yes.
 2 Q Okay. The judge will say if there is a
 3 term of imprisonment?
 4 A Correct.
 5 Q The judge will say whether there is
 6 probation?
 7 A Correct.
 8 Q The judge will say out loud if there is
 9 a fine?
 10 A Correct.
 11 Q And if there is restitution?
 12 A Correct.
 13 Q All right. What does the judge say
 14 about costs?
 15 A He puts costs on the record as well.
 16 Q And how does he do that?
 17 A They just -- they literally read down
 18 the sheet. They start with whatever the -- it
 19 is imprisonment or probation and then they
 20 almost verbatim say defendant's to pay court
 21 costs.
 22 Q I want to understand what order these
 23 things happen in. So let's -- let's start on
 24 the -- you are on the back page?
 25 A I am.

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1 then there is a checkbox for house arrest.
 2 There is a checkbox for drug and alcohol
 3 treatment and a checkbox that said Defendant is
 4 sentenced to pay the cost of prosecution and a
 5 fine of blank and restitution of blank to blank.
 6 Tell me how that actually is verbalized in the
 7 courtroom.
 8 A So the judge will say -- this is 11
 9 years of listening to a judge say it. So it
 10 is -- I'm going to use the example of probation.
 11 Defendant is sentenced to undergo
 12 probation for a period of six months with the
 13 Montgomery County Adult Probation Department.
 14 That is the date from today. Defendant to pay
 15 court costs and then they would come down to
 16 these --
 17 Q Okay.
 18 A -- these checkboxes at the bottom.
 19 Q Now, I note that the first two
 20 checkboxes on the backside of this -- of this
 21 form, the one dealing with state imprisonment
 22 and the one dealing with county imprisonment,
 23 there is a -- one of the checkboxes in -- in
 24 each of those paragraphs is costs on the county.
 25 What does that mean?

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1 A It means that the cost would be paid by
 2 the county. I have never personally used those.
 3 Those are new to this update.
 4 We were directed to do -- we weren't
 5 directed to not use these. We were directed to
 6 if the judge waived cost to handwrite it at the
 7 bottom.
 8 Q And could you put a -- a big star where
 9 you would handwrite costs are waived if that is
 10 what the judge has ordered?
 11 A That last line where it says other.
 12 Q Great. Thank you.
 13 And when you say we were taught -- you
 14 were taught not to use those boxes. Who taught
 15 you?
 16 A We weren't actually -- we weren't taught
 17 not to use them. I was never even told those
 18 boxes were there when this sheet was updated.
 19 Again, our practice has always been to
 20 handwrite it down here. So these boxes, to me,
 21 I actually just realized they were there not
 22 that long ago.
 23 But it is never really -- in this part,
 24 it is never really verbalized costs on the
 25 county. It is usually verbalized after hearing

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1 okay, we will -- we will get there and kind of
 2 towards the end of the hearing.
 3 Q Okay. If nothing is said about waiver
 4 of costs, how would you mark this sheet?
 5 A So if the judge imposes costs?
 6 Q What if the judge says nothing about
 7 costs?
 8 A That doesn't happen.
 9 Q Why not?
 10 A Because costs are always addressed by
 11 the -- by the judge.
 12 Q Okay. All right. And so if the judge
 13 imposes cost, how -- how is that marked?
 14 A Just by circling it.
 15 Q Okay.
 16 A Some clerks underline it. Some clerks
 17 circle it.
 18 Q Okay.
 19 A Some clerks actually just -- if you --
 20 let's say -- let's say, for instance, the person
 21 pled to Count 2, because I have a 2 there,
 22 putting a 2 there and checking this box is
 23 enough.
 24 Some judges prefer you to actually
 25 circle it or underline it but by putting the

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1 costs are waived because their -- the judge will
 2 hear why the costs should be waived. So he will
 3 listen to argument and then make a ruling
 4 basically. So we have always been told after
 5 hearing costs are waived down here.
 6 Q Okay.
 7 A It is not that we weren't told not to
 8 use these. It is just that I never actually
 9 used them.
 10 Q Okay. At what point in your experience
 11 would the judge hear the argument about why
 12 costs should be waived?
 13 A Usually, depends on the circumstances,
 14 before he goes down this sheet, usually defense
 15 counsel makes a motion.
 16 Q Okay.
 17 A Sometimes it is after he has read this
 18 sheet and that is one of the situations where I
 19 would go back and if he agrees and he grants it,
 20 I would white it out and then handwrite that
 21 down there.
 22 So it is kind of -- it can happen
 23 throughout the course of -- sometimes before we
 24 even start, counsel says I'm going to make a
 25 motion for costs to be waived and he will say,

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1 count there and checking that box, it -- it
 2 indicates that costs are imposed.
 3 Q So what you -- what you have done just
 4 to be -- to make the record clear so that the
 5 written transcript is clear also, not just the
 6 video --
 7 A Oh, I'm sorry.
 8 Q -- you -- you said that you could write
 9 the number of the count next to the line that
 10 says -- and check the box that says Defendant is
 11 sentenced to pay the cost of prosecution?
 12 A Correct.
 13 Q Okay. And if the judge ordered costs on
 14 more than one count, how would you record that?
 15 A So the two boxes that are underneath
 16 the -- the top initial sentence are used for
 17 additional counts.
 18 So you would write in that section
 19 count -- the count number and then you would
 20 physically handwrite in the sentence.
 21 And if that included costs, you would
 22 write it at -- on the line where it says
 23 sentence is --
 24 Q So you are indicating --
 25 A -- physically handwriting it in. Sorry.

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1 Q That is okay.
 2 You are indicating a part of the form in
 3 a box that says concurrent/consecutive sentence?
 4 A Correct.
 5 Q Okay. And what are the words that would
 6 come out of a judge's mouth that would make you
 7 fill in that -- indicate in that box that --
 8 that costs are to be on that count as well as
 9 the lead count?
 10 A It is -- sounds exactly the same as if
 11 he was -- so he would -- I'm trying to think of
 12 how to word this.
 13 He would say, okay, on Count 3 sentence
 14 is six years probation, Montgomery County Adult
 15 Probation consecutive to Count 2 and to pay
 16 costs. He would just -- I mean, it is kind of
 17 just sometimes they just say costs.
 18 Q And when the judge -- the judge would
 19 say to pay costs, you are not saying that the
 20 judge would say -- would identify specific costs
 21 to be paid by that person?
 22 A In terms -- I don't --
 23 Q Let me -- let me back up here.
 24 Let me do this with an exhibit because I
 25 just think it will be an easier way to explain

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1 Q Okay. Where have you heard that?
 2 A If they -- if defense has filed a motion
 3 to waive costs after the fact, I have seen
 4 judges have this printed out and we will go
 5 through it and we will waive individual costs
 6 but that is not -- that is after the fact. That
 7 is after -- if I -- if a motion is filed.
 8 Q Okay. And how often have you seen that?
 9 A Handful. Not many.
 10 Q Okay.
 11 A For -- not many that a judge has
 12 actually gone through. I have sat through
 13 hundreds probably of -- of other hearings and
 14 usually it is denied or granted kind of in whole
 15 but for a judge to physically go through each
 16 one? Under five.
 17 Q Okay. And when that happened, how did
 18 you record that?
 19 A In an Order.
 20 Q Okay.
 21 A So I would say after a hearing the judge
 22 grants in part and I would literally list which
 23 ones were waived.
 24 Q Okay. So that --
 25 A And then the judge would review it and

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1 it.
 2 MS. ROPER: Exhibit 12.
 3 Counsel, this is the same list that we
 4 attached to the complaint. And so -- so the
 5 record is clear, this is a -- a list of -- of
 6 potentially applicable costs that has been put
 7 together by Petitioners.
 8 (Exhibit No. 12 was marked for
 9 identification.)
 10 BY MS. ROPER:
 11 Q And you don't need to agree that this is
 12 accurate or not.
 13 A Okay.
 14 Q I'm not going to ask you that and -- and
 15 you -- well, I mean, I -- would you know whether
 16 this is an accurate listing of the costs that
 17 are charged in -- in Montgomery County?
 18 A I would not.
 19 Q Okay. It is, however, a list of a
 20 couple dozen costs that may appear on the docket
 21 and be assessed against a criminal defendant in
 22 Montgomery County.
 23 Have you ever heard a judge refer to
 24 specific costs when imposing costs?
 25 A Not -- not at a sentencing hearing.

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1 sign it.
 2 Q That is not something you tried to
 3 capture on the disposition sheet?
 4 A No.
 5 Q Okay. In your experience, do judges
 6 specify an amount of costs to be paid?
 7 A No.
 8 Q Okay. And so if a motion is made -- is
 9 made to waive costs, you have to described to me
 10 a judge saying essentially all costs are waived?
 11 A Yes.
 12 Q And you have described to me this very
 13 rare circumstance where a judge will actually
 14 walk through a list of costs and says, I'm
 15 going -- I'm going to give you this one and this
 16 one but not this one?
 17 A Correct.
 18 MR. DALEY: I will object to form very
 19 rare but you answered. So --
 20 BY MS. ROPER:
 21 Q Okay. But in response to such a motion,
 22 you never heard a judge say you'll pay only,
 23 say, 300 in costs?
 24 A Not -- the only time I have seen it and
 25 it is only recently is at a violation hearing.

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1 Q Okay.

2 A If they are violated for not paying

3 court costs, sometimes they will say, okay, you

4 are going to pay these within this time and go

5 to Clerk of Courts to have a payment plan put

6 together kind of a thing but not in this

7 circumstance, no.

8 Q All right.

9 A Can I get a quick break to get a cup of

10 water?

11 Q Oh, absolutely.

12 MS. ROPER: Off the record.

13 VIDEO TECHNICIAN: We are now going off

14 the record.

15 (Break.)

16 VIDEO TECHNICIAN: We are now back on

17 the record. This commences DVD No. 2. It is

18 1:58. Please proceed.

19 MS. ROPER: Okay. Thank you.

20 BY MS. ROPER:

21 Q Welcome back.

22 A Thank you.

23 Q And thank you for your -- your patience

24 here.

25 I am going to see if I can finish up our

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1 A Depending upon which count there was,

2 and which count -- actually, that is not true.

3 It would just say costs because ultimately, it

4 is the judge's discretion and the judge's

5 ruling. So --

6 Q Would it say cost next to more than one

7 count if the plea was to more than one count or

8 would it just say costs once?

9 A It depends on who is writing the sheet.

10 So sometimes -- and there -- there is actually a

11 few ways of writing it.

12 It could say F/C, which fine and costs,

13 which really just means cost because unless they

14 have a number for the fine, it would just -- it

15 is kind of just a shorthand way of doing it.

16 Again, depending upon who is writing the

17 terms, it could be just costs generally or it

18 could be next to each one.

19 It depends -- so this is a good place

20 for me to kind of circle back. In this -- on

21 this, which is Exhibit 1, the terms on this one

22 would have indicated that these two counts,

23 Count 2 and Count 4 were identical.

24 So the way that it was most likely

25 written up was a 2 and a 4 and then just one

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1 examination of the disposition sheet.

2 A Okay.

3 Q So I'm going to direct your attention

4 back to what was marked as Exhibit 14 --

5 A Okay.

6 Q -- the disposition sheet that you have

7 been making notations on at my request.

8 But I want to -- we talked at length

9 about what the process that you follow if there

10 is a negotiated plea in a case.

11 And one of the things we talked about

12 was that you would get a -- a sheet that was --

13 essentially contained the agreement of the

14 parties before the hearing and use that to

15 initially fill in the -- the disposition sheet,

16 correct?

17 A Correct.

18 Q Would that -- I'm sorry. What do you

19 call that piece of paper that you would get?

20 A The term sheet.

21 Q The term sheet.

22 What would the term sheet say about

23 costs?

24 A Just the word.

25 Q Just the word costs?

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1 time having it written -- the agreement written

2 out.

3 So in that indication, this person put

4 both Count 2 and Count 4 and costs because it

5 was probably written on the sheet that way.

6 Q Okay.

7 A If there are different counts where

8 there are different sentences, they would

9 probably just write the word costs once at the

10 bottom because, again, it is up to the judge to

11 kind of indicate whether costs are on both of

12 those counts.

13 So for identical sentences in a

14 situation like this, it was probably written

15 just once next to both to Count 2 and Count 4.

16 Other circumstances, it was probably just

17 written at the bottom.

18 Q And just so the record is clear, let's

19 figure out which page of Exhibit 1 you are

20 referring to.

21 A That would be Page 10.

22 Q Thank you.

23 MR. DALEY: And maybe for clarification,

24 which sentencing sheet -- what is the bill of

25 info at the top?

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1 THE WITNESS: 2750 of '18.
 2 MR. DALEY: Okay.
 3 MS. ROPER: Thank you.
 4 THE WITNESS: Vincent Esposito.
 5 BY MS. ROPER:
 6 Q Okay. Thanks.
 7 So we walked through the process if
 8 there was a negotiated plea; but, of course,
 9 some cases are resolved after a trial.
 10 Can you talk about the process from the
 11 first time that the clerk picks up a disposition
 12 sheet when it is -- we are going to have a -- a
 13 sentencing after a trial?
 14 A So the front part would have already
 15 been completed at the time of trial, that the
 16 front is -- that is why that all of the -- on
 17 the one, two, three, four -- the fourth through
 18 sixth checkboxes are all trial based. So that
 19 would already be completed.
 20 That would also say which counts the
 21 Defendant was found guilty on. So they would
 22 immediately flip the sheet over and start at the
 23 second page and circle back.
 24 They would fill in this -- the sentence
 25 block here at the top of the first page with who

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1 A Announcing the sentence one way or the
 2 other is the same.
 3 Q Okay. And would you fill in the boxes
 4 and circle things in the same way after it --
 5 when sentence was pronounced after a trial as
 6 you would when you were recording a -- a
 7 negotiated sentence or a negotiated plea?
 8 A Say that again. I'm sorry. Say it
 9 again.
 10 Q It was a terribly-worded question. Let
 11 me -- let's scrap it and try to start all over.
 12 A Okay.
 13 Q So you have just said that when a judge
 14 is pronouncing sentence, it is going to sound
 15 very similar after a trial as it does after the
 16 judge accepts a guilty plea; is that correct?
 17 A Correct. Yes.
 18 Q And when you are filling in boxes and --
 19 and filling in this form, are you going to
 20 follow then the same procedure?
 21 A Yes.
 22 Q Okay. You mentioned a trip to Lancaster
 23 when the idea first came that court clerks would
 24 start doing CPCMS entering live at hearings --
 25 A Um-hum.

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1 would -- all of the parties that were there and
 2 the date and then they would start on the second
 3 page.
 4 And if there was an agreement, again it
 5 would be a similar process. If it were up to
 6 the judge, judges here do it differently.
 7 My circumstances with Judge Branca, if
 8 it were one or two counts, I would have -- he
 9 would usually hold the page and I would have a
 10 little piece of scrap paper and as he is
 11 pronouncing the sentence, I'm making my
 12 shorthand, my chicken scratch.
 13 Some judges would fill it in themselves.
 14 Some judges will put the sentence on the record
 15 and then take the court clerk in the back to
 16 kind of review it with them to complete but --
 17 so it kind of depends on the judge.
 18 Q Okay. In terms of describing the
 19 sentence, going through the -- the checkboxes on
 20 the second page of the disposition sheet, how
 21 would that differ after a trial versus after
 22 a -- a guilty plea? And I'm -- I'm talking
 23 about what is the judge doing.
 24 A It is pretty much the same.
 25 Q Okay.

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1 Q -- correct?
 2 A Correct.
 3 Q At some point, during your tenure as a
 4 court clerk, were dispositions being entered by
 5 the Clerk of Courts office rather than by anyone
 6 in judicial administration?
 7 A Yes.
 8 Q Do you recall when that was?
 9 A I believe up until about 2018.
 10 Q Okay. And what is your recollection or
 11 understanding of how -- of how that changed?
 12 A I -- I believe that the Clerk of Courts
 13 was very far behind in entering items into
 14 CPCMS.
 15 And it was thought that the court clerks
 16 could do it in a much more timely fashion. And
 17 so they -- so they switched it over to us.
 18 And that is when actually Meg became --
 19 she is not part of our department but that is
 20 when Meg started working with us hand in hand.
 21 Q Is that the same time as your trip to
 22 Lancaster?
 23 A About. I don't -- I couldn't tell you
 24 approximately when that was, but it was
 25 somewhere around that time.

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1 Q I guess I'm asking, were those two
 2 events connected?
 3 A Yes.
 4 Q Okay. When as a court clerk you were
 5 entering things into CPCMS, how much of the
 6 information from the disposition sheet would you
 7 enter into CPCMS versus sending onto the Clerk
 8 of Courts?
 9 A We would enter all of it.
 10 Q All of it?
 11 A Correct. Anything that was handwritten
 12 or indicated by a checkbox or anything that was
 13 written as a part of the sentence, we would put
 14 into CPCMS.
 15 Q Okay. Do you recall how you would
 16 indicate which counts were to have costs on
 17 them?
 18 A Whichever ones said it. So in this --
 19 so this is just Exhibit 1 --
 20 Q So I'm going -- I'm going to stop you
 21 because my question was obviously not clear.
 22 Do you recall how in CPCMS --
 23 A Oh.
 24 Q -- you would indicate -- and feel free
 25 to make reference to the -- the manual, if you

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1 want.
 2 A It was under a -- I believe it was under
 3 a column of judicial -- something judicial. I
 4 don't actually remember.
 5 But we would type it in. We would
 6 hand -- was it typed in or was there a checkbox?
 7 I don't remember.
 8 Q Okay. Let me -- I may have a guess
 9 about this. I'm going to ask you to turn in
 10 that manual to a page that is -- and I'm sorry
 11 for the purposes of the record, we are referring
 12 to Exhibit 2.
 13 In this manual, would you turn to a page
 14 that at the bottom, it says Judicial
 15 Respondent's 24?
 16 A Do you happen to know what tab that is
 17 under?
 18 Q It is --
 19 MR. TRAINER: 2.
 20 BY MS. ROPER:
 21 Q Tab 2, apparently.
 22 A Which number did you say? I'm sorry.
 23 Q Twenty-four.
 24 So the -- the page refers to entering
 25 judge-ordered conditions. Is -- does that look

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1 like the place where you would --
 2 A I honestly don't remember because
 3 everything in CPCMS would have looked very
 4 similar.
 5 Q Okay.
 6 A And I wasn't doing a lot of the entering
 7 because I was in an active courtroom. So I
 8 wasn't one of the main people doing it but there
 9 was -- it was -- I can't remember if it was -- I
 10 don't believe it was in this tab.
 11 Q Okay.
 12 A I believe it was in another tab after
 13 the fact, like in -- in the sentencing part. I
 14 believe this tab pops up in the beginning and
 15 then you go through and you actually enter the
 16 sentence in terms of -- meaning whether it is
 17 probation or parole. And in that screen, there
 18 is a conditions box and I believe it is in
 19 there.
 20 Q Okay. And when you say it is in there,
 21 is there a drop-down menu that says pays costs
 22 or is that -- you said something about typing it
 23 in?
 24 A There are different ways of doing it and
 25 I can't remember off the top of my head if it is

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1 part -- there are drop-downs. So I -- I believe
 2 it was in a drop-down -- I believe it is a
 3 drop-down. Yes.
 4 Q But you are --
 5 A I'm not --
 6 Q But you are not 100 percent sure?
 7 A I am not. I am not. It has been
 8 several years since I have done this and again,
 9 I wasn't doing it a lot. I'm -- I couldn't give
 10 you is a 100 percent answer but I believe it is
 11 a drop-down.
 12 Q Okay. During your many years sitting in
 13 courtrooms, how often would you hear a judge --
 14 how often would you fill in a form saying that
 15 costs were ordered on more than one count?
 16 A It depends on whether -- how many -- I'm
 17 sorry. Say that again. How many times would I
 18 have done that?
 19 Q Yes.
 20 A It is more often than not that the costs
 21 are put on just one, but that doesn't mean I
 22 haven't put them on both. It just depends on
 23 what the judge indicates.
 24 And I worked with one judge for 11
 25 years. I can't say that all judges don't do --

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1 don't necessarily put them on both.
 2 But under my circumstances working with
 3 Judge Branca, more often than not, it was under
 4 one count as opposed to two --
 5 Q Okay.
 6 A -- or multiple, I should say.
 7 Q Okay. I'm going to ask you to look back
 8 at Exhibit 1 and let's start with the first
 9 disposition sheet that is attached there.
 10 It is a disposition sheet for Amy
 11 McFalls. Now, this appears to me to be an old
 12 disposition sheet before the revision. It says
 13 at the bottom revised 4/13.
 14 How many versions of this disposition
 15 sheet have you seen?
 16 A I would say three to four.
 17 Q Okay. And on the first page, which has
 18 many of the same boxes, the -- I guess the third
 19 box begins the motion of the District Attorney
 20 to nolle pros the following bills of information
 21 is granted.
 22 And it is followed by a line that says
 23 costs on and a checkbox that says Defendant and
 24 a checkbox that says county.
 25 A I see that.

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1 to happen?
 2 A I couldn't tell you. It was so many
 3 years ago. It was either my supervisor at the
 4 time or a judge or came in an e-mail from court
 5 administration. I'm not 100 percent sure.
 6 Q Okay. Do you think that it was in an
 7 e-mail?
 8 A I -- I don't know. Actually, back in
 9 that time, it probably was not only because we
 10 didn't -- we would receive things more through
 11 communications through paper in our mailboxes,
 12 but I don't even think that that was that.
 13 I think -- it might have been an e-mail.
 14 I don't remember. I don't think it probably
 15 was.
 16 Q Okay. If subsequent to that
 17 communication to you a judge said costs on
 18 Defendant with respect to nolle prossed charges,
 19 what would you mark on this sheet?
 20 A I would check the Defendant box.
 21 Q Okay. Although you had been told it was
 22 not supposed to happen?
 23 A Oh, I'm sorry. I misunderstood your
 24 question.
 25 After the -- after we were told not to,

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1 Q Okay. Do you recall a time when you
 2 would check off costs on Defendant for counts
 3 that were being nolle prossed?
 4 A Yes.
 5 Q When was that?
 6 A From the time that I started up and
 7 through maybe 2017, 2018, somewhere in there.
 8 Most times it was on the Defendant unless the
 9 judge made the decision to put it on the county.
 10 Q Okay. And how would you know that it
 11 was on the Defendant?
 12 A It was just standard to put them on the
 13 defendant. And then again, if the judge found
 14 that it should be on the county, then he would
 15 put it on the record.
 16 Q Okay. What is your understanding of why
 17 that changed?
 18 A It was found to be wrong to put
 19 counts -- or costs on people that -- for case --
 20 for things that they are no longer being charged
 21 with or I don't -- I don't really know the exact
 22 way of putting it. But if your nolle prossing
 23 something, why are you forcing them to then pay
 24 for it?
 25 Q Who told you that that is not supposed

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1 it would -- the judge was -- they were told not
 2 to do that and then they switched the -- they
 3 changed the form actually to change the language
 4 so it is not even an option anymore.
 5 But judges would have never put it on
 6 the Defendant after that time period where it
 7 was brought to our attention that we should not
 8 have done that.
 9 Q So are you telling me you never heard a
 10 judge say costs on Defendant with respect to
 11 nolle prossed charges after you were told to
 12 stopped doing that?
 13 A No, I have not.
 14 Q Okay. And what would you have done if a
 15 judge did say that?
 16 A If I had -- what would I have done
 17 personally?
 18 Q Yeah.
 19 A I would have reminded him that we were
 20 told to put them on the county but it never
 21 happened. So --
 22 Q Okay. On this page, there are some
 23 markings I want to ask you about.
 24 A Okay.
 25 Q At the very, very top in the top

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1 left-hand corner, it says on the first page of
 2 it, it says PPI/PSI.
 3 Do you know who wrote that?
 4 A The court clerk.
 5 Q Okay. And when?
 6 A At the time of -- when the Defendant was
 7 found guilty, we would then address the bottom
 8 part of PPI and PSI eval -- they are both
 9 evaluations that are ordered to help the judge
 10 with sentencing.
 11 Q Okay.
 12 A This -- the reason we put it up here is
 13 to alert when we send the -- the disposition
 14 sheet to the different departments so that it is
 15 a quick place for them to see, oh, I need -- I
 16 need to start working on these things.
 17 It is just a quick reference as opposed
 18 to probation or chambers to know that those
 19 evaluations were ordered.
 20 Q Okay. And when you flip the -- the page
 21 to the second page --
 22 A Um-hum.
 23 Q -- of this same disposition sheet, up at
 24 the -- at the very top margin, there is what
 25 looks like a capital E and then -- then some

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1 initials maybe.
 2 Do you know what that says?
 3 A That was our way of -- of indicating
 4 that the disposition had been entered into
 5 CPCMS.
 6 Q Okay.
 7 A So when we were starting the process, we
 8 would have the people who are entering, again,
 9 to make sure it was done, you would put -- would
 10 put the E and your initials.
 11 So if there was an issue with CPCMS, we
 12 knew who did it; and they -- they -- the could
 13 go back and correct it. That just means it was
 14 entered into CPCMS.
 15 Q Okay. Do you know whose initials or
 16 whose that name is?
 17 A I want to say it says MAP.
 18 Q Okay. Are those initials you recognize?
 19 A I know a Monica Pacorni, who was the
 20 clerk who was indicated who heard this -- or who
 21 filled out this disposition. I don't know her
 22 middle name.
 23 So but I'm trying to think if we have
 24 any other MP court clerks. I don't believe we
 25 do.

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1 Q And you said that those -- that E and
 2 initials indicated that this had been entered
 3 into CPCMS.
 4 So this is something that was added to
 5 the sheet after the sentencing hearing?
 6 A Correct.
 7 Q Okay. On this sheet, could you tell me
 8 what this sheet says about costs and where it
 9 says that?
 10 A Counts -- Count 3, costs of prosecution
 11 were imposed. That is indicated on the one,
 12 two, three, four -- seventh checkbox and that is
 13 the only place they were imposed.
 14 Q Okay. Looking at the next page in this
 15 exhibit, which is also a disposition sheet for
 16 Amy Falls -- Amy McFalls and it has got -- at
 17 the top of it we see E and it looks to me like
 18 Meg.
 19 Is that -- whose name do you think that
 20 is?
 21 A Meg McMullen.
 22 Q Okay. And if it says E Meg, does that
 23 indicate that she entered this into CPCMS?
 24 A That is what I would assume by that.
 25 Q Okay. Turning to the back of this

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1 disposition sheet, what does this disposition
 2 sheet indicate about costs?
 3 A Again, they were indicated on Count 1
 4 where it is costs of prosecution line and is
 5 circled.
 6 Q Okay. All right. The next disposition
 7 sheet in your packet for Vincent Esposito. Do
 8 you know whose initials are at the top of that
 9 sheet?
 10 I -- I actually see two different sets
 11 of initials with a -- with a big E next to them.
 12 What does that mean?
 13 A The one -- one indicates that it was
 14 entered at the time of the open plea. The other
 15 one indicates it was entered at the time of the
 16 sentencing.
 17 Q How do you know that?
 18 A Just because that is how -- again, that
 19 is how we were told to indicate that we had
 20 entered them.
 21 Not everyone put it on the second page
 22 for when the sentencing was entered. Sometimes
 23 people would just put it on a different spot on
 24 a different page -- on the front page. I'm
 25 sorry.

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1 Q Okay. And why was some information put
 2 into CPCMS after the open plea and some after
 3 the sentencing?
 4 A So at the time -- so an open plea, we
 5 would put everything from this first page. And
 6 since sentence was deferred, another clerk on
 7 the -- on the 10/17 of '19 would have put the
 8 back aspect the sentencing.
 9 So on 9/23, I'm assuming this TD is Tara
 10 Daquilante because she is the one that completed
 11 the front of the sheet, she would have entered
 12 just this information on the front, and then on
 13 10/17 TH would have entered the back
 14 information.
 15 Q And turning to the back of this
 16 disposition sheet, what does it say about the
 17 imposition of costs?
 18 A That they are imposed both on Count 2
 19 and Count 4.
 20 Q Okay. It does not say which of that
 21 lists of costs you have looked at -- any
 22 particular cost that get assigned to Count 1
 23 versus get assigned to Count 4, correct?
 24 A No, it does not.
 25 Q And in fact, there is no place on this

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1 Q Okay. I'm going to ask you to take a
 2 look at Exhibit 14 just because it is -- it may
 3 be handy. It is the newer version of the
 4 disposition sheet.
 5 And looking at Mr. Jackson's disposition
 6 sheet, one of the differences that I have noted
 7 is that if you look at the front and the
 8 checkboxes there, the structure of the sheet is
 9 very similar but it is the -- let's see.
 10 Look at the fourth checkbox where it
 11 says the Court sustains a motion for judgment of
 12 acquittal as to bills of information.
 13 Whereas if you look at the newer version
 14 of the sheet, I would suggest a very similar
 15 line says that court sustains a motion for
 16 judgment of acquittal as to counts.
 17 First of all, in your tenure as a court
 18 clerk, would you have considered these two
 19 sheets as asking for any different information
 20 on those two lines?
 21 A No.
 22 Q All right. Do you have any
 23 understanding as to why it was changed?
 24 A I do not.
 25 Q When you have been in a courtroom and

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1 disposition sheet to note that, is there?
 2 A No.
 3 Q Let's keep going to the next disposition
 4 sheet, Gregory Jackson.
 5 Can you explain to me the writing at the
 6 top right of the first page?
 7 A I -- it is an E circled with NM as the
 8 initials.
 9 Q Okay. And next to that there is
 10 something that looks like either an S2 or a 52.
 11 Do you know what that is?
 12 A Fifty-two is probably the number on the
 13 list because we received a list that responds
 14 with --
 15 Q Okay. And turning to the backside of
 16 this disposition sheet, can you tell me what
 17 this says about costs and where?
 18 A Count 1 has the same spot as I indicated
 19 before and the other two are costs are on -- I
 20 believe it was the seventh checkbox.
 21 And then on count 4, this has those
 22 concurrent/consecutive boxes where the clerk
 23 wrote -- handwrote out the second sentence for
 24 Count 4 where she indicates by the word costs in
 25 the handwritten area.

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1 heard a judge talk about a second count or a
 2 third count, but anything other than a lead
 3 count, is what I mean --
 4 A Um-hum.
 5 Q -- and say costs, is the -- does the
 6 judge say I find that this is a separate
 7 criminal incident or a separate criminal
 8 episode? Have you heard that?
 9 A I have never heard that, but that
 10 doesn't mean that other judges -- again, I
 11 worked for one judge for 11 years. I have never
 12 heard on the record a judge say that.
 13 Q Okay. Have you ever heard from any
 14 other court clerk of -- of judges saying that?
 15 A No.
 16 Q All right. If a judge said that, is
 17 that something that you would want to record in
 18 some way?
 19 A I probably wouldn't. I just wouldn't --
 20 I would just indicate if he wanted costs on one
 21 count or both counts, I would probably just
 22 indicate it that way. I wouldn't -- I probably
 23 wouldn't add unless I was told to, by the judge,
 24 add that language.
 25 Q Okay. And looking at either the new

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1 sheet or the old sheet, it doesn't actually have
 2 a place for you to -- there is no checkbox for
 3 that, there is no length that would correspond
 4 to that kind of language from a judge, is there?
 5 A No.
 6 Q Now, when we were looking at the first
 7 couple of pages of -- of Exhibit 1 earlier and
 8 going through that list of questions, you -- and
 9 in fact, let's go back and do that rather than
 10 sort of free handing this, which always leads to
 11 problems.
 12 We had looked at Paragraph 4 of -- which
 13 talks about the policy that authorizes the
 14 duplication of costs when a judge determines
 15 that there are multiple criminal incidents in
 16 one case.
 17 What -- what understanding do you have
 18 about judges making such a determination or the
 19 policy referenced in that paragraph?
 20 A The only thing that I ever heard about
 21 that was through Judge Branca, several years
 22 ago, he said to me that that was how he does it.
 23 But I don't -- I personally as a court
 24 clerk and really no court clerk will ever
 25 actually -- there is no policy for us because we

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1 don't make that determination.
 2 So it is -- it is not something that
 3 most court clerks probably know just because we
 4 are just taking down what the judge says.
 5 But Judge Branca did tell me one time
 6 that that is how he determines what -- how to
 7 impose costs.
 8 Q And when was that?
 9 A Probably around the same time period,
 10 2018-ish.
 11 Q Okay.
 12 A Maybe 2017. A few years ago.
 13 Q What did you -- how did this come up?
 14 A There was probably -- there was a -- a
 15 sentence that he was imposing where I probably
 16 had put costs on the second line.
 17 And he said we are only imposing costs
 18 on the first count. And then so I -- I -- Judge
 19 Branca, again, have worked together for a long
 20 time.
 21 So lots of time, I would stand up
 22 because my seat was directly in front of the
 23 bench. And he would say, hey, this is what I'm
 24 thinking. This is what I'm doing.
 25 So I probably stood -- I remember

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1 standing there and I remember him telling me
 2 that but it was a very in-passing situation.
 3 Q Why had you put costs on another count
 4 in that instance?
 5 A Probably because it was on the -- on the
 6 terms I received.
 7 Q Okay.
 8 A But, again, it -- we change things all
 9 the time based upon what the judge says. But if
 10 it was on the term sheet that I received, I
 11 would have put it on there.
 12 MS. ROPER: Okay. Can I have the last
 13 exhibit?
 14 BY MS. ROPER:
 15 Q Have -- when you were a court clerk,
 16 would there be times when the criminal case in
 17 front of you involved more than one bill of
 18 information?
 19 A Yes.
 20 Q Okay. And would there then be one
 21 trial? Two trials? One guilty plea? Hearings?
 22 Two guilty plea hearings? What -- how would
 23 that be handled?
 24 A It depends on if -- we will start with
 25 your first part of your question about whether

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1 it was trials.
 2 It depends on if the cases are similar,
 3 if they can be tried together. That is
 4 determined by the DA.
 5 So we would hear them together. They
 6 are two separate files and we would hear them at
 7 the same time.
 8 If it were a plea and they are both
 9 ready to be heard, we would hear them at the
 10 same time.
 11 Q Okay. But you would have two separate
 12 files?
 13 A Correct.
 14 Q And two separate disposition sheets?
 15 A Correct.
 16 Q And by two separate files, you also mean
 17 they would have two different docket numbers?
 18 A Correct.
 19 Q Okay. I'm going to hand you what we
 20 have marked as Plaintiff Exhibit No. 13. Have
 21 you ever seen this before?
 22 A No.
 23 (Exhibit No. 13 was marked for
 24 identification.)
 25 BY MR. ROPER:

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1 Q Had you heard that there was a letter
 2 from the ACLU talking about costs on nolle pros
 3 charges and costs on more than one count?
 4 A The more than one count, not until
 5 recently; but the nolle pros charges, yes.
 6 Q Okay. And what did you hear about
 7 this -- first of all, let me ask, when do you
 8 think you heard about that?
 9 A Probably around this time.
 10 Q Okay.
 11 A 20 -- 2018.
 12 Q Okay. And from whom would you have
 13 heard that?
 14 A Probably Judge Branca.
 15 Q Was that connected with the conversation
 16 about -- I'm sorry. Let me take that -- what
 17 can you recall about what he said about this
 18 communication from the ACLU?
 19 A I remember -- just that it was
 20 happening, just that the nolle pros thing was
 21 being addressed. I don't specifically remember
 22 an in-depth conversation.
 23 Q Okay. And you said, am I correct, that
 24 at the time you did not understand there was
 25 also an issue about costs on more than one

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1 And you talked about one meeting that
 2 you had with Mr. Kehs and Miss Grace talking
 3 about this lawsuit and the deposition.
 4 Is that the only time that you spoke to
 5 either of them about this deposition or the
 6 lawsuit?
 7 A It is minus the fact that I told them I
 8 was -- I told Andrea that I was here today. I
 9 didn't talk about anything in depth but it was
 10 just that hey, I will be -- I'm unavailable this
 11 afternoon but that is about it.
 12 Q Okay. All right. And when you had the
 13 meeting with Miss Grace and Mr. Kehs, who
 14 described the issue to you?
 15 A Michael.
 16 Q And how did he describe it?
 17 A Just that it was -- that it was an issue
 18 that we were being sued and he did -- he asked
 19 me what my understanding of how costs were
 20 imposed and that was kind of it. It wasn't a
 21 very long meeting.
 22 Q And what did you say to him?
 23 A Just that this is how -- it depends on
 24 what the judge says and that the court clerk
 25 realistically has no -- we just follow what the

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1 count?
 2 A I did not.
 3 Q Okay. When did you first hear that that
 4 was an issue of concern to the ACLU?
 5 A Two weeks -- a month ago.
 6 Q Are you talking about in your
 7 conversation with Mr. Kehs and Miss Grace?
 8 A No. I was actually informed about it by
 9 counsel --
 10 Q Okay.
 11 A -- before that and then I was actually
 12 on vacation and ignored it and then I reached
 13 out to Andrea Grace and -- and she told me that
 14 I could communicate with them about the
 15 situation.
 16 Q Okay. And what was your first
 17 communication with Miss Grace around that?
 18 A Just I forwarded their e-mail and I
 19 said, hey, I don't really know what this is. Is
 20 it something that I need to -- to address.
 21 At the time, she told me no, not knowing
 22 I was going to be here today; and then she got
 23 back to me and said yes, you need to speak with
 24 them. They are representing me. So --
 25 Q Here you go.

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1 Court says and we just put it on the sheet.
 2 Q Okay. And what did Miss Grace say
 3 during that meeting?
 4 A I can't remember specifically. Again,
 5 it was -- it was probably a three-minute
 6 meeting.
 7 It was not a very in-depth conversation.
 8 I was a hey, yes, you are going to be deposed.
 9 This is the issue. That is about it.
 10 Q Okay. Were you asked to look for any
 11 documents in connection with this litigation?
 12 A Training materials. That was about it.
 13 Let me -- let me -- let me answer that --
 14 training materials. I believe that was it.
 15 Q Were you asked to look for any written
 16 communications about the circumstances under
 17 which judges would order the imposition of costs
 18 on more than one count?
 19 A Written? No.
 20 Q Okay. Were you asked if you could
 21 produce a list of cases in which costs were --
 22 I'm sorry -- in which judges had determined that
 23 a case involved multiple criminal incidents?
 24 A No.
 25 Q Okay. Would it be possible for you to

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1 produce such a list?

2 A I would -- I would -- if I sat there and

3 went through each case in CPCMS and looked them

4 up, I probably could.

5 Q Wait. How would you know which ones the

6 judge had determined had multiple criminal --

7 A I would have to find one. There

8 wouldn't be a way that I know of at least.

9 Q Okay. Do you know of any way that that

10 is ever noted in a case?

11 A That there are -- that there are two --

12 two counts and only -- and costs imposed on

13 both.

14 I'm sorry. Say it again.

15 Q No. I'm asking about how -- when a

16 judge has determined that the charges describe

17 more than one criminal incident?

18 A I don't know if there is a way of

19 looking that up. Again, I have never heard it

20 put on the record. So --

21 Q Okay. Have you ever heard a judge or

22 heard of a judge telling the parties that the

23 judge has made that determination?

24 A No. That might not be true. That might

25 have been a little quick. Judge Branca may

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1 Q Okay.

2 A I can't -- I can't specifically say -- I

3 can't exactly say that was the one same

4 conversation, but there may have been one time.

5 Q Okay. And I'm sorry. Do you remember

6 when that conversation was or when that instance

7 was?

8 A I want to say it was around 2018.

9 Q Okay.

10 A Yeah. It was definitely pre-COVID.

11 Q All right. With respect to the

12 disposition sheet, as a court clerk, would you

13 add any information to it after the hearing?

14 A Never. Never on my own, I should say.

15 Q Okay.

16 A If it were -- again, if there were a

17 correction, if there was something that was

18 marked down incorrectly and it was brought down

19 to my attention, then yes, but never kind of

20 willy-nilly on my own, no.

21 Q Okay. Was there ever a situation where

22 you just had too much to do and couldn't finish

23 filling it out and you would fill it out later?

24 A No.

25 Q Okay. What is the mechanism by which

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1 have -- again, I'm speaking of one judge.

2 He, at some point, maybe once or twice

3 or a handful of times may have said yes, that it

4 was two separate incidents but it would not have

5 been a common occurrence.

6 Q Okay. Would you have made any notation

7 of that?

8 A No.

9 Q Can you -- you just said that Judge

10 Branca may have done that on an occasion or two.

11 Do you actually have a memory of that happening?

12 A I sort of do actually. I -- I have a

13 very strange memory where I remember very

14 strange things and then the next thing I don't

15 remember at all.

16 But I do remember there being at least

17 one time where he was openly discussing in the

18 courtroom that it -- that multiple charges

19 incident -- or having it be multiple -- I'm

20 sorry -- the same incident or a different

21 incident.

22 I do remember there being one. It may

23 have actually been in the same -- same

24 conversation of him telling me that that is how

25 he does it.

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1 these disposition sheets are -- are sent to

2 Miss McMullen?

3 A Right now, they are being scanned and

4 e-mailed.

5 Q Is that something that happens all at

6 one time on a -- a scanner that you can also

7 choose a destination or is it scanned and then

8 you actually attach it to an e-mail?

9 A It -- the program that we have -- it

10 depends on -- different people do it different

11 ways.

12 Some people will e-mail it to themselves

13 and then forward it. Some people might send it

14 to her directly. I don't know.

15 But it is -- it is scanned and pops up

16 into this program that we all have on our

17 laptops and then it is generated into an e-mail

18 and sent.

19 Q Okay. During the sentencing hearing,

20 does the court clerk or anyone else in the room

21 provide the Defendant or their counsel with an

22 itemization of the costs that they will be

23 paying?

24 A No.

25 Q To your knowledge, as a court clerk,

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1 were you aware of any manner in which an
 2 itemization of the costs to be paid was given to
 3 a Defendant and/or counsel?
 4 A That is a Clerk of Courts thing. So it
 5 wouldn't have -- I wouldn't have any knowledge
 6 of that.
 7 Q Okay. Turning back to Exhibit 1. I
 8 want to look at the disposition sheets for
 9 Mr. Esposito and -- and Mr. Jackson.
 10 A Okay.
 11 Q And -- and what they say about costs.
 12 A Okay.
 13 Q And you pointed out that on
 14 Mr. Esposito's form, where it says Defendant is
 15 sentenced to pay costs, it lists two different
 16 counts.
 17 But on Mr. Jackson's form, it is filled
 18 out differently. It says, you know, the
 19 check -- the box is checked off as to -- to
 20 Count 1. Defendant is sentenced to pay costs.
 21 And then you noted that there is
 22 something additional under the concurrent
 23 consecutive sentence.
 24 Why is it recorded differently?
 25 A It is -- it is court clerk preference.

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1 cross the board.
 2 Q Okay. But do you know if your
 3 predecessors in this position had tried to
 4 obtain uniformity in -- in how these particular
 5 checkboxes and boxes were filled out?
 6 A I don't.
 7 Q How were you taught to do it?
 8 A The way that Mr. Jackson's seat is
 9 filled out where it is in two separate sections.
 10 Q Okay. Any particular reason why you
 11 think that is the -- the correct way?
 12 MR. DALEY: Objection as to form because
 13 I don't know that she said that either was
 14 incorrect.
 15 MS. ROPER: Okay.
 16 MR. DALEY: But you can answer.
 17 THE WITNESS: Okay. I think that it
 18 is -- I think it is clearer if you do it this
 19 way, do it the Jackson way, where it is
 20 separated.
 21 It is just the way I was taught. So it
 22 is kind of just how I have always done it. The
 23 Esposito way is a newer way of doing it. Again,
 24 it is not wrong; but it is just not how I was
 25 taught.

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1 They are -- they are both identical sentences.
 2 So under Mr. Esposito where it was done on two
 3 counts on one line, it just indicates that the
 4 sentences are -- are identical and it is a
 5 faster way of putting the information down.
 6 So some court clerks recently have
 7 gotten into this practice and then on
 8 Mr. Jackson, the court clerk rather had more
 9 time or has -- this is the way that they prefer
 10 to do it.
 11 They use the concurrent box to put that
 12 count in there. So it is really -- it is a
 13 different way of doing it but neither way is
 14 wrong. They are both done kind of intertwined.
 15 Q Okay. When we talked about supervising
 16 court clerks, which you have not been doing for
 17 very long, we talked about consistency --
 18 A Um-hum.
 19 Q -- in how things are done by the court
 20 clerks.
 21 Would you like to see them filling out
 22 the same boxes in the same way?
 23 A I prefer that. I do. Some people have
 24 been doing it differently for many, many years.
 25 I -- I do -- I like to see it one way done away

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1 Q Okay. All right. I would like to take
 2 a break because I do think I'm getting pretty
 3 close to wrapping up. We just need to confer a
 4 little bit.
 5 Thank you very much for your patience.
 6 A Of course.
 7 VIDEO TECHNICIAN: We are now going off
 8 the record. It is 2:51.
 9 (Break.)
 10 VIDEO TECHNICIAN: We are back on the
 11 record. It is 3:01.
 12 Please proceed.
 13 MS. ROPER: Thank you.
 14 BY MS. ROPER:
 15 Q Am I correct that in Montgomery County,
 16 there is a division of labor between the
 17 Judicial Administration and the Clerk of Courts
 18 in terms of what gets entered or processed in
 19 CPCMS on a criminal case?
 20 A Yes.
 21 Q All right. What happens in your office?
 22 A We take the disposition sheet. We enter
 23 the information that is on the disposition
 24 sheet, and that is it.
 25 Q Okay. And that means you enter what the

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1 penalty is going to be?
 2 A Correct.
 3 Q Enter special conditions ordered by the
 4 judge?
 5 A Correct.
 6 Q Okay. And you have said that you will
 7 indicate within CPCMS that a particular count is
 8 to have costs on it?
 9 A Correct.
 10 Q Okay. But you don't actually enter
 11 assessments?
 12 A No.
 13 Q All right. Why not?
 14 A You would have to ask my boss. I don't
 15 know. I believe it is the Clerk of Courts is --
 16 they are the money people. They are the money
 17 job. We are just the recorder of the
 18 information.
 19 Q Okay. When you were entering
 20 dispositions into CPCMS, is that essentially
 21 identical to what Miss McMullen does now?
 22 A Yes.
 23 Q All right.
 24 A I believe she has other -- other parts
 25 of her job but that is one part of her job, yes.

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1 with him a handful -- handful of times filling
 2 in for his clerks --
 3 Q Do you have --
 4 A -- and in passing.
 5 Q Do you have any personal relationship
 6 with Judge Delricci?
 7 A Nothing more than employee to someone --
 8 employee to judge, I will say, yeah.
 9 Q And other than serving as a clerk in his
 10 courtroom on occasion, do you have any other
 11 regular interaction with him?
 12 A Unless I see him in the hallway, no.
 13 Q Okay. Lori Schreiber?
 14 A I know the name. I believe she is the
 15 new Clerk of Courts, but I don't know her.
 16 Q Okay. Lauren, I may need some help with
 17 this. Melissa Jenkins Phogphachone.
 18 MR. KEIGHTLY: Phogphachone maybe.
 19 BY MS. ROPER:
 20 Q Phogphachone? You do not know that
 21 name?
 22 A I do not.
 23 Q What is your relationship with Meg
 24 McMullen?
 25 A She -- we work hand in hand with her on

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1 Q But does she enter anything more into
 2 CPCMS than you would have entered into CPCMS?
 3 A No.
 4 Q All right. So that is the penalty
 5 information but not the assessment of costs?
 6 A Correct.
 7 Q All right. I'm going to ask you if you
 8 know and how you know some people?
 9 A Okay.
 10 Q All right. And the first one I'll ask
 11 you about is Michael Kehs.
 12 A I do know him.
 13 Q How do he know him?
 14 A He is my -- he is The Court
 15 Administrator. He is my boss.
 16 Q Okay. Do you -- how often do you
 17 interact with him?
 18 A Not often at all.
 19 Q Okay. Do you have any personal
 20 relationship with him?
 21 A I do not.
 22 Q Judge Delricci?
 23 A I do know Judge Delricci.
 24 Q And how do you know Judge Delricci?
 25 A He was the President Judge, and I worked

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1 the entering of dispositions. And if there are
 2 corrections or things that come to her
 3 attention, she bring it to my attention so I can
 4 address the clerk.
 5 Q Okay. Do you have a personal
 6 relationship with her?
 7 A I am not -- we are not going to dinner
 8 on the weekends together, but we are friendly to
 9 each other.
 10 Q How long have you worked together?
 11 A She was in the Clerk of Courts before
 12 getting her new position. So I -- she has been
 13 here longer than I have been here.
 14 So I have probably, you know, had to
 15 deal with her in the past a handful of times but
 16 now that she is in her new position, I want to
 17 say she has been in that position for three or
 18 four years. So I have had much more contact
 19 with her since then.
 20 Q Okay. Have you spoken to her about this
 21 deposition?
 22 A Yes.
 23 Q And tell me about that conversation.
 24 A Her part of it was more about her
 25 hearing and possibly having me help her. We

<p style="text-align: center;">Page 109</p> <p>1 didn't really discuss the -- the underlying 2 issues of the -- of the matter. Mostly just she 3 was concerned about her hearing and if I could 4 help her. 5 Q Okay. Did you discuss the reason for 6 the case at all? 7 A I don't think -- I am sure we have. I 8 can't remember specifically off the top of my 9 head and saying, hey, how about those court 10 costs but I'm sure we have. I just can't 11 remember. 12 Q Okay. And I'm sorry. But this is a -- 13 a standard question we ask everyone. 14 Have you ever been arrested or charged 15 with a crime? 16 A No. 17 MS. ROPER: Okay. Those are all the 18 questions I have. 19 MR. DALEY: I don't have anything. 20 MS. GALLAGHER: I don't have anything. 21 VIDEO TECHNICIAN: This completes the 22 deposition. We are now going off the record. 23 It is 3:07. 24 (The video deposition concluded at 3:07 25 p.m.)</p>	<p style="text-align: center;">Page 110</p> <p>1 THE REPORTER: Ms. Gallagher, do you 2 need a copy of the transcript? 3 MS. GALLAGHER: Yes. Could you attach 4 just Exhibit 14? 5 THE REPORTER: Yes. 6 Mr. Daley, do you need a copy of the 7 transcript? 8 MR. DALEY: Yes, and attach only Exhibit 9 14 as well. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 111</p> <p>1 I hereby certify that the proceedings 2 and evidence are contained fully and accurately 3 in the notes taken by me on the within 4 proceedings and that this is a correct 5 transcript of the same. 6 7 8 9 Hillary Hazlett Walsh, Reporter 10 Notary Public 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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EXHIBIT C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, *et al.* :
 :
 Petitioners : 4 MD 2021
 v. :
 :
 38th JUDICIAL DISTRICT, *et al.* :
 :
 Respondents :
 :
 :

**Affidavit of Michael Kehs, Montgomery
County District Court Administrator**

1. I, Michael Kehs, am the current District Court Administrator for the 38th Judicial District of Pennsylvania and am competent to testify to the following.

2. I have worked in Court Administration since 1992, and have been District Court Administrator since November 25, 1999.

3. I am familiar with the Court’s Administrative policies, procedures, and practices, and the forms maintained by Court Administration.

4. In June 2022, the Court revised the criminal Sentencing Disposition Sheet to incorporate several updates, including the following section related to the imposition of costs:

The Court finds that Count(s) _____ are separate criminal conduct and costs are imposed on Count(s) _____.

5. This section memorializes a Judge’s finding that separate counts constitute separate conduct when they are imposing costs on more than one count.

6. The 2022 revised Sentencing Disposition Sheet is Attached as Exhibit “1.”

7. The Court has since revised other aspects of the Sentencing Disposition Sheet, but the section related to costs imposed on more than one count remain.

8. The current Sentencing Disposition Sheet, last revised in October 2023, is Attached as Exhibit “2.”

9. In addition, I have reviewed Petitioners’ Application for Summary Relief filed in this matter.

10. In paragraphs 54 through 55 of the Petitioners’ Application for Summary Relief, they assert:

54. Pursuant to the interpretive policy adopted by the Clerk of Court’s office at the instruction of the 38th Judicial District’s leadership and the Clerk of Courts’ determinations about which costs may be imposed only once or multiple times, Respondents never duplicate . . . six costs in criminal cases, even if the sentencing order calls for costs to be imposed on more than one count[.]

* * *

55. Pursuant to the interpretive policy adopted by the Clerk of Court's office at the instruction of the 38th Judicial District's leadership and the Clerk of Courts' determinations about which costs may be imposed only once or multiple times, Respondents duplicate . . . nineteen costs in criminal cases if the sentencing order calls for costs to be imposed on more than one count[.](emphasis added).

11. While I am aware of the general interpretive guidance referred to in paragraph 23 of the Joint Stipulation of Facts and Law Submitted for the January 5, 2023 Class Certification Hearing, after reasonable investigation, I have uncovered no evidence to support the claim that the 38th Judicial District's leadership instructed the Clerk of Courts to assess or not to assess specific statutory costs, nor do I have any personal recollection of any such instruction.

12. Instead, it is my understanding that the calculation and assessment of costs against criminal offenders has been and is a ministerial function assigned to and handled by the Clerk of Courts in Montgomery County.

13. I verify the facts contained herein are true and correct to the best of my knowledge, information and belief. I understand that the

statements contained herein are made subject to the penalties of 18
Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

DATE: 4/15/24



Michael Kehs, Esquire
District Court Administrator
Montgomery County, Pennsylvania

EXHIBIT 1

TRIAL/PLEA/SENTENCE

Commonwealth of Pennsylvania

Charge(s) and Counts

VS

	TRIAL	OPEN GUILTY PLEA	SENTENCE
DATE			
JUDGE			
COURTROOM			
COMMONWEALTH'S ATTY			
DEFENDANT'S ATTY			
COURT REPORTER			
COURT CLERK			

AND NOW, this _____ day of _____, 20_____

The Court finds that the defendant has knowingly, intelligently and voluntarily entered a (negotiated) (open) plea of guilty with reference to the following count(s) and the Court accepts the guilty plea:

The Court accepts the terms of the plea agreement and sentence will be imposed in accordance with it.

The motion of the District Attorney to nol pros the following Count(s) with costs on the county is granted: _____

The Court sustains a motion for judgment of acquittal as to Count(s): _____

The Court overrules a motion for judgment of acquittal as to Count(s): _____

After trial, the Jury/Court finds the defendant:

Guilty of the following Count(s): _____

Not guilty of the following Count(s): _____

Jury sworn: _____ Jury Returns: _____ Trial Days: _____

The Court directs that the defendant forthwith register with the Adult Probation Department for:

PPI Evaluation House Arrest Suitability Assessment Sexually Violent Predator Assessment

Pre-Sentence Investigation Report with Risk Assessment Instrument and Sentencing Guidelines

Commencing Supervision

Sentence deferred: Defendant remanded without bail/released on same bail/remanded pending posting of bail in the increased amount of _____ 90 Day Rule is waived

Other: _____

Defendant is advised that PA driver's license will be suspended by PENNDOT.

Blood Alcohol Content _____ _____ Offense Refusal

BY THE COURT: _____

AND NOW, _____

_____ Defendant is sentenced to undergo **Imprisonment** for not less than _____ years no more than _____ years in such State Correctional Institution as shall be designated by the Deputy Commissioner for Programs, Department of Corrections, and sent to the State Correctional Institution at **SCI Phoenix/Muncy** for this purpose. Commitment to date from _____

Credit for time served from _____ to _____

Consecutive **Concurrent** to all previously imposed sentences. Costs on the County

The defendant is not eligible for: RRRRI Short Sentence Parole State Drug Treatment Program

Boot Camp PA Department of Corrections to calculate RRRRI minimum.

_____ Defendant is sentenced to undergo **Imprisonment** for not less than _____ months nor more than _____ months in the Montgomery County Correctional Facility. Commitment to date from _____

Credit for time served from _____ to _____

Consecutive **Concurrent** to all previously imposed sentences. Costs on the County

Ineligible for good-time credit Eligible for Work Release Ineligible for Reentry Plan

_____ Defendant is sentenced to: **Probation**, **Restrictive DUI probation** 42 Pa.C.S.A. § 9763(c),

Restrictive probation 42 Pa.C.S.A. § 9763(d) for _____ months/years in the custody of

Montgomery County Adult Probation/Parole Department PA Board of Probation and Parole.

To date from: _____ **Consecutive** **Concurrent** to _____

Defendant is placed on house arrest with electronic monitoring for the first _____ days/months/years.

_____ Defendant is directed to participate in drug and alcohol treatment under 75 Pa.C.S.A. § 3815(c).

_____ Determination of guilt without further penalty Count _____ merges with Count _____ for sentencing purposes

CONCURRENT/CONSECUTIVE SENTENCE

Count No. _____ Sentence is _____

and is to run concurrently/consecutively with/to sentence imposed on Count # _____

Ineligible for SDTP Ineligible for BC Ineligible for RRRRI Ineligible for SSP

CONCURRENT/CONSECUTIVE SENTENCE

Count No. _____ Sentence is _____

and is to run concurrently/consecutively with/to sentence imposed on Count # _____

Ineligible for SDTP Ineligible for BC Ineligible for RRRRI Ineligible for SSP

Fines, Cost, and Restitution

_____ Defendant is sentenced to pay the costs of prosecution within monthly installments as directed.

The Court finds that Count(s) _____ are separate criminal conduct and costs are imposed on Count(s) _____.

_____ Defendant shall pay restitution in amount of \$ _____ as outlined on attached Restitution Order within _____ days/months/years.

_____ Defendant is sentenced to pay a fine in the amount of \$ _____ within monthly installments as directed.

SPECIAL CONDITION(S) OF SENTENCE(S)

Comply with Restrictive Conditions of Probation Comply with Level of Care Assessment

PPI Evaluation and comply with recommended treatment Comply with PENNDOT requirements.

Community Service: _____ hours at site to be determined, within _____ months/years

Comply with 42 PA C.S. 9799.15 sex offender registration requirements Tier: _____

Defendant, as a condition of sentence, shall comply with Montgomery County and/or PA Board of Probation and Parole rules, regulations and special conditions of supervision and electronic monitoring if applicable. Attached and imposed.

Defendant, as a condition of sentence, shall comply with Montgomery County Rules, Regulations and Special Conditions of Sex Offender Supervision and/or the State Standard Special Conditions for Sex Offenders, Supplemental Special Conditions for Sex Offenders, and Optional Special Conditions for Sex Offenders.

Defendant shall pay the monthly offender supervision fee. Offender supervision fee is waived.

To be evaluated for: Sex Offender Substance Abuse Disorder Anger Management

D/V Counseling Parenting Classes No contact with _____

Parole authority retained pursuant to 75 P.S. 3804D & 3815 Other: _____

EXHIBIT 2

TRIAL/PLEA/SENTENCE

Commonwealth of Pennsylvania

Charge(s) and Counts

VS

	TRIAL	OPEN GUILTY PLEA	SENTENCE
DATE			
JUDGE			
COURTROOM			
COMMONWEALTH'S ATTY			
DEFENDANT'S ATTY			
COURT REPORTER			
COURT CLERK			

AND NOW, this _____ day of _____, 20_____

The Court finds that the defendant has knowingly, intelligently and voluntarily entered a (negotiated) (open) plea of guilty with reference to the following count(s) and the Court accepts the guilty plea:

The Court accepts the terms of the plea agreement and sentence will be imposed in accordance with it.

The motion of the District Attorney to nol pros the following Count(s) with costs on the county is granted: _____

The Court sustains a motion for judgment of acquittal as to Count(s): _____

The Court overrules a motion for judgment of acquittal as to Count(s): _____

After trial, the Jury/Court finds the defendant:

Guilty of the following Count(s): _____

Not guilty of the following Count(s): _____

Jury sworn: _____ Jury Returns: _____ Trial Days: _____

The Court directs that the defendant forthwith register with the Adult Probation Department for:

PPI Evaluation House Arrest Suitability Assessment Sexually Violent Predator Assessment

Pre-Sentence Investigation Report with Risk Assessment Instrument and Sentencing Guidelines

Commencing Supervision

Sentence deferred: Defendant remanded without bail/released on same bail/remanded pending posting of bail in the increased amount of _____ 90 Day Rule is waived

Other: _____

Defendant is advised that PA driver's license will be suspended by PENNDOT.

Blood Alcohol Content _____ _____ Offense Refusal

AND NOW, _____

Defendant is sentenced to undergo **Imprisonment** for not less than _____ years no more than _____ years in such State Correctional Institution as shall be designated by the Deputy Commissioner for Programs, Department of Corrections, and sent to the State Correctional Institution at **SCI Phoenix/Muncy** for this purpose. Commitment to date from _____

Credit for time served from _____ to _____

Consecutive **Concurrent** to all previously imposed sentences.

The defendant is not eligible for: RRRRI Short Sentence Parole State Drug Treatment Program

Boot Camp PA Department of Corrections to calculate RRRRI minimum.

Defendant is sentenced to undergo **Imprisonment** for not less than _____ months nor more than _____ months in the Montgomery County Correctional Facility. Commitment to date from _____

Credit for time served from _____ to _____

Consecutive **Concurrent** to all previously imposed sentences.

Ineligible for good-time credit Eligible for Work Release Ineligible for Reentry Plan

Defendant is sentenced to: **Probation**, **Restrictive DUI probation** 42 Pa.C.S.A. § 9763(c),

Restrictive probation 42 Pa.C.S.A. § 9763(d), for _____ months/years in the custody of

Montgomery County Adult Probation/Parole Department Pennsylvania Parole Board 42Pa.C.S.A.6172

To date from: _____ **Consecutive** **Concurrent** to _____

Defendant is placed on house arrest with electronic monitoring for the first _____ days/months/years.

Credit for Inpatient Treatment from _____ to _____ - Prior Custody _____ days

Determination of guilt without further penalty Count _____ merges with Count _____ for sentencing purposes

CONCURRENT/CONSECUTIVE SENTENCE

Count No. _____ Sentence is _____

and is to run concurrently/consecutively with/to sentence imposed on Count # _____

Ineligible for SDTP Ineligible for BC Ineligible for RRRRI Ineligible for SSP

CONCURRENT/CONSECUTIVE SENTENCE

Count No. _____ Sentence is _____

and is to run concurrently/consecutively with/to sentence imposed on Count # _____

Ineligible for SDTP Ineligible for BC Ineligible for RRRRI Ineligible for SSP

FINES, COST, AND RESTITUTION

Defendant is ordered to pay the costs of prosecution in monthly installments. 42 Pa.C.S.A. §9721(c.1)

The Court finds that Count(s) _____ are separate criminal conduct and costs are imposed on Count(s) _____.

Defendant shall pay restitution pursuant to 18 PA CSA § 1106 (a) in amount of \$ _____ as outlined on attached Restitution Order within _____ days/months/years. _____

Defendant is sentenced to pay a fine in the amount of \$ _____ in monthly installments as directed.

SPECIAL CONDITION(S) OF SENTENCE(S)

Defendant is directed to participate in drug and alcohol treatment under 75 Pa.C.S.A. § 3815(c).

Comply with Restrictive Conditions of Probation Comply with PENNDOT requirements.

PPI Evaluation and comply with recommended treatment Comply with Level of Care Assessment

Community Service: _____ hours at site to be determined, within _____ months/years

Comply with 42 PA C.S. 9799.15 sex offender registration requirements Tier: _____

Defendant, as a condition of sentence, shall comply with Montgomery County and/or Pennsylvania Parole Board rules, regulations and special conditions of supervision and electronic monitoring if applicable. Attached and imposed.

Defendant, as a condition of sentence, shall comply with Montgomery County Rules, Regulations and Special Conditions of Sex Offender Supervision and/or the State Standard Special Conditions for Sex Offenders, Supplemental Special Conditions for Sex Offenders, and Optional Special Conditions for Sex Offenders.

Defendant shall pay the monthly offender supervision fee. Offender supervision fee is waived.

To be evaluated for: Sex Offender Substance Abuse Disorder Anger Management

D/V Counseling Parenting Classes No contact with _____

Parole authority retained pursuant to 75 P.S. 3804D & 3815

The Commonwealth waives notification of Parole for any Negotiated or Time Served sentences.

Other: _____

EXHIBIT D

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY McFALLS, et al., : NO. 4 M.D. 2021

Petitioners, :

vs. :

38th JUDICIAL DISTRICT, HON. :

THOMAS M. DELRICCI, President :

Judge (in his official :

capacity), MICHAEL R. KEHS, :

Esq. Court Administrator (in :

his official capacity), and :

LORI SCHREIBER, Clerk of Courts :

(in her official capacity), :

Respondents. :

Wednesday, April 20, 2022

Oral deposition of MEG MCMULLEN, taken pursuant to notice, held at One Montgomery Plaza, 4th Floor, Norristown, Pennsylvania, commencing at 9:42 a.m., before Nicolle J. Tornetta, Registered Professional Reporter and Notary Public there being present.

KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 South Broad Street, Suite 1303 Philadelphia, PA 19102 (215) 922-7112

APPEARANCES:

LANGER, GROGAN & DIVER, P.C. BY: KEVIN TRAINER, ESQUIRE MARY CATHERINE ROPER, ESQUIRE JOHN J. GROGAN, ESQUIRE 1717 Arch Street, Suite 4020 Philadelphia, Pennsylvania 19103 (215) 320-5662 jgrogan@langergrogan.com Representing the Petitioners

AMERICAN CIVIL LIBERTIES UNION PENNSYLVANIA BY: ANDREW CHRISTY, ESQUIRE P.O. Box 60173 Philadelphia, Pennsylvania 19102 (215) 592-1513 ext. 138 achristy@aclupa.org Representing the Petitioners

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS BY: NICOLE A. FEIGENBAUM, ESQUIRE 1515 Market Street, Suite 1414 Philadelphia, Pennsylvania 19102 (215) 560-6957 nicole.feigenbaum@pacourts.us Representing the Respondents, 38th Judicial District

RUDOLPH CLARKE, LLC BY: GREGORY R. HELENIAK, ESQUIRE DEREK A. KEIGHTLY, ESQUIRE 7 Neshaminy Interplex, Suite 202 Treviso, Pennsylvania 19053 (215) 633-1830 gheleniak@rudolphclarke.com Representing the Respondents, Clerk of Courts

INDEX

Table with 3 columns: Line Number, Description, Page. Includes sections for WITNESS (MEG MCMULLEN) and EXHIBITS (Amended Notice to take Oral Deposition, Trial/Plea/Sentence, Charge(s) and Bill(s) of Information, Blank Trial/Plea/Sentence, Charge(s) and Counts, Screenshot of Conditions Tab).

DEPOSITION SUPPORT INDEX

Table with 2 columns: Line Number, Description. Includes entries for Direction To Witness Not To Answer, Request For Production Of Documents, Stipulations, and Questions Marked.

Page 5

1 - - -

2 (It is agreed by and among counsel that

3 reading, signing, sealing, filing, and certification

4 are hereby waived and all objections, except as to the

5 form of the questions, are reserved until the time of

6 trial.)

7 - - -

8 MEG MCMULLEN, having been duly sworn,

9 was examined and testified as follows:

10 - - -

11 EXAMINATION

12 - - -

13 BY MR. TRAINER:

14 Q. Good morning, Ms. McMullen. I'm going to

15 start with a few housekeeping items that are common to

16 most depositions. The first question we always ask is,

17 have you ever been deposed before?

18 A. Yes.

19 Q. And how many times previously?

20 A. Once.

21 Q. Once. Were you testifying in your official

22 capacity or was it a personal matter?

23 A. No, it was not. It was a personal matter.

24 Q. Okay. And what was the nature of your

Page 6

1 deposition?

2 A. Divorce and child custody.

3 Q. Okay. Now we'll discuss how a deposition

4 typically operates, some of which you might know

5 already. I'll ask the question, stop, and then you'll

6 answer the question. And during that question and

7 answer, to make sure that the resulting transcript

8 reflects what was said and to make the court reporter's

9 job as easy as possible, it's important that we each

10 let the other finish before beginning to speak

11 ourselves. Is that okay?

12 A. Yes.

13 Q. Okay. Relatedly after we finish today, the

14 court reporter will prepare a written transcript. Do

15 you understand that?

16 A. Yes.

17 Q. Okay. And it's that written transcript and

18 not the Zoom transcript or anything else, that will be

19 the record of what was said.

20 A. I understand.

21 Q. Okay. And the reason I bring that up is

22 because the court reporter only can record audible

23 answers, so please use yes or no instead of head

24 nods --

Page 7

1 A. Okay.

2 Q. -- or things like that. Now, after I ask you

3 a question, but before you answer it, your lawyer may

4 object. That's a common component of depositions as

5 your lawyer may have told you. But after she objects,

6 unless she's instructed you to not answer a question,

7 you still must answer the question. Does that make

8 sense?

9 A. Okay.

10 Q. Okay. I will also endeavor throughout the

11 deposition to ask questions that are simple and

12 straightforward. I'm sure that at some point, I will

13 fail at that. If I ask you a question that's not clear

14 or if you otherwise don't understand what I have asked,

15 please let me know, and I will repeat the question or I

16 will rephrase the question. Okay?

17 A. I will.

18 Q. Okay. Thank you. Similarly, it's perfectly

19 fine to answer a question with I don't know. If you,

20 in fact, don't know, we would prefer that you would

21 answer I don't know.

22 A. Okay.

23 Q. Okay. We can take a break any time you need

24 it, so if you would like to take a break, just ask.

Page 8

1 And then we'll probably schedule one or two breaks --

2 A. Okay.

3 Q. -- before lunchtime. The only caveat is that

4 if I've asked a question that you have not yet to

5 answer, you will answer that question first and then we

6 can take a break after you've answered that question.

7 Okay?

8 A. Okay.

9 Q. Finally, is there any reason, like illness, a

10 medication you are taking, lack of sleep, or anything

11 else that could affect your ability to understand or

12 answer the questions that I will ask today?

13 A. No.

14 Q. Okay. And is it correct that we have, to the

15 best of our ability, provided an accommodation through

16 Zoom to allow you to further understand the questions

17 that I've asked?

18 A. Yes.

19 Q. Okay. Thank you. So let me begin by handing

20 you the amended notice to this deposition that we sent

21 your lawyers on Monday, which I have marked as or will

22 be marked as Exhibit 14 [sic].

23 A. Can I have a moment to read this?

24 Q. Yes, please take a moment to read that.

Page 9

1 MS. ROPER: We already have a 14. Can
 2 we make it 15?
 3 THE WITNESS: This is talking about --
 4 I think you handed me the wrong one. This is talking
 5 about the deposition.
 6 BY MR. TRAINER:
 7 Q. You're right.
 8 MS. FEIGENBAUM: Just for
 9 clarification, it's still 15 for purposes of this
 10 deposition?
 11 MR. TRAINER: Let's make it 14.
 12 MS. ROPER: No, we have an Exhibit 14
 13 from the former deposition; I don't want to duplicate
 14 that. It was the sentencing sheet that she wrote her
 15 notes on. So please let's make this 15.
 16 MS. FEIGENBAUM: Okay. Thank you.
 17 - - -
 18 (Whereupon, Exhibit 15, Amended Notice
 19 to take Oral Deposition, was marked for
 20 identification.)
 21 - - -
 22 BY MR. TRAINER:
 23 Q. So I'm going hand you again what we're going
 24 to mark as Exhibit 15. Please take a moment to review

Page 11

1 A. I'm sorry. It didn't come up.
 2 Q. And do you understand that as a designee of
 3 the 38th Judicial District, you will be answering the
 4 questions I pose on their behalf and not on behalf of
 5 yourself, personally?
 6 A. Yes.
 7 Q. Okay. On Page 2 of Exhibit 15, I direct you
 8 to topic No. 2. Do you see topic No. 2?
 9 A. Yes.
 10 Q. Okay. Do you understand that the
 11 38th Judicial District has designated you to testify as
 12 to the topic listed in topic No. 2?
 13 A. Yes, I do.
 14 Q. Okay. If you could take a moment to read that
 15 second topic, please.
 16 A. Complies. May I have a pen? Does anybody
 17 have a pen?
 18 Q. Uh-huh.
 19 A. Thank you. Oh, I can't write on this?
 20 MR. TRAINER: It doesn't matter to me.
 21 MS. FEIGENBAUM: This is an exhibit.
 22 THE WITNESS: Can I have a piece of
 23 paper?
 24 MS. FEIGENBAUM: For notes for

Page 10

1 that.
 2 Have you seen Exhibit 15 before?
 3 A. No, I have not.
 4 Q. Okay. Do you understand that the 38th
 5 Judicial District, which is a defendant in this case,
 6 has designated you and another individual to testify on
 7 their behalf regarding the topics on Page 2 of this
 8 exhibit?
 9 A. I'm not sure what you mean another individual
 10 to testify on my behalf. Is that what you said?
 11 Q. Sorry.
 12 A. I'm sorry. That's what it...
 13 Q. Why don't you -- have you ever seen the topics
 14 listed on Page 2 of Exhibit 15 before?
 15 A. I have not seen this exhibit before today.
 16 Q. Okay. Do you understand that you have been
 17 designated as a witness for --
 18 A. Yes.
 19 Q. -- the 38th Judicial District?
 20 A. I understand that.
 21 Q. And do you understand that the 38th Judicial
 22 District has designated you to testify on their behalf?
 23 A. Yes.
 24 Q. Okay.

Page 12

1 yourself?
 2 THE WITNESS: That's all right. Okay.
 3 I'm good.
 4 BY MR. TRAINER:
 5 Q. Are you the best person to testify as to the
 6 topics in topic No. 2?
 7 A. I believe so, yes.
 8 Q. Okay. Is there something in topic No. 2 that
 9 struck you as incorrect or odd or imprecise?
 10 A. That's what I was -- the court clerks,
 11 specific charges are already in CPCMS, the court clerks
 12 do not enter them. Okay?
 13 Q. Got it.
 14 A. So I wanted to specify that, so that's
 15 incorrect.
 16 Q. Got it. We'll have a lot of time to discuss
 17 the details of it.
 18 A. But, I mean, everything else looks okay.
 19 Q. Thank you. We can put this Exhibit 15 to the
 20 side for now.
 21 A. Okay.
 22 Q. Okay. Ms. McMullen, the next few questions I
 23 will ask you concern how you prepared for this
 24 deposition. Okay?

Page 13

1 In preparing for this deposition, did
 2 you review any documents?
 3 A. No, I did not.
 4 Q. Okay. Did you meet with any person?
 5 A. I just met her for the first time this
 6 morning.
 7 Q. Did you speak with any colleagues about this
 8 deposition?
 9 A. No, I did not.
 10 Q. Did you speak with Ali Hasapes?
 11 A. Just to let them know that I was testifying so
 12 they don't look for me in my office.
 13 Q. I see. So other than telling your colleagues
 14 that you were going to be out this morning for the
 15 purpose of a deposition, you did not talk to any
 16 colleagues about --
 17 A. I didn't even say that I was out for the
 18 purpose of a deposition. I said I had a meeting.
 19 Q. Okay. The next few questions I'm going to ask
 20 are about your current job and past jobs that you have
 21 had. What is your current position?
 22 A. I work for court administration and I'm a
 23 criminal court assistant.
 24 Q. Okay. And who is your employer?

Page 15

1 Q. I see. And when you first began in your
 2 current role, did you receive any direction as to what
 3 your responsibilities would be?
 4 A. Basically training the court clerks in how to
 5 use CPCMS or how to enter cases into CPCMS. I mean,
 6 generally, yeah.
 7 Q. And those things that you are hired to do, are
 8 those things that you had done previously in your role
 9 at the Clerk of Courts?
 10 A. Yes.
 11 Q. Okay. And can you talk a little bit about
 12 what it is that you do when you train the court clerks
 13 as how they are to use CPCMS?
 14 A. Yes. First and foremost, I believe -- can I
 15 talk about Ali? No?
 16 MS. FEIGENBAUM: If we can pause for a
 17 moment.
 18 THE COURT REPORTER: Off the record?
 19 MS. FEIGENBAUM: Yes.
 20 - - -
 21 (Whereupon, a discussion was held off
 22 the record.)
 23 - - -
 24 THE WITNESS: Yes, when the court

Page 14

1 A. Montgomery County.
 2 Q. And your job title is criminal court
 3 assistant; is that right?
 4 A. That's correct.
 5 Q. Okay. How long have you been in that
 6 position?
 7 A. Since April of 2018.
 8 Q. Okay. And how did you get that job?
 9 A. Well, I was hired by the court administrator.
 10 I mean...
 11 Q. You applied for the job?
 12 A. The job was not a posted job. Do I have to
 13 answer this? Okay.
 14 Q. Well, how did you find out that the job was
 15 available? And then what steps did you take?
 16 A. I work for Clerk of Courts for 13 or 14 years;
 17 I'd have to do the math. And what the court clerks do
 18 now, I was asked to come -- the court deemed that court
 19 administration could do a more efficient and faster and
 20 everything, a better job if the court clerks did it
 21 than if Clerk of Courts did it.
 22 Q. Okay.
 23 A. So I was asked to come and work for court
 24 administration and train the court clerks.

Page 16

1 clerks are in the courtroom and they have different
 2 kinds of disposition and sentencing sheets to fill out,
 3 I make sure that they know how to fill them out
 4 correctly. Once those sheets are filled out, then
 5 they're generally given to a different court clerk to
 6 enter into CPCMS, so I would show that court clerk how
 7 to enter that information correctly into CPCMS.
 8 BY MR. TRAINER:
 9 Q. Okay. And were you going to say something
 10 about Ms. Hasapes?
 11 A. About Ms... it says about Ms...
 12 (indiscernible).
 13 Q. Were you going to answer the question by
 14 discussing something about Ali?
 15 A. No, I just didn't want to repeat anything that
 16 I had already said about how the sheets are filled out;
 17 that's all.
 18 Q. I understand. In your current role, have you
 19 led or participated in the creation of new policies or
 20 policy documents?
 21 A. I have not created new policies. Is that what
 22 you asked me?
 23 Q. Yes.
 24 A. No, I have not created now policies.

Page 17

1 Q. I'm going to -- this has been marked as
 2 Exhibit 2.
 3 A. Okay.
 4 Q. Have you seen this document before?
 5 A. Yes, I made it.
 6 Q. Okay. And so we're going to talk today a lot
 7 about this document, but we'll get back to that in a
 8 moment. If you could just say briefly what the process
 9 was like when you created this document.
 10 A. Okay. This was probably created in probably
 11 April of 2018. It is not set in stone. It's basically
 12 a quick generalization for court clerks that had never
 13 used CPCMS before that, had no idea, you know, just
 14 basically. This, again, they can't -- they were told
 15 they could never go by just this. This was just -- I
 16 mean, because as you can see, it's overwhelming for
 17 some of them that weren't familiar with CPCMS at all.
 18 Every single court clerk, if they weren't trained
 19 personally by me, was trained by another court clerk
 20 that was proficient. Okay?
 21 Q. I see.
 22 A. But, again, this is not an official policy or
 23 anything. It's general instructions and just basic use
 24 of CPCMS.

Page 18

1 Q. In your experience interacting with court
 2 clerks, do they find this document helpful?
 3 A. I do not.
 4 Q. Maybe if I can -- I should repeat the
 5 question. Maybe there was a misunderstanding.
 6 A. I do not find it helpful, no.
 7 Q. Okay. But you created the document; is that
 8 correct?
 9 A. When I first came over, we were -- we had
 10 maybe 42 court clerks at the time who had never -- had
 11 no concept of CPCMS at all. So when you're trying to
 12 train someone -- so then we thought maybe if we put
 13 something in writing so they could just get the gist of
 14 how to get into the program that that might help, but,
 15 again, this is not an official manual of any kind.
 16 Okay? It would be, like, if I wrote things down, like
 17 enter your name, enter your password. I mean, it's
 18 just..
 19 Q. Did you have help in creating this document?
 20 A. I honestly don't remember. I think so. I
 21 mean, I think some of the printing, definitely, things
 22 like that, yeah.
 23 Q. Okay. And like I said, we'll come back to
 24 this document later on in the deposition --

Page 19

1 A. Okay.
 2 Q. -- where I can ask you additional questions.
 3 So you can put it to the side for now.
 4 I have a few more questions about your
 5 work history. Before you came to the 38th Judicial
 6 District, you worked for the Clerk of Courts; is that
 7 correct?
 8 A. That's correct.
 9 Q. And what was your title there?
 10 A. I believe it was disposition clerk; I think
 11 that's what..
 12 Q. Okay. And how long were you in that role?
 13 A. I started there in January of 2005 and I left
 14 in April of 2018. You could do the math.
 15 Q. In your current position, do you attend
 16 sentencings?
 17 A. Rarely.
 18 Q. In your current position, do you fill out
 19 disposition or sentencing sheets?
 20 A. I do not fill out sentencing sheets, no.
 21 Q. In your current role, do you enter into CPCMS
 22 any information that is on a sentencing sheet?
 23 A. Yes.
 24 Q. And if you could estimate by a percentage how

Page 20

1 much of your time is spent entering into CPCMS
 2 information that is on a sentencing sheet?
 3 A. Since the pandemic, I would say maybe
 4 25 percent. Before the pandemic, I would say
 5 90 percent.
 6 Q. Got it. And why has it changed so
 7 drastically?
 8 A. That's an estimate. I mean..
 9 Q. And why has it changed so drastically from
 10 before to after the pandemic?
 11 A. Because we're -- just like I'm sure everyone
 12 is, we're playing catch up.
 13 Q. Were you able to enter into CPCMS information
 14 while working from home, for example, during the
 15 pandemic?
 16 A. Yes.
 17 Q. Is CPCMS accessible remotely to more than just
 18 you?
 19 A. Yes.
 20 Q. Okay. You said that you currently spend about
 21 25 percent of your time on entering information into
 22 CPCMS; is that right?
 23 A. No. Your question -- I thought that your
 24 question was training in the entering. I would say I

Page 21

1 spend about 60 percent of my time entering.
 2 Q. Okay. Currently?
 3 A. Yeah, currently.
 4 Q. And how do you spend the rest of your time?
 5 A. Well, I have other duties for court
 6 administration that have nothing to do with CPCMS.
 7 Q. Would you be able to discuss some of those?
 8 A. Judicial assignments. I do accelerated
 9 rehab -- ARD program, all the summary appeals. I
 10 mean, that covers...
 11 Q. Okay. So just to have a clear record, I
 12 understand you to say that at the moment, you spend
 13 about 60 percent of your time entering information from
 14 sentencing sheets into CPCMS; is that right?
 15 A. I mean, it might be. It might be more than
 16 60 percent. I'm trying to think of a day. I mean, out
 17 of a seven-hour day, probably at least five-and-a-half
 18 hours, so what percentage is that?
 19 Q. But it's safe to say that you spend a lot of
 20 your time entering information --
 21 A. Yes.
 22 Q. -- into CPCMS? Thank you.
 23 A. I like that better than a percentage.
 24 Q. Have you ever worked in any other county court

Page 22

1 system?
 2 A. Besides -- I've worked in other departments,
 3 but I've always worked for Montgomery County.
 4 Q. Okay. We can move to... okay. First, I would
 5 like to show you Exhibit 15 again. Okay.
 6 Ms. McMullen, do you see that on topic No. 2, the
 7 answer -- or topic No. 2 is based off of the, quote,
 8 Judicial respondents' representation in informal
 9 discovery?
 10 A. Yes.
 11 Q. Okay. So now, I would like to show you
 12 Exhibit 6, previously marked Exhibit 6, which is an
 13 e-mail dated November 16, 2021 from Michael Daley to
 14 Mary Catherine Roper, myself, and several others. Do
 15 you see that?
 16 A. Yes.
 17 Q. Do you see that Exhibit 6 also includes a
 18 document which is titled Court Respondents -- excuse
 19 me.
 20 Do you see also that Exhibit 6 attaches
 21 a document titled Petitioner's Questions and Responses
 22 (McFalls)?
 23 A. Yes.
 24 Q. You don't need to read the entire document,

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1 but could you just take a few minutes to review --
 2 A. Sure.
 3 Q. -- the document titled Court Respondents'
 4 Responses.
 5 A. Okay.
 6 Q. Have you seen that document before?
 7 A. No.
 8 Q. Okay. Could you please turn to Question 8 on
 9 Page 6 of that document?
 10 A. (Complies.)
 11 Q. And could you please take a moment to review
 12 just the question portion of Question 8?
 13 A. (Nods.)
 14 Q. For the purposes of the record, I will read
 15 in, if nobody objects, to Question 8. So Question 8
 16 asks, When an individual is sentenced on multiple
 17 charges and costs imposed on more than one charge, what
 18 are the steps to entering the court costs information
 19 entered into CPCMS and who takes each of those steps?
 20 Do you see that?
 21 A. Okay.
 22 Q. You don't have to answer just yet.
 23 A. Okay.
 24 Q. If you could turn to the response on the next

Page 24

1 page under subsection d.
 2 A. (Complies.)
 3 Q. And take a moment to review that, please.
 4 A. You said "d"?
 5 Q. D.
 6 A. (Complies.) Okay.
 7 Q. The answer given here first says that, After
 8 the presiding judge signs the sentencing form, court
 9 clerks enter sentencing information into CPCMS,
 10 including the specific charges, special conditions,
 11 fines and restitution information, and whether or not
 12 costs are to be imposed on which counts. Is that
 13 accurate?
 14 A. As I corrected before, they do not enter
 15 specific charges, they're already in the system. They
 16 do enter special conditions, fines and restitution
 17 information, and whether or not costs are to be imposed
 18 on which counts.
 19 Q. The answer that the judicial defendants of the
 20 38th Judicial District gave continues to say that,
 21 Court clerks do not enter any specific costs or
 22 numerical value for costs, or which specific costs
 23 should be imposed per counts. That is done by the
 24 Clerk of Courts. Is that accurate?

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1 A. I'm not sure I understand exactly what you're
 2 asking. You're asking specifically what costs?
 3 Q. No.
 4 A. Oh.
 5 Q. If you could first review the second sentence
 6 in the response given to Question 8d.
 7 A. (Complies.) That's correct.
 8 Q. Okay. And then, finally, the answer says
 9 that, After the information is entered into CPCMS, the
 10 sentencing form is provided to the Clerk of Courts.
 11 The Clerk of Courts enters specific cost information
 12 into CPCMS, which populates the costs per count. Is
 13 that accurate?
 14 A. Fairly accurate.
 15 Q. Okay. In what way might it be inaccurate?
 16 A. Well, Clerk of Courts doesn't even -- it's
 17 CPCMS. It's in the system exactly which costs go on a
 18 specific event. So Clerk of Courts just really has to
 19 generate whether costs are going on that offense or
 20 not, but I mean, specifically they're not picking which
 21 fees or fines or anything. Does that make sense?
 22 Q. It does. Yes. Thank you. And so to
 23 summarize, other than the inaccuracy that you just
 24 described and the fact that court clerks don't enter

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1 into CPCMS specific counts, is the answer provided to
 2 Question 8d accurate?
 3 A. Let me read it again. Yes.
 4 Q. Okay. We can put to the side Exhibit 6 for
 5 the moment.
 6 Okay. I am now going to show you what
 7 has been previously marked as Exhibit 9. And if you
 8 could please take a moment to review Exhibit 9.
 9 A. This is the same case. Oh, I see why there's
 10 two, because it was sentence deferred and this was
 11 sentenced at a later date. Okay.
 12 Q. Have you seen any of these documents before?
 13 A. Probably.
 14 Q. Generally speaking, what are these documents
 15 in Exhibit 9?
 16 A. Disposition sentencing sheets.
 17 Q. And some people call them disposition sheets,
 18 some people call them sentencing sheets, but those two
 19 terms are equivalent; is that right?
 20 A. Because this one was a sentence deferred case,
 21 it would have been a disposition. Once it was
 22 sentenced, then it becomes a sentencing sheet.
 23 Q. Got it. And it's correct that for both
 24 dispositions and for sentences, court clerks use this

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1 sheet or an example of this sheet that's included in
 2 Exhibit 9?
 3 A. Yes.
 4 Q. And it is correct that court clerks use these
 5 sheets all the time?
 6 A. If not this sheet, a sheet like it. There's
 7 different kinds of sheets used for different kinds of
 8 dispositions and sentencings.
 9 Q. I understand. And this might be trivial, but
 10 is it correct that court clerks use these sentencing
 11 disposition sheets to transcribe or document certain
 12 information, like whether the courts or a jury found a
 13 defendant guilty of some crime?
 14 A. Yes.
 15 Q. Okay. And similarly, court clerks use these
 16 sentencing or disposition sheets to know what
 17 information to enter into CPCMS, like whether a
 18 defendant who has been found guilty of some crime has
 19 to pay a fine?
 20 A. Yes.
 21 Q. And do these sentencing disposition sheets
 22 included in Exhibit 9 appear to you to be normal
 23 sentencing sheets used by court clerks in the ordinary
 24 course of their job?

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1 A. Yes.
 2 Q. Okay. Is there anything out of the ordinary
 3 in these sentencing disposition sheets?
 4 A. There doesn't appear to be, no.
 5 Q. Okay. In Exhibit 9, I want to begin with the
 6 sentencing sheet for Amy McFalls, who is a petitioner
 7 in this case; those sentencing sheets are the first two
 8 pages of Exhibit 9. And if you could, could you please
 9 just review the first and second page of Exhibit 9,
 10 which are two separate sentencing disposition sheets
 11 for Amy McFalls?
 12 A. (Complies.) Okay.
 13 Q. And nothing in these two disposition sheets
 14 appears out of the ordinary, correct?
 15 A. Nothing on the sheet does, no.
 16 Q. And if you could turn to the second
 17 disposition sheet for Ms. McFalls, is that your
 18 signature or initial at the top?
 19 A. I want to check the dates. Hold on. Without
 20 other paperwork, I don't know what happened.
 21 Q. I see. If you could look to the top of the
 22 second page, Page 2 of Exhibit 9.
 23 A. The second page?
 24 Q. The second page.

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1 A. You mean the fourth page?
2 Q. The fourth page.
3 A. Okay. Got it.
4 Q. The third page. On what you're seeing as the
5 third page of Exhibit 9, is that your signature at the
6 top of Ms. McFalls --
7 A. Yes, it is.
8 Q. And does your signature at the top of that
9 sentencing disposition sheet signify that you entered
10 certain information from the sentencing sheet into
11 CPCMS?
12 A. Not necessarily.
13 Q. What does your signature at the top mean?
14 A. If this was being used to train someone, even
15 if they entered it, I would just initial it just to
16 show that -- this is just to show that we did it.
17 Q. I see.
18 A. That it was completed.
19 Q. I understand. So --
20 A. I could tell you if I entered it.
21 Q. But the signature at the top of the sheet does
22 signify that somebody. Either you or a court clerk
23 that you were training. Entered certain information --
24 A. Yes.

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1 what point would you have initialed that document?
2 A. We no longer initial documents.
3 Q. And when you initialed the --
4 A. This the initialing was done just during
5 training so that there was no confusion between a court
6 clerk trying to enter it a second time, so this way we
7 could look and say that one's already been done.
8 Q. And at what point, for example, after a court
9 hearing, a sentencing hearing, a disposition hearing,
10 would you or a court clerk have entered into CPCMS the
11 information that you just marked?
12 A. Immediately, if -- I mean, or pretty close to.
13 Q. Okay. Could you flip to the back of that
14 sheet, which I guess is Page 4 of Exhibit 9? At the
15 top of that page, is that a court clerk's initial at
16 the top of the page?
17 A. Yes, it is.
18 Q. Do you know whose initials those are?
19 A. Yes.
20 Q. Who?
21 A. Monica Pokorny.
22 Q. Is that person a court clerk?
23 A. Yes.
24 Q. And a court clerk employed by the

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1 Q. -- into CPCMS?
2 And just to remind you, Ms. McMullen,
3 if you could wait until I finish the question and then
4 you can answer, mostly for the court reporter.
5 Okay. So using Page 3 of Exhibit 9,
6 could you mark with a pen what information either you
7 or the court clerk would have entered before you
8 initialed at the top of the page?
9 MS. ROPER: This now becomes a new
10 exhibit.
11 THE WITNESS: Where do you want -- you
12 want me to mark, like, what they would have entered?
13 MR. TRAINER: Just one moment.
14 BY MR. TRAINER:
15 Q. So let me just repeat the question. Yes, if
16 you could with a pen just mark on that first page of
17 Ms. McFalls' sentencing disposition sheet what
18 information either you or a court clerk would have
19 entered before you initialed at the top of the page.
20 A. You just want me to put, like, a checkmark?
21 Q. Sure.
22 A. (Complies.)
23 Just that page or do I go to the next?
24 Q. Just the front page, please. Okay. And at

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1 38th Judicial District?
2 A. Yes.
3 Q. And does that initial mean that that court
4 clerk entered certain information from that sheet into
5 CPCMS?
6 A. Most likely.
7 Q. Okay. Is there any other reason why somebody
8 might have initialed that sheet?
9 A. She could have been showing someone how to do
10 it.
11 Q. Okay. But it's safe to say that, like your
12 initials on the front of the page, the initials on the
13 back of the page mean that somebody entered the
14 information onto or into --
15 A. Yes.
16 Q. -- CPCMS?
17 Okay. Like you did on the front of the
18 page, if you can, could you put checkmarks next to what
19 information that court clerk would have entered prior
20 to their signing that sentencing disposition sheet?
21 A. Can I just...
22 Q. Sure. Thank you.
23 MR. TRAINER: And we'll mark this as
24 Exhibit 16, if that's okay with everybody.

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1 - - -
2 (Whereupon, Exhibit 16,
3 Trial/Plea/Sentence, Charge(s) and Bill(s) of
4 Information, RE: Amy McFalls, was marked for
5 identification.)
6 - - -
7 BY MR. TRAINER:
8 Q. Okay. Let me turn back to the 38th Judicial
9 District's answers to Petitioner's Informal Discovery
10 Questions, and that's Exhibit 6. So, Ms. McMullen, the
11 first portion of the answer to Question 8d says that,
12 After the presiding judge signs the sentencing form,
13 court clerks enter sentencing information into CPCMS,
14 including the specific charges, special conditions,
15 fines and restitution information, and whether or not
16 costs are to be imposed on which counts. So let me ask
17 a few questions about where on the sentencing sheet a
18 court clerk would find that information. So using
19 Ms. McFalls' sentencing disposition sheet, could you --
20 and we'll use this in Exhibit 16 still, if that's okay.
21 So using Exhibit 16, which is the marked-up version of
22 Ms. McFalls's sentencing disposition sheet, could you
23 mark with a number 1 where on the sentencing sheet a
24 court clerk would find the specific charges?

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1 information?
2 A. Was that number 3?
3 Q. 3.
4 A. (Complies.)
5 Q. And using a number 4, where on the sentencing
6 disposition sheet would a court clerk find whether or
7 not costs are to be imposed on which counts?
8 A. For this particular case, there's only one
9 count, so it would be where number 3 was, so that would
10 be number 4 as well.
11 Q. Okay. And on this particular sentencing
12 disposition sheet, is there any other location on that
13 sheet where a court clerk noted that the presiding
14 judge ordered the defendant to pay costs or a fine?
15 A. Not for this case.
16 Q. Okay.
17 A. There's only one guilty plea offense.
18 Q. Got it. So there's no other place on this
19 sentencing disposition sheet where the court clerk
20 noted that the presiding judge ordered Ms. McFalls' to
21 pay costs?
22 A. Not on this sheet.
23 Q. Okay. If you could turn to -- also in
24 Exhibit 9 -- the sentencing disposition sheet for

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1 A. Okay. Can I clarify your question? Define
2 the specific charges the defendant was charged with or
3 was found guilty. The specific charges are found at
4 the top of the sheet.
5 Q. Okay. And so why don't you mark with a
6 number 1 both the specific charges that the defendant
7 was charged with and the charges that the defendant was
8 eventually found guilty of or pled guilty to.
9 A. Okay. This would be number 1, what the
10 defendant was charged with.
11 Q. Okay.
12 A. This line would be what the defendant was
13 found guilty of.
14 Q. Okay. And you can mark this, then, with a
15 number 1 as well?
16 A. (Complies.)
17 Q. Okay. And using a number 2, where on the
18 sentencing sheet would a court clerk find special
19 conditions?
20 A. That was a number 2, you said?
21 Q. Yes, please.
22 A. (Complies.)
23 Q. And using a number 3, where on the sentencing
24 sheet would a court clerk find fines and restitution

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1 Vincent Esposito, who is another petitioner in this
2 case.
3 A. (Complies.)
4 Q. Does Mr. Esposito's sentencing disposition
5 sheet appear to you to be a normal sentencing
6 disposition sheet?
7 A. May I look at it? I mean, it's not normal
8 because there's stuff at the top blacked out, so that's
9 not normal.
10 Q. And why would the stuff at the top be blacked
11 out?
12 A. It appears to be normal.
13 Q. Okay. Do you know whose signature or initials
14 are at the top left and the top right?
15 A. Yes.
16 Q. Who are they?
17 A. Tara D'Aquilente.
18 Q. And at the top right?
19 A. That's -- her name -- she's no longer Tamara
20 Herder.
21 Q. And are both of those people or were both of
22 those people when they signed or initialed that sheet,
23 were they court clerks?
24 A. That's correct.

1 Q. Okay. And do those signatures, like your
 2 signature at the top of Ms. McFalls' sentencing
 3 disposition sheet, signify that either those court
 4 clerks or somebody they were supervising entered
 5 certain information from the sentencing sheet into
 6 CPCMS?
 7 A. Yes.
 8 Q. Okay. Now, the next part might get a little
 9 boring, but I'm going to ask you a few questions
 10 similar to those that I asked you about Ms. McFalls'
 11 sentencing sheet. Could you mark with a number 1 where
 12 on Mr. Esposito's sentencing disposition sheet the
 13 court clerk indicated whether or not costs are to be
 14 imposed on which counts?
 15 A. (Complies.)
 16 Q. And can you mark with a number 2 where on
 17 Mr. Esposito's sentencing sheet the court clerk ordered
 18 the defendant to pay fines?
 19 A. The defendant was not ordered to pay a fine.
 20 Q. Is there any other location on Mr. Esposito's
 21 sentencing sheet where the court clerk noted that the
 22 presiding judge ordered the defendant to pay costs?
 23 A. No, just the supervision fee. Are you
 24 including that in costs, supervision fee?

1 A. Yes.
 2 Q. Okay. And on Mr. Jackson's sentencing
 3 disposition sheet, whose signature is that at the top
 4 right?
 5 A. I believe it's Nick Maier's.
 6 Q. And is that person a court clerk?
 7 A. He was a court clerk, yes. He's no longer
 8 with us.
 9 Q. And at the time where he initialed this page,
 10 he was a court clerk; is that right?
 11 A. Yes.
 12 Q. Okay. Is there a reason, to the best of your
 13 knowledge, why there's no second signature on
 14 Mr. Jackson's sentencing sheet?
 15 A. Probably because he entered -- this wasn't a
 16 deferred sentencing, so it would have only been entered
 17 once. So when you see the two, it's because it was a
 18 deferred -- the other two cases were deferred
 19 sentencing.
 20 Q. I see. So in that case, the court clerk whose
 21 signature is at the top right entered all of the
 22 information on the sentencing disposition sheet; is
 23 that right?
 24 A. Most likely, yes.

1 Q. Would you typically include that in costs?
 2 A. I mean, that's not what -- I mean, it's a
 3 definition. It's not part of costs, but it is money
 4 that's ordered.
 5 Q. I see.
 6 A. So supervision fees always address that they
 7 were not charged with a supervisor fee.
 8 Q. And if you would to exclude the supervision
 9 fee from the definition of costs, is there any other
 10 place on Mr. Esposito's sentencing disposition sheet
 11 that the court clerk noted that the presiding judge
 12 ordered him to pay costs?
 13 A. No, there's not, but let me just check the
 14 front of the sheet again. No, both offenses that
 15 Mr. Esposito was found guilty of, costs were ordered
 16 on.
 17 Q. I see. And those are where you noted with
 18 number 1?
 19 A. That was the fine, you said.
 20 Q. Thank you. Okay. Let's move, if we could, to
 21 the last of the sentencing sheets in Exhibit 9, which
 22 is the sentencing sheet for Gregory Jackson. Does
 23 Mr. Jackson's sentencing disposition sheet appear to
 24 you to be a normal sentencing disposition sheet?

1 Q. Okay. And that signature, like your signature
 2 at the top of Ms. McFalls' sentencing sheet, signifies
 3 that either that court clerk or some other court clerk
 4 he was supervising entered the information from the
 5 sheet into CPCMS?
 6 A. Going back to Ms. McFalls' sheet, Ms. McFalls
 7 has two sheets, which I'm a little confused about.
 8 Okay? And without other paperwork, I don't know what
 9 happened with her. Okay? So for her first sheet, it
 10 appears that only one clerk entered it. For her
 11 second, she had a deferred bench trial. It appears I
 12 or I was training a clerk that did that, it appears for
 13 her sentencing that the aforementioned court clerk
 14 entered that.
 15 Q. And looking at Mr. Jackson's sheets, even if
 16 we forget about for the moment what you did with
 17 Ms. McFalls' sheet or did not, on Mr. Jackson's
 18 sheet --
 19 A. All right. Hold on. I'm sorry, what was the
 20 question about Mr. Jackson?
 21 Q. So the question is, the court clerk whose
 22 signature appears at the top right of Mr. Jackson's
 23 sheet, it's most likely the case that that court clerk
 24 -- that signature of that court clerk signifies that

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1 either that court clerk or somebody he was supervising
 2 entered Mr. Jackson's information into CPCMS?
 3 A. He would not have been supervising anyone, so
 4 most likely he entered it himself.
 5 Q. So this court clerk entered into CPCMS the
 6 information from Mr. Jackson's sentencing disposition
 7 sheet?
 8 A. Yes.
 9 Q. Okay. Staying with Mr. Jackson's sentencing
 10 sheet, I'm going to ask you a few questions that I've
 11 been asking you now about the others. Could you, on
 12 Mr. Jackson's sheet, mark with a number 1 where the
 13 court clerk indicated -- excuse me.
 14 Could you mark with a number 1 where on
 15 Mr. Jackson's sheet the court clerk noted that the
 16 presiding judge indicated that costs were to be
 17 imposed?
 18 A. You said number 1, correct?
 19 Q. Yes.
 20 A. Well, they indicated it in two spots.
 21 Q. Two spots. And could you mark with a number 2
 22 where on Mr. Jackson's sentencing sheet the court clerk
 23 noted that the presiding judge ordered the defendant to
 24 pay fines?

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1 A. No.
 2 Q. Okay. You can put those away for the moment.
 3 Okay. Ms. McMullen, I'm handing you what has been
 4 previously marked as Exhibit 7. What is Exhibit 7?
 5 A. A disposition sheet.
 6 Q. And this one appears to be somewhat different
 7 than the disposition sentencing sheets we've been
 8 reviewing; is that right?
 9 A. It was updated in July of 2020.
 10 Q. Okay. And did you --
 11 A. During the pandemic.
 12 Q. All right. Did you play a role in the
 13 revision of the sentencing disposition sheet?
 14 A. Not in July of 2020, but prior to March of
 15 2020, we all met, you know, to just try to -- I mean,
 16 the previous -- I don't know what the date was, but it
 17 was quite some time before, it had been updated just to
 18 make it more simple.
 19 Q. Do you know if court clerks like the new sheet
 20 better than the old sheet?
 21 MS. FEIGENBAUM: Objection. I think
 22 that calls for speculation. You can ask what she --
 23 MR. TRAINER: Sure.
 24 MS. FEIGENBAUM: -- thinks.

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1 A. No fines were ordered.
 2 Q. Okay.
 3 A. Do you want me to unmark where it would have
 4 been?
 5 Q. If you could mark where it would have been
 6 noted.
 7 A. (Complies.)
 8 Q. Thank you. Is there any other location on
 9 Mr. Jackson's sentencing sheet where the court clerk
 10 noted that the presiding judge ordered the defendant to
 11 pay costs?
 12 A. In this case, if a fine was ordered on
 13 Count 4, it would have been written next to where it
 14 says costs.
 15 Q. Okay. And looking at the two places on
 16 Mr. Jackson's sheet where you indicated a number 1, is
 17 there any other location on Mr. Jackson's sheet
 18 besides --
 19 A. Not for this case, no. I'm sorry.
 20 Q. It's awkward for me, too. Is there any other
 21 location on Mr. Jackson's sheet except for the two
 22 places you noted with a number 1 where the court clerk
 23 indicated that the presiding judge ordered Mr. Jackson
 24 to pay costs?

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1 BY MR. TRAINER:
 2 Q. In your experience interacting with court
 3 clerks, have you heard whether these court clerks like
 4 the new sentencing sheet more than the old sentencing
 5 sheet?
 6 A. In my opinion, I don't think that they thought
 7 it was much different.
 8 Q. And you said previously that you all met to
 9 discuss updating the sheet. Could you talk a little
 10 about what that meeting was like and how many meetings
 11 you had?
 12 A. It really doesn't relate to updating the
 13 sheet. When we met, we were really meeting to see if
 14 -- I mean, should I answer this? Really to see -- some
 15 other counties don't even use sheets like this. Okay?
 16 We were meeting to see if there's forms in CPCMS
 17 directly that we could enter the information and print
 18 out the form and it would appear to be the same thing
 19 as this. So we were seeing if we could try to make the
 20 form match what is in the form that's in CPCMS.
 21 Q. I see. And where in CPCMS did you access or
 22 find the form that you're discussing?
 23 A. You can't access it until you enter the
 24 information in.

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1 Q. I see. And so in this case -- well, why don't
 2 you just explain, if you could, a little bit of what
 3 you're discussing? I'm not sure if I understand what
 4 you mean by entering into CPCMS and then the
 5 information appearing on this sheet.
 6 A. Your question is not -- repeat your question.
 7 Q. Sure. So did you say that you could find this
 8 sheet in CPCMS?
 9 A. No. That's not -- I'm saying the information
 10 that we enter in CPCMS on the sentencing screen, other
 11 counties have a box -- we don't have it -- that they
 12 can click on that prints out, like, what they call a
 13 sentencing order. We don't have that.
 14 Q. I see. So it's the case still that --
 15 A. So this is our sentencing sheet.
 16 Q. I see. And like before, court clerks still
 17 fill out this new sentencing sheet by hand?
 18 A. Yes.
 19 Q. Okay. And as before, court clerks still will
 20 take the sentencing sheet and enter into CPCMS
 21 information that appears on this sentencing sheet?
 22 A. Yes. Nothing changed.
 23 Q. And looking at Exhibit 7, could you -- and
 24 this will become Exhibit 17 -- could you mark on

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1 sheet; is that correct?
 2 A. Yes.
 3 Q. Okay. And in each of the sentencing sheets we
 4 reviewed, we saw that the presiding judge signs the
 5 front of the sentencing sheet and the back of the
 6 sentencing sheet; is that correct?
 7 A. That's correct.
 8 Q. Okay. When would the presiding judge sign the
 9 front of the sentencing sheet?
 10 A. Because essentially it's a disposition, and
 11 then even if it's not deferred, then it moves on to the
 12 sentencing phase, so that's why.
 13 Q. And when would the presiding judge sign the
 14 front of the sentencing sheet?
 15 A. If they only sign the front of the sheet, it's
 16 simply because it was a deferred sentencing. Like the
 17 McFalls one was, initially the judge only signed the
 18 front of the sheet.
 19 Q. I see. At what point in the course of a court
 20 hearing or in the case of a trial would the judge have
 21 signed the sheet? Like, when during the day, when
 22 during the week, when during the trial? At what point
 23 would that have happened?
 24 A. I have no way of knowing that if I'm not

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1 Exhibit 7, to become Exhibit 17, with a number 1
 2 anyplace where a court clerk could note that a
 3 presiding judge ordered a defendant to pay costs?
 4 A. (Complies.)
 5 Q. And other than that location, is there any
 6 other place where a court clerk could note that a
 7 presiding judge ordered costs?
 8 A. No.
 9 Q. Okay. We can come back to Exhibit 7 in a
 10 moment.
 11 - - -
 12 (Whereupon, Exhibit 17, Blank
 13 Trial/Plea/Sentence, Charge(s) and Counts, was marked
 14 for identification.)
 15 - - -
 16 BY MR. TRAINER:
 17 Q. I'm going to direct you, again, to Exhibit 6,
 18 please. And the answer that the 38th Judicial District
 19 gave to 8d begins by saying, After the presiding judge
 20 signs the sentencing form, court clerks enter
 21 sentencing information into CPCMS. So that answer
 22 discusses the fact that the presiding judge signs the
 23 sentencing sheet, and it is correct and we have seen in
 24 all of the cases, a judge has signed the sentencing

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1 there.
 2 Q. In your experience -- well, how much
 3 experience do you have in the courtroom entering
 4 information onto the sentencing sheet?
 5 A. I'm sorry, there was no...
 6 Q. Oh, I'm sorry. Well, why don't we use
 7 Ms. McFalls' sentencing sheet. And if you could turn
 8 to the back.
 9 A. Is this the first one?
 10 Q. The second one.
 11 A. This one?
 12 Q. Page 4.
 13 MS. FEIGENBAUM: This one.
 14 THE WITNESS: (Nods.)
 15 MR. TRAINER: And just for clarity of
 16 the record, we're now talking about what we've been
 17 discussing as Page 4 of Exhibit 9, which is the second
 18 of Ms. McFalls' sentencing sheets.
 19 BY MR. TRAINER:
 20 Q. Okay. Turning to that page, do you see that a
 21 judge has signed it?
 22 A. Yes.
 23 Q. Okay. When would the judge have signed that?
 24 A. I would have to look -- I can't tell by -- it

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1 appears to be Judge Eisenberg.
 2 Q. And do you know when he would have signed it?
 3 A. I have no idea. I mean, he would have signed
 4 it by the end of the hearing. I mean, I don't know how
 5 he -- I have no way of knowing.
 6 Q. I see. Is it typical in your experience for
 7 the judge to sign a sentencing disposition sheet at the
 8 end of a hearing?
 9 A. I have no idea.
 10 Q. In your experience, would the judge have
 11 signed the sentencing sheet after the court clerk
 12 entered information on the back of the sentencing
 13 sheet?
 14 A. I don't know.
 15 Q. In your experience, do judges sign the
 16 sentencing sheet before it's filled out by a court
 17 clerk?
 18 A. No. I mean, I don't know, but, no.
 19 Q. In your experience, would it be common for a
 20 judge during a sentence to say I order costs on the
 21 defendant and then for the court clerk to circle on the
 22 sentencing sheet costs?
 23 A. I'm sorry, I don't understand your question.
 24 Q. Sure. I'm sorry. Let me ask it this way: On

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1 to circle costs. They do -- if they want a fine, they
 2 do need to write the fine down, but even if that's not
 3 circled, costs would have been imposed on Count 1.
 4 This is just this court clerk's way of doing things.
 5 Q. I see. And would a court clerk ever circle
 6 costs of prosecution or check the box indicating costs
 7 without --
 8 A. I have no idea why she did that. She didn't
 9 have to.
 10 Q. Well, let me, -if I can -- maybe my question
 11 will become clear after I ask it. Is there any other
 12 reason why a court clerk would circle costs of
 13 prosecution besides that the presiding judge ordered
 14 costs to be imposed on the defendant?
 15 A. No.
 16 Q. And so court clerks don't check or circle
 17 costs unless the presiding judge orders the defendant
 18 to pay costs; is that correct?
 19 A. That's correct.
 20 Q. Okay. And so in your experience, is it common
 21 for a judge to say in a court hearing or a sentencing
 22 hearing that I order the defendant to pay costs on,
 23 say, Count 1?
 24 A. I'm not there, so I don't know.

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1 the second sheet, the court clerk circled costs of
 2 prosecution. Do you see that?
 3 A. She circled it to show that there were costs
 4 on Count 1 with a fine of \$300.
 5 Q. And how would the court clerk have known to
 6 circle costs of prosecution?
 7 MS. FEIGENBAUM: Objection. Again, I
 8 believe this is calling for speculation. She's said
 9 she's not the one in the courtroom doing this, so I'm
 10 not sure how that would be answered without
 11 speculation.
 12 MR. TRAINER: Well, if Ms. McMullen
 13 needs to speculate, we can discuss that.
 14 BY MR. TRAINER:
 15 Q. In your experience, Ms. McMullen --
 16 MR. TRAINER: I can rephrase, Nicole.
 17 MS. FEIGENBAUM: (Nods.)
 18 BY MR. TRAINER:
 19 Q. In your experience, Ms. McMullen, what would
 20 cause a court clerk to circle on a sentencing
 21 disposition sheet costs of prosecution as here?
 22 A. In my experience, they do not need to circle
 23 -- if they use the checkmark here and they write the
 24 account number or account numbers here, they don't need

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1 Q. Okay. If the presiding judge did not order
 2 the defendant to pay costs, would a court clerk ever
 3 circle or check costs?
 4 A. If the judge did not order them to pay costs,
 5 then it is a clerical error.
 6 Q. It's a what?
 7 A. You're asking me if the judge did not order
 8 costs --
 9 Q. Yeah.
 10 A. -- and the clerk circled it, then that's a
 11 clerical error on the court clerk.
 12 Q. Okay. And how would that error be fixed?
 13 A. That if the judge did not order costs, I would
 14 have no way of knowing that, and neither would anyone
 15 else entering. I would have no reason to question it
 16 because it was addressed. The only way it would be
 17 caught is if the defendant caught it, maybe the defense
 18 attorney. I can't really answer that.
 19 Q. I understand. And in your experience, does
 20 the judge review the sentencing disposition sheet after
 21 the court clerk fills in information, like whether
 22 costs are to be imposed?
 23 A. I'm not there.
 24 Q. Do you know somebody else who would be able to

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1 answer that question?
 2 A. Ali. I mean, I can answer that and I would
 3 assume so, but I don't know.
 4 Q. I see.
 5 MR. TRAINER: Why don't we take a
 6 break?
 7 MS. FEIGENBAUM: Yeah, sure.
 8 MS. ROPER: Off the record.
 9 - - -
 10 (Whereupon, a brief recess was taken
 11 at 11:08 a.m., which the deposition continued at
 12 11:20 a.m.)
 13 - - -
 14 BY MR. TRAINER:
 15 Q. Hi, again, Ms. McMullen.
 16 A. Hello.
 17 Q. We stopped just before the break talking about
 18 potential clerical errors that might appear on a
 19 sentencing sheet. Ms. Hasapes a couple weeks ago in
 20 her deposition noted one example of an error that might
 21 appear on a sentencing sheet. She said that if a
 22 charge has been nol prossed and the court clerk
 23 indicates that the judge ordered the defendant to pay
 24 costs, then you wouldn't know that that was an error.

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1 at Exhibit 2, and I believe it's Page 0009.
 2 A. What page?
 3 Q. 9. It says Page 3 at the top.
 4 A. I think I found it.
 5 Q. Okay. And for the purpose of the record, on
 6 Page 3, which has been marked in discovery as Judicial
 7 Respondents 0009 in Exhibit 2, on No. 17. Do you see
 8 No. 17?
 9 A. (Indicating.)
 10 Q. Can you briefly review No. 17?
 11 A. Okay. I know specifically what this is
 12 referring to, regular sentencing, regular criminal
 13 case, not a case that -- not a nol pros order. It's
 14 talking about these remaining costs. They're always
 15 going to be on the county.
 16 Q. Okay. And for a nol pros order, what you have
 17 been discussing where an entire case has been nol
 18 prossed, is it your understanding that a presiding
 19 judge still is permitted to impose costs on the
 20 defendant?
 21 A. I have no idea what a judge is permitted to
 22 do. I do not know. I mean, like I mentioned before, I
 23 think in my 30 years or more, I have maybe only seen --
 24 on a nol pros order, we're not talking about -- maybe

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1 Is that a fair characterization of something that might
 2 happen?
 3 A. No, that's not correct.
 4 Q. Can you explain why --
 5 A. The judge can order costs on a nol pros order.
 6 Now, Ali was most likely talking about a sentencing
 7 sheet like this, not a nol pros order where -- this is
 8 -- let me find. This isn't a good example. This has
 9 nol pros costs; Ali must have been talking about this.
 10 Your question you stated nol pros order, which is when
 11 the entire case is nol pros.
 12 Q. Okay. And in your experience or pursuant to
 13 the policy as you understand it, is it still
 14 permissible for a judge to order costs when the entire
 15 case has been nol prossed?
 16 A. Can I answer that? If it's a nol pros order
 17 and the entire case is nol prossed, rarely, but it does
 18 happen, costs are ordered.
 19 MR. TRAINER: What exhibit is this?
 20 THE WITNESS: Is that from our
 21 handbook?
 22 MS. ROPER: Exhibit 2, Page 9.
 23 BY MR. TRAINER:
 24 Q. Exhibit 2. If you could look, Ms. McMullen,

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1 once.
 2 Q. Okay.
 3 A. So I don't know.
 4 Q. I see.
 5 A. I don't know what the law is. I don't know.
 6 Q. Okay. Did you write when you designed this
 7 policy --
 8 A. Wait. I'm sorry. Okay.
 9 Q. You testified before that you drafted this
 10 court clerk manual; is that correct?
 11 A. Yes.
 12 Q. And did you draft No. 17 on Page 3?
 13 A. Yes, I did.
 14 Q. Okay. Since April 2018, in your experience,
 15 has any court clerk noted that a presiding judge
 16 ordered the imposition of costs on a nol prossed case?
 17 MS. ROPER: Nol pros charge. Say that
 18 differently.
 19 BY MR. TRAINER:
 20 Q. Maybe let me say that question again, then.
 21 Since April 2018 when you --
 22 A. No. Like I said, they're talking about when
 23 the remaining counts are nol prossed, like this case,
 24 it's always going to say on the county, always. We

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1 should probably get rid of that defendant box.
 2 Q. And that's because on the sentencing sheet,
 3 the sentencing disposition sheet for a charge that has
 4 been nol prossed, the costs can never be imposed on the
 5 defendant; is that correct?
 6 MS. FEIGENBAUM: Objection to the way
 7 that you phrased that. Where are you getting that
 8 statement from?
 9 MR. TRAINER: Well, I can rephrase it.
 10 MS. FEIGENBAUM: If you don't mind.
 11 BY MR. TRAINER:
 12 Q. Can a presiding judge ever order a defendant
 13 to pay costs on a nol pros charge?
 14 A. Not to my knowledge.
 15 Q. Okay. And if we go back to discussing
 16 potential errors on a sentencing disposition sheet, if
 17 you received a sentencing disposition sheet that noted
 18 that the presiding judge imposed costs on the defendant
 19 for a nol prossed charge, you would recognize that to
 20 be an error, wouldn't you?
 21 A. Honestly, there are no costs on nol pros
 22 charges. We wouldn't -- as court clerks, we don't even
 23 talk about the -- the only thing we say about nol pros
 24 charges is if the offense was a nol pros. That would

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1 Q. Would you ever enter into CPCMS a sentencing
 2 sheet in which the court clerk noted that the presiding
 3 judge ordered the defendant to pay costs on a nol pros
 4 charge?
 5 A. Not to my knowledge.
 6 Q. And you never have?
 7 A. Not since I've been in court administration.
 8 Q. You have not?
 9 A. Not since I've been in court administration.
 10 Q. Okay. Can we turn back to Exhibit 6? In the
 11 answers to Question 8d, the 38th Judicial District
 12 noted that court clerks enter certain information into
 13 CPCMS, including whether or not costs are to be imposed
 14 on which counts. Is that something that court clerks
 15 do?
 16 A. Yes.
 17 Q. So now, I'm going to turn to Exhibit 2, the
 18 manual. And before, Ms. McMullen, you --
 19 A. Where do you want me to go to?
 20 Q. Before you go anywhere, what does it mean to
 21 say that court clerks enter into CPCMS whether or not
 22 costs are to be imposed?
 23 A. How they enter it into CPCMS. If there's one
 24 guilty plea offense, they address it on the offense

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1 be something Clerk of Courts, they do the costs.
 2 Q. I understand. And so if you received a
 3 sentencing sheet in which the court clerk indicates
 4 that the presiding judge ordered the defendant to pay
 5 costs on the defendant for a nol prossed charge, what
 6 would you do?
 7 A. If I saw it, I would assume that they
 8 misunderstood how to fill out the sheet; that's what --
 9 and I would send it back to them.
 10 Q. And what does that process look like?
 11 A. I would say, like, in this case, Tara, you
 12 checked the wrong box. Please fix it.
 13 Q. And just for the purpose of the record, Tara,
 14 I believe, is a court clerk who --
 15 A. She's the court clerk on this sheet.
 16 Q. -- filled out the sentencing sheet,
 17 Mr. Esposito's sentencing sheet in Exhibit 9. And so
 18 in that case, would you go to Tara and tell her that
 19 there was an error on her sentencing sheet?
 20 A. Well, I wouldn't tell her. I would ask her
 21 about it.
 22 Q. And would the judge be informed?
 23 A. I would have no idea what Tara would do with
 24 my question, but I would assume so.

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1 itself. And are you familiar with CPCMS?
 2 Q. A little bit.
 3 A. Okay. It would -- if, for instance, in this
 4 case, whatever count -- well, whatever Count 2, if it's
 5 a guilty, there would be another tab underneath that
 6 event and it would say course of prosecution, you know,
 7 blah, blah, blah, you know, it talks about costs being
 8 ordered, and if there was a fine, it would be there
 9 also.
 10 Q. If you could just take a moment to review
 11 Exhibit 2, which is the Court Clerks Manual for
 12 Disposing and Sentencing Cases in CPCMS. Can you
 13 identify where in this manual court clerks are
 14 instructed how to enter into CPCMS the fact that the
 15 presiding judge ordered the defendant to pay costs?
 16 A. Okay.
 17 I haven't come across it. I'm sorry.
 18 Do you have it? If you do, you could help me find it
 19 in here.
 20 Q. Well, I don't know if I have it.
 21 A. What does it appear to be under?
 22 Q. So I think there might be a few places. Why
 23 don't you first, if you could, turn to --
 24 A. I think -- I think -- I mean, I can't recall.

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1 I mean, it's 2018. I believe possibly we entered the
2 cost information in a different spot than we do now.
3 Here we go. This one says something
4 about entering costs of prosecution.
5 Q. And just, Ms. McMullen, for the purpose of the
6 record, what page are you on in Exhibit 2?
7 A. Yes, that's correct. We no longer enter it
8 there anymore.
9 Q. And what page?
10 A. This appears to be -- I can't see what it
11 says, 0066.
12 Q. So just for the purpose of the record, we're
13 now discussing Page 0066 in Exhibit 2.
14 A. It's okay if they enter it there if there's
15 only one guilty plea offense.
16 Q. Okay.
17 A. Okay? If there's more than one guilty plea
18 offense, it's entered onto the offense itself at the
19 bottom of the screen, not under judge ordered
20 conditions. It will be entered under -- let's see if
21 it shows a picture of it here -- it would be the
22 conditions on the offense itself.
23 Q. And so to clarify that, when you say if
24 there's more than one guilty plea offense, which you

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1 BY MR. TRAINER:
2 Q. Why don't I just repeat the question. Other
3 than Page 90, is there any other place in CPCMS where a
4 court clerk could enter the fact that the presiding
5 judge has ordered the defendant to pay costs on?
6 A. Yes, there is, if there's -- like I mentioned
7 before, if there's only one guilty or guilty plea
8 offense, they can -- should not, but they do and they
9 can enter it on that previous page, Judge ordered
10 conditions, because if there's only one guilty plea
11 offense, then, obviously, the costs are only on that
12 one offense.
13 Q. Okay. And in the case where there are
14 multiple offenses, is Page 90 a representation of where
15 court clerks would enter costs?
16 A. Yes.
17 Q. On Page 90 -- maybe I'll show you. If you
18 could look on Page 90 of Exhibit 2, there is a place
19 marked --
20 A. Is this what I'm looking at?
21 Q. Yes.
22 A. Okay.
23 Q. Do you see where there's --
24 A. Yes, it is a separate tab under the offense.

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1 will tell me if what you mean is that a defendant
2 pleads guilty to either one or more than one count; is
3 that right?
4 A. Correct, as in the case.
5 Q. Could you turn to 0090 of Exhibit 2?
6 A. You said 99, right?
7 Q. 90.
8 A. Oh. (Complies.) That's correct.
9 Q. Okay. And so on this page, just to clarify
10 for the record, Ms. McMullen, on Page 0090, is it
11 correct that on this page, this page shows the page in
12 CPCMS where court clerks enter whether or not the
13 presiding judge has ordered the defendant to pay costs?
14 A. Yes. For this case that's pictured, it shows
15 the defendant's ordered to pay costs on that offense.
16 I can't see what the offense is, but whatever --
17 Q. Okay.
18 A. Okay.
19 Q. In your experience, are there any other pages
20 in CPCMS where a court clerk could enter that the
21 presiding judge has imposed on --
22 A. They are not supposed to enter --
23 THE COURT REPORTER: I'm sorry, I just
24 didn't get the last of the question.

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1 Q. Okay. And on Page 90, do you see where I just
2 marked, do you see where it says condition at the
3 bottom of the box?
4 A. Yes.
5 Q. Okay. And do you see under condition that it
6 says, Defendant is to pay the costs of prosecution?
7 A. Yes.
8 Q. Okay. Is that something that a court clerk
9 would type in or enter freehand or is that a drop-down
10 menu?
11 A. It's a dropdown.
12 Q. And what else is on that dropdown?
13 A. There's probably over 500 things in the
14 dropdown. I mean, there's all kinds of conditions. I
15 mean, community service. I mean, you name it.
16 Q. Okay. So here when the court clerk gets to
17 this screen and they see that a presiding judge has
18 ordered the defendant to pay costs, they would click on
19 condition, and then they would scroll through a
20 drop-down menu to find where it says cost of --
21 Defendant is to pay the cost of prosecution?
22 A. It says, Cost of prosecution.
23 Q. Is that correct?
24 A. Yes.

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1 Q. Okay. And, Ms. McMullen, you mentioned that
 2 there's a drop-down menu where a court clerk could find
 3 that the defendant has to pay the cost of prosecution.
 4 Can you indicate on Page 90 with a pen where that --
 5 where the court clerk would click to access the
 6 drop-down menu?
 7 A. (Complies.) It's so small.
 8 MR. TRAINER: And we'll make that, if
 9 there's no objection, 18.
 10 MS. FEIGENBAUM: And that's Page 90.
 11 THE WITNESS: I guess I should circle
 12 here, this is the actual dropdown.
 13 - - -
 14 (Whereupon, Exhibit 18, Screenshot of
 15 Conditions Tab, was marked for identification.)
 16 - - -
 17 BY MR. TRAINER:
 18 Q. And maybe, Ms. McMullen, for the purpose of
 19 the record, could you just explain or walk through for
 20 us how when you come to this page you would indicate
 21 that the judge ordered the defendant to pay costs?
 22 A. Well, you'll just be interested in the cost
 23 part, so they would click on the tab that says,
 24 Conditions.

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1 A. That's correct.
 2 Q. Okay. And we just went through a whole
 3 process where you showed us in CPCMS court clerks
 4 indicated whether costs have been imposed and on which
 5 counts. There's no place in that process that you just
 6 described for us for the court clerks to enter, for
 7 example, the numerical value for costs; is that
 8 correct?
 9 A. That's correct.
 10 Q. Okay. And there's no place in that process
 11 that you described for us for a court clerk to indicate
 12 the specific costs that the defendant must pay; is that
 13 correct?
 14 A. Correct.
 15 Q. And there's no place in that process that you
 16 just described for us where a court clerk could
 17 indicate which specific cost should be imposed on which
 18 specific count; is that correct?
 19 A. Yes.
 20 Q. Okay. And to the best of your knowledge, all
 21 of that is done by the Clerk of Courts, not by court
 22 clerks; is that correct?
 23 A. Correct.
 24 Q. Okay.

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1 Q. Okay.
 2 A. Then they would use where it says, Condition
 3 Type in the dropdown until they got to the cost. So
 4 the condition they were looking for, they would
 5 highlight that and then to the left, they would hit
 6 add, and at the bottom of the screen, they would hit
 7 okay.
 8 Q. So the drop-down menu that we were discussing
 9 so far is where the box says, Condition Type; is that
 10 right?
 11 A. That's correct.
 12 Q. Okay. Thank you for doing that. If we could
 13 return, again, to this.
 14 MS. ROPER: List the exhibit number for
 15 the record, please.
 16 MR. TRAINER: This is Exhibit 6, which
 17 is the Court Respondents' Responses to Petitioner's
 18 Informal Discovery Questions.
 19 BY MR. TRAINER:
 20 Q. And, Ms. McMullen, in response to Question 8d,
 21 the 38th Judicial District stated that, Court clerks do
 22 not enter any specific costs or numerical value for
 23 costs, or which specific costs should be imposed per
 24 count. Is that correct?

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1 A. The only numerical value is fines.
 2 Q. But as to costs, a court clerk would never
 3 indicate the numerical value of any costs?
 4 A. No.
 5 Q. We're very close to being finished. I would
 6 like to ask a few more questions, Ms. McMullen, if you
 7 would allow it, just to clarify some things that we
 8 discussed before. We discussed before Exhibit 7, which
 9 is the sentencing disposition sheet that was revised by
 10 the court clerks in July of 2020. You mentioned that
 11 something prompted the revision of that sentencing
 12 sheet in or around July 2020. Could you just discuss
 13 in a little bit of detail what prompted you or members
 14 of your office to revise the sentencing disposition
 15 sheet?
 16 A. I have no knowledge that the court clerks were
 17 the ones that prompted it.
 18 Q. And do you know who prompted the revisions?
 19 A. I do not.
 20 Q. When does this July 2020 Exhibit 7 sentencing
 21 sheet --
 22 A. I was working from home --
 23 Q. Okay.
 24 A. -- in July of 2020.

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1 Q. Okay. As the sentencing sheet was being
 2 revised, were you involved in any meetings or
 3 discussions about what revisions should be included on
 4 the new sentencing sheet?
 5 A. Not in July of 2020, I was not.
 6 Q. Were you involved at any --
 7 A. Like I mentioned before, prior to March of
 8 2020, we talked about just updating the sheet in
 9 general.
 10 Q. And who was part of those discussions?
 11 A. I mean, I only met with maybe one person, but
 12 I don't know who all was involved. I have no way of
 13 knowing.
 14 Q. And who did you meet with?
 15 A. Well, the deputy court administrator asked me
 16 for my opinions on what should be added. What she did
 17 with them or didn't do with them, I have no way of
 18 knowing until -- and I don't know who else. I mean, I
 19 wasn't the decision maker for this by any means. It
 20 was just asking my opinion on what should be changed or
 21 added or gotten rid of. I mean, we had some conditions
 22 that we no longer use.
 23 Q. Okay. And who is the deputy court
 24 administrator that you just referenced?

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1 A. I do not.
 2 Q. Looking at Exhibit 7 now, do you see on
 3 Exhibit 7 any of the changes that you recommended?
 4 A. Well, I see some things that are no longer on
 5 the sheet, so I would say yes, then.
 6 Q. And what are those things?
 7 A. I'd have to compare the sheets.
 8 Q. Please.
 9 A. Is this an older one? Yeah. We got rid of,
 10 like, the outpatient, the inpatient treatment. Just, I
 11 mean, nothing -- nothing to do with costs. Mostly just
 12 a lot of conditions. The RRI, we didn't clutter it up
 13 with that.
 14 Q. Okay. And so for the purpose of the record,
 15 what you, Ms. McMullen, are describing are various
 16 special conditions that existed in the previous form of
 17 the sentencing sheet that was removed in the new
 18 sentencing disposition sheet; is that roughly correct?
 19 A. Yes.
 20 Q. And to the best of your knowledge, there's no
 21 difference between the old and the new sentencing
 22 sheets with respect to costs?
 23 A. I'll look. Well, there is one that I -- I
 24 mean, since you're asking me about nol pros costs,

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1 A. She's no longer here.
 2 Q. And what is her name?
 3 A. Denise Vicario.
 4 Q. Do you know where she works now?
 5 A. I do.
 6 Q. And where is that?
 7 A. She's the director of the Montgomery County
 8 Bar Association.
 9 Q. I see. So she's a lawyer?
 10 A. Yes, she is.
 11 Q. When you were asked for your opinion on what
 12 should be changed --
 13 A. I do not remember. I mean, I don't know when
 14 it was. And it was not a formal -- it was just, you
 15 know, my opinion on -- my input, is all.
 16 Q. Do you recall what your input was?
 17 A. Not specifically without comparing the sheets,
 18 no.
 19 Q. Okay. Would you --
 20 A. Mine was more of taking out some of the things
 21 that we no longer use to reduce the clutter on the
 22 sheet.
 23 Q. Do you remember specifically what things you
 24 recommended to be removed?

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1 there's no longer a county or defendant for nol pros
 2 costs.
 3 Q. And so what you're describing is that on the
 4 old sentencing disposition sheet, there was an option
 5 for the court clerk to note that the presiding judge
 6 ordered the defendant to pay costs on a nol pros
 7 charge; is that right?
 8 A. That is not correct.
 9 Q. Okay.
 10 A. On the old sheets, I would say back in, like,
 11 2010, 2011, they would -- this had nothing -- it
 12 shouldn't have even been here, whether it had to do
 13 with costs for the entire case on the county, not nol
 14 pros costs. That was what the definition was there.
 15 Q. Okay.
 16 A. Someone along the line took it to me that it
 17 addressed nol pros costs.
 18 Q. Okay. And whatever that line item was in the
 19 old sentencing sheet, that no longer exists in the new
 20 sentencing sheet?
 21 A. It doesn't appear to, no.
 22 Q. And was that your recommendation?
 23 A. No, that was not one of mine.
 24 Q. Do you know whose recommendation that was?

1 A. I have no idea.
 2 Q. You also discussed previously while the
 3 sentencing sheet was being revised that you knew that
 4 other counties did things differently; is that -- did
 5 you say that?
 6 A. No. I mean, to my knowledge, everyone was
 7 aware that other counties -- every county does things
 8 differently from the next county.
 9 Q. Right. And when you -- when the sentencing
 10 sheet was being revised, did you or anybody else that
 11 you know of look to what other counties did with their
 12 sentencing sheets or CPCMS to inform how you would
 13 revise yours?
 14 A. Not to my knowledge.
 15 Q. Okay. You also, I believe, mentioned that you
 16 know that other counties can access their sentencing
 17 sheet through CPCMS; is that right?
 18 A. That's correct.
 19 Q. Okay. How do you know that?
 20 A. I visited some of the other counties.
 21 Q. Do you remember which counties you visited?
 22 A. Lancaster, for one.
 23 Q. Do you remember when you visited Lancaster?
 24 A. I do not. I mean, prior to the pandemic.

1 Q. And after you visited Lancaster and
 2 Philadelphia, did you brief any of your colleagues or
 3 superiors on what those counties do and compared to
 4 what Montgomery County does?
 5 A. Yes.
 6 Q. And to the extent you can remember, what were
 7 those differences?
 8 A. Philadelphia -- I can't even. I mean, it's
 9 too entailed. It's totally different. Lancaster, they
 10 don't have the volume of cases we do, so they're able
 11 to do it a different way. They do not use sheets;
 12 everything is put directly into CPCMS.
 13 Q. Okay. And in Lancaster, after information is
 14 put directly into CPCMS, can court clerks in Lancaster
 15 print out sentencing sheets?
 16 A. I do not recall how they do that. I don't
 17 know if they -- the judge signed or they use electronic
 18 signatures. I do not know.
 19 Q. When you returned from your visit to
 20 Lancaster, did you recommend that Montgomery County
 21 adopt a similar practice?
 22 A. I don't think so, no.
 23 MR. TRAINER: So why don't we take just
 24 another quick ten-minute break and then I think we'll

1 Q. And is it fair to say some time after you came
 2 to the 38th Judicial District?
 3 A. I don't understand your question. It's not...
 4 Q. Did you visit Lancaster after you came to
 5 court administration?
 6 A. Yes.
 7 Q. Okay. And you visited Lancaster before
 8 July 2020?
 9 A. Yes.
 10 Q. Okay. So some time in between. Did anybody
 11 else visit Lancaster with you?
 12 A. I don't remember.
 13 Q. Okay. Do you remember if you were by yourself
 14 or not?
 15 A. Ali might have been there.
 16 Q. Okay.
 17 A. I don't remember.
 18 Q. It was a long time ago.
 19 A. If she was, I met with different people than
 20 she did while we were there.
 21 Q. And did you visit other counties?
 22 A. Philadelphia.
 23 Q. And any others?
 24 A. No, they're the only two.

1 be able to wrap up pretty shortly thereafter. Is that
 2 okay?
 3 THE WITNESS: Okay.
 4 MS. FEIGENBAUM: That's fine with me.
 5 - - -
 6 (Whereupon, a brief recess was taken
 7 at 12:04 p.m., which the deposition continued at
 8 12:10 p.m.)
 9 - - -
 10 BY MR. TRAINER:
 11 Q. Okay. Thank you, again, Ms. McMullen, for
 12 your patience. I have a few more questions, but I
 13 promise there're only a few. We today talked a lot
 14 about how you might be able to detect errors on a
 15 sentencing sheet. After you enter the information you
 16 enter into CPCMS, does anybody then go and check what
 17 you entered into CPCMS to make sure it is correct or
 18 accurate?
 19 A. Clerk of Courts.
 20 Q. And after you enter the information you enter
 21 into CPCMS, do you notify the judge that information
 22 has been entered in a case that he's presiding over?
 23 A. No.
 24 Q. To the best of your knowledge, does the judge

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1 know when you have finished entering information into
 2 CPCMS?
 3 A. Not to my knowledge.
 4 Q. And then you mentioned that after you enter
 5 your information into CPCMS, the Clerk of Courts gets
 6 the information. Do you communicate with the Clerk of
 7 Courts to say that you have finished entering in
 8 certain information into CPCMS?
 9 A. No, the only communication is we drop off the
 10 files from court, so then they know we're done with
 11 them.
 12 Q. Okay. And who does that?
 13 A. The court clerks take their own files.
 14 Q. So in this case, somebody comes and picks up
 15 the files --
 16 A. Picks the files, and then the Clerk of Courts
 17 has a table, and the files just get dumped on the
 18 table.
 19 Q. Okay. So once you finished entering a
 20 sentencing disposition sheet into CPCMS, you put a
 21 completed file in a specific area?
 22 A. Correct.
 23 Q. And then the Clerk of Court knows to come and
 24 pick up those completed sentencing disposition sheets?

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1 Q. And how do you know the judge?
 2 A. I mean, I don't know him well. I mean, I know
 3 him because he's a judge.
 4 Q. Do you know Michael Kehs?
 5 A. Yes, he is my boss.
 6 Q. And how long has he been your boss?
 7 A. Since 2018 when I started at court
 8 administration.
 9 Q. And do you know Lori Schreiber?
 10 A. Yes.
 11 Q. And how do you know Ms. Schreiber?
 12 A. I only know her -- she's the new Clerk of
 13 Courts. I never worked for her; I just know her from
 14 my dealings with Clerk of Courts.
 15 Q. And do you have a criminal history?
 16 A. No.
 17 MR. TRAINER: That's all I have,
 18 unless, Nicole --
 19 MS. FEIGENBAUM: I have no questions.
 20 MR. TRAINER: Thank you very much.
 21 - - -
 22 (Whereupon, the deposition of
 23 MEG McMULLEN was concluded at 12:15 p.m.)
 24 - - -

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1 A. Yeah. I mean, the table's in Clerk of Courts.
 2 Q. Okay. And how did that process work during
 3 the pandemic when you were working from home?
 4 A. Everything -- two ways: If the judge was
 5 virtual and the clerk was also virtual, the people that
 6 are entering were also virtual. I believe the sheets
 7 in the virtual will -- I had nothing to do with that,
 8 but I believe they were e-mailed to someone at Clerk of
 9 Courts.
 10 Q. Okay. So in that case, still, though, there
 11 would be a filled in disposition sheet that would be
 12 transmitted to --
 13 A. Correct.
 14 Q. Okay. I have three more questions and these,
 15 Ms. McMullen, are common questions that we are forced
 16 to ask in all the depositions. Do you know any of the
 17 parties in this litigation?
 18 A. You mean at this table?
 19 Q. Sure.
 20 A. No.
 21 Q. No. Do you know Judge DelRicci?
 22 A. Jennifer Red Shoe?
 23 Q. Do you know Judge DelRicci?
 24 A. Yes, I do.

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1 CERTIFICATION
 2
 3
 4
 5 I hereby certify that the proceedings and
 6 evidence noted are contained fully and accurately in
 7 the stenographic notes taken by me upon the foregoing
 8 matter on Wednesday, April 20, 2022, and that this is a
 9 correct transcript of the testimony given by the
 10 witness of the same.
 11
 12
 13
 14
 15 Nicolle Joan Tornetta
 16 Registered Professional Reporter
 17 and Notary Public
 18 My Commission Expires:
 19 July 15, 2022
 20
 21 (The foregoing certification of this transcript
 22 does not apply to any reproduction of the same by any
 23 means, unless under the direct control and/or
 24 supervision of the certifying reporter.)

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EXHIBIT E

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY McFALLS, et al., : NO. 4 M.D. 2021

Petitioners, :

vs. :

38th JUDICIAL DISTRICT, HON. :
THOMAS M. DELRICCI, President :
Judge (in his official :
capacity), MICHAEL R. KEHS, :
Esq. Court Administrator (in :
his official capacity), and :
LORI SCHREIBER, Clerk of Courts :
(in her official capacity), :

Respondents. :

Wednesday, April 20, 2022

Oral deposition of
MELISSA JENKINS-PHONGPHACHONE, taken pursuant to
notice, held at One Montgomery Plaza, 4th Floor,
Norristown, Pennsylvania, commencing at
1:20 p.m., before Nicolle J. Tornetta, Registered
Professional Reporter and Notary Public there being
present.

KAPLAN, LEAMAN AND WOLFE
Registered Professional Reporters
230 South Broad Street, Suite 1303
Philadelphia, PA 19102
(215) 922-7112

APPEARANCES:

LANGER, GROGAN & DIVER, P.C.
BY: KEVIN TRAINER, ESQUIRE
MARY CATHERINE ROPER, ESQUIRE
JOHN J. GROGAN, ESQUIRE
1717 Arch Street, Suite 4020
Philadelphia, Pennsylvania 19103
(215) 320-5662
jgrogan@langergrogan.com
Representing the Petitioners

AMERICAN CIVIL LIBERTIES UNION PENNSYLVANIA
BY: ANDREW CHRISTY, ESQUIRE
P.O. Box 60173
Philadelphia, Pennsylvania 19102
(215) 592-1513 ext. 138
achristy@aclupa.org
Representing the Petitioners

RUDOLPH CLARKE, LLC
BY: GREGORY R. HELENIAK, ESQUIRE
DEREK A. KEIGHTLY, ESQUIRE
7 Neshaminy Interplex, Suite 202
Trevose, Pennsylvania 19053
(215) 633-1830
gheleniak@rudolphclarke.com
Representing the Clerk of Courts

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WITNESS
MELISSA JENKINS-PHONGPHACHONE
(Witness sworn.)
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EXHIBITS

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Melissa Jenkins-Phongphachone

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1 - - -
2 (It is agreed by and among counsel that
3 reading, signing, sealing, filing, and certification
4 are hereby waived and all objections, except as to the
5 form of the questions, are reserved until the time of
6 trial.)
7 - - -
8 MELISSA JENKINS-PHONGPHACHONE, having
9 been duly sworn, was examined and testified as follows:
10 - - -
11 EXAMINATION
12 - - -
13 BY MS. ROPER:
14 Q. Ms. Jenkins-Phonga -- Phoncha -- no. I'm
15 going to try to get this right. Phongphachone?
16 A. Yes.
17 Q. Did I get that correct?
18 A. Correct.
19 Q. Jenkins-Phongphachone. I am Mary Catherine
20 Roper. I represent the petitioners in this matter and
21 I will be taking your deposition. I am going to --
22 before we get started with that, I do want to put one
23 housekeeping matter with your counsel on the record,
24 however, and then we will come back to you. I promise

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1 Q. We will proceed then. My first question is
2 whether you have ever given a deposition before.
3 A. No.
4 Q. Okay. I will explain how this procedure
5 works. At its core, it's very basic. I ask questions
6 and you answer them. You understand, of course, that
7 you are under oath?
8 A. Correct.
9 Q. Okay. The other thing that's important to
10 understand about this procedure is that our court
11 reporter is taking down everything we say, which means
12 she cannot record when you nod or shake your head.
13 A. Okay.
14 Q. So I will ask you to always --
15 A. Verbalize.
16 Q. Exactly. The other thing that she cannot take
17 down is two people speaking at once. So sometimes the
18 question I'm going to ask you is excruciatingly
19 obvious, but I will ask you to please wait until I have
20 finished speaking before you speak, and I will, of
21 course, try to do the same with you. Sometimes in
22 conversation, people interrupt one another and we just
23 have to try not to do that. Is that agreeable?
24 A. Agreed.

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1 it won't take very long.
2 MS. ROPER: So, for the record, we had
3 identified as one of the topics in our designee notice
4 someone who could on a live basis demonstrate the input
5 of costs on a case into CPCMS, and I understand that
6 the respondent is refusing that request, and I just
7 want to get that explanation on the record.
8 MR. HELENIAK: Yes. That's accurate.
9 The respondent, Clerk of Courts, is refusing to the
10 request for a live demonstration of the CPCMS input due
11 to the concerns with not being able to use a neutral or
12 other input method that does not disclose information
13 unrelated to this matter. We're happy to provide
14 screenshots for reference that have been redacted. I
15 also think that if we're putting it on the record that
16 procedurally, it's not appropriate at this point in the
17 litigation.
18 MS. ROPER: Your concern about using a
19 nonparty, if we instead asked for a demonstration that
20 would involve using one of our client's files, would
21 you still object to that?
22 MR. HELENIAK: At this time, yes.
23 MS. ROPER: Okay. Thank you.
24 BY MS. ROPER:

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1 Q. Okay. You are entitled to a question that is
2 clear, that you understand. I will try to make my
3 questions clear and straightforward, but that is just
4 not -- I'm not going to score a hundred percent on
5 that. So, please, when you do not understand a
6 question or you think that it is confusing, ask me to
7 clarify. Okay?
8 A. Okay.
9 Q. If you do answer a question, I'm going to
10 assume you understood it.
11 A. I would as well.
12 Q. Okay. There may be times that your lawyer
13 objects to a question that I have asked. If that
14 happens, just hold on for a moment, there may be some
15 exchange between us. I may withdraw the question and
16 change it to a new one or I may ask you to go ahead and
17 answer it. And once the two of us are done talking,
18 you will know whether you should answer the question or
19 not.
20 A. All right.
21 Q. Okay. And if by that time you have forgotten
22 the question, just ask me and I'm happy to repeat.
23 A. Please repeat. Okay.
24 Q. Exactly. We will take a couple of breaks, but

Melissa Jenkins-Phongphachone

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1 if you need a break before I call one, please just say
2 so.
3 A. Okay.
4 Q. The one sort of condition on that I will say
5 is if I've just asked you a question, please don't say
6 now I'd like to take a break.
7 A. Understood.
8 Q. Okay. Answer the question and then say you'd
9 like to take a break.
10 Is there any reason today why you would
11 have difficulty either recalling or testifying
12 truthfully? And this could be because of medication
13 you're on or if you are feeling ill or anything like
14 that.
15 A. Absolutely not.
16 Q. Okay. Great. Thank you.
17 A. You're welcome.
18 Q. To start with, I would like to ask you what
19 you have done to prepare for today's deposition?
20 A. I had a brief meeting with Greg and Lauren
21 yesterday.
22 Q. And you've just identified two people who are
23 your counsel?
24 A. Correct.

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1 Q. Okay. Did you review any documents while you
2 were preparing for this deposition?
3 A. I did not.
4 Q. Okay.
5 MS. ROPER: I'm going to ask that this
6 be marked as Exhibit 19. It's just the amended notice.
7 MR. HELENIAK: Thank you.
8 THE WITNESS: Thank you.
9 MS. ROPER: You're welcome.
10 - - -
11 (Whereupon, Exhibit 19, Amended Notice
12 of Deposition, was marked for identification.)
13 - - -
14 BY MS. ROPER:
15 Q. Ms. Jenkins-Phongphachone, could you look
16 through this document and tell me if you have seen it
17 before?
18 A. Yes.
19 Q. I'm going to try to ask you a very specific
20 question. When have you seen it?
21 A. It was sent to me this morning.
22 Q. Okay. Thank you. This is a notice of
23 deposition that asks the Clerk of Courts to designate
24 someone knowledgeable to speak on a number of different

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1 Q. I don't want you to talk about anything you
2 discussed with them.
3 A. Okay.
4 Q. Have you discussed the fact that you're taking
5 a deposition or this case with anyone other than the
6 counsel?
7 A. My husband.
8 Q. And what did you tell your husband?
9 A. That my boss asked me to step in for him, so
10 that's all.
11 Q. Okay. Did you tell your husband what you
12 understood the case to be about?
13 A. Yes.
14 Q. And what did you tell him?
15 A. I told him that the ACLU filed a suit based on
16 costs that they believe should not be put on cases.
17 Q. Okay. Thank you.
18 A. Uh-huh.
19 Q. When did you first hear about this lawsuit?
20 A. When you filed it in 2017.
21 Q. Okay.
22 A. And I remember somebody came in, there was a
23 meeting and I was brought into one of them, so I knew
24 about -- I knew this was coming.

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1 topics. I'm going to go down the list of topics on the
2 second page and ask you if you are, in fact, a person
3 who is knowledgeable on each of those topics.
4 A. All right.
5 Q. Okay. Let's start with topic No. 1 identified
6 on Page 2 of this notice, the process of interpreting
7 disposition sheets as prepared by the court clerks and
8 determining which specific costs should be entered into
9 CPCMS.
10 A. Yes.
11 Q. Okay. Topic No. 2, whose responsibility it is
12 to ensure that court costs are entered into CPCMS in a
13 manner that complies with the law.
14 A. Yes.
15 Q. Okay. Number 3, when a judge imposes costs on
16 more than one charge of the costs that are imposed,
17 which costs are imposed once per charge -- or once per
18 case, which are imposed once per case, and the reasons
19 for issue each -- I have not read it correctly. Is
20 that a topic you are prepared to testify on?
21 A. Yes.
22 Q. Thank you very much. We're going to skip
23 No. 4 because that is a matter that is disputed by your
24 counsel. Number 5, the process for modifying costs in

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1 CPCMS.
 2 A. Yes.
 3 Q. Number 6, the review process after cost
 4 information is entered into CPCMS, I would just add, by
 5 the Clerk of Courts office.
 6 A. Yes.
 7 Q. All right. Number 7, the methods and timing
 8 of each form of notice to defendants and their counsel
 9 about fines, costs and restitution they must pay.
 10 A. Yes.
 11 Q. All right. And, finally, the role that the
 12 Clerk of Courts' office plays in collecting court
 13 costs.
 14 A. Yes.
 15 Q. All right. We will move on then, but, first,
 16 I need to learn a little about you and your background.
 17 A. Okay.
 18 Q. What is your formal job title?
 19 A. Supervisor.
 20 Q. Where does that put you in the structure -- we
 21 might say hierarchy -- of the Clerk of Courts' office?
 22 A. I'm fourth.
 23 Q. Fourth down from?
 24 A. Chief.

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1 THE WITNESS: Thank you.
 2 BY MS. ROPER.
 3 Q. Good for you. What sort of work did you do as
 4 a computer engineer?
 5 A. I worked for McKean Defense Group down at the
 6 Navy yard, government contracts on naval ships.
 7 Q. How did you get the job of verifier in 2013?
 8 A. Linda liked me. I didn't even apply, to be
 9 honest with you. I was getting my master's degree, so
 10 I was, like, not working. My husband's like, stop
 11 playing video games, get off the couch. Complained to
 12 my mother, who then -- my aunt works at the courthouse.
 13 She works in jury board, so she made a call to Ann, and
 14 then HR called me. They were like, oh, we didn't -- we
 15 must have lost your application. I was like, I never
 16 applied, but that was a subtle hint that I needed to
 17 get off the couch.
 18 So I came in and I interviewed, and I
 19 thought I was going to be there for, like, three
 20 months. And I knew nothing about the judicial system
 21 and I fell in love and I stayed.
 22 Q. It's good to find something you enjoy.
 23 A. Yeah.
 24 Q. Especially when the whole thing is engineered

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1 Q. Okay. How long have you been in that
 2 position?
 3 A. Seven years.
 4 Q. And what were you doing before that?
 5 A. In the Clerk of Courts?
 6 Q. Let's start there.
 7 A. Yeah. I was hired as a verifier.
 8 Q. And when were you hired as a verifier?
 9 A. In 2013.
 10 Q. Was that your first position in the Clerk of
 11 Courts' office?
 12 A. It was.
 13 Q. What did you do before you joined the Clerk of
 14 Courts' office?
 15 A. I was a computer engineer.
 16 Q. Sounds like you are overqualified for this
 17 job.
 18 A. I really am, and underpaid.
 19 Q. We'll repeat that; that's definitely part of
 20 the record.
 21 A. I just graduated law school. I'm taking the
 22 bar in July, so let's hope.
 23 Q. Good for you.
 24 MR. CHRISTY: Congratulations.

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1 by your family.
 2 A. Yeah, exactly.
 3 Q. Okay. Tell me what your job duties were as a
 4 verifier in the Clerk of Courts' office.
 5 A. We had to verify everybody's work from start
 6 to finish, so I got to see everything, the whole
 7 process of what our office does. I felt like a teacher
 8 with a red pen, like, pointing out people's mistakes.
 9 I would do drive-bys when I had to put stuff on their
 10 desk, just make sure they weren't there and then hurry
 11 up and run.
 12 Q. Okay. Let me talk specifically about the
 13 entry of information in criminal court dockets.
 14 A. Okay.
 15 Q. That is one of the things the Clerk of Courts'
 16 office does --
 17 A. Yes.
 18 Q. -- right?
 19 You have to wait for me to finish.
 20 A. I'm so sorry.
 21 Q. So tell me how as an -- actually, let me see
 22 if we can make some distinctions here. My
 23 understanding from previous depositions is that prior
 24 to 2018, the Clerk of Courts' office entered much more

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1 information into CPCMS on criminal dockets; is that
2 true?
3 A. That is correct.
4 Q. Okay. Let's start by talking about prior to
5 2018. Prior to that change, what is it you would do to
6 verify the accuracy of work on criminal court dockets?
7 A. Regular filings, docket entries, we look at
8 the image, make sure it's the right docket number,
9 Defendant's name, the right filer is either a judge if
10 it's court ordered or the attorney or if it's pro se,
11 or the DA. So we would verify that in that it's titled
12 correctly, because some of it starts a calendar event,
13 so we have to make sure that that entry is proper
14 because it starts a clock in the background. Like, you
15 have 60 days to respond, so you need to make sure it's
16 done correctly that way.
17 As for the actual sentencing part, we
18 would enter a dispositional event, the date, the time,
19 what type of hearing it was. And then you go into the
20 sentencing side, and you would input, like, their min,
21 their max, probation, if it's county jail, state time,
22 credit time. You have to prepare the DLs for PennDOT
23 if it's a driving offense, so we have to do that.
24 Yeah, that's -- then we calculate the assessments and

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1 describe that change to me, how you understand that?
2 A. We started a pilot program because we wanted
3 to go into the courtroom and do it live so that
4 everybody had their fines and costs, everything
5 assessed before they left the courtroom. So
6 Judge O'Neill set us up for, like, a month and we
7 rotated in and out. And then he thought that his court
8 clerks could do it instead of us being in the
9 courtroom; they're already there. So they just kind of
10 adapted our idea and took it over.
11 Q. Okay. But they don't enter everything. Can
12 you distinguish for me what they enter and don't enter?
13 A. According to, like, the statute, the Clerk of
14 Courts is the one who assesses costs, fines,
15 restitution, so that part, they did not take.
16 Q. All right. So what year did you become a
17 supervisor?
18 A. 2015.
19 Q. When you became a supervisor -- and I
20 understand this was still before the change in duties
21 of 2018 -- how did your job change from what you had
22 been doing as a verifier?
23 A. I had to learn everybody's job on my team, so
24 I'm the fill-in for everyone.

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1 then calculating OSP, which is offender supervision,
2 ran by adult probation. That's a generalization.
3 Q. How many verifiers were there in the office,
4 let's say, just from 2013 when you started to sometime
5 in 2018 when the division of duties changed?
6 A. Four.
7 Q. Okay. And did you oversee specific clerks?
8 A. Yes.
9 Q. How many?
10 A. Originally when I first became supervisor, I
11 had a total of 18 people under me. I now have 14.
12 Q. Okay. Now, let me see if I understood your
13 answer correctly. For every single change that went
14 onto a docket, a clerk would enter that information,
15 and then later, a verifier would look at the document
16 that was the reason for the change and make sure that
17 the entry into CPCMS had been made correctly?
18 A. Correct.
19 Q. Every single docket change?
20 A. Correct.
21 Q. Okay. As I said, we understand that the types
22 -- some of the types of information that the Clerk of
23 Courts' office had been entering into CPCMS became the
24 job of judicial administration around 2018. Could you

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1 Q. Okay.
2 A. Yeah. Before I was just verifying, so I had
3 to learn how to docket, how to do court orders, how to
4 enter dispositional events, sentencing, adding
5 assessments. All of that fun stuff.
6 Q. So prior to becoming a supervisor in 2015, you
7 didn't actually do the first line entry of dispositions
8 or assessments into CPCMS; is that right?
9 A. That is correct.
10 Q. Okay. But since you became a supervisor in
11 2015, you have learned to do that type of entry as well
12 as the other functions?
13 A. Yes.
14 Q. Okay. How many verifiers are in the office
15 now?
16 A. Four.
17 Q. And how do their job duties compare to what
18 you were doing as a verifier?
19 A. It's absolutely the same.
20 Q. Okay. You said that you now supervise 14
21 people?
22 A. Correct.
23 Q. Are there multiple supervisors?
24 A. There's one other supervisor in our office,

Page 21

1 and then there's a supervisor at our juvenile office.
 2 Q. Okay. And what are the titles of the people
 3 you supervise?
 4 A. We call them the trial team.
 5 Q. Does that include verifiers?
 6 A. Yes.
 7 Q. Okay. And it includes people who on a
 8 first-line basis actually enter information into CPCMS?
 9 A. Correct.
 10 Q. Okay. What would we call those people who are
 11 doing the data entry?
 12 A. Well, data entry docketers; that's what we
 13 call them. And then our disposition clerks are the
 14 ones who do assessments, payment plans, the DLs. It's
 15 a higher-level paying job, so they're a level 6 versus
 16 a level 5.
 17 Q. Okay. So people who are entering docket
 18 changes other than assessments you have called data
 19 entry docketers?
 20 A. Correct.
 21 Q. Okay. And then you called the folks who are
 22 doing assessments disposition clerks?
 23 A. Correct.
 24 Q. Okay. What training did you receive when you

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1 send people -- because most of our employees have never
 2 been in a courtroom, but they're dealing with all the
 3 paperwork, so I thought it was good for them to see it
 4 live. And interesting or not, like, you know, at least
 5 they knew what we were doing and where this paperwork
 6 -- what it's going to, you know.
 7 Q. Okay. Thank you.
 8 A. Sorry.
 9 Q. Do you know Meg McMullen?
 10 A. I do. I was her supervisor.
 11 Q. Okay. What was her job when you were her
 12 supervisor?
 13 A. Dispositional clerk.
 14 Q. Okay. And there came a point in time where
 15 she went to work for judicial administration, right?
 16 A. Correct.
 17 Q. Okay. And am I correct that was associated
 18 with this shift in duties of some of the CPCMS entry
 19 over to the judicial administration side?
 20 A. Correct.
 21 Q. Okay. Although you have attended court, you
 22 have never done that in a -- as a court clerk or having
 23 anything to do with recording the proceedings; is that
 24 right?

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1 became a supervisor?
 2 A. Not too much, just kind of, you know, get into
 3 it. You know, learn. So, I mean, I learned
 4 everybody's job from the people who were in that
 5 position.
 6 Q. Did you attend formal training, say, from AOPC
 7 or was it really just being shown things by your
 8 coworkers?
 9 A. I was shown by my coworkers mostly, but I was
 10 sent to Mechanicsburg to AOPC for three days.
 11 Q. Okay. How many times have you been to AOPC
 12 training?
 13 A. Just my initial when I came in as supervisor
 14 because they made me a super user, so I had to learn
 15 all these other functions that I didn't necessarily
 16 need to use, but I was trained.
 17 Q. Okay. Have you ever worked -- I'm sorry. Let
 18 me try to ask that in a clearer fashion. Have your job
 19 duties ever included attending court hearings?
 20 A. Duties, no. Have I attended court hearings?
 21 Yes.
 22 Q. Why would you have attended court hearings?
 23 A. We had Cosby, we had Kathleen Kane. We
 24 thought it was -- we called it summer camp and we would

Page 24

1 A. Correct.
 2 Q. Okay. As the supervisor, is it your job to
 3 train new disposition clerks?
 4 A. Yes.
 5 Q. How do you train them?
 6 A. Take them step-by-step. Our part is much
 7 smaller than it used to be, so training is much easier.
 8 I have an opening, just so you know. But I sit with
 9 them for at least three weeks, show them how to enter,
 10 you know, how to calculate the -- you know, some things
 11 you have to calculate when it comes to OSP, but I'll
 12 show them how to do that, create the payment plans,
 13 prepare the DLs.
 14 Q. Do you also train verifiers?
 15 A. I do.
 16 Q. And what is your process for training
 17 verifiers?
 18 A. Similar to how I would train a dispo clerk,
 19 the only training that takes longer is superior court.
 20 I'd have to sit for, like, months because appeals come
 21 in. You know how appeals go. So for superior court,
 22 nothing is, like, wham, bam, done, you know, so that
 23 training takes longer.
 24 Q. Okay. I'm going to show you what we have

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1 marked as Exhibit 2. It's actually in front of you.
2 A. Okay. Clerk of Court Manual.
3 Q. So Exhibit 2 is called Court Clerks Manual.
4 And we have heard from Meg McMullen that it is
5 something she prepared to assist court clerks with
6 their entry into CPCMS. Is this a document you have
7 seen before?
8 A. Yes.
9 Q. Do you use this document?
10 A. I give everyone a copy of it.
11 Q. Okay. Do you use it in training? Apart from
12 actually handing someone a copy, do you actually sort
13 of walk through it and use it to --
14 A. Some parts I do use; other parts I don't
15 because you actually need to be in a screen. They're
16 screenshots. They need an update, but it's easier
17 sometimes when you're live to be able to show them.
18 And then I'll take my own screenshot and give them a
19 copy.
20 Q. Okay.
21 A. But, yes, I do utilize it.
22 Q. Okay. I'm going to show you the next three
23 documents, which we have marked as Exhibit 3,
24 Exhibit 4, and Exhibit 5. Ms. Jenkins-Phongphachone,

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1 A. Yes.
2 Q. Do you have them do the exercises?
3 A. No.
4 Q. Okay. Is there a reason for that?
5 A. You have to go into the training portal side,
6 and I don't really care for that program.
7 Q. When you say "training portal," is that a
8 component of CPCMS?
9 A. Correct.
10 Q. Okay.
11 A. There's live mode and then there's a training
12 mode.
13 Q. Okay. Why don't you care for the training
14 mode of CPCMS?
15 A. Honestly, some of the situations they give you
16 never occur.
17 Q. Okay.
18 A. So, you know, if you stumble upon something
19 like that, I'd probably go in and use it, but in this
20 county, no, never seen any of those, really.
21 Q. Okay. Is it possible in the training mode to
22 just go in and make up your own case or do you have to
23 use the scenarios they have put in there?
24 A. No, you could create a case. You could do

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1 have you seen any of these three exhibits before?
2 A. I have.
3 Q. Which ones?
4 A. All three.
5 Q. All right. Let's start with Exhibit 3.
6 A. Assessments.
7 Q. Assessments. Tell me how you are familiar
8 with this document.
9 A. I was given this document when I was hired and
10 I have used it multiple times prior to being, you know,
11 more familiar now, but in the beginning, I did use this
12 a lot.
13 Q. When you were hired as a verifier?
14 A. No, when I was hired as supervisor. Well,
15 promoted to supervisor.
16 Q. Okay. Is this a document you provide to your
17 dispo clerks or your verifiers?
18 A. Yes, they get the whole manual. They get
19 everything.
20 Q. Okay. And when you are training them, do you
21 use this to walk through with them?
22 A. I do.
23 Q. I have noticed in reviewing this manual that
24 it includes exercises.

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1 everything. Like, we do bringing up a case from
2 district court, I mean, I can create a case manually,
3 you know, fake names, date of birth, you know.
4 Q. Okay. Great. Thank you.
5 A. Uh-huh.
6 Q. Could you turn to Exhibit No. 4?
7 A. Sentencing.
8 Q. Sentencing. And could you tell me about your
9 familiarity with this document?
10 A. Same as assessments.
11 Q. Meaning that it's something you got when you
12 became a supervisor?
13 A. Correct.
14 Q. And you used it as a reference?
15 A. Yes.
16 Q. Do you still use it as a reference?
17 A. Not anymore.
18 Q. Why is that?
19 A. Well, I don't need it, nine years, I mean, but
20 you know, new people I'm training, yes, I'll reference
21 it for them.
22 Q. Okay. And I'm going to refer you to Exhibit
23 No. 5.
24 A. Dispositions. As you can see, these have not

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1 been updated in quite a long time.
2 Q. And could you explain to me your familiarity
3 with Exhibit No. 5?
4 A. Same as 3 and 4.
5 Q. Okay. When you are training your disposition
6 clerks -- well, let me put it this way: Is it accurate
7 to say that Exhibit 2, the Court Clerks Manual,
8 contains, perhaps in a more condensed form, a lot of
9 the same processes that are described in these three
10 AOPC manuals?
11 A. I would agree with that.
12 Q. Okay. Is there one source or another that you
13 use more or that you would think your dispo clerks
14 would rely on more?
15 A. They'd probably do the individual; the 3, 4,
16 and 5 exhibits.
17 Q. The AOPC?
18 A. Yes.
19 Q. Okay. Is there a reason for that?
20 A. Just because we're using AOPC, CPCMS. They
21 designed it, they're telling me how to do it, so...
22 Q. Okay. Do your dispo clerks go to trainings
23 hosted by AOPC?
24 A. They have not. Our bookkeepers have.

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1 training them all to follow the same procedure every
2 time?
3 A. That is correct.
4 Q. And if you saw someone taking a different path
5 from what you had trained them to do, you would correct
6 them, right?
7 A. I would.
8 Q. Okay. And, again, I'm going to ask you some
9 questions about prior to 2018 when the judicial
10 administration took over some CPCMS entry and post
11 2018. And let me start with pre 2018. Following a
12 sentencing, how would the Clerk of Courts become aware
13 of a case disposition and the need to enter things into
14 CPCMS?
15 A. The court clerks or the criers would bring the
16 file from the courtroom to our office, and they were
17 sorted through. Everything gets dropped off, but
18 anything with a sentencing sheet would be directly on
19 top and that would go get scanned and then be given to
20 me to divide for the girls to dispose of the case or
21 add the sentencing. ARDs are set up prior to their
22 hearings.
23 Q. Okay. And in the case of an ARD, what
24 procedure -- and, again, let's talk about pre 2018

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1 Q. Okay.
2 A. I think that's the only other -- other than
3 supervisors, I think our bookkeeping people are the
4 only ones who've gone for training.
5 Q. Can you explain the function of the
6 bookkeepers in the Clerk of Courts' office? I'm not
7 familiar with that.
8 A. Bookkeeping are the ones who handle the
9 payments. Like, it's bookkeeping. Payments aren't
10 done by the cashier, but they keep our records in
11 check, like, making sure that our bank statements are
12 balanced.
13 Q. Okay.
14 A. They're the ones who cut restitution checks,
15 they'll refund checks. They're in charge of that
16 function of the office.
17 Q. Okay. Do they have anything to do with the
18 assessment of costs?
19 A. No, because that's a conflict of interest if
20 we get audited.
21 Q. Okay. Thank you.
22 A. Uh-huh.
23 Q. When you train your dispo clerks and your
24 verifiers, would it be accurate to say that you are

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1 first -- what would be the procedure that would
2 ultimately result in the Clerk of Courts having
3 assessments to enter?
4 A. Okay. The DA sends us a list of who's going
5 to be accepted into the ARD program. It was our job to
6 prepare the case leaving the pending status, and we
7 would add all the assessments prior to the hearing
8 because the DA required them to pay the Friday before
9 the hearing. So everything was done ahead of time so
10 people knew what their balance was prior to showing up
11 for court that day.
12 Q. Okay. Let me see if I can capture what that
13 would mean. That means you would get a case that was
14 going to be disposed of through the ARD program, you
15 would know what the disposition is dictated by its
16 being part of ARD. The Clerk of Courts would enter the
17 dispositional events, would also through CPCMS assess
18 costs, anything else that was going to be associated
19 with that disposition, would take it right up to the
20 end, but would then not close the case, would not
21 confirm those costs and dispositions, right?
22 A. Correct.
23 Q. Okay. And then after the hearing, how would
24 that case come back to you?

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1 A. The DA would submit a court order signed by
 2 the judge stating that they actually went through the
 3 program. The only time we would ever alter anything is
 4 if -- say, restitution. Most of them are DUIs, so if
 5 they hit a telephone pole and they owed PennDOT, but
 6 the insurance company paid PennDOT, we would make an
 7 adjustments that way. Also, the incentive, if they
 8 paid their case in full prior to their hearing, instead
 9 of one-year probation, they would knock them down to
 10 six months. So we set everybody up for the one year,
 11 but the DA would be like, okay, they paid in full, we
 12 now reduced it to six. So those are the only two times
 13 we would alter anything prior to setting it up.
 14 Q. And how would you know that those things were
 15 supposed to be altered?
 16 A. It was all written on the court order.
 17 Q. And you're making reference to a court order.
 18 Is that the same thing as a disposition sheet?
 19 A. It is. It looks different, though. It's
 20 generated out of CPCMS and it literally just says
 21 "order" at the top of it. So it's not like one of our
 22 green or blue sheets that you see.
 23 Q. Okay. Let's talk about the disposition sheets
 24 just so that we know we're talking about the same

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1 of the criminal case, right?
 2 A. Correct.
 3 Q. Okay. Now let's talk post 2018.
 4 A. Uh-huh.
 5 Q. Can you describe for me as you understand it
 6 the life of this disposition sheet?
 7 A. It's been there as long as I've been there.
 8 It's created by court administration in the bench.
 9 Q. Okay. So what I mean by that is, in an
 10 individual case, say that my case was coming up for a
 11 sentencing, who fills out that sheet?
 12 A. The court clerk.
 13 Q. And then what happens to it?
 14 A. Well, it depends. Some court clerks pre-fill
 15 out weeks ahead. They'll have us pull what's coming
 16 and they'll pre-fill out the form. And then either
 17 they plea and it's sentenced that day or we go to a
 18 bench trial, jury trial, they can sentence defer.
 19 Q. Is it correct that that sheet could come --
 20 actually, I'm going to switch gears on you.
 21 A. Okay.
 22 Q. Before 2018, is it possible that the Clerk of
 23 Courts' office would have seen that sheet more than
 24 once?

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1 thing. In front of you there is something that has
 2 been marked as Exhibit 7. So there's a whole pile of
 3 deposition exhibits --
 4 A. Oh, there's more. I'm sorry, that manual is
 5 just so huge, I know.
 6 Q. I know.
 7 A. Thank you very much.
 8 Q. So just to be clear, I have actually handed
 9 you a document that has a note on it both for Exhibit 7
 10 and Exhibit 17. The sticker that says 17 notes that
 11 somebody else has -- Ms. McMullen actually has
 12 indicated some things, made some marks on that document
 13 and I may ask you to refer to some of those, too.
 14 A. Okay.
 15 Q. Could you identify what this document is
 16 that's in front of you?
 17 A. This is our regular sentence deferred trial
 18 plea sheet.
 19 Q. Okay. Is this what we've been calling a
 20 disposition sheet?
 21 A. Correct.
 22 Q. And I'm correct in saying that this is the set
 23 of instructions that you get following a sentencing
 24 hearing as to -- well, everything about the disposition

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1 A. Yes.
 2 Q. In a single case?
 3 A. Yes.
 4 Q. And is that because if the -- there could be a
 5 disposition event that would come to the clerk's office
 6 to be recorded?
 7 A. Uh-huh. I'm sorry, yes.
 8 Q. And then at a later time, there could be a
 9 sentencing event that would then come again to the
 10 clerk's office for the new information to be recorded?
 11 A. Correct.
 12 Q. All right. Now that the judicial
 13 administration is recording, as I understand it, the
 14 sentencing component of that process, does this sheet
 15 come to the Clerk of Courts' office before assessments
 16 are made?
 17 A. It does.
 18 Q. Tell me how that happens.
 19 A. That's the same prior -- like, before 2018,
 20 it's the same. Like, we get these and that's how we
 21 know what we need to do.
 22 Q. Okay. And say that there has been a trial and
 23 a verdict but no sentencing yet, and this disposition
 24 sheet comes to the Clerk of Courts' office, does the

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1 Clerk of Courts do any entry with it at that point?
 2 I'm talking now post 2018.
 3 A. We wouldn't unless it was sentence deferred
 4 because we would have to know if we were remanding them
 5 with no bail or if they're being -- bail is reinstated
 6 and they're out.
 7 Q. Okay. So from prior witnesses, my
 8 understanding is that when some information is filled
 9 in on that sheet, say there's a trial and a verdict,
 10 the judicial administration will enter that information
 11 into CPCMS, then put that sheet back in the file, and
 12 then drop the file off to the Clerk of Courts' office?
 13 A. Correct.
 14 Q. All right. After the Clerk of Courts has then
 15 taken up the file and performed anything that you need
 16 to perform with it -- again, I'm talking about before
 17 sentencing -- what happens to the file then?
 18 A. Prior to us entering anything, anything that
 19 came with the file, we have to have it scanned.
 20 Q. Okay.
 21 A. And then we'll enter what we need to, and then
 22 we put everything back, it gets verified, it goes to
 23 the file room to be pulled again for sentencing.
 24 Q. Okay. Now, when that file is pulled for

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1 A. But that's the last person usually who touches
 2 it.
 3 Q. That's the last person who will touch this if,
 4 say, it's not going to be appealed?
 5 A. True. And the system that he's entering in
 6 has nothing to do with CP or AOPC.
 7 Q. Okay. He's not entering into CPCMS?
 8 A. No, he is not. He's just doing sentencing
 9 guidelines for the state through a separate system, but
 10 somehow they link, but it doesn't alter anything.
 11 Q. Okay. So is it correct to say that the Clerk
 12 of Courts' office is normally the last stop for entry
 13 into CPCMS?
 14 A. Correct. Should be, anyway.
 15 Q. Okay. I'm going to ask you to pull up
 16 Exhibit 3, the AOPC Assessments Manual.
 17 A. Okay. The year I was hired.
 18 Q. You just pointed at the last updated date --
 19 A. Yeah.
 20 Q. -- on the front of this? AOPC should get on
 21 that.
 22 A. Well, you know, they're going to be de-funded.
 23 Q. Now, you've just pointed that it's been a
 24 while since this booklet was updated?

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1 sentencing and the terms of the sentence are filled in,
 2 can you tell me what on that sheet the judicial
 3 administration, the court clerks would then enter into
 4 CPCMS?
 5 A. Whatever's filled out on the sentencing side.
 6 Q. Okay.
 7 A. The front would already be done. What they
 8 would do is just put the date that they're being
 9 sentenced and who was in the courtroom.
 10 Q. Okay. And then what is left for the Clerk of
 11 Courts' office to do when that comes to you after a
 12 sentencing?
 13 A. We go in and we add the assessments, generate
 14 the DLs, if there's any that need to be done, enter a
 15 civil judgment, if that needs to be done, create a
 16 payment plan, and then it gets verified, and then we
 17 send it back to the court for sentencing guidelines to
 18 be done.
 19 Q. What does that mean?
 20 A. Frank Morgan works for court administration
 21 and he enters sentencing guidelines -- it's for the
 22 state -- based on what they pled to and their min,
 23 their max.
 24 Q. Okay.

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1 A. Uh-huh.
 2 Q. Have you looked through this manual lately?
 3 A. I haven't hired any new dispo clerks and my
 4 newest one was probably five years ago, so, no,
 5 probably not in five years.
 6 Q. Okay. I'm going to walk through some of the
 7 pages in this book. And I'm trying to understand
 8 through the screenshots in the book what is -- how this
 9 process works, what you are doing. I'm going to assume
 10 if you don't say anything that the screenshot I'm
 11 looking at is the same screen that you would see today.
 12 A. Yes.
 13 Q. Okay. But if there's some way in which CPCMS
 14 has been updated and things look different now or look
 15 different to you than they looked in this manual, would
 16 you please alert me to that?
 17 A. Absolutely.
 18 Q. Okay. I will try to remember to ask you is
 19 this the same that you see, but please, if you see
 20 something that's not what you regularly work with, try
 21 to let me know.
 22 A. Will do.
 23 Q. Okay. Thank you.
 24 - - -

<p>Page 41</p> <p>1 (Whereupon, John J. Grogan, Esquire 2 exits the conference room.) 3 - - - 4 BY MS. ROPER: 5 Q. I'm turning to Page 6 in this manual. I will 6 not make everyone go through it, actually, page-by-page 7 as I have. 8 A. Welcome to my world. 9 Q. And there's a heading here on Page 6 of 10 Exhibit 3 that says, Previewing Possible Assessments. 11 Is there any context in which you would use that 12 mechanism, that feature of CPCMS? 13 A. I have never used that. 14 Q. Okay. On Page 7 of Exhibit 3, under the 15 heading, Editing Offense Details, there's a little icon 16 and a word, Caution, and it says, Prior to assessing a 17 case, always check to ensure the grade on the offenses 18 has been recorded correctly. Is that something that 19 the Clerk of Courts does routinely? 20 A. We do. 21 Q. Okay. Can you go ahead and explain? 22 A. Okay. We do, but the court clerks who are -- 23 they're the ones who are selecting the grading. I do 24 check that, match it with the bills of information to</p>	<p>Page 42</p> <p>1 make sure it's the same, because some people, their 2 grading changes based on number of offenses for DUI and 3 things like that. 4 Q. Okay. At what point in the process is that 5 checked? 6 A. That is checked as soon as the bills of 7 information are filed. CPCMS when they -- like, they 8 submit them electronically, once they're accepted in 9 our office, CP automatically, whatever their lead 10 offense is, checks that as lead. It doesn't mean 11 that's what they're pleading guilty to, but that's the 12 lead offense. 13 Q. Okay. Let me use an example here. Sitting in 14 front of you is an exhibit that's got two numbers on 15 it, one number is Exhibit 9, one number is Exhibit 16, 16 and it's a packet of disposition sheets for some of the 17 petitioners. Let's just look at the first one of 18 those. 19 A. Okay. 20 Q. If this disposition sheet came to the Clerk of 21 Courts, to a dispo clerk, would the dispo clerk before 22 entering assessments check the grading on the offense? 23 A. We do. 24 Q. Okay. On Page 8 of Exhibit 3, it talks about</p>
<p>Page 43</p> <p>1 adding identified victims, probably for the purposes of 2 restitution. Is that something that a Clerk of Courts' 3 dispo clerk would be involved in doing? 4 A. Yes. 5 Q. And at what point in a case would that happen? 6 A. It depends on the type of case and when the DA 7 lets us know that there's a crime victim and 8 restitution is owed. 9 Q. Okay. Could that happen before a sentencing? 10 A. Yes. 11 Q. Could it happen after a sentencing? 12 A. It has. 13 Q. Okay. Your tone suggests that that's probably 14 not the right time for it to be happening? 15 A. Absolutely not. 16 Q. Okay. On Page 10 of Exhibit 3, the caption or 17 the heading is, Viewing Dispositional Details, and by 18 dispositional details, I believe it is referring to 19 whether there's a guilty plea, whether a particular 20 charge is withdrawn, et cetera. Is that something that 21 a disposition clerk in the Clerk of Courts' office will 22 look at and check? 23 A. Yes. 24 Q. Am I correct that the dispositional details,</p>	<p>Page 44</p> <p>1 that's part of what the judicial administration is 2 going to be entering? 3 A. That's correct. 4 Q. Okay. But when a sentencing sheet comes to 5 the Clerk of Courts' office, the Clerk of Courts will 6 double-check those dispositions? 7 A. Yes. 8 Q. And when I say "double-check," does the Clerk 9 of Courts -- does the disposition clerk -- how do they 10 check that? 11 A. The verifier actually checks it. The girls 12 won't check that; the verifier will catch that, just 13 because there could be counts on there that should have 14 been nol pros if they're still held for court, that 15 could mess somebody upgrading, it will mess somebody up 16 just in case they want to file for partial expungement, 17 things like that, if it's not addressed or it's wrong, 18 they don't qualify. 19 Q. Okay. So the dispo clerk doesn't actually 20 check -- 21 A. No, but the verifier will. 22 Q. Okay. I'm going to finish the sentence, 23 though. The dispo clerk doesn't actually check the 24 work of the judicial administration?</p>

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1 A. Correct.

2 Q. But the verifier does?

3 A. Correct.

4 Q. Okay. What does the verifier look at to check

5 that work?

6 A. The bills of information for the grading and

7 then also the dispositional sheet. They'll put here,

8 like, what -- if it was nol pros, what they pled guilty

9 to, make sure all counts are addressed.

10 Q. Okay. And when you said when they "put here,"

11 you pointed at the disposition sheet that is Exhibit 9

12 and Exhibit 16, right?

13 A. Correct.

14 Q. Thank you. I just have to make those things

15 very clear out loud for the purposes of the transcript.

16 A. Understood.

17 Q. Okay. So on Page 13 of Exhibit 3 is where

18 this manual on assessments finally gets to talking

19 about how to add assessments. Could you tell me when a

20 dispo clerk receives a completed sentencing sheet like

21 Exhibit 9 and 16, what are the steps that the dispo

22 clerk will follow before starting to add cases?

23 A. Steps before that, they're going in to the

24 dispositional side, make sure the event is correct that

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1 A. There's certain things that only go on once,

2 so we never do that.

3 Q. Got it. Okay. On the next page, Page 14,

4 there's a heading that says, Adding Offense-Related

5 Assessments. Can you explain to me what that

6 encompasses?

7 A. That's how we add assessments. Whatever the

8 offense is, what they pled guilty to, it automatically

9 generates.

10 Q. Okay. We're going to come back to that. The

11 next page, 15, it says, Adding Non-Offense-Related

12 Assessments. What are non-offense-related assessments?

13 A. DNA fees, lab fees, our COC fee, postage.

14 Q. Okay.

15 A. Bench warrants.

16 Q. Okay. I'm going to show you what we have

17 marked as Exhibit 12. This is a list of costs that

18 appear on dockets in Montgomery County that we have

19 prepared, so I'm not going to ask you to vouch for this

20 list that it's complete or not completed, but looking

21 through this list of costs, are there any of these

22 costs that you would identify as non-dispositional

23 assessments -- or, I'm sorry, non --

24 A. Offense.

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1 was put in by the court clerk. Then they move to the

2 sentencing side, make sure that the correct guilty is

3 checked, and then they will hit add assessments.

4 Q. Okay. Do they review judge-ordered

5 conditions?

6 A. No.

7 Q. Okay. Now, on Page 13 at the bottom of that

8 page, there's a tip with a little icon, it says,

9 Financial details can be recorded in batch by selecting

10 multiple eligible offenses prior to clicking add. Am I

11 correct in understanding that what that is saying is

12 that if you click more than one charge on the case, you

13 can perform the assessment function all at once for all

14 of the checked charges?

15 A. That is correct. We do not use that function,

16 though.

17 Q. You don't?

18 A. No.

19 Q. Okay. Is there a reason you don't use that

20 function?

21 A. Yes, because you can add -- like, our Clerk of

22 Court fee, you can add that multiple times. It only

23 goes once per case.

24 Q. Okay.

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1 Q. Non -- thank you. Yes.

2 A. Yes, the COC fee.

3 Q. Wait. Which is --

4 A. The Clerk of Courts processing fee. I

5 apologize.

6 Q. Got it. That's on the first page. Anything

7 else that --

8 A. Booking center, which is on the first page.

9 Q. Okay.

10 A. The offender supervision program on the second

11 page.

12 Q. Okay.

13 A. And that's about it.

14 Q. Okay.

15 A. Oh, I'm sorry, I missed appeal.

16 Q. Appeal. What is the process for adding these

17 particular assessments in a case?

18 A. Well, the COC fee goes on every case, but it's

19 not offense related; it's just our processing fee based

20 on whether it's a criminal case, miscellaneous docket,

21 or summary appeal.

22 Q. Wait, just a moment.

23 A. Uh-huh.

24 Q. So is that something that your dispo clerk

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1 will go in, we'll say manually, and push a button in
 2 order to add to the docket?
 3 A. Correct.
 4 Q. Okay. This is not something that pops up
 5 automatically; it's something that your dispo clerk
 6 will go in and add?
 7 A. Correct.
 8 Q. Okay. And please continue.
 9 A. The booking center fee is based on the case,
 10 if they were actually booked, the police department
 11 submits a form, so we manually enter a booking center
 12 fee. You can only have one per case. Appeal is only
 13 if they appeal to superior court, then we charge a
 14 processing fee. Substance abuse pops up, but the
 15 amount is different based on your blood alcohol level.
 16 So if it's under a .16, it's \$100. If it's over that,
 17 it's \$300.
 18 Q. When you say it "pops up," do you mean that it
 19 automatically generates as part of the cost?
 20 A. It does.
 21 Q. But you will go in and alter it?
 22 A. If the BAC is greater than .16.
 23 Q. Okay. But that is not a cost that the dispo
 24 clerk has to individually push a button to generate?

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1 just put a 1?
 2 A. (Complies.)
 3 MS. ROPER: This will be Exhibit 20.
 4 - - -
 5 (Whereupon, Exhibit 20, List of Costs
 6 on Dockets in Montgomery County, was marked for
 7 identification.)
 8 - - -
 9 BY MS. ROPER:
 10 Q. And how do you know that each of those can
 11 only be assessed once per case?
 12 A. Because most of them aren't statute related.
 13 Q. Can you explain that answer?
 14 A. Like, the Clerk of Courts' fee is not
 15 associated with a statute or offense. Same thing with
 16 the booking center fee, it's not actually linked to an
 17 offense.
 18 Q. Okay. For those that are defined by a
 19 specific statute, is that a fair way of describing the
 20 other ones?
 21 A. Correct.
 22 Q. Have you reviewed the statutes to see whether
 23 they may be assessed more than once per case?
 24 A. CP, it's full compliant. It wouldn't allow

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1 A. Correct.
 2 Q. Okay. What about OSP?
 3 A. OSP you have to manually enter.
 4 Q. Okay. Let's talk about adding offense-related
 5 assessments.
 6 A. Okay.
 7 Q. All right. Am I correct that most of the
 8 items listed on Exhibit 12 you would consider
 9 offense-related assessments?
 10 A. Correct.
 11 Q. And by the way, since we're looking at this,
 12 would you be able to go down that list with a pen and
 13 mark -- I want to know which ones can only be once per
 14 case and which ones in your view can be more than once
 15 per case. And so I'm going to ask you to put a 1 --
 16 Well, let me ask this question: The
 17 ones that can appear more than once per case, how many
 18 times per case can they appear?
 19 A. Most of them, it's any guilty if a judge
 20 instructs --
 21 Q. As much --
 22 A. -- costs. Guiltys that there are.
 23 Q. Okay. So could you take a pen and just next
 24 to each one that can only be assessed once in a case

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1 you to add it if it wasn't statute related.
 2 Q. Okay. I am going to ask you, though, to tell
 3 me, have you reviewed any statutes to see what their --
 4 A. Personally, no.
 5 Q. Okay. Are you aware of anyone associated with
 6 the Clerk of Courts' office -- let me finish -- who has
 7 reviewed statutes to see which of these costs may
 8 properly be assessed more than once per case?
 9 A. I would assume Linda, but that's an
 10 assumption. She's been there for 25 years and I know
 11 she read up on everything.
 12 Q. Okay. Has Linda ever told you that she has
 13 done such a review?
 14 A. In the past, yes.
 15 Q. Let me back up for a moment. What is Linda's
 16 full name?
 17 A. Sulock.
 18 Q. And what is her position?
 19 A. She's a second deputy.
 20 Q. What did she say to you that leads you to
 21 believe she had reviewed statutes?
 22 A. Before I became a super user, she gets
 23 bulletin updates, and as you see, the ones that say,
 24 "The act of" next to all of them, it's statute related

<p style="text-align: right;">Page 53</p> <p>1 or an act. So she would review the act or the new 2 bulletin that she gets sent through AOPC allowing an 3 update or telling you now the fee's increased or... 4 Q. Okay. So my understanding of what you're 5 saying is that you know she reviews every one of these 6 updates and any act that comes through, correct? 7 A. Correct. 8 Q. But has she ever specifically said to you I 9 checked to make sure how many times that cost can be 10 imposed? 11 A. No, she usually just prints out the bulletin 12 and gives it to everybody, so you're supposed to read 13 it yourself. 14 Q. Does everybody read it themselves? 15 A. No. 16 Q. Do you read all the bulletins? 17 A. No, I usually get a brief synopsis, like, hey, 18 guys, did you read that? 19 Q. Okay. 20 A. I'm a very busy girl. 21 Q. Right. Okay. You said a moment ago that 22 CPCMS is rule compliant and it wouldn't allow you to 23 assess any fees that were not permitted by law. Is 24 that something someone told you?</p>	<p style="text-align: right;">Page 54</p> <p>1 A. That's what AOPC has told us because we go to 2 conferences and I've asked a couple times, and they're 3 like, if it's not rule compliant, you cannot -- I can't 4 adjust anything or add; it won't let you. The system 5 just -- nope, you get a little error button. 6 Q. Okay. Turning back to Exhibit 3. 7 A. Okay. 8 Q. I'll turn you to Page 16 in Exhibit 3. 9 A. Uh-huh. 10 Q. There's a heading that says, Viewing and 11 Editing Assessments. There's another heading that 12 says, Canceling an Assessment. 13 A. Uh-huh. 14 Q. In CPCMS, have you used these functions? 15 A. Yes. 16 Q. Beginning at Page 20 through 22, there appear 17 to be more sections dealing with Editing Assessments, 18 Adjusting Assessments, Canceling Assessments. Are 19 these all things that you know how to do in CPCMS? 20 A. Yes. 21 Q. Are these things that your dispo clerks know 22 how to do in CPCMS? 23 A. Yes. 24 Q. Okay. I'm going to ask you to turn to the</p>
<p style="text-align: right;">Page 55</p> <p>1 disposition sheets that are marked as Exhibit 9 and 2 another exhibit number. I'm going to ask you first to 3 turn to -- I think it's the fifth page into that batch, 4 there's a disposition sheet for Vincent Esposito. 5 A. Uh-huh. I see it. 6 Q. Okay. Looking at the first page of this 7 disposition sheet, under the current division of labor 8 between judicial administration and Clerk of Courts, is 9 there any information on this first page that a 10 disposition clerk would be entering in the Clerk of 11 Courts' office? 12 A. Yes. 13 Q. What is it? 14 A. The bail. 15 Q. Okay. And can you tell me where that is on 16 this sheet? 17 A. At the very bottom, the sentence deferred box 18 is checked, and you see how they said he's released on 19 same bail? 20 Q. Got it. Okay. Let's turn to Page 2 of this. 21 Can you tell me specifically on this page which pieces 22 of information a Clerk of Courts' disposition clerk 23 would enter into CPCMS? 24 A. Currently or the way we used to?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Currently. 2 A. Okay. We would add the assessments for 3 Counts 2 and 4 to pay the cost to prosecution. 4 Q. Okay. And will you -- I think you have 5 pointed out sort of the middle of the page where 6 there's a box checked next to defendant is sentenced to 7 pay the cost of prosecution? 8 A. Correct. 9 Q. All right. Do you and do you teach your dispo 10 clerks to read this sentencing form? 11 A. Yes, I do, and I teach them -- because we were 12 told by the bench -- I used to send it back for 13 correction all the time. They're running concurrent. 14 When they put it on the line like that, it's to run 15 concurrently. If they wanted to do it consecutively, 16 they would use the lower box. But when it comes to 17 costs, they're imposing costs on both counts. 18 Q. Okay. And when you say that instruction came 19 from the bench, could you explain to me what you mean 20 by that? 21 A. We would send it back for clarification. 22 Q. And what period of time are you talking about 23 when you say "we would send it back for clarification"? 24 A. We still send tons of things back for</p>

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1 clarification, but when we weren't in the courtroom and
 2 they weren't doing it, we weren't there, so we didn't
 3 know what was intended by the bench. We sent it back
 4 and then we had a meeting with -- it was, I think,
 5 Judge DelRicci, Branca, and I think O'Neill was there
 6 as well, because judges were getting annoyed that we
 7 kept sending things back. Like, what do you mean by
 8 this? Like, I wasn't there, I'm sorry, and I don't
 9 have your notes of testimony. So they told us when
 10 it's written like this with a comma or they'll do the
 11 "and" symbol, they are to run concurrent.
 12 Q. Okay. Do you recall when that meeting was?
 13 A. I'm going to say it was probably when I became
 14 -- promoted to manager or supervisor, so 2015-ish.
 15 Q. Okay. Tell me what kinds of things today you
 16 would send back for clarification.
 17 A. Well, if the grading is wrong, if all the
 18 counts aren't written on the front of it, like,
 19 matching the bills of information, if all counts were
 20 not addressed. We send back for clarification,
 21 sometimes they have multiple boxes checked and you're
 22 like, wait a minute, what's going on here. So anything
 23 like that, we'll send back to the court clerk who
 24 closed it, and if she needs direction or he, they'll

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1 and I see what appears to be Count 2, 4 and underneath
 2 that in paren what looks to me like the word
 3 concurrent?
 4 A. Correct.
 5 Q. Okay. What is your understanding of what that
 6 means with respect to imprisonment?
 7 A. Both counts are being served at the same time.
 8 Q. Okay. And down below where it, again, says,
 9 Count 2, comma, 4 with a checkbox, Defendant is
 10 sentenced to pay the costs of prosecution, you said
 11 that because it's 2, comma, 4, that is also concurrent?
 12 A. And both counts are written on there. If he
 13 didn't want costs on one of them, he would only write 2
 14 or 4.
 15 Q. Okay. You used the word "concurrent" to -- I
 16 thought I heard you use the word "concurrent to
 17 describe that line as well and I then didn't understand
 18 what you meant by that.
 19 A. I apologize. I meant the way it's written in
 20 both places with the comma, that means to them
 21 concurrent.
 22 Q. And what does concurrent mean when it comes to
 23 costs?
 24 A. Nothing.

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1 ask the judge specifically.
 2 Q. Okay. Specifically on this sentencing sheet
 3 for Mr. Esposito, who is it you would send something
 4 back to?
 5 A. I would send it back to Tara D'Aquilente. She
 6 was the court clerk.
 7 Q. Okay. And you know that because it says ETD
 8 on the top left corner?
 9 A. No. If you look in the little grid box, at
 10 the very bottom it says, Court clerk.
 11 Q. Thank you.
 12 A. You're welcome.
 13 Q. Okay.
 14 A. I do that and we're in CP. Whoever entered
 15 the information, their name would be behind it. So say
 16 Tara was the girl in the courtroom that day, I would
 17 send it back to her or Meg because Meg's the one who
 18 enters everything for them.
 19 Q. Right.
 20 A. But Tara was the one in the courtroom, so I'll
 21 ask her what's up.
 22 Q. What's up. Okay. Now, when you and I see on
 23 Mr. Esposito's sheet on the second page where you -- at
 24 the very top, where it's talking about imprisonment,

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1 Q. Okay. Thank you.
 2 A. You're welcome.
 3 Q. I was confused. And so tell me what your
 4 reading of that means.
 5 A. For the cost portion?
 6 Q. Yes.
 7 A. To me it means that he is imposing costs on
 8 both counts.
 9 Q. All right. And how do you know which costs
 10 are to be imposed on which count?
 11 A. When I select it by the statute, the offense,
 12 it automatically generates in CPCMS.
 13 Q. Okay. Looking at the next sentencing sheet
 14 that's in that packet, it's a sentencing sheet for a
 15 Gregory Jackson, and turning to the back side of that,
 16 can you tell me what this sentencing sheet says to you
 17 about costs?
 18 A. Count 1 is paying costs, and Count 4, it looks
 19 like he wrote plus costs.
 20 Q. Okay.
 21 A. And it's to be paid within 36 months.
 22 Q. Okay. And can you just describe where you see
 23 that for the record?
 24 A. It's the second one where Count 1 is written

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1 and all the way to the side -- the cost line, if I can
 2 refer to it as that, it says within the first
 3 36 months.
 4 Q. Okay. How would you enter that into CPCMS?
 5 A. We would set up their payment plan for their
 6 release within 36 months.
 7 Q. Okay.
 8 A. Because he's doing state time.
 9 Q. Got it. Okay. So is this a sheet that you
 10 also read to say that there should be costs imposed on
 11 two different counts?
 12 A. Yes.
 13 Q. I don't mean to be too picky, but it looks
 14 different than the other one. It looks different than
 15 Mr. Esposito's.
 16 A. It does.
 17 Q. But you read them to mean the same thing?
 18 A. Correct.
 19 Q. Why is that?
 20 A. Because Judge Carpenter is addressing Count 4
 21 in the lower box, it's running concurrently with
 22 Count 1, but he wrote he's doing 5 to 15 at SCI plus
 23 costs, so that's cost of prosecution.
 24 Q. Okay. So even though they look different,

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1 appease the bench. They wanted to create -- they
 2 created this one. You can see on your Exhibit 9, 16,
 3 Judge Carpenter designed that one. They thought the
 4 older ones had too many boxes and was confusing, so
 5 they eliminated it.
 6 Q. How do you know what you just told me about
 7 their reasons for --
 8 A. Because I did have a brief meeting with court
 9 administration and they approached us before it
 10 happened and said, just so you know, they're changing
 11 their Gagnon sheets and their sentencing sheets.
 12 Q. Who in court administration did you meet with?
 13 A. At the time, it was Andrea Grace and Denise
 14 Vicario, which I welcomed because, I mean, it was crazy
 15 how many boxes could be checked. It's a little
 16 streamlined now.
 17 Q. Did you find the new version easier to read?
 18 A. Yes.
 19 Q. Okay. But am I correct that from your point
 20 of view, that's the only change?
 21 A. Correct.
 22 Q. All right. Pointing to the old sentencing
 23 sheet, let's look at Mr. Esposito.
 24 A. Okay.

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1 your practice is to read these two different sentencing
 2 forms as ordering essentially the same thing?
 3 A. Correct.
 4 Q. Okay. Is that something that a judge told you
 5 to do?
 6 A. Yes. You send things back for clarification,
 7 you learn each judge does something different and you
 8 learn how they write things and what their intention
 9 is. If not, I send it back for correction or
 10 clarification.
 11 Q. Okay. Could you look back for a minute at
 12 Exhibit 7, which at some point was a blank disposition
 13 sheet?
 14 A. Yes.
 15 Q. Am I correct that's an updated version of what
 16 you were looking at on Exhibit 9?
 17 A. Correct.
 18 Q. Okay. Were you part of any discussions about
 19 this sheet being updated?
 20 A. I was not.
 21 Q. Okay. Is there anything you understand about
 22 this sheet to change how a Clerk of Courts' disposition
 23 clerk reads sentencing sheets?
 24 A. No. The changes that were made were to

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1 Q. Midway down the first page, there's a box
 2 checked next to, The motion of the district attorney to
 3 nol pros the following bills of information is granted.
 4 Something's written in, All remaining counts.
 5 A. Uh-huh.
 6 Q. And then it says, Costs on: Defendant,
 7 County, and county is checked.
 8 A. Correct.
 9 Q. What would it mean if defendant was checked?
 10 A. We would add nol pros costs to every case that
 11 that box was checked on.
 12 Q. Okay. Is there a point in time where that
 13 practice changed?
 14 A. Yes.
 15 Q. When was that?
 16 A. Probably the end of 2017.
 17 Q. Okay. Do you know why it changed?
 18 A. Because I was told the ACLU was inquiring, so
 19 we went to the bench. You guys didn't -- you know...
 20 Q. After this point in time where you remembered
 21 that changing, if a sentencing sheet came through that
 22 had costs on defendant checked, what would that dispo
 23 clerk do with that?
 24 A. When we made the change, I said if it was

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1 checked, you are not to add nol pros costs.
 2 Q. And what would they do? Would they --
 3 A. They would not add the nol pros cost.
 4 Q. They would finish the case and just not add
 5 nol pros cost?
 6 A. Correct.
 7 Q. Okay. I will point you to Exhibit 7, the
 8 newer disposition sheet, and midway down the page
 9 there's a box that says, The court sustains a -- no,
 10 I'm sorry.
 11 The motion of the district attorney to
 12 nol pros the following count(s) with costs on the
 13 county is granted. You are snickering. Is that
 14 because you understand that to be implementing this
 15 change you just told me about?
 16 A. Correct.
 17 Q. Okay.
 18 A. No more checkbox.
 19 MS. ROPER: So we've been going for a
 20 while. I need some water. Why don't we take, like,
 21 seven minutes.
 22 THE WITNESS: Sure.
 23 - - -
 24 (Whereupon, a brief recess was taken

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1 says, Financial Details, Add. Do you see that?
 2 A. I do.
 3 Q. Is that familiar to you?
 4 A. Yes.
 5 Q. Is that, in fact, part of the mechanism by
 6 which you add assessments in CPCMS?
 7 A. Yes.
 8 Q. Okay. Let's walk through how you in the 38th
 9 Judicial District in the Clerk of Courts' office do
 10 this. Why don't we start with the example here on
 11 Page 13. First of all, before you click that little
 12 add button, what will you have done or what will the
 13 dispo clerk have done with, let's say, Mr. Esposito's
 14 sentencing sheet?
 15 A. Before they -- they would go into the
 16 dispositional screen and add the events of what time of
 17 sentencing it will be or a dispositional event.
 18 Q. Okay.
 19 A. Then you will move on to the sentencing
 20 screen. You select the guilty charge and click the add
 21 financial button.
 22 Q. Okay. And when you click add financial, let's
 23 look at Page 14, do you, in fact, see something similar
 24 to the screenshot on Page 14?

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1 at 2:46 p.m., which the deposition continued at
 2 3:04 p.m.)
 3 - - -
 4 MS. ROPER: We are back on the record.
 5 BY MS. ROPER:
 6 Q. Ms. Jenkins-Phongphachone, I am going to now
 7 see if we can, without a computer screen, walk through
 8 the process of adding assessments in CPCMS. I'm going
 9 to try to do it using Exhibit 3, the assessments manual
 10 from AOPC. I'm going to start on Page 13.
 11 A. I opened up right to it.
 12 Q. Do you have an estimate of how many times you
 13 personally have walked through the process of doing
 14 assessments in a criminal case?
 15 A. More than I can count.
 16 Q. We're talking more than ten?
 17 A. Way more than ten.
 18 Q. We're talking more than 50?
 19 A. Correct.
 20 Q. Got it. Okay. Page 13 in the AOPC manual,
 21 Exhibit 3, includes a screenshot of a case in which
 22 there appears to be one offense, one charge, and
 23 there's an arrow directing the reader to a little box
 24 that I'm probably going to ask things about where it

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1 A. No.
 2 Q. What do you see?
 3 A. I see now the assessments that are associated
 4 with that offense.
 5 Q. Okay. And does that not look like this
 6 screenshot on Page 14 in the manual?
 7 A. Oh, sorry. Yes. I apologize.
 8 Q. Okay.
 9 A. I thought we were referencing 13 in my head
 10 for some reason.
 11 Q. Okay. But, in fact, on Page 13, we see an add
 12 button?
 13 A. Correct.
 14 Q. After you push the add button, you see
 15 something similar to what's on Page 14; is that
 16 correct?
 17 A. Yes.
 18 Q. Okay. And on the left-hand side of that
 19 screen, there's a column headed by the word Apply, and
 20 under that, at least on this screen, all of those costs
 21 have been checked off. Is that what you see when you
 22 click on add?
 23 A. Yes.
 24 Q. Okay. And if one were to scroll down this

<p style="text-align: right;">Page 69</p> <p>1 list, might one see some boxes that weren't checked? 2 A. Yes. 3 Q. Okay. And am I correct that those would be 4 assessments that might or might not apply -- 5 A. Correct. 6 Q. -- to a given case? 7 A. Correct. 8 Q. And would you then as a dispo clerk determine 9 which of those apply and check those boxes? 10 A. Yes. 11 Q. Okay. Of the ones that are automatically 12 checked, are there any that do not apply in some cases? 13 A. Yes. 14 Q. And so am I correct that you would uncheck 15 those boxes? 16 A. Correct. 17 Q. All right. And after you checked boxes that 18 needed to be checked and unchecked boxes that needed to 19 be not checked, am I correct your next step would be to 20 click okay at the bottom? 21 A. Correct. 22 Q. Okay. You mentioned earlier that the 23 substance abuse education fee is something that can be 24 different depending on sort of circumstances of a case</p>	<p style="text-align: right;">Page 70</p> <p>1 and that you might need to change the amount of the 2 assessment. Is this the screen on which you would make 3 that change? 4 A. Yes. 5 Q. Okay. Let's turn back to Page 13, and why 6 don't you turn in Exhibit 9 to Mr. Esposito's 7 sentencing sheet. So am I correct that for 8 Mr. Esposito, if we were looking at the same screen we 9 see on Page 13 in Exhibit 3, if we were looking at his 10 screen in CPCMS, we would have seen a longer list in 11 the offenses box? 12 A. Correct. 13 Q. And we would have seen different dispositions 14 for the different offenses listed? 15 A. Correct. 16 Q. All right. Two of which would have had a 17 guilty plea? 18 A. Correct. 19 Q. All right. So walk me through what you would 20 do given what you see on his disposition sheet when you 21 got that disposition sheet and pretending we could see 22 in this screen the offenses for Mr. Esposito. 23 A. Okay. I would make sure that they said guilty 24 plea. I would move to the sentencing side, I would</p>
<p style="text-align: right;">Page 71</p> <p>1 select Count 2 first, go over and then click add 2 financial. 3 Q. Okay. And you said select Count 2 because on 4 Mr. Esposito's sheet, to summarize, the only counts 5 that are receiving sentencing are 2 and 4? 6 A. Correct. 7 Q. Okay. Go ahead. 8 A. So I would click add, everything would 9 populate that should be there. I would uncheck -- 10 like, booking center fee if he didn't have a booking 11 fee, I would uncheck that. If there was a fine, I 12 would add it, but there isn't, so... The box is 13 checked, but you have to pre-fill in the amount of the 14 fine, so I would just uncheck the box. 15 Q. Okay. 16 A. Everything else should be good, I'd hit okay. 17 Then I'd move on to Count 4, do the same. To add my 18 COC fee, I would have to go to a different screen. 19 Like, my manual adding assessments on the assessments, 20 there's an actual assessment tab separate from where 21 you add financials based on offense. 22 Q. Okay. Holding that thought for a moment, if 23 we flip back to -- no, I'm sorry. Look at Page 15. 24 A. Okay.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Where it says, Adding Non-Offense-Related 2 Assessments. 3 A. Yes. 4 Q. Is that the screen that you are referring to 5 in terms of adding your fee? 6 A. Yes. 7 Q. Okay. What other fees are added on this 8 non-offense-related assessments page? 9 A. Lab fees. 10 Q. Okay. 11 A. If there were appeal fee, expungement fee, 12 things -- yeah -- that aren't offense related, you 13 would go to the assessments screen and add those. 14 Q. Referring back to Exhibit 12 where you put a 15 little 1 next to things that should only appear once 16 per case docket, of any of those -- and I ask because 17 you mentioned the booking fee -- it sounds like the 18 booking fee pops up automatically when you do offense 19 assessments and you have to uncheck it if it doesn't 20 fit? 21 A. Correct. 22 Q. And if it did fit but you were assessing costs 23 on two different counts, you would uncheck it on the 24 second count so it only appeared once?</p>

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1 A. Correct.

2 Q. Okay. All right. So let me just see if I can

3 summarize. For Mr. Esposito, you would have come to

4 the page that is represented on Page 13 in Exhibit 3,

5 you would have first clicked on Count 2 and clicked

6 add.

7 A. (Nods.)

8 Q. You would have gotten a list of assessments

9 similar to that on Page 14?

10 A. (Nods.)

11 Q. You keep nodding, but I am going to ask you to

12 say --

13 A. I'm sorry. Correct.

14 Q. Thank you. If he doesn't have a booking fee,

15 you would have unclicked booking fee?

16 A. Correct.

17 Q. There might have been other things you would

18 have added, then, for his Count 2?

19 A. In this case, no, there was nothing extra to

20 add. Whatever populated, I would do that.

21 Q. Okay. So after you removed the booking fee

22 for him, you would have pushed okay?

23 A. Correct.

24 Q. And you would have gone back to the screen on

Page 75

1 Q. Is there anything you would have added for

2 Count 4?

3 A. No.

4 Q. Okay. And, again, just to clarify, if he did

5 have a booking fee, you would have left that clicked on

6 Count 2, but unclicked it on Count 4?

7 A. Correct.

8 Q. Got it. And after you have done what you need

9 to do with Count 4, you hit okay?

10 A. Correct.

11 Q. What happens then?

12 A. If I needed to add OSP, I would do that, but

13 since he's doing state sentence, there is no OSP and

14 it's checked. Then I would go to the assessments side,

15 add my COC fee.

16 Q. Okay. When you say "go to the assessment

17 side," you mean what is represented on Page 15 in the

18 manual in Exhibit 3?

19 A. Yes.

20 Q. What they call non-offense-related

21 assessments?

22 A. Correct.

23 Q. So you told me you would go to this page so

24 you could add your COC fee?

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1 Page 13?

2 A. Correct.

3 Q. And then you would have clicked on Count 4?

4 A. You can do it all in the sentencing side.

5 Q. Okay. Yeah. Page 13, isn't that the

6 sentencing side?

7 A. Yeah, but it will show me other counts. This

8 person only has one, so that screenshot is not very --

9 Q. Not helpful.

10 A. Yes, but when you're on the sentencing side,

11 you can select both guilty's, but I do them

12 individually. We don't batch.

13 Q. Got it. Okay. You don't batch?

14 A. Correct.

15 Q. So after finishing the assessments for

16 Count 2, you would hit okay, would you then go to a

17 screen where you could select Count 4?

18 A. Correct.

19 Q. Again, we would see this long list of

20 assessments?

21 A. Correct.

22 Q. Since if he doesn't have a booking fee, you

23 would unclick the booking fee?

24 A. Correct.

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1 A. Correct.

2 Q. Anything else?

3 A. After that, I would create a payment plan.

4 Q. Okay. He's going to serve a state sentence?

5 A. Correct.

6 Q. So what would that payment plan be comprised

7 of?

8 A. When I go to his max, which is three years, I

9 create the payment plan for one month after he is

10 released.

11 Q. Got it. All right. Do you automatically

12 create a payment plan for everyone?

13 A. Yes.

14 Q. And I think you had pointed out previously --

15 actually, when we were looking at Mr. Jackson, you

16 pointed out a notation of the costs being paid within

17 36 months, but for Mr. Esposito, there is no such

18 notation, right?

19 A. That is correct.

20 Q. So what would his payment plan look like?

21 What would the monthly payment be? How long would it

22 last?

23 A. If he was on probation, we'd do it based on

24 that, but they give him three years. So I would set it

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1 up for one month after he's released and I would give
 2 him three years to pay.
 3 Q. Got it. Okay.
 4 A. And that calculates, you know, one monthly
 5 payment. It takes the total and it divides it so it's
 6 evenly spread through every month. It's the same
 7 amount for the three years.
 8 Q. So whatever the total of the assessments on
 9 the case including fines --
 10 A. Fines, everything.
 11 Q. -- it would just automatically divide by 36?
 12 A. Correct.
 13 Q. And assign that as a monthly payment amount?
 14 A. Correct.
 15 Q. Okay. Then what happens?
 16 A. They get an intro notice two weeks before
 17 their first payment is due. That notice is mailed to
 18 their house.
 19 Q. Okay. So for people who are not
 20 incarcerated --
 21 A. Correct.
 22 Q. -- they get -- I think we have seen something
 23 called an introduction letter.
 24 A. Yes, we call them intro notices.

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1 give you an instruction about that?
 2 A. I was given instruction about that.
 3 Q. By whom?
 4 A. Linda.
 5 Q. Okay. So for Mr. Esposito, if you clicked on
 6 add, wouldn't the automation fee be one of those that
 7 was automatically checked?
 8 A. Only on Count 2. It would not populate on
 9 Count 4.
 10 Q. It would not populate on the second one?
 11 A. (Nods.) Because I already have it implemented
 12 on Count 2.
 13 Q. Okay. So the system knows not to charge it on
 14 Count 4?
 15 A. Correct.
 16 Q. Okay. What about with the booking fee? Why
 17 does --
 18 A. Booking fee always populates and we uncheck
 19 it.
 20 Q. Okay. So the system does not know not to
 21 charge that?
 22 A. Correct.
 23 Q. Okay. Are there other fees that will not
 24 populate on the second count?

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1 Q. Okay. What information is on that intro
 2 notice?
 3 A. It tells them their monthly payment and when
 4 it's due at that date every month. It says what they
 5 owe in fines, what they owe just in regular costs, and
 6 what they would owe in restitution with their total
 7 balance.
 8 Q. Okay. I need to go back to CPCMS.
 9 A. Okay.
 10 Q. We talked about the costs that get
 11 automatically generated, which are represented on
 12 Page 14. How do you know which of those it's okay to
 13 charge more than once?
 14 A. Because it automatically populates. The ones
 15 that don't are the ones that I usually have to manually
 16 do. And the AT -- the automation fee, that's only one
 17 per case, always.
 18 Q. How do you know that?
 19 A. Because of the act.
 20 Q. Okay. When you say "because of the act,"
 21 what --
 22 A. Act 36 of 2000, it's a state law. It was an
 23 act that is in place.
 24 Q. Okay. And have you read that or did someone

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1 A. DNA.
 2 Q. Okay.
 3 A. Substance abuse only populates once, and like
 4 I said, that won't populate. If two DUI charges or
 5 drug charges, whatever I check as lead, it won't.
 6 Q. It won't populate again?
 7 A. It will be a grayed-out box. It does appear,
 8 but it's grayed out.
 9 Q. Got it. Okay. So you said DNA cannot be
 10 assessed twice because it won't populate?
 11 A. Correct.
 12 Q. Substance abuse does not populate on the
 13 second charge?
 14 A. It appears, but it's grayed out so you can't
 15 use it.
 16 Q. Understand. And when you say "it's grayed
 17 out," I just want to be clear, not only is the apply
 18 box not checked, but you can't check the apply box?
 19 A. That is correct.
 20 Q. Got it. Okay. Anything else you can think
 21 of?
 22 A. No. Everything else would populate and be
 23 checked for me.
 24 Q. Okay. Does the Clerk of Courts provide the

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1 defendant and/or their attorney with a copy of the
 2 disposition sheet?
 3 A. No. I believe that happens in the courtroom.
 4 Q. Okay. But you've never served that function
 5 in the courtroom?
 6 A. I have not.
 7 Q. Okay. So you don't actually know?
 8 A. Correct.
 9 Q. Okay. Am I correct that the first notice that
 10 the Clerk of Courts provides to a defendant or their
 11 attorney about costs owed is this introduction letter
 12 that goes out two weeks before their first payment is
 13 due?
 14 A. Correct.
 15 Q. And that goes to the defendant; it doesn't go
 16 to their attorney?
 17 A. That is correct.
 18 Q. Okay. Two weeks before their first payment is
 19 due, if they are not incarcerated, when does that --
 20 when is that?
 21 A. It's as soon as I get the case and I close it
 22 that day, I set the payment up for four weeks from that
 23 date. So they'll get it, their first payment is due in
 24 a month, but they'll get the notice within two weeks

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1 two weeks of the sentencing.
 2 A. That's absolutely correct.
 3 Q. Does that mean that there are some that don't
 4 -- that there are at least a non-insignificant number
 5 that happens, say, a week or more after the sentencing?
 6 A. Some, yes, especially if we send it back for
 7 correction and we're waiting for the bench to make a
 8 correction.
 9 Q. Okay.
 10 A. And sometimes Meg's on vacation.
 11 Q. Right.
 12 A. You know what I mean? It does come down to
 13 that sometimes.
 14 Q. Right, because Meg is doing the dispositional
 15 part of the CPCMS entry on the court administration
 16 side before you even get the case file?
 17 A. That is correct.
 18 Q. Got it. And you would not touch CPCMS until
 19 after she has entered the dispositional events?
 20 A. That is correct.
 21 Q. Okay. And the dispositions?
 22 A. Correct.
 23 Q. Okay. After the intro letter, when is the
 24 next time that a defendant would hear from the Clerk of

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1 prior.
 2 Q. Got it. Okay. So their first payment is due
 3 four weeks from the day the case is closed?
 4 A. Correct.
 5 Q. I'm correct that sometimes it takes a little
 6 bit of time for the Clerk of Courts to get all these
 7 assessments entered and cases closed?
 8 A. Yes.
 9 Q. All right. So if my sentencing happens on
 10 Monday, it isn't necessary -- well, it isn't
 11 necessarily true that the Clerk of Courts is going to
 12 get to that disposition sheet that week?
 13 A. It could be. It's usually within that week,
 14 but I would say, like, Tuesday, Wednesday, and that's
 15 the date that -- I use that date. If I'm adding your
 16 assessments on Wednesday, I'm doing four weeks from
 17 that date.
 18 Q. Okay.
 19 A. Not when were you sentenced; from when I'm
 20 actually adding your assessments, because I would be
 21 stealing time from you.
 22 Q. Okay. In some previous answers provided by
 23 your attorneys, we were told that the Clerk of Courts'
 24 office ensures that all assessments are entered within

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1 Courts' office about what they owe with respect to
 2 costs?
 3 A. They would get a delinquency notice if it was
 4 60 days past their due date and no payment was made,
 5 they would get a delinquency notice.
 6 Q. Okay. And what does that delinquency notice
 7 say with respect to the amount owed?
 8 A. It tells them what their monthly payment is
 9 and that this is the date you need to pay; that's
 10 pretty much it.
 11 Q. Okay. And I'm just going to ask a summary
 12 question here. Am I correct that there is no piece of
 13 paper that is ever sent to a criminal defendant that
 14 lists one-by-one the assessments that have been put on
 15 their case?
 16 A. That's correct. We do not automatically send
 17 that out. If they ask for one, it's provided, and it's
 18 also on line. It's public, so...
 19 Q. Okay. And when you say "it's public," you're
 20 talking about the public docket, right?
 21 A. Correct.
 22 Q. Okay. That public docket does not correlate a
 23 specific cost or assessment to a specific count, right?
 24 A. Correct.

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1 Q. Okay. So there is no piece of paper that they
2 are given that says you were charged these particular
3 fees on Count 2, Mr. Esposito, and these particular
4 fees on Count 4, Mr. Esposito?
5 A. Correct.
6 Q. Okay. What is your involvement with the
7 collections function of the Clerk of Courts' office?
8 A. None other than I verify what the cashier has
9 done and what case she's applied monies to, making sure
10 it's the correct defendant, the amount's correct, and
11 that if they have multiple cases -- like, they'll have
12 five cases, they send me a check for 25, we apply \$5 to
13 each case, so that one isn't just -- unless they
14 specify.
15 Q. Okay. And when you say you do that, you mean
16 that someone who is a verifier as you used to be --
17 A. Correct.
18 Q. -- verifies that transaction as they verify
19 every change on a person's case?
20 A. Correct.
21 Q. Okay.
22 MS. ROPER: I might be done. Can we
23 just take another couple minutes?
24 THE WITNESS: Sure.

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1 wanted them to be entered?
2 A. No.
3 Q. Okay.
4 MS. ROPER: That was all I have. Thank
5 you so much for your patience and for your good humor.
6 THE WITNESS: You're welcome. Thank
7 you.
8 THE COURT REPORTER: Can I just take
9 the orders on the record? Does everybody just need
10 regular delivery?
11 MS. ROPER: Yes.
12 MS. FEIGENBAUM: Yes.
13 MR. HELENIK: Yes.
14 THE COURT REPORTER: Okay. Thank you.
15 - - -
16 (Whereupon, the deposition of
17 MELISSA JENKINS-PHONGPHACHONE was concluded at
18 3:34 p.m.)
19 - - -
20
21
22
23
24

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1 - - -
2 (Whereupon, a brief recess was taken
3 at 3:30 p.m., which the deposition continued at
4 3:32 p.m.)
5 - - -
6 BY MS. ROPER:
7 Q. You've mentioned that in the Clerk of Courts'
8 office, there is a verifier who will check the work of
9 the folks who are actually doing the entry into CPCMS.
10 When does that verifier check with respect to the entry
11 of assessments and closing of a case?
12 A. Usually within a day, day-and-a-half of when
13 the dispo clerks are done with that case. They put it
14 for the verifiers to check.
15 Q. Okay.
16 A. It depends on the volume.
17 Q. Okay. But the verifier is going to check that
18 within a matter of days, if it's terribly busy and
19 backed up a week; we're not talking months?
20 A. Correct.
21 Q. Okay. Either after the dispo clerk finishes
22 entering things or after the verifier has finished
23 going over the file, does anything go back to the judge
24 to make sure that things were entered as the judge

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1 CERTIFICATION
2
3
4
5 I hereby certify that the proceedings and
6 evidence noted are contained fully and accurately in
7 the stenographic notes taken by me upon the foregoing
8 matter on Wednesday, April 20, 2022, and that this is a
9 correct transcript of the testimony given by the
10 witness of the same.
11
12
13
14
15 Nicolle Joan Tornetta
16 Registered Professional Reporter
17 and Notary Public
18 My Commission Expires:
19 July 15, 2022
20
21 (The foregoing certification of this transcript
22 does not apply to any reproduction of the same by any
23 means, unless under the direct control and/or
24 supervision of the certifying reporter.)

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