

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss**

**SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT**

\* \* \* \* \*

**COMMONWEALTH OF MASSACHUSETTS,**

**Plaintiff**

**v.**

**DOCKET NO. MICR2012-1160**

**BRANDON WINSTON,**

**Defendant**

\* \* \* \* \*

**OPENING STATEMENTS EXCERPTED FROM JURY TRIAL - DAY 2  
BEFORE THE HONORABLE MAYNARD KIRPALANI**

**APPEARANCES:**

**For the Commonwealth:**

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Woburn, Massachusetts 01801  
By: Assistant District Marisa Tagliareni  
Assistant District Attorney Emily Walsh

**For the Defendant:**

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Woburn, Massachusetts  
Courtroom 630  
Tuesday, February 24, 2015

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1 (Proceedings. All parties present.)

2 MS. TALIARENI: In January 2011, Kamilah  
3 Willingham and the defendant, Brandon Winston, were  
4 both students at Harvard Law School, and they had been  
5 friendly with each other for about a year at that time.  
6 And on the night of January 14th, 2011, a Friday night,  
7 Kamilah Willingham had plans to go out and do something  
8 with her friend, [REDACTED] [REDACTED] who had been her  
9 friend since high school and they stayed in touch.

10 And during the day on January 14th, Kamilah was  
11 also communicating with the defendant and texting him,  
12 and he asked if he could come over. She said sure, and  
13 he did so that evening.

14 They hung out for a little while, and  
15 eventually [REDACTED] came over, as well as another friend of  
16 Kamilah's from law school named [REDACTED] [REDACTED] And the  
17 four of them were all hanging out. They were drinking  
18 some alcohol and at one point Kamilah, [REDACTED] and the  
19 defendant had some cocaine, and they all did a line of  
20 cocaine. And [REDACTED] wasn't there when that happened and  
21 didn't participate in that.

22 And eventually they decided that they wanted to  
23 go out to a bar or something, so they decided to go to  
24 the Middlesex Lounge in Cambridge. And the four of  
25 them got in a cab and went there together. And when

1 ■■■ was on her way there, she was really intoxicated  
2 at that time, so intoxicated that the last thing she  
3 really remembers from that night is going into the  
4 Middlesex Bar and being handed a drink. She really has  
5 no memory of the events at the bar or after that until  
6 the next morning, when she woke up back at Kamilah's  
7 apartment in Cambridge, in Kamilah's bed, wearing  
8 nothing on the top, her tank top off, and her bra  
9 tangled in her hair and her earring.

10           Back at the Middlesex when Kamilah was there,  
11 she was dancing with some people and saw that ■■■  
12 appeared to be unbalanced and seemed unsteady on her  
13 feet. She and defendant even had a conversation about  
14 it at one point, and she thought the defendant was  
15 being really helpful with ■■■ and trying to help her  
16 because she seemed so intoxicated on that night.

17           The three of them, when the bar was closing,  
18 left together. ■■■ at that point, had already left  
19 the bar and they didn't see him for the rest of the  
20 night, but Kamilah, ■■■ and the defendant walked  
21 outside and eventually found a cab and went back to  
22 Kamilah's apartment. The defendant had left his bike  
23 there earlier, before they went to the bar.

24           When they got back there, Kamilah and ■■■ went  
25 inside and up to Kamilah's apartment on the fifth

1 floor. The defendant stayed downstairs, paid for the  
2 cab, but eventually he came upstairs, as well. And  
3 when [REDACTED] walked into Kamilah's apartment, she took off  
4 her winter coat, she fell into Kamilah's bed and passed  
5 out. She was still wearing leggings under her jeans,  
6 as well as a bra and underwear, a tank top over the  
7 bra, as well as a long zip-up sweater. And she had  
8 worn all of that to the Middlesex. And the only thing  
9 she took off when she came into the apartment, before  
10 she hit the bed, was her winter coat.

11 Kamilah wasn't feeling well at that point. She  
12 went to the bathroom and actually got sick. And when  
13 she came back into the room she saw that [REDACTED] was  
14 unconscious and that the defendant was sitting on the  
15 bed with [REDACTED]. She decided that she would get in the  
16 bed, as well, but she wanted to position herself  
17 between the defendant and [REDACTED] because at that time  
18 [REDACTED] had only met the defendant on one prior occasion,  
19 that fall in 2010 when they'd all gone to a jazz club.  
20 So she didn't want [REDACTED] waking up next to the  
21 defendant.

22 So she tried to put herself between him and  
23 [REDACTED]. And the defendant moved her on the other side of  
24 him so that he was in between [REDACTED] and Kamilah. And  
25 when Kamilah got in that position, she fell asleep.

1           The next thing she remembers, waking up in the  
2 early-morning hours, in the middle of the night  
3 basically, and the defendant was on top of her. She  
4 reached out and she felt naked skin, and she realized  
5 that was [REDACTED] and that her tank top was no longer on  
6 and her bra wasn't on her chest, that she could feel  
7 because she was feeling her naked back.

8           She asked the defendant, 'What happened to  
9 [REDACTED] clothes?' And he said at that time that he had  
10 taken them off. And he started to touch [REDACTED] breast,  
11 while she was still unconscious, with his hand.  
12 Kamilah moved his hand away from [REDACTED] told him to get  
13 out of the room, and let him at that point go sleep in  
14 her roommate's room, who wasn't there.

15           And Kamilah Willingham will tell you why she  
16 did that at that point, why she didn't kick the  
17 defendant out at that point, why she allowed him to go  
18 and stay in her roommate's room at that point. Because  
19 this was a friend of hers, a friend that she'd known  
20 for a little while at that point, and she didn't really  
21 understand what was going on at that point. So in  
22 those moments she didn't kick him out; she allowed him  
23 to sleep in her roommate's room.

24           At that time she tried to wake [REDACTED] up to see  
25 what was going on, but [REDACTED] wasn't making any sense.

1 She was throwing water on her, couldn't even wake her  
2 up, and when she eventually did, she said some things  
3 that didn't make any sense.

4 So she went, left the room, basically let [REDACTED]  
5 pass out again, which is what she did, and at some  
6 point she talked, Kamilah did, to the defendant again  
7 and asked him what was going on. And he admitted at  
8 that point that he had taken her shirt off. And  
9 Kamilah said, 'Well, how am I going to explain that to  
10 [REDACTED] And at some point the defendant said, 'Well,  
11 maybe you could just tell her that you took it off.'  
12 And then when she said okay, he said, that's great, 'I  
13 owe you one.' And in the morning, he left her  
14 apartment.

15 When [REDACTED] woke up in the morning she didn't  
16 have her shirt on. She didn't understand what was  
17 going on. She went out into the living room where  
18 Kamilah was at that point and was trying to figure out  
19 what had happened, why did she wake up without her  
20 shirt on.

21 Kamilah and [REDACTED] were talking and trying to  
22 figure out what had happened, and they decided later  
23 that day, on the 15th of January, to send a message to  
24 the defendant to ask him what was going on. So Kamilah  
25 used her phone and sent a text to the defendant and

1 said something like, 'Does [REDACTED] need to take a  
2 pregnancy test? Did you put your p in her v?' And what  
3 she meant by that was 'Did you put your penis in her  
4 vagina?' And the defendant wrote back, 'No. A finger  
5 in the v at most.'

6 And you'll see those text messages and the  
7 exchange that Kamilah and the defendant had on the  
8 15th. You will also hear a recorded statement that the  
9 defendant gave in June of 2011 about the events of that  
10 night. And you'll hear that he says at various times  
11 in that statement that when they all got back to the  
12 apartment in the early-morning hours of the 15th of  
13 January, that "[REDACTED] was out of it," in his words, and  
14 that at one point he was feeling her everywhere,  
15 including her crotch.

16 You'll hear that recorded statement and you'll  
17 hear the defendant in his own words about what he did  
18 in the early-morning hours of January 15th, 2011.  
19 You'll hear from Kamilah Willingham. You'll hear from  
20 [REDACTED] [REDACTED] You will hear that statement.

21 At the end of the trial the evidence will show  
22 that the defendant went too far with [REDACTED] that night,  
23 that she was in no position to give her consent to any  
24 kind of touching, and that when the defendant touched  
25 her breasts and touched her vaginal area, he committed



1 the crime of indecent assault and battery. And the  
2 evidence will show that he is guilty of those two  
3 charges.

4 At the end of the trial I'll have another  
5 opportunity to address you. It's at that time that I  
6 will ask you to find the defendant guilty as charged.  
7 Thank you.

8 THE COURT: Thank you, Ms. Tagliareni.

9 Do you wish to make an opening statement, Mr.  
10 Zalkind?

11 MR. ZALKIND: I do, your Honor.

12 MR. ZALKIND: Good morning, or good afternoon,  
13 ladies and gentlemen. As you know, I represent Mr.  
14 Winston.

15 You're going to hear a lot to this story. Let  
16 me talk now about what you're going to hear.

17 Mr. Winston's 30 years old. He was born on a  
18 Marine base in Camp Lejeune, South Carolina, where his  
19 father was a Marine officer. Shortly after his birth,  
20 in a year a two, his family moved to Brooklyn. And  
21 that's where he grew up, that where his parents grew  
22 up. And his father became a New York City firefighter  
23 and his mother was a math teacher.

24 He was tested as a gifted child, along with his  
25 brother, and he was in a program, I think it was called

1 Prep for Prep (sounds like), which his mother was able  
2 to get the two boys to go to high school at the  
3 prestigious Phillips Andover Academy. And there was a  
4 special program for inner-city kids to go to.

5 He graduated Phillips Andover Academy. And  
6 then after that, you will find out he went to the  
7 University of Miami and studied computer science. But  
8 after about two-and-a-half years of studying computer  
9 science, he recognized that this was not the right  
10 education for him, and he transferred to St. John's  
11 College in New Mexico.

12 And when you go to St. John's College, you find  
13 out you have to begin from the beginning, you get no  
14 credits for anything that you've done. And for four  
15 years he went to St. John's College, and he took a year  
16 off to play music. And you're not graded at that  
17 school, but it's very small classes and everybody  
18 listens to everybody, anything that anybody says.

19 And at the end of that time, he applied to law  
20 school. And he was accepted to Stanford, Columbia,  
21 Harvard. And Harvard was the best and the place for  
22 the brightest, and he went to that law school.

23 And in the fall of 2010, 2009, when he started  
24 the Law School, shortly after entering the Law School,  
25 he took an elective for recording artists. There was

1 upper-class students there and there were first-year  
2 students. He was a first-year student. And Kamilah  
3 Willingham, she was an upper-class student; she was a  
4 second-year student. And she picked him to be in her  
5 group, and the two of them became very close friends.

6           And about a week or so after Kamilah Willingham  
7 met him, they had a very minimal romantic interlude.  
8 In other words, after they went to a party she invited  
9 him over to her house with her girlfriend, and they  
10 kissed and hugged at the party. And you'll find out  
11 that Kamilah Willingham said, her story of this little  
12 interlude, was little different than his. He said they  
13 went in the bedroom, they kissed, they made out, they  
14 got a little bit undressed, and he left. She said he  
15 pushed her into the bedroom, that she was laughing at  
16 him.

17           But more or less, up until this point they both  
18 agreed, they had no romantic relationship, but they  
19 stayed as very close friends. And they would meet on  
20 this course all over the campus, and she would take him  
21 to her apartment once in a while to study. And shortly  
22 after this he concluded he did not want a romantic  
23 relationship with Kamilah, and he felt she didn't want  
24 one with him. And so they were good friends.

25           She had a boyfriend. And by the summer of 2010

1 they basically faded from each other. He heard nothing  
2 from her during the summer. He went back to school in  
3 the fall.

4 And in the fall, around, some time around  
5 November, you will find out that Kamilah Willingham  
6 started to make contact with him. And he liked her.  
7 She was a good person. She was tall and beautiful.  
8 And they were friends.

9 And they went out to some clubs. They went out  
10 to Ryles and the House of Blues. You're gonna see some  
11 pictures there. And for the first time, Brandon  
12 Winston met her friend, [REDACTED] [REDACTED] He had never  
13 met her before, he had no relationship with her. He  
14 felt she was a good-looking woman. He was not spending  
15 any time trying to have any interest with her.

16 And then comes December. And you're gonna see  
17 a series, there's a series of text messages in which  
18 Kamilah Willingham reaches out to Brandon, 'Hey, BJ,  
19 where are you?' And she starts asking him out. And he  
20 is never available; he's always doing something else.  
21 And he had a girlfriend he was breaking up with, and  
22 he's just not available. But she keeps reaching out.

23 And then she's in Africa. And she goes to  
24 Africa with [REDACTED] [REDACTED] and she sends him a video  
25 message from Africa with a picture, an attractive

1 picture of her. And this had not happened before. So  
2 she's reaching out to him, trying to makes some  
3 contact.

4 She comes back from Africa. In fact, she  
5 brings him a very nice gift from the Masai tribe, a  
6 musical instrument. And each time he calls he's very  
7 friendly to her; he's brought up to be very polite.

8 And they can't seem to get together. But at  
9 one point in January, they do get together, and they  
10 have some very personal conversations when they get  
11 together. He's telling her about the breakup with his  
12 girlfriend, and she's telling him this very close  
13 friend of hers that she's had since Newton High School,  
14 even before Newton High School, a ten-year friend,  
15 she's had some problems with her, but she's not telling

16 [REDACTED]  
17 And then after that, Brandon Winston gets a  
18 text message -- by the way, he gets a text message at  
19 some point around one o'clock in the morning to come  
20 over and see Kamilah. He doesn't answer it.

21 He gets another text message on the 13th,  
22 'Where are you? Come out.' And he doesn't answer  
23 that.

24 At some point before she says she wants to go  
25 out with him on her birthday. She's showing a lot of

1 interest.

2           Finally, they do get together. He works, he  
3 was working on a project at the Law School, and he goes  
4 over her house. And they're there for about two hours  
5 alone; this is Kamilah Willingham and Brandon. And  
6 she's giving him a special concoction of drinks that  
7 she's made, some kind of Bailey's and cream. And she's  
8 showing him these beautiful pictures of Africa that  
9 mostly, which [REDACTED] took. And she brings out cocaine.

10           And there's another law student that came over,  
11 and they share this cocaine. [REDACTED] she's gonna say she  
12 didn't see the cocaine, she did not take any cocaine.  
13 She comes along later, she comes to the house later.

14           They're all friends, they're all friendly,  
15 they're all laughing and having a great time. They  
16 leave together, by plan, for the Middlesex Lounge.  
17 Both Kamilah Willingham's home is on Mass. Ave. and the  
18 Middlesex Lounge in on Mass. Ave. But it's along the  
19 other side, it's towards Central Square. They're on  
20 the other side of Harvard.

21           So they go to the Middlesex Lounge. And you're  
22 gonna find a little different story from Mr. Winston  
23 than you are from Kamilah Willingham. When he first  
24 got there, he was very happy. It was the end of the  
25 week. He put up a tab; even though he doesn't have a

1 lot of money, he put up a tab. He spent over a  
2 hundred-and-something dollars on drinks. He bought  
3 drinks for everybody, for himself, and for strangers.

4 And he's dancing with strangers. And Kamilah  
5 Willingham's dancing. And [REDACTED] dancing.  
6 Everybody's a bit tipsy.

7 And by the way, when he was back in the  
8 apartment, Kamilah Willingham wanted to send a, sort  
9 of, a video to her mother. So you'll see this video of  
10 Brandon and Kamilah and [REDACTED] another student, that's  
11 on the video. And you're gonna see the picture. And  
12 you'll also see a picture of Brandon and Kamilah with  
13 [REDACTED] in one of the clubs that they told you that they  
14 met, and also when Brandon and Kamilah were alone.

15 So he's dancing around with everybody. And  
16 Kamilah's dancing with everybody. And about halfway  
17 through the time he's there, [REDACTED] comes up to him and  
18 they start dancing. And it's not, like, just dancing  
19 and playing around; she starts kissing him and he  
20 starts kissing her. And they are making out for about  
21 an hour. Not just straight, but there is a lot of  
22 contact between these two people. They are hugging and  
23 kissing, and he's touching her, she's touching him. It  
24 is a very sexual dancing that's occurring between them.  
25 And it goes on. And he's gonna tell you Kamilah had to

1 see this. The Middlesex Lounge is not that big a  
2 place.

3 And he was surprised and he was excited by this  
4 woman. And she's drunk, but she's functioning.

5 Kamilah Willingham will say she fell flat on her face,  
6 that one time she had high heels and she tripped. No.  
7 She didn't fall flat. She was talking to people. She  
8 was dancing around. And Kamilah Willingham, who was  
9 her good friend, who is gonna say, 'Oh she was sick,'  
10 she did nothing to take her out of there; she was  
11 chasing after another man, a man by the name of Ziggy  
12 who was there.

13 Finally the lights come on in the club, and  
14 they start to leave. And at first Brandon sees [REDACTED]  
15 talking to a lot of men. He was thinking maybe she's  
16 not even coming back and maybe she's not interested.  
17 But no, she comes back, they go outside, and Kamilah  
18 Willingham takes pictures of the two of them outside.

19 And they have to go about a hundred feet or  
20 more to get the cab. Kamilah goes to get the cab, and  
21 Brandon and [REDACTED] are walking. He's attracted to [REDACTED]  
22 he wants this to continue with the two of them.

23 They go and they drive towards Kamilah's  
24 apartment. Brandon had left his bag at the apartment.  
25 So he gets off, and they leave to go to the apartment.



1 And he sees Kamilah walking, and [REDACTED] is following her.  
2 And there's a barrier in the road; it goes up about a  
3 foot and a half. He sees them crossing over the  
4 barrier, going up the stairs to the apartment. I don't  
5 think he sees them going up the stairs; they get across  
6 the street, and he goes into the Bank of America to get  
7 some money. And then he comes back, and he wants to go  
8 up. And he asks Kamilah before that, 'Can I stay  
9 over?' And she says yes.

10 So he goes up and he gets to the buzzer. And  
11 you can't get in unless you press something to,  
12 somebody has to let you in. He doesn't know the code.  
13 He's been there only a few times before. Kamilah is  
14 going to say somehow he just was able to walk in, walk  
15 into this stairway. He's gonna tell you that's not  
16 true.

17 And you're gonna see where the buzzer is. It's  
18 halfway down the corridor of her apartment.

19 He gets up to the top of the stairs. The door  
20 is a little ajar because obviously somebody had buzzed  
21 him in, made the door ajar. And he goes into the  
22 apartment.

23 Kamilah is gonna say the two of them, meaning  
24 her and [REDACTED] were standing on the stairs, at the top  
25 of the stairs, and [REDACTED] had made a clear statement,

1 understandable statement, to her, to Kamilah. Somehow  
2 she's supposed to be completely out of it? She's  
3 making a statement.

4 He's gonna tell you he goes in, he goes down  
5 the corridor. He sees [REDACTED] in the bed. She's fully  
6 dressed. He goes down and sits down beside her.

7 He asks her to get up. She gets up. They  
8 start kissing again. She kisses him, he kisses her.  
9 It's mutual.

10 He tries to take off her shirt. He can't get  
11 it off. He says to her, 'Lift your arms up.' She  
12 lifts her arms up. He takes off her shirt. And then  
13 he tries to take her bra off. He can't. He falls  
14 asleep.

15 That's the end of it. He does not -- he will  
16 have no memory of that he was touching her. They were  
17 mutually, consensually making out. She was making out  
18 with him. And he falls asleep.

19 He will say it did not happen that Kamilah sat  
20 between them and tried to push between them and he  
21 pushed her aside. That's something you're going to  
22 hear.

23 He says he's woken up in the middle of the  
24 night. True. And Kamilah is starting to kiss him. He  
25 turns over -- he doesn't know it's Kamilah; he thinks

1 it's [REDACTED] -- and within 30 seconds to a minute he knows  
2 that it's not [REDACTED] who he's interested in. And he  
3 pulls down, stops, he rejects her.

4 And Kamilah says to him, 'Oh, you've got a wife  
5 at home.' And he says, 'Should I go on the couch,  
6 sleep on the couch?'

7 Kamilah says, 'No, go to my roommate's room.'

8 That's what you're going to hear from Mr.  
9 Winston.

10 You're gonna hear that Kamilah Willingham, she  
11 says that she was attacked by him in there, she was  
12 attacked by him. She says that he was putting his  
13 hands in her pants, that he was kissing her breasts,  
14 that he was touching her all over. There are no  
15 charges, you're going to hear, by Kamilah Willingham.  
16 And that somehow when she's in the middle of this  
17 attack, the middle of this attack she's slapping him,  
18 pushing his hand away, pulling his hair, she suddenly  
19 says, 'Why is [REDACTED] Naked?' It's ridiculous. 'Why is  
20 [REDACTED] naked?' And then he says, 'Ha ha,' and puts his  
21 hands on [REDACTED] breast.

22 This did not happen. You'll find that out.

23 He goes to his bedroom and falls asleep. When  
24 I say his bedroom, the roommate's room. In the room  
25 you'll hear that Kamilah Willingham claims that she

1 went into his bedroom and that he was half asleep -- he  
2 does not remember this -- but she asked him what  
3 happened and he says, 'Nothing. Nothing. We were  
4 making out and I fell asleep.' You'll see the  
5 statement that she makes, and you'll hear it, to the  
6 grand jury. And then he says that he gets up to leave,  
7 and she asked him why is [REDACTED] shirt off.

8 Now, this is the man that's supposedly attacked  
9 her. She says, 'Why is [REDACTED] shirt off'?

10 'I took it off.' He didn't think there was  
11 anything wrong with it. This was cool, this was nice.

12 And she says, 'Oh, but [REDACTED] going to be very  
13 upset. What am I gonna tell [REDACTED] These are grown-  
14 ups. These are people in their middle 20's.

15 And Brandon says, you know, 'You can tell her  
16 you put it, you can put her shirt on if you want.' He  
17 thought it was ridiculous. This was a woman that was  
18 making out with him for an hour in the club.

19 So then, the next day, you're gonna see a  
20 series of text messages going back and forth, where  
21 he's being accused by his friend. He's trying to  
22 mollify her. She's angry with him. She's going after  
23 him. She's not stopping.

24 He did nothing wrong. He says that, he did  
25 nothing, 'At most, I touched her.' 'Just like you and

1 me,' he says, 'just like when we were making out.'

2 And she can't stop. She can't stop.

3 But then she says they have to talk, and they  
4 go to the Cambridge Commons to talk. And she says, 'I  
5 found a condom, I found a condom in the apartment.'  
6 She's claiming she found a condom on the top of the  
7 wastebasket. And she says, 'Did you rape, did you rape  
8 [REDACTED] I'm bringing this to the police. I'm bringing  
9 this to the police.'

10 And that condom -- he gets scared. He says, 'I  
11 didn't do anything.' But he's thinking, 'Was I drunk?  
12 Did I do something I didn't know about and was there  
13 something that I did that was wrong?'

14 Well, at some point that condom was tested. It  
15 was tested for DNA. And you're gonna get a  
16 stipulation, and that stipulation is going to tell you  
17 that on that condom it was Kamilah's and an unknown  
18 man. And there was no test made of Mr. Winston, no  
19 test made of Mr. Winston. And she had to know it was  
20 hers. And Mr. Winston, with our help, went and had the  
21 DNA tested, and it was not him, it was not. And that's  
22 a stipulation. A stipulation means that's undisputed  
23 evidence. And you're gonna find out that it was not,  
24 it was not his.

25 She was after him. He rejected her after all

1 this time, and she doesn't care about him. This man,  
2 since he was charged with this, has to be out of law  
3 school, that had finished two years of law school.  
4 This has been over his head.

5 He's going to tell you, whatever little  
6 happened with him and [REDACTED] was consensual. And this  
7 woman was out to destroy him. And you, at the end, the  
8 prosecution will not be able to persuade you beyond a  
9 reasonable doubt that he was guilty of anything.

10 Thank you very much.

11  
12 *(Balance of proceedings not transcribed at this*  
13 *time.)*

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## CERTIFICATION

I, Christina O'Neill, Official Court Reporter, do hereby certify that the foregoing, Pages 1 through 23 inclusive, is a true and accurate transcription, to the best of my knowledge, skill and ability, from the record of the court proceedings in the above-entitled matter.

I, Christina O'Neill, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Administrative Format.

I, Christina O'Neill, further certify that I neither am counsel for, related to, nor employed by any of the parties to this action in which this hearing was taken, and further certify that I am not financially nor otherwise interested in the outcome of the action.

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Date

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