

Clerk's Notice of Decision
Document Sent to Parties

on 01/14/2025

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS.

JANUARY TERM, 2024

GRANTED. The Court will accept the proposed surreply attached to the motion. So ordered.



Honorable Martin P. Honigberg

January 13, 2025

State of New Hampshire

v.

Anna Barbara Hantz Marconi

Case No. 217-2024-CR-01167

STATE'S ASSENTED-TO MOTION FOR LEAVE TO FILE A SURREPLY

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General (“the State”), and respectfully requests leave of the Court to file the attached Surreply. *See N.H. Super. Ct. R. 13A*. In support thereof, the State submits as follows:

1. On January 10, 2025, Defendant filed a 237-page Reply to State’s Objection to Motion to Dismiss (First Amendment; Judicial Immunity). In her Reply, Defendant submitted four exhibits from discovery and sought to bolster her Motion through items in discovery, necessitating, in the interests of fairness, a brief response from the State.
2. Accordingly, the State seeks leave to file a brief Surreply, a copy of which is attached to this motion as Exhibit 1 for the Court’s review.
3. On January 13, 2025, counsel for Defendant was asked his position on the instant Motion. In an email response the same day, Defendant’s counsel indicated that he assents to the State’s motion.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State's Motion and accept its Surreply; and
- B. Order such other and further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

January 13, 2025

/s/ Joe M. Fincham II
Joe M. Fincham II, N.H. Bar #273596
Assistant Attorney General
Criminal Justice Bureau
New Hampshire Department of Justice
1 Granite Place South
Concord, NH 03301
(603) 271-3671

/s/ Dan A. Jiménez
Dan A. Jiménez, N.H. Bar #273604
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I cause a copy of the foregoing to be sent to counsel for the Defendant via the Court's electronic filing system.

/s/ Joe M. Fincham II
Joe M. Fincham II, N.H. Bar #273596

EXHIBIT 1

State's Proposed Surreply

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS.

JANUARY TERM, 2024

State of New Hampshire

v.

Anna Barbara Hantz Marconi

Case No. 217-2024-CR-01167

STATE’S [PROPOSED] SURREPLY

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General (“the State”), and respectfully submits this Surreply in response to Defendant’s Reply to State’s Objection to Motion to Dismiss (First Amendment; Judicial Immunity). In support thereof, the State submits as follows:

1. On January 10, 2025, Defendant filed a 237-page Reply to State’s Objection to Motion to Dismiss (First Amendment; Judicial Immunity). In her Reply, Defendant submitted four exhibits from discovery and sought to bolster her Motion through items in discovery, necessitating, in the interests of fairness, a brief response from the State.

2. ***First***, while providing certain items from discovery could be relevant for a civil motion for summary judgment (or for a criminal defendant seeking to make arguments to potential jurors through pretrial publicity), arguments relating to the sufficiency of evidence are not relevant to Defendant’s Motion to Dismiss. *See State v. Bisbee*, 165 N.H. 61, 65-66 (2013) (quotations omitted) (“There is no summary judgment procedure in criminal cases. Nor do the rules provide for a pre-trial determination of sufficiency of the

evidence. . . . The sufficiency of a criminal indictment is determined from its face;” “A motion to dismiss is not intended to be a summary trial of the evidence;” “Unlike civil proceedings, there is no summary-judgment procedure in criminal cases.”). Summary judgment is unnecessary and inappropriate in the criminal context because “[t]here is a presumption of regularity that attaches to grand jury proceedings.” *State v. Hall*, 152 N.H. 374, 376 (2005) (citing *State v. Dayutis*, 127 N.H. 101, 104 (1985)). Part of this presumption of regularity includes the sufficiency of the evidence supporting an indictment returned by the grand jury – like the indictments returned against Defendant by the Merrimack County Grand Jury in this case. *See, e.g., Ostrer v. Aronwald*, 567 F.2d 551, 553-54 (2d Cir. 1977) (“[S]peculations that the grand jury has insufficient evidence on which to indict [a defendant] are not enough to overcome the presumption of regularity attached to grand jury proceedings”).

3. ***Second***, to the extent Defendant provided this Court with certain items she believes could bolster her Motion through selective quotations,¹ she did not provide all items in discovery that would be relevant if the Court wished to ignore *Bisbee* and consider the discovery provided in considering her Motion and Reply. For example, while the State does not believe it to be appropriate to publicize all discovery in this matter, given Defendant’s publicizing of certain materials while withholding others from the Court that would undermine her arguments, the State has attached two illustrative examples. The first attachment is an email from Defendant to the scheduler for Governor Sununu wherein she

¹ The State contends that the full transcripts of the interviews contain evidence regarding Defendant’s criminal intent. *See State v. Craig*, 167 N.H. 361, 379 (2015) (quotations and citations omitted) (“Because persons rarely explain to others the inner workings of their minds or mental processes, a culpable mental state most, in most cases, . . . be proven by circumstantial evidence. The jury is entitled to infer the requisite intent from the defendant’s conduct in light of all the circumstances in the case because conduct illuminates intent.”).

requested the meeting at issue herein to discuss “a personal matter involving a member of my immediate family,” which would undermine her argument that this was a meeting covered by judicial immunity. The second attachment is a transcript of an interview with Chief Justice Gordon MacDonald, wherein the Chief Justice denied having any prior knowledge of Defendant’s meeting with Governor Sununu and disputed Defendant’s representations to the Governor regarding the administrative aspects of the Court, which would also undermine her argument that this was a meeting covered by judicial immunity.

4. ***Third***, these exhibits tend to show why Defendant has been so reluctant to verify her factual assertions through affidavit as required by Rule 35. While Defendant attested by affidavit to related factual assertions in her attorney-discipline matter, this affidavit was made before Defendant had the benefit of discovery in her criminal case, including the attached exhibits (which undermine the veracity of her assertions).

5. ***Accordingly***, this Court should follow *Bisbee* and deny Defendant’s implicit request to import civil procedures that have no place in the criminal law.

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Grant the State’s Motion and accept this Surreply;
- B. Deny Defendant’s Motion to Dismiss; and
- C. Order such other and further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General

January 13, 2025

/s/ Joe M. Fincham II
Joe M. Fincham II, N.H. Bar #273596
Assistant Attorney General
Criminal Justice Bureau
New Hampshire Department of Justice
1 Granite Place South
Concord, NH 03301
(603) 271-3671

/s/ Dan A. Jiménez
Dan A. Jiménez, N.H. Bar #273604
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I cause a copy of the foregoing to be sent to counsel for the Petitioners via the Court's electronic filing system.

/s/ Joe M. Fincham II
Joe M. Fincham II, N.H. Bar #273596

Madison Trites
Director of Scheduling
Office of Governor Christopher Sununu
(603) 271-2121

From: Trites, Madison <Madison.E.Trites@nh.gov>
Sent: Tuesday, June 4, 2024 11:47 AM
To: Justice Anna Barbara Hantz Marconi <ahantzmarconi@courts.state.nh.us>
Subject: RE: A few minutes of the Governor's time

Good Morning,

Thank you for reaching out. The Governor is currently travelling but I will review his schedule with him and follow up soon regarding his availability to meet.

Best,
Madison

Madison Trites
Director of Scheduling
Office of Governor Christopher Sununu
(603) 271-2121

From: Justice Anna Barbara Hantz Marconi <ahantzmarconi@courts.state.nh.us>
Sent: Monday, June 3, 2024 11:19 AM
To: Trites, Madison <Madison.E.Trites@nh.gov>
Subject: A few minutes of the Governor's time

Hello Madison, I would like to meet with the Governor on a personal matter involving a member of my immediate family. It should not take long, and I am happy to meet him at his convenience. I can be reached at the number below, or my cell phone [REDACTED]

*Anna Barbara Hantz Marconi
Associate Justice NH Supreme Court
1 Charles Doe Drive
Concord, NH 03301
(603) 415-6741
ahantzmarconi@courts.state.nh.us*

Trites, Madison

From: Trites, Madison
Sent: Thursday, June 6, 2024 10:29 AM
To: Justice Anna Barbara Hantz Marconi
Subject: RE: A few minutes of the Governor's time

Yes, the Governor will be available for a 2:15PM meeting so please plan to come over then. It shouldn't be a long wait, likely none at all. Thank you very much!

Madison Trites
Director of Scheduling
Office of Governor Christopher Sununu
(603) 271-2121

From: Justice Anna Barbara Hantz Marconi <ahantzmarconi@courts.state.nh.us>
Sent: Thursday, June 6, 2024 10:23 AM
To: Trites, Madison <Madison.E.Trites@nh.gov>
Subject: Re: A few minutes of the Governor's time

I can be there after 2 today - until 3:30. Shall I just come over at 2:15 and wait?

Bobbie Hantz Marconi

(603) 415-6741 [internal ext. 0214]

ahantzmarconi@courts.state.nh.us

From: Trites, Madison <Madison.E.Trites@nh.gov>
Sent: Thursday, June 6, 2024 9:54 AM
To: Justice Anna Barbara Hantz Marconi <ahantzmarconi@courts.state.nh.us>
Subject: RE: A few minutes of the Governor's time

EXTERNAL EMAIL WARNING! This email originated outside of the New Hampshire Judicial Branch network. Do not click on links or open attachments unless you recognize the sender and are expecting the email. Mouse over links to confirm the target before you click. Do not enter your username and password on sites that you have reached through an email link. Forward suspicious and unexpected messages to 'suspicious@courts.state.nh.us'.

Good Morning Justice,

The Governor will be in the office today and Friday after 2:00PM. Would you be available for a meeting from 2:00PM after either today or tomorrow? Thank you.

Best,
Madison

STATE OF NEW HAMPSHIRE

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NEW HAMPSHIRE PORT AUTHORITY *
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INTERVIEW OF CHIEF JUSTICE MACDONALD - 8/2/24
TRANSCRIBED FROM AUDIO

Prepared for: Autumn Sayball, Paralegal
N.H. Department of Justice
1 Granite Place South
Concord, NH 03301

1 INTERVIEWER: All right, my name is
2 Investigator Tom Desfosses, today's date is August
3 2nd, 2024. It's approximately 10:05 by my watch and
4 we are at the Attorney General's Office in Concord,
5 New Hampshire. And this is being audio recorded and
6 if we can just go around the room and have everyone
7 introduce themselves and whether or not they consent
8 to audio recording.

9 INTERVIEWER: Senior Assistant Attorney
10 General Dan Jimenez and I'm okay being recorded.

11 INTERVIEWER: Assistant Attorney General Joe
12 Fincham, I'm okay with being recorded.

13 CHIEF JUSTICE MACDONALD: Gordon MacDonald,
14 I consent to be recorded.

15 ATTORNEY CREEGAN: Erin Creegan, General
16 Counsel for the Judicial Branch, appearing on behalf
17 of the Chief Justice, and I consent to being
18 recorded.

19 ATTORNEY O'CONNELL: Scott O'Connell,
20 appearing on behalf of the Chief Justice, and I also
21 consent.

22 INTERVIEWER: And I know I said this off
23 recording, but I just want to let everyone know in

1 the room that if Attorney O'Connell, Attorney
2 Creegan, if you guys want to take a time out, or you
3 want to talk about a question, Chief Justice, if you
4 have -- want to take a time out, ask about a
5 question, then we'll step out of the room, provide
6 you any time you need, okay, understand?

7 ATTORNEY O'CONNELL: Thank you.

8 INTERVIEWER: All right.

9 CHIEF JUSTICE MACDONALD: Thank you.

10 INTERVIEWER: So Chief Justice, can you just
11 state your name, and spell your last name just for
12 the record, sorry?

13 CHIEF JUSTICE MACDONALD: Of course, it's
14 Gordon, G-O-R-D-O-N, MacDonald, M-A-C-D-O-N-A-L-D.

15 INTERVIEWER: Thank you, and what do you
16 currently do for work?

17 CHIEF JUSTICE MACDONALD: I'm the Chief
18 Justice of the New Hampshire Supreme Court.

19 INTERVIEWER: How long have you been doing
20 that?

21 CHIEF JUSTICE MACDONALD: I've been doing
22 that since March of 2021.

23 INTERVIEWER: So were you Chief Justice the

1 entire time?

2 CHIEF JUSTICE MACDONALD: I've been, I was
3 appointed into that position, yes.

4 INTERVIEWER: Okay, and whose position did
5 you take over?

6 CHIEF JUSTICE MACDONALD: It had been vacant
7 for 19 months or so. My most immediate predecessor
8 was Robert Lynn.

9 INTERVIEWER: Okay, who was -- was there
10 anyone taking over those duties while there was that
11 time in between?

12 CHIEF JUSTICE MACDONALD: No, there was no
13 provision under statute for an Acting Chief Justice
14 or anything like that. The, the four members of the
15 court --

16 INTERVIEWER: Yeah.

17 CHIEF JUSTICE MACDONALD: -- sort of
18 collaborated.

19 INTERVIEWER: And what did you do before you
20 became Chief Justice?

21 CHIEF JUSTICE MACDONALD: I was the Attorney
22 General of New Hampshire.

23 INTERVIEWER: For how long?

1 CHIEF JUSTICE MACDONALD: From 2017 until
2 the minute I took my current job.

3 INTERVIEWER: Well, and could you just,
4 what's the difference between the Chief Justice and
5 an Associate Justice?

6 CHIEF JUSTICE MACDONALD: The Chief Justice
7 really has two roles, one is to be a member, a member
8 of a five-member court, and in that position you're
9 really an equal with the others in terms of acting as
10 the final court in the State of New Hampshire. We
11 have one Appellate Court, so we act together in
12 deciding appeals. The other aspect of the job of
13 Chief Justice is under our Constitution the Chief
14 Justice serves as effectively the administrative head
15 of the Judicial Branch.

16 INTERVIEWER: So you're Head Administrator
17 as long as, and as well as being --

18 CHIEF JUSTICE MACDONALD: Um-hum.

19 INTERVIEWER: -- one of five, is that right?

20 CHIEF JUSTICE MACDONALD: Exactly, and --
21 and I just want to make clear in discharging my
22 administrative job I do consult and interact with my
23 colleagues on the Supreme Court regularly.

1 INTERVIEWER: Yeah, so it's not, you know,
2 you're the Grand Poohbah dictating what goes on, it's
3 more of your collaborative process?

4 CHIEF JUSTICE MACDONALD: We do work
5 together on --

6 INTERVIEWER: Okay.

7 CHIEF JUSTICE MACDONALD: -- administrative
8 tasks.

9 INTERVIEWER: And, you know, I -- what are
10 you guys, are the Chief, are the Justices of the
11 Supreme Court, are they all on Hazen Drive, or do you
12 have offices here at 1 Granite Place?

13 CHIEF JUSTICE MACDONALD: The, all of us are
14 located in one location --

15 INTERVIEWER: Okay.

16 CHIEF JUSTICE MACDONALD: -- on, it's 1
17 Charles Doe Drive which is off Hazen Drive, but we
18 all have chambers there and our chambers are in the
19 same hall.

20 INTERVIEWER: Okay.

21 CHIEF JUSTICE MACDONALD: So we work
22 together.

23 INTERVIEWER: So I'm just gonna get right

1 into it, in -- in June of, in and around early June
2 of this year, do you recall being called by Governor
3 Sununu regarding a visitor that he had?

4 CHIEF JUSTICE MACDONALD: Yes.

5 INTERVIEWER: Can you just go through that
6 in a linear fashion about how that came about?

7 CHIEF JUSTICE MACDONALD: Sure, there were
8 actually two calls.

9 INTERVIEWER: Okay, okay.

10 CHIEF JUSTICE MACDONALD: The Governor
11 called me and told me that Justice Hantz Marconi
12 wanted to come and see him and that he was going to
13 see her.

14 INTERVIEWER: Okay.

15 CHIEF JUSTICE MACDONALD: And then some
16 short, relatively short period of time later he
17 called me back about that meeting.

18 INTERVIEWER: What was the conversation
19 between you and him when he said that the Associate
20 Justice is gonna come speak to him?

21 CHIEF JUSTICE MACDONALD: My memory is it
22 was very brief. My memory is that's news to me. I,
23 I said that's news to me.

1 INTERVIEWER: Yeah.

2 CHIEF JUSTICE MACDONALD: I want to limit it
3 there 'cause that's my only clear memory.

4 INTERVIEWER: Yeah, and whatever you
5 remember. If you don't recall anything else, that's
6 perfectly fine. Just we want what's the best of your
7 memory. But it was a brief conversation, fair to
8 say?

9 CHIEF JUSTICE MACDONALD: Very brief.

10 INTERVIEWER: And you, you said, you
11 mentioned that you told the Governor that it was a
12 surprise to you?

13 CHIEF JUSTICE MACDONALD: Um-hum.

14 INTERVIEWER: Was it actually --

15 CHIEF JUSTICE MACDONALD: Words to the
16 effect that's news to me. I did not know she was
17 going to see the Governor.

18 INTERVIEWER: Okay, so that's something no
19 one cleared with you or told you beforehand?

20 CHIEF JUSTICE MACDONALD: Correct.

21 INTERVIEWER: And then you said that there's
22 a, a follow-up phone call shortly thereafter from the
23 Governor. Can you just tell us what that

1 conversation was?

2 CHIEF JUSTICE MACDONALD: Well, let me say
3 at the outset, there were, there were sort of two
4 parts to it.

5 INTERVIEWER: Yeah.

6 CHIEF JUSTICE MACDONALD: The first part was
7 a read-out of what had occurred when Justice Hantz
8 Marconi was there, and then a second part which I
9 think was actually the majority of the conversation
10 was relating to a Governor and Council meeting that
11 was gonna come up at the Supreme Court and I mean --

12 ATTORNEY CREEGAN: Doesn't relate to this
13 inquiry.

14 INTERVIEWER: Yeah, it was a separate issue,
15 Governor and Council meeting, that was gonna happen
16 at the Supreme Court?

17 CHIEF JUSTICE MACDONALD: Yeah, and it's,
18 it's relevant only because --

19 ATTORNEY CREEGAN: Do you want to discuss it
20 first or --

21 CHIEF JUSTICE MACDONALD: Sure.

22 ATTORNEY CREEGAN: -- would you like to
23 discuss it with Scott and I, or do you think --

1 CHIEF JUSTICE MACDONALD: It was like six
2 days later.

3 INTERVIEWER: Okay.

4 CHIEF JUSTICE MACDONALD: And so the timing
5 was a little bit less than ideal.

6 INTERVIEWER: Okay.

7 CHIEF JUSTICE MACDONALD: And, and he, he
8 told me the circumstances by which the G&C meeting
9 got scheduled and how, you know, it probably -- I'll
10 just leave it at that, and --

11 INTERVIEWER: Yeah, just so I, just so I
12 make sure I have it correct there's gonna be a G&C
13 meeting, a Governor and Executive Council meeting
14 scheduled. Sorry, I -- I do that sometimes and that
15 was gonna be six days later at the Supreme Court?

16 CHIEF JUSTICE MACDONALD: Yes.

17 INTERVIEWER: And there was discussions
18 about administrative stuff related to that?

19 CHIEF JUSTICE MACDONALD: There the
20 Governor's Office had a few days prior to this
21 reached out to us and asked whether the Supreme Court
22 would be willing to host a breakfast for the Governor
23 and Council. Governor and Council routinely has

1 breakfast meetings and then they have their regular
2 meetings. And the Governor and Council breakfast
3 meetings rotate among State agencies. And so,
4 although it was relatively at the last minute, we
5 agreed and, and we're prepared to hold the breakfast
6 meeting.

7 INTERVIEWER: Yeah, so that's just kind of
8 administrative stuff afterwards?

9 CHIEF JUSTICE MACDONALD: Yeah.

10 INTERVIEWER: And that was the bulk of the
11 conversation?

12 CHIEF JUSTICE MACDONALD: Those two --

13 INTERVIEWER: Yeah, those two pieces?

14 CHIEF JUSTICE MACDONALD: Yes.

15 INTERVIEWER: And what was the, in relative
16 to the read-out of Justice Hantz Marconi's visit,
17 what was the read-out of that?

18 CHIEF JUSTICE MACDONALD: So my memory
19 sitting here today is there were really three, three
20 points that I heard and, and retained. The first was
21 she complained about the Attorney General. She
22 complained, I remember, and this is the Governor
23 telling me what she said.

1 INTERVIEWER: Yeah.

2 CHIEF JUSTICE MACDONALD: And she said that
3 he, that the Attorney General was weak and that he
4 was being very political. The second thing that in
5 my memory I've retained is that the Governor told me
6 that she said she knew everything that her husband
7 knew, everything that her husband knew.

8 INTERVIEWER: Um-hum.

9 CHIEF JUSTICE MACDONALD: And the third
10 thing was that she told the Governor that she is
11 recused in 40 percent of the cases and that there are
12 important cases, and that all of this is creating a
13 burden on her colleagues.

14 INTERVIEWER: Does that include you?

15 CHIEF JUSTICE MACDONALD: Yes.

16 INTERVIEWER: Like, yeah, and anything else?

17 CHIEF JUSTICE MACDONALD: It's, it's all I
18 really remember about the substance.

19 INTERVIEWER: Yep, did you say anything back
20 in response to any of those statements by the
21 Governor?

22 CHIEF JUSTICE MACDONALD: Yes, I responded
23 to the third point.

1 INTERVIEWER: And which point was that?

2 CHIEF JUSTICE MACDONALD: The point about
3 recusals and burden on her colleagues.

4 INTERVIEWER: What was your response?

5 CHIEF JUSTICE MACDONALD: I said, Governor,
6 I just want to be very clear, these words to the
7 effect, I can't quote you exactly. Governor, I just
8 want to be very clear, we have policies and
9 procedures in place to deal with disqualifications.
10 We will get the work done. We will serve the people
11 of New Hampshire, and it is no burden on us to do our
12 job.

13 INTERVIEWER: Words to that effect, yeah.

14 CHIEF JUSTICE MACDONALD: Words to that
15 effect.

16 INTERVIEWER: And recusals happen on the
17 Supreme Court, is that fair to say?

18 CHIEF JUSTICE MACDONALD: Yes.

19 INTERVIEWER: You know, is it fair to say
20 that for a period of time you recused yourself from,
21 from the Attorney General's Office cases once you
22 came on the bench?

23 CHIEF JUSTICE MACDONALD: That is correct.

1 INTERVIEWER: You know, and that's because
2 you're the ultimate decision-makers over here, right?

3 CHIEF JUSTICE MACDONALD: I, I felt it was,
4 it was appropriate under, under all the authorities
5 that govern judicial disqualification for me to
6 disqualify myself in cases that were in this office
7 at the time I served as Attorney General.

8 INTERVIEWER: So in that conversation she,
9 she mentioned our investigation here. Prior to your
10 conversation with the Governor, was there any
11 conversations with Justice Hantz Marconi about what
12 she knew, or didn't know about our investigation?

13 ATTORNEY CREEGAN: Between herself and him?

14 INTERVIEWER: Yep, between herself and you?

15 CHIEF JUSTICE MACDONALD: Yes.

16 INTERVIEWER: Can you just expound on that?

17 CHIEF JUSTICE MACDONALD: My memory today is
18 I can recall three instances. Oh, prior to the
19 Governor's --

20 INTERVIEWER: Yeah, prior to the Governor's?

21 CHIEF JUSTICE MACDONALD: -- okay, two. The
22 first instance, I want to make sure, can you ask the
23 question again?

1 INTERVIEWER: Yeah.

2 CHIEF JUSTICE MACDONALD: I want to make
3 sure I'm responsive --

4 INTERVIEWER: Yeah.

5 CHIEF JUSTICE MACDONALD: -- because I got
6 tripped on that.

7 INTERVIEWER: Yeah, no, no, it's okay.

8 ATTORNEY CREEGAN: They obviously had a lot
9 of conversations about recusal. Do you mean to ask
10 when she, when she had knowledge of something
11 specific?

12 INTERVIEWER: Yeah, when did she have
13 knowledge of something specific as to the
14 investigation and whether she relayed that to you,
15 just her to you?

16 CHIEF JUSTICE MACDONALD: Yeah.

17 ATTORNEY CREEGAN: Essentially the, the
18 first time she would have indicated to you that she
19 had awareness that there was a criminal
20 investigation?

21 INTERVIEWER: Yeah, the first time and then
22 any times thereafter.

23 CHIEF JUSTICE MACDONALD: That she was aware

1 there was a criminal case?

2 INTERVIEWER: Yes.

3 CHIEF JUSTICE MACDONALD: Okay, at some
4 point during the month of May she told me there are
5 grand jury subpoenas being issued.

6 INTERVIEWER: Anything else in regards to
7 that?

8 CHIEF JUSTICE MACDONALD: Three to four
9 weeks ago she told me the same thing.

10 ATTORNEY O'CONNELL: Just to be clear that
11 was after the discussion you had with the Governor
12 that you've already described?

13 CHIEF JUSTICE MACDONALD: Correct, it was in
14 July.

15 INTERVIEWER: Okay, thank you, Scott. Did
16 you have a conversation with her about her meeting
17 with the Governor after the meeting?

18 CHIEF JUSTICE MACDONALD: No.

19 INTERVIEWER: Joe, any follow-ups?

20 INTERVIEWER: I thought you said that there
21 were two instances when you spoke to her prior to the
22 Governor, one was in May she said there were grand
23 jury subpoenas being issued. What was the other?

1 CHIEF JUSTICE MACDONALD: I was confused on
2 the question.

3 INTERVIEWER: Okay.

4 CHIEF JUSTICE MACDONALD: And I'm sorry, I
5 -- the timeline, there were two instances where, at
6 least two that I remember, where she said that the
7 grand jury subpoenas had been issued. One was in
8 May, and the second was in July which as Attorney
9 O'Connell's pointed out, is after the meeting with
10 the Governor.

11 INTERVIEWER: Okay, so there's only one
12 prior to the Governor?

13 CHIEF JUSTICE MACDONALD: That I remember
14 right now.

15 INTERVIEWER: You said that that, those were
16 the times that she was aware of a criminal
17 investigation. Did she ever tell you that she
18 suspected there was a criminal investigation?

19 CHIEF JUSTICE MACDONALD: Not to my memory.

20 INTERVIEWER: Okay.

21 ATTORNEY CREEGAN: And if this conversation
22 jogs his memory in any way, we'll be sure to
23 supplement.

1 INTERVIEWER: Yep, you can always, you can
2 always supplement if you feel as before Joe asks
3 another question, if you know, memory is jogged you
4 can always come back and let us know if you remember
5 something. Obviously you can step out. Here if you
6 remember something you can always get back to us,
7 okay?

8 CHIEF JUSTICE MACDONALD: Thank you.

9 INTERVIEWER: And, and I know walking into
10 this that, you know, you didn't know exactly the
11 questions but again, after our questions, you'll sort
12 of know the topics that we're interest in so --

13 INTERVIEWER: Yeah.

14 INTERVIEWER: -- feel free to supplement
15 later. Normally in recusals there's not really a
16 public statement about why a particular justice is
17 recusing at times, is that correct?

18 CHIEF JUSTICE MACDONALD: That's correct.

19 INTERVIEWER: There was a statement publicly
20 about Justice Hantz Marconi's initial recusal from
21 cases involving the Attorney General, is that
22 correct?

23 CHIEF JUSTICE MACDONALD: That's correct.

1 INTERVIEWER: Who made the decision to issue
2 that statement?

3 ATTORNEY CRREGAN: I'm sorry, I don't know,
4 I don't know if you can answer how you deliberated on
5 this issue, if you decided it. Is there, is there a
6 way, is there something that you're getting at that
7 you can maybe ask a little more directly in terms
8 of --

9 INTERVIEWER: Was this --

10 ATTORNEY CREEGAN: -- are you asking, for
11 example, Justice Hantz Marconi took some action?

12 INTERVIEWER: Right, this is a deviation
13 from sort of normal policy, did Justice Hantz Marconi
14 request this sort of special action in this case, to
15 put out a public statement about why she was recusing
16 herself?

17 ATTORNEY CREEGAN: I think you could
18 probably say a yes or no, but then that might be all
19 that you can do for this, is that all right? Do you
20 want to talk about it?

21 ATTORNEY O'CONNELL: Can we just have two
22 minutes?

23 INTERVIEWER: Yeah, of course. Yeah, of

1 course, perfectly fine.

2 INTERVIEWER: Do you want me to pause the --

3 INTERVIEWER: Yeah.

4 INTERVIEWER: Thank you.

5 INTERVIEWER: And we'll just note the time.

6 INTERVIEWER: All right, so it is 10:22 by
7 my watch and I'm going to pause the recording.

8 (Pause.)

9 INTERVIEWER: Okay, the recording is back on
10 and it is approximately 10:25 by my watch. All the
11 parties that were here previously are back again.
12 And has anything changed with consent to recording?

13 ATTORNEY CREEGAN: No.

14 CHIEF JUSTICE MACDONALD: No.

15 ATTORNEY O'CONNELL: No.

16 INTERVIEWER: No.

17 INTERVIEWER: Okay, thank you.

18 ATTORNEY CREEGAN: Okay, Joe, just repeat
19 your question?

20 INTERVIEWER: Yes, Mr. Chief Justice, we had
21 talked about how normally there aren't public
22 statements put out about reasons for recusal, but
23 there was one with Justice Hantz Marconi's recusal,

1 and I'd asked if that was as a result of any
2 requests, specific requests by Justice Hantz Marconi?

3 CHIEF JUSTICE MACDONALD: No.

4 INTERVIEWER: The public statement said that
5 the recusal was because of the Attorney General's
6 Office civilly advising the Pease Development
7 Authority with regard to the employment of Justice
8 Hantz Marconi's husband, Geno Marconi.

9 ATTORNEY CREEGAN: I think it may have been
10 more ambiguous but it said advising, that the
11 Attorney General's Office is involved or something
12 with regard to the situation of her spouse. It may
13 have been ambiguously worded because it was obviously
14 a broad recusal.

15 INTERVIEWER: It, it was fairly broad but it
16 was about this office advising the Pease Development
17 Authority, that was the language that was used. And
18 as you know from your time as Attorney General, the
19 Civil Bureau is the one that advises government
20 agencies, correct? The Criminal Bureau doesn't
21 really advise agencies, we don't give agency advice,
22 we're not client counseling.

23 CHIEF JUSTICE MACDONALD: Again, I -- I

1 would be uncomfortable asking, answering these
2 questions without having that statement in front of
3 me I'm, I'm not sure what the language, exact
4 language we used, but I agree with you that the Civil
5 Bureau does it, yes.

6 INTERVIEWER: Right.

7 ATTORNEY CREEGAN: Well, since Justice
8 Marconi hasn't requested the statement, is there
9 something else you want to ask with regard to what
10 she may have done or --

11 INTERVIEWER: Yeah, I'm just wondering why
12 the difference between the public statement, or if
13 there was some discussion, or if she kept some
14 information about the criminal investigation away
15 from the public statement, so she tells you that the
16 grand jury subpoenas are being issued before you
17 talked to the Governor, and was that before her
18 recusal off of the cases, or was it after that she
19 told you there was grand jury subpoenas?

20 CHIEF JUSTICE MACDONALD: She recused or
21 disqualified herself before that statement was made.

22 INTERVIEWER: Okay, that answers it then.
23 So you had no indication from her that there was a

1 criminal investigation at the time that statement was
2 made?

3 ATTORNEY CREEGAN: Do, do you remember the
4 date of the statement?

5 INTERVIEWER: It was the date of her
6 recusal, I can pull it up.

7 ATTORNEY CREEGAN: Oh, I -- I don't, I don't
8 know if that was the date of her recusal. Her
9 recusal was very close in time to her husband being
10 put on leave.

11 ATTORNEY O'CONNELL: I believe it was May
12 9th.

13 ATTORNEY CREEGAN: Is the statement?

14 ATTORNEY O'CONNELL: I believe so.

15 ATTORNEY CREEGAN: Okay, I -- I don't want
16 to put too much in here but I think her first
17 recusals were off of oral arguments that were made on
18 April 23rd.

19 INTERVIEWER: Right, I remember the nurse is
20 one of them so the public statement goes out May 9th,
21 approximately, and it was some time in early May that
22 she told you grand jury subpoenas were being issued.
23 I'm just wondering if it was before or after?

1 ATTORNEY CREEGAN: Sorry, just -- just a
2 correct, he would -- the timing in May --

3 INTERVIEWER: I said May, May.

4 CHIEF JUSTICE MACDONALD: I don't know when
5 in May.

6 INTERVIEWER: Okay, you said that she said
7 that she knew everything her husband knew.

8 ATTORNEY O'CONNELL: That's what the
9 Governor told you.

10 INTERVIEWER: Or the Governor told you that
11 she said she knew everything her husband knew. Did
12 the Governor elaborate on what exactly she knew, or
13 just was that sort of the general statement of just,
14 she just knew everything her husband knew?

15 CHIEF JUSTICE MACDONALD: That's the
16 statement I remember.

17 INTERVIEWER: Okay.

18 CHIEF JUSTICE MACDONALD: And it stuck with
19 me.

20 INTERVIEWER: Did the, in your first call
21 with the Governor, did the Governor indicate why she
22 had requested a meeting?

23 CHIEF JUSTICE MACDONALD: No, not that I

1 remember.

2 INTERVIEWER: Did he say whether it was
3 personal or professionally related?

4 CHIEF JUSTICE MACDONALD: I really, I'm --
5 I'm sorry, I want to think about that interaction.

6 INTERVIEWER: If --

7 CHIEF JUSTICE MACDONALD: I just have no
8 clear memory of exactly what he said.

9 INTERVIEWER: It's perfectly fine.

10 INTERVIEWER: Did the Governor ask you if
11 you knew what the meeting was about?

12 CHIEF JUSTICE MACDONALD: I don't remember
13 but if he had I would have said no.

14 INTERVIEWER: Okay, and you said that you
15 never spoke to her about her meeting with the
16 Governor afterwards, correct?

17 CHIEF JUSTICE MACDONALD: Correct.

18 INTERVIEWER: And I assume that means, or I
19 don't want to assume so I'm asking this question, so
20 she never spoke to you or told you that she had met
21 with the Governor?

22 CHIEF JUSTICE MACDONALD: That's correct.

23 ATTORNEY CREEGAN: You can take a second.

1 INTERVIEWER: Well, I think, Tom, if you've
2 got anything.

3 ATTORNEY CREEGAN: Do you all want to talk
4 and see if you have anything else to ask?

5 INTERVIEWER: I'm, I'm fine. Tom, do you
6 have anything?

7 INTERVIEWER: Just kind of a basic question.
8 What is, is there a typical schedule that an
9 Associate Justice would follow for a work schedule?

10 CHIEF JUSTICE MACDONALD: In other words you
11 have to show up at a certain time, is that what
12 you're asking?

13 INTERVIEWER: Yeah, like Monday through
14 Friday, 9 to 5 --

15 CHIEF JUSTICE MACDONALD: Yeah.

16 INTERVIEWER: -- sort of --

17 ATTORNEY CREEGAN: If wishing made it so.

18 CHIEF JUSTICE MACDONALD: No required work
19 schedule, each -- I think each Justice has their own
20 work schedule so but there's nothing required if
21 that's your question. Each Justice I think it's fair
22 to say has their own pattern of when they come in and
23 when they go, go home.

1 INTERVIEWER: Okay.

2 CHIEF JUSTICE MACDONALD: Is that, is that
3 what you're asking?

4 INTERVIEWER: Yeah, so throughout the day
5 they can leave if they need to.

6 CHIEF JUSTICE MACDONALD: Sure.

7 INTERVIEWER: They can come back if they
8 need to.

9 CHIEF JUSTICE MACDONALD: Absolutely, yes.

10 INTERVIEWER: You don't have a time card
11 that you can punch out every, every time you leave,
12 go to lunch?

13 CHIEF JUSTICE MACDONALD: No.

14 INTERVIEWER: Okay, are there any policies
15 or procedures regarding professional, or using the
16 court's email for private purposes, personal
17 purposes?

18 ATTORNEY CREEGAN: Not really.

19 CHIEF JUSTICE MACDONALD: I don't think so.

20 ATTORNEY CREEGAN: No.

21 CHIEF JUSTICE MACDONALD: But --

22 INTERVIEWER: We'll follow up with Erin, or
23 counsel might be --

1 ATTORNEY CREEGAN: We'll, we'll look into
2 it.

3 ATTORNEY O'CONNELL: We will follow up with
4 General Counsel afterwards about that specific
5 question.

6 ATTORNEY CREEGAN: Yeah, I can hunt around
7 and see if I can find anything.

8 ATTORNEY O'CONNELL: Okay.

9 INTERVIEWER: The last question is the
10 roughly 40 percent of the cases that was referenced
11 in the recusal, is that fairly accurate, or is that
12 -- how does that compare to what you can speak to?

13 CHIEF JUSTICE MACDONALD: Yeah, it strikes
14 me as low. I -- we could certainly get you the exact
15 number but it, it strikes me as low. I think it's,
16 you know, the volume of cases from the Attorney
17 General's office is, is fairly significant so to
18 answer your question is I believe that's not
19 accurate, and the number is probably higher.

20 INTERVIEWER: Okay.

21 INTERVIEWER: Forgive me if I've already
22 asked this, Mr. Chief Justice, you referenced the two
23 conversations about subpoenas with Justice Hantz

1 Marconi, you're saying that's when she was, indicated
2 she was aware of the criminal investigation?

3 CHIEF JUSTICE MACDONALD: Those were her
4 words.

5 INTERVIEWER: Okay.

6 CHIEF JUSTICE MACDONALD: Grand, that grand
7 jury subpoenas had issued.

8 INTERVIEWER: Okay, were there ever any
9 other conversations with her where she indicated she
10 suspected there was a criminal investigation into her
11 husband that you recall?

12 CHIEF JUSTICE MACDONALD: Not that I
13 remember.

14 INTERVIEWER: Okay, and then one final
15 question, when the Governor called you and told you
16 about the conversation with Justice Hantz Marconi,
17 specifically about the recusal and the burden on the
18 colleagues which you indicated that you disagreed
19 with, how did that make you feel?

20 ATTORNEY CREEGAN: I don't know if it's a
21 factual question.

22 CHIEF JUSTICE MACDONALD: I'm happy to
23 answer it.

1 ATTORNEY CREEGAN: It's up to you.

2 CHIEF JUSTICE MACDONALD: I was angry, I was
3 angry.

4 INTERVIEWER: Why?

5 CHIEF JUSTICE MACDONALD: Because we're
6 gonna get the job done, we're gonna get the job done
7 for the people of New Hampshire.

8 INTERVIEWER: Thank you.

9 INTERVIEWER: Thank you, sir, that's it.

10 INTERVIEWER: We can go off recording now.

11 INTERVIEWER: It's 10:36 and the recording
12 has ended.

13 (End.)

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CERTIFICATE

I, Mary Mielke, a court-approved transcriptionist, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceeding in the above-entitled matter to the best of my professional skill and ability.



Mary Mielke
Avicore Reporting

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