

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) No. 21-CR-10270-MLW
ATICHA JITTAPHOL, a/k/a)
"LILLY,")
Defendant.

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT COURT JUDGE
SHOW CAUSE HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 2
One Courthouse Way
Boston, Massachusetts 02210

April 8, 2022
10:09 a.m.

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Official Court Reporter
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Mechanical Steno - Computer-Aided Transcript

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1 P R O C E E D I N G S

2 THE CLERK: All rise for the Honorable Court.

3 Court is back in session in the matter of United
4 States v. Aticha Jittaphol, Criminal Action 21-10270.

5 You may be seated.

6 THE COURT: Good morning. Would the clerk please
7 administer the oath to the interpreters again.

8 Interpreters, sworn

9 THE CLERK: Ann, can you please show your video.

10 THE INTERPRETER: I cannot hear the clerk clearly but
11 I think I understand --

12 THE COURT: If you can't -- excuse me. For some
13 reason you're not coming up on my screen, but he will more
14 slowly and again administer the oath to you.

15 Interpreters, sworn

16 THE INTERPRETER: Yes, I do.

17 THE INTERPRETER: I do. Ann last name is Huynh,
18 H-u-y-n-h.

19 THE COURT: Thank you. And you should each interpret
20 every word, please.

21 Would counsel please identify themselves for the court
22 and for the record.

23 MS. LAWRENCE: Good morning, Your Honor. Kelly
24 Lawrence for the United States.

25 MS. TOCHKA: Good morning, Your Honor. Alyssa Tochka

1 for the United States.

2 MR. HALPERN: Good morning, Your Honor. Keith Halpern
3 for Ms. Jittaphol.

4 THE COURT: Who's present.

5 Since I saw you on April 4, pursuant to my April 6
6 order that you order the transcripts of the hearings in this
7 case on an expedited basis, I've received the excellent April 4
8 transcript from Ms. Silva, who's doing a fine job. I haven't
9 received the April 1 or March 8 transcripts and I understand
10 that Ms. Mortellite, who took the March 8, was not informed
11 that the transcript was to be prepared on an expedited basis.
12 I think she did April 1 also. But she will now have those by
13 Monday.

14 It's docketed April 6. I received it yesterday, April
15 7. The defendant filed a memorandum re: additional exhibits,
16 docket number 70, which has seven proposed exhibits. The first
17 is a description of a behavioral health network program and the
18 rest are articles that are about or relate to sweat patch
19 testing.

20 Does the government have any objection to those
21 becoming exhibits?

22 MS. LAWRENCE: We do not.

23 THE COURT: Then they're going to be admitted as
24 Exhibits 21A through G.

25 (Exhibits 21A-G received in evidence.)

1 MR. HALPERN: Your Honor, I took the group -- there's
2 actually ten. So there were --

3 THE COURT: There's not ten that I got yesterday.

4 MR. HALPERN: I know there weren't ten that --

5 THE COURT: I know. Here, sit down and listen,
6 please.

7 These I'm admitting. These have been docketed. The
8 government doesn't object. These I've read. I just found,
9 when I came down, some additional exhibits and we'll deal with
10 those later. Okay?

11 If you want to propose them on redirect, which is to
12 be limited to the direct -- I'm sorry, limited to the cross,
13 I'll talk to you about them. We may have a break so I can look
14 and see what they are, but we've got to proceed.

15 I'm going to have the clerk administer the oath again
16 to Ms. Jittaphol.

17 **ATICHA JITTAPHOL, sworn**

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Do we think that translating equipment
20 won't work if she sits in the witness box, Jarrett?

21 THE CLERK: It won't work at the witness box.

22 MR. HALPERN: She can sit here.

23 THE CLERK: The cord isn't long enough.

24 THE COURT: Okay. Ms. Tochka, you want to resume your
25 cross-examination?

1 MS. TOCHKA: Please.

2 THE COURT: Go ahead.

3 MS. TOCHKA: Thank you.

4 CROSS-EXAMINATION

5 BY MS. TOCHKA:

6 Q. Good morning, Ms. Jittaphol, again. On the last date you
7 indicated that on March 23 you were at the spa and that you had
8 taken a client; is that correct?

9 A. Yes.

10 Q. Was that the first time you returned to that massage
11 parlor since you were the owner of that spa?

12 A. Yes.

13 Q. Yes?

14 A. Yes.

15 Q. Were you present at that spa in February of 2022?

16 A. Yes.

17 Q. Okay. So February --

18 THE WITNESS: Excuse me. Can I have translator? I
19 didn't hear she said anything.

20 THE COURT: Okay. Why don't you put the questions
21 again and they should be translated.

22 MS. TOCHKA: Okay.

23 Q. On the last date you said that March 23 you were working
24 at the Emerald Spa, correct?

25 A. I didn't hear the translator, but I can say yes.

1 Q. Before that, was that the first time you were at that spa
2 since you were the owner?

3 A. Yes.

4 Q. So were you not present in February of 2022?

5 A. Can you repeat again.

6 Q. In February of 2022, were you present at the Emerald Spa?

7 A. Yes.

8 Q. So, therefore, March 23 was not the first time you were
9 back at that massage spa; is that correct?

10 A. I'm back to that spa it's like 10 February is one and the
11 second one is the 23rd of March.

12 Q. So February 10 you were at the Emerald Spa?

13 A. Yes.

14 Q. And you were working there as an employee on that day?

15 A. Actually, I heard that I can get employed working over
16 there, but I am still in process of submitting the application
17 to renew my license.

18 And in that time, he -- the owner like want me to
19 help and want me to work there, but I'm not like licensed. My
20 license is still expired.

21 THE COURT: I'm sorry. You have to repeat the end of
22 that. The owner wanted you to work and then what did you say?

23 THE DEFENDANT: My license is still on process for
24 renewal.

25 Q. But the owner wanted you to work there on that day?

1 A. So that day we have the inspector come to the shop to
2 inspection to prove that the place can open for like --

3 (Court reporter interrupts.)

4 THE COURT: Go slowly and clearly.

5 THE DEFENDANT: Sorry.

6 A. So that day we have inspector come to inspection and we
7 not open yet that day.

8 Q. Okay. Was that scheduled to have the inspector there on
9 that day?

10 A. Yes.

11 Q. And did the owner ask you to be there --

12 A. Yes.

13 Q. -- for the -- okay.

14 So you were there present on behalf of the owner of
15 the spa, correct?

16 A. I don't understand.

17 Q. You went on that day because the owner had asked you to be
18 there for the inspector?

19 A. Yes.

20 Q. Okay. Did you identify yourself as an employee to the
21 inspector?

22 A. Yes. Will be an employee.

23 Q. You would be an employee?

24 A. Yes.

25 MR. HALPERN: She said "will be."

1 A. Will be.

2 THE COURT: I'm sorry. Let's -- what did you tell the
3 inspector?

4 THE DEFENDANT: I will be an employee.

5 THE COURT: You would be an employee?

6 THE DEFENDANT: Yes.

7 Q. And did you also tell the inspector that you did not have
8 a valid license?

9 A. Yeah.

10 Q. Okay. And as a result, you are aware that the spa was
11 denied a license at that time?

12 A. Yeah.

13 Q. Okay. Thank you.

14 MS. TOCHKA: Your Honor, at this time I would move to
15 introduce the Division of Professional Licensure form that
16 indicates that there was a visit by the inspector on that date
17 and that Ms. Jittaphol was present as an employee.

18 THE COURT: Okay. Have you shown it to Mr. Halpern?

19 MS. TOCHKA: We have.

20 MR. HALPERN: Your Honor, in the event that you later
21 agree to just leave the premarked exhibits --

22 THE COURT: I'm not agreeing to leave the premarked
23 exhibits. They'll be numbered if they're admitted. I've
24 admitted those that came yesterday, 21A to G, I believe.

25 MR. HALPERN: I'm just suggesting that we pick up the

1 number where mine left off.

2 THE COURT: And I'm suggesting -- I'm ruling that
3 that's not what I'm going to do.

4 MR. HALPERN: Okay.

5 THE COURT: Go ahead.

6 MS. TOCHKA: Thank you.

7 THE COURT: What's the next -- Jarrett, let me see it
8 and I'll give it back to you.

9 Q. Ms. Jittaphol --

10 THE COURT: Just one second, please.

11 MS. TOCHKA: Oh, sure.

12 THE COURT: All right. The Division of Professional
13 Licensure document of a visit on February 10, 2022 will be
14 Exhibit 22.

15 Go ahead.

16 (Exhibit 22 received in evidence.)

17 MS. TOCHKA: Thank you.

18 Q. On that date, Ms. Jittaphol, on February 10, did you have
19 any customers come to the store?

20 A. No.

21 Q. But on March 23, you did have a customer come to the
22 store?

23 A. Yes.

24 Q. Would it be fair to say your license expired January 28,
25 2021?

1 A. Yeah.

2 Q. Have you had an updated license since then?

3 A. Yes.

4 Q. When was that?

5 A. It's in like February. I went to the massage board to
6 send application for renewal and right now I'm still waiting
7 for the mail that they said was sent to my house and just put
8 the application in. But I didn't receive anything yet.

9 Q. Okay. So since January 2021, you have not received a new
10 valid license, correct?

11 A. Not yet.

12 Q. Okay. However, on March 23, 2022, you gave a massage
13 without a valid license; is that correct?

14 A. Yes.

15 Q. Okay. Sometime after February 2022, were you fired by
16 the -- Mr. Prasert after that inspection?

17 A. I'm not sure -- for like 10 February for inspection?

18 Q. Yes, after that.

19 A. Just denied for employ had been like -- license had
20 expired. And my owner just like send the application again for
21 like inspection and they got approved for that later.

22 Q. Afterwards they got approved?

23 A. Yup.

24 Q. Okay. Before they got approved, did the owner say
25 anything to you about not having a job anymore to you?

1 A. Yeah. And until like -- that he gonna hire me after
2 everything okay, something like that. Yeah.

3 Q. Do you mean he would hire you after the spa got its
4 license?

5 A. Yeah.

6 Q. Okay. Are you aware that the owner told the inspection
7 board that he was going to fire you?

8 A. Yes.

9 Q. Okay.

10 MS. TOCHKA: Your Honor, the next exhibit I would like
11 to admit is an email from the owner to the licensing board
12 stating that he was going to terminate Ms. Jittaphol.

13 THE COURT: Is there any objection?

14 MR. HALPERN: No.

15 THE COURT: Okay. Is the next numbered exhibit 23?
16 It is admitted as Exhibit 23.

17 **(Exhibit No. 23 received into evidence.)**

18 Q. Ms. Jittaphol, you stated that sometime in March the
19 Emerald Massage Spa did get its license to open?

20 A. Say again, please.

21 Q. In March the Emerald Massage did get approval to open?

22 A. Yup.

23 Q. Correct?

24 MS. TOCHKA: Your Honor, I move as the next exhibit a
25 second Division of Professional Licensure form dated March 11

1 indicating the opening -- the approval of the massage parlor.

2 MR. HALPERN: No objection.

3 THE COURT: Is that Exhibit 23? It will be admitted.
4 It's admitted as Exhibit 23.

5 LAW CLERK: 24.

6 THE COURT: I'm sorry. It's admitted as Exhibit 24.

7 MS. TOCHKA: Thank you.

8 **(Exhibit No. 24 received into evidence.)**

9 Q. Ms. Jittaphol, turning to the sweat patches, were you
10 aware ahead of time when the sweat patch would be put on your
11 body?

12 THE DEFENDANT: Actually, can I have the translator?

13 THE COURT: Yes.

14 Q. My question is, for the sweat patches, were you told ahead
15 of time when the sweat patch would be put on your body?

16 THE DEFENDANT: I'm sorry. I didn't hear any
17 translator.

18 THE INTERPRETER: I am translating all the time.

19 THE COURT: Can we have a translation?

20 THE INTERPRETER: Yes, Your Honor, I have been doing
21 it from the beginning. I'm not sure there's anything wrong
22 with -- whether the wire was connected or not, but I have been
23 interpreting since the beginning and my partner confirmed that.

24 THE COURT: Well, here, try it again right now and
25 maybe your partner can translate, if necessary, since there are

1 two of you.

2 Ms. Jittaphol, did you hear her?

3 THE DEFENDANT: No.

4 THE INTERPRETER: Your Honor, this is Ann Huynh.

5 Would counsel repeat the question again.

6 THE COURT: Stop just a moment. Could you say
7 something? It may be that the equipment wasn't turned on.

8 THE DEFENDANT: I didn't hear anyone.

9 MS. SHANNON: No?

10 THE DEFENDANT: I'm hearing her now.

11 MS. SHANNON: This is the volume.

12 THE DEFENDANT: Thank you.

13 THE INTERPRETER: Your Honor, I've confirmed that
14 Ms. Jittaphol can hear me. If you could state the question
15 again, that would be great. Thank you.

16 MS. TOCHKA: Yes.

17 Q. The question is, for the sweat patches did you know ahead
18 of time when the sweat patch would be put on your body?

19 A. From the first time I came, I didn't know that.

20 Q. What about the next times?

21 A. Yes. They already told me before they were going to do
22 it.

23 Q. How many days before did you know the sweat patch was
24 going to go on you?

25 A. It was about a day before.

1 Q. The day before. And what about, did you know when the
2 sweat patch was going to come off of you?

3 A. Actually, it should be a week but it's like -- the
4 probation already told me to come in the office before the day.

5 Q. The day before?

6 A. Yes.

7 Q. Okay. Thank you.

8 During this time, for the past year or so, have you
9 used any other -- any drugs at all?

10 A. No.

11 Q. Have you drank any alcohol at all?

12 A. Just occasionally, like not really much.

13 Q. Okay. And then my last question is, any stimulants have
14 you taken?

15 THE COURT: What do you mean by "stimulants"?

16 A. No.

17 THE COURT: Well, I asked you a question.

18 MS. TOCHKA: So drug stimulants.

19 THE COURT: What's that?

20 MS. TOCHKA: Drug stimulants. If I could just have
21 one moment, please. (Pause.)

22 Q. Ms. Jittaphol, my question I can clarify is any legal
23 narcotics?

24 THE COURT: I'm sorry, what's the question?

25 Q. Any prescribed or over-the-counter drugs?

1 A. No. Only medication, that's all.

2 THE COURT: Okay. That's going to need clarification.

3 Q. What kind of medication?

4 A. It's hormone treatment, like estrogen and --

5 (Court Reporter interrupts.)

6 THE COURT: Yes, you're going to have to --

7 What time period do you want, the last year?

8 MS. TOCHKA: Yes.

9 THE COURT: What prescribed medications have you taken
10 in the last year?

11 THE DEFENDANT: Only hormone.

12 THE COURT: Hormones?

13 THE DEFENDANT: Yes.

14 THE COURT: Are those female hormone?

15 THE DEFENDANT: Pardon me?

16 THE COURT: Female hormones?

17 THE DEFENDANT: Yes.

18 THE COURT: Estrogen did you say earlier?

19 THE DEFENDANT: Yes.

20 MS. TOCHKA: I have no further questions. Thank you.

21 THE COURT: Okay. All right.

22 Mr. Halpern, you may -- do you have any redirect?

23 MR. HALPERN: Yes.

24 THE COURT: Okay. I've got a pile of documents that I
25 received as I was coming in the courtroom. Some of them are

1 documents I received yesterday and some of them I haven't seen
2 before.

3 MR. HALPERN: They were all provided to the government
4 yesterday, and I don't believe there's any objection to any of
5 them. I think there's --

6 THE COURT: Well, let's see what they're relevant to.
7 This is not the only case on my docket. I'm starting a trial
8 next week. We're going to finish this ideally this morning
9 with the evidence and the arguments.

10 I don't know what these documents are. I don't know
11 what their relevance is.

12 MR. HALPERN: I provided them as a courtesy thinking
13 you might want electronic copies.

14 THE COURT: No, it's -- I'm not saying that I won't
15 take them. I want you to tell me what's new that you didn't
16 provide with your memo, because I read what you provided before
17 and the government doesn't object. I've admitted them.
18 They're Exhibits 21A through G.

19 MR. HALPERN: I intended to do that.

20 THE COURT: I'm asking you to tell me now so I know
21 what we're talking about --

22 MR. HALPERN: Okay.

23 THE COURT: -- and we can facilitate this.

24 MR. HALPERN: Fine.

25 THE COURT: You marked something Exhibit 20. It will

1 get a different number, but it looks like it's Behavioral
2 Health Network, My Sister's House. I saw one document of that
3 nature you filed on April 6. It's docket 70-1. Are these
4 different than that?

5 MR. HALPERN: I don't remember what I filed.

6 The document that I had premarked as 20 is from the
7 BHN website. It's a description of the long-term residential
8 care house that is part of the BHN network that was talked
9 about as a possible place for her to go.

10 THE COURT: All right. And maybe -- oh, I see. These
11 are multiple -- so I have multiple copies.

12 MR. HALPERN: You have two copies of everything.

13 THE COURT: All right. Then -- okay. So would you
14 mark premarked as Exhibit 20 as actually 22A.

15 MS. LAWRENCE: Is that 21A, Your Honor?

16 THE COURT: I'm sorry. 21A. I apologize. Thank you.

17 MS. LAWRENCE: Thank you.

18 **(Exhibit No. 21A received into evidence.)**

19 THE COURT: All right. Then there's a CV of
20 Dr. Stuart Gitlow.

21 MR. HALPERN: Yes, Dr. Gitlow is the psychiatrist who
22 you submitted his report as an exhibit. This is his CV.

23 THE COURT: Okay. And his report is an exhibit?

24 MR. HALPERN: Yes. You admitted it.

25 THE COURT: All right. What's the next number?

1 Is there any objection?

2 MS. LAWRENCE: No.

3 THE COURT: So here you go, Jarrett.

4 We only have two of these. Does the government have
5 one?

6 MS. LAWRENCE: I do, Your Honor. And that's being
7 marked as what number?

8 THE COURT: 25.

9 **(Exhibit No. 25 received into evidence.)**

10 THE COURT: Then there's an unsigned stipulation.

11 MR. HALPERN: I'm sorry. I thought -- I'm just
12 confused. I thought previously you said all of these were
13 going to go 21A, B, C, D, but now --

14 THE COURT: Well, I could add them that way too.

15 MR. HALPERN: I just was confused what we're doing.

16 THE COURT: Because I admitted the others before I had
17 seen these.

18 MR. HALPERN: Okay. So the Gitlow CV is 25?

19 THE COURT: What's that?

20 MR. HALPERN: The Gitlow CV is 25?

21 THE COURT: Correct.

22 Then I have a stipulation signed by Mr. Halpern but
23 not Ms. Lawrence that says, "The parties stipulated that
24 Ms. Jittaphol attended an NA/AA meeting the evening of March 9,
25 2022 and she confirmed her attendance at that meeting with

1 Ms. Wertz that day." Is that something to which the government
2 agrees?

3 MS. LAWRENCE: We do, and I signed one copy of it that
4 may be somewhere not in your hands, but I do agree to it.

5 THE COURT: Well, we'll make this Exhibit 26.

6 **(Exhibit No. 26 received into evidence.)**

7 MR. HALPERN: The next one is a screenshot of a few
8 pages from the PharmChek website concerning their statements
9 regarding a comparison between their patch test and urine
10 tests.

11 THE COURT: All right. Is there any objection to
12 this?

13 MS. LAWRENCE: No, Your Honor.

14 THE COURT: So this will be Exhibit 27.

15 **(Exhibit No. 27 received into evidence.)**

16 MR. HALPERN: The next one --

17 THE COURT: Wait.

18 MR. HALPERN: Okay.

19 THE COURT: Just wait.

20 Because that's a new one. Here you go, Jarrett,
21 that's 27.

22 Is the next one "Monitoring Cocaine Use and Substance
23 Abuse Treatment By Sweat and Urine Testing"?

24 MR. HALPERN: No, the next one is a similar --

25 THE COURT: Well, that's the next one in the pile I

1 have, which I think is already -- I think this is one you gave
2 me previously.

3 MR. HALPERN: I don't think so. It's PharmChek --

4 THE COURT: Oh, another PharmChek?

5 MR. HALPERN: Yeah. It's analysis -- it's how they
6 analyze the patch. It says, "Analysis Profile" or something
7 like that.

8 THE COURT: I don't have something that says that. Do
9 you want to take a look?

10 MR. HALPERN: It may have been mixed in with the prior
11 one, but I'm sure it's there.

12 THE COURT: Let me see the other pile.

13 Show it to him so he can sort it out.

14 (Discussion held off the record.)

15 THE COURT: So the --

16 MR. HALPERN: 27 is the one that has the picture of
17 the urine container. The next one --

18 THE COURT: Hold on a second. I don't see -- 27 says
19 "PharmChek analysis panels."

20 MR. HALPERN: No. 27 is the one that says, "It
21 Stinks."

22 THE COURT: Right. Okay. So this one is 28. Do we
23 just have one copy of that? "PharmChek Analysis Panels" is 28.
24 Okay?

25 MR. HALPERN: PharmChek Analysis Panels is what?

1 THE COURT: 28.

2 MR. HALPERN: 28, yes, thank you.

3 **(Exhibit No. 28 received into evidence.)**

4 THE COURT: Then --

5 MR. HALPERN: The remaining ones are all scientific
6 articles.

7 THE COURT: And I think -- let me just compare them,
8 because I may have already admitted them, although I guess
9 there wouldn't be much harm in having them twice.

10 MR. HALPERN: I think one or two were not in the group
11 that I --

12 THE COURT: Well, we'll identify them.

13 Well, there may be some redundancy here because I'm
14 not laying my hands on what you filed on Wednesday, but what
15 are the next -- what's the next number?

16 LAW CLERK: 29.

17 THE COURT: 29. So there's one called, "Monitoring
18 Opiate Use in Substance Abuse Treatment Patients with Sweat and
19 Urine Drug Testing." That will be Exhibit 29.

20 MR. HALPERN: Is the lead author Huestis,
21 H-u-e-s-t-i-s?

22 THE COURT: Yes, it is. And, here, the clerk can give
23 you copies as well. 29.

24 **(Exhibit No. 29 received into evidence.)**

25 THE COURT: Then there's "Monitoring Cocaine Use in

1 Substance Abuse Treatment Patients by Sweat and Urine Testing."

2 We'll make that Exhibit 30.

3 MR. HALPERN: The lead author is --

4 THE COURT: The lead author is Preston.

5 MR. HALPERN: Preston.

6 **(Exhibit No. 30 received into evidence.)**

7 THE COURT: The next one is, "Comparison of Daily
8 Urine, Sweat and Skin Swabs Among Cocaine Users." The lead
9 author is Kidwell, and we'll make that 31.

10 **(Exhibit No. 31 received into evidence.)**

11 THE COURT: The following one is, "Interaction and
12 Transport of Methamphetamine," lead author Wagner. That will
13 be Exhibit 32.

14 **(Exhibit No. 32 received into evidence.)**

15 THE COURT: The next one is "Working Up a Good Sweat -
16 The Challenges of Standardising Sweat Collection," lead author
17 Hussain. That will be 33.

18 **(Exhibit No. 33 received into evidence.)**

19 THE COURT: And the last one is, "The Current Status
20 of Sweat Testing for Drugs of Abuse: A Review." I'll make
21 that 34.

22 **(Exhibit No. 34 received into evidence.)**

23 THE COURT: Okay?

24 MR. HALPERN: Thank you.

25 MS. LAWRENCE: So essentially Exhibit 21 has been

1 replaced by all these individually marked ones?

2 THE COURT: To the extent they're redundant, yes.

3 MS. LAWRENCE: Great. Thank you.

4 THE COURT: All right. So Mr. Halpern, you may have
5 redirect essentially limited -- well, limited to the scope of
6 the cross, please.

7 REDIRECT EXAMINATION

8 BY MR. HALPERN

9 Q. Ms. Jittaphol, if you don't understand my question, please
10 speak up and say that you need it translated. Okay?

11 A. Yes, sir.

12 Q. All right. The man that you sold the massage parlor to,
13 his name is Prasert Pathpong?

14 A. Pathamawong, yes.

15 Q. And he's a 45-year-old man?

16 A. Yes, sir.

17 THE COURT: You should do this in a non-leading
18 manner, please.

19 MR. HALPERN: All right.

20 Q. Does he have any training or certification that you're
21 aware of?

22 A. Yes. He has a massage therapist license.

23 Q. When you sold him the massage parlor, was there a plan for
24 you to work there?

25 A. Yes.

1 Q. Was there any court order that prevented you from working
2 there?

3 A. No.

4 Q. Was there any court order that required you to ask
5 permission to work there?

6 A. No.

7 Q. What role was he going to play in the new business? What
8 was he going to do?

9 A. He's --

10 THE COURT: Could I just ask you to clarify something,
11 Mr. Halpern.

12 MR. HALPERN: Yes.

13 THE COURT: In terms of time limit. Asking permission
14 to work there, are you talking about at the time she sold him
15 the business in September 2021?

16 MR. HALPERN: Yes.

17 THE COURT: Okay.

18 MR. HALPERN: I'll ask an additional question.

19 THE COURT: Okay.

20 BY MR. HALPERN:

21 Q. Ms. Jittaphol, what's your understanding of when for the
22 first time you had a condition to get permission from Probation
23 about taking a new job? When did that happen?

24 A. I believe that it's like 9 March I got a new condition
25 about work.

1 Q. Did you say March 9?

2 A. Yes.

3 Q. Prior to March 9 of 2022, was there any requirement that
4 you get permission from Probation to work anywhere?

5 A. Yes.

6 Q. Prior to -- just listen closely. Okay. Before March 9 --

7 THE COURT: Could I -- you may want to clarify this
8 too. The hearing was on March 8.

9 MR. HALPERN: Okay.

10 THE COURT: And I imposed the conditions orally and
11 discussed them with her.

12 MR. HALPERN: Okay.

13 THE COURT: And then there was a written order dated
14 March 9 that memorialized the new conditions.

15 MR. HALPERN: Okay.

16 Q. Do you remember that on March 8, the judge talked about
17 your having to notify Probation about a job?

18 A. Yes.

19 Q. Okay. Before that, before that day, did you know about
20 any rule?

21 A. No.

22 Q. Before March 8, what was your understanding about whether
23 or not you were allowed to work in a massage place without
24 telling Probation? Could you do that or could you not do it?

25 A. Actually, I don't know that I have to get permission to

1 work, but, actually, when I'm going to work I should let her
2 know that I will -- let her know, yeah.

3 Q. You should let her know where you're going?

4 A. I -- yes.

5 Q. All right. Did you think that you needed permission from
6 Probation to agree to work wherever you wanted?

7 A. I -- I am not sure about that, but I just -- honestly,
8 that's my career that I can -- I'm working -- before this
9 order, I would just let Probation know, something like that.

10 Q. All right. When you went to the massage parlor on
11 February 10, was anyone with you? Was anyone else there when
12 the licensing person came?

13 A. With the owner.

14 Q. Okay. Did you go together?

15 A. Yes.

16 Q. Was the place open for business that day?

17 A. No.

18 Q. And did the license -- did you hide the fact that you did
19 not have a license? Did you try to hide that?

20 A. No.

21 Q. All right. And the licensing person was told whether or
22 not you had a license?

23 A. Yes.

24 Q. And when they found out that you did not have a license,
25 what did they say?

1 A. Actually, the license person, she came in. So we -- she
2 asking about the license to qualify that -- and I told her
3 before that my license is on process, like renewals. She
4 understand that and she just checked it out to make sure that
5 the license number is correct. And after that, she just check
6 up every like thing and then she just let me go to renew and
7 get a new license and she would like allow that.

8 Q. So on February 10, when the licensing person came, did you
9 have a plan about whether you wanted to work there if you got a
10 license?

11 A. Yes.

12 Q. What was your plan?

13 A. Actually, my plan is I get a job working over there with
14 my -- yeah.

15 Q. Now, when the owner was told that he could not get a
16 license because you did not have a license, were you fired?

17 A. In that day, yeah, he just fired me.

18 Q. And why did you think you were fired?

19 A. Because I didn't get the license yet. Only one reason.

20 Q. Now, after you were fired, when was the next time that you
21 went to the massage place?

22 A. The second time that I go back is like March 23.

23 Q. Okay. And why did you go there on March 23?

24 A. Because the owner is like -- like he just let me like go
25 to help him for like set it up, the place, and cleaning up that

1 day, like that.

2 Q. Okay. On March 23, you still were waiting to get a new
3 license?

4 A. Yes.

5 Q. Did you have a plan about what you were going to try to do
6 for work if you got a new license?

7 A. Just working there.

8 Q. All right. Did you ever take a permanent position there?

9 A. Not yet.

10 MR. HALPERN: That's all. Thank you.

11 THE COURT: I may have some questions at the end of
12 this, but is there any recross?

13 MS. TOCHKA: Yes, briefly.

14 THE COURT: Go ahead.

15 RECROSS-EXAMINATION

16 BY MS. TOCHKA:

17 Q. Ms. Jittaphol, you just testified that when you sold the
18 business to the new owner in September, you had discussions
19 with him about working at his new business, correct?

20 A. Yes.

21 Q. On the last date you said in December, you talked to him
22 again about working at his business, correct?

23 A. Yes.

24 Q. And then today you said that in February you were there
25 when the inspector came, correct?

1 A. Yes.

2 Q. And then March 8 you were present for the hearing where
3 Judge Wolf said that you need to get approval when you're
4 getting a new job, correct?

5 A. Yes.

6 Q. And after that hearing, the probation officer talked to
7 you about that again, correct?

8 A. Yes.

9 Q. At that point you had already been at the business and
10 talked to the new owner about working there and you had
11 identified yourself as an employee. Then you hear from Judge
12 Wolf that there's a new condition that you have to tell the
13 Probation Department about a new job. Why didn't you tell the
14 probation officer on that day, "Yes, I've met with the owner, I
15 plan to be working there. I actually had just gone there a
16 month earlier." Why didn't you tell her that?

17 A. Actually, I just waiting for my license to get renewed
18 that you can know exactly that I'm going to work there, but,
19 actually, we just plan -- I just planned to go to work there.

20 So that day I just met my probation there because I
21 also want to let her know that I'm going to be here and when I
22 got the license approved for the renewal, I will send her all
23 the details for what the hiring exactly is because I'm still
24 like not really know exactly yet that I'm going to get hired
25 there from like the license under process right now.

1 Q. Okay. So your understanding of the condition was that you
2 don't have to tell Probation unless it's a legal permanent job?

3 MR. HALPERN: Objection.

4 A. Actually, for me --

5 THE COURT: What's that?

6 MR. HALPERN: Objection.

7 A. I --

8 THE COURT: Excuse me. If he objects, I have to rule
9 on the objection.

10 The objection's overruled.

11 Do you need the question again?

12 Q. What was your understanding of the condition that Judge
13 Wolf had enforced?

14 A. I understand clearly now today.

15 Q. And what do you understand it to be?

16 A. And I just confused what I'm going to put -- like what
17 should I tell first and what should I do first, because it's
18 like this new condition is -- I have -- I was also confused on
19 what I'm going to -- like how to tell that -- because I didn't
20 get exactly the permission to work. Because, actually, I was
21 confused about my license, all that thing. I was still waiting
22 for that. That's why I cannot tell Probation exactly that I'm
23 going to get hired. But I just only wishing that I get it as
24 soon as possible.

25 Q. Okay.

1 MS. TOCHKA: Thank you. No further questions.

2 THE COURT: All right. I may have a few.

3 Could I see the exhibit -- because now I don't seem to
4 have a copy -- of the denial of the license the first time and
5 the email from the owner?

6 What exhibit number is this?

7 LAW CLERK: The report is 22.

8 THE COURT: What's that?

9 LAW CLERK: The denial is 22, the email is 23.

10 THE COURT: What was the date of the inspection in
11 February? February 10.

12 So were you at Emerald Massage on February 10 when the
13 inspector came?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And was Emerald Massage at the same
16 location as the massage parlor you owned and ran previously?

17 THE DEFENDANT: Yes.

18 THE COURT: Who else was there in addition to you and
19 the inspector?

20 THE DEFENDANT: No.

21 THE COURT: No, was anybody else there in addition to
22 you and the inspector?

23 THE DEFENDANT: My owner, the owner.

24 THE COURT: And what was the conversation that led to
25 your being told -- or the inspector being told that your

1 license had expired? What had been said before that?

2 THE DEFENDANT: Yeah, but actually she just come to
3 check the place and she checked the license, who was there,
4 like me and the owner.

5 THE COURT: Did the owner introduce himself as the
6 owner?

7 THE DEFENDANT: Yes.

8 THE COURT: And who introduced you?

9 THE DEFENDANT: And I -- and the owner there and me, I
10 introduced myself that I am there, but the inspector, she just
11 asking for -- everyone have their license. We just showed
12 them.

13 THE COURT: So did the owner show him --

14 THE DEFENDANT: Yes.

15 THE COURT: -- show the inspector his license?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And was the inspector told that you were
18 going to be an employee?

19 THE DEFENDANT: Yes.

20 THE COURT: And then were you asked for your license?

21 THE DEFENDANT: Yes.

22 THE COURT: And did you have it there with you?

23 THE DEFENDANT: Yes.

24 THE COURT: And it showed that it was expired?

25 THE DEFENDANT: It's expired.

1 THE COURT: And then what did the inspector say?

2 THE DEFENDANT: She said I just go to renewals and
3 get -- finish, and then she will allow me to work. But after
4 that -- but I already like submitted the application for
5 renewal. I was just waiting for the new one. And --

6 THE COURT: You started -- you had already started the
7 request for renewal?

8 THE DEFENDANT: Yeah.

9 THE COURT: What date did you do that?

10 THE DEFENDANT: I did it after the inspection -- about
11 two days. It's about like 13 of March -- no, of February.

12 THE COURT: What's that?

13 THE DEFENDANT: February 13.

14 THE COURT: So that was after the inspection?

15 THE DEFENDANT: After.

16 THE COURT: Not before?

17 THE DEFENDANT: Not before. But I know already that
18 my license expired.

19 THE COURT: And did you have to -- did the inspector
20 say why she was disapproving the plan if the owner had a
21 license to massage?

22 THE DEFENDANT: She had two things, that the place
23 have something missing about the trash or something like that.

24 THE COURT: What's that?

25 THE DEFENDANT: The place need to add something more

1 like about the trash cans have lids. And then like my license
2 is -- waiting for my license to get the renewal.

3 THE COURT: The form says "Employee 1 license expired
4 since 2021. No covered disposals." Were you going to be the
5 only employee?

6 THE DEFENDANT: At that time, yes.

7 THE COURT: At that time, yes?

8 THE DEFENDANT: Yes.

9 THE COURT: When you owned it, how many employees, if
10 any, did you have, before this case started?

11 THE DEFENDANT: Three.

12 THE COURT: You had three. And yourself?

13 THE DEFENDANT: And myself.

14 THE COURT: And you filled out an application on about
15 February 13 to get your license renewed?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you do that on a piece of paper --

18 THE DEFENDANT: Yes.

19 THE COURT: -- or did you do it on a computer?

20 THE DEFENDANT: On the paper and I went to the message
21 board in downtown.

22 THE COURT: You went where?

23 THE DEFENDANT: Massage board.

24 MR. HALPERN: Massage board.

25 THE DEFENDANT: Massage board office in downtown.

1 THE COURT: So you took the piece of paper there?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you keep a copy of what you gave them?

4 THE DEFENDANT: No.

5 THE COURT: Do you remember what the questions were?

6 THE DEFENDANT: They were telling me waiting at the
7 mail to the house. They will send the mail to my house.

8 THE COURT: No. Do you remember what questions you
9 answered on the application?

10 THE DEFENDANT: Well, I did not answer -- they just
11 asking me -- I mean, the -- they were licensed to check my name
12 and asking my license number to check on that. And then
13 they're telling me -- they have to check the information and
14 they will send the mail to my house. That's all. And then I
15 just --

16 THE COURT: They had to check what information, the
17 information they asked you for on the form?

18 THE DEFENDANT: Yes.

19 THE COURT: Did they ask you your name?

20 THE DEFENDANT: Yes.

21 THE COURT: Did they ask you where you lived?

22 THE DEFENDANT: Yes.

23 THE COURT: Did they ask you if you'd been licensed
24 before?

25 THE DEFENDANT: Yes.

1 THE COURT: Did they ask you if the license had
2 expired?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you have to sign the answers under the
5 pains and penalties of perjury saying you were telling the
6 truth and were swearing to tell the truth, do you remember?

7 THE DEFENDANT: No. Actually, it's just only one
8 paper for like -- for like verified my license number and my
9 name and address. That's all.

10 THE COURT: Did you have to sign the application?

11 THE DEFENDANT: Yes, to sign that.

12 THE COURT: Did you fill it out all by yourself or did
13 somebody help you?

14 THE DEFENDANT: So -- no, just myself.

15 THE COURT: Did you read it before you signed it?

16 THE DEFENDANT: Yeah.

17 THE COURT: Did it require that you, before you signed
18 it, state that all of the answers were truthful?

19 THE DEFENDANT: Not at all.

20 THE COURT: I'm sorry, what did you say?

21 THE DEFENDANT: No.

22 THE COURT: It didn't say that?

23 Did it ask you whether you'd ever been convicted of a
24 crime?

25 THE DEFENDANT: Yes, they checked that.

1 THE COURT: And how did you answer that question?

2 THE DEFENDANT: So they just told me that they're
3 going to check the CORI or something.

4 THE COURT: They were going to check your CORI,
5 C-O-R-I?

6 THE DEFENDANT: Yeah.

7 THE COURT: But how did you answer the question?

8 THE DEFENDANT: I didn't answer anything. They said
9 they're going to send me the paperwork by mail and after they
10 asking me they have to check the CORI information and then they
11 will send the mail to me.

12 THE COURT: Was there a question on the form about
13 whether you'd ever been convicted of a crime?

14 THE DEFENDANT: I didn't get that paper yet.

15 THE COURT: No, on the application.

16 THE DEFENDANT: No, they don't have it.

17 THE COURT: They didn't ask that?

18 THE DEFENDANT: No.

19 THE COURT: Did they ask if you'd ever been charged
20 with a crime?

21 THE DEFENDANT: Actually, in the application they have
22 that, but I didn't sign it yet for that one.

23 THE COURT: I don't understand what you're saying.
24 Did the form ask whether you had ever been charged with a
25 crime?

1 THE DEFENDANT: Not yet. I don't have it.

2 THE COURT: You're not answering the question. Do you
3 remember filling out the application?

4 THE DEFENDANT: Yes.

5 THE COURT: Was there a question on there that asked
6 whether you were ever charged with a crime?

7 THE DEFENDANT: In general -- I didn't sign any paper
8 that had the question yet, but -- not yet.

9 THE COURT: Did the application -- you still haven't
10 answered my question.

11 THE DEFENDANT: I'm sorry.

12 THE COURT: Did the application have a question that
13 asked you whether you had ever been charged with a crime?

14 THE DEFENDANT: Yes, it did have.

15 THE COURT: And did you answer that question? Did you
16 write an answer to that question?

17 THE DEFENDANT: No.

18 THE COURT: You left that blank?

19 THE DEFENDANT: Yeah. I don't have any crime,
20 anything.

21 THE COURT: I didn't hear what you said after you said
22 "yes."

23 THE DEFENDANT: So.

24 THE INTERPRETER: Your Honor, this is the interpreter.
25 I believe that I need to clarify this, because I think when she

1 says "no," I'm not sure whether she meant no, she didn't fill
2 it or no, she didn't commit a crime prior to filling out the
3 form.

4 THE COURT: Well, what you need to do is just
5 translate the words exactly.

6 THE INTERPRETER: Your Honor, I am, but --

7 THE COURT: If I need clarification, I'll let you
8 know. Thank you.

9 So the application asked whether you have ever been
10 charged with a crime, right?

11 MR. HALPERN: Objection.

12 THE COURT: Overruled.

13 Was that your testimony?

14 THE DEFENDANT: Yes.

15 THE COURT: And did you tell me that you didn't answer
16 that question, you didn't write yes or no? Did you answer that
17 question on the form?

18 THE DEFENDANT: No.

19 THE COURT: And did you give the form to somebody?

20 THE DEFENDANT: (Nodding head.)

21 THE COURT: You have to say yes or no.

22 THE DEFENDANT: Yes.

23 THE COURT: Did you talk to the person you gave the
24 form to?

25 THE DEFENDANT: Yes.

1 THE COURT: Did the person say anything about the fact
2 that you hadn't answered the question of whether you were
3 charged with a crime?

4 THE DEFENDANT: No.

5 THE COURT: Did he say anything about that?

6 THE DEFENDANT: No.

7 THE COURT: When you filled out the application in
8 February of 2022, did you know you had been charged with a
9 crime in this case?

10 THE DEFENDANT: No.

11 THE COURT: You didn't know you were charged with a
12 crime in this case in February 2022?

13 THE DEFENDANT: No. I'm not sure.

14 THE COURT: Why do you think -- do you remember being
15 here in court in January 2022?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you remember that you signed an
18 agreement before then to plead guilty to the crime --

19 THE DEFENDANT: Yes.

20 THE COURT: -- charged in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: Then why didn't you answer the question of
23 whether you'd ever been charged with a crime on the application
24 "yes"?

25 THE DEFENDANT: Actually, I went there to the massage

1 board. They didn't give me that paper to sign it yet, you
2 know. I just got -- they were just asking me for the renewal
3 license -- my name and the license number. That's all.

4 And then they said they're going to send all the
5 paperwork to my house. That is supposed to be the application
6 the board is asking me about. I mean, the paperwork that I
7 have to sign.

8 THE COURT: I thought you told me you filled out the
9 application and took it to the massage board.

10 THE INTERPRETER: Your Honor, could you repeat the
11 question? I didn't get the first part.

12 THE COURT: Yes. I'm just trying to understand this.
13 So you -- did you take something to the massage board
14 in February 2022?

15 THE DEFENDANT: I just went there to -- asking for --

16 THE COURT: Mr. Halpern, please sit down.

17 THE DEFENDANT: -- for the renewal. That's all. I
18 didn't --

19 THE COURT: Did you ever fill out an application to
20 have your license renewed in 2022?

21 THE DEFENDANT: Actually --

22 THE COURT: Did you?

23 THE DEFENDANT: No, I don't think so.

24 THE COURT: What was the day you went to open the
25 massage -- the Emerald Massage Parlor in March? What day did

1 you go, do you remember?

2 THE DEFENDANT: 23.

3 THE COURT: What was the date? On March 23?

4 THE DEFENDANT: (Nodding head.)

5 THE COURT: You have to say yes or no.

6 THE DEFENDANT: Yes.

7 THE COURT: And I think you said, when you testified
8 on Monday, that a customer came?

9 THE DEFENDANT: Yes.

10 THE COURT: And did you testify previously that he had
11 been a customer when you owned the massage parlor?

12 THE DEFENDANT: Yes.

13 THE COURT: Was it a man?

14 THE DEFENDANT: It was a man.

15 THE COURT: Do you know his name?

16 THE DEFENDANT: His name is Dan.

17 THE COURT: Dan?

18 THE DEFENDANT: Dan.

19 THE COURT: Do you know his last name?

20 THE DEFENDANT: No.

21 THE COURT: Had he come to your massage parlor one
22 time or more than one time?

23 THE DEFENDANT: Before it was like -- yeah, it's about
24 two or three times.

25 THE COURT: Do you remember whether he paid in cash --

1 did you give him massages when he came to your massage parlor
2 previously?

3 THE DEFENDANT: Sometimes.

4 THE COURT: Did he pay in cash or by check or by
5 credit card?

6 THE DEFENDANT: Sometime it's credit card and
7 sometimes it was cash.

8 THE COURT: Sometimes cash? Sometimes credit card
9 also?

10 THE DEFENDANT: Yes.

11 THE COURT: What did he say when he came to the
12 massage parlor?

13 THE DEFENDANT: So he said he's glad that this place
14 is open again, that -- yeah, he come to visit. That's all.

15 THE COURT: He said he was glad to see the massage
16 parlor was open again?

17 THE DEFENDANT: Open, yeah.

18 THE COURT: And did he ask for a massage?

19 THE DEFENDANT: Yes.

20 THE COURT: And what did you say?

21 THE DEFENDANT: I said, "This is the first day that
22 this place like -- I'm here in this place." So like -- he just
23 walk in. Yeah, just like give him the massage.

24 THE COURT: I couldn't hear the end of that. He said
25 he'd like you to give him a massage?

1 THE DEFENDANT: He was asking for if I'm open that I
2 can do a massage today, and I just say yes.

3 THE COURT: You said yes?

4 THE DEFENDANT: (Nodding head.)

5 THE COURT: And did you give him a massage?

6 THE DEFENDANT: Yeah, I gave him a massage.

7 THE COURT: And did he pay for it?

8 THE DEFENDANT: Yes.

9 THE COURT: How did he pay for it?

10 THE DEFENDANT: That day he paid by cash.

11 THE COURT: What did you do with the cash?

12 THE DEFENDANT: Take it.

13 THE COURT: Did you give any of it to the owner?

14 THE DEFENDANT: Yeah.

15 THE COURT: How much?

16 THE DEFENDANT: That day --

17 THE COURT: Actually, how much did he pay you?

18 THE DEFENDANT: \$80 for one hour and \$20 for tip.

19 THE COURT: \$80 for one hour and \$20 for a tip?

20 THE DEFENDANT: Yeah.

21 THE COURT: How much of that did you give the owner,
22 if any?

23 THE DEFENDANT: Actually, it's 40 and then -- and then
24 that day the owner just give me all that money.

25 THE COURT: He let you keep all that money?

1 THE DEFENDANT: Yeah.

2 (Law clerk/court discussion held off the record.)

3 THE COURT: Well, I don't want this to be an
4 impediment to concluding, but I'd like the government to
5 subpoena whatever she gave the licensing board and to get it
6 produced as quickly as possible.

7 You evidently obtained some materials. Do you have
8 any idea of how long it might take to get it?

9 MS. LAWRENCE: Our agent has already emailed the
10 contact who provided those documents to us on Wednesday or
11 Thursday. So hopefully we can get a response quickly.

12 THE COURT: All right.

13 Do my questions suggest any further questions to
14 counsel?

15 MS. TOCHKA: Yes. Just one question.

16 RECROSS-EXAMINATION

17 BY MS. TOCHKA:

18 Q. On February 10, when the inspector came, did you tell the
19 inspector you were an employee or did the owner tell the
20 inspector you were an employee?

21 (Pause.)

22 A. If I told them I would be employed --

23 Q. Say it one more time.

24 A. Can you repeat.

25 Q. When the inspector came in February, did you tell the

1 inspector that you were going to be an employee or did the
2 owner tell the inspector you were going to be an employee?

3 A. I cannot remember just the conversation, I cannot
4 remember, you know.

5 MS. TOCHKA: Okay. Thank you.

6 THE COURT: All right. Mr. Halpern, do you have
7 anything else?

8 MR. HALPERN: Yes.

9 THE COURT: I think it would be better, and I should
10 have asked Ms. Tochka to do it too if you go back there because
11 then she's more likely to keep up her voice and the
12 stenographer is more likely to be able to understand.

13 MR. HALPERN: There's a couple of questions I'd like
14 for her to look at something I've written. So I could do those
15 first.

16 THE COURT: Well, let me see what you've written. And
17 you'll have to then show it to the government, but.

18 You can just ask the questions.

19 MR. HALPERN: I want to do it that way. There's a
20 reason I'm doing it that way. Do you want me to explain it?
21 She --

22 THE COURT: Well, here, show it to the government.
23 And you're going to have to at least lay a foundation for
24 showing it to her.

25 REDIRECT EXAMINATION

1 BY MR. HALPERN:

2 Q. Ms. --

3 THE COURT: Don't give it to her.

4 MR. HALPERN: I want to show her --

5 THE COURT: Go over there. Once I hear the
6 foundation, I'll let you know whether you can show her the
7 piece of paper.

8 BY MR. HALPERN:

9 Q. Ms. Jittaphol, you were given a document that you had to
10 read to apply for a renewal -- a new license?

11 THE COURT: Well, why don't you ask her in a
12 non-leading way. She's answered in different ways.

13 Q. What language was the document that you were given?

14 THE COURT: No, ask her if she was given a document.

15 Q. Were you given a document to fill out to renew your
16 license?

17 A. It's English.

18 THE COURT: No.

19 Q. Did you get the document online? Did somebody give it to
20 you? Where did you get it?

21 A. I just waiting for the board to send it to me.

22 Q. No, no. I'm not talking about the renewal.

23 A. Oh.

24 Q. Okay?

25 A. Oh, by mail.

1 Q. Do you know what an application is?

2 A. Yes.

3 Q. What is it?

4 A. Actually, for --

5 Q. Just answer the question. What is an application? What
6 does that word mean?

7 A. It's paperwork to extend for the license.

8 MR. HALPERN: Okay. I would ask the interpreter not
9 to translate my questions right now.

10 THE COURT: But, here.

11 MR. HALPERN: Okay.

12 THE COURT: Well, we'll get there. But if you want to
13 use that piece of paper, you're going to have to lay a
14 foundation. She's going to have to hear the questions. I
15 think I understand where this is going and it's for argument
16 and you may get to use that paper, but not quite yet.

17 I'm directing the interpreter to translate.

18 It would be helpful if you clarified whether she got
19 something, because I asked her these questions and I thought
20 they were clear, and the answers may not be consistent.

21 MR. HALPERN: All right.

22 BY MR. HALPERN:

23 Q. Is there a form that you got that you had to fill out to
24 try to get your license renewed? Was there a form that you had
25 to fill out? Yes or no?

1 A. No. I did not get that yet.

2 Q. I'm not asking -- I'm not asking about the renewal. Okay?
3 That's not what I'm asking you about. That's why I asked you
4 if you understood what an application is.

5 Do you understand -- is the translator translating
6 the word "application" for you?

7 A. Yes.

8 Q. Do you understand what an application is, a request for
9 something?

10 A. Yes.

11 Q. All right. And you were requesting that your license be
12 renewed, right?

13 A. Yes.

14 Q. To make that request, did you fill out a piece of paper?

15 A. No.

16 Q. You didn't fill out a form?

17 A. No.

18 Q. Did you go online and on a computer did you fill out a
19 form?

20 A. I did try the online too.

21 Q. Aticha, when you applied to get your license renewed, did
22 you fill out anything, a piece of paper, something on a
23 computer? Did you fill out something?

24 A. Yeah, they have the question and I put it in the online,
25 but it's not submitted yet, I think, and then I just go to the

1 message board to ask them like to renew.

2 Q. Okay. So you tried to fill out a form online, and you had
3 a problem doing it?

4 A. Yes.

5 Q. So you gave up?

6 A. Yes.

7 Q. Did you ever actually submit the form or you decided, when
8 you couldn't do it, you were going to go in person?

9 A. I did not submit. I just go to the board.

10 Q. All right. So because you couldn't do it online, is that
11 the reason you went there?

12 A. Yes.

13 Q. To get help?

14 A. Yes.

15 Q. Okay. So when you got there, did somebody help you fill
16 out a form?

17 A. No.

18 Q. Did you talk to somebody?

19 A. Yes.

20 Q. And did they ask you questions so that they filled out a
21 form?

22 A. Yes, just some questions.

23 Q. So did you ever read the form?

24 THE COURT: Excuse me. Hold on just one second.

25 They asked you questions? You met with somebody?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you meet with a man or a woman?

3 THE DEFENDANT: A woman.

4 THE COURT: And what did you say to her when you went
5 in?

6 THE DEFENDANT: I was come to renew my license.

7 THE COURT: Is that all?

8 THE DEFENDANT: Yes.

9 THE COURT: What did she say to you?

10 THE DEFENDANT: And she just asking me the license
11 number, yeah, and she checked it out and she just told me
12 submit the application and the document was sent to my mail, I
13 think.

14 THE COURT: She said she would mail a document to you?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you recall telling me a few minutes ago
17 that you filled out a form and took it --

18 THE DEFENDANT: No, the form that I signed, she give
19 me only one paper to sign my name and license number and the
20 address.

21 THE COURT: What did she say about the CORI, your
22 criminal record?

23 THE DEFENDANT: She didn't say nothing. She just
24 said we will check the CORI and we will send a document to your
25 mail and then you sign and send it back to us. That's what

1 they told me. That's all. I just keep waiting after that.
2 And I also keep calling them and they won't pick up the phone.

3 THE COURT: What's that?

4 THE DEFENDANT: I was calling to the message board and
5 nobody answered.

6 THE COURT: You were always calling them?

7 THE DEFENDANT: Yeah, to followup with the document,
8 when the document was sent and when I'm going to get.

9 THE COURT: And nobody answered?

10 THE DEFENDANT: No.

11 THE COURT: When did you first come to the United
12 States? Did you come in high school?

13 THE DEFENDANT: Yeah, from the --

14 THE COURT: From Thailand?

15 THE DEFENDANT: Thailand.

16 THE COURT: Did you go to high school for one year in
17 the United States?

18 THE DEFENDANT: (Nodding head.)

19 THE COURT: You have to say yes or no.

20 THE DEFENDANT: Yes, one year.

21 MR. HALPERN: Aticha.

22 THE COURT: What year?

23 MR. HALPERN: She needs that translated.

24 THE COURT: All right. All of this I thought was
25 being translated.

1 MR. HALPERN: Aticha, did you go to a high school in
2 America?

3 THE DEFENDANT: Just only ESL, like English community.

4 THE COURT: Were you an exchange student for one year
5 before you had --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You were an exchange student for one year?

8 THE DEFENDANT: Yes.

9 THE COURT: Had you studied English in Thailand before
10 you came here?

11 THE DEFENDANT: Yes.

12 THE COURT: And how long were you in the United States
13 that first time you came?

14 THE DEFENDANT: One year.

15 THE COURT: And you went to -- did you go to high
16 school for that year?

17 THE DEFENDANT: No, that internship program is come to
18 like a training program. I just work at the culinary for one
19 year. Internship.

20 THE COURT: Did you come here -- so you were here for
21 one year. Then did you go back to Thailand?

22 THE DEFENDANT: Yes.

23 THE COURT: In that internship program, did you take
24 courses? Did you get instruction?

25 THE DEFENDANT: Just working.

1 THE COURT: Just working?

2 THE DEFENDANT: Yeah. Like internship like exchange
3 student through like work.

4 THE COURT: That's the first time you came -- what
5 year was that?

6 THE DEFENDANT: 2010, 2011.

7 THE COURT: Did you come here on a student visa in
8 2011?

9 THE DEFENDANT: It's a J1 visa.

10 THE COURT: And is that the first time you'd ever been
11 in the United States?

12 THE DEFENDANT: That's my first time.

13 THE COURT: And have you been here ever since, from
14 2011 to 2022?

15 THE DEFENDANT: No, I go back to Thailand. After I
16 finished one-year program internship, I go back to Thailand and
17 I come again like 2012.

18 THE COURT: And have you been in the United States
19 since 2012?

20 THE DEFENDANT: Yes.

21 THE COURT: And were you working as a massage person
22 and running your own business for at least part of that time?

23 THE DEFENDANT: No. I was working in New York with
24 Dr. Dan Hammer just like sport medicine in a clinic, like about
25 two years. And after that I moved to Boston and I start

1 working in Boston and go to study in massage therapist license.
2 And after that I got -- opened a business in 2016.

3 THE COURT: And you opened your business in 2016?

4 THE DEFENDANT: Yeah.

5 THE COURT: And there were customers -- when you
6 worked in the clinic, what language did you speak to Dr. Dan
7 Hammer?

8 THE DEFENDANT: English.

9 THE COURT: And did you deal with some of his patients
10 directly?

11 THE DEFENDANT: No. Only by his order. He telling me
12 what to do.

13 THE COURT: But did you talk to some of the patients?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you talk to most of them in English?

16 THE DEFENDANT: Yes.

17 THE COURT: And when you owned your own massage
18 business, did many of the customers talk to you in English?

19 THE DEFENDANT: Yes.

20 THE COURT: When the man came on March 23, did he talk
21 to you in English?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. Go ahead.

24 MR. HALPERN: I was --

25 BY MR. HALPERN:

1 Q. When you went to talk to the person at the board -- all
2 right? -- did you read the form or did somebody just talk to
3 you about what the form said?

4 A. They just told me.

5 Q. When you read -- do you like to read sometimes books?

6 A. No.

7 Q. No?

8 MR. HALPERN: I'd like to ask her a question without
9 it being translated.

10 THE COURT: Okay. But --

11 MR. HALPERN: Just one question.

12 THE COURT: It's okay. I'm not saying you can't. I'm
13 just saying if -- here, go ahead.

14 MR. HALPERN: So translator, hold off on translating
15 until the judge decides whether to allow this.

16 BY MR. HALPERN:

17 Q. The difference between the word "charge" and the word
18 "conviction," do you know what the difference is?

19 A. No.

20 THE COURT: Okay. Now the translation I think can
21 start again.

22 MR. HALPERN: I don't need the translation. That's
23 all I have. I'm done.

24 THE COURT: Okay. Does the government have anything
25 further?

1 MS. TOCHKA: We do.

2 FURTHER RECROSS-EXAMINATION

3 BY MS. TOCHKA:

4 Q. Ms. Jittaphol, when you apply for a license or for a
5 renewal, you have to pay some money for that, correct?

6 A. (Nodding head.) Yes.

7 Q. And when you went in February to renew your license, did
8 you pay money?

9 A. Not yet.

10 Q. Why?

11 A. Because they're going to send the document to my mail
12 first and then they will let me know I have to pay how much is
13 that, because they have a fee also because it's late, and the
14 reinstatement or something like that. That's what they told
15 me, yeah.

16 Q. And what did you think was -- what were they going to send
17 you in the mail? What was that form?

18 A. Actually, I believe it's going to be like -- it's like an
19 application.

20 Q. That's the application you thought they were going to send
21 you?

22 A. Yeah.

23 Q. Okay. And did you fill it out when it got sent to your
24 home?

25 A. I would fill it out when it got to my home, yeah.

1 Q. Did you ever receive it?

2 A. I never received it.

3 Q. You never received it. Okay.

4 So you never applied then? You never made payment?

5 A. I never make payment.

6 THE COURT: Well, there are two different questions.
7 Which one do you want her to answer?

8 Q. When you apply, do you pay on the day that you apply -- in
9 the past when you've applied for a license, do you pay when you
10 submit your application?

11 A. Not yet. I didn't pay yet. But -- anyway, before that I
12 renewed, I have to pay by check, and it's over a month that
13 they would deduct the money out from the check. The process is
14 very long for everything.

15 THE COURT: Okay. Do you have more?

16 MS. TOCHKA: No, thank you.

17 THE COURT: It's quarter of 12:00. I'd like to hear
18 your closing arguments.

19 I see that you're -- that one of the agents apparently
20 just came back. Do you want to confer to see whether you can
21 give any update?

22 MS. LAWRENCE: Mm-hmm. Right now?

23 THE COURT: Yes.

24 (Discussion held off the record.)

25 MS. LAWRENCE: So, Your Honor, we were able to make

1 contact with someone at the Department of Professional
2 Licensing and they indicated that since COVID they are not
3 using paper application forms, although if an applicant would
4 come into the office him or herself, theirselves, to make an
5 application or renew it, they could do it with the assistance
6 of an employee at the office. But if that were to occur, the
7 payment would be made at that time.

8 And also, according to Ms. Jittaphol's file, she had
9 renewed online in 2019 and 2020, which is the last record of a
10 renewal application being submitted by her.

11 We do have a document printed from the DPL website
12 that shows the history of renewal.

13 THE COURT: Could you show it to Mr. Halpern, please.

14 MR. HALPERN: Oh, I've seen that.

15 MS. LAWRENCE: Yeah, you've seen this before.

16 THE COURT: You've seen it?

17 MR. HALPERN: Yes.

18 THE COURT: This is something you had previously?

19 MS. LAWRENCE: I got it with the other documents. We
20 just didn't introduce it in her testimony. It just has some
21 dates of the renewals.

22 THE COURT: Are these two copies of the same document?

23 MS. LAWRENCE: Two copies of the same thing. I didn't
24 know if you wanted one for your clerk as well.

25 THE COURT: Sure.

1 MS. LAWRENCE: I would also note that we had --

2 THE COURT: Hold on just one second.

3 MS. LAWRENCE: I'm sorry.

4 THE COURT: Let me read it.

5 Actually, this is different -- the information on this
6 document is different --

7 MS. LAWRENCE: Yes, it says it expired on 1/29/2022.

8 THE COURT: Correct.

9 MS. LAWRENCE: Because each year it rolls over. So
10 when you pull this up each year, it will say it's expired in
11 that current year.

12 THE COURT: But it actually expired --

13 MS. LAWRENCE: It actually expired a day after -- on
14 the day in 2021 that it was not renewed. So that's --

15 THE COURT: Because it does show a renewal on
16 1/29/2020 and no renewal after that.

17 MS. LAWRENCE: Correct. So it's expired as of January
18 28, 2021.

19 THE COURT: All right. This is helpful.

20 What's the next number?

21 LAW CLERK: 35.

22 THE COURT: We'll make -- Mr. Halpern, would you like
23 us to make this Exhibit 35?

24 MR. HALPERN: Sure.

25 **(Exhibit No. 35 received into evidence.)**

1 THE COURT: All right. It's almost noon. To get
2 refocused, this is the hearing on pending petitions for
3 revocation is the way I'm viewing them now, revocation of the
4 defendant's release pending sentencing. I focused on those
5 alleged violations previously. Some of them are admitted and
6 some of them are disputed. So those that are admitted are
7 admitted. Those that are disputed I'll have to decide what's
8 proven and conceptually, once I do that -- essentially I think
9 the question is going to be whether there's -- whether she'll
10 obey any combination of conditions, the framework, and we went
11 over the requirements of the statute previously.

12 I think, given the time, I'd like to give you a chance
13 to organize your thoughts and organize mine and eat. Why don't
14 you come back at 1:15. Okay? And you can make closing
15 arguments, and I expect I'll probably take the matter under
16 advisement. Okay?

17 Court is in recess.

18 THE CLERK: All rise for the Honorable Court.

19 (A recess was taken.)

20 THE CLERK: All rise for the Honorable Court.

21 Court is back in session. You may be seated.

22 THE COURT: All right. The defendant can go sit back
23 in the usual place next to her lawyer. Her testimony is
24 concluded.

25 Okay. This is a revocation proceeding, a serious

1 issue -- there's certain admitted violations and then there are
2 other contested alleged violations, but it's a serious question
3 as to whether the defendant's release should be revoked. The
4 burden is on the government and Probation. So I think I should
5 hear from the government first.

6 MS. LAWRENCE: Yes. Thank you, Your Honor.

7 As you noted, there are several violations that are on
8 the table here. For the purposes of where we are right now in
9 the proceeding, I want to focus on the violations that were
10 admitted since the court hearing on March 8. And the reason I
11 want to do that is that, rereading the transcript and having
12 been present for that hearing, it was crystal clear from Your
13 Honor that the orders and the conditions of the pretrial
14 release were not optional. They were expected to be complied
15 with, and you indicated to the defendant, Ms. Jittaphol, that
16 it was going to be her choice whether to comply or whether she
17 may have her pretrial release revoked.

18 Since that time, as Your Honor knows, there are three
19 admitted violations. She missed her Crystal Meth Anonymous
20 meeting; she missed the treatment program, the CPC treatment
21 program; and she took a new job without informing Probation
22 first, and actually performed a massage knowing that she didn't
23 have a license to do so.

24 What's interesting about those three, they're
25 obviously not the worst violations I or I'm sure the court or

1 Probation or defense counsel has ever seen, but they came on
2 the heels of what couldn't be a clearer message about the need
3 to comply with these conditions in order to stay out of jail
4 and to have her freedom to pursue her life and continue to move
5 forward while she's awaiting sentencing.

6 I don't know -- the government recognizes the
7 literature about the sweat patches that defense counsel has
8 filed. The case law suggests that courts have accepted those
9 sweat patches and those results as reliable indicators of drug
10 use.

11 THE COURT: I'll hear from Mr. Halpern on this
12 undoubtedly, but I don't know that the articles, at least that
13 were filed on Wednesday night and I saw yesterday, said the
14 sweat patches were unreliable. They showed they had -- that
15 sometimes there were false positives, sometimes there were
16 false negatives. But I don't think it was a high percentage,
17 and I always try to be transparent so you all can address it.
18 But here with regard to the sweat patches, the defendant had a
19 history of using meth. She tested positive for meth, not
20 cocaine or heroin.

21 MS. LAWRENCE: Mm-hmm.

22 THE COURT: She tested twice, and whatever the chances
23 of testing false positive once, it's less likely you'd get a
24 false positive twice. The sweat patch was approved by the FDA,
25 which required a finding under the statute that it was safe and

1 effective. The Administrative Office of the Courts studied it
2 and authorized it for use. And it's inconsistent with the
3 urine tests, but I think in some of the literature that was
4 filed two days ago, as well as other evidence in the case, the
5 urine test is a snapshot. The meth could be metabolized in a
6 couple days and not show up on the urine test but is more
7 likely to show up on a sweat patch that covers a broader period
8 of time. I think that would be the analysis if, you know, I
9 was persuaded by it.

10 MS. LAWRENCE: If it were necessary to reach -- to
11 resolve those disputed allegations, I would argue I think you
12 could find based on the record of the admitted allegations --
13 violations -- sorry -- that there's clear and convincing
14 evidence, they're admitted, and based on the conduct of the
15 defendant over the period of time, especially since we've had
16 the hearings in January and March, that you could find by a
17 preponderance of the evidence that there are no set of
18 conditions that would ensure compliance with pretrial release.

19 THE COURT: You're saying even if I just focus on the
20 admitted violations?

21 MS. LAWRENCE: Correct. Correct. There are enough of
22 them and especially the three occurring after Your Honor's
23 order orally on March 8 and in writing on March 9 communicated
24 to the defendant.

25 THE COURT: Is it a state crime to give massages

1 without a license?

2 MS. LAWRENCE: I'm not sure. We weren't able to
3 specifically determine that during our break, although we did
4 discuss it. It seems more akin to a speeding ticket moving
5 violation than a true crime.

6 THE COURT: All right.

7 MS. LAWRENCE: And it appears -- oh, I may note, Your
8 Honor, during the break we received some more information from
9 the DPL, who said it appears Ms. Jittaphol did attempt to file
10 a renewal in early February. I believe it was the 8th -- is
11 that correct? -- yeah, the 8th of February. That application,
12 the CORI came back positive, not surprisingly, given this case,
13 and that's why the application was not processed for renewal.

14 THE COURT: Well, wait a minute. Wait a minute.

15 MS. LAWRENCE: But it's unclear what Ms. Jittaphol
16 submitted. We don't know what papers she might have submitted
17 or online filing.

18 THE COURT: Well, let's pause. So that's essentially
19 additional evidence and this is argument. But in a way that
20 would be consistent with part of her testimony earlier.

21 MS. LAWRENCE: I think it supports her testimony that
22 she attempted renewal. They said something about the CORI
23 needing to come back, and that's -- and she hadn't received
24 anything. I was not quite following the progression of those
25 steps. But if they did accept some form of renewal by

1 Ms. Jittaphol and were waiting to have a hearing on it, based
2 on the positive CORI hit, that would be consistent with how she
3 was explaining what happened. But I don't have documentation
4 from DPL. I don't think I need to submit it, but.

5 THE COURT: Well, if we had had it, it could be
6 germane, but I don't think it's in evidence. So I think I'm
7 not going to rely on that. Go ahead.

8 MS. LAWRENCE: Agreed.

9 So given the admitted violations and in light of the
10 court's order on March 8 and in writing on March 9, the
11 government would, consistent with Probation in part, recommend
12 a period of detention. I believe Probation is recommending
13 detention to the date of sentencing. The government believes a
14 much shorter period of time, even as short as a week, would be
15 sufficient to impress upon Ms. Jittaphol the need to follow the
16 conditions.

17 THE COURT: I don't know that this is supposed to be
18 punitive.

19 MS. LAWRENCE: No, but it would -- to redirect, Your
20 Honor, would be -- understand the significance.

21 In our view many of the violations are
22 either potentially based on a misunderstanding or -- and if
23 they were --

24 THE COURT: Look, I have to make findings. There are
25 testimonies -- there's testimony, there's evidence, there are

1 arguments that can be made. I have to make certain findings.
2 And --

3 MS. LAWRENCE: I can argue the government's position
4 on the disputed --

5 THE COURT: Yeah, and you'll need to.

6 MS. LAWRENCE: Yes.

7 THE COURT: But I think -- it hadn't occurred to me
8 that some brief period in detention would work and then she
9 would obey the conditions? If I'm persuaded that, despite
10 everything that's happened since the conditions were imposed
11 last October, she won't obey any combination of conditions,
12 then I don't know at the moment why a short period of detention
13 would alter that conclusion. And, you know, there are --

14 MS. LAWRENCE: I propose it, Your Honor, because I
15 believe it has been -- granted this was in a post sentencing
16 context, but I have had situations where other sessions have
17 used a short period -- a very short period of three to five to
18 seven days to try to redirect defendants' behavior. So given
19 the conditions that were violated here seem to be based on a
20 lack of commitment and understanding of how serious it is to
21 obey what the court and what Probation is saying, that's why
22 the government has recommended a shorter period of time to try
23 to use it as sort of a wake-up call.

24 THE COURT: Just to be, again, transparent, my
25 thinking is that if I revoke her, she'll be detained until

1 she's sentenced. In connection with that, I'll reject the
2 binding plea agreement because it won't be possible to impose
3 no time. She'll serve time and she'll have an opportunity to
4 withdraw her plea if she wants to.

5 MS. LAWRENCE: Well, Your Honor, I don't know if her
6 failure to abide by these conditions now should affect the
7 sentence imposed for the underlying crime. I recognize it's
8 all tied together.

9 THE COURT: If she gets detained, she would get credit
10 toward any sentence. Therefore, it would be impossible to
11 impose a sentence that didn't involve some period of time
12 served. So that's my thinking so far, but it's all tentative.

13 MS. LAWRENCE: Well, if detention means detention to
14 the date of sentencing, that's not the government's position.
15 However, there would need to be conditions --

16 THE COURT: You know, you've got a plea agreement --

17 MS. LAWRENCE: Yes.

18 THE COURT: -- that says -- but on the other hand --

19 Can you give me the plea agreement? You probably have
20 it.

21 I think the plea agreement says it can be abrogated if
22 she commits another crime. Right?

23 MS. LAWRENCE: Yes, it does.

24 THE COURT: And it's admitted that she committed
25 another crime because she used meth. That's one of the

1 admitted violations.

2 MS. LAWRENCE: It is.

3 THE COURT: Back in October. So I don't -- I don't
4 know exactly how this would work, but --

5 MS. LAWRENCE: Well, as defense counsel puts it, that
6 violation --

7 THE COURT: Tell me what you want to tell me and I'll
8 think about it --

9 MS. LAWRENCE: Okay.

10 THE COURT: -- as I'll certainly think about
11 everything Mr. Halpern tells me.

12 MS. LAWRENCE: Regarding the first disputed violation,
13 which is that the defendant checked out of the Behavioral
14 Health Network program against the clinical recommendation of
15 the staff --

16 THE COURT: That's not the alleged violation. The
17 alleged violation is that she didn't follow the direction of
18 Probation, I think.

19 MS. LAWRENCE: I believe it's --

20 THE COURT: I think. I mean, the condition was she
21 has to do what she's directed to do by Probation.

22 MS. LAWRENCE: Okay. So the full sentence is "in the
23 light of the defendant's discharge" --

24 THE COURT: Hold on just one second.

25 MS. LAWRENCE: I think this is Exhibit 2.

1 THE COURT: What are you looking at?

2 MS. LAWRENCE: Exhibit 2, page 2, paragraph beginning
3 "On December 6."

4 THE COURT: Exhibit 2.

5 MS. LAWRENCE: Page 2, paragraph beginning "On
6 December 6."

7 So Your Honor, the violation is that she didn't obey
8 Probation's order to reengage in the long-term program and, as
9 I understood it, the dispute that we were presenting evidence
10 on was sort of how her discharge came to be. Ultimately she
11 did not do what Probation said. I think there's clear and
12 convincing evidence of that.

13 THE COURT: Yeah, if you go in the chronological file,
14 I believe that she was directed to do it. There's a dispute as
15 to whether there was a clinical basis for it, but I think the
16 first time I said this was in January, the way to do that, if
17 there's a disagreement, is Mr. Halpern try to persuade and the
18 defendant try to persuade Probation to change the direction.
19 That's appropriate. And failing that, come to the court and
20 ask for a modification of the conditions. But not pick and
21 choose which directions to follow because of a disagreement.
22 That's my understanding of what's required at the moment.

23 MS. LAWRENCE: And the facts, as far as the evidence
24 presented here, did not undermine -- the defendant admitted, I
25 believe, to not following Probation's instructions but denied

1 the allegations so far as she checked out without permission,
2 if I remember my notes correctly.

3 But, again, I do think there's clear and convincing
4 evidence in the record here to find that the defendant did not
5 follow Probation's instruction to re-engage in that long-term
6 inpatient program.

7 Regarding the sweat patches, as Your Honor just
8 explained, there is evidence in the record supporting the use
9 of the sweat patches as a reliable detector of drug use. And
10 in particular, Ms. Wertz testified that the patch is especially
11 effective and the Probation Department only reports positive
12 tests when the metabolites of the substance are present. And
13 that is to minimize any interference from the outside in terms
14 of detecting the drug itself or contamination or interference.

15 So there have been steps taken in the way that the
16 patch is used and its results are reported to minimize some of
17 the risk of a false positive. I do not believe there's any
18 evidence in this record to suggest that in this particular case
19 with these two weeks of patches that there's anything in the
20 environment, apart potentially from Ms. Jittaphol's sweating
21 during volleyball practice, that would suggest any reason to
22 find a false positive.

23 For all of the violations that were disputed I believe
24 there's clear and convincing evidence to prove that they were
25 committed.

1 THE COURT: Well.

2 MS. LAWRENCE: That the violations occurred.

3 THE COURT: Well, there's also probable cause.

4 MS. LAWRENCE: Probable cause for the crime of the
5 methamphetamine use, which I believe the sweat patch results
6 are a positive result, which --

7 THE COURT: Even before you get to that, she admitted
8 to using meth after she was ordered by Magistrate Judge Bowler
9 not to use controlled substances that weren't prescribed. So
10 there's probable cause to believe that crime was committed.
11 And then the disputed matter is whether she used it again in
12 January and March.

13 MS. LAWRENCE: And I don't know -- I don't believe
14 that the plea agreement had been entered into at the time of
15 the first admission of methamphetamine use in October. I'd
16 have to double-check that.

17 THE COURT: What would be the implications of that?

18 MS. LAWRENCE: If Your Honor was suggesting we could
19 invalidate the plea agreement based on the first admitted
20 violation. I don't know that it was entered into at that
21 point.

22 THE COURT: I see.

23 MS. LAWRENCE: As I said, if Your Honor was only
24 considering a period of detention through the entire time to
25 sentencing, the government would rather have a much shorter

1 time in order to potentially turn the defendant's conduct
2 around and be more productive on pretrial release. Or there
3 are conditions potentially, not many, that could possibly be
4 imposed, but the defendant is not currently on a strict curfew
5 or home confinement at this point. That hasn't been suggested.
6 That could be a condition that could restrict her ability to
7 access drugs or to perform massages without a license, if we
8 had a stricter curfew in her conditions.

9 THE COURT: If she performed massages at home, she
10 testified to that, when she was not licensed and people could
11 bring meth.

12 Is there more?

13 MS. LAWRENCE: Only to say, Your Honor, that I
14 don't -- although there could be a possibility that the
15 defendant could do massages in her home or someone could
16 deliver meth to her door, it is still a more restrictive
17 condition with confinement than what she has experienced thus
18 far. If it was more a difference between that tune-up period
19 of time, month period of time in prison, versus GPS on
20 confinement, the government would lean toward the home
21 confinement.

22 THE COURT: Okay. Mr. Halpern.

23 MR. HALPERN: Your Honor, before I --

24 THE COURT: Actually, could you wait just one minute,
25 please.

1 Okay. You may proceed.

2 MR. HALPERN: Thank you. Before I begin my prepared
3 remarks, I want to address the issue of the first positive
4 test.

5 She tried to get into detox before the charge was even
6 brought. I was appointed when she was a target. I contacted
7 Probation, asking if they could assist her in getting into
8 detox. I told them she had a habit in which she used every day
9 and couldn't stop. She had to wait. Right? She had to wait
10 because Probation told me that they couldn't assist her until
11 the charge was brought. The fact that she tested positive at
12 the beginning of the case, I just have a really hard time
13 blaming her for -- unless you want to blame her for ever being
14 an addict. But she sought help; and the idea that she was in
15 violation of a condition, a routine condition not to use drugs
16 in a situation where if it had been up to her and what she was
17 requesting, she would have been in detox before that.

18 THE COURT: In my conception at the moment, there are
19 two distinct but related matters. One, whether there was a
20 violation. And two, what the implications of it are. Although
21 Probation reported that violation to me, as the statute
22 requires they do, they asked that there be no action back in
23 the first petition, the first communication, and I deferred to
24 them. And they tried to -- well, they arranged for her to get
25 treatment.

1 MR. HALPERN: So I'm going to move to my prepared
2 remarks. I'm first going to address the issue of the failure
3 to pursue inpatient long-term residential care. Because of the
4 statements that you've made during the course of the case, I've
5 developed -- I've had to look at it from two different
6 perspectives. One is, did she refuse an instruction and when
7 and from who? And then secondly, the merits and justification
8 of the instruction. There is no evidence at all that while she
9 was at Hope Center that she was told to go into inpatient
10 treatment. No evidence that Probation told her. No evidence
11 that anybody at Hope Center told her. No evidence that she was
12 in communication with anybody in Probation during the entire
13 time that she was in the detox or in Hope Center.

14 She testified that she never talked to Ms. Curran or
15 anyone else at Probation when she was at Hope Center and
16 there's no conflicting testimony. If she had spoken to
17 Ms. Curran and Ms. Curran had told her to go inpatient,
18 Ms. Jittaphol would have called me. And I would have called
19 Ms. Curran to talk about it, to try to avoid it. That never
20 happened until days after she was discharged. She left the
21 program on December 30.

22 Three days after she left the program, on page 22 of
23 the chronology, there's a message from one of her counselors
24 that says "Aticha completed to home on Monday, December 27.
25 She plans to go to meetings and work on a program to remain

1 abstinent. She was a pleasure to work with and we wish her the
2 best." There was no suggestion that she was violating any
3 recommendation, any instruction from anyone at that point.

4 Nothing about leaving against advice. Her treatment
5 records from the Hope Center confirmed this. And this is just
6 one of a number of entries. "Depending on treatment progress,
7 aftercare will send a referral to Sisters House and coordinate
8 or complete an intensive outpatient referral."

9 So there was discussion about the possibility of
10 inpatient care. There was discussion about the possibility of
11 outpatient care. But there was no instruction that she do
12 inpatient, and there was no refusal to do anything that was
13 recommended to her. There's simply no note about anyone
14 telling her that she needed to go to outpatient care.

15 THE COURT: And --

16 MR. HALPERN: Inpatient care, rather.

17 THE COURT: Before December 30?

18 MR. HALPERN: Before -- during the time that she was
19 at Hope Center.

20 THE COURT: Okay. And that comports with my
21 understanding of the evidence so far.

22 MR. HALPERN: Okay. My Sister's House is a long-term
23 residential program that is part of BHN. So it's an arm of the
24 same parent company of both the Carlson detox and the Hope
25 Center.

1 And Exhibit 20 -- well, actually, in the new list --
2 this is -- sorry -- 21A is from their website. And the purpose
3 of it was just really to show that they were being put in a
4 position where there was the potential for them to make a
5 referral that would have continued to have Probation pay the
6 parent company for her treatment.

7 And despite that, they didn't do the referral to
8 inpatient care when she was there. This is from the Hope
9 Center; and "Ms. Jittaphol explained that she hasn't spoken to
10 her probation officer in a while." This is December 22.

11 THE COURT: I'm sorry. What are you reading from?

12 MR. HALPERN: This is the Hope Center record, page 12.

13 THE COURT: What exhibit is that?

14 MR. HALPERN: The Hope Center record is --

15 THE COURT: Is it 11?

16 MR. HALPERN: No, it's 12.

17 THE COURT: So this is Exhibit 12. What page?

18 MR. HALPERN: Page 12.

19 THE COURT: They're not numbered properly.

20 MR. HALPERN: In the lower right there's a number, a
21 handwritten number.

22 THE COURT: I think not on my copy.

23 MR. HALPERN: I provided a copy to be substituted in
24 this morning that has the numbers. So the clerk may have that.

25 THE COURT: Do you have one that looks like this?

1 MR. HALPERN: But I'm showing the page.

2 THE COURT: All right. Here, why don't you just give
3 it back to me.

4 MR. HALPERN: So she says she hasn't talked to her
5 probation officer, and they talk about possible outpatient
6 treatment when she leaves Hope Center, and there's no
7 suggestion that she's doing anything wrong, that she's
8 violating any recommendation. The counselor is talking with
9 her about options to go to AA/NA meetings and other outpatient
10 programs.

11 THE COURT: Hold on just one second. Let me read that
12 paragraph.

13 MR. HALPERN: And Aticha is interested. She doesn't
14 say, "I don't want to do this."

15 THE COURT: She says interested in what?

16 MR. HALPERN: "She also shared that she was interested
17 in checking out some AA/NA meetings. We discussed a Buddhist
18 program." She's not resistant to doing outpatient treatment.
19 And there's no suggestion that that's not an appropriate option
20 in the record.

21 On January 4, which is just after she's been
22 discharged, this is from the chronology prepared by Probation,
23 Probation speaks to one of her counselors, Colleen, and Colleen
24 tells the probation officer --

25 THE COURT: What date?

1 MR. HALPERN: January 4. And at this point the note
2 indicates that the probation officer is still Maureen Curran.
3 And this is page 24 of the chronology, which is Exhibit 7.

4 THE COURT: Okay. So this is the message from Colleen
5 to Maureen.

6 MR. HALPERN: This is a note written by Ms. Curran
7 documenting a phone call with Colleen, who is Ms. Jittaphol's
8 counselor, saying "Colleen reports full participation while at
9 the program and believes that if the sub," the subject,
10 "participates in IOP," which is intensive outpatient treatment,
11 "that's sufficient." So at this point --

12 THE COURT: Wait. It looks like -- on page 24 -- this
13 is Exhibit 7 -- there appears to be an email message from
14 Colleen Fenton to Maureen Curran. That's what this is, right?

15 MR. HALPERN: I'm looking at the pink -- can you see
16 the screen there?

17 THE COURT: I can see it.

18 MR. HALPERN: All right. That's what I'm referring
19 to.

20 THE COURT: Hold on a second. Maureen writes in the
21 email that's above it --

22 MR. HALPERN: Maureen isn't writing anything. It's an
23 email to Maureen from Colleen.

24 THE COURT: I'm sorry. It's an email -- you're right.
25 It's an email to the probation officer from Colleen at Hope,

1 right?

2 MR. HALPERN: Right.

3 THE COURT: And there's a paragraph that says, "I feel
4 like the only aspect of programming that Aticha did not comply
5 with was with an aftercare plan. She refused both long-term
6 treatment as well as IOP, inpatient treatment, despite
7 counseling recommendations, as well as the recommendations of
8 our aftercare counselors."

9 MR. HALPERN: Which is inconsistent with what is in
10 the record over and over again. So if you look at the Hope
11 Center record, there are constant notes about her talking about
12 and expressing interest in various outpatient records.

13 THE COURT: But --

14 MR. HALPERN: Outpatient treatment.

15 THE COURT: But this is inpatient. I mean, this is --

16 MR. HALPERN: This is an email in which Colleen is
17 saying she's not being responsive to our recommendations about
18 the types of treatment she could have, inpatient or outpatient.
19 Right? She's not really responsive. That email is
20 inconsistent with what is in the Hope Center record, because if
21 you read the Hope Center record, there isn't a single note in
22 there that says she is not responsive. It's one note after
23 another that says she's interested.

24 The point I want to make with respect to this
25 particular document and the issue of whether she refused

1 inpatient long-term residential care and the statement that
2 Probation has repeatedly made and which is the crux of the
3 violation, which is that she refused a clinical recommendation
4 from the Hope Center to go to long-term inpatient
5 residential --

6 THE COURT: I mean, this is valuable for you to argue
7 and I just want to, again, give you a chance to address it.

8 The condition of release requires that she follow the
9 directions of Probation. I don't know that there's any
10 evidence -- two things. So one, there's another entry in here
11 somewhere that Probation directed --

12 And you were getting to this.

13 MR. HALPERN: Later, yes.

14 THE COURT: -- directed her to do it. So this goes --

15 Let me ask you this, because this is a message from
16 Hope to the probation officer. Is there evidence -- and this
17 isn't a rhetorical question. Is there evidence that the
18 probation officer read the Hope files before giving the
19 direction?

20 MR. HALPERN: Absolutely.

21 THE COURT: Okay. Keep going.

22 MR. HALPERN: All right. So this is an -- this is
23 documents of a telephone call that Maureen Curran had with her
24 primary counselor in which the primary counselor says, "I don't
25 think she needs inpatient long-term residential care." That

1 message was given on January 4. The record was provided around
2 the same period of time.

3 So this is in conflict with the subsequent position of
4 Probation that there was a clinical assessment made by the Hope
5 Center requiring her to do outpatient -- I'm sorry -- inpatient
6 residential care.

7 THE COURT: Let me ask you this, though, because you
8 highlighted something in pink. So what you highlighted in pink
9 is underneath the email. It says "PO," probation officer,
10 "also spoke with Colleen re: sub," that's the defendant, "and
11 email above. Colleen reports full participation while at the
12 program and believes if sub participates in IOP," which I
13 understand is inpatient, "that is sufficient." Is IOP --

14 MR. HALPERN: No, IOP is not --

15 THE COURT: Outpatient?

16 MR. HALPERN: It's intensive outpatient.

17 THE COURT: Intensive outpatient.

18 I think the way the testimony went this morning is
19 confusing.

20 MR. HALPERN: Can I continue?

21 THE COURT: Please.

22 MR. HALPERN: All right. So shortly after Colleen
23 tells Maureen Curran that there is no recommendation for
24 inpatient care and that she, in fact, thinks that outpatient
25 care would be sufficient, I spoke to --

1 THE COURT: Where is that in this record?

2 MR. HALPERN: It's right what I just showed you.

3 THE COURT: Oh, you're talking about what's in pink,
4 what I just read?

5 MR. HALPERN: Yeah, which says that outpatient care is
6 sufficient.

7 THE COURT: Okay.

8 MR. HALPERN: All right. So on January 7, a few days
9 after that memo, I received a phone call and an email from
10 Ms. Curran telling me that Aticha was in violation of a
11 treatment plan that recommended long-term inpatient residential
12 care, and that she would notify the court of noncompliance.

13 THE COURT: Is --

14 MR. HALPERN: That's -- I'm just telling you -- I
15 mean, I know it's true because I've got my emails but it's not
16 in evidence.

17 THE COURT: And you're not a witness. But go ahead.

18 MR. HALPERN: Right.

19 But part of it is in evidence because of the questions
20 that I asked Ms. Wertz, so she knew about these communications.

21 I had a number of conversations with Ms. Curran at
22 that point questioning the basis of what I was told was a
23 clinical recommendation by the Hope Center that she go to
24 long-term inpatient care and I tried to persuade Ms. Curran
25 let's wait and see if she tests positive and really needs it.

1 And Ms. Curran's response was, "We're not going to do that
2 because Probation is not going to second-guess the clinical
3 recommendation of the Hope Center." And they made the
4 recommendation. They're the ones who were qualified to make a
5 clinical recommendation. We're not. We're relying on them,
6 they're the experts.

7 And at that point we agreed that we would bring it to
8 your attention. We would let you know that we were in conflict
9 on the issue and we would let you decide.

10 Now, you can fault me for not filing a motion to
11 modify the conditions of release. Right? And now that I've
12 heard everything you have to say, I wish I had done that. All
13 right? But what was agreed upon on January 7 was we are going
14 to get in front of you. We're going to tell you what's going
15 on. And you decide.

16 So at that point to suggest that, well, Ms. Jittaphol
17 was in deliberate violation of Probation, she was talking to
18 me. She did not want to go to inpatient care. Maureen knew
19 that and we were trying to get in front of you as soon as we
20 could to try to figure out what to do.

21 THE COURT: And I can check the chronology, but I
22 think that Probation -- I will check the chronology --
23 Probation told me that on about January 11 -- let me just check
24 the dates -- and we had a hearing -- let me check the dates.
25 They filed a petition for a hearing and we had it on the 20th.

1 MR. HALPERN: There was a delay to get in front of
2 you. I'm sure you have other things to do. The point I'm
3 making is this issue was raised.

4 THE COURT: No, no. Look, this is -- no, this is
5 helpful. So it's raised. It's put in front of me. I know
6 you're contesting it. And I kept continuing this hoping
7 that --

8 MR. HALPERN: Me too.

9 THE COURT: -- we could get to -- you know, once you
10 persuaded me, you know, I shouldn't just reject the plea
11 agreement for other reasons, that we would just get to
12 sentencing without spending three days on this, which I've
13 spent four or five more days on this. This is helpful. Keep
14 going.

15 MR. HALPERN: You asked me a minute or two ago did
16 Probation know that there was a record from Hope Center that
17 did not support the claim that there had been a clinical
18 assessment finding that it was appropriate for her to go to
19 long-term residential care. They absolutely knew. And the
20 statement that Ms. Curran made to me was false. And she knew
21 it was false. And we know she knew because of the next
22 document.

23 THE COURT: What's the statement you allege?

24 MR. HALPERN: The statement made to me was that the
25 Hope Center had made a clinical assessment of Ms. Jittaphol and

1 they had concluded that she was required to do long-term
2 inpatient residential care because of a clinical assessment
3 that they did. Around this time I got their records. All
4 right? And I also -- and I read their records. And there was
5 no clinical assessment at all, which I -- you know, I do
6 medical malpractice cases on occasion. I've got a lot of
7 experience reading medical records. I was shocked. Right?
8 There's no report in here of any clinical evaluation. That's
9 no recommendation of anything. In addition, I was pretty
10 surprised that there was no discharge summary. Right? And
11 I've read a lot of medical records involving inpatient
12 treatment.

13 THE COURT: Does the medical record -- these are
14 records that aren't in evidence before me.

15 MR. HALPERN: They are in evidence before you. The
16 Hope Center -- the complete Hope Center record is in evidence
17 as Exhibit 12. There is no clinical assessment in the record.
18 There's no discharge summary in the record.

19 THE COURT: Let me ask you the following because
20 you've studied these: So on page 24 of Exhibit 7, Probation's
21 chronology, is an email from Colleen to Maureen that we read.
22 And it says, "She refused," the defendant, "refused both
23 long-term treatment, as well as IOP, despite counseling
24 recommendations, as well as the recommendations of our
25 aftercare counselors." There's nothing like that reflected in

1 the Hope records?

2 MR. HALPERN: No, nothing. There's no statement in
3 the Hope Center record that she refused treatment
4 recommendations. There's no question there's statements that
5 she didn't want to go to inpatient care. She says that
6 repeatedly. Right? But that's a different issue. They didn't
7 make a clinical recommendation that she go. They talked to her
8 about the possibility. We looked at the note before where they
9 said to her, well, maybe you could go to My Sister's Place.
10 Right? And she says no, I don't want to go there.

11 They never said this is what you should do. All
12 right?

13 THE COURT: You're talking about Hope?

14 MR. HALPERN: Pardon?

15 THE COURT: You're talking about Hope?

16 MR. HALPERN: I'm talking about Hope.

17 So getting back to whether Probation was aware of the
18 record or whether what I was told is true. Right? After my
19 conversation with Ms. Curran, I call up the Hope Center and I
20 say Probation is telling me --

21 THE COURT: Is this in evidence?

22 MR. HALPERN: It's in evidence because I asked
23 Ms. Wertz about it and she confirmed that she knew. Okay? I
24 called up the Hope Center. I talked to the director of
25 counseling. She told me that there had been no clinical

1 evaluation. Right? I wasn't missing anything in the record.

2 The reason there was no clinical evaluation is we
3 didn't conduct one. And the reason we didn't conduct one is
4 because Probation provided us with a contract, which is what
5 they describe the P-45 form as, which is the top page of the
6 Hope Center record. It's not a contract. Right? And
7 Ms. Wertz explained that. It's an agreement in which Probation
8 agrees to pay the provider for various services if the provider
9 thinks that they're warranted clinically. But Hope Center
10 goofed and instead of reading that the way that Probation
11 intended, which is this doesn't require you to do anything,
12 other than do an assessment, and if it comes out that these
13 treatments are appropriate, we'll pay. All right? Instead
14 what the Hope Center did is say, well, we're not going to do a
15 clinical assessment because this is what Probation wants. All
16 right?

17 So Probation is telling me we're not qualified. We're
18 not the experts. We're relying upon the clinical
19 recommendation of the Hope Center. I look at the records.
20 There's no clinical recommendation. I call the Hope Center.
21 They tell me, "We never did a clinical recommendation because
22 of the contract." I call back Probation. I tell them the
23 story. I file a memo with the court. I detail the
24 conversations that I had. I give the name of the clinician I
25 spoke to. It is impossible that Probation did not pick up the

1 phone, call the Hope Center and say, you know, "This lawyer
2 tells us about this conversation that you had. Is this real?
3 Did this really happen?" Right? Of course they did that. And
4 if they had not been told that everything I said was true, you
5 would have found out about it. They would have filed something
6 in opposition to my memo. They would have said that I was full
7 of it. They never did any of that.

8 Here's what they did: On page 27 of the chronology,
9 Ms. Wertz contacts the Hope Center. She knows there is no
10 discharge summary. She knows that there is nothing in the
11 file -- in the Hope Center records saying, "Here's the clinical
12 assessment. She needs inpatient long-term residential care."
13 Instead she has now -- she's been discharged two weeks ago.
14 The medical record is over. I have a copy of the medical
15 record. They have a copy of the medical record. After the
16 treatment is over, two weeks after the treatment is over,
17 Probation contacts the Hope Center and says, well, maybe you
18 could add something to the medical record. Maybe you could add
19 a discharge summary. Right? "Do you know if a discharge
20 summary has been completed yet?"

21 THE COURT: Wait a minute. You're on page 27 of
22 Exhibit 7?

23 MR. HALPERN: The highlighted pink. "Do you know" --
24 this is from Ms. Wertz to Colleen, the same Colleen who told
25 them "In my opinion, she does not need long-term inpatient

1 residential care." So now they go back to Colleen. Right?
2 And say, "It would help if we had a discharge summary" --
3 Right? -- "to see if we have a document regarding the
4 defendant's refusal to continue long-term residential
5 treatment," which is exactly what Colleen told them the prior
6 week she did need, but maybe you could create a discharge
7 summary now that says she does need it.

8 Can you imagine what you would do to me if I
9 represented somebody and called a hospital and said, "There's
10 no discharge summary in the record. I have some information
11 inconsistent with what I'd like the discharge summary to say.
12 Could you create a discharge summary and send it to me?"

13 THE COURT: Well --

14 MR. HALPERN: I'd be looking at a BBO letter so fast I
15 wouldn't have time to blink.

16 THE COURT: Well, Probation has the email from Maureen
17 on January 4 -- I mean, this is the type of thing I would have
18 expected the government, if it was ardently representing the
19 Probation Office, to be contending, and it's actually an issue
20 the judges have been discussing, representation of Probation in
21 revocation proceedings, but that's probably not something I
22 should mention.

23 But on that page 24, you've got Maureen writing to
24 Ms. Wertz' predecessor -- no, Colleen writing to Ms. Wertz's
25 predecessor, Maureen Connolly, "I feel like the only aspect of

1 programming that Aticha did not comply with was with an
2 aftercare plan. She refused both long-term treatment as well
3 as IOP," intensive outpatient, "despite counseling
4 recommendations, as well as the recommendations of
5 aftercare counseling."

6 MR. HALPERN: The response is twofold. Okay?

7 THE COURT: Let me just finish.

8 You know, it seems to me, because I'm the judge I can
9 just listen to all of this, but I don't want it to sound like
10 an adoptive admission. I'll decide the facts however I decide
11 them after I think about it. But a responsible probation
12 officer with an email from Hope House saying that she didn't
13 follow the recommendation for inpatient and having heard from
14 you, I think would reasonably go and look for a discharge
15 summary to see what was in it. If it was around Christmas or
16 New Year's or for whatever reason, a document that's usually
17 there isn't there, you might ask, "Do you know if a discharge
18 summary has been completed yet?"

19 MR. HALPERN: That would be fine.

20 THE COURT: That's what she said.

21 MR. HALPERN: Except she's asking them to do it.

22 THE COURT: Where?

23 MR. HALPERN: "Do you know if a discharge summary has
24 been completed yet?" What does that mean? That she's waiting.
25 She wants to know if it's going to be completed. If it's not

1 going to be completed, let's do it.

2 THE COURT: No, that's actually not what she says.
3 She says, "I wanted to provide the Termination 45 for the above
4 captioned client. Do you know if a discharge has been
5 completed yet? If not, no worries. I just wanted to see if we
6 had any documentation regarding the defendant's refusal to
7 continue long-term residential treatment."

8 MR. HALPERN: Right. Which they already knew Colleen
9 had told them she didn't need. So they are asking Colleen to
10 create a discharge summary which says the opposite of what she
11 told them on January 4. Right? On January -- if they -- if
12 she had said, okay, do a discharge summary that confirms what
13 you said in the email, that we talked to her about outpatient.
14 We talked to her about inpatient. She wasn't responsive.
15 Fine. That would be completely inconsistent with what's in the
16 treatment record, but at least it's consistent with the email.

17 That's not what they did. What they did is take
18 information from Colleen in which the clinician says she does
19 not need long-term inpatient care, turn around and ask her to
20 do the opposite and to create a document in the form of a
21 discharge summary, add it to the medical record and say, oh,
22 yes, she does need long-term inpatient residential care.
23 Moreover, at this point they knew that there had been no
24 clinical assessment. It's not just that the recommendation is
25 different. There's no clinical evaluation at all. It doesn't

1 exist. It never happened.

2 THE COURT: And the point of this is what? Because,
3 as I said --

4 MR. HALPERN: The point of this --

5 THE COURT: There are two dimensions. One, did they
6 direct her to do inpatient. And I don't think you're
7 contesting that they gave her direction.

8 You're essentially arguing the implications of --

9 MR. HALPERN: No, I'm not. They did not -- well, it
10 depends who "they" is. Nobody gave her directions when she was
11 at Hope Center.

12 THE COURT: Not at Hope Center. Probation.

13 MR. HALPERN: Afterwards.

14 THE COURT: I'm looking at page 25 of Exhibit --

15 MR. HALPERN: That's right.

16 THE COURT: Stop. And I think -- maybe I shouldn't
17 engage so much, but we've got to finish this.

18 But I'm just noting, and then I may need to give
19 Probation -- if they want to jump up -- if Ms. Wertz or Mr.
20 Pace want to jump out of their seat because they know this
21 record better than the government does. I'm not sure that the
22 government and its client have the same position.

23 But it says on page 25 --

24 MR. HALPERN: Which document are you looking at?

25 THE COURT: Exhibit 7, it's the chronological.

1 "Probation officer informed her that if she does not
2 participate in long-term care, the court will be notified as
3 this is the treatment recommendation that Probation is adhering
4 to."

5 MR. HALPERN: Right. That's January 7.

6 THE COURT: Right.

7 MR. HALPERN: That's exactly what I was talking
8 about --

9 THE COURT: But that's a direction to her.

10 MR. HALPERN: I'm not disputing that.

11 THE COURT: Okay.

12 MR. HALPERN: She called me.

13 THE COURT: Okay. I've got that. That's all I wanted
14 to clarify. But -- that's why I'm saying there are two
15 dimensions to this. One, that she failed to follow a direction
16 and, two, what should be the implications of it. And it is
17 important because I actually have other matters this afternoon
18 to attend to, but -- and it's part of the reason you want to
19 get to some of the other things soon.

20 MR. HALPERN: I'll --

21 THE COURT: No, let me just explain to you, because if
22 you listen you'll be able to do an even better job.

23 To me the issue here -- you know, each of the discrete
24 alleged violations, admitted or alleged violations is
25 important, but the ultimate issue is what picture -- what

1 mosaic emerges from the discrete violations, because I didn't
2 revoke her for not going inpatient and by the time I saw you,
3 as I recall, Probation had essentially accepted that we'll try
4 outpatient.

5 Go ahead.

6 MR. HALPERN: The violation is described as "In light
7 of the discharge from treatment against BHN's clinical
8 recommendation," there was no clinical recommendation.

9 THE COURT: Now you're reading from what?

10 MR. HALPERN: I'm reading from the petition, Exhibit
11 2. So the accusation was that she had violated a clinical
12 recommendation. There was no clinical recommendation. And as
13 of today there still has never been a clinical recommendation
14 made by anyone.

15 I'm not going to spend a whole lot of time -- so that
16 was the first issue. Was there actually a refusal to listen to
17 what Hope Center told her to do? No. Was there a refusal to
18 listen to a clinical recommendation made by anyone? No.
19 Because there never was a clinical recommendation. Was there a
20 refusal to do what Probation told her to do on January 7? Yes.
21 And at that point she called me. She told me what was going
22 on. I called Probation and we decided to bring the matter to
23 you.

24 Dr. Gitlow spends a good deal of time explaining that
25 there was no basis for a clinical recommendation, which may be

1 why they didn't do that.

2 THE COURT: Spends some time explaining where?

3 MR. HALPERN: In his report, which was previously
4 provided to you in one of the prior hearings, but in
5 this motion it's number 13 and his CV is number 25. He
6 explains -- so he is an expert in addiction medicine. And he
7 explains what you need, what criteria you look at to make a
8 judgment about whether long-term inpatient residential care is
9 appropriate. And he concludes not just they didn't do what I
10 think they should have done. He concludes that it was a
11 violation of the standard of care.

12 Now, with respect to the second issue, and I
13 appreciate your concern that, well, did she not do what she was
14 told to do. You know, I feel like if Probation says "jump,"
15 that the court has to look at something beyond whether or not
16 the defendant says "how high," and if they don't do what
17 Probation tells them to do, the assessment of the violation
18 needs to include whether the requirement made sense. And in
19 this case you've got an expert saying not just that it didn't
20 make sense, but that it breached the medical duties of care.

21 This is a doctor who was president for three years of
22 the American Society of Addiction Medicine. He's on the
23 editorial board of the Journal of Addictive Diseases. He's on
24 the board that certifies applicants for board certification in
25 addiction medicine from the American Board of Psychiatry and

1 Neurology. He's a serious guy who is saying they have
2 absolutely no business recommending long-term inpatient care
3 and, in fact, maybe that's the reason they didn't do it.

4 Nothing in his report has ever been disputed. You've
5 never seen a clinical report in this case. Never. Not from
6 the Hope Center, not since she got discharged from the Hope
7 Center. Nobody has ever written a clinical report about her,
8 let alone concluded she needed inpatient care.

9 THE COURT: There hasn't been any testimony, to my
10 memory, on Exhibit 13, Dr. Gitlow's report. So I think -- are
11 you referring to the last paragraph on the first page that goes
12 over to the second page?

13 MR. HALPERN: You're looking at his letter?

14 THE COURT: Yes. January 27.

15 MR. HALPERN: Yeah. I'm looking -- he identifies the
16 criteria.

17 THE COURT: I know, but I think you're referring to
18 this last paragraph. Let me read it so we all have it in mind
19 and then -- "The applicable standard of care in the evaluation
20 of appropriate drug treatment placement relies upon two major
21 criteria sets, Inter Qual and ASAM. These criteria similarly
22 provide that determinations as to the proper level of care are
23 to be made on a daily basis based on clinical findings. While
24 certainly it is reasonable to estimate in advance what level of
25 care might be needed and to have such care made available

1 should it be needed, it is inappropriate and a breach of the
2 standard of care to determine that a level of care, e.g.,
3 inpatient versus ambulatory, is actually warranted in advance
4 and without consideration of the patient's individualized
5 progress and needs." So is that the most pertinent --

6 MR. HALPERN: Well, no. That's what Hope Center
7 ultimately does when they interpret the T-45 as a requirement
8 to provide care that they don't think she really needs.

9 THE COURT: That's what somebody did. But that email
10 from Colleen to Maureen also says that there were counselors
11 who were recommending inpatient, that the --

12 MR. HALPERN: No, it does not say that. It doesn't
13 say that. It says that there were counselors who talked to her
14 about inpatient and outpatient and she wasn't responsive the
15 way they wanted her to be. That's not what the violation is
16 about. What the violation is about is that there was a
17 clinical recommendation for long-term inpatient residential
18 care. There wasn't. And if there had been, it would have been
19 inappropriate.

20 In the next paragraph he lists the criteria that
21 you're supposed to look at to determine whether or not
22 long-term inpatient residential care is appropriate. She
23 didn't meet any of them. Not one.

24 I want to turn to the -- I'm going to save the patch
25 issue for later and I want to turn to the smaller violations

1 which she admits.

2 The purpose of her participation in Crystal Meth
3 Anonymous and the CPC counseling is to help prevent relapse.
4 They're not conditions that have significance in and of
5 themselves. They're not conditions that are designed to see if
6 she can follow conditions. They're conditions that are
7 supposed to help her not use meth.

8 THE COURT: Am I correct that CPS is a weekly
9 counseling session?

10 MR. HALPERN: CPC.

11 THE COURT: I'm sorry. CPC.

12 MR. HALPERN: Yes, it is a weekly --

13 THE COURT: It's a weekly counseling session. CMA
14 is --

15 MR. HALPERN: Crystal Meth Anonymous. It's like NA.

16 THE COURT: So she missed --

17 MR. HALPERN: She missed two meetings.

18 THE COURT: She missed a PCC session on March 10,
19 2022, I believe, right?

20 MR. HALPERN: Yes. That was the day after she went to
21 the NA meeting, and you've got a stipulation about that. She
22 overslept.

23 THE COURT: It was two days after the March 8 hearing.

24 MR. HALPERN: Yes. I'm not excusing --

25 THE COURT: Well, I'm just trying to make sure that,

1 having heard all I've heard, particularly today including the
2 defendant's inconsistent testimony, that I've got the
3 chronology right.

4 So on March 8 I told her I wasn't revoking her. I was
5 modifying the conditions. She couldn't be like Bartleby the
6 Scrivener and say, "I prefer not to." And I asked her if she
7 was going to fully comply with everything I ordered her to do.
8 And the next morning I issued an order, and the probation
9 officer went over that with her. She agrees, she admits it.
10 And the next morning I issued that in writing, and then she
11 missed the first meeting two days after we had that discussion
12 on March 8.

13 MR. HALPERN: Right. But the day that you wrote the
14 order, she went to a meeting that night with a friend, a
15 psychologist who invited her, and there's a stipulation about
16 this, to an NA/AA meeting that she wasn't required to go to.
17 She just went because she thought it would be good for her.
18 The next morning she overslept and missed the 9:00 session that
19 she was supposed to go to with the CPC counselor, who other
20 than that meeting has said that she seems to be committed to
21 sobriety and has been doing fine.

22 THE COURT: Do I have that in the record?

23 MR. HALPERN: Pardon?

24 THE COURT: Is that in evidence?

25 MR. HALPERN: I think Ms. Wertz testified to it.

1 The failures to go to the meetings would be more
2 important if they represented a reluctance to get the help that
3 these places offer. But she's testified that she wants to go.
4 She's testified that she thinks they help her. This is not
5 about I'm going to blow off these meetings because I don't care
6 about them, because I prefer not to, because I'd rather use
7 drugs. She overslept. She was irresponsible. It's a bad
8 thing that she did it, but it's a whole lot different than,
9 like, "The hell with it. I don't feel like going to the
10 meetings. I don't think these meetings help me. I don't care
11 what the judge says. I'm going to do whatever the hell I
12 want." That's not what happened.

13 She went to an NA meeting March 9. She overslept the
14 next morning. She shouldn't have overslept. She shouldn't
15 have slept through her alarm.

16 THE COURT: Okay. I've heard that.

17 MR. HALPERN: All right.

18 She missed a Crystal Meth meeting after staying out
19 late because she was invited to a wedding party. All right? I
20 mean, she shouldn't have done it. Maybe she shouldn't have
21 stayed out so late. I do not know. But it wasn't because she
22 felt like, you know, I just don't care or I'm going to do
23 whatever I want. Right? She has been tested since the CMA
24 meeting that she missed on March 26. The tests have been
25 negative.

1 The failure doesn't have anything to do with not
2 taking sobriety seriously or with a deliberate failure to
3 violate the conditions. All right? She knows the conditions
4 help her. She wants the conditions to --

5 THE COURT: Okay. I've got that. There's a finite
6 amount of time here and we're running out of it. You've been
7 going for about an hour. I am interested in hearing about the
8 two positive drug tests.

9 MR. HALPERN: You know, I feel like I should address
10 the massage issues too, but I'll --

11 THE COURT: Why don't you do it after the drug tests.
12 It comes up chronologically.

13 MR. HALPERN: Okay. I'll go to the drug tests.

14 You asked me to -- you actually asked both parties to
15 look at some documents which Probation had produced in an order
16 on April 4 and what we made of these documents.

17 So what I make of these --

18 THE COURT: I'm sorry, what -- let me --

19 MR. HALPERN: This is an order that you wrote on April
20 4 giving us copies of the Administrative Office --

21 THE COURT: Right.

22 MR. HALPERN: -- letter, the letter from Probation and
23 the FDA.

24 THE COURT: Because, as always, I don't want to and
25 shouldn't decide anything based on information the parties

1 haven't had, but I think it's in *Alphonso* perhaps many years
2 ago Judge Young noted that the Administrative Office of the
3 Courts had authorized --

4 MR. HALPERN: So my take on these documents, as I'll
5 explain, is that they are pretty useless. But more important
6 than whether I think they're useless is that I think Probation
7 thinks they're useless. And I'll explain why.

8 The first document talks about the reliability of the
9 test. And this is based on testimony from a PharmChem
10 executive. It was written in 1998. He testified that --

11 THE COURT: Let me help you a little bit. It might
12 expedite this but also lets you focus on what's of greatest
13 interest to me.

14 The press release that -- the business wire document,
15 which I believe is a press release, at the end -- it's dated
16 July 16, 1995 -- it says, "PharmChem receives FDA market
17 approval for PharmChek's sweat patch."

18 MR. HALPERN: Mm-hmm.

19 THE COURT: The law, as I understand it, with regard
20 to getting approval from the FDA requires a finding by the FDA
21 that something is safe and effective. That's the statute.

22 MR. HALPERN: Right.

23 THE COURT: So it's just some indicia of reliability
24 that the FDA -- it went through the FDA process, the FDA found
25 it was effective and then -- and the documents that I attached

1 go way back. And you have some subsequent literature, and you
2 can, if time permits, point me to the most pertinent parts,
3 but, you know, the Probation Department wants reliable tests
4 and --

5 MR. HALPERN: Well, actually, that's one of the points
6 I want to make.

7 THE COURT: Okay. Go ahead.

8 MR. HALPERN: Dating back to 1998 in these materials,
9 they were told by PharmChem our test is better than the urine
10 test. It's more reliable. It's harder to adulterate. The
11 time frame it examines is longer. It's less expensive. Right?

12 After the last hearing when I learned that
13 Ms. Jittaphol was the only probationer that was being patch
14 tested of those under Ms. Wertz's guidance, I asked Probation,
15 how many people, out of all the people you're monitoring, how
16 many people, other than Ms. Jittaphol, are sweat patch tested?
17 They wouldn't tell me. My guess is there aren't any or if
18 there are, you could probably count them on one hand.

19 THE COURT: I know. I ordered it --

20 MR. HALPERN: That's not my point.

21 THE COURT: -- because this is an ongoing issue. Go
22 ahead.

23 MR. HALPERN: The point I want to make is that if
24 Probation believed the information that they were given over 30
25 years ago that this is a better test, it's more reliable, it's

1 more tamperproof and it's cheaper, why is she the only one?
2 Right? They would have switched to these tests decades ago.
3 And the very fact that they haven't switched and they don't use
4 these tests for virtually anybody is an indication that they
5 know this is B.S. They know that these tests are unreliable
6 and with respect to the FDA issue, all right, if a drug
7 manufacturer goes to the FDA and says, "I've got a drug. I'd
8 like you to approve it and in 80 percent of applications it's a
9 cure for this disease." Right? What does the FDA do? Do they
10 say no, we're not going to approve that drug because it's only
11 80 percent effective? Right? They approve the drug. It
12 works. Okay? The problem is the fact that it works doesn't
13 mean that it's an appropriate drug to use in court to determine
14 whether or not somebody has used drugs. Twenty percent false
15 positives means something in court --

16 THE COURT: No, this --

17 MR. HALPERN: -- that it doesn't mean to the FDA.

18 THE COURT: Well, this -- I said this earlier.
19 There's a series of things that arguably are indicia of
20 reliability, and that's just one of them. Go ahead.

21 MR. HALPERN: The government, along with Ms. Wertz's
22 testimony has -- I want to try to find the -- oh, here it is.
23 This is a letter, 2001. Okay? Now --

24 THE COURT: The government -- this is part of the
25 April --

1 MR. HALPERN: This is part of the same order.

2 THE COURT: -- the April 4 package. My order is
3 docket 66.

4 MR. HALPERN: Right.

5 So the reason this metabolite issue came up is because
6 back in 2000 there were issues raised about false positives and
7 there was a suspicion that the false positives were coming from
8 external contamination. All right? So the resolution was
9 instead of testing for the drug, we're only going to test for
10 the metabolite, which is exactly what urine tests do. They
11 test for what's being produced by the body instead of what's
12 being produced from the environment. All right?

13 But if you look at the letter, right, it says that
14 PharmChem is going to do some studies to try to figure out
15 what's going on and why there are all the false positives and
16 in the meantime, in the meantime, they are going to only report
17 results concerning the metabolites. That was in 2001. Right?
18 I don't think "in the meantime" means 24 years later. All
19 right? So if you look at the documents from PharmChem, they
20 abandoned this a long time ago. Right? They test for both the
21 drugs and the metabolite. This whole argument that we only
22 test the metabolite is made up. It's just --

23 THE COURT: What evidence do I have of that?

24 MR. HALPERN: Pardon?

25 THE COURT: What evidence do I have?

1 MR. HALPERN: Well, because you can look -- I'll get
2 to the exhibit.

3 THE COURT: All right. You're not going to have more
4 than 20 more minutes. So decide -- because it's now 20 of
5 3:00. You've had an hour and a half approximately. Decide how
6 you want to use your time.

7 MR. HALPERN: All right. This is from the PharmChem
8 website. You'll notice that the whole purpose of this is to
9 try to show how much better they are than urine tests.

10 THE COURT: This exhibit is -- we marked it this
11 morning. It's the one that says "It stinks."

12 MR. HALPERN: Right. What does the test do? It
13 detects drug metabolite and the parent drug -- Right? -- not
14 just metabolite.

15 THE COURT: Hold on a second. Let me find my copy of
16 it, please. It should be in here.

17 What exhibit is this?

18 MR. HALPERN: 27.

19 THE COURT: Go ahead.

20 MR. HALPERN: It's more effective than urine. It
21 tests both metabolite and the parent drug and it's less
22 expensive. So why aren't they using it?

23 The metabolite issue is -- the conflict here is one
24 way that the false positives can occur is if the patch is being
25 impacted from the environment. So it could be that the person

1 is near somebody else who uses. It could be they put on a
2 sweater that they were using before that had drugs on it and it
3 comes in through the patch.

4 The metabolite issue -- Ms. Wertz was asked do you
5 know how there could be a false positive if it was just testing
6 metabolites? Number one, they were not just testing
7 metabolites. Ms. Wertz said I don't know. Not only does
8 Ms. Wertz not know, nobody knows. There's a tremendous amount
9 of literature about the problem that nobody knows. What they
10 do know is that it's happening. What they do know is that
11 somehow people's bodies are providing metabolites that yield
12 false positives and that's been reported in one study after
13 another.

14 And I'm not going to go through all of these studies.
15 I'm going to kind of flash through them quickly to try to focus
16 on parts that I think are the most significant.

17 So this one, the first one, is the Preston article.
18 That's marked --

19 THE COURT: Let me get my copy, please. That's number
20 25, apparently.

21 MR. HALPERN: Preston is 30.

22 THE COURT: I'm sorry. 30 is the Preston article. I
23 have it.

24 MR. HALPERN: All right. So all I want to point out
25 here is it's a test about trying to compare urine and sweat

1 testing in cocaine use and it comes up with a false positive
2 rate of sweat patches of 21.1 percent. All right? That's a
3 lot. It may not be a lot to get rejected by the FDA, but 20
4 percent false positives --

5 THE COURT: What page were you on?

6 MR. HALPERN: Page 320. And it's repeated -- the data
7 is described on other pages, but the conclusion --

8 THE COURT: I've got it.

9 MR. HALPERN: All right. 21.1 percent false
10 positives. That's a lot.

11 The same sort of test was done in the next exhibit,
12 which is 29. The lead author was Huestis, but this one is
13 about opiates. It's not as bad as cocaine. The false positive
14 rate is only 7.9 percent. It's still a lot. 8 percent false
15 positives using opiates.

16 The next article --

17 THE COURT: Hold on just a second.

18 MR. HALPERN: Yup.

19 THE COURT: So the beginning of this abstract says,
20 "Although urine testing remains the standard for drug use
21 monitoring, sweat testing for drugs of abuse is increasing
22 especially in criminal justice programs. One reason for this
23 increase is sweat testing may widen the detection window
24 compared to urine testing. Drug metabolites are rapidly
25 excreted in urine, limiting the window of detection of a single

1 use to a few days. In contrast, sweat collection devices can
2 be worn for longer periods of time." I'll stop there. So
3 that's one thing.

4 MR. HALPERN: Yeah. I mean, there are advantages in
5 sweat patches. They last the entire time you put them on.
6 That doesn't mean that a rate of 8 percent false positives for
7 opiates and 21 percent for cocaine isn't a big deal.

8 The next article that I want to just point to, the
9 next one is the Kidwell article. And that's been marked as
10 Exhibit 31.

11 THE COURT: Let me get my copy, please. I've got it.

12 MR. HALPERN: Okay. I'm just going to show a couple
13 of the issues that this mentions. And this goes back to the
14 metabolite issue, not the environmental issue. It's not
15 clear -- so this is from page 71.

16 THE COURT: What page?

17 MR. HALPERN: Page 71, and it's on the screen. For
18 chronic users it's not clear whether cocaine appearing in the
19 patches came from current drug ingestion, previous drug
20 ingestion, previous drug contamination, current drug
21 contamination or a combination. Right? So this is not just
22 talking about environmental issues that don't involve
23 metabolites. This is talking about metabolites. It's talking
24 about problems that are arising based on prior drug use.

25 THE COURT: Prior cocaine use.

1 MR. HALPERN: In this case, yeah, prior cocaine use.

2 THE COURT: Again, this isn't rhetorical because I
3 haven't had time to focus on the studies you filed today. But
4 the papers that you filed on April 6, I don't think any of them
5 specifically addressed sweat patches and methamphetamine, did
6 they?

7 MR. HALPERN: Many of them mention methamphetamine.
8 But I have not found any studies of false positives concerning
9 methamphetamine. I've found them concerning cocaine and
10 heroin.

11 I want to point to one other bit on the Kidwell
12 article.

13 But I would point out, and I ask in terms of how
14 methamphetamine works, it's much more similar to coke than it
15 is to heroin. To what extent you can draw an inference from
16 that with respect to metabolites, I have no idea.

17 So from the Kidwell article, page 76, "The most
18 reliable method for detecting drug use appears to be daily
19 urinalysis. Patches will miss drug use as well as wrongly
20 indicate drug use. Numerous legal challenges have asserted
21 that positive patch test results were not the result of drug
22 ingestion. Most of these individual had some number of
23 negative urine tests to buttress their legal position of not
24 using drugs. This study clearly demonstrates that patch
25 positives can arise under real life conditions from sources

1 other than drug use. Therefore, interpretation of sweat patch
2 results must proceed with caution."

3 The next one -- I've only got a few more and I'm going
4 to go through them quick. Cruickshank, this one I'm not sure.

5 THE COURT: Cruickshank.

6 MR. HALPERN: I'm trying to see whether this was
7 marked. It may not have been. Oh, I think this was marked
8 earlier and if it wasn't --

9 THE COURT: I'm sorry. I believe, according to my
10 alert clerk, we're looking for 15.

11 MR. HALPERN: 15, yes.

12 THE COURT: Just a minute. Let me find it.

13 MR. HALPERN: Here I want to point out something not
14 really about the reliability of the sweat patch -- this is page
15 1087 -- but about the issue of whether these test results of
16 Ms. Jittaphol's make much sense.

17 Methamphetamine typically is used many days at a time.
18 So what the author says --

19 THE COURT: What evidence do I have of that?

20 MR. HALPERN: Well, one of the things you have is this
21 article which says, "Although dosing patterns vary
22 substantially between regular methamphetamine users, a typical
23 pattern of use appears to consist of four doses daily and
24 binges lasting four days."

25 Perhaps more important than the article is what

1 Ms. Jittaphol told everybody who's ever talked to her about her
2 drug use, which is that she used every day. She used three or
3 four times every day. And she couldn't stop and she did it
4 month after month after month.

5 THE COURT: Prior to the time she got some treatment?

6 MR. HALPERN: That's right. But the notion that
7 somehow magically after she's gotten some treatment now, since
8 this year, since January 1 of this year, she's been able to use
9 twice -- twice -- and tested positive twice for sweat patches.
10 But somehow magically figured out I don't need to use every
11 day. The article says in that same paragraph methamphetamine
12 highs last about three or four hours. That's it. So the
13 people who use -- I mean, you've seen pictures of what meth
14 addicts look like. They don't look like that because they're
15 using once every few months. They look like that because they
16 use the same way she used and they lost control of their lives
17 and they lost the ability to stop.

18 The Levisky article.

19 THE COURT: Exhibit 16, according to my notes.

20 MR. HALPERN: Yeah. This gets back to the metabolite
21 issue, and this is page 67, "Chronic cocaine users show
22 prolonged terminal urine half-lives." In other words, the
23 cocaine stays in their body, the metabolites are there longer.
24 And, it says, "may accumulate in the fatty tissues of the body
25 and then it gets released in sweat." Right? So the scientists

1 don't know exactly how this happens, but the problem doesn't go
2 away simply because you're testing for metabolites. Subjects
3 to undergo court-ordered drug testing do it for a reason. The
4 reason is usually that they're chronic drug users and the time
5 it takes to clear all residual drugs from their bodies has
6 never been studied and is not known.

7 So you could say, well, she tested negative a bunch of
8 times. So how does that happen? If it's stored in the body,
9 how does she test negative one day and positive the next? And
10 they don't know. And one of the speculations is that it has to
11 do with how much you sweat and there are more metabolites
12 produced when you sweat heavily.

13 I want to look at this next article for a very narrow
14 issue. I have to confess -- this is the Wagner article, which
15 is 32. It is unbelievably dense and the subject of it is what
16 risks are we taking if we give other drugs to treat people who
17 we know have used meth in the past? And what the authors are
18 trying to figure out is to avoid interactions, bad
19 interactions, we have to know when do the meth metabolites get
20 out of their body so we can give them another drug without
21 worrying about interactions. And what they say is "We don't
22 know." Right? So this is a long, incredibly detailed,
23 unbelievably dense article that ultimately concludes this is
24 like a really serious problem and we need to figure it out.

25 One thing that they conclude is it's extraordinarily

1 variable. And one of the things they identify, which is on
2 page 770, which you can see here, is that it depends upon urine
3 pH. And that for some reason, depending on the level of urine
4 pH, some people may get rid of meth metabolites within two or
5 three days. Some people it could be a lot longer. They don't
6 know. It's highly variable.

7 Now, the only source the government had in this
8 hearing were the 72-hour time frame that they propose. Guess
9 who came up with that? PharmChem came up with it. It's in
10 PharmChem's promotional literature. I mean, well, what's
11 PharmChem's interest here? PharmChem's interest is in exactly
12 what you saw. "Urine Stinks." Right? They're trying to
13 market a product by saying we're better than urine. So the
14 fewer days the urine is effective for, the more likely it is
15 that potential customers are going to say, well, we've got a
16 patch here that lasts a week and the urine only lasts three
17 days. Right? There's no evidence from any scientific -- all
18 we've got here is PharmChem. Right? You can't rely on them.
19 They're trying to sell their product. Right? And this is from
20 an expert who's saying you can't -- we don't know. It's not 72
21 hours. It's -- we don't know how long.

22 The next article, 29 -- I'm sorry -- which is "Working
23 Up a Good Sweat," 33. This is a narrow issue, but I think it's
24 worth noting and it's in couple of articles. One of the things
25 that they're worried about and that they don't have studies to

1 assess is what's the difference in metabolite production?
2 Depending upon how much the person sweats. Right? Does it
3 depend upon the temperature? Does it depend upon humidity?
4 Does it depend upon exercise? In this article they talk about,
5 well, it could depend on body temperature. It could depend
6 upon exercise, emotional state.

7 THE COURT: You've got about four more minutes.

8 MR. HALPERN: All right. The last article I'm going
9 to mention is the DeGiovanni article, 34, "The effects of
10 vigorous or prolonged exercise on the transfer of drugs into
11 sweat and onto the patch are unknown and there's evidence that
12 outward migration of some accumulated drugs may lead to
13 incorrect interpretation of drug use. It would be premature to
14 replace urine toxicology testing with sweat patch testing."

15 THE COURT: Hold on. What page are you on?

16 MR. HALPERN: It's the last page of the article short
17 of the references, page 559 of the DeGiovanni article.

18 THE COURT: Let me find it.

19 This article was written in 2013, it looks like?

20 MR. HALPERN: Yes. 2013.

21 THE COURT: And what you just highlighted says,
22 "Nevertheless, it would be premature" --

23 MR. HALPERN: "It would be premature to replace urine
24 toxicology testing with sweat patch testing in both research
25 and clinical testing." And it makes specific reference to

1 sweat, to sweating from exercising.

2 THE COURT: It says, "Nevertheless" -- well, it starts
3 by saying, "Sweat patches provide a convenient alternative that
4 avoid some of the problems with drug testing such as violations
5 of privacy and observed urination. Nevertheless, it would be
6 premature to replace urine toxicology testing with sweat
7 patches in both research and clinical settings. Continuing
8 improvements in sweat patch collection and testing methods may
9 result in the availability of a substantially improved sweat
10 device in the near future."

11 MR. HALPERN: Right. But there's no evidence that the
12 PharmChem device has changed in the last 30 years.

13 THE COURT: All right. That's all the time I intended
14 to give you. Do you want five more minutes?

15 MR. HALPERN: Can I conclude in like five minutes?

16 THE COURT: Yes, I just said that. Would you like
17 five minutes?

18 MR. HALPERN: I would.

19 THE COURT: But that's going to be it.

20 MR. HALPERN: I'm good with that. You've had an
21 opportunity to judge whether or not she's genuinely
22 committed --

23 THE COURT: Let me just say the following: I'm going
24 to give Probation a couple minutes if there's some things
25 they'd like to point to in the record that might be helpful. I

1 think they have greater mastery of it than -- certain parts of
2 the record than anybody else. So prepare.

3 MR. HALPERN: You've had a chance to assess whether
4 she is genuinely committed to sobriety. She's the one who
5 asked to be put into a detox. There's a reason that Probation
6 is not using sweat patches. So one change I would ask you to
7 make going forward is stop patch testing. And if you want to
8 do urine tests twice a week, do urine tests twice a week, but
9 let's avoid going through this again.

10 She deserves to be reprimanded. I don't believe she
11 deserves to be punished for the violations. But she also
12 deserves an enormous amount of credit, which she's never
13 received, for acknowledging that she had an addiction problem,
14 for asking for help, for staying clean. And even if you
15 believe these patch tests are true, which I don't for a
16 second -- you've got somebody who was using every day multiple
17 times a day for over a year and she has managed, if you believe
18 these tests, that since January she's used twice. I don't
19 believe the tests. But even if you do, it's a pretty
20 remarkable accomplishment.

21 During COVID we've all had to figure out ways to stave
22 off depression, to get out of the house. Right? She plays
23 volleyball. It keeps her active. It's good for her. It keeps
24 her off drugs. Exercise helps a hell of a lot more than
25 sitting in a house doing nothing. I played golf. If I didn't

1 have golf to rely on over the past two years I'd go out of my
2 mind. It gets me out of the house. I interact with friends.

3 THE COURT: Okay. Okay. You're using precious time.
4 I don't need to hear about golf.

5 MR. HALPERN: All right. She walks her dog. You
6 know, home confinement, if you are going to pick something to
7 make it more likely that she would want to use drugs, I don't
8 know that you could pick anything worse than prison or home
9 confinement.

10 She has worked hard to remain sober. She missed a
11 couple of appointments. She shouldn't have. It was
12 irresponsible. Part of it is just not understanding how
13 serious it is. Fine. She gets it. Right? She's not going to
14 keep violating. This isn't somebody whose attitude is I don't
15 care. I want to use drugs. I don't care what the judge says.
16 She went to an NA meeting she didn't have to go to. Why did
17 she do that? She did it because she wants to stay clean. She
18 overslept the next morning. It doesn't mean she didn't care
19 about the meeting. She screwed up.

20 The massage issue I think I should address briefly.
21 She didn't violate any court order when she sold the business,
22 when she talked to the guy about the possibility of working
23 there. This is a 45-year-old guy who not only owned the place
24 but was going to be one of the two masseuses with her. So to
25 the extent you're concerned that she was looking to get back

1 into providing sexual services, I'm sorry, but guys are not
2 walking into a massage place to get sexual services if they see
3 a 45-year-old guy is one of the two masseuses. She's trained
4 to be a masseuse.

5 She didn't do anything wrong initially. Her boss,
6 right, who owns the restaurant, says, "I'd like you to help set
7 the place up." She should have told Ms. Wertz. She didn't.
8 It's a mistake. It doesn't indicate that she can't follow
9 instructions. This is horrible. If she had been offered a
10 permanent job, if she had been told, okay, when you get your
11 license you come back, you're going to give massages, and had
12 she done that and started working every day and never told
13 Probation, that would be a more serious problem. But that's
14 not what happened. So yes, she screwed up. Yes, she should
15 have told Ms. Wertz. But you've seen for yourself the
16 difficulties of her understanding exactly what's going on.

17 THE COURT: I see for myself a certain selectivity in
18 which she chooses to understand. But go ahead.

19 MR. HALPERN: I don't think imprison --

20 THE COURT: One more minute.

21 MR. HALPERN: Fine. Incarceration in any type of
22 formal setting, I don't know how you do that. I mean, she's
23 not going to be allowed into a women's facility. If you put
24 her in a men's facility, she's going to be in solitary 24/7.
25 There's no way she's going to be allowed to interact with men.

1 So what's the alternative? The alternative is home
2 confinement. I don't think it's a good idea. I don't think
3 it's a good idea because I don't think she deserves it as a
4 punishment because I think that she can comply with the
5 conditions because I don't think the violations are bad enough
6 to suggest that she can't comply with the conditions, and I
7 think it's damaging. I mean, what you want to achieve here is
8 that she stays sober, that she works, that she gets permission
9 to work, and she gets back into society. Right? How do you
10 get there by saying stay home, watch TV all day, that's it. No
11 interaction with anybody. You're going to learn a lesson.

12 THE COURT: Okay. I've got it. Thank you.

13 MR. HALPERN: Thank you.

14 THE COURT: Is there something Probation would like to
15 say particularly with pointing me to things out in the record?

16 MR. PACE: Yes, Your Honor. Thank you very much.

17 THE COURT: Could you say your name for the record,
18 please.

19 MR. PACE: James Pace, United States Probation.

20 Just a couple points of clarification, Your Honor. I
21 know Mr. Halpern stated that there was no discharge summary and
22 the full packet was provided to the Probation Office. We
23 actually provided a discharge summary to the court.

24 THE COURT: You did?

25 MR. PACE: Yes, Your Honor. We supplied it to

1 Mr. Halpern and counsel stating the recommendations of the
2 program.

3 THE COURT: Do you have that?

4 MR. PACE: We have the email account. I don't know if
5 we have the hard copy with us right now.

6 Here. Does the government have it?

7 MS. LAWRENCE: I will check the binder that I was
8 given. This was provided on January 20.

9 MR. PACE: Yes, Your Honor, that's the hearing where I
10 testified.

11 MR. HALPERN: It was provided a month after she was
12 discharged.

13 THE COURT: Just one minute.

14 MS. LAWRENCE: You do have it?

15 MR. HALPERN: I don't have it here. It wasn't an
16 exhibit.

17 THE COURT: Stop. You address me.

18 MR. PACE: So that's --

19 THE COURT: No, hold on, Mr. Pace.

20 MR. PACE: I'm sorry, Your Honor.

21 THE COURT: This is supposedly your lawyer consulting
22 you, representing you zealously.

23 MS. LAWRENCE: This binder is just pleadings. So I
24 don't believe I have a hard copy here. I was given an email
25 copy by Mr. Pace today.

1 THE COURT: You mean it was emailed to you?

2 MS. LAWRENCE: He forwarded it to me understanding
3 that Ms. Wan would have gotten it originally.

4 THE COURT: Did you print it out?

5 MS. LAWRENCE: I was not in my office when he sent it
6 to me. I was here.

7 THE COURT: Well, have you been back to your office
8 since we adjourned at ten of 12:00?

9 MS. LAWRENCE: I got it after that. Thank you. I'm
10 sorry.

11 THE COURT: What is the discharge --

12 MR. HALPERN: I'm sorry. Can I explain this?

13 THE COURT: Well, I'll take this by way of a proffer.
14 He can do it. I'm not taking it as evidence. Have a seat.

15 MR. HALPERN: Oh, I thought you wanted me to explain
16 it.

17 THE COURT: No. It's Mr. Pace's turn.

18 MR. PACE: Yes, Your Honor. But that discharge
19 summary does highlight the treatment recommendations after the
20 fact for aftercare.

21 THE COURT: Can you read word for word what it says?

22 MR. PACE: Yes, Your Honor. If I may take a look at
23 Officer Wertz's phone, we have it.

24 THE COURT: Sure.

25 MR. PACE: Your Honor, it says, "Ms. Jittaphol made

1 great strides in the areas of developing coping skills, gaining
2 insights as evidenced by increasing participation in groups and
3 individual counseling sessions. Ms. Jittaphol also showed
4 improved insight through homework assignments, listing high
5 risk events that could trigger relapse, long-term and
6 short-term goals for recovery, employment, interpersonal" --

7 THE COURT: Slowly.

8 MR. PACE: I'm sorry.

9 -- "employment, interpersonal relationships,
10 and purpose."

11 THE COURT: Say this again. Ms. Jittaphol showed
12 what?

13 MR. PACE: "Ms. Jittaphol also showed improved insight
14 through homework assignments, listing high risk events that
15 could trigger relapse, long-term and short-term goals for
16 recovery, employment, interpersonal relationships and purpose.

17 "Ms. Jittaphol and her primary counselor reviewed
18 these materials in detail in an effort to extract insight and
19 solutions to her long-term substance use. Ms. Jittaphol met
20 with aftercare. However, when presented with options for
21 long-term treatment in a residential facility or being set up
22 with IOP, Ms. Jittaphol was very close-minded and refused
23 both."

24 THE COURT: That's similar to the email that Colleen
25 wrote to Maureen.

1 MR. PACE: Yes, Your Honor. And that's dated January
2 3, 2022.

3 THE COURT: The discharge summary.

4 MR. PACE: Yes, Your Honor.

5 MR. HALPERN: No, I don't think so.

6 MS. LAWRENCE: Yes, it is. Here's a copy on my phone.

7 THE COURT: Hold on just a second.

8 MS. WERTZ: Your Honor, if I may. Haley I believe
9 has --

10 THE COURT: Hold on just one minute.

11 MR. PACE: Yeah. (Pause.)

12 MR. HALPERN: Should I address the court?

13 THE COURT: No, not yet. Ms. Wertz, did you want to
14 say something?

15 MS. WERTZ: This was also forwarded to Haley Currie in
16 the correspondence that we sent to the government, as well as
17 defense counsel.

18 THE COURT: That's my docket clerk. I haven't seen
19 it. Maybe she sent it.

20 MS. WERTZ: Okay.

21 THE COURT: Is there going to be an objection to this
22 being put in the record?

23 MR. HALPERN: There is an objection because it's not a
24 medical record. It wasn't part of her medical record. It's a
25 document that was created at the behest of Probation. I

1 requested her medical record. That's not in it.

2 THE COURT: But here, I'm going to take a copy of
3 this. I'm going to mark it Exhibit A of today's date. I'm not
4 giving it an exhibit number. And I have heard Mr. Halpern's
5 argument, although what was the date of the request for a
6 discharge summary? I thought it was after 1/3.

7 MR. PACE: It was 1/7, Your Honor, I believe.

8 THE COURT: That's my memory. So if this is dated
9 January 3, it wasn't -- and that's the date it was created, it
10 wasn't created later. But I have to read it. I'll consider
11 it. It doesn't sound -- it sounds as if it says the same thing
12 that Colleen's email to Maureen says. So I don't know that it
13 alters your argument. It's just another piece of evidence.

14 Okay. What else, Mr. Pace?

15 MR. PACE: Your Honor, according to the documents that
16 we received from counsel, the medical records, Exhibit 12, page
17 17, it says "DAP," like data, it has a section in there that --

18 THE COURT: I'm sorry?

19 MR. PACE: Page 17.

20 THE COURT: Page 17 of --

21 MR. PACE: Exhibit 12.

22 THE COURT: Exhibit 12 is -- what is Exhibit 12?

23 MR. PACE: That's the Hope Center clinical
24 stabilization progress notes.

25 THE COURT: Let me see if I can find it. Hope Center.

1 For some reason I lost 10, 11 and 13 because I messed it up.
2 Here it is. Exhibit 12. Exhibit 12, what page?

3 MR. PACE: Page 17, Your Honor.

4 THE COURT: Mine aren't numbered. What does it --
5 what does it say on --

6 MR. PACE: It just says that the treatment team did
7 meet with Ms. Jittaphol.

8 THE COURT: What does it say at the top of the page?

9 MR. PACE: Oh, it says, "Goals addressed, session
10 information." "Session information," it says "goals
11 addressed."

12 THE COURT: Ms. Lawrence, could you put it on the
13 document presenter.

14 MR. PACE: I'm sorry.

15 THE COURT: Oh, you can do it.

16 Session information. There are a lot that look like
17 that. Here.

18 MR. PACE: Would you like me to bring the document up
19 to Your Honor?

20 THE COURT: I may be able to find it. Okay, I have
21 it.

22 MR. PACE: Where it says "DAP," Your Honor, it just
23 states that they met with Ms. Jittaphol and she refused any
24 aftercare services when offered.

25 THE COURT: This is December 23, 2021.

1 MR. PACE: Your Honor, finally, I think Probation just
2 wants to state from the testimony from Officer Wertz counsel
3 states that he had numerous conversations with Officer Maureen
4 Curran. I think Officer Wertz just confirmed that the
5 conversations occurred but she cannot confirm the exact nature
6 of the conversation, of those conversations, Your Honor. We
7 were aware that there were conversations between counsel and
8 Officer Curran but we weren't aware of the exact nature of
9 those calls specifically to counsel requesting any clinical
10 information or discharge summary.

11 THE COURT: All right. Well, there's some testimony,
12 but that's a useful clarification. Thank you.

13 MR. PACE: I believe that's all, Your Honor.

14 THE COURT: Thank you very much.

15 MR. PACE: Thank you.

16 THE COURT: It's 3:15. I'm going to take this matter
17 under advisement.

18 Defendant's release is continued on the same
19 conditions. The conditions include drug testing, sweat patch
20 testing, urine testing. The urine testing can be more than
21 once a week. And as I've ordered in the past, if there are
22 any -- if there's a violation of any condition, I'm directing
23 that the court and the parties be informed promptly.

24 Mr. Halpern.

25 MR. HALPERN: Can I ask for one clarification?

1 Ms. Wertz indicated that one of the more recent urine tests was
2 not done because there wasn't a man available and they
3 interpreted your order as -- so I'd ask you to modify the order
4 and direct Probation that if a man is not available, they do it
5 anyway even if it's --

6 THE COURT: I think that's a constructive
7 recommendation. We want the best information accessible.
8 Okay? So the purpose of the order requiring a male to observe
9 was to assure there could be a test when there was not a
10 female. But if Probation is not comfortable having a female
11 observe, which I think they're not in the circumstances, then
12 it can be unobserved.

13 MR. HALPERN: I'd also request you to require urine
14 tests twice a week because I don't want to be in a situation
15 again where they can argue that there's some conflict in the
16 time periods. If you want to keep sweat patching -- I mean,
17 actually, it would be better, frankly, from my perspective
18 because if she gets urine tests twice a week and there's
19 another inconsistency, it will be even more apparent that the
20 problem is with the sweat patch.

21 THE COURT: I hope -- if I find she was using meth
22 previously around the time of the last two hearings, if she
23 was, I would certainly hope she's not again -- I think I'll
24 leave it up to Probation's discretion. The order permits up to
25 104 drug tests per year, twice a week. They've got a lot of

1 cases too and limited resources, I know, being understaffed
2 because they're not given enough money to hire all the people
3 that the amount of work requires.

4 So I don't object to having it more than once a week,
5 but this case is -- you've set a record. I've never had a
6 revocation proceeding, pretrial release, supervised release
7 that has gone this long, and every case is important. It's --
8 so we spent the time on it, but I'm -- but there are other
9 important things that Probation has to do too and that I have
10 to do.

11 But the defendant's release will continue with that
12 one modification that permits unobserved testing if no male is
13 available.

14 Court is in recess.

15 THE CLERK: All rise for the Honorable Court.

16 (Proceedings adjourned at 3:24 p.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I certify that the foregoing is a correct transcript
from the record of proceedings taken April 8, 2022 in the
above-entitled matter to the best of my skill and ability.

/s/ Kathleen Mullen Silva

4/15/22

Kathleen Mullen Silva, RPR, CRR
Official Court Reporter

Date