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COMMONWEALTH OF MASSACHUSETTS  
COMMISSION ON JUDICIAL CONDUCT

Complaint Nos. 2006-9; 2006-30;  
SJC Docket No. OE-0119

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IN RE: JUDGE ERNEST B. MURPHY :  
: :  
: :  
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BEFORE: COMMISSION ON JUDICIAL CONDUCT

Robert J. Guttentag, Chairman  
Honorable Stephen E. Neel  
Honorable Paul F. LoConto  
Mary Z. Connaughton  
Gael Mahony, Esquire  
David J. Martel, Esquire  
Renee M. Landers, Esquire  
Jacklyn Garcia Duran

APPEARANCES:

Brown Rudnick  
(by Elizabeth A. Ritvo, Esq.)  
One Financial Center, Boston, MA 02111,  
for the Boston Herald.

Esdaile Barrett & Esdaile  
(by Michael E. Mone, Esq.)  
75 Federal Street, 16th Floor  
Boston, MA 02110,  
for Judge Ernest B. Murphy.

Held at:  
Massachusetts State House  
Hearing Room B1  
Boston, Massachusetts  
Tuesday, January 8, 2008,  
2:30 p.m.

(Nancy M. Kingsbury, Registered Professional Reporter)  
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## P R O C E E D I N G S

1  
2 CHAIRMAN GUTTENTAG: Good afternoon. It's  
3 approximately 2:30, and I am going to call this  
4 hearing to order. This is a public hearing relevant  
5 to Complaints No. 2006-9 and 2006-30, SJC Docket No.  
6 OE-0119, in the matter of Judge Ernest B. Murphy,  
7 being held pursuant to Massachusetts General Laws  
8 Chapter 211C, Section 7, Section 9, and Commission  
9 Rule 11. The purpose of this hearing relates solely  
10 to what the Commission's recommendation for  
11 discipline will be.

12 Virtually identical letters were sent out  
13 on December 19, 2007, to Mr. Patrick Purcell, care  
14 of Ms. Elizabeth Ritvo, who is counsel to  
15 Mr. Purcell, and Mr. Michael E. Mone, Sr., who is  
16 counsel to Judge Murphy. I will read into the  
17 record the first letter which was sent to  
18 Mr. Purcell:

19 "Dear Mr. Purcell, this letter is to notify  
20 you that, pursuant to Commission Rule 11, the  
21 Commission has scheduled a public hearing in the  
22 above matter regarding its recommendation for  
23 discipline to the Supreme Judicial Court. This  
24 hearing will take place at 2:30 p.m. on Tuesday,

1 January 8, 2008, in Hearing Room B1 at the State  
2 House in Boston. Judge Ernest B. Murphy and the  
3 Complainant, *The Boston Herald*, will have an  
4 opportunity to be heard before the Commission at  
5 this hearing. You and/or your attorney will be  
6 given a total of 15 minutes in which to address the  
7 Commission, as will Judge Murphy and/or his  
8 attorney. This hearing is public and will be  
9 transcribed. At this hearing, the Commission will  
10 not entertain new evidence, exhibits, witnesses, nor  
11 cross-examination. If you have any questions,  
12 please contact me at (617) 725-8050," and it was  
13 signed Howard B. Neff, III, staff attorney.

14 A virtually identical letter, except in  
15 name changes, was sent to Attorney Mone, and unless  
16 there is objection, it will be entered into the  
17 record without reading. Mr. Mone?

18 MR. MONE: No objection. But I would note  
19 I am Michael E. Mone. I am not Michael E. Mone, Sr.  
20 Just because I have a son didn't make me "Sr." He  
21 is "Jr.," but I am just Michael Mone.

22 CHAIRMAN GUTTENTAG: So noted.

23 Now, the first order of business is, we who  
24 are sitting at the table and are members of the

1 Commission will introduce ourselves, state our  
2 status as judge, attorney or layman.

3 JUDGE NEEL: I am Stephen Neel. I am a  
4 judge member.

5 JUDGE LoCONTO: I am Paul LoConto, a judge  
6 member.

7 MS. CONNAUGHTON: Mary Connaughton, a lay  
8 member.

9 MR. MAHONY: Gale Mahony, lawyer member.

10 MR. MARTEL: David Martel, lawyer member.

11 MS. LANDERS: I am Renee Landers, lawyer  
12 member.

13 MS. DURAN: Jacklyn Duran, lay member.

14 CHAIRMAN GUTTENTAG: Robert Guttentag, the  
15 chair and a lay member. Thank you.

16 As indicated in the letters which you  
17 received, the Complainant and the Respondent sides  
18 will each have 15 minutes. The time may be split in  
19 your option between the individuals involved and  
20 their attorneys. Bear in mind that the only subject  
21 under discussion is the special hearing officer's  
22 recommendations. We will not entertain new  
23 evidence, exhibits, witnesses, nor  
24 cross-examination. And at the end of each

1 presentation, the Commission members may initiate  
2 questions of the presenters.

3 I should also note at this time for  
4 inclusion in the record that on December 10, 2007,  
5 counsel for the Commission filed objections to the  
6 hearing officer's report and proposed findings and  
7 recommendations. These may be found on the  
8 Commission's Web site, [www.ma.gov/cjc](http://www.ma.gov/cjc), and copies  
9 were sent to Respondent's counsel. He has filed no  
10 objections. I believe we can now start.

11 Mr. Purcell or Attorney Ritvo, you have 15 minutes.

12 MR. PURCELL: Thank you. Good afternoon.  
13 I am Patrick Purcell, publisher of the Boston  
14 Herald.

15 The Boston Herald filed the second  
16 complaint made against Judge Murphy. By the letters  
17 Judge Murphy wrote to me, by their tone, by their  
18 content, by the fact they were on court stationery,  
19 Judge Murphy demonstrated a disregard for the rules  
20 which I am told should govern the conduct of judges.  
21 As you consider the facts found by Judge Kilborn and  
22 consider the appropriate sanctions, I ask that you  
23 keep in mind that to this day, Judge Murphy has  
24 never truly accepted responsibility for all of his

1 misconduct. He has shown no regret and shown no  
2 awareness of how harmful his behavior has been, not  
3 just to the Herald but to the public perception of  
4 how judges ought to behave.

5 This proceeding before the Commission is  
6 not about the Herald, as Judge Murphy and Attorney  
7 Mone argued to Judge Kilborn. The libel case Judge  
8 Murphy brought against the Herald is over. We  
9 believe in the Herald reporting about Judge Murphy;  
10 the paper backed up that belief by going to trial.  
11 The jury came back with a \$2 million verdict. We  
12 appealed. We lost, and his judgment got paid.  
13 That's our system. We exercised our right to defend  
14 the paper and to appeal the jury's verdict.

15 The current complaints before the  
16 Commission are, however, about Judge Murphy's  
17 conduct, and the issue before the Commission is what  
18 sanctions will communicate forcefully to Judge  
19 Murphy, and clearly to the public and other sitting  
20 judges, that his conduct was abuse of his office. I  
21 would like to talk briefly about the judge's use of  
22 court stationery and then turn to the two letters he  
23 wrote to me.

24 Judge Murphy continues to minimize the

1 issues of the stationery, apologizing for his  
2 mistake but seeing this as, at most, a technical  
3 violation of some rule. But this is not just some  
4 technical matter. How does it look to the public  
5 for a judge to use court stationery to send  
6 threatening letters, bizarre letters, to someone he  
7 still has an active suit against?

8 Judge Murphy claimed that at the time he  
9 wrote his letters to me in February, March of 2005,  
10 he was unaware that judges could not use court  
11 stationery for personal uses. However, at the  
12 hearing, he also testified that in August of 2002 he  
13 had been advised by the executive director of this  
14 Commission about the appropriateness of using  
15 judicial stationery for certain purposes. His  
16 counsel describes the judge's use of court  
17 stationery as inadvertent. But what is inadvertent  
18 about Judge Murphy crossing out the name of the  
19 clerk of court on an envelope and writing by hand,  
20 "Murphy, J., Superior Court"?

21 As you consider sanctions against Judge  
22 Murphy, I ask you to consider whether he has  
23 demonstrated any understanding of why judges are  
24 prohibited from using court stationery for personal

1 use, as he did. I ask you to consider whether he  
2 has been candid about his ignorance of the rules on  
3 this matter.

4 Now about the letters' substance. After  
5 the verdict in the libel case came down, the judge  
6 sent me two letters, one in February and one in  
7 March 2005. His letters look like ransom notes.  
8 They were threatening in tone, and I felt that they  
9 were one more attempt by Judge Murphy to intimidate  
10 the Herald into settling the case and not pursuing  
11 its appeal.

12 Right after the verdict, Judge Murphy asked  
13 for a settlement meeting through our lawyer. The settlement  
14 Herald declined. Within a day of that, Judge Murphy  
15 sent his first letter to me. In it, he tells me  
16 that he wants to have a meeting, a meeting where he  
17 will come with his lawyer and I am to come without  
18 my long-term counsel who tried our case. He insists  
19 that I am not to involve these lawyers or even tell  
20 them of this meeting. He tells me there is a price  
21 to this meeting and that I will bring a cashiers  
22 check payable to him for an amount that exceeds by  
23 half a million dollars the verdict, with interest.  
24 He tell me that everything he told me about what was



1 going to happen in the case has happened. He adds  
2 that maybe he now has some credibility with me. He  
3 concludes by telling me that it is in my distinct  
4 business interest to pay him this amount, and that  
5 he -- and I quote -- has not the slightest  
6 apprehension of failure of my ability to make you  
7 and your insurer concur in that assessment. He then  
8 adds a postscript that it will be a mistake for me  
9 to show this letter to anyone other than the person  
10 authorized to sign the check to him. In fact, a big  
11 mistake, "big" in capitals.

12 In his second letter sent a month later, he  
13 tells me I have zero chance -- "zero" in caps -- of having  
14 chance of reversing this verdict on appeal. Not 50 percent  
15 percent but zero.

16 I am not an attorney. I have no legal  
17 training. Judge Murphy is an attorney and a sitting  
18 judge. For a sitting judge, even if he is a party  
19 in the case, to tell me to come to a meeting where  
20 the judge will have his counsel but I cannot is  
21 simply wrong. For a sitting judge to tell me that I  
22 cannot even tell my attorney about these letters or  
23 about the judge's efforts to settle the case --  
24 again I quote -- to his maximum advantage and to

1 mine, as he said in his first letter, is wrong. For  
2 a sitting judge to state, as Judge Murphy did, that  
3 he knows with 100 percent certainty what will happen  
4 in the case impugns the integrity and fairness of  
5 our legal system.

6 The way I read that and the way any layman  
7 would read it is that the result in the case is a  
8 foregone conclusion, that the fix is in. That's a  
9 threat not just to the Herald but also to the  
10 public's trust in our judiciary and our courts.

11 Judge Murphy has never acknowledged with  
12 respect to the content of these letters that his  
13 conduct was wrong or that he violated the rules  
14 governing judicial conduct, rules designed to  
15 protect the public and to ensure the integrity of  
16 our legal system. He has expressed no regret.  
17 Instead, he claims that the letters were part of his  
18 grand strategy to force a settlement. But how did  
19 Judge Murphy describe his strategy as to his  
20 outrageous demand for a \$500,000 premium on the  
21 judgment plus interest? He testified that he wanted  
22 me to think -- and I quote -- this guy is crazy.  
23 Whatever the judge's private strategy, all I could  
24 see, and all the public can see, is what the judge

1 did and what the judge said in these letters. And  
2 to a layman, what the judge did in sending these  
3 letters was misconduct.

4 Judge Murphy's strategy to force a  
5 settlement had one last piece. In December 2005,  
6 Judge Murphy filed a baseless postjudgment motion to  
7 freeze the Herald's assets, baseless because the  
8 Herald had insurance. He tried to cripple us. I am  
9 thankful that motion was denied. Clearly that  
10 effort must be seen in conjunction with receipt of  
11 those letters. Taken together they were an effort  
12 to intimidate me and to keep me from exercising my  
13 legal right, the right to defend this newspaper, whose  
14 whose work, whose role in this community are truly  
15 believable. If this isn't misconduct, I don't know  
16 the meaning of the word.

17 At the hearing, Judge Murphy's attorney  
18 stated that the judge is bigger than life and that  
19 he has his own way of expressing himself. But this  
20 is no excuse. There are not two sets of rules  
21 governing the conduct of judges, one for those  
22 bigger than life and one for the other judges. To  
23 the public, all judges have the same power and  
24 position, and all judges must be held to the same

1 standard. For these reasons, the Herald asks that  
2 Judge Murphy be suspended without pay for an  
3 appropriate period of time, be publicly censured and  
4 assessed costs and expenses. For the public to have  
5 confidence in the courts and to believe what the  
6 canons of judicial conduct mean what they say  
7 demands no less. Thank you.

8 CHAIRMAN GUTTENTAG: Thank you,  
9 Mr. Purcell. Do any commissioners have questions  
10 for Mr. Purcell? We will now hear from Judge Murphy  
11 or Attorney Mone. You also have 15 minutes.

12 MR. MONE: Thank you. Frankly, listening  
13 to the Boston Herald tell us that Judge Murphy never  
14 expressed any regret and that Judge Murphy has had  
15 an impact on judicial ethics is like being called  
16 ugly by a frog. The Boston Herald's conduct in this  
17 case and its conduct in general in regards to the  
18 judiciary does not stand up to the smell test,  
19 particularly when you look at what it did to Judge  
20 Murphy in this case. Moreover, for him to tell us  
21 that Judge Murphy has never apologized, Judge Murphy  
22 apologized within days; Judge Murphy apologized at  
23 the hearing; Judge Murphy apologizes now. He should  
24 not have written the letters; he should not have

1 used judicial stationery. He said that all along.  
2 That apology is in dramatic contrast to the fact  
3 that the Boston Herald has never apologized, never  
4 apologized for what it did to Judge Murphy and his  
5 family in this case. Not one word. To state what  
6 their reporter said at the trial, when asked, he  
7 didn't care about the impact that they had had on  
8 Judge Murphy and his family. He said, "I don't  
9 care." When asked at the hearing, when I asked  
10 Mr. Purcell at the hearing as to whether he had any  
11 apology for Judge Murphy after having been found by  
12 a jury to have libeled him maliciously,  
13 slanderously, with reckless disregard for the truth,

14 his answer was "no."

15 So please, I don't want to hear anything  
16 from Mr. Purcell about what ethics require. There  
17 are judicial ethics, but I assume they assume that  
18 at some point there are also ethics with regard to  
19 what newspapers publish, ethics that apparently the  
20 Herald has no interest in and completely ignores.

21 Now, this is an interesting process. It's  
22 a process unlike any legal process, because before I  
23 ever get to ask a question of a witness, the  
24 punishment has been decided. You have already

1 decided what the punishment is going to be. You  
2 have communicated to me through your staff and at  
3 the very beginning what it is you want. So before  
4 Judge Kilborn heard one word, I already knew what  
5 the punishment would be, and I had to convince him  
6 that that was inappropriate, which I did.

7 And now here we are back here, and all I  
8 can hope is that there is an open mind here, that  
9 there is an open mind in regard to listening to what  
10 Judge Kilborn said and what Judge Kilborn  
11 recommended in this case and listening to the judge,  
12 the former chief judge of the land court who was  
13 appointed by the Supreme Judicial Court presumably  
14 because they have confidence in his ability and his  
15 integrity.

16 Judge Kilborn is the one who listened to  
17 all of this and made the recommendation that you  
18 have before you and made the recommendation that you  
19 have in terms of what is an appropriate sanction for  
20 Judge Murphy, the sanction, which I was agreeable to  
21 from the very beginning, that what he should receive  
22 is a public reprimand for his conduct. You do not  
23 have a precedent to do worse, to do more. And I  
24 want to discuss that with you, but first let me

1 discuss with you a couple of things, because what  
2 the presentation in this case has always tried do is  
3 to take out of the case the context under which the  
4 letters were written. So all they want to do is  
5 look at the text without interest to the content,  
6 which there is an old saying that text without  
7 context is simply pretext. That's what it is.

8           So let's understand where he was when he  
9 wrote the letters, what had happened to him when he  
10 wrote the letters. This is a very real part of what  
11 you have to decide, because you have to decide, if  
12 you will, the whole main concept of this, what it is  
13 that he did, for which we admit he was wrong, but  
14 what it was that drove him to do that, and what were  
15 the circumstances under which he did that. And  
16 let's look at those circumstances, which the Herald  
17 doesn't want to talk about. Their jihad does not  
18 recognize what they did to this man, does not  
19 recognize to this day what they have done to this  
20 man.

21           And the only thing I presume that is going  
22 to keep Judge Murphy off the front page of the  
23 Boston Herald tomorrow will be the New Hampshire  
24 primary, because they have always been known to put

1 him on the front page of the paper. They followed  
2 him around, they followed his wife, they take  
3 pictures of him. And this is somebody we have to  
4 listen to lecture us about ethics and what's right  
5 and wrong? That's the way they behave.

6 Let's look at what they did in the case.  
7 You know, it's easy. I hope all of you have read  
8 the Supreme Court decision in Murphy vs. Herald, a  
9 unanimous decision by the court. When Judge Murphy  
10 predicted that he would win, he was indeed correct.  
11 The Supreme Court found that the Herald had lied 18  
12 times, 18 times about Judge Murphy. They had

13 accused him of being insensitive to a rape victims.  
14 They had accused him of insulting people in his  
15 court. They had accused him of all of these things.

16 They have put it on their Web site. On  
17 their Web site they had people writing in,  
18 recommending that Judge Murphy's children, his  
19 daughters, his teenage daughters, be raped, be raped  
20 because that was an appropriate punishment for what  
21 he had done in court. They published his whole  
22 address on their Web site along with that  
23 information. Their reporter went on national  
24 television and said, repeated these things about



1 Judge Murphy, which a jury and which the Supreme  
2 Court of this state has found were false,  
3 absolutely, unequivocally false. Not only were they  
4 false, they were published with reckless disregard  
5 for the truth of those statements. That's what this  
6 man had to undergo.

7 And put yourself in the position of a  
8 judge. Put yourself in the position. What do you  
9 have other than a reputation for being fair, for  
10 being appropriate with litigants? What else do you  
11 have? That's what they took away from him. And  
12 more than that, as the Supreme Court said, they set  
13 out to destroy his family. They destroyed his  
14 health, they destroyed his sense of himself. They  
15 took it out on his children, they put him through a  
16 trial, which he won. They had every right to go to  
17 trial, but he won the trial. And all of this in the  
18 context of lies.

19 You know, this isn't The New York Times vs.  
20 Sullivan. This is a paper that decided to get in  
21 bed with a prosecutor who didn't like Judge Murphy  
22 and drive him off the bench. That process continues  
23 today. That's what they are asking you to do. They  
24 are asking you to join in that process. And that,

1 in my view, is simply outrageous.

2 So that's the context in which he wrote the  
3 letters. Was that the context in which someone else  
4 might have done something different? Was that the  
5 context in which a more calm and reasoned approach  
6 might have been used? Yes, but look at what he had  
7 gone through. Look at where he was. Look at what  
8 this man and his family were suffering from. And as  
9 Judge Kilborn found in his findings, his family and  
10 he suffer today through this. This continues  
11 through to today. His teenage daughter remains in  
12 therapy. Therapy they put her in. And that's the  
13 man who sat down to try to end what was happening to

14 him.  
15 And he thought, he thought he had a  
16 confidentiality agreement. That's what he thought.  
17 Judge Kilborn said he was reasonable. That's a  
18 credibility finding, by the way. Judge Kilborn  
19 found that he was reasonable, that he believed it.  
20 He may not have -- he shouldn't have believed it,  
21 but he did believe it, that he believed he had a  
22 confidentiality agreement. Now, he, the publisher,  
23 doesn't remember that. He doesn't remember any of  
24 that. He doesn't remember that his lawyer agreed to

1 that. But Judge Kilborn said he either knew it or  
2 he was bound by what his lawyer said.

3 So he wrote the letters to Purcell. Why?  
4 Because he was trying to settle the case, because he  
5 was trying to get the thing over with. And, you  
6 know, one of the things that they constantly repeat  
7 is the thing about you have to bring the check, they  
8 don't repeat the part that says at the end of this,  
9 if we haven't settled the case, I am going to give  
10 you the check back, because he said at the hearing  
11 when he looked at his own paper, he couldn't find it  
12 in his paper. That's what we are dealing with. And  
13 to say -- my understanding was that at the hearing,  
14 that the Commission was not holding Judge Murphy  
15 responsible for anything or any pleadings that his  
16 lawyers brought. The motion for protection was  
17 filed by his lawyers, and it was filed in the  
18 context of an insurance company who wouldn't  
19 acknowledge they insured the Herald. That was the  
20 context under which that was filed. So for him to  
21 bring that in this morning -- or this afternoon --  
22 it seems to me, is totally inappropriate.

23 Now, one of the important findings that  
24 Judge Kilborn made was they weren't intimidated.

1 They were never intimidated by the letters, and it  
2 didn't affect their decision to appeal. That's a  
3 finding, that he wasn't intimidated. And certainly  
4 the fact that it was on judicial stationery, it  
5 wasn't a surprise to him that he was a judge. After  
6 all, the complainant in the case was The Honorable  
7 Ernest B. Murphy vs. The Boston Herald and David  
8 Wedge, and others. Couldn't have not known that he  
9 was a judge. So the stationery didn't bring  
10 anything more to that.

11 But I understand the public perception. It  
12 was inappropriate. He has acknowledged that; I  
13 acknowledge that. So what we come down to, what is  
14 the appropriate sanction under all the circumstances  
15 for Judge Murphy? Judge Murphy is a terrific judge.  
16 I have tried cases. A terrific judge. What's the  
17 appropriate sanction? Well, why don't we look at  
18 what you have done in the past when you have  
19 suspended a judge in the past, and take a look at  
20 all of those cases where you suspended someone. And  
21 what do all of them have? Dishonesty, dishonesty.  
22 Lying about something.

23 Judge Kilborn didn't find in one single  
24 instance that Judge Murphy lied about anything. It

1 may have been wrong, but he didn't lie. So there's  
2 no dishonesty. The underlying activity was not  
3 dishonesty. It was not self-dealing. It was not a  
4 corruption. He did not corrupt a decision in his  
5 court. He did not sell himself. He didn't do any  
6 of the things that have resulted in suspension. You  
7 have a history here. So you have a history that  
8 there is no dishonesty, there is no corruption of  
9 the judicial process, and there is no pattern of  
10 misconduct. Those are all of the things that you  
11 looked at in the past in situations where you have  
12 thought that a suspension was appropriate. None of  
13 that exists in this case, and that's important.

14 And then when you put it in the context of  
15 other cases, particularly where you have a finding  
16 in this case by Judge Kilborn that there was no  
17 willful misconduct, there may have been mistakes,  
18 there may have been errors, but there was no willful  
19 misconduct. So you have no dishonesty, no willful  
20 misconduct, no corruption of the judicial process.  
21 It was extrajudicial. And they want a suspension?  
22 For what? Public perception.

23 Let's look at the public perception. Let's  
24 look at cases that you have decided and that the

1 Supreme Court has decided. There are two of them  
2 that I would point out to you.

3 CHAIRMAN GUTTENTAG: You have two minutes.

4 MR. MONE: I will talk faster. There are  
5 two. Brown. What did Judge Brown do? Judge Brown  
6 attacked a family on the bench, said that they  
7 were -- said essentially they were feeding at the  
8 public trough, they weren't protecting the union  
9 members, and went on and on and on. Not only did he  
10 do it, he did it after twice having been admonished  
11 and once having been privately warned by this  
12 Commission that he shouldn't be making such  
13 intemperate remarks on the bench. So here is a  
14 judge on the bench, making outrageous statements in  
15 the middle of a judicial hearing. What was that?  
16 That was a public reprimand. A public reprimand.  
17 Suspension? They apparently didn't even consider a  
18 suspension. That's what you recommended, and that's  
19 what the Commission did.

20 Lastly, Harrison. Now, before Harrison,  
21 went -- before the Harrison case turned into the  
22 atomic bomb of the judicial process, the Harrison  
23 case was a situation which Judge Harrison went to a  
24 public hearing in which his wife was representing a

1 litigant and attacked verbally one of the  
2 participants in the hearing, publicly made a vulgar  
3 remark to him, and it was widely reported in the  
4 paper that that's what happened. What was that?  
5 What was that? Suspension? No. That was a private  
6 reprimand, a private reprimand.

7 So look, at the end, what Judge Kilborn  
8 recommended is appropriate. He recommended a public  
9 censure for the judge. That's appropriate. He  
10 recommended that he pay the costs of the proceeding.  
11 That's appropriate. But to suspend him under these  
12 circumstances, to suspend him under the  
13 circumstances that he found himself in, to suspend  
14 him when he was under this unrelenting attack by the  
15 Boston Herald would be simply inappropriate.

16 And what I would ask you at the end of the  
17 day is that it's time for this to end. You can end  
18 this process. You can end it by publicly censuring  
19 the judge. The Herald isn't going to give up. The  
20 Herald will continue to follow; the Herald will  
21 continue to attack; and the Herald will continue to  
22 do what they have done to other members of the  
23 judiciary. But he did the one thing that no one in  
24 this state has ever had the guts to do. He sued

1 them, and he showed that they lied and that they  
2 lied repeatedly. He stood up for an independent  
3 judiciary, and he ought not to be suspended for  
4 that. Do you have any questions?

5 JUDGE NEEL: One, Mr. Mone, just the very  
6 last thing that you said was that Judge Kilborn  
7 recommended public censure and costs. As you know,  
8 he recommended public reprimand. And you said that  
9 the Commission could end this by public censure and  
10 costs. Where are you on the issue of reprimand  
11 versus censure?

12 MR. MONE: I think they are the same thing.  
13 I'm sorry. You know, whether you say "we publicly  
14 reprimand" or "we publicly censure," I'm sorry, I'm  
15 sort of confused where these terms have meant  
16 different things at different times. In any event,  
17 what it is is a public -- a public acknowledgment  
18 that he did the wrong thing, and you are censuring  
19 him for this. That's the appropriate -- that's what  
20 I view to be the appropriate sanction under all  
21 these circumstances, particularly under -- by the  
22 way, there's no precedent in the country that holds  
23 to the contrary.

24 JUDGE NEEL: Thank you.



1                   CHAIRMAN GUTTENTAG: Other questions? I  
2 assume Judge Murphy has spoken through you, Attorney  
3 Mone.

4                   MR. MONE: He waives his time, since I used  
5 it.

6                   CHAIRMAN GUTTENTAG: Thank you all for  
7 coming. The Commission will make its final  
8 recommendation to the Supreme Journal Court within  
9 90 days from today, and there being no further  
10 matters to come before this hearing, this hearing is  
11 adjourned.

12                                   (Whereupon, the hearing was  
13 adjourned at 3:00 p.m.)

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C E R T I F I C A T E

I, Nancy M. Kingsbury, Registered Professional Reporter, do hereby certify that the foregoing transcript, Volume IV, is a true and accurate transcription of my stenographic notes taken on January 8, 2008.

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Nancy M. Kingsbury  
Registered Professional Reporter