

COMMISSION ON JUDICIAL CONDUCT  
Complaint No. 2000-110 et seq

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In the Matter of Investigation of:       :  
The Honorable Maria I. Lopez,           :  
Associate Justice, Superior Court       :  
Department                               :  
- - - - - x

BEFORE: Hearing officer E. George Daher,  
          Chief Justice (Ret.)

Harvey Chopp, Clerk  
Laurence Pierce, Clerk

APPEARANCES:

Goodwin Procter  
    (by Paul F. Ware, Jr., Esq., Roberto  
    M. Braceras, Esq., and Cheryl R.  
    Brunetti, Esq.) Exchange Place, Boston, MA  
    02109, for the Commission on Judicial  
    Conduct.

Law Offices of Richard M. Egbert  
    (by Richard M. Egbert, Esq.  
    and Patricia A. DeJuneas, Esq.)  
    99 Summer Street, Suite 1800,  
    Boston, MA 02110, for the Honorable  
    Maria I. Lopez.

Held at:  
Edward W. Brooke Courthouse  
24 New Chardon Street  
Boston, Massachusetts  
Wednesday, November 20, 2002  
9:33 a.m.

(Carol H. Kusnitz,  
Registered Professional Reporter)

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I N D E X

WITNESS                    DIRECT    CROSS    REDIRECT    RECROSS

Maria Lopez  
  (by Mr. Ware)  3-24  
  
                  (by Mr. Egbert)            3-75

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E X H I B I T S

EX. NO.		ID	EVID
31	Two complaints filed by Angela Beaucage		3-22
53)			
to)	Complaints		3-22
63)			
M	Document entitled "Diagnostic and Statistical Manual of Mental Disorders"		3-113

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

1  
2 HEARING OFFICER DAHER: Good morning,  
3 everyone. I'm going to deal with two motions, the  
4 first being the transcript of what occurred on April  
5 the 18th, 2002. It seems that at some time prior to  
6 April 18th, 2002, Mr. Mone had conversations with  
7 Mr. Ware, who was the agent of the Judicial Conduct  
8 Commission.

9 In no uncertain terms it appears that Mr.  
10 Ware notified Mr. Mone that he cannot any further  
11 negotiate with Mr. Mone, because it's outside the  
12 scope of his authority, and that Mr. Mone should  
13 deal with the principal directly.

14 There is no evidence proffered yesterday to  
15 indicate that the principal, the JCC, contacted Mr.  
16 Mone to appear, but rather that Mr. Mone voluntarily  
17 sought his statutory -- to enforce the statutory  
18 right to appear before the Judicial Conduct  
19 Commission.

20 At no time was it proffered yesterday that  
21 any comments other than that made by Mr. Mone and by  
22 Judge Lopez indicated that there were negotiations  
23 taking place at this time.

24 Therefore, it appears that the offer to

1 compromise was a hope, a desire by Mr. Mone to  
2 engage the Judicial Conduct Commission to negotiate,  
3 to enter, hopefully make a response to his proposed  
4 resolution.

5 That being the case, I cannot in good  
6 conscience find that there was an offer of  
7 compromise, and the document goes in, the April 18th  
8 document.

9 MR. EGBERT: Judge.

10 HEARING OFFICER DAHER: Yes, sir.

11 MR. EGBERT: There are two matters that are  
12 left out, Your Honor.

13 HEARING OFFICER DAHER: I beg your pardon?

14 MR. EGBERT: There are two matters that are  
15 left out.

16 MR. WARE: Your Honor, I object. We have  
17 been over this issue and over --

18 HEARING OFFICER DAHER: I want to hear it.  
19 Go ahead. What do you want to say?

20 MR. EGBERT: One is, Your Honor, the  
21 transcript contains the statements of Mr. Mone.  
22 They should be excluded.

23 MR. WARE: No, Your Honor. He is the agent  
24 of the Defendant.

1 HEARING OFFICER DAHER: Go ahead. I want  
2 to hear it.

3 MR. EGBERT: Whether he be an agent of the  
4 Defendant or not, much of them are unrelated to the  
5 factual issues in this case.

6 HEARING OFFICER DAHER: But were they in  
7 the scope? Again, it's coming down with a  
8 principal/agency relationship. Were they within the  
9 scope of what Mr. Mone was authorized to make? And  
10 his client, Judge Lopez, was right next to him. It  
11 would appear to me that it was within the  
12 parameters.

13 MR. EGBERT: They're irrelevant as to  
14 whether or not a violation of the canons took place.  
15 What Mr. Mone's opinion is, what his statements were  
16 concerning his opinion of the case or what -- how it  
17 ought to be disposed of and the like are irrelevant  
18 to the issue before you as to whether or not there  
19 were violations of the canons, and if there were,  
20 what recommendations were to be made.

21 Number two, no one has overcome yet, as far  
22 as I can see, the fact that these were confidential  
23 communications which have not been lifted by these  
24 formal proceedings. The formal proceedings, by

1 rule, only lift the confidentiality of the statement  
2 of formal procedures, any evidentiary hearings,  
3 which these clearly were not, and any findings by  
4 you as a result of those evidentiary hearings. And  
5 the Commission rule states clearly, pursuant to  
6 statute, that those matters remain confidential and  
7 therefore are not matters which can be put in  
8 evidence in this case.

9 MR. WARE: Your Honor, first of all, when a  
10 Hearing Officer makes a ruling here, I don't think  
11 it is up to us to come back and redebate the issue  
12 which we have talked about for the last two days.

13 HEARING OFFICER DAHER: I would like to  
14 hear it.

15 MR. WARE: But, since we are doing that,  
16 the Court is absolutely correct in its instinct that  
17 counsel is an agent, and indeed the cases before  
18 you, both the Hanson case and the Harvard College  
19 case, in which I happened to be counsel for Harvard  
20 College, rule that statements of a lawyer are in  
21 fact binding on the party.

22 This case is an even stronger case for  
23 admissibility of that evidence, because it wasn't  
24 simply counsel. The Respondent, Judge Lopez, was,

1 as you pointed out, sitting right next to him. She  
2 was in the room. So even under traditional rules of  
3 admission by silence or any other kind of admission,  
4 they are admissions of the Judge when her lawyer  
5 makes them in that context.

6           So the ruling is entirely correct.  
7           I think, as I said yesterday -- and I would  
8 be repeating myself -- the issue of confidentiality  
9 changes once there are formal charges. And,  
10 finally, Your Honor, once again, the parties by  
11 definition have entrusted to the Court the  
12 discretion here. We don't have a jury case. We  
13 don't have to worry about prejudice or undue use of  
14 a particular document. That's one of the virtues of  
15 a proceeding in which you, as a judge of 30 years,  
16 have discretion and can weigh the vitality or  
17 importance of any particular document.

18           And so, again, I think the ruling is  
19 correct.

20           HEARING OFFICER DAHER: Anything else to  
21 add, Mr. Egbert?

22           MR. EGBERT: No, Your Honor.

23           HEARING OFFICER DAHER: Okay. Your  
24 objection is noted. However, the Court's ruling

1 stands.

2 More troublesome was the second motion, the  
3 Commission's motion on the admissibility of  
4 newspaper articles and complaints. I read into the  
5 record 211C, Section 5(1), entitled "Initiation of  
6 Proceedings; Inquiry, Investigation and Evaluation;  
7 Detailed Complaint or Statement of Allegation,  
8 Formal Charges."

9 "1. The Commission proceedings relating to  
10 the conduct of a judge may be initiated by an oral  
11 or written complaint stating facts that, if true,  
12 would be grounds for discipline, or by the  
13 Commission's own motion," own motion, emphasis  
14 added, "when the Commission receives reasonable  
15 information, including reports in the news media, as  
16 to conduct that appears to constitute grounds for  
17 discipline. Upon receipt of such complaints or  
18 adoption of such a motion the Commission shall  
19 promptly notify the judge, except as provided in  
20 Subdivision 2, and shall conduct a prompt, discrete  
21 and confidential inquiry, investigation and  
22 evaluation."

23 Follow that up with the careful study of  
24 Lyons Partnership LP versus Morris Costumes, Inc.,



1 243 Federal 3rd., 789,804, 4th Circuit, in 201,  
2 which support the proposition that these documents  
3 should be admissible.

4 That is the ruling of this Court, unless  
5 you can convince me otherwise, Mr. Egbert.

6 MR. EGBERT: Your Honor --

7 HEARING OFFICER DAHER: I've gone through  
8 the three cases that you've just sent up to me.  
9 I've gone through them --

10 MR. EGBERT: I must confess that I think  
11 the Court is being misled by the purple dinosaur  
12 case, the Lyons Partnership case, and it's for the  
13 following reason: In that case the newspaper  
14 articles were let in, not to prove that the dinosaur  
15 in question was Barney, but to show, because someone  
16 mistook him for Barney, that that mistake could be  
17 made. It didn't matter at all as to whether or not  
18 it was Barney. It mattered that, when looking at  
19 it, people were making mistakes about it.

20 In this particular instance, the complaints  
21 that you've received are only worthy if the  
22 statements made therein are true, the classic form  
23 of hearsay. For example -- I'll take smatterings of  
24 these complaints.

1 "I am so disillusioned with our judicial  
2 system" --

3 MR. WARE: Excuse me, Rich. Could you give  
4 me the exhibit number.

5 MR. EGBERT: 52.

6 "I am so disillusioned with our judicial  
7 system." That is of no consequence if it's not a  
8 true statement. If it's being offered for its  
9 truth, then it's hearsay. And if it's being offered  
10 for its truth and it's hearsay, certainly it should  
11 not be admitted, number one, without an exception to  
12 the hearsay rule.

13 Two, they should be -- if it is going to be  
14 permitted, then I should be able to bring these  
15 people in and cross-examine them --

16 HEARING OFFICER DAHER: I'm glad you  
17 brought that up, and I suspected you would. After  
18 two years -- and you've had ample opportunity to do  
19 that -- because of the enormity of this case, I'm --  
20 if you make a motion, if you make a motion to bring  
21 these people in and it's opposed by Mr. Ware, I'm  
22 going to overrule his opposition and allow you to  
23 bring these people in.

24 MR. EGBERT: Fine.

1 HEARING OFFICER DAHER: If you want to do  
2 that, subpoena in these people -- I envisioned this  
3 coming up -- I'm going to allow you to do it, even  
4 though it's two years --

5 MR. EGBERT: Judge, when you say even  
6 though it's two years, I want --

7 HEARING OFFICER DAHER: Go ahead.

8 MR. EGBERT: -- I want the record to be  
9 quite clear. Today is the hearing.

10 HEARING OFFICER DAHER: Exactly.

11 MR. EGBERT: Today is the hearing. And I  
12 didn't think for a minute that this Court would  
13 accept hearsay statements from these people or that  
14 they would be offered for that regard.

15 In fact, the Commission keeps telling you  
16 that they aren't being offered for the truth of the  
17 statements, all right, that they're offered only for  
18 the fact that they were said, which I suggest is not  
19 something that would cause a subpoena. It is only  
20 if they're being offered --

21 HEARING OFFICER DAHER: Under 211(5),  
22 Section 1, Mr. Egbert, it would appear that the  
23 judicial -- the legitimacy, the statutory basis, the  
24 underpinnings of their investigation of Judge Lopez

1 was predicated --

2 MR. EGBERT: A dead red herring. A dead  
3 red herring. A criminal trial is predicated on an  
4 indictment. An indictment is not evidence. A civil  
5 trial is predicated on a complaint. The complaint  
6 is not evidence. All of those go to the  
7 jurisdiction of the Court, the jurisdiction of the  
8 hearing, and the competency and the ability to  
9 conduct it. Those matters are conducted pretrial.

10 In other words, an attack on jurisdiction  
11 warrants a look to see the complaint. An attack on  
12 the sufficiency of the complaint looks to the four  
13 corners of the complaint. An attack upon the  
14 jurisdiction of the Court looks to the statute to  
15 see whether it's been complied with. None of that  
16 is going on in this proceeding. It's simply a  
17 misdirection to this Court in an attempt to get them  
18 in.

19 As clear and unequivocal proof of that, I  
20 put on the record today that the jurisdiction of the  
21 JCC is not challenged in this proceeding and has not  
22 been challenged in this proceeding. We are here for  
23 a hearing on the facts to determine whether or not  
24 the canons of ethics were violated.

1 HEARING OFFICER DAHER: Let me point you  
2 to, again -- I spent some time on it carefully last  
3 night -- "or by the Commission's own motion, when  
4 the Commission receives reasonable information."  
5 Wouldn't this fall within the purview of reasonable  
6 information?

7 MR. EGBERT: Judge, respectfully --

8 HEARING OFFICER DAHER: Go ahead.

9 MR. EGBERT: -- I think you're on the wrong  
10 road.

11 HEARING OFFICER DAHER: Tell me.

12 MR. EGBERT: Yes, the Commission can  
13 initiate investigations based upon television shows,  
14 newspaper articles, whispers, rumors, things they  
15 heard in the bathroom under a stall. They can  
16 initiate -- no one suggests they can't. They can do  
17 it on their own motion. They can wake up one  
18 morning and say, "Ah, this is something we would  
19 like to do."

20 None of that is evidence, however, of  
21 conduct, none of it. That is as to whether or not  
22 they have the right to conduct a proceeding --

23 HEARING OFFICER DAHER: They're not  
24 introducing it for the truthfulness of the

1 statements. I mean --

2 MR. EGBERT: That's baloney. Then what is  
3 its relevant purpose? If it is not for the  
4 truthfulness of it, what relevant purpose does it  
5 have? Because when you get a statement and it  
6 says --

7 HEARING OFFICER DAHER: Mr. Ware, he's  
8 stating it's overkill, that you really don't need  
9 that. You could have initiated the action without  
10 these -- without all of these complaints.

11 MR. EGBERT: Judge, I'm sorry, I'm not --

12 HEARING OFFICER DAHER: Go ahead.

13 MR. EGBERT: I may quarrel with the Court,  
14 but if I'm not making myself understood, then it is  
15 my fault, and I would like another shot at it.

16 HEARING OFFICER DAHER: Go ahead. Take as  
17 much time as you need.

18 MR. EGBERT: In a contract case, where this  
19 typically comes up, "I accept" is not hearsay,  
20 because the fact that the words were spoken has  
21 independent legal significance in a contract case.

22 HEARING OFFICER DAHER: Right.

23 MR. EGBERT: There is nothing in these  
24 complaints, in the content of these complaints,

1 which has, by themselves, any independent  
2 significance evidentiary-wise in this case. They're  
3 not relevant to the issues before you.

4           The issues that you've been sent to  
5 determine are not -- by the way, as the Commission  
6 said so often in their -- in our motion to dismiss,  
7 they are saying to you, you have no jurisdiction to  
8 consider whether or not these charges were within  
9 the jurisdiction of the JCC. Nor are you here --

10           HEARING OFFICER DAHER: But again, Mr.  
11 Egbert, bear with me. You know, these statements,  
12 you know, in a sense brought the judiciary into  
13 disrepute. I mean --

14           MR. EGBERT: If they're true. If they're  
15 true. That's -- look, that's the issue. If they  
16 have a public or if they had a public -- and then  
17 there is a question of whether it's an objective or  
18 subjective statute, which I would argue then. But  
19 from an evidentiary standpoint, you just hit the  
20 nail on the head. It doesn't do any good unless  
21 these statements are true.

22           If you're taking them for the truth, it's  
23 hearsay. If it's hearsay, it's inadmissible for all  
24 the very reasons that one would expect, that you've

1 got out there anonymous --  
2 HEARING OFFICER DAHER: Wouldn't you  
3 bifurcate -- help me -- wouldn't you bifurcate them  
4 in the sense that comments that were made, i.e., in  
5 regards to sentencing, would be outside the scope,  
6 something for an appellate tribunal, versus  
7 statements that the Judicial Conduct Commission  
8 received, i.e., in regards to her alleged demeanor,  
9 et cetera, that would be something that they could  
10 consider?

11 MR. EGBERT: Judge, let me ask this  
12 question, because I think it sits well.

13 If tomorrow this Court receives a thousand  
14 letters indicating -- indicating that Judge Lopez  
15 and her conduct did not in any way affect their  
16 confidence in the judiciary or in any way affect  
17 their belief in the independence of the judiciary,  
18 will you admit those?

19 HEARING OFFICER DAHER: Would I admit them?

20 MR. EGBERT: Yes. Would you admit them in  
21 evidence? Because it's the same thing.

22 HEARING OFFICER DAHER: But, again --

23 MR. EGBERT: They're offering to you  
24 unsworn statements, letters --



1 HEARING OFFICER DAHER: These are  
2 extrajudicial statements. However, we're talking  
3 about a Commission that's empowered under 211,  
4 Section 5, to protect the integrity of the  
5 judiciary, the public perception. They get these  
6 communications. They're not in for the truthfulness  
7 of them. They are in there. Do we have a statutory  
8 basis to conduct an investigation on Judge Lopez.

9 MR. EGBERT: That's not an issue before  
10 you. It is simply not an issue before you. You're  
11 taking evidence on an issue that's not before you.  
12 It's like taking evidence on whether or not the  
13 Commission's members were duly elected. It has  
14 absolutely nothing to do with what's before you, and  
15 that's what the issue is.

16 So if what you're saying is that it's being  
17 offered to show that the Commission conducted an  
18 investigation under the statute, that's simply not  
19 before you, period. You couldn't rule -- with all  
20 due respect, Your Honor, you couldn't rule today,  
21 tomorrow or the next day whether or not that was the  
22 case. And in fact the Commission submitted briefs  
23 to you at the outset of the case saying just that:  
24 Jurisdictional matters are not before you. You are

1 here to find facts on these issues and make  
2 recommendations.

3           And that's the problem. If you let  
4 these -- if you let these in in any way, then you've  
5 done nothing more than letting in letters from third  
6 parties uncross-examined, saying, "We don't like  
7 it," or "We do like it," without knowing what they  
8 base it on, what they saw, heard, whether they were  
9 biased, whether they were put up to it and the like.  
10 And I suggest to you that's no different than you  
11 getting a thousand letters tomorrow -- which I can  
12 assure you you will get; I assure you you will get  
13 -- in response to these letters.

14           This is a hearing with people and evidence.

15           HEARING OFFICER DAHER: Mr. Ware.

16           MR. WARE: Your Honor, I would simply  
17 observe that the ruling that the Court has announced  
18 is entirely appropriate. There are some dramatic  
19 differences between my colleague's suggestion of  
20 your getting a thousand letters tomorrow and this  
21 case, and one of those differences, as I said  
22 yesterday, is due process.

23           This Court is the arbiter of that due  
24 process. The rules are set up before the Commission

1 on Judicial Conduct to provide the Judge an  
2 opportunity to defend herself; and indeed, through  
3 four lawyers and two years, she has done so. And  
4 she's done so by taking a number of depositions out  
5 of court during which her counsel has been present  
6 and had an opportunity to question witnesses. She  
7 has done so by testing the validity of the charges  
8 against her, and she is doing so today by sitting in  
9 this courtroom before this distinguished Judge,  
10 presenting evidence in her own behalf and responding  
11 to evidence presented by the Commission.

12 That's dramatically different than a  
13 situation in which a flood of letters comes in and  
14 the Court is asked to admit those.

15 Obviously the Commission would not seek to  
16 have those letters admitted. And, among other  
17 reasons, they would not be the basis for this  
18 investigation. As you correctly point out, and have  
19 pointed out repeatedly, the issue here is not the  
20 truthfulness of an individual complaint. And  
21 Exhibit 52 for identification is an example. We are  
22 not seeking to prove that this particular --

23 HEARING OFFICER DAHER: That was going to  
24 be excluded anyhow. I have it in my notes here.

1 MR. WARE: We're not seeking to prove that  
2 a particular individual's view of what the Judge did  
3 was or was not correct.

4 On the other hand, we are seeking to prove  
5 that the Commission has a basis to act here, number  
6 one, and number two, as you correctly pointed out  
7 repeatedly, the issue is public confidence under  
8 Canon 2, and the issue is standards of integrity and  
9 conduct such that the image and the substance of the  
10 judiciary is promoted.

11 The issue of promotion of public confidence  
12 is before the Court, and the very fact that the  
13 public reacts, which is all a complaint shows us, is  
14 relevant here. Even if the public is wrong, it's  
15 relevant that they've reacted to something they've  
16 seen the Judge do in the Horton case.

17 So I think, Your Honor, for all of those  
18 reasons, in addition to which -- in addition to  
19 those that I've stated in the past and given you in  
20 writing, I think the ruling is absolutely correct.

21 HEARING OFFICER DAHER: Mr. Egbert,  
22 anything else?

23 MR. EGBERT: Your Honor, I am just  
24 astounded that the Commission wants you to go down

1 this road, quite frankly. And the law is quite  
2 clear. The question of public confidence is an  
3 objective standard, not to be determined by the man  
4 on the street or by a singular piece of evidence.

5 I suggest to you that what they're arguing  
6 to you is that you can go out on the street and ask  
7 any uninformed person what their opinion is, and no  
8 matter what the basis of their opinion is, even if  
9 it's based upon the fact that they don't like  
10 Superior Court judges in any event, or they don't  
11 like our system, or they don't like male judges or  
12 female judges or the like, that that means that  
13 that's satisfactory or legitimate evidence in a case  
14 where due process is required. So I suggest it's  
15 wrong, and I think it's a road that will be  
16 mistakenly traveled.

17 HEARING OFFICER DAHER: What I've  
18 indicated, in regard to Exhibit No. 2, I'm going to  
19 exclude that, inasmuch as it deals with -- as it  
20 deals with sentencing. On the other hand, the rest  
21 of the proffered evidence is admitted, as it relates  
22 in some fashion to conduct and the statutory  
23 authority of the Judicial Conduct Commission to  
24 conduct the investigation.

1                   You may proceed with the interrogation.  
2                   MR. WARE: Your Honor, I'm not clear what  
3 you excluded. Are you saying Exhibit 52?  
4                   HEARING OFFICER DAHER: 52.  
5                   MR. WARE: Your Honor, in that regard, I  
6 just ask the Court to note that the complaint is  
7 quite specific to the complainants' observations.  
8 But if the ruling is that 52 is out and the others  
9 are in, I'm not going to make an issue.  
10                  HEARING OFFICER DAHER: That's my ruling.  
11                  MR. WARE: Thank you, Your Honor.  
12                  For the record, Your Honor, the Court has  
13 admitted, as I understand it, Exhibits 31 and 52 --  
14 excuse me -- 53 through 63.  
15                         (Document(s) marked as Exhibits 31 and  
16                         53 through 63 in evidence)  
17                  MR. WARE: With that, I would like to  
18 resume the examination of Judge Lopez.  
19                  MR. EGBERT: Judge, I'm going to ask --  
20                  HEARING OFFICER DAHER: Yes, what do you  
21 want to do?  
22                  MR. EGBERT: Judge, again, because I think  
23 sometimes records are important, would the Court  
24 respectfully put on the record the use that these --

1 strike that -- the use that the factfinder may put  
2 to these exhibits, the purposes for which this Court  
3 is accepting them.

4 MR. WARE: No, Your Honor. I mean, you are  
5 the Judge here, not Mr. Egbert, and not me, and  
6 you're entitled to make such use of them as you  
7 want.

8 I will represent again, on the record, that  
9 they're not being offered for the truth of the  
10 matters asserted. I'm not asking the Court to draw  
11 an inference from an individual complaint --

12 HEARING OFFICER DAHER: Mr. Egbert, we're  
13 not dealing with a jury, and I --

14 MR. EGBERT: Judge, and because we're not  
15 dealing with a jury -- if we were dealing with a  
16 jury, I would ask you to instruct the jury.

17 HEARING OFFICER DAHER: Right.

18 MR. EGBERT: So instead, I think the rules  
19 require, in civil proceedings, that -- particularly  
20 then where there is not a jury, that the Court will  
21 indicate, as if he was instructing a jury, what the  
22 Court is accepting these for so that there is a  
23 record of what's happening. It's done -- that's  
24 exactly what is done in a civil proceeding, it seems

1 to me, so that any reviewing court, should there  
2 ever be one, can determine whether or not these were  
3 admitted for a proper purpose.

4 HEARING OFFICER DAHER: I see no problems  
5 with that. Again, Mr. Ware?

6 MR. WARE: If the Court wishes to make such  
7 a statement, that's okay with me. I don't think you  
8 need to do that or are obligated to do that.

9 HEARING OFFICER DAHER: At the proper time  
10 I certainly will.

11 MR. EGBERT: Thank you.

12 HEARING OFFICER DAHER: Go ahead.

13

14 MARIA LOPEZ, Previously Sworn  
15 CONTINUED DIRECT EXAMINATION

16 COURT OFFICER: Judge, you are still under  
17 oath.

18 THE WITNESS: I am under oath.

19 MR. EGBERT: Just quickly, so we can get  
20 this process moving, I would orally move at this  
21 time for the right to subpoena the named  
22 complainants in this case to these proceedings.

23 HEARING OFFICER DAHER: Any objection?

24 MR. WARE: Yes. The Commission objects to



1 subpoenaing the complaining witnesses for precisely  
2 the reasons that you admitted the documents. You  
3 admitted them not for the truth; therefore, the  
4 content as such, their personal views are irrelevant  
5 here.

6 HEARING OFFICER DAHER: Mr. Egbert pointed  
7 out yesterday that they may have gotten together in  
8 some form of a cabal or some kind of -- on the  
9 Internet or there may be an orchestration of people  
10 getting together and saying, look, let's write these  
11 communications against Judge Lopez. I find it to be  
12 a very remote possibility. However, because the  
13 enormity of what's at stake, I'm going to allow Mr.  
14 Egbert to do that.

15 BY MR. WARE:

16 Q. Good morning, Judge.

17 A. Good morning, Mr. Ware.

18 Q. You and I talked briefly yesterday about  
19 your telephone calls to Ms. Goldbach of the  
20 Committee for Public Counsel Services, and I would  
21 like to get back to that for a minute, if I may.

22 A. Yes.

23 Q. You indicated that you called her sometime  
24 following the sentencing, in the first few days;

1 isn't that right?

2 A. After September 6th, yes.

3 Q. All right. And can you tell us how many  
4 phone calls you made to Ms. Goldbach?

5 A. I made one phone call, to my recollection.

6 Q. Only one phone call; is that your  
7 testimony?

8 A. Yes.

9 Q. In the conversation you discussed with her  
10 how you were doing --

11 A. Well, I just want to go back on that.  
12 There was that beeper message. I don't know if you  
13 would consider that a phone call or not.

14 Q. What are you referring to? Are you saying  
15 you received a beeper message from Ms. Goldbach?

16 A. No. I received a call from Ms. Goldbach  
17 giving me Jay Greene's beeper number.

18 Q. And was that a separate telephone call from  
19 what you described as the one time you called her?

20 A. Yes. But that was a message on the voice  
21 mail. It was not a conversation I had with her.

22 Q. So, as I understand your testimony then,  
23 you called Ms. Goldbach on one occasion, and you had  
24 a conversation. On a separate occasion, you

1 received a voice mail from Ms. Goldbach to which you  
2 responded?

3 A. Correct.

4 Q. Now, in the conversation you had with Ms.  
5 Goldbach, you discussed with her how you were doing  
6 and the fact that she as defense counsel was  
7 sympathetic to your plight, so to speak; is that  
8 correct?

9 A. That's correct.

10 Q. And she called you, as you previously  
11 characterized it, to commiserate about the press  
12 reaction to your sentence; isn't that so?

13 A. We were discussing the frenzy, the frenzy  
14 that was going on about this case.

15 Q. And defense counsel, in your view, was  
16 being supportive of you and concerned during that  
17 conversation; is that right?

18 A. Yes. I believe that.

19 Q. You said you also received a beeper  
20 message, and as a result of that message, did you  
21 speak with Ms. Goldbach?

22 A. No.

23 Q. All you did -- you got a beeper message  
24 that said what?

1           A.    It wasn't my beeper.  I got a message from  
2 Ms. Goldbach that said that she was in Dorchester  
3 District Court with Detective Jay Greene, who wanted  
4 to speak with me, and then she left Mr. Greene's  
5 beeper number --  
6           Q.    Was this --  
7           A.    -- for me.  
8           Q.    Was this a handwritten message that you  
9 received?  
10          A.    No.  It was a voice mail.  
11          Q.    And so Ms. Goldbach called a number at the  
12 Court which she knew to be your voice mail?  
13          A.    I'm not sure that --  
14                MR. EGBERT:  Objection.  
15                HEARING OFFICER DAHER:  What's the  
16 objection?  
17                MR. EGBERT:  How can she know what Ms.  
18 Goldbach knew?  
19                HEARING OFFICER DAHER:  Sustained.  
20          Q.    Well, tell us what -- on what phone?  What  
21 number was this message from Ms. Goldbach in which  
22 she had confidence that she could leave a personal  
23 phone mail?  
24                MR. EGBERT:  Objection.  Move to strike.

1 HEARING OFFICER DAHER: Mr. Ware, do you  
2 want to be heard?  
3 MR. WARE: No, I don't want to be heard.  
4 HEARING OFFICER DAHER: Good point.  
5 Sustained.  
6 Q. What was the phone number she called and  
7 left you this message on?  
8 A. It was -- well, I don't know what number  
9 she called. I know where I picked up the voice  
10 mail.  
11 Q. You don't think there's a correspondence  
12 between those two things?  
13 A. It could have been transferred in from the  
14 clerk's office into the voice mail box.  
15 Q. Where did you find the voice mail message?  
16 A. On the -- in the phone in the lobby in  
17 Middlesex.  
18 Q. During your conversation with Ms. Goldbach,  
19 the one in which you actually spoke to her, did you  
20 give her your phone number?  
21 A. No, because I think my conversation with  
22 her occurred after the message about the beeper  
23 number.  
24 Q. So the sequence, as you understand it or as

1 you recall it, is that you received a voice mail  
2 message at the Court from Ms. Goldbach, and what  
3 that voice mail message said was, "Detective Greene  
4 wants to talk to you. Here is his beeper number,"  
5 more or less?  
6 A. Correct.  
7 Q. What did you do as a result of having  
8 gotten that beeper number?  
9 A. I called the beeper number.  
10 Q. And --  
11 A. And left my number.  
12 Q. And that was the occasion on which you  
13 spoke to Detective Greene?  
14 A. And he returned that beeper call, yes.  
15 Q. Following all of your dealings with Mr.  
16 Greene, you then called Ms. Goldbach, correct?  
17 A. I believe so.  
18 Q. And so by the time you talked to Ms.  
19 Goldbach, you had already spoken with Detective  
20 Greene.  
21 A. Correct.  
22 Q. When you spoke to Ms. Goldbach, did you  
23 talk about Mr. Horton?  
24 A. No. We talked about the press surrounding

1 this case, and I was telling her the kinds of things  
2 that were happening to me and my family, how  
3 outraged I was that there was this kind of response  
4 to this; and, you know, we had that kind of a  
5 conversation. I may have inquired as to how she was  
6 doing.

7 Q. Did you tell her that you had spoken with  
8 Detective Greene?

9 A. I might have. I don't remember.

10 Q. Did you tell her what Mr. Greene said to  
11 you?

12 A. I don't recall that.

13 Q. Did you have any conversation about the  
14 fact that she had left you a message on your voice  
15 mail at the Court to call a Boston police detective,  
16 you had called the detective, you had gotten some  
17 information? Did you tell her anything about that?

18 A. Possibly I could have said -- I did speak  
19 to --

20 Q. I'm asking you a different question. Do  
21 you remember saying anything about that?

22 A. I don't have a recollection of it, no.

23 Q. In your conversations with Ms. Goldbach,  
24 you were talking really about the fallout from the

1 sentencing and the media attention in the Horton  
2 case, correct?

3 A. Yes, and its impact on me and on my family.

4 Q. And then at some time you had a  
5 conversation with Mr. Leahy, you told us; is that  
6 right?

7 A. Yes.

8 Q. And I think you said yesterday that, in  
9 your conversation with Mr. Leahy, you were asking  
10 him to defend in public the process, the judiciary,  
11 your sentence, all of those things; isn't that so?

12 A. All of the above, and however he decided to  
13 do it, but certainly see if he could speak on the  
14 issue, yes.

15 MR. WARE: Could you put up Slide 56 for  
16 me.

17 Q. Let me direct you briefly to the testimony  
18 on the monitor, which appears at Page 109. Judge,  
19 if you're working from the transcript, Exhibit 32,  
20 it is Page 109, I think essentially Lines 2 through  
21 9.

22 In your conversations with Mr. Leahy you  
23 have indicated in your previous sworn testimony that  
24 you made the point to him that it was important to



1 you that your sentence not be misperceived or your  
2 decision not be misperceived; is that correct?

3 A. As having released a predatory pedophile,  
4 yes.

5 Q. And so your conversation with Mr. Leahy was  
6 that you had not released a predatory pedophile;  
7 isn't that correct?

8 A. That's correct. That's what the public was  
9 concerned about, that's what the media was  
10 reporting, and that was of major concern, to put  
11 some perspective on this case.

12 Q. Now, Mr. Leahy was not counsel in the case,  
13 was he?

14 A. No. He is the executive director, I  
15 believe is his title.

16 Q. And when you talked to him, you say,  
17 beginning at Line 8, or let's say Line 6,  
18 "Question: You wanted him," Mr. Leahy, "to make the  
19 point that this was not a predatory pedophile?"

20 In Lines 9 and 10: "I wanted that out,  
21 yes."

22 A. Yes.

23 Q. "I wanted I did not release a predatory  
24 pedophile. I was being accused of this." Is that

1 what you said on that occasion?

2 A. That's what I said, yes.

3 Q. And you were hopeful, were you not, that  
4 both Mr. Leahy, as executive director, and for that  
5 matter Ms. Goldbach would defend your sentence?

6 A. Yes. I mean, I don't think it was explicit  
7 with Ms. Goldbach. I don't know if that was on my  
8 mind when I was talking with her, but it clearly was  
9 on my mind when I spoke with Mr. Leahy.

10 Q. Let me ask you just briefly to take a look  
11 at Page 110, Lines 4 through 8. You were asked,  
12 when you testified before Commission counsel under  
13 oath: "Question: You were hopeful that Mr. Leahy"  
14 -- and I've put this up the on monitor as well --  
15 "and for that matter Ms. Goldbach would defend the  
16 system and defend the sentence; isn't that correct?"  
17 And you said, "Yes"; isn't that so?

18 A. Yes. But in Line 11 I clearly state that  
19 "To Mr. Leahy." I don't recall Ms. Goldbach. So it  
20 wasn't a clear -- in my deposition I wasn't clear  
21 what my intent was as to Ms. Goldbach.

22 MR. EGBERT: Judge, I must object to this  
23 point based -- I object at this point, based upon  
24 the way this screen is being used to mislead this

1 witness. They deliberately put up this block to  
2 cover an answer which clearly says what she has, and  
3 I think it's important for the record to show the  
4 kind of manipulation that the JCC and its counsel  
5 are involved in here with the witness in this  
6 regard.

7 HEARING OFFICER DAHER: In other words, the  
8 fact that they're highlighting something?

9 MR. EGBERT: No. In other words, he  
10 asked -- he asked Judge Lopez right now this  
11 question: "You were hopeful that Mr. Leahy, and for  
12 that matter, Ms. Goldbach would defend the system  
13 and defend the sentence." You can see that block  
14 there, right?

15 HEARING OFFICER DAHER: Right.

16 MR. EGBERT: And it was to impeach her,  
17 so-called, to show that she never said that it  
18 wasn't really Ms. Goldbach.

19 Well, the line that they're actually  
20 covering up is where she says, just after that, "To  
21 Mr. Leahy. I don't recall Ms. Goldbach as a -- I  
22 don't recall Ms. Goldbach. To Mr. Leahy."

23 And so by their manipulation of this  
24 exhibit, they have simply blocked her ability and

1     tried to trick her and misrepresent to her what she  
2     previously said.

3             So it's one thing to use these gadgets to  
4     assist a witness in a court. It's another to do it  
5     with the deliberate attempt to misrepresent the  
6     facts.

7             HEARING OFFICER DAHER: I'm somewhat of a  
8     quandary. Isn't this her testimony? This is  
9     what --

10            MR. EGBERT: Judge, you can't cover up --  
11     they cover up Lines 11, 12 and 13, where she  
12     completes the answer.

13            MR. WARE: The Judge has the testimony in  
14     front of her, and in fact she read Line 11. So I  
15     don't see the hysteria here.

16            HEARING OFFICER DAHER: The objection is  
17     noted.

18            MR. EGBERT: We don't see any hysteria,  
19     Your Honor. I'm going to ask right now that this  
20     exhibit that's up on the board to you, up on the  
21     screen to you, be put on paper and made a part of  
22     this record. I want this as a part of the record in  
23     this case. I want exactly how it is shown, with the  
24     question that was just asked. That is my right.

1           MR. WARE: I do not object, so long as all  
2 of them are admitted as evidence, and we will offer  
3 a CD with all of them on it.  
4           HEARING OFFICER DAHER: I was just going to  
5 say, that will be fine. Absolutely. Go ahead.  
6           MR. WARE: May I have just a moment, Your  
7 Honor?  
8           MR. EGBERT: And I'm going --  
9           HEARING OFFICER DAHER: Mr. Ware, have you  
10 been making a CD of this or do you already have it?  
11          MR. WARE: Yes.  
12          HEARING OFFICER DAHER: Fine. You can make  
13 a copy and give it to --  
14          MR. EGBERT: Thank you. And I'm  
15 instructing you, Judge Lopez, to use the  
16 transcript --  
17          MR. WARE: Your Honor, I object to  
18 counsel's speech and instruction to a witness on the  
19 stand.  
20          HEARING OFFICER DAHER: Mr. Ware. Mr.  
21 Ware. I can take a short recess and he can confer  
22 with his client.  
23          MR. EGBERT: I'll do it right now.  
24          HEARING OFFICER DAHER: Let's do it right

1 now.  
2 (Brief recess)  
3 HEARING OFFICER DAHER: Are we still on  
4 Page 109?  
5 MR. WARE: Yes, Your Honor.  
6 All right. Could you put Page 109 on the  
7 screen, and would you please highlight a section of  
8 Page 109.  
9 BY MR. WARE:  
10 Q. Judge, you understand that what's  
11 highlighted on the screen is a section, and you have  
12 before you the entire Page 109, do you?  
13 A. Yes.  
14 Q. And let me specifically, as I have with  
15 every other question, ask you to look at Lines 10 to  
16 14.  
17 A. Yes.  
18 Q. If you want to look at any other lines on  
19 the page, you are free to do so. Are you clear?  
20 A. That's okay.  
21 Q. Now, at Line 10 you respond to an  
22 additional question. "Question: Did you also  
23 encourage Ms. Goldbach to come to the defense of the  
24 case and your sentencing? "Answer: I don't

1 recall. I mean, you know, not explicitly. I'm sure  
2 by my feeling, you know, you can interpret -- it was  
3 conversations. I was feeling bad." And you go on;  
4 is that right?

5 A. Yes.

6 Q. So whether or not you explicitly told Ms.  
7 Goldbach that she should get out there and defend  
8 this, you feel that you impliedly told her that by  
9 your body language, by the context or by whatever  
10 else; is that right?

11 A. Well, she wasn't looking at me. This was  
12 on the phone, so she had no clue what my body  
13 language was. But I think that it could possibly be  
14 construed as a possible, you know -- something that  
15 she could possibly do after the conversation with  
16 me. I mean, that construction is not out of the  
17 realm of possibilities.

18 Q. So you understood that whatever you said,  
19 it may have encouraged her to go out front and  
20 defend the sentence or defend you?

21 A. Yes, it could have.

22 Q. Now, you learned at some point that  
23 Detective Greene, whom you called and with whom you  
24 had some conversation, was not part of the

1 investigation of the Horton case; isn't that so?

2 A. I knew that from the beginning. What do  
3 you mean I learned at some point that he wasn't  
4 part -- you mean that he wrote the police reports?  
5 I mean, involved in that way?

6 Q. No. He was not part of the investigation  
7 of the case; isn't that correct?

8 MR. EGBERT: I have to object. Mr. Ware  
9 well knows that Detective Greene was not only a part  
10 of the case; he was on the scene, and he took  
11 statements from the alleged defendant, and it's in  
12 the police reports.

13 HEARING OFFICER DAHER: Again, Mr. Egbert,  
14 I'm in somewhat of a quandary. This is  
15 cross-examination. You know, I'm --

16 MR. EGBERT: Cross-examination is one  
17 thing, but it's another to assume facts in a  
18 question which he knows to be false.

19 MR. WARE: Well --

20 HEARING OFFICER DAHER: Overruled. Let's  
21 go.

22 MR. WARE: I'm not assuming any facts that  
23 I know to be false, and I'm getting a little sick of  
24 listening to Mr. Egbert' soliloquies.



1 HEARING OFFICER DAHER: Stricken. Let's  
2 go.

3 BY MR. WARE:

4 Q. In any event, Judge, you knew that  
5 Detective Greene was not part of the investigation  
6 of the Horton case; isn't that so?

7 A. Okay. So long as that's clear that I knew  
8 he had been on the scene, but he wasn't formally  
9 charged with the obligation of doing the  
10 interviewing, preparing the police reports, doing  
11 the follow-up. I knew that he was not one of those  
12 police officers.

13 Q. All right. Well, I don't want to split  
14 hairs here. Detective Greene told you, did he not,  
15 that he was not part of the investigation of the  
16 Horton matter? Yes or no.

17 A. He never represented to me that he was, but  
18 he never said --

19 Q. Judge, did Detective Greene tell you --

20 A. I don't recall.

21 Q. -- that he was not part of the  
22 investigation of the Horton matter? Yes or no.

23 A. No, I don't recall.

24 Q. Take a look at your sworn testimony 13

1 months ago when you did recall, and specifically at  
2 Page 49, beginning at Line 5, which is on the  
3 monitor, if you want to use it. It is also in the  
4 transcript at Exhibit 32. Do you have it before  
5 you?

6 A. (Reviewing document)

7 Q. At Line 5, "Question: Did Detective Greene  
8 indicate to you that he was not part of the  
9 investigation of the Horton matter? Answer: Yes.  
10 He said the sexual assault team was called in. They  
11 took over."

12 Do you see that? Is that what you  
13 testified to?

14 A. That's what I did testify to, and that's my  
15 understanding.

16 Q. Now, the first time you ever heard anything  
17 about Detective Greene being first on scene was well  
18 after the plea; is that correct?

19 A. Absolutely not.

20 Q. Let me direct your attention, Judge, to  
21 Page 49 of your sworn testimony of more than a year  
22 ago, at the bottom of the page, beginning at Line  
23 22: "Question: You were operating on the  
24 assumption that Detective Greene was first on scene?"

1 Answer: I was. Well, I was once he told me that.  
2 But this is days after the plea, okay."  
3 Isn't that what you testified to, Judge?  
4 A. My problem --  
5 Q. Is that what you testified to?  
6 A. That's taken out of context.  
7 Q. Pardon me?  
8 A. It's out of context.  
9 Q. All right. Let's just establish whether or  
10 not these are the words you said when sworn to tell  
11 the truth under oath before Commission counsel 13  
12 months ago. Is this the testimony you gave?  
13 A. "Days after the plea" deals with my  
14 conversation with Mr. Greene.  
15 Q. Judge, please. Let me repeat my question,  
16 in case it's unclear. When you testified under oath  
17 to the following question, "Question: You were  
18 operating on the assumption that Detective Greene  
19 was first on scene? Answer: I was. Well, I was  
20 once he told me that. But this is days after the  
21 plea, okay" -- is that what you testified --  
22 A. "Days after the plea" refers to my  
23 conversation with Mr. Greene --  
24 Q. Judge --

1 MR. EGBERT: Please --

2 A. I have to explain it, Mr. Ware.

3 MR. WARE: I would like a responsive  
4 answer.

5 HEARING OFFICER DAHER: Please, again,  
6 Judge, answer the question. I'm pretty sure that  
7 Mr. Egbert will elucidate it in the future. Go  
8 ahead.

9 Q. Is this the sworn testimony that --

10 A. The deposition says that. That is what --  
11 that's the language on those lines on that page,  
12 yes.

13 Q. I'm not asking if that's the language on  
14 those lines. I'm asking you whether that is the  
15 testimony you gave under oath 13 months ago, yes or  
16 no.

17 A. Yes.

18 Q. Whatever information you learned from  
19 Detective Greene, you have discussed that  
20 information on hundreds of occasions after the  
21 sentencing; isn't that correct?

22 A. Correct.

23 Q. And you've used Detective Greene in  
24 conversations to tell people that a local police

1 officer agrees with your view; isn't that right?

2 A. Yes. To that effect I would say.

3 Q. Now, is it your position, Judge, that  
4 having accepted a plea to kidnapping, assault with  
5 intent to rape a child under 16, that you as a Judge  
6 are acting appropriately in going behind the scene  
7 and talking to a Boston police detective and giving  
8 that detective's name to the public information  
9 office to get additional information not part of the  
10 record?

11 MR. EGBERT: I object.

12 HEARING OFFICER DAHER: What's the  
13 objection?

14 MR. EGBERT: I object to the words "behind  
15 the scenes."

16 A. It was all up front.

17 HEARING OFFICER DAHER: Again, I think  
18 we're splitting hairs right now, "behind the  
19 scenes." I mean, Mr. Ware --

20 MR. WARE: I think the Judge has answered  
21 the question. She says it was all up front.

22 Q. Judge Lopez, are you telling me that your  
23 conversations with Detective Greene were part of  
24 some public record?

1           A.    No.  But the case was not pending, and it  
2 was not an ex parte communication.  
3           Q.    You say it was all up front.  The district  
4 attorney was never notified --  
5           A.    Up front --  
6           Q.    Judge, please.  
7           A.    You've misunderstood what I meant by that.  
8           HEARING OFFICER DAHER:  There is no  
9 question before you.  Please.  
10          Q.    You say it was all up front, your  
11 conversations with Detective Greene.  
12          A.    In response to "behind the scenes," yes.  
13          Q.    Now, Judge, I will repeat my question.  Do  
14 you think that a sitting Superior Court judge is  
15 acting appropriately, having taken a plea to  
16 kidnapping, assault with intent to rape a child  
17 under 16, assault and battery with a dangerous  
18 weapon, assault on a child under the age of 14, in  
19 going behind the record in court and behind the  
20 record identified to you or articulated to you at  
21 the lobby conference to get additional information  
22 to be used by the press or the public after the  
23 sentence?  
24                   MR. EGBERT:  Please don't answer.

1 HEARING OFFICER DAHER: What is the  
2 objection, Mr. Egbert?

3 MR. EGBERT: My objection, Your Honor, is  
4 that he's asking a hypothetical question and using  
5 words in the hypothetical question "behind this,"  
6 "behind that," "behind this," and "behind that,"  
7 which there is simply no evidence of that. And it  
8 puts her in a position that she can't possibly  
9 answer it with a yes-or-no answer. And that's what  
10 you're requiring her to do. If you want to ask the  
11 question hypothetically, then use the facts that  
12 have been adduced in this hearing.

13 MR. WARE: There is nothing hypothetical  
14 about the question.

15 HEARING OFFICER DAHER: Again, Mr. Egbert,  
16 she has been a judge for 14 years. She understands  
17 what the canons, what the rules are. I mean, in a  
18 sense if there is anybody -- and if it does break  
19 down, which I don't see it as a hypothetical, but if  
20 it does break down to an expert, there could be no  
21 greater expert than the Judge. Overruled.

22 MR. EGBERT: Can we ask, "Do you think it's  
23 appropriate if the Judge jumps off a cliff?" There  
24 is no evidence of that in this case.

1 HEARING OFFICER DAHER: Overruled.  
2 MR. WARE: I don't plan to ask that.  
3 HEARING OFFICER DAHER: Mr. Ware.  
4 MR. WARE: You can --  
5 HEARING OFFICER DAHER: Mr. Ware. Let's  
6 not get into a dialogue. You may have the question.  
7 Do you want it played back to you?  
8 MR. WARE: No. I think I can ask it again.  
9 BY MR. WARE:  
10 Q. Let me get another fact out here, Judge.  
11 At no time did you ever tell the District Attorney's  
12 office that you were in communication either with  
13 defense counsel or with CPCS or a Boston police  
14 detective; isn't that correct?  
15 A. That's correct.  
16 Q. You never made that information known to  
17 the lawyer for the public, the assistant district  
18 attorney; isn't that right?  
19 A. That's correct.  
20 Q. And let me ask you again, Judge, is it your  
21 testimony here today that you're promoting public  
22 confidence in the judiciary by, following a sentence  
23 in a case in which you accepted a plea of guilty to  
24 these serious charges, that you're calling up a



1 Boston police detective to see what else he knows  
2 about the case?

3 A. In my mind and in my opinion, the case was  
4 over once I imposed sentence, and -- it was over.  
5 And I --

6 Q. Let's take your assumption that it was  
7 over.

8 A. Yes.

9 Q. Let's give you all the benefit of the doubt  
10 on that.

11 MR. EGBERT: Objection. Move to strike.

12 HEARING OFFICER DAHER: Stricken. Let's

13 go.

14 Q. Under any scenario, whether the case is  
15 over or whether the case is pending, is it your  
16 testimony here today that it's appropriate for a  
17 Superior Court judge, having accepted these pleas of  
18 guilty on the record, following sentence, following  
19 disposition, to call up a Boston police detective to  
20 seek additional information about the case that may  
21 be used in the press?

22 A. Under these unprecedented circumstances, I  
23 would say it would be appropriate.

24 Q. And in fact you're saying it was

1 appropriate, aren't you?

2 A. I don't believe I did anything wrong by  
3 having a conversation with Mr. Greene.

4 Q. And you believe that, as part of the  
5 standards to which we ought to hold a Superior Court  
6 judge following a guilty plea, following a case in  
7 which you accepted three pages of factual data from  
8 the Assistant District Attorney, following a case in  
9 which the defendant admits to having used a  
10 screwdriver at the child's neck, that you are  
11 entitled to go behind that record --

12 MR. EGBERT: Objection.

13 Q. -- and call a Boston police detective?

14 MR. EGBERT: The underlying facts of the  
15 crime have nothing to do with whether or not it's  
16 appropriate or not to speak after a plea and  
17 sentencing.

18 THE WITNESS: Right.

19 MR. WARE: I'll rephrase the question.

20 HEARING OFFICER DAHER: Go ahead.

21 Q. I don't want to retrace all our steps of  
22 the last two days with respect to the facts that  
23 were asserted by the assistant district attorney nor  
24 those which you accepted and the defendant accepted

1 at that time.  
2 I just do want to be clear, however, on  
3 what standards you think a Superior Court judge  
4 should be held to. And you have told us here this  
5 morning that you see nothing wrong with your having  
6 either called defense counsel after this case was  
7 subjected to disposition and sentencing, without the  
8 knowledge of the district attorney, right?  
9 A. Correct.  
10 Q. And you see nothing wrong with your calling  
11 up someone whom you believed to be a material  
12 witness in the case --  
13 A. I didn't believe that.  
14 Q. -- and having a conversation with him.  
15 A. I don't agree with that. I never believed  
16 Jay Greene was a material witness. The case was  
17 over. There was not going to be a trial. He was  
18 not going to be a witness.  
19 Q. Let's put it this way, Judge: You believed  
20 he was, quote, first on scene, and have said so  
21 repeatedly under oath; isn't that right?  
22 \*A. I believe he had information that could  
23 prove exculpatory.  
24 Q. Try to answer my question.

1 MR. EGBERT: Objection.  
2 Q. Try to answer my question.  
3 HEARING OFFICER DAHER: What's the  
4 objection?  
5 MR. EGBERT: The objection is he  
6 continually interrupts her.  
7 HEARING OFFICER DAHER: Again, Mr. Egbert,  
8 with all due respect, he's not getting a response to  
9 his question. Overruled.  
10 MR. EGBERT: I think he is getting it.  
11 HEARING OFFICER DAHER: Overruled. You may  
12 have it.  
13 MR. WARE: Thank you, Your Honor.  
14 May I have just a moment, Your Honor?  
15 HEARING OFFICER DAHER: Yes.  
16 Ms. Brunetti, if you want to sit at the  
17 counsel's table, I have no problems with that.  
18 MR. WARE: Thank you, Your Honor. I would  
19 like her to join us, if the Court is amenable. Your  
20 Honor, I don't believe I introduced Cheryl Brunetti  
21 at the beginning of the case, but I'm happy to do so  
22 now.  
23 HEARING OFFICER DAHER: Okay.  
24 MR. WARE: Could I have --

1           MR. EGBERT: You might want to invite the  
2 rest of the firm up, too.  
3           MR. WARE: Well, do you want --  
4           HEARING OFFICER DAHER: Again, Mr. Egbert,  
5 if you have anyone that you would like, a family  
6 member or any counsel, to sit next to you, I would  
7 be delighted.  
8           MR. EGBERT: We're just fine where we are.  
9           HEARING OFFICER DAHER: Okay. Let's go.  
10          MR. WARE: Your Honor, I would like to have  
11 the witness's last answer read back.  
12          \*(Record read)  
13          BY MR. WARE:  
14          Q. Your testimony is that you believe a Boston  
15 police detective had information which might  
16 constitute exculpatory evidence; is that what you  
17 are telling us?  
18          A. Based on what Anne Goldbach had told me at  
19 the lobby conference, yes.  
20          Q. And so it follows from that, does it not,  
21 that you accepted a plea of guilty to these charges  
22 knowing that there was exculpatory evidence; is that  
23 correct?  
24          A. I had a representation that there was a

1 failure to pursue exculpatory evidence and that  
2 there were a number of disputed facts in the case,  
3 yes.

4 Q. And so with that knowledge you accepted the  
5 pleas of guilty; isn't that correct?

6 A. Correct.

7 Q. So there was nothing knew about the fact of  
8 their being this, quote, exculpatory evidence that  
9 you learned after you had sentenced the defendant;  
10 isn't that correct?

11 A. I don't understand your question, that  
12 there is nothing new I learned.

13 Q. You just told us that you were already told  
14 by Ms. Goldbach that there was exculpatory evidence  
15 regarding this case; isn't that so?

16 A. Yes.

17 Q. And you were told that on August 1; is that  
18 correct?

19 A. That's correct.

20 Q. So on September 6th, six weeks later, or  
21 five weeks later, when you sentenced the defendant  
22 and accepted the pleas, you were well aware of this  
23 assertion of exculpatory evidence, correct?

24 A. Correct.

1 Q. So you didn't learn anything new from  
2 Detective Greene in terms of their being exculpatory  
3 evidence; is that right?

4 A. I learned one, I believe, what I consider a  
5 new fact.

6 Q. Well, you didn't learn anything which  
7 caused you to say, "I shouldn't have accepted the  
8 pleas of guilty"?

9 A. No.

10 Q. Let me repeat my question, because I don't  
11 think we have had an answer to this question. Is it  
12 your view that it promotes public confidence in the  
13 judiciary and is appropriate for a Superior Court  
14 judge, following the criminal proceeding in which  
15 there have been pleas of guilty, to contact  
16 investigating officers or police officers to learn  
17 additional information about the case because there  
18 has been a firestorm in the press?

19 A. Well, is it my view -- I need -- you have a  
20 lot of assumptions in that question. So I need  
21 to -- could you repeat it?

22 Q. Let me try to be clearer.

23 A. Yes. There are a lot of assumptions.

24 Q. Is it your testimony, Judge, that

1 consistent with the canons of judicial conduct, as  
2 you understand them, that you were entitled, as a  
3 Superior Court judge, following acceptance of pleas  
4 of guilty and, therefore, convictions of a  
5 defendant, to go beyond the record before you to  
6 contact a Boston police officer for the purpose of  
7 getting additional information in response to press  
8 reports?

9 A. I didn't know it was going to be used in  
10 press reports.

11 Q. Well, what was the reason you were  
12 contacting Detective Greene?

13 A. I had gotten a beeper -- a call with a  
14 beeper number. I knew he had been the detective  
15 that Anne Goldbach had referred to during the lobby  
16 conference, and -- the other thing is, I remember  
17 Jay Greene from my days as a district court judge.

18 So I knew Jay Greene, I knew his  
19 reputation, and I wasn't -- you know, when he called  
20 me -- the message that was left is, "Jay Greene  
21 wants to talk to you." You know, it could have been  
22 he wants to commiserate with me, he thinks I'm  
23 getting a bum rap on this. He's a local cop on that  
24 beat, and I called Jay Greene because he was not an



1 anonymous person to me.

2 Q. And your testimony is, Judge, that you  
3 didn't call him because of any press response; you  
4 just called him as a friend?

5 A. I think he called me because of the press  
6 response, and I returned the call.

7 Q. I thought you told us repeatedly here that  
8 Detective Greene was part of this case in some  
9 fashion and had information regarding the case and  
10 was first on scene; isn't that right?

11 A. There is no case once I accept a plea of  
12 guilty.

13 Q. So that gave you license, as you understand  
14 it, and consistent with the standards you apply to  
15 yourself as a Superior Court judge, to call any of  
16 the Boston police for that matter and ask questions  
17 about the case, because of a firestorm of protest,  
18 correct?

19 A. Mr. Ware, I am sure --

20 Q. Judge, please try to respond to my  
21 question. Does it give you license, following your  
22 having accepted a guilty plea in this case or any  
23 other case, to call a Boston policeman whom you  
24 believe to have been somehow involved in the

1 investigation to elicit additional information on  
2 the case from him in response to press reports?  
3 A. I think it depends on what the purpose --  
4 Q. Yes or no?  
5 A. Depends on the purpose.  
6 Q. You think you could have done that, and in  
7 fact you did it here, right?  
8 A. Yes.  
9 Q. Now, Judge, at this point, following your  
10 preparation for trial, appropriate preparation for  
11 trial, you've read the testimony before the  
12 Commission in its entirety, have you not?  
13 A. My testimony?  
14 Q. The testimony, the testimony of many of the  
15 witnesses.  
16 A. Yes.  
17 Q. And you have read the testimony under oath  
18 of Detective Greene; isn't that correct?  
19 A. Correct.  
20 Q. And you know --  
21 MR. EGBERT: Objection.  
22 HEARING OFFICER DAHER: What's the  
23 objection?  
24 MR. EGBERT: Objection. I want to be heard

1 at side bar.

2 (At side bar)

3 MR. EGBERT: This is the height of  
4 unethical conduct, and I can't wait to send the  
5 transcript to the BBO. They know that Jay Greene  
6 lied during his deposition. Jay Greene has claimed  
7 he had no phone calls with anybody.

8 Now they want to get her to say she read  
9 his deposition which is a lie and is not in evidence  
10 in this case. They're going to take a statement of  
11 a witness which is not in evidence, where they know  
12 he lied, and ask this witness, "Did you read it?"  
13 and "What did he say?"

14 It's preposterous. It is back door in this  
15 case, beyond the beyond. And there is no -- not a  
16 singular evidentiary basis for it. What she read of  
17 Jay Greene's testimony is irrelevant to these  
18 proceedings.

19 MR. WARE: Your Honor, at this point  
20 Detective Greene's testimony is no different than  
21 the police report, and I am entitled to get her  
22 understanding of what he said. And that's what I  
23 intend to do, in a very limited way.

24 MS. DeJUNEAS: They told Detective Greene

1 that they don't intend to call him as a witness  
2 because he lied.

3 MR. WARE: I have never spoken to Detective  
4 Greene since that deposition.

5 MS. DeJUNEAS: You talked to him last week.

6 MR. EGBERT: Greene lied in his deposition.  
7 He say he never had any conversations with anybody,  
8 even Joan Kenney, who is going to come in and say  
9 they had a conversation.

10 They had him on the witness list, and they  
11 called his attorney. Then they said, "No, we're not  
12 going to call him because we know he is lying." Now  
13 they want to put that lie into evidence through her.

14 MR. WARE: I'm not intending to elicit  
15 anything about his lie.

16 MR. EGBERT: What are you going to ask?

17 HEARING OFFICER DAHER: What's the  
18 question?

19 MR. WARE: I'm not going to announce my  
20 question.

21 MR. EGBERT: Well --

22 HEARING OFFICER DAHER: I'm going to  
23 sustain the objection.  
24 (End of side bar)

1 HEARING OFFICER DAHER: At this particular  
2 point we're going to have a little change of clerks.  
3 Harvey is giving a lecture on landlord/tenant law in  
4 Worcester. Mr. Laurence Pierce, a very eminent  
5 assistant clerk, is going to substitute for Mr.  
6 Chopp.

7 We can proceed.

8 MR. WARE: Thank you, Your Honor.

9 BY MR. WARE:

10 Q. Whatever information you got from Detective  
11 Greene, one of the things you did --

12 HEARING OFFICER DAHER: I just want to make  
13 sure it is on the record, your objection is  
14 sustained for the record.

15 Q. One of the things you did is call the  
16 Office of Public Information of the Supreme Judicial  
17 Court and ask Joan Kenney to call Detective Greene;  
18 isn't that correct?

19 A. Yes. I don't know if I spoke to her  
20 directly, but I know I called and left a message for  
21 her with the beeper number I had, yes.

22 Q. And it was your intention in doing so that  
23 she contact Detective Greene to obtain some  
24 information; isn't that so?

1 A. Correct.

2 Q. Information which you believed might be  
3 helpful in dealing with the press and deflecting  
4 criticism of the sentence or the process or you,  
5 correct?

6 A. Correct.

7 Q. You indicated yesterday that at this point  
8 you have read, you believe, all of the complaints  
9 before the Commission; is that so?

10 A. I think so.

11 Q. And you believe that some of those  
12 complaints may be fictitious, correct?

13 A. Correct.

14 Q. And let me ask you briefly to look at Page  
15 159 of your testimony before the Commission, and I  
16 ask that that be put on the screen. And you can  
17 look at the whole page, if you are confused, or you  
18 can look at the highlighted portion, or you can look  
19 at anything you want.

20 Specifically at Lines 15 -- beginning at  
21 Line 13 "Question: Are there any other  
22 complaints" -- you had been talking about one  
23 particular complaint; isn't that so?

24 A. That's correct.

1 Q. And here you were asked the following  
2 question: "Are there any other complaints which you  
3 deem or suspect as being fictitious or problematic?

4 Answer: I have a real question about a number of  
5 the complaints, yes." Isn't that so?

6 A. Yes.

7 Q. And your suspicion, according to your  
8 testimony at that time, was that this may have  
9 something to do with individuals involved in the  
10 Demoulas case; isn't that right?

11 A. Amongst others, yes.

12 Q. Are there other individuals who may have  
13 filed fictitious complaints, in your view?

14 A. More that 50 percent of the people that  
15 appear before a judge go away mad, Mr. Ware.

16 Q. So it's your feeling, Judge, that you have  
17 enemies out there, not just from the Demoulas case,  
18 but others who may have filed fictitious complaints?

19 A. I wouldn't say enemies, but people who may  
20 not be happy with certain decisions I have made.  
21 But the Demoulas case is certainly the biggest case  
22 that I have dealt with. I'm sure there are  
23 individuals that I have made rulings on cases about  
24 who are not happy with me.

1 Q. And is it your view, Judge, that this whole  
2 investigation arises out of something your enemies  
3 are doing or fictitious complaints?

4 A. I believe it is all about my sentence.

5 Q. You don't think it has anything to do with  
6 fictitious complaints or Demoulas. You think it's  
7 your sentence; is that right?

8 A. No, no -- I don't understand your question.  
9 Do I think there are some illegitimate complaints  
10 amongst those? I do believe that, yes.

11 Q. Which ones are they?

12 A. I am not sure I can identify particular  
13 complaints; but given my experience in the last few  
14 years, where numerous false, bogus, illegitimate  
15 complaints have been filed against me -- and in fact  
16 one was filed before the Commission, and they know  
17 that there was a complaint that was falsely filed  
18 against me before them.

19 Q. All right. So the Commission knows that  
20 because they investigated it and found it to be  
21 false?

22 A. Because the lawyer withdrew it.

23 Q. Just if you would, I don't want to get all  
24 that through that problem --



1 MR. EGBERT: Let --

2 HEARING OFFICER DAHER: I want to hear it.  
3 You asked it and this is the response. Go ahead.

4 A. What was the question? I forget.

5 Basically the reason it was disposed of is,  
6 the lawyer that was in fact representing the affiant  
7 in that false affidavit found out about it and  
8 withdrew it, sent a letter to the Commission saying  
9 this was falsely -- to the effect -- I mean, not  
10 exactly these words, but it was falsely procured and  
11 contained false information.

12 Q. And so that matter never came to  
13 investigation, certainly never came to charges, and  
14 certainly did not result in a hearing; isn't this  
15 correct?

16 A. That's correct.

17 Q. And you know that during the last two  
18 years, you've had the opportunity to investigate any  
19 of these complaints or take depositions of these  
20 witnesses or do anything else you wanted to do  
21 through your counsel to determine the validity of  
22 these complaints?

23 A. I'm here because I investigated one on my  
24 own.

1 Q. Can you respond to my question. You  
2 understand that you and your legal team have had two  
3 years to investigate any of these complaints, talk  
4 with the complainants, take their sworn testimony,  
5 to determine whether or not they were valid  
6 complaints; isn't that correct? Yes or no.

7 A. We certainly have had that opportunity,  
8 yes.

9 Q. You have had that opportunity?

10 A. If we wanted to depose them, bring them in,  
11 ask them questions. But they all were generally  
12 about the same thing, the demeanor and the sentence,  
13 so...

14 Q. So you chose, as a matter of election or  
15 strategy or whatever, not to take pretrial or  
16 prehearing testimony from those witnesses; is that  
17 correct?

18 A. I guess. I mean, no specific decision was  
19 made, but we didn't choose to do that.

20 Q. Now, Judge, one of the complaining  
21 witnesses here is a woman named Beaucage; is that  
22 correct?

23 A. Correct.

24 Q. And directing your attention to Exhibit 31,

1 that is the complaint or complaints filed by Ms.  
2 Beaucage; is that correct?

3 A. Correct.

4 Q. Exhibit 31 consists of two separate  
5 complaints; is that correct?

6 A. I did not receive them together.

7 Q. No, but it consists of two complaints; you  
8 understand that?

9 A. Yes.

10 Q. The first two pages of Exhibit 31  
11 represent, let's say, the older of those complaints,  
12 which bears a date stamp of October 20 in the upper  
13 right, correct?

14 A. Yes.

15 Q. Has a date October 20, 2000; is that  
16 accurate?

17 A. That's the date on this, yes.

18 Q. And the second complaint consists of a  
19 one-page letter which is dated with the same kind of  
20 date stamp, January 23, 2001; is that correct?

21 A. Correct.

22 Q. When you received a copy of this complaint,  
23 you received it from the Commission itself; isn't  
24 that so?

1           A.    Yes.  It was a single complaint.  
2           MR. EGBERT:  Excuse me, Your Honor.  
3           HEARING OFFICER DAHER:  What's the  
4  objection?  
5           MR. EGBERT:  Your Honor, these are not in  
6  evidence.  
7           MR. WARE:  They are in evidence.  
8           MR. EGBERT:  These are not in evidence.  
9           MR. WARE:  They are in evidence.  They were  
10  admitted today as among the complaints, Your Honor.  
11          MR. EGBERT:  Exhibit 31 was not admitted.  
12          MR. WARE:  Yes, it was.  It was admitted  
13  today.  
14          HEARING OFFICER DAHER:  It was admitted.  I  
15  have it in.  Exhibit 31, complaints by Angela  
16  Beaucage.  
17          MR. EGBERT:  It is in, Your Honor, not for  
18  the truth of this matter asserted as alleged by the  
19  Commission.  And I would urge the Court to not  
20  permit any examination on those matters.  
21          And I would add, so the record is clear,  
22  Ms. Beaucage, as you know, who was being deposed by  
23  us, left the deposition and never returned, and is  
24  scheduled again to be deposed on Thursday.  Whether

1 or not she ever shows up is a matter of speculation,  
2 I suppose.

3 In the event that she does not show up for  
4 the deposition, I reserve my right to move to strike  
5 Exhibit 31.

6 MR. WARE: Your Honor, whether or not this  
7 woman is a witness has nothing to do with the  
8 Commission's charge that it was improper for the  
9 Judge to be calling individuals who filed complaints  
10 during a pending investigation when represented by  
11 counsel. That's fundamentally the issue.

12 HEARING OFFICER DAHER: That's the limited  
13 purpose that you are asking?

14 MR. WARE: Yes. That is what this issue is  
15 all about. That's what these complaints are all  
16 about.

17 HEARING OFFICER DAHER: Not for the  
18 truthfulness of it.

19 MR. EGBERT: The allegation in the  
20 Commission's filing and the formal charges is that  
21 Judge Lopez called Ms. Beaucage and she was  
22 intimidated, and words to that effect. But there is  
23 nothing in evidence, nor could there be in evidence  
24 in this case, unless Ms. Beaucage takes the witness

1 stand in that regard. So that's the purpose of my  
2 objection.

3 HEARING OFFICER DAHER: For the purpose --  
4 for the limited purpose that Mr. Ware intends to  
5 interrogate Judge Lopez, your objection is  
6 overruled. Go ahead.

7 BY MR. WARE:

8 Q. In any event, you called this particular  
9 witness, did you not?

10 A. I called a number on this complaint  
11 purporting to belong to this person, yes.

12 Q. And you made that call on November 1st,  
13 shortly after 11:00 p.m.; is that correct?

14 A. I think it was like 11:02 or 11:03, yes.

15 Q. And you made the call from your home,  
16 correct?

17 A. From my home.

18 Q. You made that call at a time when you knew  
19 the investigation was pending; isn't that correct?

20 A. Yes.

21 Q. The investigation had begun, as you  
22 understood it, in September 2000, correct?

23 A. Correct.

24 Q. At that time you were represented by

1 competent counsel, were you not?  
2 A. Yes, I was.  
3 Q. And you knew that if you had any questions  
4 about any complaint, you had a number of options  
5 short of calling a complaining witness yourself;  
6 isn't that correct?  
7 A. If I had thought about it that way, I would  
8 agree with you, yes.  
9 Q. Thinking about it now, you understand that  
10 obviously you could have gone to Mr. Mone, your  
11 counsel, and raised any questions you had with him  
12 and let him do the investigating; isn't that right?  
13 A. Correct.  
14 Q. You could have also opened the phone book  
15 to determine whether or not this particular  
16 individual was listed; isn't that true?  
17 A. No. I don't have a Tewksbury -- I think  
18 she's from Tewksbury or Billerica. I live in  
19 Newton. So I would not --  
20 Q. Do you have a computer?  
21 A. Yes, but I have never done that, searched  
22 for people's phone numbers on a computer, or  
23 address. So...  
24 Q. So you could not, through your office or at

1 home, through one of your children, who is perhaps  
2 more literate, at least if it's like my house, than  
3 you are on the computer had someone look up a phone  
4 number?

5 A. I suppose I could have, yes.

6 Q. Those options were available to you, right?

7 A. Yes.

8 Q. You did not avail yourself of those  
9 options, correct?

10 A. No, I did not.

11 Q. You did not call the Commission or  
12 Commission's counsel and ask them whether they would  
13 take a look at this particular complaint, because  
14 you had some doubt about it; is that right? You did  
15 not do that?

16 A. I did not do that.

17 Q. You did not ask your lawyer to call the  
18 Commission to determine whether or not this  
19 complaint or any other complaint might have some  
20 characteristic to it that made it inauthentic?

21 A. I believe I told my lawyer about this call,  
22 either the following day or shortly thereafter.

23 Q. You told him --

24 A. -- I had made this call to verify the



1 legitimacy of this complaint, yes. I don't think a  
2 decision was made to look further into it.

3 Q. Now, you're aware now, are you not, that  
4 this particular complaining witness happened to have  
5 caller ID; isn't that so?

6 A. That's correct.

7 Q. And when you called the witness that night,  
8 you didn't know that, did you?

9 A. No, I didn't.

10 Q. It was, from your point of view, an  
11 anonymous phone call; isn't that right?

12 A. Correct.

13 Q. Which is to say, when you reached someone  
14 on the other end of the line, you didn't tell them  
15 who you were, did you?

16 A. I never identified myself to her, no.

17 Q. And so in this call, which occurred, you  
18 say, at 11:03, and you reached a woman on the other  
19 end of the phone, you didn't introduce yourself or  
20 in any way give that individual any indication who  
21 was calling at that hour, did you?

22 A. That's right.

23 Q. If that witness had not had caller ID, no  
24 one would have known about this call but you; isn't

1 that correct?

2 A. Correct.

3 Q. You believed at this period of time that  
4 you were being persecuted in various ways by  
5 powerful enemies through Demoulas or other channels;  
6 is that correct?

7 A. I believe it to this day.

8 Q. And that's what gives rise to your  
9 suggestion here today that some of these complaints  
10 that were not investigated may yet be fictitious; is  
11 that so?

12 A. Correct.

13 Q. So your testimony is that even here today,  
14 notwithstanding all that surrounds us and the  
15 distinguished court who is spending his time  
16 listening to this, you are not even satisfied that  
17 these complaints are real as we sit here today,  
18 right?

19 A. I am not satisfied they're real, correct.

20 Q. You think all of this may be inspired by  
21 your enemies, correct?

22 A. Some of it. I'm not saying all of it. I'm  
23 sure there are some legitimate citizens who saw the  
24 tape and got upset about it. But I believe that

1 there are a number of complaints and a number of  
2 the -- a lot of the press frenzy, some of it was  
3 motivated, inspired, which is the word you like to  
4 use, by my enemies, yes.

5 Q. And you believe that even as you sit here  
6 testifying today, correct?

7 A. Correct.

8 Q. And you believe that indeed you are the  
9 victim here, don't you?

10 A. With regards to these proceedings?

11 Q. Yes.

12 A. Yes, I do.

13 Q. You're the victim, correct?

14 A. Yes, I do.

15 MR. WARE: I have nothing further. Thank  
16 you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. EGBERT:

19 Q. Let's start where you left off.

20 MR. WARE: Your Honor, could we take the  
21 morning break at this point?

22 HEARING OFFICER DAHER: Is that okay?

23 MR. EGBERT: No. It's not okay with me.  
24 If that's what you want, fine.

1 HEARING OFFICER DAHER: If is not okay with  
2 you, fine. We can go another 25 or 30 minutes or  
3 so. Go ahead.

4 BY MR. EGBERT:

5 Q. You left off by talking about the impact  
6 some important enemies have had upon you, right?

7 A. Correct.

8 Q. For those who don't know, let's talk about  
9 the Demoulas case. First of all, what was the  
10 Demoulas case about?

11 A. The Demoulas case involved two trials that  
12 I presided over. They occurred in late 1994 and  
13 then again at the beginning of 1995. The first one  
14 was a stock transfer, fraudulent stock transfer case  
15 that was tried to a jury; and the allegations were,  
16 from the plaintiffs who were the nephews of the  
17 Defendant, that their stock had been fraudulently  
18 transferred through a number of mechanisms. That  
19 was about a four-month trial.

20 Q. And that case involved a good deal amount  
21 of money?

22 A. It involved what I understand to be over a  
23 billion dollars.

24 Q. And were you subject to conduct by lawyers

1 and others after that proceeding and your findings  
2 in that proceeding which you thought to be unusual?

3 A. Yes.

4 Q. Tell the Court, after all of these Demoulas  
5 proceedings and during them, some of the things that  
6 were done to you by lawyers for the losing side.

7 A. Well, amongst the things that were done --  
8 I mean, they were responsible for that false  
9 complaint that was filed with the Commission in the  
10 Trios matter. But they also obtained false  
11 affidavits alleging that I had engaged in improper  
12 social conduct with the lawyer -- the lead lawyer on  
13 the winning side of the case. And they had moved to  
14 recuse me on that basis.

15 Then they perpetrated this unbelievable  
16 ruse on the law clerk that was assigned to me during  
17 the second trial, the derivative action, which was a  
18 jury-waived trial. It was tried to me. But they  
19 perpetrated an unbelievable ruse against my law  
20 clerk, flying him out of state so that they could  
21 tape him and not have to comply with our, you know,  
22 both-party-consent laws in Massachusetts. They  
23 threatened him. I mean, I'm sure the Judge might be  
24 familiar that this is now in fact involved -- well,

1 it was a federal investigation. There was a grand  
2 jury convened. They are now before the Board of Bar  
3 Overseers.

4 Q. Let me stop you. When you say they are now  
5 before the Board of Bar Overseers, who is now before  
6 the Board?

7 A. Richard Donahue, Gary Crossen and Kevin  
8 Curry.

9 Q. And were these the lawyers related to the  
10 losing side on the case that you presided over?

11 A. Yes.

12 Q. And are they charged with multiple counts  
13 of interfering with the judicial process by bringing  
14 your clerk to foreign countries and taping him?

15 A. Yes, they are.

16 Q. By filing false affidavits with regard to  
17 your clerk?

18 A. Yes.

19 Q. Were you informed that you had been  
20 followed during some of those proceedings?

21 A. That's correct. I mean, they had done  
22 things like illegally obtained financial records of  
23 mine.

24 Q. Were you informed that your trash was gone

1 through by members of the losing side to look for,  
2 quote, dirt on you?

3 A. Correct. And I had to have the State  
4 Police come and search for bugs at my house and in  
5 my lobbies.

6 Q. How long -- we'll get into this in more  
7 detail tomorrow or Friday, but how long was the,  
8 quote, Demoulas process -- how long did it go on?

9 A. Well, it actually began in the fall of  
10 1994, and I believe the last decision affirming my  
11 denial of a recusal motion based on the Paul Walsh  
12 matter, the law clerk matter, was rendered in June  
13 of 2000.

14 Q. So June of 2000 was the last, at least as  
15 far as you know, judicial action in the Demoulas  
16 matter?

17 A. Yes. I think the appellate process is over  
18 in the cases.

19 Q. And in essence, were all of your findings  
20 and rulings relating to who won and who lost and the  
21 like affirmed by the Supreme Judicial Court?

22 A. I was affirmed in everything. There was a  
23 remand concerning some tax calculations that had to  
24 be redone, but on every legal issue and every

1 evidentiary issue I was affirmed.

2 Q. And on these motions to recuse, and for  
3 those who may not know, that means to disqualify you  
4 as a Judge because of bias; is that right?

5 A. That's correct.

6 Q. Were any of those motions granted by you?

7 A. No, I denied them -- there were three  
8 motions. I denied them all.

9 Q. And were each of those affirmed -- your  
10 decisions in that regard affirmed by the Supreme  
11 Judicial Court?

12 A. Correct. They were.

13 Q. And when you talk about these false  
14 complaints at the Judicial Conduct Commission, and  
15 you mentioned the Trios matter --

16 A. Correct.

17 Q. -- did it come to your attention that  
18 affidavits and complaints were filed with the  
19 Judicial Conduct Commission at the behest of the  
20 Demoulas lawyers?

21 A. Correct.

22 Q. And that after a period of time, those  
23 people who signed the affidavits and filed the  
24 complaints through their attorneys came forward and



1 indicated that they were all false, that everything  
2 that they had filed was a falsity, and they had done  
3 so by trickery?

4 A. Correct.

5 Q. With regard to the Demoulas lawyers?

6 A. That's right.

7 Q. And that each of those -- and each of those  
8 complaints accused you of various forms of  
9 impropriety?

10 A. That's right.

11 Q. Both social and judicial?

12 A. That's correct.

13 Q. And they were all thrown out at that time?

14 A. Yes, they were.

15 Q. How did you feel going through the process  
16 of these lawyers during that period of time trying  
17 to affect --

18 HEARING OFFICER DAHER: What's your  
19 objection?

20 MR. WARE: I was going to let him finish  
21 his question.

22 HEARING OFFICER DAHER: Well, I can  
23 anticipate. What is your objection?

24 MR. WARE: To her feeling. It's

1 irrelevant.

2 MR. EGBERT: Her state of mind coming into  
3 these events I think is perfectly appropriate.

4 HEARING OFFICER DAHER: I think because of  
5 the nature of the charges, I'm going to overrule  
6 that objection. You may have it. You may continue  
7 with it.

8 Q. How did you feel -- how did you feel, going  
9 through that period of time in the Demoulas case  
10 with these lawyers conducting themselves in this  
11 way, attacking you, filing false affidavits, filing  
12 false affidavits with the Judicial Conduct  
13 Commission, filing false affidavits in your court,  
14 and doing the kinds of things that you just  
15 described to us?

16 HEARING OFFICER DAHER: You already  
17 objected to it, how she feels.

18 MR. WARE: Objection, Your Honor. I was  
19 just going to ask if we have a time frame here. I'm  
20 not clear at all what year we're talking about.

21 HEARING OFFICER DAHER: You are entitled to  
22 that.

23 Q. Take us through, Judge Lopez, take us  
24 through basically as best you can the time from '97

1 through the year 2000.

2 A. Regarding the motions for recusal and what  
3 happened?

4 Q. No. Regarding your feelings concerning  
5 what was going on.

6 A. Well, I mean, I was very upset that my  
7 professional reputation was being impugned that way.  
8 I mean, I knew that what was being alleged in those  
9 affidavits -- I knew that to be false.

10 I was very upset, and I was angry that  
11 there would be such an effort, not only to attack me  
12 personally, but to use those kinds of means to  
13 undermine a decision that had been rendered in  
14 accordance with our laws, fairly decided. And I  
15 thought it as an attempt on their part to disqualify  
16 me in some way -- and in fact the SJC saw it that  
17 way too -- to get me disqualified so they could get  
18 a new trial on the cases, because they were unhappy  
19 with the results in that case.

20 So they marshalled every force they could  
21 to see what they could come up with to get me -- to  
22 get a new Judge to retry the case. And so I felt  
23 attacked. I felt besieged.

24 MR. EGBERT: I want to take up one other

1 matter, and then if you want to take a break.

2 HEARING OFFICER DAHER: I don't have to  
3 take a break. If you're on a roll, go ahead.

4 MR. EGBERT: No, I'm not on a roll. I just  
5 wanted to take up one other matter quickly, and then  
6 we'll take a break.

7 Q. You were asked a bunch of questions this  
8 morning about Jay Greene not being in the  
9 investigation, Jay Greene not being a part of the  
10 case against Horton, Jay Greene not being a person  
11 who was on the scene, Jay Greene not being a part of  
12 the investigation. Do you remember all those  
13 questions?

14 A. Yes.

15 Q. Would you turn -- do you have the exhibit  
16 book in front of you?

17 A. I do.

18 Q. Let's not use any screens. Let's use real  
19 paper, all right?

20 A. Okay.

21 Q. Turn to Exhibit 27, if you would. Now, in  
22 your years of experience in practice and as a Judge,  
23 do you recognize what this document is?

24 A. I've seen hundreds if not thousands of

1 them.  
2 Q. What is it?  
3 A. It's a police report. It's an incident  
4 report.  
5 Q. And an incident report -- this is the first  
6 report, basically, of the police officers with  
7 respect to a criminal conduct?  
8 A. Correct.  
9 Q. Now, I want you to turn to Page 2 at the  
10 bottom, and start with -- I want you to go, on the  
11 second line from the bottom, from the word "the."  
12 A. Yes. "The VD63 unit."  
13 Q. Would you read that out loud.  
14 A. "The --" I think it is supposed to be "VS";  
15 I don't know what "VD" means -- "63 unit, Officer  
16 Goldy was on scene." I guess that's -- oh, that's a  
17 badge. "Sergeant Detective Downey, Sergeant Burns,  
18 Detective Greene and McCarthy --" and I think those  
19 are their badges.  
20 Q. Keep reading.  
21 A. "-- were on scene."  
22 Q. "Were on scene"?  
23 A. Right.  
24 Q. And now you also were asked if Detective

1 Greene had anything to do with the investigation of  
2 this case. Please read on from after on scene.  
3 A. "The Sexual Assault Unit was notified, the  
4 V825, Detective Keeley, and V823, Detective  
5 Hartgrove, continued the investigation."  
6 Q. Stop right there for a minute. Does that,  
7 in your understanding, lead you to believe that the  
8 people who were on scene and listed were there  
9 before the so-called sexual assault unit?  
10 A. Correct.  
11 Q. Now, keep reading, please.  
12 A. "Detective Hartgrove continued the  
13 investigation. Officers administered suspect's  
14 Miranda rights at the scene. Suspect denied any  
15 involvement post-Miranda to Officers Sweeney and  
16 Detective Greene."  
17 Q. So Detective Greene was on scene, according  
18 to this report --  
19 A. Correct.  
20 Q. -- interviewed the Defendant, according to  
21 the report?  
22 A. Correct.  
23 MR. WARE: Objection.  
24 HEARING OFFICER DAHER: What is the

1 objection?  
2 MR. WARE: Gave Miranda rights. That's  
3 all.  
4 MR. EGBERT: "Suspect denied any  
5 involvement --"  
6 HEARING OFFICER DAHER: Overruled. You can  
7 have it.  
8 MR. EGBERT: "-- post Miranda."  
9 HEARING OFFICER DAHER: Overruled. You got  
10 it.  
11 Q. Now, without regard to what your testimony  
12 before the Commission may have been some year or so  
13 after these events as to whether or not you  
14 remembered him being on scene or not being on scene  
15 or the like, having looked at this report, do you  
16 now have a basis in your mind to determine whether  
17 or not Detective Greene was on scene?  
18 A. Yes.  
19 MR. EGBERT: Your Honor, would this be a  
20 good time for a break?  
21 HEARING OFFICER DAHER: Fine.  
22 (Recess)  
23 (Side bar off the record)  
24 HEARING OFFICER DAHER: Pick it up.

1 BY MR. EGBERT:

2 Q. Judge Lopez, just recently, on your direct  
3 examination, you were asked whether or not you  
4 thought of yourself as a victim in this matter. Do  
5 you recall that questioning?

6 A. Yes, I do.

7 Q. What do you mean by that?

8 A. Well, what I meant by that, and what I mean  
9 by that, is that I mean as to these proceedings. I  
10 certainly was not suggesting -- and I hope it was  
11 not interpreted -- that I was equating myself to a  
12 victim such as the victim in the Horton case or a  
13 victim in any kind of a criminal matter.

14 When I said "victim," what I meant is that  
15 in the course of these proceedings I have gone  
16 before the Commission, I have apologized for my  
17 demeanor issues, and I really believe that this  
18 matter should have been resolved in the way that  
19 most, if not the overwhelming majority, of  
20 complaints before the Commission are resolved, given  
21 the nature of the allegations, and that -- I mean,  
22 this is -- I'm not trying to suggest that these are  
23 not legitimate proceedings, but I do believe that  
24 the Commission has, in my case, gone beyond what it



1 has done in other cases. So in that sense I feel  
2 victimized.

3 Q. And in that regard, have you ever had a  
4 complaint before the Commission where there has been  
5 any affirmative action or finding that you have done  
6 anything in violation of any canons of the ethics?

7 A. No.

8 Q. Have you ever had any case before the  
9 Commission go to an informal adjustment or private  
10 admonition or the like?

11 A. I have had no sanction possible, whether  
12 it's private, confidential, public, from the  
13 Commission in my entire career as a judge.

14 Q. And also just a few moments ago you were  
15 asked about your phone call to Ms. Beaucage. Do you  
16 recall that?

17 A. Yes.

18 Q. And whether or not you were suspicious and  
19 why you were suspicious at that particular time?

20 A. Correct.

21 Q. The call you made to Ms. Beaucage was  
22 around when?

23 A. It was on November 1st.

24 Q. Of the year?

1 A. 2000.

2 Q. Just before November 1st of the year 2000,  
3 did you have an occasion to experience false and  
4 fraudulent letter writing or complaints, so called?

5 A. Yes.

6 Q. I'm going to -- and I'm going to hand up to  
7 you, if I may --

8 MR. EGBERT: May I approach, Judge?

9 THE WITNESS: Yes. I can't believe I -- do  
10 you know how tough it is? I want to rule on the  
11 objections myself.

12 Q. I'm handing Respondent's Exhibits H and I,  
13 which the Court has the originals, I believe. And I  
14 ask you, first of all, can you identify what these  
15 are?

16 HEARING OFFICER DAHER: What exhibits are  
17 we dealing with?

18 MR. EGBERT: H and I. They won't be in the  
19 book, Judge. They will be in the exhibits we  
20 submitted to you.

21 HEARING OFFICER DAHER: All right. Go  
22 ahead.

23 Q. Let's start with H. That's a letter dated  
24 October 10th of 2000.

1 A. Correct.  
2 Q. Do you recognize it?  
3 A. Yes.  
4 Q. And what is it?  
5 A. It's a letter I received at the courthouse,  
6 probably on October 13th or 14th.  
7 Q. Of 2000?  
8 A. Of 2000, yes.  
9 Q. And could you read that letter into the  
10 record, please.  
11 A. Okay. It says, "To Maria. We demand to  
12 know what you are doing to" -- wait a minute --  
13 "what you are going to do to correct your ignorant  
14 ruling on the child attacker, Ebony. Are you so  
15 politically correct that you do not see right from  
16 wrong? You and your husband have the moral value  
17 and character of a common criminal, but that  
18 probably is not even an insult to you, because you  
19 are in bed with the criminals anyway. You cannot  
20 realize how much you are loathed in this state."  
21 Q. And who signed it?  
22 A. Somebody by the name of Patricia Steinborn.  
23 Q. Now, after --  
24 HEARING OFFICER DAHER: I have to interrupt

1 you. I don't -- I have all of your suggested  
2 exhibits, but I don't have H and I in the -- I'll  
3 need a copy, please.

4 MR. EGBERT: May I approach?

5 HEARING OFFICER DAHER: That will be fine.

6 MR. EGBERT: I'll give you these.

7 Q. Now, after receiving that -- did you  
8 receive that at the Superior Court?

9 A. Yes, I did.

10 Q. And what -- did it come in an envelope?

11 A. It came in an envelope.

12 Q. With a return address?

13 A. Correct.

14 Q. What did you do with that when you received  
15 it?

16 A. I received these together.

17 Q. Let's start with this one.

18 A. Okay. What I did with it -- well, what  
19 happened was, my court officer was in fact reading  
20 my mail, because I was getting thousands and  
21 thousands of letters excoriating me and threatening  
22 me. So he would -- by this time I was only getting  
23 a few of them. Anyway, I gave it to my court  
24 officer for him to verify whether or not this was a

1 legitimate letter.

2 Q. And what did you learn from your court  
3 officer in that regard?

4 A. I learned he called --

5 MR. WARE: Objection. Hearsay, Your Honor.

6 HEARING OFFICER DAHER: Sustained.

7 MR. EGBERT: It goes to her state of mind  
8 at this period of time in her belief that there were  
9 people writing false letters. It does not go to  
10 whether or not they're false, and --

11 HEARING OFFICER DAHER: That's under the  
12 exception to the hearsay rule. You may have it.

13 A. Excuse me. The question was, what did  
14 he --

15 Q. What did you learn from Mr. Hart?

16 A. From Mr. Hart, that he had called the  
17 business that was -- the return address on the  
18 envelope and inquired as to whether or not a  
19 Patricia Steinborn worked there, and they said they  
20 had never heard of a Patricia Steinborn.

21 Q. And would you a look at Exhibit I, please.

22 A. Yes.

23 Q. And is that a letter that you also received  
24 at or about the same time?

1 A. Correct.

2 Q. And was that in fact in the same envelope  
3 as the previous exhibit?

4 A. Not in the same envelope. In a separate  
5 envelope, but with the same return address.

6 Q. And would you read that one.

7 A. It says, "To Maria. You are a disgrace to  
8 Massachusetts. There are so many people that are  
9 disgusted with your work. You have no dignity or  
10 shame. You must not be a parent or grandparent the  
11 way you callously ruled in the case with the child  
12 rapist Ebony. We are watching you and you better  
13 clean up your act."

14 Q. And "we are watching you and you better  
15 clean up your act," did you take that as a threat?

16 A. Yes.

17 Q. What did your court officer do about that?

18 A. He again, when he called the return address  
19 business, he inquired about this Jessica Fernandez,  
20 and they had never heard of her.

21 Q. And so at least as of about October 13th or  
22 14th of the year 2000, you at least had some  
23 experience with receiving false or fictitious  
24 complaints, correct?

1 A. Correct.

2 Q. Now, when did you receive Exhibit 31, which  
3 is the complaint filed by Ms. Beaucage against you?

4 A. I received it on November 1st.

5 Q. And that was approximately how long after  
6 the Ebony Horton sentencing?

7 A. Well, September 6th. So we're talking  
8 seven and a half weeks.

9 Q. And was that unusual, in your mind?

10 A. It was very unusual, this one.

11 Q. Why?

12 A. Well, at the beginning I would get an  
13 envelope from the Commission that had 30 or 40  
14 complaints or whatever; a number of complaints. And  
15 this one -- and I had not received a Commission  
16 envelope in a number of weeks. And then this one  
17 came alone. It was a single complaint, and -- does  
18 that answer the question?

19 Q. Were you suspect of it?

20 A. I was absolutely suspect of it.

21 Q. And you've indicated that you made a phone  
22 call to Ms. Beaucage or to a phone number?

23 A. I did.

24 Q. What was your purpose in making the phone

1 call?

2 A. I wanted to verify whether or not this was  
3 a legitimate person that was filing a complaint  
4 against me.

5 Q. And when you made that phone call, do  
6 you -- you have something that's -- do you have  
7 caller ID on your phones?

8 A. Yes.

9 Q. And your phones give out caller ID?

10 A. They give it out, yes.

11 Q. Is that correct?

12 A. Correct.

13 Q. And you did nothing to block your caller  
14 ID, did you?

15 A. Correct.

16 Q. And you did nothing to stop your  
17 information flowing in that phone call, correct?

18 A. No. I -- I truly believed that I was going  
19 to find out that there was no such person at that  
20 phone number.

21 Q. What happened when you called?

22 A. When I called, a woman answered the phone.  
23 I asked, "Is there a person by the name of Angela  
24 Beaucage there?" She paused and said, "Yes." And



1 at that point I said, "Thank you," and I hung up.  
2 Q. Did you say anything else to her?  
3 A. No.  
4 Q. Did you threaten her, intimidate her?  
5 A. No, absolutely not.  
6 Q. Did you mean to threaten her or --  
7 A. Absolutely not.  
8 Q. It was your firm belief that you were going  
9 to find out that there was no such person there,  
10 right?  
11 A. Correct.  
12 Q. And as soon as you found out that person  
13 existed, you said good-bye?  
14 A. I hung up and I told my lawyer I think the  
15 following day.  
16 Q. I'd like to go back, if we could, to the  
17 beginning of these matters and to discuss with you  
18 the various events that led up to the sentencing in  
19 the Ebony Horton matter; all right?  
20 A. Okay.  
21 Q. And let's start, if we could, with August  
22 1st of the year 2000. You know what that date was  
23 about, correct?  
24 A. Correct. That was the date of the lobby

1 conference at side bar.

2 Q. Now, approximately how many cases a day do  
3 you handle in the First Session of Suffolk County?

4 A. We probably on the list could have, you  
5 know, 50, 60 matters.

6 Q. And of those matters, how many of them end  
7 up with lobby conferences, so called?

8 A. They try and put on maybe -- depending on  
9 the judge, actually, but between, around six, eight  
10 of them.

11 Q. During the course of those lobby  
12 conferences -- what is the purpose of them?

13 A. The lobby conference is an opportunity, an  
14 effort -- an opportunity for the lawyers for both  
15 sides to present their best case to the judge and  
16 see if they can reach some kind of a disposition.

17 Q. And during that, when you say "present  
18 their best case to the judge," the prosecutor is  
19 permitted to tell the facts of the case, I take it.

20 A. Correct. He tells me or tells the judge  
21 what he expects the evidence in the case to be.

22 Q. And there are references to the criminal  
23 record of the defendant?

24 A. Correct.

1 Q. Any extraordinary circumstances that the  
2 prosecution thinks is appropriate?  
3 A. Yes.  
4 Q. And the defense basically does the same on  
5 the other side of the coin?  
6 A. The defense has the opportunity to present  
7 their best scenario.  
8 Q. During those lobby conferences, each one  
9 advocates for their position, correct?  
10 A. Correct.  
11 Q. Now -- and we talk about lobby conferences,  
12 is that the way you refer to these plea conferences?  
13 A. Yes. They're plea conferences.  
14 Q. Let's go to the conference that was had  
15 with regard to the Ebony Horton case. First of all,  
16 was Ms. Joseph there?  
17 A. Yes, she was.  
18 Q. Now, you've indicated that you had some  
19 prior experience with Ms. Joseph, correct?  
20 A. Correct.  
21 Q. And that you had, I think you said, a less  
22 than favorable opinion of her anyway.  
23 A. That's right.  
24 Q. At the beginning, as she came to you that

1 day, did your opinion of her affect you in any way  
2 as to the manner or means in which you would treat  
3 that case?

4 A. Absolutely not.

5 Q. Do you have opinions, both good and bad, of  
6 many lawyers and prosecutors who appear before you  
7 over the years?

8 A. Absolutely.

9 Q. And do you permit your opinions in those  
10 regards to have any impact upon your decision  
11 making?

12 A. No, not at all.

13 Q. And if you thought or believed that you had  
14 an opinion for which would require -- strike that.  
15 If you had an opinion which would prohibit you from  
16 being unbiased, what would you do?

17 A. I would recuse myself.

18 Q. And if you thought that there was a  
19 circumstance which would indicate to the public that  
20 you were biased, what would you do?

21 A. I would recuse myself.

22 Q. During the course of any proceeding that  
23 you had had with Leora Joseph, up through and  
24 including the lobby conference on August 1st of the

1 year 2000, had she or any member of the district  
2 attorney's office asked you to recuse yourself in  
3 any case involving Leora Joseph?

4 A. No. No one has ever asked me that.

5 Q. And when a lawyer, particularly a lawyer  
6 with the -- who represents the people, as Mr. Ware  
7 has described, believes that he or she will suffer  
8 bias at the hands of a judge, what is their  
9 obligation?

10 A. They bring it to the Court's attention and  
11 request that the Judge recuse herself, himself.

12 Q. And at any time, up to and including August  
13 1st of the year 2000, had any such motion been made  
14 by Leora Joseph?

15 A. No.

16 Q. Had any such motion been made by anyone on  
17 her behalf?

18 A. No.

19 Q. Had she talked to you at any time,  
20 privately or publicly, about any feeling she had  
21 that you were treating her unfairly?

22 A. No.

23 Q. During the lobby conference on August 1st  
24 of the year 2000, did Leora Joseph have a chance to

1 state her position?

2 A. Yes, she did.

3 Q. Was -- did you at any time hinder her from  
4 saying anything she wanted during the lobby  
5 conference in any way?

6 A. No, I did not.

7 Q. Did she say to you at any time at that  
8 lobby conference words to the effect of, "Judge, I  
9 have more to say," "I'd like to say more," or "I  
10 would like to put more time into this," or anything  
11 of the like?

12 A. No, she said nothing like that.

13 Q. Did she do anything to indicate to you that  
14 she was lacking in judicial time to present her  
15 case?

16 A. No.

17 Q. Did she do anything by representation to  
18 you that she was lacking in judicial demeanor to  
19 present her case?

20 A. No.

21 Q. And did you in fact give her all the time  
22 she needed?

23 A. I gave her all the time she needed.

24 Q. And, by the way, during the course of that

1 lobby conference did you also give the attorney for  
2 the defendant, Anne Goldbach, time to speak?

3 A. Correct.

4 Q. And did you, in the first instance -- did  
5 she in the first instance -- strike "the first  
6 instance." Did she provide to you a psychosocial  
7 report as it related to Ebony Horton?

8 A. Yes, she did.

9 Q. To step back a minute, you've been a judge  
10 in the criminal courts for how many years?

11 A. Fourteen years about.

12 Q. And you have recognized in the past, have  
13 you not, an interplay or byplay between mental  
14 health issues and criminal law issues?

15 A. That's always there, yes.

16 Q. And have you, on your own, and as a judge,  
17 studied many of those issues in the past?

18 A. I have. Not on my own, but through  
19 conferences, and in the course of cases I have  
20 listened to experts on these issues.

21 Q. And have you also attended conferences with  
22 your judicial colleagues with relation to mental  
23 health issues and their impact vis-a-vis the  
24 criminal law?

1 A. Many.

2 Q. And so -- and would it be fair to say that  
3 those who know you in the criminal justice system,  
4 lawyers, district attorneys, know of your  
5 understanding in that regard and interest in that  
6 regard?

7 MR. WARE: Objection as to --

8 HEARING OFFICER DAHER: Again, that's a  
9 stretch. Sustained.

10 Q. Let me ask it more specifically. In the  
11 Calixte case that you had with Leora Joseph, do you  
12 recall that?

13 A. Yes.

14 Q. Was there a mental health issue involved in  
15 that case?

16 A. Yes.

17 Q. Was it one involving an undiagnosed  
18 schizophrenic?

19 A. Right.

20 Q. And during that case was there medical and  
21 psychological evidence presented to you?

22 A. There was a letter from the doctor that was  
23 treating her. At the time of the incident, the  
24 crime, she was undiagnosed, and then she was



1 subsequently involuntarily committed, medicated, and  
2 she was in treatment to recognize that she had this  
3 mental illness; so the doctor that was treating her  
4 sent me a letter.

5 Q. And was that something that, during the  
6 course of the Calixte sentencing and plea hearings  
7 and the like, was discussed by you with Miss Joseph  
8 as counsel?

9 A. Yes.

10 Q. And was it a matter where you expressed  
11 your views to her in conference and otherwise that  
12 these mental health issues had to be considered by  
13 you in determining what an appropriate sentence may  
14 be in that case?

15 A. Absolutely.

16 Q. So it was certainly known to Miss Joseph by  
17 the time of the Horton case that you would consider  
18 mental health issues in determining or fashioning an  
19 appropriate sentence in a criminal case.

20 A. Right. I think every judge has to.

21 Q. Forget what every judge has to for a  
22 minute. Stick with my question.

23 A. All right.

24 Q. Was it known to her from those proceedings?

1 A. Yes, it was.

2 Q. Thank you. Now, during the course of the  
3 presentation by Ms. Goldbach, one of the things she  
4 presented to you in conjunction with her  
5 representation of Mr. Horton was a psychosocial  
6 assessment and dispositional plan for Charles Ebony  
7 Horton; is that correct?

8 A. That's correct.

9 MR. EGBERT: May I approach?

10 HEARING OFFICER DAHER: Please.

11 MR. WARE: Your Honor, this is Exhibit 3.

12 BY MR. EGBERT:

13 Q. I want to show you what's in Exhibit 3 in  
14 this case, and ask you, first of all, can you  
15 identify it?

16 A. Yes.

17 Q. What is it?

18 A. That's the psychosocial report that was  
19 presented to me at the August 1st lobby conference.

20 Q. Now, did you read this at the time?

21 A. Yes, I did.

22 Q. And when you -- give us the backdrop or the  
23 setup of how this conference took place. Was it at  
24 a bench, such as Judge Daher is sitting at?

1           A.    Yes.  A bigger one, I must say, in the  
2   First Session probably.  A bigger, wider one, longer  
3   one.  
4           Q.    And where would this conference take place?  
5           A.    It would take place at side bar.  
6           Q.    And the lawyers would go over on the side  
7   and you would confer with them for whatever period  
8   of time was necessary for the conference?  
9           A.    Correct.  
10          Q.    Now, were you handed this document, Exhibit  
11   3, by Ms. Goldbach with Ms. Joseph standing there?  
12          A.    Yes, she was.  
13          Q.    And did Ms. Joseph exhibit any surprise or  
14   objection to you reading this document?  
15          A.    No.  
16          Q.    Did she indicate to you in any way that she  
17   hadn't seen the document?  
18          A.    No, she did not.  
19          Q.    Did she ask you for a copy of the document?  
20          A.    She did not.  
21          Q.    During the course of plea conferences that  
22   you've held over the period of years, has it been  
23   your custom to accept documents from people at the  
24   conferences?

1 A. Always.

2 Q. And has it been your understanding and  
3 practice that if a lawyer was lacking in a document,  
4 they would ask you for a copy?

5 A. Yes.

6 Q. Was there any -- did you have any reason to  
7 believe whatsoever that Leora Joseph did not have a  
8 copy of this psychosocial assessment?

9 A. No. I had no reason to believe that at  
10 all.

11 Q. Was there any discussion about that at all?

12 A. No.

13 Q. And she was there with you when you were  
14 reading it?

15 A. Yes, she was.

16 Q. And she was there with you while you  
17 discussed the contents of it with both her and Ms.  
18 Goldbach, right?

19 A. That's right.

20 Q. Now, as an advocate for one side or the  
21 other, and I'm not asking you to be, but in your  
22 experience as a judge, when presented -- when a  
23 judge is presented with something like this  
24 psychosocial assessment, if the opposing side wished

1 to confront that issue, what generally would they  
2 seek to do?

3 A. They would inform the Court that they --  
4 either they would dispute or challenge this, or they  
5 would request an opportunity to conduct their own  
6 evaluation.

7 Q. Did, during that conference, Leora Joseph  
8 dispute the accuracy of the report?

9 A. No, she did not.

10 Q. Did she dispute the validity of the report?

11 A. No, she did not.

12 Q. Did she dispute the reliability of the  
13 report?

14 A. No, she did not.

15 Q. Did she seek to have you continue the case  
16 for any period of time so that she could conduct her  
17 own investigation in this regard?

18 A. No, she did not.

19 Q. Did she seek an order from the Court asking  
20 you to order the defendant, Mr. Horton, to  
21 participate in an independent evaluation at any  
22 time?

23 A. No, she did not.

24 Q. Did she do anything in regard to this

1 report?

2 A. She did not.

3 Q. So, is it fair to say that during the  
4 course of this conference, based upon the conduct of  
5 counsel, the statements of counsel, and the like,  
6 that by the end of the conference you had an  
7 undisputed, un rebutted psychosocial assessment and  
8 dispositional plan for Charles Ebony Horton?

9 A. That's correct.

10 Q. Now, there are a number of --

11 MR. EGBERT: May I approach the side bar  
12 for a moment?

13 (At side bar)

14 MR. EGBERT: I'm looking for your guidance.  
15 It's not my desire to put Ebony Horton's full  
16 psychosocial records in the public domain, but I  
17 think, unfortunately, based upon the manner this  
18 case has gone in, it is important to get her  
19 considerations and the conduct of the DA's office.

20 HEARING OFFICER DAHER: Do you have any --

21 MR. WARE: I'm prepared to work with any  
22 code that protects Mr. --

23 MR. EGBERT: I think the press should be  
24 excluded from these details.

1 HEARING OFFICER DAHER: Do you?  
2 MR. WARE: I would not agree to have the  
3 press excluded from this. The Judge specifically  
4 refers to -- the Judge in fact makes findings from  
5 this.  
6 MR. EGBERT: The ultimate disease, but not  
7 as to all the underlying characteristics.  
8 HEARING OFFICER DAHER: Let me see if I can  
9 understand.  
10 MR. EGBERT: My request is that this part  
11 of the examination of Judge Lopez be -- the press be  
12 excluded.  
13 CHECK MR. WARE: No, Your Honor.  
14 HEARING OFFICER DAHER: Overruled.  
15 MR. EGBERT: I'm doing the best I can --  
16 HEARING OFFICER DAHER: You have it on  
17 record.  
18 (End of side bar)  
19 BY MR. EGBERT:  
20 Q. And, Judge, I'm sorry and I indicate to you  
21 that there is no order excluding the confidentiality  
22 with regard to this document as of now.  
23 A. As of now.  
24 Q. Right. First of all, Judge, have you, in

1 the past, been involved in seminars and discussions  
2 and your own private readings concerning the issue  
3 of sexual identity disorder?

4 A. Yes.

5 Q. And do you know what it is, for lack of a  
6 better word?

7 A. Yes. It's a gender identity disorder.  
8 It's a psychological impairment where a person is  
9 born of one sex, but feels that they are of another  
10 sex.

11 Q. And do you know whether or not sexual  
12 identity disorder is a disorder which is recognized  
13 by the American Psychiatric Association?

14 A. Yes, it is.

15 Q. And do you know something referred to as  
16 the "Diagnostic and Statistical Manual of Mental  
17 Disorders"?

18 A. Yes.

19 MR. EGBERT: May I approach the witness?

20 HEARING OFFICER DAHER: Please.

21 MR. EGBERT: Let's hope, Judge, you have  
22 this as M.

23 Q. I'm providing to you Defendant's Exhibit M.

24 MR. EGBERT: Which I would offer at this



1 time, Judge.  
2 MR. WARE: No objection.  
3 HEARING OFFICER DAHER: Go ahead.  
4 (Document marked Exhibit M  
5 received into evidence)  
6 Q. This is -- well, tell me what this manual  
7 is; what it means to you.  
8 A. This is what is used by the medical  
9 profession, psychiatric profession, to diagnose  
10 mental illness, emotional illness.  
11 Q. And is gender identity disorder recognized  
12 as a mental disorder by the American Psychiatric  
13 Association?  
14 A. Yes, it is.  
15 Q. With recognized characteristics?  
16 A. Yes.  
17 Q. You can put that down for the moment.  
18 A. Okay.  
19 Q. Now, you were provided Exhibit 3, which is  
20 the psychosocial assessment for Mr. Horton, and you  
21 learned a number of facts during the course of your  
22 reading of this document; is that right?  
23 A. Yes.  
24 Q. None of these facts that we're about to go

1 into were on the record anywhere in the proceedings  
2 of Charles Ebony Horton; is that correct?

3 A. Correct.

4 Q. And they were not made a part of the  
5 sentencing record, correct?

6 A. Correct.

7 Q. And in fact, Ms. Goldbach, during the  
8 sentencing, you recall asked that she not have to go  
9 through these factors so it would not be made a  
10 public record in that regard.

11 A. That's right. She knew I was aware of  
12 them.

13 Q. And with regard to this psychosocial  
14 assessment, you ultimately provided a copy to the  
15 probation department, did you not, that would  
16 supervise Mr. Horton?

17 A. Right.

18 Q. During the course of your review of this  
19 document, you found out, No. 1, that Mr. Horton had  
20 been treated with female hormones, correct?

21 A. Yes.

22 Q. And that she had not had a surgical  
23 castration, correct?

24 A. Correct.

- 1 Q. And that she was struggling with a variety  
2 of psychological and social issues around her sexual  
3 identity.
- 4 A. Yes.
- 5 Q. That, for the most part, her life had been  
6 defined by gender issues?
- 7 A. Yes.
- 8 Q. She recognized early on that she was  
9 different?
- 10 A. Yes.
- 11 Q. And that Ebony and a cousin have the same  
12 concerns and often dressed up in female clothes as  
13 young children for which Ebony, at least, was  
14 beaten.
- 15 A. Yes.
- 16 Q. What did you understand that to mean  
17 historically?
- 18 A. That when she was in junior high and high  
19 school she would dress as a female, and she would be  
20 taunted at school.
- 21 Q. When you say "taunted at school" --
- 22 A. Beaten.
- 23 Q. Does the report indicate she was beaten?
- 24 A. Yes, the report indicates she was beaten.

1 Q. Then the following sentence indicates that  
2 she was taunted at schools at all levels.  
3 A. Right.  
4 Q. And dropped out in the 12th grade.  
5 A. Right.  
6 Q. Did you also learn that her parents had  
7 separated when she was young because her father had  
8 had an affair with a younger woman?  
9 A. Yes.  
10 Q. And that since that time, Ebony's mother  
11 refused to allow her children any contact with the  
12 father; is that correct?  
13 A. Right.  
14 Q. And that there is some discussion of the  
15 relationship with the father.  
16 A. Yes.  
17 Q. And then during her childhood Ebony's  
18 mother became a drug addict?  
19 A. Right.  
20 Q. And was both physically and verbally  
21 abusive to Ebony Horton, correct?  
22 A. Correct.  
23 Q. You also learned that sometime in her  
24 teenage life, I believe, that her father died of

1 sickle cell anemia, correct?  
2 A. Yes.  
3 Q. And she was around 12 at the time?  
4 A. Yes.  
5 Q. And then you learned something about the  
6 progress that Ebony Horton had made over a period of  
7 time, correct?  
8 A. Yes.  
9 Q. And that her mother had made.  
10 A. Yes.  
11 Q. And can you tell us a bit about that.  
12 A. Yes. The report states that the mother has  
13 been drug free for seven years --  
14 MR. WARE: Objection. The report is in  
15 evidence. I think the question is what the Judge  
16 understood.  
17 HEARING OFFICER DAHER: Sustained.  
18 Q. You can refer to the report for your  
19 understanding.  
20 A. That the mother had rehabilitated herself,  
21 that she was now drug free for a number of years,  
22 that she was an active participant in a church.  
23 Q. And was there some discussion or learning  
24 as to whether or not Ebony, after these events, had

1 turned to the church?

2 A. Yes.

3 Q. When I say "after these events," I mean the  
4 events for which he was arrested.

5 A. What was the last part of that question?

6 Q. That Ebony Horton had turned to the church  
7 sometime after the events which caused his arrest.

8 A. Yes.

9 Q. And that -- can you tell us a bit about  
10 what you learned there?

11 A. That she became a member of the church,  
12 that there was a minister that had taken an interest  
13 in her, and that she was being accepted by that  
14 congregation.

15 Q. And did you also learn that she had been in  
16 counseling at the Sidney Borum Health Center?

17 A. Yes.

18 Q. And that she wanted and expected to  
19 continue on with counseling in some other facility,  
20 correct?

21 A. Correct.

22 Q. And that -- did you also learn that she was  
23 supposed to be on medication, but was frightened off  
24 medication because of incidents that had occurred

1 with some of her friends?

2 A. That's right.

3 Q. Did you also then learn that Ebony had a  
4 severe chronic depression along with suicidal  
5 thoughts that surfaced when she is under severe  
6 pressure?

7 A. That's correct.

8 Q. And would you switch to the page that deals  
9 with clinical impressions. "Ebony is a  
10 transgendered individual with all of the problems  
11 that produces, especially for a young person. She  
12 has been struggling with gender issues for years.  
13 She is socially and emotionally immature and needs  
14 to work on maturational issues. Her life is  
15 difficult. Her mother is supportive, but less  
16 accepting than her older sister. The Fenway  
17 Community Health Center is the best place for her to  
18 receive counseling at the time. She is also being  
19 treated with hormone therapy, and needs to continue  
20 with the medication," correct?

21 A. I learned that, yes.

22 Q. Now, would you read the next line?

23 A. "I find it highly unlikely that Ebony will  
24 repeat the behavior that brought her to court in

1 this case. Jail has been a chilling experience for  
2 her."  
3 Q. So she had been jailed for a period of time  
4 until she was bailed?  
5 A. Awaiting -- yes, she was on bail.  
6 Q. And, by the way, are you the judge that  
7 released her on bail?  
8 A. No.  
9 Q. Now, read on, if you would.  
10 A. "Further incarceration will be a disaster  
11 for Ebony, and place her at considerable risk. I do  
12 not believe that Ebony would survive the prison  
13 system. She is who she is not by choice, but by  
14 birth."  
15 Q. Did anyone from the district attorney's  
16 office at any time, from the beginning of the case  
17 of Ebony Horton to the end of the case of Ebony  
18 Horton, supply you with a singular piece of  
19 information to refute what is in this report?  
20 A. No.  
21 Q. Did they ever attempt to?  
22 A. No.  
23 Q. This report goes on to recommend that  
24 Charles Ebony Horton be allowed to go home,



1 continuing therapy, and have certain conditions; is  
2 that correct?

3 A. Correct.

4 Q. In your course of duties as a Superior  
5 Court judge, do you consider reports like this?

6 A. Always.

7 Q. And do you permit --

8 A. When they're made available to me.

9 Q. And do you permit counsel from both sides  
10 to refute or rebut matters in those reports?

11 A. Absolutely.

12 Q. Did you do anything to dissuade the  
13 district attorney's office in this case, the Ebony  
14 Horton case, from doing that?

15 A. No.

16 Q. Did they ever take any such action?

17 A. They never did.

18 Q. Now, also during the course of your plea  
19 conference on Ebony Horton on August 1st of the year  
20 2000, there were some discussions of some disputed  
21 facts, were there not?

22 A. Yes.

23 Q. That's not unusual, is it?

24 A. Happens all the time.

1 Q. When you get these disputed facts in a plea  
2 conference, what do you do with them?

3 A. I just register them as disputes. What it  
4 indicates to me is that certainly the cases are not  
5 going to come in as has been represented. I mean,  
6 there's a question as to that.

7 Q. So is it fair to say that as a judge, you  
8 have used your experience to determine that  
9 sometimes there is always a third story besides the  
10 one on the left and the one on the right?

11 A. That's right.

12 Q. And do you take those disputed facts and  
13 add them into the mix of your sentencing calculation  
14 if in fact you have an impression as to those and  
15 feel them relevant?

16 A. Correct.

17 Q. One of those disputed facts that was  
18 disputed in this case was whether or not -- at least  
19 it became a discussion between Ms. Joseph and Ms.  
20 Goldbach -- was whether or not Ebony Horton was  
21 crying when the police came.

22 A. Not Ebony Horton. The victim.

23 Q. I'm sorry. The victim was crying when the  
24 police came.

1           A.    There was a dispute as to whether or not  
2 the victim was crying.

3           Q.    And the Commonwealth was telling you that  
4 the victim was crying, and you should -- and you  
5 should consider that and use that in part of your  
6 mix at sentencing, correct?

7           A.    Yes.

8           Q.    And Ms. Goldbach was telling you that no;  
9 she had other information that in fact that wasn't  
10 the case, and you should use that in your mix.

11          A.    Right.

12          Q.    None of it determinative of what you would  
13 do, correct?

14          A.    Correct.

15          Q.    But in the mix.

16          A.    In the mix.

17          Q.    And didn't Ms. Goldbach tell you that there  
18 was a tape in which the victim himself said he  
19 wasn't crying when the police came?

20          A.    She told me that the tape of the victim  
21 stated that he wasn't crying in that tape.

22          Q.    And you were asked by Mr. Ware whether or  
23 not you asked to see the tape. Do you remember  
24 that?

1           A.    Yes.  
2           Q.    Is that your job?  
3           A.    No.  That's never done.  I have never heard  
4 of a judge in a lobby conference requesting to see  
5 the tape.  
6           Q.    Whose job is it -- let's take a  
7 hypothetical -- let's take this case.  Here you have  
8 Anne Goldbach telling you.  She is a lawyer that has  
9 been practicing in the criminal courts for how many  
10 years as far as you know?  
11          A.    I think over 20.  
12          Q.    Do you respect her?  
13          A.    Yes.  
14          Q.    And has she ever lied to you that you know  
15 of?  
16          A.    Not that I know of.  
17          Q.    In any event, she says to you at a  
18 conference, they have a tape, and I have it, and  
19 this is what the victim says on it.  He says he was  
20 not crying when the police came.  What would --  
21 what's the prosecutor supposed to do if Ms. Goldbach  
22 is not representing the facts to you properly?  
23          A.    The prosecutor would then say, Judge, I  
24 want you to see the tape.  That representation was

1 inaccurate.

2 Q. Was that said to you?

3 A. No.

4 Q. Was that requested of you?

5 A. No.

6 Q. Also during the course of this whole event  
7 of these -- leading up to the sentencing of Ebony  
8 Horton, there was this issue of the victim having  
9 been required or caused to put his mouth on a  
10 screwdriver.

11 A. Correct.

12 Q. That was an allegation, correct?

13 A. Yes.

14 Q. An allegation by the Commonwealth, correct?

15 A. Yes.

16 Q. And you knew from what Ms. Goldbach said to  
17 you at the conference that in fact there had been  
18 testing done on the screwdriver, correct?

19 A. Yes.

20 Q. And that the Commonwealth had failed to  
21 provide the results of that testing to the  
22 defendant.

23 A. Correct. I did not know -- she did not  
24 know the results of that test.

1 Q. And she was concerned about that as far as  
2 exculpatory evidence, correct?

3 A. Yes.

4 Q. Do you now know what the results of that  
5 test were?

6 A. Yes. It came back negative.

7 Q. It came back negative of any evidence of  
8 DNA or the like on that screwdriver where it was  
9 alleged to have been sucked on, right?

10 A. Correct.

11 Q. Now, also during the course of that  
12 conference the prosecutor was telling you, were they  
13 not, that this victim got into the car, Ebony  
14 Horton, voluntarily under some ruse, correct?

15 A. Right.

16 Q. Didn't Ms. Goldbach tell you at that time  
17 that on the very tape that we've just discussed that  
18 in fact that's not at all what the victim was saying  
19 happened? He said he was pulled by the arm through  
20 a window of the car?

21 A. Yes. I believe she had a different version  
22 of how the kid got into the car, and it involved  
23 some pulling into it, yes.

24 Q. And that that was actually on the tape of

1 the victim?

2 A. That's correct.

3 Q. Now, when addressed with that, did the  
4 prosecutor stand up and say to you, that's not true;  
5 that's not on the tape?

6 A. No.

7 Q. Did they ask you to look at the tape?

8 A. No.

9 Q. Did they present you with the tape?

10 A. No.

11 Q. Did they do anything to dissuade you from  
12 the information being provided to you by the  
13 defense?

14 A. They rebutted none of that information, or  
15 attempted to.

16 Q. Had they asked you to do so, would you have  
17 done so?

18 A. Probably, because those are critical  
19 issues. I probably would have looked at it,  
20 although it's not my practice to.

21 Q. And with regard to -- well, certainly you  
22 would have let them talk to you about it, wouldn't  
23 you?

24 A. Yes.

1 Q. And if there was a substantial issue as to  
2 what the tape said, would you have looked at the  
3 tape at their request?

4 A. Yes. If it was --

5 Q. If it was relevant.

6 A. Yes, if it was relevant to this lobby  
7 conference.

8 Q. Now, all of these discussions were being  
9 held for the purpose of asking you, based on  
10 everything that these two sides were feeding you --

11 A. Yes.

12 Q. -- what it is you thought would be an  
13 appropriate sentence if Mr. Horton pled guilty,  
14 correct?

15 A. That's correct.

16 Q. The defense still maintained that there  
17 were a number of these crimes that he wasn't guilty  
18 of, right?

19 A. Yes.

20 Q. It was a settlement conference, wasn't it?

21 A. Right. It was an effort to plead the case.

22 Q. And that goes on in the First Session of  
23 each county in this state every day, correct?

24 A. Yes.



1 Q. Was there anything that occurred on August  
2 1st of the year 2000 with regard to leading up to  
3 your determination of an appropriate sentence for  
4 which Leora Joseph ever made an objection?  
5 A. I think she was unhappy with my sentence, I  
6 mean, but she didn't object to anything else.  
7 Q. I said leading up to the time you made your  
8 sentence.  
9 A. Oh.  
10 Q. So let me make it clear. Did she object to  
11 the way you conducted the proceeding?  
12 A. No.  
13 Q. Did she object to the information you were  
14 provided?  
15 A. No.  
16 Q. Did she object to the time she had to  
17 speak?  
18 A. No.  
19 Q. Did she object to anything about the  
20 process?  
21 A. Nothing about the process, no.  
22 Q. And then you announced your sentence,  
23 right?  
24 A. Yes.

1 Q. And did anybody tell you you hadn't taken  
2 enough time?  
3 A. No.  
4 Q. Did anybody tell you you hadn't thought  
5 about enough things?  
6 A. No.  
7 Q. Did anybody tell you they needed more time  
8 to present evidence?  
9 A. No, they didn't.  
10 Q. And as of August 1st of the year 2000, when  
11 you announced your sentence, what you said, and  
12 meant to say, was if Ebony Horton pleads guilty, he  
13 can count on the fact that this is the sentence I  
14 will deliver, correct?  
15 A. Yes.  
16 Q. And you meant that for them to rely on it,  
17 correct?  
18 A. Right.  
19 Q. When Ms. Joseph, just before they left the  
20 bench or the like, did she evidence to you her  
21 displeasure with your sentence?  
22 A. Yes.  
23 Q. What did she say?  
24 A. She made some mention that, you know, that

1 she -- she didn't agree with the sentence. She made  
2 some face about it, and --

3 Q. Did she tell you she thought it was  
4 outrageous?

5 A. Yes. She emoted about it. She emoted.  
6 She thought it was out of line. I don't remember  
7 exactly the words she used.

8 Q. But she certainly registered her  
9 displeasure.

10 A. Correct.

11 Q. But other than registering her displeasure,  
12 did she present you with any further evidence, facts  
13 or seek to do so in order to dissuade you from  
14 making that sentence?

15 A. No.

16 Q. Now comes -- I take it the case was  
17 continued to August 4th for a possible plea.

18 A. Right.

19 Q. At the end of the day, on August 1st when  
20 you left court, did you know whether or not there  
21 would be a plea on August 4th?

22 A. No.

23 Q. Why not?

24 A. Because I believe Anne Goldbach said she

1 would go back and talk to her client about it.  
2 Q. The client wasn't in court that day; is  
3 that right?  
4 A. No; the client was in court on August 1st.  
5 Q. And it wasn't resolved on that date?  
6 A. No, it was not resolved on that date.  
7 Q. That was because Ms. Goldbach said she had  
8 to go and take time and speak with the client.  
9 A. That's right.  
10 Q. And determine whether our not the client  
11 wanted to waive the many rights that he had with  
12 regard to a trial, correct?  
13 A. Correct.  
14 Q. And accept basically the disposition which  
15 you were offering.  
16 A. Correct.  
17 Q. When you walked into court on the morning  
18 of August 4th of the year 2000, did you know whether  
19 or not there would be a plea in the Ebony Horton  
20 case?  
21 A. No.  
22 Q. Did you have in your mind, as you woke up  
23 on the morning of August 4th, that today is the day  
24 Ebony Horton will be before you?

1           A.    No.  It was not in my mind at all.  
2           Q.    Did you have any concerns or interest in it  
3 at all as you went to court that day?  
4           A.    No.  We handle many cases in the First  
5 Session.  You engage these lawyers in the lobby  
6 conferences, and, you know, even if you give them a  
7 date for a return, it doesn't mean they're going to  
8 come back on that date.  It could be continued by  
9 agreement.  There could be a million things.  
10          Q.    And you don't monitor that.  
11          A.    No.  
12          Q.    Did you take any special interest in the  
13 Horton case?  
14          A.    No.  
15          Q.    Did you monitor it?  
16          A.    No.  
17          Q.    Did you ask for reports on it or event  
18 reports on it?  
19          A.    No.  
20          Q.    When you came into court on August 4th,  
21 what did you find?  
22          A.    I found that there was an unusual number of  
23 people milling around the hallway right before the  
24 First Session.  I then proceeded to the lobby --

1 actually, my court officer, I think, came and got  
2 me, escorted me through the corridor. And when I  
3 got into my lobby, I -- I think it was the clerk --  
4 it could have been the court officer -- told me  
5 about the cameras in the courtroom, and that there  
6 appear to be some emotional issues involving Anne  
7 Goldbach.

8 Q. Let me stop you and put that in two parts.  
9 You were told that there were cameras in the  
10 courtroom.

11 A. Right.

12 Q. You've had cameras in your courtrooms  
13 before, haven't you?

14 A. Many times.

15 Q. And what's the regular -- strike that.  
16 What's the Supreme Judicial Court dictated procedure  
17 for cameras in the courtroom?

18 A. They have to request permission from the  
19 judge to put cameras in the courtroom.

20 Q. And was that -- did anyone request  
21 permission from you before setting up in the  
22 courtroom?

23 A. No.

24 Q. So did you ask them to leave?

1 A. I didn't ask them to leave, no.

2 Q. Did you throw them out?

3 A. No.

4 Q. Now, you also said there was a second part  
5 of this statement, and that is that there was  
6 some -- what did you say -- emotional issues as  
7 regards to Anne Goldbach?

8 A. Yes. I was told that Anne Goldbach was  
9 very distraught, was crying, and wanted to see me.

10 Q. Now, is it unusual for your court officers  
11 or clerks to come to you and tell you there are  
12 lawyers who want to see you on a particular case?

13 A. No. It happens all the time.

14 Q. And did you in fact permit Ms. Goldbach to  
15 come in to see you?

16 A. With Ms. Joseph.

17 Q. And -- we're going to get to that. So a  
18 conference was had where in the courthouse?

19 A. It was in the lobby, in the chambers.

20 Q. So this is not by the side bar that we  
21 talked about earlier, but actually the judge's  
22 chambers which are off the court; is that correct?

23 A. Correct.

24 Q. And what -- if you would, to the best of

1 your memory -- well, first tell me, what were the  
2 demeanor of the parties? When I say "the parties,"  
3 I mean Ms. Joseph --

4 A. The lawyers.

5 Q. -- and Ms. Goldbach.

6 A. Well, Ms. Goldbach was very distraught.  
7 She had tears in her eyes. She said something like,  
8 "Never in my 20 years as a lawyer has something like  
9 this happened to me," and she was very upset. Ms.  
10 Joseph sat there -- they were both sitting, and I  
11 was behind the desk -- with her arms crossed and  
12 looking indifferent, in my opinion, about the whole  
13 thing.

14 Q. And, by the way, have you ever seen Ms.  
15 Goldbach cry in your courtroom?

16 A. No.

17 Q. Was that an unusual --

18 A. It is very rare for a lawyer to start  
19 crying.

20 Q. And so this was a rather unusual event for  
21 you, I take it.

22 A. Right.

23 Q. And what did Ms. Goldbach ultimately tell  
24 you she was so upset about?



1           A.    What she told me was that when her client  
2   and her mother were getting off the elevator, there  
3   were cameras waiting for them, that there was an  
4   altercation between, I think, the defendant's mother  
5   and the camera person and the press that was waiting  
6   for her, that they got very upset.  They refused to  
7   get off the elevator.

8           Q.    They?

9           A.    The defendant and her mother refused to get  
10  off the elevator; that they were brought then by  
11  Anne Goldbach to another room in the courthouse, and  
12  that the defendant and her mother were very, very  
13  mad at Anne Goldbach, because they believed that  
14  Anne was responsible for this and that they were  
15  distraught and crying and didn't want to come into  
16  the courtroom with the cameras.

17          Q.    Let's stop there for a moment.  When you  
18  say -- this was the day for a possible plea,  
19  correct?

20          A.    Correct.

21          Q.    Now, a plea can only be done if the  
22  defendant agrees to it, correct?

23          A.    Right.

24          Q.    No one can force a plea on a defendant.

1           A.    They have to agree to plea, yes.  There  
2    could be agreed pleas, unagreed pleas.  
3           Q.    I understand that, but don't get too  
4    technical on me for a minute.  A defendant cannot be  
5    forced to plead guilty in a case, correct?  
6           A.    No.  They have a constitutional right to  
7    have a jury trial.  
8           Q.    And so -- and the plea of guilty to be  
9    accepted by you has to be done knowingly,  
10   voluntarily --  
11          A.    And intelligently.  
12          Q.    -- and intelligently, correct?  
13          A.    That's correct.  
14          Q.    And generally do you accept pleas with  
15   people who are hysterical, crying, won't come in the  
16   room and the like?  
17          A.    No.  
18          Q.    And was there a further consideration to  
19   you in this case of the fact that the defendant was  
20   suffering from a mental illness?  
21          A.    That was a big consideration for me.  
22          Q.    And why is that?  
23          A.    Because I understood the defendant to be  
24   very fragile, and that if she was in that state, I

1 would not be able to complete the plea. I would not  
2 get that done that day.

3 Q. And so at least as to the anticipated  
4 events of the day -- and that was a possible plea --  
5 it was at least suspect to you that that could take  
6 place because of the incidents that had taken place;  
7 is that right?

8 A. It was a concern not only for the  
9 defendant's emotional state, but also Ms. Goldbach's  
10 emotional state. It was quite an emotional  
11 situation.

12 Q. And did you find out from Anne Goldbach  
13 what else she was upset about with regard to the  
14 nature of the press?

15 A. Yes. She said that the DA's office had  
16 issued some press release about this plea.

17 Q. You've testified earlier the DAs have all  
18 the right in the world to issue press releases,  
19 right?

20 A. Absolutely.

21 Q. But they're also limited by certain rules,  
22 are they not?

23 A. That's correct.

24 Q. While Ms. DeJuneas finds that for me, are

1 you generally familiar with the canons of ethics for  
2 lawyers?

3 A. Yes, I am.

4 Q. And are you familiar with -- are there  
5 special rules for prosecutors in criminal cases?

6 A. There are.

7 Q. And do those special rules affect a  
8 prosecutor's ability to provide information to the  
9 press during a pending criminal case?

10 A. Yes, there are such rules.

11 Q. Now, let's talk about that for a minute.  
12 For example, is it generally appropriate, in your  
13 mind, for the prosecutor to announce the possibility  
14 of a plea or the potential for a plea in a criminal  
15 case?

16 A. They generally don't announce the  
17 possibility of pleas. They would announce that a  
18 plea would take place, but the possibility is not  
19 something that I have seen them do.

20 Q. And there's a reason for that, isn't there?

21 A. Correct.

22 Q. What's the reason?

23 A. Because it may not happen.

24 Q. And is it -- and one of the reasons that we

1 regulate the way lawyers and prosecutors talk to the  
2 press is so that criminal trials will not be  
3 affected by public information being disseminated;  
4 isn't that correct?

5 A. That's right.

6 Q. And so if one is to put out to the world in  
7 press releases that Ebony Horton is going to plead  
8 guilty in a criminal case, and Ebony Horton doesn't  
9 plead guilty in a criminal case, does that have a  
10 potential to impact the jury pool?

11 A. Yes, it could taint the jury if there was  
12 some information, public information, that this  
13 person was willing to plead guilty.

14 Q. Which would be inappropriate for any jury  
15 to know; is that correct?

16 A. That's correct.

17 Q. And so is that one of the parts of this  
18 element or events that concerned you?

19 A. Yes.

20 Q. And then also did you learn from Ms.  
21 Goldbach that the press release was provocative?

22 A. I don't know if she used that in the lobby.  
23 I saw the press release after that initial lobby  
24 situation.

1 Q. And --

2 A. But I know she was upset about the press  
3 release.

4 Q. Let's go back to the lobby still. And Ms.  
5 Goldbach -- did she say something to Ms. Joseph  
6 concerning the press release?

7 A. I think she blamed the district attorney's  
8 office and Ms. Goldbach -- I'm sorry -- and Ms.  
9 Joseph for the press release.

10 Q. And what did -- did Ms. Joseph respond in  
11 any way to that?

12 A. Well, she -- actually, she said nothing to  
13 Anne Goldbach when Anne Goldbach said that.

14 Q. And do you recall her commenting -- do you  
15 recall Ms. Joseph commenting that she was shocked  
16 that there were cameras in the courtroom for her  
17 case?

18 A. I believe maybe Anne Goldbach made that  
19 representation as to a conversation they may have  
20 had before the lobby conference.

21 Q. So --

22 A. The cameras. Yes.

23 Q. Do you want to think about that for a  
24 minute?

1 A. Yes, I recall that. I don't know --

2 Q. Well, let me ask it another way.

3 HEARING OFFICER DAHER: Are you objecting,  
4 Mr. Ware?

5 MR. WARE: I object if it is conversation  
6 between two people, neither of which is the Judge.

7 MR. EGBERT: It's the information that the  
8 Judge is getting --

9 HEARING OFFICER DAHER: Sustained. Let's  
10 go.

11 MR. EGBERT: I'm sorry?

12 HEARING OFFICER DAHER: I just sustained  
13 his objection.

14 Q. Judge, did someone report to you in the  
15 lobby what Ms. Joseph's response was to an  
16 accusation that she was involved in calling the  
17 press?

18 A. Yes.

19 Q. And what information did you receive?

20 MR. WARE: Objection. That's by definition  
21 hearsay.

22 MR. EGBERT: Your Honor, it's to provide  
23 the information received by this judge upon which  
24 she acted.

1 MR. WARE: I don't have an objection to  
2 what the Judge's understanding was of what was going  
3 on.

4 HEARING OFFICER DAHER: Sustained.

5 MR. EGBERT: Her understanding, Your Honor,  
6 comes from what she heard.

7 HEARING OFFICER DAHER: Why don't you go  
8 ahead and rephrase the question.

9 MR. EGBERT: So long as no one is going to  
10 argue later on that she didn't have a factual basis.

11 Q. What was your understanding of what had  
12 occurred out in the hallway with Ms. Goldbach and  
13 Ms. Joseph?

14 A. My understanding was that Ms. Joseph had  
15 indicated that she had no idea what -- she had no  
16 idea what the cameras would be there for. She was  
17 shocked --

18 MR. WARE: I object now, Your Honor. This  
19 is just a repetition of a conversation at which the  
20 Judge is not present, and she is now purporting to  
21 relate the conversation. Ms. Joseph is going to be  
22 here as a witness. Ms. Goldbach is on the witness  
23 list for both sides. I think this is pretty  
24 unreliable.



1 HEARING OFFICER DAHER: Go ahead.  
2 MR. EGBERT: Judge, she had -- she has been  
3 quizzed by Mr. Ware over and over concerning the  
4 findings she made that day on the continuance, and  
5 information which she had and had been given to her  
6 and went into her considerations of the findings  
7 that were made are clearly relevant in this case.  
8 MR. WARE: Well, I think Ms. Goldbach can  
9 be asked by Mr. Egbert what she told the Judge.  
10 MR. EGBERT: No. The Judge is going to be  
11 asked what she knew and what she learned when she  
12 made her findings.  
13 MR. WARE: That's a different question, and  
14 I don't object to that question.  
15 HEARING OFFICER DAHER: Mr. Egbert, aren't  
16 they going to be here to testify?  
17 MR. EGBERT: Judge, Judge Lopez was  
18 continually quizzed by Mr. Ware --  
19 HEARING OFFICER DAHER: Right.  
20 MR. EGBERT: -- concerning what information  
21 made up her findings. Well, he left out a few  
22 things, and I'm going to put in all the information  
23 she had in front of her that day which led up to her  
24 making findings.

1 HEARING OFFICER DAHER: All right. Over --  
2 go ahead, Mr. Ware.

3 MR. WARE: Then ask her what the  
4 information was she had. I don't object to that.

5 HEARING OFFICER DAHER: I think he's  
6 getting to it. Overruled. Go ahead. You can have  
7 it.

8 Q. What information did you have with regard  
9 to the Joseph/Goldbach conversation vis-a-vis the  
10 press?

11 A. The information I had was that Ms. Joseph  
12 was shocked by the presence of the cameras there.  
13 She had no idea what they might be there for.

14 Q. Did you have a conversation with Ms. Joseph  
15 in the lobby concerning the press?

16 A. Yes, I did.

17 Q. To the best of your memory, tell us the  
18 substance of what was said.

19 A. Well, after Anne Goldbach told me about the  
20 press release, and, you know, I asked Ms. Joseph if  
21 she had anything to do with it.

22 Q. What did she tell you?

23 A. She said, "I had nothing to do with it. I  
24 can't control what my office does."

1 Q. Now, when she said that -- first of all,  
2 what was her demeanor when she said that to you?

3 A. Insolent.

4 MR. WARE: Objection. I move that that be  
5 struck. The Judge can testify not to conclusions,  
6 but observations.

7 HEARING OFFICER DAHER: That was a  
8 conclusion. Sustained.

9 Q. What was her tone of voice?

10 A. What was her tone of voice. Sort of fresh,  
11 angry.

12 Q. When you heard those words that she had  
13 nothing to do with it, did you believe that she was  
14 being candid with you?

15 A. No, not at all.

16 Q. Now, first of all, we talked a minute ago  
17 about a lawyer's responsibilities as it relates to  
18 the press. Do you recall that?

19 A. Yes.

20 Q. And I want to put before you -- I'm sorry;  
21 I pulled out the wrong package. Here it is. Rule  
22 3.8 of the rules of conduct for Massachusetts  
23 lawyers. Are you familiar with that?

24 A. Yes.

1 (Document handed to the  
2 witness by Mr. Egbert)  
3 MR. EGBERT: Your Honor, I have one for the  
4 Court. I would ask the Court to take judicial  
5 notice of the rules of the court.  
6 HEARING OFFICER DAHER: Mr. Ware, any  
7 objection?  
8 MR. WARE: No, Your Honor.  
9 HEARING OFFICER DAHER: Fine, then.  
10 MR. WARE: I might note it is on Page 345  
11 of the rulebook, if the Court has that.  
12 HEARING OFFICER DAHER: Okay. I've got it.  
13 BY MR. EGBERT:  
14 Q. Judge, would you look at Rule 3.8(G), and  
15 let me read it to you for a moment. "The prosecutor  
16 in a criminal case shall, except for statements that  
17 are necessary to inform the public of the nature and  
18 extent of the prosecutor's action and that serve a  
19 legitimate law enforcement purpose, refrain from  
20 making extrajudicial comments that have a  
21 substantial likelihood of heightening public  
22 condemnation of the accused." Do you see that?  
23 A. Yes.  
24 Q. In your judgment, does putting out a press

1 release saying that Ebony Horton --  
2 HEARING OFFICER DAHER: What's the  
3 objection?  
4 MR. WARE: This is now asking for an expert  
5 opinion. There is no evidence in this case that  
6 Judge Lopez is an expert with respect to Rule 3.8 or  
7 the ethical responsibilities of the prosecutor.  
8 MR. EGBERT: She was an expert judge for  
9 them and she's an expert lawyer and judge for me.  
10 HEARING OFFICER DAHER: Well, not --  
11 MR. EGBERT: They asked her specifically --  
12 HEARING OFFICER DAHER: But not in re the  
13 conduct of attorneys. She's an expert -- not in  
14 that field.  
15 Q. Judge, you've been a lawyer for how many  
16 years?  
17 HEARING OFFICER DAHER: I still don't think  
18 she's an expert on that. There's experts on the  
19 canons of judicial conduct or experts in the  
20 behavior and demeanor of attorneys. I'm going to  
21 sustain the objection.  
22 MR. EGBERT: Judge, let me just be heard  
23 for a moment.  
24 HEARING OFFICER DAHER: Go ahead. I'd love

1 it.

2 MR. EGBERT: You permitted her to be  
3 questioned about her opinion of the meaning of the  
4 judicial ethics on the grounds that she is a judge  
5 and she knows the ethics. Well, she's a lawyer and  
6 knows the ethics as a lawyer, too. There is no  
7 difference.

8 HEARING OFFICER DAHER: Sustained.

9 Q. Did you have in mind these canons of ethics  
10 when you were talking to Leora Joseph?

11 A. Yes, I did, because judges have a  
12 responsibility and an obligation to make sure that  
13 attorneys' conduct conforms to the rules of ethics.

14 Q. Now, also with regard to this matter, I  
15 want to show you Rule 3.6 of the canons of ethics.

16 HEARING OFFICER DAHER: Let me take a look  
17 at it first.

18 A. (Reviewing document)

19 Q. Does 3.6 generally relate to trial  
20 publicity and the obligations of lawyers?

21 A. Yes, it does.

22 Q. And does it indicate what, in a criminal  
23 case, is appropriate to be released for information?

24 A. Yes, it does.

1 Q. And what is it -- let's take a look at it  
2 for a moment. "A lawyer who is participating and  
3 has participated in the investigation or litigation  
4 of a matter shall not make an extrajudicial  
5 statement" -- right?

6 A. Yes.

7 Q. -- "that a reasonable person would expect  
8 to be disseminated by means of public communication  
9 if the lawyer knows or reasonably should know that  
10 it will have a substantial likelihood of materially  
11 prejudicing an adjudicative proceeding in the  
12 matter," correct?

13 A. Correct.

14 Q. And then it goes on to say, "A lawyer may  
15 state, in a criminal case," and it lists a number of  
16 items; is that correct?

17 A. Yes.

18 Q. Would you read those items.

19 A. Do you want me to read them?

20 Q. Yes.

21 A. One is, "The claimed offense or defense  
22 involved, and, except when prohibited by law, the  
23 identity of the persons involved." No. 2 is, "the  
24 information contained in a public record"; 3, "that

1 investigation of the matter is in progress"; 4, "the  
2 scheduling or result of any step in litigation"; 5,  
3 "a request for assistance in obtaining evidence and  
4 information necessary thereto"; 6, "a warning of  
5 danger concerning the behavior of the person  
6 involved when there is reason to believe that there  
7 exists the likelihood of substantial harm to an  
8 individual or to the public interest"; and, 7, "in a  
9 criminal case, in addition to 1 through 6" --  
10 Q. Let me stop you. Okay. Now you get in a  
11 criminal case certain specifics, correct?  
12 A. Yes.  
13 Q. And would you just quickly read those.  
14 A. It says, "In a criminal case, the identity,  
15 residence, occupation and family status of the  
16 accused; if the accused has not been apprehended,  
17 information necessary to aid in the apprehension of  
18 that person; the fact, time, and place of arrest;  
19 the identity of investigating and arresting officers  
20 or agencies; and the length of the investigation."  
21 Q. Is there anything in that listing which you  
22 have seen which permits the dissemination of a  
23 mental disorder of a defendant appearing before the  
24 Court which is not a matter of public record?



1 MR. WARE: Objection.  
2 HEARING OFFICER DAHER: What is the  
3 objection?  
4 MR. WARE: First of all, this is just  
5 argument. Secondly -- and the Court has already  
6 said that you're going to take judicial notice --  
7 HEARING OFFICER DAHER: I have.  
8 MR. WARE: It is matter of law for you to  
9 interpret. Secondly, the Judge is no more an expert  
10 in the prosecution's obligation now than she was ten  
11 minutes ago.  
12 HEARING OFFICER DAHER: Mr. Egbert.  
13 MR. EGBERT: These are lawyers'  
14 obligations; not prosecutors' obligations.  
15 HEARING OFFICER DAHER: I've taken judicial  
16 notice of it. Sustained. Let's go.  
17 Q. Lastly, when you were meeting with Ms.  
18 Joseph, were you aware of the Section 3.8, which you  
19 previously had before you --  
20 A. Yes.  
21 Q. -- which reads as follows: "The prosecutor  
22 in a criminal case shall exercise reasonable care to  
23 prevent investigators, law enforcement personnel,  
24 employees or other persons assisting or associated

1 with the prosecutor in a criminal case from making  
2 an extrajudicial statement that the prosecutor would  
3 be prohibited from making under Rule 3.6." do you  
4 see that?

5 A. Yes, I do.

6 Q. Now, having all of those rules in mind,  
7 when Leora Joseph appeared before you and said I had  
8 nothing to do with it, it might have been my office,  
9 did you believe at that time that she was carrying  
10 out her ethical responsibilities as a prosecutor in  
11 the case before you?

12 A. Absolutely not.

13 Q. Did she indicate to you that she had taken  
14 any reasonable efforts whatsoever to prevent others  
15 in her office from releasing information?

16 A. No.

17 Q. Who was the lawyer for the district  
18 attorney's office on the case of Commonwealth versus  
19 Ebony Horton from the moment you came into the case  
20 until the moment on August 4th you were in the  
21 lobby?

22 A. Leora Joseph.

23 Q. Who was the person in charge of that  
24 prosecution?

1 A. It was Leora Joseph.

2 Q. Who was the person that you understood to  
3 have the file in that prosecution?

4 A. Leora Joseph.

5 Q. And in your experience as a judge in the  
6 various counties in which you've practiced, is it  
7 your understanding that press releases in cases get  
8 released without the line prosecutor knowing it?

9 MR. WARE: Objection. How would the Judge  
10 know that? Objection, Your Honor.

11 HEARING OFFICER DAHER: I think, again, Mr.  
12 Ware, I think she's been on the bench for 14 years.  
13 I think she would know. Overruled. You may have  
14 it.

15 A. My experience is that it's the line  
16 prosecutor that provides the information to the  
17 press office of the district attorney's office.

18 Q. And when she told you in no uncertain terms  
19 that she had nothing to do with it, did you say  
20 anything to her?

21 A. I told her I did not believe her.

22 Q. And what did she say?

23 A. Well, then I said I intend to continue the  
24 case. And I think she just got up in a huff and

1 left.

2 Q. Well, before that -- let's take it in  
3 steps. When you said "I don't believe you" or words  
4 to that effect, did she respond to that?

5 A. I can't recall if she responded verbally.  
6 She certainly responded in demeanor and -- I can't  
7 recall.

8 Q. What --

9 A. I don't remember.

10 Q. What did you take -- strike that. You  
11 recognized in this case that there was an alleged  
12 victim in this case, correct?

13 A. Yes.

14 Q. And that that victim was deserving of  
15 certain rights and responsibilities of the Court?

16 A. Yes.

17 Q. And also that there was an alleged  
18 defendant in the case?

19 A. Yes.

20 Q. Involving similar rights, other  
21 constitutional rights?

22 A. Correct.

23 Q. What did you perceive the harm done by this  
24 press release and the press conduct and the press

1 presence on this particular occasion?

2 A. Well, that it could abort the plea, and  
3 that would mean then that everyone involved -- the  
4 victim would have to testify, the defendant would be  
5 put through a trial, that the plea that we thought  
6 was going to happen would not happen ever.

7 Q. Did you think it was a good thing, in your  
8 opinion, for the victim to have to come in and  
9 testify in this case?

10 A. Absolutely not.

11 Q. Was the plea a good thing for the victim in  
12 this case?

13 A. Many times in child abuse cases, child sex  
14 cases --

15 MR. WARE: Objection, Your Honor.

16 HEARING OFFICER DAHER: What's the  
17 objection.

18 MR. WARE: The answer is entirely  
19 nonresponsive.

20 HEARING OFFICER DAHER: But it is very  
21 important. Overruled. You may have it.

22 A. Many times that is a major consideration in  
23 child sexual abuse cases, putting a victim through a  
24 court proceeding, cross-examination. So that's a

1 major consideration for the Court, for the lawyers  
2 involved, yes.

3 Q. And is that so for a 12-year-old child?

4 A. Absolutely.

5 Q. And, by the way, at the time can you tell  
6 me what age you thought the victim was in this case?

7 A. The police report indicated that he was six  
8 weeks short of 13.

9 Q. And is that also the information provided  
10 to you by the prosecution?

11 A. That's what they always represented.

12 Q. Were you ever at any time -- in all of  
13 these proceedings, while you were presiding over the  
14 case of the Commonwealth versus Horton, did anyone  
15 from the Commonwealth ever tell you that this victim  
16 was 11, not almost 13?

17 A. No. No one. Everyone was operating on the  
18 assumption that the date of birth on the police  
19 report was accurate.

20 Q. And in fact on each occasion that you were  
21 addressed by the Commonwealth, they addressed you to  
22 the fact that this was a 12-year-old boy just short  
23 of his 13th birthday.

24 A. Correct.

1 (Discussion off the record)

2 BY MR. EGBERT:

3 Q. Now, did it concern you as a judge that the  
4 press attention that developed in the Horton case on  
5 the 4th and its resulting displacement of the plea  
6 that day would have an unfortunate impact for the  
7 victim?

8 A. Absolutely.

9 Q. And what was that?

10 A. The impact would be that if the plea did  
11 not go forward, if this was not a plea, this child  
12 would have to be put through a trial, which means  
13 having to be prepared, having to go over and over  
14 the testimony he would give concerning this event.  
15 Then the child would be subjected to  
16 cross-examination. I knew, based on the lobby  
17 conference, that there were some inconsistencies, so  
18 I was concerned about the child having to be put  
19 through this process.

20 Q. Were you also -- did you also have concern  
21 for the defendant?

22 A. Absolutely.

23 Q. And what were those concerns?

24 A. Well, I was aware of the defendant's

1 psychological, psychiatric history, and knew that  
2 this was an individual that had depression, suicidal  
3 ideation, and I was worried about that.

4 Q. And did you then, during the lobby  
5 conference, indicate your displeasure with Ms.  
6 Joseph?

7 A. I did.

8 Q. And what did you say to her?

9 A. When she got up, I said something to the  
10 effect like, "This is a mean thing for you to do.  
11 You belong in the suburbs."

12 Q. And when you said "you belong in the  
13 suburbs," what did you mean by that?

14 A. What I meant by that was that she lacked  
15 the sophistication, the experience, the judgment to  
16 deal with individuals who are -- who exist on the  
17 fringes of our society, who have been marginalized  
18 in our society, and these are individuals that for  
19 the most part one finds in urban communities. So I  
20 did not -- I thought she lacked the judgment and the  
21 experience to handle a case such as this one that  
22 presented some unique urban issues.

23 Q. And did you also feel that she or the  
24 office had done a disservice to their own client in



1 essence, the victim?

2 A. Absolutely.

3 Q. In this regard --

4 MR. WARE: Objection.

5 HEARING OFFICER DAHER: What's your  
6 objection?

7 MR. WARE: Too late now. The witness has  
8 answered.

9 A. Absolutely.

10 Q. Now, were you shown some prior statements  
11 that you had made on this very subject, and one of  
12 them one I want to talk about. Why don't you turn  
13 to Page 76 -- no; sorry. Let's start at 66 of your  
14 prior testimony.

15 A. Okay. 66. Yes.

16 Q. Would you go -- on that prior testimony,  
17 you were asked, on the prior page, 65, at the end,  
18 "What was your opinion as regards the Assistant  
19 District Attorney Leora Joseph prior to the Horton  
20 matter in terms of her professional demeanor or  
21 competence or any other opinion you held of her  
22 professional abilities?" And how did you respond?

23 A. I said, "Not a particularly high one."

24 Q. And then you were asked, "What do you mean

1 by that," and what did you respond to that?  
2 A. I said, "I found her to be immature,  
3 personalized things, would make faces when things  
4 didn't go her way, not particularly worldly, or in  
5 terms of life experience in judgment, I didn't think  
6 she brought much to bear in that way."  
7 Q. Did that mean you couldn't be fair to her?  
8 A. Absolutely not.  
9 Q. That you were biased against her?  
10 A. I was not biased against her.  
11 Q. This was an opinion that you delivered at  
12 the request of Mr. Ware at your prior testimony,  
13 correct?  
14 A. Correct.  
15 Q. Now, would you turn to Page 76. And here  
16 we have the comment or the statement about the  
17 suburbs.  
18 A. Right.  
19 Q. And you were asked, "Did you make a  
20 statement to her along the lines of you should be in  
21 the suburbs?" And you answered, "I think I did,"  
22 right.  
23 A. Yes.  
24 Q. And then you were asked, "What do you think

1 you said?" And you answered, "I think I said, 'You  
2 belong in the suburbs," correct?

3 A. Correct.

4 Q. And what did you mean -- then you were  
5 asked, "What did you mean by that?" And read what  
6 you said.

7 A. "What I meant by that is that she really,  
8 you know -- she wouldn't be able to understand an  
9 Ebony Horton; that if she understood -- if her life  
10 experience was a little broader, if she was a little  
11 more sophisticated about people who are marginalized  
12 in our society and had a little more compassion  
13 about it, she would understand better. And I guess  
14 when I said the suburbs -- I mean, I live in the  
15 suburbs. Okay. So was sort of a characterization"  
16 -- and this is what I didn't mean -- "about the  
17 woman who, you know, stays home, goes to the beauty  
18 parlor and does her nails. That's all."

19 Q. Well, let's get to that. You said --

20 HEARING OFFICER DAHER: Can we do that on  
21 Friday morning? Start with that?

22 MR. EGBERT: Start with her nails on Friday  
23 morning?

24 THE WITNESS: I do mine.

1 HEARING OFFICER DAHER: If that's one  
2 little issue that you want to address now. But if  
3 you're going to develop that --

4 MR. EGBERT: Yes, I am. That's perfectly  
5 fine, Judge.

6 (Whereupon, at 12:47 p.m.  
7 the hearing was adjourned)

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C E R T I F I C A T E

I, Carol H. Kusnitz, Registered  
Professional Reporter, do hereby certify that the  
foregoing transcript, Volume III, is a true and  
accurate transcription of my stenographic notes  
taken on September 20, 2002.

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Carol H. Kusnitz  
Registered Professional Reporter

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