

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

APPEARANCES:

Goodwin Procter LLP
(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, December 18, 2002
9:50 a.m.

(Jane M. Williamson, Registered Merit Reporter)

* * * *

	I N D E X				
	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Anne Goldbach				
4	(By Mr. Egbert)	12-3			
4	(By Mr. Ware)			12-186	

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E X H I B I T S

	EX. NO.		FOR ID	IN EVID.
9	U	First evaluation by		12-4
10		Joan Katz		
11	V	Curriculum vitae of	12-6	
12		Joan Katz		
13	68	Visitor records from the	12-206	12-206
13		Nashua Street Jail re		
13		Charles Ebony Horton		

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P R O C E E D I N G S

ANNE GOLDBACH, Previously Sworn

DIRECT EXAMINATION, Resumed

1 BY MR. EGBERT:

2 Q. Ms. Goldbach, yesterday you were asked by
3 Mr. Ware to provide first, I'll call it, the report
4 of Joan Katz with regard to Horton?

5 A. Yes.

6 Q. And did you do that?

7 A. I did.

8 Q. Let me show you this document and ask you,
9 first of all, what that is.10 A. This is the first evaluation that Joan Katz
11 did.12 Q. And is that the one that you testified you
13 believe you brought to the arraignment?

14 A. That's correct.

15 Q. And is that the one for which you made a
16 copy and attempted to provide it to Leora Joseph?

17 A. It is.

18 MR. EGBERT: I'd offer that.

19 HEARING OFFICER DAHER: Mr. Ware?

20 MR. WARE: Could I see it?

21 (Mr. Egbert hands document to Mr. Ware)

1 MR. WARE: I object to this copy of the
2 document, because it has fax information on it
3 that's not part of the original. We have a clean
4 original here, and I don't object to that.

5 MR. EGBERT: The fax information just
6 shows, Your Honor, that she complied with the order
7 last night.

8 MR. WARE: There's no dispute about that.
9 I received it.

10 MR. EGBERT: And delivered it last night.

11 HEARING OFFICER DAHER: Is there any
12 problem of accepting it?

13 MR. EGBERT: No, so long as what I just
14 heard from him is a stipulation on the record that
15 she was in full compliance with the request.

16 MR. WARE: I agree completely that I
17 received this last night.

18 MR. EGBERT: That's all.

19 HEARING OFFICER DAHER: That will be fine.

20 THE CLERK: It will be U, Exhibit U.

21 (Document marked as Hearing
22 Exhibit U offered into evidence)

23 Q. Yesterday you were asked a series of
24 questions concerning Joan Katz and your knowledge of

1 her CV, correct?

2 A. That's correct.

3 Q. Do you recognize the document I put before
4 you?

5 A. I do.

6 Q. What is it?

7 A. It's a resume of Joan Katz's experience.

8 Q. And are you familiar with the contents of
9 that document?

10 A. I am.

11 Q. Have you used it in the past in court
12 proceedings?

13 A. I have.

14 MR. EGBERT: I'd offer that.

15 HEARING OFFICER DAHER: Any problems?

16 MR. WARE: Yes. I object to that, Your
17 Honor. It is, of course, hearsay. If Mr. Egbert
18 wants to put Ms. Katz on the witness stand and have
19 her credentials tested, that's one thing. But this
20 document, first of all, obviously was never
21 identified as an exhibit in the trial in compliance
22 with the Court's order. It's hearsay to this
23 witness. It covers a time period, I presume, during
24 which the witness was not familiar with Ms. Katz.

1 MR. EGBERT: It wasn't provided to anybody
2 before today because I didn't know Ms. Katz's
3 credentials were going to become an issue in this
4 case until it became so through cross examination by
5 Mr. Ware. If Mr. Ware wants to cross-examine Ms.
6 Katz concerning her credentials, he's welcome to do
7 so, but this is the document that this witness knew
8 about as she was producing it and providing reports
9 to the Court under these circumstances, and I think
10 it should be taken for that purpose.

11 HEARING OFFICER DAHER: Sustained.
12 Objection sustained.

13 MR. EGBERT: Marked for identification,
14 please?

15 HEARING OFFICER DAHER: Yes.

16 THE CLERK: V for ID.

17 (Document marked as Hearing
18 Exhibit V for identification)

19 Q. Yesterday when we left off, I was asking
20 you about some matters that were discussed with
21 Judge Lopez during the August 1st lobby conference.
22 Do you recall that?

23 A. I do.

24 Q. I would like to ask you in some specific

1 areas, but the way I'll do that is I'll play you the
2 tape and then I'll stop and ask you some questions
3 about it. Is that all right?
4 A. That's fine.
5 Q. What I'm going to show you is Exhibit 9.
6 And I've cued it up so that you know -- do you
7 remember that on this tape there was a series of
8 questions, I'll call them preliminary questions,
9 between the interrogator and Mr. Suarez?
10 A. Yes.
11 Q. That did not relate to the offense, but
12 related to getting him warmed up so to speak?
13 A. Yes.
14 Q. Is that customary?
15 A. Yes, it is.
16 Q. I've skipped over that. Is there anything
17 in that aspect of it that you recall that was at all
18 discussed with Judge Lopez on August 1st?
19 A. No.
20 (Videotape playing)
21 "Q. Ramon, do you know why you're here today?
22 A. Yes.
23 Q. And why is that?
24 A. Because something happened that shouldn't

1 have.
2 Q. Do you think you could tell me in your own
3 words from the beginning to the end about what it is
4 that happened?
5 A. Yeah. I was walking from my friend's
6 house, because I just got dropped off from UMass" --
7 (Videotape stopped)
8 MS. DeJUNEAS: Excuse me. I just want to
9 be sure that the camera is shut off.
10 CAMERA OPERATOR: It's not on the video.
11 (Videotape playing)
12 "A. And I was like at the corner of the second
13 street from my house, and this lady said, 'Oh, I
14 know you from somewhere. Will you help me look for
15 my son?' I was like, 'What?' I ignored her. I
16 kept walking. The second time, she was like, 'Oh, I
17 know you. Can you help me find my son?' I was
18 like, 'I don't even know you.'
19 Q. Where was the lady?
20 A. Well, she was at the corner of the same
21 street I was at.
22 Q. Was she standing on the street?
23 A. Hum-um, a car.
24 Q. She was in a car. And then what happened?

1 A. Then after that, she said, 'Oh, I'll offer
2 somebody \$100, whoever helps me find my son.' So I
3 was like, um, I know where he was, but -- she's
4 like, 'Oh, can you show me?' I was like -- at first
5 I started walking and then she was like, 'Oh, come
6 in.' And then she like grabbed my hand and sort of
7 pulled me in."

8 (Videotape stopped)

9 BY MR. EGBERT:

10 Q. You heard that statement, "She grabbed my
11 hand and sort of pulled me in"?

12 A. Yes.

13 Q. Was that statement ever conveyed to Judge
14 Lopez at any lobby conference?

15 A. No, it wasn't.

16 Q. Are you sure of that?

17 A. I'm sure of that.

18 (Videotape playing)

19 "A. Then after she pulled me in the car, she
20 drove around, stopped. She locked the doors and
21 windows.

22 Q. How did she do that?

23 A. She -- like on her side of the car there's
24 like a lock thing that locks the doors and the

1 windows.

2 Q. Uh-hum.

3 A. So --

4 Q. How did you know that she did that?

5 A. Because I tried to unlock the window and
6 run out, but it was locked. And I -- and then she
7 took me to some specific place I don't even know.
8 Then she said, 'Oh, well, you can suck on my private
9 part.' I was like, 'No. I want to go home.' She's
10 like, 'You're going to go home.' I was like, 'I
11 want to go home now.' She's like, 'You're going to
12 go home.' And I started crying. Then after
13 that she was like -- oh, she grabbed my head, pulled
14 me down like this and said, 'Suck on my finger.'
15 And then after that she told me to suck on a
16 screwdriver. And I was about to yell, and then she
17 held that same exact screwdriver up to my neck like
18 this (indicating). And then she was like, 'Oh, you
19 better be quiet or I'll tell my husband to come out
20 and kill you.'"

21 (Videotape stopped)

22 BY MR. EGBERT:

23 Q. You heard the statement, "You better be
24 quiet or I'll tell my husband to come out and kill

1 you"?

2 A. Yes.

3 Q. Was that statement ever conveyed to Judge
4 Lopez during the plea conference on August 1st of
5 the Year 2000?

6 A. No, it wasn't.

7 Q. And are you sure of that?

8 A. I'm sure of that.

9 (Videotape playing)

10 "A. And then she unbuttoned her pants. Then
11 after that, the police came. Then they seen what
12 she was doing. And then after that they seen my
13 head pop up like and then after that they took me
14 out to the car and asked me what happened. And I
15 told them what happened. And then after that, they
16 took me in the car -- they arrested her. Then from
17 there I went to a hospital, and they did some, like,
18 tests on me to make sure I was all right.

19 Q. Uh-hum. And did you talk to anybody there?

20 A. Yeah, some detectives came.

21 Q. Okay. You just told me a whole lot of what
22 happened. I'm going to back up and ask you a couple
23 of more questions about it. Okay?

24 A. Uh-hum.

1 Q. First of all, do you know when this was,
2 Ramon?
3 A. It was on a Saturday, about eight o'clock.
4 Q. In the evening?
5 A. Yes.
6 Q. You said you had just come from UMass and
7 you were at a friend's house?
8 A. Yeah. Because I was coming from swimming.
9 I came from there, and then my coach dropped me off
10 at his house. Then --
11 Q. What's your coach's name?
12 A. Domingos. Then from there, I kept walking
13 from his house, because I was going to call my house
14 and then tell my mom I was on my way.
15 Q. Uh-hum.
16 A. So then after that, he left, and then I
17 seen her.
18 Q. So what street were you actually on, do you
19 know?
20 A. First I was on Holiday. I kept walking.
21 Then I got on Corona.
22 Q. Corona?
23 A. Yes.
24 Q. And is that when you saw her?

1 A. Yes.
2 Q. And you said that she asked you two
3 different times to help her find her son?
4 A. Yes.
5 Q. And could you see what type of car she was
6 in or what color it was?
7 A. It was a Toyota, but it was like a
8 gold like -- I can't say -- I don't really know what
9 color it was, but it was sort of like a goldish
10 color.
11 Q. And how did you know it was a Toyota?
12 A. Because I seen the thing that said
13 'Toyota.'
14 Q. Do you like to look at cars? Do you know
15 anything about cars?
16 A. Yes.
17 Q. Okay. So the first time was she on your
18 side of the street or the other side of the street
19 in the car?
20 A. She was on this side of the street
21 (indicating).
22 Q. So when she asked you, were you next to the
23 driver window or was she --
24 A. On the passenger's side.

1 Q. Okay.
2 A. She was on the driver's side, but she,
3 like, leaned over --
4 Q. To speak to you through the passenger
5 window?
6 A. Yes.
7 Q. Okay. And so the first time, what did you
8 do?
9 A. I ignored her and kept walking.
10 Q. And then how far did you walk before she
11 asked you again?
12 A. Not that far. Like at least two -- what,
13 seven steps away.
14 Q. So not very much?
15 A. Yeah.
16 Q. And she asked you again?
17 A. Yeah.
18 Q. And she said what?
19 A. She was looking for her son. Then she said
20 she has a reward for \$100.
21 Q. Did this person look familiar to you, this
22 lady? Had you ever seen her before?
23 A. No.
24 Q. So you didn't know if she had a son or who

1 her son was or anything?

2 A. No. And she lied and said she was a
3 dentist.

4 Q. Okay. So she said she would give you \$100.
5 And then what did you do after she said that?

6 A. Then I was, like, 'Well, I can help you
7 look for him.' But at the time I didn't want to get
8 in the car. So she grabbed my hand and pulled me in
9 the car."

10 (Videotape stopped)

11 BY MR. EGBERT:

12 Q. Did you hear him say there, "at the time I
13 did not want to get in the car. So she grabbed my
14 hand and pulled me into the car"?

15 A. Right.

16 Q. Now, did you have any trouble hearing that
17 on the tape?

18 A. No.

19 Q. And did you have any trouble hearing it or
20 seeing it when you first reviewed it?

21 A. No.

22 Q. Was that fact mentioned to Judge Lopez by
23 the prosecutors at any time during the lobby
24 conference on August 1st?

1 A. No, it wasn't.
2 Q. By the way, did that seem ambiguous to you
3 in any way, what he said?
4 MR. WARE: Objection.
5 HEARING OFFICER DAHER: Sustained.
6 (Videotape playing)
7 "Q. Do you want some water?
8 A. Yes.
9 Q. Someone can get it for you or I can go get
10 it. What do you want to do?
11 A. Someone can go get it.
12 Q. Okay. Do you have a cough?
13 A. Yes.
14 Q. Take your time.
15 (Water handed to Mr. Suarez)
16 A. Thank you.
17 Q. Does that help a little bit?
18 A. Yes.
19 Q. So you said you didn't want to get in the
20 car?
21 A. No. And then she, like, grabbed my hand
22 and started pulling me in the car. I tried to
23 scream, but nobody was around at the time."
24 (Videotape stopped)

1 BY MR. EGBERT:

2 Q. Once again, you heard that statement about
3 grabbing the hand and pulling him into the car and
4 trying to scream, but no one was around?

5 A. Yes.

6 Q. Was that fact or statement given to Judge
7 Lopez at any time during the proceeding on August
8 1st?

9 A. No.

10 (Videotape playing)

11 "Q. So you got in the car?

12 A. Yes. And I tried to get out, but she,
13 like, locked the windows.

14 Q. Did you say anything to her when she locked
15 the windows or when you were trying to get out?

16 A. No.

17 Q. Okay. And then what happened? How far did
18 she drive? For how long, do you think?

19 A. At least down the street.

20 Q. And then what happened?

21 A. And then after that, she stopped the car.
22 I still tried to get out, but she locked the doors.
23 And then after, she took me to some place that I
24 don't even know, which was past the bowling alley.

1 Q. Do you know the name of the bowling alley?
2 A. Lucky Strike.
3 Q. Had you been there before?
4 A. Yes.
5 Q. Okay. And she took you to a place --
6 A. Past it.
7 Q. Past it?
8 A. Uh-hum.
9 Q. Okay. And was the car still moving or did
10 she stop it?
11 A. She stopped -- well, after she took me --
12 she took me around, like, the place, and then she
13 stopped the car.
14 Q. And when she stopped the car, where were
15 you?
16 A. I looked around and I didn't even know
17 where I was.
18 Q. What could you see?
19 A. Like in front was like these boxes and
20 there are train tracks.
21 Q. And then what happened?
22 A. Then she said, 'Oh, while we're waiting,
23 you can suck on my private part.' I was like, 'No,
24 I want to go home.' She was like, 'Oh, you're going

1 to go home.' I said, 'No, I want to go home.' She
2 said, 'Oh, you're going to go home.' Then I cried,
3 and then she put my head down and like, 'Oh, suck on
4 my finger.'

5 Q. Now, you said you sucked on her finger.
6 How did you know it was her finger?

7 A. Because it was, like, rough.

8 Q. What else did you notice about it?

9 A. It had, like, a long nail on it. And I'm
10 not really sure if it was a girl or a boy.

11 Q. Why do you say that?

12 A. Because she had, like, this deep voice.

13 Q. Okay. And you said that she said that she
14 wanted you to suck on her finger?

15 A. Uh-hum.

16 Q. Did you suck on her finger?

17 A. Like, she put her finger in my mouth
18 between -- she moved my head up and down like that
19 (indicating).

20 Q. Okay. And was she saying anything to you
21 when she did that?

22 A. No.

23 Q. Do you know where her other hand was?

24 A. No.

1 Q. Was she making any noises or sounds at all?
2 A. Hum-um.
3 Q. How long do you think that was going on
4 for?
5 A. At least a minute. And then she told me to
6 suck on a screwdriver.
7 Q. What part of the screwdriver?
8 A. The part that you hold, the end.
9 Q. And what did she do with that screwdriver?
10 A. After that, I was about to scream, but she
11 put the screwdriver up to my neck like that
12 (indicating).
13 Q. But when she asked you -- when she told you
14 to suck on it, what did she do with it?
15 A. She put my head back down and then she put
16 it in my mouth.
17 Q. And then what did she do?
18 A. Then after that, she --
19 Q. Did she move your head like she did with
20 her finger or differently?
21 A. Yeah, she did the same thing.
22 Q. And did you hear her make any noises or
23 sounds or say anything while that was happening?
24 A. No.

1 Q. And then what happened?
2 A. Then she unbuttoned her pants. And then
3 like three minutes after that, the police came. And
4 then after that she gave me \$50 and told me to be
5 quiet.
6 Q. When she pulled down her pants -- let me
7 ask you --
8 A. Uh-hum -- she unbuttoned her pants.
9 Q. Okay. Did she pull them down or just
10 unbutton them?
11 A. Unbuttoned them.
12 Q. And could you see that her pants were
13 unbuttoned?
14 A. Yes, because I seen her unbutton them.
15 Q. And what did you see when her pants were
16 unbuttoned?
17 A. Just the unbuttoned part; that's it.
18 Q. Could you see any part of her body?
19 A. No.
20 Q. When she put your head down like that,
21 where on her body were you?
22 A. Like right here (indicating).
23 Q. And where on her body -- so where was her
24 finger?

1 A. Her finger was right here (indicating).
2 Q. And what part of her body was it closer to?
3 Was it closer to the knees or the thighs or closer
4 to the middle part?
5 A. The thigh.
6 Q. Her thigh. Could you point on your body
7 how close she was to her own -- this part or --
8 A. Like right here (indicating).
9 Q. So her finger was right there, in that
10 part?
11 A. Yes.
12 Q. And when she unbuttoned them, her pants,
13 did she say why she was doing that?
14 A. No.
15 Q. Or what she wanted you to do?
16 A. Basically she wanted me to suck on her
17 private part.
18 Q. How did you know that?
19 A. Because she said, 'While we're waiting, I
20 can suck on her private part,' and I said, 'No.'
21 Q. That's what she said in the very beginning?
22 A. Right when we stopped.
23 Q. Did she say anything about that again,
24 after she had you such on the screwdriver?

1 A. Hum-um.
2 Q. What word did she use for private part?
3 A. The 'p' word.
4 Q. You know what? I know sometimes it's hard
5 to say things, certain word or words, but it would
6 be helpful for me to know exactly the words she
7 used, and it won't be hard for me to hear it,
8 because I talk to lots and lots of kids about lots
9 of different things. You can even write it down if
10 you want. But I need to know the word she said?
11 A. (Writing)
12 Q. 'Pussy.' So that's the word she used?
13 A. Yeah.
14 Q. And she said, 'I want you to suck on my
15 pussy'?
16 A. Uh-hum.
17 Q. Did she say that just that one time, or did
18 she say that at all again during the time she had
19 you there in the car?
20 A. She said it that one time.
21 Q. And when she unbuttoned her pants, did she
22 say anything to you about why she was unbuttoning
23 them?
24 A. No.

1 Q. And what happened before the police came?
2 A. Well, she got on top of me and told me to
3 be quiet.
4 Q. What do you mean, she got on top of you?
5 A. Because, like, the seat was leaning -- she
6 pulled the seat and leaned it back.
7 Q. The passenger seat?
8 A. Uh-hum.
9 Q. And when it was leaned back, what happened?
10 A. Well, I sort of fell back, and then she got
11 on top of me right then.
12 Q. And what was she doing when she was on top
13 of you?
14 A. She told me to 'Be quiet or I'll get my
15 husband to come out here and kill you.'.
16 Q. What was she doing -- where was her body?
17 A. On top of mine.
18 Q. And what was she doing with her hands or
19 with the rest of her body while she was on top of
20 you?
21 A. She told me -- like, her hands were like on
22 her other side, but she told me to be quiet."
23 (Videotape stopped)
24 BY MR. EGBERT:

1 Q. You heard the testimony there -- there was
2 a statement there that your client, with at that
3 point his pants unbuttoned, according to the
4 witness, laid on top of the victim on the passenger
5 side seat and told him to be quiet or he'd kill him.
6 Do you recall that?

7 A. Yes, I heard.

8 Q. Was any of that information provided to
9 Judge Lopez during the plea conference on August 1st
10 of 2000?

11 A. No, it wasn't.

12 Q. Do you have any doubt about that at all?

13 A. I don't.

14 MR. EGBERT: Mr. Ware, I have no intention
15 of playing anything else unless you want me to
16 complete --

17 MR. WARE: The only request I'd make is
18 where at the beginning of the tape where the child
19 announces his age as 11 years old. It's right at
20 the beginning.

21 MR. EGBERT: I'll stipulate to that.

22 MR. WARE: I'd like the witness to see it
23 so I can ask some questions about that if you don't
24 mind.

1 MR. EGBERT: I don't. Finding it may be a
2 little problematic.

3 MR. WARE: I'd be happy to cue it up at a
4 recess. We don't need to do it now.

5 MR. EGBERT: Is there anything else further
6 on that you'd like?

7 MR. WARE: No. Thank you.

8 MR. EGBERT: I should ask the Court. Your
9 Honor, is there anything --

10 HEARING OFFICER DAHER: No. Thank you for
11 asking.

12 Q. As the lawyer for the defendant in the
13 Charles Ebony Horton cases, did you have a feeling
14 as to whether or not the facts that I've just --
15 strike that -- the statements I've just shown you,
16 would it -- could it have had an impact on a judge's
17 decision at sentencing?

18 MR. WARE: Judge, the question is whether
19 this witness would have had a feeling.

20 HEARING OFFICER DAHER: Sustained.

21 Q. As the lawyer in the Charles Ebony Horton
22 case, was it in your interest to have those
23 statements put before the Judge?

24 MR. WARE: Objection. What statements?

1 MR. EGBERT: The three statements that
2 we've just identified.
3 A. It was not in my client's interest.
4 Q. And who, if anyone, in your experience,
5 would be charged with making Judge Lopez aware of
6 those particular statements of the victim?
7 A. It would have been Leora Joseph's.
8 Q. And did she ever do that?
9 A. No, she didn't.
10 Q. Now, those three matters that I've just
11 described to you -- and they involve the pulling
12 into the car, the threats to kill, and the laying on
13 top of the victim -- those three matters weren't
14 disputed matters at the plea conference, correct?
15 A. I'm sorry?
16 Q. Those three matters weren't disputed
17 matters at the plea conference, were they?
18 A. No.
19 Q. Because they weren't mentioned at all.
20 A. No.
21 Q. So there was no discussion of them in any
22 way which could have been resolved by reviewing the
23 tape, right?
24 A. That's correct.

1 Q. And during that plea conference did Leora
2 Joseph at any time say any words which would
3 indicate to you that she wanted the Judge to listen
4 to some tape?

5 A. No, she didn't.

6 Q. Or to view some tape?

7 A. No.

8 Q. Was there any discussion of that at all?

9 A. Not at all.

10 Q. Was there even a discussion of the
11 existence of a tape?

12 A. No, there wasn't.

13 Q. Now, back to the plea conference on August
14 1st. You said that Ms. Joseph gave her statement of
15 the facts and her rationale for the sentence
16 recommendation she was making, correct?

17 A. Yeah.

18 Q. And do you recall the exact -- or
19 substantially the exact words that she said?

20 A. In terms of what she was looking for for a
21 sentence?

22 Q. In terms of the factual statements that she
23 made in the beginning.

24 A. As I indicated, I can't recall everything

1 that she said. But in terms of her recitation of
2 the facts, my memory is that she discussed my client
3 luring the victim into the car and forcing him to
4 suck both a finger and a screwdriver.

5 Q. Were those the essential --

6 A. Yes.

7 Q. -- acts?

8 A. Yes. There were certainly more details
9 about how the child came to be in the car and what
10 happened inside the car. There was the statement,
11 "Will you suck my pussy" and the boy said, "No."
12 There were other aspects of it, yes.

13 Q. Now, in the presentation by Leora Joseph to
14 Judge Lopez, was there any doubt that what she was
15 telling Judge Lopez is the boy got in the car
16 willingly?

17 A. Was there any doubt about that?

18 Q. Yes.

19 A. No.

20 Q. And in fact, that was in fact the
21 Commonwealth's theory, wasn't it?

22 A. Yes.

23 Q. Now, after Leora -- by the way, during the
24 plea conference was Leora Joseph cut off in any way

1 from making her presentation?
2 A. No.
3 Q. Was she given, at least to your
4 understanding, a full and fair opportunity to
5 address the issues that the Commonwealth wished to
6 address?
7 A. Yes.
8 Q. And at any time was she told not to speak
9 or to go on to other matters or anything like that?
10 A. No.
11 Q. Did she voluntarily stop talking when her
12 presentation was over?
13 A. Yes, she did.
14 Q. And did Judge Lopez appear to listen to
15 what she was saying?
16 A. Yes, she did.
17 Q. And did she appear to be paying attention?
18 MR. WARE: Objection.
19 HEARING OFFICER DAHER: Sustained.
20 Q. Well, where was Judge Lopez looking when
21 Leora Joseph was speaking?
22 A. At Leora Joseph.
23 Q. And was Judge Lopez doing any other
24 business at the time?

1 A. No, she wasn't.
2 Q. And where were her eyes directed?
3 MR. WARE: Objection. Really, two years
4 ago where her eyes were?
5 HEARING OFFICER DAHER: I'll give you a
6 chance to cross-examine. Go ahead.
7 A. Her eyes were looking at Leora Joseph.
8 Q. And after Ms. Joseph stopped speaking, she
9 made a recommendation -- or before she stopped
10 speaking, she made a recommendation, correct?
11 A. She did.
12 Q. Do you recall what that recommendation was?
13 A. My memory is that it was 8 to 10.
14 Q. And that would be 8 to 10 years in the
15 state prison?
16 A. That's right.
17 Q. And then you got a chance to speak; is that
18 correct?
19 A. I did. I actually stepped a little bit
20 closer to the Judge at that point to speak and
21 explain our viewpoint.
22 Q. And when you did that, tell us as best you
23 can remember what you said and what you did.
24 A. I first addressed some of the allegations

1 and indicated to Judge Lopez that this was not a
2 total-stranger situation, that my client knew the
3 boy's older brother, that they had seen each other
4 in the neighborhood, that they shared mutual
5 acquaintances.

6 I also told Judge Lopez about the
7 information that I had gotten from Jay Greene, and
8 that was that he had responded to the scene, that
9 Jay Greene was a veteran detective, that he was
10 somebody who was not a softy -- those were the words
11 I used, "softy" -- on defendants, and that he
12 described the boy to me as having been cool as a
13 cucumber, and that he observed the boy. And his
14 observations were that either the boy knew --

15 MR. WARE: Objection, Your Honor, as to his
16 observations.

17 HEARING OFFICER DAHER: Yes, sustained.

18 MR. EGBERT: This is what she told the
19 Judge.

20 HEARING OFFICER DAHER: Mr. Ware, why don't
21 you want to hear this, in a sense? Go ahead. I'm
22 going to allow it. Go ahead.

23 A. That it was Jay Greene's observation that
24 the boy was not crying, that either he knew -- he

1 had been involved in this type of sort of pickup
2 situation before or knew what he was getting into by
3 getting into the car.

4 HEARING OFFICER DAHER: And this
5 communication you had received from Jay Greene which
6 you in turn communicated to Judge Lopez; is that
7 correct?

8 THE WITNESS: That's correct.

9 HEARING OFFICER DAHER: And all of this
10 information was given to you by Jay Greene; is that
11 correct?

12 THE WITNESS: The latter part, yes.

13 HEARING OFFICER DAHER: Go ahead.

14 THE WITNESS: Not about the mutual
15 acquaintances. The other part.

16 HEARING OFFICER DAHER: About the brother?

17 THE WITNESS: No. That was from my client,
18 that they had mutual acquaintances, that my client
19 knew the boy's older brother. That was information
20 that I divulged from my client. It was the
21 observations of the boy at the scene. And Jay
22 Greene's observations about the boy that I then
23 related to the Judge.

24 BY MR. EGBERT:

1 Q. When you say "related to the Judge,"
2 related to the Judge, and Leora Joseph was present
3 during that conference?

4 A. She was standing right next to me.

5 Q. Continue on, please.

6 A. I went extensively into my client's
7 background. I had certificates with me, GED
8 certificate, other certificates that represented
9 some of the activities my client had been involved
10 in since her arrest. And I also presented Judge
11 Lopez with I believe it's Exhibit 3, which is the
12 second psychosocial assessment. And I handed it up
13 to the Bench. She began to read it, and we all
14 stopped talking. And she read it from beginning to
15 end before anybody else resumed speaking.

16 HEARING OFFICER DAHER: Now, these
17 communications you made to Judge Lopez after having
18 seen the tape or did you see the tape subsequently?

19 THE WITNESS: No. The tape was given to me
20 as part of discovery. I had seen it months before.

21 HEARING OFFICER DAHER: Before you made the
22 representation to Judge Lopez.

23 THE WITNESS: That's correct. And a copy
24 was made for me. I had a copy.

1 HEARING OFFICER DAHER: Go ahead.

2 A. She read the report. I don't recall
3 specifically what questions Judge Lopez asked me,
4 but there were some questions about my client's
5 background. I also pointed out to the Judge -- my
6 client was sitting in the courtroom along with a lot
7 of family members who were there in support of her.
8 And I pointed those individuals out to Judge Lopez.
9 And I told Judge Lopez that I was looking for a
10 sentence that involved probation with a lot of
11 supervision, but I was hoping to avoid incarceration
12 for my client.

13 Q. Now, I want to go back to a couple of
14 things. The Judge asked you whether or not you made
15 these representations or allegations to Judge Lopez
16 after seeing the tape.

17 A. Yes.

18 Q. What was your client's position at that
19 time with regard to the veracity of the statements
20 on the tape?

21 MR. WARE: Objection. You're now asking
22 about the communication between the client and the
23 lawyer?

24 MR. EGBERT: I'll rephrase it.

1 Q. What was your position with the Court --
2 without mentioning the tape, because you said you
3 didn't talk about it -- with regard to the veracity
4 of the allegations being made by the Commonwealth?

5 MR. WARE: Objection.

6 HEARING OFFICER DAHER: What's the
7 objection?

8 MR. WARE: To this witness' interpretation?
9 I object, Your Honor.

10 HEARING OFFICER DAHER: Overruled. I want
11 to hear it. She saw the tape, she heard the victim,
12 and then she made a representation to the Judge. Go
13 ahead. You may have that question.

14 A. There were certain aspects of what was said
15 on the tape that were inconsistent -- we were not
16 saying that nothing had happened here, but there
17 were certainly aspects within the tape and the tape
18 compared to other pieces of discovery, other
19 reports, where there were some inconsistencies.

20 Q. You indicated, for example, to the Judge
21 that, as you just said, you indicated that it was
22 your position that the defendant knew the boy's
23 brother, right?

24 A. That's correct.

1 Q. And that was inconsistent information that
2 was on the tape, correct?
3 A. That's right.
4 *Q. And so why did you make that representation
5 to the Court?
6 A. The Commonwealth was portraying this case
7 as -- Leora Joseph was portraying this case --
8 MR. WARE: Objection, Your Honor. Now
9 we're into the witness' characterization of what the
10 Commonwealth --
11 HEARING OFFICER DAHER: Sustained.
12 MR. EGBERT: She's explaining her conduct.
13 HEARING OFFICER DAHER: She's stating what
14 Leora Joseph --
15 MR. EGBERT: Judge, she's responding to
16 Leora Joseph's allegations and positions in this
17 conference. So to understand what she's doing, one
18 must understand what she's responding to.
19 HEARING OFFICER DAHER: Sustained. Go
20 ahead. I've sustained the objection.
21 *(Question read)
22 HEARING OFFICER DAHER: Go ahead.
23 *A. The Commonwealth was, I felt, exaggerating
24 some aspects of the case, making it look -- I felt

1 there were mitigating aspects of the case that I
2 could provide to the Court, both about the
3 allegations and about my client, and that's why I
4 pointed some of these things out.

5 Q. Let me ask you this. Did you have a good-
6 faith basis -- you know what a good-faith basis is
7 for lawyers under the law, right?

8 A. Yes.

9 Q. Did you have a good-faith basis to make
10 those statements?

11 MR. WARE: Objection, Your Honor.

12 HEARING OFFICER DAHER: Sustained.

13 MR. EGBERT: If Your Honor please, she's
14 debilitated by being unable to provide to this Court
15 and, quite frankly, to the due process rights of
16 this Judge through the privilege that's being
17 asserted by her client, which is understandable, but
18 it is, at least it seems to me, appropriate to find
19 out if she had a basis to make these statements --

20 HEARING OFFICER DAHER: She started out her
21 response by saying that she exaggerated. And now
22 you asked for a good-faith basis. The objection is
23 sustained.

24 MR. EGBERT: Not that she exaggerated.

1 HEARING OFFICER DAHER: She started saying
2 that.
3 MR. EGBERT: No. She said the Commonwealth
4 had exaggerated.
5 HEARING OFFICER DAHER: Could you play that
6 back?
7 *(Answer read)
8 HEARING OFFICER DAHER: Overruled. Go
9 ahead. You have it.
10 A. My good-faith basis --
11 MR. WARE: Objection.
12 HEARING OFFICER DAHER: Overruled. Go
13 ahead.
14 A. -- was based in a substantial part on my
15 investigation of the case. And by that I mean we
16 hired an investigator who went out and went to the
17 neighborhood. And it was in part because of that,
18 not just communications that I had had with my
19 client, that I believed that this was so.
20 Q. Without divulging the confidence, was your
21 statement to the Court also consistent with what
22 your client had been telling them?
23 A. Yes.
24 Q. And the parts of the statements that you

1 made with regard to Jay Greene advising you of
2 various matters, at that time did you have any
3 reason to believe that Jay Greene was not credible?

4 A. Absolutely not.

5 Q. Had you had any experience with him in the
6 past as a detective on the Boston Police force?

7 A. Yes. I've known Jay Greene for over 20
8 years. My first assignment to an adult --

9 MR. WARE: Objection. She's answered the
10 question.

11 HEARING OFFICER DAHER: Sustained.

12 Q. What was the basis of your knowledge of Jay
13 Greene and his veracity?

14 A. Years ago I --

15 MR. WARE: Objection, Your Honor.

16 HEARING OFFICER DAHER: Overruled. Go
17 ahead. Let's hear it.

18 A. Jay Greene was a police officer and
19 detective in other cases that I've had. It had been
20 years since I had actually had a case with him.
21 However, as supervisor of the Boston trials office,
22 he had been involved in many cases that were
23 prosecuted by the Suffolk County DA's office over
24 the years. So I had -- while I didn't have those

1 cases, I was quite aware of his involvement in other
2 cases in our office. And that it turned out that he
3 was involved in this case.

4 Q. Would you turn to -- first, you said that
5 you had handed up Exhibit 3 to Judge Lopez and she
6 had read it from beginning to end; is that correct?

7 A. Yes.

8 Q. Did she skim it in parts quickly?

9 A. No. She took her time and read the whole
10 thing.

11 Q. And how could you tell she was doing that?

12 A. By the length of time, by watching her
13 reading it and turning the pages, I could tell that
14 she was reading it thoroughly.

15 Q. And after she read the report, was there
16 some discussion of the contents of the report?

17 A. Yes.

18 Q. And do you recall what that discussion was
19 in any detail?

20 A. I don't in detail.

21 Q. Do you recall it in -- how much can you
22 recall? Let me ask you that.

23 A. I believe there was some discussion about
24 counsel, but I just can't be specific about it.

1 Q. Now, this report, Exhibit 3, as Judge Lopez
2 was reading it -- strike that.
3 As you handed it up to Judge Lopez, did
4 Leora Joseph say anything to Judge Lopez about the
5 report?
6 A. No, she didn't.
7 Q. Did she say anything about the
8 qualifications of Joan Katz?
9 A. No, she didn't.
10 Q. Did she say anything that would be a
11 lawyer's objection to the Court's reading the
12 report?
13 A. No.
14 Q. Did she indicate any dissatisfaction or
15 displeasure with the contents of the report?
16 A. No, she didn't.
17 Q. Did she say anything about the report?
18 A. Nothing about the report.
19 Q. And while the Judge was reading the
20 report -- and you said there was some conversation
21 about contents of it, although you're not sure
22 exactly what they were, was that conversation back
23 and forth with you?
24 A. Yes.

1 Q. In Ms. Joseph's presence?

2 A. Yes.

3 Q. Did Ms. Joseph make any objection at that
4 time to the conversation or inquiries being made by
5 the Judge?

6 A. No.

7 Q. This report directs itself to many aspects
8 relative to sentencing, does it not?

9 A. Yes, it does.

10 Q. In the first page, if it you take a look at
11 it, it starts out discussing personal and family
12 history, correct?

13 A. That's right.

14 Q. And in it it says at the beginning, "There
15 is a marked difference in her outlook that includes
16 accepting responsibility for showing poor judgment
17 being involved with a minor child, and this is
18 behavior that will not occur again."

19 A. Yes.

20 Q. By that point in time, which would now be
21 August 1st, when you're presenting this document --
22 by that point in time, what documents had you
23 provided to Joan Katz which would indicate the
24 nature and extent of the offense charged?

1 A. She had seen part of the tape --
2 MR. WARE: Objection to what she had seen.
3 The question was what she was given.
4 HEARING OFFICER DAHER: Sustained.
5 A. I gave her the police reports, I gave her
6 the grand jury minutes, I gave her in essence all
7 the discovery I got from Leora Joseph.
8 Q. And so for those who haven't --
9 MR. WARE: Excuse me. Can we have a
10 timeframe?
11 MR. EGBERT: Sure.
12 A. I gave her all the discovery I had up until
13 July of 2000, which was when Joan evaluated her the
14 second time.
15 Q. When you say you gave her all the discovery
16 you received from Ms. Joseph, is it fair to say that
17 that would all outline in detail the Commonwealth's
18 case --
19 MR. WARE: Objection.
20 HEARING OFFICER DAHER: Sustained.
21 Q. Tell me about the police reports. What was
22 in them?
23 MR. WARE: Objection. Hearsay. The police
24 reports are in evidence.

1 Q. These are matters you gave to Joan Katz,
2 correct?
3 A. Yes.
4 HEARING OFFICER DAHER: Overruled. Go
5 ahead.
6 MR. EGBERT: Judge, I don't want to draw
7 this out. I think I can ask a broader question --
8 HEARING OFFICER DAHER: I overruled it. Go
9 ahead.
10 MR. EGBERT: -- instead of going piece by
11 piece of paper. I really hate to draw this out.
12 HEARING OFFICER DAHER: Do whatever you
13 want.
14 MR. EGBERT: If you would permit me some
15 leading in this very limited area, I think you'll
16 find that it would --
17 HEARING OFFICER DAHER: Try me.
18 Q. Typically in discovery in criminal cases,
19 the discovery that's provided by the Commonwealth
20 and in the grand jury minutes, what does that lay
21 out for factually?
22 MR. WARE: Objection.
23 HEARING OFFICER DAHER: The objection is?
24 MR. WARE: What happens in a typical case

1 is irrelevant here.
2 Q. In this case what did the grand jury
3 minutes lay out?
4 MR. WARE: Objection to the witness'
5 summary of the grand jury testimony.
6 MR. EGBERT: I leave it to you, Judge. If
7 you really want to go into the grand jury minutes
8 page by page, we can.
9 HEARING OFFICER DAHER: Sustained.
10 MR. WARE: The police reports are in
11 evidence.
12 HEARING OFFICER DAHER: Sustained. Go
13 ahead.
14 Q. Do you have the grand jury minutes?
15 A. I have them in my office. I don't have
16 them with me.
17 Q. Will you provide them to me?
18 A. Will I provide them with you?
19 Q. To me. Will you provide them to me?
20 A. Yes.
21 Q. Will you provide them to me with a
22 certificate of authentication that they are the
23 grand jury minutes that were provided to you by the
24 Commonwealth and provided to Joan Katz by you?

1 A. Yes.
2 MR. EGBERT: Your Honor, would that satisfy
3 the admissibility requirements for those documents?
4 MR. WARE: I will certainly object to the
5 admission of grand jury minutes. First of all, I
6 don't know that this witness is authorized to
7 produce grand jury minutes to anyone.
8 MR. EGBERT: Right. You don't know.
9 MR. WARE: And, secondly, we're well off on
10 a tangent here. She had grand jury minutes. She
11 gave them to Ms. Katz.
12 MR. EGBERT: Judge, we have had cross
13 examination ad nauseam of what information Joan Katz
14 knew through parties who had no idea what she knew,
15 like Judge Lopez or Judge DelVecchio or Leora Joseph
16 or Mr. Deakin. The only person who knows exactly
17 what Joan Katz received and can identify what she
18 received by way of that information is this witness.
19 I was perfectly happy to generalize in
20 those regards. If that's not appropriate to the
21 Court, I would ask that the grand jury minutes be
22 offered and accepted as the information provided to
23 Joan Katz which substantiates the two statements in
24 her report that this behavior will not occur again

1 and that --

2 HEARING OFFICER DAHER: I got the point.

3 Mr. Ware?

4 MR. WARE: I would, of course, object to
5 that. This problem, to the extent it is a problem,
6 is one of Mr. Egbert's own making. He could have
7 called Mrs. Katz or Ms. Katz as a witness in this
8 case, could have put her on the witness list, could
9 have taken her deposition, and we could have had
10 this from the horse's mouth, so to speak. Now we're
11 reduced to a situation in which, by definition,
12 every utterance here is hearsay.

13 MR. EGBERT: It's not a hearsay utterance
14 to indicate --

15 HEARING OFFICER DAHER: But why wasn't Ms.
16 Katz --

17 MR. EGBERT: If I ever thought that this
18 case was going to degenerate to an onslaught of a
19 report of a psychosocial assessment given to a judge
20 and its underpinnings when I started this case, I
21 suppose I might have thought of that. Mr. Ware and
22 the Commission certainly never thought of it, nor
23 did I think that's what we would be here doing. But
24 since that's what we've been doing for the last

1 week, I suggest that the information that was
2 provided to Joan Katz is not hearsay at all. It's
3 not submitted for the truth of the matter. It's
4 submitted to show what she saw, whether in fact --
5 quite frankly, I'm sure it's Ms. Goldbach's position
6 that what's in those grand jury minutes may not be
7 the truth, but that's what Joan Katz saw as the
8 outline of the Commonwealth's case.

9 MR. WARE: Your Honor, this issue has been
10 on the table since Mr. Egbert's opening statement in
11 which he talked at length about Exhibit 3, the Katz
12 report --

13 HEARING OFFICER DAHER: Mr. Egbert, help me
14 out. Shouldn't Ms. Katz have been put on the stand
15 to allow Mr. Ware at least a voir dire on her
16 qualifications, her background, and then we could
17 take it from there?

18 MR. EGBERT: He can subpoena her. This is
19 all in evidence. If he wants to question her
20 qualifications, I have no objection to him bringing
21 her in. I mean, really, we can try this right down
22 to -- we'll bring the cops in and get their
23 observations.

24 What this seems to be about or what much of

1 the cross examination of Joseph was about was, Oh,
2 how can you rely on a report? And we're now hearing
3 about the report and its bona fides and what went
4 on. There was much cross examination about how Joan
5 Katz never knew the facts of this case. Well,
6 that's just not so.

7 HEARING OFFICER DAHER: Overruled. Go
8 ahead.

9 MR. EGBERT: Will the grand jury minutes be
10 accepted?

11 HEARING OFFICER DAHER: Yes.

12 BY MR. EGBERT:

13 Q. So you provided the grand jury minutes, the
14 police reports, correct?

15 A. Yes.

16 Q. Anything else?

17 A. I asked him to watch part of the tape.

18 Q. And when you say "the tape," you mean the
19 tape we just played, Exhibit 9?

20 A. Yes.

21 Q. And did you give her the tape?

22 A. I don't believe I gave her the tape. It
23 was in my office. It was playing in my office.

24 Q. I'm sorry?

1 A. I played it in my office.
2 Q. For her?
3 A. Yes.
4 Q. In her presence?
5 A. Yes.
6 Q. For her?
7 A. And for my client.
8 Q. So who was present for that viewing?
9 A. Joan Katz was there for part of it, and my
10 client was there for the entire time with me.
11 Q. And so you had Joan Katz in a few parts of
12 it?
13 A. Yes, I did.
14 MR. WARE: Excuse me, again. If you don't
15 mind, when was this?
16 Q. To the extent you know, can you date that?
17 A. I can't. It was certainly well before the
18 July evaluation, the second evaluation.
19 Q. Anything else by the way?
20 A. Not that I can think of right now.
21 Q. Now, I'd like you to look to the second
22 paragraph on the page -- I'm dealing with Exhibit 3
23 -- and that relates to some psychosocial issues
24 described for Ebony Horton, correct?

1 A. The second paragraph?
2 Q. Yes.
3 A. Yes.
4 Q. And it indicates that Ebony Horton is
5 transgendered, looks and feels female, correct?
6 A. Yes.
7 Q. And that she's struggling with a variety of
8 psychological and social issues around her sexual
9 identity.
10 A. Right.
11 Q. Would you describe that basically as a
12 discussion of a sexual --
13 MR. WARE: Objection to the leading nature
14 of the question.
15 HEARING OFFICER DAHER: Sustained.
16 Q. Do you know what that's called when you put
17 that all together?
18 MR. WARE: Objection. This witness'
19 conclusion is irrelevant.
20 HEARING OFFICER DAHER: Sustained.
21 MR. WARE: It's Judge Lopez's that matters.
22 HEARING OFFICER DAHER: Sustained.
23 Q. Would you turn to Exhibit 17, and go
24 down -- and you see that that's -- we're going to

1 come to it later -- but that's a motion and some
2 findings of the Court?
3 A. Yes.
4 Q. And I want to read this one to you. "The
5 defendant suffers from a sexual identity disorder.
6 She looks female in all respects." Do you see that?
7 A. Yes.
8 Q. Is that statement consistent with Paragraph
9 2 of this report?
10 MR. WARE: Objection.
11 HEARING OFFICER DAHER: Sustained.
12 Q. Did you argue that matter to Judge Lopez
13 during your presentation?
14 MR. WARE: Objection.
15 HEARING OFFICER DAHER: Overruled.
16 A. Yes.
17 MR. WARE: What matter?
18 MR. EGBERT: That the defendant Charles
19 Ebony Horton --
20 HEARING OFFICER DAHER: We're dealing with
21 Paragraph 2, right?
22 MR. EGBERT: That the defendant Charles
23 Ebony Horton suffered a sexual identity disorder.
24 MR. WARE: Objection. He's just adopting

1 the words from Exhibit 17. What the witness argued
2 was Exhibit 3, which says nothing about sexual
3 identity disorder.

4 MR. EGBERT: Only to someone who can't
5 read, since it talks about a transgendered person
6 who has a problem with her sexual identity and
7 psychological issues related to it, you add those
8 three items, and I don't know what else you call it.

9 MR. WARE: Your Honor, that's argument, not
10 evidence.

11 HEARING OFFICER DAHER: Sustained.

12 Q. Did you use the word "sexual identity
13 disorder" in any of your discussions with Judge
14 Lopez?

15 A. I used the word "transgender" and I used
16 the word "disorder."

17 Q. So your exact words were what?

18 A. I can't tell you at this point.

19 Q. But "transgender" and "disorder"?

20 A. Yes.

21 Q. And "disorder." How did you use the word
22 "disorder"? In what sense?

23 MR. WARE: Objection as to the sense. You
24 asked her the words. She gave us the words.

1 Q. What context did you use them?

2 MR. WARE: Objection to the context. It
3 was a characterization.

4 HEARING OFFICER DAHER: Sustained.

5 MR. EGBERT: Judge, I must confess, with
6 the direct examination we've provided of the
7 witness --

8 HEARING OFFICER DAHER: Why don't you
9 rephrase the question.

10 MR. EGBERT: -- to nickel and dime these
11 kinds of things is, quite frankly, going to keep
12 this thing going for a long time.

13 HEARING OFFICER DAHER: Your objection is
14 noted. Let's go.

15 Q. Tell me what you said about a transgender
16 disorder to Judge Lopez.

17 A. Well, there are a number of things that I
18 discussed about my client being transgendered in the
19 sense that she had realized that she was
20 transgendered from a young age, that there were
21 problems with her, in fact, at the jail because of
22 her transgendered status --

23 Q. Let me stop you.

24 MR. WARE: Objection. Could the witness

1 finish, please?

2 Q. Go ahead.

3 HEARING OFFICER DAHER: Go ahead.

4 A. -- that she had to remain on the medical
5 floor at the Nashua Street Jail, that she was locked
6 up for 23 out of 24 hours a day, that she had been
7 taunted by other inmates and possibly by some
8 corrections officers, and that that had been a very
9 scary experience for her.

10 Also, I discussed her gender identity
11 disorder in terms of her dealing with depression
12 and in the past suicidal ideation, and that she was
13 beginning to cope with her transgendered status, was
14 making progress in terms of her psychological
15 condition.

16 Q. And you indicated for us earlier that you
17 had provided the Judge with documents evidencing GED
18 graduation, that type of stuff, right?

19 A. Yes.

20 Q. What did you do with those documents --
21 strike that. When you gave the Judge those
22 documents, did she read them?

23 A. Yes. They weren't lengthy. They were
24 certificates.

1 Q. Did she look through them?

2 A. Yes.

3 Q. And what happened when she was done with
4 them?

5 A. She returned them to me.

6 Q. And did you provide copies of those to Ms.
7 Joseph?

8 A. I showed them to her. Not the
9 certificates. I showed them to her.

10 Q. Did she ask for copies?

11 A. No, she didn't.

12 Q. Now, on Page 2 there's some discussion in
13 the second full paragraph down concerning her mother
14 being a Seventh Day Adventist. Do you recall that?

15 A. Yes.

16 Q. What did you tell the Judge in regard to
17 those matters?

18 A. The matters that are discussed in this
19 paragraph?

20 Q. Yes.

21 A. I didn't go at length into her family
22 background, except to say that she had come from a
23 very unstable family background.

24 Q. But this information was in the report

1 which you read?

2 A. Yes.

3 Q. And there's information in here --

4 A. There was one other thing.

5 Q. Yes.

6 A. The mother had come to court with my
7 client, and I pointed the mother out to Judge Lopez
8 and had explained that her mother was recovering
9 from substance abuse.

10 Q. And in here it indicates that, "Ebony has
11 been attending church between three to five times a
12 week on a regular basis, and the minister has taken
13 active interest in helping Ebony and has been very
14 supportive, and the Seventh Day Adventist Church and
15 its members appear to be accepting of Ebony and
16 include her in their activities." Do you see that?

17 A. Yes.

18 Q. What was the relevance of that to the
19 sentencing in this case?

20 MR. WARE: Objection.

21 HEARING OFFICER DAHER: Sustained.

22 Q. What did you put forward as the relevance
23 of that information?

24 MR. WARE: Objection.

1 HEARING OFFICER DAHER: Sustained.

2 Q. When you were deciding whether or not to
3 present this to the Court, did you make some
4 judgments as to whether or not that would assist you
5 at the time of sentencing?

6 A. Yes, I did.

7 Q. And in what way would it assist you?

8 MR. WARE: Objection.

9 HEARING OFFICER DAHER: Sustained.

10 Q. Those matters which are listed in that
11 paragraph that I've just described to you concerning
12 the church and Ebony's attendance at the church and
13 the priests or the ministers taking an active
14 interest in Ebony, were those matters discussed with
15 the Judge at any time in terms of conditions of
16 probation which ought to be imposed?

17 A. Yes.

18 Q. And how were they discussed?

19 A. In terms of her curfew and her ability to
20 continue -- well, her curfew, her being monitored on
21 the electronic bracelet, being under house arrest,
22 as it's sometimes called, her ability to continue to
23 attend the church.

24 Q. And was that something that you, as

1 counsel, in your experience, have seen in the past
2 discussed with regard to things like electronic
3 monitoring?

4 A. Yes.

5 Q. And why is it important?

6 MR. WARE: Objection.

7 HEARING OFFICER DAHER: Sustained.

8 Q. All of those facts -- or at least the ones
9 that are facts and not opinions in that section --
10 you knew when you presented them, that they could be
11 investigated by the district attorney's office,
12 correct?

13 A. Yes.

14 Q. And did you do anything to hinder any
15 investigation of those allegations by the district
16 attorney's office?

17 A. No.

18 Q. Do you know from any knowledge that you've
19 received through discussion or otherwise that they
20 ever investigated anything like this?

21 A. No, I don't.

22 Q. Now, it goes on to say that Ebony was in
23 counseling at the Sidney Borum Health Center, a
24 project of the Justice Research Institute at 130

1 Boylston Street, and it gives a phone number,
2 correct?

3 A. Right.

4 Q. And it says, "Her counselor left some time
5 ago. Ebony is in agreement that she needs to return
6 for counseling to help her deal with the major life
7 issue she confronts. Ebony has sought out
8 counseling through the Fenway Community Health
9 Center."

10 A. Right.

11 Q. Do you know -- did you understand those
12 facts to be true facts?

13 A. Yes.

14 Q. And do you know whether or not anyone from
15 the district attorney's office at any time sought to
16 investigate those facts?

17 A. No.

18 Q. And has there ever been a report to you --
19 strike that.

20 Did anybody from the district attorney's
21 office ask you to provide medical records of Ebony
22 Horton to them?

23 A. No, never.

24 Q. Did they ask the Court to order that you

1 provide medical records?
2 A. No.
3 Q. Did they ask for a subpoena for the records
4 at Fenway Community Health Center?
5 A. No.
6 Q. Or at the Sidney Borum Health Center?
7 A. No.
8 Q. Did they ask your client to consent in any
9 way to a medical records release for these
10 documents?
11 A. No, they didn't.
12 Q. And did they ask the Judge to order such?
13 A. No.
14 Q. It then goes on to say, "Ebony has a
15 chronic depression along with suicidal thoughts that
16 surface when she's under severe pressure."
17 A. Yes.
18 Q. Did you discuss those matters with Judge
19 Lopez?
20 A. Yes, I did.
21 Q. In what fashion?
22 A. My concerns for her ability --
23 MR. WARE: Objection to the witness'
24 concerns.

1 Q. Did you express your concerns to Judge
2 Lopez?

3 A. I expressed my concerns to Judge Lopez
4 about --

5 Q. What did you say?

6 MR. WARE: Your Honor, I object to "about."
7 I don't object to the conversation.

8 HEARING OFFICER DAHER: Sustained.

9 A. I told Judge Lopez that Ebony might not
10 survive in prison. And I focused on those facts,
11 some of what you just reviewed, as some of the
12 reasons why she might not survive, and that being
13 the depression, the suicidal ideation, as well as,
14 of course, the vulnerability in being transgendered.

15 Q. Did the Commonwealth at any time during
16 your argument in that area object?

17 A. No.

18 Q. Did Leora Joseph say anything about that
19 area or discussion?

20 A. Only in response to Judge Lopez.

21 Q. And do you recall what Judge Lopez said to
22 Ms. Joseph?

23 A. She asked Ms. Joseph where my client would
24 be incarcerated if she were incarcerated. And Ms.

1 Joseph said that it wasn't her responsibility.

2 Q. Was there any further discussion in that
3 regard?

4 A. Not that I recall right now.

5 Q. Now, there's then the next paragraph which
6 I want to go over a bit with you. It says, "Ebony
7 realizes she should be spending her time with other
8 individuals closer to her age. Her self-esteem is
9 low, coupled with concern about what to do with her
10 life. To help in addressing these problems, Ebony
11 has been volunteering her time three afternoons a
12 week doing community outreach and educating teens
13 about HIV/AIDS." I'll stop there for the moment.
14 That was in the report, correct?

15 A. Yes.

16 Q. And did anyone from the Commonwealth
17 indicate that they wished to seek her volunteer
18 attendance records at this outreach program?

19 A. No.

20 Q. Do you know of any subpoena being issued?

21 A. No.

22 Q. Do you know of any objection or
23 disagreement being raised as to that?

24 A. No.

1 Q. And would you describe that as efforts of
2 rehabilitation?

3 MR. WARE: Objection.

4 HEARING OFFICER DAHER: Sustained.

5 Q. Rehabilitation is a matter which is
6 regularly discussed in sentencing, is it not?

7 A. Yes, it is.

8 Q. And what kind of things do you present --
9 what kinds of things did you present to the Court in
10 this case that went to the issue of rehabilitation?

11 MR. WARE: Objection.

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

14 MR. WARE: What kinds of things she
15 presented to the Court? Again, I have no objection
16 to her conversation with the Judge. But the
17 characterizations -- the conclusions --

18 HEARING OFFICER DAHER: Well, again, I'm
19 going to overrule that, because that is a -- we're
20 dealing with the charges, and then we have -- "Ebony
21 has been volunteering her time three afternoons a
22 week doing community outreach and educating teens
23 about HIV/AIDS." I'd like to hear that. Overruled.
24 Go ahead.

1 A. In terms of trying to demonstrate to Judge
2 Lopez that my client was in the process of
3 rehabilitating, I addressed many factors that are in
4 this report, including her volunteer work with
5 teens.

6 HEARING OFFICER DAHER: And you had in
7 mind, obviously, at the time that you were making
8 this pitch in regard -- you had in mind what the
9 charges against Ebony Horton were, right?

10 THE WITNESS: Yes. And it was these
11 things, but there were many other factors that I
12 advocated as proof of rehabilitation, including the
13 active involvement in counseling and other aspects
14 of her life that are mentioned in this document.

15 Q. Everybody seems to stop with the line
16 "concerns" in that paragraph -- I'm sorry, doing
17 community outreach and educating teens about
18 HIV/AIDS." Let's read on, however. Okay? "She has
19 also been working with young people about
20 transgender concerns," correct?

21 A. Right.

22 Q. So again, she's working with young people,
23 right?

24 A. That's right.

1 Q. What does the last line say?

2 A. "These activities have been under
3 supervision of a counselor associated with Boston
4 GLAS.

5 Q. What is that?

6 A. It's a gay/lesbian association. And many
7 transgenders are involved with Boston GLAS.

8 Q. And so her work in HIV/AIDS --

9 MR. WARE: Objection. Leading.

10 HEARING OFFICER DAHER: Overruled.

11 Q. -- and young people with transgender
12 concerns was under the supervision of a counselor?

13 MR. WARE: Objection. Leading. He's just
14 reading the report. It's in evidence.

15 HEARING OFFICER DAHER: Overruled. Go
16 ahead. I'll give you that one.

17 Q. Is that correct?

18 A. Could you repeat the question?

19 Q. So her activities in regard to these
20 outreach programs and working with young people on
21 transgendered issues was under the supervision of a
22 counselor?

23 MR. WARE: Objection.

24 HEARING OFFICER DAHER: Overruled. Go

1 ahead.
2 A. Yes.
3 Q. And did you think that was important?
4 A. Yes.
5 MR. WARE: Objection.
6 HEARING OFFICER DAHER: Sustained.
7 Q. Well, having in mind, as the Judge asked
8 you, that this was involving teens and young people,
9 did you think it was important in your presentation
10 to the Court?
11 A. Yes.
12 Q. Why?
13 MR. WARE: Objection.
14 HEARING OFFICER DAHER: Sustained.
15 Q. Now, you next go on in the report to
16 education and employment and indicate that "Ebony
17 had not completed high school when I first
18 interviewed her." By the way, let me just go back a
19 second, if I may. With regard to this "teens"
20 statement, when the Commonwealth asked for a
21 condition of probation that Ms. Horton stay away
22 from a particular age group, do you recall what that
23 age group was?
24 A. I'd have to look at the document. I'm

1 sorry.

2 Q. Turn to Page -- give me one second before I
3 mislead you. Let me find it.

4 HEARING OFFICER DAHER: Take your time.

5 Q. Turn to Exhibit 22 and then -- give me one
6 second. (Pause) Exhibit 22, on Page 23. Do you
7 see at Line 12 where the Commonwealth makes a
8 statement?

9 A. Yes.

10 Q. "That the defendant be ordered to have no
11 contact whatsoever with minor children...?"

12 A. Yes.

13 Q. And what's the age of the minority in
14 Massachusetts for these purposes?

15 A. Well, you don't get to go to adult court
16 until you're 17.

17 Q. So it's 16 and under?

18 A. Right.

19 Q. And in fact, was there further discussion
20 later on in the proceeding by Mr. Deakin about until
21 the victim is 16 --

22 A. Yes.

23 Q. -- no contact with the victim until he's
24 16?

1 A. Right.
2 Q. Let's go back to Exhibit 3.
3 By the way, in the process of a criminal
4 case, the Commonwealth's recommendation is just a
5 recommendation of one party in the case; is that
6 right?
7 A. That's right.
8 Q. And the defense makes a recommendation?
9 A. Yes.
10 Q. Generally?
11 A. Yes.
12 Q. Is that correct?
13 A. Yes.
14 *Q. And in your experience, just because the
15 Commonwealth makes a recommendation, doesn't mean
16 that that is what should be imposed, correct?
17 MR. WARE: Objection. Irrelevant, Your
18 Honor. This isn't in controversy.
19 HEARING OFFICER DAHER: Sustained.
20 MR. EGBERT: If it's not in clear
21 controversy, I'd like a stipulation on direct;
22 because if you would listen to the direct
23 examination of Mr. Deakin, I'd say it seems to be
24 quite in controversy by the Commission. So --

1 HEARING OFFICER DAHER: And your
2 stipulation?
3 MR. EGBERT: A stipulation that in a
4 criminal --
5 HEARING OFFICER DAHER: I'm asking Mr.
6 Ware.
7 MR. WARE: Judge, I'm sure this will be a
8 fantastic stipulation to which I cannot possibly
9 agree, so why don't we just get the answer to the
10 question.
11 MR. EGBERT: May I have the question read
12 back?
13 *(Question read)
14 A. In my experience, that's correct.
15 MR. EGBERT: Your Honor, could we take a
16 morning recess at this time?
17 HEARING OFFICER DAHER: Yes, sure.
18 (Recess)
19 BY MR. EGBERT:
20 Q. By the way, there seems to be some
21 discrepancy. Would you take a look at Exhibit 7 in
22 the book. Do you recognize that as being the DA's
23 press release, which we'll talk about later, but
24 that led to the August 4th incidents in court?

1 A. Yes.
2 MR. WARE: Objection. I object to the
3 characterization.
4 HEARING OFFICER DAHER: Overruled. Go
5 ahead.
6 A. Yes, I do recognize it.
7 Q. In the second full paragraph do you see
8 where it says, "Charles Horton, 31, a transgendered
9 person who appears as a woman"? Do you see that
10 statement?
11 A. I do.
12 Q. Is that an accurate statement?
13 A. No.
14 Q. Was Charles Horton 31?
15 A. No.
16 Q. How old was Charles Horton at the time of
17 the offense? Do you recall?
18 A. HE was either 21 or 22, I believe.
19 Q. Let me send you back to Exhibit 3, now.
20 A. Right.
21 Q. And take a look at the second full
22 paragraph on Page 1 and see if that refreshes your
23 memory as to how old Mr. Horton was at the time of
24 the offense.

1 A. Twenty-two.

2 Q. It says "now 22"?

3 A. Right. And at the time of the offense she
4 was actually 20, because her birthday is December
5 6th.

6 Q. So some 10 or 11 years younger than the 30
7 years old professed in the press release?

8 A. Right.

9 Q. Would you go to Page 3 of Exhibit 3. We've
10 talked about everything up to the section where it
11 talks about education and employment. Do you see
12 that?

13 A. Yes.

14 Q. And in this area there's a discussion that
15 she had received a GED through Roxbury Community
16 College, correct?

17 A. Right.

18 Q. And is that one of the certificates you
19 supplied to Judge Lopez?

20 A. Yes, it is.

21 Q. Now, with regard to that particular aspect
22 of this report, what was the purpose in providing
23 that to the Court?

24 A. To demonstrate rehabilitation again.

1 Q. And, lastly, there is a clinical
2 impression, correct? On Page 4?

3 A. Yes.

4 Q. And it says that, "Ebony is a transgendered
5 individual with all of the problems that produces,
6 especially for a young person"?

7 A. Yes.

8 Q. "She has been struggling with gender issues
9 for years." What did you understand "gender issues"
10 to mean?

11 MR. WARE: Objection.

12 HEARING OFFICER DAHER: Sustained.

13 Q. Did you understand this report when you
14 were provided it?

15 A. Yes.

16 Q. And when you presented it to the Court, did
17 you discuss it with the Court?

18 A. Yes, I did.

19 Q. And did you discuss gender issues with the
20 Court?

21 A. Yes, I did.

22 Q. What did you discuss about gender issues?

23 MR. WARE: I don't object if she's going to
24 give us the conversation.

1 HEARING OFFICER DAHER: That's what he
2 asked for. Go ahead.

3 A. Again, what I said earlier, Your Honor,
4 about Ebony being transgendered and the problems
5 that that status has caused her in terms of growing
6 up, her depression, things like that.

7 Q. And then it goes on to discuss some
8 counseling issues, correct?

9 A. Yes.

10 Q. And it says, "I find it highly unlikely
11 that Ebony will repeat the behavior that brought her
12 to court in this case." Do you see that?

13 A. Yes, I do.

14 Q. And that's a statement of Ms. Katz,
15 correct?

16 A. Mrs. Katz's statement, yes.

17 Q. Joan Katz's statement. That's her
18 statement, not yours, right?

19 A. That's right.

20 Q. Now, during the time that Ebony was
21 involved with counseling teens and working with
22 teens and all of the things we've read about in the
23 report earlier, had there been a single allegation
24 of any kind of repeat offense --

1 A. No.

2 Q. -- by Ebony Horton?

3 A. No.

4 Q. Or any kind of incident during the periods
5 of time that she became engaged in those activities?

6 A. Engaged in a sexual assault on a
7 juvenile --

8 Q. In the counseling of under Boston GLAS and
9 the like.

10 A. No, no.

11 Q. And then, "Jail has been a chilling
12 experience for her."

13 A. Yes.

14 Q. Had you had conversations with Ebony Horton
15 concerning the impact of jail -- strike that.

16 How long did Ebony Horton spend in jail
17 awaiting trial, do you recall?

18 A. My recollection at this point is not
19 absolutely certain. I think it was about three
20 weeks. And I visited her at the jail.

21 Q. And did you have, as you sat there that
22 day, support for the statement that it had been a
23 chilling experience for her?

24 MR. WARE: Objection. This is Ms. Katz's

1 report. Whether this witness had support in her own
2 mind is irrelevant.

3 HEARING OFFICER DAHER: Well, she did say
4 that she did visit her. Overruled. Go ahead.

5 A. Could you repeat the question?

6 Q. Did you have support for that statement?

7 A. Yes, I did.

8 Q. And what was it?

9 A. It was my own observations of Ebony at the
10 jail, along with the knowledge that Joan Katz had
11 visited Ebony at the jail.

12 Q. And then it goes on to say that, "Further
13 incarceration will be a disaster for Ebony and place
14 her at considerable risk."

15 A. Yes.

16 Q. What did you understand the risk to be?

17 MR. WARE: Objection.

18 HEARING OFFICER DAHER: Sustained.

19 Q. Did you discuss the risk with the Court?

20 A. I did.

21 Q. What did you discuss?

22 A. My concerns for her --

23 MR. WARE: Objection.

24 HEARING OFFICER DAHER: Sustained.

1 MR. EGBERT: Judge, she said she was
2 discussing her concerns with the Court.
3 HEARING OFFICER DAHER: Go ahead.
4 Q. Did you say, for example, to the Judge,
5 "I'm concerned" --
6 MR. WARE: Objection to the leading.
7 HEARING OFFICER DAHER: Sustained.
8 MR. EGBERT: I want to be heard at side
9 bar.
10 HEARING OFFICER DAHER: Sure.
11 (AT side bar)
12 MR. EGBERT: On their direct examination
13 you gave them the ability to lead every witness,
14 indicating throughout the matter that it would speed
15 things along, and leading questions were not going
16 to be a problem because they at least put the things
17 in context and the like.
18 This constant objecting by the Commission
19 to, quote, leading questions is nothing more than to
20 simply disrupt and delay this witness' testimony. I
21 think it's unfair. I ask you to give me the same
22 latitude you provided them to get this case moving
23 on direct. I think this is just sad to see this
24 case tried in this fashion at this point.

1 MR. WARE: Your Honor, the Court has given
2 counsel for both sides some latitude in asking
3 leading questions. I'm sure the transcript will
4 reflect that Mr. Egbert was given plenty of leeway.

5 MR. EGBERT: I'll count up the objections
6 to the leading questions by me in direct, and I
7 think you will find it will be very short.

8 MR. WARE: I think what's important here,
9 Your Honor, is this is the defense's witness. She's
10 being asked about conversations. Words shouldn't be
11 put in her mouth. She's a capable lawyer. I'd like
12 to hear from her.

13 HEARING OFFICER DAHER: The objection is
14 noted.

15 (End of side bar)

16 BY MR. EGBERT:

17 Q. During the lobby conference, was there a
18 discussion at all in the area of your concerns for
19 Ebony going to prison?

20 A. Yes.

21 Q. What were those discussions?

22 A. I told the Judge that I was worried that
23 Ebony would not survive prison, for probably two
24 different major reasons. One was, again, who Ebony

1 Horton is and was psychologically, that she was a
2 considerable risk in that regard. But, secondly,
3 being transgendered, there wasn't any easy place for
4 my client to be within the Department of Corrections
5 that I knew. And not only was there a concern about
6 the type of incarceration that she would experience,
7 but also physical harm, because she was at risk to
8 be raped in prison.

9 Q. And did you discuss those matters with
10 Judge Lopez?

11 A. Yes.

12 Q. And then the report goes on to strongly
13 recommend that Charles Ebony Horton be allowed to go
14 home, return to therapy at the Fenway Community
15 Health Center, and be placed on probation, if
16 indicated?

17 A. That's right.

18 Q. And that, "Further, education and
19 employment may be pursued with the help of a
20 counselor. Inquiries will be made with Mass. Rehab
21 to see where she would qualify for their services."

22 A. Right.

23 Q. That was the recommendation of Ms. Katz?

24 A. Yes.

1 Q. And was that also your recommendation to
2 the Court?

3 A. Yes, it was.

4 Q. And did you have any further discussion
5 with the Court in that regard?

6 A. Well, there was further discussion, because
7 Judge Lopez mentioned the community corrections
8 program, and produced a form that actually I had not
9 seen until that day. It was a fairly new program at
10 that point. And there was some discussion about her
11 being involved in the community as an alternative to
12 this type of recommendation for probation. There
13 was a discussion about, one, being on house arrest
14 or the electronic monitor, and, two, being under the
15 highest-level supervision available through the new
16 community corrections program. And there was a
17 discussion of what that entailed, including at the
18 time daily reporting and group counseling.

19 Q. And was there any further statements by Ms.
20 Joseph made during the course of that conference
21 that you can recall?

22 A. No.

23 Q. Did Judge Lopez announce what her decision
24 would be in the event Mr. Horton entered a plea?

1 A. Her decision at that time was that Ebony
2 would be placed on probation, would be placed under
3 house arrest or electronic monitoring for the first
4 year, and would be involved in the community
5 corrections program.

6 Q. Which is that high-supervision program?

7 A. Right. There are different levels of
8 supervision, and she was going to require Ebony to
9 be involved in the highest level of supervision.

10 Q. Did Ms. Joseph indicate in any way what she
11 thought of that?

12 A. No.

13 Q. Did you tell the Judge at that time or Ms.
14 Joseph whether or not Mr. Horton would plead to
15 those offenses?

16 A. I most certainly did not.

17 Q. Did you say anything about that?

18 A. Well, what I said is I would talk to my
19 client about it.

20 Q. Did you indicate that your client would
21 accept that plea?

22 A. No, I didn't.

23 Q. When you said "I'll talk to my client about
24 it," what did you mean by that?

1 A. I would discuss what had been proposed by
2 the Judge and to see if she wanted to plead guilty
3 under those circumstances.
4 Q. And prior to that moment in court, had your
5 client expressed to you a desire to plead guilty?
6 A. No.
7 Q. And how was it left at the end of the day?
8 A. It was left that the matter would be
9 continued to August 4th to give me time to speak to
10 my client.
11 Q. To determine what?
12 A. To determine whether or not there would be
13 a plea.
14 Q. Now, between August 1st, which was the date
15 of this event, and August 3rd -- strike that.
16 Between August 1st and August 3rd, did you
17 meet with your client?
18 A. I did.
19 Q. On how many occasions?
20 A. I met with her on the 3rd.
21 Q. And do you know approximately what time of
22 day that was?
23 A. It was in the afternoon.
24 Q. And who was present for that meeting?

1 A. There were a number of people present.
2 They didn't all arrive at the same time. But my
3 client was there, my client's mother was there, my
4 client's aunt was there, and I believe for part of
5 the time her sister was there.

6 Q. And what was the topic of the conversation?

7 A. There were different discussions in
8 different configurations of individuals. I spoke
9 alone with my client, I spoke with the entire group
10 of people who were there, with the entire group of
11 people. There were a lot of questions about what if
12 my client went to trial, what if my client took this
13 plea, what the ramifications were, what the possible
14 outcomes were if the case went to trial. They just
15 wanted to know what the options were.

16 Q. And with your client -- again, without
17 divulging the content of the conversation -- is it
18 fair to say that was there was a discussion as to
19 whether or not your client wanted to accept the
20 plea?

21 A. That's correct.

22 Q. At some time while you were meeting with
23 your client and/or these other people, did you
24 receive a telephone call from anyone in the DA's

1 office?
2 A. Yes, I did.
3 Q. Who was that?
4 A. From Leora Joseph.
5 Q. And this was on August 3rd?
6 A. This was on August 3rd.
7 Q. And do you recall approximately what time?
8 A. It was between 3:30 and 4:30 in the
9 afternoon.
10 Q. What was the conversation between you and
11 Ms. Joseph at that time on August 3rd?
12 A. She asked me if my client was going to
13 plead guilty.
14 Q. Did you respond?
15 A. I did respond.
16 Q. What did you say?
17 A. I said I didn't know.
18 Q. Was there any further conversation?
19 A. She asked me why.
20 Q. Why?
21 A. Why I didn't know.
22 Q. And what did you tell her?
23 A. I told her because this is a very difficult
24 decision.

1 Q. Did you tell her that you were talking with
2 the people at the time?

3 A. I don't know if I told her that my client
4 was there.

5 Q. In that conversation, did you ever indicate
6 to Ms. Joseph that it was assured that there would
7 be a plea on August 4th?

8 A. No, I did not.

9 Q. Did you indicate to her that it was
10 substantially assured --

11 MR. WARE: Objection. We've had the
12 conversation. This is all leading. More
13 conclusions.

14 HEARING OFFICER DAHER: Again, this
15 develops the conversation somewhat. Overruled. Go
16 ahead.

17 Q. Did you indicate that there was any
18 substantial likelihood that there would be a plea?

19 A. No, I didn't.

20 Q. How would you characterize the
21 conversation?

22 MR. WARE: Objection.

23 HEARING OFFICER DAHER: Sustained.

24 Q. How was it left with Ms. Joseph?

1 MR. WARE: Objection as to how it was left,
2 as opposed to what was said.
3 HEARING OFFICER DAHER: Sustained.
4 Q. What was said to Ms. Joseph concerning the
5 events for August 4th?
6 A. I said I didn't know what was going to
7 happen.
8 Q. And that was the end of it?
9 A. Yes.
10 Q. Did she express anything else to you?
11 A. No.
12 Q. Now, on August 3rd, when you spoke with Ms.
13 Joseph, were you telling the truth?
14 A. Yes.
15 Q. Did you have any idea what was going to
16 happen?
17 A. I had no idea.
18 MR. WARE: Objection, Your Honor.
19 HEARING OFFICER DAHER: Overruled. Go
20 ahead. She had no idea. Go ahead.
21 Q. Now you've had the conversation with Ms.
22 Joseph. At any time after that on August 3rd had
23 your client come to a conclusion with you as to
24 whether or not there would be a plea?

1 A. No. By the time she left my office, I
2 still didn't know what was going to happen.

3 Q. Was there a plan for the next day?

4 A. We had to come to court. It was a
5 scheduled court event. So, of course, she was
6 coming to court. That I would speak to her when she
7 got to court.

8 Q. Now, on August 4th, when you got to
9 court -- and we're talking about the Suffolk County
10 Superior Court?

11 A. Right.

12 Q. Which is in the old Federal Courthouse
13 Building?

14 A. Right.

15 Q. Would you recall approximately what time
16 you got to court?

17 A. Around nine o'clock in the morning, nine or
18 9:15.

19 Q. Did you arrive alone?

20 A. I did arrive alone.

21 Q. When you arrived, where did you go?

22 A. I went to the 15th floor, which is where
23 the First Session is.

24 Q. Did anything unusual happen when you got to

1 the 15th floor?

2 A. Yes. When I got to the 15th floor, I
3 noticed that a large video camera was being set up
4 in the corner of the courtroom.

5 Q. Did you have any conversation with anyone
6 concerning the purpose of that camera?

7 A. I asked the court officers if they knew why
8 the camera was there.

9 Q. Did they respond?

10 A. They didn't know at first.

11 Q. At some point in time did you have further
12 conversation?

13 A. I did, with a clerk.

14 Q. Let me take things in sequence, if I may.
15 So you went in and you checked on the cameras and
16 didn't know what they were for, correct?

17 A. That's right.

18 Q. And then what happened next that's of
19 relevance to this proceeding?

20 A. I went back out into the corridor and more
21 and more people from the media were arriving. There
22 were reporters, there were camera people, and the
23 hallway was filling up with media.

24 Q. You mean it wasn't just one camera?

1 A. No. There were multiple cameras.
2 Q. How many would you say there were?
3 A. There were photographers there with regular
4 35 millimeter cameras -- I don't mean regular, but
5 the kind that --
6 Q. Still cameras?
7 A. Still cameras. And also others with video
8 cameras, reporters with video cameras.
9 Q. And can you total up your best estimate of
10 how many there were?
11 A. It's very hard to say. There were lots of
12 people there.
13 Q. When you say "lots of people," lots of
14 press?
15 A. Lots of press.
16 Q. And you've been in the business for 25
17 years?
18 A. Twenty-five years, yes.
19 Q. Did it appear to you to be a lot of press?
20 A. It appeared to be a very large number of
21 press.
22 Q. And what happened next?
23 A. My client's mother got off -- well, what
24 happened next is that I found out from a clerk that

1 indeed, the cameras were there for this case, for
2 the Horton case.
3 Q. And what happened after that?
4 A. I believe the next thing that happened was
5 that my client's mother got off the elevator. And
6 there's two banks of elevators in that courthouse --
7 (Mr. Ware stands)
8 HEARING OFFICER DAHER: Are you objecting?
9 MR. WARE: Not yet.
10 HEARING OFFICER DAHER: Go ahead. Next
11 question.
12 MR. WARE: Not to what she observed.
13 HEARING OFFICER DAHER: She observed the
14 grandmother --
15 THE WITNESS: The mother.
16 HEARING OFFICER DAHER: -- exit the
17 elevator.
18 MR. WARE: I do object unless the witness
19 is saying she saw the mother.
20 A. I saw the mother exit the elevator.
21 HEARING OFFICER DAHER: Go ahead.
22 Q. What next?
23 A. She asked me if the cameras were there for
24 this case.

1 Q. And then what happened?
2 A. I said yes.
3 Q. And then what happened?
4 A. She became very upset.
5 Q. When you say "very upset," could you
6 describe her demeanor?
7 A. She was shaken, she was very unhappy about
8 the fact that the cameras were there.
9 Q. And what happened next in sequence of
10 events?
11 A. Again, in that long hallway outside the
12 bank of elevators that leads to the courtroom on the
13 15th floor where First Session was, I passed Leora
14 Joseph in the hallway, and I said to her, "Did you
15 do this," meaning the press being there.
16 Q. What did she say to you?
17 A. She said, "No."
18 Q. Any further conversation with Leora Joseph?
19 A. I told her that the minute the Judge
20 arrived, I was going to ask to go to see her with
21 Ms. Joseph.
22 Q. Did she respond?
23 A. No. She nodded. She didn't say anything.
24 Q. And what next occurred in sequence of

1 events?

2 A. I ran downstairs, because my client had not
3 yet arrived. And I was concerned about my client
4 being photographed under those circumstances. And I
5 went down to the first floor, the area between the
6 two sets of elevators, and I waited for my client
7 down there.

8 Q. And did your client arrive?

9 A. My client did arrive.

10 Q. And did you discuss the subject matter of
11 the press and cameras with your client?

12 A. I told my client what was going on on the
13 15th floor.

14 Q. And what was your client's demeanor?

15 A. My client was shocked.

16 Q. How did your client act?

17 A. She was almost speechless, she was upset,
18 and I could tell that she was shocked.

19 Q. Did you do anything after that?

20 A. I did. I took her to an office that the
21 public defenders have on the second floor, and I
22 kept her there.

23 Q. And then where did you go?

24 A. I went back up to the 15th floor.

1 Q. And when you got to the 15th floor, did you
2 learn anything with regard to the grandmother and
3 the press or the mother and the press?

4 MR. WARE: Objection as to what she
5 learned, unless she saw it.

6 MR. EGBERT: What she learned, Judge, is
7 what she conveys to the Court later on and is the
8 basis for her statements --

9 HEARING OFFICER DAHER: Overruled. Go
10 ahead. You may have it.

11 A. I learned something that actually happened
12 later that morning.

13 Q. Well, then let's keep it in sequence then.
14 What happened next?

15 A. There was a lot of up and down on the
16 elevators as we were waiting to see Judge Lopez. I
17 was checking on my client. Some of my client's
18 family had arrived on the 15th floor. I took them
19 down to that office on the second floor. The mother
20 was up and down on the elevator several times.

21 Q. During that period of time, how would you
22 describe the demeanor of the family and your client?

23 MR. WARE: Objection.

24 HEARING OFFICER DAHER: What's the

1 objection?
2 MR. WARE: What's the relevance of this?
3 MR. EGBERT: The relevance is to her
4 consideration when she's about to go and ask for a
5 continuance for these proceedings.
6 HEARING OFFICER DAHER: Overruled. Go
7 ahead.
8 A. Everybody was extremely upset about the
9 press coverage.
10 Q. And did you have any conversation with your
11 client during that period of time as to whether or
12 not your client was going to plead guilty that day?
13 A. Yes, I did.
14 Q. What were you told?
15 A. It wasn't going to happen that day.
16 MR. WARE: I just want to be clear that's a
17 conversation between the witness and her client.
18 THE WITNESS: That's right.
19 HEARING OFFICER DAHER: That's exactly it.
20 Q. It was not going to happen that day?
21 A. No.
22 Q. Now, what next occurred?
23 A. After all the going up and down, there
24 was -- I was towards the courtroom on the 15th floor

1 when there was a screaming match that I heard down
2 the corridor between my mother and apparently people
3 from the media.
4 Q. I think you said "my mother."
5 A. Sorry. The mother, Ebony's mother.
6 Q. And the media?
7 A. And the media.
8 Q. When you say "the media" --
9 A. Members of the press. I can't tell you who
10 they were.
11 Q. Were there cameras?
12 A. There were camera people down there, yes.
13 Q. And when you say "a screaming match," what
14 was going on?
15 A. I remember hearing Ebony's mother talking
16 about "my baby," but I can't quote -- in other
17 words, meaning her child -- but I can't quote what
18 was said other than that.
19 Q. How would you describe that event? How did
20 it appear from a distance?
21 A. I heard --
22 MR. WARE: Objection. She's already
23 described it.
24 HEARING OFFICER DAHER: Overruled. Go

1 ahead.

2 A. I heard it. I didn't see it. But it was a
3 very stressful situation. My mother -- my client's
4 mother was still quite upset.

5 Q. Now, at some point in time were you able to
6 read or obtain a copy of the press release issued by
7 the Suffolk County district attorney's office?

8 A. I learned actually from one of the
9 attorneys in the Roxbury office that there was a
10 press release. And he took me over to a woman who
11 was seated on the bench out in the hallway, somebody
12 from the media -- I think Channel 4, but I'm not
13 certain -- and she allowed me to read her copy of
14 that press release.

15 Q. And would you turn to Exhibit 7 in the
16 book.

17 A. Yes.

18 Q. Is that the press release which you read a
19 copy of that day?

20 A. It is.

21 Q. And when you read the press release, were
22 you concerned in any way?

23 A. I was very concerned.

24 Q. Tell me, please -- let's start with the

1 first line of this press release that reads, "BOSTON
2 MAN EXPECTED TO PLEAD TO CHILD KIDNAPPING, SEXUAL
3 ASSAULT." Do you see that statement?

4 A. I do.

5 Q. And did that raise concerns with you?

6 A. Yes, it did.

7 Q. What were the concerns it raised?

8 A. Well, first, that I had never told
9 anybody -- particularly anybody in the district
10 attorney's office -- that my client had made a
11 decision to plead guilty or that it was even likely
12 that my client would plead guilty. I still didn't
13 know.

14 Q. What did you care that a press release was
15 being issued that says he was expected to plead
16 guilty?

17 A. Well, I had a number of concerns. One was
18 that this was --

19 MR. WARE: Your Honor, I'm going to object
20 to her concerns of the press release.

21 MR. EGBERT: Let me see if I can put it in
22 position.

23 Q. Did all of the things that you saw and
24 heard and observed and read and understood up until

1 you met with Judge Lopez, did you have all of those
2 things in mind when you made your various requests
3 to Judge Lopez and your arguments to Judge Lopez?

4 A. Yes.

5 Q. I'm again going to ask you what it is that
6 troubles you about that.

7 A. About this press release?

8 Q. About that statement.

9 A. About the first paragraph?

10 Q. "Man expected to plead."

11 A. "Man expected to plead," that was a totally
12 inaccurate statement, as far as I was concerned.
13 There was no way I had indicated to anybody in the
14 district attorney's office that I had any idea of
15 what was going to happen. So I didn't at that point
16 expect my client to plead, because I didn't know
17 what decision had been made, if any, by the time I
18 read this.

19 MR. EGBERT: Now, could the witness be
20 handed Defendant's Exhibit O. In fact, I'll let the
21 Court keep one and I'll give her another copy.

22 MR. WARE: I'm going to object to this
23 witness testifying to the ethical rules surrounding
24 the press release. We've been over this ad nauseam.

1 This witness is not an ethics expert.

2 HEARING OFFICER DAHER: I'll hear you in re
3 Mr. Ware's objection.

4 MR. EGBERT: The witness is a lawyer who by
5 law is required to know and understand the ethical
6 rules for lawyers. And I suggest to you that she
7 will testify that the violation of these rules
8 troubled her and was a part of her considerations in
9 dealing with this matter.

10 HEARING OFFICER DAHER: Mr. Ware, your
11 argument?

12 MR. WARE: This witness' view of the ethics
13 of the press release have no bearing on this case
14 whatsoever. She's not an expert, she's not called
15 as an expert. You sustained objections even as to
16 Judge Lopez opining about certain of these ethical
17 rules.

18 HEARING OFFICER DAHER: Last word?

19 MR. EGBERT: Judge, as far as Judge Lopez
20 was concerned, you allowed full questioning of her
21 ethical rules, and that is the canons of judicial
22 conduct, on the grounds that she's required to know
23 them and to understand them and to live by them.
24 This is the same for lawyers. This is exactly what

1 lawyers must abide by, must live by and must
2 understand in their presentations.

3 HEARING OFFICER DAHER: Mr. Ware, anything
4 else?

5 MR. WARE: Your Honor, it's utterly
6 irrelevant to what the Judge knew at the time.

7 MR. EGBERT: I don't think that's the case.

8 MR. WARE: Well --

9 HEARING OFFICER DAHER: Let him finish.
10 Mr. Egbert, finish it up.

11 MR. EGBERT: All of these matters are the
12 matters that went into the presentation by Ms.
13 Goldbach to the Judge in chambers, which ultimately
14 led to the findings in this case, which are at issue
15 and are alleged to be the subject of bias.

16 MR. WARE: Your Honor, again, this witness
17 is not here to testify as an expert on ethics.

18 HEARING OFFICER DAHER: Sustained.

19 MR. EGBERT: I want at this point to read
20 into the record part of Exhibit O.

21 MR. WARE: I object, Your Honor. By
22 definition, it's in the record.

23 MR. EGBERT: It's an exhibit. I would like
24 to read it into the record at this time.

1 MR. WARE: Objection. That's just
2 argument.
3 HEARING OFFICER DAHER: It's not going to
4 hurt you, Mr. Ware. It's already in the record. Go
5 ahead.
6 MR. EGBERT: Section 3.6 of the rules of
7 professional conduct states, with regard to trial
8 publicity: "A lawyer who is participating or who
9 has participated in the investigation or litigation
10 of a matter shall not make an extrajudicial
11 statement" --
12 MR. WARE: Your Honor, I'm going to object.
13 This rule actually is not in evidence. I'm not
14 suggesting the Court can't take judicial notice, but
15 it's not in evidence.
16 MR. EGBERT: You took judicial notice of
17 it, Judge, back --
18 HEARING OFFICER DAHER: I think it is.
19 MR. WARE: It's Exhibit O for
20 identification.
21 HEARING OFFICER DAHER: I took judicial
22 notice of it. It's already in.
23 MR. WARE: Fine. You can take judicial
24 notice of it. This is argument to read it.

1 MR. EGBERT: Judge, I think the objection
2 is the same --

3 HEARING OFFICER DAHER: Go ahead. Let's
4 get through it, Mr. Egbert. Overruled.

5 MR. EGBERT: "A lawyer who is participating
6 or who has participated in the investigation or
7 litigation of a matter shall not make an
8 extrajudicial statement that a reasonable person
9 would expect to be disseminated by means of public
10 communication if the lawyer knows or reasonably
11 should know that it will have a substantial
12 likelihood of materially prejudicing an adjudicative
13 proceeding in the matter."

14 And then Note 5 under "Comment": "There
15 are, on the other hand, certain subjects which are
16 more likely than not to have a material prejudicial
17 effect on a proceeding, particularly when they refer
18 to a civil matter triable to a jury, a criminal
19 matter, or any other proceeding that could result in
20 incarceration. These subjects relate to: (Section
21 2) in a criminal case or proceeding that could
22 result in incarceration, the possibility of the plea
23 of guilty to the offense..." -- and I'll stop there
24 as the relevant parts.

1 Q. Now also in this press release is the
2 statement -- and we're back to Exhibit 7: "Charles
3 Horton, 31, a transgendered person who appears as a
4 woman."

5 A. Yes.

6 Q. Did you have any concerns concerning
7 that --

8 A. I certainly did.

9 Q. And what were they?

10 A. I felt that this was sensationalizing the
11 case and that it was a lure for the media to get
12 there. And I found it quite offensive, frankly.

13 Q. Did you indicate your thoughts in that
14 matter to Ms. Joseph before you went into Judge
15 Lopez's lobby?

16 A. Yes.

17 Q. And what did she say?

18 A. She didn't say anything.

19 Q. What did you say to her?

20 A. That this was gratuitous. That the word
21 "transgendered" in there, that was gratuitous.

22 Q. And did you say anything else?

23 A. No.

24 Q. What did she say?

1 A. She didn't respond.

2 Q. And did anything else happen of consequence
3 before you went into Judge Lopez's lobby?

4 A. It was a very chaotic morning. Nothing
5 comes to mind at the moment.

6 Q. When you say "chaotic," you've been
7 involved in the practice of criminal law, as you
8 say, for 25 years?

9 A. Right.

10 Q. Was what you were observing that day
11 unusual?

12 A. It was quite unusual. Every time I got off
13 the elevator, there were cameras there poised and
14 ready to photograph me with my client. People kept
15 trying -- members of the press kept trying to talk
16 to me about the case. And the hallway was just
17 filled with people. It was very unusual to see that
18 much media there for a case.

19 Q. Did anything else happen before you went in
20 to see Judge Lopez?

21 A. Not that I can think of right now.

22 Q. Now, at this point I think you've testified
23 that you tried to make arrangements to see Judge
24 Lopez with Ms. Joseph?

1 A. Right.

2 Q. And how did you make those arrangements?

3 A. By telling the clerk.

4 Q. Telling the clerk what?

5 A. That I wanted to see Judge Lopez with Leora
6 Joseph as soon as she was available.

7 Q. And were you at some point notified that it
8 was your turn to go in?

9 A. Yes.

10 Q. I want you, as clearly as you can and in as
11 much detail as you can, to tell us what happened
12 from the moment you got into the Judge's chambers
13 and who said what and in what order, as best you're
14 able.

15 A. We went in and sat down. Judge Lopez was
16 already seated. And I was the first person to
17 speak. And I explained to Judge Lopez that the
18 district attorney's office had issued a press
19 release indicating that my client was expected to
20 plead guilty and that my client was transgendered.
21 I explained what was going on out in the hallway in
22 terms of the media. I indicated to Judge Lopez that
23 at that point I had had 23 years of experience, that
24 you usually see this type of media coverage for

1 either a first-degree murder case or a case that was
2 a high-profile case in the press, which was not the
3 case in this instance. That my client wasn't a
4 murderer, that this was not fair, that this wasn't
5 just, and that it was cruel for the district
6 attorney's office to have done this. And I
7 indicated to Judge Lopez that my client was not in
8 any condition to plead guilty, and I asked for a
9 continuance.

10 Q. The one thing I'd ask you to explain -- you
11 said, "I explained to her about the media outside."
12 Can you tell me what you told her?

13 A. Again, I indicated that there was a huge
14 amount of press there, from my perspective, and that
15 there had been screaming going on in the hallway. I
16 think I did indicate that my client was still down
17 on the second floor and unwilling to come upstairs.
18 I think that's what I told her.

19 Q. And who next spoke?

20 A. I believe Judge Lopez next spoke.

21 Q. And what did she say, if you can recall?

22 A. She turned to Ms. Joseph and said, "I know
23 you have the right to call the press, but this is
24 mean, this is cruel." She indicated something to

1 the effect that what was going on was not right, and
2 she also said to Ms. Joseph, "You're young, you
3 don't get it. You belong in the suburbs."
4 Q. And did she say anything else at that
5 point?
6 A. Not that I recall.
7 Q. Do you recall her tone of voice at the
8 time, "her" meaning Judge Lopez?
9 A. Judge Lopez was clearly displeased, but it
10 was calm. It was stern, but it was quite
11 controlled.
12 Q. Screaming?
13 A. No.
14 Q. Yelling?
15 A. No.
16 Q. Out of control?
17 A. Not at all.
18 Q. I want to play for you Exhibit B-1?
19 HEARING OFFICER DAHER: I think I know
20 what's coming, but go ahead.
21 MR. WARE: I object. I'm anticipating
22 that --
23 HEARING OFFICER DAHER: We both are.
24 MR. WARE: -- that this is a recording of

1 Judge Lopez in another case --

2 HEARING OFFICER DAHER: Talking about
3 hyperbole and characterization?

4 MR. EGBERT: Yes, which is in evidence.

5 MR. WARE: And that the witness is now
6 going to be asked to serve as an acoustic expert and
7 tell us whether or not the tone of voice in the tape
8 is the same as the tone of voice as Judge Lopez used
9 on August 4th, 2000.

10 HEARING OFFICER DAHER: I think your
11 anticipation is right on the money, Mr. Ware, but
12 I'm going to overrule it and I'm going to allow Mr.
13 Egbert to do that.

14 MR. EGBERT: Let me just check something
15 with my associate. (Pause)

16 Q. I'm going to play this tape for you, and
17 please listen to it.

18 A. Yes.

19 Q. It's a segment of the tape. And I'm going
20 to turn the volume up.

21 (Audio tape playing)

22 "THE CLERK: Your duty to register as a sex
23 offender shall end in 20 years from this date.

24 Do you understand that, sir?

1 THE DEFENDANT: Yes.
2 THE CLERK: Okay. I'm going to hand this
3 back to you, sir. You are to sign and date it.
4 THE COURT: Ms. Joseph, let me just say
5 something on the record. Next time -- do you want
6 to stand up. Stand up.
7 MS. JOSEPH: Yes, Your Honor.
8 THE COURT: Okay. Next time that you are
9 going to recite facts to me on a plea, dispense with
10 hyperbole and subjective characterizations. Okay?"
11 (Audio tape stopped)
12 Q. How would you compare the tone of voice to
13 what you heard in the lobby that day?
14 MR. WARE: Objection.
15 HEARING OFFICER DAHER: Overruled. Go
16 ahead.
17 A. Very similar.
18 Q. Now, after Judge Lopez made the remarks
19 that you just described, did anyone say anything?
20 A. There was one other remark that I heard
21 Judge Lopez make, and that was to Ms. Joseph. She
22 said -- and this is somewhat out of order in terms
23 of the other thing -- but, "You're responsible for
24 this." And Ms. Joseph did not reply to that.

1 Q. Didn't say a word?

2 A. No, she didn't.

3 Q. And then what was next said by anyone in
4 the room?

5 A. I believe I repeated my request for a
6 continuance, that I didn't think that it was
7 possible for it to happen that day, and that we
8 wanted a continuance.

9 Q. Now, at the time when you say you didn't
10 think it was possible for it to happen that day,
11 you've previously indicated there hadn't been a
12 final decision by your client anyway; is that
13 correct?

14 A. That is correct.

15 Q. And did you inform Judge Lopez of that?

16 A. That I didn't know whether my client was
17 going to plead or not?

18 Q. Yes.

19 A. I don't know that I told her that I hadn't
20 known up until that point. But, no, I hadn't.

21 Q. So tell us exactly what you informed her of
22 with regard to the continuance and the need for it.

23 A. That my client wasn't in any condition to
24 engage in a plea that day. So while I didn't

1 discuss what my client's decision was, because I
2 actually didn't know it, I just felt that, given my
3 client's condition at that point, that there was no
4 way she could knowingly and intelligently make that
5 decision and go through a guilty plea.

6 Q. Now, as counsel in a criminal case, do you
7 know what your obligations are with regard to making
8 sure that no client engages in a plea colloquy under
9 conditions where they would not be able to be
10 knowingly and intelligently done?

11 A. Yes, I do.

12 Q. And are lawyers regularly asked by judges
13 in plea colloquies to respond to questions as to
14 their knowledge in that regard?

15 A. Yes.

16 Q. And what did you believe your
17 responsibility was that day with regard to those
18 issues?

19 MR. WARE: Objection.

20 HEARING OFFICER DAHER: Overruled. Go
21 ahead.

22 A. That given my client's condition, that it
23 would be wrong and ineffective to -- ineffective in
24 the sense of ineffective assistance of counsel -- to

1 even attempt to address whether or not she was going
2 to plead, let alone go through a plea colloquy.
3 Q. And did the Judge say anything to you about
4 your request for the continuance while you were in
5 the lobby?
6 A. She indicated that there would be a
7 continuance; that, yes, I would have my continuance.
8 Q. And was there anything else said?
9 A. Not that I recall.
10 Q. And, by the way, what was your demeanor in
11 the lobby at that time?
12 A. Well, I was quite upset that this had
13 happened. I think that's my answer.
14 Q. Were you visibly upset?
15 A. Visibly upset?
16 Q. Yes.
17 A. I assume by my facial expressions I was.
18 Q. After the lobby conference, what happened?
19 Just so I don't confuse the issue, after the meeting
20 on August 4th --
21 A. Right.
22 Q. -- and you just indicated the Judge said,
23 "You'll get a continuance," what happened next?
24 A. Leora Joseph stormed out of Judge Lopez's

1 lobby.
2 Q. You say "stormed out."
3 A. Right.
4 Q. Would you describe what she did.
5 A. She stood up and walked out very quickly.
6 Q. And when you say "she stood up and walked
7 out very quickly," was that with or without the
8 invitation of the Judge to leave?
9 A. Without the invitation of the Judge.
10 Q. So she just up and left?
11 A. Yes.
12 Q. And what happened then?
13 A. I went outside the doorway to Judge Lopez's
14 office. There is a hallway or an anterior room that
15 connects the chambers to the courtroom as well as to
16 the corridor via two different doors. Judge Lopez
17 was still in her office, and I asked whether or not
18 my client was going to have to come up to the 15th
19 floor in order to get the continuance.
20 Q. And what was --
21 A. I was told, I believe by a clerk, that my
22 client could stay downstairs.
23 Q. After that event, did anything happen by
24 way of conversation or otherwise between you and Ms.

1 Joseph?

2 A. Ms. Joseph first said to me, "Do you want
3 to pick a date?" It wasn't clear to me at that
4 point whether -- what procedure was going to happen
5 in order to get that continuance. Sometimes in the
6 First Session --

7 MR. WARE: Objection.

8 HEARING OFFICER DAHER: Sustained.

9 Q. Why was it not clear to you?

10 MR. WARE: Objection.

11 HEARING OFFICER DAHER: Sustained.

12 Q. What were the possibilities, as you
13 understood them, for getting a continuance under
14 those circumstances procedurally?

15 MR. WARE: Objection, Your Honor.

16 HEARING OFFICER DAHER: It's close.

17 Overruled. Go ahead.

18 A. Either to give a clerk an agreed-upon
19 continuance date without court being formally called
20 to session or to wait for Judge Lopez to get on the
21 bench and to have a formal setting of the next date.

22 Q. So what was your response, then, to Ms.
23 Joseph in that regard?

24 A. I said I would pick a date. I did not have

1 my calendar at that point.
2 Q. And what happened next?
3 A. I believe I went down to see my client
4 again to inform her what was going on.
5 Q. And you did so, I take it?
6 A. I did. And I came back upstairs. And I
7 believe at that point Mr. Deakin had come to the
8 15th floor.
9 Q. David Deakin?
10 A. Yes.
11 Q. Now, are you able to give us an
12 approximation of the time now, about what time of
13 day it is when you now say you see Mr. Deakin?
14 A. That's very hard to do. I wasn't looking
15 at a watch. It felt like I had been there a long
16 time already before I saw Mr. Deakin.
17 Q. In any event, you saw Mr. Deakin?
18 A. I did.
19 Q. And was he with anyone when you saw him?
20 A. Ms. Joseph was standing nearby.
21 Q. Did you engage either or both of them in
22 conversation?
23 A. I did.
24 Q. Tell me what happened.

1 A. At first I asked to speak -- I understood
2 Mr. Deakin to be Leora Joseph's supervisor. At
3 first I asked to speak to him alone. And Ms. Joseph
4 didn't appear happy with that. And I said, "Okay,
5 she can stay." And I complained to Mr. Deakin about
6 Ms. Joseph's handling of this case.

7 Q. And in what way?

8 A. In her failure to turn over discovery, in
9 her attitude toward the entire case, in her refusal
10 to check out anything that mitigated the facts in
11 this case or anything that mitigated her view of my
12 client. And I told him that I felt, in my dealings
13 with him, that he had been professional, that he at
14 least listened and checked out those things which he
15 was obligated to check out, for instance, in terms
16 of exculpatory evidence. And I also told him that I
17 was quite upset about the press release.

18 Q. Did you have a discussion as to the
19 contents of the press release with Mr. Deakin?

20 A. I certainly did.

21 Q. Can you tell us what that discussion was.

22 A. It was both about the fact that I was upset
23 that it indicated that my client was expected to
24 plead guilty when there was not that expectation as

1 of late in the afternoon on August 3rd. And I was
2 also upset by the fact that the district attorney's
3 office had seen it fit to throw in the word
4 "transgendered" into this press release and the
5 effect it would have in terms of getting the media
6 to court.

7 Q. Did he respond to you?

8 A. He did.

9 Q. What did he say?

10 A. He said a couple of things. He indicated
11 that it was probably wrong to have the word
12 "transgendered" in the press release. And he also
13 indicated that the district attorney sent out press
14 releases in cases that had been previously covered
15 in the press.

16 Q. Did you respond to that?

17 A. I did. This case had not been followed in
18 the press, to my knowledge. I had never seen
19 members of the media in the entire time I had made
20 court appearances with my client over that 10-month
21 period of time -- I guess 9-month period of time.

22 Q. And you say you hadn't seen members of the
23 media. Had you also not seen anything in the major
24 press outlets in --

1 A. No, nothing.

2 Q. And what next occurred in the conversation?

3 A. I believe what happened next was that Dave
4 Deakin indicated that he would be representing the
5 Commonwealth, and that they were going to be
6 opposing the continuance.

7 Q. Was there any discussion of the
8 Commonwealth's grounds?

9 A. I think he said that there was a motion
10 being prepared and that I would get a copy of it.

11 Q. What next occurred?

12 A. There was still some time that passed with
13 a lot of waiting around. And finally Judge Lopez
14 came out on the bench.

15 Q. Before Judge Lopez came out on the bench,
16 did the Commonwealth give you a copy of their
17 opposition to the continuance?

18 A. They did give me a copy.

19 Q. And I want to turn to Exhibit 17, if you
20 would. And this is the Commonwealth's motion in
21 opposition to a continuance?

22 A. Yes, it is.

23 Q. And it says in here that, "The Commonwealth
24 opposes any continuance of the above matter,"

1 correct?

2 A. Right.

3 Q. And, "As reason therefor, the Commonwealth
4 states that the child victim in this case and his
5 family was made aware that the case would be
6 resolved today."

7 A. Right.

8 Q. Do you see that?

9 A. Yeah, I do.

10 Q. Had you ever indicated to anyone in the
11 Commonwealth that they could be assured that the
12 case would be resolved that day?

13 A. No, I didn't.

14 Q. In fact, had your conversations with them
15 been otherwise?

16 A. Yes.

17 Q. Then it says, "The child's guardian, the
18 maternal grandmother, has been present in the
19 courtroom since early in the morning," correct?

20 A. Right.

21 Q. And did you have any information one way or
22 the other on that?

23 A. Someone pointed her out to me in the
24 hallway. I did see her out in the hallway.

1 Q. And then it says, "She would like to be
2 present when her impact statement is read in court,"
3 right?
4 A. Right.
5 Q. Did you know of any reason that the impact
6 statement couldn't be read on any particular day
7 that this case was scheduled for?
8 A. No, I didn't.
9 Q. Is there anything in this document that you
10 read as a lawyer which indicated to the Judge what
11 the impact of the child would be on a continuance?
12 A. No.
13 MR. WARE: Objection to the witness'
14 opinion, Your Honor.
15 HEARING OFFICER DAHER: Sustained.
16 MR. WARE: I ask that the answer be struck.
17 HEARING OFFICER DAHER: Struck.
18 Q. So Judge Lopez came out on the bench,
19 correct?
20 A. Yes.
21 HEARING OFFICER DAHER: Mr. Ware, Mr.
22 Egbert, sometime during the morning I can take more
23 argument on your motion in limine at some time, so I
24 can have a ruling for you by this afternoon.

1 MR. EGBERT: What time do you plan on
2 breaking?
3 HEARING OFFICER DAHER: We can break in
4 another 10 or 15 minutes and I'll take argument on
5 the -- I've been going through it.
6 MR. EGBERT: Okay.
7 HEARING OFFICER DAHER: Is that okay with
8 you? I'll give you another 15 minutes, or do you
9 want to take it now?
10 MR. EGBERT: We can take it now. I've got
11 some witness problems I want to clear up.
12 HEARING OFFICER DAHER: Do you want to stop
13 it here right now?
14 MR. EGBERT: Yes. May I have a couple of
15 minutes?
16 HEARING OFFICER DAHER: Yes. We'll take
17 five minutes, and I'll come back out and hear you.
18 (Recess)
19 HEARING OFFICER DAHER: Mr. Ware, could I
20 hear you on the motion in limine to exclude
21 character and conduct witnesses -- I'll hear you.
22 MR. WARE: Yes, thank you, Your Honor. I
23 think the issue that you've asked us to address is
24 the question whether there could be collateral

1 evidence of character and conduct. And I think the
2 law in Massachusetts is clear in that regard that
3 you cannot do that, particularly in circumstances in
4 which, as here, you're being asked to call a
5 separate witness who's going to come in and talk
6 about an unrelated incident.

7 At most, the law of the Commonwealth
8 permits -- and in fact, my colleague has given you
9 two cases this morning which support our position;
10 that is, in the cross examination of a party, of
11 Judge Lopez, for example, questions could be asked
12 regarding some other incident insofar as that goes
13 to the party's conduct or character.

14 But here we're talking about third-party
15 witnesses. And the law is very clear that it is not
16 permissible for the Court to allow witnesses to go
17 on the stand to talk about an incident at some other
18 time which the defense then argues shows some
19 propensity to have acted in a particular way in this
20 case.

21 Secondly, Your Honor, with respect to the
22 incident that was discussed regarding Mr. Deakin,
23 it's confirmed that that incident occurred after
24 September 6th, 2000. So by definition, it could not

1 have affected his character prior to that time, No.
2 1, and, No. 2, obviously couldn't have been known to
3 Judge Lopez since it hadn't occurred.

4 This kind of evidence, too, of course, is
5 highly prejudicial. It is the central reason that
6 courts don't permit this kind of evidence, is that
7 it requires going off on a host of tangents and
8 trying the character of individual witnesses, which,
9 of course, is not the point here. So on all of
10 those bases, and obviously consistent with the
11 memorandum we've submitted, I urge the Court to deny
12 the request of the defendant.

13 HEARING OFFICER DAHER: Mr. Egbert?

14 MR. EGBERT: Thank you, Your Honor. I
15 think we have to first put this case -- question in
16 the posture that it's supposed to be, not that it
17 was proffered by Mr. Ware. He's asking you to deny
18 my request. You already granted my request in a
19 prior ruling. What he's asking for is for you to
20 reconsider your prior ruling --

21 HEARING OFFICER DAHER: Right.

22 MR. EGBERT: -- which was made, and, quite
23 frankly, which was acted upon by counsel by the
24 asking of questions. You made a ruling and in fact

1 required that Russo be called -- it was in the
2 record. I'm sure you've gone back -- I know how
3 meticulous you are in checking the record -- and I
4 know that you know what was done at the time was a
5 prerequisite to asking the questions that I would
6 call Judge Russo, which you ruled and I agreed to
7 before asking the questions involved.

8 So I think the ruling has been made in the
9 first instance. It's become the law of the case, so
10 to speak, and actions have been taken based upon
11 that ruling and are not to be disturbed for that
12 reason as a beginning point.

13 But, secondly, I think the Commission's
14 statements to the Court are in error and are a wrong
15 interpretation of the law.

16 These matters -- and clearly what they are
17 now, so that the record is clear, is that Judge
18 Russo would testify that Mr. Deakin said to him in a
19 proceeding, a plea proceeding in the East Boston
20 District Court, when Judge Russo indicated a
21 likelihood of entering a plea disposition that Mr.
22 Deakin did not prefer -- he said the words, "I'll go
23 public with that" or words to that effect, which I
24 think the fair inference of that is that, I'll do

1 something with the press in this or I'll do
2 something in that regard, and that's the way Judge
3 Russo understood it, and that's the complaints that
4 were made thereafter.

5 It goes to a number of issues in this case,
6 which make it all admissible.

7 In the first instance, it does go to refute
8 the statements of Mr. Deakin and Ms. Joseph, both
9 individually and as an office policy, that we never
10 do that kind of thing. We don't use the press for
11 muscle, we don't try to use the press in any way to
12 affect or deal with judges that we disagree with.
13 We don't, the office doesn't, and we never have.
14 And that was part of their direct testimony in this
15 case put on by the Commission in their attempt to
16 show that this press release that was issued in the
17 Horton case, which we've heard so much about, was
18 nothing more than standard operating procedure and
19 not geared to do what it did.

20 So this goes to a central issue in this
21 case in the fact that they have said they never do
22 these kinds of things. And in fact, it's clear they
23 do. And as to the weight of it -- which has been
24 argued tangentially -- as to the weight of it, well,

1 that's for you to decide. In other words, you ought
2 to determine how much weight you give to it when the
3 time comes of its submission. So in the first
4 instance, it is related to that.

5 It is specifically related to the
6 credibility of Mr. Deakin as to whether or not he
7 lied to you under oath. There was no equivocation
8 in this matter when he was asked. There was no lack
9 of memory, there was no attempt to explain or
10 otherwise. He simply said under oath, "I never said
11 those words to Judge Russo." And I suggest to you
12 that you have to -- so much of this case and your
13 findings and rulings will require you to assess and
14 address the credibility of the proponents of the
15 information given to you. And Mr. Deakin is a major
16 proponent of the information given to you in this
17 regard. And so his credibility is directly related.

18 No. 3, if Your Honor please, that in what
19 makes it not collateral -- let me go back a step.

20 I've handed up two cases to the Court. And
21 one of them, which is a civil case and at least
22 deflects the argument, and that is Simon versus
23 Solomon, where the Court in that case let in
24 extrinsic evidence to impeach the evidence of one of

1 the witnesses in the case -- not the party, but a
2 person who worked for Gem Realty, as I understand
3 it -- indicating quite clearly that this is a
4 discretionary call in that regard and ought to be
5 considered in that fashion.

6 And also in the case of Commonwealth versus
7 Ferguson, which I provided to you, it addresses the
8 other argument by the Commission on Page 5, where it
9 states the following: "Although the rebuttal
10 testimony was collateral to the main issues at
11 trial, the evidence 'tended to cast doubt on the
12 defendant's credibility, because it created a basis
13 from which the jury might infer that because the
14 defendant's testimony [as to his requirements for
15 female 'marketers'] was not accurate, other portions
16 of his testimony also might be inaccurate." And
17 that was a first-degree murder case that had nothing
18 to do with the issue of how he addressed his female
19 marketers, but the Supreme Judicial Court indicated
20 quite clearly that that was something the fact
21 finders should have, because particularly when you
22 have a direct false statement in that regard, it
23 goes directly to assessing the full credibility of
24 the witness.

1 Lastly, if Your Honor please, there's a
2 reason that this is neither collateral nor falling
3 within the discretionary rule, and that is that it
4 goes to the likelihood or motive of Mr. Deakin to
5 fabricate his testimony here.

6 It is clear that under our canons of
7 ethics, as you've seen throughout these matters,
8 lawyers have some specific obligations as it relates
9 to the press and certainly both cultural and
10 customarily in relations with the Court. Both in
11 candor to the Court in obviously not seeking to
12 impede or impugn a court or otherwise affect a
13 court.

14 Well, it doesn't matter that this came
15 after the Lopez case. Quite frankly, I think it's
16 more than that. It came after the Lopez case, the
17 incident with Judge Russo, because what happened in
18 that case when Mr. Deakin said to Judge Russo, "I'll
19 go public" or words to that effect, Judge Russo
20 called and reported him for that comment. And he'll
21 testify in that regard. And he'll testify that he
22 called and made a serious issue with that kind of an
23 attempt to influence a judge's ruling by what he
24 felt were both unethical and irresponsible means.

1 That's strike one for Mr. Deakin in both
2 his professional and employment life and in his life
3 with Board of Bar Overseers and bar discipline.
4 That's the first complaint with regard to these
5 matters. And he knows, as he sits here in this
6 witness box in front of you, that he can't possibly
7 say that they used the press in any way to influence
8 or embarrass Judge Lopez or Ebony Horton while he's
9 on the stand because that's strike 2 with regard to
10 Mr. Deakin. And he can't have that.

11 So it goes to his bias and motive to lie in
12 these proceedings. And that is not collateral. It
13 is not subject to the Court's discretion, because in
14 that particular area of the law it is clear, as
15 stated in the case of Commonwealth versus O'Neil,
16 that evidence tending to show witness' bias,
17 prejudice or motive to lie is so significant that it
18 is not considered to be a collateral matter, but is
19 deemed exculpatory evidence that may be established
20 by extrinsic proof, as well as by impeachment
21 through cross examination. For all of those
22 reasons --

23 And one further reason that I think is also
24 important. And, Judge, respectfully, I think you

1 leapt at something that isn't there and that has to
2 be corrected. You recall that in your statements to
3 me and to counsel on this issue, you said -- and I
4 think I'm quoting you accurately -- "Secondly" --
5 this is the Court speaking -- "it does go" -- you
6 say, "It goes go to the issue of credibility. And
7 it also goes to show that Judge Russo followed
8 established procedure when he notified the DA's
9 office, and your client did not." And then you went
10 on to discuss --

11 HEARING OFFICER DAHER: Right.

12 MR. EGBERT: Judge, there is no established
13 procedure.

14 HEARING OFFICER DAHER: I agree.

15 MR. EGBERT: And Judge Russo will testify
16 to that. He just took one course of many available
17 under the circumstances.

18 HEARING OFFICER DAHER: Right.

19 MR. EGBERT: And I think for all of those
20 reasons -- and for the last reason, and that is --
21 two reasons. One of the considerations that we have
22 in this area of the law is it's just going to drag
23 the proceeding out. It's not. Judge Russo will be
24 a short witness. The event is short. It's concise.

1 It is a small snippet, so to speak, to be heard.
2 Two, is a jury likely to be confused by it?
3 We have no jury. You are an experienced judge who
4 can and will give it --
5 HEARING OFFICER DAHER: Let's talk about
6 the other witnesses, if you will. I'm somewhat
7 familiar as to Mr. Deakin's comments, obviously, and
8 what I think --
9 MR. EGBERT: There are no other witnesses
10 that fit this category that I understand. There
11 would have been, except you excluded the evidence on
12 Leora Joseph, if you recall. And that was excluded
13 outright with regard to her alleged lies to a court
14 in the Boston Municipal Court. Since you excluded
15 that, I haven't named any witnesses -- I haven't
16 brought in any witnesses that would testify in that
17 area of the law.
18 HEARING OFFICER DAHER: How about the
19 judges that you had in mind of bringing in?
20 MR. EGBERT: No. As to whether or not
21 they're going to testify about something Deakin did?
22 HEARING OFFICER DAHER: Are you intending
23 to call them?
24 MR. EGBERT: We're not on the same page. I

1 apologize. I intend to call judges, but not on
2 these --
3 HEARING OFFICER DAHER: I understand that.
4 In regards to what?
5 MR. EGBERT: In regards to Judge Lopez's --
6 HEARING OFFICER DAHER: Character or
7 procedure in Superior Court?
8 MR. EGBERT: Her work, her work ethic,
9 similar to the matters discussed in re Brown and
10 that type of thing.
11 HEARING OFFICER DAHER: But you're familiar
12 with the rule in re Brown. It's the charges and the
13 weight to be given is very slight. I mean, if you
14 recall -- again, are they going to testify as to the
15 procedure on pleas in the Superior Court?
16 MR. EGBERT: No.
17 HEARING OFFICER DAHER: They're not going
18 to testify to that?
19 MR. EGBERT: No.
20 HEARING OFFICER DAHER: They're going to
21 testify as to her work ethic? How would they know
22 that? In the Appeals Court there are panels and
23 they sit there and they talk about it.
24 I believe -- I know that judges are not

1 supposed to discuss cases, an ongoing case with
2 another judge. So how are they going to testify to
3 it?

4 MR. EGBERT: First of all, that's at issue,
5 Judge. That's seriously at issue. There's case law
6 directly on point on that as to whether or not
7 judges can consult with other judges on cases and
8 law concerning cases and the like.

9 HEARING OFFICER DAHER: How would they have
10 that specific knowledge as to her work ethic?

11 MR. EGBERT: Because some of them do. For
12 example, Judge Mulligan was her Chief for a number
13 of years, and he would be the person who would be
14 responsible for her assignments, who would be
15 responsible for any complaints received with regard
16 to her, be responsible to see that her assignments
17 are accomplished and tasked appropriately and the
18 like.

19 Judge Quinlan was her regional
20 administrative judge for a number of years. She
21 would find herself in the same position, along with
22 other activities on the Court and the like. Judge
23 Bohn worked with Judge Lopez from as far back as the
24 Attorney General's Office and is prepared to discuss

1 a number of things about her and the like. There
2 are a number of lawyers that I'll be bringing in to
3 talk about their practice before Judge Lopez --
4 their practicing before Judge Lopez, all -- some on
5 the issue of how that affects any conduct that's
6 described here, much of it on the issue of what, if
7 any, sanction ought to be imposed if a violation is
8 found.

9 The problem with this kind of proceeding is
10 it's not bifurcated. And so I am compelled, as I
11 understand the law, to present to you the following:
12 Discussions and arguments on the facts of the law
13 and the allegations described. And then on the
14 chance that you will find a violation, any and all
15 mitigating information, which I think is appropriate
16 to go before you in a decision as to what effects
17 the appropriate sanction. And that includes, by the
18 way -- and I haven't decided whether to do it or
19 not -- that includes whether or not the Judge makes
20 a statement to the Court with regard to those
21 issues.

22 So because it's not bifurcated --
23 HEARING OFFICER DAHER: I understand.
24 MR. EGBERT: -- that's where I find myself.

1 HEARING OFFICER DAHER: Okay. Mr. Ware?

2 MR. WARE: Your Honor, nothing that Mr.
3 Egbert has said changes the law of Massachusetts.
4 And while he's a skilled orator and trial lawyer ,
5 even he can't do that. And the law is quite clear
6 in this state that one cannot attack the credibility
7 of a witness by calling a third party with respect
8 to another incident. And the limited exception that
9 plays out -- and in fact is the subject of one of
10 the cases Mr. Egbert gave you today -- is a party in
11 the case, the defendant in the case.

12 For example, we could presumably, as the
13 Commission, call a character witness regarding a
14 certain incident involving Judge Lopez. I'm not
15 proposing we do that. But the difference is she is
16 a party. When it comes to a witness, a third-party
17 witness, the law is absolute in this respect that
18 the Court does not have the discretion to do that.
19 And the reasons are intuitively sound. That once
20 you go down that road, obviously there can be little
21 mini trials with respect to each witness who
22 testifies, and that's highly inappropriate.

23 I don't believe anything Judge Russo could
24 or might say has a bearing on the testimony you saw

1 of Mr. Deakin. Whether there was another incident
2 in which the Judge and Mr. Deakin either
3 misunderstood one another or they were two ships
4 passing in the night, who knows. One thing we do
5 know from what's been proffered to Your Honor is
6 Judge Russo handled it in a professional manner by
7 calling the district attorney's office, by having a
8 meeting with the district attorney and then with Mr.
9 Deakin, and then parting ways. No complaints were
10 filed, nobody went to the Board of Bar Overseers.
11 Whatever the issue, they resolved it as men and as
12 professionals.

13 Here, Your Honor, we're talking about a
14 third-party witness. And obviously if this
15 testimony comes in, we will need to call superiors
16 from the district attorney's office in rebuttal.
17 And we're off on another little tangent here.

18 The important point is you watched Mr.
19 Deakin for days. You're in a position to assess his
20 credibility, and you can do that without hearing
21 from third-party witnesses with respect to another
22 incident, if indeed there was such an incident, that
23 isn't relevant here anyway, and again, by
24 definition, occurs after the events in this case.

1 Even Mr. Egbert is not saying it's something Judge
2 Lopez knew.

3 What's at issue in this proceeding is the
4 Judge's conduct, even though it seems as though
5 we've spent 60 percent of the time on why she made
6 the sentencing decision, at least on the defense
7 side.

8 But in any event, what's at issue is the
9 Judge's conduct, not Mr. Deakin's conduct. The
10 Judge's conduct cannot be informed by something that
11 happened after this was all over. It just can't be.

12 So again, to the extent the Court allowed a
13 couple of questions earlier, I respectfully suggest
14 that that was a mistake, and the answer to that is
15 not to compound it, to let third-party witnesses
16 come in. The answer is to recognize it and say,
17 Let's get back on track.

18 HEARING OFFICER DAHER: How about the other
19 witnesses?

20 MR. WARE: Your Honor, I agree with my
21 inference of the way in which the Court reads the
22 Brown case, which is to say that evidence from other
23 judges that Judge Lopez has been a valued colleague
24 and an eminent jurist, in many respects is really

1 irrelevant to the issue at hand. I'm not going to
2 stand in the way of those witnesses -- I'm not
3 saying I won't object to certain aspects of the way
4 they testify, depending on what they are proffered
5 for; but I'm reluctant to say as a blanket matter,
6 that I would oppose a whole category of witnesses
7 without knowing for sure what they would testify to.

8 I do believe that the Court is quite
9 correct that whatever those judges say about Judge
10 Lopez's reputation and whatever their level of
11 knowledge, it really doesn't carry any weight with
12 respect to the conduct that's at issue. And indeed,
13 no one on the Commission, nor am I, is broadly
14 challenging Judge Lopez or indicting her entire
15 career. That's not what's at issue here.

16 HEARING OFFICER DAHER: Last word, Mr.
17 Egbert?

18 MR. EGBERT: Yes. I guess just by
19 repeating it over and over again, Mr. Ware thinks
20 that it will come true; but when he says to you it's
21 the law of this Commonwealth that you cannot impeach
22 a witness with extrinsic evidence, it's simply not
23 true. And I've read to you a specific paragraph of
24 a case -- a number of cases -- that make it crystal

1 clear that that's appropriate. In some instances
2 it's within the Court's discretion. In others,
3 where it relates to motive or the like, it is not
4 within the Court's discretion, unless it would be a
5 marathon, and then I think Court control might take
6 over. I don't think anything he's said has changed
7 the law. You've heard the arguments and the like.

8 With regard to the other witnesses,
9 so-called, Judge, I would caution in this fashion,
10 it's not my intention, obviously, to call all the
11 world that thinks the world of Maria Lopez, because
12 that would be too time-consuming and the like. But
13 to say that if a violation of any canon is found,
14 that the history and life of the Judge before the
15 Court is irrelevant, as Mr. Ware said, is frivolous,
16 to say the least.

17 It may not be the only consideration or the
18 biggest consideration, but certainly one considers,
19 as they did in Brown, whether it was first, second,
20 third or fourth or fifth violation and the like and
21 the statements of colleagues and the like as to the
22 service to the community. No sanction in any
23 disciplinary proceeding can be considered without
24 considering the person involved.

1 HEARING OFFICER DAHER: Thanks very much
2 for the help. I'll have a ruling on this by 4:00,
3 and I'll see you at 2:00. Thank you very much.
4 MR. EGBERT: Judge, I apologize. Can I
5 just give you a cite in Commonwealth versus O'Neil?
6 HEARING OFFICER DAHER: Yes.
7 MR. EGBERT: Do you want the Northeast cite
8 or the Appellate Court cite?
9 HEARING OFFICER DAHER: What do you have?
10 MR. EGBERT: 51 Mass. Appeals Court 170,
11 744 Northeast 2nd, 86.
12 (Luncheon recess taken from
13 1:00 p.m. to 2:00 p.m.)
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AFTERNOON SESSION

1
2 HEARING OFFICER DAHER: Mr. Ware, do you
3 want to wait for Mr. Braceras?

4 MR. WARE: No, Your Honor. I'm all set.

5 BY MR. EGBERT:

6 Q. Ms. Goldbach, I think when we concluded I
7 had asked you about everything that had occurred up
8 until the point where you had gone into court on the
9 4th of August before the continuance. Is that about
10 right?

11 A. Right.

12 Q. Now, when you went into court at that time,
13 I think you said you had been given a copy of
14 Exhibit 17, which is the Commonwealth's motion,
15 correct?

16 A. Right.

17 Q. And the Court came out. And before the
18 Court came out at that time, do you know, to your
19 knowledge, had anybody made the Court aware of the
20 Commonwealth's opposition to the continuance?

21 A. Not that I'm aware of.

22 Q. You would have had to have been present, I
23 take it, if somebody spoke to the Judge about an
24 opposition, correct?

1 A. Yes.
2 Q. And you weren't present for any such
3 conversation?
4 A. No.
5 Q. Would you turn to Exhibit -- strike that.
6 Do you recall what time of day the Court
7 came in?
8 A. Late morning or early afternoon, before the
9 lunch break.
10 Q. It was before the lunch break?
11 A. Yes.
12 Q. And that's your memory of it?
13 A. Yes.
14 Q. And then would you turn to Exhibit 42,
15 please, in the book. Do you see that?
16 A. I do.
17 Q. That's a transcript of the proceedings on
18 that day; is that right?
19 A. Yes.
20 Q. Now, go to Page 2, if you would. And do
21 you see that the Court comes out and announces that
22 the case is going to be continued until the week of
23 August 21st in Middlesex County, correct?
24 A. Yes.

1 Q. And the Court indicated that she had 16
2 bails and a lot of other things to take care of, so
3 this case is being put over for the plea at another
4 time in Middlesex?

5 A. Yes.

6 Q. And at or about that time of day were you
7 aware whether or not there were a number of bails
8 and other things to be taken care of in the court?

9 A. Yes.

10 Q. And was that so?

11 A. Yes.

12 Q. And then after that, Mr. Deakin indicated,
13 "Your Honor, the Commonwealth objects" and says, "We
14 filed an objection..." Do you see that?

15 A. Yes, I do.

16 Q. Before that point in time, do you know of
17 any time where Mr. Deakin or Ms. Joseph indicated to
18 the Court that there would be an objection to the
19 continuance?

20 A. No, I don't.

21 Q. Did Ms. Joseph indicate in chambers that
22 there would be an objection to the continuance?

23 A. No, she didn't.

24 Q. And when Ms. Joseph came to you, you

1 testified earlier, to get a date -- do you remember
2 that?
3 A. Yes.
4 Q. -- after leaving the lobby conference?
5 A. Yes.
6 Q. Was it your understanding at any time from
7 what she said that she was objecting to a
8 continuance?
9 A. Not at all.
10 Q. Now, after -- and I take it the case was
11 continued that day?
12 A. It was continued.
13 Q. And it was continued to September 6th of
14 the Year 2000?
15 A. Right.
16 Q. From August 4th to September 6th did you
17 have any dealings with the Court?
18 A. With Judge Lopez?
19 Q. Yes.
20 A. No.
21 Q. Had you had conversations with your client
22 during that time period?
23 A. Yes.
24 Q. And had you reached a decision at some

1 point as to whether or not a plea would take place?
2 A. No.
3 Q. As you came to court on September 6th, were
4 you assured, yes or no, of a plea taking place on
5 that date?
6 A. No.
7 Q. Why not?
8 A. My client still -- based on conversations
9 with my client.
10 Q. And so what was your intention on the 6th?
11 A. To speak to my client and to find out if
12 she had made a decision.
13 Q. Is that something that's unusual in your
14 practice?
15 A. Yes.
16 Q. This was not the everyday discussion, I
17 take it, you have with your client?
18 A. Correct.
19 Q. Just prior, days or however, what
20 time period -- I'll ask you, I suppose.
21 Did you receive some communication from
22 court personnel of Middlesex County?
23 A. I did by telephone.
24 Q. And with whom do you recall speaking?

1 A. I don't remember the name of the person who
2 called. It was somebody from the clerk's office, as
3 I understood it.
4 Q. And what was the nature of that
5 conversation?
6 A. That my client could go up to Judge Lopez's
7 courtroom by a rear elevator.
8 Q. And were arrangements made in that regard?
9 A. That I should instruct my client to meet me
10 at the back of the Middlesex County Courthouse and
11 we could use that elevator; that either a clerk or
12 court officer would be waiting for us.
13 Q. And did you inform your client of that?
14 A. I did.
15 Q. And was there any discussion with the clerk
16 as the reason for those precautions?
17 A. No, not that I recall.
18 Q. Now, at that point -- strike that. Did you
19 go to court on September 6th?
20 A. I did.
21 Q. Did you go to the back door?
22 A. I did.
23 Q. And did you meet your client?
24 A. No, I didn't.

1 Q. Where was your client?

2 A. It took a while for me to find my client,
3 actually. And I actually went with a court officer
4 looking for my client, thinking that perhaps she had
5 gone to a different building. And by the time we
6 got back, or shortly after we got back, we learned
7 that my client was already upstairs in the
8 courtroom. She had come from the front.

9 Q. And did you then -- where did you meet your
10 client?

11 A. In a room off of the courtroom.

12 Q. And in that room did you discuss whether or
13 not your client was going to plead guilty?

14 A. Yes, I did.

15 Q. And was a decision finally made?

16 A. Yes, it was.

17 Q. And what was the decision?

18 A. To plead guilty.

19 Q. At some point court was called?

20 A. It was.

21 Q. And you all went to the court through the
22 side door?

23 A. Yes.

24 Q. And you've been involved in cases involving

1 media attention before?

2 A. Yes.

3 Q. And have you ever been involved in courts
4 making arrangements to keep parties and the like
5 away from the media?

6 A. Yes, definitely.

7 Q. And was this similar to the prior cases in
8 that regard?

9 A. Yes.

10 Q. As a lawyer, did you believe that the
11 media, rightly or wrongly, but the attention that
12 went on on August 4th, had any impact on the
13 judicial proceedings that day?

14 MR. WARE: Objection.

15 HEARING OFFICER DAHER: Sustained.

16 Q. Let me go back to Exhibit 17.

17 A. 17?

18 Q. Yes. Would you turn to that, please. And
19 do you see the Court's findings listed there?

20 A. Yes.

21 Q. And have you seen those before?

22 A. Yes.

23 Q. The first finding is that this case was on
24 for a change of plea today. And that's August 4th.

1 Is that a correct statement?

2 A. Yes.

3 Q. And that Assistant District Attorney
4 Joseph, unhappy with the Court's disposition, called
5 the press in. First of all, let me ask you, had Ms.
6 Joseph made her feelings known with regard to the
7 Court's disposition?

8 MR. WARE: Objection.

9 HEARING OFFICER DAHER: I'll hear you.

10 MR. WARE: Well, she's being asked about
11 her feelings. Ms. Joseph has testified. We
12 understand what her thoughts were with respect to
13 the recommendation. I think we should have the
14 witness' observations, not --

15 HEARING OFFICER DAHER: Sustained.

16 Q. Had Ms. Joseph done anything in your
17 presence and the presence of the Court which would
18 indicate to you that she had a feeling one way or
19 another with regard to the disposition?

20 A. Yes.

21 MR. WARE: Objection.

22 HEARING OFFICER DAHER: It's the same thing
23 all over again. Sustained.

24 MR. EGBERT: I don't know if it's the same

1 thing all over again. I'm about to have her
2 describe the conduct. I can ask her everything
3 Leora Joseph did for a week. We'll do it that way.

4 Q. Tell me everything Leora Joseph did from
5 the beginning of this case until the end, until
6 August 4th, that would in any way -- strike that.

7 Tell me everything she did in any way from
8 the beginning of her relations with Judge Lopez to
9 the end, and we'll figure out whether or not any of
10 those make her unhappy.

11 HEARING OFFICER DAHER: Mr. Ware?

12 MR. WARE: Objection.

13 HEARING OFFICER DAHER: Sustained.

14 Q. Tell me her conduct from beginning to end
15 in the Judge's presence.

16 MR. WARE: Objection.

17 HEARING OFFICER DAHER: Sustained.

18 MR. EGBERT: Judge, can I have some
19 understanding of on what basis she's not being
20 allowed to describe the physical conduct --

21 HEARING OFFICER DAHER: I'm not going to
22 get into a colloquy with you. I sustained the
23 objection. Let's move on.

24 Q. Did you have an opinion as to whether or

1 not Ms. Joseph was happy with the disposition?
2 A. Yes.
3 Q. And what was your opinion?
4 MR. WARE: Objection.
5 HEARING OFFICER DAHER: Sustained.
6 *Q. Did you form your opinion based upon facts
7 and circumstances that occurred in the presence of
8 Judge Lopez?
9 *A. Yes.
10 *Q. And what were those?
11 MR. WARE: Objection.
12 HEARING OFFICER DAHER: I'll hear you.
13 MR. WARE: Well, we've been all over this.
14 She's described the lobby conference for four hours
15 now.
16 HEARING OFFICER DAHER: Again, he asked her
17 specifically about the facts. Overruled. Go ahead.
18 THE WITNESS: Could you ask that question
19 again?
20 MR. EGBERT: Sure.
21 Q. I think I asked you whether or not you
22 formed your opinion of her feelings concerning the
23 disposition based upon things --
24 MR. WARE: Objection.

1 HEARING OFFICER DAHER: Sustained.
2 MR. EGBERT: Would you reread the question.
3 *(Record read)
4 A. Mostly by her demeanor --
5 Q. Which was --
6 A. -- and her reaction to Judge Lopez.
7 Q. And describe that, please.
8 A. It was negative. It was unhappy.
9 Q. What did you observe?
10 A. I observed her facial expressions, I
11 observed the way she failed to answer Judge Lopez
12 when Judge Lopez directed certain statements to her.
13 Q. Now, it then says that -- I'm going back --
14 "ADA Joseph, unhappy with the Court's decision,
15 called the press in." Do you see that?
16 A. Yes.
17 Q. When Judge Lopez said to Ms. Joseph,
18 "You're responsible for the press being there," what
19 did she say?
20 A. She did not respond.
21 Q. And who issued the press release in the
22 case on August 3rd --
23 MR. WARE: Objection. We had this
24 testimony this morning from this very witness. The

1 district attorney's office did.
2 MR. EGBERT: Thank you.
3 Q. And the next sentence, "Ms. Joseph has a
4 habit of doing this." Are you familiar with any of
5 those facts?
6 A. No, I'm not.
7 Q. Then the next sentence is, "The defendant
8 suffers from a sexual identity disorder." Do you
9 see that?
10 A. Yes.
11 Q. Was that a true statement?
12 MR. WARE: Objection. Is this now expert
13 opinion?
14 HEARING OFFICER DAHER: Overruled. Go
15 ahead.
16 A. That's true.
17 Q. And that, "She looks female in all
18 respects." Was that a true statement?
19 A. Yes.
20 Q. "And when the defendant and her mother were
21 getting off the elevator on the 15th floor, there
22 was a television camera waiting for her in the
23 hallway." Is that a correct statement?
24 A. Right.

1 Q. "And the defendant and her mother refused
2 to get off the elevator. There was an eruption in
3 the hallway, with the defendant's mother yelling at
4 the press." Is that a true statement?

5 A. Right.

6 Q. "And the Court finds that the ADA Joseph
7 attempted to embarrass and ridicule defendant
8 suffering from a psychological disorder." Do you
9 see that?

10 A. Yes, I do.

11 Q. Did you feel the same way?

12 A. Yes, I did.

13 MR. WARE: Objection as to how this witness
14 felt.

15 HEARING OFFICER DAHER: Sustained.

16 Q. Having in mind Ms. Joseph's conduct, the
17 press release, her statements, and all the various
18 facts and circumstances that had gone on up until
19 that point, do you believe it is a fair inference
20 that she attempted to embarrass and ridicule the
21 defendant suffering from a psychological disorder?

22 A. Yes.

23 MR. WARE: Objection.

24 HEARING OFFICER DAHER: Sustained.

1 Q. Did you say anything to Ms. Joseph at any
2 time on this subject?
3 A. I asked her if she had contacted the press.
4 Q. Did you say anything to her about the
5 content of the press release?
6 A. I don't remember.
7 Q. You did to Mr. Deakin?
8 A. I most certainly did.
9 Q. You've already testified to that?
10 A. Yes.
11 Q. "The Court finds that the Commonwealth
12 caused the continuance because it sought to turn the
13 court proceedings into a circus." Had the press not
14 been there that day and the matters occurring
15 between the grandmother -- or the mother of Ebony
16 Horton and all of the matters you've described, is
17 it likely or unlikely that you would have asked for
18 a continuance that day?
19 MR. WARE: Objection.
20 HEARING OFFICER DAHER: Sustained.
21 Q. What caused you to ask for a continuance
22 that day?
23 A. The presence of the media and what happened
24 as a result of the presence of the media.

1 Q. As you've described previously?

2 A. Right.

3 Q. And then, "There is little, if no impact on
4 the alleged victim, as this is a plea." Did anyone
5 in your presence argue to the Court in any way that
6 there was an impact on the victim in this case if
7 the plea was continued for a month?

8 A. No.

9 Q. And the matter has been rescheduled to
10 September 6th, 2000. That's a true statement?

11 A. Right.

12 Q. Now, when you arrived at court on September
13 6th, ended up in the room, and then finally came
14 into the courtroom, were you aware that there had
15 been certain procedures put in place with regard to
16 the press?

17 A. Yes, I was made aware of those.

18 Q. Do you have A?

19 A. There's a book up here.

20 Q. In that smaller book up there, do you see
21 Exhibit A?

22 A. Yes.

23 Q. Now, that's entitled "Order Limiting the
24 Use of Cameras."

1 A. Right.
2 Q. And were you made aware of that order?
3 A. I was made aware of this order.
4 Q. And the order -- have you seen orders like
5 this before?
6 A. Yes.
7 Q. Is this pursuant to the rules relating to
8 cameras in courtrooms?
9 A. Right.
10 MR. WARE: Objection.
11 HEARING OFFICER DAHER: What's the
12 objection?
13 MR. WARE: Again, this witness is now
14 opining on what this is pursuant to. It's in
15 evidence, there's been testimony about it --
16 HEARING OFFICER DAHER: Overruled. Go
17 ahead. You can have it, Mr. Egbert.
18 Q. And was this the order that was in effect
19 on the day that you appeared in court?
20 A. Yes, it is.
21 Q. When you appeared on the 6th of September,
22 did you have any concerns with regard to whether or
23 not your client would be able to give a knowing and
24 intelligent and voluntary plea if the circumstances

1 existed as they did on August 4th?

2 A. Of course.

3 Q. And what were your concerns?

4 A. That, again, it might not happen.

5 Q. Now, on September 6th you appeared in
6 court, and Exhibit 22 is a transcript of the
7 proceedings in court; is that correct?

8 A. Yes.

9 Q. Now, by the way, would you describe -- how
10 would you describe the finality of the Court's
11 statement to you on August 1st that if the defendant
12 pled, she would give him probation?

13 A. I expected that my client was going to get
14 probation.

15 Q. And in custom and practice in the court,
16 after the Court announces at a plea conference that
17 a sentence will be imposed, is that the practice?

18 A. Yes.

19 Q. Now, in fact, when you came in, after some
20 brief introductions and the like, the Court
21 addressed the defendant; is that correct?

22 A. Yes.

23 Q. And if you go to Page 8 of the transcript,
24 you will agree with me this is before the Court

1 seeks to accept any waivers of the defendant's
2 constitutional rights?

3 A. Yes.

4 Q. And before the Court seeks to have the
5 defendant admit or deny any facts?

6 A. Yes.

7 Q. So this is at the very outset, basically,
8 of the colloquy?

9 A. Right.

10 Q. And the Court says as follows -- and this
11 is addressed to the defendant, is it not?

12 A. Yes.

13 Q. "Okay. Now, the sentence -- and I think I
14 indicated that I was going to place the defendant on
15 probation for a period of five years. I had
16 initially indicated that I would be placing him into
17 the Community Corrections program. It appears that
18 he will not be accepted at the Community Corrections
19 program. Therefore, I am going to place him on
20 probation for a period of five years on electronic
21 monitoring for a period of one year, and that you
22 will be required to attend counseling, and you are
23 to stay away from children under the age of 16.
24 Okay.

1 "Do you understand that that is the
2 sentence that you are going to get?"
3 Do you see that statement?
4 A. Yes.
5 Q. And the defendant says, "Yes."
6 A. Yes.
7 Q. Do you know of any right of appeal
8 thereafter on that sentence by the defendant?
9 A. No.
10 Q. The defendant's acceptance of that sentence
11 is a waiver of any right of appeal, is it not?
12 MR. WARE: Objection. That's a question of
13 law to be left up to other courts, as opposed to Mr.
14 Egbert.
15 HEARING OFFICER DAHER: Sustained.
16 MR. WARE: The witness has said she doesn't
17 know of a right of appeal.
18 HEARING OFFICER DAHER: Sustained.
19 Q. You've been practicing criminal defense for
20 25 years --
21 A. Yes.
22 Q. -- and it's your obligation or
23 responsibility to inform your client of any rights
24 of appeal that they may have from any plea, sentence

1 or conviction, isn't it?

2 A. Right.

3 Q. What did you advise your client with regard
4 to his right of appeal on this plea?

5 A. That there was no right of appeal. I think
6 I should correct that. That the Commonwealth could
7 not appeal it.

8 Q. How about the defendant?

9 A. Well, clients can appeal incarcerated
10 sentences.

11 Q. Whether or not there was a right of appeal,
12 there's a plea and sentence after the defendant
13 agreed to the sentence.

14 A. Correct.

15 Q. Was it?

16 A. No. As I understood it, yes.

17 Q. I want to make it clear. Was there or
18 wasn't there an appeal?

19 A. No, because there was not an incarcerated
20 sentence.

21 Q. Well, let's clear that up. You say there
22 was not an incarcerated sentence, correct?

23 A. Right.

24 Q. If the defendant agreed to an incarcerated

1 sentence, he wouldn't have a right of appeal, would
2 he?

3 A. Only --

4 MR. WARE: Objection.

5 HEARING OFFICER DAHER: What's the
6 objection?

7 MR. WARE: Two. One, the question, of
8 course, is leading. Secondly, this is a pure issue
9 of law. And this is not advice that the witness
10 purports to have given her client at the time.
11 She's now simply opining on a legal issue.

12 HEARING OFFICER DAHER: Let me hear you,
13 Mr. Egbert.

14 Q. Did you give your client advice at the time
15 of this plea as to whether or not he had a right of
16 appeal?

17 A. Yes.

18 Q. What did you advise your client?

19 A. That there was no appeal from the
20 probation.

21 Q. Now, would you turn now to Page 12 and
22 13 -- 12. To acclimate yourself, this is when Mr.
23 Deakin begins to state his recitation of facts,
24 correct?

1 A. Yes.

2 Q. And on Page 13 -- strike that.

3 At the bottom of Page 12 and the top of
4 Page 13 there's the statement, "The defendant told
5 the boy that the defendant was searching for a
6 missing son named Michael and that the defendant
7 would pay \$100 to anyone who found the missing boy.
8 The defendant asked the victim to get into the car,
9 and the boy agreed." Do you see that?

10 A. Yes.

11 Q. Was that the Commonwealth's position that
12 day?

13 A. Yes.

14 Q. And had the Commonwealth ever wavered from
15 that position in any proceeding you were involved
16 in?

17 A. No.

18 Q. Did the Commonwealth ever indicate to Judge
19 Lopez in your presence that instead of the boy
20 agreeing to get in the car, he was pulled into the
21 car forcefully?

22 A. No.

23 Q. And during this recitation of facts to the
24 Court -- and you can look at it, if you want -- was

1 the Court, in your presence, made aware of the fact
2 that the --

3 MR. WARE: Objection. Leading.

4 HEARING OFFICER DAHER: Sustained.

5 Q. Do you recall any conversation by Mr.
6 Deakin with the Court concerning the issue of
7 threats to kill the boy?

8 A. No.

9 Q. Do you recall any conversation with Judge
10 Lopez where Mr. Deakin informed her -- and I'm
11 talking at this proceeding --

12 A. Right.

13 Q. -- concerning her, the defendant, laying on
14 top of the boy with his pants undone?

15 A. No.

16 Q. Have you seen the tape of these
17 proceedings?

18 A. I have seen parts of it.

19 Q. Have you seen the parts where Judge Lopez
20 yells at Mr. Deakin?

21 A. Yes.

22 Q. And did that, in fact, occur?

23 A. Yes, it did.

24 Q. In your 25 years of experience have you

1 been yelled at like that?
2 A. Yes.
3 MR. WARE: Objection.
4 HEARING OFFICER DAHER: Sustained.
5 Q. On how many occasions have you been yelled
6 at in a fashion like that by judges of the Superior
7 Court?
8 MR. WARE: Objection.
9 HEARING OFFICER DAHER: I want to hear
10 that. Go ahead.
11 MR. WARE: Your Honor, this witness is not
12 an expert at being yelled at.
13 HEARING OFFICER DAHER: No. As to what
14 happened to her. That was the question, was it not?
15 MR. EGBERT: That was the question.
16 HEARING OFFICER DAHER: Overruled.
17 A. Over the years it's happened quite a few
18 times.
19 Q. On any other occasion has it been by Judge
20 Lopez?
21 A. No.
22 MR. WARE: Objection.
23 HEARING OFFICER DAHER: Overruled. Go
24 ahead.

1 A. The answer is no.
2 HEARING OFFICER DAHER: The answer is no.
3 I heard it.

4 Q. Go to Page 31, if you would -- no, I'm
5 sorry. If you would go, please, to Page 29, and
6 Line 19. Do you see where the Court says, "Okay.
7 And of those 100 cases, in terms of the facts of
8 this case, on a scale of 1 to 10, where would you
9 put this case?"

10 A. Right.

11 Q. Do you know of any guidelines, whether they
12 be Superior Court guidelines, proposed guidelines or
13 any guidelines whatsoever, that refer to cases on a
14 1-to-10 numerical system?

15 A. No, I don't.

16 MR. WARE: Objection.

17 HEARING OFFICER DAHER: What is the
18 objection?

19 MR. WARE: Your Honor, this, in effect, is
20 asking for the witness' expert interpretation of
21 Judge Lopez's words on the record on September 6th,
22 2000. The evidence has no probative value
23 whatsoever.

24 HEARING OFFICER DAHER: Mr. Egbert?

1 MR. EGBERT: I'm not asking for her
2 interpretation of Judge Lopez's words. I'm asking
3 her a specific question whether these words, in her
4 knowledge, refer to any guidelines that she knows of
5 that go on a scale of 1 to 10.

6 MR. WARE: If that's the intent, then it's
7 hopelessly irrelevant.

8 MR. EGBERT: I don't think it's hopelessly
9 irrelevant, Your Honor --

10 HEARING OFFICER DAHER: Overruled. Go
11 ahead. You have it.

12 A. I know of no such guidelines.

13 Q. And as an attorney sitting there that
14 day -- and this was a proceeding in which you were
15 both involved in and was an important consideration
16 for you, correct?

17 A. Yes.

18 Q. Did you have an understanding of what
19 factors that question referred to?

20 MR. WARE: Objection.

21 HEARING OFFICER DAHER: Sustained.

22 Q. Shortly thereafter, Mr. Deakin indicates,
23 "In terms of the lack of a relationship between the
24 perpetrator and the victim, I would say this is a

1 10..." Do you see that?
2 A. I do.
3 Q. Have you been involved in a number of
4 sexual assault cases --
5 A. Many.
6 Q. -- over the years?
7 A. Yes.
8 Q. Have you been involved in sexual assault
9 cases where there has been physical injury to the
10 victim?
11 A. Yes.
12 Q. And have you been involved in sexual
13 assault cases where there has been penetration of
14 the victim?
15 A. Yes.
16 Q. And have you been involved in sexual
17 assault cases where there has been repetitive
18 conduct?
19 A. Yes.
20 Q. And have you been involved in sexual
21 conduct cases where there has been substantial and
22 irreparable psychological injury to a victim?
23 A. Yes, I have.
24 Q. And have you been involved in sexual

1 assault cases where the victim has suffered long-
2 term physical disability?

3 A. Yes, I have.

4 Q. And how would you compare those cases to
5 the case in which you were before the Court that
6 day?

7 MR. WARE: Objection.

8 HEARING OFFICER DAHER: Sustained.

9 Q. Now, shortly after -- on Page 31, at Line
10 8, the Court says, "I'll hear from the defense
11 attorney." Do you see that?

12 A. I do.

13 Q. Is that an unusual statement in courts that
14 you've been involved in?

15 MR. WARE: Objection.

16 HEARING OFFICER DAHER: Overruled.

17 A. No, it is not.

18 Q. And what does that suggest to you should
19 happen next in the proceeding?

20 MR. WARE: Objection.

21 HEARING OFFICER DAHER: Sustained.

22 Q. When you hear those words, "I'll hear from
23 the defense attorney," what do you do?

24 (Mr. Ware stands)

1 HEARING OFFICER DAHER: What's the
2 objection?

3 MR. WARE: As to what she does in other
4 cases? This is a transcript of a specific
5 proceeding. We know what happened, we have a
6 videotape of it, the Judge has testified, the other
7 relevant participant has testified. Now the witness
8 is being used again as an expert on direction from a
9 Judge.

10 MR. EGBERT: She's not being used as an
11 expert. She's being used to show what the custom
12 and practice is in a court when a judge --

13 HEARING OFFICER DAHER: Overruled. Go
14 ahead.

15 A. This is the point, as defense counsel, we
16 know to make a dispositional pitch.

17 Q. And at that time Mr. Deakin spoke and said,
18 "Your Honor, if I may --," correct?

19 A. Yes.

20 Q. And that's where the Judge said, "No, you
21 may not. You may sit down now." And do you recall
22 her yelling it at that time?

23 A. I do.

24 Q. And customarily, it's the custom and

1 practice of the court when it's the defense
2 counsel's turn to speak, what does the prosecutor
3 do?

4 MR. WARE: Objection. An expert on custom
5 and practice.

6 HEARING OFFICER DAHER: Sustained.

7 Q. The Court then went on to say, "You may sit
8 down now or I'll get a court officer to make you sit
9 down. And I'll hear from the defense attorney"?

10 A. Yes.

11 Q. And Mr. Deakin said, "I object to being
12 charged with being disingenuous." At that time did
13 he sit down?

14 A. I don't remember, frankly.

15 Q. Did he stop speaking?

16 A. No.

17 Q. Did he continue to speak after the Court
18 said, "I'll hear from you"?

19 A. Yes.

20 Q. Did he continue to speak after the Court
21 said, "No, you may not. You may sit down"?

22 MR. WARE: Objection, Your Honor. All
23 these questions are leading. We have the best
24 evidence; namely, a videotape.

1 HEARING OFFICER DAHER: Overruled.
2 Q. You were there, weren't you?
3 A. Yes.
4 Q. And is that what occurred?
5 MR. WARE: Objection.
6 HEARING OFFICER DAHER: Overruled.
7 Q. You went on to say at Line 23, "Your Honor,
8 on behalf of my client, you know my client's
9 background, you know what kind of work and things
10 that my client has done since she was charged in
11 this case. And for reasons of my client's privacy,
12 I'm not going to go into those details at this time.
13 But I'd ask Your Honor to sentence my client as you
14 indicated earlier this morning."
15 A. Yes, I did.
16 Q. Now, you didn't choose at that time to put
17 the psychosocial report into evidence, correct?
18 A. That's correct.
19 Q. And you didn't choose to make oral
20 representations regarding that, correct?
21 A. That's correct.
22 Q. Why not?
23 A. I feared for my client's safety.
24 MR. WARE: I object as to her reasons for

1 what she did not do on September 6th.
2 HEARING OFFICER DAHER: Sustained.
3 MR. EGBERT: Your Honor, please, the
4 reasons that she didn't do it are consistent with
5 the Court's not requiring her to do it. And I think
6 what she will testify to is that she knew that she
7 could rely on the fact that the Judge had already
8 seen all of these matters and had made her
9 sentencing decision. And I think that's an
10 important matter.
11 HEARING OFFICER DAHER: Last word, Mr.
12 Ware?
13 MR. WARE: It's irrelevant what she
14 thought.
15 HEARING OFFICER DAHER: The ruling stands.
16 Let's go.
17 BY MR. EGBERT:
18 Q. After this proceeding was complete, did you
19 do something with the so-called psychosocial report?
20 A. I did.
21 Q. What did you do with it?
22 A. I faxed it to the Probation Department at
23 their request.
24 Q. And was that for putting in their file?

1 A. Yes, it was.
2 Q. And is that an unusual practice, as you
3 understand it?
4 A. No.
5 Q. Is the probation file confidential?
6 A. Yes, it is.
7 Q. Is it open to the public?
8 A. No, it is not.
9 Q. Did that satisfy your concerns for your
10 client's privacy?
11 MR. WARE: Objection.
12 HEARING OFFICER DAHER: Sustained.
13 Q. Did you have any objection to putting it in
14 the probation file?
15 MR. WARE: Objection. She sent it to them.
16 HEARING OFFICER DAHER: What's the
17 objection? She wanted to send it to them. She did
18 send it to them. Overruled. Go ahead.
19 Q. And in fact, at one point just after that
20 place -- and I want to get to where it is. On Page
21 23 of the transcript, if you'd liked look at it,
22 during the -- you can see that that's pretty much
23 during Mr. Deakin's sentencing recommendation?
24 A. Yes.

1 Q. And he says on Page 22 at the bottom,
2 "Second, that the defendant submit himself to a sex
3 offender evaluation by an evaluator determined by
4 the Suffolk County Probation Department and enter
5 and successfully complete whatever treatment it
6 deemed necessary as a result of that evaluation."
7 And the Court says, "Do you know that he has already
8 been evaluated"?

9 A. Yes.

10 Q. What did you understand the Judge was
11 talking about in that statement?

12 MR. WARE: Objection.

13 HEARING OFFICER DAHER: Sustained.

14 Q. You are charged as an attorney in that case
15 with understanding what the Court is saying and
16 protecting your client's rights; is that correct?

17 A. Yes.

18 Q. Did you know of any evaluation of your
19 client --

20 MR. WARE: Objection to the leading nature
21 of the question.

22 HEARING OFFICER DAHER: Overruled.

23 Q. Did you know of any evaluation of your
24 client that had been done other than the

1 psychosocial evaluation which is Exhibit 3 in this
2 case?
3 A. No.
4 MR. WARE: Objection.
5 HEARING OFFICER DAHER: Overruled. The
6 answer is in anyhow. Let's go.
7 Q. And on Page 24 there's a discussion between
8 the Court and Mr. Deakin, with the following
9 remarks:
10 "THE COURT: And would the Commonwealth
11 request that this defendant be sent to a male prison
12 or female prison?" Do you see that?
13 A. Yes.
14 Q. Had that matter been discussed at lobby
15 conference on the 1st of August, the manner in which
16 the defendant would be incarcerated?
17 A. Yes, at the side bar.
18 Q. At the side bar conference on August 1st?
19 A. Right.
20 Q. And had the Judge on August 1st made that
21 consideration known to the parties?
22 A. Yes.
23 Q. And to Ms. Joseph?
24 A. Absolutely.

1 Q. And in fact sought -- I think you testified
2 she sought to have Ms. Joseph --
3 MR. WARE: Objection.
4 HEARING OFFICER DAHER: What is your
5 objection?
6 MR. WARE: Leading.
7 HEARING OFFICER DAHER: Overruled.
8 Q. She sought to have Ms. Joseph discuss that
9 particular aspect on August 1st?
10 A. Yes, she did.
11 Q. And the sentencing, I take it, was
12 completed and the sentence was imposed; is that
13 correct?
14 A. Yes.
15 Q. No objection was made by you to the
16 sentence?
17 A. No.
18 Q. No objection was made by you to the plea?
19 A. No.
20 Q. And is an objection required to any matter
21 such as that in order to preserve one's right to
22 appeal?
23 A. Yes.
24 MR. WARE: Objection.

1 HEARING OFFICER DAHER: Overruled.

2 Q. After -- well, on September 6th and shortly
3 thereafter, would you -- could you describe the
4 extent and type of media attention that the Horton
5 case received?

6 A. After I left court that day, I took my
7 client to the Probation Department to sign some
8 papers and to be assigned a probation officer. And
9 thereafter, I returned to our offices, which were
10 then at Chauncy Street, and my voicemail was
11 completely maxed out. I couldn't get any more phone
12 calls on my voicemail. And there were numerous
13 phone calls from representatives of the press and
14 the media.

15 Q. And did you respond to those?

16 A. I did respond to those.

17 Q. And can you describe the nature of the
18 conversations?

19 MR. WARE: Objection.

20 HEARING OFFICER DAHER: Overruled.

21 A. The phone calls went on and on for days and
22 days and days. The initial phone calls I was giving
23 the media people the courtesy of a return phone
24 call, to find out what they wanted to know.

1 I really needed to find out what they were
2 looking for before I could respond to it.
3 Q. And what were they looking for?
4 MR. WARE: Objection.
5 HEARING OFFICER DAHER: Sustained.
6 Q. How would you describe the -- strike that.
7 Without regard to the phone calls for a
8 moment, did you watch television, listen to the
9 radio, read the papers?
10 A. Yes, I did.
11 Q. And how would you describe that media on
12 September 6th and 7th?
13 A. There was a high level of attention to this
14 case.
15 Q. Can you describe its content?
16 MR. WARE: Objection.
17 HEARING OFFICER DAHER: What she observed.
18 Overruled. Go ahead. What you saw.
19 A. There was a lot of attention on Judge
20 Lopez, there was a lot of attention on my client,
21 there was an interest in locating my client, in
22 photographing my client, in trying to find out the
23 background of my client, the background of the case.
24 I mean, it seemed like every aspect of this entire

1 case and Judge Lopez was being aired out in the
2 media.
3 Q. And at some point did you receive or make a
4 telephone call to Judge Lopez?
5 A. I received a phone call from Judge Lopez.
6 Q. And where was that?
7 A. At my office.
8 Q. And approximately when was it?
9 A. I believe it was two or three days after
10 the plea.
11 Q. After September 6th?
12 A. Right.
13 Q. Let me ask you. Was it the next day?
14 A. It could have been. I'm not sure.
15 Q. But it was sometime within those days?
16 A. Yes, for sure.
17 Q. And what was the conversation you had?
18 A. Concern for my client, how was my client,
19 how was I doing, that this was unbelievable, the
20 level of press coverage in this case, that we had
21 seen nothing like it before, that type of thing.
22 Q. And did she ask you to do anything for her?
23 A. No, she did not.
24 Q. Did you offer to do anything for her?

1 A. No, I did not.
2 Q. Was there anything else to the conversation
3 of note?
4 A. No.
5 Q. And at sometime later was there another
6 conversation with Judge Lopez?
7 A. There was.
8 Q. And where did that occur?
9 A. That was on the phone.
10 Q. And where were you?
11 A. I was at home.
12 Q. Did Judge Lopez call you or did you call
13 her?
14 A. She called me.
15 Q. And that's your memory of the events?
16 A. That's my memory.
17 Q. And what was that -- strike that. When did
18 that conversation take place?
19 A. It was on a weekend. That's all I can tell
20 you.
21 Q. Was it the first weekend after September
22 6th?
23 A. I believe so, yes.
24 Q. And what was the nature of that

1 conversation?
2 A. It was very similar to the first
3 conversation.
4 Q. Did she ask you to do anything for her?
5 A. No, she didn't.
6 Q. Did you offer to do anything for her?
7 A. No.
8 Q. Did you have any discussions in either of
9 those conversations about anything --
10 MR. WARE: Objection, Your Honor. The
11 witness should be asked what the conversations were,
12 not leading questions.
13 HEARING OFFICER DAHER: Sustained.
14 Q. Did you discuss the Horton case?
15 MR. WARE: Objection. That's a conclusion,
16 a characterization of the conversation.
17 HEARING OFFICER DAHER: No. I'm going to
18 allow that. Go ahead.
19 A. In terms of the facts of the case, no.
20 Q. Did you discuss the law of the case?
21 A. No.
22 Q. Did you discuss rulings that had been made?
23 A. No.
24 Q. Did you discuss rulings that were to be

1 made?
2 A. To be made? No.
3 Q. Did you discuss issues that might occur in
4 the future?
5 A. No.
6 Q. Did you discuss issues that occurred in the
7 past?
8 A. No.
9 MR. EGBERT: May I have a minute, Your
10 Honor? (Pause)
11 Q. Ms. Goldbach, was there -- at some point in
12 time did you have a conversation with Jay Greene
13 after the plea?
14 A. I did.
15 Q. And when was that?
16 A. That was when I was in Dorchester Court on
17 other cases.
18 Q. Do you recall when in relation to September
19 6th that was?
20 A. It was close in time. I don't know the
21 exact date.
22 Q. Was it that week or the following week?
23 Are you able to tell that? When I say "that,"
24 that's pretty inarticulate. Was it the week of

1 September 6th or the following week?

2 A. I'm not sure.

3 Q. What was the conversation you had with Jay
4 Greene?

5 MR. WARE: Objection.

6 HEARING OFFICER DAHER: Overruled. I want
7 to hear it.

8 A. Jay Greene and I discussed the level of
9 attention this case was getting in the media. And
10 Jay Greene indicated that while he did not agree
11 with the Judge's sentence, that he felt she was
12 being unfairly treated in the press. And he wanted
13 to know how she was doing. And I indicated to him I
14 really didn't know, but that I'm sure that this
15 wasn't easy. And I ended up giving him Judge
16 Lopez's phone number, her courthouse number.

17 Q. Her chamber's number?

18 A. Right.

19 Q. Did you tell him to call Judge Lopez?

20 A. I didn't tell him to call Judge Lopez. I
21 asked him if he wanted to call her.

22 Q. And what did he say?

23 A. He said, "Yes." -- or if he wanted to talk
24 to her, actually.

1 Q. Of your own knowledge do you know whether
2 Judge Lopez and Detective Greene know each other at
3 all?

4 A. I have no idea.

5 Q. After that conversation with Jay Greene,
6 did you have any further conversation with him in
7 regard to these matters?

8 A. I see Jay Greene periodically -- I've seen
9 Jay Greene periodically over the past two or more
10 years when I go to Dorchester Court. So I have
11 brief conversations.

12 Q. And after you gave -- strike that. After
13 you gave Detective Greene Judge Lopez's number, did
14 you have any further conversation with Judge Lopez
15 concerning these matters?

16 A. No, I didn't.

17 MR. EGBERT: Nothing further.

18 HEARING OFFICER DAHER: Okay.

19 CROSS EXAMINATION

20 BY MR. WARE:

21 Q. Ms. Goldbach, we now have two reports from
22 Ms. Katz in evidence in this case, Exhibit U, which
23 you produced to counsel yesterday, and Exhibit 3.

24 A. Right.

1 Q. Do you understand that?

2 A. Yes.

3 Q. And as I understood your direct testimony,
4 Exhibit U, which I will call the December 1999
5 version of the report --

6 A. Right.

7 Q. Is that fair?

8 A. That's fair.

9 Q. Your best recollection is that the report
10 which you provided last night, now marked Exhibit U,
11 was prepared by Ms. Katz in December 1999 in
12 anticipation of a bail hearing which you anticipated
13 would be coming up in Superior Court, correct?

14 A. Yes. I should say that it was prepared
15 either in December or January of 2000. And the
16 arraignment was in 2000 -- January 2000.

17 Q. Earlier you were asked some questions about
18 Mr. Horton's bail status. Am I correct that in
19 fact, he was released from Nashua Street on December
20 28th, 1999?

21 A. That sounds correct.

22 Q. So essentially he was incarcerated or
23 unable to make bail from the period of November
24 20th, 1999, the date of arrest, until the end of

1 December 1999?
2 A. Yes.
3 Q. You had occasion to visit him in the
4 Charles Street Jail?
5 A. Yes, I did.
6 Q. Maybe I should say Nashua Street.
7 A. It was Nashua Street.
8 Q. And you visited him in December at some
9 point; is that correct?
10 A. Yes.
11 Q. Can you estimate for us about how much time
12 you spent with him on that occasion?
13 A. The first time I met with my client?
14 Q. Yes.
15 A. If I had to guess -- I don't have a clear
16 memory of it at this point -- 45 minutes or an hour.
17 Q. And I am correct, am I not, that Ms. Katz
18 also visited Mr. Horton at the Nashua Street Jail in
19 December?
20 A. Right.
21 Q. And that was the basis of her preparing the
22 report, correct?
23 A. Part of it, yes.
24 Q. Well, when you say "part of it," she

1 indicates in Exhibit 3 that she had two visits,
2 December 1999 and July 2000. Is that consistent
3 with your recollection?

4 A. Yes.

5 Q. And on the basis of the December 1999
6 visit, she prepared the first report, correct?

7 A. Right. When I say "part of it," what I
8 mean to say is that she may have verified some of
9 the information that my client gave her.

10 Q. Through documents or other things --

11 A. Through documents or phone calls or other
12 things. And I am not sure what those things were.

13 Q. Fair enough. But your understanding is
14 that she had one visit at Nashua Street Jail in
15 December of 1999, that she may have verified
16 information or had documentation from you, and she
17 prepared the initial report for the bail hearing?

18 A. Right.

19 Q. Now, let me ask you, if you would, to -- do
20 you have a copy of Exhibit U in front of you, it
21 being the December 1999 report?

22 A. I don't believe so.

23 Q. I'm going to give you a copy, with the
24 representation that we've deleted the fax

1 information from the actual exhibit.
2 A. Right.
3 Q. This report -- and for that matter, Ms.
4 Katz's final report -- breaks down into a couple of
5 sections; isn't that correct?
6 A. That's correct.
7 Q. And initially it purports to talk about
8 personal and family history?
9 A. Yes.
10 Q. And then it goes on in a separate section
11 to talk about education and employment?
12 A. Yes.
13 Q. And it then talks about substance abuse,
14 with a heading entitled "Substance Abuse," correct?
15 A. Yes.
16 Q. And then it goes to "Clinical Impression"?
17 A. Yes.
18 Q. And then finally to "Recommendation"?
19 A. Yes.
20 Q. And that is -- those are parallel in both
21 of the reports? Each of the headings is identical,
22 correct?
23 A. They are.
24 Q. You understand that the point at which Ms.

1 Katz, as a clinician, is giving something in the
2 nature of a diagnosis or, as she calls it, an
3 impression, is in the "Clinical Impression" section
4 of the report; is that correct?

5 A. I'm not sure I understand your question.

6 Q. Let me see if I can be clear.

7 The "Clinical Impression" section of the
8 report --

9 A. Yes.

10 Q. -- as you understand these reports, is
11 intended to be the point at which Ms. Katz
12 identifies her professional opinion about the
13 condition of the defendant; isn't that correct?

14 A. Yes.

15 Q. That's why it's called "Clinical
16 Impression"?

17 A. Yes.

18 Q. And it's intended to summarize her
19 professional views, or, as she calls them, her
20 impression of the defendant's condition; is that
21 correct?

22 A. Yes.

23 Q. Now, it is true, is it not, that the
24 December 1999 "Clinical Impression" section is

1 essentially identical to the final document produced
2 in July or early August of 2000; isn't that correct?
3 A. I'd have to take another look at it.
4 Q. Why don't you take a moment and do that, if
5 you would.
6 A. (Witness reviews document) I believe that
7 there's a couple of differences.
8 Q. I can point a couple of them out to you, if
9 that would help you.
10 A. All right.
11 Q. But in terms of literal language, if you
12 look at Line 3 in the December 1999, it says in the
13 middle of that line "in some ways," and I think
14 that's changed somewhat. And it goes on to say
15 "relating to people her own age," and that's changed
16 into "emotionally immature and needs to work on
17 maturational issues"?
18 A. Yes.
19 Q. But the same point is being made, would you
20 agree?
21 A. Yes.
22 Q. This point that Ms. Katz makes about Ebony
23 being socially immature; is that correct?
24 A. Yes.

1 Q. So the conclusions are the same. The
2 specific language she uses is altered somewhat, but
3 not materially? Fair?

4 A. That's fair.

5 Q. And I think there is perhaps another --
6 well, I think there's a difference -- in the
7 December 1999 report there is discussion about the
8 Fenway Community Health Center -- I guess I'm wrong
9 about that. That's the same in both reports --

10 A. No. Actually, she was initially attending
11 Sidney Borum Health Center.

12 Q. Right.

13 A. And then, as she indicates actually in the
14 second report, "I believe she lost her counselor
15 there, but then went on to Fenway Community Health
16 Center."

17 Q. So a change is that in the December 1999
18 report in the fifth line down in the "Clinical
19 Impression" section there's reference to Sidney
20 Borum Health Center, and in the final report that's
21 deleted.

22 A. It's replaced, right.

23 Q. All right, it's replaced.

24 Now, one inference we can draw from

1 comparing these two reports is that the clinical
2 impressions that Ms. Katz came to after her December
3 1999 visit with the defendant remained fundamentally
4 the same; isn't that correct?

5 MR. EGBERT: Judge, I think I was
6 continually prohibited, upon objection, from asking
7 this witness to draw inferences from this document.

8 HEARING OFFICER DAHER: Overruled. It's
9 cross examination. So go ahead.

10 A. Could you repeat the question?

11 Q. Yes. Without overcomplicating this, I
12 think you've agreed that the clinical impressions in
13 the two reports are fundamentally identical with
14 some language changes that don't affect the opinion;
15 is that correct?

16 A. Yes.

17 Q. And so it's fair to say that in December
18 1999 or the first few days of January 2000, Ms. Katz
19 came to a clinical impression, and she stayed with
20 that impression; isn't that so?

21 A. Yes.

22 Q. The fundamental professional view that she
23 gave of Mr. Horton, or Ebony, did not change from
24 December 1999 until July 2000, correct?

1 A. That's correct.

2 Q. This document or both of these documents
3 are entitled "Psychosocial Assessment and
4 Dispositional Plan," correct?

5 A. Yes, they are.

6 Q. And you have seen and worked with, what,
7 hundreds of these reports over a good many years?

8 A. Hundreds of these types of evaluations?

9 Q. Yes.

10 A. Joan Katz's evaluations?

11 Q. Evaluations from your staff at CPCS, your
12 social worker staff or your professional counseling
13 staff.

14 A. That I personally have worked with hundreds
15 of them? No.

16 Q. The kind of reports that we're looking at
17 are not uncommon; isn't that so?

18 A. That's correct.

19 Q. And CPCS, I think you told us on direct
20 testimony, has its own staff of professionals at
21 this point?

22 A. The Boston office has -- or had one social
23 worker, and that happened to be Joan Katz, the
24 director. Other offices in other regions in the

1 state had their own social worker. So I did not
2 work with those people.

3 Q. But you did work many times with Ms. Katz,
4 did you not?

5 A. I worked with her several times.

6 Q. And the format of this report is consistent
7 with the format of similar reports filed by or made
8 available by CPCS in other cases; isn't that
9 correct?

10 A. It's similar. There may be other headings
11 and other topics that might be addressed with a
12 different individual with perhaps other issues. But
13 it's similar.

14 Q. When you presented this report on August
15 1st, 2000, to Judge Lopez, you made no effort to
16 disguise the fact that this was prepared by a social
17 worker from your office, did you?

18 A. Of course not. Her name was at the bottom
19 with our Committee for Public Counsel Services.

20 Q. And you intended, by including that, to
21 indicate to the reader that the author, the
22 clinician, was someone who worked for your office;
23 isn't that correct?

24 A. Yes.

1 Q. And you intended that to be thorough enough
2 that the reader could, at a glance, determine that
3 this was not some outside consultant or private
4 psychiatrist; isn't that so?

5 A. I'm sorry; you're asking whether I
6 determined it to be thorough enough?

7 Q. Let me try again. The document is signed
8 by Ms. Katz. Her title is there. Her employment is
9 there; isn't that correct?

10 A. That's right.

11 Q. And part of the reason for that is to be
12 candid in representing who she is, whom she works
13 for, and what her position is; isn't that correct?

14 A. Right.

15 Q. Now, in this case -- this case being the
16 Horton case -- you did seek, with a motion for
17 funds, the right to hire an outside psychiatrist,
18 didn't you?

19 A. I did that shortly after the arraignment in
20 Suffolk Superior Court.

21 Q. Let me ask you to look quickly at Exhibit
22 16 in the book before you and ask you whether or not
23 that's the motion that you filed and which was
24 allowed by the Court.

1 A. It was allowed by the trial magistrate,
2 yes.

3 Q. You never got to the point of hiring an
4 outside psychiatrist or professional; is that
5 correct?

6 A. That's correct.

7 Q. But you likely would have done so if the
8 case were going to trial; isn't that correct?

9 A. It's possible, yes.

10 Q. Well, when you say "it's possible," you
11 filed a motion for funds for a psychiatrist; is that
12 correct?

13 A. Psychologist or a psychiatrist, yes.

14 Q. And you did that because your judgment at
15 the time was you might need an independent
16 professional with a Ph.D. psychology degree or a
17 psychiatric degree to assist in the defense,
18 correct?

19 A. No, that's not correct.

20 Q. Tell us why you filed the motion.

21 A. I filed the motion if in fact I would need
22 it down the line for dispositional reasons. There
23 wasn't going to be any sort of psychiatric defense
24 in this case in terms of the allegations. This

1 would allow me, if a court needed it or if a court
2 asked for it -- if they said okay, here's -- above
3 and beyond this, we want you to further document
4 these findings within Joan Katz's report, I would
5 have the funds available.

6 Q. Fair enough.

7 So even in the event of a guilty plea, you
8 contemplated that it might be necessary to hire a
9 psychiatrist or a Ph.D. psychologist?

10 A. That it might be, yes.

11 Q. Now, you were not present at any of the
12 interviews by Ms. Katz with Mr. Horton; is that
13 correct?

14 A. I didn't stay for those interviews, no.

15 Q. And so when there was a meeting between Mr.
16 Horton and Ms. Katz at the Nashua Street Jail, you
17 were not present for that meeting.

18 A. No.

19 Q. And you don't know how long that meeting
20 occurred -- lasted, do you?

21 A. No, I don't.

22 Q. And you don't know how long any ensuing
23 meeting in January -- excuse me -- in July of 2000
24 lasted, do you?

1 A. I wasn't present for the whole thing. I
2 brought my client to Ms. Katz for the interview.

3 Q. In the summer of 2000?

4 A. Right, but they had seen each other on
5 numerous occasions between December and July --
6 "numerous" is perhaps a stretch. They had seen each
7 other on several occasions in between.

8 Q. Well, in fact, Ms. Katz reports having seen
9 Mr. Horton only in December 1999 and on a single
10 day, July 31, 2000; isn't that correct? Right in
11 Exhibit 3?

12 A. What she says is that she evaluated her on
13 those two dates.

14 Q. No. She says, "I interviewed Charles Ebony
15 Horton in December 1999 and again on July 31, 2000";
16 isn't that correct?

17 A. Yes, but there were meetings in between.

18 Q. So you're saying that this report is
19 inaccurate in that respect?

20 A. No. This report indicates the dates that
21 she evaluated my client. My client came to the
22 office on -- as I've told you before -- came to my
23 office on many occasions throughout the months prior
24 to the plea. She would meet with me, and on some of

1 those occasions she would he also stop and visit
2 with Ms. Katz.

3 Q. Well, you will agree with me, will you not,
4 that this report, Exhibit 3, represents -- its
5 author represents that she interviewed Mr. Horton in
6 December 1999 and on July 31, 2000?

7 A. Right.

8 Q. Isn't that so?

9 A. Yes, it does.

10 Q. And it makes no further representation of
11 spending any time with the defendant on the basis of
12 which she comes to any conclusions; isn't that
13 correct?

14 A. It does not.

15 Q. And so anyone reading this report would
16 fairly infer that they met at the most twice; isn't
17 that correct?

18 A. Yes.

19 Q. Now, a moment ago I asked you about the
20 conclusions in this report, in Exhibit U and in
21 Exhibit 3. And I think you've said those
22 conclusions fundamentally didn't change between
23 December 1999 and July 2000, correct?

24 A. Right. There was one addition in the

1 second report that we didn't yet discuss, but...

2 Q. But there is no substantive change
3 whatsoever in the clinical impression; isn't that
4 correct?

5 A. Right.

6 MR. EGBERT: Your Honor, "substantive" is a
7 word of art. It calls for an opinion, and I think
8 fairly so, considering there are a number of changes
9 in there, particularly which mental health center he
10 recommended. So I think the question ought not to
11 assume something that isn't in the report.

12 HEARING OFFICER DAHER: Mr. Ware, do you
13 want to take -- in regard to that objection --

14 MR. WARE: Well, the witness has already
15 answered the question. I don't have any problem
16 agreeing, as I have earlier, that there is a
17 reference to a different mental health center.

18 HEARING OFFICER DAHER: Sustained.

19 Q. Isn't that right?

20 A. Among other differences, yes.

21 Q. Now, let me show you a document not
22 currently in evidence. Can you tell us what that
23 is?

24 MR. EGBERT: May I see it?

1 HEARING OFFICER DAHER: Take a look at it.
2 Q. Do you recognize that document?
3 A. I've never seen it before, but it appears
4 to be records from the Nashua Street Jail.
5 Q. And it appears to be a record of the visits
6 to Mr. Horton during the period of his
7 incarceration; is that correct?
8 A. Yes, it does.
9 Q. And it indicates, does it not, that you
10 visited with Mr. Horton on November 30th, 1999,
11 correct?
12 A. Right.
13 Q. And it indicates that you spent some
14 considerable period of time?
15 A. Yes.
16 Q. From 10:30 in the morning until about
17 quarter of three?
18 A. Yes.
19 Q. Does that refresh your recollection?
20 A. Yes.
21 Q. That you in fact spent four or five hours
22 on that first visit with your client?
23 A. Yes.
24 Q. Is that correct?

1 A. Yes.
2 Q. Now, turning to the next page, it also
3 reflects the December 1999 visit of Ms. Katz. Do
4 you see that?
5 A. Yes.
6 Q. And that visit occurred on December 6th,
7 1999, did it not?
8 A. Yes, it did.
9 MR. EGBERT: Could we approach?
10 HEARING OFFICER DAHER: Side bar?
11 MR. EGBERT: Yes.
12 (At side bar)
13 MR. EGBERT: Your Honor, I don't mind so
14 much, but I'd like to know whether or not these were
15 obtained by subpoena. And if they were, why I
16 wasn't give notice for the request for that
17 subpoena?
18 MR. WARE: I guess I better find out. May
19 I have a moment, Your Honor?
20 HEARING OFFICER DAHER: Sure. (Pause)
21 MR. WARE: Your Honor, in essence, we got
22 the report by direct-request through the Suffolk
23 County Jail. And I did that because this issue came
24 up for the first time yesterday.

1 HEARING OFFICER DAHER: Let him finish.
2 MR. EGBERT: Here if it's in the a matter
3 of subpoena, and that's on the record.
4 MR. WARE: I did not subpoena the document.
5 MR. EGBERT: I will tell you that the
6 Suffolk County Jail is not authorized to release
7 these kinds of records other than by subpoena. It's
8 a violation of law.
9 MR. WARE: That's a whole other issue.
10 MR. EGBERT: That's why I figured it was by
11 subpoena. All I would ask is if matters like this
12 are going to come up in the future, if before a
13 witness is shown a document, I be given a copy or at
14 least a look at it. That's appropriate behavior.
15 MR. WARE: Except in circumstances in which
16 it's cross examination.
17 MR. EGBERT: In which case I have always
18 handed you a document, as I've shown it to a
19 witness. I don't expect advance notice. Just
20 before you show it to a witness show it to me.
21 MR. WARE: You were given the document.
22 (End of side bar.)
23 MR. EGBERT: Judge, I have no objection to
24 the introduction of that document.

1 THE CLERK: It will be Exhibit 68.
2 (Document marked as Hearing
3 Exhibit 68 for identification)

4 BY MR. WARE:

5 Q. You and I were --

6 MR. WARE: Your Honor, could I mark this
7 for identification or in fact offer it at this
8 point?

9 MR. EGBERT: I have no objection to the
10 document. Ms. Goldbach may have something to say
11 about it, however, as I think it relates to her
12 client's visiting records; that she should probably
13 be informed that these were not subpoenaed. They
14 were voluntarily handed over to counsel in this
15 case.

16 (Document marked as Hearing
17 Exhibit 68 moved into evidence)

18 Q. Now, looking again at Exhibit 68, I think
19 you and I have agreed at this point that you visited
20 on November 30th, 1999?

21 A. Right.

22 Q. And you appeared to have spent four hours
23 and a quarter sort of with your client; is that
24 correct?

1 A. That's what it appears to, yes.

2 Q. And it also appears, does it not, that Ms.
3 Katz visited, as you earlier suggested, on December
4 6th, 1999, correct?

5 A. Right.

6 Q. And that the total time she spent in the
7 jail was one hour and 11 minutes; is that correct?

8 A. Right.

9 Q. Now, you know, do you not, that when you go
10 to the Nashua Street Jail, there's a process by
11 which a defense lawyer or a professional gets to see
12 a defendant who's incarcerated; isn't that correct?

13 A. Yes.

14 Q. And would you describe that process for us
15 briefly.

16 A. Defense attorneys go up to the desk and
17 sign a special form for attorneys, indicating who
18 they're there to see, indicating that they're not
19 related to the individual, but that it is an
20 attorney visit. They sign their name with their bar
21 card number. They usually have to produce
22 identification to the officers at the jail, usually
23 a bar card and a driver's license.

24 Q. And then there's a process by which you go

1 into a secured area and usually meet with the
2 incarcerated defendant on a different floor of the
3 jail than the ground floor, correct?

4 A. Right.

5 Q. Depending on the level of security in which
6 the defendant is held; is that correct?

7 A. Or if they're in the infirmary, yes.

8 Q. Is it a reasonable estimate to say that in
9 general, it takes 15 or 20 minutes from the time you
10 sign in to when you're actually able to sit down
11 with the client?

12 MR. EGBERT: Judge, I object.

13 HEARING OFFICER DAHER: Overruled.

14 A. No, actually, it's not. There are times
15 when I've gotten into the jail right away and there
16 are times when I've waited an hour to get into the
17 jail. When I say, "into the jail," up into the
18 visiting area.

19 Q. But even when you're in the visiting area,
20 still your client has to be brought into the room;
21 is that correct? Sometimes the client is there,
22 sometimes not, correct?

23 A. No. My experience is that I go up first.
24 I'm placed in the room. And then my client is

1 brought to the room. In fact, in my visits at the
2 Nashua Street Jail, I don't think there's ever been
3 a time where I've walked into a room with a client
4 already seated there. And I believe that's a
5 security issue for the jail.

6 Q. So it takes time, after you sign in, to get
7 upstairs to a secure room, you go into the room.
8 You then wait until your client is brought into the
9 room, correct?

10 A. Yes, from the adjoining area.

11 Q. And that can take, as you're pointing out,
12 a long time, but in the best of all possible worlds,
13 it can't be less than 10 or 15 minutes; is that
14 correct?

15 A. I've gotten up into the jail and seen my
16 client within five minutes.

17 Q. But let's take your estimate and let's
18 assume that --

19 MR. EGBERT: It's not an estimate. She's
20 testified as to what the facts are. His question is
21 the estimate.

22 HEARING OFFICER DAHER: In a sense, it
23 seemed to be an estimate. She says she's gone from
24 10 minutes to an hour. Overruled. Go ahead.

1 MR. EGBERT: Judge, she's testified on
2 those previous questions, so it's clear, that she
3 has gone to jail and gone up to see her client and
4 met with her client within five minutes.

5 HEARING OFFICER DAHER: Overruled.

6 Q. Whether you've done it in five minutes, 15
7 minutes, 20 minutes, or a half hour, some amount of
8 time elapsed, correct?

9 A. Yes.

10 Q. So you sign in at a particular time, there
11 is some interval before you're able to see your
12 client, there is another interval after you leave
13 your client and sign out; isn't that correct?

14 A. Yes, a brief one.

15 Q. So you would agree with me, would you not,
16 that the time that is logged in and the time that is
17 logged out is not all time spent with the client,
18 correct?

19 A. Frankly, I'm not aware of how they log in
20 the time. I don't see them logging in the time. I
21 don't know what they do to log in the time.

22 Q. You're really in the dark on this issue
23 after 25 years of this?

24 A. I've never seen them log me out.

1 Q. I'm not asking you whether you've seen them
2 log you out or seen them log you in or put a stamp
3 on a piece of paper.

4 Don't you know and don't you understand
5 that you're logged in when you sign it at the front
6 desk?

7 A. Of course.

8 Q. And you're logged out when you leave.

9 A. I assume some record is kept of when I
10 leave. I've never seen them do it.

11 Q. You know that happens, whether you've seen
12 it or not, correct?

13 A. Correct. What I'm saying is I don't know
14 the procedure, because what I do is I leave --

15 Q. Ms. Goldbach, I'm not asking if you know
16 the procedure?

17 MR. EGBERT: Let her finish her answer.

18 HEARING OFFICER DAHER: Respond. Go ahead.
19 Respond.

20 A. There are times that you go to the jail
21 that you return your visitor card to the desk, you
22 return your visitor paper to the desk, and you walk
23 away. And I don't know what's done with those
24 papers after that.

1 Q. You will agree that some amount of time
2 elapses between the time you walk into the lobby and
3 you sit down with your client, correct?
4 A. Into the lobby?
5 Q. Of the Nashua Street Jail.
6 A. I'm not sure I know what you're asking.
7 Q. The document you just reviewed, Exhibit 68,
8 indicates that Ms. Katz spent an hour and 11 minutes
9 from log in to log out at the Nashua Street Jail on
10 December 6th; isn't that correct?
11 A. Yes, it does.
12 Q. And you would expect that not every minute
13 of that time was spent with Mr. Horton; isn't that
14 correct?
15 A. Correct.
16 Q. You don't know how much was or how much was
17 not, correct?
18 A. Of course.
19 Q. And if it was a day when it took a long
20 time to get upstairs, then they spent little time
21 together. If it was miraculous, they spent an hour
22 together.
23 MR. EGBERT: Objection.
24 HEARING OFFICER DAHER: Stricken.

1 Q. At most, Ms. Katz spent an hour with Mr.
2 Horton on December 6th; isn't that correct?

3 A. I suppose that's correct.

4 Q. And very possibly she spent less time;
5 isn't that correct?

6 MR. EGBERT: I object. She has no idea.

7 HEARING OFFICER DAHER: Cross. Go ahead.

8 A. I don't know.

9 Q. But you do know that the clinical
10 impression that was set forth in Exhibit U and
11 ultimately set forth in Exhibit 3 is a function of
12 that one hour of time spent with Mr. Horton in
13 December 1999; isn't that correct?

14 A. No, it's not correct.

15 Q. Let me take you back to Exhibit U and have
16 you compare it with Exhibit 3 and tell me all of the
17 differences that you regard as clinically meaningful
18 between those two documents in the "Clinical
19 Impression" section.

20 A. Well, there are differences throughout the
21 report, and --

22 Q. No, please. Let me focus you as clearly as
23 I can. I would like you to compare the two
24 "Clinical Impression" sections, and I would like you

1 to tell me how the report changes in any substantive
2 way from December 1999 until you used it in August
3 of 2000.

4 MR. EGBERT: I think the question he asked
5 her, though, was not that. The question he asked
6 her was whether or not that clinical impression was
7 made based on that one hour's worth of work, and she
8 said no. That's not the question he's referring to.

9 HEARING OFFICER DAHER: Overruled. Go
10 ahead. Take a look at the two reports. Take a look
11 at U and take a look at Exhibit 3 and tell Mr. Ware
12 where you --

13 THE WITNESS: Where the differences are?

14 HEARING OFFICER DAHER: Where the
15 differences are.

16 A. The original sentence, which would be the
17 third sentence of the paragraph entitled "Clinical
18 Impression" originally said, "Ebony is a bit
19 socially immature" --

20 HEARING OFFICER DAHER: Where are you?

21 THE WITNESS: I'm sorry. It would be the
22 fourth page of Exhibit U, under "Clinical
23 Impression," third line. Originally it said, "Ebony
24 is a bit socially immature in some ways and needs to

1 work on relating to people her own age." That
2 changed to "Ebony is socially and emotionally
3 immature and needs to work on maturational issues."

4 Q. There is no substantive difference in those
5 two clinical impressions; isn't that correct? They
6 both deal with maturational issues, correct?

7 A. Well, I think adding "emotionally immature"
8 is substantively different.

9 Q. Go on. Show us any other changes in that
10 eight-month period.

11 A. As we indicated earlier, the counseling
12 locale changed from Sidney Borum to Fenway Community
13 Health. And then the third major difference is in
14 the last paragraph there's an additional sentence in
15 the report that was completed in July of 2000, and
16 that sentence is, "I do not believe that Ebony would
17 survive the prison system."

18 Q. That's added in the summer one, correct?

19 A. Yes, it is.

20 Q. You would agree that on the basis of the
21 December visit and what Ms. Katz knew at that time,
22 she was already predicting in Exhibit U that she
23 found it unlikely that Ebony would be repeating this
24 behavior; isn't that correct?

1 A. Yes.
2 Q. And she says that again, does she not, in
3 the summer of 2000?
4 A. Yes.
5 Q. And she is already predicting by December
6 6th -- based on her visit of December 6th -- that
7 "further incarceration will be a disaster," isn't
8 she?
9 A. Yes.
10 Q. And that doesn't change in the next eight
11 months. Further incarceration is still, in her
12 opinion, a disaster; isn't that correct?
13 A. Yes.
14 Q. Did you at any time advise Judge Lopez that
15 there were two reports?
16 A. No.
17 Q. Did you advise the Judge in any way that
18 the clinical impression arrived at in December of
19 1999 was on the basis of a single visit to the
20 Charles Street Jail for an hour -- make it the
21 Nashua Street Jail.
22 A. The issue of the earlier --
23 Q. Ms. Goldbach, I'm going to put the question
24 to you and I'd like you to answer it yes or no. Did

1 you at any time make anyone aware, the district
2 attorney or the Judge, that the clinical impressions
3 that you were proffering to the Court were formed on
4 the basis of a one-hour visit by your social worker
5 to the Nashua Street Jail in December of 1999? Yes
6 or no?

7 A. No.

8 Q. Now, you indicated that at some time you
9 gave the earlier report to the assistant district
10 attorney in the District Court; isn't that correct?

11 A. No, that's not correct. I gave this report
12 to Leora Joseph prior to my client's arraignment in
13 the Suffolk Superior Court.

14 Q. Okay, fair enough. Didn't you also give
15 the precursor, the December 1999 report, to an
16 assistant district attorney in District Court?

17 A. No. That was to Leora Joseph in the
18 Suffolk Superior Court prior to the Superior Court
19 arraignment. I gave the first report to Leora
20 Joseph at the January arraignment in Suffolk
21 Superior Court.

22 Q. And you're saying at that time she flipped
23 through it and gave it back to you, correct?

24 A. Yes, she did.

1 MR. WARE: May I have just a moment, Your
2 Honor?

3 HEARING OFFICER DAHER: Sure.
4 (Pause)

5 Q. Am I correct that you have never
6 represented your client to be mentally ill; isn't
7 that true?

8 A. To be mentally ill?

9 Q. Yes.

10 A. I've represented my client to be suffering
11 from a personality disorder.

12 Q. You represented your client, I thought you
13 said -- the words you've always used were
14 "transgendered" and as "having a disorder"; isn't
15 that correct?

16 A. No. My client has gender identity
17 disorder.

18 Q. Well, did you at any time use the language
19 "gender identity disorder" until you testified here
20 in this courtroom?

21 A. In what capacity?

22 Q. In any capacity ever.

23 A. Yes.

24 Q. And did you at any time represent to a

1 court or to a district attorney that Mr. Horton has
2 gender identity disorder?

3 A. I did not use those words with Ms. Joseph,
4 no.

5 Q. So you never told Ms. Joseph that Mr.
6 Horton, in your view, had something called gender
7 identity disorder; is that correct? Yes or no?

8 A. Correct.

9 Q. The words you have used are "disorder" and
10 transgendered," correct?

11 A. That's correct.

12 Q. And you never indicated to Ms. Joseph or
13 any district attorney any kind of defense in this
14 case of criminal responsibility or competence, did
15 you?

16 A. No, I didn't.

17 Q. Indeed, there was no such defense; is that
18 correct?

19 A. Not to my knowledge, no.

20 Q. You never at any time suggested to Judge
21 Lopez or the district attorney that your client was
22 suffering from some kind of psychiatric disorder
23 defined in the DSM? Did you? Yes or no?

24 A. Did I ever make reference to DSM-IV?

1 Q. Yes.
2 A. No.
3 Q. And you're not aware of any document in
4 this case or what you ever gave to the district
5 attorney or the Court in which you used the term
6 "gender identity disorder," correct?
7 A. In which I used the term?
8 Q. Yes.
9 A. No.
10 Q. On August 4th, 2000 -- excuse me -- August
11 1st, 2000, following the bench conference, none of
12 the information that was disclosed at the bench
13 conference itself, the lobbying of the case, was
14 public in the sense of it's being on the record; is
15 that correct?
16 A. It was not on the record.
17 Q. And as you've indicated, the Katz report,
18 Exhibit 3, was not filed with the Court at that
19 time.
20 A. That's correct.
21 Q. Let me ask you to look at Exhibit 17 for a
22 moment, if I may. You're aware, are you not, that
23 Exhibit 17, after it was issued by the Court, was
24 made available to the media, correct?

1 A. Yes.
2 Q. And in fact, much of it was quoted the
3 following day, August 5, 2000, in the Herald and in
4 the Globe, do you remember that?
5 A. Yes.
6 Q. This was the first document which made
7 public anything about Mr. Horton in the nature of a
8 sexual identity disorder; isn't that correct?
9 A. That was made public?
10 Q. Yes.
11 A. Yes.
12 Q. So until Judge Lopez issued the order
13 marked Exhibit 17, nowhere in the public record had
14 Mr. Horton ever been labeled as having a sexual
15 identity disorder; isn't that correct?
16 A. Not in those words.
17 Q. And nowhere had Mr. Horton been labeled as
18 having a psychological disorder; isn't that correct?
19 A. I think this report says my client had a
20 psychological disorder.
21 Q. Fine. But you just told us that wasn't
22 public; isn't that correct?
23 A. Right. You had just said -- no, I'm sorry.
24 I misunderstood your question.

1 Q. Let me be clear.

2 The order and findings marked Exhibit 17
3 represent the first document that was ever made
4 public which announced in any way that your client
5 had a sexual identity disorder or a psychological
6 disorder; isn't that correct?

7 A. In those words, yes.

8 Q. You had never put out a piece of paper
9 saying that in the public; isn't that correct?

10 A. No, but the district attorney's office --

11 Q. No. I asked you, you had never put out any
12 documentation diagnosing Mr. Horton or putting any
13 kind of label on him, had you?

14 A. No.

15 Q. This document was the first public
16 announcement of that; isn't that correct?

17 A. Yes.

18 Q. And this document was sent to all the
19 media, was it not?

20 A. Apparently, it was.

21 MR. WARE: Your Honor, I'm happy to
22 continue, but could I have a two- or three-minute
23 recess?

24 HEARING OFFICER DAHER: We haven't had a

1 break. Maybe we should pick it up again on Friday.
2 MR. WARE: That would be fine.
3 HEARING OFFICER DAHER: Now, in re the in
4 limine motion, I've gone over it, and I'm going to
5 deny the motion to your motion in limine.
6 MR. WARE: The effect of which is my motion
7 is denied and the judge can testify? Is that what
8 you're saying?
9 HEARING OFFICER DAHER: Yes, exactly.
10 MR. WARE: Your Honor, may I have an
11 instruction that this witness not confer, either
12 with me or any counsel in this case, while on cross
13 examination, which I think is a standard request.
14 MR. EGBERT: I don't know that it's
15 standard. I don't have a problem with it. She has
16 her own counsel, I assume --
17 HEARING OFFICER DAHER: Again, I'm going to
18 adopt that suggestion, Ms. Goldbach. You understand
19 what the restriction is?
20 THE WITNESS: Yes, I do, Your Honor.
21 HEARING OFFICER DAHER: We'll pick it up at
22 9:30. And the motion is denied.
23 (Whereupon, the hearing was
24 adjourned at 3:35 p.m.)

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C E R T I F I C A T E

I, Jane M. Williamson, Registered Professional Reporter, do hereby certify that the foregoing transcript, Volume XII, is a true and accurate transcription of my stenographic notes taken on Wednesday, December 18, 2002.

Jane M. Williamson
Registered Merit Reporter

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