

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  
Friday, December 20, 2002  
9:45 a.m.

(Jane M. Williamson, Registered Merit Reporter)

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I N D E X

WITNESS                      DIRECT    CROSS    REDIRECT    RECROSS

Anne Goldbach  
    (By Mr. Egbert)                      13-52  
    (By Mr. Ware)                      13-3

Dominic Russo  
    (By Mr. Egbert)                      13-102                      13-118  
    (By Mr. Ware)                      13-113

Robert Mulligan  
    (By Mr. Egbert)                      13-120

Andrew Meyer  
    (By Mr. Egbert)                      13-126

Michael Avery  
    (By Mr. Egbert)                      13-133

J. Owen Todd  
    (By Mr. Egbert)                      13-141

Robert M.  
Delahunt, Jr.  
    (By Mr. Egbert)                      13-153

\* \* \*

E X H I B I T S

EX. NO.                                      FOR ID    IN EVID.

69 Appendix of CPCS-aggregated news articles re Horton 13-35

W Documents relating to the case of Commonwealth versus Kelly Angell 13-106

P R O C E E D I N G S  
ANNE GOLDBACH, Previously Sworn  
CROSS EXAMINATION, Resumed

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BY MR. WARE:

Q. Good morning, Ms. Goldbach.

A. Good morning.

Q. You indicated in your direct testimony that prior to your having been assigned the Horton case, there was another lawyer from CPCS who was handling the case; is that correct?

A. That's correct.

Q. And the case was assigned to you because the charges at the time were deemed serious enough that a more experienced lawyer was required; isn't that correct?

A. Partially correct.

Q. Well, do you have your deposition testimony in front of you?

A. I don't, unless it's here in the book.

Q. We may need this today, so I'm going to give you a copy, and let me make a copy available to the Court.

Let me direct your attention to Page 8, beginning at Line 8. Do you recall being asked

1 under oath during your testimony before the  
2 Commission, "Question: Is that another way of  
3 saying that the charges at the time were viewed as  
4 serious enough to warrant an experienced trial  
5 lawyer?"

6 "Answer: Yes"?

7 A. Yes.

8 Q. And that's consistent with your  
9 recollection, is it not?

10 A. It is.

11 Q. The charges in the District Court, were  
12 those charges identical to what became the charges  
13 in the Superior Court following indictment?

14 A. I believe they were. I'm not entirely sure  
15 of that.

16 Q. And at the time that you received the case  
17 prior to Superior Court arraignment, did you have  
18 any discovery at all in the case?

19 A. I had the police reports.

20 Q. Other than the police reports, you had no  
21 other discovery?

22 A. I don't believe so.

23 Q. And the docket, Exhibit 2 in this case,  
24 reflects that you made a series of motions in June

1 of 2000. Does that square with your recollection of  
2 when you filed discovery motions?

3 A. Well, that would have been after the  
4 arraignment in Superior Court. I'd have to look at  
5 the docket; but yes, most of my -- my discovery  
6 motions were made in the Superior Court, not the  
7 District Court.

8 Q. The only discovery you recall having had in  
9 December 1999 were the police reports and whatever  
10 information you had by virtue of conversation with  
11 your client; is that correct?

12 A. In December, and also that from Jay Greene,  
13 yes.

14 Q. Conversation with Detective Greene?

15 A. Right.

16 Q. Incidentally, one of the things that  
17 Detective Greene told you was that he had in fact  
18 spoken to the district attorney's office in the  
19 District Court; isn't that correct?

20 A. Yes.

21 Q. And he told you that prior to the Superior  
22 Court indictment; isn't that correct?

23 A. He was in the District Court prior to the  
24 Superior Court arraignment.

- 1 Q. But Detective Greene told you at some point  
2 later that when the case was in the District Court,  
3 he had in fact spoken with the district attorney's  
4 office?
- 5 A. He did tell me that.
- 6 Q. Obviously you didn't have grand jury  
7 minutes at the District Court level prior --
- 8 A. No, I didn't.
- 9 Q. I need to finish the question.
- 10 A. Sorry.
- 11 Q. -- prior to the indictment, since there had  
12 been no grand jury, correct?
- 13 A. That's right.
- 14 Q. And it follows, does it not, therefore,  
15 that the only discovery which Ms. Katz could have  
16 had available to her in December 1999, at the time  
17 the December report was prepared, was the police  
18 reports?
- 19 A. Relative to the incident, yes.
- 20 Q. And, of course, she had her interview with  
21 Ebony Horton, correct?
- 22 A. Right. And did some other things to make  
23 her report.
- 24 Q. When did you first receive the videotape of

1 the victim, roughly, order of magnitude. It doesn't  
2 matter --

3 A. I would guess in the spring of 2000, spring  
4 or early summer.

5 Q. But some number of weeks, in any event,  
6 prior to your appearance before Judge Lopez on  
7 August 1st; is that correct?

8 A. That's right.

9 Q. And when you viewed the videotape, you  
10 learned, among other things, that the child  
11 represented himself as being 11 years old; isn't  
12 that true?

13 A. That's right.

14 Q. Right at the beginning of the tape the  
15 child is asked his age, and he says, "I'm 11," and  
16 he gives his birth date as being in January, a few  
17 weeks hence; isn't that right?

18 A. I don't remember the birth date, but I  
19 remember he said 11.

20 Q. You had no reason to disbelieve the child's  
21 recollection or understanding of his own age, did  
22 you, at that time?

23 A. I just knew that there was a discrepancy  
24 between the police report and the tape, but no, I

1 didn't have any reason at that time.

2 Q. So you were on notice that the police  
3 reports said he may be 12 years old, there might be  
4 a mistake in the police reports, but the victim was  
5 saying he was 11 years old, correct?

6 A. I'm not sure I understand your question. I  
7 was on notice?

8 Q. When you saw the videotape --

9 A. Right.

10 Q. -- you knew that the child was saying he  
11 was 11 years old at the time of these crimes; is  
12 that correct?

13 A. That's true.

14 Q. And to the extent the police report said  
15 otherwise, that was an issue that you, as defense  
16 counsel, if you thought it was important, had an  
17 obligation to yourself and to your client to clear  
18 up; isn't that correct?

19 A. If the matter had gone to trial, yes.

20 Q. Well, if the issue of his age had  
21 importance to you as a defense lawyer, obviously it  
22 was your obligation, as you understood it, to clear  
23 up any ambiguity in your mind whether he was 11 or  
24 he was 12; isn't that right?



1           A.    Under the circumstances, I think the  
2 difference between --

3           Q.    Ms. Goldbach, please.  You were defense  
4 counsel in the case, which you viewed to be a very  
5 serious case, with charges of kidnapping and rape  
6 and the other charges; isn't that correct?

7           A.    Yes.

8           Q.    All right.  You saw a videotape in which  
9 the victim said he was 11, correct?

10          A.    Absolutely.

11          Q.    You had police reports which you believed  
12 to be at variance with that, which indicated that he  
13 was 12 at the time of the incident; isn't that  
14 correct?

15          A.    That's right.

16          Q.    Had you thought it important -- that is,  
17 the distinction between his being 11 or 12 at the  
18 time of the crimes -- obviously you would have  
19 cleared up that ambiguity; isn't that correct?

20          A.    Yes.

21          Q.    You mentioned in your direct testimony, in  
22 referring to the transcript of the proceedings on  
23 September 6th, that as originally represented to you  
24 by Judge Lopez, Mr. Horton was going to be placed in

1 the community corrections program; is that right?

2 A. That's right.

3 Q. And at some time you learned that he was  
4 not eligible for the community corrections program  
5 because he was considered a violent offender; isn't  
6 that correct?

7 A. That is not what I learned.

8 Q. Well, you learned he was not eligible; is  
9 that correct?

10 A. I did.

11 Q. And the Court, accordingly, on September  
12 6th announced that she was going to place him in an  
13 alternative type of probation or with additional  
14 probation conditions.

15 A. That's correct.

16 Q. Let me ask you, if you would, to go back to  
17 Exhibit 3. That is the report of Ms. Katz from the  
18 summer, July or August -- excuse me -- July of 2000?

19 A. Yes.

20 Q. Now, you had used Ms. Katz, as I understood  
21 you two days ago, for many of your other cases;  
22 isn't that correct?

23 A. Yes.

24 Q. And had used her on numerous occasions to

1 evaluate defendants whom you represented or whom the  
2 office represented; is that correct?

3 A. That's correct.

4 Q. Ms. Katz predicted in Exhibit U -- that is  
5 the December 1999 report -- and again in Exhibit 3  
6 that Mr. Horton would not be a repeat offender;  
7 isn't that correct?

8 A. That's correct.

9 Q. Am I also correct that three weeks after  
10 the August 1st conference, lobby conference with the  
11 Judge, he was in fact arrested for another sex  
12 offense?

13 A. That's not considered a sex offense in some  
14 circles.

15 Q. All right. Well, let's take a look at  
16 Exhibit 18, first of all.

17 A. 18?

18 Q. Yes.

19 MR. WARE: I'm going to hand up to the  
20 Court another copy, just for ease of reference. I  
21 think you guys have it.

22 Q. Directing you, if I can, to the third page  
23 of the document, but it says in the upper right  
24 corner "Page 1 of 2," do you have that before you?

1 A. Yes, I do see -- Page 2 of 2 or 1 of 2?  
2 Q. Right here (indicating).  
3 A. Okay.  
4 Q. And let me direct your attention to the  
5 offense that's indicated there.  
6 A. Right.  
7 Q. It indicates the date of offense as August  
8 29th, 2000; is that correct?  
9 A. Yes.  
10 Q. And that's about a week before the  
11 September 6th plea and sentencing, correct?  
12 A. That's correct.  
13 Q. And about a month following the lobby  
14 conference of August 1st, correct?  
15 A. Right.  
16 Q. And this offense is referred to here as  
17 sexual conduct for a fee.  
18 A. That's right.  
19 Q. "(Sexual conduct for a fee)"?  
20 A. That's correct.  
21 Q. And did you at some time understand -- come  
22 to understand the facts of that crime?  
23 A. Yes.  
24 Q. And there was at some point a plea of

1 guilty and a probation in November -- well, in  
2 November of 2000, correct?

3 A. That's right.

4 Q. That offense was not discussed with Judge  
5 Lopez on August 1st, because it hadn't occurred;  
6 isn't that correct?

7 A. That's correct.

8 Q. Were you aware of the offense of August  
9 29th on September 6th, 2000?

10 A. No, I wasn't.

11 Q. So Mr. Horton did not tell you anything  
12 about that arrest.

13 A. I wasn't aware of it.

14 Q. Mr. Horton did not tell you anything about  
15 his arrest a week prior to the sentencing.

16 A. That's correct.

17 Q. Accordingly, while Ms. Katz has predicted  
18 or had predicted that it was unlikely that Ebony  
19 would repeat the behavior that brought her to court,  
20 it turns out that Ebony certainly had some violation  
21 of law only three weeks after the conference with  
22 Judge Lopez; isn't that correct?

23 A. That's not repeating the behavior, Mr.  
24 Ware.

1 Q. I see. Okay. In any event, whatever  
2 behavior it was, it was sufficient to result in a  
3 conviction for sexual conduct for a fee, correct?

4 A. That's right.

5 Q. You mean by that, it did not involve  
6 children or a child?

7 A. It didn't involve many of the allegations  
8 that were connected to the case that brought us  
9 here.

10 Q. After the arraignment in Superior Court, at  
11 which point I understand you to have said that you  
12 gave the December 1999 version of Ms. Katz's report  
13 to the district attorney, when the final report was  
14 completed in July of 2000, did you at any time write  
15 to the district attorney, enclose a copy of the  
16 report, and say, in effect, "Here's a report I'd  
17 like you to consider in mitigation of sentencing"?

18 A. No. I tried to give it to her personally.

19 Q. Well, you tried to give it to her  
20 personally, but you did that on the day that you  
21 were to have a lobby conference; is that correct?

22 A. That's right.

23 Q. In advance of that date, did you ever make  
24 any attempt to serve a copy of it on the district

1 attorney's office and invite them to have a plea  
2 discussion with you with respect to the disposition  
3 of Mr. Horton?

4 A. No.

5 Q. You didn't make it available in advance of  
6 August 1st to Mr. Deakin or Ms. Joseph or anyone  
7 else; is that correct?

8 A. Mr. Deakin was not involved in the case  
9 until August 4th, so --

10 Q. I understand that. For clarity's sake, you  
11 did not make the report available to anyone at the  
12 district attorney's office prior to August 1st; is  
13 that correct?

14 A. No; only the earlier report.

15 Q. In other words, the answer to my question  
16 is yes, you did not make it available.

17 A. I tried to give Ms. Joseph the earlier  
18 report, but no, I hadn't given the July report to  
19 Ms. Joseph before August 4th.

20 Q. When you spoke with Detective Greene, he  
21 told you, did he not, that while --

22 MR. EGBERT: Could we have a time?

23 HEARING OFFICER DAHER: Good point. A  
24 time.

1 MR. WARE: At any time.  
2 MR. EGBERT: Are you asking -- you're  
3 asking for a conglomeration of conversations.  
4 MR. WARE: I haven't asked a question yet.  
5 HEARING OFFICER DAHER: Overruled. Go  
6 ahead.  
7 Q. When you talked to Detective Greene, you  
8 learned that he had responded to the scene; isn't  
9 that correct?  
10 MR. EGBERT: Objection.  
11 HEARING OFFICER DAHER: Overruled.  
12 MR. EGBERT: In which conversation?  
13 HEARING OFFICER DAHER: In a conversation  
14 when he responded to the scene. Overruled. Go  
15 ahead.  
16 MR. EGBERT: Judge, maybe you misheard the  
17 question.  
18 HEARING OFFICER DAHER: No, I didn't  
19 mishear the question.  
20 MR. EGBERT: The question is in the  
21 conversation when he responded.  
22 HEARING OFFICER DAHER: As a result of a  
23 conversation that she had with Detective Greene, she  
24 learned that he had responded to the scene.



1 MR. EGBERT: Your Honor, there were a  
2 number of conversations --

3 HEARING OFFICER DAHER: I understand.

4 MR. EGBERT: He should at least indicate  
5 which conversation we're talking about.

6 HEARING OFFICER DAHER: Overruled. Go  
7 ahead.

8 A. I learned he had responded to the scene,  
9 yeah.

10 Q. And you also learned that he was not one of  
11 the uniformed patrol officers who was first on  
12 scene; isn't that correct?

13 A. Yes.

14 Q. And you knew that in fact, the arrest in  
15 this case and the officers first on the scene were  
16 Officers Rose and Sweeney, who were uniformed patrol  
17 officers in a cruiser, correct?

18 A. That's right.

19 Q. And consistent with the police report, you  
20 never learned anything in this case to dissuade you  
21 from the view that they were the first two police  
22 officers to observe the crime scene, correct?

23 A. That's true.

24 Q. Now, at no time in your defense of Mr.

1 Horton did you ever contact Officers Rose or Sweeney  
2 and ask them questions about the case; isn't that  
3 correct?

4 A. No, I hadn't at that point, that's correct.

5 Q. And when you learned this information that  
6 you've given us from Detective Greene that you've  
7 repeated in your direct testimony, you never made  
8 any attempt to verify any of Detective Greene's  
9 impressions with the officers who arrived first on  
10 scene, did you?

11 A. No. Jay Greene is a very tough cop.

12 Q. Whatever Jay Greene is, he gave you a  
13 series of impressions, correct?

14 A. He did.

15 Q. And he did not give you an evidentiary  
16 basis for those impressions. He told you his gut  
17 reaction, his feel for the scene; isn't that  
18 correct?

19 A. And his observations.

20 Q. Yes. He did not indicate to you any  
21 evidence that was contrary to what you were reading  
22 in the police reports; isn't that correct?

23 A. Give me evidence -- I'm not sure what you  
24 mean by "give me evidence."

1 Q. What I mean is Detective Greene you said  
2 was a tough cop. You believed him to be a savvy  
3 cop, correct?  
4 A. That's correct.  
5 Q. He didn't provide you with any evidence in  
6 the sense of physical evidence or statements or  
7 documents which in any way changed the facts as  
8 reported in the police report; isn't that correct?  
9 A. No, but that would have been unusual --  
10 Q. Never mind "but." He did not provide you  
11 with any such thing, did he?  
12 A. Of course not.  
13 Q. And at no time did you take the impressions  
14 or the views articulated to you by Detective Greene  
15 and go back to the uniformed officers or the  
16 detective on the case who was in charge of the  
17 investigation and say to them, "How does this fit,"  
18 right?  
19 A. No. I took it to the district attorney.  
20 Q. Oh, I see. You never made any attempt to  
21 verify Greene's information, did you?  
22 A. I had no reason to believe that he was  
23 lying.  
24 Q. Ms. Goldbach, you made no attempt to verify

1 Greene's information with other police officers or  
2 the detective in charge of the investigation; isn't  
3 that true?

4 A. Of course not, Mr. Ware. Of course not.

5 Q. Is it true?

6 A. It is true.

7 Q. Thank you.

8 You knew as well that the police report,  
9 according to the officers who arrived first on  
10 scene, characterized the child as crying at the time  
11 they approached the vehicle.

12 A. One of the officers did.

13 Q. One of the officers did. Very well. You  
14 understood that one of the two people who was first  
15 there on that night, November 20th, 1999, who  
16 observed the child initially, said the child was  
17 crying, correct?

18 A. One did, yes.

19 Q. And that's right in the police report, is  
20 it not?

21 A. Yes, it is.

22 Q. During your -- let's turn to August 1st, if  
23 we could for a moment.

24 During your direct testimony you said that

1 at no time was Judge Lopez made aware of there  
2 having been a videotape of the victim; is that  
3 correct?

4 A. Not to my knowledge, no.

5 Q. You don't remember that?

6 A. No, I don't.

7 Q. And you said, with great emphasis, that at  
8 no time was it brought to Judge Lopez's attention  
9 that the child was pulled by the arm, whether he was  
10 actually pulled into the car or assisted or  
11 whatever; is that correct?

12 A. Right. Or forced in.

13 Q. Let me ask you, if you would, to take a  
14 look at testimony in this proceeding of November  
15 20th.

16 MR. EGBERT: Hold on one second.

17 HEARING OFFICER DAHER: Take your time.

18 MR. EGBERT: Whose testimony is it?

19 MR. WARE: Judge Lopez's testimony, during  
20 your questioning.

21 Q. I've placed before you a transcript of the  
22 sworn testimony, in part, of Judge Lopez in this  
23 proceeding on November 20th. And specifically  
24 directing you to Page 126 of Volume III, beginning

1 at Line 16.

2 The question is asked, "Didn't Ms. Goldbach  
3 tell you at the time that on the very tape we've  
4 just discussed" -- and I'll represent to you that  
5 that's the victim tape -- "that in fact, that's not  
6 all what the victim was saying happened. He said he  
7 was pulled by the arm through a window of the car."

8 Answer from Judge Lopez: "Yes. I believe  
9 she had a different version of how the kid got into  
10 the car, and it involved some pulling into it, yes."

11 "Question: And that was actually on the  
12 tape of the victim?"

13 "Answer: That's correct."

14 Do you see that testimony?

15 A. I do.

16 Q. Now, does that refresh you in any way that  
17 there was conversation with Judge Lopez on August  
18 1st regarding the child having been grabbed by the  
19 arm and the fact that there was a videotape of the  
20 child?

21 A. No, it doesn't.

22 Q. Do you recall, among the statements which  
23 Judge Lopez made on August 1st, was the statement,  
24 "I know transgendered people"?

1 A. Yes, I do.

2 Q. And she also indicated her view that she  
3 did not believe they were violent or predators;  
4 isn't that correct?

5 A. I don't recall her saying that part, no, I  
6 don't.

7 Q. You don't remember one way or the other?

8 A. I don't remember one way or the other.

9 Q. She may have said it, she may not have said  
10 it, so far as your recollection is concerned?

11 A. I just don't remember. That's right.

12 Q. Now, you indicated that following the  
13 conversation on August 1st, no decision had been  
14 made -- certainly on August 1st -- that Mr. Horton  
15 was going to plead guilty, correct?

16 A. That's correct.

17 Q. And you've indicated, in fact, that no  
18 decision was made right up until September 6th of  
19 2000, correct?

20 A. That's correct.

21 Q. Accordingly, you were uncertain as a  
22 defense lawyer whether or not the case might still  
23 go to trial during the period between August 1st and  
24 September 6th, correct?

1           A.    That it might go to trial between those two  
2    dates?

3           Q.    No.  Let me try to be clear.  Your  
4    understanding during the period August 1st, 2000, to  
5    September 6th, 2000, was that there remained the  
6    potential that the Horton case would go to trial,  
7    correct?

8           A.    That's correct.

9           Q.    And as you've said many times, you didn't  
10   get a final decision from your client until  
11   September 6th, correct?

12          A.    That's right.

13          Q.    Under those circumstances, you, as a  
14   defense counsel, could not make Mr. Horton available  
15   to a social worker from the district attorney's  
16   office or a psychiatrist to give statements to that  
17   psychiatrist or professional which might in fact be  
18   admissions, could you?

19          A.    I couldn't have allowed her to discuss the  
20   incident, that's correct.

21          Q.    Right.  So when we talk about what  
22   alternatives the district attorney's office had,  
23   your view is, No. 1, you hadn't yet told them that  
24   Mr. Horton was going to plead guilty, correct?



1 A. That's true.

2 Q. And, No. 2, you would not, under any  
3 circumstance, have allowed Mr. Horton to make  
4 statements to a psychologist or a psychiatrist hired  
5 by the district attorney's office which might result  
6 in serious adverse admissions to him; isn't that  
7 correct?

8 A. Not those types of communications, of  
9 course not.

10 Q. What you're saying, among other things, is,  
11 you wouldn't let him talk about the facts of these  
12 crimes, correct?

13 A. Yes. That's what I said.

14 Q. So he would not even be able to describe  
15 his version of events to a psychiatrist, would he?

16 A. No.

17 Q. He would not be able to describe any other  
18 details which might incriminate him; isn't that  
19 correct?

20 A. Yes.

21 Q. And so it would be inconceivable and,  
22 indeed, impossible for the district attorney's  
23 office to have submitted a rebuttal report by August  
24 1st, no matter when you served the document on them;

1 isn't that correct?

2 A. Not necessarily.

3 Q. I see. Well, they could submit a report,  
4 are you suggesting, in which the psychiatrist or  
5 psychologist didn't even have the opportunity to  
6 discuss with the patient what the facts were that he  
7 was to evaluate?

8 A. Well, at least in terms of my client's  
9 psychological condition, the transgender issues, the  
10 depression, the suicidal ideation, those things  
11 don't involve the alleged facts.

12 Q. I see. So are you suggesting that it would  
13 have been a useful piece of expert work or report  
14 for the district attorney to somehow have hired a  
15 psychiatrist or psychologist, had that psychologist  
16 meet with Mr. Horton, and talk around the facts, but  
17 never discuss the facts of the crime and come to an  
18 evaluation?

19 A. I'm not suggesting it was useful or not.  
20 I'm simply saying that what I wouldn't have allowed  
21 my client to talk about was the allegations in this  
22 case.

23 Q. Well, Ms. Goldbach, you and I can agree,  
24 can we not, that you have never, in your 25 years of

1 criminal defense, permitted the district attorney's  
2 office to undertake any such thing; isn't that  
3 correct?

4 A. They've never asked me to, Mr. Ware. So  
5 the answer is no.

6 Q. And if they had asked you, you know you  
7 could not have permitted it ethically and  
8 professionally; is that correct?

9 A. Of course not. About the allegations,  
10 that's true.

11 Q. You testified a couple of days ago that  
12 during your meeting in the lobby with Judge Lopez,  
13 the Judge made a number of statements to Leora  
14 Joseph about the suburbs and so forth, correct?

15 A. Yes.

16 Q. And without belaboring those, essentially  
17 you recall her saying, "You belong in the suburbs";  
18 that was one thing she said, correct, or something  
19 to that effect?

20 A. Yes.

21 Q. "And you've lost credibility with me." Do  
22 you recall her saying that?

23 A. That's one part I don't remember. It's  
24 just that I don't remember it.

1 Q. Let me ask you to turn to your sworn  
2 testimony before the Commission and specifically to  
3 Page 67.

4 A. (Witness reviews document)

5 Q. On Page 67, beginning at Line 4, you were  
6 asked the following question and you give this  
7 answer:

8 "Question: During the chamber conference  
9 on August 4, do you recall colloquy between Judge  
10 Lopez and Ms. Joseph in which the Judge told Ms.  
11 Joseph something to the effect: 'You've lost  
12 credibility with me. I know you have the right to  
13 call the press, but this was very cruel. You belong  
14 in the suburbs.'" Do you recall that?

15 A. Yes, I do.

16 Q. And further down on that page, beginning at  
17 Line 20 --

18 MR. EGBERT: Oh, no, Judge. No. He gives  
19 her a question that he asks from Line 4 to Line 10.  
20 Let's get the answer to the question that she gave.

21 MR. WARE: Fine.

22 Q. Your answer is, "I remember her saying --  
23 the credibility part is not a clear memory, but that  
24 wouldn't surprise me," correct?

1           A.    Yes.  
2           Q.    So you don't remember one way or the other  
3 the credibility point, correct?  
4           A.    That's right.  
5           Q.    And you remember her saying, "...it was  
6 cruel and you just don't get it"? Is that correct,  
7 at Line 13?  
8           A.    Yes.  
9           Q.    And at Lines 19 and 20 you've indicated, in  
10 response to this question, "What do you believe was  
11 said?  
12                "Answer: 'You don't get it. You belong in  
13 the suburbs.'" you recall that?  
14           A.    Yes, I do.  
15           Q.    Now, on August 1st -- excuse me -- August  
16 4th, when you appeared in court for a potential  
17 change in plea, you asked Judge Lopez whether it  
18 would be acceptable for Mr. Horton to remain on a  
19 different floor, correct?  
20           A.    I did.  
21           Q.    And you did that, I take it, because of  
22 sensitivity about press attention; is that right?  
23           A.    Yes, and because my client was so upset.  
24           Q.    And in the past you have described Mr.

1 Horton as fragile, to use your word; isn't that  
2 correct?  
3 A. Yes.  
4 Q. And is that the case today, in your  
5 opinion?  
6 A. Of my client?  
7 Q. Yes.  
8 A. Today?  
9 Q. Yes.  
10 A. At this time?  
11 Q. Yes.  
12 A. My client's doing better, that's for sure.  
13 Um --  
14 Q. Do you continue to represent Mr. Horton in  
15 any way?  
16 A. I sure do.  
17 Q. So you have been his lawyer since this case  
18 as well; is that correct?  
19 A. I've been Ebony Horton's lawyer for over  
20 three years now, yeah.  
21 Q. And that's a representation which continued  
22 after September 6th, 2000; is that correct?  
23 A. It did.  
24 Q. In representing Mr. Horton, did you

1 represent him with respect to the offense indicated  
2 as having occurred on August 29th, 2000?

3 A. In the Boston Municipal Court?

4 Q. Yes.

5 A. I did not represent Ms. Horton there.

6 Q. But you have represented him with respect  
7 to any probation issues that have come up since  
8 September 6th?

9 A. There have been no occasions for me to need  
10 to go to court on probation matters, no.

11 Q. I'm not talking about going to court. I  
12 mean, for example, if he needs permission to leave  
13 the state, is that worked out directly with his  
14 probation officer or have you been involved from  
15 time to time?

16 A. There haven't been any recent issues that I  
17 know of. I don't recall whether within the first  
18 few weeks or months after my client was placed on  
19 the bracelet, whether or not I ever spoke to a  
20 probation officer about medical issues or  
21 appointments that she had permission to attend. I  
22 just don't remember at this point.

23 Q. Do you recall having submitted anything to  
24 Probation yourself on his behalf after September

1 6th?

2 A. On September 6th, in the afternoon, at  
3 Milton Britton's request, I sent a copy of Joan  
4 Katz's report by fax.

5 Q. It's your view, is it not, that the  
6 publicity in that case was potentially going to be  
7 harmful to Mr. Horton; is that correct?

8 A. Absolutely.

9 Q. And it's your view that any publicity  
10 regarding Mr. Horton is potentially harmful to him;  
11 isn't that correct?

12 A. Any publicity?

13 Q. Yes.

14 A. No, not necessarily. I mean, anything made  
15 public about my client isn't necessarily harmful to  
16 my client. But most of the publicity that's  
17 occurred in the past has led my client to receive  
18 death threats and things like that.

19 Q. Now, isn't it a fact that CPCS itself has  
20 used Mr. Horton's case as a training vehicle?

21 A. Well after the fact, yes, we did.

22 Q. In fact, in December of 2000 you began  
23 using such materials as a training vehicle, did you  
24 not?



1 A. To my knowledge, it was one time only, yes.

2 Q. Well, isn't it available today on the CPCS  
3 website? Can't one go to that website and see those  
4 materials?

5 A. You can ask to order them from the website.

6 Q. Yes. And you can go over to CPCS and pick  
7 up copies of CPCS-aggregated articles regarding Mr.  
8 Horton and Judge Lopez in this case; isn't that  
9 correct?

10 A. Yes, we can. That's correct.

11 Q. And let me show you a document and ask you  
12 if you can identify that.

13 A. It's an appendix of articles covering this  
14 case.

15 Q. And these are training materials from CPCS?

16 A. Yes, they are.

17 Q. So it follows, I take it, that sometime in  
18 December of 2000, ten weeks or so following, or  
19 three months following the sentencing, CPCS itself  
20 pulled together media articles and made them  
21 available publicly; is that correct?

22 A. Made them available to -- at the time it  
23 was an in-house solely full-time public defender  
24 training program. It was a day-long public defender

1 conference, and by that I mean not just bar  
2 advocates, but just full-time public defenders.

3 Q. What this document consists of is an  
4 aggregation of various news articles regarding the  
5 Horton case; isn't that so?

6 A. Yes, it is.

7 MR. WARE: I offer that, Your Honor, as  
8 Exhibit 69.

9 MR. EGBERT: As what?

10 HEARING OFFICER DAHER: Good question.

11 MR. WARE: Your Honor, one of the issues  
12 that counsel has persistently argued to the Court is  
13 that the publicity surrounding this, a press release  
14 announcing the fact of the guilty plea, created all  
15 this media hysteria. Three months following this  
16 case, CPCS itself puts out this information,  
17 aggregates all the press information, puts Mr.  
18 Horton's name on the cover, and makes it available  
19 on its website for anybody who wants to buy it. I  
20 think that bears on the question whether this  
21 hysteria was justified or indeed genuine.

22 MR. EGBERT: Judge, how, months after the  
23 events that occurred here --

24 HEARING OFFICER DAHER: Sustained. Let's

1 go. Let's move on. Mark it for ID.  
2 THE CLERK: It will be marked for ID only.  
3 MR. WARE: Okay.  
4 (Document marked as Hearing  
5 Exhibit 69 for identification)  
6 BY MR. WARE:  
7 Q. You regarded the recommendation of the  
8 district attorney's office in this case, the 8- to  
9 10-year recommendation, as a heavy recommendation,  
10 correct?  
11 A. That's correct.  
12 Q. But you did not regard it as outside the  
13 range of sentences recommended by that office in  
14 similar cases, correct?  
15 A. That's correct.  
16 Q. Now, on September 6th am I right that you  
17 did not personally see any incident in which the  
18 defendant's mother refused to get off the elevator?  
19 A. No. I heard the screaming.  
20 Q. You heard some screaming.  
21 MR. EGBERT: I want to make sure the record  
22 is clear. I think he said September 6th.  
23 A. That's right. It was August 4th.  
24 MR. EGBERT: We're talking about two

1 different days.

2 Q. All right. Well, let's clear that up. On  
3 August 4th you heard some screaming, but you did not  
4 personally see the incident you described in which  
5 the defendant's mother refused to get off the  
6 elevator, correct?

7 A. That's correct.

8 Q. And you didn't see cameras pointed at Mr.  
9 Horton's mother as she got off any elevator, did  
10 you?

11 A. Oh, yes, I did.

12 Q. Let me ask you to take a look at Page 73 of  
13 your testimony before the Commission. And maybe you  
14 can clarify what you said here.

15 A. (Witness reviews document)

16 Q. Do you see at the top of that page,  
17 beginning roughly at Line 8 -- you've been  
18 discussing cameras waiting in the hallway. I ask  
19 you at Line 4, "Did you observe anything like that?"  
20 And you indicate down at Line 12 that you were in  
21 the hallway?

22 MR. EGBERT: Why don't you read --

23 MR. WARE: Fine. You can read anything you  
24 want.

1 MR. EGBERT: -- "I mean, you did say  
2 earlier that there were television" --

3 HEARING OFFICER DAHER: He gave her a lot  
4 of latitude.

5 MR. EGBERT: You can't read a half  
6 question. That's unfair.

7 HEARING OFFICER DAHER: We're not going to  
8 allow that, Mr. Egbert.

9 Q. Read anything you want on that page to get  
10 the context, if you will.

11 A. You asked on Line 4, "Did you observe  
12 anything like that?" And you said, "I mean, you did  
13 say earlier that there were television cameras all  
14 over, and that when you got out of the elevator,  
15 there were cameras in your face." And my answer  
16 was, "And that happened over and over again  
17 throughout the morning. And there were cameras  
18 there when my client's mother got off from the  
19 elevator."

20 Q. Right. And then, "Question: Did you see  
21 that?"

22 "Answer: I was out in the hallway when it  
23 happened. I did not see this, but I was told..."

24 A. But that goes on to explain that a

1 different transgendered individual had been  
2 photographed, not that I hadn't seen the cameras in  
3 front of the mother's face.

4 Q. Fine. All right. So what you did see was  
5 that the camera attention on that day that you  
6 observed, or some of it, was focused on a different  
7 individual, another person whom you believe to have  
8 been transgendered, correct?

9 A. One time --

10 Q. Ms. Goldbach --

11 A. No, that's not correct.

12 Q. Did you see on that day cameras  
13 photographing another defendant, whom you believed  
14 to be transgendered? Yes or no?

15 A. Yes.

16 Q. And in fact, on September 6th, if we can  
17 switch to that, when your client came to court, your  
18 client walked right in the front door and went up to  
19 the floor on which he was to go to court; isn't that  
20 correct?

21 A. She did.

22 Q. And no cameras bothered Mr. Horton on that  
23 occasion, did they?

24 A. They didn't know who she was.

1 Q. Right. Exactly. But the defendant walked  
2 through the front door of the courthouse, managed to  
3 get up to the courtroom, and no camera paid any  
4 attention to her; isn't that correct?

5 A. That's correct.

6 Q. Now, prior to September 6th, you received a  
7 call, as I understood your testimony, from a clerk  
8 or someone that Mr. Horton could use a rear elevator  
9 to get to a floor on which Judge Lopez was sitting  
10 on the day of the plea and sentencing, correct?

11 A. Yes.

12 Q. And you were told to go to the back door of  
13 the courthouse, correct?

14 A. Right.

15 Q. And you believe that on that occasion you  
16 were given the name of someone who was to -- would  
17 meet you and escort you to the courtroom floor,  
18 correct?

19 A. Yes.

20 Q. And on September 6th you were in fact  
21 greeted by a court officer, were you not?

22 A. I was.

23 Q. Who escorted you into the building.

24 A. I was down there a long time. There was a

1 clerk there part of the time. There was a court  
2 officer there part of the time. And eventually I  
3 believe I was escorted upstairs by a court officer.

4 Q. And you were waiting outside the building  
5 for Mr. Horton to arrive, and he never did arrive at  
6 the back of the building, correct?

7 A. Right.

8 Q. And that's because he went in the front  
9 door and went directly up, right?

10 A. She did.

11 Q. Now, your understanding was that Judge  
12 Lopez had directed the clerk to call you to make  
13 these arrangements?

14 A. That was my assumption, yes.

15 Q. In the courtroom itself, during the course  
16 of the plea, am I correct that the effect of  
17 whatever orders were put in place was that Mr.  
18 Horton's face and, indeed, Mr. Horton himself could  
19 not really be photographed?

20 A. Yes.

21 Q. And so all you can really see on the  
22 videotape is an occasional backside of her head or  
23 basically the lawyers' and the court officer; isn't  
24 that correct?



1 A. That's right.

2 Q. So the effect of the order as it was  
3 implemented was that the press couldn't photograph  
4 Mr. Horton.

5 A. Yes.

6 Q. You testified in your direct testimony, as  
7 I understood you, that within a few days of  
8 September 6th, Judge Lopez called you.

9 A. Right.

10 Q. And am I correct that she called you two or  
11 three different times?

12 A. That's right.

13 Q. At no time did you make a call to Judge  
14 Lopez; is that correct?

15 A. I didn't initiate a call, no.

16 Q. All of those calls came from Judge Lopez to  
17 you?

18 A. Yes.

19 Q. I thought I heard you say that at least one  
20 of those calls was to your home on a weekend; is  
21 that correct?

22 A. That's right.

23 Q. And were the other calls to your office?

24 A. I'm not sure about the third call. I know

1 for sure that the first call was to my office.  
2 Q. During the first call you had with Judge  
3 Lopez, she expressed concern and worry about Mr.  
4 Horton, correct?  
5 A. Yes.  
6 Q. And she --  
7 A. Concern. Worry -- well, okay. The answer  
8 is yes.  
9 Q. And she asked you how she was doing. She  
10 expressed concern for you as well?  
11 A. Yes.  
12 Q. And she was telling you that the press, in  
13 her view, was misportraying the case, correct?  
14 A. I think we were agreeing that, yes,  
15 agreeing to that, yes.  
16 Q. And you understood that to mean that the  
17 press attention was excessive and/or the sentence  
18 was, in her view, fair; is that correct?  
19 A. No. I felt that my client was being  
20 portrayed as a pedophile, which she's not. And so  
21 I -- I can't tell you what Judge Lopez exactly was  
22 thinking, but we were both expressing the view that  
23 it was an unbelievable amount of press coverage and  
24 that it was not a fair representation of the case.

1 I cannot tell you what specific words were used. I  
2 don't have any clear memory of that.

3 Q. Fine. But in that conversation she did  
4 tell you that in her view, she thought the press was  
5 being unfair? The case was being portrayed  
6 unfairly; isn't that right?

7 A. I think the gist of what we were saying is  
8 those things, but I cannot quote Judge Lopez on  
9 that.

10 Q. Then in a second conversation you had with  
11 Judge Lopez, you in fact advised her that she might  
12 want to get a lawyer; isn't that right?

13 A. In the second or third conversation, yes.

14 Q. So you had a conversation with the Judge  
15 again in which she expressed certain concern for you  
16 and your client; is that right?

17 A. Among other things, yes.

18 Q. And you talked to her about the ongoing  
19 media attention and the interest that at least some  
20 legislators had taken in the case; isn't that  
21 correct?

22 A. I didn't speak to her specifically about  
23 the interest the legislature or legislators had  
24 taken in the case. I just said, you might want to

1 think about getting a lawyer.

2 Q. But you did that because you believed, in  
3 your judgment as a lawyer, that she might need  
4 counsel, obviously, correct?

5 A. Well, I wasn't trying to represent her. It  
6 just seemed that it would be a good idea that she  
7 consult counsel, yes.

8 Q. And you told her that?

9 A. I did.

10 Q. And again, you talked about the case being  
11 unfairly portrayed in the media?

12 A. Yes.

13 Q. And again, you talked about Mr. Horton and  
14 how she was doing?

15 A. How my client was doing, yes.

16 Q. You would agree, would you not, that a  
17 phone call from a Superior Court judge following a  
18 criminal matter is quite unusual; isn't that  
19 correct?

20 A. Yes. This whole case was unusual.

21 Q. But this particular kind of call was unique  
22 in your experience, isn't it?

23 A. Unique -- highly unusual, I suppose, but --

24 Q. At some point a decision was made at CPCS

1 to come out publicly and defend the sentence and to  
2 go public in the press about certain aspects of the  
3 case; is that correct?

4 A. That's absolutely correct.

5 Q. And you talked on background to some extent  
6 about the case as well as occasionally on the  
7 record, correct?

8 A. Right.

9 Q. And Mr. Leahy, chief counsel of CPCS, went  
10 on television shows and took the lead role in, if  
11 you will, defending this sentence in this  
12 proceeding, correct?

13 MR. EGBERT: I just want to make sure she's  
14 talking about her personal knowledge, whatever it  
15 is, when we're talking about what Mr. Leahy did.

16 Q. You know what Mr. Leahy did because he was  
17 working in the same office and you discussed it;  
18 isn't that right?

19 A. Yes. I spoke to Bill Leahy the afternoon  
20 of September 6th. I went straight to him. We began  
21 defending --

22 Q. Wait a minute. You knew what Mr. Leahy was  
23 doing because a good deal of it was public,  
24 including television shows and quotations in the

1 media; isn't that correct?

2 MR. EGBERT: Judge, the fact that things  
3 may be public doesn't mean this.

4 THE WITNESS: It had.

5 MR. WARE: Let her say so.

6 MR. EGBERT: I think the question is, what  
7 did she know and see.

8 HEARING OFFICER DAHER: I'll entertain a  
9 motion to strike if it's not responsive. Go ahead.

10 A. I'm aware that Mr. Leahy made at least one  
11 television appearance. I don't have a memory of  
12 whether I actually saw it or not.

13 Q. Do you recall Mr. Leahy having appeared on  
14 Emily Rooney's show?

15 A. Yes.

16 Q. And did you see one or more of those shows  
17 yourself?

18 A. I might have.

19 MR. WARE: Your Honor, I'd like to offer  
20 Exhibit 6 at this time, which is the videotape of a  
21 couple of those shows, on the same basis as the  
22 newspaper articles were offered.

23 MR. EGBERT: On what basis? That Mr.  
24 Leahy, who they took off their witness list, went on

1 television?

2 MR. WARE: Yes. This was among the  
3 publicity regarding the case. It was among the  
4 reasons for public reaction and is relevant on the  
5 same basis as the newspaper articles and with the  
6 same limitations.

7 MR. EGBERT: Judge, it is the most back  
8 door of ways to get in some television show that no  
9 one can authenticate and still hasn't.

10 This witness still hasn't said that she's  
11 ever seen it. So we're simply going to start  
12 playing television shows without witnesses and quite  
13 frankly, to what end, I'm not sure, but I object.

14 HEARING OFFICER DAHER: Overruled. Do you  
15 want to play them --

16 MR. WARE: I don't have it in the  
17 courtroom. We'll bring it and mark it later, if  
18 that's okay with you.

19 MR. EGBERT: Wait a minute.

20 HEARING OFFICER DAHER: I know. It's  
21 putting the cart before the horse.

22 MR. WARE: I understand that, but this  
23 witness is going to be off the stand. You have a  
24 copy of it --

1                   MR. EGBERT: Wait a minute. Wait a minute.  
2 No. Use this witness to try to authenticate a  
3 videotape and play it. They're going to play it in  
4 front of this witness.  
5                   MR. WARE: I'm not going to play it. I'm  
6 not going to spend the time. I'm offering it not  
7 for the truth of the matter --  
8                   MR. EGBERT: Well, then --  
9                   HEARING OFFICER DAHER: Let him finish. Go  
10 ahead.  
11                   MR. WARE: I'm offering it on the same  
12 basis as the newspaper articles. I'm not intending  
13 to play it.  
14                   MR. EGBERT: Judge, some piece of evidence  
15 is being offered in this case. I want it here in  
16 this courtroom --  
17                   MR. WARE: You have it.  
18                   MR. EGBERT: No, I don't have it.  
19                   HEARING OFFICER DAHER: Let him finish, Mr.  
20 Ware.  
21                   MR. EGBERT: I want it here in this  
22 courtroom where I can use it. I've never seen a  
23 case tried like this.  
24                   HEARING OFFICER DAHER: I think, Mr. Ware,



1 to try to get it in that way without giving Mr.  
2 Egbert a chance to scrutinize --

3 MR. WARE: Mr. Egbert is not saying he  
4 doesn't have a copy of it. He does. That's not the  
5 issue. We happen to have left it at our office this  
6 morning.

7 MR. EGBERT: Then send somebody back to  
8 your office --

9 MR. WARE: If that's what it takes, that's  
10 what we'll do.

11 HEARING OFFICER DAHER: That's what we'll  
12 do.

13 MR. WARE: Fine.

14 BY MR. WARE:

15 Q. I think you said yesterday that you knew  
16 that Judge Lopez retained jurisdiction in this case;  
17 is that right?

18 A. Yes.

19 Q. And that was specifically at your request,  
20 was it not?

21 A. Yes.

22 Q. And it was your understanding, I think you  
23 said, that the case, while over, certainly had the  
24 potential for probation issues of coming back before

1 Judge Lopez; isn't that correct?

2 A. If there had been an allegation of a  
3 violation, yes.

4 Q. And you understand that Judge Lopez has in  
5 fact been supervising Mr. Horton's probation since  
6 September 6th, 2000?

7 A. The only thing I know is that Milton  
8 Britton, one of the probation officers, is in touch  
9 with her or has been in touch with her in the past.  
10 I don't know how she's supervising it.

11 Q. With respect to the conversations you had  
12 with Judge Lopez shortly after September 6th, those  
13 two or three conversations all occurred within the  
14 first few days, first week or so of September 6th;  
15 is that correct?

16 A. That sounds correct.

17 Q. And am I correct that at no time did you  
18 advise the district attorney's office that those  
19 calls had occurred?

20 A. I did not.

21 MR. WARE: I have no further questions at  
22 this time.

23 HEARING OFFICER DAHER: Go ahead, Mr.  
24 Egbert.

1           MR. EGBERT: Judge, I want to suspend until  
2 we get that tape.

3           MR. WARE: Your Honor, that's entirely  
4 unnecessary. Counsel has had the tape for months  
5 and months and months.

6           MR. EGBERT: Judge, I want to suspend until  
7 I have that tape. It was offered through this  
8 witness and I want it.

9           HEARING OFFICER DAHER: Motion is allowed.  
10 As soon as we get it, we'll pick it up.

11           (Recess)

12           HEARING OFFICER DAHER: Are the tapes here?  
13 Are you offering it as an exhibit?

14           MR. WARE: No. I'm withdrawing the offer.  
15 I have a tape of five Greater Boston shows. Our  
16 employee who has the edited tape is not in today.  
17 We can't locate it. So I'm withdrawing the offer of  
18 Exhibit 6.

19           MR. EGBERT: I understand, Your Honor, that  
20 it's not just a withdrawal of the offer, but it's  
21 not going to be offered again in these proceedings.

22           MR. WARE: That's correct. I won't offer  
23 it.

24           HEARING OFFICER DAHER: Okay.

1 MR. EGBERT: So since you did admit it, I  
2 move to strike it.

3 HEARING OFFICER DAHER: Stricken. Agree.

4 MR. EGBERT: May I proceed, Your Honor?

5 HEARING OFFICER DAHER: Please.

6 REDIRECT EXAMINATION

7 BY MR. EGBERT:

8 Q. Ms. Goldbach, you were shown Exhibit U,  
9 which is the, we'll call it the initial  
10 psychological assessment.

11 A. Right.

12 Q. And then you indicated that Ms. Katz met  
13 with Ebony Horton for some period of an hour or so  
14 at or about December 6th, correct?

15 A. Right.

16 Q. Now, you also met with Ms. Katz concerning  
17 Ebony Horton, didn't you?

18 A. Oh, of course I did.

19 Q. And before Ms. Katz went to see Ebony  
20 Horton, did you provide her with the details of the  
21 information you had received --

22 MR. WARE: Objection to the leading nature  
23 of these questions. This is redirect.

24 HEARING OFFICER DAHER: Sustained.

1 Q. Without content from me, because I don't  
2 want to violate the privilege, can you tell me the  
3 nature of the information you provided to Ms. Katz  
4 prior to her seeing Ebony Horton.

5 A. I discussed with her the allegations. As I  
6 indicated earlier, I gave her the police reports, I  
7 indicated to her that this was a transgendered  
8 client, and I did convey privileged information to  
9 Ms. Katz about the incident.

10 Q. And would it be fair to say when you say --

11 MR. WARE: Objection. Leading.

12 HEARING OFFICER DAHER: Overruled. Go

13 ahead.

14 Q. -- when you conveyed privileged  
15 information, that was what your client had told you  
16 about the events?

17 A. Right.

18 Q. And you had worked with Ms. Katz on a  
19 number of occasions in the past, correct?

20 A. That's right.

21 Q. Take a look at Exhibit U. It's true, is it  
22 not, that it references some psychological  
23 counseling -- strike that -- some counseling at the  
24 Sidney Borum Health Center?

1           A.    Right, it does.  I don't think I have --  
2 oh, yes, I do have.  Sidney Borum, right?

3           Q.    Do you know from your experience what Ms.  
4 Katz's practice and procedure would have been with  
5 relation to having received that information?

6           MR. WARE:  Objection, Your Honor.

7           HEARING OFFICER DAHER:  What is it?

8           MR. WARE:  She's now being asked what Ms.  
9 Katz would have done.

10          HEARING OFFICER DAHER:  Sustained.

11          Q.    Do you know, from your discussions with Ms.  
12 Katz and your review of the file, whether or not Ms.  
13 Katz did anything in regard to the Sidney Borum  
14 Health Center?

15          A.    Yes.

16          Q.    What is that?

17          MR. WARE:  Objection as to what she did.  
18 He can call Ms. Katz.

19          HEARING OFFICER DAHER:  Overruled.

20          A.    She verified that my client had been at  
21 Sidney Borum -- that's part of Justice Research  
22 Institute, as I understand it -- and she spoke to a  
23 former counselor there, who was actually at that  
24 point part of the Boston Police Department.

1 Q. And is that the former counselor that  
2 you've referenced in the report that Ms. Horton's  
3 counsel left?

4 MR. WARE: Objection.

5 HEARING OFFICER DAHER: Sustained.

6 Q. And with regard to a number of the other  
7 matters reflected in this report as to where and  
8 under what circumstances Ebony Horton was going to  
9 school or work or counseling and the like, was there  
10 anything in the file that you saw with regard to  
11 that?

12 A. Anything in her file?

13 Q. Ms. Katz's file.

14 A. I, myself, didn't see her file. I know  
15 that she verified --

16 MR. WARE: Objection.

17 HEARING OFFICER DAHER: Sustained.

18 Q. From your discussion with her, do you know  
19 what she did?

20 A. She verified --

21 MR. WARE: Objection.

22 HEARING OFFICER DAHER: Sustained.

23 Q. When you presented this report -- strike  
24 that. When you had this report available to you

1 from the date of arraignment in January of the Year  
2 2000 -- and I'm talking about you, now -- were you  
3 satisfied that the information contained in there  
4 had been verified by Ms. Katz?  
5 MR. WARE: Objection.  
6 HEARING OFFICER DAHER: Sustained.  
7 Q. Did you take any steps to determine whether  
8 or not you were providing information -- would be  
9 providing information to the Court that had been  
10 verified?  
11 A. Yes.  
12 Q. What did you do?  
13 A. I spoke to Ms. Katz about what she had  
14 done.  
15 Q. What did she tell you?  
16 MR. WARE: Objection.  
17 HEARING OFFICER DAHER: Sustained.  
18 MR. EGBERT: Your Honor, again, it's not  
19 for the truth of the matter being asserted. It's  
20 for what this lawyer was put on notice of before --  
21 HEARING OFFICER DAHER: Mr. Ware, for that  
22 limited purpose?  
23 MR. WARE: No, Your Honor. It is for the  
24 purpose of it. What counsel is trying to do here is



1 buck up the report in a backhanded way by having  
2 someone who read the report --  
3 HEARING OFFICER DAHER: Overruled.  
4 A. She verified various aspects of this report  
5 by making phone calls and speaking to different  
6 individuals.  
7 Q. Now, you were asked some questions about  
8 the clinical impression in Exhibit U, which would  
9 have been dated -- it certainly would have been  
10 available to you by the date of arraignment, which  
11 was January 26th of the Year 2000, right?  
12 A. Right.  
13 Q. It starts with, "Ebony is a transgendered  
14 individual." Do you see that?  
15 A. Yes.  
16 Q. As counsel indicates, was that matter in  
17 dispute?  
18 A. No, it was never in dispute that Ebony is  
19 transgendered.  
20 Q. And this next statement "that she's been  
21 struggling with gender issues for years" --  
22 A. Right.  
23 Q. -- is that matter in dispute?  
24 MR. WARE: Objection.

1 HEARING OFFICER DAHER: What is it?

2 MR. WARE: Again, Your Honor, it's asking  
3 this witness to interpret the report --

4 HEARING OFFICER DAHER: Sustained.

5 MR. EGBERT: Well, Judge, she was asked on  
6 cross examination not only to interpret the report,  
7 but to give inferences from the report and speculate  
8 about the report. And I think I'm entitled to ask  
9 those same questions to let her clarify her answers.

10 HEARING OFFICER DAHER: In regards to any  
11 responses on cross, Mr. Ware?

12 MR. WARE: Your Honor, the witness, of  
13 course, is entitled to talk about her interpretation  
14 of the report. What she's not entitled to do is to  
15 speak for Mrs. Katz and what Mrs. Katz meant.

16 HEARING OFFICER DAHER: Sustained.

17 Q. When you were reading this report, what did  
18 you interpret these two statements to mean: "Ebony  
19 is a transgendered individual with all of the  
20 problems it produces, especially for a young person.  
21 She has been struggling with gender issues for  
22 years"? What did you interpret that to mean?

23 A. That Ebony has a gender identity disorder .

24 Q. By the way, "gender identity disorder" is a

1 word that is in DSM-IV?  
2 A. That's correct.  
3 Q. Do you know something called DSM-III?  
4 A. I do.  
5 Q. And what --  
6 MR. WARE: Objection. This witness  
7 testified that she never, ever referenced the DSM-IV  
8 in any way in a public courtroom or represented it  
9 to Judge Lopez.  
10 MR. EGBERT: That doesn't mean she didn't  
11 have knowledge of it.  
12 MR. WARE: We don't know when she got the  
13 knowledge --  
14 HEARING OFFICER DAHER: Overruled. Go  
15 ahead.  
16 Q. Are you familiar with DSM-III?  
17 A. Yes.  
18 Q. And can you tell me what DSM-III described  
19 or entitled the section --  
20 (Mr. Ware stands)  
21 HEARING OFFICER DAHER: Sustained.  
22 MR. EGBERT: Let me finish the question.  
23 HEARING OFFICER DAHER: I beg your pardon?  
24 MR. EGBERT: Can I have my question on the

1 record?

2 HEARING OFFICER DAHER: Absolutely. Mr.  
3 Ware was very fast in getting up.

4 MR. EGBERT: Mr. Ware may be fast getting  
5 up, but I'd ask the Court to await my question.

6 HEARING OFFICER DAHER: Absolutely. Put it  
7 on.

8 Q. Do you know what the DSM-III was entitled  
9 as far as the section which is now in DSM-IV called  
10 "Gender Identity Disorder"?

11 MR. WARE: Objection.

12 HEARING OFFICER DAHER: I'll hear you on  
13 the objection.

14 MR. WARE: This witness is not an expert on  
15 the "Diagnostic and Statistical Manual". These  
16 exhibits are in evidence. They speak for  
17 themselves. To that extent, she's not a  
18 psychiatrist, she's not a psychologist. She didn't  
19 write this report. In fact, she went to someone in  
20 her office to do it.

21 HEARING OFFICER DAHER: Sustained.

22 Q. You testified that you did not use the  
23 money provided by the court system for psychiatric  
24 experts which was permitted by way of a motion filed

1 by you, correct?

2 A. Right. Psychiatric or psychological,  
3 actually.

4 Q. Now, does the CPCS have a budget?

5 A. We have a budget.

6 Q. And are you satisfied that that budget is  
7 full and fair and gets you everything you want?

8 A. No, I'm not.

9 MR. WARE: I object, Your Honor, although  
10 I'll stipulate that they don't have what they  
11 deserve.

12 HEARING OFFICER DAHER: It doesn't hurt  
13 you, Mr. Ware. Overruled. Go ahead. They're  
14 underfunded.

15 THE WITNESS: Yes, Your Honor.

16 Q. Did you think, based upon the fact that you  
17 already had Joan Katz's report and the result of the  
18 lobby conference, that it was wise or efficient for  
19 you to then go out and hire a psychiatrist or  
20 psychologist --

21 (Mr. Ware stands)

22 HEARING OFFICER DAHER: Sustained.

23 Sustained.

24 MR. WARE: Objection.

1 HEARING OFFICER DAHER: The question's on;  
2 the objection is sustained. Let's go.

3 Q. Why didn't you spend the money that was  
4 authorized to get a psychologist or psychiatrist?

5 A. At that point I didn't feel it was  
6 necessary. I was aware by August of 2000 that Ms.  
7 Katz had spent extensive time with my client, as I  
8 had. I feel another psychologist or a psychiatrist  
9 would have come to the same conclusions. And in  
10 fact, of course, the same argument could be made for  
11 the psychologist or the psychiatrist; that we hire  
12 that person --

13 MR. WARE: I object. I move that so much  
14 of the answer has said she believes some other  
15 professional --

16 HEARING OFFICER DAHER: It's starting to  
17 get to that point.

18 MR. EGBERT: Judge, those were her reasons.  
19 She was tested on cross examination for not using  
20 those funds, and she's entitled to give the reasons  
21 why she didn't.

22 HEARING OFFICER DAHER: Sustained.

23 Q. You said that you're aware that Ms. Katz  
24 had had extensive interaction with Ebony Horton; is

1 that right?

2 A. Right.

3 Q. And how were you made aware of that?

4 A. Between December and actually August --  
5 well, in the entire time I've represented Ebony  
6 Horton, but specifically up until September 6th  
7 and/or, shall we say, July, which was when the  
8 second report was generated, there were multiple  
9 occasions when my client came to visit me at the  
10 office. And while there was not a prior arrangement  
11 for Ms. Katz to meet with Ebony Horton, it was quite  
12 often that Ms. Katz would actually meet with Ebony  
13 either before her appointment with me or right after  
14 her appointment with me. And I'm also aware that  
15 Ms. Katz and Ebony spoke by phone on quite a few  
16 occasions as well.

17 Q. Are you able to quantify those occasions?

18 A. I know that there are at least a half dozen  
19 meetings. And there were many phone calls.

20 Q. By the way, you were given some records of  
21 the Charles Street Jail in regard to -- and it's  
22 Exhibit 68. Do you have that in front of you?

23 A. Exhibit 68?

24 Q. Do you have it?

1           A.    Yes.  
2           Q.    Now, those are the records of the Charles  
3 Street Jail which were provided to you with relation  
4 to when people check in, when people check out, all  
5 of that stuff, do you remember that?  
6           A.    Right.  
7           Q.    Now, you've never seen a record like this,  
8 have you?  
9           A.    Had I ever seen like this one before?  
10          Q.    Right.  
11          A.    Not before two days ago.  
12          Q.    And these aren't provided to counsel when  
13 you come in and out of the jail?  
14                MR. WARE:  Objection.  
15          A.    No, they're not.  
16                MR. WARE:  Objection.  
17                HEARING OFFICER DAHER:  What's the  
18 objection?  
19                MR. WARE:  What's the relevance?  
20                HEARING OFFICER DAHER:  Overruled.  You can  
21 have it.  
22          Q.    You were tested as to when you go in and  
23 when you go out and when they check you in and when  
24 they check you out.  Do you recall that?



1           A.    Yes, I recall that.  
2           Q.    Are you aware of what they do when they  
3 check you out?  
4           A.    I am not aware what they do when they,  
5 quote, check me out.  
6           Q.    Are you aware of what records are created  
7 when they, quote, check you out?  
8           A.    No, I'm not.  
9           Q.    Do you know if they're accurate or not?  
10          A.    I don't.  
11          Q.    By the way, speaking of the accuracy of  
12 these records, take a look at the entry on the  
13 bottom of the first page. Do you see where it says  
14 Lisa Daniels was a visitor?  
15          A.    I do.  
16          Q.    And turn to the next page. She visited on  
17 12/1/99, right?  
18          A.    Right.  
19          Q.    At 19:04, right?  
20          A.    Right.  
21          Q.    She never left.  
22          A.    It seems that way.  
23          Q.    She's still in Charles Street.  
24          A.    Apparently -- Nashua Street.

1 Q. Nashua Street. Now, go to the entry at the  
2 end of the third page. And that one references  
3 someone you know well.  
4 A. The end of the third page?  
5 Q. Yes.  
6 A. Yes.  
7 Q. What entry is that for?  
8 A. For me.  
9 Q. Anne Goldbach?  
10 A. Right.  
11 Q. You were there on 12/14/99 at 10:14?  
12 A. Yes, I was.  
13 Q. You never left either.  
14 A. Apparently.  
15 Q. You're still there.  
16 A. Right.  
17 Q. How can that be?  
18 A. Obviously it's a mistake.  
19 Q. Now, you were asked a question as to  
20 whether or not you knew that Ms. Katz in Exhibit  
21 U --  
22 A. Yes.  
23 Q. -- made her clinical impression based upon  
24 a one-hour interview at the jail. Do you remember

1 being asked a series of questions like that?

2 A. I do.

3 \*Q. Do you know whether or not Ms. Katz made  
4 her clinical impression based upon a one-hour  
5 interview at the jail?

6 MR. WARE: Objection.

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

9 MR. WARE: Ms. Katz can speak to what she  
10 did. This witness cannot.

11 MR. EGBERT: She was asked this -- this was  
12 her question on cross.

13 HEARING OFFICER DAHER: Overruled. Go  
14 ahead. You can have it.

15 THE WITNESS: Could you say the question  
16 again?

17 MR. EGBERT: Can you read it for her.

18 \*(Question read)

19 A. I know that she made it based on much more  
20 than that.

21 Q. And what was that?

22 A. First of all, her many years of experience,  
23 her speaking with me, her interview of Ebony Horton,  
24 her verification and conversations with other

1 individuals who have been involved or had been  
2 involved in Ebony's life at that time.

3 Q. And people who have been involved in the  
4 treatment?

5 A. Including people -- prior counselors.

6 Q. Now, on cross you were requested, one,  
7 whether or not the report speaks the words "gender  
8 identity disorder," correct?

9 A. Right.

10 Q. And you looked at it and said, "No, it  
11 doesn't."

12 A. Right.

13 Q. Take a look at Exhibit 3, if you would.

14 A. Exhibit 3?

15 Q. Right. That should be the report that was  
16 submitted on August 1st?

17 A. Right.

18 Q. Am I right about that?

19 A. Yes.

20 Q. I want to take you through some language.

21 A. Right.

22 Q. Let's start with Paragraph 2, which says,  
23 "Charles Ebony Horton, now 22, is a transgendered  
24 person who looks and feels female."

1 A. Right.

2 Q. Now, I've put up before you DSM-IV. Do you  
3 see that?

4 A. I do.

5 Q. And would you read -- which is in evidence  
6 in this case, by the way.

7 A. All right.

8 Q. Would you read the first paragraph of  
9 DSM-IV.

10 A. "There are two components of Gender  
11 Identity Disorder, both of which must present to  
12 make the diagnosis. There must be evidence of a  
13 strong and persistent cross-gender identification,  
14 which is the desire to be, or the insistence that  
15 one is, of the other sex (Criterion A). This  
16 cross-gender identification must not merely be a  
17 desire for any perceived cultural advantages of  
18 being the other sex. There must also be evidence of  
19 persistent discomfort about one's assigned sex or a  
20 sense of inappropriateness in the gender role of  
21 that sex." That's Criterion B.

22 "The diagnosis is not made if the  
23 individual has a concurrent physical intersex  
24 condition (e.g., partial androgen insensitivity

1 syndrome or congenital adrenal hyperplasia)  
2 (Criterion C).  
3 "To make the diagnosis, there must be  
4 evidence of clinically significant distress or  
5 impairment in social, occupational, or other  
6 important areas of functioning (Criterion D)."  
7 Q. Now, I want you to take a look at this  
8 first paragraph again of the report.  
9 A. Right.  
10 Q. And it says that, "Charles Ebony Horton is  
11 a transgendered person who looks and feels female,"  
12 correct?  
13 A. Right.  
14 Q. "She goes by the name Ebony," correct?  
15 A. Right.  
16 Q. And do you understand that to be a female  
17 name?  
18 A. I do.  
19 Q. "And has been treated with female hormones  
20 for at least a couple of years."  
21 A. Right.  
22 Q. "Ebony has not had a surgical castration."  
23 It goes on to tell it's too expensive or whatever  
24 the case may be, right?

1 A. Right.

2 Q. "She's still struggling with a variety of  
3 psychological and social issues around her sexual  
4 identity. Ebony's life for the most part has been  
5 defined by gender issues. She recognized early on  
6 that she was different. Ebony and her cousin have  
7 the same concerns and often dressed up in female  
8 clothes as young children, for which Ebony, at  
9 least, was beaten."

10 A. Right.

11 Q. In your experience, Ms. Goldbach, as you've  
12 described, particularly in charge of forensics for  
13 the past five years for CPCS, does Paragraph 1 of  
14 Ms. Katz's report indicate to you what condition  
15 Ebony Horton's suffers from?

16 A. Yes, it does.

17 MR. WARE: Objection. She's not a  
18 psychiatrist. Counsel is trying to use her --

19 HEARING OFFICER DAHER: Sustained.

20 MR. EGBERT: I'm using her as a forensic  
21 legal person who's a lawyer in this case and  
22 presented this to Judge Lopez.

23 HEARING OFFICER DAHER: Sustained. Go  
24 ahead.

1 Q. Go on to Page 2, where it indicates that  
2 "Ebony was in counseling at the Sidney Borum Health  
3 Center" on the bottom. Do you see that?

4 A. Yes.

5 Q. And what did that indicate to you?

6 A. That she was getting therapy.

7 Q. For what?

8 MR. WARE: Objection. I withdraw the  
9 objection.

10 HEARING OFFICER DAHER: Okay. It's  
11 withdrawn. Go ahead.

12 A. For gender identity disorder, for  
13 psychological issues.

14 MR. WARE: Now I object. I move to strike  
15 the answer.

16 MR. EGBERT: You can't have it both ways.

17 MR. WARE: The witness is trying to use the  
18 magic words "gender identity disorder" to fit this  
19 to the "Diagnostic and Statistical Manual." She's  
20 not a psychiatrist.

21 MR. EGBERT: This herring is not red. It's  
22 purple. For any human being who has achieved the  
23 12th grade education to not be able to read this  
24 report and read the DSM and see they're talking



1 about the exact same condition is folly. And for  
2 the Commission to argue to you to close your eyes  
3 and ears and intellect to everything involved in  
4 this is simply folly.

5 If we really want to, if we want to engage  
6 in this thing to ad nauseam and bring in experts to  
7 say that all of these conditions fit the DSM manual  
8 for gender identity disorder and that Judge Lopez,  
9 in her understanding of what's being given to her,  
10 writes that down, then we'll do it. But it seems to  
11 me that this lawyer, who has both presented this to  
12 the Court and investigated it herself, ought to  
13 testify, so that we can go onto another subject.

14 HEARING OFFICER DAHER: Your position?  
15 Same argument?

16 MR. WARE: No, Your Honor. I take counsel  
17 at his word that a person with a 12th grade  
18 education might be able to do that. And it follows  
19 from that that it's the province of the Court, not  
20 this witness, who has a particular purpose here, to  
21 compare the "Diagnostic and Statistical Manual" as  
22 it's in evidence --

23 HEARING OFFICER DAHER: Sustained.

24 Q. Do you have a particular purpose here?

1           A.    I'm sorry?  
2           Q.    Do you have a particular purpose in being  
3 here?  
4           A.    A particular purpose?  
5           Q.    Yes.  Mr. Ware just said "We have a witness  
6 who has a particular purpose here."  Did you come  
7 here with a particular purpose?  
8           A.    No, I didn't.  
9           Q.    Were you on the witness list for the  
10 Commission?  
11          A.    I was.  
12          Q.    And had they in fact talked to you on a  
13 number of occasions, planning your appearance here  
14 in court?  
15          A.    They deposed me and they talked to my  
16 counsel about my being here, yes.  
17          Q.    And up until a few days ago, did you think  
18 you were coming to testify on behalf of the  
19 Commission?  
20          A.    I did.  
21          Q.    And it's only recently they told you they  
22 weren't going to call you?  
23          A.    That's correct.  
24          Q.    And after that, I called you and told you

1 that I would call you; is that correct?

2 A. Right.

3 Q. Now, you were asked -- turn to Exhibit 17,  
4 please. Those are the findings of the Court.

5 A. Right.

6 Q. You were asked by Mr. Ware -- I think I've  
7 got the question right. He said "Now, Exhibit 17  
8 was the first document to make public that Ebony  
9 Horton suffered from a gender or sexual identity  
10 disorder; is that correct?

11 A. That's what he asked me, right.

12 Q. Would you turn, please, to the DA's press  
13 release.

14 A. Which is what number?

15 MR. WARE: 7.

16 A. 7?

17 Q. Yes. And is there anything there that  
18 indicates to you that there had been a public  
19 statement by anyone that Ebony Horton suffered from  
20 a sexual identity disorder?

21 A. There most certainly is.

22 Q. What is that?

23 A. The second paragraph where it says,  
24 "Charles Horton, a transgendered person, who appears

1 as a woman."

2 Q. And did you or your client ever authorize  
3 the district attorney to release that information?

4 A. No, I did not.

5 Q. Was that the first occasion that you know  
6 of that that had ever been put in the public domain?

7 A. Absolutely, it was the first occasion.

8 Q. Now, as far as Exhibit 17 is concerned,  
9 that was done, you know, as a result of the district  
10 attorney's office demand for findings, correct?

11 A. That's right.

12 Q. And those are judicial findings made by the  
13 Court, correct?

14 A. That's right.

15 Q. And you know that those are based on the --  
16 MR. WARE: Objection, Your Honor. This is  
17 a series of leading questions. I haven't objected.  
18 I do now.

19 HEARING OFFICER DAHER: Sustained.

20 Q. Do you know, in your experience as a  
21 lawyer, whether or not -- strike that.

22 Are those findings in the public record?

23 A. They are made part of the court record, as  
24 far as I know, yes.

1 Q. Is the court record a public record?  
2 A. Yes.  
3 Q. And is that a matter of law?  
4 A. Yes.  
5 Q. And you requested the continuance in this  
6 case, correct?  
7 A. Oh, I certainly did.  
8 Q. Did you understand that the Court would  
9 have to make findings?  
10 A. Yes, I did, based on the fact that Mr.  
11 Deakin had filed this motion.  
12 Q. And whether or not -- did you have the  
13 expectation whether or not the Court would use  
14 information provided by you in making these  
15 findings?  
16 A. I did.  
17 Q. Now, you testified that the charges in the  
18 District Court you thought were the same, correct?  
19 A. Yeah. I'm not totally sure of that,  
20 though.  
21 Q. Take a look at Exhibit 18.  
22 A. (Witness reviews document)  
23 Q. Do you have it in front of you?  
24 A. I do.

1 Q. Turn, if you would -- I'll speed it up for  
2 you. Turn to what I think is the third page, and  
3 down at the bottom is there an entry for the  
4 Dorchester District Court?

5 A. Of the third page? There is an entry on  
6 "Page 1 of 2" it says at the top, but it's the  
7 second page. November 22 of '99?

8 Q. I just want to make sure we're on the same  
9 page. It may have gone in in a different order.  
10 Right. So let's identify it properly in the exhibit  
11 you're looking at. What page is it on?

12 A. This is the third page, but it's identified  
13 at the top where it says "Record information as of  
14 5/16/2001, Page 1 of 2."

15 Q. And then -- but it's the third page of the  
16 exhibit, correct?

17 A. That's right.

18 Q. And at the bottom is there an entry?

19 A. There is an entry.

20 Q. What's the entry?

21 A. "Rape of child."

22 Q. Dorchester District Court?

23 A. Dorchester District Court.

24 Q. And it shows it was dismissed on a

1 particular day?  
2 A. Right.  
3 Q. What date?  
4 A. February 1 of 2000.  
5 Q. Now, having this record in mine, was the  
6 defendant Horton charged with different crimes in  
7 the Dorchester District Court than in the Suffolk  
8 Superior Court?  
9 A. Yes.  
10 Q. And was he charged with a more serious or  
11 less serious offense --  
12 A. Less serious.  
13 Q. Let me finish. -- when it got to the  
14 Superior Court?  
15 A. A less serious charge.  
16 Q. And the rape case was dismissed by the  
17 Commonwealth; is that correct?  
18 A. That's right.  
19 Q. And do you understand rape to be a more  
20 serious offense in all respects than assault to  
21 rape, for example?  
22 A. Yes.  
23 HEARING OFFICER DAHER: Mr. Egbert, Mr.  
24 Ware, could I just interrupt for a phone call? I

1 have to make a phone call.

2 MR. WARE: Yes.

3 MR. EGBERT: Certainly.

4 (Recess)

5 HEARING OFFICER DAHER: At this time I'm  
6 going to -- I made a ruling that bothered me. And  
7 that was in re to the omitted Exhibit No. 6. Would  
8 you play back what Mr. Egbert's request was in  
9 regards to the tapes. I don't want to foreclose Mr.  
10 Ware totally from producing the tapes and offering  
11 the tapes. Would you play back that -- I just want  
12 to make a blanket --

13 MR. EGBERT: So you know, that's Mr. Ware's  
14 agreement with me put on the record. It's a  
15 stipulation that he's not going to bring in any of  
16 the tapes.

17 MR. WARE: I think that's a fair  
18 characterization of what I represented. I'm  
19 prepared to live with that, Your Honor.

20 HEARING OFFICER DAHER: So it's a  
21 stipulation, and the JCC does not intend -- it's  
22 your election not to produce the tapes; is that  
23 correct?

24 MR. WARE: I produced it months and months



1 ago. They have the tape, but I'm not going to  
2 reoffer it in this proceeding.  
3 HEARING OFFICER DAHER: You're not going to  
4 offer it today.  
5 MR. WARE: Right.  
6 MR. EGBERT: He's not going to offer it  
7 ever.  
8 HEARING OFFICER DAHER: That's just it.  
9 Ever?  
10 MR. WARE: That's right, Your Honor. I've  
11 withdrawn the exhibit. All it is is a videotape of  
12 several television shows, and I'm prepared to live  
13 without it.  
14 HEARING OFFICER DAHER: Okay.  
15 BY MR. EGBERT:  
16 Q. On cross examination you were asked whether  
17 or not you learned of the discrepancy, basically,  
18 between whether the boy was 11 or 12, right?  
19 A. Right.  
20 Q. The police reports said he was 12, correct?  
21 A. Right.  
22 Q. Some videotape said he was 11?  
23 A. Right.  
24 Q. You were asked what steps you took to clear

1 that up and to get the true answer. Do you recall  
2 that?

3 A. Right.

4 Q. Did you care?

5 A. No.

6 Q. What's the age that makes a difference  
7 under the statutes under which --

8 A. 16. Age 16.

9 Q. And, by the way, just so it's clear, turn  
10 to Exhibit 22.

11 A. Exhibit 22?

12 Q. Yes.

13 A. Yes.

14 Q. That tape we're talking about, the tape of  
15 the young man, that was certainly available to the  
16 prosecutors, right?

17 A. They gave it to me.

18 Q. And they participated in making it, right?

19 A. Yes, they did.

20 Q. What did Mr. Deakin say to Judge Lopez on  
21 Page 12 of Exhibit 22 at the statement of facts for  
22 the plea on September 6th of the Year 2000?

23 A. At which line?

24 Q. Line 15.

1           A.    "On Saturday, November 20th, 1999, a  
2 12-year-old boy, the victim in this case, was  
3 walking to his home in Dorchester."  
4           Q.    You can stop there.  So Mr. Deakin told the  
5 Court as late as September 6th, 2000, that the young  
6 man was 12 years old --  
7           A.    Yes, he did.  
8           Q.    -- at the time of the offense?  
9           A.    Right.  
10          Q.    You didn't jump up and correct him, did  
11 you?  
12          A.    No.  It wasn't my job to do so.  
13          Q.    You were next asked about Mr. Horton's  
14 arrest on or about August 29th of the Year 2000 for  
15 sexual conduct for a fee.  Do you recall that area  
16 of inquiry?  
17          A.    Yes.  
18          Q.    Do you know what that was about?  
19          A.    That was a prostitution situation with an  
20 undercover police officer.  
21          Q.    How old was the undercover police officer?  
22          A.    I met the police officer.  I know who he  
23 is.  I've known him over the years.  And I'd say he  
24 was at least in his late 40s, possibly mid 50s.

1 Q. And who offered -- did the officer offer  
2 money?  
3 MR. WARE: Objection.  
4 HEARING OFFICER DAHER: What's the  
5 objection?  
6 MR. WARE: We're now into the details of  
7 this crime on a hearsay basis. I mean, she's said  
8 what it was --  
9 HEARING OFFICER DAHER: Sustained.  
10 MR. EGBERT: Judge, there's an attempt to  
11 leave some impression that Mr. Horton on August 29th  
12 went out and committed some offense that would have  
13 any impact on the decision making in this process.  
14 And that was the intent left by the Commission. She  
15 ought to be able to explain what it was that he was  
16 charged with.  
17 HEARING OFFICER DAHER: Sustained.  
18 Q. What judge gave Ebony Horton probation on  
19 11/7/01 on the case of --  
20 A. On the Boston Municipal Court case?  
21 Q. On the case of sexual conduct for a fee.  
22 A. You know, I don't know. I didn't represent  
23 Ebony in that case.  
24 Q. Was it Judge Lopez?

1 A. No.

2 Q. And did that disposition occur after Judge  
3 Lopez had sentenced Ebony Horton on September 6th of  
4 the Year 2000?

5 A. Yes, it did.

6 Q. And is it fair to say that unless that  
7 judge was living in the Ukraine, with all the media  
8 attention, he would have known of the existence of  
9 the Ebony Horton case?

10 MR. WARE: Objection.

11 HEARING OFFICER DAHER: Sustained.

12 Q. To your knowledge, was Ebony Horton's  
13 having been placed on probation by Judge Lopez a  
14 part of the probation file on the date of 11/9/2000?

15 A. Yes.

16 MR. WARE: Objection.

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

19 MR. WARE: We have no idea what the  
20 district judge had available to him or her.

21 HEARING OFFICER DAHER: Sustained.

22 Q. In all your years of practice as a lawyer,  
23 have you ever seen a district judge denied a  
24 probation report?

1 MR. WARE: Objection.  
2 A. No.  
3 HEARING OFFICER DAHER: Sustained.  
4 Q. Or a CORI report?  
5 MR. WARE: Objection.  
6 A. No.  
7 MR. WARE: Objection. Could you please not  
8 answer the questions until the objection is ruled  
9 on. Objection.  
10 HEARING OFFICER DAHER: Sustained.  
11 Q. By the way, this offense, such as it is, by  
12 Ebony Horton on about 8/29/2000, was that  
13 information available to the prosecution in the  
14 Horton case?  
15 A. 8/29/2000?  
16 Q. Yes.  
17 A. Yes.  
18 Q. And did Mr. Deakin, Ms. Joseph or any  
19 person from the prosecution in your presence advise  
20 Judge Lopez that Ebony Horton had been arrested for  
21 sexual conduct for a fee?  
22 A. No, they didn't.  
23 Q. You were asked questions about Detective  
24 Greene and whether or not he was the first on the

1 scene, correct?  
2 A. Right.  
3 Q. Did you know whether he was first, last or  
4 in the middle?  
5 A. No.  
6 Q. What did you know?  
7 A. That he had arrived shortly after the  
8 uniformed officers had gotten there.  
9 Q. And how shortly after?  
10 MR. WARE: Objection.  
11 HEARING OFFICER DAHER: Sustained.  
12 Q. What did he tell you?  
13 A. That he was on the scene when all the other  
14 officers were there.  
15 Q. What's your experience with the manner in  
16 which detectives arrive on the scene when calls go  
17 out on the Boston Police Department radio?  
18 MR. WARE: Objection.  
19 HEARING OFFICER DAHER: Sustained.  
20 Q. You were asked whether or not you went to  
21 other police officers to verify what Jay Greene told  
22 you, correct?  
23 A. He did.  
24 Q. Do you do that as a defense lawyer?

1           A.    No.  
2           Q.    What do you do?  
3           A.    If I know that police officers or agents of  
4 the Commonwealth have exculpatory information, or  
5 suspect that they do, I ask the district attorney to  
6 fulfill their ethical obligation to check out that  
7 exculpatory evidence.  
8           Q.    Have you ever found a reluctance by certain  
9 Boston police officers to talk to you privately?  
10          A.    Of course.  
11          Q.    And so does that affect your decision on  
12 asking the DA to do it?  
13          A.    Of course it does.  
14          Q.    Now, you were also asked whether or not you  
15 would have permitted Mr. Horton to engage in a  
16 rebuttal report, I think it was called, by the  
17 Commonwealth. Do you recall those questions?  
18          A.    I do.  
19          Q.    First, did anybody ask you to do that?  
20          A.    No, nobody asked me.  
21          Q.    Second, did the prosecutors ask Judge Lopez  
22 to order you to do it?  
23          A.    No, they did not.  
24          Q.    Third, did the prosecutors ask Judge Lopez



1 to strike Joan Katz's report unless you went through  
2 an independent examination?  
3 A. No, they did not.  
4 Q. Did the prosecutors say anything to Judge  
5 Lopez about the Katz report?  
6 A. Nothing.  
7 Q. Nothing at all?  
8 A. Nothing.  
9 Q. Not an objection?  
10 A. No.  
11 Q. Not a word?  
12 A. Not a word.  
13 Q. Now, you heard Mr. Ware in his cross  
14 examination of you go through instances of the Katz  
15 report and how much time was spent and what this  
16 meant and what that meant, all of that stuff?  
17 A. Right.  
18 Q. Did Leora Joseph say any of that to Judge  
19 Lopez?  
20 A. No.  
21 Q. Anything like it?  
22 A. Nothing like it.  
23 Q. Now, you indicated, I think -- on your  
24 cross examination you were asked what were you upset

1 about in talking about with Judge Lopez when talking  
2 about the press reports, when you had conversations  
3 with Judge Lopez sometime after September 6th.  
4 MR. WARE: I'm sorry; I didn't understand  
5 the question.  
6 MR. EGBERT: Let me rephrase it.  
7 Q. You were asked about your conversations you  
8 had with Judge Lopez after September 6th.  
9 A. Yes, I was.  
10 Q. Not to get into detail, but I think you  
11 said there were one, two, or three?  
12 A. Right.  
13 Q. And that they generally involved the press  
14 treatment of the case?  
15 A. Yes.  
16 Q. Am I right that you testified that there  
17 was discussion of being upset that your client was  
18 being portrayed as a pedophile?  
19 A. That's right.  
20 Q. And was that discussion with Judge Lopez?  
21 A. That was my feeling, yes.  
22 Q. And was that discussed with Judge Lopez?  
23 A. Right.  
24 Q. And in fact --

1 MR. WARE: Objection.  
2 HEARING OFFICER DAHER: What's your  
3 objection?  
4 MR. WARE: The witness said that's her  
5 feeling.  
6 HEARING OFFICER DAHER: Sustained.  
7 MR. EGBERT: My question was, was that  
8 discussed with Judge Lopez, and she answered yes.  
9 MR. WARE: I don't think she did.  
10 HEARING OFFICER DAHER: Ask it again.  
11 Q. Did you discuss that with Judge Lopez?  
12 A. Yes, I discussed the fact that it was my  
13 feeling.  
14 Q. Your feeling what?  
15 A. That my client was being erroneously  
16 portrayed as a pedophile.  
17 Q. You were asked whether or not you had  
18 advised the DA of your discussion with Judge Lopez?  
19 A. That's right.  
20 Q. Did you see any reason to?  
21 A. No.  
22 Q. Was there any discussion of the case or  
23 judicial decisions to be made in that case?  
24 MR. WARE: Objection, Your Honor.

1 HEARING OFFICER DAHER: What was the  
2 question again?

3 MR. EGBERT: Was there any discussion of  
4 the case or judicial decisions to be made in that  
5 case.

6 MR. WARE: Objection.

7 HEARING OFFICER DAHER: What's your  
8 objection?

9 MR. WARE: The witness has been asked what  
10 the conversations were. She's repeated those  
11 conversations. We don't need characterizations  
12 after the fact.

13 HEARING OFFICER DAHER: I'm going to allow  
14 that. Overruled. Go ahead.

15 A. I recall nothing about judicial decisions  
16 or anything like that being discussed.

17 Q. Lastly, you were asked a number of things  
18 about your statements that you gave on an interview  
19 before the Commission on June 22nd of the Year 2001,  
20 correct?

21 A. Yes.

22 Q. And you were placed under oath for that?

23 A. I was.

24 Q. And you were asked a series of questions,

1 correct?

2 A. I was.

3 Q. And who was the lawyer for the Commission  
4 that was asking the questions?

5 A. Paul Ware.

6 Q. And were you represented by counsel at the  
7 time?

8 A. I was.

9 Q. And who was that?

10 A. Patty Garin.

11 Q. At the end of the interview, did you ask to  
12 be able to put certain things on the record?

13 A. I did.

14 Q. And was there a time when you went off the  
15 record for a minute to tell Mr. Ware what it is you  
16 wanted to put on the record of your interview?

17 A. Yes, there was.

18 Q. And did you tell him those things?

19 A. Through counsel, yes.

20 Q. And did he refuse to let you put them on  
21 the record?

22 A. Yes, he did.

23 Q. Did he tell the court reporter to stop  
24 taking notes?

1 A. He did.

2 Q. And was the information that you wanted to  
3 put on the record relative to these proceedings?

4 MR. WARE: Objection.

5 HEARING OFFICER DAHER: Sustained.

6 Q. What was the information you wanted to put  
7 on the record that the Commission on Judicial  
8 Conduct refused to let you do in an interview?

9 MR. WARE: Objection.

10 HEARING OFFICER DAHER: What's your  
11 objection?

12 MR. WARE: My objection is this is in the  
13 nature under the Supreme Court law of this state of  
14 a grand jury proceeding. It's not a setting in  
15 which a witness is allowed to make statements  
16 voluntarily. I conferred with counsel for Ms.  
17 Goldbach --

18 MR. EGBERT: So are you going to testify  
19 now?

20 MR. WARE: -- who refused to let her make a  
21 speech.

22 MR. EGBERT: She didn't want to make a  
23 speech. She wanted to put facts on the record that  
24 weren't asked of her --

1                   MR. WARE: I don't think Mr. Egbert was  
2 there.

3                   MR. EGBERT: Let me ask a question.

4           Q. Did some of the matters that you wished to  
5 put on the record relate directly to Judge Lopez's  
6 demeanor in the lobby on August 4th of the Year  
7 2000?

8                   MR. WARE: Objection.

9                   HEARING OFFICER DAHER: What's your  
10 objection?

11                  MR. WARE: My objection, Your Honor, is  
12 we're now talking about a conversation among Ms.  
13 Goldbach's counsel, me -- the witness may be present  
14 or not -- I don't remember -- this is not part of  
15 the proceeding before the Commission testimony.  
16 She's given full testimony here.

17                  HEARING OFFICER DAHER: The last word?

18                  MR. EGBERT: We're talking about two  
19 things, Your Honor. We're talking about, No. 1, the  
20 conduct of the Commission in the investigation of  
21 this case by refusing to put on the record matters  
22 which directly related to the allegations in this  
23 case. Two, the presentation of formal charges in  
24 this case without permitting a witness to give

1 specific credible information on one of the very  
2 issues being charged in this case.

3 MR. WARE: Your Honor, that is a ludicrous  
4 proposition. This witness testified at length about  
5 what went on in chambers on August 1st, on August  
6 4th, on September 6th. This is in the nature --

7 HEARING OFFICER DAHER: Sustained.  
8 Objection is sustained.

9 MR. EGBERT: I want an offer of proof.

10 MR. WARE: I object to an offer of proof.  
11 It's irrelevant, it's inadmissible, it's a  
12 characterization by counsel.

13 HEARING OFFICER DAHER: Side bar.  
14 (At side bar)

15 MR. EGBERT: I put on the record at the  
16 conclusion of the interview with Ms. Goldbach, which  
17 we described -- I don't have the date. Let me get  
18 it. (Pause)

19 At the conclusion of the interview on June  
20 22nd of the Year 2001 of Ms. Goldbach by Mr. Ware,  
21 where she was represented by counsel, Ms. Goldbach  
22 was never asked during this interview what the  
23 Judge's demeanor was on August 4th of 2000 in the  
24 lobby when she had her discussions with counsel,



1 which is an issue in this case, as you know.

2 At the conclusion of the events Ms. Garin  
3 said to Mr. Ware, "Just before we suspend" -- Ms.  
4 Garin is counsel for Ms. Goldbach -- "Just before we  
5 suspend, Anne has just two short points that she  
6 sort of thought of as you were thinking of things.

7 "MR. WARE: Let me discuss that off the  
8 record with you and then we will see."

9 This witness will testify and Ms. Garin  
10 will testify that Mr. Ware was told that Ms.  
11 Goldbach would testify that in the lobby conference  
12 with Judge Lopez on August 4th of 2000, her demeanor  
13 was stern, not yelling, not screaming, and  
14 consistent with the testimony she's given here  
15 today. Mr. Ware refused to let her put that on the  
16 record, refused to let her make a record of it. And  
17 I think that goes to a number of factors -- and by  
18 the way, Ms. Garin is prepared to testify to this,  
19 too. She's also a member of the bar.

20 So let me put on the record what I think  
21 this is for. I think this is about as disgraceful  
22 an exhibition of a Commission lawyer trying to keep  
23 from the Commission the true facts upon which they  
24 can make a decision, so that they can seek a skin

1 and seek a scalp.

2 Mr. Ware is supposed to be, as someone who  
3 is investigating for the Commission, is someone  
4 who's supposed to be investigating facts, not a  
5 one-sided set of events to form a prosecution. He  
6 displayed, in my opinion, bias and prejudice by  
7 doing that. He was unfair to the Judge --

8 HEARING OFFICER DAHER: That's an offer of  
9 proof?

10 MR. EGBERT: Yes, No. 1. And No. 2, it was  
11 a part of our response in this case, and I want to  
12 prove the factors in my response which were made to  
13 the formal charges.

14 MR. WARE: Your Honor, I'm not going to  
15 respond to the characterizations, but I will say  
16 that under the law of the Commonwealth, the SJC's  
17 law, the Commission's investigation is in the nature  
18 of a grand jury proceeding. Having been a  
19 prosecutor on two separate occasions for the  
20 Iran/Contra Committee --

21 MR. EGBERT: How impressive.

22 MR. WARE: -- I think I understand how to  
23 ask questions --

24 HEARING OFFICER DAHER: Let him finish.

1                   MR. WARE: I think I understand my  
2 obligations.

3                   HEARING OFFICER DAHER: What are you  
4 knocking him for?

5                   MR. EGBERT: I'm putting it on the record  
6 that it's very impressive.

7                   MR. WARE: I think I understand the  
8 obligations of taking testimony in a grand jury  
9 setting. I did not permit any witnesses to make  
10 voluntary speeches, and so I did not on this  
11 occasion.

12                  MR. EGBERT: Now I want to put two things  
13 on the record and we'll end it.

14                  HEARING OFFICER DAHER: Is this going to be  
15 in the nature of an offer of proof?

16                  MR. EGBERT: I just want to make sure that  
17 we're clear.

18                  First of all, the law of the Commonwealth,  
19 as far as grand jury matters, you should know, as  
20 having been an Iran/Contra attorney, that  
21 exculpatory evidence must be provided to the grand  
22 jury, unlike the federal system. But with regard to  
23 their statement that the Commission never asked  
24 people to open-endedly make statements, the --

1 HEARING OFFICER DAHER: What do you want to  
2 say?

3 MR. WARE: First of all, I don't believe I  
4 conducted this investigation.

5 MR. EGBERT: Your office did. Mr. Braceras  
6 did. Here's the last question to Sister Beaucage:  
7 "Sister Beaucage, is there anything else you would  
8 like to add?" She was certainly given permission to  
9 add anything she wanted at the end.

10 HEARING OFFICER DAHER: Okay.

11 (End of side bar)

12 BY MR. EGBERT:

13 Q. Ms. Goldbach, you were shown a document  
14 that was entitled "Media Appendix, Selections From  
15 the Print Media Coverage of the Ebony Horton Case,"  
16 correct?

17 A. Right.

18 Q. You were asked questions about whether or  
19 not CPCS made this public.

20 A. Right.

21 Q. First of all, under what circumstances was  
22 this document created?

23 A. It was created three months after the fact  
24 in response to the huge amount of media coverage

1 that attended this case.

2 Q. And was it put together with regard to  
3 teaching any particular subject to public defenders?

4 A. It was put together for the purposes of  
5 teaching full-time public defenders about issues  
6 concerning ever speaking to the press, as well as  
7 just in terms of speaking to supervisors. In other  
8 words, not -- in other words, when do you speak to  
9 the press and what are the considerations.

10 Q. Just so it's clear also, you said to Mr.  
11 Ware on cross that you wouldn't let Ebony Horton be  
12 questioned by a prosecution psychiatrist concerning  
13 the facts of the case, correct?

14 A. At that time, right.

15 Q. Would you have let prosecution  
16 psychiatrists or psychologists have questioned Ebony  
17 Horton about her medical conditions?

18 A. Absolutely.

19 Q. Her psychiatric conditions?

20 A. Right.

21 Q. Her transgendered status?

22 A. Right.

23 Q. Her job?

24 A. Right.

1 Q. Her schooling?  
2 A. Right.  
3 Q. Her counseling?  
4 A. Right.  
5 Q. And all the various factors contained in  
6 that report?  
7 A. Yes.  
8 MR. EGBERT: I have no further questions.  
9 MR. WARE: No questions. Thank you, Ms.  
10 Goldbach.  
11 HEARING OFFICER DAHER: Thank you very  
12 much. Next witness.  
13 MR. EGBERT: Judge Russo, please.  
14 DOMINIC J.F. RUSSO, Sworn  
15 DIRECT EXAMINATION  
16 BY MR. EGBERT:  
17 Q. Would you state your name, please?  
18 A. Dominic J.F. Russo.  
19 Q. And what is your present occupation?  
20 A. I'm retired from the judiciary.  
21 Q. And when did you retire?  
22 A. In January of this year.  
23 Q. And before your retirement, what was your  
24 position?

1           A.    I was the First Judge of the East Boston  
2 District Court.  
3           Q.    Approximately how long had you been in that  
4 position?  
5           A.    Approximately ten years.  
6           Q.    And when did you come on the District Court  
7 bench?  
8           A.    In 1980.  
9           Q.    Prior to 1980 --  
10          A.    I was the clerk in Brookline for 15 years.  
11          Q.    Did you also practice law during that  
12 period?  
13          A.    Part of it. We were permitted to practice,  
14 but then the practice was forbidden by statute.  
15          Q.    And, Judge Russo, are you familiar with the  
16 case of Commonwealth versus Kelly -- is it Angell?  
17          A.    Kelly Angell, yes.  
18                MR. WARE: Excuse me, Your Honor. May I  
19 confer with counsel for a moment?  
20                (Mr. Ware confers with Mr. Egbert)  
21                (At side bar)  
22                MR. EGBERT: This morning I met with Mr.  
23 Ware concerning a fact which I knew he knew, which  
24 is some many years ago I represented Judge Russo in

1 a matter before the Commission which was dismissed.  
2 Mr. Ware knew about the underlying complaint. I  
3 told him I thought it was highly inappropriate that  
4 the Commission would provide him that information,  
5 since it's illegal to do so because it's  
6 confidential. I have not told Judge Russo about it  
7 yet, because I don't want to prejudice his  
8 testimony, but he can take whatever action is  
9 appropriate after that.

10 The fact that the Commission is bringing an  
11 action against Judge Lopez doesn't mean they can  
12 search their files for confidential information  
13 about other judges and provide it in this case. I  
14 brought it to Mr. Ware's attention because I didn't  
15 want him to in any way be sandbagged by that fact.  
16 And I bring it to your attention. And that's where  
17 I leave it. I don't care to ask Judge Russo, nor do  
18 I think I should ask him on the record in open  
19 court, whether or not he had an attorney/client  
20 relationship with me once many years ago. You now  
21 know it. You're the finder of fact in this regard.  
22 If it affects you in any way, fine.

23 HEARING OFFICER DAHER: Mr. Ware?

24 MR. WARE: Your Honor, I've told counsel



1 that I don't want to ask any questions of Judge  
2 Russo that would be embarrassing to him in this  
3 regard, so I don't intend to inquire into anything  
4 that may have happened before the Commission.  
5 MR. EGBERT: They're not embarrassing to  
6 him.  
7 MR. WARE: Whatever.  
8 MR. EGBERT: He was erroneously charged and  
9 the case was dismissed. He's not embarrassed by  
10 that.  
11 HEARING OFFICER DAHER: So I'm notified.  
12 MR. EGBERT: That's right.  
13 HEARING OFFICER DAHER: Let's go.  
14 (End of side bar)  
15 BY MR. EGBERT:  
16 Q. Judge, I've handed up a series of documents  
17 that purport to relate to the case of Commonwealth  
18 versus Kelly Angell. Do you see them?  
19 A. (Witness reviews document) Yes.  
20 Q. Are those in fact documents from the case  
21 file of Commonwealth versus Angell?  
22 A. Yes.  
23 MR. EGBERT: I would offer them.  
24 MR. WARE: Objection. The objection is the

1 same as the objection to the testimony of this  
2 witness, Your Honor. That is to say, it's a  
3 collateral matter on the third-party witness, not a  
4 party to the case, for all the reasons set forth in  
5 the motion I filed with the Court.

6 HEARING OFFICER DAHER: I'll hear you.

7 MR. EGBERT: You already ruled that this  
8 would be admissible testimony.

9 HEARING OFFICER DAHER: Mr. Ware, wasn't  
10 that the understanding that we had or was it in  
11 regards to --

12 MR. WARE: Your Honor, I think you have  
13 ruled that Judge Russo can testify. I nonetheless  
14 object to that testimony, as I have before, and as I  
15 believe I'm required to now --

16 HEARING OFFICER DAHER: Overruled.

17 MR. WARE: And I object to the introduction  
18 of these documents.

19 HEARING OFFICER DAHER: Overruled.

20 THE CLERK: It will be W.  
21 (Documents marked as Hearing  
22 Exhibit W moved into evidence)

23 Q. Judge Russo, sometime during the case of  
24 Commonwealth versus Angell, did there come a time

1 where there was something -- some conference was  
2 held off the record?

3 A. Yes. An in-camera conference was held.

4 Q. Who was present in that conference?

5 A. There was myself, counsel for the  
6 defendant, and counsel for the Commonwealth.

7 Q. And who was counsel for the Commonwealth,  
8 do you recall?

9 A. David Deakin.

10 Q. And who was counsel for the defendant?

11 A. Anthony Lochiatto.

12 Q. Judge Russo, without getting into the  
13 specifics of the conversation, what was the nature  
14 of this conference? Was it about a possible  
15 resolution?

16 A. The nature --

17 MR. WARE: Again, Your Honor, I don't want  
18 to interrupt the Judge. May I have a standing  
19 objection to the questions and answers here on the  
20 same basis?

21 HEARING OFFICER DAHER: Yes. Go ahead.

22 A. The in-camera conference was an attempt to  
23 determine, where a tender of plea is being made,  
24 whether or not the parties were close to a

1 recommended disposition which would be agreeable to  
2 both sides or whether it was going to be disparate.

3 Q. And during the course of that conversation,  
4 did Mr. Deakin give the Commonwealth's position?

5 A. Yes, he did.

6 Q. Did Mr. Lochiatto give the defendant's  
7 position?

8 A. Yes, he did.

9 Q. And as a result of some statements by Mr.  
10 Lochiatto, did you say something to Mr. Deakin?

11 A. Mr. Lochiatto emphasized that his client  
12 had no record, and they were seeking a lenient  
13 disposition.

14 Q. What was that disposition?

15 A. Continued without a finding.

16 Q. Did you address Mr. Deakin at that point?

17 A. Yes. As it was my habit, I turned to  
18 counsel for the Commonwealth and I asked Mr. Deakin  
19 whether or not that might not be the proper way to  
20 dispose of this case, in view of the lack of a  
21 criminal record on the part of the defendant.

22 Q. And did Mr. Deakin say anything to you?

23 A. Yes, he did.

24 Q. What did he say?

- 1           A.    He said, "You can't do that, Judge.  If you  
2 do, I'll go public."
- 3           Q.    And when he said, "If you do, I'll go  
4 public," what did you say?
- 5           A.    I said, "Mr. Deakin, you have a right to  
6 make whatever statements you want on the record in  
7 the courtroom, but I take offense to that remark and  
8 I want you to know that it's not relevant.  And if  
9 you're intending to tell the Court what he can do, I  
10 won't accept it.  And the Court has" -- and I  
11 believe these were my exact words -- "the Court has  
12 many discretionary dispositional arrows in its  
13 sentencing quiver, and I'm not going to give up any  
14 one of them because of a statement like that."
- 15          Q.    When he made the statement, "If you do,  
16 I'll go public," what did you understand that to  
17 mean?
- 18          A.    That he would go to the media.
- 19          Q.    Wasn't the media following the case, in any  
20 event?
- 21          A.    They were outside, yes.
- 22          Q.    So --
- 23          A.    They were in the courtroom.
- 24          Q.    Pardon me?

1 A. They were in the courtroom.

2 Q. So what did you understand his statement to  
3 mean?

4 A. That he would make adverse comments as to  
5 the Court's ruling to the media.

6 Q. And did you think that that at that time  
7 was appropriate or inappropriate?

8 A. I thought it was highly inappropriate and  
9 uncalled for and somewhat insolent.

10 Q. The case ultimately resolved in open court?

11 A. Yes.

12 Q. And after that, did you do anything about  
13 it?

14 A. Yes. I felt that Mr. Deakin had  
15 overstepped, and it was my sincere feeling that he  
16 was a good lawyer and he needn't resort to  
17 victory-at-any-cost type statements like he made. I  
18 thought he should be reported to his boss. And I  
19 called the district attorney's office.

20 Q. And do you recall who you spoke to in the  
21 district attorney's office?

22 A. I spoke to someone initially, and I was  
23 asked what the nature of my call was. And Mr.  
24 Martin wasn't there and they said someone would call

1 me back.

2 Q. And do you recall having a conversation  
3 with someone in that subject matter?

4 A. Yes, I did.

5 Q. Do you recall who it was?

6 A. I believe it was a female. I can't recall  
7 the name right now.

8 Q. And after that -- did you tell the person  
9 you spoke with what the nature of your complaint  
10 was?

11 A. I told her exactly what happened during the  
12 in-camera conference. She was -- she felt that --  
13 did he really say that? I said, "Yes, he did." I  
14 said, "He should be talked to. He's a good lawyer,  
15 and he needn't resort to that type of statement."

16 Q. And at some point in time after that  
17 conversation did you have another conversation with  
18 Mr. Deakin?

19 A. Mr. Deakin called, and I had a conversation  
20 with Mr. Deakin, yes, not long after.

21 Q. Concerning the nature of the -- strike  
22 that.

23 What was your conversation with Mr. Deakin?

24 A. I told him, I said, "You don't need to do

1 that, counselor. You don't need to do that. That  
2 isn't the proper way -- you can't tell a judge what  
3 he can do or can't do by that kind of statement."

4 Q. And did it end there?

5 A. That's about the size of it. And he  
6 apologized, and that was the end of it.

7 Q. Now, your calling the district attorney's  
8 office and making this report and the like, was that  
9 just your decision on how to deal with this  
10 situation?

11 A. I made many more calls to the district  
12 attorney's office, mainly on young attorneys who  
13 were in the court that I thought needed a boost.  
14 And if their performance was excellent, I thought  
15 the DA should know it, and I would call Mr. Martin  
16 or someone in the office to tell them that a person  
17 did an exceptional job in prosecution. And this was  
18 the only time I called with an adverse report.

19 Q. The only time?

20 A. The only time I ever called with an adverse  
21 report in my courtroom.

22 Q. And how many years on the bench?

23 A. 22.

24 MR. EGBERT: No further questions.



## CROSS EXAMINATION

- 1  
2 BY MR. WARE:  
3 Q. Good afternoon, Judge.  
4 A. Good afternoon.  
5 Q. Your Honor, had you had any other  
6 experience with Mr. Deakin apart from the Kelly  
7 Angell case?  
8 A. I don't recall any other experience with  
9 Mr. Deakin.  
10 Q. Now, the Angell case was among the most  
11 publicized cases we've probably ever seen in the  
12 Commonwealth; isn't that right?  
13 A. In East Boston, yes.  
14 Q. Yes. And you had reporters crawling out of  
15 the woodwork every day, all day at every conference;  
16 isn't that correct, from Europe, from the United  
17 States and locally, isn't that so?  
18 A. We had reporters there, yes. I don't know  
19 where they were from.  
20 Q. The conference that you described at which  
21 there was discussion about a possible plea or agreed  
22 disposition, that was a pretty animated conversation  
23 among counsel, was it not?  
24 A. Counsel were animated, yes.

1 Q. And by that, would you agree that each  
2 felt, shall we say, very strongly about his position  
3 and the righteousness of that position?

4 A. It was why I felt it was a disparate  
5 recommendation to be made in an open court.

6 Q. And you would agree that both of the  
7 attorneys got worked up on this occasion in advance  
8 of their respective causes; is that so?

9 A. I would say that both attorneys did their  
10 job, except for one going a little bit too far.

11 Q. Now, Judge, you say Mr. Deakin said, in  
12 part, "You can't do that." And you understood him  
13 to be talking about the continuance without a  
14 finding; isn't that correct?

15 A. Yes.

16 Q. And as a matter of fact, there were reasons  
17 why there could not be a continuance without a  
18 finding; isn't that so?

19 A. No.

20 Q. Was there a continuance without a finding  
21 in the case?

22 A. No.

23 Q. But there was a different disposition?

24 A. When you say there were reasons -- I could

1 have elected in my discretion to continue the matter  
2 without a finding.

3 Q. But what Mr. Deakin explained to you was  
4 that his view was you could not legally continue --  
5 because of the nature of these charges, could not  
6 grant a continuance without a finding; is that  
7 correct?

8 A. He never made that statement in that form.

9 Q. In that form.

10 A. He just said, "You can't do it. And if you  
11 do, I'll go public."

12 Q. When he said, "You can't do it," did you  
13 understand him or do you consider that he may have  
14 meant to you, "I don't believe you're statutorily  
15 empowered because of this charge to continue the  
16 case without a finding"?

17 A. I think he knew I was statutorily so  
18 empowered.

19 Q. Following this discussion, you talked with  
20 the district attorney's office. And do you recall  
21 that, in fact, the woman with whom you spoke is  
22 Elizabeth Keeley, the first assistant now?

23 A. It might very well have been, yes.

24 Q. And following that, you said that you had a

1 conversation with Mr. Deakin --

2 A. Mr. Deakin called, yes.

3 Q. He called you, did he not?

4 A. He called me.

5 Q. And you inferred that that was as a result  
6 of his superior having talked with him, correct?

7 A. I inferred that he was told the nature of  
8 my complaint by his superior, yes.

9 Q. And you said you thought he was a good  
10 lawyer and you respected him for calling you and  
11 apologizing for overstepping on that conversation;  
12 is that correct?

13 A. In my conversation with Ms. Keeley?

14 Q. No. After Mr. Deakin had called you, the  
15 purpose of his call, as you understood it, was to  
16 apologize to you, correct?

17 A. He apologized, yes.

18 Q. And you accepted that apology, did you not?

19 A. I told him -- and I'll quote -- "You don't  
20 need to do things like that. You're a good lawyer.  
21 But if you do things like that and you continue to  
22 do it, there is some judge out there who is going to  
23 hand you your head." That's basically what I told  
24 him.

1 Q. From a personal standpoint, you accepted  
2 his apology to you?

3 A. Oh, yes. I thought it was genuine.

4 Q. And you respected him for having recognized  
5 that he overstepped --

6 A. I respected him for calling me and wanting  
7 to talk about it.

8 Q. And in your experience -- and your  
9 preference is that that's exactly the way in which a  
10 professional lawyer ought to act; namely, pick up  
11 the phone and address the issue with you?

12 A. Yes.

13 Q. That is the appropriate response, isn't it?

14 A. Yes.

15 Q. You didn't seek to put out in public any  
16 kind of finding naming him or excoriating him, did  
17 you?

18 A. I didn't believe that was necessary. I  
19 believed it was taken care of in the fashion that it  
20 concluded, with his call.

21 Q. And the fashion in which it was concluded  
22 was, he called you, he apologized, and you said, "I  
23 accept that"; you know, "Do your job."

24 A. It was my hope that it wouldn't happen

1 again.

2 Q. And as far as you know, it has not?

3 A. As far as I know.

4 MR. WARE: Thank you, Your Honor.

5 MR. EGBERT: Just one quick question.

6 HEARING OFFICER DAHER: Sure.

7 REDIRECT EXAMINATION

8 BY MR. EGBERT:

9 Q. After this conference you had in the lobby  
10 with Mr. Deakin where he made those remarks -- and  
11 you know what I'm talking about?

12 A. Yes.

13 Q. There was nothing that occurred after  
14 that -- like, he didn't ask to -- he didn't object  
15 to you being involved in the proceedings, did he?

16 A. No.

17 Q. He didn't ask you for specific findings  
18 about anything, did he?

19 A. No, he didn't. I did inform -- in open  
20 court I did inform everyone that there had been an  
21 in-camera conference and that the matter was going  
22 forward on a disparate recommendation.

23 Q. And there were no findings for you to be  
24 made concerning like a continuance or anything that

1 happened in the lobby, correct?  
2 A. Everything would be done on the record in  
3 court.  
4 MR. EGBERT: Thank you.  
5 HEARING OFFICER DAHER: Next witness.  
6 (Conference off the record)  
7 HEARING OFFICER DAHER: So we can suspend  
8 here until 1:30.  
9 (Luncheon recess taken from  
10 12:29 p.m. to 1:37 p.m.)  
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AFTERNOON SESSION

MR. EGBERT: I'd like to call Judge Mulligan.

ROBERT MULLIGAN, Sworn  
DIRECT EXAMINATION

BY MR. EGBERT:

Q. Good afternoon, Your Honor.

A. Good afternoon.

Q. Your Honor, could you state your name, please.

A. Robert Mulligan.

Q. Judge Mulligan, what is your current employment?

A. I'm an Associate Justice of the Superior Court.

Q. And how long have you been a justice of the Superior Court?

A. Twenty years.

Q. And prior to your appointment to the Superior Court, were you also on the bench?

A. On the Boston Municipal Court from September 5th, 1980, to December 14th, '82.

Q. And prior to your appointment to the bench, what was your profession?



1           A.    I worked in the U.S. Attorney's Office for  
2 a couple of years before the appointment to the BMC,  
3 and I worked in the Attorney General's Office before  
4 that, and I worked in a small civil firm in Waltham  
5 prior to that.

6           Q.    Judge Mulligan, were you at some point in  
7 your career appointed to the position of Chief  
8 Justice of the trial court?

9           A.    No. Chief Justice of the Superior Court.

10          Q.    Pardon me.

11          A.    November 1 of '94 I was appointed to that  
12 position.

13          Q.    And what were your duties and function as  
14 Chief Justice?

15          A.    They're statutory duties. I was  
16 administrative chief of the Superior Court. I  
17 assigned the judges to their assignments, take care  
18 of any problems. Aside from the judges, there were  
19 about 120 employees on the Superior Court payroll at  
20 that time.

21          Q.    Judge, do you know Judge Maria Lopez?

22          A.    I do.

23          Q.    And when did you first come to know Judge  
24 Lopez?

1           A.    When she was appointed to the Superior  
2 Court in 1993.

3           Q.    And for a good part of -- strike that.  For  
4 all of your tenure as Chief Justice, she was a  
5 Superior Court judge; is that correct?

6           A.    That's correct.

7           Q.    During the time when you were Chief  
8 Justice, did you receive any complaints concerning  
9 Judge Maria Lopez?

10          A.    No.

11          Q.    And when Judge Lopez -- let me go back a  
12 second.  I think the statement is well known that  
13 the Superior Court is a court of equals, correct?

14          A.    Court of equals?

15          Q.    Yes.

16          A.    It's a collegial court, that's correct.

17          Q.    And it is not the position of the Chief to  
18 go around and watch trials and that kind of thing?

19          A.    That's correct.

20          Q.    But with regard to Judge Lopez, would it be  
21 your function at the time when you were Chief to  
22 give out assignments for various cases in courts?

23          A.    Well, I give out the yearly assignments to  
24 various sittings.  Each year judges request

1 assignments. Based upon seniority, we give out the  
2 assignments. And they're given out in December of  
3 each year for the following year. And I would have  
4 given her assignments for each calendar year that  
5 she was serving under me when I was the Chief.

6 Q. And during any of that time, was there any  
7 difficulty with her taking her assignments or taking  
8 her jobs or the like?

9 A. No. She accepted -- she was relatively  
10 junior as a judge when I was a Chief Justice, which  
11 means she doesn't get necessarily her preferences.  
12 She took her assignments, accepted them. She didn't  
13 ask for reconsideration or complain about any of  
14 them and went to her assignments and did her work.

15 Q. Now, Judge, are you aware of the fact that  
16 Judge Lopez presided over the case of what's  
17 commonly called the Demoulas case?

18 A. I am.

19 Q. And cases?

20 A. Yes.

21 Q. And do you have enough familiarity to  
22 describe those cases in a general sense?

23 MR. WARE: Objection.

24 HEARING OFFICER DAHER: What is your

1 objection?

2 MR. WARE: My objection is to this whole  
3 line of the Demoulas case as being irrelevant to the  
4 Horton case.

5 HEARING OFFICER DAHER: Show me the  
6 relevancy, Mr. Egbert.

7 MR. EGBERT: The relevance, Your Honor --  
8 and I believe Judge Mulligan would testify -- that  
9 the Demoulas case was, in his experience, on the  
10 bench an extraordinarily complex case with much  
11 acrimony during it, and that Judge Lopez handled the  
12 case efficiently and that she was virtually upheld  
13 on appeal on all respects.

14 HEARING OFFICER DAHER: Mr. Ware, for that  
15 purpose?

16 MR. WARE: Well, Your Honor, again, I think  
17 this is an irrelevant line of questioning. The  
18 Judge's conduct in the Demoulas case --

19 HEARING OFFICER DAHER: I'm going to  
20 overrule rule it. Go ahead.

21 Q. Do you have some familiarity with the  
22 so-called Demoulas case?

23 A. I do.

24 Q. And how would you describe those cases?

1           A.    Legally I would say they were very complex.  
2    Factually, perhaps not that complex, but there was a  
3    great deal of acrimony between the parties.  But the  
4    legal issues were complex, quite complex.

5           Q.    And have you followed the handling of that  
6    case and the ultimate handling of the case by the  
7    Supreme Judicial Court?

8           A.    Well, yes.

9           Q.    And can you tell us whether or not Judge  
10   Lopez's rulings were virtually upheld in all  
11   respects in these cases?

12          A.    I think that's true.  They were upheld in  
13   virtually all respects.  There were some minor  
14   adjustments in her rulings and findings and orders.

15          Q.    And when you say the Demoulas case was  
16   complex, how would you compare it to the normal  
17   cases that come into the Superior Court?

18                MR. WARE:  Objection.

19                HEARING OFFICER DAHER:  Sustained.

20                MR. EGBERT:  No further questions.

21                HEARING OFFICER DAHER:  Thank you.

22                MR. WARE:  I have no questions.

23                HEARING OFFICER DAHER:  Thank you very  
24   much.

1 MR. EGBERT: Your Honor, I would call  
2 Andrew Meyer.

3 ANDREW MEYER, Sworn  
4 DIRECT EXAMINATION

5 BY MR. EGBERT:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Would you state your name for the record,  
9 please.

10 A. Andrew Meyer.

11 Q. And, Mr. Meyer, are you an attorney  
12 licensed to practice in the Commonwealth of  
13 Massachusetts?

14 A. I am.

15 Q. Sir, could you tell me a bit of your  
16 background and experience in the practice of law?

17 A. I've been practicing since 1974 at the firm  
18 of Lubin & Meyer, founding partner. We practice  
19 mostly civil litigation. The majority of our cases  
20 are medical malpractice in nature.

21 Q. And, Mr. Meyer, could you tell us some of  
22 your professional appointments.

23 A. Professional appointments. Well, I teach  
24 regularly for MCLE. I'm a member of Boston Bar and

1 Mass. Bar, American Bar Association, Federal Bar  
2 Association. I teach regularly on behalf of most of  
3 those associations. I've been chosen -- well, for  
4 professional appointments, I think that's it. I  
5 teach, guest lecture at Harvard Law School on  
6 occasion, at Suffolk university Law School on  
7 occasion, at BU Law School on occasion.

8 Q. Do you hold any positions with regard to  
9 any boards of institutions?

10 A. I'm on the board of trustees of Suffolk  
11 university, and I am governor for the Mass. Academy  
12 of Trial Attorneys. I have been for about ten  
13 years.

14 Q. Mr. Meyer, do you regularly practice in the  
15 courts of the Commonwealth of Massachusetts?

16 A. I do.

17 Q. And does your work consist primarily of  
18 trial work?

19 A. It does.

20 Q. And in what area of the law?

21 A. Civil litigation, primarily personal injury  
22 and mostly medical malpractice.

23 Q. Sir, have you had occasion to -- strike  
24 that. Do you know Judge Maria Lopez?

1 A. I do.

2 Q. And how do you know her?

3 A. Professionally. Strictly as a lawyer who  
4 practices before her in the Superior Courts.

5 Q. And do you recall -- can you tell us  
6 approximately how many times you have appeared  
7 before Judge Lopez in your practice.

8 A. Over the course of years I've appeared  
9 before Judge Lopez numerous times. I've tried a  
10 number of cases before her and have appeared  
11 regularly in front of her on motions.

12 Q. Have you -- can you give me an  
13 understanding of the types of cases you try before  
14 Judge Lopez?

15 A. Most of the cases that I try are highly  
16 complex medical malpractice cases. They're  
17 sophisticated not only in the facts regarding the  
18 medicines, the evidentiary matters, as well as the  
19 substance of the law.

20 Q. And during the course of your practice  
21 before Judge Lopez, can you describe for us her  
22 legal acumen.

23 A. Excellent. I think Judge Lopez never  
24 showed any signs of not grasping any of the matters



1 before her that we brought, and to the contrary,  
2 understood, I felt, very quickly many of the complex  
3 medical matters and legal matters that are  
4 addressed, which she does not see on a regular  
5 basis. We would on a daily basis. I can think of  
6 one case in particular that we had involving a child  
7 who was going under some complex procedures at  
8 Children'S Hospital, involving a procedure called  
9 echmo. It took me and my staff probably months to  
10 learn. I believe Judge Lopez picked up on the facts  
11 and circumstances of that case, by reading the  
12 pleadings and listening to the testimony, very  
13 quickly. We were very impressed with her ability to  
14 grasp the law and the medicine.

15 Q. And during the course of your proceedings  
16 before her, can you describe her work ethic?

17 A. Judge Lopez was always there on time. She  
18 took appropriate recesses, but never extended  
19 recesses. Made us work the appropriate amount of  
20 time. However, was cordial in the sense when we had  
21 scheduling difficulties she was flexible to allow  
22 our case to proceed appropriately and always  
23 accommodated the witnesses, but did so with a firm  
24 hand.

1 Q. During the course of your proceedings in  
2 front of Judge Lopez, would you describe for us her  
3 demeanor.

4 A. Always balanced, never too high, never too  
5 low. As I said, I've seen Judge Lopez not only in  
6 trials, but also in motion sessions. Some of these  
7 matters, particularly during the course of trials,  
8 get heated. And I've had particular circumstances  
9 where either between the lawyers or between the  
10 witnesses matters become heated, some of which  
11 became pretty serious. And I thought Judge Lopez  
12 remained above the fray for the most part, never got  
13 herself personally involved in circumstances -- I  
14 remember one such circumstance where one lawyer on a  
15 case I had was attempting during a recess what we  
16 considered to be intimidating a witness who had come  
17 in from out of state. It was, I thought, highly  
18 improper. We went back in and reported it to the  
19 Judge. Judge Lopez maintained a calm demeanor,  
20 conducted a voir dire, made findings on the record  
21 to later be reported, which they were later  
22 reported, and then moved on with the trial. Not as  
23 much as I would have liked at the time, but  
24 certainly that I think was appropriate.

1 Q. Do you have occasion in your various  
2 positions that you've described to us to talk with  
3 other lawyers in your community concerning Judge  
4 Lopez?  
5 A. I do.  
6 Q. And does that include your position with --  
7 is it the Massachusetts Trial Lawyers Association?  
8 A. Yes, it does. It's Mass. Academy of Trial  
9 Attorneys.  
10 Q. Mass. Academy of Trial Attorneys. And have  
11 you actually gone and discussed Judge Lopez with  
12 various lawyers?  
13 A. I actually have.  
14 Q. And could you tell us what you found to be  
15 her reputation in that community.  
16 MR. WARE: Objection.  
17 HEARING OFFICER DAHER: Sustained.  
18 MR. EGBERT: Judge, may I be heard for a  
19 moment?  
20 HEARING OFFICER DAHER: Sure.  
21 MR. EGBERT: Probably at the side bar.  
22 (At side bar)  
23 MR. EGBERT: Judge, this is a matter that  
24 I'm offering with regard to the issue of possible

1 sanctions. And with regard to sanctions, I think  
2 the law is that virtually anything about the person  
3 which is in any way relevant to their conduct in the  
4 past, to their -- to virtually anything is  
5 appropriate for consideration on sanctions, given  
6 the weight that the particular person making the  
7 recommendation gives.

8 I recognize that if this were being offered  
9 on conduct, that it would not fit the bill for  
10 particular reputation, because it would require  
11 reputation for truth and veracity; but as a  
12 reputation as a judge on the bench amongst his  
13 peers, I believe it's appropriate for sanctions --  
14 on the issue of sanctions. And for that purpose,  
15 I'd ask you to take it, keep it in its correct  
16 compartment; and if the time ever comes, then give  
17 it the weight or lack of weight that you think is  
18 appropriate.

19 HEARING OFFICER DAHER: Mr. Ware?

20 MR. WARE: That's acceptable to me, Your  
21 Honor.

22 HEARING OFFICER DAHER: Fine.

23 (End of side bar)

24 Q. Let me see if I can repeat that question.

1 Based upon your discussions with other lawyers as  
2 you've described, can you tell us what you learned  
3 from those discussions concerning Judge Lopez's  
4 reputation as a jurist in the Commonwealth of  
5 Massachusetts?

6 A. I believe -- and I've had numerous  
7 conversations and a number of them since this  
8 incident came about, because obviously it was a  
9 topic of conversation. And I can say that uniformly  
10 the people I've spoken to in the bar, in the Mass.  
11 Academy of Trial Attorneys in the defense bar, in  
12 the corporate arena have all uniformly felt that  
13 Judge Lopez was a highly competent, efficient,  
14 balanced, talented jurist, whom they had no  
15 complaints of.

16 MR. EGBERT: I have no further questions.

17 MR. WARE: I have no questions.

18 HEARING OFFICER DAHER: Thank you,  
19 counselor. I appreciate it.

20 MR. EGBERT: Your Honor, I call Michael  
21 Avery.

22 MICHAEL AVERY, Sworn

23 DIRECT EXAMINATION

24 BY MR. EGBERT:

1 Q. Would you state your name, please.

2 A. Michael Avery.

3 Q. Mr. Avery, how are you employed at this  
4 time?

5 A. I'm an associate professor at Suffolk Law  
6 School.

7 Q. Can you give me a synopsis or history of  
8 your professional background, please.

9 A. I graduated from Yale Law School in 1970.  
10 I worked for one year for the American Civil  
11 Liberties Union as a special staff counsel. After  
12 that, I was in private practice for the next 27  
13 years in a variety of small partnerships, first in  
14 New Haven, Connecticut, and then in Boston. For the  
15 last two and a half years, before I went to Suffolk  
16 Law School, I was a partner in the firm of Perkin,  
17 Smith & Cohen.

18 Q. Have you also, during the time of your  
19 professional employment, taught in a number of  
20 different locations?

21 A. I've taught as an adjunct professor at  
22 Northeastern Law School, at Boston College Law  
23 School, I taught in a clinic course at Yale Law  
24 School when I was in New Haven, and I've been a

1 visiting professor at Georgia State Law School. Not  
2 a whole semester, by the way. It was a week. It  
3 was a very short visitorship.

4 Q. Mr. Avery, are you a member of the bar of  
5 the Commonwealth of Massachusetts?

6 A. I am.

7 Q. And are you a member of any other court  
8 bars?

9 A. I'm a member of the state bar in  
10 Connecticut, the United States District Court bar  
11 for Connecticut and Massachusetts, the bars of the  
12 First, Fourth, Second and Ninth Circuits, and the  
13 United States Supreme Court bar.

14 Q. And while you were in private practice, Mr.  
15 Avery, can you describe the nature of your practice.

16 A. Well, I had both civil and criminal  
17 litigation. I did criminal defense work. I did  
18 largely plaintiffs' civil work, a lot of civil  
19 rights work, but other kinds of civil litigation as  
20 well.

21 Q. And do you know Maria Lopez?

22 A. I do know Maria Lopez.

23 Q. How did you first come to know her?

24 A. I first met Judge Lopez when she was a

1 lawyer for Legal Services in Boston, and I can't  
2 remember what the matter was, but there was some  
3 civil rights-related matter that she was working on  
4 professionally, and I believe she called me for some  
5 advice about it.

6 Q. And after that point in time, did you come  
7 to have a professional and social relationship with  
8 Judge Lopez?

9 A. Yes. When she went to the Attorney  
10 General's Office, we had occasion to meet a number  
11 of times. We both live in Newton and our children  
12 have both attended the same schools. And so over  
13 the years, we developed not only a professional, but  
14 also a social relationship.

15 Q. Have you had occasion to be involved in  
16 teaching with Judge Lopez?

17 A. Yes, I've taught as a guest in the class,  
18 trial practice class, that Judge Lopez taught at  
19 Boston University. And this coming spring Judge  
20 Lopez and I are teaching a CLE program together at  
21 Suffolk Law School.

22 Q. What's the nature of that CLE course?

23 A. A four-part course on evidence law. And  
24 the section that Judge Lopez and I are doing is on



1 hearsay.

2 Q. Have you ever appeared before Judge Lopez?

3 A. I never have appeared before Judge Lopez.  
4 When she was appointed to the bench, she advised me  
5 very shortly after that that she would disqualify  
6 herself in any cases in which I was counsel, because  
7 we had had dinner together and socialized together a  
8 number of times, and she didn't think it was  
9 appropriate to sit on my cases.

10 Q. So in years, how long would you say that  
11 you have had this professional and social  
12 relationship with Judge Lopez?

13 A. Well, it was before she went to the  
14 Attorney General's Office. And I can't be precise,  
15 but I would say it's about 20 years, in any event.

16 Q. During the course of those years, have you  
17 had occasion to discuss the law with her?

18 A. Many times.

19 Q. And have you had occasion to discuss  
20 various legal issues and the like with her?

21 A. Yes. We've talked many times either about  
22 cases I might be working on or cases that are in the  
23 public eye that people are talking about or perhaps  
24 recent decisions from the Supreme Court or trial-

1 related matters, because we both have an interest in  
2 trial practice.

3 Q. And can you tell us from what you have  
4 learned, how you would describe Judge Lopez's legal  
5 acumen?

6 A. I think Judge Lopez is very intelligent,  
7 very thoughtful jurist. It's evident to me from our  
8 conversations spends a lot of time thinking not only  
9 about the legal correctness of her rulings and  
10 various doctrines that come into play in the courts  
11 in which she sits, but also social justice issues  
12 that lie behind legal matters. And I would say, of  
13 the different judges that I know outside the  
14 courtroom, that she's one of the most thoughtful  
15 that I've met in my professional career.

16 Q. During the course of your professional  
17 career, have you had occasion to talk to lawyers,  
18 law professors, trial lawyers and the like  
19 concerning Judge Lopez?

20 A. I have.

21 Q. And on how many occasions, so to speak, or  
22 what's the frequency of those kinds of  
23 conversations?

24 A. Well, as you might imagine, recently

1 they've been quite frequent. But even prior to  
2 that, I've had many conversations with other lawyers  
3 and practitioners about Judge Lopez.

4 Q. And were you able to come away from those  
5 conversations with an opinion concerning her  
6 reputation as a jurist amongst those in the  
7 community with whom you've spoken?

8 A. I have.

9 Q. And what is that reputation?

10 MR. WARE: Objection, unless offered on the  
11 same basis --

12 HEARING OFFICER DAHER: For the same  
13 limited purpose as indicated at the side bar a few  
14 minutes ago.

15 MR. EGBERT: Yes, Your Honor.

16 HEARING OFFICER DAHER: Absolutely. Go  
17 ahead.

18 A. Judge Lopez is very highly regarded with  
19 the lawyers and law professors with whom I've spoken  
20 regarding her. They believe her to be a person of  
21 great principle, great integrity and great  
22 compassion.

23 Q. Now, have you also had occasion to travel  
24 to Cuba with Judge Lopez?

1           A.    No, I have not traveled to Cuba with Judge  
2 Lopez, but I have traveled to Cuba.  And Judge Lopez  
3 has traveled to Cuba, and we've talked about Cuba on  
4 many occasions.

5           Q.    Do you have some interests in the Cuban  
6 cultural system?

7           A.    Yes.  I went to Cuba in 1983 with a  
8 delegation of lawyers, and I'm a very close friend  
9 with a lawyer who is a full-time researcher in  
10 Havana and who does research and writing about Cuba,  
11 to whom I introduced Judge Lopez.  And she  
12 subsequently has had many contacts with this  
13 individual.

14          Q.    And are you aware of Judge Lopez's work in  
15 the area of Cuban/United States relations?

16          A.    I am.

17          Q.    And can you describe that a bit?

18          A.    Well, she, I think, has taken many people  
19 to Cuba and has been involved in many trips of  
20 people going to Cuba, different delegations of  
21 lawyers and judges and the like, and has done a lot  
22 of work, I think, in terms of reducing  
23 misunderstanding on both sides between the Cuban  
24 legal profession and the legal profession in this

1 country.  
2 Q. And -- strike that.  
3 MR. EGBERT: I have no further questions.  
4 MR. WARE: I have no questions. Thank you.  
5 HEARING OFFICER DAHER: Thank you. We  
6 appreciate it.  
7 MR. EGBERT: Your Honor, I have two other  
8 witnesses this afternoon, but this went faster than  
9 even I thought it would go, so they weren't expected  
10 to be here for a bit. So let me check.  
11 HEARING OFFICER DAHER: Go ahead.  
12 (Pause)  
13 MR. EGBERT: Judge, they're not here yet.  
14 I suspect I'm going to need a 20- or 25-minute break  
15 or so.  
16 HEARING OFFICER DAHER: I'm going to allow  
17 it. You think around 2:30?  
18 MR. EGBERT: I'll let you know as soon as  
19 they arrive.  
20 (Recess)  
21 J. OWEN TODD, Sworn  
22 DIRECT EXAMINATION  
23 BY MR. EGBERT:  
24 Q. Could you state your name, please.

1           A.    J. Owen Todd, O-w-e-n, T-o-d-d.

2           Q.    Mr. Todd, can you give us a brief  
3 description of your professional background, please.

4           A.    I graduated from Boston College Law School  
5 in 1960. I clerked for a year at the Supreme  
6 Judicial Court. I then went with Hale and Dorr, a  
7 law firm in Boston. I was there until 1988. I then  
8 was nominated and appointed to the Superior Court,  
9 where I was an Associate Justice from 1988 to 1992.  
10 I left the Court in 1992 and was a founding partner  
11 of a law firm, Todd & Weld, in Boston, and I  
12 practiced -- I have practiced there from 1992 to  
13 today.

14          Q.    And can you give me a brief description of  
15 any of your professional associations and any major  
16 part or role you played in any of them.

17          A.    I'm a member of the American College of  
18 Trial Lawyers, a fellow; the American Board of  
19 Advocates, a fellow; all of the bar associations --  
20 American, Massachusetts, Boston -- a member of --  
21 entitled to practice before the Supreme Court,  
22 United States Supreme Court, the Courts of Appeal,  
23 the District Courts, Tax Court. I'm a practitioner  
24 in the Tax Courts, the Federal Court of Claims, the

1 Federal Appeals Court in Washington.

2 Q. Thank you. Mr. Todd, during the course of  
3 your practice, what type of law have you practiced?

4 A. Well, I began as a tax lawyer, lasted a  
5 year. I then became involved in bankruptcy work  
6 with Fred Fisher, the late Fred Fisher. And then I  
7 got involved in antitrust work with Corn Hurley and  
8 Earle Cooley at Hale and Dorr, and then from that  
9 point on was involved in trial practice. So for the  
10 last probably 35 or more years I've been engaged  
11 entirely in trial practice.

12 Q. Mr. Todd, have you had occasion to become  
13 familiar with Judge Maria Lopez?

14 A. Yes, I have.

15 Q. And when did you first come in contact with  
16 Judge Lopez?

17 A. I was trying to think of that. I knew  
18 Judge Lopez when she was a District Court Judge.  
19 Whether I had appeared before Judge Lopez in the  
20 District Court, I'm not sure. I believe that the  
21 Judge became a Superior Court judge either during my  
22 last year as a judge or shortly after that. And I  
23 think when we were both judges, perhaps in different  
24 courts for a while, I had had some interaction. And

1 if we were together as a Superior Court -- on the  
2 Superior Court, we had interaction. And then I've  
3 appeared before Judge Lopez in a number of cases  
4 since 1992.

5 Q. During the time that you have appeared  
6 before Judge Lopez since 1992, can you -- strike  
7 that.

8 Did you appear before Judge Lopez in any  
9 cases that are related to the so-called Demoulas  
10 matter?

11 A. Yes, I have.

12 Q. And what was your role or what part of that  
13 case did you have?

14 MR. WARE: Objection, Your Honor.

15 HEARING OFFICER DAHER: What's the  
16 objection?

17 MR. WARE: The same objection, Your Honor.  
18 That this is a tangent, the Demoulas cases, and  
19 irrelevant to these proceedings.

20 HEARING OFFICER DAHER: I think that would  
21 be the grounds, Mr. Egbert. Show me the relevance.

22 MR. EGBERT: It goes to the background of  
23 Mr. Todd's knowledge of Judge Lopez, his dealings  
24 with her on the bench, and his dealings with her in



1 a case -- particularly in that case, where he will  
2 describe some of the conduct of lawyers towards her,  
3 and her judicial demeanor and dealings with that on  
4 the bench.

5 HEARING OFFICER DAHER: Sustained.

6 MR. EGBERT: Then I would offer it, Your  
7 Honor, for the second ground, and that is as it  
8 relates to any matters relating to potential  
9 sanctions in this case.

10 MR. WARE: No, Your Honor. I think this is  
11 different in kind from the testimony of the judges  
12 with respect to their view or their conversations  
13 with others regarding the Judge's reputation. I  
14 don't object to Mr. Todd giving such testimony, but  
15 the Demoulas case is a whole other can of worms.

16 MR. EGBERT: Judge, this specifically goes  
17 to this lawyer's observation of the Judge under very  
18 difficult circumstances, as he'll describe them, and  
19 very trying circumstances, and the Judge's reaction  
20 and dealings with those particular matters. It goes  
21 to the issue of whether or not there are sanctions  
22 available in this case, what they ought to be,  
23 considering her rather distinguished prior dealings  
24 on the bench, No. 1. And, No. 2, whether or not the

1 conduct that we saw on tape in the Horton case was  
2 so aberrational, based upon her prior conduct and  
3 experience, as to affect what sanction ought to be  
4 imposed.

5 HEARING OFFICER DAHER: Mr. Ware?

6 MR. WARE: Your Honor, that's the very  
7 reason the testimony should not be permitted.  
8 What's at issue here is specific conduct in the  
9 Horton case, and an attempt to compare it or set  
10 standards of conduct through this witness is  
11 completely inappropriate and irrelevant. The  
12 Court's already ruled for that purpose this  
13 testimony is inappropriate.

14 MR. EGBERT: I think he misunderstood or I  
15 didn't speak clearly as to what I mean.

16 HEARING OFFICER DAHER: Go ahead.

17 MR. EGBERT: It doesn't affect her conduct.  
18 Her conduct in the Horton case on tape is for all  
19 eyes to see and hear. There's no one refuting on or  
20 doing anything with that more than playing tapes.

21 It goes to the issue, as it always does in  
22 any case of discipline, should there be discipline,  
23 as to who is the person and what has that person  
24 done and said over a particular portion of their

1 career and how they distinguished themselves and  
2 whether or not the conduct at issue is one of a  
3 pattern of conduct or one of a single aberration or  
4 a single event.

5 HEARING OFFICER DAHER: For that purpose,  
6 it's allowed.

7 MR. EGBERT: Thank you.

8 Q. Let me go back. You were involved in the  
9 Demoulas case?

10 A. Yes.

11 Q. And could you tell us your involvement.

12 A. I was not involved in the trials, the now  
13 famous two trials that took place before Judge  
14 Lopez, one a jury trial and one a bench trial. I  
15 became involved following the decisions that were  
16 written in those two cases in representing Rafaele  
17 Demoulas, who was the widow of Evan Demoulas, who  
18 originally had brought the lawsuit and then died  
19 tragically in an automobile accident, leaving a very  
20 young wife and a child. And I represented them in  
21 connection with some controversy about the stock  
22 among the family.

23 But in that role, I, in a number of  
24 occasions, was required to be present in the role as

1 counsel for Rafaele Demoulas in hearings that were  
2 held before Judge Lopez in relationship to the scope  
3 of her orders, what should be included in her  
4 orders, how her orders would be carried out in terms  
5 of money exchanging between the two branches of the  
6 family, what equitable relief would be granted in  
7 terms of unraveling certain companies and so forth.  
8 They were very convoluted issues.

9           And at the time that I was present in that  
10 case and participating in hearings before Judge  
11 Lopez, the problem raised by accusations --

12           MR. WARE: Your Honor, I'm going to object,  
13 with all deference to Mr. Todd.

14           HEARING OFFICER DAHER: I think I'm going  
15 to sustain this part of it.

16           Q. Were you aware -- strike that. Had it  
17 become public -- strike that.

18           Had the conduct of the lawyers involved in  
19 the so-called Demoulas case and their conduct  
20 towards Judge Lopez become public by that point in  
21 time?

22           A. Yes. The accusations against Judge Lopez,  
23 by the lawyers that were present in the courtroom.

24           Q. And had you had a chance to observe the way

1 Judge Lopez treated those lawyers even after the  
2 so-called accusations?

3 MR. WARE: Objection.

4 HEARING OFFICER DAHER: What is the  
5 objection?

6 MR. WARE: Again, Your Honor, we're now  
7 going to have the witness describing how the Judge  
8 treated lawyers in another case in which he was not  
9 a party because in a related case he had a personal  
10 need to make observations.

11 HEARING OFFICER DAHER: Overruled. Go  
12 ahead. I want to hear it.

13 A. Well, the conduct that I observed on the  
14 part of Judge Lopez toward all of the lawyers, those  
15 lawyers that had accused her of very serious things  
16 and those lawyers who had not -- was  
17 indistinguishable. She was very quiet,  
18 professional, courteous, respectful to all the  
19 lawyers, handled the questions in a very  
20 professional manner, and took arguments, asked  
21 questions. I saw absolutely no display by body  
22 language, by verbal indications, any way of any  
23 hostility or disrespect or antagonism towards the  
24 lawyers who had accused her of all these things

1 versus the lawyers who had not. And I was candidly  
2 very, very impressed that somebody could do that  
3 under those circumstances.

4 Q. Now, you also had occasion to appear before  
5 Judge Lopez on other matters during the course of  
6 your practice?

7 A. Yes.

8 Q. And in fact, have you appeared before her  
9 in cases where she has been required to make legal  
10 rulings and the like?

11 A. I have. And, Chief, may I just add this?  
12 I believe that --

13 MR. WARE: Objection, Your Honor.

14 HEARING OFFICER DAHER: Sustained.

15 A. Yes, I have appeared in other cases.

16 Q. Can you describe for us her legal acumen  
17 displayed in those cases?

18 MR. WARE: I don't object to the extent  
19 this is offered on the issue of sanctions, as the  
20 earlier witnesses were.

21 HEARING OFFICER DAHER: That's precisely  
22 what it's being offered for. Go ahead.

23 A. The judicial acumen that I observed, both  
24 in the Demoulas cases, which the opinions that were

1 authored by Judge Lopez in those two cases I feel  
2 are responsible for the fact that we have a business  
3 court in this Commonwealth today. They were  
4 cutting-edge opinions on fiduciary duties,  
5 partnership law. For years, Massachusetts has been  
6 considered kind of a backwater place in terms of  
7 corporate law --

8 MR. WARE: Your Honor, I object. We're a  
9 little far afield from the question here.

10 HEARING OFFICER DAHER: I think so.  
11 Sustained.

12 A. But in any event -- I understand your  
13 ruling, Judge. And in any event --

14 MR. WARE: Please, Mr. Todd.

15 A. Just to continue on the acumen --

16 HEARING OFFICER DAHER: I think you've gone  
17 well beyond that. If you can just focus your  
18 comments in re the question of her legal acumen  
19 without getting into the business court development,  
20 et cetera.

21 THE WITNESS: I will.

22 HEARING OFFICER DAHER: I'd appreciate it.

23 A. Those two opinions were brilliant. And for  
24 a judge who hadn't been on the Superior Court for

1 more than one or two years, to have authored them,  
2 they were incredible.

3 HEARING OFFICER DAHER: They were  
4 brilliant. Let's move on.

5 A. Then in cases I've been before her on, a  
6 case for Kirkpatrick & Lockhart, a law firm; there  
7 were difficult questions of jurisdiction involved in  
8 that, and bankruptcy issues, whether debts were  
9 discharged or not. I believed, although I was not  
10 always on the winning side, that the opinions that  
11 the Judge generated in that case were really  
12 paradigmatic of judicial acumen. Any number of  
13 cases. I've had about five or six cases.

14 Q. And, Mr. Todd, in the times that you  
15 remember before Judge Lopez and on times where you  
16 observed her directly by -- at times when you were  
17 not counsel, but observing, are you able to describe  
18 her demeanor on the bench?

19 A. Always low-keyed, quite participatory in  
20 asking questions and searching for views from  
21 attorneys, quite open to arguments from the lawyers,  
22 never rude or cutting people off in the middle of  
23 arguments, quite scholar -- I think more scholarly  
24 or academic would be the impression that I took away



1 mostly from my interactions with Judge Lopez as a  
2 counsel.

3 MR. EGBERT: Thank you. I have no further  
4 questions.

5 MR. WARE: No questions.

6 HEARING OFFICER DAHER: Thank you.

7 ROBERT M. DELAHUNT, JR., Sworn

8 DIRECT EXAMINATION

9 BY MR. EGBERT:

10 Q. Would you state your name, please.

11 A. Yes. Good afternoon. My name is Robert M.  
12 Delahunt, Jr. Delahunt is spelled D-e-l-a-h-u-n-t,  
13 and I am junior of said name.

14 Q. I'm sorry?

15 A. I'm junior of that name.

16 Q. Mr. Delahunt, how are you currently  
17 employed?

18 A. I am an attorney. I am engaged in the  
19 private practice of law with the law firm of Murphy,  
20 Hesse, Toomey & Lehane. Our offices are in Boston,  
21 Springfield and Quincy, Massachusetts.

22 Q. Can you give me a synopsis of your  
23 professional background, education and prior  
24 employment.

1           A.    I graduated from Colby College in 1987 with  
2   a Bachelor of Arts. I graduated from the Boston  
3   University School of Law in 1990. From there, I  
4   proceeded to a ten-year career in state law  
5   enforcement as a state prosecutor. From August of  
6   1990 to December of 1998, I was employed as a  
7   prosecutor with the office of the Norfolk District  
8   Attorney. From January of 1999 through November of  
9   2000, I was employed as a state prosecutor with the  
10  office of the Middlesex District Attorney'S Office.  
11  And during that period of time, I was  
12  cross-designated for various assignments, including  
13  a six-month stint in the office of the Suffolk  
14  District Attorney for one homicide case. Following  
15  that, in November of 2000, I entered private  
16  practice, where I have been to date.

17           Q.    You were at the Norfolk District Attorney'S  
18  Office I think you said from 1990 to 1998 or  
19  thereabouts?

20           A.    Yes, sir.

21           Q.    Can you tell us what types of cases you  
22  handled at the Norfolk DA's office?

23           A.    I began as a prosecutor in the District  
24  Courts and then to the jury of six, where I handled

1 the routine misdemeanors, including an abundance of  
2 trial work in the jury of six.

3 I then progressed to the Superior Court,  
4 where I handled felonies and ultimately worked on  
5 almost exclusively homicides for the last four years  
6 there. In addition, one of my primary assignments  
7 was to handle all civil rights-related matters and  
8 hate crimes, as they were commonly known. That  
9 required community interfacing with the various  
10 groups affected and worked with law enforcement  
11 professionals in those areas.

12 Q. You said you went to the Middlesex DA's  
13 from 1999 to the Year 2000?

14 A. That's correct.

15 Q. What types of cases did you handle there?

16 A. Almost exclusively homicides. I handled  
17 select felonies at the discretion of the District  
18 Attorney Martha Coakley and other special projects  
19 for her, but I was principally involved in the  
20 homicides.

21 Q. And during that, time I think you said you  
22 were a special assistant in Suffolk County for one  
23 case?

24 A. That's correct.

1 Q. What was the case of that?

2 A. Commonwealth versus Jeffrey Bly, which  
3 involved the murder of an Assistant Attorney General  
4 Paul McLaughlin. My assignment in that case was to  
5 be loaned from the Middlesex DA's office to the  
6 Suffolk DA's office, cross-designated as a Special  
7 Assistant DA and as a Special Assistant Attorney  
8 General to support the lead prosecutor, Thomas  
9 Brennan. My principal assignment in the case was  
10 twofold: One was the forensic DNA evidence, to  
11 compile the experts, to interface with them, and to  
12 present the DNA evidence through admissibility  
13 hearings, to cross-examine defense DNA experts and  
14 the like.

15 My second assignment in that case was  
16 witness preparation. And thirdly, I was just at Mr.  
17 Brennan's disposal for other issues that came up.

18 Q. Sir, have you been involved in the --  
19 strike that.

20 Do you teach at the Massachusetts Criminal  
21 Justice Training Council?

22 A. I have in the past. In fact, one year --  
23 one full academic year I was a weekly instructor for  
24 the purposes of hate crimes and civil rights work

1 for in-service training for Massachusetts police  
2 officers.

3 Q. Sir, during your approximately ten years'  
4 experience with the DA's offices that you've  
5 described, did you have occasion to appear before  
6 Judge Maria Lopez?

7 A. Many times.

8 Q. And can you quantify that in any way that's  
9 helpful?

10 A. Yes, sir. When I was a prosecutor in the  
11 district courts while Judge Lopez was a District  
12 Court Judge, I would say I appeared in front of her  
13 on motions, pleas, and trials at least 20 to 25  
14 times.

15 In the Superior Court I appeared in front  
16 of her on felonies and numerous times on homicide  
17 cases in everything from plea negotiations and plea  
18 dispositions to motion hearings, full-blown  
19 evidentiary motion hearings and the like. I also  
20 try cases in front of her principally in the  
21 District Court.

22 Q. While in Superior Court, you mentioned that  
23 you had various pleas in front of her. Guilty  
24 pleas, I take it?

1 A. Yes, sir.

2 Q. Did you participate in anything called  
3 "lobby conferences"?

4 A. Yes, I did.

5 Q. And what are those?

6 A. Those are conferences between a prosecutor,  
7 defense counsel and the Judge in an effort to  
8 dispose of the case short of trial.

9 Q. And did Judge Lopez have a particular  
10 practice in the way those were conducted that you  
11 observed?

12 A. Yes, she did.

13 MR. WARE: Objection, Your Honor.

14 HEARING OFFICER DAHER: What's the  
15 objection?

16 MR. WARE: The relevance of this. We're  
17 concerned here with a single case again.

18 HEARING OFFICER DAHER: Overruled. Go  
19 ahead.

20 A. Yes, she did.

21 Q. And can you just again, without belaboring,  
22 tell us generally what the practice was of Judge  
23 Lopez for lobby conferences.

24 A. In the Superior Court my experience was

1 that Judge Lopez would see attorneys at side bar.  
2 These were done off the record. She would take  
3 great pains to listen and take notes. She would  
4 listen to both sides, she would listen to  
5 aggravating circumstances, she would listen to  
6 mitigating circumstances. She would then tell  
7 counsel, based upon their recommendations, what she  
8 would do on a plea, what sentence she would give on  
9 a plea. That was made known to counsel, so that the  
10 defense counsel could then make an informed decision  
11 relative to their client as to whether the matter  
12 would proceed by way of a plea.

13 Q. And as the prosecutor in those cases, what  
14 did you understand when she told you that that would  
15 be her sentence on a plea?

16 MR. WARE: Objection.

17 HEARING OFFICER DAHER: Sustained.

18 Q. During the course of your dealings with  
19 Judge Lopez, both in -- strike that.

20 During the course of your appearances  
21 before Judge Lopez in all the various aspects that  
22 you just described, can you tell us how you found --  
23 how you would describe her legal and judicial  
24 abilities.

1           A.    Well, I found her legal and judicial  
2   abilities to be outstanding.  It was my experience  
3   that she was able to combine the highest legal  
4   acumen with a degree of humanity that some of the  
5   most severe felonies and homicides require.

6           Q.    And, sir, could you tell me during those  
7   courses of those proceedings before Judge Lopez, how  
8   you would describe her demeanor and conduct.

9           A.    In my experience, she was always fair,  
10  patient, measured and professional, highly  
11  professional with all parties.

12          Q.    And during the course of -- strike that.

13                You've described all those appearances that  
14  you've had before her as a prosecutor, correct?

15          A.    Yes, sir.

16          Q.    Have you ever appeared before her as a  
17  defense counsel?

18          A.    No, I have not.

19          Q.    Since you went into private practice, have  
20  you appeared before her at any time?

21          A.    No, I have not.

22                MR. EGBERT:  I have no further questions.

23                HEARING OFFICER DAHER:  Cross?

24                MR. WARE:  No questions.



1 MR. EGBERT: That's all the witnesses I  
2 have for today, Your Honor.

3 HEARING OFFICER DAHER: Let's agree -- I  
4 know that the parties -- I want to get it on record  
5 that the parties agree that there will be no  
6 hearings next week. Is that correct? That's by  
7 agreement. I want to get it on record. And we can  
8 pick it up -- how much more do we have? Another day  
9 or so? Will one more day do it?

10 MR. EGBERT: I think it will, Judge,  
11 particularly with the speed that this is going with  
12 these type of witnesses and so forth. So I think  
13 our agreement was we would start up a week from  
14 Monday, which is the 30th, I believe.

15 HEARING OFFICER DAHER: If you want to do  
16 that -- if it's only going to take one day, we could  
17 do it on the 3rd of January or the Monday of that  
18 week.

19 MR. WARE: I think we're talking about a  
20 week from Monday, December 30th; is that right?

21 HEARING OFFICER DAHER: That would be  
22 December 30th. We could start it on a Monday; or  
23 else -- if it's going to be one day, we could do it  
24 in January, on the 3rd of January.

1 MR. EGBERT: I'm going to lose witnesses.  
2 We've been calling around to people --  
3 HEARING OFFICER DAHER: If you want the  
4 30th, we can do it the 30th. If you want the 3rd of  
5 January and get through the holidays, I really don't  
6 care.  
7 MR. WARE: I would like to go with December  
8 30th, which is what we talked about.  
9 HEARING OFFICER DAHER: You've got the  
10 30th. That will be fine.  
11 What else do we have? Anything else?  
12 Nothing pending?  
13 (No response)  
14 HEARING OFFICER DAHER: Okay, fine.  
15 (Whereupon, the hearing was  
16 adjourned at 2:53 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 XIII, is a true and accurate transcription of my stenographic notes taken on Friday, December 20, 2002.

\_\_\_\_\_  
Jane M. Williamson  
Registered Merit Reporter

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