

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.,
 and Roberto M. Braceras, 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
Monday, December 30, 2002
 9:43 a.m.

(Jane M. Williamson, Registered Merit Reporter)

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I N D E X

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(By Mr. Egbert) 14-3

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(By Mr. Egbert) 14-24

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Sarrouf, Jr.

* * *

E X H I B I T S

EX. NO. FOR ID IN EVID.

(None)

1 P R O C E E D I N G S
2 HEARING OFFICER DAHER: Mr. Egbert, you may
3 continue.
4 MR. EGBERT: I call Randy Chapman.
5 HEARING OFFICER DAHER: I take it you've
6 given a copy of the Veksler case to Attorney Ware?
7 MR. EGBERT: Yes, Your Honor.
8 HEARING OFFICER DAHER: Let's go.
9 RANDY SCOTT CHAPMAN, Sworn
10 DIRECT EXAMINATION
11 BY MR. EGBERT:
12 Q. Sir, would you state your name, please.
13 A. Randy Scott Chapman.
14 Q. Where do you reside?
15 A. Swampscott, Massachusetts.
16 Q. What is your current employment?
17 A. I'm a partner in the law firm of Chapman &
18 Chapman in Chelsea, Massachusetts.
19 Q. And you're an attorney licensed to practice
20 in the Commonwealth?
21 A. I am.
22 Q. Can you give me a brief description of your
23 professional background, please.
24 A. I passed the bar in 1986 and immediately

1 started to work for the Essex County district
2 attorney's office. I stayed there from 1986 to
3 1991, prosecuting in the District Court, the jury
4 session, and then Superior Court. I left in 1991,
5 joined my father, practiced in Chelsea, and have
6 been there since 1991 to the present, practicing
7 mostly in state and federal court, criminal defense
8 and some personal injury.

9 Q. Sir, can you tell me, have you had occasion
10 to be a chair of any bar association committees?

11 A. Yes. I am currently a House of Delegate
12 member and an executive committee member for the bar
13 association. I've been involved with the Mass. bar
14 since 1993 and have been the chair of the criminal
15 justice section for two years. I was also chair of
16 the judicial registration section and was also a
17 member of the Judicial Conduct Commission task
18 force.

19 Q. Have you also had occasion to give lectures
20 in the various areas of law?

21 A. Yes, I've lectured locally for MCLE, local
22 laws. I've also been on the faculty for
23 Northwestern Law Center in Chicago, and have
24 lectured around the country, mostly dealing with

1 motor vehicle homicide and
2 operating-under-the-influence-related issues.
3 Q. Mr. Chapman, while you were in the district
4 attorney's office in Essex County, did you have
5 occasion to practice in the various district courts
6 in Essex County?
7 A. I did.
8 Q. And did you also have occasion to practice
9 in the Superior Court in Essex County?
10 A. I did.
11 Q. Were you the head of any sections of the
12 district attorney's office at the time?
13 A. I was chief of the motor vehicle homicide
14 unit.
15 Q. When was that?
16 A. That would have been probably from about
17 1999 -- excuse me -- 1989 to 1991.
18 Q. Sir, during your tenure as an assistant
19 district attorney, did you have occasion to come
20 into contact with Judge Maria Lopez?
21 A. I did.
22 Q. And has your relationship with her been
23 solely professional?
24 A. Yes, it has.

1 Q. And during the course of your -- strike
2 that.

3 Tell us how and under what circumstances
4 you came into Judge Lopez's -- in contact with Judge
5 Lopez during the course of your career as a district
6 attorney.

7 A. Essex County was -- in 1987 began an
8 experiment to abolish trial de novo. They were
9 eliminating the two-trial system in the District
10 Court. I was assigned in 1998 and 1997 and part of
11 1989 -- excuse me -- 1987, 1988 and 1989 into the
12 jury session, both in Salem and in Peabody. Judge
13 Lopez I think had just around that time been
14 appointed to the bench and was assigned as a Region
15 2 judge to Peabody District Court.

16 Q. Did you have occasion to both try cases in
17 front of Judge Lopez and handle pleas and other
18 matters before her?

19 A. I did.

20 Q. And approximately how many times did you
21 appear before her, if you can tell us?

22 A. The way the District Court works, you're
23 dealing with -- you could be dealing with 50 cases a
24 day, so several of those cases when she was in the

1 jury session I'd be handling in front of her. Many
2 of those would be pleas; many also would be jury
3 trials.

4 Q. Now, while you were an assistant district
5 attorney and appearing before her, could you
6 describe her judicial demeanor?

7 A. She was extremely cordial, she was
8 respectful of the litigants, she had a command and
9 understanding of the law, and she fully listened to
10 the issues and always tried to, in my opinion, reach
11 what she felt was the fair and equitable decision.

12 Q. After your career as an assistant district
13 attorney, you entered private practice?

14 A. Yes.

15 Q. And that was with your father, I believe;
16 is that correct?

17 A. Yes.

18 Q. Where is your office located?

19 A. My office is in Chelsea, but we practice
20 primarily in Suffolk County, Middlesex and Essex
21 County at the state level.

22 Q. And did you have occasion to appear in the
23 Chelsea District Court regularly?

24 A. Yes. In 1991 and thereafter, I was in

1 Chelsea District Court on several occasions.

2 Q. And that was as a private defense lawyer?

3 A. Yes.

4 Q. During that time did you also have contact
5 with Judge Lopez?

6 A. We had a lot of contact with her. My
7 father was partners with the presiding judge, Judge
8 Panarese at the time. So all of our cases he
9 recused himself of anything that he had to deal
10 with. So all of our cases were sent to the Second
11 Session, where Judge Lopez was assigned.

12 Q. And during that period of time as a defense
13 lawyer of the District Court, again can you
14 approximate how many occasions you appeared before
15 Judge Lopez?

16 A. Probably not as many as when you're a DA,
17 because you're there every day, but it could be once
18 or twice a week. And not only would you be sitting
19 there for your matters; you'd be sitting there for
20 everybody else's matters because the Second Session
21 was sort of the receptacle for any other cases that
22 were not being heard in the First Session. So there
23 were a lot of cases going on during that time.

24 Q. And while you appeared before Judge Lopez

1 in the Chelsea District Court as a private defense
2 lawyer, can you describe for us her legal acumen and
3 her judicial demeanor?

4 A. The same as it was as when I was on the DA
5 side. She again listened carefully to the arguments
6 on both sides that were being made, she was fair,
7 she tried to always seem to reach the right result.

8 Q. And have you also had experience appearing
9 before Judge Lopez in the Superior Court?

10 A. Yes. Obviously to a lesser extent, but
11 I've had some matters in front of her which involved
12 pleas. I had a restraining order matter in front of
13 her once.

14 Q. And again, with regard to your experience
15 in the Superior Court with Judge Lopez, how would
16 you describe her judicial demeanor?

17 A. Again, the same. Very thoughtful, listened
18 to the litigants and always tried to reach what she
19 felt was the fair and equitable result.

20 MR. EGBERT: I have no further questions.

21 HEARING OFFICER DAHER: Any questions?

22 MR. WARE: No.

23 HEARING OFFICER DAHER: Call your next
24 witness.

1 MR. EGBERT: Brian Grifkin, please.
2 BRIAN GRIFKIN, Sworn
3 DIRECT EXAMINATION
4 BY MR. EGBERT:
5 Q. Good morning.
6 A. Good morning, sir.
7 Q. Would you state your name, please.
8 A. Brian Grifkin.
9 Q. Mr. Grifkin, where do you reside?
10 A. Malden, Massachusetts.
11 Q. Sir, can you tell us what your current
12 employment is?
13 A. Trial court, Commonwealth of Massachusetts.
14 Q. And what is your position in the trial
15 court?
16 A. I'm the assistant chief court officer at
17 Middlesex Superior Court in Cambridge.
18 Q. How long have you been a court officer?
19 A. Since February of 1977.
20 Q. How long have you had the position as
21 assistant chief?
22 A. Since June of 1996.
23 Q. And during the course of your experience as
24 a court officer, how long were you in the Superior

1 Court system?

2 A. My whole time I've been in Superior
3 Court -- I've worked district courts and probate,
4 but mainly in Superior Court.

5 Q. And has it also been in Middlesex County?

6 A. Yes.

7 Q. And has it primarily been in the Cambridge
8 court?

9 A. Yes.

10 Q. Mr. Grifkin -- strike that.

11 During the course of your duties have there
12 been occasions where arrangements have been made by
13 your office or court personnel for litigants,
14 witnesses and the like to appear in prearranged
15 destinations?

16 A. Yes.

17 MR. WARE: Objection.

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

20 MR. WARE: Your Honor, this is in the
21 nature of expert testimony. This witness has no
22 relationship whatsoever to the events that are
23 relevant here.

24 HEARING OFFICER DAHER: Overruled. Go

1 ahead. You may have it.

2 MR. EGBERT: Thank you.

3 Q. And the answer to my question was?

4 A. Yes.

5 Q. And, sir, under what circumstances
6 generally are those arrangements made?

7 MR. WARE: Objection.

8 HEARING OFFICER DAHER: Same objection.
9 Overruled. Go ahead.

10 A. Sometimes we confer with members of the
11 judiciary. Sometimes the Chief, myself and the
12 other Assistant Chief take it upon ourselves to do
13 it with conversations with attorneys, both from the
14 district attorney's office, from the defense bar
15 and, like I said, with members of the judiciary.

16 Q. And, sir, are there circumstances -- have
17 there been circumstances in your past dealings as
18 Assistant Chief where you have made these kinds of
19 arrangements where there was press involved?

20 A. Yes.

21 Q. And what are the nature of the
22 circumstances which have caused those arrangements
23 to be made?

24 MR. WARE: Objection.

1 HEARING OFFICER DAHER: Sustained.

2 Q. What are the considerations for your office
3 in making arrangements for litigants and the like as
4 we've described?

5 MR. WARE: Objection.

6 HEARING OFFICER DAHER: Same objection --
7 I'm going to sustain that also.

8 MR. EGBERT: Judge, it goes to the practice
9 and procedure. It's got nothing to do with expert
10 testimony at all. He's not being asked to deliver
11 an opinion. He's being asked to tell us how the
12 courthouse operates in a particular matter. This is
13 a matter that Judge Lopez is particularly charged
14 with supposedly exhibiting bias by making
15 arrangements which this witness would testify to are
16 made all the time under similar circumstances by his
17 office, by judges and the like.

18 HEARING OFFICER DAHER: The ruling stands.
19 Let's go.

20 BY MR. EGBERT:

21 Q. Are you familiar with arrangements that
22 were made in the Horton case?

23 A. Yes, I am.

24 Q. And was that a case -- strike that. Can

1 you tell us what arrangements were made?

2 MR. WARE: Objection.

3 HEARING OFFICER DAHER: What's your
4 objection?

5 MR. WARE: The only way this witness
6 knows -- I don't know if there's going to be a
7 better foundation, but my understanding is this
8 witness had no role in the Horton case.

9 HEARING OFFICER DAHER: What is the
10 underpinning, Mr. Egbert?

11 Q. What was your position in September of
12 2000?

13 A. I was the Assistant Chief Court Officer.

14 Q. And what were your duties as Assistant
15 Chief?

16 A. To supervise the other court officers to
17 make sure that, you know, the associate court
18 officers are in the building, just in my normal
19 course of duties.

20 Q. And during that period of time, did you
21 supervise the court officers who were in the
22 courtroom for the case of Commonwealth versus
23 Horton?

24 A. Yes.

1 Q. And did they report to you?
2 A. Yes, they did.
3 Q. And did you have discussions with them
4 concerning arrangements being made in the Horton
5 case?
6 A. Yes.
7 Q. And when did you have those discussions?
8 A. The morning of the case.
9 Q. The morning of the sentencing?
10 A. Yes.
11 Q. And can you tell us what the conversations
12 were with the court officers?
13 MR. WARE: Objection.
14 HEARING OFFICER DAHER: What's the
15 objection?
16 MR. WARE: Hearsay.
17 MR. EGBERT: It's not hearsay, Your Honor.
18 It's not being offered for the truth. It's being
19 offered to show what he was told as the supervisor
20 as to arrangements that were being made. It's
21 putting him on notice of those particular events.
22 HEARING OFFICER DAHER: As to what action
23 he took upon having been notified?
24 MR. EGBERT: That's right.

1 HEARING OFFICER DAHER: I'll hear from Mr.
2 Ware.

3 MR. WARE: Your Honor, it is in fact
4 hearsay. It is in fact being offered for the truth
5 of what the arrangements were.

6 HEARING OFFICER DAHER: Overruled. Go
7 ahead.

8 A. The officers in the session informed me
9 that Judge Lopez had informed them to meet the
10 defendant and the defense attorney at the rear door
11 of the building, and then they brought the
12 defendant -- actually, they brought the attorney up
13 to the 12th floor. The defendant came in the front
14 door of the building, was wandering on the second or
15 third floor where the court officers went down there
16 with his lawyer, I believe, and got him and then
17 brought him up to the 12th floor. The Judge was in
18 Courtroom 12B.

19 HEARING OFFICER DAHER: Again, this is
20 information that they told you specifically?

21 THE WITNESS: Yes.

22 HEARING OFFICER DAHER: Again, Mr. Egbert,
23 we're somewhat far afield. In other words, what
24 action did he take once he was notified. I mean,

1 we're really far afield now.

2 MR. EGBERT: I'm sorry, Judge; I didn't
3 hear you.

4 HEARING OFFICER DAHER: Again, what did he
5 do, having been notified.

6 MR. EGBERT: I'm about to ask that.

7 HEARING OFFICER DAHER: Go ahead.

8 Q. When you had the discussions with the court
9 officers concerning the arrangements that were being
10 made, what did you do?

11 A. I made sure they did it. And when I went
12 up to the courtroom -- because in addition to the
13 Horton case, there were 50 other cases in the
14 building that day -- I went up to the courtroom, and
15 I walked into the courtroom and saw at that point
16 that I guess the disposition of the sentencing was
17 just about to take place. And I then left the
18 courtroom. There was no incidents at that point
19 which we needed to put extra security in the
20 courtroom. The courtroom looked secure. There
21 wasn't any situation where we had to call in more
22 court officers, and I left and went back to my
23 office.

24 Q. And had you made similar arrangements in

1 the past in other cases?
2 A. Absolutely.
3 Q. And had you done so on your own?
4 A. Without question.
5 Q. Had you done so at the direction of a
6 judge?
7 A. Absolutely.
8 Q. Had you done so at the request of defense
9 counsel?
10 A. Yes.
11 Q. Had you done so at the request of the
12 district attorney's office?
13 A. Yes, I have.
14 Q. And in all of those matters, what was the
15 reason that you did that?
16 A. For the security of --
17 (Mr. Ware stands)
18 HEARING OFFICER DAHER: Sustained.
19 Q. Do you interact with judges regularly
20 concerning your requirements for security in the
21 courthouse?
22 A. Absolutely.
23 Q. Have you interacted in the past with Judge
24 Lopez concerning your requirements for security in

1 the courthouse?
2 A. Yes, I have.
3 Q. And what have you informed the judges,
4 including Judge Lopez, concerning your concerns for
5 security in the courthouse?
6 MR. WARE: Objection.
7 HEARING OFFICER DAHER: What's the
8 objection?
9 MR. WARE: Irrelevant to this particular
10 occasion on September 6th, 2000. We're now asking
11 for some global instruction to Judge --
12 HEARING OFFICER DAHER: Sustained. I'll
13 hear you.
14 MR. EGBERT: It goes to first state of
15 mind, No. 1, as to what she was told the concerns of
16 the security force were and what she learned -- what
17 he told her upon which she has a right to act with
18 regard to making arrangements for security in the
19 courthouse.
20 HEARING OFFICER DAHER: The ruling stands.
21 Go ahead.
22 BY MR. EGBERT:
23 Q. As Assistant Chief Court Officer, if you
24 learned that the Horton case -- strike that. Were

1 you aware on September 6th -- and I'll inform you
2 for a moment that's the date of the sentencing in
3 the Middlesex County case, if you would -- were you
4 aware on September 6th that there had been some
5 press interaction with litigants in Suffolk County
6 in the Horton case previous to it coming to
7 Middlesex County?

8 A. I had seen the news of it, but was unaware
9 until the day that it was actually coming to
10 Cambridge.

11 Q. And as Assistant Chief, if you understood
12 that in a prior occasion in Suffolk County the press
13 and the litigants came into such contact that there
14 were shouting matches in the hallway and litigants
15 would not come up elevators and come into court and
16 the like, would that give you any concern for the
17 security of the Middlesex courthouse on September
18 6th of 2000?

19 MR. WARE: Objection.

20 HEARING OFFICER DAHER: Sustained.

21 Q. Did you, as Assistant Chief at the time on
22 September 6th, find anything unusual in the
23 arrangements which were being made that day?

24 A. No.

1 MR. EGBERT: No further questions.

2 HEARING OFFICER DAHER: Cross?

3 CROSS EXAMINATION

4 BY MR. WARE:

5 Q. Mr. Grifkin, the arrangements that were
6 made on September 6th, 2000, as I understood you,
7 were as a result of instructions given by Judge
8 Lopez to two of the court officers who worked for
9 you; is that correct?

10 A. That's correct.

11 Q. Prior to September 6th, and specifically on
12 August 4th, 2000, were you aware of any specific
13 arrangements made or problems in the Horton case
14 while it was in Middlesex?

15 A. I believe it was in Suffolk --

16 Q. Excuse me; you're right.

17 A. So, therefore, counsel, what goes on in
18 Suffolk, that wasn't our issue at the point.

19 Q. As I understood you, until September 6th,
20 that morning when you had some conversation, you
21 weren't specifically aware of the need for any kind
22 of special arrangements; is that correct?

23 A. Prior to that, first thing that morning,
24 no.

1 MR. WARE: I have nothing further. Thanks.
2 REDIRECT EXAMINATION

3 BY MR. EGBERT:

4 Q. You were asked whether or not before
5 September 6th you were aware of anything that
6 required special arrangements. Do you recall that
7 question just now?

8 A. Right.

9 Q. Now, on September 6th did you become
10 aware --

11 A. Yes, I was told in the morning by the
12 officers in the session that they would be doing a
13 disposition on this matter and that the Judge had
14 made arrangements with the defense attorney to meet
15 them at the back door with the defendant so they
16 could get in the building without any problems.

17 Q. And did you become aware on that date, on
18 the morning of September 6th, that there had been
19 problems in Suffolk County on this case in the past?

20 A. Yes.

21 Q. And that they had caused a disruption in
22 Suffolk County?

23 A. Absolutely.

24 Q. And after hearing all this information, did

1 you agree with the arrangements being made?
2 A. 100 percent.
3 MR. EGBERT: No further questions.
4 HEARING OFFICER DAHER: I have a question.
5 You knew that the Horton matter was before you; is
6 that correct?
7 THE WITNESS: Your Honor, I wasn't aware
8 until -- on the morning of the 6th, when my officers
9 told me that Judge Lopez had requested of them to
10 meet the defense attorney and defendant --
11 HEARING OFFICER DAHER: And you're in
12 charge of the running of the courtroom.
13 THE WITNESS: Of the courthouse.
14 HEARING OFFICER DAHER: How did you let the
15 cameras in without getting her permission first?
16 THE WITNESS: The cameras came up to the
17 floor.
18 HEARING OFFICER DAHER: How did you let
19 them in without getting her permission first?
20 THE WITNESS: They come into the building.
21 We're called from the front desk. We then tell them
22 to go into the 12th floor in the public corridor.
23 Then the camera people have the court officers in
24 the session speak to the Court and then they ask the

1 Court if the cameras are allowed in and she says yes
2 and they come in the courtroom.

3 HEARING OFFICER DAHER: Who said "yes"?
4 Judge Lopez said "yes"?

5 THE WITNESS: Yes.

6 HEARING OFFICER DAHER: Okay. Any
7 questions, Mr. Ware?

8 MR. WARE: No.

9 HEARING OFFICER DAHER: All right. Thank
10 you.

11 CHARLES SPURLOCK, Sworn
12 DIRECT EXAMINATION

13 BY MR. EGBERT:

14 Q. Would you state your name, please.

15 A. Charles Spurlock.

16 Q. Judge, what is your current employment?

17 A. Superior Court of Massachusetts.

18 Q. And you're an associate justice in the
19 Superior Court?

20 A. Yes, I am.

21 Q. Can you give me a brief description of your
22 professional background, please.

23 A. From law school? I graduated Boston
24 University Law School. I worked at the Center for

1 Criminal Justice at BU, for a while at the
2 Commission against Discrimination, Middlesex County
3 district attorney's office, United States attorney's
4 office, and associate justice of Roxbury District
5 Court and then associate justice of Superior Court.

6 Q. And when were you named as an associate
7 justice of the Roxbury District Court?

8 A. December 1986.

9 Q. And when were you named to associate
10 justice in the Superior Court?

11 A. April of 1992.

12 Q. And during the course of your -- strike
13 that.

14 Do you know Judge Lopez?

15 A. Yes, I do.

16 Q. And do you recall when you first came to
17 know her?

18 A. It was before we were judges sometime ago.
19 We were lawyers, I think, when I first met her.

20 Q. And during the course of -- strike that.
21 After you became a judge, did you have a
22 professional association with Judge Lopez?

23 A. Yes. I mean, during the conferences in the
24 District Court and primarily conferences at the

1 Superior Court level, educational conferences.

2 Q. And how often would you come in contact
3 with her under those circumstances?

4 A. At the educational conferences in the
5 Superior Court twice a year and in the District
6 Court once a year and as many times as we might have
7 been assigned to the same courts over the years.

8 Q. During the course of your coming into
9 contact with Judge Lopez under those circumstances,
10 have you had occasion to discuss legal issues and
11 issues of general legal principles and the like?

12 A. Yes.

13 Q. And have you come to know of her legal
14 acumen in those regard?

15 A. Yes.

16 Q. And how would you describe it?

17 A. Very smart, very insightful, very quick,
18 smarter than me.

19 Q. And during -- strike that. At some time in
20 the more recent past, have you had occasion to be in
21 a group to travel to Cuba with Judge Lopez?

22 A. That was two years ago, in December of
23 2000, I believe.

24 Q. What were the circumstances surrounding

1 that?

2 MR. WARE: Objection.

3 HEARING OFFICER DAHER: What's the
4 objection?

5 MR. WARE: Relevance, Your Honor.

6 MR. EGBERT: It goes to her community
7 service, her community involvement, her input into
8 the community at large, all of which are relevant
9 factors in any disciplinary proceeding.

10 HEARING OFFICER DAHER: Again, in re, this
11 is confined solely, Mr. Ware, to the possibility of
12 sanctions, I'm going to allow it. Overruled. Go
13 ahead.

14 Q. Let me repeat the question, if I can. What
15 were the circumstances surrounding your trip to
16 Cuba?

17 A. Maria organized a trip to Cuba in which
18 judges from Massachusetts met with judges and
19 lawyers in Havana, Cuba over a ten-day period in
20 which we had different opportunities to exchange
21 ideas about the criminal justice system and the
22 civil justice system between the two countries.

23 I think at the time it was not long after
24 the Elian Gonzalez episode here in America. And a

1 lot of the people in Cuba wanted to understand what
2 had taken place here and how it had taken place in
3 terms of the process by which the boy was returned
4 to Cuba and what our system was about.

5 Q. How many judges, if you recall, traveled on
6 that trip?

7 A. Maybe 15 to 20. I'm not sure.

8 Q. And who arranged the trip?

9 A. Maria did.

10 Q. She had full charge basically of
11 arranging --

12 A. Yes. She arranged the trip, she arranged
13 who would be the speakers from our end -- I'm not
14 sure about how it worked out from the other end, who
15 were going to be the speakers from the Cuban side,
16 but she arranged for different judges in our group
17 to speak about different issues that we knew about
18 or that we had an interest in while we were in Cuba.

19 I remember an afternoon in which we
20 discussed criminal justice there. And I think it
21 was Judge Graham -- I remember Judge Graham. I
22 can't remember the others who were giving it. And
23 they were a bit surprised at how we operated in
24 terms of the burden of proof and things like that.

1 Q. And as a judge and a member of the judicial
2 community, how did you find that exchange of ideas?

3 MR. WARE: Objection.

4 HEARING OFFICER DAHER: It doesn't hurt
5 you. Overruled. Go ahead.

6 A. I thought it was interesting. I came away
7 with a new appreciation -- not a new appreciation,
8 but a better understanding of how important our
9 system of justice is in terms of its focus on
10 protecting the innocent as opposed to trying to lock
11 everybody up in order to protect the state.

12 MR. EGBERT: I have no further questions.

13 HEARING OFFICER DAHER: Any questions?

14 MR. WARE: No questions.

15 HEARING OFFICER DAHER: Thank you, Judge.

16 I appreciate it. Thank you.

17 EDWARD P. RYAN, JR., Sworn

18 DIRECT EXAMINATION

19 BY MR. EGBERT:

20 Q. Would you state your name, please.

21 A. Edward P. Ryan, Jr.

22 Q. Mr. Ryan, where do you reside?

23 A. Walpole, Massachusetts.

24 Q. Sir, you're a lawyer?

1 A. Yes, I am.

2 Q. Licensed to practice in the Commonwealth?

3 A. Yes, I am.

4 Q. Can you give me a brief recitation of your
5 professional background.

6 A. Yes. I was graduated from Suffolk
7 University Law School magna cum laude in 1976. I
8 was admitted to the practice of law on January 17th,
9 1977. I began my career as an assistant district
10 attorney in the office of the Worcester County
11 district attorney, where I had worked as an
12 administrative secretary all through law school,
13 served as a student prosecutor and then served for
14 approximately two years as an assistant district
15 attorney.

16 In approximately 1979 I left the office of
17 the district attorney and started a full-time law
18 practice with a former assistant district attorney
19 by the name of John M. O'Connor who had been a
20 district attorney for approximately 20 years.

21 After I would say approximately one year,
22 we formed a partnership known as O'Connor & Ryan and
23 that's where I practice law today. My practice
24 consists of mainly trial work in the federal and

1 state courts, criminal, civil and domestic
2 relations.

3 Q. Mr. Ryan, have you been a participant in
4 various bar associations?

5 A. Yes, I have. I've been a member of the
6 executive committee of the Worcester County Bar
7 Association, served in that capacity for a number of
8 years, ultimately becoming the president of the
9 Worcester County Bar Association. Prior to that, I
10 was the president of the Northern Worcester County
11 Bar Association. I served for a number of years as
12 the president of the Bar Advocates of Worcester
13 County, Inc. At the same time I was also a member
14 of the Massachusetts Bar Association. I served in
15 various capacities in various sections on the House
16 of Delegates, I served as secretary, treasurer, vice
17 president and ultimately president of the
18 Massachusetts Bar Association.

19 Q. When was your term as president of the
20 Massachusetts Bar Association?

21 A. It began September of 2000 and it runs for
22 a year.

23 Q. Mr. Ryan, do you know Judge Maria Lopez?

24 A. Yes, I do.

1 Q. And how do you know her?

2 A. Basically and strictly only professionally.
3 That's it.

4 Q. And have you appeared before her in various
5 cases?

6 A. I've appeared in front of her on one
7 occasion in Worcester, Worcester Superior Court.

8 Q. And what kind of --

9 A. It was a civil case. I believe it was
10 the -- I represented the Boy Scouts of America.

11 Q. And during the course of the proceedings
12 where you appeared before Judge Lopez, could you
13 describe her judicial demeanor and legal acumen?

14 A. Her demeanor and legal acumen was
15 exemplary, she grasped a complicated set of
16 pleadings, a cypres trust case, fairly quickly. I
17 was on the losing side of a motion for preliminary
18 injunction on that day. Ultimately the case was
19 tried before a different Judge almost two years
20 later.

21 Q. Sir, in September of 2000, when you took
22 office as president of the Massachusetts Bar
23 Association, did you become aware shortly thereafter
24 of a case of Commonwealth versus Horton?

1 A. Yes, I did.

2 Q. And did you follow publicly the press
3 accounts and the like of that case?

4 A. Yes, I did.

5 Q. And as president of the bar association at
6 that time and thereafter, did you have occasion to
7 discuss with various lawyers and members of the bar
8 Judge Maria Lopez?

9 A. Yes, I did.

10 Q. And did you discuss with them their
11 knowledge of her demeanor and legal acumen?

12 A. Yes, I did.

13 Q. And did you come away from those
14 discussions with an understanding of her reputation
15 in the community of lawyers from which you spoke in
16 that regard?

17 A. Yes, I did.

18 MR. WARE: Objection.

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

21 MR. WARE: By definition, according to what
22 the witness has said, this all occurred after
23 September 6th, 2000. It's based on conversations
24 following sentencing with lawyers, as opposed to the

1 witness' personal knowledge.

2 HEARING OFFICER DAHER: Mr. Egbert, it's
3 post the Horton matter.

4 MR. EGBERT: The conversations was post.

5 HEARING OFFICER DAHER: Sure.

6 MR. EGBERT: The people's knowledge of
7 Judge Lopez spanned a period of time.

8 HEARING OFFICER DAHER: I think the
9 question was after you had the conversation with
10 them, which was post Horton, did you reach a
11 conclusion as to --

12 MR. EGBERT: Her reputation.

13 HEARING OFFICER DAHER: That's post Horton.

14 MR. EGBERT: That's even of more interest,
15 I would think, to the Court. First of all, that her
16 reputation, having in mind the press activity in the
17 Horton case and the fact that these people obviously
18 gained their knowledge over a period of time.

19 HEARING OFFICER DAHER: Mr. Ware?

20 MR. WARE: Your Honor, again, as I
21 understand Mr. Ryan, he has conversations with
22 members of the bar after September 6th, 2000,
23 regarding the Horton case --

24 HEARING OFFICER DAHER: I'm going to

1 sustain the objection. I've given you a lot of
2 latitude --

3 MR. EGBERT: Judge, respectfully, I
4 appreciate the latitude, but --

5 HEARING OFFICER DAHER: Which you don't
6 think you're getting. Go ahead.

7 MR. EGBERT: But I think the law gives me
8 more. In this area of the law the expressions by a
9 community of the reputation of a person who was
10 subject to discipline are relevant to all factors
11 which one must consider in that regard. Now, the
12 weight you give it is a matter of --

13 HEARING OFFICER DAHER: That's an exception
14 for the record. The objection is sustained. Go
15 ahead.

16 Q. When you spoke with these people that
17 you've described to us, did any of them or many of
18 them indicate to you that they obtained their
19 knowledge prior to September 6th of the Year 2000?

20 MR. WARE: Objection. Again, Your Honor,
21 this witness' opinion is what's being elicited here.

22 HEARING OFFICER DAHER: Sustained.

23 MR. EGBERT: As an offer of proof I want to
24 put on the record what he would testify to so it's

1 on the record.

2 HEARING OFFICER DAHER: Go ahead.

3 MR. EGBERT: Do you want him to testify to
4 it or do you want me to give it?

5 HEARING OFFICER DAHER: Do you want to do
6 it at the side bar as an offer of proof, Mr. Ware?

7 MR. WARE: I don't object to the offer of
8 proof being done right from the podium.

9 HEARING OFFICER DAHER: Go ahead.

10 MR. EGBERT: Your Honor, I believe if this
11 witness were permitted to testify, he would testify
12 that as president of the Massachusetts Bar
13 Association after the September 6th publicity
14 related to the Horton case, he made an effort to
15 discuss with lawyers and members of the bar at great
16 length Judge Lopez, her judicial demeanor and her
17 judicial acumen and that he returned from those
18 discussions with a uniform opinion that her judicial
19 demeanor and legal acumen was one of an independent,
20 hard-working judge who showed balance and fairness
21 to both sides in the deliberation of her judicial
22 duties.

23 HEARING OFFICER DAHER: You've got it.
24 Okay. Anything else?

1 MR. EGBERT: No further questions.

2 MR. WARE: No questions.

3 FREDERICK E. DASHIELL, Sworn

4 DIRECT EXAMINATION

5 BY MR. EGBERT:

6 Q. Sir, would you state your name and spell
7 your last name, please.

8 A. My name is Frederick E. Dashiell,
9 D-a-s-h-i-e-l-l.

10 Q. And, Mr. Dashiell, where do you reside?

11 A. In Boston, Massachusetts, 6 Cotton Hill
12 Avenue, Dorchester, Massachusetts.

13 Q. And, sir, what is your profession?

14 A. I'm a lawyer.

15 Q. Can you give me a brief description of your
16 professional background.

17 A. I graduated law school Northwestern
18 University in '79, returned to Boston, took the bar,
19 worked at the Department of Labor for about five
20 years, joined the U.S. Attorney's Office in 1984,
21 left there at the end of 1994. During that time, I
22 became a member of the George Lewis Ruffin Society,
23 a professional criminal justice organization here in
24 the Boston area. I am currently working with my own

1 firm of Dashiell & Associates here in private
2 practice.

3 Q. Mr. Dashiell, you mentioned the Ruffin
4 Society, could you describe what that is.

5 A. Yes. It's an organization of criminal
6 justice professionals that was founded in 1984, and
7 it's been affiliated since then with the
8 Northeastern University College of Criminal Justice.
9 Its goals are to educate the minority community with
10 respect to the criminal justice system and to assist
11 in the promotion of minorities in the criminal
12 justice system.

13 Q. And you said you were involved with the
14 Ruffin Society since 1984?

15 A. I think around early 1990 was when I was
16 first invited to join.

17 Q. And have you held any offices in the Ruffin
18 Society?

19 A. Yes, I have. I've been second and first
20 vice president, and I'm currently the president of
21 the Ruffin Society as of 2001.

22 Q. Sir, do you know Judge Maria Lopez?

23 A. Yes, I do.

24 Q. And when did you first come into contact

1 with Judge Lopez?

2 A. I believe I met her through my affiliation
3 with the Justice Ruffin Society.

4 Q. And so that would be sometime after 1990?

5 A. Yes. 1991. I believe she was already a
6 member of the organization at the time.

7 Q. And are you familiar with whether or not
8 Judge Lopez held any office within the Ruffin
9 Society?

10 A. Yes. I was her first vice president for
11 three years before becoming the president of the
12 organization. She was the first vice president to
13 the president of the organization prior to that
14 while we were all members of the organization, on
15 the board of directors.

16 Q. So during the three-year period that you
17 just described, she was the president of the
18 organization?

19 A. That is correct.

20 Q. Can you tell me whether or not Judge Lopez
21 was involved in any matters with relation to the
22 Ruffin Society relating to the creation of some
23 courthouse history?

24 A. Yes, she was.

1 Q. Can you describe what that was.

2 A. It was during Judge Lopez's tenure that the
3 Long Road to Justice Project, which is a study of
4 the history of African-Americans in the criminal --
5 in the court system of Massachusetts was developed,
6 really under the leadership of Judge Houston, but
7 under her leadership that project was funded and in
8 fact on September 28 of 2000, here in the foyer of
9 this courthouse, we had a reception. And the first
10 exhibit of that very wonderful program about the
11 history of minorities in the Massachusetts court
12 system.

13 Q. Can you describe for us Judge Lopez's
14 efforts with regard to that project in bringing it
15 to fruition?

16 A. Yes. Judge Lopez is an extremely hard
17 worker, very attentive to the details, very
18 appreciative of the history of minorities in the
19 criminal justice system. That project looks at not
20 only those who have been judges in the system, such
21 as Justice Ruffin, but also lawyers that handled
22 civil rights matters, the role of minorities in the
23 law as it was played out in some major historical
24 cases in the Massachusetts court system. And just

1 her leadership and stewardship in that project, you
2 know, was instrumental in bringing it about.

3 Q. And, sir, with regard to the Ruffin
4 Society, I think you indicated that it was to
5 educate and assist in the minority of both
6 appreciation of the criminal justice system and
7 participation in the criminal justice system; is
8 that correct?

9 A. That is correct. If I can expand on that.

10 Q. Please.

11 A. In 1984 a number of judges and probation
12 officers -- minority members of the criminal justice
13 system -- were concerned about the uptick in crime
14 and the large influx of minorities into the criminal
15 justice system. And those that were sitting on the
16 bench in other positions in the criminal justice
17 system said, you know, we need to do something more
18 than just what we're doing through our regular jobs,
19 and that sort of was the genesis for the founding of
20 the organization.

21 And so we come together really to sort of
22 educate the minority community as to the role of the
23 criminal justice system in Massachusetts in their
24 lives and to educate the criminal justice system as

1 to, you know, the needs of minority citizens in the
2 Commonwealth. And I want to get back to your point.
3 But that's what the organization is all about.

4 Q. Sir, how would you describe Judge Lopez's
5 efforts on behalf of the Ruffin Society?

6 A. Very diligent. You know, she operates with
7 the highest integrity. I mean, there were funds
8 that were raised, people that, you know, you had to
9 talk with. And she was the face of the
10 organization. She presented -- she was the
11 moderator of the presentation of the exhibit here in
12 September of 2000. I've always been excited about
13 her affiliation.

14 I should say the one thing about the Ruffin
15 Society is that it's an opportunity for minority
16 professionals in the criminal justice system to
17 interact with each other. And so when I was first
18 invited to the organization, you know, it was an
19 opportunity to meet justices, to meet other
20 prosecutors or defense counsel who all are members
21 of the organization that you would not otherwise
22 come in contact with. And so it's been that kind of
23 organization of professionals who have come
24 together, you know, to try to serve the education of

1 the minority community in Massachusetts.
2 MR. EGBERT: Thank you. I have no further
3 questions.
4 HEARING OFFICER DAHER: Questions?
5 MR. WARE: No questions.
6 REGINA QUINLAN, Sworn
7 DIRECT EXAMINATION
8 BY MR. EGBERT:
9 Q. Good morning, Your Honor.
10 A. Good morning.
11 Q. Could you state your name, please.
12 A. Regina Quinlan.
13 Q. And, Judge, you are associate justice of
14 the Superior Court?
15 A. Yes, I am.
16 Q. Can you give me a brief description of your
17 professional background.
18 A. I was in private practice prior to being
19 appointed in 1992. I was a sole practitioner
20 working in association with other lawyers, and
21 basically it was a small practice, both civil and
22 criminal.
23 Q. And you came to the bench in 1992?
24 A. '92.

1 Q. Since that time, have you sat on various
2 counties throughout the Commonwealth?

3 A. I have.

4 Q. And during that time, have you come into
5 contact with Judge Maria Lopez?

6 A. I have.

7 Q. From approximately 1995 through 1997, were
8 you the regional administrative justice for
9 Middlesex County?

10 A. For criminal business I was.

11 Q. For criminal business; I'm sorry.

12 A. Yes.

13 Q. What are, briefly, the duties and functions
14 of the regional administrative justice?

15 A. It's basically to make sure the sessions
16 have a sufficient number of cases and that the
17 backlog is kept down and also the jail cap, to
18 monitor the population of the jail to make sure that
19 the cap was honored as best we could under adverse
20 circumstances.

21 Q. During the period of time where you were
22 the regional administrative justice, did you have
23 occasion to make assignments of cases and dockets
24 basically to various judges?

1 A. I did.

2 Q. And was that so as to Judge Lopez?

3 A. It was.

4 Q. And during the course of your dealing with
5 Judge Lopez as regional administrative justice, can
6 you give me a description of the way she went about
7 her work.

8 A. Whenever she was assigned anything, it was
9 always done. But I think what impressed me most was
10 she would call and volunteer, which not many did.

11 Q. So she would call and volunteer. Were
12 there particular occasions that you recall in that
13 regard?

14 A. I do. There was one situation where,
15 shortly after enactment of the dangerousness law, it
16 came to my attention as regional that the manner in
17 which the detention hearings were being held were
18 that the magistrate who would do the arraignment
19 would be informed that there had been a detention
20 hearing in the District Court and that the person
21 was held without bail, and so there would be a
22 notation on the file "without bail." What came to
23 my attention was we had no documentation. And so I
24 initiated a review of all the 58A detainees to

1 ensure that we had proper documentation and proper
2 findings so that if anything happened, we would be
3 able to calculate the time necessary and we would
4 also have the supporting documentation to hold the
5 detainees. And Judge Lopez called me at that time
6 and was of assistance to me.

7 Q. I take it that was on a voluntary basis?

8 A. It was.

9 Q. Also while you sit on the Superior Court
10 bench, do you have occasion to follow Judge Lopez
11 into sessions?

12 A. I'm not sure.

13 Q. Did you have occasion to, I think, by way
14 of background on the civil side of the Superior
15 Court at least, cases go in and out of sessions,
16 having heard motions and the like --

17 A. I've seen her name on cases that I've
18 inherited or come across and been part of the judges
19 who have dealt with them.

20 Q. And based upon what you have seen with
21 regard to that paperwork in those cases, could you
22 describe her conduct of those cases?

23 A. No. That's what appellate courts are for.
24 But the work was done.

1 Q. During the course of your time on the
2 bench, have you had occasion to have discussions
3 with Judge Lopez concerning legal issues and matters
4 of the court?

5 A. I have.

6 Q. And during those conversations, can you
7 describe her legal acumen --

8 A. I think she was very knowledgeable, she was
9 interested and interesting and very engaged in some
10 of the discussions that we had on various issues
11 that would arise from time to time.

12 MR. EGBERT: I have no further questions.

13 MR. WARE: No questions.

14 HEARING OFFICER DAHER: Thank you, Judge.
15 We appreciate it.

16 Next witness.

17 CHRISTINE McEVOY, Sworn

18 DIRECT EXAMINATION

19 BY MR. EGBERT:

20 Q. Would you state your name for the record,
21 please.

22 A. Christine McEvoy.

23 Q. Your Honor, you are an associate justice of
24 the Superior Court?

1 A. I am.

2 Q. Can you give us a brief description of your
3 professional background.

4 A. Yes. I can give you a brief description.
5 I went to Suffolk Law School and graduated in 1976.
6 I was a law clerk to the justices of the Superior
7 Court for the first year after graduating. I then
8 went to Middlesex District Attorney'S Office, where
9 I was an assistant district attorney under John
10 Droney and subsequently Scott Harshbarger. I left
11 the district attorney's office in January of 1989.
12 I became an associate justice in the District Court
13 Department of the Trial Court. And my court of
14 designation was the concord District Court.
15 Although I was a justice of the Concord District
16 Court, I was assigned to the Cambridge jury of six
17 where I sat for approximately four years on a
18 regular basis. And then the Lowell jury of six for
19 a year. In June of 1994 I became an associate
20 justice of the Superior Court and I have been a
21 Superior Court justice since June of 1994, appointed
22 by Governor Weld.

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

24 A. I do. I know her well.

1 Q. And how did you first come to know her?

2 A. I came to know Judge Lopez when I was a
3 District Court judge. We were both appointed by
4 Governor Dukakis. We were both fairly young women
5 at the time and members of the District Court.
6 Although not assigned to the same court, I came to
7 know her professionally through different joint
8 meetings of the justices of that court and came to
9 know her professionally and then socially as a
10 result of our affiliation. I came to know Judge
11 Lopez better when we were both Superior Court
12 judges. I believe she was appointed to the Superior
13 Court by Governor Weld in I want to say 1993, but
14 I'm not sure of that.

15 Q. And since that time, have you come to enjoy
16 a friendship, along with a professional association?

17 A. Absolutely. I'm a very good friend of
18 Judge Lopez.

19 Q. You're familiar with the case of
20 Commonwealth versus Horton, I take it?

21 A. I am.

22 Q. I want to direct your attention to the
23 period of time after the sentencing of Mr. Horton
24 on -- and I'll give you the date of September 6th of

1 the Year 2000. Okay?

2 A. Uh-hum.

3 Q. Did you have occasion to see Judge Lopez
4 after the sentencing on September 6th of the Year
5 2000?

6 A. I believe I saw Judge Lopez on the day of
7 the sentencing, if my memory serves me correctly,
8 where we both attended the swearing in at the
9 Statehouse of a Supreme Judicial Court justice. And
10 I saw her -- I believe that was a Wednesday. And I
11 saw her again on Friday of the same week, where we
12 both attended a memorial service for the deceased
13 wife of Justice Robert Bohn in Concord, Mass.

14 Q. Between September 6th and that Friday, did
15 you also have occasion to speak with her by phone?

16 A. I definitely spoke to her by phone. I may
17 have even seen her on that Thursday, but I have no
18 recollection of it.

19 Q. During the course of the discussions that
20 you had in person and on the telephone before that
21 Friday, can you describe for me Judge Lopez's
22 demeanor?

23 A. I can describe it. I can probably best
24 describe it on that Friday. That Friday -- again,

1 if my memory serves me correctly on the dates -- was
2 the day that there was a broadcast for a talk radio
3 show that was being broadcast from the end of Judge
4 Lopez and her husband, Stephen Mindich's, road going
5 up to their house. It was really at the end of
6 their driveway, if I understood the talk show host
7 correctly. And I called their home that morning to
8 tell them so that Judge Lopez would know when she
9 left for work that morning and that her children
10 would know that they were broadcasting from that
11 driveway.

12 I called her as a friend to let her know
13 and also as a colleague. I also made a call that
14 morning to the administrative office of the Superior
15 Court so that she would be able to get into the
16 courthouse in a safe manner without large crowds
17 being around her. So I called her for two reasons.
18 One, to let her and her family know so that when the
19 boys went to school, that they would know what they
20 were walking outside to, as well as to make sure she
21 had safe transport into the courthouse. I believe
22 she was sitting in Cambridge at the time.

23 Q. And during those calls that you made that
24 morning, how would you describe her demeanor?

1 A. She was extremely upset. I believe Stephen
2 answered the phone, Stephen Mindich answered the
3 phone, and they were extremely upset.

4 MR. WARE: Objection to the
5 conversations --

6 HEARING OFFICER DAHER: Sustained.

7 Q. Did you have any discussion during that
8 timeframe -- that would be the 6th and the 7th of
9 September -- with Judge Lopez concerning -- strike
10 that. I apologize.

11 On or about September 8th, when you were at
12 the memorial service for Judge Bohn's wife, did you
13 have any discussion with Judge Lopez concerning the
14 press and the public comment that was going on in
15 the Horton case?

16 A. Yes.

17 Q. And can you tell us basically what those
18 conversations were.

19 A. Yes. At the memorial service there were a
20 number of our colleagues --

21 MR. WARE: Objection, Your Honor.

22 MR. EGBERT: Judge, this goes to the state
23 of mind of Judge Lopez at the time with regard to
24 the press, her actions, what she intended to do,

1 what others were telling her with regard to these
2 matters, what her intentions were with regard to a
3 sentencing memorandum, all of which go not to the
4 truth of the statements, but to her state of mind at
5 the time in dealing with these very issues, all of
6 which is relevant to these proceedings.

7 HEARING OFFICER DAHER: Mr. Ware?

8 MR. WARE: Again, Your Honor, Judge Lopez
9 testified for five days. She testified to her state
10 of mind. Conversations with this witness aren't the
11 basis for Judge Lopez's state of mind. So this
12 testimony is not relevant here in any respect.

13 MR. EGBERT: Judge, Mr. Ware mistakes
14 corroboration for irrelevance. It corroborates
15 Judge Lopez's testimony. Indeed it does. The
16 Commission challenged her testimony in a number of
17 ways. This testimony corroborates with Judge
18 Lopez's testimony. If the Commission's response is,
19 through its counsel, well, Judge Lopez already
20 testified to that and we take it as a given and
21 unrefutable, then fine. Otherwise, this certainly
22 seems to be relevant to those issues.

23 HEARING OFFICER DAHER: Overruled. Go
24 ahead. I'll give it to you.

1 A. The question, I believe, was whether I had
2 conversations with her on that Friday. The answer
3 is yes, I had conversations with her both at the
4 church in Concord -- I had several conversations
5 with her there -- and after the service I had
6 several conversations with her at my house in
7 Concord, where we went to after the service. In
8 fact, we left the reception after the service early
9 and went there.

10 In regard to the conversations at the
11 church, without saying what the conversations were
12 with Chief Justice DelVecchio, I did speak to Chief
13 Justice DelVecchio and then I spoke to Judge Lopez.
14 There was a service inside the chapel there and then
15 there was a reception afterwards. And it was very
16 well attended, the reception. And a number of our
17 colleagues were there. A number of our
18 colleagues -- and I won't say what the conversation
19 was -- spoke to Judge Lopez and spoke to me, and
20 then I spoke to Judge Lopez intermittently
21 throughout that period of time at the reception.

22 During that period of time, Judge Lopez was
23 extremely upset. She was very upset about the
24 perception of what she had done in sentencing Ebony

1 Horton. She was very upset about the public
2 perception, the press coverage and how it was being
3 perceived. And the conversation, as best as I can
4 recall -- and I can't recall it verbatim,
5 obviously -- was what she should do about that in
6 regard to issuing a press release or issuing a
7 sentencing memorandum or something to try to explain
8 within the confines of what she was allowed to do
9 why she did what she did. Part of that conversation
10 also was about the way that she was being perceived
11 in regard to her demeanor with the prosecutor.

12 Q. And what did she tell you with regard to
13 what she believed was a misperception of the
14 sentencing?

15 MR. WARE: Objection.

16 HEARING OFFICER DAHER: Mr. Egbert?

17 MR. EGBERT: Your Honor, it goes to the
18 very same issue. It goes to her state of mind at
19 the time. It also corroborates her testimony in
20 this regard.

21 HEARING OFFICER DAHER: Go ahead.

22 A. She said then that day numerous times that
23 Ebony Horton was not a predatory pedophile, that she
24 had relied in part on a report in regard to --

1 HEARING OFFICER DAHER: She did what to the
2 Court?

3 THE WITNESS: That she had relied in part
4 on a report that she had read and considered, and
5 that Ebony Horton is not a predatory pedophile. She
6 said that numerous times that day and frankly
7 several other times as well.

8 Q. And was there a discussion also of issuing
9 a sentencing memorandum at that time?

10 A. Yes, there was.

11 Q. And what was that discussion?

12 A. I don't recall whether that -- my memory is
13 that that discussion was at my house. We went to my
14 house with another Superior Court judge who was a
15 friend to get away from the environment that was --
16 a lot of people were offering Judge Lopez advice
17 about what to do and, frankly, she seemed
18 overwhelmed. And I lived in Concord and as a
19 result, I said, why don't we leave here and clear
20 your mind and come to my house. And it was sort of
21 a safe haven at the time because there would be no
22 press there and it would be an opportunity to
23 reflect upon what happened for her to consider what
24 action to take. And we did that. And we went to my

1 house, myself, Judge Lopez and another judge. And
2 at that time she discussed -- and we discussed what
3 options were available to her to try to correct, as
4 she saw it, the misperception of what had happened
5 in the courtroom.

6 Q. And was there also discussion of her
7 apologizing with regard to her loss of temper?

8 A. Absolutely. The two main options that were
9 being discussed were apologizing for her demeanor
10 that had been shown on the tape on the news and
11 issuing a sentencing memorandum to explain the
12 factors she had considered in sentencing Ebony
13 Horton.

14 Q. And during the discussions at the church,
15 did Judge DelVecchio participate in any of those
16 discussions with you?

17 A. She did with me, and then she spoke to
18 Judge Lopez privately. She took Judge Lopez aside
19 and spoke to her there. She also called my house.

20 Q. Let's stick for a moment with the
21 conversation with you.

22 A. Yes.

23 Q. What did she say to you with regard to
24 whether or not Judge Lopez should take any more

1 public action or statements?

2 MR. WARE: Objection.

3 HEARING OFFICER DAHER: Sustained.

4 MR. EGBERT: Your Honor, again, this is
5 offered not for the truth of it, because what Judge
6 DelVecchio says is basically, don't do any more,
7 don't give any public statements and the like. And
8 it is not to show that that's a true statement of
9 fact, but only that the Chief Justice of the Court
10 said it, and said it not just to Judge McEvoy, but
11 to Judge Lopez, which is both in corroboration of
12 what others have said, but it's the fact of her
13 saying that --

14 HEARING OFFICER DAHER: Mr. Ware?

15 MR. WARE: Your Honor, Justice DelVecchio
16 testified to conversations with Judge Lopez. Judge
17 Lopez testified. This witness wasn't present, as
18 she said, for any conversation between Justice
19 DelVecchio and Judge Lopez.

20 MR. EGBERT: She was present immediately
21 prior to Judge DelVecchio informing Judge McEvoy
22 exactly what she was going to tell Judge Lopez,
23 which is nothing more than a statement of intent,
24 which is not hearsay.

1 HEARING OFFICER DAHER: The ruling stands
2 BY MR. EGBERT:
3 Q. Did Judge DelVecchio call your house?
4 A. Yes, she did.
5 Q. And did she call sometime after the
6 service?
7 A. Yes, and I answered the phone.
8 Q. And was there a discussion at that time as
9 to what Judge Lopez ought to do in Judge
10 DelVecchio's mind?
11 A. Yes.
12 Q. And what did she say to you?
13 MR. WARE: Objection. Same basis.
14 MR. EGBERT: Judge, I think the fact that
15 the Chief Judge of the court is communicating a
16 message to Judge Lopez through Judge McEvoy gives
17 Judge Lopez a right to both rely on that statement,
18 whether it's true or not, and it affects her state
19 of mind as to her actions based upon what
20 information was provided.
21 HEARING OFFICER DAHER: Overruled. Go
22 ahead.
23 MR. WARE: I'm going to object. This is a
24 conversation between Justice McEvoy and the Chief

1 Justice, not between -- there's no evidence here
2 that Judge Lopez heard this conversation or this
3 instruction.

4 BY MR. EGBERT:

5 Q. Was Judge Lopez in the room when you spoke
6 with Judge DelVecchio?

7 A. Yes, we were on my porch.

8 Q. And after you spoke with Judge DelVecchio,
9 did you speak with Judge Lopez?

10 A. Actually, what happened is after I spoke to
11 the Chief Justice, I handed the phone to Judge
12 Lopez. Judge Lopez then spoke to the Chief Justice,
13 and when that conversation ended, then I spoke to
14 Judge Lopez.

15 Q. And did you tell Judge Lopez your
16 conversation with Judge DelVecchio?

17 A. Yes, I did.

18 Q. What was your conversation with Judge
19 DelVecchio?

20 MR. WARE: Objection.

21 HEARING OFFICER DAHER: Overruled.

22 A. I told Judge Lopez what Chief Justice
23 DelVecchio had said to me, which was that she should
24 not issue anything to the press; that she should let

1 the story die.

2 Q. Have you, during the course of your years
3 of friendship and professional association with
4 Judge Lopez, discussed legal issues, judicial issues
5 in matters relating to the court?

6 A. Yes, many times.

7 Q. And after those discussions, have you come
8 away -- strike that. Can you describe her legal and
9 judicial acumen?

10 A. Yes, I can.

11 Q. Would you do that, please.

12 A. I know Judge Lopez both as a justice of the
13 Superior Court and as a fellow law school professor,
14 although we teach at different law schools. Judge
15 Lopez for many years taught at Boston University Law
16 School and I've taught at Boston College Law School
17 for 14 years. And during that period of time, I
18 have asked her and she has asked me to participate
19 in sitting, for example, as a judge at a mock trial.
20 And so I've actually attended classes she has
21 taught, seen her interact with students at Boston
22 University Law School, as well as seen her interact
23 with my students at Boston College Law School.

24 In regard to the Superior Court, I have

1 spoken to her and rely upon her to give me legal
2 advice on issues that I need help with, and she has
3 done the same. And that is true both in the
4 District Court, but more particularly in the
5 Superior Court.

6 I have read her opinions. I have read her
7 opinions because I needed to at times. I had a
8 Demoulas case and had issues in that case involving
9 res judicata and law of the case and as a result
10 read her legal findings and rulings and legal
11 opinions in that case in order for me to rule on my
12 case which followed it. So I've had quite a bit of
13 exposure, and that is only a sampling of the
14 exposure I've had to her legally.

15 In my opinion she has a fine legal mind.
16 She has one that I certainly have relied upon. She
17 is a very quick study. And she is someone who I not
18 only respect, but have gone to for advice because I
19 hope to get good advice and I go to people that can
20 give it to me, and she is certainly one of them. I
21 hold her in the highest regard.

22 MR. EGBERT: I have no further questions.

23 HEARING OFFICER DAHER: Mr. Ware?

24 MR. WARE: No questions.

JOHN BONISTALLI, Sworn
DIRECT EXAMINATION

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BY MR. EGBERT:

Q. Good morning.

A. Good morning.

Q. Would you state your name, please.

A. John Bonistalli.

Q. What is your current profession?

A. Attorney.

Q. And could you give us a brief background of your professional experience.

A. I was a law clerk to the Superior Court in 1975, '76. I then went to the Attorney General's Office in the criminal division while Frank Bellotti was the attorney general from 1977 to approximately 1981. I then went into private practice in '81, doing mostly criminal work, and then developed a general practice, criminal and civil practice, and have been doing that since 1981 in various different locations.

Q. And are you now practicing in the City of Boston?

A. I practice at One Financial Center. I have my own practice, Bonistalli & Associates.

1 Q. While you were at the Attorney General's
2 Office for that period of time, did you become chief
3 of any division?

4 A. After a number of years, we had developed
5 an arson unit. And through various grants and
6 funds, Frank Bellotti put together an arson division
7 that I headed for the last year or so I was at the
8 office.

9 Q. Mr. Bonistalli, do you know Judge Maria
10 Lopez?

11 A. Yes.

12 Q. When did you come to know Judge Lopez?

13 A. I had a -- I was representing a defendant
14 in the Suffolk Superior Court on a double homicide,
15 and sometime in 1996 or so the case was assigned to
16 Judge Lopez's session.

17 Q. Without getting into the gory details, can
18 you tell us some of the major issues in the case?

19 A. Well, the case had -- it had DNA evidence
20 developed initially through the Boston Crime Lab and
21 then followed up with a local science lab in Boston,
22 CPR, I think it is, in Boston. And it was one of
23 the first Suffolk cases to deal with DNA in a
24 criminal case. And the district attorney's office,

1 in an effort to sort of consolidate the expenses,
2 put it together with four or five other cases. And
3 at the outset it was before Judge Moriarty. And my
4 case got separated from the others and ultimately it
5 was assigned to Judge Lopez.

6 Q. How would you describe the issues in that
7 case?

8 A. For me, the issues were very complex. They
9 were very novel, something that my learning curve
10 started at zero on. And I had to, you know, retain
11 a molecular biologist, a population geneticist, a
12 statistician. And for me, having done quite a bit
13 of criminal work up until that time, I had never
14 dealt with the DNA issues. And so for me, it was
15 very complicated. And I think even for the Court I
16 know it was complicated, because they had initially
17 hand-selected Judge Moriarty to handle these cases
18 particularly because I think he had a background in
19 science. So he had those cases and had dealt with
20 the issues as related to the five different cases.
21 And then my case got segregated from the others.

22 Q. Did you have hearings that were conducted
23 before Judge Lopez with regard to the DNA matters?

24 A. Yes. My case got -- I got -- the DNA was

1 suppressed initially, so that's why I split off from
2 the other cases. And then the DA did some further
3 testing for which there needed to be further
4 hearings, a Daubert hearing, and that was the
5 preliminary issue in the case before it went to
6 trial.

7 Q. And in those preliminary hearings did you
8 actually present evidence to experts and scientists
9 and the like?

10 A. Yes.

11 Q. And how long did the preliminary hearings
12 take?

13 A. I think the preliminary hearings took
14 anywhere from seven to nine days in court.

15 Q. And then after the preliminary hearings,
16 was there a trial?

17 A. Yes.

18 Q. And how long did the trial take?

19 A. I think the trial took at least a couple of
20 weeks.

21 Q. During the course of your preliminary
22 hearings and the trial of the matter, can you
23 describe Judge Lopez's legal and judicial acumen?

24 A. I thought it was outstanding. From my

1 point of view as a trial lawyer, she understood the
2 issues, she was somebody who you could engage in
3 dialogue with. I didn't win on all the issues, but
4 I was able to present my side of the various
5 arguments I was making. I won some, I lost some.
6 And I thought she was outstanding.

7 Q. And with regard to her demeanor in the
8 courtroom and towards lawyers, could you describe
9 that during the course of these proceedings?

10 A. Again, from my view as a trial counsel in
11 that case, it was exceptional. She was very -- I
12 remember specifically she was very sensitive to the
13 fact of me being a lawyer in this case going against
14 the Commonwealth, the Boston Police Department, the
15 Boston Crime Lab, the FBI, scientists world renowned
16 from North Carolina and Maryland. And she just to
17 both sides was somebody who worked with us in terms
18 of the scheduling, in terms of the issues, in terms
19 of the whole approach to the process in the
20 courtroom. It was just a very good experience.

21 Q. And, lastly, can you describe during the
22 course of those proceedings her fairness to the
23 parties?

24 A. I thought she was eminently fair. As I

1 said, I didn't win on all the issues, but she was
2 someone that I could dialogue with on everything. I
3 felt that you could process it and be listened to,
4 and I thought it was very good.

5 Q. By the way, did you win or lose the case?

6 A. I lost the motion and I lost the case.
7 Well, the jury found the defendant guilty on both
8 counts.

9 Q. And was the case entitled Commonwealth
10 versus McNickles?

11 A. Robert McNickles, yes.

12 Q. I want to show you this document. Can you
13 tell us what that is.

14 A. After the conviction, the case was appealed
15 to the Supreme Judicial Court as a first-degree
16 murder conviction. The case went directly to the
17 Supreme Judicial Court and this was the opinion that
18 was issued written by Judge Sosman.

19 Q. So this is the Supreme Judicial Court
20 opinion in the McNickles case which you tried?

21 A. Yes.

22 MR. EGBERT: Judge, I'd ask that you take
23 judicial notice of the Commonwealth versus
24 McNickles.

1 HEARING OFFICER DAHER: Any objections, Mr.
2 Ware?

3 MR. WARE: I don't know if I can object.
4 It's not being offered as an exhibit.

5 HEARING OFFICER DAHER: I agree. I
6 understand. Fine. Done. Let's go.

7 MR. EGBERT: No further questions.

8 HEARING OFFICER DAHER: Cross?

9 CROSS EXAMINATION

10 BY MR. WARE:

11 Q. Mr. Bonistalli, I take it from your
12 testimony, sir, that you were counsel at the trial
13 level, but not the appellate level in the McNuckles
14 case?

15 A. Well, I didn't write the appeal, but I
16 collaborated with Nona Walker who did the appeal and
17 met with her to get the trial transferred to her,
18 met with her about the issues that were raised on
19 the appeal, met with her as the brief was being
20 written, shared my memorandum with her, my thoughts
21 on the issues as they were raised, because she was
22 at a very beginning learning curve on that DNA
23 stuff.

24 Q. At the trial court level -- this case, as I

1 understood your testimony, involved expert
2 testimony, including expert testimony with respect
3 to DNA evidence; is that right?

4 A. Correct.

5 Q. And you came to appreciate that one of,
6 among the knowledge base that Judge Lopez had, was
7 how to screen expert testimony and expert reports;
8 isn't that correct?

9 A. I don't know what you mean by "screen."

10 Q. Well, for example, there's a case called
11 Commonwealth against Lanigan. There are a set of
12 standards which govern when expert testimony should
13 or should not be admitted; is that correct?

14 MR. EGBERT: My only objection is are we
15 offering expert opinion here through Mr. Bonistalli.
16 You can have it as long as I'm able to cross on it.

17 MR. WARE: I'm not offering expert
18 testimony. I'm asking for this witness' knowledge
19 of what the Judge exhibited at a trial level, which
20 is what counsel questioned him about.

21 MR. EGBERT: I think he asked him about
22 Commonwealth versus Lanigan.

23 HEARING OFFICER DAHER: Are you going to go
24 into the expert testimony once you introduce the

1 Lanigan case?

2 MR. WARE: No, Your Honor. I'm asking for
3 what this witness inferred as the Judge's knowledge
4 base while he encountered her at trial.

5 HEARING OFFICER DAHER: Overruled. Go
6 ahead.

7 Q. And my question, to reframe it and focus
8 it, did you come to understand that Judge Lopez, at
9 least in your opinion, had an understanding of the
10 standards to be applied to expert testimony and
11 expert reports?

12 A. Yes.

13 Q. And did you satisfy yourself that the Judge
14 was familiar with what standards need to be applied
15 to an expert report before considering it or
16 admitting expert testimony?

17 A. Well, I certainly had submitted to her what
18 I thought the standards were in the various briefs
19 that I had submitted in the previous opinion that
20 had been issued by Judge Moriarty, so it was pretty
21 well laid out both in my memorandum and in previous
22 court opinions, and she certainly was very familiar
23 with what the standard was with respect to experts.
24 And I disagreed with her on some aspects of it, but

1 she was sustained by Judge Sosman with respect to
2 every ruling she made.

3 Q. Part of the focus of the proceeding at the
4 trial level was the admissibility of these expert
5 opinions; is that correct? Yes or no?

6 A. At the trial?

7 Q. Yes.

8 A. Yes.

9 Q. Not at the trial. At the trial level,
10 while the Court was in the trial court.

11 A. In the first instance, whether it was
12 evidence that was admissible under the standards of
13 scientific evidence --

14 Q. Yes.

15 A. -- in the first instance. In the second
16 instance, whether it was admissible at the trial
17 level before the jury, right.

18 Q. And those screening functions were ones
19 which Judge Lopez performed while you were counsel
20 at the trial level; is that correct?

21 A. By "screening," you mean admissible
22 decisions?

23 Q. Yes.

24 A. Yes.

1 MR. WARE: I have no further questions.
2 REDIRECT EXAMINATION
3 BY MR. EGBERT:
4 Q. When you handled the McNickles case before
5 Judge Lopez and you had these hearings with regard
6 to DNA evidence, that involved expert testimony; is
7 that correct?
8 A. Substantial expert testimony.
9 Q. That was expert testimony that the
10 Commonwealth was seeking to present at trial,
11 correct?
12 A. Yes.
13 Q. And you were objecting to?
14 A. Yes.
15 Q. And so you made your objections known to
16 the Court?
17 A. Correct.
18 Q. And you went through and objected to
19 various aspects --
20 MR. WARE: Objection, Your Honor. This is
21 all leading. This is redirect.
22 HEARING OFFICER DAHER: Sustained.
23 Q. Let's take it as it was. There was talk
24 about the Judge screening experts. Do you recall

1 that?

2 A. Yes.

3 Q. Did the Judge screen any experts in your
4 case?

5 A. I'm not sure what he meant by "screening,"
6 but the Judge had to in the first instance make a
7 determination of whether or not this evidence
8 satisfied the scientific criteria to be reliable
9 enough to be admitted before a jury of lay people.

10 Q. And how was that accomplished? Who did
11 what at the hearing?

12 A. Well, it started off with the Commonwealth
13 having the burden of going forward and bringing
14 forward their experts on two or three different
15 areas to present the evidence and the reliability of
16 the evidence in the current scientific atmosphere.

17 Q. When the Commonwealth proffered their
18 experts and their reports, did you ask for a copy of
19 the reports?

20 A. Yes. I had gotten it already.

21 Q. So you had a copy?

22 A. Right.

23 Q. And you read it?

24 A. Right.

1 Q. And after you read it, did you object to
2 it?
3 A. Yes.
4 Q. And so you made your objections known to
5 the Court.
6 A. Yes.
7 Q. And did that result in a hearing?
8 A. Right.
9 Q. And that hearing was --
10 MR. WARE: Again, Your Honor. This is all
11 leading.
12 HEARING OFFICER DAHER: Overruled. Go
13 ahead.
14 Q. And at that hearing did you make your
15 objections known?
16 A. Yes.
17 Q. And did you present evidence as to your
18 objections?
19 MR. WARE: Objection.
20 HEARING OFFICER DAHER: Overruled. You may
21 have it
22 A. I presented evidence both through the
23 examination of the witnesses and I had my own
24 experts who I had retained and flown in from Seattle

1 and Chicago and different parts of the country to
2 present at the hearing.
3 Q. And after that, the Judge made a ruling as
4 to the admissibility at trial before a jury,
5 correct?
6 A. Correct.
7 MR. EGBERT: No further questions.
8 MR. WARE: No further questions.
9 HEARING OFFICER DAHER: Thank you. Next
10 witness.
11 MR. EGBERT: Can I have five minutes to
12 collect, and then I think we can be fairly brief.
13 (Recess)
14 ROBERT BOHN, Sworn
15 DIRECT EXAMINATION
16 BY MR. EGBERT:
17 Q. Good morning, Your Honor.
18 A. Good morning.
19 Q. Would you state your name, please.
20 A. Robert Bohn, B-o-h-n.
21 Q. You are a justice of the Superior Court?
22 A. I am.
23 Q. Could you give me a brief history of your
24 professional background.

1 A. I graduated from Villanova University in
2 1961, Georgetown Law School in 1964, went to work
3 for a program called Neighborhood Legal Services
4 Program in 1964, which was an Office of Economic
5 Opportunity-funded legal services program in
6 Washington, D.C., and I worked at that program until
7 1969. In 1969 I was asked to start a program in
8 Wichita, Kansas. It was the last OEO-funded program
9 that was not yet operational. So I moved to
10 Wichita, Kansas and started a legal services program
11 in Wichita, Kansas. I stayed there for three years.

12 I came back to Harvard Law School in
13 1970 -- 1972, and I had a teaching fellowship at
14 Harvard Law School in the clinical program. In 1972
15 I got a master's degree in law from Harvard Law
16 School. I then went to the Massachusetts Parole
17 Board until 1975. So from 1972 to 1975 I was a
18 member of the state parole board. From 1975 to 1981
19 I was an assistant attorney general in Attorney
20 General Bellotti's office. From July of '76 to '81
21 I was chief of the civil rights division in the
22 Office of the Attorney General, Commonwealth of
23 Massachusetts.

24 In 1985 I was appointed to the Newton

1 District Court as an associate justice of the Newton
2 District Court, and in 1989 to the Superior Court of
3 the Commonwealth of Massachusetts.

4 Q. Where you remain today?

5 A. Where I remain today.

6 Q. Judge, during the course of your position
7 as chief of the civil rights division in Attorney
8 General Bellotti's office, did you have occasion to
9 come in contact with Maria Lopez?

10 A. I did.

11 Q. And can you tell me how that came to be?

12 A. Yes. As I said, I became the chief of the
13 civil rights division in Attorney General Bellotti's
14 office in 1976. And it was apparent that we had a
15 need for a lawyer with a Hispanic background, and we
16 didn't for a long time.

17 I did hear about Maria Lopez and I knew her
18 reputation because at that time she was working at
19 the Greater Boston Legal Services program. And so
20 from time to time I would speak with Maria. And in
21 1980 I recruited her to come to work for the Office
22 of the Attorney General. And indeed, in 1980 she
23 join the civil rights division in Attorney General
24 Bellotti's office.

1 Q. Were you her supervisor at the time?

2 A. I was indeed. I think we had eight or nine
3 lawyers. She was the newest lawyer. I recall at
4 that time we had offices in the Saltonstall
5 Building. We had a very nice suite of offices with
6 windows. But we had only one office that was left
7 for Judge Lopez when she joined us, and that was an
8 interior office. And she came on board with the
9 Office of the Attorney General in 1980 and was
10 gracious enough to accept an interior office without
11 a view of downtown Boston.

12 Q. While at the Attorney General's Office,
13 were you cognizant of her assignments and
14 activities?

15 A. Yes, indeed.

16 Q. Could you describe them for me.

17 A. At that time in 1980, 1981, we were very
18 invested in housing issues in the Hyde
19 Park/Roslindale area, and particularly interested in
20 discrimination that was going on in the rental of
21 housing. And I know we had sort of dedicated a lot
22 of our energy at that time to address housing issues
23 in the Greater Boston area and particularly in that
24 Hyde Park/Roslindale area.

1 We worked with -- the civil rights division
2 worked with the criminal bureau in Attorney General
3 Bellotti's office to address issues of housing and
4 housing discrimination in those neighborhoods. And
5 I know Judge Lopez got very interested in and
6 invested that issue. So she was particularly
7 concerned, particularly of help to me in the housing
8 areas.

9 She also became very interested in school
10 issues. At that time there were a lot of private
11 schools that were beginning, the busing situation in
12 Boston was at its height, and a lot of religious
13 schools were beginning, and I actually went back and
14 pulled some of my earlier reports and I noted that
15 she had become interested in issues involving the
16 process by which these private academies and private
17 schools were conducting their educational programs.

18 For example, there was a case entitled
19 Anrig versus New Life Christian Academy. And the
20 New Life Christian Academy people were refusing to
21 report attendance records, and that was one of the
22 requirements of the State Board of Education, State
23 Department of Education, and Maria I know sued the
24 New Life Christian Academy in a case in which they

1 were made to report attendance, attendance records,
2 scholarly records, academic records and so on. So
3 those were the kinds of issues that she became very
4 important to me in.

5 She also, of course, was the liaison to me
6 to much of the Hispanic community and also to the
7 Asian community in Chelsea and Charlestown, those
8 areas over there in the '80s and mid '80s when
9 things were really sensitive in this community. She
10 was very helpful to me in establishing those
11 contacts in the Chelsea and Charlestown
12 neighborhoods.

13 And, of course, 1988 she was appointed to
14 the Chelsea District Court I think to some extent as
15 a result of her involvement in matters of legal
16 issues in the Chelsea neighborhoods.

17 Q. And during the time that she was working
18 with you and for you in the civil rights division,
19 could you describe her commitment to public service
20 law?

21 A. She was enormously committed to public
22 service law. Her whole history as a professional
23 has been in public service. Greater Boston Legal
24 Service was her first legal involvement after Boston

1 University Law School. The work that she did in the
2 Attorney General's Office was fantastic work, it was
3 dedicated, it was done intelligently, it was done
4 with thoughts of strategy, as well as legal
5 proceedings. And she was, as I said, of immense
6 help to me and to the department and to the division
7 and to the communities that she served.

8 Q. Judge, there came a time -- and I'm going
9 to use the "D" word -- there came a time when you
10 became involved in a case involving the Demoulas
11 family; is that correct?

12 A. Yes.

13 Q. And how did that come to be?

14 MR. WARE: Objection.

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

17 MR. WARE: Irrelevance.

18 HEARING OFFICER DAHER: Show me the
19 relevance with regard to that.

20 MR. EGBERT: The relevance, Your Honor, is
21 that Judge Bohn was integrally involved in the
22 Demoulas case and because of his involvement fully
23 reviewed all of the matters in the Demoulas case,
24 the decisions from the SJC concerning the Demoulas

1 case, also concerned his rulings along with Judge
2 Lopez's. He is fully familiar with her rulings and
3 findings and the opinions of the SJC, and he is able
4 to tell us concerning that case its complexity, its
5 level of acrimony amongst the parties, its
6 difficulty for a judge and the like.

7 HEARING OFFICER DAHER: Mr. Ware, I take it
8 synoptically it's in re of her judicial acumen, and
9 basically that's what it is.

10 MR. WARE: Well, I understand, Your Honor.
11 I don't withdraw the objection. I think that the
12 Demoulas case is a tangent in this case. There's no
13 dispute that Judge Lopez is an able, intelligent
14 jurist, and that's not at issue in these
15 proceedings.

16 HEARING OFFICER DAHER: But I think Mr.
17 Egbert wants to get that on record. Go head.

18 Q. Briefly, how did your involvement come to
19 be?

20 A. In March of 1991 Judge Patrick Brady had
21 entered an order against Telemachus Demoulas and his
22 family not to transfer or to compromise any funds of
23 the business other than in the ordinary course of
24 business. And there was a very specific order not

1 to transfer nor to spend any money other than in the
2 ordinary course of business.

3 At some point the allegation on the part of
4 the plaintiffs was that between October of '92 and
5 December of '92 the defendant Demoulas Telemachus
6 Demoulas and his family had distributed some \$73
7 million to their family members by accelerating
8 notes that had been made payable to his members.
9 And those notes were to be paid in 1996, '97 and
10 '98. But in 1991 they accelerated payment of those.
11 And so there was a complaint for contempt filed
12 against the defendant Demoulas family. And for some
13 reason, that case was assigned to me.

14 And in the spring of 1993, over a period of
15 several months, I held hearings on the issue of
16 whether the transfer of funds violated Judge Brady's
17 order. And indeed, after a long period of hearings,
18 days and days of hearings, I did find that the
19 defendant family members had indeed violated Judge
20 Brady's order, and I ordered that they put \$68.5
21 million into an escrow account, and that was the
22 outcome of my involvement with that. And my order
23 was probably in early 1994.

24 After I had finished my piece of the work,

1 had found them in contempt of Judge Brady's order,
2 had ordered them to place \$68.5 million in escrow,
3 the case in chief then went to Judge Lopez who then
4 began whatever enormously complicated process she
5 was required to do in order to advance that case to
6 trial. That was my involvement.

7 Q. And while you had the case, can you
8 describe the level of acrimony between the parties?

9 A. It was an enormously contentious case.
10 Probably that case and my Ellis & Ellis litigation
11 in Worcester are the two most contentious pieces of
12 litigation I've been involved in.

13 I remember in the middle of the hearing on
14 the contempt complaint one of the sons of the
15 plaintiff family died in a car crash up in Canada.
16 He was a race car driver, and he died. And I
17 thought to some extent that would force some
18 settlement in the Demoulas litigation early on,
19 but if anything, it stimulated them to more
20 litigation.

21 And there was contentiousness among the
22 lawyers, there was contentiousness among the
23 parties. I recall at one point I think there was
24 even a physical confrontation in the hallway of the

1 courthouse. So it was an enormously complicated
2 piece of litigation because of the legal issues
3 involved. It was a very difficult case because of
4 the contentiousness of the families. And, of
5 course, there was an awful lot of money involved,
6 too, which put an awful lot of pressure on the
7 parties, the lawyers, and on the Court, on the
8 Judge. There was a lot of pressure in that case.
9 And Judge Lopez handled those complicated issues in
10 an extremely competent, careful and professional
11 manner.

12 Q. And did you have occasion to follow the
13 findings and opinions and the like that followed
14 after your contempt?

15 A. I did. And if you'll note, the SJC
16 report --

17 MR. WARE: Objection.

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

20 MR. WARE: He said he did. I think he's
21 well beyond having answered the question.

22 HEARING OFFICER DAHER: Overruled. Go
23 ahead.

24 A. I did because my piece of the case was also

1 reported in the SJC opinion. And so I was invested
2 because of my own, whether I was going to be
3 affirmed or reversed. I was interested in following
4 it for that reason, of course, but I was also
5 interested in following it because of the
6 complicated nature of the issues and I wanted to see
7 how another judge was going to be able to deal with
8 all of this.

9 Q. And you in fact did observe, by way of
10 findings and opinions, how Judge Lopez dealt with
11 it?

12 A. I did.

13 Q. And what did you observe?

14 MR. WARE: Objection, Your Honor, to expert
15 testimony and opinion on these opinions which are
16 themselves public records and available.

17 MR. EGBERT: It's not an opinion on the
18 opinions. It's his observations as a judge; not
19 anything more than that.

20 HEARING OFFICER DAHER: Sustained. Let's
21 go. Objection is sustained.

22 MR. EGBERT: I have nothing further of this
23 witness. Thank you.

24 MR. WARE: No questions.

1 EVA NILSEN, Sworn
2 DIRECT EXAMINATION
3 BY MR. EGBERT:
4 Q. Could you state your name, please.
5 A. My name is Eva Nilsen, N-i-l-s-e-n.
6 Q. And where do you reside?
7 A. I live in Cambridge.
8 Q. What is your current profession?
9 A. I'm a clinical professor at Boston
10 University School of Law.
11 Q. And are you also an attorney licensed to
12 practice in the Commonwealth?
13 A. Yes, I am.
14 Q. Could you give me a brief synopsis, a
15 history of your professional background?
16 A. Yes. I graduated from the University of
17 Virginia Law School in 1977. I was a Prettiman
18 Fellow, a graduate fellow at Georgetown University
19 Law School for a couple of years where I practiced
20 public defender work. And then I came to Boston in
21 1980 and began working as a law professor at Boston
22 University Law School.
23 Q. What subject or matters do you teach at
24 Boston University?

1 A. Criminal law. I teach in a criminal law
2 clinic open to second- and third-year law students.
3 They receive cases in the Boston Municipal Court and
4 work under my supervision from first appearance
5 through the end of the cases.

6 Q. Now, during the course of your tenure as a
7 professor at Boston University Law School, have you
8 had occasion to come in contact with Judge Maria
9 Lopez?

10 A. Yes, I have.

11 Q. And what were the circumstances under which
12 you've come in contact?

13 A. Judge Lopez has been an adjunct professor
14 at Boston University Law School for a number of
15 years, eight or ten years. I can't remember the
16 exact number of years. And I've met her at Boston
17 University functions. I've sometimes overlapped
18 with her in classrooms. And I've actually talked
19 about her indirectly with my students over the
20 years, because she was an adjunct professor in trial
21 advocacy. And before students can take the criminal
22 clinic, they have to take trial ad., and many of
23 them had Judge Lopez as their trial advocacy
24 teacher.

1 So I had occasion to talk to her about
2 particular students. Sometimes if a student was
3 having a problem, I would talk to her or she would
4 tell me about students she had had. And my students
5 had talked about her over the years as their trial
6 advocacy teacher.

7 Q. And during the course of your interaction
8 with Judge Lopez, have you also had occasion to
9 discuss legal issues, issues of legal education and
10 issues of clinical legal education?

11 A. Absolutely.

12 Q. And from your discussions with Judge Lopez
13 in that regard, do you have an opinion of her legal
14 and professional acumen in that regard?

15 A. Yes. From my discussions with her and also
16 from my discussions with students about her, I have
17 very strong opinions about her evidentiary
18 knowledge, about her knowledge of the role of the
19 judiciary, about her trial advocacy skills, because
20 those are all issues that I care very much about and
21 they're issues that my students talk about with me
22 and that I have talked about with her over the
23 years.

24 Q. And what is your opinion in that regard?

1 A. My opinion is that she is a very smart
2 judge, that she has great legal abilities, that she
3 has very strong trial advocacy skills, and that as a
4 teacher, she's able to be patient and convey these
5 to students, which can sometimes try the patience of
6 any teacher. And so I've found that she was very
7 patient and that she understood very well how
8 students were to be in front of judges.

9 Q. Now, your students in the clinical program
10 actually appear before judges; is that correct?

11 A. They do.

12 Q. And do they do that under your supervision?

13 A. Absolutely.

14 Q. And when I say "supervision," are you often
15 present when they are in court?

16 A. I am always present when they're in court.

17 Q. So you are basically the supervising
18 attorney?

19 A. That's right. They discuss every aspect of
20 the case with me. And it's very important to me
21 that they have trial advocacy skills, because we
22 don't teach a separate trial advocacy course. So
23 when they come to me and know evidence, then they're
24 ready to step into the courtroom, and I don't have

1 to teach them evidence. And I felt that when Judge
2 Lopez was the teacher, that the students knew their
3 evidence and knew their trial ad. skills. And it
4 made my job a little bit easier.

5 Q. Do you also have occasion to have students
6 appear before Judge Lopez in hearings or otherwise?

7 A. Yes, I did.

8 Q. What would be the occasion for those?

9 A. My students take arraignments at the Boston
10 Municipal Court and often their clients are held on
11 bail. And they do all the bail appeals on their
12 cases. And often Judge Lopez was sitting in the
13 Superior Court bail review session. So the students
14 would go up in the afternoon with their clients and
15 make bail arguments in front of her.

16 Q. And were you during those occasions able to
17 make observations of Judge Lopez in her judicial
18 demeanor?

19 A. Yes, I was.

20 Q. And could you tell us what you observed?

21 A. I observed her to be a patient judge, a
22 judge who knew the bail law, knew the bail statute,
23 and who did not always give the students what they
24 wanted, but I felt that the times that they appeared

1 before her, they understood her decisions. That is,
2 that she gave the reasons for why she would deny
3 them the relief that they wanted, and I felt that
4 she was open-minded, and I've always said to the
5 students that the best you can hope for is that a
6 judge will be fair, open-minded and know the law.
7 And sometimes you'll win and sometimes you'll lose.
8 And with Judge Lopez, that was the case.

9 Q. When you say that was the case, what do you
10 mean by that?

11 A. She was fair, open-minded and knew the law.

12 MR. EGBERT: Thank you. I have no further
13 questions.

14 MR. WARE: No questions.

15 MR. EGBERT: Judge, can I have one minute?

16 HEARING OFFICER DAHER: You can have all
17 the time in the world. Go ahead. (Pause)

18 CAMILLE F. SARROUF, JR., Sworn

19 DIRECT EXAMINATION

20 BY MR. EGBERT:

21 Q. Good morning.

22 A. Good morning, sir.

23 Q. Could you state your name and spell your
24 last name, please.

1 A. It's Camille F. Sarrouf, Jr.,
2 S-a-r-r-o-u-f.

3 Q. And, Mr. Sarrouf, you're an attorney
4 licensed to practice in the Commonwealth of
5 Massachusetts?

6 A. I am.

7 Q. And could you give me a brief synopsis of
8 your professional background.

9 A. After passing the bar, I was employed as an
10 assistant district attorney in Middlesex County from
11 mid to late 1993 to I think the summer of 1995.
12 From there, I began my employment at the law office
13 of Sarrouf, Tarricone & Fleming, 95 Commercial Wharf
14 in Boston. And I'm still there today.

15 Q. Are you familiar with an organization
16 entitled the Middlesex County Bar Association?

17 A. I am.

18 Q. What is that?

19 A. It is a county bar association made up of
20 lawyers who live and/or practice in Middlesex
21 County. The association has a board of directors
22 and officers who are voted on on a yearly basis by
23 the members of the association as their
24 representative body.

1 Q. And do you hold some position with the
2 Middlesex County Bar Association?
3 A. I did. I believe I would now be classified
4 as the immediate past president.
5 Q. And as immediate past president, have you
6 been authorized by the association to appear here
7 today?
8 A. I have.
9 Q. And has the association authorized you to
10 provide a statement with regard to Judge Lopez?
11 A. They have.
12 Q. And what is that?
13 MR. WARE: Objection.
14 HEARING OFFICER DAHER: I'll hear you.
15 MR. WARE: Well, Your Honor, this is by
16 definition a hearsay endorsement of some kind of a
17 judge. I think it has no place in evidence in this
18 case. If they want to seek to file some amicus
19 brief with the Court, they can do so; but as far as
20 a statement which is proffered in the guise of
21 evidence, it seems to me that this is inappropriate.
22 MR. EGBERT: I'm offering this aspect of it
23 on the issue of sanctions, if any. This is a
24 statement authorized by a whole bar association

1 concerning their statement as to Judge Lopez's
2 conduct on the bench and her position as a judge.
3 It is classic information which is appropriate at a
4 phase of the hearing which is not bifurcated in this
5 case.

6 HEARING OFFICER DAHER: Mr. Ware, we're
7 dealing with a nonbifurcated proceeding. We have
8 the Brown case that indicates that, you know, gives
9 some guidance as to the weight the Court's going to
10 give it. So I can't see how you're going to get
11 hurt by it.

12 MR. WARE: It isn't a question of my being
13 hurt or not hurt. It's a question whether this is
14 evidence in any respect. And an endorsement by a
15 bar association strikes me as not having any
16 evidentiary value whatsoever. If the bar
17 association wants to make a, quote, statement, it
18 can make it in the appropriate context when and if
19 the time comes. It has no place in a court
20 proceeding.

21 MR. EGBERT: This is the appropriate
22 context and when the time has come. There is no
23 other time to present matters to this record or to
24 this office or anyone up and down the line

1 MR. WARE: Your Honor, Mr. Egbert himself
2 has made a heavy point of fact that the rules of
3 evidence apply. This isn't evidence. Whatever it
4 is, it's not evidence.

5 MR. EGBERT: The rules of evidence apply,
6 Your Honor, to the findings of fact which you must
7 make and to the evidence which is presented as to
8 the findings of fact. The rules of evidence do not
9 apply to those areas that relate to what the
10 ultimate disposition of any disciplinary matter
11 ought to be. They never have and they never will.
12 The case I provided to you, Veksler versus Board of
13 Registration in Dentistry, makes it quite clear that
14 things like allocution and presentation of
15 mitigating circumstances and in fact likening it to
16 a sentencing hearing in a criminal case for which a
17 judge can take all forms of information in
18 determining it, including double, triple, and
19 quadruple hearsay in making a determination of what
20 an appropriate result may be.

21 HEARING OFFICER DAHER: Overruled, Mr.
22 Ware. Go ahead.

23 A. At a meeting held at the Middlesex County
24 Bar Association, the message to be conveyed to the

1 panel and to this hearing is that Judge Lopez is
2 deemed to be a reasonable, intelligent, fair and
3 just jurist.

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

6 MR. WARE: No questions.

7 HEARING OFFICER DAHER: Call your next
8 witness.

9 MR. EGBERT: Your Honor, at this time I
10 have no further witnesses to present. I do wish to
11 present Judge Lopez in a matter of allocution before
12 the Court at this time. She wishes to address the
13 Court, as is her right, and so I would like to do
14 that at this time.

15 HEARING OFFICER DAHER: Let me hear from --
16 anything in rebuttal?

17 MR. WARE: No, Your Honor.

18 HEARING OFFICER DAHER: You have no
19 witnesses?

20 MR. WARE: No rebuttal testimony. Your
21 Honor, the Judge does have a right of allocution,
22 and that right was exercised over five days of this
23 hearing. She does not have an independent right to
24 take the stand and make some statement in this

1 proceeding.

2 MR. EGBERT: Judge, a right of allocution
3 is far different than testimony under the rules of
4 evidence in all proceedings, whether it be criminal
5 or disciplinary. The statements -- or the testimony
6 that Judge Lopez gave pursuant to the rules of
7 evidence, with objections and the like, all go to --
8 and I suggest go to the findings of fact which this
9 Court must make at any particular time because they
10 are bound by the rules of evidence.

11 The right of allocution, however, is
12 classic in both the criminal law and disciplinary
13 law and is stated as clearly as anyone can state it
14 by Justice Ireland in the Veksler case, and that is
15 where the Court stated the statutes cannot be
16 plainer. The petitioner is entitled to a hearing.
17 That's the first aspect of it. And then, of course,
18 we're entitled to a hearing here, too, on
19 discipline. And it goes on to say, "Such a hearing
20 provides the petitioner, like the criminal defendant
21 at a disposition hearing, with a right of
22 allocution, the right to present mitigating factors
23 prior to sentencing." That right of allocution is
24 absolute.

1 And I might note, Your Honor, rather than
2 getting into what I think might be a constitutional
3 debacle, you'll note that the SJC didn't reach the
4 due process issue because they found they didn't
5 have to. But I would suggest that it would be quite
6 clear under the case law that if they did,
7 allocution would have been constitutionally
8 mandated.

9 HEARING OFFICER DAHER: Last word, Mr.
10 Ware?

11 MR. WARE: Your Honor, counsel cites as the
12 only precedent for this request to the Court a case
13 from the Board of Registration in Dentistry. And
14 obviously the statutory framework that we're dealing
15 with here is unique and quite different. It makes
16 it plain under Section 7 that the formal hearing
17 shall be conducted before you and that it shall be
18 subject to the rules of evidence. Those rules of
19 evidence are not suspended because we're at a point
20 at which the Judge would like to make some personal
21 statement.

22 There are many forms by which Judge Lopez
23 can make a personal statement. She can make them in
24 the course of the briefing with Mr. Egbert, but they

1 are not evidence. She's testified here and been
2 subject to cross examination. She's not now
3 entitled to a separate appearance under the guise of
4 what counsel is calling "allocution," which itself
5 is a term borrowed from the criminal law in a
6 sentencing proceeding.

7 This is not a sentencing proceeding. The
8 Hearing Officer can make a recommendation to the
9 Commission. Mr. Egbert will have an opportunity to
10 appear before the Commission presumably, as will the
11 Judge. Further proceedings may occur before the
12 Supreme Judicial Court. But Judge Lopez is not
13 entitled to simply take the stand and make a
14 statement here in the guise of something other than
15 the five days in which she's already testified.
16 That is her right. That is her due process right
17 here, and she exercised it.

18 HEARING OFFICER DAHER: Mr. Egbert?

19 MR. EGBERT: That, unfortunately, is Mr.
20 Ware's statement, but it isn't a statement of the
21 law. The statement of the law is quite clear. So
22 it's clear, I'm not offering this as factual
23 evidence -- evidence of facts in the case upon which
24 you should make your findings and rulings on facts.

1 I'm offering this on allocution, which is an unsworn
2 allocution to be taken by the Court in the event,
3 and only in the event, there's a recommendation or
4 you intend to recommend any form of findings.

5 HEARING OFFICER DAHER: Overruled, Mr.
6 Ware. Go ahead.

7 JUDGE LOPEZ: Thank you, Judge Daher, for
8 this opportunity to address the charges against me
9 and to speak not only on my own behalf, but on
10 behalf of a principle that is the foundation of the
11 judicial branch of government -- that principle
12 being the independence of the judiciary.

13 None of my remarks are directed at this
14 tribunal or at how these proceedings were conducted
15 by Your Honor.

16 These proceedings were contentious and much
17 lengthier than anticipated by both sides. The Court
18 did an excellent job of staying in control in a
19 patient and dignified manner, as a judge is expected
20 to. And while I'm on the subject of Your Honor's
21 staying in control, remaining patient and conducting
22 these proceedings in a dignified manner, I want to
23 make it absolutely clear again how sincerely
24 apologetic I am for having allowed myself to lose my

1 self-control during the proceedings of the Horton
2 case on September 6th, 2000.

3 As this Court and the Commission know, even
4 before these proceedings began, as well as during
5 them, I have acknowledged my mistake, and I believe
6 I have conveyed my full understanding of that
7 transgression. Although uncharacteristic of my
8 behavior in over 14 years on the bench, I
9 understand -- I fully understand how such a
10 transgression of judicial demeanor can undermine the
11 public's confidence in the administration of
12 justice. And such confidence is critical to the
13 legitimacy of our justice system.

14 To the extent many of the remainder of my
15 remarks are critical, they are not directed to Your
16 Honor, but they are directed solely at the
17 Commission on Judicial Conduct and its attorneys.

18 Sitting here listening to the witnesses the
19 Commission has relied on to support its charges
20 against me has not been easy. I do not believe that
21 in the history of the Massachusetts judiciary there
22 has been a judge that has been required to respond
23 in a formal disciplinary proceeding to charges of
24 this nature and on the quality of the evidence

1 presented by the Commission in these proceedings.
2 The Commission has relied on assistant
3 district attorneys who are inexperienced,
4 unprofessional and of questionable veracity to
5 challenge a legal sentencing decision made by a
6 judge of the Superior Court who has been on the
7 Bench for 14 years.

8 In these proceedings the Commission
9 advances a new and novel theory of Canon 3(A)(6) of
10 the Code of Judicial Conduct, which requires judges
11 to abstain from public comment about a pending case.
12 Not only did the Commission bring these charges
13 knowing that that canon had never been interpreted
14 by the Supreme Judicial Court as it urges here, but
15 it also knows that the weight of the legal opinion
16 amongst judges of the Superior Court is that a case
17 is no longer pending once a sentence is imposed,
18 including a probationary sentence.

19 The charges involving the pending case
20 issue is just the clearest example of the
21 Commission's overreaching in this case. I'm going
22 to leave it to my counsel to argue the strength and
23 quality of the Commission's evidence, even though I
24 know I could launch into a complete and detailed

1 refutation of its case.

2 As frustrating as these proceedings have
3 been for me, I believe that standing up to these
4 unfounded and irresponsible charges -- those that go
5 beyond the demeanor issue -- was the only thing I
6 could do, not just for myself, but for the right
7 guaranteed to all citizens of this Commonwealth by
8 Article 29 of the Declaration of Rights of the
9 Massachusetts Constitution, which states as follows:
10 "It is the right of every citizen to be tried by
11 judges as free, impartial and independent as the lot
12 of humanity will admit."

13 For me personally, it has been unpleasant
14 and financially costly -- consequences I fortunately
15 have the ability to bear. For the citizens of this
16 Commonwealth, the cost is immeasurable. How do we
17 quantify the chilling effect that these proceedings
18 have had on the exercise of independent judgment by
19 judges? I have heard it from colleagues on the
20 Superior Court, as well as freely from judges in
21 other courts of the Commonwealth. We can all be
22 assured that the example the Commission has sought
23 to make of me is not aspired to by any member of the
24 Massachusetts judiciary.

1 The historical figure I have been
2 identifying with during the course of these
3 proceedings is Sir Edward Cooke, the great English
4 champion of an independent judiciary. He was born
5 in the 16th Century and he was the first Chief
6 Justice of England. His career, as has been mine,
7 was a stormy one. He incurred the enmity of King
8 James in his obstinate maintenance that the common
9 law as interpreted by the court were superior to the
10 rights claimed by the church, chancery and even the
11 King. Not surprisingly, the King finally removed
12 Chief Justice Cooke from the Bench. Cooke's theory
13 of a judiciary, independent of control by royalty or
14 Parliament, was not developed further in England.
15 It was, as we know, highly regarded and adopted by
16 the American colonies as early as 1761.

17 Historians have surmised that Cooke's
18 theory of an independent judiciary was not pursued
19 further in England until much later because other
20 judges, having seen what happened to Chief Justice
21 Cooke, feared a similar fate.

22 The Commission has succeeded in making me
23 the example of the fate judges are to avoid.
24 Unfortunately, this means that many judges will now

1 seek to avoid controversial cases, judges will
2 concern themselves with public opinion before making
3 decisions, and they will worry about making
4 unpopular decisions.

5 I fear it is quickly becoming a justice
6 system composed of judges not just concerned with
7 applying the law in a fair and just fashion, but it
8 is becoming a justice system that will think first
9 about what happened to Judge Maria Lopez.

10 These proceedings against me have
11 undermined the very foundation of our judiciary's
12 constitutional mandate, which is to dispense justice
13 freely, impartially and independently. It is a
14 sorry day for the people of the Commonwealth.

15 As to the specific charges against me, I
16 believe that my only actual ethical transgression
17 was losing my temper at Mr. Deakin's conduct. And
18 while I fully understand and admit to the negative
19 impact of that loss of temper -- and I say this not
20 in justification, but in mitigation of what
21 occurred -- Mr. Deakin was in violation of a court
22 order, and that should not be ignored. There are
23 times that judges are not only authorized to, but
24 required to issue harsh orders, and one of those

1 circumstances is in order to keep control of the
2 proceedings when a lawyer is contumacious. Though
3 again, regrettably, I should have spoken to him in a
4 more controlled and dignified manner.

5 With certainty, however, I can state that
6 in deciding the sentence that I imposed in the
7 Horton case, a sentence that was essentially decided
8 on August 1st, and despite my loss of demeanor at
9 Mr. Deakin and my shortness with him on September
10 6th, I was free of any bias or prejudice towards any
11 of the participants in the case.

12 I decided that sentence based on my
13 judgment of what was a fair sentence considering all
14 of the circumstances of the case. I must, say,
15 however, it is still inconceivable to me how that
16 one instance of judicial misconduct has subjected me
17 and everyone involved here to these time-consuming
18 and costly proceedings. Maybe if I had had the
19 foresight to have handled it man-to-man -- as Mr.
20 Ware on behalf of the Commission stated during these
21 proceedings was the appropriate way to handle an
22 insubordinate and disrespectful lawyer -- all of
23 this could have been obviated. But in absolute
24 candor, Your Honor, the idea of handling it, quote,

1 like a man, unquote, did not even enter my mind, nor
2 should it have.

3 In evaluating that single instance of lapse
4 of demeanor in my otherwise unblemished 14-year
5 career as a jurist, I ask you to consider that
6 judges, like all mortals, make mistakes. My error
7 should be put into the context of my entire career
8 and who I am as a person.

9 In addition, I ask that my conduct in this
10 regard be put into the context of Commission
11 precedence. I submit that never in the history of
12 the Commission has a judge been sanctioned for a
13 single instance of loss of demeanor, and certainly
14 there have never been formal charges brought against
15 a judge for a single instance of loss of demeanor.

16 I also ask you to consider that my family
17 and I have had to endure the strain of these
18 proceedings, and it has been a substantial burden.
19 In my view, this is one of those situations where an
20 elephant gun has been used to shoot a mouse.
21 Because of the unprecedented nature of these
22 proceedings, the question of why have they been
23 brought must be asked. It certainly was not my
24 single instance of loss of demeanor.

1 The reason I have been proceeded against in
2 this manner is because of the political and public
3 outcry of the sentence I imposed. A consideration
4 of the evidence the Commission has presented here
5 indicates the Commission believes it is authorized
6 to put my sentence on trial. Well, it is not. And
7 respectfully, Judge Daher, neither are you. It is a
8 legal sentence. To this day, I stand by that
9 sentence as a fair one. The Commission's authority
10 does not extend to a review of a legal sentence.
11 Even an appellate court would lack jurisdiction to
12 review the sentence imposed on the Horton case.

13 What does the record show about the
14 evidence the Commission presented in this case?
15 Well, most of its evidence went to issues concerning
16 the lawful sentence I decided on August 1st. We
17 spent a lot of time scrutinizing the Katz report.
18 Should I have relied on the Katz report? Was it a
19 biased report because Ms. Katz prepared it on behalf
20 of the Committee for Public Counsel Services? What
21 were Ms. Katz's credentials? Anyone familiar with
22 our adversarial system knows that except in rare
23 circumstances, whatever is given to the Court comes
24 from one side or the other. And as the Judge, the

1 decision-maker in the case, I could give what was
2 presented to me whatever weight I deemed
3 appropriate.

4 As the judge imposing a legal sentence, I
5 am not to be second-guessed. However, a review of
6 the record created by the Commission in these
7 proceedings shows that that is precisely what the
8 Commission seeks to do.

9 The Commission's modus for bringing these
10 proceedings must be scrutinized. It has in these
11 proceedings exceeded not only its customary
12 practice, but I submit its legal mandate. And I ask
13 you, Judge Daher, to ask why.

14 The answer to this question is crucial to
15 any findings this court might make and any sanctions
16 this court might entertain. If the Commission's
17 motives are not legitimate, how can I, in fairness,
18 be deemed in violation of any canon, never mind
19 sanctioned? I stand here before you not because of
20 a series of serious ethical violations, as would be
21 expected from the aggressive nature of the
22 Commission's handling of the investigation and these
23 proceedings, but because of public outrage over my
24 legal sentence -- outrage which has been fueled by

1 unfettered and ill-informed criticism of judicial
2 decisions and the role of the judiciary in our
3 constitutional democracy.

4 A situation similar to this one occurred
5 some years ago with Judge Harold Baer of the Federal
6 District Court in the Second Circuit. As a result
7 of suppressing evidence in a drug case, it called
8 for Judge Baer's removal or the reversal of his
9 decision came from everywhere, including President
10 Nixon and Senator Dole.

11 In a most unusual act, the Chief Justice of
12 the Second Circuit Court of Appeals, Judge John
13 Newman and his colleagues, issued a statement to the
14 press that pointedly applies to my situation.

15 In the statement the justices stated, The
16 recent attacks on the justice of our circuit have
17 gone too far. They threaten to weaken the
18 constitutional structure of this nation which has
19 well served our citizens for more than 200 years.
20 These attacks do a grave disservice to the principle
21 of an independent judiciary and more significantly,
22 mislead the public as to the roles of judges in a
23 constitutional democracy.

24 When a judge is threatened with a call for

1 resignation or impeachment because of disagreement
2 with a ruling, the entire process of orderly
3 resolution of legal disputes is undermined. We have
4 no quarrel with criticism of any decision rendered
5 by a judge. Informed comment and disagreement from
6 lawyers, academics and public officials have been
7 the hallmarks of the American legal system. But
8 there is an important line between legitimate
9 criticism of a decision and illegitimate attacks
10 upon a judge.

11 Criticism of a decision can illuminate
12 issues and sometimes point the way to better
13 decisions. Attacks on a judge risk inhibition of
14 all judges as they conscientiously endeavor to
15 discharge their responsibilities.

16 The Commission in this case has proceeded
17 on the basis of what Justice Newman and his
18 colleagues in the Second Circuit characterized as
19 illegitimate attacks upon a judge, and its
20 unprecedented pursuit of me has had all the adverse
21 consequences Justice Newman's statement cautions
22 about. I want to briefly return to the comments I
23 began my remarks with.

24 In addition to making clear my apology, I

1 want it to be clear that I chose to stand up to
2 these allegations, because if I allowed myself to be
3 bullied, I would empower the Commission to bully
4 other judges. I wonder how many judges in the past
5 have been forced to acquiesce to unreasonable
6 allegations and settlements with the Commission
7 because they could not, like I, pay the emotional
8 and economic price of putting the Commission to its
9 proof.

10 But even more lamentable than the
11 unfairness to the judges is the devastating effect
12 these kinds of illegitimate and
13 politically-motivated proceedings have on the
14 independence of the judiciary.

15 And before I conclude, I want to comment on
16 the role that the Commission and its attorneys have
17 assumed in these proceedings. Commencing from how
18 the investigation was undertaken and up to arguments
19 made by the Commission in the course of this
20 hearing, one would think it was engaged in a
21 criminal prosecution. Nothing, of course, could be
22 further from the truth.

23 These are civil administrative proceedings.
24 As far as I know, I have not been charged with a

1 criminal offense. My understanding of the
2 investigative function of the Commission is that it
3 is to look at all of the evidence, including
4 exculpatory evidence. At that stage it should be
5 acting as a neutral investigator searching for the
6 truth. Clearly, that did not happen here.

7 In my case, as I believe will eventually be
8 shown, it commenced with a mission to make an
9 example of me. As has been shown here, the
10 Commission refused to consider exculpatory evidence
11 and pursued only that evidence which, regardless of
12 its quality, could be used in a manipulated and
13 distorted way to support any allegation of
14 misconduct against me.

15 I refer to Anne Goldbach's testimony before
16 the Commission in which she was refused the
17 opportunity to offer exculpatory evidence. I refer
18 to the disingenuous pursuit of my husband's emails
19 on the mere speculation that I or we had engaged in
20 a, quote, whispering campaign -- a charge noticeably
21 absent from the charges it eventually brought, a
22 charge the Commission knew it had not even a
23 scintilla of evidence upon which to justify its
24 intrusion into my husband's privacy.

1 As we all know, bad facts make bad law.
2 And this is, in my opinion, one of the many
3 unfortunate consequences of the Commission's actions
4 in this case. And there is more that will come out.
5 The subpoenaing of any friend of mine that was
6 quoted in the press of saying something favorable
7 about me, the subpoenaing of individuals' personal
8 computers, the harassment of attorneys who dare to
9 write about this case in the context of judicial
10 independence; and as the evidence in these
11 proceedings has shown, the complete disregard of the
12 Commission's confidentiality proceedings --
13 provisions, I'm sorry.

14 Before commencing these proceedings, the
15 Commission was required to find sufficient cause
16 based on a preponderance of the credible evidence
17 that my conduct constituted grounds to issue formal
18 charges and for discipline. Based on how Mr. Ware
19 himself has represented he conducted the
20 investigation, the Commission was not presented with
21 a complete record of the evidence. If exculpatory
22 evidence was excluded, how, then, could the
23 Commission make a finding based on a preponderance
24 of the credible evidence?

1 What these proceedings have unequivocally
2 established is that the Commission has, at best,
3 misperceived its role and at worst, as the record I
4 believe shows, it has violated many of my rights and
5 those of other individuals who were involved here.

6 And finally, once again returning to the
7 issue of my conduct, which is why we are supposed to
8 be here, I would like to conclude with a quote from
9 the philosopher Pascal, in which he speaks to the
10 importance of recognizing humanity by judges and in
11 judges. And I will retain the gender used by the
12 philosopher in the quote.

13 Pascal cautioned as follows: "We must not
14 expect too much of any judge. We must not assume
15 that he will cease to be a man and become an angel,
16 because man is neither angel nor brute. And the
17 unfortunate thing is that he who would act the
18 angel, acts the brute."

19 I ask, not only on my behalf, but on behalf
20 of the principles that are the foundation of our
21 justice system, that I be completely exonerated of
22 these charges. Again, I appreciate this opportunity
23 to say what has been on my mind for some 27 months.

24 Thank you.

1 HEARING OFFICER DAHER: I'm delighted to
2 give you the opportunity.
3 Mr. Ware, this is not a closing, but
4 there's been a personal attack on you. Would you
5 like to make some comments?
6 MR. WARE: No, Your Honor, not at this
7 time.
8 HEARING OFFICER DAHER: Okay. Fine. Thank
9 you very much.
10 Both parties rest; is that correct?
11 MR. WARE: Yes, Your Honor.
12 MR. EGBERT: But for checking a couple of
13 exhibits that I want to check, but --
14 HEARING OFFICER DAHER: You can take care
15 of that with Harvey.
16 Gentlemen, I would like to have briefs
17 in -- how does the 17th of January sound? Is that
18 enough time for briefs? Briefs by the 17th?
19 MR. EGBERT: I think we're going to have a
20 brief --
21 HEARING OFFICER DAHER: We're going to have
22 the briefs, and then we'll have the closing
23 arguments two weeks later. I want to review the
24 briefs.

1 MR. EGBERT: I understood that you were
2 going to require the Commission to file its request
3 for findings in brief and then we would then file
4 ours.

5 MR. WARE: No, no, no.

6 MR. EGBERT: We have the record from the
7 last proceeding that that's exactly what you ruled,
8 because it's the Commission's burden of proof --

9 MR. WARE: That's not --

10 MR. EGBERT: Let me finish.

11 HEARING OFFICER DAHER: One at a time.

12 MR. EGBERT: I'm sick of being interrupted
13 from the side and the front. And I'm also quite
14 frankly, Your Honor, sick of the Commission counsel
15 consistently misrepresenting the record in this
16 case. You ruled on this when we last --

17 HEARING OFFICER DAHER: Let's talk about
18 the briefs and the rulings of findings. Tell me --
19 let's cut to the chase.

20 MR. EGBERT: My understanding is, Your
21 Honor, it's the Commission's burden to prove -- that
22 they were going to present to you their findings in
23 brief, we would then present to you our findings in
24 brief, and then you would set up argument for

1 whatever date.
2 HEARING OFFICER DAHER: Mr. Ware, does that
3 interrupt your schedule at all?
4 MR. WARE: My understanding was that you
5 wanted simultaneous filing of the briefs and then
6 reply briefs, and that I'm amenable to doing. I
7 would also be amenable to our filing a brief, having
8 Mr. Egbert reply, and our filing a final brief in
9 reply to his response. I'll go either way on that.
10 HEARING OFFICER DAHER: Okay, great.
11 MR. EGBERT: You remember the conversation,
12 Judge.
13 HEARING OFFICER DAHER: I do.
14 MR. EGBERT: Apparently that was at the end
15 of the proceedings off the record.
16 MR. EGBERT: But it appears to me -- and I
17 will say this on the record because I'm sick of
18 it -- any time there isn't is a record here, Mr.
19 Ware recreates it out of whole cloth. I hope you
20 remember what our conversations were.
21 HEARING OFFICER DAHER: Mr. Egbert, can you
22 agree on Mr. Ware's suggestion?
23 MR. EGBERT: Which one?
24 HEARING OFFICER DAHER: The fact that there

1 will be simultaneous filing of the briefs, request
2 for rulings --

3 MR. EGBERT: No. It's wholly inappropriate
4 for us to be responding to the Commission's charges
5 at the time they're making them.

6 HEARING OFFICER DAHER: Mr. Ware, again,
7 the case does have some great import to Judge Lopez.
8 Would that be a problem for you? We have the brief,
9 you file your request, copy and then they'll file
10 their brief and reply within 7 days thereafter.

11 MR. WARE: I'm agreeable to that, as long
12 as the Commission, which has the burden of proof,
13 gets to file a reply.

14 HEARING OFFICER DAHER: Of course. I
15 thought I indicated that. And at one time you were
16 somewhat reluctant to wanting to file a reply. No,
17 that's absolutely right.

18 MR. WARE: Let me try to be clear. I will
19 go either of two ways or any other reasonable way;
20 that is, simultaneous filings of initial briefs --
21 that's one option -- and simultaneous filings of
22 replies. That's acceptable to the Commission.

23 MR. EGBERT: That is not acceptable.

24 MR. WARE: In the alternative, the

1 Commission is prepared to file its memorandum and
2 request for findings by January 17, some period of
3 reply by Judge Lopez, and then we will respond
4 within ten days of having received that reply.

5 HEARING OFFICER DAHER: Mr. Egbert?

6 MR. EGBERT: Your Honor, my suggestion is
7 that -- I would suggest if the Commission files on
8 the 17th, that we file two weeks after that.

9 HEARING OFFICER DAHER: That would make it
10 the 31st?

11 MR. EGBERT: That's correct. And then if
12 the Commission then wants ten days after that for
13 any replies, I think you should give it to them.

14 HEARING OFFICER DAHER: As long as the time
15 periods are the same. If Mr. Egbert wants two
16 weeks, we'd like two weeks.

17 HEARING OFFICER DAHER: Fine. The 17th
18 finding by the JCC. The 31st in response. You
19 want --

20 MR. WARE: 14th of February for a reply?

21 HEARING OFFICER DAHER: Absolutely. 14th
22 of February for a reply. Do you want to argue at
23 that time, or do you want two weeks thereafter?

24 MR. WARE: I thought you wanted an

1 opportunity to read things.

2 HEARING OFFICER DAHER: I do, absolutely.

3 MR. EGBERT: Judge, I think only because
4 we're getting out in time now, maybe it makes sense
5 to do the following --

6 HEARING OFFICER DAHER: I have about
7 2000 pages of stenographic notes, I have about 200
8 pages of scribblings that I have to go through, I
9 have the floppies that I have to review.

10 MR. EGBERT: Bear with me, Judge. That's
11 fine. And the 14th for the Commission reply is
12 fine. I would only ask for seven days after that
13 for us to reply --

14 MR. WARE: No, Your Honor. The Commission
15 has the burden of proof. We're entitled to the last
16 word here and that's what I'd like.

17 MR. EGBERT: I've never heard of such a
18 thing, but I will say this: If they file something
19 on the 14th and I think a reply is necessary, I'm
20 going to seek to file it. What I was going to say,
21 though, Your Honor, is maybe then you should be
22 given the opportunity to digest everything, and then
23 us pick a hearing date, because quite frankly, for
24 me to pick a hearing date with you now, which goes

1 into the end of February, early March, is probably
2 going to be an exercise in folly --
3 HEARING OFFICER DAHER: How does that
4 sound?
5 MR. WARE: No, Your Honor.
6 HEARING OFFICER DAHER: You want to
7 establish the time parameters right now?
8 MR. WARE: First of all, I want to
9 establish the briefing schedule --
10 MR. EGBERT: We just did.
11 MR. WARE: -- and Judge Lopez is not
12 entitled to a reply following the Commission's reply
13 brief. We're going to go on forever with this
14 thing.
15 MR. EGBERT: No, we're not.
16 MR. WARE: Secondly, as soon as we file our
17 reply on the 14th of February, we're proposed to
18 argue. Whatever time it takes the Court to get a
19 feel for those briefs, I'd like to argue. I'd like
20 to set that date now. We have many other
21 commitments we're both dealing with.
22 MR. EGBERT: Judge, my only proviso to
23 you is -- and I don't know why we're doing this,
24 unlike lawyers who in all other cases, but

1 apparently the Commission doesn't have any others or
2 its counsel -- you can set a date today. What I'm
3 telling you is that I can't tell you I can abide by
4 it. It can be a guidance, I'm sure, but I'm on
5 trial on a number of cases. I think Mr. Ware tries
6 a couple here and there. And so if we set a date
7 now --

8 HEARING OFFICER DAHER: I think Mr. Ware's
9 suggestion of setting a date, that would somewhat
10 illuminate precisely what your schedules should be.
11 I'm going to set the date right now. There's enough
12 time, Mr. Egbert, for you to take care of your
13 scheduling.

14 The 17th, the 31st, the 14th, and we'll
15 take argument on the 28th. You can take as much
16 time as you need for the closing and argument.

17 MR. EGBERT: What time, Your Honor -- I
18 don't have my schedule in front of me.

19 HEARING OFFICER DAHER: I understand that
20 10:00 in the morning, Mr. Ware? Is that okay?

21 MR. WARE: That would be fine.

22 HEARING OFFICER DAHER: What else do you
23 need?

24 MR. WARE: Which week is President's week?

1 (No response)
2 MR. WARE: Well, there's no point in
3 scheduling it the 28th if -- I know I'm out that
4 week, whatever week that is. It's school
5 vacation.
6 MR. EGBERT: If Mr. Ware has a vacation, I
7 don't have any problem with changing the date.
8 HEARING OFFICER DAHER: I'm going to
9 accommodate Mr. Ware --
10 MR. WARE: Your Honor, please, don't
11 accommodate me until we know which week it is. It
12 may not be the week of the 28th.
13 HEARING OFFICER DAHER: The 28th is a no-go
14 for you?
15 MR. WARE: I don't know if I can be here.
16 HEARING OFFICER DAHER: Oh.
17 MR. WARE: I'm saying I'm out the week of
18 school vacation. I don't know which week that is.
19 It may be the preceding week. Whatever week
20 President's Day falls on, I am not here.
21 HEARING OFFICER DAHER: Why don't we
22 tentatively schedule it for the 28th.
23 Mr. Ware, if that's the week that you're
24 going to be inconvenienced, let me know, and

1 then we'll try to alter that. And likewise, Mr.
2 Egbert, if you run into any exigencies, let me
3 know.

4 (Whereupon, the hearing was
5 adjourned at 12:41 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 XIV, is a true and
accurate transcription of my stenographic notes
taken on Monday, December 30, 2002.

Jane M. Williamson
Registered Merit Reporter

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