

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

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

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

Harvey Chopp, Clerk

APPEARANCES:

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

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

                  held at:  
Edward W. Brooke Courthouse  
24 New Chardon Street  
Boston, Massachusetts  
February 28, 2003  
9:39 a.m.

(Jane M. Williamson, Registered Merit Reporter)

\* \* \* \*

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

1  
2 HEARING OFFICER DAHER: Good morning.  
3 Please accept my apologies for being a little  
4 late.

5 MR. WARE: Good morning, Your Honor.

6 MR. EGBERT: Good morning, Your Honor.

7 Your Honor, my purpose here today is to not  
8 rehash the hundreds and hundreds of pages of briefs  
9 that have been filed in this case. I think that  
10 they are extensive. I hope that they have provided  
11 to the Court information helpful in garnering the  
12 evidence and looking for law.

13 My intention really is to highlight some  
14 matters that are more likely left for oral argument  
15 in person and frankly to encourage the Court to ask  
16 any questions of me that the Court might see fit,  
17 because after some 600-odd pages of briefing, there  
18 may be questions, either through inartfulness or  
19 through simply things left out.

20 Let me also say to you and to Judge Lopez  
21 and to tell you that this is not only an important  
22 moment, it is a momentous moment, and it is one  
23 which I take with the highest degree of  
24 responsibility and trust that Judge Lopez has placed

1 in me, and the Court, and I hope and intend to act  
2 upon that trust.

3 The backdrop of what brings us here however  
4 can't be escaped and I think needs some discussion.  
5 There have been recently discussions in the media or  
6 otherwise that this case somehow has affected or  
7 impacted the Judicial Conduct Commission in such a  
8 way as to bust their budget or seek supplemental  
9 budgets and the like. And there were public  
10 intimations by the Commission that this is a bizarre  
11 consequence of the statute and that most judges  
12 settle and they never anticipated such a lengthy  
13 hearing. That publicity generated just before this  
14 argument struck me as something less than  
15 coincidental.

16 But you should know and the record of this  
17 case is crystal clear that Judge Lopez is not the  
18 one who did not seek settlement. Judge Lopez  
19 appeared before the Commission, as you know, and you  
20 admitted the testimony and you heard evidence  
21 concerning those proceedings. She appeared before  
22 the Commission at the time and attempted to resolve  
23 this matter in a manner which she felt and her  
24 counsel felt was then appropriate to save an

1 extraordinary expense to the Commonwealth, an  
2 extraordinary expense to her and her family, and to  
3 try to put a context to the allegations here. And  
4 that's the testimony that was brought before you by  
5 the Commission.

6 At no time did the Commission ever even  
7 make a proposal, contrary to virtually all prior  
8 Commission proceedings. The Commission never  
9 proposed a resolution to counsel or to Judge Lopez.  
10 The Commission never sent a proposal or discussed a  
11 proposal. So we're here not from any lack of trying  
12 to go through the process in a less expensive, less  
13 arduous and, quite frankly, less insulting manner.

14 So if there is anyone out there who is  
15 crying about the money that's been expended, believe  
16 me, it was not brought on by Judge Lopez. And those  
17 who ask should ask themselves in this system, just  
18 as starting out where we are, how many judges can  
19 fight back? How many judges, when charges are  
20 brought like this, can expend the time, the energy,  
21 the emotion and the money to fight back? Judges  
22 aren't high-salaried employees in the Commonwealth.  
23 Judges' pay in the Commonwealth is low by comparison  
24 and do not permit the kind of economic war, so to

1 speak, that this takes.

2 So to the extent that Judge Lopez has opted  
3 to get into this fight, has opted to speak out to  
4 what she believes in, has opted to spend her  
5 personal funds and her family funds and to expose  
6 her family, her children, her emotions and the very  
7 essence of her life in these public proceedings  
8 should not be a slap to Judge Lopez but should, by  
9 every judge in this Commonwealth and by every  
10 citizen in this Commonwealth, stand up and say, well  
11 good, when you're charged with something like that,  
12 it's fair to fight back and it's fair to fight back  
13 hard.

14 The Commission through its pleadings in  
15 this case has concocted a new form of judicial  
16 misconduct: fighting back, fighting for your  
17 rights. The papers in this case were so shocking to  
18 me, when I received them, for the Commission to urge  
19 upon you that, for a judge to have the gumption to  
20 stand up to their charges is contempt of the  
21 Commission, for a judge and its counsel to cross  
22 examine witnesses, present evidence and point out  
23 the deficiencies in the Commission's case, should be  
24 seen by you as contempt of the Commission.

1           I suggest to you that those statements by  
2 the Commission are in contempt of the system. They  
3 are in contempt of everything that we are taught to  
4 believe in this system of justice.

5           The statute requires due process. Due  
6 process means just what it says: the ability to  
7 present evidence, to cross examine witnesses, all of  
8 the witnesses, to confront the witnesses and  
9 confront, in essence, your accusers or adversaries.  
10 That's what was done here. She's entitled to no  
11 less than every other citizen. A judge does not put  
12 on the robe and throw away the Constitution.

13           The manner and venom and stridency of the  
14 pleadings in this case by the Commission must  
15 exhibit to this Hearing Officer that there is  
16 something more at work here than the facts that were  
17 brought before you.

18           I wonder where any body that is charged in  
19 this system that we have here, where the Judicial  
20 Conduct Commission ultimately must decide this  
21 case -- you are merely sending it back to them with  
22 your findings and rulings. They are the ones  
23 charged, as you are, but in the subsequent event, of  
24 being fair, impartial, with open minds and open ears

1 to the matter of Judge Maria Lopez. And yet they  
2 found themselves in a position of filing documents  
3 before you telling you that the Commission on  
4 Judicial Conduct says that she should be removed  
5 from the bench on these facts and on these  
6 circumstances, that the Commission on Judicial  
7 Conduct calls her a liar in misrepresentative  
8 filings before you, that the Commission on Judicial  
9 Conduct alleges and does this and does that and does  
10 this and does that. It is inappropriate, it is  
11 wrong.

12 I don't know what it would do to any future  
13 of this matter, should it have a future, but it  
14 should not impact you, because you are in fact the  
15 arbiter and the decider of these facts.

16 Throughout the Commission's filings in this  
17 case they have asked you to disregard the burden of  
18 proof. They have asked you to speculate. They have  
19 asked you to infer -- inference upon inference upon  
20 inference. They have asked you to take every act  
21 and statement of Judge Lopez and treat it as a lie  
22 and every act and statement of every other witness  
23 in contravention and call it the truth, without any  
24 reference to the facts or the statements or the

1 context in which they were put.

2 But the burden of proof which you must  
3 apply is clear and convincing evidence, strong,  
4 positive and free from doubt. This is not some  
5 minor affair. These are important affairs in the  
6 lives of the judiciary, this judge.

7 Around and surrounding that burden, and  
8 this is something that I think has been missed in  
9 virtually all of the pleadings in this case, is the  
10 statutory exemption, preclusion for review of  
11 certain matters by the Judicial Conduct Commission.

12 And I think reading the statute is  
13 imperative. It's Chapter 211 C, Section 2. "In  
14 absence of fraud, corrupt motive, bad faith or clear  
15 indications that conduct violates the Code of  
16 Judicial Conduct, no action may be taken for making  
17 findings of fact, reaching a legal conclusion,  
18 applying the law as the judge understands it." And  
19 probably more telling is the last line: "The  
20 Commission proceedings shall not be a substitute for  
21 an appeal."

22 This statute basically acts as a backstop.  
23 More than a backstop, it acts as a shield. I don't  
24 want to liken it to the presumption of innocence in



1 a criminal case, because it never leaves. The  
2 presumption of innocence in a case can be overcome  
3 by certain quantum of proof. This never leaves.

4 And why? Well, the reason is because  
5 litigants often leave the courtroom angry.  
6 Litigants often see judges as having done them wrong  
7 in one fashion or another, have not done as they  
8 asked, have taken their property, taken their money,  
9 taken their children, taken their liberty. And  
10 emotions run high in instances like that.

11 And so the Legislature wanted to make clear  
12 and did make clear that the Commission is not here  
13 to second guess judicial decisions. It is not here  
14 to say, I would have done it differently. It is not  
15 here to say, well, that judge allowed in that piece  
16 of evidence; that was erroneous. None of that is  
17 before you, nor can it be.

18 And yet that is the primary argument  
19 throughout the Commission's pleadings here. We've  
20 spent hours and hours of testimony, and we will  
21 spend pages and pages of transcript, with the  
22 Commission arguing to you that Judge Lopez should or  
23 shouldn't have relied on a particular document,  
24 should or shouldn't have relied on a particular

1 piece of testimony, should or shouldn't have given a  
2 certain amount of weight or less weight or more  
3 weight to particular matters. Nice for a law school  
4 course. It's nice for a judging course. But it has  
5 no place here. It simply does not.

6 And so I will come back to these precepts  
7 during my argument so that we may try to put them in  
8 perspective.

9 I also, as our brief did, Judge, will  
10 discuss these matters chronologically, but I want to  
11 step aside for a minute. The history of the  
12 judicial conduct cases is that singular instances,  
13 events, of judicial actions generally, unless they  
14 are of the most corrupt sort of bribe taking and the  
15 like, which frankly and fortunately are few and far  
16 between, but kind of singular events of a judge's  
17 conduct are rarely, if ever, seen as disciplinable  
18 in a public forum. They most often are rectified by  
19 an apology or by a, quote, letter of admonition or  
20 the like.

21 And recognizing that fact and deciding that  
22 they wanted to turn up the heat on this case in a  
23 manner which has never been done before, the  
24 Commission charged this matter as six counts of all

1 the same stuff, calling it a different name,  
2 tweaking it in a different forum, but all the same  
3 event; today this statement about suburbs -- and  
4 I'll get to all of this -- is a violation of this  
5 canon, and on Page 20 that same statement is a  
6 violation of this canon, when they're probably not a  
7 violation at all.

8           But my point is this: The manner in which  
9 this case has been charged has been an attempt to  
10 take a singular event in these lives of the Horton  
11 case and parse it and cut it and chop it and chop it  
12 and at the end call it a pattern. And by calling it  
13 a pattern, the Commission says, Aha, see, now  
14 there's a pattern. Now we can step up the volume in  
15 this case, and as they urged upon you, argue that  
16 removal from the bench is an appropriate sanction in  
17 this case.

18           That should be not permitted. It has no  
19 meaning, and it's unprecedented in the law.

20           The Commission asked you, as I've  
21 indicated, to find that every time that Judge Lopez  
22 made a partially inconsistent statement in 15 or 20  
23 hours of testimony, find it's a lie; every time that  
24 she expanded upon an answer when asked a question on

1 one time and asked to explain another, if the  
2 explanation went beyond the limited answer given,  
3 find it a lie; every time that you can take a word  
4 and twist it in one paragraph and twist it again in  
5 another paragraph, find it a lie.

6 Well, I say to you, Judge, that that's not  
7 what you do. But how do you come into this picture  
8 and try to figure out in fact what is going on here,  
9 who is the liar and who isn't? What are the lies  
10 and what aren't? What were people's conduct  
11 motivated by? What was actually going on here? And  
12 that's what I hope to discuss with you.

13 But when I discuss it with you, I want you  
14 to know that I'm discussing Judge Maria Lopez, not  
15 some unknown person who comes before you without  
16 background and not some person who comes before you  
17 with bad background.

18 Maria Lopez comes to you with a lifetime of  
19 public service dedicated to the disadvantaged, the  
20 underrepresented, the poor in our society. That's  
21 what she was before she was a judge. That's what  
22 every inch of her professional career was devoted  
23 to. You can't throw that away. That isn't a plea  
24 for mercy. It is a plea that this Court, in judging

1 this human being, judge her on who she is when you  
2 make your inferences about what she was thinking or  
3 doing, because who we are is a big part of what we  
4 do.

5           When she did these things, when she joined  
6 these enterprises, such as Boston Legal Services for  
7 the poor, the Department of the Attorney General's  
8 Civil Rights Division, the Office of Refugees and  
9 Immigrants as general counsel, she did that as an  
10 articulate, bright, attractive Spanish-speaking  
11 lawyer. What was the call, back in the mid '80s,  
12 for a bright, articulate, attractive  
13 Spanish-speaking lawyer in our professional system?

14           She could have had the world as her oyster,  
15 money rolling in from big firms, all the accolades,  
16 all the money, all the prestige. But, no, she  
17 expended her considerable talents in public service  
18 to those who were less fortunate. That must tell  
19 you something about her. It must tell you something  
20 about what motivates her. And it must tell you  
21 something about who she is as she sits here today.

22           And during the 14 years that she was on the  
23 bench, she was singularly recognized for her work:  
24 bright, articulate, took all tasks without

1 complaint, took the most serious case that the  
2 Superior Court had in a long time and handled it  
3 with efficiency and intellect.

4 People came in here and testified she was  
5 fair, she gave all sides a chance to be heard, both  
6 prosecutors and defense lawyers.

7 This is the person who arrived before you,  
8 who when she acts and speaks, you must judge what  
9 she means and what she says and what motivates her  
10 to say it. She arrives with never having had a  
11 complaint before the Judicial Conduct Commission,  
12 never having had a complaint before her Superior  
13 Court Chief Justices.

14 So she arrives to you in these facts and to  
15 the Horton case with these facts in a manner which I  
16 suggest to you is one with an exemplary professional  
17 life.

18 I want to go through the events that start  
19 this whole ball rolling. And it really talks about  
20 -- and what we have to figure out is this broad  
21 question. And I'm not going to go into every canon  
22 and its minutia, because the questions I think are  
23 broader, when you apply them with these broad  
24 questions in mind. And that is, was Judge Lopez

1 biased against Leora Joseph in such a way -- and  
2 biased doesn't mean, by the way, that you have a  
3 feeling about someone. That's not bias. Judges are  
4 not automatons. When people come before them,  
5 whether they be defendants, lawyers, court officers  
6 and the like, they're entitled to have feelings.  
7 What they're not allowed to do is to let any  
8 feelings that they have interfere with or create a  
9 bias against that individual from either doing their  
10 work or being heard or whatever the case may be.

11 On the other hand, a judge does not have to  
12 disregard the conduct of counsel or the conduct of a  
13 defendant in determining what to believe when the  
14 counsel is speaking, what to make of what the  
15 counsel is doing, and whether or not one can trust  
16 or believes a particular statement of counsel as  
17 being credible or not.

18 I suggest to you that the record in this  
19 case shows without question that neither was Judge  
20 Lopez biased against Leora Joseph, nor did she act  
21 upon any such bias. In fact, it's true, what may be  
22 said is the contrary. And let's take it from the  
23 beginning, because you have to go back to one early  
24 time, and that is the Estrada case. That's where it

1 starts.

2 And what happens in the Estrada case?  
3 Well, it's worthy of note in some detail, because it  
4 is the shroud that Leora Joseph wears for the rest  
5 of this case.

6 What happened in Estrada? Well, the first  
7 thing that happens is there's a standard, everyday  
8 plea conference. Now, I think by this time, Judge,  
9 and I know that you never sat in the criminal  
10 courts, and we have all attempted by witness and  
11 otherwise to present evidence to this Court that  
12 would at least present an understanding of what is a  
13 different court and a different group of procedures.  
14 And I urge you, again, if there are questions in  
15 this regard, to speak --

16 HEARING OFFICER DAHER: I've gone over  
17 Chief Justice DelVecchio's testimony, I've gone  
18 through all the pages, and I'm quite familiar with  
19 what goes on in Superior Court now.

20 MR. EGBERT: Quite honestly, that changes  
21 day to day, as it does in every court.

22 HEARING OFFICER DAHER: That's what I'm  
23 learning about it.

24 MR. EGBERT: But in any event, at least as



1 to the Estrada case, it's pretty clear. It was a  
2 standard plea conference. What that came to mean  
3 and what you know it means is that Judge Lopez, as  
4 other Superior Court judges would, would sit down  
5 with counsel and hear from counsel what it is they  
6 thought about the case, the facts and the like, down  
7 to counsels' recommendations on a plea.

8           And as you've heard, those could come from  
9 two widely divergent places. The Commonwealth can  
10 say that the evidence is black, and the defense can  
11 say, No, no, the evidence is green. And they're  
12 never to agree on that evidence.

13           But as they start to melt down to a  
14 possible plea, the evidence becomes less important  
15 and the disposition becomes what it's about. And if  
16 the disposition is one which the defendant will  
17 accept in some circumstances or the Commonwealth in  
18 other circumstances, then it can be done.

19           And these are -- as you probably know,  
20 virtually 99 percent of the work done in criminal  
21 courts is by guilty plea. And if you want to see a  
22 system go broke, by the way, and a court system come  
23 to a halt, change that statistic from 99 percent to  
24 1 percent and have a few more thousand trials a

1 month in the superior courts and see what would  
2 occur.

3           So the plea takes place, everybody  
4 testifies, Leora Joseph testifies. Nothing happened  
5 out of the ordinary. She had a full and fair  
6 opportunity to speak her mind, a full and fair  
7 opportunity to recommend what she wanted for her  
8 sentence, a full and fair opportunity to address  
9 each and every matter the defense counsel brought  
10 before Judge Lopez.

11           By the same token, Judge Lopez heard from  
12 the defense counsel. And in Estrada you had one of  
13 these situations that presents one of the kind of  
14 complex, urban horror shows that we have come to  
15 see. But these complex, urban horror shows come  
16 with complex problems.

17           And what was one of the complex problems  
18 here? Well, you had the family, including the  
19 victim, the victim's mother, begging the Judge not  
20 to send him to jail, not because it didn't happen,  
21 not because they, as Leora Joseph later said,  
22 supported rape, but because they'd be on the  
23 streets, they'd be destitute. The mother, the  
24 victim and the victim's infant son would have all

1 been on the streets. And they, as the victim's in  
2 the case, urged the Judge to not send him away and  
3 urged the Judge to do something else, to protect  
4 them at the same time, not an easy task.

5         So what did Judge Lopez do? Well, she  
6 fashioned a sentence which she thought was  
7 appropriate under the circumstances. Now, let me  
8 stop there. Whether the Commission thinks it's a  
9 good sentence or a bad sentence is irrelevant.  
10 Whether the Commission thinks that she should have  
11 done something else is irrelevant. That's where the  
12 statute comes in. The statute makes it crystal  
13 clear.

14         So Judge Lopez did everything she could do  
15 that day. She actually called, if you remember, the  
16 victim's mother up to the witness stand and the  
17 victim up to the stand. "Is this what you really  
18 want me to do?" And she did it and then added on  
19 her own that there would be sex offender counseling.

20         So it was done. It was done. Everybody  
21 knew what the sentence was going to be. And now it  
22 was a matter of just getting the plea, because the  
23 defendant's constitutional waiver of rights is a  
24 very important part of a plea. But it was over.

1           Leora Joseph wasn't pleased. We know that.  
2     But what did Leora Joseph do during the plea  
3     hearing? The plea hearing is set in two parts.  
4     There is the plea colloquy, where the Commonwealth  
5     is asked to put in facts that they would prove at  
6     trial, for the defendant to admit those facts exist,  
7     the basis of the plea; and then there is, subsequent  
8     to the acceptance of the plea, a sentencing hearing.

9           They're not all mixed together. They're  
10    two different functions. And the reason you don't  
11    mix them together is because the defendant is going  
12    to be asked at the end of the colloquy, "You've  
13    heard what the prosecutor said. Do you agree with  
14    those facts?" And if the prosecutor is putting in  
15    hyperbolic statements that aren't fact, it's going  
16    to cause the defendant oftentimes to say, "Wait a  
17    minute. I don't agree I'm a no-good bum. I don't  
18    agree I'm a menace. I don't agree that that's part  
19    of this case," and the like. So they come in two  
20    places.

21           But Leora Joseph couldn't contain herself.  
22    Now, not the most horrible of transgressions the  
23    first time, not the most horrible, but worthy of  
24    being called upon so it doesn't happen again. And

1 by the way, if you look at the Estrada transcript,  
2 you'll see that Judge Lopez didn't bring this up on  
3 her own. In the midst of Leora Joseph's statements,  
4 it was defense counsel who obviously stood up to  
5 object, because you can see Judge Lopez say, "Well,  
6 I'll get to that" or "I'll let her put it in for  
7 now." It was wrong. She shouldn't have done it,  
8 Leora Joseph, but again, not worthy of anything  
9 horrible. Worthy of a review, worthy of being told  
10 by the Judge, "Don't do that again in my courtroom."  
11 I don't think anyone disagrees with that.

12 She put in facts in the plea colloquy like  
13 this: "The wife and the pastor have supported" --  
14 the pastor, who was standing there. "The wife and  
15 the pastor have supported his criminal behavior,  
16 even at the expense of this girl's well-being."  
17 That was not fact in this criminal case. Certainly  
18 the defendant wasn't going to admit to it.

19 "The defendant's therapist identified him  
20 as a reactive sex offender, though it was unclear  
21 what he was reacting to when he was repeatedly  
22 shoving his erect penis into her mouth when she was  
23 11 years old." That whole priest and therapy wasn't  
24 coming into this case, and that kind of diatribe

1 wasn't there. So everybody knew it shouldn't be  
2 there and it had to be dealt with.

3           Now, here's where we start to get a picture  
4 of what's going on here. Leora Joseph told us under  
5 oath on the bench, "At the end of the hearing Judge  
6 Lopez screamed to me." You remember the impression  
7 Ms. Joseph was trying to make with you. "She  
8 screamed to me. She humiliated me. I have never,  
9 ever, ever been spoken to like that in my life. It  
10 was horrible, horrible."

11           Why would she do that, Judge? Why would  
12 she do that under oath here before you? We all know  
13 why. She thought she could get away with it. The  
14 Commission thought they could get away with it.  
15 Everybody thought that they could come in and  
16 testify and vilify Judge Lopez because she's sitting  
17 here as a target and it was easy to do.

18           All there was was a transcript.  
19 Transcripts don't talk. All we had was the words.  
20 They put the transcript in evidence, had her give  
21 this spiel about this horrible event. There's only  
22 one thing, they didn't know we had a tape. They  
23 didn't know. They didn't go check to see whether or  
24 not the court reporters in that session had tapes

1 too, and we did.

2 And the tape made it a lie. Is there any  
3 doubt, is there any doubt that the rendition Leora  
4 Joseph gave was simply not true? And is that  
5 something you'd forget?

6 Now, the Commission says, Oh, forgive her,  
7 Judge. Forgive her. It was just a tough time for  
8 her. Maybe that's the way she perceived it. Bull.  
9 Come on.

10 This is not some 10-year-old child. This  
11 is a prosecutor who the Commission, throughout their  
12 briefs, said, "This is a responsible prosecutor,  
13 well known in the law," da, da, da, da, da, da. And  
14 she can't tell the difference between the Judge  
15 saying, "Excuse me, would you please not do that  
16 again in my courtroom" versus screaming and yelling  
17 and humiliating?

18 It was a lie on the stand under oath to get  
19 her. That's all it was, period. And it should  
20 stick with everything Leora Joseph says in this  
21 case. She can't shed it off. It's with her  
22 forever. And not to mention one other piece of  
23 information we gleaned from that little Estrada  
24 case, and that was that Ms. Joseph, because she's so

1 high and mighty and she's so angry, she thinks that  
2 she doesn't have to stand when a judge is talking to  
3 her.

4 Now, you notice in that transcript that  
5 Judge Lopez has to say to her, "Will you stand,"  
6 "Will you stand," "Stand." Now, lawyers know, I  
7 think, that they're supposed to stand when talking  
8 with a judge. They're supposed to show some  
9 respect. It was another one of these insolent,  
10 childish expressions by Ms. Joseph which we saw  
11 throughout these proceedings.

12 Now, I am not -- my purpose is not here, as  
13 the Commission says, my purpose is not to vilify Ms.  
14 Joseph. I could care less about Ms. Joseph. I  
15 could care less whether she ever practices law or  
16 doesn't practice law or the like. But this conduct  
17 was done in front of Judge Lopez, and this started  
18 to make the history that she had in front of Judge  
19 Lopez, and this started to create for Judge Lopez,  
20 and rightfully so, what kind of credibility does  
21 this lawyer have with me, what do I believe, what do  
22 I not believe. But more important, this follows her  
23 with you, because she lied to your face.

24 And I'm not talking some mixing of words,



1 like the Commission's filing on Judge Lopez, trying  
2 to find a word here and a word there. That was a  
3 big up, blown-out lie.

4 Now, the only other excuse is there was no  
5 lie, that she actually is so demented and so  
6 emotionally unstable that she doesn't know what's  
7 happening in a courtroom, that she actually could  
8 perceive a judge talking to her in a normal tone of  
9 voice, because she didn't like what she was hearing,  
10 as being screaming, yelling and humiliating, in  
11 which case that must follow her throughout these  
12 proceedings, and those perceptions and inability to  
13 perceive must follow her throughout these  
14 proceedings.

15 So when the Commission says to you at the  
16 outset of these filings that she did nothing wrong,  
17 that's not true; she didn't deserve to be  
18 admonished, that's not true; and that Judge Lopez  
19 did something wrong, that's simply not so.

20 Let me ask something, Judge, by the way,  
21 and this is a procedural matter. I don't intend to  
22 go until I've put everybody to sleep, but do you  
23 have a time limit in mind? You hadn't mentioned  
24 one.

1 HEARING OFFICER DAHER: You can take as  
2 much time as you want. If you want to come back on  
3 Sunday, we can do that. But take as much time as  
4 you want. I don't want to be guilty of  
5 foreclosing -- you go ahead and take as much time as  
6 you need. My schedule is free, subject to your --

7 MR. EGBERT: It is my intention not to go  
8 for long.

9 HEARING OFFICER DAHER: As a matter of  
10 fact, I'm enjoying this review of the facts. Go  
11 ahead.

12 MR. EGBERT: Now, what happens after the  
13 Estrada hearing, and what can we infer? Well, we've  
14 now seen Leora Joseph up close and personal, seen  
15 her lie to the Court, seen what she said about that  
16 tape. And what happens next?

17 Well, we've got an angry Leora Joseph. She  
18 didn't like the sentence and she didn't like what  
19 Judge Lopez said to her. You don't have to be a  
20 rocket scientist to figure out that she was mad. So  
21 she had her chance, not through advocacy, but she  
22 had her chance to get publicity and to go after the  
23 Judge in the press.

24 And there is something about going after

1 judges in the press in an unfair manner. Every  
2 judge is subject to criticism and ought to be when  
3 it's respectful and fair. But no judge should be  
4 subject to misrepresentative criticism. That's  
5 unfair and it's wrong. It's unprofessional, it's  
6 probably unethical, and it is certainly unbecoming.

7 She went and met with Eileen McNamara. And  
8 now we get to this parsing of words. Well, Eileen  
9 McNamara called her, she didn't call Eileen  
10 McNamara; therefore she didn't call in the press.  
11 But we know what "call in the press" means in the  
12 vernacular with lawyers. It means get out there in  
13 the press and slap a judge around. That's what it  
14 means.

15 And when lawyers do it, they do it at their  
16 peril, because they better do it carefully,  
17 respectfully and not misrepresent the facts. And in  
18 this case, she went there and fully and completely  
19 misrepresented what happened at that hearing in  
20 order to make that judge look bad. That's what it  
21 was all about.

22 There is nothing in the article that -- you  
23 read the article. Try to find anything that matches  
24 what was said in the hearing, anything anywhere, any

1 argument, any statement by Leora Joseph, any  
2 sentencing statement. Nowhere. You would think you  
3 were talking about two different events.

4         But how does she phrase these comments to  
5 McNamara? In talking about the Estrada case, "If  
6 you say he is not a threat because he just raped a  
7 girl in his own household, then can't you say the  
8 car thief," et cetera, et cetera. Who? If who  
9 says? We're talking about a sentence that just  
10 occurred and a judge who just gave the sentence and  
11 about the judge's sentence.

12         This is a message -- this is a wrong,  
13 deceitful message to the public: "Judge Lopez says  
14 it's okay if you rape people in their house. That's  
15 a distinguishing factor. It's a mitigating factor.  
16 He's not a threat, because he just raped a girl in  
17 his own household."

18         It goes on to say, "Society does not  
19 condone the rape and beating of children, quote,  
20 even in your own house."

21         So here's what she tells Eileen McNamara  
22 and the public. Oh, this judge, this nutcase judge,  
23 she's got this rule that if you're in your house,  
24 it's not really a rape. If it's your child and you

1 live with them, it's not really a rape. And that's  
2 why this judge sentenced to probation. And that's  
3 wrong, and that is wrong, and she knew it.

4 And what she is trying to do is to make  
5 herself look good at Judge Lopez's expense, instead  
6 of advocating her case appropriately or instead of  
7 telling Eileen McNamara, "Hey, here were the  
8 arguments on each side. Here was my argument for  
9 sentencing. It didn't fly."

10 But to leave the impression with the public  
11 that this judge released this person on probation  
12 with the conditions he did because the rape occurred  
13 in his own home with his own child is disgraceful.

14 What does the Commission respond? It's  
15 that these comments are benign, benign, and that  
16 they're not a personal attack on Judge Lopez -- get  
17 this one -- because she didn't mention Judge Lopez's  
18 name.

19 Well, Judge, I suppose if I walked out of  
20 here tomorrow and somebody said to me, "How is that  
21 hearing on Judge Lopez going? How are you being  
22 treated in those rulings?" "Well, those rulings I'm  
23 getting in that courthouse," da, da, da, da, da, da,  
24 da. Just don't say the word "Daher."

1                   This is supposed to be -- this is about a  
2 judge and her future, and it's not supposed to try  
3 to shape the facts in such a way, to such a far out  
4 understanding, as to be both unfair and quite  
5 frankly without credibility.

6                   These remarks were about Judge Lopez. They  
7 were made in an article about Judge Lopez. That's  
8 what she was talking about when they were there.  
9 And it was a misrepresentation of what it was, and  
10 it was done with malice aforethought.

11                   So now, we have conduct in the Estrada case  
12 and lying about the Estrada case, conduct in the  
13 McNamara article. And by the way, you reap what you  
14 sow in this business. You reap what you sow as a  
15 lawyer. If you were a judge for more than a  
16 decade -- and I don't know how much more, but a  
17 lot -- and I suspect, without urging it upon the  
18 Court, that you would have formed impressions of the  
19 people who stood before you and determined how much  
20 inquiry had to be made to various representations  
21 that were being made. And the reason you did that  
22 is based on experience. And the reason you  
23 conducted yourself -- and that's typical fact  
24 finding. And that's typical judging.

1                   Well, a year passes or thereabouts, and  
2 there's been no contact with Ms. Joseph, Judge  
3 Lopez. I guess Ms. Joseph was out and had a baby  
4 for a while, and their paths didn't cross after  
5 that.

6                   But here comes the truest expression that  
7 you can find that the Horton case was not a result  
8 of any bias between counsel and Lopez.

9                   They come in before Judge Lopez. And,  
10 one -- this was after the fact. Everybody wants to  
11 go back and recreate history. One, Ms. Joseph  
12 indicated that, to her, the Horton case was very  
13 important -- and I believe it was; it was important  
14 to her professionally, and I took everything she  
15 said about its importance in her head at face  
16 value -- but that she was petrified of Judge Lopez.  
17 She was petrified because she was humiliated,  
18 wrongfully, by the way, remember, in her mind, in  
19 Estrada. She was yelled at, screamed at and  
20 humiliated wrongfully.

21                   Well, when a lawyer goes before a judge in  
22 an important case and has evidence that the judge is  
23 biased, what does the lawyer do? He or she moves to  
24 recuse the judge. It's done every day. Sometimes

1 these things happen. Sometimes a judge just can't  
2 stand a particular lawyer and a lawyer can't stand a  
3 particular judge, and sometimes those things have to  
4 find another place in the courthouse.

5 And Ms. Joseph came, not as some neophyte  
6 litigant coming before Judge Lopez. She had the  
7 full and complete authority and force of the Suffolk  
8 County district attorney's office behind her. That  
9 is not an instrumentality without power. Elected  
10 official. They have full media contact, they have  
11 contact with the Legislature, they have direct  
12 contact with the court system all the time. They're  
13 a powerful organization. And if they think they're  
14 getting a raw deal before a particular judge, they  
15 know how to move to recuse.

16 Well, it wasn't done because it wasn't so.  
17 So they go before Judge Lopez, and they have their  
18 lobby conference on Horton. And the conference  
19 occurs as it does in every other case. Even Leora  
20 Joseph had to testify she had a full, complete and  
21 fair opportunity to present her side of the matter,  
22 to make her recommendations. Anne Goldbach got a  
23 full, fair and complete opportunity to do the same.

24 But what's the one remark, Judge, that



1 tells you that, if you look at it, you can say, Aha,  
2 I know why -- I can see clearly there was no bias  
3 here. What is it? It's when Leora Joseph  
4 testified, if you recall -- and she was reluctant to  
5 do it, because I had her saying in a deposition and  
6 she didn't want to say it again, the ramifications  
7 of it, but she finally admitted it -- that when  
8 Judge Lopez was listening to the case -- these are  
9 Ms. Joseph's words -- when she was listening to the  
10 presentation, she said, "This case looks pretty  
11 serious, Anne. I don't think I can give probation  
12 here."

13           And then what happened? She looked at the  
14 Katz report, and the words were, "she seemed to be  
15 swayed by the report." Well, if it was a product of  
16 bias when Ms. Joseph came in, that statement never  
17 would have been made.

18           It was typical judging. It was typical  
19 judging. Here you have a judge. She's heard part  
20 of the presentation, part of what Anne Goldbach has  
21 to say, and she's talking out loud, "I don't think I  
22 can do that in this case. It looks a little too  
23 serious."

24           Is that a judge who was biased against the

1 Commonwealth or Leora Joseph? No. It's a judge who  
2 was saying, "This one looks like it might deserve  
3 this sentence." And she maintained that position  
4 until she was provided other information which  
5 convinced her otherwise, which swayed her, and  
6 that's the so-called Katz report.

7 Now, I want to stop for a minute here,  
8 because the Commission makes much of this Katz  
9 report in this regard. But I think this whole event  
10 kind of puts the lie to it.

11 One, the Commission says that Judge Lopez  
12 now, for the first time, is using the Katz report as  
13 kind of a rationale for her sentence, that it was  
14 never a big deal; she never hardly looked at it. It  
15 really wasn't why she sentenced him to that, but now  
16 we're making this up for the purpose of this  
17 hearing.

18 Well, not according to Leora Joseph, not  
19 according to Leora Joseph. Leora Joseph says that  
20 she was becoming swayed by the Katz report. That's  
21 what she testified to. And that's what Anne  
22 Goldbach testified to. And Anne Goldbach  
23 testified -- and by the way, when you want to  
24 compare witnesses in the case, both their demeanor,

1 their professionalism, their knowledge and their  
2 attempt to speak the truth on the witness stand, you  
3 compare Anne Goldbach to Leora Joseph, and I'll take  
4 that horse in that race any day.

5 And Anne Goldbach testified quite clearly  
6 that Judge Lopez read the report carefully, she went  
7 over it, asked questions about it and the like, and  
8 it was what fashioned the ultimate description of  
9 what she thought the sentence ought to be.

10 Now, we come to an area right now where the  
11 Court had a number of questions during the hearing.  
12 And we tried to explain through witnesses and  
13 whatever, but I want to at least take up a couple of  
14 points.

15 This Court said, I think, well, how come  
16 the DA didn't get a copy of the report? Well,  
17 you've heard Anne Goldbach's testimony. She tried  
18 on three separate occasions to give her one. It is  
19 not the Court's obligation to provide copies to  
20 counsel. Certainly the courts have accommodated  
21 counsel upon request, "Could I have a copy of that  
22 Judge. I forgot mine," that kind of thing. But  
23 it's not the Court's obligation to -- with a lawyer  
24 standing right there, the Court would expect that if

1 the Court had a document that counsel wasn't given,  
2 that counsel would say, "Well, excuse me, Judge, I  
3 don't have that," or "It was never provided to me."

4 Now, why didn't Ms. Joseph stand up and say  
5 that? Because she knew it was given to her and she  
6 simply disregarded it. In the arrogance of power,  
7 in the arrogance of her position, she pooh-poohed it  
8 and said, "I don't want that. It's got nothing for  
9 me. This is a jail case," not understanding, quite  
10 frankly, how serious that particular document was  
11 going to become in terms of the information it  
12 provided to Judge Lopez. It's dangerous lawyering,  
13 dangerous lawyering, and she paid for it.

14 Two, why didn't Judge Lopez keep a copy? I  
15 think it's crystal clear now, certainly from Judge  
16 DelVecchio's testimony, Anne Goldbach's testimony  
17 and Judge Lopez's testimony, that that's the way  
18 it's done in those proceedings. You take it, the  
19 Judges make notes in their books and whatever, and  
20 then the sentencing occurs. Most times the  
21 sentencing occurs within five minutes, by the way,  
22 it goes right then -- but in this case it was  
23 continued for a few days -- and if it's going to be  
24 used to opt for probation, just as it was in this

1 case. So there was nothing unusual in its  
2 treatment.

3 Now, counsel in this case says, when they  
4 argued to you, you must hold up the statute, 211 C,  
5 and say, No, no, no, that can't play here. Katz  
6 worked for the CPCS. It can't play here.

7 The weight she gave the report is the  
8 weight she gave the report, period. Period. Unless  
9 you find clear and convincing evidence that her  
10 reviewing that report and giving it weight was done  
11 with a corrupt motive or in bad faith, it's off the  
12 table, as it should be. Otherwise, we'd be  
13 relitigating judges' determinations in the context  
14 of judicial conduct.

15 That's not to say that this report wasn't  
16 valid and informative, which I suggest to you it  
17 was, but I don't need to nor will I go down that  
18 road. But certainly the information was there.  
19 Judge Lopez chose to rely on it. That's that.

20 Did the Commonwealth do anything? Because  
21 now you might say, Well, here I can find some  
22 evidence of bias. Here would be bias if the  
23 Commonwealth said to the Judge at the time, "Whoa,  
24 Judge. This Katz report is baloney. We want to

1 have a hearing." Maybe then if the Judge said, "No,  
2 no, no. You can't speak." Would that be evidence  
3 of bias? I don't know. Would it be evidence of  
4 something? It would certainly be something  
5 different than we have here today? A little bit.

6 If the Commonwealth said, "Can we have our  
7 own examiner? Give us a week's continuance, Judge,  
8 for our own examiner," and she said, "No," then  
9 maybe we might want to examine that ruling, if it's  
10 to be examined, what was the cause. But you have  
11 none of that here.

12 What you have through every person who was  
13 at this hearing -- including Ms. Joseph with her  
14 head down saying, "No, I never asked for that. I  
15 never asked for a continuance. I never asked for an  
16 independent study. I never asked to take the report  
17 and rebut it or argue about it or for an evidentiary  
18 hearing or otherwise" -- that is off the table.

19 What is it off the table here? Well,  
20 there's a remark made by Ms. Joseph at this plea  
21 hearing at the end, when she's not getting what she  
22 wants, when she wants to tell the Judge that she  
23 doesn't like what the Judge is doing, she does  
24 what's starting to be a pattern of advocacy by that

1 office, she gives the veiled threat about the media.  
2 Now, her explanation is so phony, it is so  
3 unbelievable because it's built on a lie. And  
4 here's what I'm saying. On her way out the door, as  
5 she's lost the case, she says to Judge Lopez "Our  
6 office takes this very seriously. The media is  
7 watching" or "The media is paying attention" or "The  
8 media is concerned," words to that effect.

9 Now, with the education you've received  
10 here from Judge Russo, I think you get a sense of  
11 what that remark means over there in Suffolk County.  
12 But her explanation was, "Oh, the reason I said that  
13 is not to give the Judge a tickle, not to let her  
14 know, Hey, we're going to slam you. I just -- it  
15 was only fair for me to warn her of the media  
16 attention. Just a heads-up," I think she said.

17 The problem was, there was no media  
18 attention. There had been no media interest. The  
19 only article of media that she could conjure up  
20 anywhere was a small article in some Dorchester  
21 weekly a year and a half earlier.

22 So she wasn't giving her any heads-up. She  
23 was giving her a warning. And the warning was,  
24 "Hey, you don't do what we say, Judge, and we will

1 crack you up in the media. And we know how to do  
2 it."

3           And if you need any more proof of that,  
4 Your Honor, that that's what was going on, look to  
5 the Deakin/Russo testimony and look to that event,  
6 the same office, same people, same people dealing  
7 with this press release. And what does Deakin say  
8 to Judge Russo in a conference when he's afraid  
9 Judge Russo is going to do something he doesn't  
10 like? "I'm going public." "I'm going public"? Is  
11 that a citation to some case? That's a threat.  
12 That's just what Judge Russo thought it was, a  
13 threat. And he said he found it insolent,  
14 demeaning, and he understood it to mean, If you do  
15 this, Judge Russo, we'll go public and make you look  
16 bad in the media.

17           Now, Deakin denied it. A clear question.  
18 I asked him a crystal clear, "Did you ever say to  
19 Judge Dominic Russo the words 'I'll go public'?"  
20 "No." "Anything like it?" "No." "Ever anything  
21 like it?" "No, no, no." "Ever happen?" "No."

22           Judge Russo came on the stand. Do you  
23 think he wanted to be here? He came on the stand,  
24 and he testified to exactly what happened. And he



1 said, why does he remember it so? It's the first  
2 time in 22 years on the bench he ever called and  
3 made an adverse comment about a lawyer. That's how  
4 bad it was.

5           And do you remember what happened then?  
6 The Commission's counsel stood up to you and said,  
7 "Oh, Judge, if you're going to let this in, we're  
8 going to bring in all his superiors to show Judge  
9 Russo was not telling the truth about that, that he  
10 had conversations with these superiors, and that's  
11 not what he said." And of course you saw them bring  
12 in those witnesses, you saw them bring in Ms. Keeley  
13 and Ms. Borghesani and Ralph Martin. That's on a  
14 day when none of us were here, apparently.

15           But that's what they said in open court.  
16 That's what they told you would put the lie to Judge  
17 Russo.

18           So let's make it crystal clear. Deakin  
19 lied on the witness stand on this very same subject  
20 matter, because this is what they do over there.  
21 And Judge Lopez took it, just as she should have, as  
22 this kind of little threat by the DA's office: Once  
23 again, we'll go to the press and we'll make you look  
24 bad.

1                   And that's not okay. That's not okay.  
2 That's not free speech. That's not advocacy.  
3 That's not professionalism.

4                   What happens next? Make a prediction and  
5 it will come true. On August 3rd a press release is  
6 issued by the district attorney's office. It is  
7 sad, to say the least. It is unethical and  
8 unprofessional, to say the most.

9                   Why do I say those things? Well, what  
10 possible purpose other than to rile up the masses  
11 with prurient testimony do you put "A transgendered  
12 man to plead guilty tomorrow," "Transgendered man  
13 who dresses like a woman to plead guilty tomorrow"?  
14 There was virtually no legitimate purpose for that  
15 statement.

16                   Put in anything you want. If you want to  
17 write tomorrow, "Charles Horton will plead  
18 guilty" -- "will plead guilty" is a problem as you  
19 can see from the rules -- "will plead guilty in a  
20 criminal case," da, da, da, da, whatever. "He's  
21 charged with" this, that and the other thing. You  
22 can put that in.

23                   But can there be any doubt in anyone's mind  
24 what the reason for that phrase was, particularly

1 after the conduct of Ms. Joseph in the McNamara  
2 article and her threat to Judge Lopez and Mr.  
3 Deakin's threat to Judge Russo?

4 And it's interesting to note that Leora  
5 Joseph calls Anne Goldbach about four o'clock on the  
6 afternoon of August 3rd, as Goldbach testified,  
7 wanting to find out if the plea is going to go  
8 through the next day. Why? Well, I suggest to you  
9 one of the reasons was because she and Deakin had  
10 that press release in hand.

11 And what do you say, Judge, to the hear-no-  
12 evil, see-no-evil, speak-no-evil testimony of Deakin  
13 and Joseph when it comes to this press release?  
14 This is the immaculate press release. It is  
15 inconceivable. Their testimony is so silly that it  
16 is troublesome.

17 She is the line prosecutor. He's the boss.  
18 She just told the Judge, "Watch out for the press,"  
19 and, bingo, here comes the press release in this  
20 case: "Transgendered, dresses like a woman."

21 And you know they got -- they accomplished  
22 what they wanted. They really did. The next  
23 morning the courthouse is packed, plenty of media,  
24 plenty of cameras, plenty of reporters. They had to

1 see the guy who dresses like a woman. They had to  
2 see Ebony's dress. They had to see Ebony's hair.  
3 They had to take pictures of her.

4 We are not -- cannot blind ourselves to  
5 this. This was not some scheduling notice. This  
6 was an invitation to a circus, a freak show. That's  
7 what it was, and that's what it became.

8 And what did it cause? Well, it caused  
9 harm beyond harm, not that they called in the press,  
10 not that the press was there; but this attempt to  
11 generate this frenzy and to generate this prurient  
12 kind of spectacle, that's what it was about.

13 So what happened? Everything gets  
14 derailed. You heard all the testimony of Ms.  
15 Goldbach, Judge Lopez and Leora Joseph. The parties  
16 come in, the press -- by the way, I hate to have the  
17 press think I don't understand their rights. They  
18 have every right to be there. But that doesn't mean  
19 that there are occasions that the press and  
20 litigants can get so convoluted that bad things can  
21 happen, and maybe it ought to be controlled in a  
22 different fashion.

23 The mother won't come out of the elevator.  
24 Ebony Horton won't come out of some room. There's

1 swearing and jostling and banging around with  
2 cameramen. Anne Goldbach's crying or near tears, a  
3 lawyer of 20-odd years experience.

4 Anne Goldbach says to Leora Joseph, "Did  
5 you do this?" And what does Leora Joseph say to  
6 her? "I'm shocked that the press is here. I'm  
7 absolutely shocked. I had no idea." Do you believe  
8 that? Why were they all so afraid to admit that  
9 they sent out this press release? Because they knew  
10 it was wrong. Because they knew what they were  
11 trying to do.

12 Well, they did. They managed to drill this  
13 plea. Because Anne Goldbach testified -- and I  
14 suggest to you not only is her testimony and was her  
15 testimony credible, but it was probable, too.  
16 Here's this person who was not really ready to plead  
17 in the first place and was coming in that day for a  
18 final decision, so to speak, hit with all of this  
19 attention and the like and tumult. And Anne  
20 Goldbach said, "I'm not pleading him today." She  
21 told Joseph that and she told Judge Lopez that.

22 Now, Joseph, in her inimitable fashion,  
23 denies that that conversation took place. Ms.  
24 Goldbach swears on her professional reputation that

1 it took place. That was the reason she went to see  
2 the Judge. That was the reason she went to see the  
3 Judge, to get a continuance. She had no other  
4 purpose to go to see the Judge. If she didn't want  
5 a continuance or she wasn't asking for a  
6 continuance, there was no reason to go see the  
7 Judge. None. She couldn't do anything about the  
8 cameras. We all know the rules for cameras in the  
9 courtroom.

10 So what was her purpose? Just as she  
11 spoke, to get a continuance, because it wasn't going  
12 to happen today. She told the Judge and you, it  
13 wasn't going to happen, because the defendant  
14 wouldn't let them do it, and it wasn't going to  
15 happen, because she wouldn't do it. It would be  
16 unprofessional conduct of her to allow a plea to go  
17 forward under that kind of emotional strain and  
18 circumstance, and she would not do it, and a  
19 continuance was going to be granted that morning,  
20 and Judge Lopez said so.

21 Now, the Commission says in their  
22 pleadings, there was no discussion of a continuance,  
23 and this was all made up. Fine. I leave it to you,  
24 Judge. If you think Anne Goldbach and Judge Lopez

1 were incredible on the issue of this continuance,  
2 then you so find. But where can you find a  
3 scintilla of believable evidence to the contrary?

4 Now, what happens when they go in? Well,  
5 so far Judge Lopez has been lied to by Joseph,  
6 threatened by Joseph, maligned and disrespected by  
7 Joseph. And now when she comes in and looks and  
8 she's asked, basically, "Did you have anything to do  
9 with this?" or "Who did this?" or words to that  
10 effect, she clams up and denies it.

11 Well, Judge Lopez said "I think you've lost  
12 credibility with me. I think you're mean. And I  
13 think you belong prosecuting" -- either "prosecuting  
14 cases in the suburbs" or "in the suburbs," with the  
15 clear understanding, it seems to me, by everybody  
16 she meant prosecuting cases in the suburbs.

17 Was Judge Lopez happy with those choice of  
18 words? No. Did she indicate both here and  
19 otherwise should she have selected better words?  
20 Yes. But that's not the end of the inquiry, nor is  
21 it evidence of bias. It certainly isn't evidence of  
22 bias in one's dealings in professional matters.

23 She was mean, Judge. She was mean in  
24 creating this event with these groupings of people,

1 both victims and defendants who were in a highly  
2 emotional and suffering state. That is mean.  
3 That's mean by anybody's book.

4 Suburbs? Well, as Judge Lopez described  
5 it, the first number of times she described it, both  
6 in depositions and otherwise, what she meant by that  
7 was, these are edgy issues that you often find in  
8 urban areas, particularly Suffolk County courts and  
9 the like, these edgy issues of transgenderedism, of  
10 alternative lifestyles, of underground lifestyles.  
11 These tend to become more urban issues and require,  
12 when you have such things, as the psychological  
13 backgrounds and the whole issue of how to get  
14 punished and how it affects families, and the  
15 Estrada case. These require a different kind of  
16 thinking than some of the cases in the suburbs,  
17 which -- and by the way, it's not demeaning to  
18 prosecutions in the suburbs, but we know there are  
19 some differences in the level of them.

20 The nails remark? Well, I meant someone  
21 who polishes nails stays home. You read the  
22 transcript. That was after about five questions by  
23 Mr. Ware where she explained fully all the reasons  
24 she had it and she made some flippant answer. That



1 is not punishable by anything.

2 But it turns out that she was right, that  
3 the way these matters were handled by Ms. Joseph and  
4 continually handled, calling a victim's mother  
5 supportive of rape in the Estrada case, calling a  
6 pastor a supporter of rape in the Estrada case,  
7 calling in a press on a transgendered person case,  
8 lacks the urban professionalism needed to deal with  
9 these kinds of matters.

10 And you know, Judge, she did it -- and this  
11 kind of plays out interestingly -- she did it in her  
12 lobby, not in front of 100 lawyers. She did it in  
13 her lobby, took her in there, she spoke to her and  
14 did it in a manner which let her know how she felt  
15 about it, gave her a little wake-up call on her  
16 professionalism in this regard, and it was done and  
17 it was over.

18 Ms. Joseph tells you that this was -- the  
19 magic words -- screaming, yelling, horrible,  
20 horrible, horrible, horrible screaming and yelling.  
21 Ms. Goldbach told you that it wasn't. She heard it  
22 all. I think she described it as stern but normal,  
23 and in fact listened to the tape in the Estrada case  
24 when Judge Lopez spoke and said it was not

1 dissimilar to those remarks -- not those remarks,  
2 but that tone of voice.

3 Well, having in mind what Ms. Joseph  
4 perceives as screaming, and having in mind the  
5 credibility of Ms. Goldbach, I suggest it should be  
6 crystal clear what occurred in that lobby.

7 In our brief, Judge, there is a section  
8 which I won't go through now but which really lays  
9 out, I think -- it's around 23 to 26 of the brief --  
10 lays out the kind of information that Judge Lopez  
11 possessed at the time of her statements to Ms.  
12 Joseph, which I suggest to you would indicate that  
13 she was reasonably warranted in making the  
14 statements she made and the like.

15 But you know, Judge, even with that, I've  
16 been practicing 32 years in the courts of the  
17 Commonwealth, and I know we've made quite a  
18 production out of these two statements, mean and the  
19 suburbs part of pleadings and hearings and the like,  
20 but I've got to tell you, if that's the worst that's  
21 said in a judge's lobby to lawyers in this  
22 Commonwealth, then I'd be quite surprised. Whether  
23 it rises to this level of televised hearings is  
24 beyond me.

1           There is, no doubt, not a judge who has  
2 spent any time trying cases or otherwise who hasn't  
3 made a similar comment and, at best, have been asked  
4 to apologize if it ever came to light.

5           Now we come to the important part of August  
6 4th, which is --

7           HEARING OFFICER DAHER: Mr. Egbert, do you  
8 want to take a five- or ten-minute break here?

9           MR. EGBERT: Sure.

10          (Recess)

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

12          HEARING OFFICER DAHER: Please.

13          MR. EGBERT: So on August 4th, sometime  
14 later in the day, when Judge Lopez takes the bench,  
15 what's everybody's state of mind? She thinks the  
16 case is just being continued, after they've had this  
17 meeting in the lobby. She's told counsel it's going  
18 to be continued. It has to be continued, there's no  
19 question about that, because the defendant is not  
20 about to plead, and for those various reasons. And  
21 she's already had her say to Ms. Joseph in terms of  
22 what she thought was appropriate to say.

23                 She comes up, and no one has, to this  
24 point, no one has said to her, "I object to what

1 you're doing." No one. She thinks when she comes  
2 up it's another day at the bench and there's no  
3 reason to go into any great detail about who, what  
4 and where, no reason to put her private comments  
5 public and the like.

6           And so she comes out, and you recall that  
7 basically her words are, "Okay. This case is going  
8 to be continued. I have a number of bails and  
9 things to do, and we'll do it over in Middlesex,  
10 because I'm moving to Middlesex," I think in a day  
11 or so.

12           Now, the Commission urges you to say that  
13 that was a lie and a pretense, when all it was was  
14 an attempt to get the case moving without bothering  
15 anybody, if you know what I'm saying. It was true,  
16 she had a lot of bails. It was true that she had  
17 other things to do. It was true it was going to be  
18 continued. She didn't see any reason to -- no one  
19 objected to this point -- to go into a long history  
20 of what happened. And I think she was right for  
21 that. It was appropriate. She wasn't looking for  
22 trouble, quite frankly, and she wasn't looking for  
23 anyone to look bad. And it would have been over.

24           The Commonwealth was the one who sought

1 findings at that point. They had all day for Ms.  
2 Joseph to make it known to the Judge she objected to  
3 a continuance, but she didn't. The Commonwealth  
4 gives them the motion and says, "We object to the  
5 continuance, and we want you to make findings" and  
6 the like.

7 Well, remember, Judge Lopez is sitting  
8 there on the bench saying to herself, why am I  
9 continuing this case? What are the reasons I'm  
10 continuing this case? And as she goes back to her  
11 lobby and chambers -- and the Commonwealth says, by  
12 the way, she couldn't have been that busy. She had  
13 plenty of time to write her findings; she writes the  
14 findings in hand on the side. And I don't know how  
15 long the Commission thinks it takes to do 16 or 18  
16 bail reviews, but I suggest to you not very quickly.

17 So now she goes into chambers and she  
18 writes out her finding. Now, first of all, Judge,  
19 let me stop and once again hold up Chapter 211 C,  
20 Section 4, and say to you and to the Commission,  
21 these are findings of the Court, and they are not to  
22 be part of any judicial conduct inquiry or hearing  
23 unless this court finds that they were made in bad  
24 faith or with a corrupt motive, not as the case was

1 tried by the Commission, and that is, would you have  
2 found the same way, are they supported in the  
3 evidence, did you have an evidentiary hearing and  
4 the like. None of that has anything to do with  
5 anything.

6 Now, if, of course -- as you sit in Judge  
7 Lopez's seat you ask yourself, could she have  
8 believed this, basically? Could she have inferred  
9 these facts to make these findings? Could she have  
10 in any possible way that wouldn't be the product of  
11 bias or corrupt motive?

12 The first finding, and I'm only going to  
13 press the findings that the Commission objects to,  
14 is "ADA Joseph, unhappy with the court's position,  
15 called the press in." ADA Joseph was clearly  
16 unhappy with the Court's position and made that  
17 known. She had warned Judge Lopez, in that veiled  
18 threat of hers, that the press is looking at this,  
19 and the press release gets issued in her case from  
20 her office saying "Transgendered person going to  
21 plead."

22 Who else would have done it? It's her  
23 case. She's lead counsel. She's trial counsel.  
24 Who else would have been involved in it? And

1 certainly didn't she have the right to infer that  
2 Ms. Joseph followed the rules of professional  
3 responsibility, which say that any line lawyer  
4 basically must take reasonable steps to make sure  
5 that no one in their office or their employ issues  
6 any statements to the press that they couldn't issue  
7 themselves? It's clearly something that is both  
8 supportable, durable and correct.

9           Then she says, "Ms. Joseph has a habit of  
10 doing this." What she meant by that, as she  
11 explained, and it's clear, she meant the McNamara  
12 article. And in her mind, this was just another  
13 time where this particular prosecutor was going to  
14 try to jack up the Judge in the press and say things  
15 in the press or create press in that manner. She  
16 was perfectly warranted in so finding. You may not  
17 ever. She may not ever (indicating). She was  
18 perfectly warranted in doing so. It certainly  
19 wasn't done on the basis of any corrupt motive or  
20 bias.

21           "The district attorney attempted to  
22 embarrass and ridicule a defendant suffering from a  
23 psychological disorder." What other purpose could  
24 there have been to put that statement in the press

1 release? What was it? What other purpose could it  
2 have been?

3           Let me ask you something, Judge. If this  
4 case were the same case, same factual case, and the  
5 district attorney put in the press release "Joe  
6 Smith, a man with a colostomy who carries a bag of  
7 waste around his side in flowery colors, is pleading  
8 tomorrow to the rape and kidnap of so and so," would  
9 that be the same thing? Wouldn't it be the same  
10 thing? Just nothing more than an attempt to  
11 embarrass and ridicule a defendant in matters that  
12 ought not to have been -- certainly she had the  
13 right to infer that and make a finding. It wasn't  
14 done out of a corrupt motive or bias, not  
15 particularly with the history she had seen in this  
16 particular case.

17           And then there's been much about this  
18 "suffering from a psychological disorder." I don't  
19 mean to be flip here, Judge, but have you heard any  
20 evidence that there are any transgendered people who  
21 are undergoing hormone therapy to enlarge their  
22 breasts in an attempt to get ready to have an  
23 operation so that they can remove their penis and  
24 insert a vagina, and who have wanted to be girls



1 since very young in life and suffer from suicidal  
2 tendencies and depression, who don't suffer from a  
3 psychological disorder? Do you know of any evidence  
4 in this case that, with those combinations of  
5 factors that were before Judge Lopez, that that  
6 person -- that she did not have the right to find  
7 and be warranted in finding that the defendant  
8 suffered from a psychological disorder?

9           Take a look at the DSM and see what you  
10 need to diagnose that psychological disorder, and I  
11 suggest to you this goes well far beyond it.

12           And of course we've spent much time with  
13 Mr. Ware saying to Judge Lopez, You're the only one  
14 who thinks this fellow has a psychological disorder;  
15 it's not in this report. All of those factors are  
16 listed in the report and in the DSM, so she  
17 certainly had every right to find that.

18           "The DAs caused the continuance and sought  
19 to turn the court proceedings into a circus." Well,  
20 they did turn it into a circus, although there  
21 weren't lions and tigers and bears. But we know  
22 what you mean when you turn an event into a circus.  
23 It was pandemonium, it was tumultuous, it was  
24 leering, it was prurient, and it was anticipated by

1 the Commonwealth. And certainly Judge Lopez had the  
2 right to find in that regard, it was warranted in  
3 finding, that particular matter.

4 And now the one that the Commission says is  
5 a callous rejection of the victim in this case,  
6 which couldn't be further from the truth. "It will  
7 have little if no impact on the victim, as this is a  
8 plea." What will have little if no impact on the  
9 victim? Not the case, not the assault, not the  
10 facts as underlying the event. That's not what this  
11 is talking about.

12 The continuance will have little if no  
13 impact on the victim. In other words, another  
14 couple of weeks to get this thing done right and in  
15 order will have little if no impact on the victim.

16 And she goes on to write, "as this is a  
17 plea." What does that mean? Well, the victim is  
18 not even here in the courtroom, petrified and ready  
19 to testify, undergoing the trauma of being ready to  
20 testify, and have to give testimony. Judge Lopez  
21 knows what a child sexual assault trial can be like  
22 for a child. She's had that experience.

23 And so what this is saying, which is  
24 perfectly appropriate, is, Look, continuing this

1 case for a few weeks, or whatever, is not going to  
2 affect this victim in a significant way.

3 Why did she say that? Well, nobody told  
4 her any different either. And remember, although  
5 the Commission wants to gloss over this, it's the  
6 Commonwealth's obligation, in finding that  
7 opposition under Section 16 F, to tell the Judge,  
8 quote, to put on the record what the impact of the  
9 victim was. They totally didn't do anything. They  
10 said, "The grandmother's here."

11 Then they come into court before you and  
12 they put on this big show about how they promised to  
13 have it done before he goes to school and all of  
14 that. Do you recall all that testimony, Judge?

15 Well, that was great, but they never  
16 bothered telling Judge Lopez that. And they're  
17 trying to make a splash in this courtroom, but they  
18 never told Judge Lopez they wanted her to rely on  
19 it. It doesn't make sense.

20 These findings may have hurt their  
21 feelings. These findings may have gone up their  
22 professional back. But these findings were  
23 warranted, and they were certainly not based on a  
24 corrupt motive or bias.

1                   How do you know that? Well, you look for  
2 things in people's conduct to figure out where they  
3 stand, because we all can go back -- I can go back  
4 in history and pull some things you said or did out  
5 and talk about it 20 years later and manufacture  
6 something about it, or what the court reporter said,  
7 and manufacture something about it. But it's their  
8 actions at the time that explain to us what's going  
9 on.

10                   And each of these DAs, Deakin and Joseph,  
11 testified that these were insulting attacks on their  
12 professionalism, attacks on their jobs, or that they  
13 were public expressions of admonishment by the Court  
14 against them, and, and, they were totally unfounded.  
15 And they were totally unfounded.

16                   Now, I don't know about you, Judge, but if  
17 somebody made a professional attack upon me in a  
18 permanent record of a court that I thought were  
19 unfounded, I might at least file one little bitty  
20 motion asking that it be reconsidered, one little  
21 bitty motion asking for a hearing, one little bitty  
22 piece of paper saying that I want you to reconsider,  
23 one little bitty piece of paper before the SJC  
24 saying these findings were made about me and my

1 conduct. They are unfounded, they have no basis,  
2 and I want it overturned. Not one. Not one.

3 And the reason for that is because they  
4 knew if they tried to attack these findings and  
5 wanted a hearing, they would have got a hearing, and  
6 all this business of what they did with the press,  
7 all this business of what they put in the press  
8 release, all the stuff that they had done in this  
9 case would have come out on the record in an  
10 evidentiary hearing, and it would have been worse  
11 for them, not better.

12 This is the Suffolk County DA's office.  
13 And by the way, not only do they have a professional  
14 responsibility to themselves, but they have an  
15 advocate's responsibility to both the Commonwealth  
16 and the victim in this case to assure themselves  
17 that they are able to try the case and handle the  
18 case and that they will in fact be able to do their  
19 job.

20 So you can't have it both ways. If Judge  
21 Lopez's findings were totally unfounded, that means  
22 she's biased, right? That's what the Commission  
23 says. If they were based on whole cloth, then they  
24 must have been from bias.

1                   Well, if they were based on bias, then the  
2 prosecutor should have moved to recuse her. That's  
3 their responsibility. If they got a document in the  
4 mail and said, "Hey, this is a totally unfounded  
5 attack on us as professionals. She's biased. Let's  
6 move to recuse her so our client doesn't suffer,"  
7 did they do that? No. So their actions speak  
8 louder than their words now.

9                   Their words of crying foul mean nothing,  
10 because at the time of the event, they didn't do one  
11 singular thing that a lawyer would do when faced  
12 with those findings if they were a product of bias  
13 or if they were a product of lack of foundation.

14                   Ah, but what did they do? The best Lawyer  
15 Leora Joseph and David Deakin know how to do, the  
16 only lawyering it seems to me that that office was  
17 doing at the time. Where did they make their plea?  
18 In the newspaper the next day. That's where they  
19 went. Not to the courtroom, not to the courthouse,  
20 not to the judge, not to the SJC. To the newspaper.

21                   Are you starting to see a pattern, Judge?  
22 Are you starting to see a pattern? The same pattern  
23 that Judge Lopez watched day in and day out in these  
24 events? Don't litigate with me. Litigate out

1 there, where you can say what you want, you can say  
2 what you want without getting in trouble, you can  
3 say what you want without a judge ruling.

4 And what did they say? I think this is  
5 Exhibit 15 in the record, Judge. "Martin spokesman  
6 James Borghesani noted that Lopez concluded that  
7 Horton suffers from a psychological disorder, quote,  
8 without hearing any evidence from experts." Lie.  
9 Lie. Dead-out lie. She had the Katz report days  
10 before that. It was presented to her. Katz is  
11 clearly an expert. And all of that information was  
12 in there.

13 So they lied, because it's easy. The Judge  
14 isn't there to say, "Overruled. That's not so."  
15 They lied. They simply lied. Why? Because it  
16 makes her look bad. It just makes her look bad.  
17 "Look at this judge. She's making findings without  
18 even getting any expert information. What's the  
19 matter with her?"

20 Then they go on to say the following. "No  
21 one should be deceived by this smokescreen." This  
22 is a judge they're talking about. These are a bunch  
23 of lawyers who just lost an event. "No one should  
24 be deceived by this smokescreen. Judge Lopez was

1 prepared to hand down an extremely lenient sentence,  
2 and she balked when the media was present to witness  
3 it."

4           They knew full well that the reason it was  
5 continued is because the plea couldn't go forward.  
6 They knew full well that. Did they put in here that  
7 Anne Goldbach moved for a continuance because her  
8 client was not ready to plead, as was his  
9 constitutional right to do or not to do? No.

10           They attacked a Superior Court judge  
11 because they didn't like what the sentence was going  
12 to be, and they didn't know how to be advocates in  
13 the courtroom. They only knew how to be bullies in  
14 the newspaper.

15           Now, there is only so much, it seems to me,  
16 that people can do, lawyers can do, before they are  
17 subject to discipline or reprimand. But the fact of  
18 the matter is that nothing was done about that, and  
19 it was let lie.

20           And if you need to understand the makeup of  
21 a judge, a good judge, without regard to whether you  
22 or I or anybody who sentenced higher or lower than  
23 her or anything else, she could have run from this  
24 case. How many opportunities did she have to let



1 that kind of lawyering win, to let newspapers win  
2 over judging, to let prosecutors use the press to  
3 beat up a judge and to get her off the case or to  
4 change her mind.

5 She could have walked away from this case  
6 on any number of occasions. When she was going to  
7 Middlesex, she could have said, "I'm going to  
8 Middlesex. You do this when you want." She could  
9 have read that newspaper article and said, "Leave it  
10 at Suffolk."

11 But she had the courage of her convictions  
12 to say, "I'm doing what I believe to be right for  
13 the reasons that I've thought about them." And so  
14 she continued on with the case. But she didn't  
15 continue on with it without an institutional memory  
16 of events or an institutional memory of history.

17 So what did she do? Well, the first thing  
18 she did was she made security arrangements, if you  
19 recall. Now, even though we've been calling this a  
20 Commission complaint, for them to file documents  
21 before you that so torture the facts of the case and  
22 all of our understanding of what goes on in a  
23 courthouse to try to get a conviction seems to me to  
24 be over the top.

1           The Commission's argument on this is a few  
2 fold: one, that Judge Lopez made arrangements for  
3 the defendant to come to the back door without  
4 telling the district attorney, and that's somehow  
5 wrong. Why it's wrong, where it's wrong or how it's  
6 wrong, they don't say. Everybody does it, we now  
7 know from both Judge DelVecchio and Brian Grifkin,  
8 who is the deputy chief court officer of Middlesex.  
9 It's a regular occurrence done.

10           Why was it done? It was done for obvious  
11 good reason. Look what went on in Suffolk when  
12 there was no control of the meetings between the  
13 litigants and the press? There was this circus, and  
14 everything derailed. So it was not only the smart  
15 thing to do and the right thing to do, it was the  
16 intelligent thing to do.

17           And by calling them special arrangements,  
18 it's like making it up to be some kind of goody  
19 basket, like it really matters to Ebony Horton in  
20 terms of specialness to go in the front door or the  
21 back door. In fact, Ebony Horton went in the front  
22 door anyhow. There was nothing special about it.  
23 It was an attempt to keep the place sane and to keep  
24 the matter sane.

1 All the orders with regard to the cameras  
2 were just the same. They weren't solicitous of  
3 anyone. She wanted this plea to happen. This judge  
4 wanted this plea to happen and happen in a way that  
5 it could be handled. And you're dealing with  
6 emotional people with emotional problems and highly  
7 volatile situations.

8 So what did she do? She said cameras can  
9 fully have and view the proceedings, but I'm not  
10 going to have this defendant, full-faced view,  
11 pictured. Why? One, because it's the prurient  
12 interest of some of the media in this male/female  
13 show; two, because this particular defendant has  
14 already shown that confrontations with cameras may  
15 derail him and not get this proceeding completed.

16 And so what? She didn't hide anything.  
17 She hid the defendant's face. Big deal. The  
18 defendant's face often is not shown, because he's  
19 sitting with his back to the press. But it  
20 certainly wasn't done out of bias and favored  
21 solicitousness to the defendant. It was done in a  
22 well-intentioned and frankly intelligent attempt to  
23 let this plea go forward in a rational fashion.

24 We come upon the 6th of September, the plea

1     itself. And there's been much discussion of what  
2     was really going on here. I'm going to suggest to  
3     you what was really going on here, and I think after  
4     all you have seen and heard, you'll see that that's  
5     the case.

6             This proceeding now on September 6th was a  
7     formality. Now, I don't mean formality in the sense  
8     that the defendant's constitutional rights and the  
9     waiver thereof is not an extraordinarily important  
10    event in any case, but the rest was a formality.  
11    The sentence had been determined. It was already  
12    determined on August 1st. It was in place on August  
13    4th. And it was there, undisturbed, on September  
14    6th. It was over.

15            Now, the Commission kind of minces these  
16    words in some of its filings you'll see. "Well,  
17    Judge Lopez could have changed the sentence. She  
18    could have changed the sentence." And I could jump  
19    over the Empire State Building. But the  
20    circumstances of this case, she could not. Why?  
21    The sentence had been told to the defendant. No one  
22    had moved for reconsideration. They were there to  
23    take the plea. And the defendant was there to get  
24    the sentence that he had already been told would be

1 the sentence in this case in return for his plea.  
2 It was over.

3           What further evidence do you have that it's  
4 over? She tells the defendant before he ever enters  
5 his plea, now, you know, right on the record. In  
6 Exhibit 22 she says to him, on Page 8 -- this is  
7 before the defendant is waiving any constitutional  
8 rights -- "Okay. Now the sentence, and I think I  
9 indicated I was going to place the defendant on  
10 probation for a period of five years. I had  
11 initially indicated that I would be placing him in  
12 Community Corrections. It appears he will not be  
13 accepted into the Community Corrections program.  
14 Therefore I'm going to place him on probation for a  
15 period of five years, on electronic monitoring for a  
16 period of one year, and you'll be required to attend  
17 counseling, and you're to stay away from children  
18 under the age of 16, okay? Do you understand that  
19 this is the sentence that you are going to get?

20           "Yes."

21           It's over, Judge. All that we're here to  
22 do from a constitutional standpoint is for the  
23 defendant to waive his constitutional rights  
24 knowingly, intelligently and voluntarily and for the

1 judge to make such a finding and for a clerk to read  
2 what the judge had already said.

3         So when Mr. Deakin got up and went on in  
4 his lengthy description of the facts, those of us or  
5 anyone who's been in the business long enough knows  
6 those statement of facts weren't being delivered to  
7 Judge Lopez. Those long statement of facts were  
8 being delivered to our friends in the media, and it  
9 wasn't there for sentencing purposes. The  
10 sentencing had already been done. It was kind of  
11 this long, flowing statement which we get out into  
12 the media and try to jack this case up, which is  
13 fine, which is fine, except now you have to put in  
14 context what Judge Lopez was doing.

15         She's sitting there saying, "Okay. All I  
16 need is sufficient facts so I can finally ask the  
17 defendant, are these facts true." By the way, you  
18 don't even have to ask the defendant, are these  
19 facts true, can they prove these facts, or do you  
20 disagree with these facts. But in any event...

21         So he goes on, and at one point Judge Lopez  
22 interrupts him, if you can call it that, politely.  
23 And it is at a point right when all the facts have  
24 been given and they announce, "and the defendant was

1 arrested," which was a natural break point for the  
2 judge to say, "Okay." And then Mr. Deakin said,  
3 "No. I want to say more," basically. And she let  
4 him go, and off he went and said more.

5 So for the Commission to argue that that  
6 was some kind of bias is to simply take every word  
7 spoken, every event, and say there's no other  
8 explanation but it's bias. It was a natural break  
9 point and was certainly not bias nor did it look to  
10 be bias.

11 Interestingly enough -- and to this day I  
12 can't figure out why. I have tried to figure it  
13 out, but I can't. If you can when you make your  
14 findings, I'm anxious to read them. But why -- when  
15 we now know from that videotape, we now know that  
16 the victim told the district attorney's office that  
17 he had been pulled off the street by force into the  
18 car, that Ebony Horton threatened to kill him in the  
19 car if he didn't shut up, and that Ebony Horton laid  
20 on top of him in the car in the passenger's seat --  
21 why those three facts were never communicated to  
22 Judge Lopez by any competent prosecutor.

23 There is no doubt that those would have  
24 jacked up the price of this case in anybody's mind:

1 a threat to kill, a forcible pulling off the street  
2 into the car, actual laying on top, body to body, in  
3 the car. There's simply no doubt as to the impact  
4 that those facts would have had. And I cannot get  
5 my arms around what it was the prosecutors were  
6 thinking. But I can get my arms around one concept:  
7 this nonsense that they tried to feed us in this  
8 courthouse that they all two of them forgot those  
9 three most important facts does not make any sense  
10 in any world which we live in, period. It doesn't.  
11 The three most important facts -- the three worst  
12 facts in the case, both prosecutors at different  
13 times in different proceedings forget.

14 Now, there was something else amiss, and  
15 again, I haven't been able to put my finger on it,  
16 but it certainly goes to the credibility of these  
17 prosecutors and what they were doing here. To say  
18 they forgot is an outrage. To say they forgot is  
19 simply incredible.

20 And during this statement that Mr. Deakin  
21 is making, one of the first objections, so-called,  
22 of the Commission or an argument that Judge Lopez  
23 was either biased or failed to give a proper  
24 opportunity to speak was by not permitting -- that's



1 their words -- not permitting Leora Joseph to read  
2 the victim impact statement.

3           They came into court, Deakin and Joseph.  
4 They sat down. When counsel was asked to identify  
5 themselves, Mr. Deakin stood. Mr. Deakin stood.  
6 Whether that was one more little piece of Leora  
7 Joseph saying to Judge Lopez, "I don't stand in your  
8 presence" or not, I don't know. But Mr. Deakin  
9 stood, and he identified himself as clearly the  
10 person who would be speaking on behalf of the  
11 Commonwealth. And he in fact did all the speaking  
12 on behalf of the Commonwealth.

13           And when it came time to read the victim  
14 impact statement, it was Mr. Deakin who went to the  
15 side bar and told the judge that he was going to  
16 read parts of the statement. And apparently,  
17 according to their testimony, when one of the  
18 statements was about to be read, Ms. Joseph went to  
19 stand up -- that's the best I can make of it,  
20 because we can't find it anywhere in the  
21 proceedings -- and according to them, Judge Lopez  
22 said, "Mr. Deakin, would you please read it."  
23 Perfectly appropriate, not biased.

24           That's the way courthouses are run. People

1 just don't jump in proceedings and say, "Hey, me,  
2 too." That's not the way it happens. You don't  
3 stand up -- Ms. DeJuneas, you would be shocked to  
4 see her stand up in the middle of my argument and  
5 have her say, "Judge, I want to say a couple of  
6 words, too." It's inappropriate. That's not the  
7 way things are done.

8           It's done by one lawyer speaking on a  
9 subject. And if there's plans otherwise, then seek  
10 the Court's permission respectfully and ask. None  
11 of that was done -- whether or not it was deliberate  
12 or not is unimportant -- and Judge Lopez exercised  
13 her legitimate discretion and said, "No. You're  
14 standing. Go ahead and read it." It's not as if  
15 she was going to be doing any lawyering, by the way.  
16 She's simply going to read somebody else's  
17 statement, which doesn't take much lawyering.

18           So now we get to what I consider the famed  
19 "1 to 10" remark. Now, as a beginning point, does  
20 Judge Lopez wish she never engaged in this colloquy  
21 with Mr. Deakin, no matter what point they're each  
22 trying to prove? Well, of course, because look  
23 where it went. Look where it went.

24           Its initial purpose was not a bad one, just

1 like the question about where would you house him,  
2 in a male or a female prison, was not a bad one.  
3 This was a public forum, and the public was watching  
4 this sentencing. And these were some of the impacts  
5 or the considerations that would impact this very  
6 bizarre set of circumstances in developing this  
7 sentence. And there's nothing wrong with the public  
8 being educated on those kinds of issues. And in  
9 fact, Mr. Deakin was well prepared to answer those  
10 issues. So he obviously expected them to come.

11 The question asked, though, was not as has  
12 been portrayed over and over by the Commission. The  
13 question was -- I'm sorry.

14 HEARING OFFICER DAHER: Go ahead.

15 MR. EGBERT: I'm just trying to keep myself  
16 from going too long.

17 HEARING OFFICER DAHER: I can honestly say  
18 that my first assessment of Sunday seems to be  
19 holding true. But go ahead. You take your time.  
20 I'm free, and I'm sure Mr. Ware has nothing else to  
21 do. So you take your time, and I mean that very  
22 sincerely. Go ahead, Mr. Egbert. It's too  
23 important to cut it short. Take your time.

24 MR. EGBERT: The question as framed, Judge,

1 by Judge Lopez was not -- and this is important both  
2 for the Court and frankly the public to  
3 understand -- the content of the question and the  
4 import of the question was not how would he rate  
5 this case, 1 to 10, in all the world of cases. It  
6 was, how does this case rate, 1 to 10, in the world  
7 of child sexual assault cases. That's what was  
8 being asked. And it was taken out of context by the  
9 Commission. It was taken out of context on often  
10 occasions on attacks on Judge Lopez. But the fact  
11 of the matter is what she was saying and did say is  
12 the following:

13 She first asked him, how many cases in the  
14 whole have you brought in the child sexual assault  
15 unit. So that's the universe that we're talking  
16 about. And he brings the figure down to about 100  
17 cases. And she says, "And of those 100 cases in  
18 terms of the facts of this case, on a scale of 1 to  
19 10, where would you put this case?"

20 In other words, in terms of child sexual  
21 assault cases, where does this one fit? Not what  
22 was portrayed in the media, Oh, this is a low-level  
23 crime as compared to walking your dog on the street  
24 or malicious destruction or whatever. In the realm

1 of these very serious cases -- there's no child  
2 sexual abuse cases that aren't serious. In the  
3 realm of these very serious cases, where does this  
4 one fit, and on the factors that one considers when  
5 fitting them there.

6 And she heard Mr. Deakin's response, and  
7 she believes that he was calling it a 10. That was  
8 her interpretation of what he was saying, and a  
9 rational interpretation of what he was saying.  
10 Whether she was right or wrong is almost irrelevant,  
11 but that was what she heard when he said "10" and  
12 didn't give any other number and basically went  
13 through the crime. That's what she testified to,  
14 and of course, that's what she said in her response.

15 She then said that Mr. Deakin was  
16 disingenuous. "I find you to be disingenuous." Why  
17 did she say that? Well, because, Judge, in the  
18 scheme of sexual assault cases involving children  
19 and the like, this case was, whether in the  
20 guidelines or the factors in the guidelines or in  
21 human experience, a lower level case.

22 Why was it? Well, unlike in the Estrada  
23 case, for example, the victim had not been sexually  
24 brutalized through penetration or with any organ

1 member. If you recall, there was no penile  
2 penetration, there was no oral penetration, there  
3 was no conduct other than -- and I don't diminish  
4 it -- other than the supposed sucking on the  
5 screwdriver and finger. And that is a far cry, as  
6 we know, from penile or vaginal penetration.

7           And it was not a repeated case. In many  
8 cases where a child is sexually abused, we know from  
9 cases like Estrada and others, it involved repeated  
10 sexual crimes over a period of time with lack of  
11 reporting.

12           Unlike in the Calixte case, there had been  
13 no nonsexual physical brutalization. What I mean by  
14 that, there were no beatings and the like and there  
15 was no brutalization in that regard. And unlike  
16 both Calixte and Estrada, this case did not involve  
17 the obtaining of sexual favors from positions of  
18 trust and the like, parents or guardians and the  
19 like, which has been a well-known curse of the  
20 criminal justice system.

21           According to the unrebutted psychological  
22 assessments of the offender, you had unlikely to be  
23 a recidivist, not likely to be a pedophile suffering  
24 from these various disorders, and having no other

1 involvement with children in terms of a sexual  
2 nature and the like and that he had complied with  
3 all these various matters for probation, making him,  
4 let's say, a different kind of offender than the  
5 norm.

6           And so whatever you may say, Judge Lopez's  
7 statement that in her mind, in terms of child sexual  
8 assault cases, that this was at a low level was both  
9 correct and warranted and not meant to be demeaning  
10 and not meant to be insensitive to anybody,  
11 including most especially the victim or their  
12 family. Because even though it was, in her opinion,  
13 a low-level crime in that realm of crimes, it was  
14 both a serious and important crime for the victim  
15 and for society.

16           But what happened then? What happened then  
17 is she turns, after saying "I think you're  
18 disingenuous" or "I find you disingenuous," she  
19 turns and she says, as is her right as the judge of  
20 the Court, "I will hear from defense counsel."

21           Now, after all the conduct of Mr. Deakin  
22 and Ms. Joseph, after everything that had gone on in  
23 the past, after all their playing with the press and  
24 the newspapers and the like, after all that had gone

1 on, you would think that they would have sat down  
2 and obeyed the Court's order, but he did not. And  
3 he testified that he knew he was disobeying the  
4 Court order, that he knew it when he did it and he  
5 consciously decided to do it.

6 And why did he decide to do it? To defend  
7 his honor. Well, he had no right to defend his  
8 honor there. He has no right to defend his honor --  
9 he has a right to zealously advocate for his client.  
10 He has no right to defend his own personal honor at  
11 that time. He can ask for a hearing. He can ask to  
12 see the Court. He can ask for whatever. But he was  
13 told to sit down and to hear from defense counsel so  
14 the proceedings could go on. And he refused, and he  
15 jacked this thing up, and she exploded and she was  
16 wrong. She was wrong. She has said she's wrong.

17 But she's not wrong in a vacuum. This  
18 Judge of 14 years, without a prior complaint, is not  
19 wrong in a vacuum. When you look at some of the  
20 cases that have been cited to you over time,  
21 particularly the Brown case, for example, which is  
22 the most resent demeanor kind of case that we have  
23 found. In that case Judge Brown, who we all know  
24 and have a great deal of respect for, Judge Brown



1 was on his third bite of the judicial conduct apple.  
2 He had been previously sanctioned twice and had just  
3 one month before this event of In Re Brown signed an  
4 agreement of sanctions to never do it again.

5 So, clearly, this is not Judge Lopez. And  
6 Judge Brown's conduct of coming after, shall I say,  
7 using words to a particular litigant that were  
8 inappropriate weren't justified in any way. There  
9 was nothing to lead up to that conduct. There was  
10 no conduct by the person but walking in the door  
11 with a case that led to that diatribe.

12 This was a case with history, where the  
13 lawyers had taken after the Judge, who had  
14 threatened the Judge, and who had disrespected the  
15 Judge publicly and the like. So that simply cannot  
16 be taken out of the mix.

17 But she was wrong, and she has said she was  
18 wrong. How many times must she say it for  
19 Commission counsel to finally get it? Commission  
20 counsel confuses and refuses to see when someone  
21 says, Yes, I was wrong, but explains the  
22 circumstances of how it came to be, to explain her  
23 wrongfulness and to understand how it happened.  
24 That's how it happened. As the story that I've just

1 told you, that's how it happened. And she exploded.  
2 I wonder how it feels for Judge Lopez to be  
3 the only judge that ever yelled at a lawyer in a  
4 courtroom of the Commonwealth of Massachusetts,  
5 because you would think that's what it is. We all  
6 know better. It doesn't excuse it. It doesn't  
7 excuse it, but it does put some perspective on it.  
8 And it also puts perspective on it when you realize  
9 that she is 14 years without a complaint.

10 As evidence of the fact that she was both  
11 capable to continue to hear the case and permit the  
12 Commonwealth to be heard, once she realized that Mr.  
13 Deakin then later wanted to speak on another matter,  
14 she not only permitted him to speak but found in his  
15 favor as to various conditions which he was seeking.

16 And then, as they say in Glocamora, it hit  
17 the fan. And there was this mixture of dislike of  
18 her sentence and use of this one-minute clip of  
19 video to make a point.

20 Did you ever have videos in your court,  
21 Judge, or in all the courts in the Commonwealth?  
22 One second of a judicial life where she screams at  
23 this prosecutor and, man, if you watch television,  
24 then you can close your eyes and do it by heart.

1           And the fact of the matter is that there  
2 was nothing wrong with her sentence. It was a  
3 correct sentence and a lawful sentence. Some may  
4 disagree with it. Many who disagreed with it were  
5 never really given the fact of what led to it in her  
6 decision.

7           But that doesn't matter, again. Chapter  
8 211 C, Section 4, tells you it doesn't matter. You  
9 just have to sit here right now, Judge, and say to  
10 yourself the following: Was Judge Lopez biased in  
11 this sentence? I suggest to you that the answer is  
12 crystal clear.

13           Well, after September 6th the Commission  
14 now wants to allege that -- well, basically a couple  
15 of things: One, that Judge Lopez is a liar, that  
16 their witnesses tell the truth, Joseph and Deakin,  
17 and that Judge Lopez lied and provided false  
18 information to Ms. Kenney at the judicial  
19 information office to, one, disseminate or see to it  
20 that wrongful information got disseminated, or two,  
21 to issue a false press release, or three, to somehow  
22 protect her to the public. And I know I'm talking  
23 in a broader sense.

24           Well, first of all, Judge Lopez hadn't done

1 anything wrong, besides yell at the prosecutor. She  
2 hadn't done anything wrong. Judge Lopez wasn't  
3 afraid of her sentence at the time, no more than  
4 she's afraid of it now. She thought it was the  
5 right thing to do then. She thinks it's the right  
6 thing to do now. So she wasn't afraid or attempting  
7 to get information out there to justify her  
8 sentence.

9           Look what she was trying to do and what was  
10 going on. Do you remember the word "sensitivity,"  
11 "insensitive"? It came out through this, "I didn't  
12 want to be portrayed as insensitive," and "I didn't  
13 want the public to understand his sentence as  
14 insensitive."

15           What did she mean by that? What she meant  
16 by that is -- she wasn't responding to nothing. She  
17 was responding to the hysterical newspapers and talk  
18 shows that were showing up on her doorstep, calling  
19 her house and people calling her house, calling her  
20 a spik and a Jew lover and her husband a Jew-loving  
21 spik and the like.

22           And the Commission and counsel expected her  
23 to be acting absolutely with her head square on her  
24 shoulders during a time like that, careful with

1 every word and careful with every thought and able  
2 to consider and sit back and calmly deal with this  
3 situation? Come on. She's a judge, but she's a  
4 human being. Her children threatened, people got --  
5 my God, it should be a lesson to us in what not to  
6 do in terms of dealing with our public officials, or  
7 we'll never have any.

8           Object all you want, but that kind of  
9 conduct does nothing but create chaos and create  
10 chaos in the mind of a woman who cares for her  
11 family and her children and her husband.

12           But she had nothing to hide or disseminate.  
13 And in fact, in her conversations with Ms. Kenney,  
14 you'll note that Ms. Kenney was pretty much around  
15 the pike -- she was the essence of an honest  
16 witness. And she kept saying, "I don't recall all  
17 this stuff." She was really -- she didn't help me  
18 too much, whatever. But that's all right. She said  
19 she couldn't remember.

20           And she was really quite clear that there  
21 were bits and pieces of conversations that she had  
22 with Judge Lopez. She took bits and pieces from  
23 those conversations, couldn't remember all of them.

24           I asked her if she recalled talking about

1 the psychological report, for example. She said, "I  
2 don't recall that." And I asked around, "Does that  
3 mean no or does that mean, no, you don't know one  
4 way or the other?" You know, "Do you recall this or  
5 that?" "No," she said, "I don't remember one way or  
6 the other."

7           And really there's not a large difference  
8 or much difference between what Judge Lopez says and  
9 she says they all talked about. They talked about  
10 the facts of the case, who said what, what the  
11 background of the defendant was, why she gave her  
12 sentence. What do you think she'd be talking to  
13 Kenney about? She'd be talking to Kenney about,  
14 "Joan, all these people screaming and yelling,  
15 here's why I gave the sentence the way I did. I  
16 didn't think this guy was a pedophile. I had these  
17 reports. I didn't think he was this. In the  
18 guidelines and the factors that judges consider,  
19 this case was not on the high level of sexual  
20 assault cases. It was on the lower level of sexual  
21 assault cases."

22           Imagine the conversation, Judge. You know,  
23 they want to take people's memory of one word and  
24 say, "Aha it's a lie." Imagine what the

1 conversation would have had to have been. "Joan,  
2 here's what happened. Here's why I did it. Here's  
3 what I was thinking," and all of that.

4           And, Judge, they hold out to you -- the  
5 Commission's whole aspect of this case is, "Aha.  
6 She said 'guidelines' and she was lying, lying,  
7 because when she went before the Commission on  
8 deposition, she tried to explain it." She said,  
9 "Well, I wasn't thinking of the actual guidelines.  
10 I was thinking of factors according to the  
11 guidelines, those kinds of things. And I thought  
12 the press release" -- you will recall what she said  
13 at deposition -- "I thought the press was materially  
14 accurate, and it was okay for a press release."

15           Now, think of the sequence of events in  
16 trying to determine whether or not she was lying and  
17 whether or not that makes sense. The press release  
18 says "appropriate level of sentencing guidelines."  
19 Commission counsel gets her in a deposition and asks  
20 her about that statement. All she had to do to  
21 avoid all of this last 30 pages of this judicial  
22 conduct complaint was say, "Yes, I was talking about  
23 the guidelines," period. Period. Nothing anyone  
24 could have done. They could have argued about her

1 interpretations of the guidelines, they could have  
2 said, Well, it's higher than that or lower than that  
3 or upside down or down from that. Nothing. There  
4 wouldn't have been a word anybody could have said.

5 But instead, she was honest. Instead, she  
6 said, "Look, I didn't mean the guidelines  
7 themselves. I meant these factors and all the  
8 things I thought about and all of this and the like"  
9 in trying to explain it to them.

10 And what do they do? They take their  
11 explanation, which she simply could have said -- if  
12 she were a liar, she could have simply said, "Hey, I  
13 said the guidelines. I meant the guidelines." Bam.

14 But, no, she chose to explain it to them  
15 honestly, and they indict her for it. That's what  
16 you get. She's before a Commission investigation  
17 supposedly -- that's supposed to be fair and honest.  
18 She gives them appropriate, honest answers, and now  
19 they say she's a liar because of what she said in  
20 the press release. It's an outrage.

21 This whole concept that she spoke to Joan  
22 Kenney to encourage misleading public comment is  
23 built on straw. Ms. Kenney testified clearly she  
24 wasn't going to make any public comment in this



1 case; she wasn't permitted to. Maria Lopez could  
2 have told Joan Kenney that the victim had twelve  
3 legs and four arms and the defendant flew in from  
4 Mars and all this occurred, and Joan Kenney wasn't  
5 going to say anything publicly, because as she told  
6 you under oath that her conversations with Judge  
7 Lopez were confidential, period. And the only  
8 matters which would be released is if Judge Lopez  
9 told her to release anything. And the only matters  
10 Judge Lopez gave her the okay to release were this  
11 one, singular press statement.

12 Now, it doesn't make a lot of sense, does  
13 it, that if Judge Lopez's whole purpose in talking  
14 Joan Kenney was to get all -- disseminate all this  
15 information, this wrongful information out there to  
16 encourage misleading public comment, if that was her  
17 purpose, she probably should have been smart enough  
18 to tell Joan Kenney it's okay to repeat it.

19 Part of this relates to this document --  
20 I'll try not to belabor it -- but this document that  
21 the Commission filed about all of Judge Lopez's  
22 statements. This was a press release. It wasn't a  
23 sentencing memorandum. It wasn't a full statement  
24 of everything Judge Lopez knew. It was a press

1 release.

2 Now, in the first instance the Commission  
3 says she's a liar, a liar, when she testified, "This  
4 was my first press release." Liar. Why? "Because  
5 her personal life is immersed in the media." In  
6 other words, translation, her husband owns the  
7 Phoenix. Okay? And that's what this Commission  
8 bases a statement that somebody's a liar when they  
9 say, this is my first press release, because her  
10 husband owns the Phoenix.

11 We have sunk to levels in this case that  
12 are beyond any dimension fathomed when this  
13 Commission was statutorily authorized. She would  
14 have been better off if she gave a sentencing  
15 memorandum. And when you go back, Judge, and you  
16 read the Commission's statements about how she lied  
17 about what she could and couldn't say, you'll say --  
18 if you read them carefully, you'll see that what  
19 she's saying is, in all occasions, back in  
20 deposition and here, there's a confusion. You can't  
21 say publicly that which is not public or in the  
22 public record. You can put anything you want in  
23 your findings and anything you want in your  
24 sentencing memorandum, as long as it's based on

1 something that's before you, and then it becomes  
2 public.

3 And there was this whole confusion of those  
4 events. And so that's why we went through this  
5 exercise in the press release of adding in what you  
6 can say in a press release versus in a sentencing  
7 memorandum, because they're different.

8 Now, sure, would she have been better  
9 served now, as we look back on it, to have written  
10 out a ten-page press release with all -- strike  
11 that -- a ten-page sentencing memorandum with all  
12 her thoughts and all her reasons and the reports?  
13 Yes, she would have.

14 But she was being onslaughted with opinion.  
15 She was being told by Judge DelVecchio, "Stay away  
16 from the press. They'll kill you." She was being  
17 told by her lawyer, "Don't do anything." She was  
18 being told by her husband, "Hey, it's the press.  
19 Get out there and do it." She was being told by her  
20 friends, "You've got to do something."

21 What was she to do? What was she to do?  
22 So she let this press release go out. It was, as  
23 she says, materially accurate. It was, yes, good  
24 enough for a press release. It gave the concept and

1 tone of what this was about, and it in fact was  
2 true.

3           Now we take this press release and pick it  
4 apart word by word and call it a lie and charge her  
5 with lying and giving false information. It is  
6 beyond comprehension to me.

7           Did she think the case was pending? Was it  
8 pending? There's law everywhere. Take a  
9 jurisdiction, I'll find you some law.  
10 Unfortunately -- how are you supposed to act? If it  
11 were a criminal case, it would be easy. Dismissed,  
12 whatever. Void for vagueness -- if it was a  
13 constitutional challenge, void for vagueness. Don't  
14 be so sure it won't be a constitutional challenge at  
15 some point.

16           But we're talking here about misconduct,  
17 not mistake. So the first thing you have to ask  
18 yourself is, do you know the law and did you know it  
19 back on whatever date before you started this  
20 hearing on a pending case. Did you know about the  
21 Bruzzese decision in the SJC? Did you know about  
22 the Georgia Advisory Committee? The answer is, no,  
23 you didn't, of course, and none of us did.

24           And so what we were acting upon was our

1 common sense understanding and her judicial  
2 understanding of what a pending case was. Judge  
3 Lopez -- and it's probably the law. The law is  
4 argued beautifully in the briefs by both sides. I'm  
5 not going to try to recreate it here.

6 But I am going to say this: If you didn't  
7 know what it meant, you didn't know what it meant, I  
8 didn't know what it meant, they didn't know what it  
9 meant, Judge DelVecchio didn't know what it meant,  
10 did she have at least a right to maintain, I've  
11 finished my sentencing, the guy's on probation, this  
12 case is not around anymore, it's over? That's Judge  
13 DelVecchio's stated position under oath, it's not  
14 pending. That's Judge Lopez's position.

15 And why else should she be entitled to the  
16 benefit here and to show that it is not clear and  
17 convincing evidence of a violation? Well, I know  
18 Judge DelVecchio testified that each judge is  
19 autonomous and they're responsible for their own  
20 decision. But, you know, when you're sitting around  
21 with your Chief Judge and the head of the Public  
22 Information Office in the SJC, and you're a 14-year  
23 or five-year or six-year Superior Court judge, and  
24 the Chief doesn't say, "Hey, this case is pending,

1 you can't issue this" -- in fact, he's making mark-  
2 ups on it -- and Joan Kenney doesn't say, "You can't  
3 issue this," it goes to her good faith in her  
4 understanding as to whether or not this was a  
5 pending case. It goes to whether or not she thought  
6 she was right and was acting in accordance with the  
7 law and the like.

8 And I leave for a better day whether or not  
9 the case is pending or not pending and the like.  
10 But I think, without regard to any of it, her  
11 conduct was not proven to be misconduct by clear and  
12 convincing evidence in that regard.

13 Can we take a five-minute break? I'm  
14 getting close to wrapping up.

15 HEARING OFFICER DAHER: That would be fine.  
16 (Recess)

17 HEARING OFFICER DAHER: Mr. Egbert. Pick  
18 it up, Mr. Egbert.

19 MR. EGBERT: Thanks, Judge.

20 Two quick comments on the interaction of  
21 Ms. Kenney and Judge Lopez and what you should take  
22 from that and what the Commission has done. And now  
23 is a good time for me to bring up this document that  
24 the Commission filed, this inconsistent statements

1 or lies document. And I assure you I have no  
2 intention of going through it piece by piece, which  
3 we have in full response, my office. And I think  
4 you know that the way we responded is by including  
5 what we thought was appropriate.

6 But the very first example in the book  
7 relates to Ms. Kenney, and it should be emblazoned  
8 in the Court's memory as, quite frankly, what the  
9 Commission has done here is an attempt to play with  
10 the transcripts and the facts in this case, which is  
11 unheard of in the most highfalutin civil trials for  
12 trillions of dollars, not where we're supposed to be  
13 basically in a search for some understanding of the  
14 conduct of a judge.

15 But in the first -- the very first portion  
16 the Commission cited to you, they told you that  
17 Judge Lopez told Joan Kenney -- that she lied to  
18 Joan Kenney and that she told Joan Kenney that the  
19 boy was not kidnapped. And they say to you that you  
20 should then find that Judge Lopez is a liar because  
21 Joan Kenney -- because Judge Lopez told her that the  
22 boy was not kidnapped.

23 And they put in a section of the transcript  
24 that reads as follows: "Judge Lopez told you this

1 was not a kidnapping; isn't that right?" by Mr.  
2 Ware. "Answer: That's correct."

3 "So your best recollection is those were  
4 her words without qualifiers; is that correct?" Ms.  
5 Kenney: "Yes." And left out -- and had the gall to  
6 leave out the rest of her testimony, where she says  
7 the following, and answers the following  
8 questions -- I asked her the following question.  
9 "Judge Lopez didn't use half a sentence. She didn't  
10 say, 'This wasn't a kidnap.' You've testified  
11 continuously, what she told you is, it wasn't a  
12 traditional kidnap, that the boy got into the car  
13 willingly, correct?" Ms. Kenney answered, "Yes."  
14 "That's what she said, correct?" "Answer: Yes. The  
15 implication was he wasn't snatched off the street  
16 and kidnapped; he got into the car willingly."

17 She was asked, "He got in willingly? He  
18 was not snatched off the street by the arm or  
19 something, correct?" She answered, "Correct."  
20 "Question: Or by gun point, whatever the case may  
21 be? Answer: That's correct."

22 So in an attempt to get you to make a  
23 finding that Judge Lopez lied to Ms. Kenney and told  
24 her that it was not a kidnap, when of course the



1 fellow had pled guilty to kidnap, and to simply not  
2 provide you with the appropriate transcript  
3 references where she clearly says what Judge Lopez  
4 was saying to her was it was not a kidnap in the  
5 traditional sense, meaning he wasn't snatched of the  
6 street by force, is a fraud. It is fraudulent  
7 lawyering. It is fraudulent advocacy. It is  
8 something that you would think that the Commission  
9 on Judicial Conduct would not stoop to in order to  
10 try to obtain a conviction here, so called.

11 It is replete in their filing of those  
12 matters. I am not going to go through every one.  
13 We have filed, as you know, a 150-page response.  
14 But I would ask that you consider, when they do  
15 their PowerPoint presentation, that you make sure  
16 when you're being shown transcripts on that  
17 PowerPoint or matters on that PowerPoint, that  
18 you're not being misled by halves and quarters of  
19 the transcript. And this is replete throughout this  
20 document.

21 With regard to Judge Lopez and Ms. Kenney,  
22 you should know there's this whole issue of what did  
23 Jay Greene say -- the Jay Greene event, let me call  
24 it. Well, the evidence in this case is clear: The

1 only thing that Judge Lopez knew that Jay Greene  
2 would say is what he told her, and that is that all  
3 the time in the street, I think he said, that Ebony  
4 Horton was flamboyant, was known around the streets,  
5 Ebony Horton was, and that he, Greene, did not think  
6 she was a danger to children or a pedophile.

7           That's what he told Judge Lopez. And Judge  
8 Lopez had every expectation that when she gave Joan  
9 Kenney that number, that that's what he would tell  
10 Joan Kenney. Now, what he told Joan Kenney,  
11 according to Joan Kenney, is I'm sure what he must  
12 have told her. But Judge Lopez would have no way of  
13 knowing that, first of all. And based upon what we  
14 now see of Jay Greene and his failure to testify  
15 here, his prior deposition transcript where he said  
16 he never talked to anybody, the level unfortunately  
17 of what he might say at any given time is  
18 unfortunately of some consequence.

19           But one thing Judge Lopez said in her  
20 deposition and in these proceedings, which ought to  
21 ring out, she said, "Look" -- she was asked, "Did  
22 you talk to people, friends and whatever, about this  
23 case?" And she said, "Yes." What person wouldn't?  
24 The press is in her front door and everything else,

1 a lot of people speaking out of turn.

2           And then the Commission asked her, "And  
3 what was your major discussion?" And just as she  
4 said here and she said everywhere else, "I didn't  
5 want anybody to think I had released a predatory  
6 pedophile." That's all she cared about. She has  
7 been a judge that has been involved in sentencing  
8 all her life, and the one thing she didn't want the  
9 community to think was that she was involved in  
10 releasing a predatory pedophile.

11           And so why is Jay Greene of consequence to  
12 her, as she said in her own testimony and  
13 deposition? Because it gave her some reassurance  
14 that, when a cop on the beat who knows everybody  
15 there, who knows Ebony Horton, who's a tough cop, at  
16 least had a reputation as such, when he says he's  
17 not a predatory pedophile, it assisted Judge Lopez  
18 in her mind that she had judged it right in that  
19 particular matter, as she was getting her brains  
20 beat in from every corner at every question.

21           The next area, so-called, is the alleged ex  
22 parte conversations with Goldbach and Leahy. I'll  
23 treat those shortly. They've been briefed quite  
24 well. Simply not ex parte contacts in the sense of

1 the rule. They're not about any adjudicative  
2 matters. They're not such that it would affect any  
3 rulings or orders and the like. The case was not  
4 pending. All of that harassment of all that was  
5 been provided to the Court.

6 But bring it down to a more -- a simpler  
7 level, if I may. Goldbach says she was not asked or  
8 enticed to give any statements about the sentence.  
9 Judge Lopez said she called Leahy and told him to  
10 get out there and defend the sentencing, the process  
11 of the institution. Mr. Leahy, the head of CPCS,  
12 he's an institutional person with an institutional  
13 drive and bent, both legislatively and otherwise.

14 What's wrong with it? Joan Kenney  
15 testified that these things happened. She asked the  
16 Judge, "Who should I call for you to be out there  
17 and be surrogates?" That was her testimony. It's  
18 the Commission that has said, you can't do  
19 indirectly what you couldn't do directly. Well, by  
20 the same token, this is clearly permissible, this  
21 indirect kind of getting the surrogates to speak on  
22 these procedural matters and matters of  
23 institutional fairness, and it was perfectly  
24 appropriate here.

1                   And as you cut the line -- and I guess here  
2 is what I would say, but I don't want to spend a lot  
3 of time with it. As you cut the line and look at  
4 the Commission's filing, they're desperately trying  
5 to find a way to make this bad, something nefarious,  
6 to make it all full of these people would be  
7 indebted to her now because they talked to her or  
8 some such nonsense -- it's to defy judging and to  
9 defy the integrity of the judiciary.

10                   If our judiciary of the Commonwealth of  
11 Massachusetts cannot be trusted to read a lawyer's  
12 name in the paper saying something about him and be  
13 trusted to act without bias in the next case with  
14 him and be trusted to act and not give away the  
15 store because some lawyer said something nice about  
16 them, then who's kidding who?

17                   That's the concept that they're under.  
18 They basically said, she can't ever sit down with  
19 any lawyer who might appear in the Superior Court at  
20 any time, have lunch, have dinner, give pleasantries  
21 or whatever; our judges aren't expected to do that.  
22 And I suggest, if Your Honor please, when you look  
23 at the Goldbach contacts and the like, you will look  
24 at them from the same perspective.

1           The last allegation, the so-called pattern  
2 allegation, ends with Ms. Beaucage and the call to  
3 Ms. Beaucage. We'll treat the call first for what  
4 it is and then talk about this pattern. And I  
5 confess I do not understand the Commission's filing  
6 about how Judge Lopez was lying when she said she  
7 called Ms. Beaucage because she was concerned that  
8 the complaint was a phony. They say she's lying  
9 about that.

10           What possible reason would she have to call  
11 Ms. Beaucage if she wasn't trying to confirm her  
12 identification and her reality, so to speak? She  
13 didn't call and say, "I'm Judge Lopez. Look out."  
14 She didn't have somebody else calling for Judge  
15 Lopez, which probably would have been more  
16 intimidating. She simply called and said, "Hi. Is  
17 this Angela Beaucage?" "Yes." "Nice to speak with  
18 you."

19           Now, is eleven o'clock at night -- should  
20 she have called at eleven o'clock at night? I don't  
21 know. People call me at eleven o'clock at night and  
22 I get angry. But is that judicial misconduct? I  
23 mean, she called her to find out if she really  
24 exists. And that's exactly the way Ms. Beaucage

1 took it, by the way, when she testified. If you  
2 look at her testimony on my cross, she said she was  
3 pleasant, she was polite, nonharassing,  
4 non-intimidating. It seemed to her to be a  
5 confirmatory phone call. That's what it was.

6 By the way, she wasn't intimidated, hurt,  
7 upset or anything else until she went into the other  
8 room and looked at the call waiting and said, "Oh,  
9 it's Judge Lopez." How was she supposed to know  
10 that she had call waiting and that she would take it  
11 like that?

12 This is trumped up. But more importantly,  
13 this is what the Commission puts together and says,  
14 Aha, this is the pattern, because somehow this isn't  
15 related directly to the Horton case.

16 Well, when you read the record, I think  
17 you'll see that Judge Lopez had every right to be  
18 nervous and concerned about some of the complaints  
19 she was getting. She made a call, which was not  
20 wrong, was not intimidating, there was nothing wrong  
21 with it. Somebody took it wrong.

22 But really -- it's interesting. I want you  
23 to go back, Judge, and look at our brief and one  
24 aspect of it, and that's where we ask you to

1 reconsider this ruling that you made on what  
2 happened before the deposition where they go off the  
3 record with Ms. Beaucage, where she comes out and  
4 says -- they're asking about the case. Mr. Braceras  
5 was there. And then they go off the record. And  
6 come off the record, and her first words without  
7 asking or being asked a question are, "Intimidated."  
8 And when you look at that, it must give you pause to  
9 wonder what on earth goes on in those, quote,  
10 investigative depositions.

11           You have permitted the Commission to go  
12 last. I haven't quarreled with your ruling in that  
13 regard and I'm not going to. I don't care. I'll go  
14 when I'm told to go.

15           But I would caution you, frankly, the way I  
16 would caution the jury, and that is that going last  
17 is not the freedom to misspeak and it is not the  
18 freedom to mislead. And going last, because it's  
19 the last word, doesn't mean it's the right word.  
20 Mr. Ware is a fine lawyer. He will make a fine  
21 presentation, I'm sure.

22           But I would ask the Court, based upon all  
23 of what's gone on in this case, to keep an open eye  
24 and an open ear, as I know you will, and to



1 consider, as you're sitting here today and as you  
2 sit through these proceedings, have you ever thought  
3 that there would be a proceeding like this of its  
4 length, tenor and duration for something that wasn't  
5 corruption, that wasn't dastardly abuse of office,  
6 that wasn't bribery, extortion or fixing cases or  
7 using one's influence in a case in a wrongful manner  
8 to thwart our criminal justice or judicial system?

9           Did you ever think in a million years we  
10 would be here talking about a case where Judge Lopez  
11 screamed at a prosecutor for a minute after much  
12 justification and that now we can quibble and  
13 quarrel and wink and twink about her press release  
14 after days and thousands of dollars?

15           I ask you, Your Honor, no matter what you  
16 do, to keep this in perspective. And I know you  
17 will make your fact findings based on the real  
18 world, not some fanciful world, on the real record,  
19 not some misrepresented record. And I ask you to  
20 consider, as you do, the woman who sits before you,  
21 all that she has accomplished and done, in asking  
22 yourself what did she mean when she said this, and  
23 what did she mean when she said that, and what was  
24 she trying to accomplish, and the many things she

1 has accomplished.

2 I'm satisfied, Your Honor, that you have  
3 spent obviously the time and given us the patience  
4 to listen to us to make these determinations. I'm  
5 equally satisfied that you will be as time consuming  
6 and spend as much detail as you always have.

7 What I'm less than satisfied in is that the  
8 system which is in place in judicial conduct cases  
9 is a good one or a fair one or an intelligent one,  
10 quite frankly.

11 But I ask you to not worry about that.  
12 Simply look at what has been put before you and ask  
13 yourself whether or not the Commission has proved to  
14 you by clear and convincing evidence that this Judge  
15 has committed misconduct in any way. Think about  
16 that. Think about that. Think about, if I find a  
17 little something, what do I do with it. Think of  
18 this: in the scheme of what has occurred in this  
19 courthouse, the blasphemy of the Commission asking  
20 for the removal of this Judge.

21 Remember, not months ago there was a case  
22 before the Supreme Judicial Court of the  
23 Commonwealth, In Re Markey. A judge used his  
24 judicial position to deliberately interfere and

1 intercede in a case to affect the outcome of a case  
2 in front of another judge. And that judge suffered  
3 a short suspension. Now think about that when the  
4 Commission on Judicial Conduct wants you to remove  
5 Judge Lopez for yelling on tape. Thank you, Your  
6 Honor.

7 HEARING OFFICER DAHER: Thank you, Mr.  
8 Egbert.

9 Mr. Ware, we can pick it up at 1:30, a very  
10 short break? Is that okay?

11 MR. WARE: It's really your choice, Your  
12 Honor. My own preference would be just to skip  
13 lunch, but I'm going to obviously defer to the  
14 Court.

15 HEARING OFFICER DAHER: We'll take a 45-  
16 minute break, until 1:30, and I'll go as long as you  
17 need to today.

18 (Luncheon recess)

19  
20  
21  
22  
23  
24

## AFTERNOON SESSION

1  
2 HEARING OFFICER DAHER: Mr. Ware, you may  
3 proceed.

4 MR. WARE: Thank you, Your Honor. May it  
5 please the Court.

6 First, Your Honor, let me respond to some  
7 of Mr. Egbert's preliminary comments and to make  
8 clear that at this juncture the Commission has not  
9 and does not intend to recommend, quote, removal of  
10 Judge Lopez. That is not the position of the  
11 Commission at this stage of the game.

12 The Commission intends to look at this  
13 Court's findings, intends to look at the entire  
14 record, and will make its own independent judgment  
15 with respect to what sanction, if any, is  
16 appropriate, based in no small part on what you  
17 decide based on the evidence before you.

18 That is different from saying, as counsel,  
19 we have presented you with a range of alternatives  
20 based on the evidence as we see it, evidence which  
21 obviously is not binding on you and does not purport  
22 to speak for a Commission which has not yet had a  
23 record presented to it for action.

24 I can say, however, that no one takes

1 pleasure in being here in this courtroom on behalf  
2 of the Commission. This is not a task to which  
3 anyone would look forward. It is not a proceeding  
4 to which the Commission looks forward. I'm sure  
5 it's not a proceeding or a further proceeding to  
6 which this distinguished Court looks forward.

7           To the extent Mr. Egbert has represented or  
8 referred to argument that the Judge is, quote, in  
9 contempt of the Commission, I don't know what that  
10 means. I don't know where it comes from. The  
11 Judge, of course, has an absolute right to defend  
12 herself here, and I think there's no greater  
13 testimony to that fact than that we've been here  
14 since November 18, 2002, over a number of weeks in a  
15 vigorous, heated debate about the facts in this  
16 case.

17           The Judge has had every opportunity not  
18 only to testify, but to present witnesses, and I can  
19 only presume that this Court will take a  
20 dispassionate view of that evidence.

21           And with that, let me turn to the evidence,  
22 because I think a good deal of what Mr. Egbert has  
23 said has filled in the gaps with his own opinion and  
24 with a number of characterizations, as distinguished

1 from the evidence. And to me, the most important  
2 evidence in this case is the testimony of Judge  
3 Lopez. She is the individual who knows what went  
4 on. She is the individual who made decisions with  
5 respect to what she would do, beginning on August  
6 1st, running right through November 1, 2002 --  
7 excuse me, 2000. And so her testimony, to me, takes  
8 on not a disproportion, but a high proportion, a  
9 high importance in this proceeding, and that's why  
10 we have given it tremendous weight in the documents  
11 which we filed before the Court.

12 On August 1st, Your Honor, there's no  
13 dispute that there was a plea conference. And I,  
14 too, will go through this chronologically for ease  
15 of everyone's understanding. That plea conference,  
16 by the testimony, lasted somewhere between 10 and 20  
17 minutes. That's it. On the high end, 20 minutes.  
18 On the low end, 10 minutes.

19 This was in the First Session of Suffolk  
20 Superior Court. For those of us who have been  
21 there, it's a busy session, not a deliberative  
22 session. It is largely a negotiation of what's  
23 about to happen. And the Commission does not  
24 contend that in that proceeding the Judge did not

1 afford the district attorney an opportunity to  
2 express her views.

3 The Judge disagreed with those views. The  
4 Judge announced the sentence. And the Judge, Judge  
5 Lopez, here has made a heavy point of the fact that  
6 as of August 1st, it was all over. She has said it  
7 repeatedly. She made a sentencing decision on that  
8 occasion. She never changed it. And as will be  
9 evident in a moment, but as has been said repeatedly  
10 by Mr. Egbert and in the testimony itself, the rest  
11 was a matter of form, according to the Judge. The  
12 district attorney requested a sentence of 8 to 10  
13 years, based on sentencing guidelines, based on the  
14 facts of the case as she understood them and  
15 articulated them.

16 We now know that this social worker's  
17 report, which was proffered to the Judge, and on the  
18 basis of which the Judge said she made her decision,  
19 is a pretty flimsy document. I'm not saying that  
20 the Judge knew all of that at the time, although the  
21 Judge did testify before you that she had experience  
22 with such reports, that she had seen many of them  
23 before. And plainly on its face, this was a  
24 document generated by an employee of the defense

1 counsel, from CPCS.

2 I think Mr. Egbert is right. We're not  
3 here to question whether the Judge could in fact  
4 impose that sentence. She did. And I'm not here to  
5 test whether that is the appropriate sentence or an  
6 inappropriate sentence.

7 But in the course of that, the Judge also  
8 made a number of comments. The testimony is largely  
9 undisputed that she said something to the effect  
10 that she knows transgendered people. Ms. Joseph  
11 testified that she said, "I have a house in  
12 Provincetown. I know these people. They're not  
13 violent." Mr. Goldbach testified slightly  
14 differently, saying, "The Judge did say something  
15 about knowing transgendered people."

16 So on whatever basis the Judge made this  
17 decision, it's apparent that what she had before her  
18 was some argument, a four-page social worker's  
19 report, which we now know was prepared at the Nashua  
20 Street -- or following one meeting at the Nashua  
21 Street jail in 1999 by a social worker for the  
22 defense counsel.

23 According to Mr. Egbert, the heart of this  
24 case begins on August 3rd with the press release



1 issued by the District Attorney's office. That is  
2 the touchstone, the foundation stone, the linchpin  
3 of this entire defense argument here that the  
4 District Attorney's office was retaliating against  
5 Judge Lopez, that they were engaged in a reprisal,  
6 an offensive strike against this Judge.

7           A fundamental question unanswered, however,  
8 is why. Of the thousands of cases the office  
9 prosecutes and of the hundreds of cases they've had  
10 before Judge Lopez, many of which have resulted in  
11 probation, what is their motivation for picking this  
12 one case out of the hat on the basis of which to  
13 seek reprisal? And more extraordinarily, why is it  
14 that a young prosecutor, who necessarily would  
15 jeopardize her career in doing so, would single out  
16 this case to, quote, retaliate against Judge Lopez?

17           And if you look at the very first page of  
18 the briefs filed on behalf of Judge Lopez, the word  
19 "retaliate" appears repeatedly. The entire thrust  
20 of the Judge's defense here is, "I am a victim. I'm  
21 a victim of the District Attorney's office. I've  
22 been victimized by that District Attorney's office.  
23 They were out to get me. They conspired to do so.  
24 Deakin and Joseph made an affirmative decision. The

1 district attorney's office ginned up a press release  
2 to infuriate me and drew me into a circumstance in  
3 which I had no choice but to discipline them in the  
4 way that I did."

5 So let me draw the Court's attention to  
6 that press release, Exhibit 7, which I have put on  
7 the monitor.

8 First of all, what's notable here is the  
9 headline, "Boston Man Expected To Plead To Child  
10 Kidnapping, Sexual Assault." That's the headline.  
11 Nothing about transgendered persons, nothing about  
12 dressing like a woman. The headline, the  
13 attention-grabber from a District Attorney's office  
14 is factual in nature. It is specific to a type of  
15 crime; namely, that a Boston man is expected to  
16 plead to child kidnapping and sexual assault.

17 Now, this press release has been treated by  
18 the defense as if, literally and in other ways, as  
19 if it's some kind of criminal act on the part of the  
20 District Attorney's office, when in fact, not only  
21 is this release not unethical; it is an exercise of  
22 appropriate judgment and discretion by a public law  
23 office.

24 Like every other public law office and

1 agency, the District Attorney's office has limited  
2 resources. It's entitled to feature to the public  
3 what kinds of cases it is prosecuting, what kinds of  
4 crimes will result in retribution from that public  
5 law office, what law enforcement efforts our  
6 taxpayer dollars are being used to enforce. Not  
7 only is this not unethical, it is an entirely  
8 appropriate message to the public about what that  
9 office is doing. And there is nothing, nothing  
10 whatsoever unethical about this press release. And  
11 yet the Judge here purports to claim that this is  
12 somehow unethical.

13           And there's discussion about Rule 3.8 and  
14 so forth in the briefs. Suffice it to say at this  
15 point, since this can be debated in writing, those  
16 rules go to a circumstance in which there may be a  
17 jury trial and whether or not a prosecutor says  
18 something which could taint a jury.

19           This is not a jury trial. This is a guilty  
20 plea. This kind of press release occurs all the  
21 time, whether in federal court or in state courts  
22 across the country, and moreover, is in fact the  
23 judicial use and appropriate use of that office's  
24 resources to announce to the public what kinds of

1 crimes are being prosecuted; and for that matter, to  
2 give notice to those individuals in the community  
3 who may be tempted to engage in that kind of conduct  
4 that indeed, they'll be prosecuted. It is a good  
5 thing, not a bad thing.

6 Now, Judge Lopez says, Well, what's really  
7 wrong with this press release is that it refers to,  
8 quote, a transgendered person who appears as a  
9 woman. Again, entirely factual, not inflammatory  
10 language. I don't think it's the first time the  
11 public has heard a description of an individual as  
12 transgendered. Since this man's name is Charles  
13 Horton, it's no secret that if he's transgendered,  
14 he would appear as a woman. And in fact, obviously  
15 when he was in court for the public to see in a  
16 public proceeding, that was apparent.

17 So what is the problem here? This is two  
18 days too early? That does not make the press  
19 release unethical or improper in any way, shape or  
20 form.

21 And I think what is important to understand  
22 here, Your Honor, is that the use of this as the  
23 building block for the conspiracy by the District  
24 Attorney's office is fundamentally flawed. It isn't

1 such a building block. There is nothing wrong with  
2 it. There is, of course, the issue Judge Lopez  
3 would put to you, which is, did Leora Joseph inspire  
4 this press release. And I'll turn to that in a few  
5 moments. But while we have this on the screen, I  
6 ask you to note that it purports to be from Mr.  
7 Borghesani.

8 Now, Mr. Borghesani was on Judge Lopez's  
9 witness list, not ours. It's Judge Lopez who chose  
10 not to call him, presumably because he didn't have  
11 anything to say that she wanted to hear. But the  
12 more important point here is that this press release  
13 features specifically the head of the press office.  
14 The district attorney's office is a big  
15 organization. It has a specifically unambiguous  
16 structure as to how public relations and public  
17 information is to be handled.

18 The notion that a 30-year-old assistant  
19 district attorney, one of hundreds, has the  
20 authority to issue press statements is ludicrous,  
21 and it's inconsistent with the evidence. Both  
22 Deakin and Joseph have testified -- and of course,  
23 we have the District Attorney's manual -- that in  
24 fact, they have no such discretion and that what

1 happened here was the following of channels, and  
2 that those channels were scrupulously observed.

3           Until this trial, Judge Lopez never took  
4 the position that this press release was unethical.  
5 In fact, she took the contrary position. And she  
6 testified before the Commission, when asked about  
7 the press release, as I've put up now on the screen,  
8 that there is nothing inappropriate, nothing  
9 unethical about the press release.

10           She said it that time. I'm sure she would  
11 say today that she disagreed with it. She didn't  
12 think that attention should be drawn to an  
13 individual who was transgendered, even if he was a  
14 criminal defendant. Fair enough.

15           But the point is this whole notion of the  
16 press release being unethical or inappropriate is  
17 part of a trial epiphany in this case. When the  
18 Judge testified in October of 2001, a year before  
19 trial, at what our Supreme Judicial Court considers  
20 analogous to a grand jury proceeding, her testimony  
21 was, "There is nothing unethical, nothing  
22 inappropriate about this." In fact, she notes that  
23 the District Attorney's office, among other things,  
24 is headed by a political office and that there are

1 reasons for these kinds of press releases.

2 I think that's significant, Your Honor.

3 And I think it substantiates that the Judge is being  
4 situational in her ethics, her own ethics about this  
5 press release. It is not a building block of  
6 anything in this case.

7 On August 4th, when the parties appeared in  
8 court, much has been said about media frenzies,  
9 circuses and so forth. If you actually go back and  
10 look at the testimony in this case, Your Honor,  
11 there was no media frenzy; there was no circus.

12 The literal testimony about the press that  
13 was at the Suffolk County courthouse on August 4th  
14 is as follows: Ms. Goldbach saw nothing whatsoever,  
15 did not see a camera poked in the face of the  
16 defendant's mother. Her testimony, at most, is she  
17 heard some yelling. That's what Ms. Goldbach  
18 testified to.

19 The testimony of the assistant district  
20 attorney is there was one camera in the courtroom,  
21 no different than the camera that's before us now.  
22 Hardly a media circus.

23 Maybe it's true that a camera was put in  
24 the face of Mr. Horton and his mother as they

1 attempted to get off an elevator. That's just too  
2 bad. He is a criminal defendant in a public  
3 proceeding. The press is entitled to take his  
4 picture. And if he doesn't like it, maybe he  
5 shouldn't commit the crime. But it doesn't make a  
6 media circus. And it didn't interfere in any way  
7 whatsoever with anything that was going to be going  
8 on in the courtroom, because it didn't occur in the  
9 courtroom.

10 The courtroom had one camera, and there's  
11 not a shred of evidence in this case to the  
12 contrary. So this notion of media circuses or  
13 frenzies as having caused disruption in the  
14 proceedings is a creature of tactics in this  
15 litigation. It's not what the evidence says.

16 With respect to what occurred on August  
17 4th, what we know is that almost immediately, when  
18 Ms. Goldbach, the defense lawyer, saw the cameras --  
19 the camera in the hallway, the camera in the  
20 courtroom, whatever, and realized that the camera in  
21 the courtroom was there for the Horton matter, she  
22 requested a conference. She was emotional about it.

23 When the parties went into the lobby to see  
24 Judge Lopez, there was no reasoned discussion, What



1 can we do about this. There was no reasoned  
2 discussion about how can we solve the problem or  
3 whether indeed there was a problem. The evidence is  
4 consistent that what happened in the lobby was that  
5 the Judge began excoriating the assistant district  
6 attorney, Ms. Joseph; from the inception began, in  
7 Ms. Joseph's words, to attack her.

8 Now, maybe at another point Ms. Joseph,  
9 regarding the Estrada case, fine; she overstated it.  
10 I will concede that. There's no question that based  
11 on the audiotape, she wasn't yelling. All well and  
12 good. Maybe she was too emotional. Maybe she was  
13 overwrought. I don't know. And the evidence  
14 doesn't tell us.

15 But the more important point is, the fact  
16 that she overstated it doesn't change what occurred  
17 on August 4th, because that testimony is unrebutted  
18 and is confirmed by Anne Goldbach and the Judge,  
19 that she said, "You belong in the suburbs. You are  
20 mean. You are cruel."

21 Now, I, too, have been in this profession a  
22 good many years; and to my way of thinking, that's  
23 not a professional review. That is not the way in  
24 which responsible judges deal with what they

1 perceive to be problems. And had Judge Lopez truly  
2 thought that this plea was in jeopardy of not  
3 occurring or that one camera in the courtroom would  
4 somehow be disruptive, the Judge could have raised  
5 that with counsel and had a discussion about, for  
6 example, changing courtrooms or continuing a case,  
7 none of which occurred.

8           Rather, the evidence is, the Judge got  
9 immediately into an accusatory frame of mind, made  
10 highly personal comments to the assistant district  
11 attorney and announced that she was going to  
12 continue the case; and for good measure, when Ms.  
13 Joseph was leaving the lobby, said to Ms. Goldbach,  
14 "Maybe we should continue this case to a date when  
15 Ms. Joseph is on vacation."

16           I don't think that represents a  
17 professional, dispassionate consideration by an  
18 experienced Superior Court Judge of a basis upon  
19 which a case should or might be continued. Rather,  
20 it indicates a judge already out of control or a  
21 judge who is in fact biased, either against Ms.  
22 Joseph as an individual, because of her prior  
23 experience, or the District Attorney's office in  
24 general, because she's infuriated that attention was

1 drawn to this case at all.

2 In either event, the Judge had an  
3 obligation to do something about that. If the Judge  
4 had a bias to which she's entitled, fine. But it  
5 was her obligation to disclose the bias and to do  
6 something about that, which is to say, request that  
7 someone else handle the case from the District  
8 Attorney's office, which ultimately, in effect, she  
9 did by forcing Mr. Deakin to handle the matter; or  
10 for that matter, handing off the case to another  
11 judge, sending the case to another session, if not  
12 for the plea conference, since that had already  
13 occurred, to take the plea itself. All of this  
14 could have been done in a dispassionate,  
15 professional way.

16 One of the ironies here of touting the  
17 incident with Judge Russo is that, in fact, that's  
18 exactly what Judge Russo did. Judge Russo did not  
19 issue a bunch of personal findings excoriating David  
20 Deakin for unprofessionalism, telling him he  
21 belonged in the suburbs, faxing off a press release  
22 to the Boston television stations and trying to  
23 embarrass him.

24 What did he do? He did what any

1 professional person or judge would do. He picked up  
2 the phone. He called the district attorney, and he  
3 said, you know, "I've got a problem with this guy  
4 and I want to correct it." Now, whether Judge Russo  
5 was right or he was wrong, whether he correctly  
6 perceived what Mr. Deakin was doing or, as Mr.  
7 Deakin says, "I didn't say that" -- or at least he  
8 didn't intend that, we don't know.

9           But the fact is Judge Russo had the  
10 presence, the dispassion, the fairness, the  
11 professionalism to handle the matter in a  
12 professional way, not in an emotional way,  
13 exhibiting bias and underscoring to the public that  
14 the judge could not promote confidence in the  
15 integrity of the judiciary; but rather, through her  
16 court order, dragged the entire proceeding into the  
17 mud and into personal comments about the assistant  
18 district attorney.

19           It is not evidence, Your Honor, but it's  
20 intuitive as human beings that when, as a 60-year-  
21 old man, I deal with a 30-year-old lawyer, I have to  
22 cut that lawyer some slack. I have to have some  
23 understanding about the fact that that's a younger  
24 individual who has a long career. I would expect a

1 judge with 14 years experience to take the same  
2 factors into account. I would expect that judge, if  
3 truly distressed on a professional level about an  
4 assistant district attorney, I would expect that  
5 judge to handle that in a professional way which  
6 could be constructive for that assistant district  
7 attorney and improve that district attorney's habits  
8 or course of conduct as she goes forward in her  
9 career.

10 What I would not expect is what Leora  
11 Joseph got in this case, which was an excoriation, a  
12 whipping, a personal embarrassment by Judge Lopez,  
13 who was in a bullying position. Obviously the  
14 contest between a Superior Court Judge and a  
15 30-year-old prosecutor is not a fair fight.

16 Judge Lopez did not call Ms. Joseph into  
17 her chambers and on a one-on-one basis say, "You  
18 know, I don't like the fact that the press was here.  
19 That bothers me, and I want you to level with me  
20 about what went on." That could have happened. It  
21 did not happen, and it did not happen, because this  
22 judge chose not to be a professional but to be  
23 personal and to be unprofessional. And that is the  
24 essence, Your Honor, of bias.

1           With respect to Ms. Joseph's role in the  
2 press release, Your Honor, the evidence here is that  
3 she did what office policy requires; that is to say,  
4 she went back from the lobby conference with Judge  
5 Lopez, she reported events to her supervisor, Mr.  
6 Deakin, and that supervisor took the issue up the  
7 chain to Elizabeth Keeley and eventually to Mr.  
8 Borghesani. Obviously, the decisions for a  
9 prospective press release were made at a more senior  
10 level.

11           And I remind the Court that the Judge's  
12 theory of retaliation doesn't square with the  
13 evidence here, because Ms. Joseph testified that way  
14 back in December of 1999 or January of 2000, the  
15 original Superior Court arraignment in the Horton  
16 case in January of 2000, that Mr. Borghesani  
17 button-holed her at that time and said, "I know  
18 you've got this case, but I want you to keep me  
19 posted on it."

20           So the fact that in August of that same  
21 year Ms. Joseph went back to her office and reported  
22 to her superior and raised the question whether  
23 press attention is appropriate is entirely  
24 consistent with what she had been asked to do and is

1 entirely consistent with what any young professional  
2 prosecutor would be expected to do.

3           The attack on Ms. Joseph, I would suggest  
4 to the Court, is entirely unsupported and  
5 unjustified by the Judge. She harkens back to the  
6 Estrada case. And she says that on the basis of  
7 that Estrada case, she had animosity at some level  
8 about Ms. Joseph and that that gave rise to her  
9 attitudes on August 4th. And she points in  
10 particular to the Eileen McNamara article. And I  
11 asked the Judge in the course of her testimony  
12 whether or not she viewed that article as a comment  
13 that Ms. Joseph had been unethical, and she said  
14 that she did.

15           I've put on the monitor a bit of testimony.  
16 "And you characterized that column as representative  
17 of Ms. Joseph's criticizing you or your sentence, is  
18 that so? Answer: In making what I deemed to be  
19 inappropriate and probably unethical comments to the  
20 press."

21           Now, Judge, we went over at some length the  
22 McNamara column, and I certainly invite the Court to  
23 look at it again and look at it at your leisure. I  
24 don't intend to do that. I will say that this

1 labored dissection of the McNamara article, as it  
2 appeared in Judge Lopez's brief, is ludicrous. That  
3 dissection purports to find ghosts around every  
4 corner in that article.

5           And yet in fact, the article is no more  
6 than a comment by the District Attorney's office, a  
7 comment in which Ms. Joseph was requested by that  
8 office to sit for an interview. She took a  
9 precaution of being accompanied by a more senior  
10 person in that office, and she did nothing in that  
11 article to personally criticize Judge Lopez.

12           Is it true that inferentially it is  
13 critical of the Judge's decision? Yes, I would say  
14 that's true, insofar as anybody can string together  
15 the fact that these were Judge Lopez's cases and  
16 it's disagreeing with the sentence. If you want to  
17 call that a criticism of the Judge's sentence, yes,  
18 so be it.

19           But it was in no way, shape or form an  
20 inappropriate comment on the Judge, her ethics, her  
21 views of the world, her predispositions. It was a  
22 perfectly legitimate comment to the newspaper about  
23 the basis of sentencing, the theoretics of  
24 sentencing, the philosophical reasons for sentences.



1           A heavy point has been made by Mr. Egbert  
2 and the Judge about the Estrada case and what is  
3 claimed to have been an overreaching statement in  
4 the course of the guilty plea by Ms. Joseph that  
5 gave rise to the Judge's suspicions, ongoing  
6 suspicions about her.

7           But, Your Honor, if you look at that case,  
8 here is a case, just to refresh, in which a  
9 11-year-old child between the ages of 11 and 15 is  
10 repeatedly raped by this guy who lives in her  
11 house -- stepfather or boyfriend or whatever it  
12 was -- in a closed bathroom, with this man taking  
13 out his penis and sticking it in this kid's mouth.  
14 And the assistant district attorney referred to that  
15 as "vile." Well, you know what? It sure as hell is  
16 vile. It was vile then. It's vile now.

17           If anything, the assistant district  
18 attorney understated the issue on that occasion. I  
19 would say that is commendable restraint on the part  
20 of the assistant district attorney to have referred  
21 to that merely as "vile." It is far more than that.

22           I think for Judge Lopez to come before you  
23 and try to use that as an illustration of an  
24 overreaching prosecutor who somehow is trying to

1     retaliate against the Judge, says more about Judge  
2     Lopez than it will ever say about Leora Joseph.  
3     That is a distortion of what is right. It is a  
4     distortion of the kinds of values that good judges  
5     bring to bear when they sit in judgment on people.

6             There is absolutely nothing wrong with what  
7     Leora Joseph said. There is nothing wrong with  
8     pointing out that the pastor, the mother, whoever  
9     wanted this guy around for economic reasons -- she  
10    was entitled to say, "That's a mistake. Those are  
11    misplaced values, Judge. That is wrong. Stick the  
12    guy in jail." Of course she should say that. She  
13    owed the public that kind of representation in that  
14    courtroom.

15            Mr. Egbert and the Judge, for that matter,  
16    tried to say to you, Oh, well, wait a minute. This  
17    wasn't the sentencing phase. This was just  
18    providing a factual basis for a plea. And they've  
19    made repeated -- this strained argument that when a  
20    prosecutor is reciting facts for purposes of  
21    sufficiency of a guilty plea, that somehow has to be  
22    constrained. That's supposed to be this narrow  
23    little set of facts just sufficient to get this plea  
24    over the bar. That is not the legal requirement.

1           Any prosecutor, federal or state, has  
2 discretion to state such facts as that prosecutor  
3 believes she or he would prove in the event the case  
4 went to trial. To the extent that a defendant feels  
5 those facts are overstated, that defendant can do  
6 exactly what Mr. Horton did. He can disagree with  
7 them, and the Judge can then say, Well, I'm going to  
8 take into account what you disagreed with and what  
9 you've agreed with. I find that there are or are  
10 not sufficient facts to warrant this guilty plea.

11           So this artificial notion that the  
12 prosecution should not have said something is not  
13 reality. It is not a legal requirement. This is  
14 not the Judge's province. She can say what she  
15 wants. Mr. Egbert can say what he wants. The  
16 prosecution's burden -- the prosecution's discretion  
17 is to decide what evidence they would proffer were  
18 the case to go to trial. That is not Judge Lopez's  
19 discretion. And the prosecution has wide latitude  
20 to articulate such facts as they believe are  
21 appropriate, the obvious check being the defendant  
22 can disagree with them.

23           Again, I think what's important here is,  
24 this is a distortion by the Judge of what went on in

1 the Estrada case. It is a distortion of what the  
2 prosecution's right is. There was absolutely  
3 nothing wrong with what this young prosecutor said.

4 I turn, if I may now, to the August 4th  
5 findings. And the Court may recall the testimony  
6 here that what happened on the afternoon of August  
7 4th preceding these findings was that Mr. Deakin  
8 himself went to the courthouse.

9 Not mentioned this morning by my colleague  
10 is the fact that the first thing Mr. Deakin did was  
11 ask for a meeting with the Judge. He asked to see  
12 her in the lobby. And he told us that the reason he  
13 did that was that he hoped to get the temperature  
14 down. He wanted to diffuse what was obviously  
15 already a circumstance out of control, based on the  
16 comments that the Judge had made to Leora Joseph  
17 earlier that day.

18 Judge Lopez refused. She would not see him  
19 with or without defense counsel. She would not  
20 permit a professional exchange about the  
21 differences. Rather, the Judge let the parties stew  
22 for a few hours in the courtroom. When the last  
23 matter had finally been called, Mr. Deakin went to  
24 the clerk and said, "Hey, what about this case?"

1                   Finally the Judge came out. She considered  
2 the case. Statutorily she was required to make  
3 certain findings because of its continuance. I  
4 think, truth be told, in candor, she was mad as hell  
5 at the prosecution that they were forcing her to  
6 make those findings and said so. "You'll get your  
7 findings."

8                   And she wrote these findings out, no doubt  
9 in extreme anger, anger generated that morning,  
10 anger generated because there was a camera, anger  
11 generated because the Judge believed she was right  
12 in the sentence that she had decided upon for Mr.  
13 Horton. And she saw this as creating a problem.

14                   But the fact is there is no way to look at  
15 those findings and not to conclude that a good deal  
16 of emotion surrounded the Judge in which she got  
17 caught up as she wrote these findings.

18                   The Judge, when she came out, indicated,  
19 improperly, that she was too busy to hear the  
20 matter. That plainly was not correct. Fine, she  
21 had 18 bails. So be it. But the fact is the Judge  
22 did have time to do the findings and fax them off by  
23 4:00. No question she had the time. More  
24 importantly, she had already continued the case in

1 the morning in the lobby. She announced immediately  
2 she was going to continue the case.

3 So to come out on the bench and announce on  
4 the record that she was doing this because she was  
5 too busy is plainly not candid. It's plainly not  
6 the truth about what the Judge was doing or why she  
7 was doing it.

8 In these findings, Your Honor, the Judge  
9 has agreed that she intended them to mean that the  
10 District Attorney's office had acted unethically in  
11 this press release. And if I could, I just want to  
12 put up one quick exchange, and this is simply my  
13 question to the Judge:

14 "It follows... that you were saying that  
15 the District Attorney's office at large acted  
16 unethically in this case, isn't that so?" We were  
17 talking about the findings here in the press  
18 release. "And you knew that was the impact of your  
19 order?"

20 "Correct."

21 So here is the Judge agreeing -- not my  
22 words, not my characterization -- that she intended  
23 with this order to accuse the District Attorney's  
24 office of acting unethically. That, Your Honor, is

1 wholly unsupportable or insupportable, whichever it  
2 is.

3           There is no evidence that this was an  
4 unethical act on the part of the District Attorney's  
5 office. The Judge goes on to say -- and I'm not  
6 going to put it up at the moment -- that her  
7 findings were intended to say that Leora Joseph and  
8 Mr. Deakin and the district attorney's office acted  
9 intentionally to create a circus, acted  
10 intentionally to embarrass and ridicule a defendant.

11           There is no evidence whatsoever of that. I  
12 think if you take a step back at this juncture, Your  
13 Honor, and you think about what kinds of findings  
14 would a responsible Superior Court Judge need to  
15 make on a continuance -- I mean, this labored  
16 argument is made that the district attorney's office  
17 could have appealed a continuance. Can you imagine  
18 it? I don't care if it's theoretically possible or  
19 not under some statute. No one appeals a  
20 continuance. And that's what this was.

21           But more importantly, taking that step  
22 back, the question here is, what in this order was  
23 necessary to have a continuance? Did the Judge need  
24 to make a finding that the assistant district

1 attorney intentionally tried to embarrass and  
2 ridicule the defendant? That didn't have anything  
3 to do with the continuance, according to the Judge.

4 Did the Judge need to make a finding that  
5 the District Attorney's office tried to turn this  
6 into a media circus, which she says meant they  
7 intentionally tried to do that? Did that have  
8 anything to do with the continuance? No. These  
9 were gratuitous personal slaps at the individual  
10 lawyers and at the district attorney's office in  
11 general.

12 I think if we could look at the findings  
13 for a moment. This particular finding has been  
14 labored over -- and I'm going to spend only seconds  
15 on it -- the issue of calling the press in. I mean,  
16 I would certainly agree that in the most general  
17 sense, because Ms. Joseph was the prosecutor in the  
18 case and communicated to her superior, in that broad  
19 sense, she communicated the fact that the case was  
20 on for a guilty plea. If you want to call that  
21 "calling the press in," I suppose it is.

22 But this finding is more specific. This is  
23 saying Ms. Joseph, not the district attorney's  
24 office, called the press in. That's wrong. She



1 reported to her superiors, and her superiors  
2 followed a well-worn path, consistent with the  
3 policy of that office.

4 Her finding that Ms. Joseph attempted to  
5 embarrass and ridicule a defendant I think is simply  
6 unjustified. It is another example of the Judge  
7 being overreaching and personal in a way that she  
8 simply did not need to be. If what the Judge was  
9 trying to justify here was a continuance, what  
10 difference does it make? How did this help? Why be  
11 gratuitous?

12 If the Judge does not have a bias, why make  
13 this personal attack on a 30-year-old prosecutor,  
14 using her name and testifying here that she intended  
15 that to mean Ms. Joseph was unethical and that she  
16 did it on purpose.

17 And finally, this business of the district  
18 attorney's office having sought to turn the  
19 proceedings into a circus, there is no justification  
20 for that. Is that because there was a press release  
21 on August 3rd? Does that constitute turning the  
22 proceedings into a circus? I don't think so, Your  
23 Honor. The district attorney's office sends out  
24 press releases every day, sometimes in anticipation

1 of guilty pleas, sometimes for other purposes. It  
2 does not follow inexorably from that that they're  
3 trying to interfere with court proceedings or judges  
4 and turn the courthouse into a circus.

5 I think also you should note the Judge's  
6 language. The language is inflammatory: "circus,"  
7 "embarrass" and "ridicule." These aren't words of  
8 dispassion and finding by a judge. They're words of  
9 emotion. They're improper words for the context.

10 And that's at the heart of what went wrong  
11 here. Judge Lopez got mad, lost it and made  
12 findings that are highly inappropriate and harmful  
13 to the people involved, serving no professional  
14 purpose.

15 Importantly, the Judge then scaled up the  
16 problems here. And I draw the Court's attention to  
17 Exhibit 49, the press release to Channels 4, 5, 7  
18 and 56. And the Court may recall the testimony,  
19 which is that after the Judge wrote the findings, I  
20 have contended that she labeled this a press release  
21 and faxed it off to all the television stations,  
22 notably at 4:00 in the afternoon, so it could make  
23 the six o'clock news, and she did that specifically  
24 and unambiguously to embarrass the prosecution and

1 the district attorney's office.

2 Now, the Judge says, Well, wait a minute,  
3 that's not my handwriting. Somebody in the  
4 courthouse did that, one of the clerks or something  
5 did that. I don't think that's credible, Your  
6 Honor. I cannot image a clerk in any courthouse,  
7 this one or any other courthouse, taking into her or  
8 his own hands labeling this as a press release and  
9 making some decision to fax it off to local  
10 television stations.

11 It obviously didn't happen that way. I  
12 don't care if it's Judge Lopez's handwriting or not.  
13 It is obvious enough that the Judge gave a direction  
14 to someone, "Send this as a press release to Joan  
15 Kenney and tell her to fax it to the TV stations  
16 right now." That's what's happened here and that's  
17 what Ms. Kenney has testified to. She said, "I got  
18 this. I understood it to be a press release. I  
19 faxed it off to the television stations."

20 And again, Your Honor, let's step back and  
21 ask ourselves whether this is consistent with a  
22 judge's creating, promoting confidence in the  
23 integrity of the judiciary. Why did the television  
24 stations need to see this? Because there had been a

1 camera in the courtroom and because the case was  
2 continued? Is that why? What justified Judge Lopez  
3 in faxing this out to all the media with these  
4 highly personal comments in it?

5 Nothing justified that, except the Judge's  
6 own sense of retribution, sanctioning the lawyers,  
7 firing a shot against the bow of Ralph Martin.  
8 That's what this was all about.

9 And so this had its intended effect. The  
10 following day, on August 5, articles did appear in  
11 the Boston newspapers. This happens to be one from  
12 the Herald. It quotes directly from the Judge's,  
13 quote, press release. It specifically identifies  
14 Ms. Joseph. And it repeats these findings that are  
15 extraneous to the continuance.

16 I think it's ironic that the Judge would  
17 argue to you that the August 3rd press release using  
18 the word "transgendered" is bad, is unethical, but  
19 that this press release from the Judge is fine.  
20 This is good stuff because it comes from a Judge,  
21 but that press release that used the word  
22 "transgendered" and said the defendant looked like a  
23 female, that's unethical. Your Honor, there's  
24 something wrong with that argument, and I think this

1 court can cut through it.

2 The other contradiction in this, Your  
3 Honor, is that here's a judge who tells you under  
4 oath, "The whole reason I continued this case on  
5 August 4th was press attention. I thought it was  
6 unfair. I thought they were going to disrupt the  
7 proceeding."

8 Now, we can pass the question how she could  
9 come to that conclusion, since there was no  
10 proceeding and there was one camera in the  
11 courtroom. I don't know how the Judge could come to  
12 that conclusion. We have, as I've said, a camera  
13 here. I don't think it's disrupted a great deal  
14 today.

15 But passing that, here's a judge that said  
16 to you, "On August 4th I had to continue the case  
17 because I thought the press would disrupt things,"  
18 or "I thought there was a media circus" or whatever.

19 And yet the Judge, in her press release,  
20 goes one better. She goes way beyond the August 3rd  
21 press release in terms of what she says about Mr.  
22 Horton. She labels him as having a psychological  
23 disorder. The district attorney hadn't said  
24 anything about that. She labels him as having a

1 sexual identity disorder.

2       It's the Judge herself who sticks these  
3 labels on Mr. Horton's back. These are all facts  
4 which at that time were confidential. No one knew  
5 them. They had not yet been disclosed to the  
6 public. And yet, Judge Lopez self-righteously comes  
7 in here and says to you, "Oh, I had to continue this  
8 thing on August 4th, this was awful," meanwhile  
9 faxing to television stations her personal views of  
10 psychological disorders and sexual identity  
11 disorders.

12       She then scaled it up one more notch. She  
13 announced to the public and the newspapers, "By the  
14 way, I'm in a vicious fight with the district  
15 attorney's office here; and if you want to see the  
16 next round, you can all come back on September 6th."

17       And the newspaper articles in fact print  
18 that. They print her findings. They print how the  
19 district attorney's office has turned this into a  
20 circus, "embarrass" and "ridicule." They print that  
21 the next bout will be on September 6th.

22       So for the Judge now to turn around and say  
23 on September 6th, "I was all worked up because the  
24 press was there, because I had this history with Ms.

1 Joseph" is sophistry. The press was there and  
2 interested not because this was the first  
3 transgendered person they had ever seen, but because  
4 the Judge had put out a press release the month  
5 before saying, "This is going to be a good one; and  
6 if you guys want to see it, show up on September  
7 6th." It's the Judge's press release that scaled  
8 this case up into a major incident, and that is a  
9 central contradiction in what the Judge has tried to  
10 proffer to you here in this proceeding.

11 I guess a footnote here. I'm reminded, you  
12 might recall as well -- let me turn to September  
13 6th.

14 On September 6th we know that the Judge  
15 unilaterally made a number of arrangements. I don't  
16 want to over-dramatize or underscore those  
17 arrangements. I would certainly agree that a judge  
18 has broad discretion to manage the courthouse, to  
19 manage the courtroom, to make decisions with respect  
20 to security, order, television cameras. That's not  
21 the dispute here.

22 All we're saying here is that this was a  
23 circumstance in which the Judge hadn't been asked to  
24 do any of that. There was no security issue here.

1 Mr. Egbert uses the word "security." What's the  
2 security issue? Is the defendant to be made secure  
3 from a television camera?

4 There was no security issue. No one had  
5 ever used the word "security" on August 4th. Ms.  
6 Goldbach didn't even know about these arrangements  
7 as they were set up on September 6th until she got  
8 to the courthouse -- or I think she said perhaps she  
9 got a call from someone earlier.

10 So the point is, these arrangements were  
11 not for security. They were gratuitous.

12 Now, is that fatal? Is that a terrible  
13 thing? No, it's not a terrible thing. But they  
14 were gratuitous; and in the aggregate, when combined  
15 with other solicitous efforts by this Judge for this  
16 defendant, they certainly create an appearance of  
17 bias. In and of themselves, they are harmless. In  
18 and of themselves, she had the right to do it. But  
19 the point here is private elevators for defendant  
20 and defense counsel, keeping him in a separate room,  
21 when no one's requested it -- the district attorney  
22 is not even alerted -- it isn't that those things  
23 are wrong in and of themselves, of course not.

24 The question is, how do they fit into a



1 larger mosaic of the Judge's conduct over time and  
2 her solicitous attitude toward this defendant?  
3 That's their only import. I don't want to glorify  
4 them in this argument or in our papers.

5 I will note, however, that according to the  
6 evidence, as a practical matter, what happened on  
7 September 6th was Mr. Horton never got the word, and  
8 he walked in the front door, and nobody looked at  
9 him or photographed him. He took the elevator to  
10 the relevant floor and walked into the courtroom and  
11 sat down. That's what Ms. Goldbach told us. So  
12 there goes your security issue.

13 In addition, Ms. Goldbach testified that  
14 what happened on that day was the cameras were in  
15 fact observed to be photographing a different  
16 transsexual -- transgendered person in the  
17 courthouse. So I don't think we even have any  
18 evidence in this case that the press were  
19 particularly interested one way or another in Mr.  
20 Horton. Obviously they were covering the case; and  
21 obviously when proceedings began on September 6th,  
22 they were present.

23 Importantly here, Your Honor -- again  
24 stepping back -- by September 6th, about six weeks

1 had elapsed since the inflammatory relationship  
2 between the district attorney and the Judge on  
3 August 4th. One has to wonder how it is that a  
4 judge with 14 years experience didn't calm down a  
5 little bit in those six weeks. How is it that the  
6 Judge didn't get in better proportion the fact that  
7 she was going back in on September 6th; she knew  
8 there would be cameras.

9 In fact, earlier on September 6th itself,  
10 she talked with Joan Kenney about entering an order  
11 with respect to the press. All of this was known.  
12 It was all anticipated. The Judge herself had sent  
13 out her press release. Everything that happened on  
14 September 6th was entirely predictable, except the  
15 Judge's own conduct. Everything else was  
16 predictable; that there would be cameras, that there  
17 would be public attention, that the Judge had  
18 personally and unambiguously invited that attention  
19 with her press release. It was all set up by the  
20 Judge. No surprises to Judge Lopez.

21 How is it, then, if this conduct of the  
22 Judge's is said to promote confidence in the  
23 integrity of the judiciary and has no appearance of  
24 impropriety, how is it that this Judge walked into

1 court on September 6th with yet another or perhaps  
2 the same chip on her shoulder, having it in for the  
3 district attorney's office.

4 There's no evidence here that the district  
5 attorney's office, quote, retaliated against Judge  
6 Lopez. None whatsoever. If the Judge truly  
7 believed that there was an issue after August 4th,  
8 why didn't she do something about it? Why didn't  
9 she do what Judge Russo did and pick up the phone,  
10 have someone else assigned to the case, transfer the  
11 case for disposition, a host of alternatives, all  
12 within Judge Lopez's control.

13 Now, as Mr. Egbert said and as I said  
14 earlier, according to the Judge's testimony, the  
15 sole purpose of what was to happen on September 6th  
16 was to legally formalize, according to them -- Jim,  
17 could I have the slide -- what had already been  
18 decided on August 1st.

19 And the Judge testified to that herself.  
20 "After you deliver a sentence in court" -- Mr.  
21 Egbert here talking about August 1st -- "has it been  
22 your experience that the arguments of counsel  
23 thereafter are for form or for substance?

24 "They are for form," says the Judge.

1                   And repeatedly we've been treated to the  
2 argument here that all the important work, all of  
3 the heavy lifting happened on August 1st. September  
4 6th was an afterthought -- not an afterthought, too  
5 strong; but in any event, a formalistic cementing of  
6 the guilty plea and imposition of a sentence to  
7 which the defendant had already agreed.

8                   Well, if that's true, Judge, if we take  
9 Judge Lopez at her word, that the rest was form, we  
10 take her at her word that the heavy lifting was done  
11 on August 1st, then the Judge's questions to the  
12 district attorney, "Do you suggest a female prison  
13 or a male prison?" are simply to bait the  
14 prosecution. They have no fundamental substantive  
15 purpose. Her question to Mr. Deakin about rating  
16 the case had no value in that proceeding, according  
17 to Judge Lopez herself. She says, "I had done it  
18 all on August 1st."

19                   Why, then, if that's the case, is Judge  
20 Lopez asking questions about female prisons and male  
21 prisons or rating the case on September 6th? Mr.  
22 Egbert argues forcefully that it doesn't really  
23 matter whether Judge Lopez on September 6th was  
24 right or wrong as she interpreted what Mr. Deakin

1 said. That was her interpretation. That's enough.  
2 Your Honor, that's not enough. The Judge  
3 owed the prosecution -- who, after all, is the  
4 lawyer for the public, the public's interest -- the  
5 Judge owed that lawyer her attention and her  
6 thoughtful consideration of his views. If she was  
7 going to ask any question, like rating the case, it  
8 was her obligation to hear him out and understand  
9 him and not excoriate him by picking out one number  
10 and saying, "You're being disingenuous."

11 And in any event, the testimony is  
12 absolutely clear -- or the transcript, Exhibit 22,  
13 is absolutely clear that Mr. Deakin's answer was  
14 highly responsible, breaking down the seriousness of  
15 the offense into three components and rating each  
16 separately.

17 But the more important point again, if we  
18 take Judge Lopez at her word that this was all form  
19 on September 6th, then there's no reason for the  
20 Judge to have baited the prosecution. There's no  
21 reason for her to have a rating of the case at all.  
22 There's no reason for her to suggest, "Do you  
23 suggest a female prison or a male prison?"

24 And I think the inference you can draw as a

1 fact finder is, she was posturing. She did this  
2 because she perceived herself to be gaining some  
3 advantage in her arm wrestling with the district  
4 attorney's office, and she was herself attempting to  
5 expose them in front of cameras.

6 The Judge goes on to interrupt the  
7 prosecutor. Again, fatal? No. Terrible  
8 transgression? No. But as part of that overall  
9 mosaic, it, too, suggests a bias on the part of the  
10 Judge. As I said earlier, it's the prosecution's  
11 discretion which, how many, and what level of facts  
12 are proffered to the Court on a guilty plea. It's  
13 not the Judge's discretion.

14 There is no law that says you've got to  
15 give the minimalist account of the crime. That's  
16 not the case. The district attorney's office has a  
17 legitimate public purpose in articulating all of the  
18 facts it chooses to articulate which support the  
19 pleas of guilty. They do not have to do the bare  
20 minimum, as the Judge is suggesting here.

21 Indeed, that's quite an ironic argument,  
22 because out of the other side of her mouth she says,  
23 "You didn't tell me enough." So on the one hand she  
24 argues she had a right to interrupt him and to limit

1 him to just the facts that are, quote, relevant.  
2 That's one argument she makes to you.

3           And then Mr. Egbert says, Well, wait a  
4 minute. There's a bunch of other things you didn't  
5 tell me about. So "You didn't say enough," "You  
6 said too much," and "You didn't say enough." That  
7 is the argument that's been made to you here this  
8 morning. And the "not enough" is Mr. Deakin didn't  
9 mention that this so-called threat by Horton -- and  
10 I don't want to get sidetracked on that, but I will  
11 observe that -- the threat, to remind the Court what  
12 the evidence was on the tape, allegedly is that the  
13 child says on the videotape he, Horton, said to him,  
14 "I'm going to get my husband to come out here and  
15 kill you if you don't shut up," in effect.

16           Now, of course, the prosecution knew -- the  
17 child didn't, but the prosecution knew that he had  
18 no husband. He knew that that wasn't a real death  
19 threat. And I'm sure that if Mr. Deakin asserted  
20 that fact for purposes of this guilty plea, the  
21 Judge would have taken him to task for it.

22           Mr. Egbert also says, "Well, the  
23 prosecution didn't mention that he was being dragged  
24 into the car by his arm." Well, the prosecution

1 didn't have to mention that because Judge Lopez has  
2 testified to you that she knew it because Goldbach  
3 told her on August 4th. And in Volume III, at Pages  
4 126 and 127, beginning at Line 16, in effect the  
5 question is, "Didn't Ms. Goldbach tell you that the  
6 victim said he was pulled by the arm through a  
7 window of the car?"

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

11           So what kind of an argument is this, the  
12 prosecution didn't mention it, but it was already  
13 out there and the Judge knew it? Then why should  
14 the prosecution mention it again? The Judge knew  
15 it. It was on the table. How is that a problem  
16 with what the district attorney's office said? I'd  
17 say, more accurately, it's a clever use or nonuse of  
18 the testimony in this case by counsel.

19           As far as the third prong of what the  
20 district attorney is alleged not to have said that  
21 he should have said is that Mr. Horton lay on top of  
22 the child. I'm not clear why that is so  
23 significant, since Mr. Deakin clearly said that  
24 defendant was intending to do a sexual act. The



1 defendant admitted that to the police. Mr. Deakin  
2 did relate that in the facts.

3           And if you look at Exhibit 22, which I'm  
4 not going to do now, you will see four pages of  
5 testimony there, beginning at Pages 12, Line 21, all  
6 the way through Page 15, Line 22, that it's just a  
7 series of fact after fact after fact, including what  
8 Horton had told the police; facts which establish  
9 that the child was kidnapped, that he was crying,  
10 that he wanted to go home, Horton wouldn't let him,  
11 that a screwdriver was put to his neck, that Horton  
12 told the police he intended to do a sexual act with  
13 the child. Maybe there was more to tell, I don't  
14 know, but it seems to me that the prosecution's  
15 discretion was appropriately used there.

16           I do not want to play the videotape at this  
17 point. I think we've all perhaps had enough of  
18 that. And so I turn to the argument made today and  
19 actually made in the papers about Mr. Deakin's  
20 refusal to sit down. And you will recall that,  
21 during the course of the colloquy, the Judge is  
22 yelling at Mr. Deakin, and she says something to the  
23 effect, "Sit down now. You may sit down." He says,  
24 "Your Honor, may I --" and she says, "You may sit

1 down now or I'll have a court officer make you sit  
2 down."

3           And the Judge, I must say to my  
4 astonishment, argues to you that's contempt. That's  
5 literally what she argues and what she testified to  
6 in the trial. And I put on the monitor that  
7 testimony.

8           And the Judge's position on this is her  
9 instruction to the lawyer for the Commonwealth that  
10 he sit down while he's trying to make a presentation  
11 on behalf of the public in a criminal prosecution,  
12 and she calls him disingenuous, and he fights back  
13 by saying, "Your Honor, if I may, I don't appreciate  
14 that." She says, "Well, that's contempt."

15           Well, Your Honor, what's contemptible is a  
16 judge who would make that argument. There's nothing  
17 contemptuous or contumacious about anything Mr.  
18 Deakin did as a public lawyer having been called  
19 disingenuous in a criminal proceeding with a judge  
20 out of control. He had no obligation whatsoever to  
21 cower under the lash of a Superior Court Judge who  
22 has lost it. The obligation he had was to be  
23 courteous and forthright.

24           And the tape demonstrates that at every

1 step of the proceeding, notwithstanding the outrages  
2 of the Judge, he was consistently courteous and  
3 distinguished and an appropriate representative of  
4 the people. That is not contempt. He has no  
5 obligation to sit there and take it from Judge Lopez  
6 or anybody else. In fact, his obligation is to the  
7 contrary. To the extent he did not believe he was  
8 disingenuous, he had an obligation to explain why.  
9 He did that with courtesy, with aplomb, with  
10 professionalism. And I think it's a distortion of  
11 an honorable public servant's work in this case for  
12 the Judge to claim to you that it's contumacious.  
13 If anything's outrageous, it's the Judge's position.

14 I turn now, Your Honor, to the events after  
15 September 6th. And perhaps not surprisingly, I have  
16 a somewhat different take on this than Mr. Egbert.

17 First of all, Mr. Egbert talked about the  
18 Judge's courage. Well, I think a judge is  
19 courageous when a judge, having made findings, is  
20 prepared to live with the consequences of those  
21 findings. He is prepared to stand the gaff. He is  
22 prepared to take whatever criticism is inherent in  
23 having made such a decision. That's what good  
24 judges do. They do it everyday. And I'm sure they

1 don't like it. They can't strike back. They have a  
2 position of great honor, but also of great  
3 responsibility.

4 This is a judge who made a very, very  
5 different decision. She was not courageous. She  
6 engaged almost immediately in circulating the wagons  
7 of public opinion, and she did that in a highly  
8 improper way. And what the evidence shows here is  
9 that her dealing with Ms. Kenney and the Supreme  
10 Judicial Court's Office of Public Information was  
11 anything but candid. She owed that office absolute  
12 candor. And yet, her approach to that was, What can  
13 I do to get some spin? I've got to do something  
14 about my low level comment in court.

15 At that point -- this is September 7th, the  
16 day after the sentencing -- the press had had a  
17 field day with her having characterized the offense  
18 as "low level." By the way, we can sit here and  
19 debate the metaphysics of what the Judge said in  
20 court until the cows come home, but common sense  
21 looking at the tape will tell you that the Judge was  
22 absolutely referring to the offense. And this  
23 caricature of an argument today that, Well, yeah,  
24 she's talking about the offense, but only in the

1 context of other serious cases. All child abuse  
2 cases are serious, so it's low level within this  
3 high level.

4 That's not what the public understood,  
5 because that's not what the Judge said, and I dare  
6 say, that's not what the Judge meant, because those  
7 aren't her words. That itself is a distortion.

8 In any event, her approach here was to go  
9 to Joan Kenney of the SJC's Public Information  
10 Office. She believed that she could use this office  
11 to ameliorate the reaction to her sentence. And she  
12 treated that as spin. And her testimony on that is  
13 quite clear. I'll put some of it on the monitor.  
14 This is the Judge's testimony before trial, a year  
15 before trial to the Commission counsel. "...I  
16 thought they," meaning the office of Joan Kenney,  
17 "would have better expertise as to how to frame or  
18 what spin to give whatever than I would..." She  
19 repeats it again some pages later. "...and they  
20 were giving some sort of spin to the low-level  
21 statement that was in the tape."

22 And here at trial she repeated it a third  
23 time. My question, "The reason you didn't want to  
24 make this information known or any corrections to

1 Ms. Kenney or Justice DelVecchio is that you viewed  
2 this as an exercise in spin?

3 "Answer: That's correct."

4 Now, Your Honor, I would contend that  
5 that's a perversion of the process; that in dealing  
6 with the SJC's Office of Public Information, it's  
7 not an exercise of spin. It ought to be an exercise  
8 either in truth-telling or in silence. But in no  
9 event did Judge Lopez have the right to spin, to  
10 spin the truth.

11 And I think the central problem with spin,  
12 with the Judge's use of the Office of Public  
13 Information, is that if you think about it, what the  
14 Judge is really saying is on September 6th I sat in  
15 a courtroom. The defendant was under oath. He  
16 admitted to a host of facts which I believe as a  
17 judge constituted kidnapping, indecent assault,  
18 assault with intent to rape a child under 14. I  
19 believe what he admitted to was so serious, that  
20 they constitute sufficient evidence to convict him  
21 of those five felonies. That's September 6th.

22 On September 7th the Judge goes to the SJC  
23 Office of Public Information, goes behind what she  
24 had done in open court, says to Joan Kenney, "There

1 was no kidnapping" -- I don't care if she said "No  
2 kidnapping," "No kidnapping in the usual sense,"  
3 whatever. It doesn't matter how she characterized  
4 the kidnapping. She plainly said, "The screwdriver  
5 was not used as a weapon."

6           Those were false representations by the  
7 Judge to Joan Kenney. Absolutely false. And more  
8 distressing perhaps, more distressing than the  
9 falsity of those statements is the fact that they  
10 undercut the fundamental premise of integrity in the  
11 judiciary.

12           She had sat in a courtroom, she had put on  
13 the record evidence sufficient for the convictions  
14 of these crimes. She turned around the next day and  
15 tried to get the SJC's office to put out contrary  
16 information. The Judge was personally undercutting  
17 what she had done in open court. I cannot imagine a  
18 more serious infraction of the Judge's obligation to  
19 promote the integrity of the judiciary or the  
20 judicial process. It is a complete perversion of  
21 her responsibility.

22           And distressing as well is the fact that  
23 its only purpose was for the Judge to protect her  
24 own image. After all, the whole business of spin,

1 the whole business that Judge Lopez wanted the  
2 office of press information to put out any kind of a  
3 statement was to take the heat off. That's why she  
4 was doing it. And the Judge was happy to use that  
5 office to spin the information. Your Honor, that's  
6 the wrong use of that office. That's not a  
7 permissible use of that office. It is one thing for  
8 Joan Kenney to be a spokesperson, a filter of  
9 information, a buffer against newspapers and  
10 television stations. It's quite another for the  
11 Judge to permit a statement that she knows to be  
12 inaccurate to be put out into the public. And  
13 that's what happened here.

14 Now, the Judge says -- the Judge has taken  
15 a couple of positions. A year before this trial the  
16 Judge's position at that time was, This wasn't my  
17 statement, anyway. I didn't make this statement.  
18 This was Justice DelVecchio and it was Joan Kenney.  
19 It was theirs. It was presented to me as a fait  
20 accompli. "It is not my statement," the Judge says  
21 in more than one occasion on Exhibit 32. Obviously  
22 the Court can read the entire transcript.

23 At trial, recognizing that that wasn't  
24 going to fly, the Judge backed off that testimony.



1 And when she testified here, she said, "It is my  
2 statement."

3 The problem with saying "It is my  
4 statement" was that a year earlier, she had already  
5 pointed out the number of inaccuracies in the  
6 statement, and she had already testified that she  
7 never told Joan Kenney about those inaccuracies or  
8 Justice DelVecchio -- the most notable one being the  
9 sentencing guidelines issue.

10 HEARING OFFICER DAHER: Mr. Ware, can we  
11 take a short recess at this point?

12 MR. WARE: Yes.

13 (Recess)

14 HEARING OFFICER DAHER: Mr. Ware?

15 MR. WARE: Earlier in his closing comments  
16 Mr. Egbert suggested -- perhaps I'm thinking of  
17 briefs -- has suggested that it's not the case that  
18 Ms. Kenney only had information from Judge Lopez,  
19 but in fact, what Judge Lopez was engaged in on  
20 September 7th was the creation of what was to be her  
21 statement. And Joan Kenney testified quite clearly,  
22 as did the Judge, that she knew Joan Kenney was  
23 completely dependent on her for accurate  
24 information.

1           Elsewhere perhaps in the briefs they have  
2 argued, Wait a minute, Joan Kenney knew how to read,  
3 she could see the Herald, she could see the Globe.  
4 She had lots of other sources of information.  
5 That's not the point.

6           The point here is Judge Lopez had gone to  
7 her to prepare a statement for Judge Lopez, which  
8 was to reflect what Judge Lopez knew, not what The  
9 Boston Herald knew.

10          So when I asked Judge Lopez whether in fact  
11 she knew during trial that Ms. Kenney was dependent  
12 upon her, she says, yes, that would be her only  
13 source of information. And you're entitled to  
14 accept that from the Judge. She knew very well that  
15 Ms. Kenney was dependent upon her. She knew very  
16 well that for her to give other than candid  
17 information ran the risk that the public would be  
18 told something which was not true.

19          Ms. Kenney herself said, when asked by me,  
20 "Other than the information you got from Judge  
21 Lopez, did you have any other sources of information  
22 at this time?

23                 "Answer: No."

24                 And that, again, is for the unremarkable

1 reason that what Ms. Kenney was doing was preparing  
2 the Judge's statement, which of course was solely  
3 dependent on what Judge Lopez knew.

4           So for Judge Lopez to go behind what she  
5 had done in the courtroom, accepting a plea,  
6 listening to the defendant agree to the fact that he  
7 had engaged in a kidnapping, go behind the fact that  
8 the defendant had agreed that the screwdriver was  
9 used as a weapon; and for her to tell Ms. Kenney the  
10 contrary, is not only a distortion of the process of  
11 using the Office of Public Information, but is  
12 grossly improper on the part of a judge, grossly  
13 improper, because the inevitable consequence of  
14 anything at that point which Judge Lopez told Ms.  
15 Kenney, was she knew that it could show up in a  
16 public release to be sent to the newspapers.

17           And so I don't think I can emphasize  
18 strongly enough what I have referred to as a  
19 perversion of this process. Here is a judge who on  
20 September 6th listens to the agreement of a  
21 defendant to all of these facts -- screwdriver used  
22 as a weapon, kidnapping, child crying, begging to go  
23 home, testimony proffered by the district attorney  
24 as to what Horton told the police, that he did

1 intend to engage in a sex act, all of that; and the  
2 following day the Judge goes to the Office of Public  
3 Information and promptly goes behind what she had  
4 done on the public record to try to undercut the  
5 seriousness of the offenses in the public press.  
6 That is plainly wrong. And there is no mitigating  
7 circumstance.

8 Ms. Kenney was clear in her testimony about  
9 what Judge Lopez told her about the kidnapping and  
10 the screwdriver. There is no cute use of  
11 transcripts here. Here is Ms. Kenney's testimony in  
12 volume 10. "What is it the Judge told you about the  
13 screwdriver and the kidnapping, as best you recall?"  
14 Not a leading question. I just asked her, What did  
15 she say to you.

16 "Ms. Kenney: She didn't think it was a  
17 real kidnaping, and the screwdriver was not used as  
18 a weapon."

19 The next day you will recall that you asked  
20 whether she could be recalled to dot some Is and  
21 cross some Ts. I recalled her. The question is put  
22 to her again: "Judge Lopez told you that this was  
23 not a kidnapping; isn't that right?"

24 "Answer: That's correct."

1           And she goes on to say, Those were the  
2 words, there were no qualifiers, there were no  
3 qualifications to that testimony. That's what Ms.  
4 Kenney's sworn testimony is as to what Judge Lopez  
5 told her. And that is plainly inconsistent with the  
6 truth, plainly inconsistent with what the Judge had  
7 done in open court on the record.

8           I think importantly, Your Honor, if indeed  
9 Judge Lopez felt it was appropriate to have the  
10 Office of Public Information issue a statement  
11 somehow indicating that the victim was not quite a  
12 victim or the crime was not as serious as people  
13 might have been led to believe from what occurred  
14 within open court, if you think about that, if the  
15 Judge really believed that, these were not false  
16 representations, wasn't it her obligation to vacate  
17 the guilty plea? Here is a defendant who stands  
18 convicted of kidnapping, assault with attempt to  
19 rate, indecent assault on a child under 14, assault  
20 and battery. These are serious felonies.

21           If the Judge somehow came convinced that  
22 there was exculpatory evidence, as she claimed at  
23 one point, from Detective Green, what was her  
24 obligation? It wasn't to put out some spin. Her

1 moral and legal obligation would have been to say,  
2 you know, "There was a wrong here. I've got to  
3 right it. I'm going to call in the district  
4 attorney and defense counsel, and I'm going to find  
5 out whether this is or isn't true."

6 So the fact that the Judge didn't do that  
7 tells you something. And what it tells you is the  
8 Judge didn't believe a word of this stuff. No  
9 kidnapping, screwdriver not used as a weapon. The  
10 defendant had admitted it in front of her. It's on  
11 the record. It's in Exhibit 22 for all of us to  
12 read. Rather, the Judge was engaged in saving her  
13 own hide, trying to get the Office of Public  
14 Information to put out a story that would make her  
15 look better to the public. Planting those seeds of  
16 doubt in contravention of what the Judge had done in  
17 open court is plainly, plainly wrong and in  
18 violation of every canon in this case.

19 The Judge also testified in her statement,  
20 Exhibit 24, that the reference to "low level" in  
21 court was not a reference to a lack of seriousness  
22 of the offense; it was a reference to the sentencing  
23 guidelines. That's what she testified to in court.

24 Now, the Judge has been all over the map on

1 this particular issue. And when she testified  
2 sometime ago; that is, the year before trial, the  
3 Judge was unequivocal that the reference to "low  
4 level" had nothing to do with sentencing guidelines,  
5 nothing whatsoever. And here are a couple of her  
6 answers. "It meant in the scale of 1 to 10, where  
7 does this case fit. I didn't mean in terms of  
8 guidelines, no." She's not talking there about  
9 factors inherent in guidelines. I don't see  
10 anything there about Ronan guidelines from 1981.

11 This is a flat-out statement that the  
12 reference in that release was not to sentencing  
13 guidelines. "That's not my statement." There,  
14 again, is an example of the Judge saying Exhibit 24,  
15 put out by Joan Kenney, the Judge's release of  
16 September 7th, is not her statement. And indeed,  
17 that was the position she took and her counsel took.  
18 And if you go back and you flip through Exhibit 32,  
19 you'll find a point at which her lawyer says, "This  
20 was not her statement." And the Judge says it  
21 multiple times. And the tactic at that time was to  
22 say, "This statement, Exhibit 24, that was put out  
23 by Joan Kenney was a Joan Kenney/Justice DelVecchio  
24 statement. I didn't have anything to do with it.

1 Yes, it was wrong. It had errors in it. It talked  
2 about 'low level' as a reference to sentencing  
3 guidelines. That was wrong."

4 Here she says that. "I didn't mean  
5 guidelines." The reason she's prepared to say the  
6 statement is wrong at that time is that she is  
7 taking the position a year before trial that it's  
8 not her statement anyway. So the fact that it's  
9 wrong is of no moment to her.

10 She goes on in this question, You disagree  
11 with the characterization that the reference to low  
12 scale was a reference to the appropriate level of  
13 sentencing guidelines?

14 "That's correct. That's not what I  
15 intended..."

16 So again, a year before trial, the Judge is  
17 saying in that statement put out by Joan Kenney, the  
18 reference to the sentencing guidelines is wrong.  
19 She goes on to testify that she never corrected it  
20 with Justice DelVecchio and Joan Kenney. She knew  
21 it was wrong, she received a draft, but didn't tell  
22 them that it was erroneous, and that's why it went  
23 out.

24 Now she comes to trial and the strategy's



1 changed. She's made a tactical decision that saying  
2 it was a Kenney/DelVecchio statement isn't going to  
3 work, because it says statement -- Exhibit 24 says  
4 right on it "Statement by Maria Lopez." And she  
5 makes the decision that she's not going to be able  
6 to back away from that statement as she had done a  
7 year earlier. And so she now embraces the statement  
8 and says, "Okay, it is my statement."

9         The problem with doing that is she's  
10 already conceded a year earlier that it's got errors  
11 in it that she didn't alert the Chief Justice to or  
12 Joan Kenney. And so she comes up with this  
13 elaborate fix to which you have been treated, which  
14 is, Well, it's not the sentencing guidelines. There  
15 aren't any sentencing guidelines. There are these  
16 1981 guidelines that most of the people in the  
17 courtroom are too young to remember. And there are  
18 factors inherent in guidelines. That's the new  
19 party line.

20         Once she embraces the statement, she has to  
21 say, Yeah, I was referring to guidelines. But since  
22 she's already denied that the year earlier, she  
23 says, It's factors inherent in sentencing  
24 guidelines.

1                   Now, Your Honor, that is just dishonest.  
2     And it is trying to put one over on you by confusing  
3     these various sentencing guidelines in pretending  
4     somehow that these statements which are  
5     unambiguously clear that she was not referring to  
6     sentencing guidelines somehow have this hidden  
7     meaning of factors inherent in sentencing  
8     guidelines.

9                   Judge Lopez, when she testified a year  
10    before this trial, did tell us what she meant by  
11    "low level." And in fact, she was quite candid  
12    here. This, I suggest to you, is the truth.  
13    "...the fact that I called it low scale -- look, I  
14    had a bad day that day. Okay? So I called it a low  
15    scale. I shouldn't have called it a low scale in  
16    the scheme of things. All right."

17                  Now, Your Honor, that very likely is the  
18    truth. The Judge made a mistake. She got mad on  
19    September 6th. She lost her cool. She labeled the  
20    offense "low scale." She later regretted it. And  
21    here that's what she's admitting. For reasons known  
22    only to the Judge, she's completely backed away from  
23    this statement in the trial and said now it means  
24    factors inherent in guidelines.

1 I simply submit to the Court that not only  
2 is this sophistry, but it's blatantly untrue and  
3 it's wrong to perpetrate it on this court, which  
4 brings me to the heart of what's at issue in terms  
5 of the Judge's testimony here.

6 I think it very likely that the Judge did  
7 in fact just lose her temper and say something  
8 ill-advised, that the offense is low scale. For  
9 whatever reason, she's unwilling to admit that in  
10 this courtroom.

11 After September 6th, the Judge makes a  
12 series of calls to defense counsel. I won't belabor  
13 them, but there is certainly a legitimate issue  
14 whether the case is pending in ordinary  
15 circumstances throughout a period of probation. I  
16 don't dispute that. I don't want to claim that the  
17 Judge should have been on notice that for a  
18 five-year period of probation, she needed to  
19 consider the case pending, nor do I dispute that  
20 there may be many circumstances in which judges,  
21 following cases, talk to the lawyers -- on their  
22 own, at bar association sessions, on the street, as  
23 friends, over lunch. It happens all the time.  
24 There's nothing rare about it, nothing wrong about

1 it.

2           What makes this case unique is something  
3 quite different. And that is several things. One,  
4 this was in the middle of a firestorm. The case, in  
5 a very real sense, was not over. We're talking  
6 about phone calls to defense counsel, No. 1, who  
7 continued to represent the defendant. In fact, Ms.  
8 Goldbach told us -- told you in this courtroom, that  
9 she has continually represented the defendant since  
10 this case in September of 2000 and represents Mr.  
11 Horton today.

12           So there is an ongoing representation here  
13 that isn't usual. Typically when a case is over, if  
14 you have a conversation with a lawyer or I have one  
15 with a judge, the representation has ended. The  
16 relationship has ended. There is nothing yet to go  
17 on in the case.

18           This was different. The lawyer was still  
19 engaged for the defendant, No. 1. No. 2, the Judge  
20 specifically retained jurisdiction. She did not  
21 have to do that. She was asked to do it by defense  
22 counsel and she did it.

23           She testified quite openly here that she  
24 knew that what that meant is if there were a problem

1 down the road that involved resentencing Horton,  
2 parties would be back in front of her. That, too,  
3 distinguishes it from the ordinary situation in  
4 which lawyer and judge talk after a case.

5 The fact that the Judge had retained  
6 jurisdiction, that is not usual in a case. It's not  
7 unheard of, but it's not a run-of-the-mill  
8 circumstance.

9 Third, Your Honor, there is the possibility  
10 of appeal here of the conditions of probation.  
11 We've cited Commonwealth against Power and another  
12 case today, which I've forgotten at the moment. And  
13 so, while it's probably true that it's a stretch to  
14 say a case is pending for all five years of  
15 probation, we're not talking about that here. We're  
16 talking about the first five days after the case had  
17 been sentenced.

18 And during that period of time, you'll  
19 recall here that the Judge changes one of the  
20 conditions of sentencing on the spot on September  
21 6th. Originally, as you'll see in Exhibit 22,  
22 Horton was to be sentenced to the Community  
23 Corrections Program. It isn't until September 6th  
24 that the Judge announces to Horton, "I'm not going

1 to do that. I'm going to put you on probation." So  
2 she is changing fundamentally the sentence there.

3 Now, obviously he agrees to that, because  
4 he pleads guilty to it. But the law in this state  
5 appears to be that for some period of time it is  
6 possible to appeal the conditions of probation. And  
7 certainly that period of appeal runs for at least  
8 the first ten days.

9 Fourth, I would say that this case is  
10 fundamentally different because of the storm of  
11 protest that was ongoing and because the Judge was  
12 then engaged in dealing with the case with the  
13 Office of Public Information and with others. So  
14 this is very unlike the average case in which  
15 lawyers and judges may talk.

16 In addition, Your Honor, this was not a  
17 single, ill-advised call to a defense lawyer. It  
18 was a series of calls. And we know from the  
19 testimony that there were two or three such calls  
20 after September 6th. At least one of those calls  
21 was to defense counsel's home on a weekend. That or  
22 another call with defense call was one in which  
23 Judge Lopez and defense counsel discussed whether  
24 Judge Lopez should have legal representation, a

1 lawyer.

2 All of these calls, according to the  
3 testimony, involved some discussion about Mr.  
4 Horton, his well-being. And while the defendant  
5 here, Judge Lopez, can contend that that's not  
6 talking about the case, we're really splitting hairs  
7 on that one. I don't know how the Judge calls Ms.  
8 Goldbach and enlists her help with the public press  
9 to deflect attention from Judge Lopez without  
10 talking about the case. If she means by that, we  
11 didn't discuss whether he was guilty or not guilty,  
12 okay. But that's not enough. This was an ongoing  
13 relationship. And whether or not the case is  
14 pending, the conduct is violative of at least four  
15 other canons of ethics. So it's really a red  
16 herring whether the case is pending and certainly  
17 unnecessary to any finding the Court might make.

18 I think the notion that a Superior Court  
19 Judge of this experience or any experience can call  
20 defense counsel and enlist their help with the  
21 public press defending what that Judge did, which  
22 after all, by definition, meant saying something to  
23 make the crime look less serious than it was -- why  
24 else would the Judge get a benefit from defense

1 counsel talking with the press? That is  
2 fundamentally wrong. It's wrong because she  
3 shouldn't be going to defense counsel. And it's  
4 wrong because it's inconsistent with what the Judge  
5 had done in open court. So here she is undermining  
6 her own decisions on September 6th.

7 I would point out as well, Your Honor, on  
8 the whole pending issue -- not to belabor it -- if  
9 you look at Exhibit 24, which is the series of the  
10 press releases, the very first line of Judge Lopez's  
11 statement says, "A judge can't talk about a pending  
12 or impending case." So one would think that  
13 inherent in that is Judge Lopez's belief at the time  
14 that the case was pending. And what she's saying  
15 is, "I can't say more in this release because this  
16 case is pending or impending."

17 I think also, Your Honor, that the Judge  
18 finds herself in another dilemma here. If we  
19 compare this effort again to the August 3rd press  
20 release of the district attorney's office, how is it  
21 that the Judge can say to you with a straight face,  
22 The district attorney's office press release using  
23 the word "transgendered" is somehow unethical and  
24 wrong, but for the Judge to go to defense counsel



1 and get them to make statements about how the crime  
2 is less serious than what the Judge said it was on  
3 September 6th, that's fine. There's an inherent  
4 contradiction there. And it seems to me the Judge  
5 is impaled on that contradiction.

6 The conversations with Detective Green are  
7 basically in the same category. I don't see how  
8 those can be brushed aside. I do not agree that  
9 it's proper for a Superior Court Judge to be calling  
10 a Boston cop, trying to enlist his help with the  
11 press office to say something that will take the  
12 heat off the Judge.

13 Again, the only information which could  
14 take the heat off the Judge would be information  
15 that the crime is less serious or the defendant is  
16 well known or the victim isn't really a victim, all  
17 of which is inconsistent, again, with what the Judge  
18 had done on the public record.

19 It is plainly improper for a judge to be  
20 calling an investigator in the case, particularly  
21 this investigator. The Judge has treated you to the  
22 argument that he was on scene and he was therefore  
23 integral to the investigation. He was part of the  
24 investigation. If that's true and if something goes

1 wrong with this whole sentencing and there's  
2 eventually any trial or probation is revoked, this  
3 man could be a witness.

4         Now, I don't want to stretch that too far.  
5 I grant that that's relatively remote, but judges  
6 are in the business of being protective of people's  
7 rights and the appearance of fairness. This Judge  
8 had no right to compromise that potential fairness  
9 down the road.

10         And finally, Your Honor, as regards to the  
11 facts, anyway, I turn to the Beaucage incident. The  
12 defense here really has been, "I don't know why  
13 they're raising this." And I find that an  
14 astonishing defense. Because in effect, what Judge  
15 Lopez says to you today is "I could do this tomorrow  
16 and it would be proper. I could call up any  
17 complainant -- maybe I shouldn't call them at 11; I  
18 should call them earlier in the day. There's  
19 nothing wrong with that."

20         I don't agree with that, Your Honor. As I  
21 said in our brief, in other contexts, words like  
22 "obstruction of justice," "witness tampering" would  
23 be thrown around. And I'm not suggesting here that  
24 Judge Lopez was engaged in witness tampering with

1 all its connotations, but I am suggesting that this  
2 is appallingly bad judgment. And for Judge Lopez to  
3 come before you and say, "Oh, no, it's just fine. I  
4 don't know why Mr. Ware is even raising this point,"  
5 is itself appallingly bad judgment. Because as I  
6 say, it amounts to an argument, "I could do it  
7 tomorrow. I could call up any one of the  
8 complainants whose names are here in evidence and  
9 there would be nothing wrong with that, as long as  
10 all I was trying to do is find out who they were."

11 There's a lot wrong with it, Your Honor.  
12 And what's wrong with it is exactly what Ms.  
13 Beaucage said.

14 And the argument that's made in the briefs  
15 to you is, "Wait a minute, here. The Commission's  
16 counsel has conjured all this up." If you look at  
17 the testimony taken by Mr. Braceras, the witness  
18 uses the word "intimidated" after there's been a  
19 break, so he must have fed the words to her, and so  
20 this is all a put-up job.

21 But, Your Honor, that totally ignores what  
22 Ms. Beaucage wrote in her own complaint months  
23 before she had contact with anybody from the  
24 Commission. I don't believe I had even been

1 appointed at that time.

2 So this notion that somehow we put words in  
3 her mouth is again sophistry. It's an effort to  
4 mislead you here, and it's fundamentally wrong.

5 The testimony from the witness' own  
6 complaint, as you can see on the monitor, is Judge  
7 Lopez said, "I am pleased to meet you" and hung up.  
8 Now, the "pleased to meet you" corresponds to Sister  
9 Beaucage's complaint itself, which says, "I have  
10 never met this woman." And so Judge Lopez, I would  
11 contend is saying here, "I am pleased to meet you"  
12 because she's responding to what the complainant has  
13 said in writing. She says, "I got up, I checked the  
14 caller ID." Quote, "This was a disturbing phone  
15 call, to say the least."

16 Well, if it's a disturbing phone call to an  
17 elderly nun, why does anyone think it's disturbing?  
18 It's disturbing because she doesn't know what it  
19 means. She doesn't know whether it's a threat or an  
20 intimidation or what it is. And it's late at night.

21 She goes on to say in her complaint that,  
22 One could easily view this, quote, as a threat, like  
23 "I know where you live" in the phone call. Now, we  
24 had nothing to do with that. It was all carved in

1 stone. It was writ before Commission counsel had  
2 anything to do with this woman or ever met her.

3 So this argument to which you're being  
4 treated, that somehow her testimony has been  
5 tainted, totally ignores the written record; namely,  
6 the complaint itself.

7 But the more fundamental point I think is  
8 this, Your Honor: It cannot be the case that in an  
9 administrative investigation of any kind -- and bear  
10 in mind that in the Roache case, the Supreme  
11 Judicial Court in this state has likened  
12 Commission's counsel investigation to a grand jury  
13 proceeding. That's the law here.

14 It cannot be that a judge under  
15 investigation is free to start calling up the  
16 complainants. How is it that a complainant should  
17 be subjected to a confrontation by a judge under  
18 investigation? One can imagine that going terribly  
19 wrong at some point in the future. It cannot be.  
20 It is fundamentally wrong.

21 We listened for several days to a lot of  
22 distinguished people who came in here and told us  
23 how bright, how talented, how perceptive this woman  
24 is. And I'm not here to dispute that. But if that

1 is so, the corollary is she was bright enough, smart  
2 enough, talented enough, and with 14 years on the  
3 bench, knew that it was highly improper to make this  
4 phone call. Knew that. You can't have it both  
5 ways -- a talented bright, smart and experienced,  
6 but I can call up complaining witnesses. I don't  
7 think it will wash. That dog don't hunt.

8 Now, I think Your Honor, in addition, you  
9 will recall the testimony here that in fact, the  
10 Judge had set up a system. She introduced Exhibits  
11 H and I. Those were these letters which we were  
12 told were Demoulas letters. She had set up her own  
13 courthouse system to check out this very kind of  
14 thing. And she had done that by having a court  
15 officer make phone calls during business hours, and  
16 she had taken the results of that. She didn't  
17 involve herself in the least.

18 How is it, then, on November 1, 2000, with  
19 the investigation pending for a couple of months,  
20 the Judge takes matters into her own hands. And  
21 worse yet to me, is that she comes here and says,  
22 "Oh, this was fine. I could do it tomorrow. This  
23 was right. I don't know why Mr. Ware is even  
24 raising this with you."

1 I'm raising it because it does fundamental  
2 violence to the statutory and rule-making scheme  
3 here. None of us is pleased to be in the  
4 courtroom today. None of us wants this to be going  
5 on. None of us wants to be standing before you  
6 talking about the future of a judge. And we're not  
7 here because we like this. We're here because we  
8 owe it to the public, period, paragraph.

9 And one of the things the public is  
10 entitled to is fairness from the judge during the  
11 course of an investigation.

12 Your Honor, I'd like to turn just briefly  
13 to what I think are some -- since we're there.  
14 Comment has been made about the fact that I have  
15 asserted in the papers the Judge's lack of candor.  
16 And that's true; I have, some of it quite  
17 forcefully.

18 Again, I point out that the Commission has  
19 taken no position here with respect to potential  
20 penalties. And naturally would not do so unless and  
21 until this court makes certain findings.

22 But my role here is different. Part of it  
23 is as advocate. Part of it is to bring to this  
24 court's attention the spectrum of possibilities and

1 the law that surrounds those possibilities.  
2 One fact of life is the case law out there  
3 is uniform in saying that in these proceedings,  
4 judges have to be candid; that all well and good  
5 that they defend themselves. And I don't diminish  
6 the importance of Judge Lopez engaging the best  
7 lawyers in the city, which she has, to come in here  
8 and defend this case. No one could ask for better  
9 representation than the combination of counsel with  
10 whom this Judge has worked. Fair enough.

11 But the corollary is the Judge has to be  
12 honest. She has to cooperate in the investigation  
13 up to a point, not to compromise her defense. But  
14 she has to be candid in her statements to you and  
15 she has to be candid in her statements in Exhibit  
16 32, in October of 2001, the year before this.

17 And the law is really -- this is just an  
18 example of it, Massachusetts Supreme Court; "The  
19 Judge was under an obligation to be completely  
20 candid with the Commissioner." This is also was  
21 with the Judicial Conduct Commission. That  
22 obviously was fundamental to the process.

23 All of the states that considered this come  
24 out the same way with respect to any absence of



1 candor. And that is, that it is inevitably the most  
2 serious of breaches. Regardless of any underlying  
3 problem which the Judge may have faced, if the Judge  
4 is not candid in the investigation and in the  
5 proceedings, that is a fundamentally disqualifying  
6 fact. And that's the issue that I've asked this  
7 Court to look at in the course of your  
8 deliberations.

9 I'm not here to say that the underlying  
10 offenses, if you will, transgressions, breaches of  
11 the canons would in any way justify the Judge's  
12 removal. Frankly, I don't believe they would. And  
13 I would not be an advocate of her removal. But I  
14 think the more serious issue is if on top of that  
15 you find that this Judge has not been honest in her  
16 sworn testimony, either before the Commission on  
17 October 2001 or before this court or both, which I  
18 believe is the case, that's a horse of another  
19 color. And the consequences of that are serious,  
20 indeed.

21 Obviously it's up to this court to make a  
22 recommendation and not up to me. But the examples  
23 of inconsistency are legion, and I've spelled them  
24 out at some length in our brief. I want to go

1 through just a couple of them, and then I will sit  
2 down.

3           In this first example, Your Honor. In  
4 October of 2001 the Judge says quite clearly that  
5 she wanted to continue the case because she believed  
6 there would be another news story that would be  
7 hotter. In other words, she was not continuing it  
8 because of a full calendar. She was continuing it  
9 by virtue of the fact she wanted to avoid the press  
10 attention. She flatly denies that here before you.  
11 That's a blatant contradiction. I don't know of any  
12 other way to interpret that.

13           In this next example, Your Honor, the Judge  
14 says in her response here, filed only last summer, a  
15 year and a half, two years almost after this  
16 investigation began, that she did not have the  
17 district attorney's press release when she makes  
18 these findings on August 4th. That's the  
19 representation that's made.

20           Now, this isn't a response filed quickly.  
21 This is a deliberate response, years after the  
22 investigation began, to which the Judge must be  
23 held. And yet, she claimed in cross examination,  
24 somewhat to my surprise, that in fact, she had the

1 findings. She had the press release at the time she  
2 makes the August 4th findings.

3 Again, a blatant contradiction in the  
4 testimony before you.

5 I think you are owed more, Your Honor.

6 The third one just to draw your attention  
7 to, the Judge's unequivocal testimony in October of  
8 2001 before Commission counsel that there was  
9 nothing unethical about the District Attorney's  
10 press release. Nothing unethical, nothing  
11 inappropriate. And then the Judge says that the  
12 district attorney's office was unethical, and that  
13 the root of that here, as argued today, was the  
14 press release of August 3rd.

15 And additionally, as I've been saying  
16 throughout the afternoon, when it suited her in  
17 October of 2000 -- excuse me, October of 2001, the  
18 Judge took the position that the statement issued  
19 through Joan Kenney's office was not her statement.  
20 You saw an earlier example of this testimony. "This  
21 is not my statement." And yet, here the Judge is  
22 saying on November 2, "It purports to be your  
23 statement, correct?"

24 "Answer: It is my statement," flatly

1 contradicting the positions she had taken a year  
2 earlier.

3           There is then testimony in October of 2001,  
4 this reference to "certain facts." I asked her,  
5 "What are those facts?" This was in her statement.  
6 There was a reference to certain facts which would  
7 change everyone's mind. I said to her, "What are  
8 those facts?" She said, "I don't know." Now, she  
9 was saying that because at the time she took the  
10 position that this was not her statement.

11           And yet here in the trial before you,  
12 you're treated to a very different answer. Now the  
13 "certain facts" are everything -- from the Katz  
14 report, disputed facts, the lobby conferences,  
15 criminal records, a blatant contradiction.

16           And finally, I think, Your Honor, again,  
17 the reference here from October 2001, where she says  
18 in the statement prepared by Joan Kenney in the  
19 reference to "low level," the Judge is saying on the  
20 left-hand side, "I didn't mean in terms of  
21 guidelines. That's not my statement," again saying  
22 this Kenney document is not her statement.

23           I ask her, "So the statement is erroneous?"  
24 "Answer: Correct." And the Judge goes on to say a

1 couple of pages later, "The characterization of what  
2 I was doing in open court, that it referred to  
3 sentencing guidelines, is not accurate." That's her  
4 position in 2001.

5 Here you're treated to a very different  
6 version. You're treated to a version that says,  
7 Well, it's not quite accurate, but it's good enough  
8 for government work, good enough for a press  
9 release. That's a major rewrite, a major  
10 repackaging of the truth, Your Honor.

11 And finally, "Before you drafted the  
12 statement" -- this is a question to Joan Kenney --  
13 "did you learn additional facts?" And she goes on  
14 to say, Yes. Judge Lopez told her she did not  
15 believe it was a kidnapping, did not believe that  
16 the screwdriver was used as a weapon. We've been  
17 over that to some extent.

18 And then when she is recalled the following  
19 day, that's repeated. She says that those are the  
20 Judge's exact words, insofar as she can remember.

21 Here the Judge denies that in front of you,  
22 denies that testimony.

23 Now, Your Honor, I believe strongly in the  
24 Judge's right to defend herself. And I'm sorry that

1 the Judge is in a position in which she has to do  
2 that. But Your Honor, defending oneself as a judge  
3 means also observing the principles of honesty that  
4 are inherent in this process. How can it be that a  
5 judge who cannot tell the truth in this courtroom  
6 before you can sit by as a witness takes an oath to  
7 tell the truth and monitor the testimony of that  
8 witness?

9           That is why all the courts of the United  
10 States which have considered this have a great deal  
11 of problem with this and inevitably say, If the  
12 Judge hasn't been candid in a proceeding, that is  
13 fundamentally disqualifying.

14           This is an example from Michigan, really  
15 just saying that lack of candor is fundamentally  
16 disqualifying to a judge. There's a similar  
17 California case and others, and this one talking  
18 specifically about deliberately false information to  
19 the Commission on Judicial Conduct.

20           So again, Your Honor, with a degree of  
21 sadness, I say to the Court, Unfortunately, you have  
22 to consider the candor of the Judge's testimony and  
23 you have to consider ultimately the consequences  
24 that flow from that lack of candor.

1 Thank you, Your Honor.  
2 HEARING OFFICER DAHER: Thank you. We have  
3 until the middle of March for any reply response.  
4 March 14 for reply responses.  
5 MR. WARE: May I confer?  
6 HEARING OFFICER DAHER: Sure. Go ahead.  
7 You want to confer with him?  
8 (Off the record)  
9 MR. WARE: Your Honor, at this time I'd  
10 like to make available to the Court and counsel the  
11 slides.  
12 HEARING OFFICER DAHER: Yes.  
13 MR. EGBERT: I can agree on the 21st.  
14 Apparently, they want to extend the date you gave us  
15 from the 14th to the 21st. That's fine.  
16 HEARING OFFICER DAHER: It's okay with me.  
17 That will be fine.  
18 MR. WARE: Secondly, Your Honor, I have  
19 available, as we have throughout the trial, copies  
20 of the slides for the Court and counsel.  
21 MR. EGBERT: Judge, the slides are for  
22 final argument and are not part of the record, so I  
23 have an objection that they be made a part of the  
24 record to this Court. They've had their display --

1 MR. WARE: I'm not asking they be marked as  
2 an exhibit, but just for identification. We have  
3 turned over the slides throughout the case. They're  
4 every bit as much available to you as the closing  
5 arguments, which I understand are going to be  
6 transcribed.

7 HEARING OFFICER DAHER: I'm going to accept  
8 it. It's going to be of help to the Court. I  
9 appreciate it. We have until the 21st, gentlemen.  
10 That will be fine.

11 Do you want to add anything?

12 MR. EGBERT: The only thing I want to add,  
13 frankly, is to say that they have supplied you  
14 half-transcripts, which I'll call them, as they've  
15 done in the past. I would just urge the Court to  
16 refer to the file, which has all of these  
17 transcripts. I'm not going to get up now and rehash  
18 it.

19 HEARING OFFICER DAHER: I will, indeed.  
20 (Whereupon, the hearing was  
21 adjourned at 3:51 p.m.)

22  
23  
24



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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 XV, is a true and  
accurate transcription of my stenographic notes  
taken on Friday, February 28, 2003.

---

Jane M. Williamson  
Registered Merit Reporter

- - - -

