

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

Complaint No. 2000-110, et seq.

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

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

Guillermo Garza, Esq., 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 Office of Richard M. Egbert (by Richard M.
Egbert, Esq.) 99 Summer Street, Boston, MA
02110, for the Honorable Maria I. Lopez.

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held at
Edward W. Brooke Courthouse
24 New Chardon Street
Boston, Massachusetts
Friday, November 15, 2002
12:05 p.m.

Carol H. Kusinitz
Registered Professional Reporter

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P R O C E E D I N G S

1
2 HEARING OFFICER DAHER: Mr. Egbert, do you
3 want to start it off?

4 MR. EGBERT: I do.

5 Your Honor, I think the first matter before
6 you is my motion to compel the deposition of Dave
7 Wedge.

8 HEARING OFFICER DAHER: Go ahead. I'll
9 hear it.

10 MR. EGBERT: Your Honor, it wasn't until
11 November 7th of 2002 that the Commission on Judicial
12 Conduct gave notice to the Defendant that it may
13 call David Wedge as a witness during its case in
14 chief, or at all. As you know from pleadings, we
15 then immediately filed seeking permission from the
16 Commission under the rules to depose Mr. Wedge. It
17 was denied in a manner that, quite frankly, I don't
18 understand, indicating that the discovery period was
19 ended, and Mr. Wedge's connection to this --

20 HEARING OFFICER DAHER: It would have to be
21 the ruling for acts not foreseeable; is that correct?

22 MR. EGBERT: Right. Mr. Wedge's connection
23 to this matter has been known for some time. His
24 name appeared on an article regarding Judge Lopez.

1 Well, his name appeared on a number of
2 articles as a person who contributed to various
3 articles, but what's of particular interest, during
4 the course of Judge Lopez's deposition with regard
5 to these matters, counsel for the Commission asked
6 Judge Lopez about a particular news article, and I
7 think it's the one they're referring to now, which
8 had a by line by Mr. Martinez. And the Commission's
9 counsel specifically asked Judge Lopez, "Did you
10 make the following statement to Mr. Martinez?" And
11 Judge Lopez indicated she did not.

12 They never asked her if she made the
13 statement to Mr. Wedge, and of course, she never --
14 she was never asked, nor was it answered, nor do we
15 know what Mr. Wedge may have to say in that regard.

16 We have no statements from Mr. Wedge. We
17 have no notes of interviews of Mr. Wedge. He was
18 never deposed, as far as we know. He was never
19 spoken to by the Commission, as far as we know, at
20 least by way of any information given to us. In
21 fairness, it seems to me that we ought to be
22 entitled to depose him to find out what he has to
23 say.

24 HEARING OFFICER DAHER: Well, this was

1 brought to my attention by your associate, Pat, and
2 then you and I discussed this. And I had suggested
3 to you that maybe Mr. Wedge should have counsel here
4 today, and it was your thoughts that, let's get a
5 ruling first, and then we can take it from there.

6 MR. EGBERT: It was their preference to
7 have Mr. Wedge on their witness list, so I assume
8 Mr. Wedge has not exhibited any objection to having
9 testified.

10 HEARING OFFICER DAHER: Mr. Ware.

11 MR. WARE: Your Honor, a couple of things.
12 First of all, there are a great many witnesses in
13 this case who have not been deposed. And so on the
14 issue of prejudice, if anything, there are 20 or
15 more witnesses on the defense list here about whom
16 the Commission had no knowledge whatsoever until
17 November 12th or 13th.

18 So on the scale of surprise here, this one
19 is way down that scale. Both sides are going to have
20 to live with some uncertainties here. We're now at
21 the point of trial.

22 With respect to Mr. Wedge in particular,
23 the fact is that the formal charges identified this
24 article. It would have taken no more than a phone

1 call to the newspaper or to Mr. Martinez to learn
2 that Mr. Wedge was in fact the reporter who spoke
3 personally -- says he spoke personally with Judge
4 Lopez.

5 Moreover, this was not a fleeting
6 conversation. This was a conversation, face to
7 face, which we're given to understand Mr. Wedge
8 introduced himself to Judge Lopez. We never did
9 depose Mr. Wedge. He is represented at this point
10 by counsel for the Boston Herald.

11 So all of this could have been learned, was
12 known. Counsel have been in this matter for a long
13 time. The rules, as the Court knows, provide that
14 the hearing was to have occurred within 60 days.
15 We're now six or seven months out. There's been
16 ample opportunity to deal with this issue.

17 MR. EGBERT: Judge, I don't understand the
18 answer, quite frankly. The Commission says --
19 counsel says that they have a number of witnesses
20 who they haven't deposed. They never sought to
21 depose anyone, quite frankly, nor did they ever file
22 asking me for a witness list or discovery.

23 The Commission had within the rules the
24 ability to send me a letter asking for discovery at

1 any time, and they never did, not once. So it's not
2 as if I'm springing anything on them. In fact, they
3 simply never asked for discovery in this case, and
4 that should be made a part of the record. Had they
5 asked for discovery, they would have gotten whatever
6 discovery they asked for under the rule.

7 Number two, it doesn't take a phone call.
8 Reporters don't talk to me, and reporters don't give
9 me information without some form of process. And
10 with the byline being Mr. Martinez, and with
11 counsel's questions being directed to whether or not
12 Judge Lopez ever made that statement to Mr.
13 Martinez, we felt quite secure, because Judge Lopez
14 informed me and counsel that she never met Mr.
15 Martinez.

16 So this statement attributed to her by Mr.
17 Martinez and asked if she delivered to Mr. Martinez
18 was fairly easy to deal with in this case, because
19 in fact Judge Lopez had never had any discussion
20 whatsoever with Mr. Martinez.

21 Now at the last minute they say, no, it was
22 Mr. Wedge who had this conversation. They never
23 asked Judge Lopez about it when she was deposed, and
24 therefore we're entitled to know.

1 MR. WARE: Your Honor, may I respond
2 briefly?

3 HEARING OFFICER DAHER: Please.

4 MR. WARE: Neither side asked for a witness
5 list until the last conference before the Court.
6 Obviously, if I had asked for a witness list three
7 months ago, counsel would have said what he said
8 last week: "We don't have it yet."

9 So it's not a question of our springing any
10 information on Judge Lopez's counsel at this
11 juncture. Moreover, Mr. Wedge's name is on the
12 article. It's the tag line on the article. So it
13 would not have taken in-depth inquiry to figure out
14 who made the quote. Defense counsel was in as good
15 a position as we were to learn anything about Mr.
16 Wedge.

17 The point is, at this juncture we're about
18 to start the trial. There are many witnesses in the
19 case that are going to go on this witness stand
20 without having been deposed, and there is no
21 prejudice of any moment to Judge Lopez here.

22 HEARING OFFICER DAHER: I'm going to take
23 this under advisement until about 4:30 this
24 afternoon.

1 MR. EGBERT: May I say one other thing for
2 your information?
3 HEARING OFFICER DAHER: Yes.
4 MR. EGBERT: I suspect any deposition of
5 Mr. Wedge will not delay these proceedings one iota,
6 based on our schedule. I can depose him Monday
7 afternoon.
8 HEARING OFFICER DAHER: Okay. I'll take it
9 under advisement. I'll have an answer for you by
10 4:30.
11 We have another one dealing with Ms.
12 Beaucage.
13 MR. EGBERT: That relates to Ms. Beaucage.
14 HEARING OFFICER DAHER: Is there any
15 opposition to that?
16 MR. WARE: Yes, Your Honor.
17 HEARING OFFICER DAHER: What's your
18 opposition?
19 MR. WARE: The opposition is, Your Honor,
20 that --
21 HEARING OFFICER DAHER: How will you be
22 prejudiced by it, Mr. Ware?
23 MR. WARE: Well, I can't say that would I
24 would be prejudiced by it. The circumstances are

1 these, Your Honor. This witness was deposed for
2 several hours. As the Court may know from the
3 formal charges, the only relevance of this witness
4 is that she allegedly received a phone call from the
5 Judge at eleven o'clock at night in November of
6 2000, asking what her name was and so forth.

7 So this is not a witness with substantive
8 information beyond that. She has already been
9 deposed for two hours, and the questions went well
10 beyond anything conceivably relevant about this
11 witness, Your Honor.

12 She's in her early 70s. When --

13 HEARING OFFICER DAHER: Mr. Egbert, an
14 offer of proof. If she were to testify, what would
15 you expect to elicit from her?

16 MR. EGBERT: The problem, Judge, is in Mr.
17 Ware's presentation to you -- and I'm frankly
18 saddened by the fact that whenever he makes a
19 presentation, it seems to be half a presentation,
20 because I had this conversation with him yesterday.

21 Ms. Beaucage is not being offered for the
22 fact that she received a phone call only. The
23 formal charges in this case indicate and allege that
24 as a result of that phone call, she felt

1 intimidated, pressured, scared, threatened and the
2 like.

3 Now, I had a conversation with Mr. Ware
4 yesterday where he made these same kinds of remarks:
5 "Well, it's only about her receiving the phone
6 call." I said, "If it's only about her receiving
7 the phone call, then I would stipulate that she
8 received the phone call. Judge Lopez admitted that
9 she made a phone call on that night."

10 The issue I want to depose --

11 HEARING OFFICER DAHER: The motion is
12 allowed. You can have that one.

13 Any other motions?

14 MR. WARE: Your Honor, with respect to the
15 Beaucage matter --

16 HEARING OFFICER DAHER: Yes.

17 MR. WARE: -- may there be a time limit,
18 such as an hour. That would be three hours --

19 HEARING OFFICER DAHER: I'm not going to
20 set any parameters on it, Mr. Ware. The stakes are
21 too high in this case.

22 MR. EGBERT: Judge, do you want to set a
23 date so that it can be a court-ordered date so I
24 don't have to go round and round with Ms. Beaucage?

1 HEARING OFFICER DAHER: Why don't you pick
2 a date that is conducive to your schedule and
3 conducive to Mr. Ware's schedule and get back to me.
4 It will obviously have to be done some afternoon.
5 MR. EGBERT: I'll report back to you.
6 HEARING OFFICER DAHER: What other motions
7 do we have, gentlemen?
8 MR. WARE: Your Honor, there was --
9 HEARING OFFICER DAHER: The one with regard
10 to the Leahy matter?
11 MR. WARE: Yes, Your Honor. The
12 transcript, I have -- we've agreed on a proposed
13 order.
14 HEARING OFFICER DAHER: Is that order okay,
15 Mr. Egbert? With the limitations placed in that
16 order, is that satisfactory?
17 MR. EGBERT: It is, Your Honor. I think --
18 there are some wordage changes. I hope you have
19 them.
20 HEARING OFFICER DAHER: Okay. It's
21 approved.
22 What else do we have, Mr. Ware? Anything
23 else?
24 MR. WARE: Your Honor, to the extent the

1 Court makes a ruling this afternoon that there will
2 be further depositions in this case, I just want to
3 advise you that I will then move to depose other
4 witnesses about whom we've just learned, and --
5 HEARING OFFICER DAHER: Such as?
6 MR. WARE: Well, Jerry Hart, for one,
7 perhaps some of the judges, Joseph Carter, a number
8 of individuals on the list that we received only
9 this week. So it seems to me this has to be
10 reciprocal.
11 MR. EGBERT: Well, Judge, when they file
12 for that, we should argue it obviously, but they
13 never asked for discovery in this case. They simply
14 never asked for discovery under the rule.
15 MR. WARE: That doesn't preclude me from
16 asking for discovery with respect to witnesses about
17 whom we had no knowledge.
18 HEARING OFFICER DAHER: I'll take it under
19 advisement. What else do we have? Anything else?
20 MR. WARE: Your Honor, one --
21 HEARING OFFICER DAHER: Again, for all
22 parties concerned, I know that Judge Lopez waived
23 any rights of privacy. So upon conclusion of this
24 meeting today, the press is going to be given a list

1 of witnesses.
2 Okay. What else do we have?
3 MR. WARE: Your Honor, we do not have a
4 list of exhibits from the defense. We provided a
5 list of exhibits, and I thought that the import of
6 the Court's order last time at our conference was
7 that there would be a mutual exchange.
8 HEARING OFFICER DAHER: Also a list of
9 expert witnesses. Do you have a list of expert
10 witnesses?
11 MR. WARE: Yes, Your Honor.
12 HEARING OFFICER DAHER: With their resumes,
13 their curriculum vitae?
14 MR. WARE: We do not have that at this
15 time. It may be that there are no expert witnesses,
16 that would explain this, but we haven't been told
17 that.
18 HEARING OFFICER DAHER: That would be my
19 reading of it.
20 MR. EGBERT: Obviously I didn't file any
21 CVs. That was the week we were --
22 HEARING OFFICER DAHER: Okay. That was
23 impression of it.
24 MR. WARE: That's fine, Your Honor. But we

1 would like an exhibit list promptly.

2 HEARING OFFICER DAHER: Well, the order
3 read that, obviously, as soon as possible, all
4 documents for identification would be marked at
5 least one half hour before trial.

6 Do you have a list of exhibits that you
7 could give brother counsel right now, Mr. Egbert?

8 MR. EGBERT: Well, Your Honor, I don't
9 intend -- I don't intend, unless ordered differently
10 by you, I don't intend to give counsel items which I
11 intend to use in cross-examination, because I'm
12 going to wait to see the examination of the
13 witnesses and see whether or not their testimony
14 varies from certain matters that I have in my
15 possession. Those matters I do not intend to
16 educate the witnesses with regard to.

17 HEARING OFFICER DAHER: Mr. Ware.

18 MR. WARE: Your Honor, surely there is a
19 baseline group of documents or exhibits which
20 defense intends to offer at this juncture. The
21 parameters of this case are well known. They have
22 been spelled out for over a year --

23 HEARING OFFICER DAHER: Mr. Egbert, are
24 there documents that will not be used for cross-

1 examination solely, that, as Mr. Ware puts it, are
2 baseline documents that there should be no
3 objections to?

4 MR. EGBERT: To the extent there are, Your
5 Honor, I'll identify them for counsel.

6 HEARING OFFICER DAHER: Okay. I have
7 another motion. You wrote me a letter to indicate
8 you wanted to the Court to vacate that order.

9 MR. WARE: Yes, Your Honor.

10 HEARING OFFICER DAHER: I'm taking that
11 under advisement. I'll get back to you on it.

12 What else do we have?

13 MR. EGBERT: Judge, I'm --

14 MR. WARE: Excuse me. Your Honor, with
15 respect to vacating that order, I just want to make
16 clear that my basis for that is my mistaken belief
17 that I had not turned over the information. And
18 having discovered that I did turn it over --

19 HEARING OFFICER DAHER: Well, wait a
20 minute, Mr. Ware. You turned it over to Mr. Mone,
21 but when Mr. Egbert made the request, it wasn't
22 turned over to him. That tape wasn't turned over to
23 him.

24 MR. WARE: No, Your Honor.

1 HEARING OFFICER DAHER: That's the import
2 of the letter.

3 MR. WARE: No, Your Honor.

4 HEARING OFFICER DAHER: I'm sorry, go
5 ahead.

6 MR. WARE: The way this worked was, there
7 was successor counsel, but everything that we had
8 turned over to Mr. Mone was given to Mr. Egbert.
9 There was no separate request from Mr. Egbert to
10 receive all the same discovery from us.

11 HEARING OFFICER DAHER: Did you file any
12 discovery requests, Mr. Egbert, or did you rely on
13 Mr. Mone's discovery?

14 MR. EGBERT: My statement to counsel was
15 that I asked for everything in the file --

16 HEARING OFFICER DAHER: Right.

17 MR. EGBERT: -- when I came into the case.
18 And there were matters that weren't given to Mr.
19 Mone which were provided to me subsequently. That
20 was not a motion.

21 HEARING OFFICER DAHER: Okay.

22 MR. WARE: But, Your Honor --

23 MR. EGBERT: Quite frankly, you know, if
24 you examined the transcript of that conference

1 before you, Your Honor, I think you will find it
2 pretty clear my memory is --

3 HEARING OFFICER DAHER: You mean in the
4 prefile transcript?

5 MR. EGBERT: Yes.

6 HEARING OFFICER DAHER: You haven't sent it
7 to me yet.

8 MR. EGBERT: I haven't gotten it yet. I
9 had assumed that the Court had gotten them in that
10 regard. Assuming is the wrong thing to do.

11 But I think -- my memory is quite clear
12 that Mr. Ware made the following statements: "One,
13 I don't know if I have it. Two, I don't know if
14 I've seen it" --

15 HEARING OFFICER DAHER: I have a good
16 memory, Mr. Egbert. I know exactly what he said.

17 Anything else?

18 MR. WARE: Yes, Your Honor. I mean, as I
19 explained to the Court, but I will reiterate, I had
20 no idea this issue was going to come up. And it
21 wasn't until subsequent to the conference that we
22 went back, we looked at the production that had been
23 made to counsel for Judge Lopez. The obligation
24 here is to make the information available to counsel

1 for Judge Lopez.
2 HEARING OFFICER DAHER: Let me tell you
3 right now, subsequent to the pretrial conference --
4 is that correct?
5 MR. WARE: Yes.
6 HEARING OFFICER DAHER: But according to
7 what you communicated to me, as you were walking up,
8 someone told you that there was a tape, and that
9 refreshed your recollection. That was my memory.
10 MR. WARE: Yes, Your Honor.
11 HEARING OFFICER DAHER: But was it prior to
12 or subsequent to the pretrial conference?
13 MR. WARE: I raised it at the conference
14 before you because of the discussion on the way
15 over.
16 HEARING OFFICER DAHER: Okay.
17 MR. WARE: I did not have an opportunity to
18 go back and look at correspondence until
19 subsequently.
20 HEARING OFFICER DAHER: Okay.
21 MR. WARE: It was only in looking at the
22 correspondence and checking what we had already
23 produced to defense counsel that we realized we had
24 offered to produce it.

1 HEARING OFFICER DAHER: No problem. I'll
2 take it under advisement.
3 What else do we have, gentlemen?
4 MR. EGBERT: Judge, I had faxed over this
5 morning a preliminary motion in limine. I don't
6 know if the Court got it.
7 HEARING OFFICER DAHER: I haven't seen it
8 yet.
9 MR. EGBERT: Did you get it?
10 MR. WARE: I have it.
11 HEARING OFFICER DAHER: I haven't seen it.
12 Do you have a copy for me?
13 (Document handed to the Court
14 by Mr. Egbert)
15 HEARING OFFICER DAHER: Okay. I'll hear
16 it. Go ahead.
17 MR. WARE: Excuse me, Your Honor, I would
18 like an opportunity to respond to the motion we just
19 got in the last hour.
20 HEARING OFFICER DAHER: Do you want time to
21 review it?
22 MR. WARE: I want time to file an
23 opposition to it.
24 HEARING OFFICER DAHER: Sure.

1 Go ahead.
2 MR. EGBERT: You want me to argue it now?
3 HEARING OFFICER DAHER: Any objection if he
4 argues it now?
5 MR. WARE: No, I don't object to arguing it
6 at the moment, but --
7 HEARING OFFICER DAHER: Your response will
8 be filed shortly.
9 MR. WARE: -- I may well ask the Court to
10 argue additional points after we get a chance to
11 review it and make some further legal argument, Your
12 Honor.
13 HEARING OFFICER DAHER: Mr. Egbert, go
14 ahead. I would like to hear your comments.
15 MR. EGBERT: Judge, I apologize, but I've
16 given you my copy. I just gave you my copy.
17 MR. WARE: Here.
18 MR. EGBERT: Judge, I'm fine.
19 HEARING OFFICER DAHER: We can get a copy.
20 (Pause)
21 HEARING OFFICER DAHER: Go ahead, Mr.
22 Egbert.
23 MR. EGBERT: Thank you. Your Honor,
24 pursuant to Commission rule, Judge Lopez and her

1 attorney, Mr. Mone, appeared before the Commission
2 on April 18th, 2002, before the issuance of formal
3 charges in this case, and attempted a disposition of
4 the matter.

5 Mr. Mone's opening words to the
6 Commissioner were, "I want to thank the members of
7 the Commission very much for seeing Judge Lopez here
8 this afternoon. I would like to talk to you about a
9 disposition in the case, and I would like to talk to
10 you about why I believe the public disposition
11 without sanctions," and then he goes on.

12 And then he goes on to give his argument as
13 to why a particular disposition would be
14 appropriate, even though, as he acknowledges in the
15 next paragraph, that he has defenses to many of
16 them; in essence, an offer to settle the matter in a
17 particular way.

18 Judge Lopez then gave a short statement
19 adopting Mr. Mone's statements and indicating that a
20 particular settlement would be appropriate in her
21 mind also.

22 The Commission rejected that by the fact
23 that they brought formal charges.

24 It seems to me that that is classic

1 settlement discussions, and it is classic offer in
2 compromise to compromise a piece of litigation --
3 HEARING OFFICER DAHER: I'll hear Mr. Ware
4 on that point. An offer of compromise, negotiations
5 for settlement.

6 MR. WARE: Yes, Your Honor, as I said
7 earlier, I would like to file memorandum in
8 opposition. But I think the thrust of the argument
9 I would make to Your Honor is, this is anything but
10 an offer in compromise.

11 The fact that Mr. Mone says, "I want to
12 talk to you about a disposition in this case," does
13 not change the statutory character of the right of
14 the Judge to appear on that occasion before the
15 Commission on Judicial Conduct.

16 It is what it is, and what Mr. Mone wished
17 it to be doesn't change the character of that. The
18 fact is, were the Court to look at this in camera,
19 it would see that there was no exchange at all about
20 a proposed disposition. There was no -- I don't
21 believe --

22 HEARING OFFICER DAHER: At that particular
23 time, did the -- did the Commission have something
24 in mind that would act as a final resolution of the

1 matter?

2 MR. WARE: No, You Honor.

3 HEARING OFFICER DAHER: There were no
4 negotiations whatsoever?

5 MR. WARE: No, Your Honor.

6 HEARING OFFICER DAHER: Now, did the
7 Commission understand that when Mr. Mone was there,
8 that he was there for the sole purpose -- for the
9 purpose of trying to negotiate --

10 MR. WARE: Well, he absolutely was not
11 there for that purpose.

12 HEARING OFFICER DAHER: What was he there
13 for?

14 MR. WARE: He was there pursuant to the
15 right provided by the rules as follows. I'm looking
16 at Section 5 of the statute that is Chapter 211C,
17 Subparagraph 9. Quote, "If the judge requests a
18 personal appearance before the Commission" --

19 HEARING OFFICER DAHER: Right.

20 MR. WARE: -- "he may be accompanied by
21 counsel, his statement and that of his counsel shall
22 be recorded, and the Commission shall not issue
23 formal charges until after" --

24 HEARING OFFICER DAHER: Mr. Ware, at any

1 time prior or subsequent to Mr. Mone's presence at
2 the Commission, was there any thought on the part
3 of the Judicial Conduct Commission to resolving it?
4 Did they have anything in mind that would resolve
5 the matter prior or subsequent thereto?

6 MR. WARE: Your Honor, as the Court might
7 expect, counsel and I had then and have had since
8 conversations about a possible resolution. They
9 were entirely divorced from the appearance before
10 the Commission.

11 The appearance before the Commission is a
12 statutory right. The Judge had the option of doing
13 it or not. The statute provides that it must be
14 recorded, implying in and of itself that that
15 statement can be used. It is plainly an admission
16 of the Judge, and it is plainly something which can
17 be taken into account.

18 HEARING OFFICER DAHER: Okay. Go ahead.
19 Why don't you wrap it up, Mr. Egbert.

20 MR. EGBERT: Judge, once again, Mr. Ware
21 says that there were absolutely no negotiations.
22 Mr. Mone is prepared to come in here and testify
23 under oath that he and Mr. Ware were in a number of
24 discussions that one would classify as discussions

1 of negotiations between counsel, both before the
2 appearance, during the appearance and after the
3 appearance. And so for Mr. Ware to indicate the
4 opposite, once again, is just simply not in
5 conformance with the fact.

6 MR. WARE: You know, I have not indicated
7 the opposite.

8 MR. EGBERT: You said to the Judge there
9 were absolutely no negotiations.

10 MR. WARE: No. You missed --

11 MR. EGBERT: Well, there's a transcript.

12 HEARING OFFICER DAHER: Gentlemen. Let him
13 finish.

14 Go ahead.

15 MR. EGBERT: The right of the Judge to
16 appear by statute doesn't change the character of
17 what that appearance was about.

18 Mr. Mone was clearly there in an attempt to
19 resolve this matter by some disposition. The
20 Commission was listening to them in that regard, and
21 there were discussions had amongst counsel in that
22 regard. And so I think -- I'm anxious to see Mr.
23 Ware's response. I simply would like to respond to
24 it.

1 HEARING OFFICER DAHER: Well, I think his
2 response is going to be it was a voluntary
3 declaration, that they weren't solicited by the
4 Commission, and --

5 MR. EGBERT: Well, maybe the Court should
6 take a brief piece of evidence in that regard before
7 ruling, and I will have Mr. Mone come in and testify
8 as to his conversations with Mr. Ware before his
9 appearance --

10 HEARING OFFICER DAHER: When can I get a
11 memo on that, Mr. Ware?

12 MR. WARE: Your Honor, I said earlier,
13 contrary to what my distinguished colleague has
14 represented, that of course Mr. Mone and I talked
15 prior to that occasion, after that occasion, and I
16 have had conversations with Mr. Egbert about
17 possible resolutions, none of which changes the
18 character of the Judge's appearance before the
19 Commission, which is statutorily provided for.

20 Now, what she had in her mind or her
21 counsel's mind is up to them, but it cannot change
22 the evidentiary quality of that appearance.

23 HEARING OFFICER DAHER: Okay. Are you
24 going to have something for me by Monday morning?

1 MR. WARE: Yes.
2 HEARING OFFICER DAHER: What else do we
3 have? I'll take it under advisement. I'll await
4 that.
5 Next issue. Anything else, gentlemen?
6 MR. EGBERT: If I could have a moment.
7 HEARING OFFICER DAHER: Take your time.
8 MR. WARE: While Mr. Egbert is pondering,
9 Your Honor, there is the issue of transcripts.
10 HEARING OFFICER DAHER: Right.
11 MR. WARE: I don't know whether the Court
12 has resolved that or not. I know you wanted daily
13 copy. I know the Commission did not have funding
14 for that. I don't know whether you have had any
15 communication --
16 HEARING OFFICER DAHER: I talked to Chief
17 Justice Marshall, and she said, "Fine." She
18 recognized the importance of having the transcript.
19 I think that was communicated to Ms. Brunetti.
20 MS. BRUNETTI: Yes.
21 MR. WARE: That was my understanding, Your
22 Honor. So I'm assuming those logistics are in
23 place, and we don't have to do anything in that
24 regard.

1 HEARING OFFICER DAHER: That is the
2 understanding.

3 Mr. Egbert, what else do you have?

4 MR. EGBERT: Judge, frankly, to address an
5 issue from your court officer, I'm going to raise
6 the issue of press so we're all on the same page as
7 to what we're doing, if you think that's appropriate
8 now.

9 HEARING OFFICER DAHER: I would be
10 delighted to hear you.

11 MR. EGBERT: It is not a matter of being
12 heard. It is a matter of coordinating with the
13 Court. It would be my preference -- obviously, I
14 understand that they have asked to have a pool
15 camera.

16 HEARING OFFICER DAHER: That is fine.

17 MR. EGBERT: Which is fine.

18 HEARING OFFICER DAHER: I think that's the
19 proper way to go, one camera, a pool.

20 MR. EGBERT: Which is fine with me. On the
21 issue of still cameras, I consider them a disruption
22 for noisely snapping away when they already have a
23 video going. So I raise that so we all know what's
24 going on and where we're going.

1 HEARING OFFICER DAHER: Mr. Ware. I can
2 make a ruling on that. No big deal.

3 MR. WARE: Your Honor, I leave that to the
4 Court's discretion. I think Mr. Egbert has a point.
5 I think when the Court is in session, it may well be
6 disruptive to have them snapping away. When the
7 Court is not in session, that may be another matter.

8 HEARING OFFICER DAHER: Okay.

9 MR. EGBERT: Let's see if we can address
10 that one. When the Court is not in session, I would
11 ask the Court for an order that when the parties are
12 leaving this courthouse, that photographers, news
13 cameramen, the media basically, be prohibited from
14 using this courtroom or the corridors to take any
15 photographs or videotapes. It is a disruption. It
16 is a --

17 HEARING OFFICER DAHER: When the Court is
18 not in session --

19 MR. EGBERT: Right.

20 HEARING OFFICER DAHER: -- and as they're
21 exiting and entering the Court, you don't want --

22 MR. EGBERT: We don't want to be chased in
23 this courtroom and courthouse by photographers. I
24 don't think they have the right to use this court

1 facility in that way. They can go outside, they can
2 take all the pictures they want of people coming and
3 leaving.

4 But it is both, I think, unfortunately
5 disrespectful to a sitting judge to be chasing her
6 around in this hallway with cameras, and I think
7 they are uncontrollable from past experience, in my
8 past experience with them. The corridors should not
9 be some kind of a war zone with cameras.

10 And so I would ask the Court, as was done,
11 most recently done in Federal Court in Rhode Island,
12 and that is, when the cameras take place -- whatever
13 takes place in the courtroom, in a ceremonious
14 fashion, the Court is closed down, the cameras are
15 closed down. And if anybody wants to set up
16 outside, it is their prerogative, outside the
17 premises. It is their prerogative to do that, and
18 we have no objection to that.

19 I just have an objection to being, quite
20 frankly, inundated. And part of the problem is,
21 Judge, that -- I don't know if this court has any
22 place for us in terms of conference rooms so that,
23 on breaks or whatever, we can have a place --

24 HEARING OFFICER DAHER: You have.

1 Absolutely. We do have quarters in this very modern
2 building. We're all set.
3 MR. EGBERT: Great.
4 HEARING OFFICER DAHER: Anything else on
5 the issue of cameras?
6 Mr. Ware, your turn. Anything else?
7 MR. EGBERT: Judge, one last question. You
8 were -- I believe the last time it was 9:00 or 9:30.
9 Have you --
10 HEARING OFFICER DAHER: Make it easy on
11 yourself. I'm here at 7:00.
12 MR. EGBERT: 9:30 is great for us, if
13 that's good for you.
14 HEARING OFFICER DAHER: That's ideal for
15 me. Mr. Ware, satisfactory?
16 MR. WARE: Yes, Your Honor.
17 HEARING OFFICER DAHER: Okay.
18 Mr. Ware, what else do you have?
19 MR. WARE: Just one further logistical
20 issue, Your Honor. At least for certain portions of
21 the case, we would like to have monitors so that we
22 can use computer disks, which we're prepared to have
23 set up this afternoon. What I mean by that is,
24 there would be a monitor on the Court's bench so you

1 can see anything.
2 HEARING OFFICER DAHER: No problem.
3 MR. WARE: There would be a monitor --
4 HEARING OFFICER DAHER: Can you take care
5 of that? Tell him what you need.
6 MR. WARE: It has all been arranged, Your
7 Honor.
8 COURT OFFICER JOYCE: They will be here
9 this afternoon to set it up.
10 MR. WARE: I just want to make sure you're
11 okay with that.
12 HEARING OFFICER DAHER: Absolutely. No
13 problem. Anything else?
14 MR. EGBERT: We're all set.
15 HEARING OFFICER DAHER: Is that it?
16 MR. WEBBER: Your Honor, if I may --
17 HEARING OFFICER DAHER: Who are you?
18 MR. WEBBER: I'm David Webber from the
19 Boston Herald. If you're considering excluding
20 still cameras from the courtroom, I would ask that
21 you allow an attorney for the Boston Herald to maybe
22 submit some papers to you before you make that
23 decision.
24 HEARING OFFICER DAHER: I haven't ruled on

1 it yet.

2 MR. WEBBER: Thank you.

3 HEARING OFFICER DAHER: That's it. You
4 should hear from me between 4:00 and 4:30. It will
5 take me some time to go through the issue of the
6 deposing of Mr. Wedge. I think by four o'clock I
7 will have an answer, 4:30 at the latest.

8 MR. EGBERT: Thank you, Your Honor.

9 (Whereupon the hearing was
10 adjourned at 12:35 p.m.)

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C E R T I F I C A T E

I, Carol H. Kusinitz, Registered Professional Reporter, do hereby certify that the foregoing transcript, Volume I, is a true and accurate transcription of my stenographic notes taken on November 15, 2002.

Carol H. Kusinitz
Registered Professional Reporter

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