

Baker Hostetler

FEB 17 2006

February 16, 2006

By Federal Express

Executive Director
Commission on Judicial Conduct
11 Beacon Street
Suite 525
Boston, MA 02108-3006

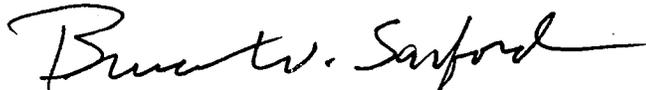
Re: Complaint against Judge Ernest B. Murphy

Dear Sir or Madam:

On behalf of the Boston Herald, we enclose a complaint to the Commission on Judicial Conduct regarding Judge Ernest B. Murphy, with attachments.

Please contact me if the Commission has any questions regarding the complaint or its attachments. Thank you for your time and attention to this matter.

Yours very truly,



Bruce W. Sanford

Enclosure

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 11 BEACON STREET SUITE 525
 BOSTON, MASSACHUSETTS 02108-3006
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FEB 17 2006

COMPLAINT FORM

CJC Complaint No. _____

This form is designed to provide the Commission with the information to screen your complaint and to begin an investigation of your allegations. Please read the accompanying materials on the Commission's function and procedures before filling out this form. ONLY ONE JUDGE MAY BE COMPLAINED OF ON EACH FORM.

PLEASE TYPE OR PRINT CLEARLY ALL INFORMATION

Your name The Boston Herald

Address One Herald Square

Boston, MA Zip Code 02106

Daytime telephone (617) 426-3000

Name of judge Ernest B. Murphy

Court Superior Court

Case name Murphy v. Boston Herald, Inc. et al.

Docket number Civil Action No. 02-2424B

Attorneys involved Howard Cooper of Todd & Weld represents Judge Murphy

Date(s) of misconduct February 20, 2005 to the present

Has an appeal been filed? Yes

A summary of the general nature of your complaint:

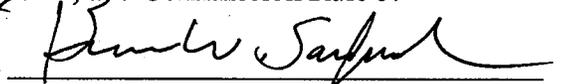
The complaint addresses Judge Ernest B. Murphy's conduct as a private litigant against the Boston Herald. His attempt to deny the right of counsel to the Herald, to demand a premium over a court judgment, and to force a conclusion to his lawsuit prior to any appeal, implicates several Canons of the Code of Judicial Conduct, including Canon 1, Canon 2, Canon 2(A), and Canon 2(B), the latter of which states that a judge "shall not lend the prestige of judicial office to advance the private interests of the judge or others" and whose Commentary states that "a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family."

Specific Facts:

Please describe exactly what the judge did that was misconduct, and on what date(s). YOUR COMPLAINT WILL BE SCREENED ON THE BASIS OF THIS FORM ONLY. DO NOT RELY UPON ATTACHMENTS TO MAKE YOUR ALLEGATIONS. (You may attach copies of any documents which support your allegations, for the purposes of the investigation.)

Please see attached Statement of Specific Facts.

I understand that this complaint and any other communication to or from the Commission on Judicial Conduct remain confidential to the extent required by MGL chapter 211C, section 6, and Commission Rule 5.

Signed 

Date 2-16-06

Please mail completed form to :

Executive Director
Commission on Judicial Conduct
11 Beacon Street, Suite 525
Boston, MA 02108-3006

Complaint Against Judge Ernest B. Murphy
Statement of Specific Facts
Submitted by the Boston Herald

In February 2002, the Boston Herald (the "Herald") published a series of articles concerning Superior Court Judge Ernest B. Murphy. The articles quoted a statement provided to the newspaper by prosecutors in New Bedford that Judge Murphy said of a teenage rape victim, "She can't go through life as a victim. She's 14. She got raped. Tell her to get over it." Judge Murphy sued the Herald for libel in Superior Court in Suffolk County in June 2002. The case was tried in January and February 2005. At trial, Judge Murphy testified that he did not make this statement, while prosecutors testified that he had made a statement substantially similar to the report in the newspaper. On February 18, 2005, the jury awarded Judge Murphy \$2.09 million in damages. The Herald filed a notice of appeal on November 11, 2005.

Two days after the jury verdict, Judge Murphy wrote Patrick Purcell, publisher of the Herald, a handwritten letter on official Superior Court stationery. See Ex. A. In the letter, dated February 20, Judge Murphy instructs Mr. Purcell to meet him at the Union Club in Boston on March 7 to end the case. He writes, "You will bring to that meeting a cashier's check, payable to me, in the sum of \$3,260,000. No check, no meeting. You will give me that check and I shall put it in my pocket." Id. Judge Murphy further writes, "[I] shall explain to you why it is in your distinct business interest to rise from the table, shake my hand, and let me walk away with that check." Id. He tells Mr. Purcell that he does not have "the slightest apprehension of failure of [his] ability" to make Mr. Purcell "concur in that assessment." Id.

The \$3.26 million payment that Judge Murphy demands in the February 20 letter represented a premium over the jury verdict, including all interest. At the time, even with all prejudgment interest added, the jury verdict was approximately \$2.7 million, as noted by Judge Murphy's counsel in a Boston Globe article published on February 19, 2005. See Ex. B.

Judge Murphy did not send a copy of his letter to the Herald's counsel at Brown, Rudnick. In fact, he explicitly threatens Mr. Purcell not to inform the Herald's lawyers of his demand for a personal meeting and a \$3.26 million cashier's check. He writes, "[U]nder NO circumstances should you involve Brown, Rudnick. Or notify that firm that such a meeting is to take place." See Ex. A. Judge Murphy indicates, however, that he would be bringing his lawyer to the meeting. At the end of the letter, Judge Murphy warns, "It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question. In fact, a BIG mistake. Please do not make that mistake." Id.

Mr. Purcell was appalled by the February 20 letter and perceived it to be an effort to pressure the Herald into abandoning an appeal of the judgment. Judge Murphy tells Mr. Purcell that he wants to "exit this matter NOW" at his "maximum advantage." Id. He boasts that "since every single thing I told you about what was going to happen in this case thus far, has happened, maybe, just maybe, I have some credibility with you at this point." Id. Mr. Purcell did not respond to the letter. Instead, approximately two weeks later, on March 11, the Herald filed a Motion for Judgment Notwithstanding the Verdict Or, In the Alternative, a New Trial.

One week later, on March 18, Judge Murphy wrote Mr. Purcell again. Judge Murphy alluded to the Herald's "decision-making" and stated, "[Y]ou have a ZERO chance of reversing my jury verdict on appeal. Anyone who is counseling you to the contrary . . . is WRONG. Not 5% . . . ZERO." See Ex. C. Just as he had written in the February 20 letter that he had "warned" Mr. Purcell against "playing 'the Team from Chicago' in this particular Super Bowl," see Ex. A., Judge Murphy now promised legal futility for the Herald's appeal, taunting Mr. Purcell that "[y]ou . . . want to pay me \$331,056/yr for the next two or three years while you spend another 500 large tilting at windmills in the appellate courts . . . be my guest." See Ex. C.

The Herald views the two letters as an attempt by Judge Murphy to leverage the prestige and authority of his status as a Massachusetts judge to gain undue advantage in his lawsuit against the newspaper and to force Mr. Purcell to accept his terms to end the case. His threatening statements on Superior Court stationery suggest an intent to interfere with the Herald's constitutional right to an appeal and right to counsel. He has intimated that he, as a sitting judge, has a special advantage and influence in the court system. On the basis of the February 20 and March 18 letters, as well as additional conduct detailed below, the Herald submits this complaint pursuant to Mass. Gen. Laws ch. 211C § 5.

Nothing in the background of the case explains or accounts for the angry and threatening tone in the letters. On two occasions prior to trial, Judge Murphy had sought to meet with Mr. Purcell. Each time, he made his request through his counsel. The two men met at Mr. Purcell's office in brief sessions in which Judge Murphy did most of the talking. He told Mr. Purcell that the Herald would not prevail in the lawsuit and that the case was going to take down the newspaper. Mr. Purcell let Judge Murphy air his grievances and said little in either meeting other than to emphasize that the newspaper believed that the reporting, which grew out of the conflict between local prosecutors and Judge Murphy over Judge Murphy's sentencing decisions, was substantially accurate.

Judge Murphy has publicly defended his correspondence to Mr. Purcell as a continuation of what he calls "settlement communications." The letters speak for themselves. They do not remotely resemble settlement communications. They consist of demands, not negotiating points. In fact, Judge Murphy insists on a premium over the judgment and asserts, "I will NEVER, that is as in NEVER, shave a dime from what you owe me." See Ex. C. Such statements represent an ultimatum from a powerful public official, not an invitation to talk. The two brief meetings

between Judge Murphy and Mr. Purcell might have served as a prelude to settlement discussions, but never grew into active settlement talks. After these sessions, there was no agreement between the two men for ongoing direct contacts without the authorization of counsel.

The Herald urges the Commission to consider Judge Murphy's conduct in light of the unique, constitutionally-mandated protections that govern appeals of libel verdicts. Libel defendants are entitled to a searching de novo review of the entire record on appeal to ensure that a public-official plaintiff has met the high, constitutionally-required burden that a provably-false statement of fact was published with clear and convincing evidence of actual malice. See Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 510-11 (1984) (requiring de novo review of actual malice findings on appeal because of "a deeply held conviction that judges . . . must exercise such review in order to preserve the precious liberties established and ordained by the Constitution"). Because of this requirement, more than two-thirds of jury verdicts for public officials and public figures are overturned when appealed. See Media Law Res. Ctr. Bulletin, Issue 1, 2005 Report on Trials and Damages (Feb. 2005).

As with the February 20 letter, Mr. Purcell did not respond to the March 18 letter. However, Judge Murphy's attempts to bully the Herald into giving up its right to an appeal continued throughout 2005. Beginning in March, counsel for Judge Murphy sent a series of harassing letters to the newspaper's insurance carrier demanding immediate payment of the judgment and threatening legal action in the Massachusetts courts against the carrier if an appeal was pursued. In one letter, dated March 23 and copied to Judge Murphy, counsel for Judge Murphy tries to capitalize on Judge Murphy's judicial status, writing, "My client, as you know, is a sitting Superior Court judge. I would think that you would be interested in what he has to say." See Ex. D (emphasis added).

Likewise, in November 2005, Judge Murphy filed a baseless Motion for Post-Judgment Security seeking injunctions against the Herald's use of its corporate assets which, if granted, would have crippled the Herald's business. On December 20, the Herald sought relief from the judgment based upon Judge Murphy's continuing conduct to force the newspaper to relinquish its appellate rights by filing before Judge Charles R. Johnson a cross-motion under Mass R. Civ. P. 60(b). The Herald cited Judge Murphy's two letters to Mr. Purcell, the correspondence to the insurance carrier, and the needless motion for injunctions against the Herald's assets. The Court ruled that the Rule 60(b) cross-motion was "appropriately before the Court, but notwithstanding the possible negative inferences that some may draw" from the letters to Mr. Purcell, see Ex. E, the Court denied the relief as well as Judge Murphy's motion for injunctions. The Herald appealed the denial of the Rule 60(b) cross-motion on January 25, 2006.

Herald counsel Bruce W. Sanford of Baker & Hostetler LLP (202-861-1626) can provide any further information requested by the Commission.

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109

A

ERNEST B. MURPHY
ASSOCIATE JUSTICE

2/20/05

Dear Pat,

I trust you continue (as do I) to honor the privacy of our personal communications in the nature of what is generically referred to as "settlement discussions" in my business.

As you no doubt clearly recollect, de Mike Ditka here warned you against playing "the Team from Chicago" in this particular Super Bowl.

Well, you know, I don't walk around telling that story. I just think it's sad I had to prove it to you. Took a lot out of me.

The reason I write now is that I think you a smart and honorable guy. And since every single thing I told you about what was going to happen in this case thus far, has happened, maybe, just maybe, I have some credibility with you at this point.

So, here's the deal. I'm heading off to St. Maarten, and I'll be back in town, for business purposes, on Monday, March 7. I will be checking my e-mail [bigemum@aol.com] while I'm down there.

I'd like to meet you at the Union Club on Monday, March 7. (No magic to the date.) (But it needs to be early in that week.)

Here's what will be the price of that meeting. You will have one person with you at the meeting. I suggest, but do not insist, that such a person be a highly honorable and sophisticated lawyer from your insurer.

Under NO circumstances should you involve Brown, Rudnick

in this meeting. On notify that firm that such a meeting is to take place.

I will have my attorney (either Owen Todd or Harold Cooper) at the meeting. The meeting will be AB-30-WFE-LY confidential and "off the record," between four honorable men.

You will bring to that meeting a cashier's check, payable to me, in the sum of \$3,260,000. No check, no meeting.

You will give me that check and I shall put it in my pocket.

I will say to you, if, at the end of this meeting, you can stand before the God of your understanding, and as a man of honor, ask for the return of that check, I'll flip it back to you.

And then, I shall explain to you why it is in your distinct business interest to rise from the table, shake my hand, and let me walk away with that check.

Because it is, Mr. Purcell, in your distinct business interests to do so, in my considered opinion; and I have not the slightest apprehension of failure of my ability to make you (and your maner) concur in that assessment.

Sincerely,
Ernie Murphy

COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
BOSTON, MA 02109

ERNEST B. MURPHY
ASSOCIATE JUSTICE

2/19/05

P.S. If you conclude you have no interest in the meeting I propose, I ask that you throw the letter away and pretend it never was received. I am NOT copying this letter to anyone.

I consider it private settlement discussion between principals to a transaction, and I assure you it provides you with no tactical or strategic advantage in the case.

Else, Mr. Purcell, you probably recognize by now, it would never have been written.

I am simply trying to exit this matter NOW, to my maximum advantage, and what I believe, Pat, is yours as well.

It would be a mistake, Pat, to show this letter to anyone other than the gentleman whose authorized signature will be affixed to the check in question.

In fact, a BIG mistake. Please do not make that mistake.



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The Boston Globe

February 19, 2005, Saturday THIRD EDITION

SECTION: METRO/REGION; Pg. A1

LENGTH: 1186 words

HEADLINE: JURY ORDERS HERALD TO PAY \$2.1M IN LIBEL CASESUFFOLK JURY ORDERS HERALD TO PAY \$2.1M TO JUDGE IN LIBEL CASE

BYLINE: By Mark Jurkowitz and Ralph Ranalli, Globe Staff

BODY:

A jury yesterday ordered the Boston Herald to pay Judge Ernest B. Murphy \$2.1 million after finding that the paper and its reporter David Wedge libeled him in a series of stories that ran in 2002.

The jury deliberated for nearly 25 hours over five days before reaching its verdict late yesterday afternoon. Two jurors interviewed afterward criticized what they said was the Herald's inattention to accuracy.

The Herald coverage began with a Feb. 13, 2002, front-page story headlined "Murphy's Law" that criticized the superior court judge's sentencing practices as lenient and contained several explosive quotes attributed to him by unnamed sources.

The most critical quote, which referred to a 14-year-old rape victim, was: "She can't go through life as a victim. She's 14. She got raped. Tell her to get over it." Murphy denied making those remarks, and his lawyer, Howard Cooper, told the jury the Herald had published a "sensationalized supermarket tabloid story" that ruined Murphy's health and reputation.

"We felt that they misquoted or changed the sentence," juror Jose Barros, 53, a community organizer for the Dudley Street Initiative, said in a telephone interview. "That's the main thing for this."

Barros, like another juror, said the verdict should be read as a warning: The press has to be held accountable for what it prints. He said the jury blamed Herald editors more than Wedge. The editors, he said, should have tried harder to check the information.

The unusual case of a judge suing a newspaper has attracted considerable interest in the media and legal circles.

Because he is a public official, Murphy had to prove not only that the Herald stories were false and defamatory; he also had to show by "clear and convincing" evidence that the paper acted with actual malice, meaning it was aware that the material it was publishing was probably false.

In reaching its verdict, the jury of six men and six women had to evaluate 61 statements over the course of the stories and assign a dollar value for each finding of libel. The jurors concluded that 22 of the 61 statements constituted libel, they deadlocked on two of the statements, and found no libel in 37 others. Of the \$2,090,000 awarded to Murphy, \$1,375,000 stemmed from 11 repetitions of the "tell her to get over it" or "get over it" quote that the paper attributed to the judge. The jury also awarded \$350,000 to Murphy for statements Wedge made when discussing the case on the Fox News show "The O'Reilly Factor."

As of yesterday, the award actually amounted to more than \$2.7 million, because civil damage claims accrue interest at an annual rate of 12 percent starting the day the case is filed, said Cooper's co-counsel David Rich. Since the case was filed nearly three years ago, the Herald owes approximately \$640,000 in interest on the award, he said.

The jury foreman said in a brief interview after the verdict that the jury found that Wedge and the Herald acted with malice because they repeatedly used the "tell her to get over it quote" without attempting to confirm whether it was true. "What happened was that, since the quote kept on getting repeated and the research wasn't done with multiple sources, the story just snowballed," said Steven M. Barbour, 45, of Dorchester. In general, he said, "the professionalism of the job was very poor."

In an emotional scene outside the Suffolk Superior Court room after the verdict, Murphy embraced Cooper and Rich. He said he felt vindicated by the decision and asserted that the verdict represented a message for the media.

"I'm very, very gratified that the jury found for me in this case," he said. "I think that what happened to me should be an example to the media in this country. Innocent people, their lives can be altered and they can be hurt immeasurably." In a statement, Herald publisher Patrick J. Purcell said the paper will appeal: "We'd like to thank the jury for their diligence on this very complicated case. However, we believe the First Amendment allows news organizations to provide uninhibited coverage of government and public figures and we will continue to cover them vigorously. We have complete faith in our reporter David Wedge, and we are confident this decision will be reversed on appeal."

"I don't think the evidence supports the verdict," said the Herald's lead lawyer, Robert Dushman. The verdict, he added, "reflects to some extent the views the general public has about the press these days."

Wedge could not be reached for comment last night. During the trial, presided over by Judge Charles R. Johnson, Wedge testified that he relied on three credible sources in the Bristol district attorney's office, one of whom was a witness, to obtain the quotes attributed to the judge.

The witness, former assistant district attorney David Crowley, testified that Wedge correctly reported the "gist" of Murphy's remarks, but acknowledged he was concerned after the article appeared, in part because of qualms over the accuracy of the "tell her to get over it" statement.

SIDEBAR: OTHER LIBEL JUDGEMENTS AGAINST THE MEDIA

* Feb. 9, 2005 - \$2.1 million jury award upheld against The Boston Globe for coverage of a fatal overdose at Dana-Farber Cancer Institute in 1994 that Dr. Lois Ayash said defamed her. The Globe refused to reveal confidential sources it used in its reporting, prompting a Superior Court judge in 2001 to rule that Ayash's claim of libel would stand by default. A jury in 2002 determined the damages; the Globe appealed to the Supreme Judicial Court, which upheld the decision earlier this month. The Globe is considering an appeal to the US Supreme Court.

* Dec. 17, 2004 - \$950,000 jury award against the Boston Phoenix for an article on a custody dispute that Maryland prosecutor Marc Mandel said libeled him. The Phoenix said it planned to appeal.

* June 1, 2004 - \$2.25 million award against the Santa Barbara News-Press allowed to stand by Supreme Court. The paper had falsely implied that investor Leonard M. Ross of Beverly Hills had been investigated for defrauding investors.

* Sept. 5, 2003 - \$1.34 million award against The Daily Call, the newspaper of the Nation of Islam, reduced by a Manhattan Appeals Court to \$440,000. A Harlem woman, Tatia Morsette, sued the paper for doctoring a photograph.

* June 4, 2002 - \$500,000 jury award against the Philadelphia Daily News thrown out by a panel of Pennsylvania judges. Municipal Judge Ronald B. Merriweather sued the paper saying he was libeled in a 1987 article that implied that he helped fix a trial. Merriweather's attorney said they would appeal.

* June 20, 2000 - The Milwaukee Journal-Sentinel stopped appealing a \$450,000 jury award from 1997 and agreed to pay \$600,000 (the original award and interest) to Milwaukee lawyer Marjorie Maguire, who had sued over a 1992 Milwaukee Sentinel story that quoted her former husband saying that she "assaulted" him. Maguire denied assaulting him.

Source: News accounts

NOTES:

Globe correspondent Heather Allen contributed to this report.

GRAPHIC: PHOTO, Judge Ernest B. Murphy with his daughters Heather Peck (left) and Adrienne Spelker, and his brother Howard (right). / GLOBE STAFF PHOTO / TOM LANDERS

LOAD-DATE: February 20, 2005

3/18/05

Dear Pat,

Read the article in the Globe today. Believe me, I take no joy from your troubles.

I'm going to, once again, principal to principal, as "settlement negotiations" - off the record - just between you and me - tell you something which may help you in your decision-making. Something for nothing.

And that is you have a ZERO chance of reversing my jury verdict on appeal.

Anyone who is counselling you to the contrary . . . is WRONG. Not 5% ZERO.

AND I will NEVER, that is as in NEVER, have a dime from what you owe me.

You and/or your insurer want to pay me \$331,056/yr for the next two or three years while you spend another 500 large tilting at windmills in the appellate courts be my guest.

You are lucky, Mr. Purcell that that jury came back at 2 million. I was betting on 5.

Kerr

TODD & WELD LLP

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BOSTON, MASSACHUSETTS 02109

HOWARD M. COOPER
Email: hcooper@toddweld.com

TELEPHONE: (617) 720-2626
FACSIMILE: (617) 227-5777
www.toddweld.com

March 23, 2005

BY FAX: 202-293-1640 and
FIRST CLASS MAIL

Jerome C. Schaefer
O'Brien, Butler, McGonihie & Schaefer PLLC
888 Seventeenth Street N.W.
Suite 1000
Washington, D.C. 20006-3967

Re: The Honorable Ernest B. Murphy v. Boston Herald, Inc. et al
Insured: The Boston Herald, Herald Media, Inc.
Certificate No. 694-1140 of Group No. 2000cm

Dear Mr. Schaefer:

Thank you for your prompt response to my letter.

You misconstrue my letter. Judge Murphy has no intention of "compromising" the judgment to avoid an appeal. The demand is for payment in full with interest accrued to date and costs. The rationale for the demand is, to state the obvious, the jury verdict and the wisdom we hope the insurer would bring to this situation about avoiding the continued accumulation of interest. The offer to meet was solely so you and your client could hear directly from the plaintiff why there is little chance of the jury's verdict being set aside, since no doubt to date you have heard only from defense counsel (if anyone). There is a track record here in this case, and it is surprising that you would so quickly and cavalierly reject a genuine offer to hear from us. My client, as you know, is a sitting Superior Court judge. I would think you would be interested in what he has to say.

I need send you no more authority to support the applicability of General Laws Chapter 93A and 176D to your client than the statutes themselves and the fact that your client writes insurance for insureds here in Massachusetts as it did in this case. Please forward to me any authority you possess for your position that an insurer can somehow exclude itself from statutory obligations. I note as well that your conclusion that the insuring contract does not create rights for Judge Murphy is incorrect but we need not debate it at the moment given the statements in your letter.

Jerome C. Schaefer

March 23, 2005

Page 2

More disturbing is your refusal to provide any information about the financial wherewithal or rating of your client. You leave us no choice but to consider seeking post-judgment security and discovery. We had hoped to avoid this through a cooperative dialogue.

Please call me if you would like to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "H M Cooper". The signature is written in a cursive style with a long horizontal stroke at the end.

Howard M. Cooper

HMC/mt

cc: M. Robert Dushman, Esq.
David H. Rich, Esq.
Judge Ernest B. Murphy

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.
No. 02-02424

SUPERIOR COURT
Department of the
TRIAL COURT

MURPHY

V

BOSTON HERALD, INC., et al

(MOTIONS)

Boston, Massachusetts
January 19, 2006
Before: Chief Justice Johnson

PAULA CONNELLY, CVR
OFFICIAL COURT REPORTER

1 actions. It's just inappropriate, Your
2 Honor.

3 Finally, Your Honor, the judicial
4 canons do not make a distinction between a
5 judge's conduct in his official capacity or
6 in his private and personal capacity. And
7 that is why all those cases that we have
8 cited you as Mr. Cooper says, do involve
9 both the usual situation, the less common
10 situation of a judge acting in his official
11 capacity. But as Judge Posner has said,
12 just because something is unusual or
13 extraordinary or just because you've never
14 seen a case like it before, doesn't mean
15 that if there's a wrong there shouldn't be a
16 remedy.

17 We think that Judge Murphy's own
18 conduct, not our reaction to it, but his own
19 conduct has created this situation. That's
20 why we placed the motion before you and
21 respectfully ask for your relief. Thank
22 you, Your Honor.

23 THE COURT: Thank you all very
24 much. The Court is satisfied, the 60B

1 Motions are appropriately before the Court,
2 but not withstanding the possible negative
3 inferences that some may draw from the
4 Murphy letters, the Court is going to deny
5 the motion to vacate the judgment and
6 dismiss the complaint.

7 Attorney Cooper, I believe you had
8 a motion before the Court?

9 MR. COOPER: Thank you, Your
10 Honor. I have to say, Your Honor, our
11 motion for post trial security given the
12 timing, it was filed really closely after
13 the Herald filed its motion to appeal, is
14 not quite as well briefed as I would have
15 normally hoped. I take responsibility for
16 that, but there are a number of points that
17 don't appear in our papers that I would like
18 to emphasize for Your Honor this morning.

19 First off, Your Honor -

20 THE COURT: Could I ask you a
21 couple of questions to narrow this
22 presentation?

23 MR. COOPER: Of course.

24 THE COURT: Are you concerned