

Unusual for Constitutional Democracy

Letter to the Editor by Harvey A. Silverglate

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RALPH RANALLI CORRECTLY QUOTED ME IN HIS FRONT-PAGE REPORT WHEN I SAID the investigation of Superior Court Judge Maria Lopez and, particularly, the subpoena seeking the private e-mails of her husband (and my firm's client), Stephen Mindich, "has been handled in a most unusual manner for a constitutional democracy" (Panel is Said to Cite Lopez on Ethics," April 26). He failed, however, to report my reason for this accusation against the Commission on Judicial Conduct and its parent, the Supreme Judicial Court and for my inability to answer all of his questions. The effort of the commission to obtain Mindich's e-mails has been carried out in secret, in accordance with a bizarre interpretation of secrecy rules that binds the commission but should not silence witnesses like Mindich. When Mindich sought in the Supreme Judicial Court to oppose the commission's effort to obtain his e-mails, he was prevented from distributing to the press copies of the court papers challenging that invasion of his privacy. When he contested the secrecy order itself, the court ordered that even the litigation papers contesting the secrecy order be sealed from public view!

In his court papers, Mindich calls the commission and the court to task for the manner in which the investigation has been conducted.

These court papers, which contain information of vital public interest, lie in a sealed court file.

Meanwhile, the SJC on March 5 ruled against Mindich and ordered him to turn over his e-mails. The court said that "opinion or opinions" would follow that would explain its reasoning for both the invasion of Mindich's private e-mails and for its own self-protective secrecy. Nearly two months later no such opinions have been issued.