

## COURT TRANSCRIPTS:

These are the court transcripts from the plea hearing. Note pages 10 and 11. They demonstrate the forgone intent of the Commonwealth to hamper any attempts a civil remedy. Because the judge had took issue with baring from civil court, the proceedings were paused, then David, his attorney, the judge, Susan Galvin from the probation department, and a Commonwealth representative from the DA's office, all shuffled into a room off the courtroom.

INVOICE

ROGER W. TRUDEAU, RMR  
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June 14, 2001

TO: Mr. David Robitaille  
36 Humbert St.  
Springfield, MA 01109

Invoice No. 01-TO-47

re: Hampden Superior Court  
Comm v. Robitaille

Transcript of: Plea hearing, 8/18/94

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Roger W. Trudeau*

OFFER TO CHANGE PLEA

C O M M O N W E A L T H O F M A S S A C H U S E T T S

Hampden, ss

Superior Court

COMMONWEALTH OF MASSACHUSETTS )  
 )  
 )  
 vs. )  
 )  
 DAVID J. ROBITAILLE )

No. 86-3251  
thru  
No. 86-3258

HEARING ON MOTION AND OFFER TO CHANGE PLEA  
BEFORE HON. CONSTANCE SWEENEY

APPEARANCES:

FOR THE COMMONWEALTH:

JUDY ZEPRUN KALMAN, Asst. District Attorney

FOR THE DEFENDANT:

CHARLES STEPHENSON, Esq.

Hampshire County Courthouse  
15 Gothic Street  
Northampton, Massachusetts

August 18, 1994

Roger W. Trudeau, CM-RPR  
Official Court Reporter

1 THE CLERK: The next matter, your  
2 Honor, I'll call will be the Commonwealth versus  
3 David John Robitaille. This is Hampden Superior  
4 Court Docket Number 86-3251 through 86-3258.

5 ATTY. STEPHENSON: Your Honor, may  
6 Mr. Robitaille join me?

7 THE COURT: Yes.

8 Thank you. Good afternoon again. I'm sorry  
9 to keep you folks waiting as well.

10 I have read all the submissions. But  
11 Mr. DeAngelis did indicate to me that there might  
12 be something counsel wishes to report, and I'll  
13 be glad to hear from you if you do.

14 ATTY. STEPHENSON: Your Honor, what has  
15 been proposed by the Commonwealth, and a proposal  
16 that I would certainly endorse, would be rather  
17 than to go forward on the motion that is before  
18 you, which is couched in terms of Rule 30(b) of  
19 the Rules of Criminal Procedure, that Rule 30(a)  
20 gives your Honor the authority to correct a  
21 sentence which is in contradiction or in conflict  
22 with the laws of the Commonwealth.

23 THE COURT: You're client can sit down.  
24 You may sit down, sir.



1 THE DEFENDANT: Thank you.

2 ATTY. STEPHENSON: That, in this  
3 essence, the substance of Mr. Robitaille's  
4 position, and one in which the government joins,  
5 I believe, is that simply in this case your  
6 Honor's intention as to the sentence was not  
7 carried out.

8 The advantage of proceeding under Rule  
9 30(a), although there's no formal paperwork in  
10 front of you, would obviate the need for an  
11 additional proceeding at some point in the  
12 future. There would not be, in fact, a new  
13 trial; there would simply be a resentencing  
14 according to an agreement that we would tender to  
15 your Honor this afternoon.

16 THE COURT: Assuming there is an  
17 agreement, however, Mr. Stephenson, I have again  
18 gone through the papers ad nauseam at this point  
19 on the Motion for New Trial, and there are  
20 substantive issues raised, however legitimate or  
21 not, with respect to the voluntariness of the  
22 plea that led to the sentence.

23 Now whether the sentence was correct or  
24 incorrect aside, it challenges the validity of

1 the plea colloquy itself upon which any sentence  
2 is going to be based.

3 So that if in fact there is an agreement  
4 here, and if it's one that's acceptable to the  
5 Court, I would still need to put your client on  
6 the stand, under oath, to make sure we had a  
7 voluntary waiver, if you will, of the various  
8 allegations he makes, and he is no longer relying  
9 on those allegations, if that's truly how he  
10 feels.

11 ATTY. STEPHENSON: That would certainly  
12 be my understanding as well, your Honor, and  
13 completely appropriate.

14 THE COURT: Attorney Kalman, how do you  
15 feel about that procedure?

16 ATTY. KALMAN: I think 30(a) can be  
17 used, your Honor. I think it probably stretches  
18 the language of, "In violation of the laws." But  
19 under the circumstances that were presented in  
20 this motion, in particular, for lack of a better  
21 term, mutual mistake I think, in view of the fact  
22 that the Defendant has served time that exceeds  
23 the time the Commonwealth originally recommended,  
24 the Commonwealth is prepared to either ask your

1 Honor to restructure the sentence or to permit  
2 the Defendant to, without our objection, to  
3 withdraw his plea and plead anew, with an  
4 agreed-upon recommendation from Mr. Stephenson  
5 and myself as to a sentence.

6 THE COURT: Thank you.

7 Mr. Stephenson, wouldn't it be easier to  
8 just plead anew?

9 ATTY. STEPHENSON: Fine, your Honor.

10 THE COURT: To be honest with you, I  
11 think the colloquy for a 30(a), as it affects  
12 waiver on the new trial issues, is going to be  
13 longer and more convoluted than a plea colloquy,  
14 if in fact he wishes to acknowledge what he did  
15 before.

16 ATTY. STEPHENSON: That's very well,  
17 your Honor.

18 THE COURT: I really think that makes  
19 more sense, both procedurally and substantively.

20 ATTY. STEPHENSON: At this time I would  
21 suggest then that the Defendant is prepared to go  
22 forward on HIS Motion for a New Trial, amended  
23 Motion for New Trial insofar as it suggests that  
24 the plea that he entered in 1987 was one that was

1 involuntary because of the mutual mistake of  
2 fact, mutual mistake shared by counsel for the  
3 Defendant and counsel for the government, and  
4 indeed the Court as well. So that is one of the  
5 two grounds.

6 THE COURT: I know. But so we're not  
7 being -- that concerns me. If he wants to plead  
8 guilty to an agreed recommendation, then he is to  
9 plead guilty to an agreed recommendation if I  
10 grant the Motion for New Trial.

11 ATTY. STEPHENSON: That is correct.

12 THE COURT: And in that plea colloquy,  
13 I'm putting right to him whether or not he is  
14 claiming that he didn't do it, whether or not  
15 he's claiming that Alex was doing it rather than  
16 he; whether or not he's claiming that he's doing  
17 it as a result of medication he's taken rather  
18 than something else. That's not going to be  
19 saved for him to raise later in the event he  
20 doesn't like the new sentence that was agreed  
21 upon.

22 ATTY. STEPHENSON: That's fully  
23 understood, your Honor.

24 It's simply that the agreement that I have

1 with the government pertains only to that one  
2 aspect of the motion.

3 THE COURT: I understand the  
4 Commonwealth is not standing up and saying "we  
5 agree that the first plea was tainted." You're  
6 not saying that it was Alex, given the plea the  
7 first time.

8 ATTY. KALMAN: That's correct, your  
9 Honor. Thank you.

10 THE COURT: Okay.

11 Now have you fully discussed all of this  
12 with your client?

13 ATTY. STEPHENSON: Absolutely, your  
14 Honor.

15 THE COURT: Are you satisfied,  
16 Mr. Stephenson, that he understands all its  
17 ramifications?

18 ATTY. STEPHENSON: Fully, your Honor.

19 THE COURT: Would you be good enough,  
20 Attorney Kalman -- first of all, without  
21 objection the Motion for New Trial will be  
22 granted. The motion for the new trial will be  
23 granted on the basis that the plea was predicated  
24 on an understanding by counsel and the Court that

1 this man was going to serve 3 years in prison --  
2 is that correct, so far?

3 ATTY. STEPHENSON: Yes.

4 THE COURT: That the record, including  
5 a lobby conference, reflects that understanding  
6 clearly; that based on that understanding, a  
7 resentencing structure was devised, which  
8 everyone, including the Court, in good faith felt  
9 would represent the necessary sentence to come  
10 out with an actually 3 years in prison based on  
11 the parole policies and sentencing procedures in  
12 place at that time; that in fact, it not only did  
13 not occur, but he has been in prison for 8 years  
14 rather than the 3 years that we all contemplated;  
15 that we are all aware of the case law that has  
16 come down subsequently that has told us that  
17 parole eligibility is no longer -- not no  
18 longer -- should not be a factor in sentencing;  
19 and that the appropriate remedy is not a  
20 corrective sentence, but a new trial if in fact  
21 the plea was a result of a sentencing agreement  
22 that went because of wrongful dependence on  
23 parole eligibility -- not eligibility, actual  
24 release. And that's exactly what occurred in

1 this case. And for those reasons, and without  
2 objection, I'm granting the Motion for a New  
3 Trial.

4 ATTY. STEPHENSON: Thank you, your  
5 Honor.

6 THE COURT: With that in mind, what is  
7 your client's intent at this point,  
8 Mr. Stephenson?

9 ATTY. STEPHENSON: Your Honor, he is  
10 prepared to offer a change of plea to indictments  
11 86-3252, 53, 54 and 55, all those alleging rape  
12 of a child by force.

13 THE COURT: So 52, 53, 54, 55?

14 ATTY. STEPHENSON: And 3257, alleging  
15 indecent assault and battery on a child under the  
16 age of 14.

17 THE COURT: Attorney Kalman, is there  
18 an agreed-upon recommendation?

19 ATTY. KALMAN: There is.

20 THE COURT: Would you state that for  
21 the record, please?

22 ATTY. KALMAN: On indictment 86-3252,  
23 that the Defendant would be sentenced to a term  
24 of time served -- in this case, that would be 969

1 days.

2 On indictments 3252 through 55, that the  
3 Defendant would be sentenced to a term of two  
4 and-a-half to four years M.C.I. Cedar Junction,  
5 that that sentence would be suspended for a  
6 period of four years, during which time the  
7 Defendant would be placed on conditions of  
8 probation, which I'm prepared to outline.

9 THE COURT: Would you state those  
10 conditions for the record, please?

11 ATTY. KALMAN: Yes, your Honor.

12 That the Defendant would receive, or involve  
13 himself in mandatory individual sexual abuse  
14 counseling treatment to be determined by the  
15 Probation Department; that the Defendant not live  
16 in a residence with children under the age of 16  
17 years; that the Defendant not be employed in a  
18 position involving children under the age of 16  
19 years; that there be no contact, direct or  
20 indirect, with the victim or victim's family;  
21 that the Defendant report to the Probation  
22 Department within 72 hours of his release; and  
23 finally, that the Defendant agree to, in the  
24 future, that any pleadings related to civil



1 lawsuits will be verified by an attorney, and  
2 that he discontinue writing letters that allege a  
3 lawsuit to the District Attorney's Office, the  
4 clerks and others.

5 THE COURT: That's going to be  
6 problematic. I think I can rephrase that. I  
7 certainly can't make a condition of probation  
8 barring him from the civil side of the court.  
9 But I can make -- I can, I think, get what you're  
10 after on that. I know what the problem is:

11 ATTY. KALMAN: There was one rape  
12 indictment --

13 THE COURT: Hold on one second.

14 (Pause in the proceedings.)

15 THE COURT: I missed number 4, the one  
16 after the employment.

17 ATTY. KALMAN: No contact, direct or  
18 indirect, with the victim or the victim's  
19 family.

20 THE COURT: Okay.

21 What else?

22 ATTY. KALMAN: The last indictment was  
23 number 3257. That charged indecent assault and  
24 battery originally, filed, and we'd ask that that

1 be filed again.

2 THE COURT: Mr. Stephenson, is that a  
3 correct statement of the agreed-upon  
4 recommendation?

5 ATTY. STEPHENSON: Absolutely.

6 THE COURT: Thank you.

7 In light of the recommendation, I'll allow  
8 his cuffs to be taken off at this time. You can  
9 take off his handcuffs.

10 (Defendant's handcuffs removed.)

11 \*\*\*\*\*

12 MR. DAVID J. ROBITAILLE, WITNESS (SWORN)

13 EXAMINATION BY THE COURT:

14 Q. Sit down, SIR, please.

15 Now, sir, before I can accept your plea of  
16 guilty, I'm going to ask you some questions. I'm  
17 doing this in order to make sure your pleas are  
18 voluntary and that you understand the  
19 consequences of those pleas.

20 If you do not understand me, you must tell  
21 me. If I don't understand you, I'll tell you.  
22 If I go too fast for you, you must tell me that  
23 as well.

24 Have you understood me so far?

1 A. Yes, your Honor.

2 Q. What is your full name, please?

3 A. David John Robitaille.

4 Q. And how old are you?

5 A. 27 years old.

6 Q. How far did you go in school?

7 A. 10th grade.

8 Q. What type of jobs have you held before your  
9 incarceration?

10 A. Prior to incarceration, I had only worked at  
11 Dunkin Donuts; that is to say as a citizen who  
12 was not living at home, as on my own.

13 Q. What other jobs have you held regardless of your  
14 living situation?

15 A. Prior to that, I had worked for the summer youth  
16 program in Springfield, doing maintenance and  
17 things of that nature.

18 Q. Sir, what, if any, mental illnesses or problems  
19 are you suffering from at this time?

20 A. At this time, your Honor, I don't feel that I am  
21 suffering from any mental illness, et cetera.

22 Q. Are you taking any type of medication at this  
23 time?

24 A. No, your Honor, I am not.

1 Q. Do you have any type of symptomatology, whether  
2 it be by way of depression, whether it be by way  
3 of racing thoughts or racing emotions or by way  
4 of the presence of any other individual within  
5 you?

6 A. No, your Honor.

7 Q. What has happened to Alex?

8 A. Through counseling, your Honor, I have dealt with  
9 that aspect of my life as it existed.

10 Q. The record will reflect the plea colloquy taken  
11 some years ago -- I'm incorporating that plea  
12 colloquy at this time with respect to the history  
13 of mental illness, the considerations the Court  
14 took into account, including the report,  
15 statements of Dr. Michelson following his  
16 examination of the Defendant both in respect to  
17 the likelihood of the Defendant suffering from an  
18 altered personality disorder as well as other  
19 mental illnesses at the time of that plea  
20 colloquy. Based on everything before me, I made  
21 a finding that the Defendant was well aware of  
22 what he was doing, was competent and that the  
23 plea was not in any way affected by mental  
24 illness, disease or the like.

1 I again make that finding based on the  
2 answers so far, incorporating the material that  
3 was before all of us some 8 years ago as well.

4 Sir, are you taking any other type of  
5 medication at all?

6 A. The only medication that I'm taking, which was  
7 prescribed for me, is for allergies. The name of  
8 it escapes me. I don't have it on me right now.

9 Q. When is the last time you took it?

10 A. This morning.

11 Q. Does it in any way whatsoever affect your ability  
12 to think or make judgments on your own behalf?

13 A. No.

14 Q. Sir, are you under the influence of any alcohol  
15 at this time?

16 A. No, your Honor.

17 Q. Are you under the influence of any drug at this  
18 time?

19 A. No, your Honor.

20 Q. Do you understand, sir, you're charged with four  
21 separate indictments of rape of a child, each one  
22 carrying maximum state prison sentences of life?

23 A. Yes, I am.

24 Q. You're charged with one indictment of indecent

1 assault and battery of a child under the age of  
2 14, carrying, at the time of the alleged offense,  
3 a maximum -- no, it was the same maximum, I had  
4 the consent part with it, though.

5 Let me take that back. You are also charged  
6 with indecent assault and battery on a child  
7 under the age of 14, carrying a maximum penalty  
8 of ten years in state's prison. Do you  
9 understand that?

10 A. Yes, I understand that.

11 Q. Now, ordinarily I could give you the maximum  
12 penalties prescribed by law if I felt it was  
13 correct. However, in this case, I will not  
14 exceed, I will not go over the agreed-upon  
15 recommendation without first giving you a right  
16 to withdraw your plea of guilty. Do you  
17 understand that?

18 A. Yes, your Honor.

19 Q. Do you understand that the agreed-upon  
20 recommendation in this case, on the first  
21 indictment, 3252, rape of a child under the age  
22 of 16, you will be sentenced to time served --

23 THE COURT: Is it 969 days?

24 PROBATION OFFICER: Yes, your Honor.

1 THE COURT: Thank you.

2 Q. -- 969 days. Do you understand that?

3 A. Yes, your Honor, I understand that.

4 Q. That on the remaining 3 rape of a child  
5 indictments, you will be sentenced on each one of  
6 those indictments to two and-a-half to four years  
7 at state's prison, Cedar Junction, to be served  
8 concurrently, meaning all at the same time as one  
9 another, but on-and-after the time served  
10 sentence; that those last three concurrent  
11 sentences will be suspended, and you will be  
12 placed on probation for a period of four years.

13 Are you with me so far?

14 A. Yes, your Honor.

15 Q. Do you understand that if the recommendation was  
16 accepted, it would be subject to the normal  
17 conditions of probation, and, in addition to  
18 those conditions, there will be special  
19 conditions: The first one is that you undergo  
20 mandatory individual sexual treatment and  
21 counseling as determined by Probation. Do you  
22 understand that condition?

23 A. Yes, your Honor.

24 Q. And do you understand that when I use the word,

1 "Participation," in that, if you, during this  
2 plea discussion, admit to what occurred or what  
3 the government says you did, if you admit to  
4 that, then I will fully expect, and it is part of  
5 the condition of your treatment, that  
6 participation require your acknowledgment to the  
7 therapist of what happened, your actions  
8 including any inappropriate sexual actions which  
9 you may admit later in this discussion, that you  
10 discuss those fully with the counselor in order  
11 to receive the appropriate treatment. Do you  
12 understand that?

13 A. Yes, your Honor.

14 Q. So, in other words, I am not going to allow the  
15 agreement phase to just be a show, in other  
16 words, to show up for your appointments and  
17 you've fulfilled that condition -- it's not going  
18 to be meaningful.

19 A. Yes, your Honor, I understand that.

20 Q. Now, in addition to that condition, sir, you  
21 would also be required to refrain from residing  
22 in any home with children under 16. You are also  
23 not to obtain employment that would require you  
24 to have contact with children under the age of



1 16.

2 If you have any question regarding that --  
3 for instance, you get a job as a store clerk,  
4 which comes to mind, and you weren't sure whether  
5 that would violate the condition or not because a  
6 kid might come in and buy something -- that  
7 before you accepted any such employment you would  
8 have to talk to your probation officer. Do you  
9 understand that clearly?

10 A. Yes, your Honor, I understand that.

11 Q. And if they said you had to get court permission,  
12 you would have to come before the Court for that  
13 permission. Do you understand that?

14 A. Yes, I understand that, your Honor.

15 Q. In addition, sir, a condition of probation would  
16 be no contact with the victim or the victim's  
17 family. Do you understand that?

18 A. Yes, your Honor, I understand that.

19 Q. Also, you would have to report to probation  
20 within 72 hours of -- in other words, by Monday.  
21 This is Thursday. You would have to report to  
22 our probation office Monday morning.

23 A. Yes, your Honor.

24 Q. And that's our probation office in Springfield.

1 A. Yes, your Honor. I understand that.

2 Q. Finally, sir, you would be required not to engage  
3 in any type of harassing behavior toward court  
4 officials, court personnel or prosecutors or  
5 attorneys associated with your case.

6 Now what I mean by that, so we're absolutely  
7 clear, -- and I'm not going to make any  
8 determination whether some of it was valid or  
9 some of it was invalid -- but as I'm sure you are  
10 aware, and we are all aware, you have a tendency  
11 to constantly contact certain people or try to  
12 get attention by kind of broad based allegations  
13 and charges and civil suits, writing letters to  
14 clerical personnel in the Clerk's office who have  
15 no authority to do anything. That is  
16 unacceptable. Do you understand that?

17 A. I understand, your Honor.

18 Q. And it has not helped you, because we have been  
19 unable to sort out what is meaningful and what is  
20 not meaningful when that type of behavior is  
21 engaged in.

22 Now I cannot bar you, and I am not barring  
23 you at this time -- it would have to go farther  
24 than that -- from bringing any type of action in

1 the courts, except to tell you that this puts you  
2 on notice that that's to stop. If you have a  
3 meaningful issue, you bring it to the probation  
4 officer's attention, but you don't harass the  
5 probation officer.

6 A. I understand that, your Honor.

7 Q. Fair enough.

8 And that if you have a legal problem, you  
9 have it brought to the attention of the Court  
10 through legal counsel.

11 A. I understand.

12 Q. Or if you don't have legal counsel, you file it  
13 with the Clerk of Courts, and you don't write  
14 letters to the young women in the office or ask  
15 for them to call you to get an explanation of  
16 this or that; that you file it in the formal  
17 course. All right?

18 A. Yes, your Honor, I understand.

19 Q. Very good.

20 Now sir, if I accept this recommendation,  
21 you are to understand that if you violate any  
22 condition of your probation, any one of those  
23 conditions, or any of the general conditions of  
24 probation, such as reporting or committing

1 another crime, that you will be violated and  
2 you'll go in and do the two and-a-half to four  
3 years, plain and simple, at state's prison. Do  
4 you understand that?

5 A. Yes, your Honor, I understand.

6 Q. And do you understand that the two and-a-half to  
7 four years at state's prison, considering the  
8 record you're coming off, would really mean a  
9 four year?

10 A. Yes, your Honor.

11 Q. And you accept that risk fully?

12 A. Yes, your Honor, I do.

13 Q. Fair enough.

14 Now have you discussed fully with Atty.  
15 Stephenson what it is that the government would  
16 have to prove at trial to a jury, or to a judge,  
17 whoever you elect, before you could be found  
18 guilty of each one of these offenses?

19 A. I believe I do, yes.

20 Q. And do you understand that the trier of fact,  
21 whether it be a judge or jury, would have to be  
22 satisfied based on the evidence, beyond a  
23 reasonable doubt, that you committed the  
24 particular crime charged before you could be

1 found guilty of that crime?

2 A. Yes, I understand that.

3 THE COURT: Attorney Stephenson, are  
4 you satisfied with your client's understanding?

5 ATTY. STEPHENSON: I am, your Honor.

6 THE COURT: Sir, please listen  
7 carefully to the District Attorney as she sets  
8 fort the allegations in this case. I'll question  
9 you following that.

10 Atty. Kalman?

11 ATTY. KALMAN: Thank you, your Honor.

12 When the Defendant was 19 and the victim was  
13 approximately 16 (sic), the Defendant moved to  
14 the victim's neighborhood and began a pattern of  
15 becoming friends with the victim. They played --  
16 they watched T.V., played some games. The  
17 Defendant showed the victim some pornographic  
18 pictures.

19 At one point in the Defendant's house, the  
20 Defendant fondled the victim's penis and that was  
21 the end of that day.

22 During April of 1986, the Defendant would  
23 call the victim over to his house. In that  
24 house, about ten or twelve times in April, they

1 again socialized and the Defendant at times would  
2 fondle the victim.

3 On May 2nd, 1986, the victim was at the  
4 Defendant's house and the Defendant asked the  
5 victim to wait so that he could get something.  
6 The victim thought he was getting a glass of  
7 water for him. But instead, the Defendant got a  
8 tube of vaseline, came back into the room where  
9 the victim was and showed him a photograph of a  
10 bicycle, promised to give the victim a bicycle  
11 for his birthday. And while the victim was  
12 reading the manual, the Defendant pulled the  
13 victim's pants down, used vaseline -- the  
14 Defendant used vaseline on himself and then  
15 performed anal sex on the victim.

16 On May 8th, the Defendant called the victim  
17 over to his house again and there engaged in both  
18 forced oral sex and forced anal sex with him.

19 On -- I'm sorry, your Honor, that was oral  
20 sex only on that occasion.

21 On July 1st, the Defendant called the  
22 victim's house again and he had a conversation  
23 regarding a bank card, withdrawing some money out  
24 of a bank. And he told the victim they were

1 going to do something important today.

2 They went outside. The Defendant showed the  
3 victim a knife and a small gun. And they left  
4 the house and went to Forest Park where the  
5 Defendant again engaged in forced anal sex with  
6 the victim.

7 The victim disclosed these matters to his  
8 mother, and then they went to the police station  
9 where what I've described to you was described,  
10 or taken down in a statement.

11 THE COURT: Thank you, Atty. Kalman.

12 Q. Sir, did you hear those factual allegations as  
13 told to me by the District Attorney?

14 A. Yes, ma'am.

15 Q. Did you commit each of those acts as she stated  
16 you did?

17 A. Yes, your Honor.

18 Q. Is there anything she told me that is incorrect?

19 A. No, your Honor.

20 Q. Do you understand that by admitting to that,  
21 you're admitting you are guilty of each one of  
22 the indictments that are presently before the  
23 Court?

24 A. Yes, your Honor.

1 Q. To these charges will you be pleading guilty  
2 willingly, freely and voluntarily?

3 A. Yes, your Honor.

4 Q. Is anyone forcing you to plead guilty?

5 A. No, no, your Honor.

6 Q. -- threatening you or coercing you, intimidating  
7 you, promising you anything to make to get to you  
8 plead?

9 A. No, your Honor.

10 Q. Do you understand that by pleading guilty, you  
11 are giving up your absolute right to a fair and  
12 impartial trial to determine whether you are  
13 guilty or not guilty, and that trial may be with  
14 or without a jury, at your choice?

15 A. Yes, your Honor, I understand that.

16 Q. Do you further understand that by pleading  
17 guilty, you are giving up your absolute right to  
18 face your accuser, to question him, to question  
19 anyone else who might appear against you, and to  
20 offer evidence on your own behalf if you choose?

21 A. Yes, your Honor, I understand that.

22 Q. Do you understand you are giving up your  
23 privilege against self-incrimination, which is  
24 your right to remain silent?



1 A. Yes, your Honor.

2 Q. You are also giving up your right to bring before  
3 the Court any Motion to Suppress Evidence, to  
4 challenge the legality of any statements you may  
5 have made to the police or any evidence that may  
6 have been taken from you or your home or an area  
7 where you claim privacy, and if you brought such  
8 a motion and I denied it, I turned you down, you  
9 are giving up your right to appeal; do you  
10 understand that?

11 A. Yes, your Honor.

12 Q. Now, have you fully discussed all of your rights,  
13 all of your defenses, all the choices you have  
14 with Attorney Stephenson?

15 A. Yes, your Honor, I have.

16 Q. Do you need to talk to him or anyone else any  
17 further before offering your plea here?

18 A. No, I don't believe so, your Honor.

19 Q. Has Mr. Stephenson acted in your best interests?  
20 Has he done a good job for you?

21 A. I believe so, yes, your Honor.

22 Q. Are you pleading guilty here today because you  
23 are in fact guilty of each and every one of these  
24 five indictments?

1 A. Yes, your Honor, I am.

2 Q. At this time, sir, the law requires that I advise  
3 you that if you are not a citizen of the United  
4 States, conviction for these offenses will result  
5 in deportation, denial of admission to the United  
6 States or denial of naturalization pursuant to  
7 the laws of the United States. Do you understand  
8 that?

9 A. Yes, your Honor.

10 THE COURT: Thank you.

11 I find the plea, once tendered, will be made  
12 voluntarily, with knowledge of its consequences,  
13 and we'll accept the plea once it's tendered.

14 THE CLERK: David John Robitaille, if  
15 you would please rise?

16 How do you now plead to Hampden County  
17 indictment number 86-3252, which charges you with  
18 rape of a child with force?

19 THE DEFENDANT: Guilty.

20 THE CLERK: How do you plead to Hampden  
21 County indictment number 86-3253, also charging  
22 you with rape of a child by force?

23 THE DEFENDANT: Guilty.

24 THE CLERK: And how do you plead to

1 Hampden County indictment 86-3254, also charging  
2 you with rape of a child by force?

3 THE DEFENDANT: Guilty.

4 THE CLERK: How do you plead to Hampden  
5 County indictment number 86-3255, charging you  
6 with rape of a child by force?

7 THE DEFENDANT: Guilty.

8 THE CLERK: How do you plead to Hampden  
9 County Indictment Number 86-3257, charging you  
10 with indecent assault and battery on a child  
11 under 14?

12 THE DEFENDANT: Guilty.

13 THE COURT: Thank you, sir. You may be  
14 seated.

15 Atty. Kalman, do you wish to be heard any  
16 further?

17 ATTY. KALMAN: I do not.

18 THE COURT: Attorney Stephenson, do you  
19 wish to be heard any further?

20 ATTY. STEPHENSON: Your Honor, I would  
21 simply implore you to adopt this recommendation.  
22 It's one that I think both fairly takes account  
23 of Mr. Robitaille's rights and, in recognition of  
24 the fact that after 8 years imprisonment,

1 beginning today he will be a free man, protects  
2 the citizens of the Commonwealth from any  
3 possible repetition of the acts to which he's  
4 admitted.

5 And I would simply take this opportunity, if  
6 I might, to recognize the high degree of  
7 cooperation that I've received from the District  
8 Attorney's Office, truly in the interest of  
9 justice and not simply taking an advocate's  
10 role. And that certainly is something that I  
11 think is important to recognize.

12 THE COURT: Thank you.

13 Anything further?

14 PROBATION OFFICER: No, your Honor.

15 THE COURT: You're all set on the  
16 conditions?

17 Thank you.

18 Are we agreed on Cedar Junction, 969 days?

19 ATTY. STEPHENSON: That's correct.

20 ATTY. KALMAN: May I correct  
21 something?

22 I inadvertently said the victim was 16. I  
23 should have said 13. And I'd ask --

24 THE COURT: Thank you. I overlooked

1 that myself. Thank you for bringing that to our  
2 attention.

3 ATTY. KALMAN: Thank you, your Honor.

4 THE CLERK: David John Robitaille,  
5 harken to the sentence which the Court has  
6 awarded against you:

7 On Hampden County Indictment Number 86-3252,  
8 to which you have pled guilty to the charge of  
9 rape of a child by force, the Court Orders that  
10 you be committed to the Massachusetts  
11 Correctional Institution at Cedar Junction, in  
12 the County of Norfolk, for the term of 969 days.  
13 This is the time that you have previously  
14 served. The Court Further on that, also for the  
15 record, Orders that you be deemed to have served  
16 any portion of this sentence, such portion being  
17 the number of days spent by you in confinement  
18 prior to this sentence.

19 On Hampden County Indictment Number 86-3253,  
20 to which you have pled guilty to the charge of  
21 rape of a child by force, the Court Orders that  
22 you be committed to the Massachusetts  
23 Correctional Institution at Cedar Junction, in  
24 the County of Norfolk, for a term of not more

1 than four years and not less than two and one  
2 half years. This sentence is hereby suspended  
3 and you are placed on probation for a period of  
4 four years under the terms and orders governing  
5 probation, with Nicholas DeAngelis, Probation  
6 Officer. This sentence is to be served on and  
7 after the sentence imposed upon you on Hampden  
8 County Indictment Number 86-3252.

9 As special conditions of your probation, the  
10 Court hereby Orders the following:

11 Number 1, you are to participate in  
12 mandatory individual sex abuse counseling and  
13 treatment as may be determined by the Probation  
14 Department.

15 2: You are not to live or reside in any  
16 residence with a child under the age of 16 years.

17 3: You are to have no employment where  
18 there is contact with a child under the age of 16  
19 years.

20 4: You are to have no contact with the  
21 victim or the victim's family, directly or  
22 indirectly.

23 5: You are to report to the Hampden County  
24 Superior Court Probation Department within 72

1 hours of your release.

2 Number 6: You are not to engage in any kind  
3 of harassing behavior towards court personnel,  
4 the District Attorney's Office and the bar.

5 ATTY. KALMAN: Thank you, your Honor.

6 THE CLERK: -- court personnel, the  
7 District Attorney's office or the bar association  
8 itself. Do you so agree to those conditions,  
9 sir?

10 THE DEFENDANT: Yes, I do.

11 THE CLERK: Thank you.

12 On Hampden County indictment number 86-3254,  
13 to which you've also pled guilty to the charge of  
14 rape of a child with force, the Court Orders you  
15 be committed to the Massachusetts Correctional  
16 Institution at Cedar Junction in the County of  
17 Norfolk for a term of not more than four and not  
18 less than two and one half years. Again, this  
19 sentence is suspended, with probation for a  
20 period of four years. And this sentence is to be  
21 served concurrently with the sentence imposed  
22 upon you on 86-3253, again with the same special  
23 conditions.

24 On Hampden County indictment number 86-3255,

1 to which you also pled guilty to the charge of  
2 rape of a child, the Court Orders that you be  
3 committed to the Massachusetts Correctional  
4 Institution at Cedar Junction, in the County of  
5 Norfolk, for a term of not more than four nor  
6 less than two and one half years. Again, this  
7 sentence is suspended and you are placed on four  
8 years probation, to run concurrently with the  
9 sentence imposed upon you on Hampden County  
10 indictment number 86-3253, again with the same  
11 special conditions as enumerated there on.

12 On Hampden County indictment 86-3257, to  
13 which you have pled guilty to the charge of  
14 indecent assault and battery on a child under the  
15 age of 14, the Court hereby Orders that this plea  
16 be placed on file, with your consent. Do you so  
17 consent to the filing of this on a guilty plea?

18 THE DEFENDANT: Yes, I do.

19 THE CLERK: Thank you, sir. The Court  
20 further informs you, sir, that you have a right  
21 to appeal to the Appellate Division of the  
22 Superior Court for a review of this sentence.  
23 This appeal must be filed with the Clerk of  
24 Courts within ten days of this date.



1           The other indictments I believe previously  
2 were placed on file. I don't know if we have to  
3 do anything with those.

4           ATTY. STEPHENSON: Your Honor, two were  
5 dismissed and one was placed on file on a not  
6 guilty.

7           THE COURT: Those will remain.

8           THE CLERK: I just wanted to be sure.

9           Absent anything else, Mr. Robitaille --

10          THE COURT: Is he held on any other  
11 process?

12          ATTY. KALMAN: No, your Honor.

13          THE COURT: All right. Thank you.

14          Now have you made any arrangements for him  
15 to --

16          ATTY. STEPHENSON: I have, your Honor.

17          Your Honor, if I might, on Mr. Robitaille's  
18 behalf and mine as well, whatever laudatory  
19 comments I directed toward the District  
20 Attorney's Office are toward your Honor as well.  
21 We truly and deeply appreciate the concern and  
22 commitment you've demonstrated. Thank you.

23          THE COURT: Well, thank you.

24          Mr. Robitaille, I expect you're going--

1           you're much more mature at this than you were 8  
2           years ago. I expect that maturity is going to  
3           show itself to our probation office and you'll  
4           have a good, solid working relationship with  
5           them. If you use them correctly, and their  
6           services correctly, they can be of assistance to  
7           you in reintegrating into the community and  
8           making sure you don't get into further  
9           difficulty. If you look at them as a police  
10          officer or the like, or something to get around,  
11          that's where you're going to run into trouble.  
12          All right?

13                 So, please be cooperative with them and make  
14                 sure we see that maturity, and things will work  
15                 out for the best, hopefully. All right.

16                         THE DEFENDANT: Yes, your Honor. Thank  
17                         you.

18                         THE COURT: Thank you both, counsel. I  
19                         appreciate it.

20                         ATTY. KALMAN: Thank you, your Honor.

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CERTIFICATION:

I, Roger W. Trudeau, Official Court  
Reporter, hereby certify the foregoing to be a  
true and accurate transcript of the hearing in  
the above matter recorded on August 18, 1994.

  
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