BERDON, J., dissenting. I disagree with the majority and would reverse the judgment of the trial court and remand the case for a new trial. It is clear that the trial judge should have recused herself notwithstanding the failure of the defendant, David K. Herbert, to move to do so.

I recognize that this court should "not ordinarily review on appeal a claim that a trial judge should have disqualified himself . . . when no such request was made during the trial." *Cameron* v. *Cameron*, 187 Conn. 163, 168, 444 A.2d 915 (1982). There are, however, exceptions to this rule. An accusation of prejudice on the part of the trial judge, "which strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary" is one such exception. *Felix* v. *Hall-Brooke Sanitarium*, 140 Conn. 496, 501, 101 A.2d 500 (1953).

"No more elementary statement concerning the judiciary can be made than that the conduct of the trial judge must be characterized by the highest degree of impartiality. If [the trial judge] departs from this standard, he casts serious reflection upon the system of which he is a part. A judge is not an umpire in a forensic encounter. *Strong* v. *Carrier*, 116 Conn. 262, 263, 164 A. 501 [1933]. He is a minister of justice. *Peiter* v. *Degenring*, 136 Conn. 331, 338, 71 A.2d 87 [1949]. He may, of course, take all reasonable steps necessary for the orderly progress of the trial. . . . In whatever he does, however, the trial judge should be cautious and circumspect in his language and conduct." (Citations omitted.) *Felix* v. *Hall-Brooke Sanitarium*, supra, 140 Conn. 501–502. A judge "should be scrupulous to refrain from hearing matters which he feels he cannot approach in the utmost spirit of fairness and to avoid the appearance of prejudice as regards either the parties or the issues before him." *Glodenis* v. *American Brass Co.*, 118 Conn. 29, 39, 170 A. 146 (1934). "It is [the trial judge's] responsibility to have the trial conducted in a manner which approaches an atmosphere of perfect impartiality which is so much to be desired in a judicial proceeding." (Internal quotation marks omitted.) *State* v. *Echols*, 170 Conn. 11, 13, 364 A.2d 225 (1975), quoting *Glasser* v. *United States*, 315 U.S. 60, 82, 62 S. Ct. 457, 86 L. Ed. 680 (1942).

"Canon [3 (c) (1)] of the Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. The reasonableness standard is an objective one. Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances. . . . *Even*

in the absence of actual bias, a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned, because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *Webb*, 238 Conn. 389, 460–61, 680 A.2d 147 (1996), aff'd after remand, 252 Conn. 128, 750 A.2d 448, cert. denied, 531 U.S. 835, 121 S. Ct. 93, 148 L. Ed. 2d 53 (2000).

In the present case, the trial judge felt offended when the mother of the defendant made an accusation that her son was being legally lynched. Although the defendant stated on the record several times that he did not endorse his mother's view, the accusations obviously concerned the trial judge, who voiced those concerns to the defendant on the record.

After the defendant was convicted of several crimes, his mother sent correspondence to the attorney general of Connecticut, a congressman and to the National Association for the Advancement of Colored People, accusing the court of being involved in a legal lynching with respect to the son's conviction. The trial judge expressed great annoyance and anger about these allegations at the time the defendant was scheduled to be sentenced. She commented that although she may have known the defendant's mother because they came from the same town, which was disclosed at the beginning of the trial, any association between them dated back many years. The trial judge stated: "And to make an allegation that somehow this court with a strong commitment to civil rights was involved in a legal lynching is enough to make me get very upset. I am not happy with these baseless, slanderous allegations, and I want you to know that. And I hope that the letter that you sent to [the attorney general] accomplishes something for you. *But I think what you have done is shot yourself in the foot.* You engaged in some very self-defeating behaviors." (Emphasis added.)

Indeed, the trial judge expressed doubt as to whether, because of her anger, she should continue with the case. Openly, she speculated: "The activity that has happened here is just totally unacceptable, and it has created some damage, and I just don't know where all the fallout is going to be. *And I really want to research my own options in terms of whether I should continue in this case because it strikes at the core of my integrity and I'm personally offended.* . . . And to the extent that you think that [the attorney general] sits as an appellate court over me, I have a problem with it." (Emphasis added.)

The trial judge, obviously realizing how upset she was, stated: "So, I'm going to continue this so that I can do this *calmly* and *fairly*. Because your rights are important to me. What happens to you sends a message

to the community. I can't expect the community to support a court system that they do not believe in." (Emphasis added.)

On September 2, 2004, six months later, the trial judge continued to demonstrate her anger, not only at the mother, but with the defendant. The trial judge stated: "Although I did take personal affront to the letter, that I do not hold against you, Mr. Herbert, indicating that the court had been involved in a legal lynching, since the mother is from the small town in North Carolina that I'm from, she would know that I grew up in the segregated style where a lynching is not to be taken figuratively, but literally; and having grown up under that system, it has been this court's objective since becoming a lawyer and while studying the ministry [for] two years in the school of divinity in Yale [University] to see that justice is done.

"So, that this court is now accused of being a part of a legal lynching is certainly disturbing to the court. I don't think that this court's reputation would support those allegations."

When, as in the present case, the trial judge takes substantial personal offense at the comments made by another regarding the case on which the judge is presiding and makes those feelings public, the judge is required to recuse herself. "The standard to be employed is an objective one, not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case. . . . Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification." (Internal quotation marks omitted.) *State* v. *Martin*, 77 Conn. App. 778, 785, 825 A.2d 835, cert. denied, 266 Conn. 906, 832 A.2d 73 (2003).

The majority finally argues that the "lenient" sentence imposed by the trial judge camouflages any impropriety of failing to recuse herself because it "did not indicate any animus toward the defendant . . . ." Whether or not the trial judge had improper feelings of animus toward the defendant misses the point. Recusal is required not only for the protection of the defendant, but also for the public perception of justice "because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." *State* v. *Webb*, supra, 238 Conn. 461. Nevertheless, in light of the admission by the state that "at no time did [the defendant] attempt to strike or kick the officer[s]," an effective sentence of three years incarceration, execution suspended after six months, with three years probation, was not a lenient sentence for a defendant who had no criminal record, supported his family and was an honors student in college.

Accordingly, I dissent.