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JUN - 4 2004

COMMISSION ON JUDICIAL CONDUCT

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BEFORE THE  
COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of:	)	No.: 4072-F-109
HONORABLE RICHARD B. SANDERS,	)	DECLARATION OF JUSTICE RICHARD
Justice, Washington Supreme Court Judge.	)	SANDERS ON SUMMARY JUDGMENT
	)	MOTION

Richard B. Sanders makes this declaration under penalties of perjury and is competent to be a witness herein:

1. At all times material hereto I have been and am now an elected Justice of the Washington Supreme Court. On January 27, 2003, I and a delegation of law clerks from the Washington State Supreme Court toured the Special Commitment Center on McNeil Island pursuant to previous arrangements with the Superintendent with that facility. I applied for and received Continuing Judicial Education credit for this tour.

2. The purpose of the tour was educational in nature. This objective was furthered by viewing various physical facilities in existence or under construction and listening to the staff and the prisoners.

3. A "sexually violent predator" is defined by statute as "any person who has been convicted of or charged with the crime of sexual violence and who suffered from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts

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1 of sexual violence if not confined in a secure facility." RCW 71.09.020(16). In RCW 71.09.010  
2 the legislature found "that the prognosis for curing sexually violent offenders is poor, the  
3 treatment needs of this population are very long term, and the treatment modalities for this  
4 population are very different than the traditional treatment modalities for people appropriate for  
5 commitment under the involuntary treatment act." Accordingly, I understood the purpose of  
6 this institution was twofold: (1) To protect the public by confining these individuals and (2) to  
7 provide treatment to enable them to return to society after curing of their mental abnormality or  
8 personality disorder which made the person likely to engage in predatory acts of sexual  
9 violence.  
10

11 4. During the tour the staff explained the physical facilities and treatment program in great  
12 detail. They explained how the prisoners were treated for lack of volitional control.

13 5. After some time we arrived at the main facility, which apparently was a converted cell  
14 block from the preexisting prison. Staff took the tour group to the woodworking shop which  
15 was largely empty except for woodworking machines and one or two prisoners. One of the  
16 prisoners explained, with some pride, that he was engaged in making Indian whistles and  
17 arranged to sell them at retail outlets. Staff also indicated that there were various recreational  
18 facilities available to the prisoners including a gymnasium, although I do not recall that we  
19 were shown the gymnasium.  
20

21 6. Thereafter we were taken to the buildings which actually housed the prisoners. Of  
22 course, the prisoners were present. I did not ask to see or speak to any particular prisoner. Nor  
23 did I recognize the name of any prisoner introduced to me as having a case before my court.  
24 Certainly I was not there to seek out such a person. Moreover I expressly directed any prisoner  
25 or prisoners with whom I came into contact that I did not wish to discuss any of their particular

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1 legal circumstances, that I was there to tour the institution, to find out how the institution  
2 worked, what the prisoners lives were like and how the treatment program functioned. I was  
3 not there to investigate legal claims nor did I do so.

4 7. One individual, without saying anything, thrust a large manila envelope containing  
5 chart paper into my hands. He did not introduce himself nor did anyone indicate who he was. I  
6 took this paper back to the office with me, however after reading the first two or three entries,  
7 concluded it was merely a reiteration of generalized complaints that I had heard from other  
8 prisoners, did not relate to any pending proceeding and put it in the filing cabinet.

9 8. Several prisoners indicated a desire to speak to the tour group. I did not specifically  
10 invite any individual to speak to the tour group although I was willing to listen to them on  
11 matters concerning their institutional life.

12 9. Staff from the institution apparently also realized that there were a number of these  
13 prisoners who wanted to talk to the tour group. Staff suggested that the tour group be seated in  
14 a separate room and that small groups of prisoners (4 or 5 each) be allowed to talk to the tour  
15 group in this room. Present during these conversations was staff member Alan McLaughlin,  
16 myself, the other members of the tour group, and the four or five prisoners. I had no role in  
17 selecting what prisoners would come in to talk to the tour group. These arrangements were  
18 made between the prisoners and staff members outside the room.

19 10. There were perhaps three groups of prisoners who spoke to our tour. On each occasion,  
20 before any prisoner said anything, I advised all the prisoners that we were not there to hear  
21 about their particular legal circumstances but only to hear about their life in the facility and  
22 their treatment experiences, because that was the subject of the tour. Each prisoner complied  
23 with this request, and at no time did any prisoner talk about any specific legal proceeding that  
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1 he might be a party to. Nor did any prisoner state that he was a party to any legal proceeding at  
2 any level of the court system.

3 11. Generally, each prisoner identified himself by name. I did not recognize any of these  
4 names in connection with any case with which I was familiar. Some prisoners gave a brief  
5 summary of their criminal record regarding sexual offenses. Personally, I thought this was  
6 helpful to understand the context surrounding whatever this individual might have to say about  
7 his prison experience. For example, some of them had raped women, some of them had raped  
8 men, and some had engaged in a variety of other sexual offenses, which possibly included child  
9 molestation etc. This was not remarkable to me in and of itself since according to the statute  
10 before anyone could be incarcerated at the facility it was necessary to establish that he had in  
11 fact been convicted or otherwise involved in a sexually violent criminal offense. See RCW  
12 71.09.030.  
13

14 12. Mr. McLaughlin reports in his declaration that some of the prisoners commented about  
15 their perspective on volitional control. I was interested to hear this since it appeared to relate  
16 directly to the treatment program of the institution. Some said they thought they had volitional  
17 control. Many, however, said nothing about it. I was not interested in determining whether  
18 these individuals actually had volitional control since that is the province of the jury, not the  
19 appellate court judge, and, by virtue of the fact that these men were already there, the jury must  
20 have found that they lacked volitional control.  
21

22 13. The jury finds the facts, not the appellate court judge. The appellate court judge must  
23 abide by the facts as previously found by the jury. Whether or not any individual thought he  
24 had or did not have volitional control had nothing to do with any decision I could possibly be  
25 called upon to make in the state Supreme Court. But it did have something to do with how the

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1 institution functioned in terms of the nature and effectiveness of its treatment program. That,  
2 after all, was the reason the institution was there and that was the reason for our tour—to find  
3 out about it.

4 14. I note that Mr. McLaughlin claims in his declaration that one of the prisoners who came  
5 forward was Charles Johnson. I did not recognize Charles Johnson as a name with which I was  
6 familiar. Mr. Johnson said nothing concerning any legal proceeding according to the  
7 McLaughlin declaration. He did not talk about volitional control. He did, apparently however,  
8 state that he wanted to make a speaking tour of the mainland. If I had known that Mr. Johnson  
9 was a party in a pending proceeding before the Supreme Court I would have concluded then, as  
10 I conclude now, that nothing he said had anything to do with his pending case. If he related his  
11 criminal history, that also would have nothing to do with his pending case, since that was not  
12 an issue in his case; as later inspection of the briefs on appeal indicate both sides were in  
13 agreement on the nature of his criminal history and that was not an issue on appeal pertaining  
14 to Mr. Johnson.

15  
16 15. That Mr. Johnson said nothing about his pending appeal is obvious by comparing the  
17 statement attributed to Johnson in the McLaughlin declaration with the written opinion  
18 ultimately issued by the Supreme Court in *In re Detention of Thorell*, 149 Wn.2d 724, 72 P.3d  
19 708 (2003). (That case did not concern mainland speaking tours by sexual predators nor Mr.  
20 Johnson's criminal history.)

21  
22 16. After speaking with the prisoners the tour group departed the island for the mainland. I  
23 felt that that tour was a worthwhile educational experience. The tour had nothing whatsoever to  
24 do with the particular legal circumstances of any prisoner that we may have met at the prison.  
25 However I was satisfied that I better understood the circumstances of the Special Commitment

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1 Center, its successes, failures, and challenges from both the perspective of the staff and the  
2 prisoners.

3 17. I was surprised several weeks after the tour had been completed when I received a  
4 motion to recuse from the Snohomish County Prosecuting Attorney indicating I had  
5 unwittingly spoken to a party, Charles Johnson, in the *Thorell* case under the circumstances as  
6 outlined above. I did not believe that my recusal was required by the rule; however, I thought  
7 recusal was permitted as a matter of discretion under the recusal rule even though the contact  
8 with Mr. Johnson, if it occurred, was unwitting and did not pertain to his pending proceeding in  
9 any way. I exercised my discretion by recusing.

10  
11 18. At no time during the visit was I ever aware of any pending or impending cases  
12 regarding any of the prisoners I talked with. I had no actual knowledge of any such cases or the  
13 defendants connected with such cases.

14 19. Assuming the accuracy of Mr. McLaughlin's declaration, I have not sat in judgment on  
15 any other case maintained by any of the prisoners identified by Mr. McLaughlin. I have also  
16 determined that no case involving any prisoner identified in the McLaughlin declaration other  
17 than Charles Johnson had been accepted for review by the Washington State Supreme Court as  
18 of the date of the tour, nor do I believe that any case after the date of the tour has been accepted  
19 for review from any of those individuals identified.

20  
21 20. When the matter of the anonymous document which I received during the course of the  
22 tour was brought to my attention, I directed that it be filed with the clerk of the Supreme Court  
23 open for public viewing. I am not aware of any claim that this document relates in any way to  
24 any pending proceeding before the State Supreme Court, nor am I aware of any significance the  
25 document may have.

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1 21. Mr. McLaughlin also seems to indicate in his declaration that I received two  
2 documents, not just the one identified above. I have no recollection whatsoever of receiving  
3 any other document from any prisoner other than the one I referenced in this declaration. I have  
4 searched through my files and records and I can find no such document. I did, however, receive  
5 many documents from the staff of the facility which I have retained. If the Commission  
6 believes there is such a document I have asked that it be produced, however, the disciplinary  
7 counsel has objected to this disclosure request. If I ever received a document of this kind I have  
8 no recollection of ever reading it, nor do I have it or a copy of it. Certainly I did not consider  
9 such a document (which I do not believe I received and cannot locate) with regard to any  
10 unspecified case.  
11

12 22. In summary, I toured the Special Commitment Center in good faith to further my  
13 judicial education. Everything I did at the Center was for that objective and that objective  
14 alone. I did not go to the Center to determine any facts regarding any litigation, real or  
15 imagined. Moreover the only facts I am allowed to consider for the purpose of appellate review  
16 are those set forth in the record of the particular case under review. I have never considered any  
17 information received from any prisoner in the visit to the Center in any case.  
18

19 23. I ask that this case be dismissed on summary judgment to avoid a useless but costly  
20 trial. It is simply not fair that I should be forced to expend nearly my whole year's net income  
21 to defend myself against allegations which are not supported in fact or law by clear, cogent,  
22 and convincing evidence, or any evidence at all.

23 I make this declaration in Vashon, Washington on this 4<sup>th</sup> day of June, 2004.  
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