

FILED
NOV 20 1989
COMMISSION ON
JUDICIAL CONDUCT

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

In Re the Matter of:)	
)	
THE HONORABLE JOHN M. DARRAH)	NO. 89-782-F-14, 89-784
Judge, King County Superior Court)	89-796, 89-802
King County Courthouse)	
516 Third Avenue)	COMMISSION DECISION
Seattle, WA 98104)	
)	

1 A fact-finding hearing was held pursuant to Commission on
2 Judicial Conduct Rules (CJCR) on October 20, 1989. The Statement
3 of Charges was personally served on the Honorable John M. Darrah
4 on September 19, 1989. The Notice of Fact-Finding Hearing was
5 mailed to Respondent on September 20, 1989.

6 Members of the Commission on Judicial Conduct present as
7 fact-finders were: Wesley A. Nuxoll, Chairman; Ruth Coffin-
8 Schroeder, Joseph H. Davis, Honorable Thomas E. Kelly, Sharon
9 Mast, Steven A. Reisler, Honorable Evan E. Sperline, and
10 Honorable Herbert A. Swanson.

11 Honorable John M. Darrah was present with his counsel, Mr.
12 Richard F. Broz and Ms. Alice L. Blanchard. The Commission on
13 Judicial Conduct was represented by counsel, Mr. Patrick C.
14 Comfort.

15 The Commission, having heard and considered the testimony of
16 the witnesses called and having reviewed the records and files
17 herein and having considered the arguments of both Counsel, finds
18 by clear, cogent and convincing evidence the following:

COMMISSION DECISION - 1

1 FINDINGS OF FACT

2 I.

3 Respondent is now and at all times mentioned herein was a
4 Judge of the King County Superior Court.

5 II.

6 On April 13, 1989, after receiving the verdict of the jury
7 in State v. Steven Charles Spurgeon but before the jury was
8 dismissed, Respondent, in open court, addressed the jury and,
9 inter alia:

10 (a) Spoke out against the availability of hand guns in our
11 society and the easy access individuals such as in the case just
12 then concluded have to handguns.

13 (b) Exhorted the jurors to contact their legislators
14 concerning such subject; and

15 (c) Urged a change in the law relating to ownership and
16 possession of handguns and asked jurors to contact their state
17 legislators about the availability of handguns in our society.

18 III.

19 These remarks followed an intense trial experience during
20 which the Respondent and the jury had heard and seen how five
21 young men and their friends ransacked homes and cars for firearms
22 and other valuables, and without apparent reason culminated in
23 one of them ending a cab driver's life in a deliberate,
24 execution-style homicide. What had been irresponsible, alcohol-
25 influenced property crimes, now became aggravated first-degree
26 murder with a resulting awesome waste of life, now and far into

1 the future. Therefore, when Respondent "spoke out", the jurors
2 and the court had a common base of information. Judge Darrah was
3 angry, frustrated, and concerned at the constant heavy toll that
4 he had seen handguns taking and was motivated by his experience
5 to so address the jury. Respondent made remarks of similar
6 import to representatives of the news media after the court
7 session had concluded. Members of the media were present while
8 Judge Darrah made his remarks to the jurors from the bench.

9
10 APPLICABLE CODE

11 The Statement of Charges asserts that Respondent violated
12 Canon 2(A) and 7(A)(4).

13 Canon 2(A) of the Code of Judicial
14 Conduct provides: Judges should respect and
15 comply with the law and should conduct
16 themselves at all times in a manner that
17 promotes public confidence in the integrity
18 and impartiality of the judiciary.

19 Canon 7(A)(4) of the Code of Judicial
20 Conduct provides: Judges should not engage
21 in any other political activity except on
22 behalf of measures to improve the law, the
23 legal system, or the administration of
24 justice.

25 Based upon the Findings of Fact and applicable Canons, the
26 Commission makes the following:

1 CONCLUSIONS

2 I.

3 It can be successfully argued that Respondent's statements
4 were inappropriate and that some of his comments were likely to
5 offend members of society. However, the statements, when taken as
6 a whole, and in light of the circumstances in which they were
7 given, did not violate Canon 2(A).

8 II.

9 Judge Darrah did not urge the jurors to take any particular
10 position or pursue any particular legislation or reform. He was
11 not involved in partisan politics prohibited by Canon 7(A)(4).
12

13 DECISION

14 Based on the foregoing Findings of Fact and Conclusions, the
15 Commission on Judicial Conduct hereby dismisses the Statement of
16 Charges filed against the Honorable John M. Darrah.

17 Dated this 17th day of November, 1989.

Ruth Coffin Schroeder
Ruth Coffin Schroeder

Sharon Mast
Sharon Mast

Joseph H. Davis
Joseph H. Davis

Evan E. Sperline
Honorable Evan E. Sperline

Thomas E. Kelly
Honorable Thomas E. Kelly

1
2 **DISSENT**

3 Canon 2(A) of the Code of Judicial Conduct states:

4 A judge should respect and comply with
5 the law and should conduct himself at all
6 times in a manner that promotes public
7 confidence in the integrity and impartiality
8 of the judiciary.

9 Canon 2(A) has three elements: (1) a judge should respect
10 the law, (2) a judge should comply with the law, and (3) a judge
11 "should conduct himself at all times in a manner that promotes
12 public confidence in the integrity and impartiality of the
13 judiciary." (emphasis added.)

14 I have no doubt that Judge Darrah is a man of the highest
15 integrity and best intentions. Judge Darrah has clearly complied
16 with the first two elements of Canon 2(A) in that he both
17 respected and complied with the law. I disagree with the
18 majority of the Commission, however, because I believe Judge
19 Darrah has failed to conduct himself at all times in a manner
20 that promotes public confidence in the integrity and impartiality
21 of the judiciary.

22 Canon 7(A)(4) states:

23 A judge should not engage in any other
24 political activity except on behalf of
25 measures to improve the law, the legal
26 system, or the administration of justice.

1
2 On April 13, 1989, Judge Darrah exhorted an impaneled jury
3 to contact their legislators concerning the availability of
4 handguns in our society. He urged a change in the law relating
5 to the ownership and possession of handguns and asked jurors to
6 contact their state legislators about the availability of
7 handguns. When Judge Darrah made these statements to the jury,
8 the trial of State v. Steven Spurgeon was over. The jury was
9 still impaneled, motions for a new trial (if any) had not yet
10 been heard, and the Judge was still speaking from the bench,
11 fully robed. When Judge Darrah exhorted the jurors to contact
12 their legislators concerning handguns, he knew that members of
13 the news media were present and that these media representatives
14 would hear, and probably repeat, his exhortation.

15 The ownership and availability of handguns is a "partisan"
16 issue. By "partisan," I do not mean that Democrats and
17 Republicans divide cleanly on the issue; solely that many people
18 strongly support one side or the other on the question, and that
19 it is an issue which ultimately must be resolved in a political
20 forum. Although I respect Judge Darrah's sincerity, share his
21 concerns, and personally subscribe to the same or similar views
22 about handguns, I believe that Judge Darrah nevertheless
23 overstepped the bounds of judicial propriety and violated Canon
24 7(A)(4).

25 As citizens we are all vested with certain Constitutional
26 rights. One can always voluntarily waive or agree to

1 restrictions of those rights. Sometimes, when one accepts the
2 duty and dignity of high office, one also accepts some
3 limitations on the freedom to always speak one's mind freely at
4 any time on any issue.

5 The legal system of the United States works on the basis of
6 trust. The real power of the courts --and therefore one major
7 leg of our tripartite form of government -- rests not on the
8 power to fine and incarcerate, but on the public confidence in
9 the courts' integrity and impartiality.

10 A man or woman who dons the robes of judicial office is no
11 longer a mere individual, but a representative and spokesperson
12 for the entire legal system. When the judge speaks from the
13 bench, it is not solely as an individual man, woman or judge, but
14 as the Court. On cases and controversies before the Court, it
15 interprets the law, applies them to the facts and makes
16 decisions. This is a difficult and, at times, a frustrating
17 process. The difficulty and occasional frustration inherent in
18 judging does not, however, license a judge to lobby from the
19 bench for political or social issues the judge sincerely believes
20 important. That is for the other branches of government. Under
21 Canon 7 of the Code of Judicial Conduct, a candidate for judicial
22 office should not announce his or her views on disputed legal or
23 political issues. A sitting judge should do no less.

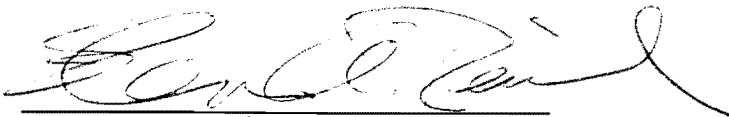
24 I have no doubt that Judge Darrah is and remains totally
25 fair and impartial. He also, in my opinion, violated Canon 2(A)
26 and Canon 7(A)(4). No one on the Commission believes he should

1
2 be removed from office, but I believe he should be reprimanded or
3 admonished not to do again as he has done.

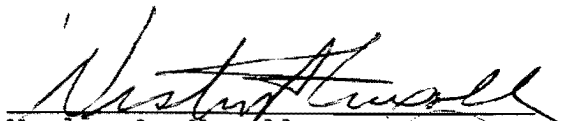
4 I believe we find it difficult to discipline Judge Darrah
5 because we like him and sympathize with his concerns. However,
6 we must act like impartial judges ourselves as we consider Judge
7 Darrah's conduct and put aside our sympathies. If Judge Darrah,
8 at the conclusion of State v. Spurgeon, -- speaking to a still
9 impaneled jury, from the bench, wearing robes of office and in
10 open court -- had exhorted the jurors (and the media) to support
11 legislation making handguns more readily available to the public,
12 then Judge Darrah would have violated his Code of Conduct. If
13 though sincerely motivated, he had from the bench urged changes
14 in the abortion laws as a means of reducing crime in the streets,
15 then the judge would have violated his Code of Conduct. The
16 difference between what one or another judge expresses from the
17 bench as his or her strongly felt personal belief is irrelevant.
18 So long as the issue is social, philosophical or political, it is
19 a matter of opinion which the judge, speaking from the bench,
20 best leaves untouched. To do otherwise threatens public
21 confidence -- even if only a segment of the public's confidence -
22 - in the integrity and impartiality of the judiciary. To some,
23 and perhaps to many, Judge Darrah's words, spoken as the Court,
24 robed with authority, from the bench and with the news media
25 present, could create the false impression that this or other
26 judges will not be fair or impartial on other cases (criminal or

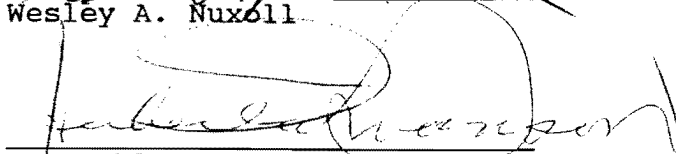
1 civil) involving handguns. This dis-serves the best interests of
2 the judiciary.

3 With all respect to the majority of the Commission -- and
4 with all respect to Judge Darrah, whose sincerity and personal
5 courage are admirable -- I dissent from the failure to find Judge
6 Darrah violated Canons 2(A) and 7(A)(4) of the Code of Judicial
7 Conduct.


Steven A. Reisler

We concur in Steven A. Reisler's opinion.


Wesley A. Nuxoll


Honorable Herbert A. Swanson