

BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON

In Re the Matter of

THE HONORABLE JOHN M. DARRAH,  
Judge, King County Superior Court,  
C-903 King County Courthouse, 516  
Third Avenue, Seattle, Washington  
98104

NO. 89-782-F-14, 89-784,  
89-796, AND 89-802

RESPONDENT'S ANSWER TO  
STATEMENT OF CHARGES

Pursuant to Commission of Judicial Conduct Rule 7, respondent, Judge John M. Darrah, by and through his undersigned counsel, for answer to the Statement of Charges filed herein avers and states as follows:

Background

With respect to the paragraph designated "Background" in the Statement of Charges, admits the statements contained therein.

Facts Supporting Charges

With respect to those paragraphs designated "Facts Supporting Charges",

(1) Admits that on April 13, 1989, after receiving the verdict of the jury in State v. Steven Charles Spurgeon, and after thanking the jurors, advising them that their service was over, and that they were now free to speak to anyone about any aspect of the case, respondent in open court addressed the jury and, inter alia:

1 (a) Spoke out against the availability of hand guns in our society and the easy  
2 access individuals such as in the case just then concluded have to handguns; these remarks  
3 followed an intense trial experience during which the respondent and the jury had heard and  
4 seen how five young men and their friends ransacked homes and cars for fire arms and other  
5 valuables, and without apparent reason culminated in one of them ending a cab driver's life  
6 in a deliberate, execution style homicide. What had been irresponsible, alcohol influenced  
7 property crimes, now became aggravated first degree murder with a resulting awesome  
8 waste of life, now and far into the future. Therefore, when he "spoke out", the jurors and  
9 the court had a common base of information. Judge Darrah was angry, frustrated, and  
10 concerned at the constant heavy toll that he had seen hand guns taking and was motivated  
11 by his experience to so address the jury. Respondent made remarks of similar import to  
12 representatives of the news media after the court session had concluded.

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

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

17 (2) Respondent denies that the facts alleged and admitted herein constitute any  
18 violation of the Code of Judicial Conduct.

19 (3) Except as expressly admitted herein, denies the remaining allegations in the  
20 paragraphs designated "Facts Supporting Charges."

21 Basis for Commission Action:

22 The respondent admits that the Commission has determined that probable cause exists  
23 for believing that he violated Canon 2(A) and Canon 7(A)(4) of the Code of Judicial Conduct,  
24 but denies such probable cause exists or that there is any reasonable basis upon which to  
25

1 make such a determination; respondent affirmatively states that his actions in speaking out  
2 against the easy availability of hand guns in society and in calling for jurors to contact their  
3 legislators concerning the subject and urging a change in the law relating to ownership and  
4 possession of hand guns, was protected speech pursuant to the Code of Judicial Conduct,  
5 established statutory and case law of the State of Washington, and the First Amendment to  
6 the Constitution of the United States.

7 Further answering the Statement of Charges, respondent affirmatively avers and states  
8 that the Commission on Judicial Conduct's determination to proceed in this matter is  
9 contrary to law and beyond its authority for the following reasons:

10 1. The Commission of Judicial Conduct ("Commission") has not identified any  
11 statement or conduct by which a reasonable person could conclude that the respondent failed  
12 to promote public confidence in the integrity and impartiality of the judiciary;

13 2. The Statement of Charges failed to consider that respondent's comments were  
14 made after conclusion of a fair and impartial trial on the merits, notwithstanding the  
15 respondent's personal beliefs and convictions, and that the defendant in the case then  
16 concluded was subject to a mandatory life sentence as a matter of law; under such  
17 circumstances and in view of the fact that respondent's comments were made to improve  
18 the criminal justice system, the Commission should have dismissed the complaints in the  
19 exercise of its dual function as set forth in In re Deming, 108 Wash. 2d 82, 89 (1987), "not  
20 only to protect the public from judges who violate the Code of Judicial Conduct, but also  
21 to protect judges from harassment and meritless complaints."

22 3. The respondent's comments were made with a specific intent to improve the  
23 criminal justice system and as such were an exercise of his rights of free speech within the  
24 constraints of the Code of Judicial Conduct;

4. The respondent's comments calling for legislative action were non-partisan political activity which is excepted from the scope of Canon 7(A)(4) as set forth in In re Staples, 105 Wash. 2d 905, 909-910 (1986).

5. There is no reason in logic or law, and therefore no compelling state interest, which would justify the unnecessary burdening of the respondent's exercise of free speech, and The Code of Judicial Conduct (CJC Canon 4) specifically encourages judges to participate in activities dedicated to the improvement of the law.

WHEREFORE, having fully answered, respondent respectfully submits that the charges against him should be dismissed and that these proceedings be terminated forthwith.

DATED this 28<sup>th</sup> day of September, 1989.

Richard F. Broz  
RICHARD F. BROZ

Alice L. Blanchard  
ALICE L. BLANCHARD By RFB.

of Mikkeltorg, Broz, Wells & Fryer  
Counsel for Judge Darrah