

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED

JUL - 6 2000

COMMISSION ON JUDICIAL CONDUCT

In Re the Matter of

Honorable Peter M. Lukevich, Judge
Tukwila Municipal Court
6200 Southcenter Boulevard
Tukwila, WA 98188

No. 3037-F-86

STATEMENT OF CHARGES

I. BACKGROUND

The Honorable Peter M. Lukevich (Respondent), was at all times discussed herein a judge of the Tukwila Municipal Court, Tukwila, Washington.

II. FACTS SUPPORTING CHARGES

1. Respondent was appointed a full-time judge of the Tukwila Municipal Court, Tukwila, Washington effective on January 1, 1998.

2. While presiding as judge of the Tukwila Municipal Court, Respondent engaged in a pattern or practice of rude, impatient, and undignified treatment of pro se defendants in the courtroom. This treatment included repeatedly interrupting defendants; refusing to allow them to answer Respondent's questions; using an angry, disdainful and/or demeaning tone of voice in addressing them; mimicking their speech; engaging in protracted dialogues with them regarding the exercise of their rights as defendants which were humiliating, intimidating and otherwise inappropriate; and otherwise failing to conduct himself in a judicious manner. Respondent demonstrated such behaviors in proceedings during, but not limited to, the following cases:

A. City of Tukwila v. Jackie Dempere, Case Numbers CR0023205 and CR0027909, including but not limited to status hearings held on January 12, 1999 and February 16, 1999. See Exhibit A.

B. City of Tukwila v. Ricardo Curry, Case Number CR0024931, including but not limited to status hearings held on January 6, 1999 and February 3, 1999. See Exhibit B.

1 C. City of Tukwila v. Lonnie Sylvan, Case Number CR0027407, including but
2 not limited to a status hearing held on May 25, 1999. See Exhibit C.

3 3. Respondent engaged in ex-parte communications with Gregory Hoover, former
4 attorney for defendant Jackie Dempere, summoning him in open court to meet with him in
5 chambers at the conclusion of a status hearing in Ms. Dempere's case held on February
6 16, 1999, and then discussing Ms. Dempere's case with Mr. Hoover in his chambers
7 without all parties being present. This ex parte conversation was not only inappropriate
8 but gave the appearance of impropriety to those present when Respondent summoned Mr.
9 Hoover to his chambers.

10 **III. BASIS FOR COMMISSION ACTION**

11 1. On December 27, 1999, pursuant to CJCRP 17(e), the Commission sent a
12 certified letter to Respondent informing him that the Commission was pursuing Initial
13 Proceedings. Enclosed with the letter was a Statement of Allegations.

14 2. On January 30, 2000, Respondent formally responded to the Statement of
15 Allegations.

16 3. On June 29, 2000, the Commission determined that probable cause exists
17 to believe that Respondent has violated Canons 1, 2(A) and 3(A)(3, 4, and 5) of the Code
18 of Judicial Conduct (CJC) which state:

19

20 **CANON 1**

21 **Judges shall uphold the integrity and
22 independence of the judiciary.**

23 An independent and honorable judiciary is indispensable to justice in our society.
24 Judges should participate in establishing, maintaining and enforcing high standards
25 of judicial conduct, and shall personally observe those standards so that the integrity
26 and independence of the judiciary will be preserved. The provisions of this Code are
27 to be construed and applied to further that objective.

28

Comment

26 *Deference to the judgments and rulings of courts depends upon public
27 confidence in the integrity and independence of judges. The integrity and independence
28 of judges depends in turn upon their acting without fear or favor. Although judges should
be independent, they must comply with the law, including the provisions of this Code.
Public confidence in the impartiality of the judiciary is maintained by the adherence of*

1 each judge to this responsibility. Conversely, violation of this Code diminishes public
2 confidence in the judiciary and thereby does injury to the system of government under
3 law.

4 **CANON 2**

5 **Judges should avoid impropriety and the appearance of impropriety**
6 **in all their activities.**

7 (A) Judges should respect and comply with the law and should act at all
8 times in a manner that promotes public confidence in the integrity and impartiality of
9 the judiciary.

10 **CANON 3**

11 **Judges shall perform the duties of their office**
12 **impartially and diligently.**

13 The judicial duties of judges should take precedence over all other activities.
14 Their judicial duties include all the duties of office prescribed by law. In the
15 performance of these duties, the following standards apply:

16 (A) **Adjudicative Responsibilities.**

17

18 (C) Judges should be patient, dignified and courteous to litigants, jurors,
19 witnesses, lawyers and others with whom judges deal in their official
20 capacity, and should require similar conduct of lawyers, and of the staff, court
21 officials and others subject to their direction and control.

22 **Comment**

23 *The duty to hear all proceedings fairly and with patience is not inconsistent with*
24 *the duty to dispose of the business of the court. Courts can be efficient and businesslike*
25 *while being patient and deliberate.*

26 (4) Judges should accord to every person who is legally interested in a
27 proceeding, or that person's lawyer, full right to be heard according to law,
28 and, except as authorized by law, neither initiate nor consider ex parte or
other communications concerning a pending or impending proceeding. Judges, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

Comment

The proscription against communications concerning a proceeding includes
communications from lawyers, law teachers, and other persons who are not participants
in the proceeding, except to the limited extent permitted. It does not preclude judges from
consulting with other judges, or with court personnel whose function is to aid judges in
carrying out their adjudicative responsibilities. An appropriate and often desirable
procedure for a court to obtain the advice of a disinterested expert on legal issues is to
invite the expert to file a brief amicus curiae.

(E) Judges shall perform judicial duties without bias or prejudice.

1 **Comment**

2 *A judge must perform judicial duties impartially and fairly. A judge who manifests*
3 *bias on any basis in a proceeding impairs the fairness of the proceeding and brings the*
4 *judiciary into disrepute.*

5 **IV. PROCEDURE FOR RESPONDENT TO ANSWER STATEMENT OF CHARGES**

6 In accordance with CJCRP 20(a), Respondent shall file a written answer to this
7 Statement of Charges with the Commission and serve a copy upon disciplinary counsel
8 in this matter, Curtis M. Janhunen; Brown, Lewis, Janhunen & Spencer; Bank of America
9 Building; 101 East Market Street, Suite 501; Post Office Box 1806; Aberdeen, Washington
10 98520 within twenty-one (21) days after the date of service. As provided by CJCRP 21(a),
11 failure to timely answer shall constitute an admission of the factual allegations.

12 DATED this 6th day of July, 2000.

13 COMMISSION ON JUDICIAL CONDUCT
14 OF THE STATE OF WASHINGTON

15 David Akana

16 David Akana
17 Executive Director
18 P.O. Box 1817
19 Olympia, WA 98507
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EXCERPTS FROM LUKEVICH COURT PROCEEDINGS
TUKWILA MUNICIPAL COURT

1. EXCERPT #1 – JACKIE DEMPERE

Case No. 23205 (false proof of insurance)

Tape No. 010-891

January 12, 1999

Motion Status hearing (prior to JTR scheduled for 2/4/99)

Summary: The parties have agreed to resolve the case on the following terms: the city agrees to dismiss the case following a evidentiary hearing before the court to determine whether there was probable cause for the defendant's arrest. The defendant refuses to stipulate that there was PC for the arrest, and the city won't stipulate that there wasn't, so the solution was to submit the issue to the Judge for determination. The Judge initially resists the request for a PC hearing, questioning why he can't just make a determination of PC based upon the police report as he normally does, and asking the parties to provide him with some authority to even hold such a hearing. At his point, hearing where the Judge is going with this, the defendant apparently tells her attorney that she would rather go to trial that accept a dismissal without an opportunity to challenge whether there was probable cause for the arrest. The defendant's attorney (Greg Hoover) relays this to the court, at which point the court makes the following statement:

Transcript excerpt # 1:

Judge Lukevich: Mr. Kovak [sic], I'm going to be very pointed with you. I'm tired of your client's antics. She's appeared in this courtroom on numerous occasions, she's wasted the time of this court, she has moaned to every executive and legislative branch of the city government in this jurisdiction, she has frankly tied this court up in more costs and efficiencies than I care to enumerate at this moment, she has tried to play the system, she has used school as an excuse for continuances, she has used illnesses and other personal conflicts for reasons for continuances, and now she comes before the court again and wants to proceed to trial after informing you and you putting your efforts into trying to resolve this matter through some form of a negotiated agreement, another reason to disregard this hearing and proceed to a trial. I'm tired of it. There's a way to resolve this matter, Mr. Hoover, you and I both understand what that is...this means nothing upon you, this is no reflection upon your services, it is a reflection upon the way that your client is treating this court. We're going to put an end to this....No, ma'am, I have an attorney to speak on your behalf. I will

schedule a probable cause hearing in this matter, I don't know what you call them, but we'll bring the officer in, we're going to honor your first request in this matter, we'll allow the officers to testify as to the issue of probable cause, and you will be limited in your cross-examination to only probable cause. At the end of that hearing, I will make a determination on whether or not PC existed for this arrest. If it has, I will honor the agreement that has been made between the parties and the matter will be dismissed."

[END OF EXCERPT]

2. TRANSCRIPT EXCERPY # 2 – JACKIE DEMPERE

Case No. 23205 (later in the same case)

Tape # 044-390

February 16, 1999

Motion status hearing (prior to JTR scheduled for 3/4/99)

Transcript excerpt #2:

Jackie Dempere (JD) (pro se defendant): May I read this?

Judge Lukevich (Judge): Are you ready to proceed to trial?

JD: May I read this?

Judge: Just hand it up to my bailiff.

JD: Em—(interrupted)

JUDGE: Just hand it up to my bailiff.

JD: Would you read it?

JUDGE: Yeah, I'm gonna read it, hand it up to my bailiff and then I can read it....Thank you officer. [Silence] [SEE ATTACHED DOCUMENT] Ms. Dempere, this is not a properly prepared request for discovery or witnesses subpoena. Mr. Hamilton, if he's, if he's truly going to represent you in this case, would...I would think he would roll over in his grave if he saw this submitted on his behalf.

JD: Well, but (interrupted)

JUDGE: I don't know who drafted this, but if his name is on it, he's in a lot of trouble in this court because as an officer of the court, this is totally unacceptable. I don't know, who drafted this?

JD: I draft this.

JUDGE: Well you can't draft things for your attorney.

JD: No, I'm not drafting for my attorney, I just ... (interrupted)

JUDGE: Who'd you draft it for?

JD: This is for me so that I...(interrupted)

JUDGE: I said, who'd you...

JD: don't get estopped when I'm talking.

JUDGE: You are going to get "estopped" because you can't submit this type of stuff to the court.

JD: My, I'm here to say (interrupted)

JUDGE: (Talking over Dempere) You're here to tell me that Mr. Hamilton is representing you, is that true?

JD: Yes, and we are scheduled for trial (interrupted)

JUDGE: (Talking over Dempere) None of the content of that document will be applicable until I have proper notice and form from Mr. Hamilton.

JD: We have a form here that (interrupted)

JUDGE: I'm talking about the contents of that letter.

JD: What is that, what is that "appearance" in there, the one that I gave you?

JUDGE: Notice of appearance?

JD: Yes

JUDGE: I'm not contesting that. I'm saying until I receive that in the proper format with the supporting necessary documentation, the court is not going to acknowledge receipt of that document. That's not prepared properly.

JD: This is not a document...that is for me, to help me, this is not for you, for me to read it to you, to tell you (interrupted)

JUDGE: And then what do you expect me to do with it once you "read it to me"?

JD: Because I'm scheduled for two trials (interrupted)

JUDGE: I said what do you expect me to do with it once you read it to me? What do you expect me to do with that?

JD: To (interrupted)

JUDGE: To rule on it, right?

JD: To acknowledge that we are scheduled for trial (interrupted)

JUDGE: Well I'm not going to do that because it's not prepared in the proper format.

JD: What exactly is...(inaudible) (interrupted)

JUDGE: I don't need a notice of appearance, Ms. Dempere. I'm talking about that document—that's called a request for discovery, demand—

JD: No, no, no, we have the discovery, we have requests for discovery.

Judge: Then why are you showing me this?

JD: Because (inaudible) (interrupted)

JUDGE: No, why are you showing me that?

JD: Because this is for me to read from, because I (interrupted)

JUDGE: So why are you showing it to me?

JD: Because you asked me to.

JUDGE: No, you wanted to give me that to read.

JD: No. I wanted to read from it (interrupted)

JUDGE: Put it away, put it away so we don't get confused. Ms. Jackson, do you have a notice of appearance for Mr. Hamilton?

MS. JACKSON: She just handed me one in court today.

JUDGE: Could I see it please?

MS. JACKSON: Sure, your honor... (pause) And I should note it's on one cause number, not the other.

JUDGE: Okay.

[silence]

JUDGE: Ms. Dempere, this notice of appearance is for the wrong cause number.

JD: Is for what?

JUDGE: It is for a different cause number than the one that's before the court.

JD: We have two cases before (interrupted)

JUDGE: Right. It's neither one of them.

JD: (Pause) Then he's copied it from the form.

JUDGE: From the form?

JD: Yes.

JUDGE: What form is that?

JD: From the file that Mr. Hoover had given to him.

JUDGE: Okay, well let me see what Mr. Hoover used last time I was here. Mr. Hoover has the correct cause number on his documentation.

JD: Is the number in there 23205?

JUDGE: Yes.

JD: Okay this is the one I am here for.

JUDGE: Right, but Mr. Hamilton is not appearing on your behalf in that cause number. (Talking over Dempere) He is appearing on behalf of a cause number of 02305.

JD: There's a 2 missing.

JUDGE: Ms. Dempere, I don't know that. All I hear is Mr. Hamilton has appeared. He's written a cause number that he's delivered to this court and it is not the cause number that's before the court.

JD: There is a 2 after the 3 missing and if he (interrupted)

JUDGE: I understand that is your decision, or your representation to the court, but I'm not going to consider this his notice of appearance on this cause number.

JD: Because of the number?

JUDGE: Right. It's the wrong cause number.

JD: But there's no cause number with my name on it with that number in the court.

JUDGE: Well, whatever it is he thinks he's representing you on it and I can't undo that, okay? That's how this system works.

JD: Technicality (unintelligible)

JUDGE: Absolutely, to the letter. You would expect nothing less from me.

JD: Okay.

JUDGE: And I expect nothing less from an attorney. If they're going to represent you, they have an obligation to the court to specify the specific cause number that they intend to represent you on.

JD: Obviously (interrupted)

JUDGE: That's their job---not yours, not mine. That's their job.

JD: It's a misprint (interrupted)

JUDGE: I don't know that because Mr. Hamilton chooses not to appear before this court today.

JD: He had a (unintelligible) schedule

JUDGE: Ms. Dempere, I could care . . . he chooses not to be here, therefore I cannot examine what went through his mind, why he made what you represent is a potential error in this cause number, I can't examine any of that. All I know is that this notice of appearance does not meet the requirements of either one of these two cases. Therefore, you stand before this court today pro se. Are you prepared to go to trial in this matter pro se? I'm not going to let Mr. Hamilton come running in here at the last minute.

JD: No, I won't be pro se, I'm unable to (interrupted)

JUDGE: Then what do you want to do, because it's set for trial in 10 days

JD: We are scheduled for March 4.

JUDGE: Right.

JD: And we expect to get discovery (interrupted)

JUDGE: Who's "we"?

JD: My attorney and myself.

JUDGE: Your attorney is not a party to this matter at all. You have no attorney. The attorney is Ms. Dempere, pro se. Do you intend to represent yourself, or do you want a continuance to get an attorney on board in this case in the right fashion with the right cause numbers making the right discovery requests?

JD: That's fine.

JUDGE: Is that what you want?

JD: That would be fine.

JUDGE: That would probably be in your best interests. In order to do that, you need to waive your right to a speedy trial. I think you've been through this before, I think you understand what that means.

JD: Yes.

JUDGE: I would caution you, Ms. Dempere, that when you do things like make decisions to fire attorneys and switch attorneys in such short order prior to the trial date, that this is the confusion that's caused when you do that

JD: I didn't fire (interrupted)

JUDGE: You are probably absolutely right that Mr. Hamilton made an error here. But he's making an error because he's trying to hurry around too much in order to satisfy your needs.

JD: You're (interrupted)

JUDGE: (Talking over Dempere) If you'd just go a little slower---I don't want to hear from you right now, I didn't ask a question. I just want you to proceed more cautiously and slowly and not at the last second in order to protect yourself. With that, let's go ahead and execute a waiver through May 30, of 1999, and we'll bring this matter back on for trial again. Tell Mr. Hamilton that he has not appeared in this case yet and that he needs to file a proper notice of appearance in accordance with the court rules.

JD: We're ready for trial (interrupted)

JUDGE: Did you understand what I just said? Did you hear what I said? Tell Mr. Hamilton to file a proper notice of appearance in accordance with the court rules. Have you executed the waiver yet?

MS. JACKSON (City prosecutor): I'm filling it out.

JD: We have to (interrupted)

JUDGE: There's no "we." Have you executed the waiver?

JD: No I haven't. She just told you (interrupted)

JUDGE: Hold on a minute, she helping you. There's no discussion, just wait a second. The waiver will be through May 30.

MS. JACKSON: Cause number 205 and 27909.

JD: I need to state that we are ready for the first case, but we (interrupted)

JUDGE: Ms. Dempere, there is no "we." You have no attorney. Quit telling me "we." There is no attorney, there's no "we" here.

JD: Obviously, we, I cannot have a trial for two cases on the same day.

JUDGE: Oh yes you can. That's why you're not an attorney, ma'am. Let me run my court. You get your attorney, and give him plenty of time to help you. Mr. Hamilton and I will work together along with Ms. Jackson. [Silence]

MS. JACKSON: I'm sorry Ms. Dempere, that's waiving your right to jury trial, you definitely don't want to do that

JD: Oh, no.

MS. JACKSON: Sign right here.

JUDGE: Bailiff, would you please return that to Ms. Dempere. Upon presentation of that waiver then this matter will be continued. The court will take a short recess. Mr. Hoover, can I see you in chambers please?

[END OF EXCERPT]

3. TRANSCRIPT EXCERPT # 3 – RICARDO CURRY

Case No. 24931 – Lewd conduct

Tape # 005-1451

January 6, 1999

Status hearing

Transcript excerpt # 3:

JUDGE LUKEVICH (JUDGE): Mr. Curry, you're ready to proceed to jury trial tomorrow?

RICARDO CURRY (RC) (pro se defendant): Sir, I'm innocent, sir.

JUDGE: I'm not concerned about your innocence at this moment. What I'm concerned about is your ability to handle yourself in a jury trial.

RC: (Unintelligible)

JUDGE: I'm sorry.

RC: I think God will make the truth come out tomorrow.

JUDGE: Well God's not going to have anything to do with the jury trial tomorrow. I'm gonna hold you to the same standard as an attorney. Are you prepared to do that?

RC: (Unintelligible)

JUDGE: Do you have the first, foggiest notion about how to proceed in a jury trial?

RC: (Unintelligible)

JUDGE: I asked you a very specific question, Mr. Curry, and that's whether or not you have any foggy notion on how to proceed in a jury trial.

RC: No I don't, sir.

JUDGE: Okay. Then why is it that you are going in this fashion if you're not prepared to do so?

RC: Because I'm innocent, sir.

JUDGE: I'm not asking you why you're going to trial.

RC: I have no choice.

JUDGE: If you haven't prepared yourself for trial, how is it that you're able to go forward tomorrow?

RC: I have no choice.

JUDGE: You have choices. You may not realize that, and we can discuss that, okay? You have a choice to prepare yourself, which I guess you haven't decided to do. Number two, you have a choice to seek counsel to represent you, and they would be prepared to represent you at trial.

RC: I think I'll do that.

JUDGE: You'll seek counsel? Okay, that is definitely your right to do that. Now, the question that I have for you is whether or not in seeking counsel, are you able to afford your own attorney, or would you need to have the court appoint an attorney to represent you?

RC: (Unintelligible) ...hire my own attorney.

JUDGE: Okay. That usually takes somewhere between 30 and 45 days to do that, and then to give your attorney a chance to get up to speed and review the evidence, to even meet with you, and hear your side of the story, okay, that takes a little time to do that. In order for that to occur, what we need to do is reset tomorrow's jury trial date for a new date, okay, so that you can go out and find an attorney if you choose to do that or retain your own attorney, and in order to reset the matter so you can do that, what we have to do is waive your right to a speedy trial. Now, that doesn't mean you give up your right to a trial; that means we just set it for a later date. Do you understand that?

RC: Yes

JUDGE: Are you agreeable to doing that?

RC: No sir.

JUDGE: Okay, why is that?

[silence]

JUDGE: I mean, you can't hire an attorney by tomorrow.

RC: I probably—I already got an attorney.

JUDGE: Trust me. Any attorney in this state that would agree to represent you tomorrow would be committing malpractice. Okay? They're not ready to go, they haven't talked to the witnesses, they don't know anything about it. They may talk to you between now and tomorrow, but they haven't even had a chance to talk to the officers or anybody involved and that would be, in many, many instances, committing malpractice, okay? That's not worth their effort to do that. They don't want to commit malpractice, they have rules that prohibit them from doing that. So, based on the court's experience—I would hope you would respect that—that it would be---well, let's just try it for a test, okay? Mr. Kirschenbaum, would you go to trial tomorrow for Mr. Curry?

Mr. Kirschenbaum: No.

JUDGE: That's just one example of someone who's in this court every single day and wouldn't take your case today to go to trial tomorrow, okay? You understand what I'm saying?

RC: Yes sir.

JUDGE: Okay. But you say you have an attorney already that you've talked with?

RC: Yes sir.

JUDGE: So you would need less time maybe than the usual person, is that true?

RC: I would like to proceed tomorrow, personally I don't have an attorney, but I don't think the prosecutor is gonna have a case.

JUDGE: Well they may not, but you don't even know how to proceed tomorrow. That's my point. Have you done your jury instructions?

RC: No sir, I haven't.

JUDGE: Okay, just one example of something that has to be turned in tomorrow at 8:30 in the morning. That's just one example. Have you interviewed the witnesses?

RC: No sir.

JUDGE: Okay. You see what I'm saying? Those are just, just minor things that you do to prepare for trial. Have you ever practiced cross-examining a witness before, to try and get them to tell the truth, or that kind of thing?

RC: No sir, I never practiced it.

JUDGE: I didn't say practice. I mean practice in going in front of a mirror and trying it, you know what I mean? That's what I mean by practice.

[end of side 1 of tape]

JUDGE: I can't do anything about it because I have to treat you just like her.

RC: There's something else (unintelligible)

JUDGE: I'm sorry.

RC: There's something else I (unintelligible)

JUDGE: There's something else you do? Well that's good, there's all sorts of things you can do in addition. I have no problem, that's good. But that isn't going to change the rules of this court tomorrow, okay? That may give you peace, and it may do good things for you in that regard, but...

RC: It's gonna make me prevail.

JUDGE: It's not going to make you prevail if you're not ready to go to trial, see, that's the problem. You show up here tomorrow morning, and you're not prepared to go to trial, the only sanctions I have are to either put you in jail, or fine you considerable amounts of money. That doesn't work, okay, that's not for either one of our benefits. That doesn't do you any good, and I don't like having to do it when I'm standing here before what appears to be a pretty reasonable man. I mean, you don't appear to be an unreasonable individual. But you're not ready to go to trial tomorrow. You see what I'm saying?

RC: Yes sir.

JUDGE: Okay, now, how far have you negotiated with this attorney? I mean, really?

RC: I spoke with him once.

JUDGE: Okay. Have you hired him?

RC: Um..no, not officially.

JUDGE: Has he seen any of the evidence in the case?

RC: (Unintelligible)

JUDGE: Well, then, he's not ready to go to trial tomorrow either, okay? Now, with that said, let me look at one thing here before I get too far down the road.

[silence]

JUDGE: What I would propose we do is to reset this matter for February in order to give you a brief period of time to talk with this attorney and see if he wants to take the case, or another one, so we're talking about a very short delay here, we're not going to give up any of your rights---if he wants to take it to a jury trial, you still get to go to a jury trial; if he advises you otherwise then you guys can work on that. What I would need you to do in order to accomplish that then is execute a waiver through February 28, and then we'd reset the matter for early February, which in this case, the February date is February 4. Okay? Are you available that day?

RC: Yes I am.

JUDGE: Does that meet with your approval?

RC: That's fine, sir.

JUDGE: Does the City have any objection?

Prosecutor: No Your Honor, not with a waiver.

JUDGE: Okay. A waiver then executed through February 28, we'll reset the matter for jury trial on February 4th. Please get to your attorney right away, explain to him that there's evidence here and you gotta get on board and that there's a trial date, okay, so that he knows or she knows exactly what's going on. And why don't we just for the sake of discussion set a real quick pretrial date in about two weeks. We'll get a pretrial on in order to afford that an attorney an opportunity and then set the matter for status on the, what the 21st, no, the 20th. Okay, on the 20th, okay. Thank you Mr. Curry. If you'd see the bailiff please.

[END OF EXCERPT]

4. TRANSCRIPT EXCERPT # 4 – RICARDO CURRY

Case No. 24931

Tape # 031-150

February 3, 1999

Motion status hearing (prior to JTR set for 2/4/99)

Transcript excerpt # 4:

JUDGE LUKEVICH (JUDGE): Good morning, Mr. Curry.

RICARDO CURRY (RC) (pro se defendant): Good morning sir.

JUDGE: The purpose of today's hearing is to determine the parties' readiness for trial tomorrow. I believe that the City is ready to proceed. Mr. Curry, last time we continued this matter it was for purposes of you to obtain counsel. Have you done that at this time?

RC: No sir. Like I said at court before, that the good Lord will make me prevail, sir.

JUDGE: I don't know about what you said with respect to the Lord; I do know that you told me you were going to get an attorney last time we saw each other.

RC: No sir, but I'd certainly like to proceed with this tomorrow.

JUDGE: Are you ready to proceed to a jury trial?

RC: Yes I am sir.

JUDGE: What have you done to prepare yourself...in order to do a jury trial?

RC: I'm gonna just speak the truth.

JUDGE: Yeah, well, there's things that have to be done to conduct a jury trial, Mr. Curry...

RC: I understand that.

JUDGE: and if you're not prepared to do that, we're not going to waste the court's time tomorrow.

RC: Sir, I am proceed . . . for to go on with this (interrupted)

JUDGE: What have you done to prepare for jury trial?

[silence]

RC: I'm prepared, sir.

JUDGE: I asked you what you did, I didn't ask you if you are. What have you done?

RC: I don't think there's anything to do, sir, except to just speak the (interrupted)

JUDGE: That's the problem, Mr. Curry. There are a lot of things to do.

You keep thinking there's nothing to do, but you haven't even investigated what there is to do. That's the point here.

RC: Like I said (interrupted)

JUDGE: There are many, many things to do for you to prepare yourself to conduct a jury trial in this court.

RC: I am ready to proceed tomorrow.

JUDGE: You haven't answered my question even closely—not even remotely. You've done nothing to prepare yourself for jury trial. This court is not going to allow its time to be wasted by you sitting there not prepared to conduct a trial. You don't just get to march into court and tell your story, Mr. Curry. That isn't the way we do justice here. There is a process. Now you told me a month ago you were going to get a lawyer. You haven't called me, you haven't come into court to ask for any type of information, continuances, direction, anything – since we last saw each other.

RC: I'm ready.

JUDGE: I guess that was just a bald-faced lie last time we saw each other, right? How's the Lord feel about that?

RC: Sir, like I said, sir, I'm ready to proceed with this (interrupted)

JUDGE: No you're not.

RC: Yes I am.

JUDGE: You don't even know the first thing to do tomorrow.

RC: Yes I am ready.

JUDGE: What's the first thing you are going to do tomorrow, Mr. Curry? Since you seem to know that, go ahead, tell the court.

RC: In lawyer terms, I don't (inaudible)(interrupted)

JUDGE: Tell me in your terms what you're going to do tomorrow, first thing. I don't need to hear it in a lawyer's term.

[silence]

RC: I don't even think their witnesses are going to show up, sir, because it's a lie.

JUDGE: That's not what I asked you, Mr. Curry. What are you going to do first thing tomorrow for a jury trial? In non-lawyer's terms so that you find it easy to explain to me.

[silence]

RC: Okay. I'm going to tell the jury my side of the story is what (interrupted)

JUDGE: No you're not, Mr. Curry, that's not the first thing that happens at trial.

RC: I'm going to tell them something (interrupted)

JUDGE: It's about the last thing that happens with you.

[silence]

RC: I don't know why this court is giving me a hard time (interrupted)

JUDGE: I'm not giving you a hard time, sir. I want to know if you are prepared for trial.

RC: I am prepared for trial.

JUDGE: What have you done? Tell me. I've asked you, I've given you plenty of opportunity to tell me and you've told me nothing.

[silence]

RC: I am prepared to go to trial.

JUDGE: What have you done to prepare yourself for trial?

RC: I've looked over the case.

JUDGE: Good. Now what about the other 10 things that we need to do—have you gone to even look at the court rules?

RC: Yes sir.

JUDGE: And what do the court rules say that you're supposed to do tomorrow morning when you arrive in this court to adequately be prepared to conduct a jury trial? At the minimum level?

RC: To be here, is the minimum level.

JUDGE: Okay. What else does it say you have to do to be prepared to conduct a jury trial?

RC: I think you're talking to me, sir, like I'm an attorney and I'm not.

JUDGE: I didn't ask you to say it in lawyer's terms. You told me you've read the rules—you just told me that. What's it say you're supposed to do?

[silence]

RC: I am ready to proceed with this tomorrow.

JUDGE: No you're not, Mr. Curry.

RC: Yes I am.

JUDGE: Well if you can't answer my basic questions (interrupted by Mr. Curry)

RC: First of all, I asked for a speedy trial (interrupted by the Judge)

JUDGE: If you can't answer my basic question (interrupted by Mr. Curry)

RC: I asked for a speedy trial (interrupted by the Judge)

JUDGE: Mr. Curry, I understand what you asked for—(interrupted by Mr. Curry)

RC: --and this court is dragging this on

JUDGE: Right. Because you're not prepared.

RC: Yes I am.

JUDGE: Okay. What are you going to do first thing tomorrow morning?

RC: Sir, if you're going to tell me if I'm prepared and I'm going to tell you yes, and you (interrupted)

JUDGE: I'm asking you to tell me what you've done.

RC: There's no reason to argue.

JUDGE: That's right (Talking over Mr. Curry) And you're not going to trial tomorrow if you can't answer my questions. You're going to go to jail in about 2 seconds.

RC: You can do as you please, sir.

JUDGE: I know I can. That's why I'm trying to be civil. What have you done to prepare for trial tomorrow?

RC: I am civil and I am ready to go to trial tomorrow.

JUDGE: What have you done?

[long silence]

JUDGE: I'm waiting

RC: I am ready to go to trial (interrupted by Judge)

JUDGE: I asked you a question, Mr. Curry.

RC: Like I said, sir, I looked over the case.

JUDGE: What else have you done?

RC: That's the only thing I think that I can do.

JUDGE: Have you looked at the court rules?

RC: Where are the court rules, sir?

JUDGE: They're in the law library, Mr. Curry. If you had been preparing yourself for trial, you'd know that.

RC: But maybe, sir, you could give me a list of the court rules and I could look (interrupted)

JUDGE: I could probably do a lot of things, unfortunately the court's not allowed to do that because if I do it for you, I have to do it for Ms. Podell [the prosecutor]. We're not allowed to do that.

RC: Well I am prepared sir.

JUDGE: If you haven't even looked at the court rules, how can you honestly look me in the face and tell me that.

RC: Like you said sir, I don't know where to find these court rules.

JUDGE: I know, but how can you tell me you're prepared if you haven't even looked at them? Can you honestly tell me that?

RC: Sir, you just told me you would not give me a list of the court rules (interrupted)

JUDGE: I told you where they are – they're in any law library in the region.

RC: Then I'll go to the library and see (interrupted)

JUDGE: I know you may do that, the problem is we're on the eve of trial. You can't get that done, and be prepared tomorrow morning. Trust me.

RC: Yes sir, I will be.

JUDGE: No you won't. Because we're not going to have a trial if you haven't done that by now. That's my point.

RC: I've done that already sir.

JUDGE: No you haven't. Mr. Curry, you just told me that you hadn't.

RC: Like I said, when I leave this courtroom, I'll take the day off work and I'll spend the rest of my day in the library and I'll be ready for tomorrow.

JUDGE: Mr. Curry, you could spend the next week in the law library reading those rules, and you wouldn't be prepared for trial by that time. They're extremely difficult to understand. They require that after you read them, you gotta take certain actions. One of them includes jury instructions.

Have you ever seen the pattern jury instructions? Ever seen those? Have you ever seen them? I suspect not. You have to pick and choose from a book that's about this thick of the appropriate jury instructions that you think are necessary to inform the jury of how to review your case.

RC: In my own words, I will be able to tell (interrupted)

JUDGE: No, you don't get to do it in words. That's my problem—you have to produce paper. It requires that they be typed, they have to have citations and no citations, they have to be produced in triplicate, and they have to be available at 8:30 tomorrow morning.

RC: I will be ready, sir.

JUDGE: No you won't, because you don't even know where the books are. You just told me that. Now, why didn't we get an attorney like you said you were going to.

RC: Because I choose not to.

JUDGE: I said, why didn't you like you told me you were going to?

RC: I choose not to, sir, can I change my mind?

JUDGE: Can you tell the court, so that Ms. Podell can be informed and know what to do tomorrow?

RC: I can tell her now, I don't have an attorney.

JUDGE: It's the eve of trial, Mr. Curry. That's why we're here. There's supposed to be communication between the parties during the proceedings.

RC: Like I said, and I'm gonna say this over and over again, the good Lord is going to make me prevail.

JUDGE: The good Lord may be able to help you, but you have obligations to this court and to the opposing party on how to conduct yourself.

RC: Do what you want, sir. I'm ready to go to court tomorrow. If you want me to come next month, you can do that. I'm not gonna get an attorney, like I've told this court over and over, the good Lord is going to make me prevail.

JUDGE: There's an option that you haven't even considered, Mr. Curry.

RC: That's all I'm gonna say, sir. The good Lord is (interrupted)

JUDGE: Then be quiet if that's all you're going to say. I'm not going to ask you to say anything anymore, and I don't expect you to say anything

then if that's how you want to deal with this. There is an alternative, the two that you should consider before you leave this courtroom today.

Number one, you can discuss with Ms. Podell an alternative resolution to this case short of trial. That's the first item you can consider. The second thing you can do, is since you're not prepared to do a jury trial and this court isn't going to permit you to waste it's time doing that until you are prepared to some minimal degree—and right now, you're not there—

RC: I'm telling you that I am—

JUDGE: I said I didn't want to hear from you---you didn't want to talk.

The other alternative is, you can ask for a non-jury trial, and then the court can hear the facts and you don't have to prepare for a jury trial. So that's the other alternative you have. But until you demonstrate to this court that you are minimally prepared and have done the necessary research to get yourself there, we're not going to waste the court's time with a jury trial. With that said, this matter will be stricken from the jury trial calendar, and for the purposes of calendaring, will be reset for approximately 30 days. You'll get another summons to appear to show cause. I expect you to be here and demonstrate to the court at that time what you have done to adequately prepare at the minimal level for trial before a jury, unless you change your mind.

RC: I'm gonna say the same thing I'm telling you---(interrupted)

JUDGE: Unless you change your mind, I expect to see that presentation at that hearing. This court will be at recess. Thank you Mr. Curry.

[END]

5. TRANSCRIPT EXCERPT # 5 – LONNIE SYLVAN

Tukwila Municipal Court Case No. CR0027407

Tape # 151-660

May 25, 1999

Motion status hearing (prior to JTR set for 6/3/99)

[At the status hearing immediately preceding this hearing, Sylvan told the presiding judge, a pro tem, that he would rather have the pro tem judge hear his case rather than Lukevich. The pro tem judge then advised Sylvan that he had the right to file an affidavit of prejudice to get Lukevich off of the case, provided that Lukevich had not made any discretionary rulings; he then reviewed the file briefly and stated that it looked like there had not in fact been any discretionary rulings. After Sylvan then stated that he did want to file an affidavit of prejudice against Lukevich, the prosecutor objected, saying she believed that the court had in fact already made a discretionary ruling. The pro se judge then decided to set the issue over for Lukevich to decide.]

Transcript excerpt # 5:

ANN JACKSON (AJ) (City prosecutor): Mr. Sylvan is here to address the issue of an affidavit of prejudice against your honor. The issue was reserved to today by pro tem Gorham last week. I objected, by the way, I believe the court has already made discretionary rulings in this case; in addition—I think we (interrupted)

JUDGE LUKEVICH (JUDGE): We must be well beyond the ten day of arraignment rule.

AJ: Yes, exactly.

JUDGE: Mr. Sylvan, I'll hear from you on why you believe your motion is appropriate, at this time. Not on why you don't want me to hear the case, but why do you believe your motion is appropriate.

LONNIE SYLVAN (LS) (pro se defendant): Because the last judge said it was okay.

JUDGE: No, the last judge said he'd set it over for me to hear it.

LS: Because he didn't think it would be a problem.

JUDGE: Well, I don't care what he said.

LS: Okay.

JUDGE: You made the motion to him based on some reason. Before he opened his mouth, why is it that you thought that a motion was appropriate in this case?

LS: Well, your honor, I wrote this letter down explaining how I feel. Would you like it?

JUDGE: No. I want you to tell me why you think the motion was (interrupted)

LS: I feel you've developed a dislike for me from previous court appearances. I also feel that you and I always have difficulty communicating. I think you and the prosecutor have developed a friendship that you and I will never possess which gives her an unfair advantage, and I really don't think you'll be fair because you've always presumed me guilty in my opinion.

JUDGE: Let me try it one more time, Mr. Sylvan, because I'm trying to make my questions straightforward and understandable. What is it that you believe makes your motion appropriate at this time? Not how you feel about anything. Let me try this. Have you read the court rules at all to understand how to bring that motion that you're suggesting?

LS: I did what the judge suggested I do. No, I didn't read any court rules.

JUDGE: So you don't have any idea how to make that motion, then?

LS: I have the idea what the judge told me.

JUDGE: Judges don't give legal advice, Mr. Sylvan.

LS: Okay, well.

JUDGE: They preside over the court.

LS: Okay.

JUDGE: You brought that motion to court, and I need to know whether or not you invested any time whatsoever into determining whether it was a valid motion that could be brought at that time. Did you look into the court rule?

LS: I looked into a few books.

JUDGE: In the what books?

LS: A few law books at the downtown Seattle public law library, on the sixth floor.

JUDGE: (angry) Mr. Sylvan, cut the attitude in my courtroom. I don't appreciate it; I'm not doing it with you; I'm treating you as an adult male in a court of law, and I expect the same respect. Get rid of it. It's doing you no good having an attitude in this courtroom.

LS: Well, your honor, you're assuming (Interrupted)

JUDGE: Now, answer --

LS: (continuing to speak) I have an attitude, I do not have an attitude

JUDGE: That's right, like you've just alleged a whole bunch of things (unintelligible)

LS: I told you how I felt.

JUDGE: Mr. Sylvan, be quiet. When I talk, and I ask a question, you'll answer. Now, once again, did you look at the court rules? That's what I asked you. Not three or four books, the court rules. That's the title of a book. Did you look at those?

[silence]

JUDGE: Yes or no?

LS: Yes, I looked at a few books.

JUDGE: I asked you if you looked at the court rules.

LS: No, I didn't look at a Tukwila court rule book.

JUDGE: There is no Tukwila—did I say the word “Tukwila”, Mr. Sylvan?

LS: I was clarifying it for—(interrupted)

JUDGE: I said, did you look at the court rules? Simple.

LS: No, I didn't look at the court rules.

JUDGE: Thank you! If you had looked at the court rules, you would have found that your motion at this stage of the proceedings is inappropriate. I have already made discretionary rulings in your case, and your motion is far later than 10 days after the date of arraignment. If you had looked at those rules, you would have seen that, and you would have saved yourself a lot of trouble—and instance, bringing this motion before the court. Based on that court rule, your motion is denied.

LS: May I appeal that? Is that possible, that I appeal this decision?

JUDGE: There's a whole bunch of things you can do, Mr. Sylvan, one of them may be appeal, I don't know, I can't give you legal advice.

LS: (Talking over the judge) Okay. For the record, I'd like to appeal.

JUDGE: No, you don't just say “for the record”, Mr. Sylvan.

LS: Okay.

JUDGE: There's a whole set of court rules. You have to go read them.

LS: I'll have them today, your honor.

JUDGE: No. Now we have to deal with what we're doing with your case today.

LS: I thought it was set for the third.

JUDGE: Are we ready to proceed to trial on the third? You're announcing your decision to appeal things.

[silence]

LS: I've been ready.

JUDGE: Mr. Sylvan, you just announced your desire to appeal things.

LS: That doesn't mean I'm not ready for trial.

JUDGE: You can't appear and be ready to go to trial on the third!

LS: I'm very well prepared to (interrupted)

JUDGE: Which one are we going to do?

LS: --on the third?

JUDGE: What are we gonna do on the third?

LS: I'd like to do them—on the third we're gonna have a jury trial.

JUDGE: Not if you appeal this ruling that I've just made, you're not gonna have a jury trial.

LS: Okay, well I'm gonna appeal this ruling you've just made, and I'm gonna go look into to see that my appeal is valid.

JUDGE: (Talking over Sylvan) Then you're going to do that you're going to have to---

(Sylvan finishes) Mr. Sylvan! Would you shut up! (audible pounding of table). Quit talking! Unless you're asked a question! (audible sigh of exasperation) Why is that so difficult?

LS: Are you asking me a question now?

JUDGE: Yes, I asked you why is this so difficult?

LS: It is difficult because you don't listen.

JUDGE: I am listening fine.

LS: That's why I'm asking for a different judge, because you don't listen.

JUDGE: Well that's been denied, Mr. Sylvan.

LS: Well, okay well.

JUDGE: Get rid of the anger!

LS: May we move on?

JUDGE: Officer---in about one second, you're going to jail. Now, who is going to be in the position of controlling your case? Cut it with the attitude! You have no reason to be angry at this court!

LS: I'm not angry at all.

JUDGE: What are you doing “I'm not angry (mimicking Mr. Sylvan) – (Both parties talk over one another and the exchange is unintelligible)

LS: --so you can understand me.

JUDGE: What is that? What is the grimacing in the face?

LS: Oh, you're reading it as grimace?

JUDGE: I asked you what it is.

LS: I'm telling you---(interrupted)

JUDGE: (Talking over Sylvan) I asked you what it is.

LS: I'm answering..

JUDGE: No you're not, you're asking me a question. What is it?

LS: It is not grimacing.

JUDGE: What is it?

LS: It is me answering you clearly.

JUDGE: What's the facial expression?

LS: I'm looking you in your eyes.

JUDGE: I asked you what the facial expression is?

LS: What facial expression are you referring to?

JUDGE: The one you don't even know you're doing, sir. You're doing it right now. Now calm yourself down, and tell me what you're going to do with this case.

LS: I am calm. I'm speaking to you—(interrupted)

JUDGE: (Yelling) I didn't ask you respond about your calmness! I said calm down, and tell me what you're going to do with the case! [silence] Right now, you've indicated your desire to appeal one thing, and go to trial in a week. Which is it going to be? [silence] You can't do both. If you're going to appeal one, then you are going to have to continue the trial date in order to appeal a ruling. [silence] If you feel that strongly about an appeal you have a right to if the court rules provide that.

LS: I need to see the court rules so that I can find out my options.

JUDGE: I understand that. Are you interested in determining whether you can appeal this case?

LS: If it is not possible, then no, I do not wish to appeal.

JUDGE: Hold on. Are you interested in determining whether or not this ruling can be appealed?

LS: Yes.

JUDGE: Okay. Listen to my question. Please. Trying to help. With that said, in order for you to do that, how long do you think it will take to determine whether this ruling is appealable?

LS: An hour.

JUDGE: The court doesn't deal in hour increments, Mr. Sylvan. We need you to deal in 30, 60 and 90 day increments. We can't reset this case in an hour. There's other people here. I mean it just can't be brought back on in an hour.

LS: It's not possible to put me at the end of today's calendar?

JUDGE: No. Because there's another calendar after this. This is the 1:30 calendar. There's a 3 o'clock calendar. So that's why we deal in those increments. Right now, you've waived your right to a speedy trial through June 30. If you want to determine the appealability of this ruling, then you'll have to waive your right through July 30.

LS: I never remember waiving my rights, your honor.

JUDGE: Well, maybe I misspoke. Sometimes I get cases confused. Let me see if we have a waiver of your right to a speedy trial. If we don't, then it's just coming on in the normal course of setting and is currently scheduled for the June term. In any event, in order to continue it beyond next Thursday so that you can determine the appealability, we'd have to continue this case until July 30 for you to do that. To investigate it properly and then come back before the court. To give you time to file the motions. I mean, even if I gave you an hour, theoretically, to run somewhere and do

whatever it is you think you need to do, if it's appealable there's a mound of paperwork you have to generate. If it's appealable. So it's not something you can do in an hour. So what do you want to do?

[silence]

LS: To answer that question, I need to know a few things.

JUDGE: Okay. I can only answer limited questions, but I'll try.

LS: One, did you find a waiver anywhere up there?

JUDGE: No. I'm saying that it's set on in the normal course of business for a June 3 trial.

LS: Well, okay, I don't wish to waive it, then; I'll see you on June 3, your honor, to go to trial.

JUDGE: So you don't want to appeal the ruling, then.

LS: Um... At this time, I don't feel it's possible (interrupted)

JUDGE: You don't get a choice; it passes you by.

LS: It's okay. I'll see you on the third.

JUDGE: You gotta make a decision, one way or the other.

LS: I made the decision.

JUDGE: Okay. So, you're gonna forgo the right of appeal on the minor issue and proceed to trial.

LS: The minor issue being you?

JUDGE: No, the minor issue being the pretrial motion verses the trial.

They are larger and smaller in scope. The trial takes much larger than a pretrial motion.

LS: Okay, well (interrupted)

JUDGE: Calm down. [silence] Would you prefer to appeal that issue, or do you want to proceed?

LS: I'm not going to appeal any issue at this time.

JUDGE: Mr. Sylvan, I don't know how to caution you---you're saying that, "at this time" as if that's going to protect you somehow. If you walk out of this courtroom, and you suddenly discover that you want to appeal that issue, that isn't gonna protect you. You're not gonna get to come back and say, "Your honor, I said at this time and now I've changed my mind." You need to know what you're doing, and I don't think you've got the knowledge base because you haven't gone to the library and researched the rules. And if you're gonna make that statement, I want you to know it straight up that you may be forgoing your right to appeal that issue.

LS: Just the issue of you being the judge?

JUDGE: My being the judge, right. You may be forgoing that right.

LS: That's okay. If that happens, it's okay with me.

JUDGE: I just want you to know, that that's the potential. I'm not even sure that it's appealable.

LS: Okay.

JUDGE: Okay. Then we're confirming this matter for June 3?

LS: Yes.

JUDGE: Okay. Are you prepared to go to trial?

LS: Yes. And I also have my witness's address that I was requested to bring last week so they can mail him a subpoena.

JUDGE: Okay. You have your jury instructions even though of, or are we trying this to the bench?

LS: It's a jury trial.

JUDGE: Have you done your jury instructions?

LS: What are jury instructions?

JUDGE: Once again, those court rules I told you about, you need to look at the court rules. There's a whole set of books on jury instructions. It's about eight volumes, and they deal with jury instructions on every imaginable criminal charge and civil matter that you can think of, and they require some extensive research and review and determination as to which ones are appropriate and which ones aren't. If you're gonna represent yourself.

LS: I strongly feel that any twelve people who hear my case will understand.

JUDGE: Yeah, but you'd don't get to tell your case unless you follow the rules.

LS: Okay.

JUDGE: So you gotta have the jury instructions.

LS: I will have them by the third.

JUDGE: Okay. If you don't, Mr. Sylvan, we won't go to trial on that day. So, don't think it's gonna just slide. Okay. Do you have any pretrial motions that you wish the court to consider other than the one you've already brought.

LS: Motion to dismiss.

JUDGE: We've already been there.

LS: Okay, well no I don't.

JUDGE: Do you have any motions in limine at this time?

LS: What is in limine?

JUDGE: Means before the trial.

LS: No your honor, I'll just see you at the trial, and I'll go from there.

JUDGE: Make sure that if you have any motions in limine that you bring those with you and get those in writing so that I can consider them with any case law that you think might be appropriate. Okay.

LS: Yup.

JUDGE: Okay, cause if you don't, then I can't consider them.

LS: That's fine.

JUDGE: Okay.

[End of excerpt]