

1 BEFORE THE COMMISSION ON JUDICIAL CONDUCT
2 OF THE STATE OF WASHINGTON
3
4 In Re the Matter of)
5 HONORABLE RICHARD B. SANDERS,) NO. 4072-F-109
6 Justice, Washington Supreme Court)
7 Judge.)
8
9 DEPOSITION UPON ORAL EXAMINATION OF
10 RICHARD B. SANDERS
11 June 21, 2004
12 Seattle, Washington
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22 Randi R. Hamilton, CSR
23 Certified Court Reporter
24 CSR No. 2260
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1 BE IT REMEMBERED that the Deposition Upon
2 Oral Examination of RICHARD B. SANDERS was taken in the
3 above-entitled and numbered case on behalf of the
4 Commission on Judicial Conduct on June 21, 2004,
5 commencing at 9:30 a.m., before Randi R. Hamilton, Court
6 Reporter and Notary Public in and for the state of
7 Washington, at the 38th Floor, 1000 Second Avenue,
8 Seattle, Washington.
9 The following proceedings took place:
10
11 <<<<>>>>
12 (EXHIBIT NO. 1 MARKED.)
13
14 RICHARD B. SANDERS, being first duly sworn to
15
16 tell the truth, the whole
17 truth and nothing but the
18 truth, testified as follows:
19
20 EXAMINATION
21
22 BY MS. PFLAUMER:
23 Q Justice Sanders, have you ever been deposed before?
24 A Yes.
25 Q Could you tell us about that, in what context?
26 A I don't see how that's relevant to this proceeding.
27 Q Your objection is noted. Would you please answer

1 the question?
 2 A I was in private practice for many years. There
 3 was litigation that arose from time to time.
 4 Collecting attorney fee bills was one. I can't
 5 remember all of them.
 6 Q Approximately how many times have you been deposed?
 7 A Half a dozen times, maybe.
 8 Q Have you deposed others in your practice?
 9 A Yes.
 10 Q Can you give us a ballpark figure how many?
 11 A Hundreds.
 12 Q I'm assuming you're very familiar with the rules?
 13 A I hope so.
 14 Q If you do not understand any of my questions, will
 15 you let me know?
 16 A Sure.
 17 Q Would you tell us about your practice of law. I
 18 understand you practiced law for about 26 years
 19 before running for the Supreme Court; is that
 20 right?
 21 A That's correct.
 22 Q Could you tell me generally what kind of cases you
 23 handled?
 24 A I had a general practice.
 25 Q Any specific areas of emphasis?

1 A I would say no.
 2 Q Plaintiffs and defendants equally in civil
 3 practice?
 4 A Well, it depends on the type of case.
 5 Q That's what I'm asking you. Can you give me a
 6 characterization of what types of cases you
 7 handled?
 8 MR. BULMER: Objection. He answered.
 9 He said he can't. He said no already.
 10 A Well, I had personal injury clients. They were
 11 always plaintiffs. I didn't -- well, mostly
 12 plaintiffs. There may have been a defendant or
 13 two, but normally it was plaintiffs. Land use
 14 cases, normally it was plaintiffs. And some
 15 criminal cases, which would have been defendants.
 16 A wide variety.
 17 Q You've brought some documents and Mr. Bulmer has
 18 given me a packet of documents that have been
 19 marked as Exhibit 1 for the deposition. Have you
 20 reviewed these?
 21 A Not in detail.
 22 Q Did you bring these to us or to Mr. Bulmer in
 23 answer to the subpoena today?
 24 A Yes, I did.
 25 Q And do these represent everything that you received

1 at or before visiting the institution with the
 2 exception of the butcher paper that you received
 3 from one of the residents?
 4 A Yes.
 5 Q Have you read your Answer to the Statement of
 6 Charges?
 7 A Not lately.
 8 Q Did you read it before it was filed?
 9 A No, I didn't.
 10 Q Did you read it in draft form before it was filed?
 11 MR. BULMER: Objection. Privileged.
 12 Don't answer.
 13 MS. PFLAUMER: "Did you read a
 14 document" is privileged?
 15 MR. BULMER: Privileged.
 16 MS. PFLAUMER: All right.
 17 Q (Continuing by Ms. Pflaumer) Did you read the
 18 document after it was filed?
 19 A Yes.
 20 Q Will you today swear or affirm the truth of what is
 21 stated in your Answer?
 22 A You'll have to be more specific to that.
 23 Q Well, I'll have this marked as Exhibit 2.
 24 (EXHIBIT NO. 2 MARKED.)
 25 Q Giving you a copy of what's been marked Exhibit 2

1 for the record, it's a cover letter, and then I'm
 2 particularly interested in your reviewing the
 3 Answer which is attached to that cover letter.
 4 A I have it before me here.
 5 Q We can do this as you like, but if there are things
 6 that are stated here that you differ with or do not
 7 affirm today, I would like you to point them out.
 8 MR. BULMER: Objection. That's an
 9 improper question. (1) You do not have to affirm
 10 your Answer. There's no requirement in this state
 11 for him to do so. The Answer was filed by me over
 12 my signature. It's inappropriate to ask him to
 13 affirm a document that I prepared.
 14 MS. PFLAUMER: Your objection is
 15 noted.
 16 A You're going to have to ask me specifically.
 17 Q (Continuing by Ms. Pflaumer) All right.
 18 (READING) No. 1: Admitted that Justice
 19 Sanders is now and was at all times referred to in
 20 the Statement of Charges a justice of the
 21 Washington Supreme Court.
 22 Is that true or not?
 23 A Sounds right to me.
 24 Q Justice Sanders, do you want me to read each of
 25 those aloud, or can you read No. 2 to yourself and

1 tell me whether you --

2 A I want you to ask me specific --

3 Q The statement --

4 A I did not draft this Answer. This Answer goes on

5 for ten pages. There's a lot of stuff in this

6 Answer that are not factual allegations at all,

7 they're legal conclusions. In order to fully

8 comprehend and understand the Answer, I'd have to

9 have the Complaint and cross-check the Answer with

10 a particular provision in the Complaint.

11 If you have a specific question about the

12 Answer, about something that's alleged in the

13 Answer, I'd appreciate if you would ask it.

14 Q To your knowledge did Kurt Bulmer draft the Answer?

15 A Of course.

16 Q Did he draft it with input from you?

17 MR. BULMER: Objection. Privileged.

18 Don't answer.

19 Q Was Kurt Bulmer acting as your agent when he

20 drafted the Answer?

21 A Kurt Bulmer is my lawyer.

22 Q Did you not feel it was necessary to review the

23 Answer before it was filed?

24 MR. BULMER: Objection. Privileged.

25 Don't answer.

1 MS. PFLAUMER: That's not a question

2 of privilege.

3 Q (Continuing by Ms. Pflaumer) Did you not feel it

4 was necessary to review your Answer to the

5 Commission's charges before it was filed?

6 MR. BULMER: It is privileged.

7 MS. PFLAUMER: I'm not asking about

8 his advice from you. I'm asking --

9 MR. BULMER: It's privileged because

10 it's based on a premise of whether he did or did

11 not review it.

12 MS. PFLAUMER: He's already stated

13 that. If that was privileged, he's waived it.

14 Q (Continuing by Ms. Pflaumer) You said you did not

15 review it before it was filed. I'm asking, did you

16 not think it was necessary to review it before it

17 was filed?

18 THE WITNESS: Do you want me to answer

19 that or not?

20 MR. BULMER: Hold on.

21 (PAUSE IN PROCEEDINGS.)

22 MR. BULMER: Can you go back to the

23 very beginning where she asked the sequence of

24 questions. It will be quite a ways back. It'll be

25 back where she asked the very first question, "Did

1 you review the Answer?"

2 (THE QUESTIONS AND ANSWERS ON

3 PAGE 7, LINES 5 - 10 WERE READ.)

4 MR. BULMER: Thanks.

5 MS. PFLAUMER: And would you please

6 read back the last question.

7 (THE LAST QUESTION WAS READ.)

8 A No.

9 Q (Continuing by Ms. Pflaumer) Rule 20 of the Rules

10 of Procedure of the Commission on Judicial Conduct,

11 2003 version, requires that a respondent file an

12 Answer, correct?

13 A I don't know what it says.

14 Q Does this Answer consist of your response to the

15 Statement of Charges?

16 A Of course.

17 Q Let me ask you, then, about some of the specific

18 statements of fact therein.

19 In No. 5 on page 2, line 14:

20 (READING) The various responses filed

21 provided full and complete information to the

22 Commission which demonstrated that there was no

23 basis in fact or law for finding any violations of

24 the Code of Judicial Conduct.

25 Is that a statement that you agree with? I'm

1 on page 2, line 14.

2 A It's my opinion.

3 Q No. 7 on the same page at line 20, the second

4 sentence:

5 (READING) Deny that any result other than

6 dismissal was ever acceptable to the respondent.

7 I'm sorry, I should read the whole No. 7.

8 (READING) It is admitted that disciplinary

9 counsel and counsel for Justice Sanders engaged in

10 discussions regarding possible resolutions. Deny

11 that any result other than dismissal was ever

12 acceptable to respondent.

13 Is that your statement today?

14 A Well, I wasn't privy to discussions had between my

15 lawyers and you, but it is certainly the case that

16 no result other than dismissal was ever acceptable

17 to me.

18 Q So I assume that the discussions that we had were

19 with your agreement; is that correct?

20 MR. BULMER: Objection. Privileged.

21 You do not have to testify as to what we

22 talked about or what we told you or what you agreed

23 to. That's a matter between you and your counsel.

24 Q Let me ask it this way. Was counsel acting outside

25 their legitimate agency when they engaged in

1 discussions?
 2 MR. BULMER: Objection. Calls for a
 3 legal conclusion, and it's based on the fact he
 4 said he didn't -- you can't come in the back door.
 5 Agency would require authority and grants of
 6 authority, which would get you right back into the
 7 privilege question.
 8 Q Were they your lawyers when they discussed the case
 9 with us?
 10 A I don't know that they discussed the case with you,
 11 counsel.
 12 Q You had no knowledge at the time that they were
 13 meeting?
 14 MR. BULMER: Objection. Privileged.
 15 Don't answer the question.
 16 Q You had no knowledge that your lawyers were meeting
 17 with disciplinary counsel for the Commission?
 18 MR. BULMER: Objection. Privileged.
 19 Q Outside of any advice given by your attorneys, did
 20 you have knowledge that your attorneys were meeting
 21 with disciplinary counsel to discuss your case?
 22 MR. BULMER: Objection. Privileged.
 23 Q Outside of any discussion with counsel?
 24 A You're asking me other than what my lawyers told me
 25 was I aware of --

1 Q Yes.
 2 A Of what?
 3 Q That your lawyers were meeting with disciplinary
 4 counsel?
 5 A With the exception of Reiko Callner's initial
 6 letter and perhaps a subsequent letter to me in
 7 early November, I don't recall having heard
 8 anything from the Judicial Conduct Commission.
 9 Q All right. When your lawyers met with disciplinary
 10 counsel, were they acting outside their authority?
 11 MR. BULMER: Objection. Privileged.
 12 And I'm also objecting to relevance. I don't
 13 understand what any of the relevance of this is to
 14 anything that has to do with the charges that are
 15 filed in this proceeding.
 16 MS. PFLAUMER: Your objection is
 17 noted.
 18 MR. BULMER: All right.
 19 MS. PFLAUMER: Counsel, do you want to
 20 discuss or do we need to get Mr. Dallaire lined up
 21 for all these privilege objections?
 22 Q (Continuing by Ms. Pflaumer) The question is, were
 23 your lawyers acting outside their authority as your
 24 lawyers?
 25 MR. BULMER: And the privilege

1 objection in that scenario is that if he answers
 2 that question yes or no, then that potentially
 3 waives or opens the door to you then asking
 4 subsequent questions as to, well, what were they
 5 doing, what direction were -- in order to operate
 6 with authority, he would have to communicate what
 7 directions he had given or received from us.
 8 So I can't on the front side let you ask the
 9 threshold question.
 10 Q Were your lawyers acting as independent agents in
 11 meeting with disciplinary counsel to discuss your
 12 case?
 13 A I don't know what an independent agent is.
 14 Q Outside the agency relationship with you. I'm
 15 specifically not asking for any discussions you
 16 had.
 17 A Kurt Bulmer and John Strait are my lawyers.
 18 I don't know what else to say about it.
 19 Q Let's move on.
 20 Let me ask you to go to your Answer at page 3,
 21 line 10, No. 10.
 22 (READING) It is admitted that on January 27,
 23 Justice Sanders visited the Special Commitment
 24 Center on McNeil Island, Washington. It is denied
 25 that he did so at the invitation of some of the

1 residents or that any such persons had the legal
 2 capacity to invite anyone to tour the facility.
 3 Do you deny today that you visited at the
 4 invitation of one or more residents of the Special
 5 Commitment Center?
 6 A I visited the facility. I had received written
 7 communication, which you've provided. However, as
 8 is stated quite clearly here in the Answer,
 9 prisoners do not have the legal capacity to invite
 10 anyone to tour the facility. It's a secured
 11 facility. You just can't walk in off the street at
 12 the request of a prisoner.
 13 Q Did the letter you received purport to invite you
 14 to visit McNeil?
 15 A You might characterize it that way. You've got it
 16 in your file there. I provided it for you.
 17 Q I'm asking you how you characterize it. I'm asking
 18 you the distinction you make between an invitation
 19 and a letter asking you to come visit.
 20 A When my next-door neighbor invites me over for
 21 Thanksgiving dinner, I call that an invitation.
 22 When a prisoner says he'd like to have a court
 23 visit or tour of a prison, I don't think it's an
 24 invitation, because he doesn't have the legal
 25 capacity to invite anybody.

1 Q No. 12 at line 18 in your Answer states:
2 (READING) Justice Sanders denies the
3 Statement of Charges are not premised on the mere
4 fact of the visit. In fact, the actual premise of
5 the Statement of Charges is that a mere visit is a
6 violation.
7 Do you swear or affirm that's your view today?
8 MR. BULMER: Objection. That calls
9 for a legal conclusion.
10 Q Is this your answer to the charges?
11 A I've already said that that's my answer to the
12 charges. It seems to me that --
13 MR. BULMER: Don't volunteer.
14 Q No. 28 on page 6 is another factual statement:
15 (READING) It is denied that Justice Sanders
16 initiated discussions with any prisoners.
17 Is that still your answer today?
18 A I may have initiated the conversation with the guy
19 in the woodworking shop.
20 Q And that would be the only one?
21 A It would be the only one.
22 Q Okay. Mr. Bulmer also filed a Supplement to
23 Response in Initial Pleadings on March 24th, 2004.
24 Did you review that before it was sent?
25 MR. BULMER: Objection. Privileged.

1 I waived it the first time around. I'm not going
2 to do it the second time.
3 MS. PFLAUMER: "Did you review a
4 document" is not a question about any communication
5 he had with a lawyer. I'm asking if he read the
6 document.
7 MR. BULMER: I would object. I think
8 the question of what he did or what I may have done
9 or what he got is always privileged.
10 MS. PFLAUMER: All right.
11 Q (Continuing by Ms. Pflaumer) In that document, and
12 I'm not going to make it an exhibit, just let me
13 quote it to you:
14 (READING) The group toured the facilities and
15 then met with some of the prisoners. These
16 meetings were not part of the original agenda and
17 happened spontaneously when some of the prisoners
18 asked if they could speak to Justice Sanders.
19 Is that accurate?
20 A I think so.
21 Q This is another quote from it:
22 (READING) At no time did he -- that would be
23 Justice Sanders -- discuss any legal issues with
24 any of the prisoners.
25 A Are you asking, is that accurate?

1 Q Yes. Is that accurate today to the best of your
2 recollection?
3 A Yes.
4 Q (READING) Justice Sanders had no knowledge that
5 any of these cases were under review at the State
6 Supreme Court. He never had any involvement
7 whatsoever in the Calhoun, Spink, Young and
8 Peterson matters. These cases were only being
9 considered for discretionary review. They never
10 came before him. He did not give consideration to
11 them, and he did not have any involvement in their
12 resolutions. These cases were never presented to
13 him for any sort of decision-making.
14 Is that accurate?
15 A I believe so.
16 Q Were you out of town when the Answer to the
17 Statement of Charges was filed?
18 A Yes, I was.
19 Q Could you give me the dates that you were out of
20 town?
21 A No.
22 Q How long were you out of town?
23 A About two weeks.
24 Q Do you recall how many days after the Answer was
25 filed you got back, approximately?

1 A I got back, I think it was on a Thursday. The
2 Answer was filed that week that I got back on
3 Thursday.
4 Q Let me go back to the Answer, page 3, No. 12, what
5 I read to you. You deny that charges are based on
6 conversations you had at the institution.
7 What is the basis for that denial?
8 MR. BULMER: I don't understand.
9 Paragraph 12?
10 MS. PFLAUMER: Page 3, No. 12.
11 MR. BULMER: And the question is the
12 basis for the denial?
13 MS. PFLAUMER: Yes.
14 A Because there was nothing that happened at the
15 prison which I can see would be a legitimate basis
16 for these charges, so it must just be the fact that
17 I visited.
18 Q (Continuing by Ms. Pflaumer) You have no other
19 basis for that denial?
20 A I think that's enough.
21 Q You have no other basis, is your testimony?
22 A I'm telling you my opinion here.
23 Q I'd like to get some terms straight between us, and
24 I hope that I'm quoting correctly, but I'd ask you
25 to agree that a sexually violent predator is

1 defined as any person who has been convicted of or
2 charged with a crime of sexual violence and who
3 suffers from a mental abnormality or personality
4 disorder which makes the person likely to engage in
5 predatory acts of sexual violence if not confined
6 in a secure facility.

7 Would you agree with that?

8 A I think that's what the statute says. You know,
9 the statute says whatever it says.

10 Q I just want to get our terms straight for the
11 discussion today.

12 Would you agree that a shorthand phrase
13 referring to that same class of people would be
14 sexual psychopaths?

15 A No.

16 Q My dictionary defines psychopath as a person with a
17 personality disorder, especially one manifested in
18 aggressively anti-social behavior.

19 What difference would you make between that
20 statutory definition of sexual --

21 A Well, we used to have a sexual psychopath statute
22 in the state. I'd have to do a little bit further
23 study to answer your question, but it was my
24 understanding that there's different requirements
25 or there's different criteria for a sex predator

1 and a sexual psychopath.

2 Q What would you refer to as the study of sexually
3 violent predators, the psychological study? Is
4 that still psychopathology?

5 MR. BULMER: I don't understand.

6 Q If you don't use the term "psychopath," which is
7 the sort of dictionary term, I'm asking what do you
8 use for the noun of the study of sexually violent
9 predators?

10 A Well, I think that the definition that you
11 previously read of a sex predator, to shorten it
12 up, does not require that the individual be a
13 sexual psychopath. I think that sexual psychopath
14 is a term of art. I can't give you a definition
15 right now, but I believe there are professional
16 texts that would illuminate the distinction.

17 Q The distinction that I'm hearing is between the old
18 statute and the new, basically, and you don't want
19 to confuse the statutes; is that right?

20 MR. BULMER: I'm going to object.
21 You're asking him to adopt your definition of the
22 term.

23 MS. PFLAUMER: Mr. Bulmer, I'll
24 withdraw the question. Let's move on. I'm just
25 trying to get terminology straight. I'm not trying

1 to set any kind of trap here.

2 Q (Continuing by Ms. Pflaumer) Did you practice law
3 in any way connected to mental commitment of any
4 kind?

5 A I had some cases involving involuntary commitment.

6 Q Did the individuals that you represented have any
7 symptoms that would be related to sexually violent
8 predators? I'm not saying they would be qualified
9 as, but were there issues of sexually violent
10 predation?

11 A Not that I recall.

12 Q Did you represent anyone charged with a crime of
13 sexual violence?

14 A I recall representing a juvenile and the charge was
15 rape, but the allegation was not sexual violence.
16 So other than that, I don't recall any clients in
17 that category.

18 Q Was this statutory rape, or when you say rape
19 without violence, could you define that?

20 MR. BULMER: I think that
21 mischaracterizes his testimony.

22 A I believe it was consensual.

23 Q And how was it rape?

24 A It was with a minor.

25 Q Okay. Did you in that case or any other have

1 occasion to call any expert witnesses in issues
2 related to sexual violence or sexual predators?

3 A No.

4 Q Have you had any education, formal or informal, in
5 the area of sexually violent predators or the
6 pathology surrounding them?

7 MR. BULMER: He can answer, but are
8 you talking like a formal CLE or anything like
9 that?

10 MS. PFLAUMER: I said any education,
11 formal or informal.

12 A Well, not outside of preparing myself for various
13 cases that might come before the Court.

14 Q (Continuing by Ms. Pflaumer) And how do you go
15 about doing that?

16 A Read the briefs. If there's other authorities that
17 are cited, sometimes I read those other
18 authorities. I read the memorandum that are
19 provided to me by the Court.

20 Q Do you ever go outside what is of record or alluded
21 to in the record in researching for those cases?

22 A No.

23 Q Have you ever read any books or articles
24 specifically outside the record on sexually violent
25 predators or that pathology?

1 MR. BULMER: Let me just ask for a
2 definition of the term. By record, do you mean if
3 they're cited in a brief?
4 MS. PFLAUMER: Yes, I understand if
5 they're cited in a brief.
6 Q (Continuing by Ms. Pflaumer) But other than that,
7 have you done any independent research?
8 A No, I haven't.
9 Q Have you ever consulted any experts outside of the
10 record?
11 A Consulted an expert about a pending case?
12 Q No, consulted an expert about the issue of sexually
13 violent predation?
14 A I wouldn't say so, no.
15 Q Have you ever consulted a psychiatrist about
16 sexually violent predation?
17 A Not that I know of.
18 Q Last December you attended a CLE put on by the
19 federal Bar Association?
20 A Yes.
21 Q And you listened to a presentation by Barry Scheck?
22 A Yes.
23 Q He is from the Innocence Project?
24 A Yes, that's right.
25 Q And he uses DNA to prove actual innocence of people

1 A I have no recollection.
2 Q Do you hold that opinion today?
3 MR. BULMER: Wait before you answer.
4 I'm going to object to the form of the
5 question because so far you've said did he ask a
6 question about, and now the premise of this
7 question is an assumption that that's an opinion he
8 held.
9 Q Do you hold the opinion today that the science of
10 psychological expertise that is used to lock people
11 up at the Special Commitment Center is junk
12 science?
13 A I don't know whether it's junk science or not.
14 Q Has your opinion or lack of opinion on this been
15 influenced by your January 2003 visit to the
16 Special Commitment Center?
17 A No, it hasn't.
18 Q What is your definition of a pending matter before
19 the Supreme Court?
20 A That's a case that we've accepted for review and
21 we've heard oral argument.
22 Q And what is your definition of an impending matter?
23 A It's a case where the Supreme Court has accepted
24 review.
25 Q Is specific knowledge of a justice necessary for a

1 who have been wrongly convicted?
2 A Yes.
3 Q And he talked about misidentification of people?
4 A Yes.
5 Q And false confessions in some cases?
6 A Yes.
7 Q And he referred to junk science, talking about, I
8 think, hair comparison testimony by a forensic
9 pathologist?
10 A Hair comparison?
11 Q He talked about junk science that's been used in
12 wrongly convicting people?
13 A He may have. It's been awhile. I can't remember
14 everything that was said.
15 Q At the conclusion of that talk, you raised your
16 hand with a question. Do you recall that?
17 A No, not really.
18 Q You asked Barry Scheck what he thought of the,
19 quote, junk science, unquote, that is used to lock
20 up people as sexual predators, did you not?
21 A I don't remember asking that.
22 Q You have no recollection of that at all?
23 A No.
24 Q Do you deny calling it junk science, or do you
25 simply have no recollection?

1 matter to be impending?
2 MR. BULMER: Objection. Calls for a
3 legal conclusion.
4 Q I'm asking for your opinion.
5 A Well, if you're asking me, you know, what do those
6 words mean in the context of the Code of Judicial
7 Conduct, I think that calls for a legal conclusion.
8 It's to be litigated here.
9 Q Your objection is noted. Would you please answer
10 the question?
11 A I gave you my definition of those terms.
12 Q Is specific knowledge of a judge or a justice, in
13 your opinion, necessary for a matter to be
14 impending?
15 A I gave you my definition of those terms.
16 Q Please answer the question.
17 A I have. A pending case is a case where oral
18 argument has been heard, it's submitted to the
19 justices for a decision. Impending case is a case
20 that has been accepted for review.
21 Q As a justice on the Supreme Court, you have
22 occasion to use these definitions?
23 A Never.
24 Q You never have occasion to think about what
25 impending or pending means?

1 A No.
 2 Q Did you have any sense of these definitions before
 3 2003?
 4 A Well, you know, I can speak the language.
 5 Q Has your experience in this case or your experience
 6 with your visit to the Special Commitment Center in
 7 any way influenced your view?
 8 A Well, since this case has been commenced against
 9 me, of course there's been briefs that have been
 10 filed discussing what those terms mean in the
 11 context of the Code of Judicial Conduct. I've read
 12 those.
 13 Q Has that in any way changed your own personal view
 14 of what pending and impending means as you conduct
 15 your daily life as a Supreme Court justice?
 16 A No.
 17 Q Would you discuss briefly how discretionary review
 18 is granted in the court.
 19 A Well, there are alternative ways of obtaining
 20 discretionary review. Typically it is submitted to
 21 a department of the Court. We divide into two
 22 departments. We have a department meeting once a
 23 month. There are five judges in each department;
 24 the chief sits on both departments.
 25 And if all five judges on a particular

1 department agree to accept review, then we've
 2 granted review. Now, if it's less than unanimous,
 3 then it's continued to an en banc conference where
 4 a majority of the Court makes that determination.
 5 Sometimes discretionary review is granted by
 6 the commissioner and it only comes before the Court
 7 if there is a motion to modify the commissioner's
 8 ruling.
 9 And for the purpose of your question, I'm not
 10 making a distinction between the two types of
 11 discretionary review that are recognized under the
 12 rules. One of them would be typical of an
 13 interlocutory appeal, and one would be a review of
 14 a final decision of the Court of Appeals. As I
 15 recall, the procedure I've outlined would be the
 16 same.
 17 Q So a commissioner can grant review?
 18 A Yes.
 19 Q And that would not be reviewed by a department?
 20 A It could be reviewed by the Court if there was a
 21 motion to modify the commissioner's ruling.
 22 Q And would that then go to a department or to
 23 en banc?
 24 A I can't remember this ever happened, so I'd be
 25 speculating for you. I assume it would go to the

1 department.
 2 Q Okay. If you sit on a department and two of you
 3 want to grant review and the other three do not, am
 4 I understanding correctly that then all the
 5 justices would sit en banc on the issue of
 6 discretionary review?
 7 A Yes.
 8 Q If a case were accepted for discretionary review by
 9 the other department, it would be heard then by the
 10 entire Court en banc, correct?
 11 A The oral argument would.
 12 Q Yes. And the decision would be by the entire
 13 court?
 14 A On the merits.
 15 Q Right.
 16 A The matter of whether or not to accept review would
 17 have been decided by the other department.
 18 Q All right.
 19 A Normally it would be. There's probably some
 20 exceptions out there. I mean, there are some cases
 21 that possibly could be dismissed for some reason or
 22 other, but normally, 99 percent of the time, it
 23 would be a decision for the entire Court.
 24 Q A case that is pending before your department -- I
 25 shouldn't use the word "pending."

1 A case that is to be reviewed by your
 2 department, your five judges, to decide whether to
 3 grant discretionary review, would you consider that
 4 to be a case pending before you?
 5 A No.
 6 Q Would you consider it to be a case impending before
 7 you?
 8 A No.
 9 Q Are there any written standards in the Court for
 10 acceptance or rejection of discretionary review?
 11 A Yes.
 12 Q Can you give me a sort of basic working person's
 13 knowledge? I don't expect you to quote it.
 14 A Well, where review is sought of a final decision of
 15 the Court of Appeals, there are a number of
 16 criteria, not necessarily binding criteria, but
 17 criteria are considered.
 18 For example, does that case represent a
 19 conflict on the legal point that the various
 20 divisions of the Court of Appeals may differ on?
 21 Is this a case of public importance? Is this a
 22 case where the Court of Appeals has departed from
 23 Supreme Court precedent? Those are the criteria
 24 that come to mind.
 25 Also, I think as a practical matter, if the

1 case is unpublished, it's much more difficult to
2 obtain review than if the case is published by the
3 Court of Appeals.

4 And then there's this other kind of
5 discretionary review of the interlocutory order
6 type discretionary review, which then the bar is
7 higher, it's more demanding. Further proceedings
8 would be rendered useless or that the judge has
9 substantially departed from the usual course of
10 proceeding.

11 These are outlined by the rule. I can't
12 recite them from memory.

13 Q The annual reviews of residents at the SCC who are
14 confined as sexually violent predators, if they are
15 appealed to the Court of Appeals, they are reviewed
16 by the Supreme Court only on discretionary review
17 at the conclusion of the Court of Appeals review,
18 correct?

19 A Well, in the first place, it's my understanding
20 that annual reviews are not held for every
21 prisoner. They have a right to an annual review, I
22 think, under the statute, but often those rights
23 are waived. Typically, as I recall, there's a
24 threshold showing. For those that want a court
25 hearing, they have to make a threshold showing.

1 described.

2 Q Has an annual review brought by a sexually violent
3 predator ever been granted the direct review by the
4 Supreme Court in your recollection?

5 A I just can't recall specifically.

6 Q Okay. I want to talk a little bit about your
7 preparation for the visit to the Special Commitment
8 Center. I understand that about three years ago,
9 you proposed visiting that same facility; is that
10 correct?

11 MR. BULMER: I'm going to object to
12 the relevance on that. What happened three or four
13 years ago in connection with any of the charges
14 that are here is irrelevant to anything that's come
15 up here. This has to do with his charges, what he
16 did, then what is pending and impending cases, as
17 we talked about. What he did three years ago is
18 not relevant.

19 MS. PFLAUMER: Objection noted,
20 counsel.

21 Q (Continuing by Ms. Pflaumer) Could you please
22 answer?

23 THE WITNESS: (Addressing the court
24 reporter) Would you read the question back for me,
25 please.

1 They have to make a prima facie case for the trial
2 court to hold a hearing.

3 Q Prima facie case as to what?

4 A Prime facie case that they're no longer subject to
5 commitment.

6 Q That they no longer suffer from an abnormality that
7 leads them to be sexually violent predators?

8 A Or that there's a less restrictive alternative or
9 that there's a way that this can be controlled.
10 There's various ways of going at this.

11 But assuming for the sake of your question
12 that a hearing is held, there's a right of appeal
13 from the Superior Court to the Court of Appeals.
14 But from the Court of Appeals to the Supreme Court
15 in this kind of case, it's a matter of discretion.

16 Q And it would be reviewed according to the
17 discretion that you've described for a final ruling
18 by the Court of Appeals?

19 A That's correct. I might say that the rules also
20 contemplate that the Supreme Court can grant
21 discretionary review of a trial court decision.
22 There can be a direct appeal to the Supreme Court,
23 but once again it's a matter of discretion, so we
24 either accept it or we reject it. It has to go
25 through the same system that I previously

1 Q Let me restate it. Several years before this
2 visit, I believe about two or three years before,
3 you contemplated or proposed visiting the Special
4 Commitment Center; is that correct?

5 A Yes.

6 Q There was a discussion with either an assistant AG
7 or the attorney general herself; is that correct?

8 MR. BULMER: Wait a minute.

9 Q Did you have a telephone conversation with a member
10 of the Attorney General's Office about your
11 proposed visit to the Special Commitment Center?

12 MR. BULMER: I need to confer with my
13 client on this, if I may. I need to find out if
14 it's privileged. If he's talked with an AG, what's
15 the role of the AG, was that his lawyer and is that
16 a privileged conversation.

17 Q Were you speaking with the attorney general or
18 assistant attorney general as yours lawyer, Justice
19 Sanders?

20 A No.

21 Q Did you have a conversation?

22 A I can't specifically recall. Normally I ask other
23 people, I mean my administrative assistant or
24 others, to help arrange for a tour if I go on a
25 tour.

1 And, you know, this was several years ago. I
 2 think it was probably more than the time frame that
 3 you're indicating, so to recount who said what to
 4 who about a tour that never took place, I don't
 5 know.
 6 Q Do you know if you had a discussion with the
 7 attorney general?
 8 A No, I don't.
 9 Q Do you know if you had a discussion with an
 10 assistant attorney general?
 11 A Oh, I might say that I'm confident that I never
 12 discussed anything of this nature with Christine
 13 Gregoire.
 14 Q Did you cancel that proposed trip?
 15 MR. BULMER: Objection. Lack of
 16 foundation.
 17 A No, I didn't.
 18 Q Did you go on the trip to the SCC?
 19 A I took a tour of the prison.
 20 Q You took a tour of the Special Commitment Center?
 21 A I didn't say that.
 22 Q My question is, did you go to the Special
 23 Commitment Center?
 24 A That wasn't your question.
 25 Q Well, it is now, if I may correct it.

1 A No, I didn't.
 2 Q Had you planned to go to the Special Commitment
 3 Center?
 4 A Arrangements were never made to do that, so I guess
 5 I didn't plan to do it.
 6 Q Did you want to visit the Special Commitment Center
 7 on that occasion?
 8 A I always --
 9 Q Specifically the Special Commitment Center?
 10 A I think that it's appropriate to visit all of the
 11 state's institutions.
 12 Q Were there special concerns voiced to you or by you
 13 about visiting the Special Commitment Center at the
 14 time?
 15 A Like what?
 16 Q Any concerns about the propriety of a justice
 17 visiting the Special Commitment Center?
 18 A You mean someone told that to me?
 19 Q Yes.
 20 A Absolutely not.
 21 Q Is there a reason you did not visit the Special
 22 Commitment Center then?
 23 A Yes, there is a reason.
 24 Q What was that?
 25 A Because the facility would not allow my to take

1 future law clerks with me, only current law clerks,
 2 and I'd arranged the group to include future law
 3 clerks. So I canceled that aspect of it.
 4 Q Were these law clerks you had hired?
 5 A Yes.
 6 Q How many?
 7 A I have two law clerks at a time.
 8 Q So these were two new hires?
 9 A I can't recall whether both of them were able to
 10 make it, but at least one was.
 11 Q And anyone else you had proposed to bring?
 12 A There may have been others. Their spouses may have
 13 been there. I can't recall specifically.
 14 Q And your spouse?
 15 A No.
 16 Q Let's get back to 2003. What was the purpose of
 17 your visit in January of 2003?
 18 A To --?
 19 Q To the Special Commitment Center. I'm sorry.
 20 A Well, to help fulfill my continuing judicial
 21 education requirement and to obtain general
 22 knowledge about how the facility functions.
 23 Q In your Declaration on Summary Judgment, you say
 24 you wanted to find out about the nature and
 25 effectiveness of the treatment program there.

1 Is that an accurate statement?
 2 MR. BULMER: Where was this?
 3 MS. PFLAUMER: In his Declaration on
 4 Summary Judgment.
 5 A Well, I think that's part of it. I mean, you know,
 6 you're asking me first sort of a general question
 7 about why make a tour, and I thought I gave you a
 8 general answer.
 9 When you're touring a facility, every facility
 10 has a different mission. They all have a different
 11 function. This facility confines people, and it
 12 also provides at least the availability of a
 13 treatment program for them, so I was interested in
 14 seeing the physical facilities, I was interested in
 15 trying to understand what this treatment program
 16 was, how it functioned, what were the strengths and
 17 weaknesses of the institution.
 18 Q So it would be accurate to say the nature and
 19 effectiveness of the program was part of the reason
 20 you wanted to visit?
 21 A Sure.
 22 Q Two other justices were originally scheduled to
 23 come with you; is that correct?
 24 A Any justice who wanted to accompany me was
 25 perfectly free to do so.

1 Q Two other justices were originally scheduled to
 2 come with you; is that correct?
 3 A I don't know what you mean by originally scheduled.
 4 They keep their own schedules.
 5 Q When you wrote the facility, you predicted that
 6 there would be a number of people coming, two of
 7 whom were Justice Fairhurst and Justice Ireland; is
 8 that correct?
 9 A You're going to have to show me that document.
 10 Q Did you have discussions with other members of the
 11 Court about visiting the Special Commitment Center?
 12 MR. BULMER: Just a second.
 13 A I think that's confidential, my discussions with
 14 other members of the Court.
 15 Q What confidence, what privilege are you asserting?
 16 MR. BULMER: What we're now into is a
 17 question as to whether the Judicial Conduct
 18 Commission can appropriately inquire as to matters
 19 that are discussed between members of the Court,
 20 either about policy or about any number of other
 21 areas, and I think we're into some real fuzzy areas
 22 as to whether the CJC has ability to intrude into
 23 the judicial branch and ask a justice to waive or
 24 discuss what members of the Court discuss between
 25 themselves.

1 And so I would direct my client -- I don't
 2 know the answer to the question. I think that
 3 there's a legitimate question as to whether you can
 4 ask about policy discussions or discussions held by
 5 the members of the Court. So I would object as to
 6 separation of powers.
 7 MS. PFLAUMER: This is a privilege?
 8 If it's a separation of powers issue, that would be
 9 an issue that would be dealt with at the time of
 10 the hearing and evidence would be received subject
 11 to the objection as all other objections.
 12 MR. BULMER: We'll claim the
 13 privilege.
 14 MS. PFLAUMER: What privilege?
 15 MR. BULMER: We'll claim that there's
 16 a privilege which exists between intrusion by
 17 others into discussions that are held between
 18 members of the Court.
 19 MS. PFLAUMER: The Judicial Conduct
 20 Commission is part of the judicial branch, and I am
 21 not asking a question on any deliberations as to
 22 any case.
 23 THE WITNESS: You're asking an
 24 irrelevant question.
 25 MS. PFLAUMER: Relevance is a matter

1 that can be handled at the time of the hearing.
 2 I ask that this be marked as Exhibit 3,
 3 please.
 4 (EXHIBIT NO. 3 MARKED.)
 5 Q (Continuing by Ms. Pflaumer) Showing you a copy of
 6 what's been marked as Exhibit 3, this is a letter
 7 from Justice Faith Ireland dated January 22nd,
 8 2003, addressed to Mark Selig, Superintendent.
 9 Would you agree that the superintendent of the
 10 Special Commitment Center is outside the Supreme
 11 Court and not covered by any privilege?
 12 A Of course.
 13 Q So if there were a privilege, Justice Ireland has
 14 waived it here, would you agree?
 15 A Well, I don't know. You have a letter here.
 16 Q In this letter, Justice Ireland says:
 17 (READING) Upon reflection, I have decided not
 18 to visit the Special Commitment Center on 1/27/03.
 19 Due to the high volume of litigation the residents
 20 have in our own court, I have determined that
 21 conversation with inmates could be construed as
 22 ex parte communication. In addition, Mr. Young's
 23 expectations, as reflected in his recent letter, do
 24 not match my own in regard to the purpose or
 25 structure of a visit.

1 This letter was distributed to all the
 2 justices of the Supreme Court, was it not?
 3 A I don't know that.
 4 Q Does the letter itself indicate that copies were
 5 sent to the justices?
 6 A Well, you know, towards the bottom of the letter it
 7 says "C: The Justices."
 8 Q Did you receive this letter?
 9 A I don't recall.
 10 Q Did you have any conversation with Justice Ireland
 11 about what is written about in the letter?
 12 MR. BULMER: Objection. Privileged.
 13 MS. PFLAUMER: Well, counsel, we may
 14 be back here on another occasion.
 15 Let's take a break right now, if you don't
 16 mind.
 17 (RECESS TAKEN.)
 18 Q (Continuing by Ms. Pflaumer) Justice Sanders, what
 19 was the impetus for your visit in January of 2003?
 20 A Well, I guess I had a longstanding interest in
 21 visiting the Special Commitment Center, and I did
 22 receive a letter from one of the prisoners
 23 suggesting it.
 24 Q Did that resident refer to himself as a prisoner?
 25 A I'd have to look at the -- he is a prisoner. I'd

1 have to look at the letter to see exactly what he
2 said.
3 Q He's not referred to as a prisoner under the law,
4 is he? He's referred to as a --
5 A I think he is referred to as a prisoner. I don't
6 know what you mean by he's not referred to as a
7 prisoner in the law. What law are you referring
8 to?
9 Q The sexual commitment law.
10 A You're going to have to show it to me.
11 Q So if the person writing you suggesting that you
12 visit referred to himself as a resident, you would
13 still think it would be appropriate to refer to him
14 as a prisoner?
15 A Of course.
16 Q Did you have any discussions with anyone before
17 going to the center about the propriety of visiting
18 the center?
19 A Don't recall any.
20 Q Did you make any inquiry of the Court -- that is,
21 the clerk or other members of the Court -- as to
22 what residents had cases pending in any way?
23 A No.
24 Q Did you advise any attorney of any resident of your
25 plan to visit the institution?

1 A You're referring to an attorney for a prisoner?
2 Q Attorney for any resident of the Special Commitment
3 Center.
4 A I didn't visit any residential community on McNeil
5 Island.
6 Q You visited people who have been committed pursuant
7 to the --
8 A They are prisoners. They're confined. They can't
9 leave. They're in a cell block. I'd call that a
10 prisoner.
11 Q You would call it a prisoner, they would call
12 themselves residents. We're talking about the same
13 people who have been committed as sexually violent
14 predators to the Special Commitment Center.
15 A Did I contact a lawyer for the prisoners or any
16 prisoner?
17 Q For any individual who resided at the Special
18 Commitment Center.
19 A I did not contact a lawyer for any prisoner.
20 Q Did you contact an attorney or identify an attorney
21 who prosecutes any of the civil commitment cases?
22 A Did I contact a lawyer for the --
23 Q For the state or the county who prosecutes?
24 A There was one lawyer for the state who was signed
25 up to be on the tour. He didn't attend. But I

1 didn't personally go out and solicit lawyers to
2 attend the tour, no, I didn't.
3 Q And who was that lawyer?
4 A Bernie Friedman.
5 Q And what is Bernie Friedman's area of practice?
6 A DSHS.
7 Q What does he do for DSHS?
8 A I have a general idea that he's concerned about
9 limiting DSHS liability for what they do or fail to
10 do.
11 Q Does he have anything to do with prosecuting cases
12 of sexually violent predators?
13 A State of Washington is involved in this.
14 Q Does Bernie Friedman, to your knowledge, have
15 anything to do with prosecuting cases of --
16 A I don't know specifically about Bernie Friedman
17 other than what I've said.
18 Q How did you know he was originally scheduled to go
19 on the tour?
20 A Because he appeared on some list.
21 Q After your visit on January 27th, 2003, did you
22 contact any attorney regarding the visit?
23 A Not --
24 MR. BULMER: Wait a minute.
25 A Not that I recall.

1 Q I'm sorry, I don't mean attorney for you. I mean
2 attorney for any side of the sexually violent
3 predator commitment process, any individual that
4 you spoke with or any attorney on the other side of
5 that process.
6 A Not that I recall.
7 Q Do you affirmatively recall that you did not, or
8 you have no recollection?
9 A Well, you know, there was a motion for recusal.
10 Q Before that?
11 A Before that, I don't recall any contact.
12 Q Okay. Let's go to the specifics of January 27th,
13 2003. How clear is your recollection today of the
14 events and conversations you had there?
15 A Pretty clear.
16 Q Did you take any notes at or about the time?
17 A Not really. I see some scratchings on one piece of
18 paper that I gave to you. That would have been it.
19 Q That would be in Exhibit 1?
20 A Yeah.
21 MS. CALLNER: Sorry, it's being
22 copied.
23 Q We'll get back to that.
24 Those are the only notes that you took on or
25 about the time?

1 A Yeah, if you want to call it a note.
 2 Q Did you use anything else to refresh your
 3 recollection today about what occurred on
 4 January 27th, 2003?
 5 A I read some of the documents that have been
 6 generated through the course of this litigation.
 7 Q Anything else?
 8 A No.
 9 Q When you arrived on McNeil Island, who met you?
 10 A Seems like there were several members of the staff
 11 of the facility that were there. I'm sure -- well,
 12 I can't recall their names.
 13 Q Do you recall any conversations you had with any of
 14 those members of the staff?
 15 A Yes.
 16 Q Could you tell me about the conversations, please.
 17 A Well, the tour went on for four hours, so --.
 18 Q I'm talking about shortly after your arrival and on
 19 your trip to --
 20 A I can tell you the format if you want. You're
 21 going to have to be more specific about who said
 22 what when.
 23 Q Where did you sit in the bus on the first drive up
 24 from the dock?
 25 A I just don't recall.

1 A Maybe something that they said would have
 2 stimulated a further question from me or other
 3 people on the tour group. Also, you want to parse
 4 this thing out between the dock and when we parked
 5 on the street, you know. It kind of runs together
 6 in my mind. I mean, it was a continuing thing, and
 7 they addressed different topics at different
 8 locations but not exclusively.
 9 So I think that part of their discussion was,
 10 you know, what they thought the purpose of this
 11 treatment was for, how they went about it, what
 12 kind of response they were getting from the
 13 prisoners, what sort of success they were having,
 14 what their problems were, you know.
 15 There are a lot of different things, so for me
 16 to recount everything -- I mean, I can talk about
 17 various topics if you want, but it was a broad
 18 discussion of, you know, what they're about.
 19 Q My question right now is what you recall of your
 20 remarks, questions, comments, and if you want --
 21 A Exactly what I said?
 22 Q -- to open it up in general.
 23 A If there's something specific that you --
 24 Q I'm asking you what your recollection is.
 25 A I guess you're going to -- look, it was a four-hour

1 Q What was the first destination?
 2 A I think we drove out to a road and just parked on
 3 the road and we could see the new facility that was
 4 being constructed. That's what I recall as being
 5 the first stop.
 6 Q And between being picked up on the dock and that
 7 first stop, do you have any memory of conversations
 8 you had with the staff in the van?
 9 A I'm sure there were conversations, but, you know,
 10 you just have to be more specific about who said
 11 what.
 12 Q Did you say anything or the staff say anything in
 13 the van that you can recall?
 14 A Of course, the staff were there to host a tour of
 15 the facility, and they described the physical
 16 plant, the new facility that was being constructed.
 17 They talked about the treatment.
 18 Q What was said about the treatment?
 19 A A lot of things were said about the treatment.
 20 Q Did you ask questions about the treatment?
 21 A Yes, I'm sure I did.
 22 Q Do you recall what those questions were?
 23 A Well, once again, you're going to have to be a
 24 little bit more specific for me.
 25 Q What did you ask about the treatment?

1 tour or longer or something like that. You're
 2 going to have to be a little more specific.
 3 Q You've asked me to be specific, and I've tried to
 4 be specific about the time and place. You're now
 5 saying you don't want me to be specific about that,
 6 so I'm trying to be specific --
 7 A How about the topic?
 8 Q -- about the treatment program. What questions did
 9 you ask about the treatment program?
 10 A Well, I can tell you generally what was said and
 11 whether it was --
 12 Q I'm sorry to interrupt. My question, Justice
 13 Sanders, is what questions did you ask about the
 14 treatment program?
 15 A If you want to ask me did I ask specifically this
 16 or that, maybe I can recall.
 17 Q I'm asking you what your recollection is of the
 18 questions you asked or comments you made about the
 19 treatment program.
 20 A Well, I would have asked, you know, what is the
 21 treatment program, how is it conducted, what sort
 22 of success are they having, how do people get
 23 themselves off the island, how are they transferred
 24 around on the island, how are they treated for the
 25 lack of volitional control. I mean, what do you do

1 on the ground to help cure this problem, and have
2 you been successful.

3 What is the rate of people progressing through
4 the program at different stages, how many people
5 are on the mainland, how many people have been
6 released, under what circumstances, what's been
7 their experience, have some reoffended and why.

8 I remember discussions about there was an
9 effort to take some prisoners, to plan for day
10 excursions to different locations on the mainland,
11 to go shopping, well, maybe it was a Kmart or
12 something down by Lakewood, I remember this.

13 And the staff members, you know, recounted to
14 me what had happened during this and that one of
15 the prisoners recounted that he attempted to
16 reoffend but that he was able to control his
17 impulses because of the structure of the program.

18 I remember asking about, you know, how they
19 determined whether a prisoner would progress from
20 one stage of the program to the next, you know,
21 what the criteria were and how they attempted to
22 deal with it.

23 And then other people in the group asked
24 questions. That's about the best I can do right
25 now.

1 Q You started out by saying, "I would have asked..."
2 Do you specifically remember asking questions along
3 the lines of what you've recounted, or are you
4 speculating?

5 A I think I asked questions along the lines of what I
6 recounted.

7 Q What was your first interaction with residents at
8 the Special Commitment Center?

9 A You're referring to prisoners now?

10 Q I'm referring to residents, you're referring to
11 prisoners, but we're talking about the same people.

12 A Well, let's see. I think the first prisoner I met
13 was in the woodworking shop.

14 Q And was that a one-on-one conversation?

15 A Nothing was a one-on-one conversation. Everybody
16 was present for all of this stuff.

17 Q Let's maybe clarify terms. Was the conversation
18 between you and the individual, or were other
19 people involved in the conversation?

20 A Did other people ask questions of the prisoner, did
21 he address the concerns of other people on the
22 tour, is that what you're saying, I mean, other
23 than everybody being together?

24 Q Was there a group conversation where person 1,
25 person 2, person 3, person 4 spoke, or was there

1 conversation between you and this individual and
2 then conversation between other people and this
3 individual?

4 A Well, I remember I asked this individual some
5 things, and he had some things to say, not only to
6 me but to others, and a staff person may have
7 interjected something.

8 Q And after you were in the woodworking shop, where
9 did you go?

10 A Well, there's a hallway in the prison and then you
11 get to a cyclone fence, and the group is taken
12 through the cyclone fence, and then we got to the
13 cell block.

14 Q And what was the circumstance in the cell block, as
15 you call it?

16 A I'm having a little difficulty remembering exactly
17 if there were two cell blocks or one cell block,
18 but I thought that when we went through the cyclone
19 fence, we went first off to the left, and there was
20 a building there, but we didn't go through it in
21 detail, I don't think. There was a prisoner there
22 who started talking.

23 Then we went over to what I'll call, perhaps
24 inaccurately, the main cell block. It was a large
25 open area, I don't know whether you call it a

1 lounge area or whatever. There were quite a few
2 prisoners there.

3 Q Can you give us a ballpark figure how many?

4 A Maybe 50, 75.

5 Q And what happened next?

6 A Some prisoner came up -- well, one prisoner handed
7 me an envelope with some butcher paper inside of
8 it, and then he left.

9 Q Did you open the envelope?

10 A Eventually. I don't think I opened it at that
11 time.

12 Q Did you have any discussion with him about why he
13 was handing you an envelope?

14 A No.

15 Q Why did you take the envelope?

16 A He gave it to me.

17 Q Did you continue in a group of -- you said this
18 envelope was given to you while you were in a group
19 of about 50 or 60 residents?

20 A Yeah. Well, it's a big room and, you know,
21 everybody is there. There's all these residents.
22 Not every resident in the facility was there, but
23 there were quite a few of them there. And I could
24 be inaccurate about the numbers, but it seemed like
25 there were a lot. And then our tour group was

1 there, the staff was there. That's sort of the
 2 milieu.
 3 Q Okay. What happened next?
 4 A Another prisoner came up and started saying
 5 something, and about that time one of the staff
 6 members, maybe Mr. McLaughlin, said it would be
 7 better if any discussions with prisoners were had
 8 in a smaller room, that they be invited in in
 9 groups.
 10 And so the tour group went into this room
 11 where there's a bunch of chairs. We sat down, and
 12 then the staff would usher in four or five
 13 prisoners at a time.
 14 Q Was the person that you met at the cyclone fence
 15 still with you, the individual you described, the
 16 first person you met in what you called the cell
 17 block?
 18 A No. The only -- no.
 19 Q What happened to him; where did he go?
 20 A I don't know.
 21 Q What was the conversation you had with him?
 22 A He might have identified himself as the author of
 23 one of those letters that you have in your packet
 24 that, you know, was happy that the tour was there
 25 and wanted to make sure that we saw everything.

1 Q Do you have an independent recollection today of
 2 the name of anybody you met there, any resident you
 3 met?
 4 A The only one would be Andre Young.
 5 Q This first person who guided you or brought you
 6 into the group, do you have any other recollection
 7 of your discussion with him?
 8 A Well, he was talking about his life there at the
 9 facility. He didn't talk about any pending
 10 litigation, he didn't give me any speeches about
 11 jury instructions or anything like that. He was
 12 talking about his life there at the facility.
 13 Q And what was he saying about his life there, if you
 14 can recall?
 15 A It's a little bit difficult to differentiate what
 16 he said with what others said. I can give you the
 17 general tenor of it if you want.
 18 Q I want your best recollection of what discussion
 19 you had with him. That's all I can ask for.
 20 A Well, like I said, he said that he was the author
 21 of one of these letters from the supposed African
 22 American Collective. He was happy that the tour
 23 was there. He wanted to make sure it was -- not
 24 make sure, he wanted to have some input on what we
 25 saw. He may have had some complaints about the way

1 he felt he was being treated. I can't specifically
 2 recall exactly what his complaints were.
 3 Q Did you ask him any questions?
 4 A I don't recall that I did.
 5 Q Now, when you were in the smaller groups in what I
 6 think was a classroom, there were smaller groups of
 7 individuals who came in and talked, correct?
 8 A Yes.
 9 Q Did they each introduce themselves by name?
 10 A Yes.
 11 Q Did a whole group come in and then a whole group go
 12 out?
 13 A Yes, that's the way it worked.
 14 Q How many would have been in a group?
 15 A Four or five.
 16 Q And before you went into the room, did you have any
 17 conversations with Mr. McLaughlin or any of the
 18 other staff about what you wanted?
 19 A Well, I believe it was probably Mr. McLaughlin that
 20 indicated to me that it would be better to talk to
 21 any prisoners who wanted to talk in the context of
 22 this smaller room, that they should go in in
 23 groups. He organized this. He thought that there
 24 were privacy concerns amongst the prisoners and
 25 that this would be a better way to handle it rather

1 than just sort of generalized conversations in the
 2 middle of this crowded room.
 3 Q And what had you said, either to him or to the
 4 residents, in connection with going into the other
 5 room; what were your words that you recall?
 6 A He said, "This is what I think we should do," and I
 7 said, "Okay."
 8 Q Did you indicate any interest in talking to anyone?
 9 A Nobody in particular.
 10 Q Talking to the group? I mean, what did you tell
 11 them you wanted to do, Justice Sanders?
 12 A What did I tell who?
 13 Q Mr. McLaughlin.
 14 MR. BULMER: I'm going to object on
 15 foundation. He has not testified that he told him
 16 that he wanted to do anything.
 17 Q Did you tell him --
 18 A I think I explained this. There was a prisoner
 19 that came up and started saying something to me,
 20 and Mr. McLaughlin intervened at that point and he
 21 said, "Look, I think that the tour group should go
 22 into the room and we'll bring people in, you know,
 23 in small groups to talk about whatever they're
 24 going to talk about." I mean, I didn't suggest
 25 this to Mr. McLaughlin, assuming it is

1 Mr. McLaughlin. He suggested it to me.
 2 Q Did you indicate to the SCC staff in any way that
 3 you wished to talk to some of the residents?
 4 MR. BULMER: At that time?
 5 MS. PFLAUMER: At that time.
 6 MR. BULMER: Thank you.
 7 A I don't think so.
 8 Q (Continuing by Ms. Pflaumer) When you were in the
 9 small room, did you or any other member of the
 10 group take any notes?
 11 A I didn't. I don't know if a member of the group
 12 did or not.
 13 Q You have read the notes that Mr. McLaughlin took
 14 and which you received, I think, shortly thereafter
 15 the visit?
 16 A Yeah, probably a month or two afterwards.
 17 Q At that time did you make any specific comments on
 18 the individual conversations that he has noted in
 19 this?
 20 A Comments?
 21 MR. BULMER: Let me ask a clarifying
 22 question. Do you mean did he make marginal
 23 notations?
 24 MS. PFLAUMER: Yeah, or any kind of
 25 notes, like Rick Calhoun, I don't remember him, or

1 Rick Calhoun, this is wrong, or --
 2 A No, I didn't mark it up.
 3 Q (Continuing by Ms. Pflaumer) Can you go through
 4 these notes and say what is accurate and what is
 5 inaccurate today?
 6 A Well, if you want to ask me specifically on it, I
 7 can tell you what I remember about it.
 8 Q Okay. Rick Calhoun is the second one listed.
 9 (READING) Rick described his personal
 10 situation, his criminal history, his time with DOC,
 11 his time with SCC and his current treatment status.
 12 Is that accurate?
 13 A Well, for starts, I cannot associate the name with
 14 the comments here. I mean, people introduced
 15 themselves, but with the one exception that I've
 16 noted, you know, their names didn't mean anything
 17 to me. So, you know, I guess --
 18 Q When -- I'm sorry. Go ahead.
 19 A I know that some residents -- okay, you've got me
 20 saying it now. You won.
 21 Some prisoners did identify the sex crimes of
 22 which they'd been convicted, so whether Mr. Calhoun
 23 did it, I couldn't tell you right now. Some
 24 residents stated how long a prison sentence they'd
 25 served. Some prisoners said how long they'd been

1 there at the Special Commitment Center, and some
 2 prisoners indicated whether they were or were not
 3 participating in the treatment program.
 4 I really only recall one answer about
 5 volitional control. I should say I only recall one
 6 statement about volitional control, and I see that
 7 Mr. McLaughlin's notes never say what the guy said.
 8 Q What do you recall was said?
 9 A I can't recall who the individual was. You know,
 10 having read these, I'm trying to reconstruct this.
 11 I'm assuming that Rick Calhoun was not in the small
 12 group.
 13 Q Why are you assuming that?
 14 A Because Mr. McLaughlin claims that he met me
 15 outside the facility, that that's where he was
 16 talking to me.
 17 Q All right. So if that person is identified as
 18 Rick Calhoun, does your memory differ from
 19 Mr. McLaughlin's notes as to what Rick Calhoun said?
 20 A I don't recall Rick Calhoun talking about
 21 volitional control.
 22 MR. BULMER: Assuming that person was
 23 Rick Calhoun.
 24 A Assuming that the second person I met -- the first
 25 person being the guy at the woodworking center, the

1 second person being the one that kind of presented
 2 himself as the author of one of these letters. I
 3 don't recall him talking about volitional control.
 4 He may have said this stuff about being placed
 5 in one part of the facility with special needs
 6 individuals or something in that effect. It wasn't
 7 terribly meaningful to me at the time, because I
 8 didn't really understand what that meant, you know.
 9 Q During this discussion with this second person, and
 10 we'll assume it's Rick Calhoun, did the clerks who
 11 were in your group ask questions?
 12 A I don't recall.
 13 Q Did you ask questions?
 14 A I don't recall.
 15 Q When you spoke to him, do you remember anything you
 16 said to him?
 17 A Anything I said to him?
 18 Q Yes.
 19 A Not specifically.
 20 Q All right. Let's go to the classroom. Do you
 21 recall making --
 22 MR. BULMER: Are you doing a
 23 transition? I do need just two minutes, if you're
 24 at a place.
 25 MS. PFLAUMER: That's fine.

1 (RECESS TAKEN.)

2 Q (Continuing by Ms. Pflaumer) We're in the small

3 groups in the classroom now, right?

4 A Yes.

5 Q And I think you've said that there were about four

6 or five residents?

7 A Prisoners, yes.

8 Q Okay. And one group of four or five would come in

9 and there would be some discussions, and then that

10 group would be excused and then another group of

11 four or five would come in?

12 A That's correct.

13 Q How many different groups came in?

14 A I think there were two or three.

15 Q Did the individuals introduce themselves?

16 A Yes, they did.

17 Q Did you introduce yourself or give general

18 statements?

19 A Yes. I believe I identified who I was and, you

20 know, perhaps the nature of the tour, and I said

21 that I was not interested in hearing anything about

22 their individual legal circumstances, that I'm here

23 to tour the facility and try to understand how the

24 facility works and I'd be interested in hearing

25 about their lives at the facility, their experience

1 Q And, again, if you could sort of explain, what was

2 the positive message you gave, what did you want to

3 hear about?

4 A Wanted to hear about their life at the facility,

5 their experiences in the treatment program, if any.

6 You know, these people selected themselves, so I

7 wanted to give them an idea that, hey, this isn't

8 the time or place to argue your case, if you have a

9 case. I'm not here for that. I'm here to tour the

10 facility and try to understand what your life is

11 like and what the facility does from their

12 perspective.

13 Q Did you ask individual questions of individual

14 people as opposed to these general statements to

15 the group of four or five?

16 A Sometimes. I might have asked what their relevant

17 criminal record was, relevant to their commitment

18 at this facility; that is to say, the sex predator

19 statute requires that someone be convicted or have

20 committed a sex crime, and I was interested in

21 hearing what their record was so I could sort of

22 understand where the guy is coming from. I mean,

23 is he a pedophile, does he rape women, is he a

24 homosexual. I mean, I didn't ask those questions,

25 but I wanted to hear what the relevant criminal

1 at the facility, but I didn't want to hear about

2 their individual cases, if there were any.

3 Q Did any of the clerks who were with you speak in

4 those sessions?

5 A I think so.

6 Q Do you recall any specific statements?

7 A No, I don't.

8 Q Did they ask any questions of the residents?

9 A They may have. It's hard to -- I can't remember

10 specifically.

11 Q Did the staff have any conversation with residents

12 in those sessions?

13 A Well, in general, I mean, where to sit, it's time

14 to leave now, that kind of thing maybe.

15 Q But no substance; they weren't asking any questions

16 of the individuals?

17 A Not that I recall.

18 Q And you gave some specific instructions about what

19 the residents could talk about or should talk

20 about?

21 A Well, more specifically what they shouldn't talk

22 about.

23 Q Okay.

24 A And probably I did tell them what we were here for,

25 you're right, both ways.

1 record was that related to their presence at this

2 facility.

3 Q Did you ask, "What is your criminal record?" or did

4 you ask, "What brought you here?"

5 A You know, I read that statement in Mr. McLaughlin's

6 declaration. I think that I was a little bit more

7 specific than what Mr. McLaughlin says. In fact,

8 there was an earlier letter to the facility that I

9 think was a little more on point.

10 Well, in any event, I believe I asked to

11 describe the criminal record that was relevant to

12 their incarceration.

13 Q Why did you want to know if an individual was a

14 pedophile or a rapist or --

15 A Because it kind of gave me a background as to where

16 the guy was coming from, what the nature of his

17 problem was and that if he wanted to describe his

18 experience in the treatment program, then this gave

19 me some idea of what he was being treated for, of

20 what his problem is.

21 Q Did you ask people to describe their experience in

22 the treatment program?

23 A I think, generally speaking, no. Some made it a

24 point, one or more made it a point, to say they

25 didn't pay participate in the treatment program,

1 and I probably asked why not.
 2 Q And this was in the same groups of four and five
 3 that were in the classroom?
 4 A That might have been upstairs. There was something
 5 that -- other prisoners were at an upper floor, and
 6 I think a question like that might have been asked
 7 at that point. Whether it was asked of these
 8 individuals that came into the classroom, I just
 9 can't differentiate that for you right now.
 10 Q Did you ask any of the individuals a question with
 11 the words "volitional control"?
 12 A Yes, probably.
 13 Q Do you have a specific recollection, or are you
 14 saying probably based on --
 15 A Yes, I did, sure.
 16 Q What's your specific recollection?
 17 A That I did.
 18 Q What was the question or questions?
 19 A Well, there is only one where I think I really got
 20 an answer, and it was kind of a funny answer, so
 21 it's hard to forget this one.
 22 I don't know the individual's name, but he had
 23 been convicted of, I think, three homosexual rapes.
 24 He was a nice-looking young man in his 30s, very
 25 well-dressed, and I think I asked him if he would

1 attribute those rapes to a lack of volitional
 2 control, and he said, "Justice Sanders, it took a
 3 lot of forethought and planning for each one of
 4 those, so I was very much in control of what I was
 5 doing."
 6 Q Did you ask anyone else about volitional control in
 7 any way?
 8 A I may have, but typically or other than this one
 9 individual, I don't believe any of the prisoners
 10 really gave me much of an answer. I mean, they
 11 were -- and it might have been when I first, you
 12 know, gave the introduction to the group about, you
 13 know, we're touring the facility, I'd like to hear
 14 about your life, I may have thrown something in
 15 there about volitional control. I may not have
 16 asked others specifically individually. I may
 17 have.
 18 Q Do you remember any specific questions that you
 19 asked involving the words "volitional control"?
 20 A Well, the question would have been: Do you think
 21 that you lacked volitional control when you
 22 committed these sex offenses? That would have been
 23 the question.
 24 Q Now, you say "that would have been." What's your
 25 basis for saying "that would have been"? That's

1 what you meant to ask, that's what you intended to
 2 ask, or that's what you remember asking?
 3 A That's what I remember asking. I didn't ask it to
 4 everybody, a few. I wanted to have their take on
 5 whether or not they identified, I mean, in their
 6 own minds that they had a problem. I say "they."
 7 I mean, this isn't everybody, but a few of them.
 8 And I thought to myself and I was questioning
 9 in my own mind, I guess, how can you treat somebody
 10 for a problem that they don't acknowledge, quite
 11 aside from the fact of whether or not they really
 12 have a problem.
 13 It was my understanding generally with these
 14 psychological treatments of all kinds that the
 15 first thing the therapist attempts to do is enable
 16 the patient or the subject to recognize what the
 17 problem is and then you attempt to deal with it.
 18 So I guess that was sort of my line of
 19 thinking there.
 20 Q What was the thinking about what you were trying to
 21 learn from your visit?
 22 A Well, as far as I know, there are two purposes for
 23 this facility. One is to keep these guys off the
 24 street, and they seem to do that pretty
 25 effectively.

1 The other is to treat them for their problem.
 2 So how do they treat them, what is the problem,
 3 what is the resistance to treatment, what are the
 4 problems associated with the treatment, how do they
 5 respond to this treatment.
 6 It seemed to me that that was basically what
 7 this institution was all about.
 8 Q And how did you expect to use that insight?
 9 A Just general knowledge. I mean, I'm not in a
 10 position to change the laws or anything like that,
 11 but to try to understand how an institution
 12 functions, this institution, other institutions,
 13 what do they do. I suppose that's the purpose of a
 14 tour.
 15 Q I think we've gone over this, but you have no
 16 recollection of receiving any other document except
 17 the one that was the butcher block piece of paper,
 18 right?
 19 A That's correct.
 20 Q Do you recall anyone attempting to give you a
 21 document or talk to you from one Eagle Scout to
 22 another?
 23 A Oh, one of the guys said that he was an Eagle
 24 Scout.
 25 Q And in the context of what, "Hey, Justice Sanders,

1 I'm an Eagle Scout"?

2 A Well, he was in one of these small groups, and it

3 came time for him to say something, and he said

4 he's an Eagle Scout. I mean, I'm an Eagle Scout,

5 my biography is on the Web, so this guy pointed out

6 that he was an Eagle Scout.

7 Q Okay.

8 A I thought that was interesting, an Eagle Scout. All

9 kinds of people are there.

10 Q When you finished discussions with those small

11 groups in the classroom, you said you went to

12 another area?

13 A As I recall, we went upstairs.

14 Q And how many people were there?

15 A Maybe 50 people.

16 Q Did you speak with them all together or in smaller

17 groups?

18 A All together.

19 Q Can you identify from Mr. McLaughlin's notes which

20 individuals were from that large group?

21 A Well, I don't know if there's any exceptions or

22 not, but it was my impression that basically these

23 were people who refused treatment.

24 Q And did you ask them why?

25 A Yeah, I asked why, yeah. I remember one individual

1 identified himself as Andre Young, and I remember I

2 asked him why, why did he refuse treatment.

3 Q And was he the only one you asked that of, or did

4 you ask others?

5 A I don't recall asking others. I remember

6 specifically that I asked him. I mean, most of the

7 people weren't saying anything.

8 Q Did you ask any other questions upstairs that you

9 can recall?

10 A Well, I might have. If somebody wanted to say

11 something, I might -- well, I probably gave them

12 this general admonition about, you know, I don't

13 want to talk about your individual legal

14 circumstances. If somebody wanted to speak up, I

15 probably asked or on some occasions I may have

16 asked what their criminal record was in the same

17 context as downstairs.

18 Q And, again, would you have said, "What is your

19 conviction record?" or would you have said, "What

20 brought you here?"

21 A I don't think I would have said, "What brought you

22 here?" That may have been Mr. McLaughlin's spin on

23 it, but I was interested specifically in, you know,

24 what it is of public record, what their criminal

25 conviction is.

1 Q So your question --

2 A I mean, was it a sex murder, well, etcetera.

3 Q So you asked, "What was your conviction?"

4 A Yeah, words to that effect.

5 Q And did you ask any of them about volitional

6 control?

7 A I don't recall that at all upstairs.

8 Q Did you receive any documents while you were

9 upstairs?

10 A Not that I remember.

11 Q I want to go to what happened after your visit and

12 the actions of the Commission. You were in town

13 when the Commission made a decision to issue the

14 Statement of Charges, correct?

15 A Well, what date would that have been?

16 Q April 5th.

17 A Yes.

18 Q Did you ask former Justice Talmadge to act as a

19 spokesperson?

20 MR. BULMER: Objection. Relevance.

21 MS. PFLAUMER: It's noted.

22 MR. BULMER: I need clarification of

23 the question if possible. Are you asking him did

24 he personally ask Justice Talmadge?

25 MS. PFLAUMER: Yes.

1 MR. BULMER: Answer the question as it

2 applies to you as to whether you personally did

3 something.

4 Q (Continuing by Ms. Pflaumer) Did you ask --

5 A I don't recall asking Justice Talmadge that.

6 Q Did you ask Lem Howell personally to be a

7 spokesperson?

8 A I don't recall specifically discussing that with

9 either of those individuals. I may have.

10 Q Did you provide information for either Justice

11 Talmadge or Lem Howell to base their role as

12 spokesperson on?

13 A I may have talked to Justice Talmadge in

14 relationship to perhaps being an expert witness.

15 Q Expert on what?

16 A Supreme Court procedures, you know, that kind of

17 thing, similar to what you were asking before.

18 Q He's referenced in your press release as a

19 spokesperson on the facts.

20 A I didn't prepare the press release.

21 Q Did you approve the press release?

22 A I saw the press release.

23 Q Did you approve it?

24 A I had some input on it. I mean, it looked fine to

25 me, if that's what you're asking.

1 Q Yes.
 2 A Looked fine to me.
 3 Q Justice Talmadge is referred to as someone who can
 4 answer factual questions. I'm asking what basis
 5 Justice Talmadge had for answering those factual
 6 questions.
 7 A Do you have the release with you here?
 8 Q Yes. I have what I believe is on your Web site,
 9 which we'll mark as the next exhibit.
 10 (EXHIBIT NO. 4 MARKED.)
 11 Q Do you maintain a Web site normally as a justice or
 12 only when you're running for office?
 13 A I maintain one normally, but this would have been
 14 on my campaign Web site. That's what you have
 15 here.
 16 Q Yes. It says "Judicial Ethics and Washington State
 17 Supreme Court Justice Richard B. Sanders," and
 18 under that it says "Sanders edits 2/6/04."
 19 What does that mean?
 20 A Apparently the --
 21 MR. BULMER: Wait a minute. If you
 22 don't know, you answer you don't know. Don't
 23 speculate.
 24 MS. PFLAUMER: Counsel, please don't
 25 counsel the witness.

1 MR. BULMER: I can instruct my client
 2 not to speculate.
 3 MS. PFLAUMER: Not in the middle of a
 4 question.
 5 A I don't know.
 6 Q (Continuing by Ms. Pflaumer) Who does your Web
 7 site?
 8 A My campaign consultant.
 9 Q Who is that?
 10 A Stan Shore.
 11 Q And you never noticed that it says "Sanders edits
 12 2/6/04" before?
 13 A No, I didn't.
 14 Q There are a number of factual statements made.
 15 A Okay.
 16 Q I presume that you reviewed them?
 17 A Well, sure, I've read this, sure.
 18 Q Did you provide these factual statements to Justice
 19 Talmadge or to Lem Howell?
 20 THE WITNESS: Would you read that
 21 question back again for me.
 22 (THE LAST QUESTION WAS READ.)
 23 A I didn't send a copy -- I don't believe I sent a
 24 copy to Justice Talmadge or Lem Howell.
 25 Q To your knowledge, were Justice Talmadge or Lem

1 Howell provided with any information such as
 2 Mr. McLaughlin's notes about what had happened at
 3 the institution?
 4 A I don't know. They were public record.
 5 Q What was public record?
 6 A His notes.
 7 Q His notes were public record?
 8 A (Witness nods head up and down.)
 9 Q Because they were filed in a case?
 10 A Yes.
 11 Q And did you or anyone on your behalf advise them
 12 that there were public record notes that had a
 13 different rendition of what had happened at the
 14 institution, that there was other information they
 15 might want to look at?
 16 A Did I advise --
 17 Q Or anyone at your request advise Lem Howell or
 18 Justice Talmadge that there was other information
 19 other than the statements that --
 20 A I don't think that I discussed those notes. I
 21 mean, personally I don't think I discussed those
 22 notes with Lem Howell or Phil Talmadge.
 23 MS. PFLAUMER: Speaking of Web sites,
 24 let's have this marked.
 25 (EXHIBIT NO. 5 MARKED.)

1 Q (Continuing by Ms. Pflaumer) Showing you what's
 2 been marked for identification as Exhibit 5, do you
 3 recognize that as the last page or one page of your
 4 "Re-elect Justice Sanders" Web site?
 5 A No, I don't.
 6 Q You do review your Web site, you've testified,
 7 right?
 8 A The Web site was up and functioning. It was
 9 prepared by the consultant. It was up and
 10 functioning before I saw everything on it. It
 11 would be my view and my hope that the campaign
 12 address would be referenced in my campaign Web
 13 site.
 14 Q How long has your Web site been up?
 15 A Since May sometime.
 16 Q When did you first accept contributions?
 17 A April.
 18 Q Do you recall when in April?
 19 A Public disclosure records are there. I don't
 20 get --
 21 Q Before you left?
 22 A Pardon me?
 23 Q Did you solicit contributions before you left town?
 24 A I never solicit contributions.
 25 Q I'm sorry. Did your committee on behalf of you

1 solicit contributions to your campaign before you
 2 left town on your vacation?
 3 A Probably.
 4 Q You have a regular group e-mail that you send out
 5 news about this Commission case; is that correct?
 6 A Campaign has an e-mail list.
 7 Q Do you personally use it to send messages?
 8 A No, I don't.
 9 Q Do you have input into what is said in the
 10 messages?
 11 A Sometimes. Sometimes not. I don't prepare them.
 12 Q Do you approve ones that are sent about your matter
 13 before the Commission?
 14 A Not necessarily.
 15 Q Who makes a decision of what's on there?
 16 A Well, you know, it's sent out through my campaign.
 17 I have a campaign consultant, Stan Shore.
 18 Q And Stan Shore would determine the content of the
 19 statements that are made about the matter before
 20 the Judicial Conduct Commission?
 21 A Well, I think that probably Stan Shore drafts the
 22 stuff that goes out. You'd have to be more
 23 specific. I don't know exactly everything that's
 24 been sent out in terms of e-mails.
 25 Q Does Stan Shore act with your authority to send out

1 e-mails about the case before the Commission on
 2 Judicial Conduct?
 3 A I really don't recall what he sent out. I think he
 4 may have sent out this initial fact statement that
 5 you had previously identified for me, but I don't
 6 recall other things having been sent out on the
 7 e-mail.
 8 Q What you're referring to as a fact sheet is your
 9 press release, correct?
 10 A Well, it's not a press release. I'm talking about,
 11 what is this, Exhibit 4.
 12 Q Exhibit 4, all right.
 13 A Something along those lines may have been e-mailed.
 14 I don't know of anything else that would have been
 15 e-mailed about this proceeding.
 16 Q If anything else were e-mailed by Stan Shore, would
 17 he get your approval first?
 18 A Not necessarily.
 19 Q Does Stan Shore have your authority to issue group
 20 e-mails about your case before the Commission on
 21 Judicial Conduct?
 22 A You know, to send out the fact statement, he
 23 probably had my authority. I don't recall
 24 authority for anything else. Was there anything
 25 else?

1 Q So does he have authority without your approval to
 2 send out group e-mails about your case before the
 3 Commission on Judicial Conduct?
 4 A He has authority to consult for my campaign, to run
 5 my campaign, and I don't recall any other e-mail
 6 communications, with perhaps the exception noted,
 7 regarding this Judicial Conduct Commission case.
 8 This is not a highlight of my campaign.
 9 Q I'm going to ask --
 10 A I think he sent an e-mail -- I participated in the
 11 reenactment of Brown vs. Board of Education. I
 12 remember asking him to send an e-mail out about
 13 that, and I think he did. And there may have been
 14 others, but I can't recall anything else about the
 15 Judicial Conduct proceeding. There's no reason for
 16 it.
 17 Q Do you know how big that e-mail list is?
 18 A Several hundred, I guess.
 19 Q And Stan Shore is S-C-H --
 20 A S-H-O-R-E.
 21 Q Thank you. And does he practice in Seattle?
 22 A No.
 23 Q In Olympia?
 24 A Yes.
 25 Q Thank you.

1 I'd like to take a short break while we go
 2 over Exhibit 1, and I think we're going to get you
 3 out of here in time for a late lunch if that's
 4 suitable for everybody.
 5 (RECESS TAKEN.)
 6 MS. PFLAUMER: Counsel stipulate that
 7 Exhibit 1 is an accurate copy of everything that
 8 Justice Sanders brought pursuant to the subpoena
 9 duces tecum except for one page that was an
 10 enlarged but repetitive version of the state
 11 budget.
 12 MR. BULMER: Yes. It is the same.
 13 The originals have some color and stuff which seems
 14 to be inconsequential, and I think the highlighting
 15 is -- let me look at page 1.
 16 I'm looking at what was sort of a torn page
 17 and it says "Movement" and "Meals," and where it
 18 says "Sweat pants" on the original, just so the
 19 record is clear, we don't know when or where, but
 20 it was highlighted with some sort of green thing
 21 and the highlighting just sort of shows up.
 22 Otherwise that's fine.
 23 Q (Continuing by Ms. Pflaumer) Let me ask, Justice
 24 Sanders, there's a handwritten note here on page 2
 25 of Exhibit 1. Is that your handwriting?

1 A Yes.
 2 Q And what was that note in regard to?
 3 A Let's see. That was in response to Mr. Young's
 4 letter, earlier letter.
 5 Q And was that sent, to the best of your knowledge,
 6 to Mr. Young?
 7 A Yes.
 8 Q There was one other handwritten item. On the front
 9 of the residential Special Commitment Center
 10 program overview, you've written some other notes.
 11 Is that your handwriting?
 12 A Yeah.
 13 Q Do you recognize who those names refer to?
 14 A Yeah. I sort of slaughtered the spelling, but
 15 these were individuals, staff people, that helped
 16 conduct the tour.
 17 Q And when did you write these notes?
 18 A Probably at the time they were introduced.
 19 Q Thank you.
 20 MS. PFLAUMER: Unless we come back on
 21 the privilege issue, that's all I can see for now.
 22 MS. CALLNER: Would you like to
 23 reserve signature?
 24 MR. BULMER: We're not going to waive
 25 signature.

1 CERTIFICATE
 2 STATE OF WASHINGTON)
 3 COUNTY OF PIERCE)
 4
 5 I, Randi R. Hamilton, Notary Public in and for
 6 the State of Washington, do hereby certify:
 7 That the annexed and foregoing deposition of
 8 RICHARD B. SANDERS was reported by me and reduced to
 9 typewriting by means of computer-aided transcription;
 10 That said transcript is a full, true and correct
 11 transcript of my shorthand notes of the aforementioned
 12 proceedings; that the above-named witness before
 13 examination was by me duly sworn to tell the truth, the
 14 whole truth and nothing but the truth; that the right of
 15 said witness to read and sign the transcript after the
 16 same was fully transcribed was reserved;
 17 I further certify that I am not a relative or
 18 employee or counsel of either of the parties or otherwise
 19 interested in said proceedings.
 20 WITNESS MY HAND AND OFFICIAL SEAL this _____
 21 day of _____, 2004.
 22
 23 _____
 24 Notary Public in and for the State
 25 of Washington, residing at Tacoma.
 My commission expires May 3, 2006.

1 MS. CALLNER: You want to review it?
 2 MR. BULMER: Yes. We reserve
 3 signature.
 4 (DEPOSITION CONCLUDED
 5 AT 12:10 P.M.)
 6
 7 (SIGNATURE RESERVED.)
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1 Deposition of RICHARD B. SANDERS
 June 21, 2004
 2
 3 In Re the Matter of HONORABLE RICHARD B. SANDERS
 CJC No. 4072-F-109
 4
 5 Page Line Suggested Change/Reason for Change
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 21
 22 I have read the original or a copy of the
 above-described transcript and my answers contained
 23 therein are correct with the above-noted changes.
 24 _____
 Signature of Deponent
 25