

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

IN THE MATTER OF )  
 )  
THE RECALL OF CYNTHIA OLSEN, )  
Port Commissioner of the Port ) NO. 04-2-00636-1  
Of Tahuya, Washington )

---

**VERBATIM REPORT OF PROCEEDINGS**

---

BE IT REMEMBERED that on the 9th day of August, 2004,  
the above matter came on for hearing before the HONORABLE  
DAVID R. DRAPER, Judge of the Superior Court of Lewis  
County, sitting at the Mason County Courthouse, City of  
Shelton, County of Mason, State of Washington; and the  
parties being present and represented as follows:

THOMAS C. O'HARE, Attorney for Residents for  
Preservation of Quality of Life on Hood Canal; and  
JAMES K. SELLS, Attorney for Cynthia Olsen.

WHEREUPON, the following was had and done, to-wit:

*Robyn Lockwood  
Court Approved Transcriber  
Mason County Superior Court  
2150 E Island Lake Drive  
Shelton, WA 98584  
(360) 427-9670 ext. 206*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TABLE OF CONTENTS

		<u>Page No.</u>
<u>Argument</u>		
Argument by Mr. O'Hare		5
Argument by Mr. Sells		11
Rebuttal Argument by Mr. Sells		14
Court's Decision		19
<u>Exhibits</u>	<u>Marked</u>	<u>Admitted</u>
Exhibit No. 1	3	4

1           THE COURT: This is Cause No. 04-2-636-1. We're  
2 here for a hearing on the recall petition against Cynthia  
3 Olsen, Port Commissioner. I have now read I believe  
4 everything that's been submitted. There are a couple of  
5 preliminary questions. Is everyone here that needs to be  
6 here?

7           MR. O'HARE: Your Honor, I'm Tom O'Hare. I'm here  
8 representing the petitioners on this recall petition.

9           MR. SELLS: Your Honor, Jim Sells, representing  
10 Commissioner Olsen in this matter.

11          THE COURT: I take it the prosecutor is not  
12 appearing today. We all got the brief that - the statement  
13 of law and so forth?

14          MR. O'HARE: He previously indicated to me that  
15 that's the extent of his participation in this, Your Honor.

16          THE COURT: As a preliminary matter, in preparing  
17 for this I noticed that there was a recodification of a  
18 number of - well, in fact the whole chapter, and some of the  
19 briefing referred to the old RCW citations. I crosschecked  
20 those. I didn't find any meaningful difference.

21          MR. SELLS: I think that's exactly correct, Your  
22 Honor.

23          THE COURT: You're agreed. I just wanted the  
24 record to show that we weren't all operating under, under  
25 RCW's that are no longer in effect. As a matter further of

1 procedural clarity hopefully, I was told that some felt that  
2 this hearing was going to take some considerable time. And  
3 the way it would I guess would be if there was a need to  
4 provide a basis of knowledge of the petitioners, and is  
5 there any need for that?

6 MR. O'HARE: In fact, Your Honor, I think my  
7 estimate to the clerk when I set this up was that it was  
8 gonna take less than half a day, and I didn't know that I  
9 could assure them how much less than half a day is where we  
10 were. In fact, Mr. Sells and I believe that we can obviate  
11 the need for any testimony, Your Honor. Mr. Sells and I  
12 have agreed and are willing to stipulate for purpose of this  
13 hearing to the admission of the petition for the recall with  
14 the attached motions and to the facts as they are stated in  
15 the memorandum in support of recall petition that I have  
16 filed in this matter.

17 MR. SELLS: That's correct, Your Honor.

18 THE COURT: Correct, all right. Now there's a  
19 supplemental memorandum in support of recall petition that I  
20 received.

21 MR. O'HARE: Right. That doesn't have a factual  
22 recitation.

23 THE COURT: I understand. I'm trying to make sure  
24 that we have originals and bench copies segregated. I don't  
25 think . . .

1 MR. O'HARE: Well, in fact she doesn't have the  
2 original of that. I'll hand it to her now. I brought that  
3 down here this morning. Mr. Sells has it, and you have it I  
4 take it Your Honor.

5 THE COURT: Yes, I do, and I have read it.

6 MR. O'HARE: The factual recitation that we're,  
7 that we were referring to is within the memorandum in  
8 support of recall petition on pages one, two and the top of  
9 page three.

10 THE COURT: Okay.

11 MR. O'HARE: I would ask - I'll give the copy of  
12 the petition for recall and ask her to mark that as an  
13 exhibit which I would like to offer at this time.

14 Exhibit No. 1 marked for  
15 identification.

16 THE COURT: It has been filed. Are you aware of  
17 that?

18 MR. O'HARE: Yes. Oh, the petition has been filed  
19 with the Mason County Auditor. Of course, it was then sent  
20 to the prosecutor, who in fact petitioned the court here to  
21 take the action that we're doing today.

22 THE COURT: Oh, yes, you're right. It was  
23 attached to the prosecutor's petition.

24 MR. O'HARE: And in fact the other key piece of  
25 documentation that Your Honor needs to pay attention to is

1 the last pages of the prosecutor's submission contains the  
2 ballot synopsis. The last pages of his petition to  
3 determine sufficiency, the last two pages are entitled  
4 ballot synopsis for recall of Cynthia Olsen. The prosecutor  
5 is, of course, charged with the statute - by the statute  
6 with preparing this, and one of your tasks today is to  
7 determine the sufficiency of that ballot synopsis.

8 THE COURT: I understand.

9 MR. SELLS: And I should add, Your Honor, if in  
10 the fact there is a ballot, then that synopsis is fine with  
11 us. I'm not gonna second guess the prosecutor.

12 MR. O'HARE: We're not objecting to the ballot  
13 synopsis as prepared by the prosecutor either, Your Honor.  
14 Your Honor, this may be cart before the horse, but just as a  
15 way of defining what I think we're doing, and I will hand up  
16 to Your Honor the original and a copy of a proposed form of  
17 order which I believe would be appropriate at the conclusion  
18 of today's hearing, Your Honor.

19 THE COURT: Is there any objection to the  
20 admission of the petition for recall as Exhibit 1?

21 MR. SELLS: No, Your Honor.

22 THE COURT: It's admitted as Exhibit 1.

23 Exhibit No. 1 identified, offered  
24 and admitted into evidence.

25 THE COURT: Anything else preliminary to argument?

1 Do you want to set any timeframes for argument or give me a  
2 prediction perhaps?

3 MR. O'HARE: By way of a prediction, Your Honor,  
4 about fifteen minutes for me.

5 MR. SELLS: Probably about the same for me.

6 THE COURT: Okay, all right. Then as far as order  
7 is concerned, the order in which you go, I'm going to  
8 suggest that the petitioners for recall go first.

9 MR. SELLS: Very good, Your Honor.

10 MR. O'HARE: Your Honor, the matter that you're  
11 here to consider today is whether or not the voters of the  
12 Port of Tahuya get a chance to first circulate petitions and  
13 then ultimately vote on the recall of one of their Port  
14 Commissioners. The specific actions - it's not a particular  
15 mystery there's been some contention out at the Port of  
16 Tahuya, and so folks have known for some time that there's  
17 some substantial substantive disagreements out there.

18 One of those - one of the things that happened is that  
19 a group of folks brought a lawsuit against two of the Port  
20 Commissioners alleging that they had violated the open  
21 public meetings act, alleging that they had held a number of  
22 telephone meetings. That's a lawsuit that was filed  
23 individually and personally against the two port - two of  
24 the three port commissioners. One of the three port  
25 commissioners was not sued, and again not a particular

1 mystery that he was most recently elected and has been  
2 substantively in disagreement with the other two port  
3 commissioners about a number of matters.

4         So at the time of the events that we're here talking  
5 about there was in existence - not threatened, but in  
6 existence - a lawsuit against Ms. Olsen individually. At a  
7 meeting in June, the topic was raised as to whether or not  
8 the Port of Tahuya should indemnify the two port  
9 commissioners that had been sued and have the port pay their  
10 litigation expenses. At that time, Commissioner Christen  
11 made it clear that he opposed that motion, and that he  
12 thought it was a conflict of interest for either of the  
13 other commissioners to vote on those resolutions as to their  
14 own indemnification and defense. It wasn't voted on in  
15 June.

16         In July it came before a special meeting of the Port of  
17 Tahuya called basically specifically for the purposes of  
18 considering several resolutions, and those are the  
19 resolutions that are before the Court. And the resolutions,  
20 without going through them in great particularity, talked  
21 about having the port defend and indemnify and provide  
22 lawyers to defend the lawsuit, the specific lawsuit that was  
23 in existence against Commissioners Olsen and Gilbert, and  
24 any future lawsuits. And it named a specific lawyer, a  
25 well-known Seattle law firm, to be hired to defend those

1 lawsuits and said that if for any reason there was a  
2 conflict, there would be yet another lawyer hired to defend  
3 the second of the port commissioners.

4       It is our argument that when you've got an existing  
5 lawsuit and someone offers to hire your lawyer for you, that  
6 is in and of itself and by its very nature conferring a very  
7 direct financial benefit on you. I think Your Honor has  
8 been present at enough trials and heard enough arguments  
9 about reasonable attorney's fees to know what an  
10 extraordinary benefit having someone else provide your  
11 lawyer for you is in significant litigation.

12       There is a Washington statute, the Washington Code of  
13 Ethics for Municipal Employees, which states very clearly  
14 that you can't as a municipal officer vote on a resolution  
15 which confers a direct financial benefit on yourself. The  
16 statute was amended in recent years to make it even clearer  
17 than it previously had been that even in areas where you can  
18 vote to confer a financial benefit on yourself or where,  
19 where, where the port can confer a financial benefit on a  
20 port officer, you can't vote to do that for yourself.

21       Commissioner Olsen was perfectly capable of voting to  
22 have Commissioner Gilbert indemnified and defended. That,  
23 that was her right and obligate - her right as a port  
24 commissioner, her obligation if she believed that was good  
25 policy under the particular port statute that exists that

1 says that under certain circumstances the port can provide a  
2 defense. That's RCW 53.08 - I believe it's 208. No, no  
3 question that that statute under certain circumstances  
4 allows the majority of a port commission to make a decision  
5 to defend and indemnify a port commissioner that they  
6 believe has acted in good faith and they believe has been  
7 sued while acting in the performance of their duties.

8 But what that statute doesn't do and what the Municipal  
9 Code of Ethics specifically says it does not do is permit  
10 you to vote on indemnifying and defending yourself. Now it  
11 used to be that the question of whether you could enter into  
12 the contract and the question of whether you could vote was  
13 all one and the same. But it was amended a couple of years  
14 ago to make it clear that even in circumstances where you  
15 can - where there is a legitimate reason to confer a benefit  
16 on a municipal employee, that particular municipal officer  
17 cannot vote on his or her own action. But in this  
18 particular case, that's what was done.

19 Now counsel would make an argument that in certain  
20 circumstances this creates some dislocation in terms of, in  
21 terms of the vote. And obviously when you have a three-  
22 member board, there's always sort of a tenuous majority.  
23 Anybody is missing and there's any disagreement, you have a  
24 one to one vote. That's kinda inconvenient sometimes, but  
25 it's the nature of a three-person board. And pretty - if

1 everybody is in agreement, if you've got a three-member port  
2 commission and say all three port commissioners get sued,  
3 reasonably simple for them to sequentially do a vote,  
4 approve it two to nothing, you know, to indemn - defend and  
5 indemnify one, then another, then another. That way nobody  
6 has voted on their own defense and indemnification. Not a  
7 difficult process as long as there's agreement among the  
8 three commissioners that it's a good idea.

9         Now in this instance there was not such agreement, and  
10 it was known there wasn't such agreement. It was known that  
11 one of the three commissioners thought this was  
12 inappropriate, that it was a bad idea and that he wouldn't  
13 vote for it. And so the other two commissioners faced a  
14 democratic dilemma in the sense that they only had two  
15 votes, they couldn't vote on their own, it would fail by in  
16 effect a one-one event split if they proposed it and if they  
17 abstained, and so they voted for it. Ms. Olsen voted to  
18 defend and indemnify herself, and she did it specifically  
19 because that's the only way it could pass because one of the  
20 commissioners disagreed. Now that's just not a good reason  
21 to violate the ethics law.

22         Now counsel will argue one case, Barry vs. Johns, as  
23 saying that this is not legally sufficient charge for  
24 recall. In that particular case - and I mention that that  
25 actually happened before the statute got amended - there

1 was, there were a couple of city councilmen that served on a  
2 nonprofit board, and the city was negotiating a contract  
3 with that nonprofit organization. And one of the terms of  
4 the contract was that that organization and that its  
5 directors would not be liable personally to the city for  
6 certain things. The court ruled - and the city councilmen  
7 that were, that were nonprofit directors voted on and for  
8 that resolution. The court ruled that that sort of - that  
9 contract provision was not a direct financial benefit to  
10 those city councilmen, and therefore declined to apply the  
11 Municipal Code of Ethics.

12       There was an argument about whether or not the city  
13 councilmen should have voted, but the port didn't have the  
14 benefit of the now newly added segment of the Municipal Code  
15 of Ethics that said that very clearly, even when it's  
16 appropriate to have such a contract, that you don't get to  
17 vote on it yourself. The court in that case had to take a  
18 look - the argument that was made was the appearance of  
19 fairness argument, and the court said, well, it's not a  
20 quasi-judicial proceeding and so they, so they didn't apply  
21 that. So the statute has become clearer since that, since  
22 that case.

23       And the other difference, the key difference between  
24 that case and what you've got here before you is that the  
25 court there spent its time trying to determine whether or

1 this and listening to these arguments, and that is in order  
2 for these people to go and circulate petitions and in order  
3 for there to be something on the ballot, that something on  
4 the ballot has to allege that the law has been broken.  
5 That's what misfeasance and malfeasance is.

6 Now with that in mind, let's take just a minute and  
7 think about what happened here and think about what the  
8 petitioners want this Court to do. This is a situation with  
9 a three-member commission. One of the members of the  
10 commission is a member of the plaintiff in the lawsuit, the  
11 underlying lawsuit. Two of the members of the commission  
12 are defendants in that action. Now RCW 53.08.208 makes a  
13 provision that when a public officer, in this case the court  
14 commissioner, is sued for actions taken as a port  
15 commissioner, then the port in this case - I think I said  
16 court commissioner - port commissioner, the port commission  
17 can indemnify them. And if you think about that, that's not  
18 all that unusual that a public official, whether they be a  
19 school board member or an irrigation district member, a  
20 judge, a clerk, gets sued for something that they do as part  
21 of their official duties, that their employer is gonna pay  
22 for defense. That's what 53.08.208 is all about. It's  
23 public policy, Your Honor.

24 Stop and think for a minute if what the petitioners are  
25 arguing is in fact true, then anytime that you have a three-

DOES NOT  
HAVE TO →

1 person commission with one person on the commission who  
2 disagreed with the other two, all that person or his buddies  
3 or his friends or his buddies or his political allies would  
4 have to do is sue those two people, not all three just two.  
5 And by doing so, they'll both - they're gonna have to defend  
6 that lawsuit themselves for actions that they took, legal  
7 actions that they took as a port commissioner. That's not  
8 the public policy in this state, and in view of 53.08.208,  
9 it's certainly not the law.

10 You can imagine as we did in the brief all kinds of  
11 scenarios where this thing is a problem. Even if you sue  
12 all three - Your Honor, I've been around public bodies for  
13 thirty years in the practice, and I have never seen these  
14 sequential votes that we're talking about and we've  
15 represented a lot of port commissions, a lot of school  
16 districts, and so forth. That's just not it. And the  
17 reason it's not it is because we've got a specific statute  
18 that says that they can be indemnified.

19 Now the other statute here, 42.23.030, is an entirely  
20 different statute. That talks about contracts. Contracts  
21 that a public officer may have financial interest in. And  
22 it's a good statute. It prevents the public officer from  
23 doing something like voting on - one of the cases was  
24 supplying gravel to the city, a three-commission member.  
25 You can't vote on that if you own the gravel shop. You

NOT REQUIRED

1 can't vote on a personal services contract, for example, for  
2 your spouse if the city is gonna pay for it. You can't vote  
3 for the city or the port to buy some land from you. You've  
4 got to disqualify yourself from that. That makes perfect  
5 sense.

6 But if you look at the case, the Barry v. Johns case,  
7 they draw a distinction between that sort of thing and the  
8 indemnification and the liability limitation which it was in  
9 that. In Barry v. Johns, the court was not faced with a  
10 situation where these two commissioners who were serving on  
11 the, on the, on the public body were sued. But what if they  
12 had been sued? Under petitioner's rule, they would have to  
13 defend their law - that lawsuit against them as public  
14 officials with their own funds because one of the three  
15 commissioners was a political enemy of the other two.

POOR LOGIC  
TIM CHRISTEN  
COULD STILL

16 And that's exactly the case here, and that is simply  
17 not the law, Your Honor. If that's the law, then we are in  
18 trouble here in this state because as soon as the word gets  
19 out, there's not gonna be anybody in their right mind that's  
20 gonna run for a port commission or a school district or any  
21 other three-person commission because they'll know that at  
22 some point one person, one person could stop the statutory  
23 and democratic process. And, Your Honor, that's not public  
24 policy, that's not democracy and that's not the law. Thank  
25 you.

NOT  
TRUE

1 THE COURT: Mr. O'Hare, do you wish to respond?

2 MR. O'HARE: Very briefly, the - you get back to  
3 the fact that there was a contract to hire a lawyer  
4 specifically to benefit Ms. Olsen. That was the purpose of  
5 the contract, confer a benefit upon her. The statute simply  
6 said that on that contract, she had to abstain. She didn't  
7 abstain, she knowingly didn't abstain, and it subjected her  
8 to recall. The voters of the Port of Tahuya will get a  
9 chance to determine, depending on Your Honor's ruling,  
10 whether they think it's a good idea or a bad idea to recall  
11 Ms. Olsen, and they're gonna ultimately have the decision  
12 here. All we're really talking about is whether or not they  
13 get a chance to have the dec - make that decision. I think  
14 under the law it's clear they should get that chance. Thank  
15 you, Your Honor.

16 THE COURT: Mr. O'Hare, would you walk me through  
17 the argument on the effect of the change of the statute and  
18 . . .

19 MR. O'HARE: Well, the key change, Your Honor, was  
20 that it made - the statute was made clear by adding the  
21 provision that says even when you can legitimately confer a  
22 financial benefit on a municipal officer, that officer can't  
23 vote for it.

24 THE COURT: What it actually says is even though  
25 one of the exemptions allowing the awarding of such a

1 contract applies.

2 MR. O'HARE: Right. That's right.

3 THE COURT: So was there an exemption?

4 MR. O'HARE: Well, I think, Your Honor, 53.08.208  
5 effectively is an exemption. There's a specific statute  
6 that says that the port commission - the ports can defend  
7 and indemnify their port commissioners in certain  
8 circumstances. I think that is in effect an exemption that  
9 allows the port to confer a financial benefit on its port  
10 commissioners. And but that still - that doesn't create an  
11 exemption from the statute that says the individual  
12 commissioner can't vote on it.

13 THE COURT: The way it's situated, the way that  
14 phrase is situated in the statute would suggest to me that  
15 it's talking about an exemption from the rule that the  
16 officer may not vote. The, the grammatical layout of the  
17 sentence suggests that to me, but I don't know of a list of  
18 exemptions where they - where it said you can't vote if you  
19 have a beneficial interest except.

20 MR. O'HARE: Well, this particular statute does  
21 contain some such exemptions where it says you can't enter  
22 into contracts, but here are some that you can. And they  
23 did list some of those.

24 THE COURT: I need to look at that. Where is  
25 that?

1 MR. O'HARE: That's in - that's within 50 or  
2 43.23.030.

3 THE COURT: And that would be in the attachment?

4 MR. O'HARE: Yes, Your Honor, I could hand up one.

5 THE COURT: Well, I think I have it here. There's  
6 quite a bit to it there. Just tell me what section it's in.

7 MR. O'HARE: The, the specific statute says you  
8 can't do this, and then it goes through a list of certain -  
9 here I'll hand it up, Your Honor - of certain types of, of  
10 contracts that can be entered into but then goes on to say,  
11 under the amendment, you don't get to vote on it.

12 THE COURT: Now once again, this is a long  
13 statute, and I don't want to take your time by me reading  
14 it. Point to me the list of the exemptions.

15 MR. O'HARE: Now Your Honor has my copy of it.

16 THE COURT: Is it this section shall not apply to  
17 the following cases?

18 MR. O'HARE: Yeah.

19 THE COURT: Is that, is that the list that you're  
20 talking about?

21 MR. O'HARE: Yes, and there's a list of - that  
22 goes on for about a page or so.

23 THE COURT: Okay, so in the logic that I at least  
24 am attaching to the language of the amended act, this  
25 particular vote would have been listed as an exemption.

1 Honor. Four of them we've brought before you. The fifth  
2 one was the defense and indemnification of Commissioner  
3 Gilbert, which is not at issue here. But the four that we  
4 attached to the recall petition all relate to defense and  
5 indemnification in one form or another. They, they . . .

6 THE COURT: I, I, understand now. Yeah, I, I did  
7 look at those, but the, the - as between was it Gilbert,  
8 Gilbert and Olsen, they were considered as separate motions?

9 MR. O'HARE: They did.

10 THE COURT: Okay.

11 MR. O'HARE: They were separate.

12 THE COURT: I'm going to take a recess, take a few  
13 minutes to get - to organize my notes in preparation and my  
14 notes from listening to the argument, and I expect to have a  
15 decision for you in fifteen minutes.

16 MR. O'HARE: Thank you, Your Honor.

17 RECESS/COURT RECONVENES

18 Court reconvenes on the same date,  
19 and the following is heard in the  
presence of the parties:

20 THE COURT: Please be seated. I find that the  
21 charges are not legally sufficient. That means taking the  
22 facts as true - no one disputes what happened - the voting  
23 was not illegal. I'm going to take a bit of time to try to  
24 explain this.

25

1 I think it's fair to say that in the normal everyday -  
2 or there is no normal everyday question that a benefit was  
3 conferred upon Ms. Olsen. But the legal question is is it  
4 the kind of benefit that is prohibited by law. And there is  
5 a personal money interest at stake, but there's also a  
6 public policy against which it must be weighed. And the  
7 public policy is that permissive defense and indemnity of in  
8 this case port commissioners, in many cases other public  
9 officials.

10 The case of Barry vs. Johns, although somewhat  
11 different on its facts, on its facts, does involve the  
12 benefit, and a financial benefit, because it is in effect a  
13 free personal liability insurance policy. Therefore, I  
14 think the logic of that case does apply here, and I want to  
15 mention some of what it says. It says we conclude,  
16 therefore, that RCW 42.23.030 - that's the statute allegedly  
17 violated here by Ms. Olsen - we conclude that that statute  
18 applies only to municipal contracts involving business  
19 transactions. Let me pause, and I'm going out of the quote.  
20 Those, those are the kinds of things that are listed as  
21 exceptions in 42.23.030. Every one of them involves some  
22 money being paid directly to the public official.

23 So back to the quote, applies only to municipal  
24 contracts involving business transactions, employment  
25 matters and other financial interest, and cannot be read to

1 should pass. And I, I just cannot accept that the laws that  
2 have been enacted would condone that.

3 Even if I'm wrong about this, about my interpretation  
4 of Ms. Olsen's decision to vote on that particular  
5 resolution, I would find it very difficult to say that her  
6 decision to do it constituted misfeasance, malfeasance, or a  
7 violation of the oath of office. If this question is so  
8 legally close - I'm giving myself some benefit I guess to  
9 say that if I think it's close, it's close. But maybe not,  
10 maybe a higher court will disagree. But just assuming that  
11 for the moment, if it's that close, it's difficult and I  
12 would rule that it would not be sufficient given the intent  
13 requirement of the recall statute to proceed to an election.

14 So this having been said, I think it's incumbent upon  
15 me to retain jurisdiction for the synopsis sufficiency  
16 pending the possibility of an appeal and a different result.  
17 And I do this even though there is an agreement as to the  
18 synopsis sufficiency. I had some questions about it that if  
19 we get to that I want to address, and if an appellate court  
20 rules differently, they may have some things to say that  
21 would affect the proper wording of the synopsis. Are there  
22 any questions?

23 MR. O'HARE: No, Your Honor.

24 MR. SELLS: I did not prepare an order because I  
25 wasn't sure what form an order would take, Your Honor. I

1 will do so and . . .

2 THE COURT: What form should it take? That's an  
3 interesting question. It's a legal question. I believe we  
4 don't have a fact dispute, so if it's going to be taken up,  
5 I think the . . . Do these go straight to the Supreme  
6 Court? The Supreme Court would view it de novo, so I'm  
7 thinking that the order would simply be that I find that  
8 there's - that the charges are not legally sufficient. My  
9 logic is not going to make much difference to them.

10 MR. O'HARE: We will - I'm sure Mr. Sells will  
11 prepare an order, and I would have some confidence that we  
12 can agree on the form of an order and send it down to you in  
13 Lewis County.

14 THE COURT: Okay. Is there anything else?

15 MR. SELLS: Nothing further, Your Honor.

16 THE COURT: We're adjourned.

17 Court is adjourned.

18 \*\*\*\*\*

19

20

21

22

23

24

25

