DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE
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DETERMINATION

RE: **The Honorable Judith E. Retchin, Associate Judge of the Superior Court of the District of Columbia**

The Commission has received and investigated several complaints concerning Judge Retchin's disposition of the case of the United States v. Jonathan Magbie, Superior Court Case No. F-2055-03.

On September 20, 2004, Mr. Magbie was sentenced by Judge Retchin to a term of ten days incarceration having pleaded guilty to the misdemeanor offense of possession of marijuana. Mr. Magbie was twenty-seven years old and suffered from quadriplegia as a result of injuries sustained in an automobile accident at the age of four years. On the fifth day of his incarceration, Mr. Magbie died.

The Commission's investigation of this matter included:

- A review of the transcripts of all relevant proceedings before the Court;
- A review of all documents filed in the case;
- A review of Mr. Magbie's attorney's letter to the Court in aid of sentencing;
- Interviews of Court staff and a review of their electronic mail communications;
- An interview of the Assistant United States Attorney assigned to prosecute the case;
- A review of the Presentence Report prepared by the Court Services and Offender Supervision Agency;
- Interviews of the Associate Medical Director of the Correctional Treatment Facility of the D.C. Jail;
- A review of Mr. Magbie's medical chart maintained by the D.C. Jail;
- A review of Mr. Magbie's medical chart maintained by Greater Southeast Community Hospital;
- A review of Mr. Magbie's autopsy report prepared by the Office of the Chief Medical Examiner of the District of Columbia; and
- A review of the report of the District of Columbia Department of Health in the matter of Jonathan Magbie.

Judge Retchin met with the Commission and discussed the several factors which led her to impose a sentence of incarceration, the extent of her knowledge of the particulars of Mr. Magbie's

medical condition and her efforts to ascertain the capacity of the D.C. Jail to accommodate a prisoner in Mr. Magbie's condition.

The Commission finds the salient facts to be as follows.

I Procedural History of *U.S. v. Jonathan Magbie, U.S. v. Bernard Beckett (co-defendants)*, Case Nos. F-2055-03 and F-2056-03

A. On April 8, 2003, Messrs. Magbie and Beckett were arrested in the 1400 Block of Mississippi Avenue, S.E. by Officers of the Metropolitan Police Department assigned to the 7th District. They and their vehicle, an H2 Hummer bearing Maryland Tag M969329, were initially observed in the 3800 block of 9th Street, S.E., parked and blocking the entrance to an alley. As the officers approached to conduct routine crime patrol duties, they observed two women run up to the passenger side of the vehicle; the driver then leaned over and reached out the passenger side window with two cups into which he poured from a Remy Martin cognac bottle. A toast was offered and the vehicle drove off.

Moments later, the officers stopped the vehicle; as they approached the vehicle on foot, the driver, Mr. Beckett, was observed to lean over the passenger seat and quickly sit back up. One officer approached the driver's side of the vehicle as the other approached the passenger side. Mr. Beckett complied with a direction to step out of the vehicle. The officer who approached the passenger side, concerned about the driver's earlier motion in that direction, asked Mr. Magbie to show his hands; when he failed to do so, the officer reached in, conducted a pat-down of Mr. Magbie's chest area and recovered, from beneath his coat, a 9 mm Luger semi-automatic pistol, its magazine loaded with twenty rounds.

Messrs. Magbie and Beckett were arrested and a search incident to the arrest produced from Mr. Magbie's person the sum of $1,502.00 and 3.4 grams of rock cocaine (2.1 grams of which constituted pure cocaine) and, from beneath the vehicle's rear seat, two ziplock bags containing 0.39 grams of marijuana. As the search was in progress, Mr. Magbie told the officers that the vehicle and the pistol were his, that Mr. Beckett was his cousin-driver-bodyguard whom he described as "simple" and "child-like," and that he had directed Mr. Beckett to place the pistol beneath his coat as the officers approached. When the cocaine was discovered, Mr. Magbie told the officers that he was unable to smoke "crack" because it would kill him and asked why the officers were concerned about the "crack" when there was more marijuana in the car than there was "crack." Mr. Magbie also told the officers that, owing to his physical condition, he could not lie flat for extended periods and that he needed to be catheterized every four hours.

B. In due course, on July 29, 2003, a grand jury of the Superior Court returned a six-count indictment charging both Messrs. Magbie and Beckett with carrying a pistol without a license (a five-year felony offense), possession of a prohibited weapon (machine gun) (a one-year misdemeanor offense), possession of an unregistered firearm (a one-year misdemeanor offense), unlawful possession of ammunition (a one-year misdemeanor offense), unlawful possession of a controlled

substance (cocaine) (a 180-day misdemeanor offense) and unlawful possession of a controlled substance (marijuana) (a 180-day misdemeanor offense).

On August 11, 2003, Messrs. Magbie and Beckett were arraigned before Judge Retchin, then presiding over a calendar of felony II cases.

The case followed a course of status hearings, continuances and the filing of motions pleadings until July 20, 2004, the date ultimately set for trial.

C. On July 20, 2004, the parties having notified the Court that a guilty plea disposition had been agreed to, the Court entertained and accepted guilty pleas from each defendant. For his part, Mr. Magbie pleaded guilty to the single 180-day misdemeanor count of possession of a controlled substance (marijuana). In exchange for that plea, and pursuant to a negotiated plea agreement, the Government represented that it agreed to dismiss all remaining counts of the Indictment and not to oppose a sentence of probation before judgment. Mr. Beckett pleaded guilty to the one-year misdemeanor offense of carrying a pistol without a license (a lesser included offense to the felony version charged in the Indictment) and to the one-year misdemeanor offense of possession of an unregistered firearm. His plea agreement specified that the Government would dismiss all remaining counts of the Indictment and would not oppose a sentence of probation. The case was set for sentencing on September 20, 2004.

D. On September 20, 2004, Mr. Magbie was sentenced to a term of ten days incarceration. Although the Probation Department's Presentence Report recommended a probationary sentence and although the Government, consistent with its agreement, did not oppose that recommendation, the Court announced the rationale for the sentence imposed as follows:

> " . . . Mr. Magbie, this report tells me that you – using marijuana makes you feel better. The Presentence Report writer believes you will not stop using marijuana and you don't believe there's anything wrong with it. As long as it's against the law, you're not permitted to do it Mr. Magbie.
>
> Mr. Magbie, I'm not giving you straight probation. Although you did not plead guilty to having this gun, it is just unacceptable to be riding around in a car with a loaded gun in this city. And I believe under all of the circumstances here, the appropriate sentence is ten days in jail."

While neither the Presentence Report nor Mr. Magbie's attorney's letter to the Court in aid of sentencing raised Mr. Magbie's physical condition as a factor militating against incarceration, the following colloquy occurred immediately prior to the conclusion of the sentencing proceeding:

> "(Mr. Magbie's attorney): Your Honor, I just want to make sure that the people that are submitted (sic) to jail have a Medical Alert.

> The Court: Would you please fill out the Medical Alert? I checked with . . . but I checked with the Chief's office, and the jail should be able to accommodate all of his medical needs. I checked with them last week.
>
> Mr. Magbie's Attorney: Very well.
>
> The Deputy Clerk: So he doesn't need to do a Medical Alert?
>
> The Court: Yes. He still should fill out the Medical Alert. I just wanted to make sure they would be able to attend to his needs."

After the Court adjourned, Mr. Magbie's attorney filled out the Medical Alert form which described the nature of the problem as "medical," added the comments, "needs medication . . . suction machine" and indicated that the foregoing information was brought to the Court's attention by the defendant and the defense counsel. Judge Retchin signed the form and it was tendered to the Deputy U.S. Marshal for delivery to the D.C. jail at the time of the prisoner's arrival. An additional copy was telefaxed to the jail by the Office of the Clerk of the Court later in the day.

E. Mr. Beckett was sentenced to consecutive one-year terms of incarceration on each of the two charges to which he had pleaded guilty. The Court suspended the execution of sentence on the first charge as to all but ten days in jail, suspended the entirety of the sentence on the second charge and placed Mr. Beckett on probation for two years on condition that he perform twenty hours of community service within the first probationary year and that he undergo out-patient substance abuse treatment.

II. Mr. Magbie's Physical Condition

At the age of four years, Mr. Magbie suffered a fracture of his cervical spine and injury to the cervical cord as the result of an automobile accident. Reparative surgery notwithstanding, Mr. Magbie suffered from quadriplegia and was confined to a motorized wheelchair equipped with a "joy stick" which he operated with his chin. His height measured 50 inches and he weighed 90 pounds.

As a constant aid to respiration, Mr. Magbie was fitted with an in-dwelling diaphragm pace-maker powered by a nine-volt battery; he breathed through a tracheostomy tube which required periodic suction of mucous accumulation; while sleeping, his respiration was monitored and, as necessary, augmented by a portable compressed-air "demand" ventilator attached to the tracheostomy tube.

At the time of his commitment to the D.C. jail, urination was accomplished by means of a suprapubic in-dwelling catheter with an attached Foley bag. While clinically described as quadriplegic, it appears that Mr. Magbie had some use of at least one arm and hand, as he himself signed several routine court documents, albeit in a child-like scrawl.

III. The Record of Judge Retchin's Awareness of Mr. Magbie's Physical Condition

A. When, on January 14, 2004, some eight months prior to Mr. Magbie's sentencing, he failed to appear for trial, Judge Retchin requested that the Court's Pretrial Services Agency investigate; on that same day, a Release Services Unit Officer assigned to the matter reached Mr. Magbie at his home by telephone. Mr. Magbie explained that, four days earlier, he had been discharged from the hospital and that he was required to remain at home to operate a "respirator" which, at that time, he required in order to breathe. A report of that inquiry and its results dated January 14, 2004, was delivered to Judge Retchin and filed in the Court jacket.

Judge Retchin was not aware that Mr. Magbie used a ventilator on a regular basis until after his sentencing when she learned that he used a ventilator at night while sleeping. Judge Retchin acknowledged that she had been aware of the incident recounted in the Release Services Report of January 14, 2004, but understood Mr. Magbie's need for mechanical respiration assistance to consist of that single episode. Judge Retchin correctly observed that Mr. Magbie had made a total of seven Court appearances prior to the sentencing and that, on no occasion, did he use a ventilator. At no time does the record reflect that, prior to the sentencing, anyone brought to Judge Retchin's attention the fact that Mr. Magbie regularly used a ventilator while sleeping.

B. During the plea proceeding on July 20, 2004, in the course of a bench conference devoted to the Court's consideration of release pending sentencing, the Assistant United States Attorney, in the course of explaining the Government's rationale for disposing of this felony case with a plea to the misdemeanor offense of possession of marijuana, told the Court:

> "I would also say, talking to the jail, that they can't accommodate Mr. Magbie because when he was arrested, they actually had taken him in an ambulance to the hospital to be catheterized because he gets catheterized every four or six hours sometimes."

The Commission, in the course of an interview, reviewed with the prosecutor the above-quoted transcript excerpt. The prosecutor did not himself make any inquiry of the jail. Rather, his statement to the Court was based upon what the arresting officers told him, based upon their then-15-month-old recollection of events on the night of the arrest.

The Commission reviewed with Judge Retchin the above-quoted transcript excerpt and asked her whether and to what extent that statement had influenced her sentencing decision.

Judge Retchin observed that, at the conclusion of that bench conference she had said, "Do you think that there is anything that would be gained by having the Presentence Report or not?"; she said that she was then disinclined to impose a jail sentence (obviating the need for a Presentence Report) based upon what the prosecutor had said. At the request of the parties, however, Judge Retchin did order a Presentence Report.

Judge Retchin said that when, six weeks later, she reviewed the Presentence Report and considered its conclusion that Mr. Magbie would likely be a repeat offender, she decided that more than probation was required to get his attention. She said that she then caused to be made her own inquiry into the jail's ability to accommodate Mr. Magbie and learned that it could.

In point of fact, the prosecutor's July 20, 2004, statement to the Court is neither correct nor relevant.

As to the former, the infirmary staff at the jail's Correctional Treatment Facility can and routinely does catheterize inmate/patients who present the need.

As to the latter, Mr. Magbie had a surgically implanted in-dwelling catheter attached to a Foley bag. Accordingly, there was no need for him to be "catheterized;" all that was required was the periodic emptying of the bag.

IV. The Absence of Notice to Judge Retchin That a Sentence of Incarceration Posed a Risk to Mr. Magbie's Health

A. Neither the Presentence Report, Mr. Magbie's attorney's letter in aid of sentencing nor the Medical Alert advanced a suggestion or argument that a sentence of probation was appropriate and warranted because incarceration would pose a risk to Mr. Magbie's health. Rather, for its part, the Presentence Report, while observing that Mr. Magbie was "paraplegic" and also that he was "paralyzed from the neck down," based its probation recommendation on the nature of the offense and the absence of any criminal history. Similarly, Mr. Magbie's attorney argued that, the Presentence Report notwithstanding, Mr. Magbie was remorseful and that he was an ideal candidate for probation.

B. On September 17, 2004, three days prior to sentencing, having concluded preliminarily that she would impose a sentence of jail time, Judge Retchin directed her law clerk to consult with the Special Counsel to the Chief Judge, who serves as the Court's liaison with the Department of Corrections, in an effort to ascertain whether the jail could accommodate Mr. Magbie.

By email, Judge Retchin's law clerk advised the Special Counsel to the Chief Judge that Judge Retchin was contemplating sentencing Mr. Magbie to time in jail and the Judge "... notes that he is a paraplegic, and wants to know if the jail will be able to accommodate him." Judge Retchin's law clerk mistakenly used the term "paraplegic" because that is the term mistakenly used by Judge Retchin when she directed her law clerk to make the inquiry.

The Special Counsel to the Chief Judge replied, "... he will be transferred into the BOP and his paralysis won't be a problem." The Special Counsel, aware that Judge Retchin presided over a felony calendar, and unaware of the particulars of the Magbie case, assumed that the defendant to whom the law clerk referred was to be sentenced as a felon (*i.e.*, to a sentence greater than one year)

and that, accordingly, he would be transferred to the custody of the Federal Bureau of Prisons ("BOP"), as he would under those assumed circumstances.

Immediately after this email exchange, Judge Retchin's law clerk reported to Judge Retchin that the Department of Corrections was able to accommodate Mr. Magbie.

V. Mr. Magbie's Course at the D.C. Jail, the Correctional Treatment Facility and Greater Southeast Community Hospital[1]

Monday, September 20, 2004: Mr. Magbie was transported from the Courthouse to the D.C. Jail where he arrived at 11:52 a.m. At 2:00 p.m., he arrived at the Jail's Urgent Care Facility for Medical Intake Processing which included radiology and a mental health assessment. At 4:30 p.m., he was cleared for admission to the CTF. At 9:00 p.m., not yet having been transferred to the CTF, Mr. Magbie exhibited difficulty breathing; he told the attending registered nurse that he "needs continuous breathing treatment ventilator at night." The nurse informed the two physicians on duty; they evaluated Mr. Magbie's condition and called 911 for EMS ambulance transportation to GSCH for acute medical care and, at 9:15 p.m., notified the GSCH Emergency Room physician that Mr. Magbie was in route.

By 9:45 p.m., the GSCH Emergency Department had begun nursing triage assessment which was completed at 10:05 p.m.; at 11:00 p.m., Mr. Magbie was examined by the ER attending physician who documented the "chief complaint shortness of breath since this p.m. Trach. dependent patient who uses ventilator at night."

Tuesday, September 21, 2004: At 1:50 a.m., the ER physician wrote, ". . . called the D.C. Jail infirmary – no ventilating support mechanical ventilation support or O_2 at infirmary. Pt to be admitted for hypovolemia, hypoglycemia and respiratory distress."

At 3:20 a.m., the attending physician wrote, ". . . O_2 SAT 95 on room air. BP 91/48. Pt. is alert and oriented. May only need nasal O_2 which the D.C. Jail infirmary can provide. Spoke to Mr. Bastien @ D.C. Jail – will arrange for room at CTF . . ."

At 7:15 a.m., Mr. Magbie's discharge was documented; at 9:50 a.m., the RN noted his BP as 68/42, administered "NS Bolus" and noted BP thereafter as 92/55 as Mr. Magbie awaited transfer to the D.C. Jail. He was transported at 11:45 a.m.

The GSCH Discharge Patient Instructions provided:

> "Your Diagnosis: Hypoglycemia – resolved; hypovolemia – resolved; bronchitis – stable; medications given: normal saline/glucose;

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[1]All quotations are from official medical records maintained at the CTF and Greater Southeast Community Hospital.

> prescriptions: plenty of fluids; other instructions: nasal O_2 at night time as needed."

When Mr. Magbie was returned to the jail from GSCH and assigned to the CTF, the Associate Medical Director of the CTF first became aware of Mr. Magbie. He concluded in short order that, because Mr. Magbie was extremely vulnerable, he belonged in a hospital where acute care would be immediately available in the event that he suddenly deteriorated, which was thought possible if not likely. Because Mr. Magbie had already been discharged from the hospital that very day, and because Mr. Magbie was not then in distress, there was neither medical justification to send him back to the hospital nor expectation that, if sent, the hospital would elect to keep him. This posed for the Associate Medical Director a quandary which left him very uncomfortable.

Accordingly, shortly before 3:00 p.m. on the 21st, the Associate Medical Director telephoned Judge Retchin's chambers and spoke with Judge Retchin's law clerk. The doctor requested that Judge Retchin issue an order directing that Mr. Magbie be transferred to the Department of Corrections custodial ward at Greater Southeast Community Hospital. The law clerk reported the request to Judge Retchin who told her to consult with the Special Counsel to the Chief Judge and to relay the Special Counsel's advice to the doctor. This she did.

The Special Counsel advised that the Court cannot order such a transfer as it is an administrative matter within the discretion of the Department of Corrections, and that the doctor should consult with the appropriate authority within the Department of Corrections.

The Associate Medical Director found this suggestion to be futile as he believed that an administrative transfer could not be accomplished in the absence of an immediate need for acute medical care. Rather, he directed that, in the event of any respiratory difficulty, Mr. Magbie was to be transferred on an emergency basis to the hospital.

At 4:42 p.m., after Mr. Magbie's arrival at the CTF, the CTF performed a "new admit sick call assessment." The physician noted, ". . . he claims to be ventilator dependent at night."

At 8:44 p.m., the admission nurse wrote:

> "Patient is quadriplegic who only moves his neck and converses very well. He has motorized wheelchair, which he controls with his mouth. Ate his dinner 75%. Said he weighs 125 lbs with a height of 5 ft. Has old trachea which gets suctioned Q8 hours and prn. No congestion noted. Sat. O_2 98%."

At 11:19 p.m., the nursing note recounted that Mr. Magbie was "alert and oriented. Remains stable in condition. No respiratory distress noted . . ."

Wednesday, September 22, 2004: Throughout the day the CTF nursing records reflect that Mr. Magbie was alert and oriented and without respiratory distress; he wheeled himself around, visited with his mother and received routine nursing care (trach. tube suctioned, bathed and dressed, battery and transmitter changed and medications administered).

Thursday, September 23, 2004: Mr. Magbie followed much the same course as he had on Wednesday (*e.g.*, at 7:45 a.m., he was observed to be alert and oriented, his pulse Ox was noted at 95%, his vital signs at 98-93-18 107/66; at 1:57 p.m., he exhibited no respiratory problems and spent time in the day room; his trach. was observed to be "intact and patent." When, at 9:32 p.m., gurgling sounds were heard when Mr. Magbie was speaking, he was suctioned and given liquids to drink.

Friday, September 24, 2004: At 7:45 a.m., Mr. Magbie was observed to be alert and oriented and no distress or discomfort was noted. His trach. site was intact, there was no congestion noted and he was constantly monitored. His vital signs were noted as 98.3-88-22 BP 68/112.

At 8:40 a.m., while maneuvering his wheelchair, Mr. Magbie was trying to mouth words which could not be understood and respiratory distress was noted.

At 8:55 a.m., a physician examined Mr. Magbie, and, consistent with the Associate Medical Director's instruction of Tuesday, the 21st, a 911 EMS ambulance was called and he was transported back to GSCH.

At 9:50 a.m., Mr. Magbie was triaged at GSCH; by 12:20 p.m., testing was completed and, at 1:10 p.m., he was admitted. He was alert, although non-verbal, his trach. was intact and he denied experiencing any pain. He remained in the ER awaiting bed space.

At 3:30 p.m., he was alert although unable to communicate and his pulse Ox was noted at 97%.

At 5:40 p.m., his pulse ox was decreasing and a respiratory therapist and a physician were called to his bedside. It was noted that Mr Magbie was in respiratory distress and that his trach. tube was protruding 1 ½" from the neck dressings under the trach. collar. Dr. "pushed trach. tube back in". It was noted that the "trach. tube not sutured at neck."

At 6:00 p.m., it was noted that Mr. Magbie's pulse oxygen continued decreasing, that there were "spikes on monitor" and that the patient was in "mild respiratory distress."

At 6:18 p.m., the nurse noticed "no rise and fall of chest" and found "no breathing and pulse." Cardiopulmonary resuscitation efforts were begun without success and Mr. Magbie expired; he was pronounced dead at 6:40 p.m.

VI Postmortem Examination

A post mortem examination was conducted by Marie-Lydie Y. Pierre-Louis, M.D., the Acting Chief Medical Examiner of the District of Columbia on September 25, 2004. The cause of death was described as:

> "Acute respiratory failure following dislodgement of tracheostomy tube placed for treatment of respiratory insufficiency due to remote upper cervical spinal cord injury with quadriplegia due to blunt impact trauma."

The manner of death was described as accidental.

The autopsy report describes additional findings:

- Acute bronchopneumonia; and
- Hypertensive cardiovascular disease
  - A. Cardiomegaly
  - B. Benign nephrosclerosis

VII Summary

In summary, based on the foregoing facts, the Commission finds that Judge Retchin sought to ascertain whether the Department of Corrections was equipped to accommodate Mr. Magbie before she sentenced him to a term of imprisonment and that her sentencing decision was legally permissible and made without bias, venal motive, maliciousness or wanton disregard.

Owing, however, to failures of communication among the participants in this tragic sequence of events, the inquiry was limited and uninformed. As a result, at the time of sentencing, neither Judge Retchin, the Court's staff nor the Department of Corrections knew of a number of the salient aspects of Mr. Magbie's medical condition (such as the diaphragm pace-maker and the regular ventilator use). Nor did they know that a medical assessment made subsequent to Mr. Magbie's incarceration would reveal that Mr. Magbie, a long-term quadriplegic exhibiting extensive muscular atrophy and an inherently compromised respiratory system, was susceptible to swift deterioration requiring acute-care hospitalization.

In retrospect, Judge Retchin acknowledges that, had she known that Mr. Magbie required the regular use of a ventilator, she would have made specific inquiry about that need and about the ability of the Department of Corrections to serve that need before she imposed sentence. She also acknowledges that given the tragic turn of events, imposition of a period of home confinement, rather than a jail term, would have far better served her sentencing objective.

VIII Conclusions

In this case, the complaints invoke the Commission's disciplinary authority contained in 1 D.C. Code, 2001 Ed., District of Columbia Home Rule Act, Title IV, Section 432. In relevant part, the statute provides:

> **REMOVAL, SUSPENSION AND INVOLUNTARY RETIREMENT OF JUDGES.**
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> Sec. 432. (a) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.
>
> (2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Commission of –
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> (A) willful misconduct in office,
>
> (B) willful and persistent failure to perform judicial duties, or
>
> (C) any other conduct which is prejudicial to the administration of justice or which brings the Judicial office into disrepute.

In this matter, it is §(a)(2)(C) which provides the basis for Commission inquiry; that is, in order to impose a sanction, the Commission must determine that Judge Retchin engaged in "conduct prejudicial to the administration of justice or which brings the judicial office into disrepute."

Those terms are imprecise and arguably vague and overbroad (any unpopular judicial decision could be said to "bring the judicial office into disrepute"). In order to mount disciplinary proceedings under Section 432(a)(2)(C), which might lead to the imposition of any sanction, the Commission must find a violation of one or more of the canons of the Code of Judicial Conduct and that violation must warrant removal from office. Halleck v. Berliner, 427 F. Supp. 1225, U.S. District Court for the District of Columbia (1977).

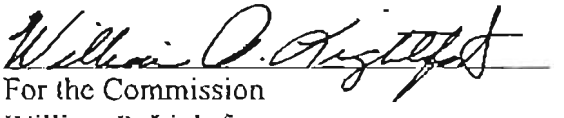
Initially, it must be emphasized that the Commission has absolutely no authority, under §432. to review the sentences of Superior Court judges in criminal cases so long as the judge is exercising her discretion to impose a sentence within the statutory limits. Canon 1 of the Code of Judicial Conduct provides that it is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. Specifically, it provides that: "a. An independent and honorable judiciary is indispensable to justice in our society . . . ." The Commentary to Canon 1 observes that "deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." There is no area of judicial decisionmaking where these principles are

more important than the area of sentencing, which affects so many in our community (both defendants and victims), which is so contentious, and about which people have such passionate and deeply held beliefs.

Unlike judges of the federal judiciary who enjoy the near-absolute independence guaranteed by lifetime tenure, our local judges' independence is circumscribed by term limits and by the statutory authority of the Tenure Commission; it may not be further circumscribed. Therefore, a judicial decision, no matter how unwise it may appear, should not and may not be the subject of Commission action unless the associated judicial conduct violates a Canon of the Code. Were it otherwise, the District of Columbia would be without an independent judiciary.

Upon analysis, it is clear that the complaints which prompt the Commission's investigation question the wisdom of the sentence imposed in this case. As we have already found, Judge Retchin sought to ascertain whether the Department of Corrections was equipped to accommodate Mr. Magbie before she sentenced him to a term of imprisonment. We have also found that her sentencing decision fell within the statutory limitations and, most significantly, was made without bias, venal motive, maliciousness, or wanton disregard. The primary question posed by the complaints is whether it was appropriate to give Mr. Magbie, a first-time misdemeanant suffering from all the physical disabilities which accompanied his being a quadriplegic, a custodial sentence of 10 days. That discretionary decision as to the wisdom of the sentence rested within the sole authority and discretion of Judge Retchin.

The Commission's disciplinary authority does not extend to the review of a sentence lawfully imposed and the Commission expresses no view on the wisdom of the sentence imposed in this case. Moreover, as the Commission finds that Judge Retchin's sentencing decision was made without bias, venal motive, maliciousness, or wanton disregard, it concludes that none of Judge Retchin's conduct associated with the sentencing decision violates the Code of Judicial Conduct.



For the Commission
William P. Lightfoot
Chairman