Opening Brief (Appellant)

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Opening Brief of Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON — DIVISION ONE

Supreme Court 88300-7
(Court of Appeals No. 69815-0-I
King County No. 12-2-39304-4 SEA

Dan Kennedy Reporting, LLC,
Plaintiff / Respondent

v.

Mr. Joel Christopher Holmes,
Pro Se, Defendant / Appellant,
KCCF #9120316/4
King County Jail (JEA)
500 Fifth Avenue
Seattle, Washington 98104

OPENING BRIEF OF APPELLANT

RAP 10.2,
RAP 13.2

OPENING BRIEF OF APPELLANT
PRESENTED BY:
Joel Christopher Holmes, Pro Se, March 11th, 2013
PREPARED UNDER LIMITATIONS
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IDENTITY OF PETITIONER

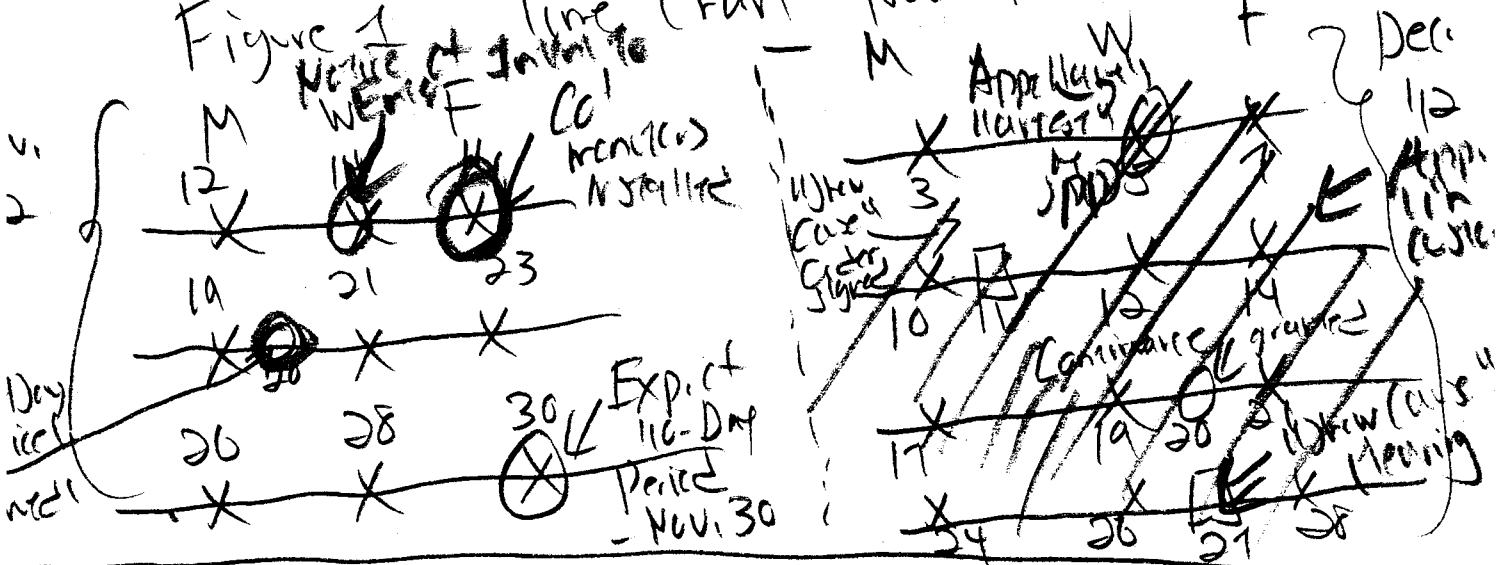
Mr. Joel Christopher Holmes, Defendant/Appellant Pro Se, hereby appears to appeal the Order, Writ of Restitution, and Judgment entered by the Honorable Carlos Y. Velarregui, Court Commissioner, King County Superior Court, on Thursday, December 27, 2012, affirming the Summary "Stew Calve" Order signed by Court Commissioner Mary Bradburn-Johnsen, on Tuesday, December 11, 2012 and finding Appellant in Unlawful Detainer as defined by the Washington State statute RCW 59.18.010 et seq. Defendant/Appellant is still being held "in custody" (Ct. 28 USCS § 2254) in the King County Jail for unrelated criminal charges (See State v. Holmes, King County No. 12-1-06088-3 SEA, pending.)

SUMMARY OF PROCEEDINGS BELOW.

On Thursday, December 27, 2012, King County Superior Court Commissioner Carlos Y. Velarregui, ruled in favor of Plaintiff/Respondent Don Kerredy Properties, LLC d/b/a Don Kerredy Real Estate, Appellant's landlord since September 06, 1976, and awarded possession of Apartment No. #105, Coho Apts., 4120 Brooklyn Avenue NE, Seattle, WA, 98105, back to owner Don Kerredy Properties, LLC ("Plaintiff"), after Plaintiff started this action on Tuesday, December 11, 2012, while Defendant was incarcerated in

the King County Jail on [illegible]
Defendant was "served"[1] by the Plaintiff while being housed on the 10th Floor of the downtown King County Jail, on Wednesday morning, December 19, 2012. This was the culmination of a landlord-tenant dispute which apparently started on Tuesday, November 20, 2012, when Appellant was "served" with a "10-Day Notice To Comply or Vacate," allegedly pursuant to RCW 59.18.130(1)-(2), which demanded that Defendant, Mr. Holmes, remove supposed "trash," "rubbish," and "flammable waste" purportedly found in the unit, #405, occupied by Appellant since March 20, 1993, without in any way defining these terms as used in the Residential Landlord-Tenant Act of 1973.[3]

Figure 1 Time Chart - Nov. '12 - Dec. '12



FOOTNOTES,

1. Defendant (Appellant does not concede that service in this manner was proper. Cf. RCW 59.18.365
2. Plaintiffs deny any involvement in Defendant's pending "criminal" matter. See SPD #395-261. (Police Report)
3. This Court should in no way extrapolate the condition

Plaintiff's ex parte "Show Cause" Order was granted by King County Superior Court Commissioner Nancy Bradburn-Johnsen on Tuesday, December 11, 2012, despite: (i) Plaintiff's failure to inspect the premises, on or before, Friday, November 30, 2012, the expiration of the mandated "10-Day" period for the tenant to "comply or vacate" in accord with RCW 59.12.030(3), and (ii) Defendant's evident incarceration on unrelated criminal charges, and inability to "comply or vacate" with the provisions written into RCW 59.18.130(1)-(2), during the time period mandated by the statute and by the landlord.[4]

The Summons And Complaint, prepared by the landlord, inter alia, required Defendant to appear "personally" in order to accept "service" of the Summons and contest the Unlawful Detainer action -- a provision since abrogated by Washington State law. See RCW 59.18.365, Housing Authority of City of Everett v. Kirby, 154 Wash. App. 842, 841 n.2, 226 P.3d 222 (2010) (subject matter jurisdiction); Summons And Complaint ¶ 2.1, No. 12-2-39304-4 SEA. Moreover, although the documents submitted by the Plaintiff all asserted that Defendant was in

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4. Plaintiff only required to inspect the premises on Sunday, December 9, 2012, after Defendant had been incarcerated by SPD and subjected to a police

purported "violations of the terms of his rental "agreement," supposedly signed by Appellant on March 26, 1993, upon entering the unit, the Exhibits submitted by Plaintiff, however, included copies of any valid rental agreement signed by Mr. Holmes. Nor did the Plaintiff, stew few the purported conditions in Defendant's rental unit, "substantially affect[ed] the health and safety of the tenant or other tenants..." RCW 59.18.180(1). Cf. Plaintiff's Exhibits, A, B, G December 27, 2012 (photographs of rental unit). See e.g. 17 WAPRAC §6.80:

> However it seems possible that ... a tenant's failure to keep the premises clean ... might not be so serious as to amount to waste ... at common law ...
>
> William B. Stoebuck, 17 WAPRAC §6.80,

See also Foisy v. Wyman, 83 Wn. 2d 22, 32, 515 P.2d 160 (1973) (implied warranty of habitability under RCW 59.18). Cf. RP, December 27, 2012, No. 12-2-34304-4 SEA at —. Here, Defendant could not have been "evicted" from his former rental unit, under the old common-law

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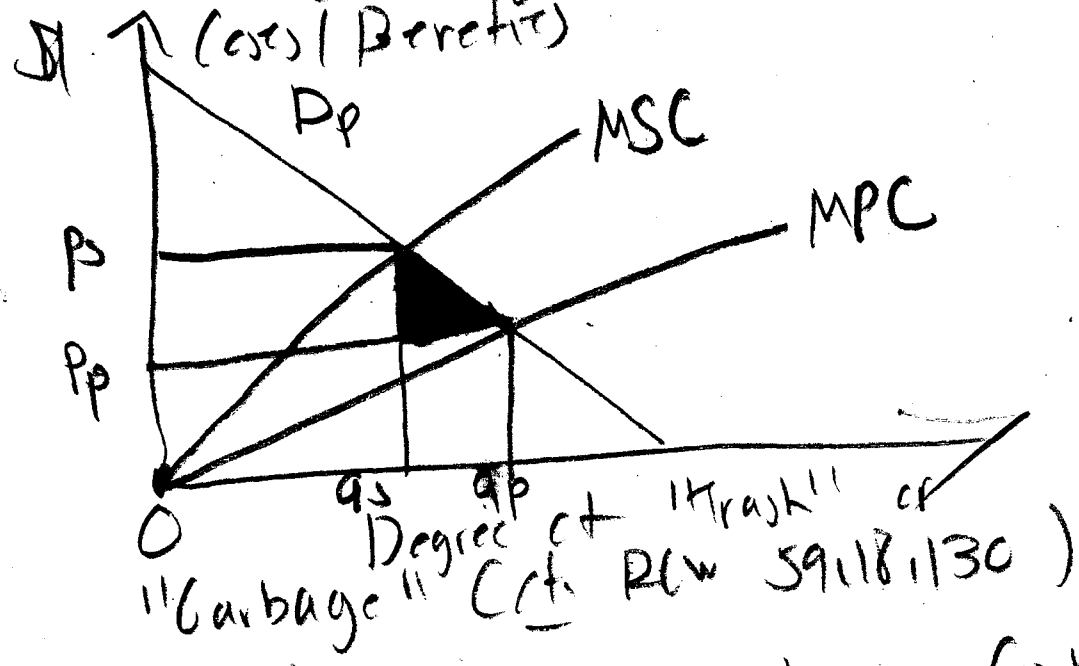
5. Defendant/Appellant cannot afford to reproduce any of the Clerk's Papers in this case. See Washington Supreme Court No. 88380-7, Motion For Expenditure of Public Funds, RAP 15.2, pending.

decline of "waste" or "nuisance" still prevailing under eg. RCW 59.12, Unlawful Detainer. See Figure 2 below!

Figure 2. Economic "Externalities" Doctrine (or Dogma) - Econ 1101 Classic



In the diagram, without regulations (public or private) such as the cited RCW 59.18.130 (1)-(2), the tenant only considers the marginal "private" costs of "trash" or "garbage," represented by the private cost curve MSC. Adding the "social" or "external" costs or others, generates the "social" cost curve MPC. Dp represents the tenant's private demand curve for "garbage" or "waste." See e.g. R. Dorfman, Economics of the Environment (1977 ed.) or any other textbook on "environmental" economics

This is the "social" justification for all sorts of environmental rules and regulations, both "public" and "private," such as eg. Seattle's 2011 ban on "plastic" grocery bags < 2.25 mm. in thickness, See City of Seattle, Ordinance 123775, December 15, 2011.

However, in the case at bar, the private Plaintiff and Landlord, Don Kennedy Properties, LLC, has NEVER identified what alleged "societal" costs Appellant "noisy" apartment supposedly inflicted upon other tenants or upon the general property values of the building, i.e. rental values and prices, in order for the tenant's attributed conduct to "substantially" affect the "welfare" of ≥40 other tenants or of the property owners in terms of the cited RCW 59.18.180(1): "substantially affect." Plaintiff has cited no accidents or fires involving Defendant's apartment unit, which he had occupied peacefully since March 30, 1993, beyond the conclusory allegations made by DK (Don Kennedy) Real Estate Property Manager James "Jim" Pear

at the December 27, 2012 "Show Cause" hearing before Commissioner Velarequi, See RP, December 27, 2012, at ___ (9-10 A.M., Dec. 27, 2012).

At the December 27, 2012 Hearing, King County Superior Court Commissioner Carlos V. Velarequi, affirmed the earlier "Show Cause" Order, signed by Commissioner Nancy Bradburn-Johnsen on Tuesday, December 11, 2012. Commissioner Velarequi also signed a Writ of Restitution, Findings of Fact And Law, all in Plaintiff/Respondent's favor, and awarded Plaintiff Don Ferre Real Estate, some $1,700 in back rents, fees, and attorney's fees, See Order And Judgment at 1-4, December 27, 2012. (Appellant is see post to reproduce these items. RAP 15.2.). This appeal timely follows Ct. State v. Alfonso 41 Wash. App. 121, 123-120, 702 P.2d 1218 (1985) (1 year delay in submitting Clerk's Papers).

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6. Appellant was not allowed to attend this Hearing personally because of KCCF Jail Rules, but was permitted to attend telephonica Ct. State ex rel Taylor v. Dorsey, 81 Wn. App 414, [illegible] Right to attend hearing

ISSUES FOR REVIEW:

I. DID THE KING COUNTY SUPERIOR COURT, NO. D-2-39304-4 SEA, VIOLATE APPELLANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION BY NOT TRANSPORTING HIM TO THE DECEMBER 27, 2012 "SHOW CAUSE" HEARING?

II. DID KING COUNTY SUPERIOR COURT, LACK JURISDICTION OVER THE DEFENDANT, BECAUSE THE SUMMONS PREPARED BY PLAINTIFF DON KENNEDY PROPERTIES, LLC, ERRONEOUSLY REQUIRED THE DEFENDANT TO "PERSONALLY APPEAR" AT THE DECEMBER 27, 2012 "SHOW CAUSE" HEARING?

III. DID KING COUNTY SUPERIOR COURT, ERRONEOUSLY AWARD PLAINTIFF OVER $1,700.00 IN ATTORNEY'S FEES AND OTHER COURT-MANDATED COSTS?

1. Lack of Jurisdiction?
2. Lack of Basis for "Costs"?

IV. DID PLAINTIFF CONDUCT AN ILLEGAL SEARCH OF DEFENDANT'S APARTMENT UNIT, ON NOVEMBER 16, 2012?

1. Installation of CO Detectors On November 16, 2012?
2. Subsequent release of evidence to Seattle Police Department (SPD) by Dan Kennedy Real Estate (DK), after Appellant's December 27, 2012, "eviction"?

V. IS RCW 59.18.030(1)-(2), UNCONSTITUTIONALLY VAGUE AND OVERBROAD, "AS APPLIED" AGAINST THIS DEFENDANT (America 2013, Penn Mal Version - for Grand Mal Version, see Case No. 12-1-06088-2 SEA, pending!)

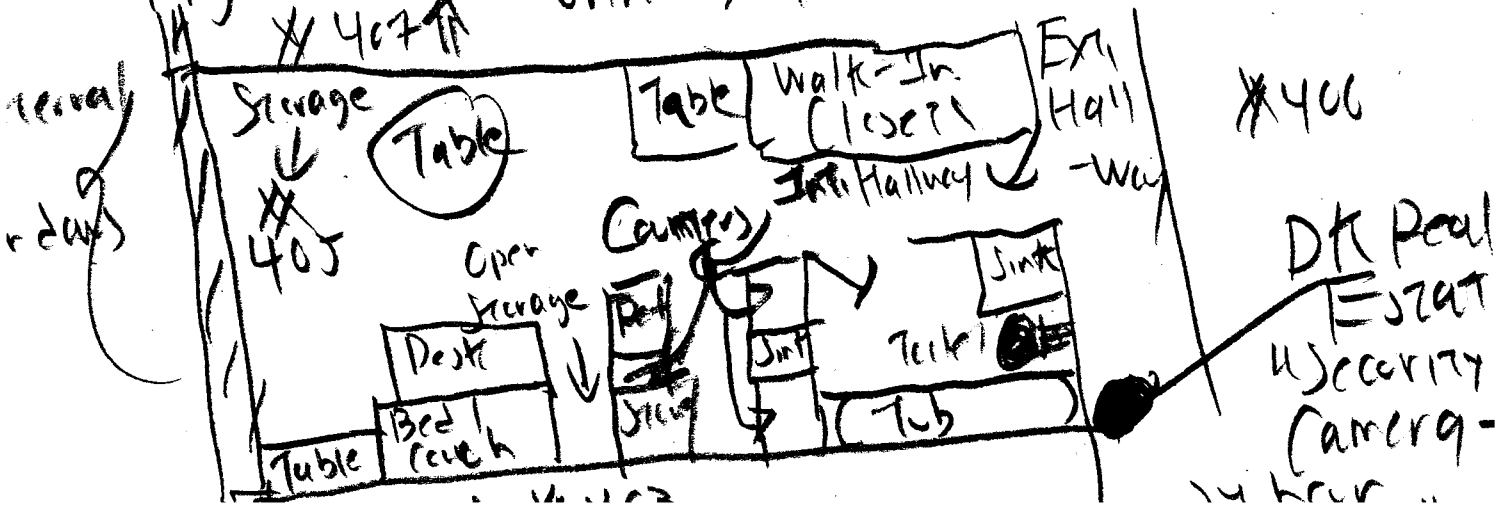
1. Vagueness?
2. Overbreadth?

STATEMENT OF CASE.

On Wednesday November 14, 2012, Plaintiff Dan Kennedy Real Properties, LLC (DK), suddenly posted notices in all 40 apartments at the Cobo Apartments, 4126 Brooklyn Ave NE, Northeast, Seattle, Washington, 98105, announcing the installation of CO ("carbon monoxide") detectors in all 40 units, allegedly pursuant to a new State law

enacted in 2005. See Exhibit 3) Defendant was not present in the apartment at the time of the 11 AM Friday morning installation of the CO^2 detectors. Apparently, unknown to all 40 tenants, Don Kennedy Property Manager James "Jim" Paar and Cote Apartments Residential Manager Julie Hamilton, intended also to enforce a mandatory inspection of all 40 units to check for allegedly unsanitary conditions. These Dor Kennedy agents also brought cell phones equipped with digital cameras with them, unbeknownst to the 40 tenants, including Appellant, to document alleged violations committed by tenants against RCW 59.18.130 (1)-(2) under the signed rental agreements. Defendant had never signed a valid rental or lease agreement with the landlord, since moving into #405 on March 26, 1993. See Plaintiff's Exhibits, December 07, 2012.)

Figure 3. Defendant/Appellant's Apartment Unit - #405



Defendant suddenly received a Registered Letter, signed by Plaintiff Dan Kennedy Real Estate's legal counsel, and presenting Appellant with a "10-Day Notice to Comply or Vacate [sic]" allegedly pursuant to RCW 59.18.130(7)-(2). Since Appellant had never signed a valid rental agreement with the Plaintiff, and the "10-Day Order" never precisely described what Appellant's purported violations of RCW 59.18.130(7)-(2) supposedly consisted of, Appellant was never apprised that he was in violation of either: (1) RCW 59.18.130(7)-(2) or any other valid statutory provision; or (2) A valid landlord-tenant rental agreement, or if before the date of the inspection and entry by the landlord, Friday, November 16, 2012.

Furthermore, Plaintiffs never required to inspect Defendant's apartment unit within the statutory "10-Day" period mandated by the legislative drafters of RCW 59.18.13(7)-(2). The expiration of this cited "10-Day" period defined by statute, was Friday, November 30, 2012. Since Plaintiffs never required, to see if Appellant was in compliance with the terms of the "10-Day" Order, on or before Friday, November 30, 2012, Plaintiff

Dan Kennedy Real Estate (DKRE), had no other alternative, except to "serve" another "10-Day Notice upon Defendant if they still wished to commence "Unlawful Detainer" proceedings against Appellant, pursuant to RCW 59.18.13(7)-(2). See e.g. IBF, LLC v. Heuft, 141 Wash App. 624, 174 P.3d 95 (2007) ("[T]he unlawful detainer statute is strictly construed in [Appellant's] favor"). However, Plaintiffs did not return to inspect Appellant's apartment until Sunday, December 9, 2012, after Plaintiffs were well aware that Appellant was absent from the building, the unit had been searched, and Defendant Joel (Ethan) had been "arrested" by Seattle Police (SPD). See SPD #12-395-3811 Case No 12-1-00688-2 SEA, pending.

Furthermore, the December 11, 2012 "Show Cause" Order, "served" upon Defendant in the King County Jail the next day, was defective in that this Summons And Complaint, prepared by Plaintiffs (Landlord's) Attorney, falsely implied that Defendant (Tenant) Appellant was required to "personally appear in court ..." (emphasis added), in order to contest the "Unlawful Detainer" action started by Plaintiffs Summons And Complaint at 1-2.

These two defendant (corporate) entities executed upon Defendant by the Plaintiffs effectively deprived Washington State Courts, of jurisdiction over this "Unlawful Detainer" action, supposedly commenced pursuant to RCW 59.18.130 (7)-(2). See e.g. Truly v. Heuft, 138 Wash. App. 913, 918, 158 P.3d 1276 (2007), since abrogated M-F-M & F, LLC v. Pryer, 168 Wash. App. 168 Wash. App. 457, 277 P.3d 62 (2012) (citing Article IV, §6, RCW(WA). The purpose of this Appeal, is to test to what extent Washington State's Courts, now arbitrarily "abrogate" and/or alter, their own prior decisions. Cf. State v. Lilyblad, 163 Wn.2d 1, 8-15, 177 P.3d 686 (2008), abrogating e.g. City of Redmond v. Burkhart, 93 Wash. App. 21, 25-27, 966 P.2d 1271 (1998) (construing RCW 9.61.230),

ARGUMENT:

I. "THE CASE OF THE ABSENT APPELLANT" -- APPELLANT/DEFENDANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW, WERE VIOLATED BY KCCF AND KING COUNTY SUPERIOR COURT, ARBITRARILY REFUSING TO TRANSPORT HIM, TO THE DECEMBER 21, 2012, "WRIT CALL" HEARING IN W-355, KING COUNTY COURT-HOUSE.

Plaintiffs Don Kennedy Real Estate, clearly knew Mr. Helms was in the King County Jail at the time that this "Unlawful Detainer" action was commenced, on December 11, 2012. See King County Jail, Inmate Lookup; Ct. "Its Only Words," December 2, 2009; Threats of More Violence Against Law Enforcement," http://www.itsonly words.net/c-helms (website accessing

Appellant, and was King County Jail Inmate (lockup). Yet Defendant was deprived of any rights to "appear personally" as directed in the Summons prepared by Plaintiff, and to contest his "eviction" from a building he had resided in for almost 40 years!! Instead, at the whims of KCCF and Judge Ronald M. Kessler, C"Free Christopher Monford!![sic!]") Kessler, Appellant was denied any rights to attend the cited December 27, 2012 King County Courthouse, W-325, hearing before King County Court "Hearing" Commissioner Carlos Y. Velategui, and to contest his "eviction";

[6] Using its discretion, the court should consider: (1) the costs and inconvenience of transporting a prisoner; (2) the potential security risk the inmate poses; (3) the substantiality of the matter at issue; (4) the need for an early determination of the issue; (5) the feasibility of delay until the prisoner is released; (6) the probability of success on the merits; (7) the integrity of

correctional system; and (8) the [illegible] interest in preserving his testimony in person rather than by deposition.

Taylor v. Dorsey, 104 Cir. 81 Wash. App. 414 at 422, 914 P.2d 773 at 777 (1996), counties omitted. In the case at bar, Defendant, a "non-violent" offender (See e.g. RCW 9.94A.535 et seq.), was merely requesting, that KCCF "transport" him 2 blocks, from the King County (Seattle) "downtown" Jail to the King County Courthouse. This transport would pose no greater security risk, than Defendant's upcoming Jury Trial (See Nov. 6-1-Oct 22 SEA) or countless other "transports," ordered by KCCF every day, inter alia, to other jails, hospitals, court appearances etc. "After considering these factors, the court may refuse to grant the inmate's request for transport, but the court must at a minimum, consider these factors." Taylor v. Dorsey, Idem, at 422, 777 (1996). Both Presiding Criminal

Judge Ronald M. Hedges and Magistrate Court Commissioner Carlos Y. Velazquez, adamantly refused to consider ANY of these cited eight factors in determining whether or not to Transport Defendant to W-325. This occurred after Mr Holmes, was erroneously told by Plaintiff, that he "must" appear "personally" at the hearing, Jurors And Complaint, Ex. CIT. Hence, at a minimum, Appellant's December 27, 2012 "Petition" must be reversed!

II. PLAINTIFF ERRONEOUSLY DEMANDED APPELLANT'S "PERSONAL APPEARANCE" (EVICTION SUMMONS, AT 2) AT THE DECEMBER 27, 2012, "SHOW CAUSE" HEARING IN FRONT OF COMMISSIONER VELAZQUEZ.

In addition to denying Mr. Holmes the right to be Transported to the December 27, 2012 W-325 Courthouse hearing, Plaintiff's also erroneously

denoted, that Defendant "must personally 'appear ... for a court hearing on [this] eviction ..." Summons, at 2. This directive by Plaintiff to Defendant has clearly overreach at the time of the December 27, 2012, "show Cause" Hearing in front of Commissioner Velarde. See RCW 59.18.365; Truly v. Heuft, loc. cit., 138 Wash. App. 913, 922-23, 130 P.3d 1076 (2007). Here, this arbitrary and capricious action by Plaintiff Kennedy Real Estate, effectively deprived the Court of jurisdiction over the "Unlawful Detainer" matter as bar, allegedly commenced pursuant to RCW 59.18.130(21-(2), and Appellants' ended December 27, 2012 Eviction, must be reversed by this Court: Lattrurchi v. Lim, 146 Wash. App 376, 196 P.3d at (2008).

Since the above cases were decided, Division I of Washington's Court of

Appeals has since attempted to "abrogate" this jurisdictional holding, deciding instead that the Superior Courts of this State, somehow have an "inherent" power, under Article IV, § 6, PCNA, to decide "Unlawful Detainer" actions, regardless of whether or not the Plaintiff satisfies any of the jurisdictional prerequisites necessary in order to commence an action. See e.g. Mkhm v. Pryor, 168 Wash. App 451, 277 P.3d 62 (2012) (abrogating Tully and other cases dismissing Unlawful Detainer actions for want of jurisdiction). However, it is NOT the function of the Washington Court of Appeals, to abrogate its own prior rulings, in the absence of any direction to do so, from the Washington Supreme Court or other higher appellate courts, such as the United States Supreme Court. Cf. State v. Hilyard, 189 Wn.2d 1 at 10-13 (abrogating prior decisions of Washington

Court of Appeals, Division I). Given that Appellant inter alia, paid monthly rents to Respondent, between the decision of Truly v. Heuft, 138 Wash. App 913, 918-923, 158 P.3d 1276 (2007) and the reversal rendered in Miller v. Myer, 160 Wash. App 451, 247 P.3d 62 (2011), to allow Plaintiff summarily to evict Defendant, based upon a defective Summons And Complaint, effectively deprived Appellant of the economic value of the rents he had paid between 2007 and 2012, thereby violating the "takings" clause of Amendment V, USCA:

¶ 21 For example, the tenant relied upon the [eviction] Summons did not contain the statutorily required notice that response by mail or facsimile was an alternative to response by personal delivery...

Housing Authority of Seattle v. Bin, 163 Wash. App. 367 at 377, 260 P.3d 900 (2011) (asserting "inadvertent" argument),

At the very least, this holding by Division I, arbitrarily abrogating the ruling in Truly, should be submitted for Discretionary Review (RAP 13.2), to the Washington Supreme Court, since the ruling MHM was not supported by any authority, other than a bare reference to Article IV, § 6, RCW, nor by any other Divisions of the Court of Appeals. In the case at bar, Defendant was incarcerated and literally could not "appear personally" to contest the purported "summons", prepared by his landlord in time for the hearing. Boddie v. Connecticut, 401 U.S. 371, 377, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971) (right of access to the courts often by civil filing fees in dissolution action). The Defendant demands the right to appeal MHM and other similar cases to the Washington State Supreme Court! Cf. State v. Helms, 141 Wn App 1040 (Division I (November 26, 2007), 2007 Westlaw 4157303, review denied, 163 Wn.2d 1057 (Wash. (July 01, 2008)).

III. KING COUNTY SUPERIOR COURT, ERRONEOUSLY AWARDED SOME $1,700 IN COSTS AND ATTORNEY'S FEES TO PLAINTIFF DCN KENNEDY PROPERTIES, LLC.

1. Lack of Jurisdiction under RCW 59.18.290(1)-(2)

The apparent basis for King County Superior Court Commissioner Velategui awarding Plaintiff some $1,700 in statutory attorney's fees and costs[1] lies in RCW 59.18.290(1)-(2). These provisions of the Residential Landlord-Tenant Act, authorize the trial court to award statutory attorney's fees to the prevailing party in an unlawful detainer action, wherein:

... (2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except

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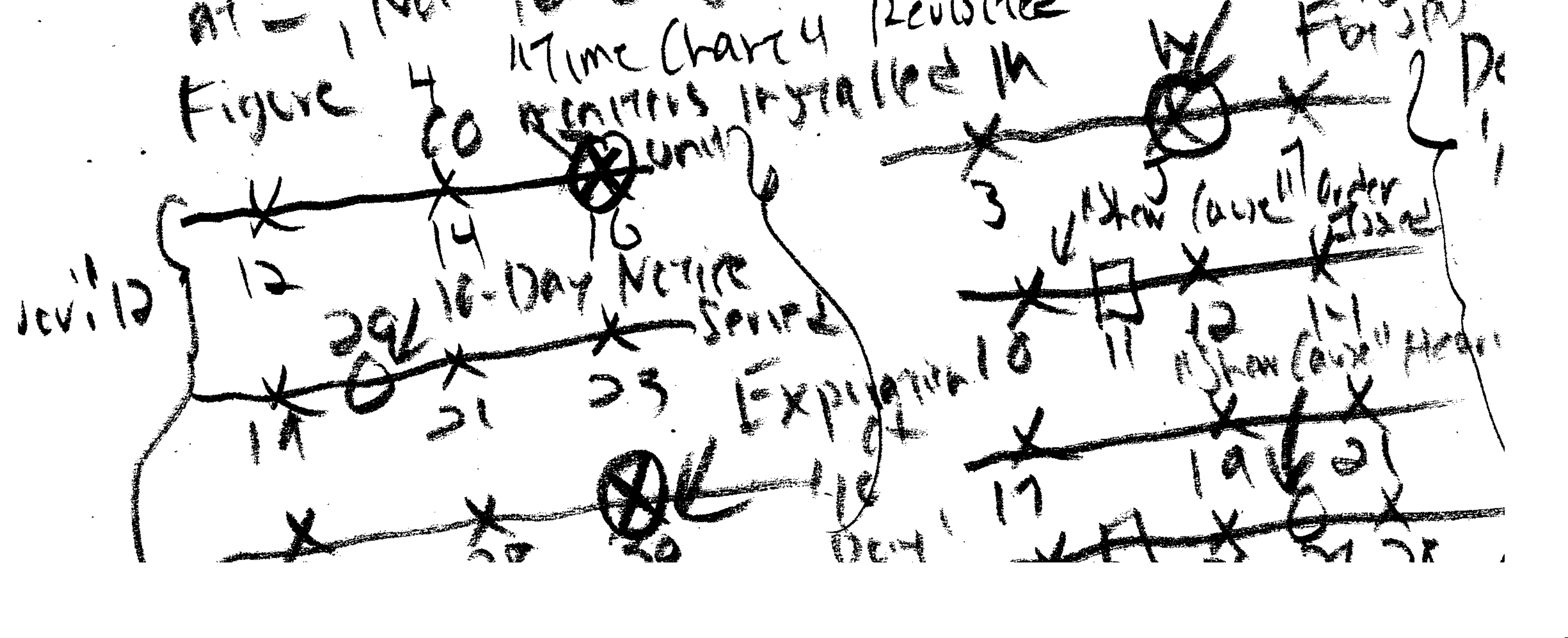
[1] Appellant cannot afford, or cannot make payable to the King County Department of Judicial Administration (DJA), the necessary costs plus the Appellate Transmittal Fee (RAP 9.2) to reproduce the Judgment for this Court. RAP 10.2.

under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section ... may recover his costs of suit and reasonable attorney's fees....

Housing Authority of the City of Everett v. Kirby, 154 Wash. App. 842 at 852, 226 P.3d 222 at 227, footnotes and citations omitted. In the case at bar, Plaintiff DK Real Estate, has never "deprived of possession of premises in violation of [RCW 59.18]," since, *inter alia*, the landlord **never** returned to inspect or monitor **Appellant's** compliance with the terms of the cited "10-Day" Notice To Comply or Vacate, Clerk's Papers at —, No. 12-2-39364-4 SEA; Defendant

"Time Chart" Reviewed

Figure 4



In the case at bar, Plaintiff only returned to inspect conditions in ##405, after Appellant was "arrested" by Seattle Police Detective Wesley "Wes" Friesen (SPD ## 395-281) Cute was apparently applying the Landlord Dan Kennedy's "10-Day" (Comply or Vacate) theories, Encapsulated in RCW 59.18.130 (1)-(2), to this State's pictured "Anti-Harassment" law RCW 9A.46.020 (1)(b), and the unit had been thoroughly "searched" and/or Trashed by SPD, State vs Jorden, 160 Wn.2d 121, 130, 156 P.3d 893 (2007) (Mere registry searches). Since this Appellant, never returned to his apartment, in time for Plaintiffs to receive compliance with the terms written in RCW 59.18.130 (2) -(3), RCW 59.18.290 (2), does not award Plaintiffs attorney's fees in this case. Cascade Health Inc vs Hawk, 136 Wash App 153, 159, 147 P.3d 1305 (2006) (Plaintiffs could have corrected the allegedly "Vexatious" and "unsanitary" conditions on their own, and subsequently billed Appellant [see RCW 59.18.180] for any cleanup work,

and Plaintiffs, never substantiated exactly how Appellant's alleged "garbage" or "trash," constituted a waste, nuisance, or "substantially affect[ed] the health and safety of the other tenants." RCW 59.18.180(3). Cf. RP, December 21, 2012, Testimony of Jim Paar, DK Property Manager, claiming falsely that "approximately at defendants property I saw electrical baseboard heaters [sic] constituted alleged "fire hazard," when in fact baseboard heaters and electrical circuit had been turned off since at least 1998.).

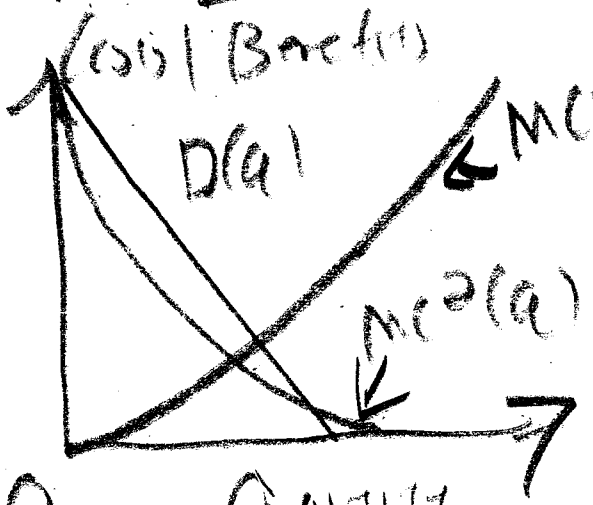
Furthermore, the modifier "after the termination of the rental agreement" included in RCW 59.18.290 (2), applies to both acts of the tenant "holding over in the premises," or "excluding" the landlord therefrom [the premises]" since both compound phrases, envision the existence of a valid rental agreement between the landlord and the tenant. See e.g. Tacoma Rescue Mission v. Hevel, 155 Wash App 250, 254 n.9, 220 P.3d 1284 (2010) (sufficiency of 1110-Day (empty or vacant) Notice). If the rose at bar, and analyzing

every one of Plaintiff's submitted Exhibits, not one of these exhibits introduced as evidence by the landlord at the December 27, 2012 "show cause" Hearing, constituted a valid rental agreement, signed by Defendant. There was no such valid "rental agreement" providing for the awarding of attorney's fees or costs or clearly, costs, in the case at bar, and, hence, the trial courts [illegible] award to Dan Kennedy Real Estate, must be reversed on appeal. Kalich v. Clark, 152 Wash. App. 544, 550, 217 P.3d 1094 (2009). This holding is continued even if appellate courts, find that the trial court, had subject matter jurisdiction over the Defendant, despite Plaintiff's faulty Summons, commanding Appellant to appear at the "show Cause" Hearing. Kirby (supra), 154 Wash. App. at 250 note 39 (2010) and the cases cited therein. "The unlawful detainer statute is strictly construed ...." IBF v. Heuft, 141 Wash. App. 624, 174 P.3d 95 (2007) Commercial

[illegible] Ner [illegible]
economic harm, supposedly "substantially affecting" other tenants, and resulting from Defendant's alleged violations, committed against the terms written in RCW 59.18.130 (1)-(2). Ct. in WAPPRAC § 6.80, supra, since this is a "civil," not a "criminal" case, for Plaintiff's actions to go forward, Respondent Don Kennedy Properties, LLC, must identify some specific economic "harm" or damages, allegedly resulting from the purported condition of Defendant's residential apartment unit, such as lost rents, waste, misuse, or physical injury committed by Defendant against other Co-Tenants, tenants. See e.g. Rogers v. American Airlines, Inc., 527 F. Supp. 229, 231 (Southern District, New York (NY) (1981) (opinion of Sofaer, J.) ("business necessity" held to justify challenged airline employee "grooming" policy under Title VII of 1964 Civil Rights Act). Since Respondent Don Kennedy Real Estate, has identified no tangible physical or economic harm,

ancillary resulting from the condition at Appellant's apartment unit, this action for damages under Residential Landlord-Tenant Act, cannot stand. Christensen v. Ellsworth, 162 Wash.2d 365 173 P.3d 228 (2007) (attempt at 3-day notice to "quit or pay rent"). 2. Lack of Basis For Assignment of Error. Even accepting, arguendo, that Plaintiff was entitled to "reasonable" attorney's fees and/or costs in the civil action No. 12-2-39304-4 SEA, Dan Kennedy Real Estate, has/neither itemized or identified these purported "costs" charged to Appellant, in a case where the landlord's counsel was retained on a fixed per diem charge, and almost all of these asserted "costs" would have had to be paid anyway by the landlord, had Appellant moved out of the rental Apartment voluntarily. See Figure 5, below.

Figure 5 Economies of Overhead Cost



Curve applied to e.g. John Bates Clark (1904)

$TC(q) = a + bq + cq^2 + \cdots$ + (higher order terms in q)

$AC(q) = TC(q)/q = \frac{a}{q} + b + cq + \cdots$

$MC(q) = TC'(q) = b + 2cq + \cdots$

In the case at bar, Plaintiff has not established, whether the alleged "cost function" $TC(q)$, for eviction "services" allegedly incurred by Appellant, is decreasing, constant, or increasing, as a function of billable hours, etc. In particular, since Plaintiff's trial Counsel is retained permanently, as in the case at bar, on a fixed compensation, it is patently unfair to bill Defendant for these costs, as if landlord's counsel was hired on a

workers increasing, linear, nearly rare, similar to
eg, hiring temporary workers for minimum wage
at Labor Ready, See eg. Ferencak v.
Department of Labor & Industries, 142 Wash.
App. 713, 729-730, 175 P.3d (2008) (remital
statutory attorney fee award at 2008), In
particular, Appellant is being billed for so-called
economic "opportunity costs" -- the costs of
permanently retained trial counsel for
the Plaintiff, costs of clearing her dayes,
and other alleged "costs" to the landlord,
which are not real variable costs in
any rational economic sense, but which are
simply part of Dr Kennedy Real Estate
"fixed" costs of doing business in
this society, See eg. Paul Samuelson and
Robert Nordhaus, Economics (19th edition)
or any other modern microeconomics
Textbook, Since Plaintiff, never served this
Defendant with an itemized Bill of
Costs, nor explained the landlord's
lack of diligence in entering the
cited provisions contained in RCW
59.18.130(1)-(2), for the past 34

years against Appellant II the trial Court's Award of Costs should be reversed, unless a new evidentiary hearing is held (with Appellant to be Transported!) to decide the basis, if any, for awarding attorney's fees and other "costs" of this action to Respondent party Don Kennedy Real Estate. RCW 4.84.080; Sanders v. State 169 Wn. 2d. 827, 841-845, 866, 240 P.3d 120 (2010) (award of attorney's fees (!) to state supreme court justice).

IV. PLAINTIFF DON KENNEDY REAL ESTATE, HAS EFFECTED A POLICY OF ILLEGALLY SEARCHING AND/OR SEIZING EVIDENCE FROM APPELLANT'S FORMER APARTMENT UNIT (XXYes).

7. The November 16, 2012 Building Inspection And Installation of the CO1C (Carbon Monoxide) "Detectors." Appellant (along with the other Yet

Tenancy resulting in the [illegible]
was informed by the landlord, that,
along with the legally required
installation of these CO detectors,
the landlord was going to conduct a
concurrent room-to-room "search" of
Defendant's apartment unit, See Notice
of Landlord's Intent To Enter Premises,
November 14, 2012. Commenced Place, LLP
v. Thardee, 100 Wash. App. 844, 25 P.3d
449 (2001) (6-day notice) (Kennedy, J.).
Instead, on Friday, November 16, 2012, while
Appellant was absent from the unit,
Respondent proceeded to search the
apartment unit for alleged "contraband,"
similar to a state prison, or county
jail, photograph the contents of
Defendant's books, writings, and other
possessions, and, there, to use all of this
alleged "evidence" of Defendant's then-
ascribed "violations", supposedly committed
against the Terms written in Ben Smith
(he had no valid rental agreement with the
property owner!), to terminate the

"Unlawful Detainer" proceeding at bar against this Appellant. In re Nichols, 171 Wn.2d 370, 372 n.6, 376, 250 P.3d 1131 (2011); Matter of Mattfield, 133 Wn.2d 332, 337, 945 P.2d 196 (1997) (electronic records). Clearly, as noted by Appellant at the December 27, 2012 "Show Cause" Hearing before Commissioner Velategui, Plaintiff violated Appellant's rights to freedom from warrantless searches and seizures of evidence (at least in his own private rental apartment unit!), as well as the tenant's "legitimate expectation of privacy," under Article 1, §7, RCW, in the literal privacy of the residential dwelling unit. State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808, 76 ALR 4th 517 (1986) Certiorari denied, 112 S.Ct. 1072, 118 L.Ed.2d 341 (1992) (Article 1, §7, RCW, held to provide "broader" privacy protections than Federal Fourth Amendment), See also e.g.

State v. Christian, 95 Wn. 2d 655, 671-672, 628 P.2d 806 (1981) (police search of vacated residential apartment unit). Appellant's unit was clearly not vacant at the time of the landlord's November 16, 2012 building inspection ostensibly conducted purely to install CO detectors. Steiner v. California, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed 2d 856 (1964); Chapman v. U.S., 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed. 2d 828 (1961). These purported photographs of Appellant's residential apartment unit taken without his knowledge or consent by DK Residential Manager James "Jim" Paar and by the Apartments Residential Manager Julie Hamilton on Friday, November 16, 2012, were introduced as evidence at the December 27, 2012 Show Cause Hearing in front of Commissioner Velategui. See RP, No. 12-2-39304-4 SEA, December 27, 2012; Plaintiff's Exhibits A, B, C (purported photographs of Appellant's rental unit). At a minimum, Appellant should be

awarded damages, pursuant to 42 USC §
§ 1983, in exchange for this warrant-
less "sweep" search of his apartment
unit, rendered by DK Real Estate, untrue
any "probable cause" or "reasonable
suspicion" that Defendant was in
violation of the terms of RCW 59.18.130
(1)-(3) or of his (pre-existing) rental
agreement. City of Seattle v. Heinfield, 170
Wn.2d 230, 239-241, 246 P.3d 1160 (2010)
(suppression of DUI breathalyzer test);
See also University of Washington Daily,
April 16, 1982, ACLU drops HFS [Housing
And Food Services] Room Search; cf. Joel
Heiney [Appellant] v. State of Washington
U.S. District Court No. 12:3-cv-00759-JLR-
MAT (November 30, 2012), appeal pending
(purported 11th Amendment "immunity" of
Washington State officials entering RCW
10.73.160 (2)-(3)). Clearly, Plaintiff DK
Real Estate, as a profit-making "private
enterprise business, enjoys No such "11th
Amendment" form damages!!

2. Dr Kennedy Real Estate provision of audio/video tape "evidence" to Seattle Police Department (SPD) in Appellant's case No 12-1-00088-2 JEA. (See SPD Police Report No. 12-395261.)

Space does not suffice here, to describe the activities of DK Real Estate since Appellant's "eviction" on December 21, 2012 (No. 12-2-39304-4 JEA) and the service of the Writ of Restitution by the King County Sheriff's Office (KCSO) on January 4, 2013. Since December 6, 2012, Dr Kennedy Property Manager James "Jim" Paar and Residential Manager Julie Hamilton, have, in the absence of any Court order, warrant, or summons, in No. 12-1-00088-2 SEA (Appellant's corresponding "criminal" case), provided SPD Detectives Wesley "Wes" Friesen and SPD Detective Bach, with replies of the

Don Kennedy Real Estate (DKE) building "security" system, purportedly photographing Appellant, on 11/18/12 and 11/20/12, as well as giving the police purported copies of the November 13, 2004 telephone calls to: William P. Gerberding and Steven G. Olswang, which formed the basis for the criminal charges and "convictions" in King County No. 04-1-14102-4 SEA, See State v. Helms, 141 Wash. App. 1049, 2007 Westlaw 4107303 (Division I, November 20, 2007). These tape recordings, are the only electronic recordings still extant, of the purported November 13, 2004 telephone calls to former UW President Gerberding and Vice-President Olswang. Cf. Seattle Post-Intelligencer, December 3, 2004, "Threats Cause Against UW Officials," Local at 3, At a minimum, Appellant is entitled to pursue an action for a counterclaim and merely damages

against Dan Kennedy Real Estate, Property (LDK) Manager Jim Paar, and Echo Apts. Mgr. Julie Hamilton, for violating Defendant's Fourth Amendment rights. See especially esp. Foisy v. Wyman, 83 Wn.2d 22, 32, 515 P.2d 160 (1973) (counterclaim at implied warranty of habitability).

V. RCW 59.18.130(1)-(2), VIOLATES APPELLANT'S RIGHTS UNDER AMENDMENTS I, V, XIV, USCA, AS WELL AS UNDER ARTICLE I, 9 3, 5, 7, 12, RCWA.

1. Vagueness.

Neither a written landlord-tenant or other agreement to render it enforceable, RCW 59.18.130(1)-(2), does not specify the "Duties of Tenant" precisely enough to satisfy the tenant's right to be put on notice as to the law define exactly what objects or materials, allegedly constitute "illegal items," "garbage" or other "flammable" items supposedly proscribed by the statute, beyond purported "decorative"

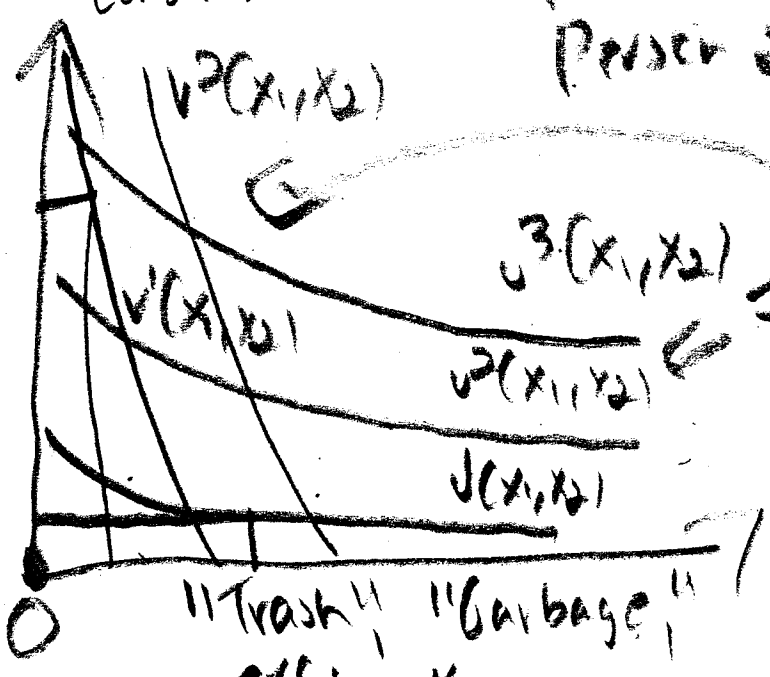
definitions, of what assuredly constitutes "trash" Tacoma Rescue Mission v. Hayes, 155 Wash. App. 250, 254 note 9, 228 P.3d 1289 (2010) (insufficiency of landlord-tenant agreement where tenant was "evicted" from publicly-subsidized housing for making "intimidation" (threats), Asserted "detritus" apart from common-law theories of waste and nuisance - caused by tenants or others which usually cause) physical injury or economic losses - are not sufficient to satisfy the requirements of due process and/or equal protection, where, as in the case at bar, the tenant is (uniquely in post-slavery America!!), mandated to perform specific duties on behalf of the landlord. Housing Authority of Seattle v. Bin, 163 Wash. App 367, 372, 260 P.3d 900 (2011) (alleged legal duty" of landlord to translate rental agreement into Somali!) Here, there was no written rental agreement (at least since March 20, 1993, when Appellant moved into Unit XXXX), to specify exactly what duties of tenant, the landlord could mandate. (Can there be a "no-pets" clause? Can the landlord even enforce a tenant "agreeing" to policy? Can the landlord enter a unit "at will," similar to employment?), Furthermore, the related provisions, within the RCW 59.18.180(1),

do not specify exactly what activities, unrelated to the tenant, "substantially" affect the health and safety of ... other tenants..." RCW 59.18.180(1)(a). Cf. e.g. WAC 478-124-120, General Conduct Code for the University of Washington, "conduct which unlawfully threatens bodily harm..."; Helmig v. Gerberding, King Co. No. 86-2-24903-0, Dec. 24, 1986 (Agid, J.). Must the landlord or other tenants, or even third parties, suffer actual economic or physical harm, to comprise an alleged "true threat" against "health and safety," or what? Cf. RCW 9A.04.110(28), "threat to include "harm" to "personal relationships," to stem "strikes, boycotts," etc., to "expose a secret." Cf. State v. Allen, No. 86119-6 (Wash. Jan. 24, 2013) ("true threat" defined). Cf. Truly v. Heuft, 130 Wn. App. 913, 156 P.3d 121 (2007) (three-month failure to pay rent by tenant excused on grounds of "defective" summons) abrogated on other grounds, MHM & F, LLC v. Pryor, 168 Wash. App. 451, 277 P.3d 62 (2012) ("irrelevant jurisdictional" Ct. rules) to try housing case, under Article IV, §6, RCWA). In sum, whether a written rental agreement or actual

proof of economic loss to the [illegible]
to other non-conserving Terms (in terms
of either Marshallian Money Income
held constant] or Hicksian Utility held
constant] demand curves). RCW 54.16.130
(1)-(2) and RCW 54.16.180(1), are
unconstitutionally vague as applied to
Hewitt and the Appellant. See e.g.
Eugene R. Silberberg, The Structure of
Economics: A Mathematical Analysis
(1990 edition) (showing impossibility of
computing "consumer surplus" in a "path-Indep
endent way").

2. Overbreadth.

Figure 6



The problem is that, in the real world, "One man's trash is another man's treasure!" whether true in a philosophical sense or not, it is true in an economic sense - as witness the recent few-year debate pertaining and here in Seattle, over whether or not to legally ban "plastic" or other "non-recyclable" shopping bags. See Seattle Ordinance No. 123775, December 15, 2011. RCW 59.18.130(1)-(2), delegate broad powers to each residential landlord (as well as to local governments), arbitrarily to prescribe and/or confiscate, a residential tenant's personal books, papers, diaries, records, heirlooms, and other keepsakes, on grounds of purported non-conformance with the strict terms written into RCW 59.18.130(7)-(2). Anything which is purportedly "flammable" may be arbitrarily confiscated and/or disposed of by the landlord, with little or

re compensation to the tenant or other owner of the artifact. Nor is RCW 59.18.130, prorated or scaled to the square footage of the house or apartment under consideration, or to the real income or assets or disability of the tenant. Tacoma Rescue Mission, loc. cit., at 254 note 9 [Sic) Alleged "threatening" physical behavior by tenant insufficient to comprise Unlawful Detainer in public housing complex. RCW 59.18.130 (3)-(5), take re consideration, of whether the Tenant's virility or indifference levels between "trash" and all other economic goods, or terms to Person 1 in the diagram (Ui(X1X2) - prefers more "trash") — or to Person 2 (Ui(X1X2) - prefers greatness Government should not be arbitrarily siding with one class of tenants over another, but RCW 59.18.130(4)-(5), as well as the actual landlord/tenant case at bench does exactly this!!

SUMMARY AND CONCLUSIONS.

Appellant's December 27, 2012 "eviction" should be reversed. In addition, Appellant should receive in compensation for loss of personal keepsakes, emotional distress, illegal police searches of his apartment, at least $1,000,000,000 (one billion dollars) in damages, to be collected from Don Kennedy Properties, LLC, Jim Paar, Julie Hamilton, SPD Detectives Friesen and Bach, as well as King County Superior Court Commissioner Carlos Y. Velategui and from KCCF.

March 11, 2013 Joel Holmes, Pro Se
KCCF #212023874

CERTIFICATE OF SERVICE

I, Joel Christopher Holmes, do hereby certify and declare, that I served Mr. Christopher M. Constantine, Attorney-at-Law, Law Offices of Evan Lee Loeffler, PLLC, 2033 6th Avenue, Suite 1040, Seattle, WA, 98121-2527, (206)-443-8678, with one copy of the enclosed Opening Brief of Appellant, VIA Inmate Legal Mail, this day the

IN THE SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

DON KENNEDY PROPERTIES LLC d/b/a Don Kennedy Real Estate as agent for the owner,

Plaintiff(s),

vs.

JOEL CHRISTOPHER HOLMES and ALL OTHER OCCUPANTS,

Defendant(s).

Case No: 12-2-39304-4 SEA

COMPLAINT FOR UNLAWFUL DETAINER

COMES NOW the plaintiff, Don Kennedy Properties LLC d/b/a Don Kennedy Real Estate as agent for the owner, by and through its attorneys of record, Law Office of Evan L. Loeffler PLLC, and for cause of action against the defendant, claims and alleges as follows:

1. Plaintiff. Don Kennedy Properties LLC d/b/a Don Kennedy Real Estate as agent for the owner, hereinafter referred to as "Plaintiff" is entitled to possession of the premises. Plaintiff has paid all fees and taxes due the State of Washington and has otherwise fulfilled all conditions precedent to the maintenance of this action.
2. Defendants. Joel Christopher Holmes, hereinafter referred to collectively as "Defendant," is believed to be currently in possession of the premises, as defined below. "All other occupants" are any party in possession or claiming a right of possession in the Premises other than Defendant.

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2033 Sixth Avenue, Suite 1040
Seattle, WA 98121-2527

3. Subject Property and Venue. This unlawful detainer action concerns residential property located in King County, commonly known as 4120 Brooklyn Avenue, Apt. 405, Seattle, Washington 98105 (the "Premises").

4. Residential Use of Leased Premises. The Premises were leased for residential use only.

5. The Agreement. Defendant entered into possession of the Premises pursuant to a rental agreement (the "Agreement") between Defendant as tenant and Plaintiff as landlord. Defendant took possession of the Premises immediately after the Agreement was executed and has been in continuous possession since that time. The Agreement provided for monies owing for rent of $710.00 per month.

6. Default. Defendant is in default under the Agreement for failure to maintain the premises in a clean and sanitary manner and failure to properly and regularly dispose of trash in violation of RCW 59.18.130(1)-(2).

7. Notice to Comply or Vacate. On November 19, 2012, Plaintiff served upon Defendant, in the manner provided for by law, a Ten Day Notice to Comply or Vacate (the "Notice"). A true and accurate copy of said notice is attached to these pleadings as exhibit A. The Notice informed Defendant that Defendant was in breach of the Agreement and required Defendant to comply with the Agreement within ten days of the date of service of said notice upon Defendant, or, in the alternative, to vacate and surrender the Premises. More than ten days have elapsed since service of said notice and Defendant has neither come into compliance nor vacated and surrendered the Premises.

8. Additional Damages. Additional rent payments of $710.00 and late charges will continue to accrue for every month or portion thereof during Defendant's continued possession of the Premises. Upon information and belief, Plaintiff asserts that Defendant may have caused damage to the premises in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

(a) That the tenancy by which Defendant holds the Premises be terminated and possession be restored to Plaintiff;

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Seattle, WA 98121-2527

(b) That a Writ of Restitution be issued by the King County Clerk, directing the Sheriff of King County to deliver possession of the Premises within ten days after its date to Plaintiff;

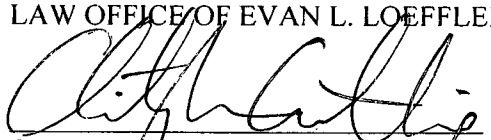
(c) For judgment for unlawful detainer in the amount of rent, late charges, unpaid utility and maintenance billings, and any consequential damages owing at the time of judgment and reserving for later adjudication any damages suffered by Plaintiff after judgment is entered;

(d) For judgment for court costs and Plaintiff's reasonable attorney's fees in the sum of $700.00 if no defense is interposed by Defendant, and such greater sum as the Court deems reasonable if this matter is contested; and

(e) For such other and further relief as the Court may deem just and equitable.

DATED December 10, 2012.

LAW OFFICE OF EVAN L. LOEFFLER PLLC



Evan L. Loeffler, WSBA No. 24105
Christopher D. Cutting, WSBA No. 41730
Jeana K. Poloni, WSBA No. 43172
Attorneys for Plaintiff

LAW OFFICE OF EVAN L. LOEFFLER PLLC
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Seattle, WA 98121-2527
Phone: 206.443.8678 Fax: 206.443.4545

TEN DAY NOTICE TO COMPLY OR VACATE

To: **Joel Holmes and all other occupants**
4120 Brooklyn Avenue, Apt. 405
Seattle, Washington 98105

YOU AND EACH OF YOU ARE HEREBY NOTIFIED THAT you are in default under the terms and conditions of your rental agreement and the rules for the premises located at **4120 Brooklyn Avenue, Apt. 405, Seattle, Washington 98105**. The default is as follows:

> Your unit is in a state of extreme clutter and disarray. You have excessive amounts of paper, waste, trash, and other detritus and junk in your apartment. This violates RCW 59.18.130(1) that requires you to "Keep that part of the premises which [you occupy] as clean and sanitary as the conditions of the premises permit" and RCW 59.18.130(2) that requires you to "Properly dispose from [your] dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals."
>
> The corrective action required is:
>
> You must remove all excess property and other items and clean your apartment within the time allowed for compliance with this notice.

The landlord hereby expressly reserves all rights and remedies regarding any and all other defaults under the rental agreement which are not set forth herein.

You are ordered to cease and desist these violations and to comply with the terms of your tenancy, or in the alternative to vacate the above-described premises **within ten (10) days of receipt of this notice.**

This notice is executed and served in accord with RCW 59.12 et seq. which provides that a tenant is in unlawful detainer of real property if the tenant fails to comply with the demands of a notice such as this. Failure to comply with this notice may result in filing of a Summons and Complaint for Unlawful Detainer, which shall further seek all monies due, including attorney's fees and court costs. Vacation of the premises shall not relieve tenants of any responsibility for damages caused to the property or for past due rents.

Dated: November 18, 2012.

LAW OFFICE OF EVAN L. LOEFFLER PLLC

Evan L. Loeffler
Christopher D. Cutting
Jeana K. Poloni
Attorneys for Landlord Don Don Kennedy Real Estate

EXHIBIT A

LAW OFFICE OF EVAN L. LOEFFLER PLLC
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IN THE SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

DON KENNEDY PROPERTIES LLC d/b/a Don Kennedy Real Estate as agent for the owner,

Plaintiff(s),

vs.

JOEL CHRISTOPHER HOLMES and ALL OTHER OCCUPANTS,

Defendants.

Case No: 12-2-39304-4 SEA

EVICTIONS SUMMONS
(Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR RESPONSE IS

5:00 p.m. on Thursday, December 20, 2012.

TO: Joel Christopher Holmes and all other occupants

AT: 4120 Brooklyn Avenue, Apt. 405, Seattle, Washington 98105

THIS IS NOTICE of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

IF YOU WANT TO DEFEND yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond to the eviction complaint in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer, and if required by this summons, a sworn statement regarding nonpayment of rent, to your landlord's attorney by personal delivery, mailing, or facsimile to the address or facsimile number stated below **TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE.** Service by

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2033 Sixth Avenue, Suite 1040
Seattle, WA 98121-2527
Phone: 206.443.8678 Fax: 206.443.4545

facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent to you, your telephone number (if any), and your signature.

If there is a number in the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the party signing the summons. Within fourteen (14) days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service upon you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause, you must personally appear at the hearing on the date indicated in the order to show cause **IN ADDITION** to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ON PAGE ONE, YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

Dated, December 10, 2012.

LAW OFFICE OF EVAN L. LOEFFLER PLLC

Evan L. Loeffler, WSBA No. 24105
Christopher D. Cutting, WSBA No. 41730
Jeana K. Poloni, WSBA No. 43172
Attorneys for Plaintiff

The notice of appearance or answer must be delivered to:

Law Office of Evan L. Loeffler PLLC
2033 Sixth Avenue, Suite 1040
Seattle, Washington 98121
(206) 443-8678
(206) 443-4545 facsimile

LAW OFFICE OF EVAN L. LOEFFLER PLLC
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DON KENNEDY PROPERTIES LLC d/b/a Don Kennedy Real Estate as agent for the owner,

Plaintiff,

vs.

JOEL CHRISTOPHER HOLMES and ALL OTHER OCCUPANTS,

Defendants.

Case No: 12-2-39304-4 SEA

MOTION FOR ORDER TO SHOW CAUSE WHY WRIT OF RESTITUTION SHOULD NOT BE ISSUED

MOTION

COMES NOW the plaintiff, by and through the Law Office of Evan L. Loeffler PLLC, its attorneys of record, and moves the Court for an order directing the defendant to appear and show cause, if any, why a writ of restitution should not be issued directing the King County Sheriff to restore to Plaintiff possession of the premises located at 4120 Brooklyn Avenue, Apt. 405, Seattle, Washington 98105, and why an order granting such other relief as prayed for in the complaint should not be entered.

This motion is based upon the records and files herein.

DATED this 10th day of December, 2012.

LAW OFFICE OF EVAN L. LOEFFLER PLLC

Evan L. Loeffler, WSBA No. 24105
Christopher D. Cutting, WSBA No. 41730
Jeana K. Poloni, WSBA No. 43172
Attorneys for Plaintiff

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

DON KENNEDY PROPERTIES LLC d/b/a Don Kennedy Real Estate as agent for the owner,

Plaintiff,

vs.

JOEL CHRISTOPHER HOLMES and ALL OTHER OCCUPANTS,

Defendants.

Case No: 12-2-39304-4 SEA

ORDER TO SHOW CAUSE WHY WRIT OF RESTITUTION SHOULD NOT BE ISSUED

[Clerk's Action Required]

THIS MATTER having come on for hearing upon the motion of Plaintiff for an order to appear and show cause why a judgment should not be entered pursuant to the prayer for relief in the complaint, including a writ of restitution directing the King County Sheriff to restore possession of the property described in the complaint to Plaintiff, and it appearing from the complaint that there may be reasonable grounds for the granting of such relief,

IT IS HEREBY ORDERED that Defendants must appear and show cause before this Court on December 21, 2012, at 9:00 a.m., in King County Superior Court, Courtroom W-325, 516 Third Avenue, Seattle, Washington, or as soon thereafter as this matter may be heard, why this Court should not enter judgment and issue a writ of restitution directing the King County Sheriff to restore Plaintiff to possession of the premises located at 4120 Brooklyn Avenue, Apt. 405, Seattle, Washington 98105.

IT IS FURTHER ORDERED that upon the failure of Defendants to appear and show cause by the date and time specified by this order, the Court will issue an order issuing a writ of restitution

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2033 Sixth Avenue, Suite 1040
Seattle, WA 98121-2527

directing the Sheriff to restore possession of the subject premises to Plaintiff, and grant such other relief as requested in Plaintiff's complaint and as provided by law.

DONE IN OPEN COURT this 10 day of December, 2012.

Nancy Bradburn Johnson
~~JUDGE~~/COURT COMMISSIONER

Presented by:

LAW OFFICE OF EVAN L. LOEFFLER PLLC

Evan L. Loeffler, WSBA No. 24105
Christopher D. Cutting, WSBA No. 41730
Jeana K. Poloni, WSBA No. 43172
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