Joel C. Holmes
WA DOC 360312
King Unit, Cell No. B-46 U
Airway Heights Correctional Center
(AHCC)
PO BOX 2049
Airway Heights, Washington
99001-2049

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Some pages have been deleted to comply with RAP 10.10(a)-(f). JC
2/11/14.

Mr. Richard D. Johnson
Chief Clerk / Administrator,
Washington State Court of Appeals —
Division One
600 University Street
One Union Square Building
Seattle, Washington
98101-4170

RE: Defendant/Appellant's Statement of Additional Grounds (RAP 10.10 (a)-(f)).
In Case No. 70398-6-I.

Joel C. Holmes 360312
Jan 28, 2014

To The Clerk:

Please transmit the enclosed documents to the Parties in the case at bar:

Respondent / Ms. Amy Meckling, Felony Appellate Unit, (KCPAO, W-554, 516 3rd Av, Seattle, WA

Counsel / Ms. Sarah McNeel Hrobsky, Washington
[illegible] 3rd AV, Suite [illegible] Seattle

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Cover Page [Title]

RAP 10.10(a)-(f)
70398-6-I

Statement of Additional Grounds - RAP 10.10

Pro Se Brief of Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON - DIVISION ONE
Case No. 70398-6-I / Appeal of King County No. 12-1-06088-2 SEA.

The State of Washington,
King County Prosecuting Attorney's Office (KCPAO), W-554, King County Courthouse, 516 Third Avenue, Seattle, Washington, 98104, Plaintiff / Respondent,

v.

Mr. Joel Christopher Holmes, WA DOC 366312, King Unit, Cell No. B-64 TT, Airway Heights Correctional Center (AHCC) PO Box 2049, Airway Heights, Washington 99001-2049, Defendant / Appellant

PRO SE BRIEF OF APPELLANT/DEF.
DEFENDANT / APPELLANT'S STATEMENT OF 366312
GROUNDS FOR REVIEW (RAP 10.10(a)-(f))
ON APPEAL FROM THE HONORABLE JUDGE
GEORGE N. BOWDEN. Pro Se

PRESENTED BY: Joel C. Holmes, Pro Se WA DOC 366312

IDENTITY OF PETITIONER.

Mr. Joel Christopher Holmes, the named Defendant in King County No. 12-1-06080-2 SEA, filed by information on December 10, 2012, hereby appears again to present the Pro Se Statement of Additional Grounds for Review (RAP 10.10 (a) - (f)).

PRIOR PROCEEDINGS.

Petitioner was charged by information, with two counts, both naming as the alleged "victim" Judge Julie A. Spector, who had presided over Appellant's previous January 30 - Feb 2, 2006 trial (King Co. 04-1-14102-4 SEA), on four counts of "felony telephone harassment" (RCW 9.61.230 (1)(c)(2)(b)), namely one count of "Intimidating A Judge" (RCW 9A.72.160 (1)-(3)), as well as one count of "Felony Harassment" (RCW 9A.46.020 (1)(b)(2)(b)(i)-(iii)), both premised on the exact same November 18, 2012 telephone "911" call attributed to the Defendant. See e.g. Verbatim Report of Proceedings (VRP) 1-155, May 9th, 2013. According to the State, Petitioner made one 23 second "911" call from a public pay phone, located at 4245 University Way Northeast, Seattle, Wa., 98105, where

he purportedly declared (State's Exhibit No. 1, 10 VRP at 16-17, May 9th, 2013):

> ... I'm going to assassinate [sic] King County Prosecutor Dan Satterberg, Shoreline District Court Judge Douglas J. Smith, Shoreline Criminal Prosecutor Sarah Roberts and <u>Judge</u> Julie Spector ...

In a 23-second telephone call, received and recorded by Seattle Police Department "911" Emergency Police/Fire Headquarters. See Testimony of Seattle Police Detective Wesley D. "Wes" Friesen, VII VRP at 32-55, 57-83, May 7, 2013. Judge Spector was only referred to by the Defendant for at most five or of the 23 recorded seconds. See Exhibit 1, Laptop Discovery from KCPAO (King County Prosecuting Attorney's Office). Two other "911" calls attributed to the Defendant in the Police Report (SPD #395-281) recorded on Tuesday, November 20, 2012 and on Saturday, December 1, 2012, were suppressed at trial. These calls contained alleged "threats" to "kill" President Obama, King County Prosecutor Satterberg, DPA Denny, John McCurdy, and several other public officials - but made NO [illegible] references to Judge Julie A. Spector.

who had been appointed to King County Superior Court Position No. 53 by then-Governor Gary A. Locke, in 1999, and subsequently elected to that position in 2000. See Voter's Guides, King County Department of Elections, 2000-2009, http://www.kingcounty.elections

gov. Judge Spector, an avowed lesbian with no children and no romantic relationships, asserted at trial that she alone, of the alleged multiple "victims" cited on the November 18, 2012 "911" call attributed to the Defendant, that she alone, had been placed in "reasonable fear" that Petitioner's attributed telephonic "threats" would be "carried out." RCW 9.61.230 (1)(b)(2)(b)(i)-(iv). This same 4:54 am SPD "911" call, received on 11/18/2012, served as the basis for both of Counts I and II upon which the Defendant was subsequently "convicted." XI VRP 1037-14, May 13th, 2013.

ISSUES FOR REVIEW:

I. CAN PETITIONER LEGALLY BE "CONVICTED" OF HAVING "DIRECTED A THREAT TO A JUDGE BECAUSE OF A RULING OR DECISION OF THE JUDGE IN ANY OFFICIAL PROCEEDING" (COURT'S

JURY INSTRUCTION NUMBER 7, May 13th 2013) ..." WITHOUT SPECIFYING THE NAME OR IDENTITY OF THE JUDGE?

II. CAN PETITIONER LEGALLY BE "CONVICTED" UNDER TWO STATUTES, WHICH ARE BASED UPON PORTIONS OF THE REVISED CODE OF WASHINGTON WHICH HAVE BEEN SUBSEQUENTLY RE-INDEXED OR REPEALED?

1. RCW 9A.72.160 (1)(b), which cites to a Definitional Section of the RCW's (RCW 9A.04.110(25)), which has since been re-indexed?

2. RCW 9A.46.020 (1)(b)(2)(b)(i)-(iv), and the reference to "Judge Julie Spector" (Court's Jury Instruction No. 9), which did NOT clearly distinguish the "Intimidation" charge from the "Felony Harassment" charge? Cf. RCW 9A.46.020 (2)(b)(ii)-(iv), [Harassment of a "Criminal Justice [sic] Participant." (Laws of 2011)]

III. IS THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, SOMEHOW "TOO INTIMIDATING" FOR WASHINGTON STATE'S APPELLATE AND TRIAL JUDICIARY?

1. Is RCW 9A.72.160 (1)-(3), unconstitutionally vague and/or overbroad?

2. Is RCW 9A.46.020 (2)(b)(i)-(iv), unconstitutional vague and/or overbroad, "as applied" to the November 18, 2012 "911" call attributed to this Defendant?

IV. DID PETITIONER HAVE THE STATUTORY INTENT TO "INTIMIDATE OR HARASS" JUDGE JULIE A. SPECTOR, AT THE START OF THE CITED NOVEMBER 18, 2012, "911" CALL? (State v. Lilyblad, 163 Wn.2d 1, 8-10, 177 P.3d 686 (2008))

V. WAS PETITIONER DEPRIVED OF HIS SIXTH AMENDMENT RIGHTS TO A UNANIMOUS JURY, BY THE LACK OF SPECIFICITY IN THE COURT'S JURY INSTRUCTIONS AND IN THE STATE'S INFORMATION, FILED IN COUNT I?

VI. WAS PETITIONER DEPRIVED OF HIS SIXTH AMENDMENT RIGHTS TO CONFRONT THE WITNESSES AGAINST HIM, BY THE STATE'S PLAYING OF THE November 18, 2012 and November 13, 2004 TAPES, WITHOUT ALLOWING PETITIONER TO SUBPOENA THE WITNESSES WHO ALLEGEDLY RECORDED THESE TAPES SUBSEQUENTLY USED AS EVIDENCE AGAINST HIM AT THE May 6th - May 13th, 2013 TRIAL, CONVENED IN No. 12-1-00088-2 SEA (State's Exhibits Nos. 1, 4-5, 6)

1. Failure to Subpoena SPD Police / Fire "Emergency" "911" Dispatchers heard on 11/18/2012 tape?

2. Failure to subpoena custodians of November 13, 2004 tapes recorded by William P. Gerberding and Steven G. Olsnarg — Gerberding, Olsnarg, and SPD Detective Daniel R. Stoltke (See State v. Holmes, 141 Wash. App 1040 (Wash. Ct. App. (Div. (November 26, 2007)), 2007 Westlaw 4157303 at *6-*7 (slip. op. at p. 10-11)))?

VII. WAS PETITIONER PLACED "TWICE IN JEOPARDY," BY THE DUAL CHARGES FILED AGAINST HIM - TWO OFFENSES INHERENTLY THE "SAME IN FACT AND LAW" - See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), and State v. Mercy, 169 Wn.2d 580, 595, 238 P.3d 495 (2010) - "INTIMIDATING A JUDGE" (Count I), AS WELL AS "FELONY HARASSMENT" (Count II)?

VIII. WAS PETITIONER, DEPRIVED OF HIS RIGHTS TO AN "IMPARTIAL" TRIAL, SUBJECTED TO "CRUEL AND USUAL PUNISHMENT," AND SENTENCED TO "ONE YEAR" OF "COMMUNITY CUSTODY" (RCW 9.94A.701 et seq), IN VIOLATION OF AMENDMENT VI USCS, Article I, §21-22, RCWA, AMENDMENT VIII, USCS, AS WELL AS RCW 9.94A.411(2) (

7.

(Statutory enumeration of "Crimes Against Persons")?

IX. WAS THIS PROSECUTION, UNLAWFULLY COMMENCED BY THE STATE, BASED ON A JUDICIAL "RULING OR DECISION" FROM March 10, 2006 (RP, No. 04-1-14102-4 SEA), MORE THAN "THREE YEARS" AFTER THE STATUTE OF LIMITATIONS (RCW 9A.04.080) HAD BEGUN TO RUN?

STATEMENT OF CASE.

Petitioner is being punished for his alleged "threats" purportedly "directed" at a judicial "ruling or decision," made almost seven years before the cited telephonic "call" "threat" in question. See Plaintiff's Exhibits 1-8, 10 VRP at pp. 16-100, May 9th, 2013. Furthermore, it clearly violates the enumeration of judicial powers established under Wash. Const. Article IV, Section 6, to allow a Judge to comment on the evidence from a previous case (as well as for the State to introduce as evidence purported rulings made by other State and Federal courts — see State's Exhibits No. 9-14). RCW 9A.72.160(1)-(3), is unconstitutionally vague and overbroad, because it is not limited to "threats" designed to change a "pending" judicial ruling or decision (the

"prong" of the statute not applied against the Defendant in the case at bar. See 10 VRP 1-199, May 9th, 2013. Instead, RCW 9A.72.160 (1)-(3), applies "in an unlimited way against any kind of threat" (State v. Smith, Loc. Cit., 111 Wn.2d 1, 15 note 5, 759 P.2d 372 (1988) (Durham, C.J.) (upholding RCW 9A.46.020 against vagueness and/or overbreadth challenges), supposedly "directed" at a prior judicial "ruling or decision" - irrespective of whether that juridical "ruling or decision" is still "pending" or not. Obviously, such a statute wrongly censors a great deal of protected speech and expression - assertedly, because communications to or (even?) about "judges" do not occur in a "public forum" for open political debate (See City of Seattle v. Huff, 111 Wn.2d 923, 925-7, 767 P.2d 572 (1989) (Dolliver, J.) (upholding Seattle Telephone Harassment Ordinance SMC 12A.100.A-2 based on "public forum/non-forum" distinction). However, as noted by Petitioner, Judges (both trial and appellate) are ELECTED public officials in this State (and most of the other 50+ States and territories). Hence, RCW 9A.72.160(1)-(3), strikes at the very heart of open political debate

debate in this State. Moreover, this statute (RCW 9A.72.160(1)-(3)), as well as the trial Court's Jury Instruction No. 7, by criminalizing alleged "threat[s] ... to cause bodily injury in the future to the person threatened or to any other person ..." (Court's Jury Instruction No. 10), are based on a definitional section, RCW 9A.04.110(25) which was repealed and re-indexed by the legislature, starting in 2005. For the statute provides:

RCW 9A.72.160 Intimidating A Judge ... (1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in an official proceeding ...

(2) "Threat" as used in this section means:

...

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time;

(b) Threat as defined in RCW 9A.04.110(25) [sic] ...

RCW 9A.72.160 (1)-(3), Laws of 1985, chapter 327 §1. However, the cited definitional section upon which this statute is based and cites explicitly — RCW 9A.04.110(25) — was repealed and re-indexed by the legislature, starting in 2005 and continuing until the 2011 session. See Code Reviser, Laws of 2005, 2011. Similar to permutation groups on n-objects, in 2005 RCW 9A.04.110(25) was re-indexed as RCW 9A.04.110(26), RCW 9A.04.110(26) became RCW 9A.04.110(27) in 2007, and finally, this definition of "threat" was re-classified as RCW 9A.04.110(28), starting in 2011. (This "definition" of "true threat," encompasses everything from alleged "threats" to start "strikes, boycotts, etc. against the recipient of the "threat," to "threats" to disclose personal "secrets" or harm the "personal relationships" of the targeted person(s). (E.G., alleged "threats" to disclose to the jury, "Judge Julie A. Spencer is a lesbian!" or "Judge Spencer is Phil Spencer's second cousin [sic]!") The Jury Instruction used in the case at bar, was explicitly based on RCW 9A.72.160(2)(b): "threat means to communicate ... the intent ... to cause bodily injury in the future to the person threatened or to any other person." Hence, Petitioner was convicted based on the faulty definition

TES: Ba State v. 05, 167 2d 10, 73, 19 P. 3d 990 2009) removal former common law statement de) Spencer, J.), State v. Smelcer, 2 Wash. App. 899, 909, 2 P.3d 99 (2007) offender ore) (Spencer, e); see also State v. App. 143

of a "true threat" contained in RCW 9A.72.160(2)(b), citing (as it does) a section of the Code which was rescinded and repealed by the legislature in 2005. Petitioner repeatedly objected to this "definition" of a "true threat" (Instruction No. 10 and Instruction No. 7) and of "Intimidating A Judge" used against him at trial. <u>See 11</u> VRP at 30-50, May 13th, 2013 (dialogue between Petitioner, DPA Roger Davidheiser, and Judge George N. Bowden). Here, these were <u>NOT</u> Jury Instructions in any way proposed or "invited" by Defendant. Cf. Court's Jury Instructions No. 8-12, No. 04-1-14102-4 JEA, Feb. 2, 2006; Reply Brief of Petitioner, PRP No. 63060-7-I, August 6, 2009 (discussing "invited error" doctrine). Petitioner did <u>NOT</u> "invite" this error, and his own proposed Jury Instructions were not adopted by Judge Bowden. See also VRP, No. 04-1-14102-4 JEA, Feb. 2, 2006 (jury instructions). Moreover, the Jury Instruction No. 7, used by the Court, NEVER defined exactly WHICH "Judge" was the target of Defendant's alleged November 18, 2012, "threats"!

... (1) That on or about November 18, 2012, the defendant [Petitioner] directed a threat to

a Judge [sic] because of a ruling or decision of the judge in an official proceeding...

Court's Jury Instruction No. 7, Case No. 12-1-06088-2 SEA, May 13th, 2013, emphasis added. Nowhere did this Instruction specify exactly **WHICH** "Judge" was the target of Petitioner's purported "threat." (At least TWO other "Judges" were raised by the State at trial as the target of potential "threats" by Defendant: Judge Douglas Smith and Washington Chief Justice Barbara A. Madsen. See 11 VRP at 110-114 (rebuttal of R. Davidheiser, DPA).) Hence, it was never clarified to the jury exactly who Defendant was accused of "[direct[ing]] a threat to," in the context of the case(s) at bar. Literally, Jury Instruction No. 7, made it a "crime" to "threaten" any "Judge," anytime, anyhow —

Similar to DPA Davidheiser's allusions, in rebuttal, about "historical [sic] figures," without more specificity in the Court's Jury Instructions, Count 1 must be reversed by this Court.

Moreover, the ambiguity in the State's

Washi... 1047, ...co ...L ...1000 ...1-43 ...ash. ...p. (Div. ...(July ..., 2000)) ...a ...995-8- ...) ...ifferen- ...ing ...W 9A.61. ...0 (1)(c) (b)(ro... ascrable ...ar" test) ...com ...W 9A. ...020 (1)(b) (b)); ...ne v. ...sell, ...Wash. ...1805

State's Jury Instruction is not limited to the "Intimidating A Judge" charge. Jury Instruction No. 9, "the defendant knowingly threatened to kill Judge Julie Spector ..."; did not clarify whether or not this charge was based on Julie A Spector's status as a King County Superior Court Judge or not, making Count II essentially redundant to the "Intimidating A Judge" charge levied by the State in Count I.

In 2011, RCW 9A.46.020 was amended to elevate "threats" against designated "Criminal Justice Participants," from a "gross misdemeanor" to a "class C-felony," based solely upon the status of the recipient of the "threat," as enumerated under RCW 9A.46.020 (2)(b)-(4):

... (b) A person who harasses another is guilty of a class C felony if any of the following apply: ... (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For

the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat...

RCW 9A.46.020 (2)(b), Laws of 2011 C64 § 7, eff. July 22, 2011. Also:

...(4) For purposes of this section, a criminal justice participant includes any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney

From this lengthy "Laundry List" of altruist statist "War On Crime" "victims," as well as from the State's Jury Instruction No. 9, it is NOT clear whether Appellant was convicted in Count II of the Information, for an alleged "threat to kill" "Judge Julie Spector"

as prohibited under RCW 9A.46.020 (2)(b)(ii) —or for making any kind of a "threat" supposedly "directed" against a "criminal justice participant" under RCW 9A.46.020(2)(b)(iii)-(iv)— or because of Petitioner's alleged past "threats" as chronicled during the May 6th-May 13th, 2013 trial (e.g. 10 VRP 50-199, May 9th, 2013) and as prohibited under RCW 9A.40.020 (2)(b)(i). State v. Oster, 147 Wn.2d 141, 146-8, 52 P.3d 26 (2002) (prior conviction as element of RCW 10.99.040(4)(c). In particular, the jury instructions given in the case at bar (No. 12-1-00088-2 SEA), did NOT in any way: (i) Clearly state the identity of the anonymous "Judge" in Jury Instruction No. 7; (ii) Clearly distinguish whether or not the "threats" charged in Count II, were based upon the status of "Judge Julie Spector" as a "criminal justice participant," and were in any way distinct from the "course of conduct" "Intimidating A Judge" charged in

NOTE: | Count 1 of the State's Information. State v. Schultz, 146 Wn.2d 540, 549, 48 P.3d 301 (2002) (Sanders, J., dissenting) (preconviction "no-contact" order extended by court). As noted by Appellant in his May 13th, 2013, Summation to the Jury, covered in No. 12-1-06688-2 SEA, Government has no business, in a free society, "protecting" one gender from another, or one group of government employees from the rest of society. But cf. State v. Parmelee, 108 Wash. App. 702, 710, 32 P.3d 1029 (2001) (Agid, J.) (merger doctrine applied), review denied, 146 Wn.2d 1009, 52 P.3d 519, appeal after new sentencing hearing, 121 Wash. App. 707, 90 P.3d 1092, habeas corpus denied, 2006 WL 1525812, affirmed, 251 Fed. Appx. 450, 451-2 (Ninth Circ. (WA) (2007)) (prosecutorial vindictiveness denied in [pre-Blakely] elevation of one year sente for felony stalking to FOUR years); but cf. In re Parmelee, 148 Wash. App. 1041, 2009 WL 377061 (Wash. App. (Div. 1 (Feb. 17, 2009)) (No. 58190-2-1); State v. Parmelee, 170 Wash. App. 1036, 2012 WL 4055815 (Wash. App. (Div. 1 (Sep. 17, 2012)) (No. 67271-1-1). The purpose of

Margin: E, viz, | ...kely v. | ...hington, | 2 U.S. | 6, 307, | L. Ed. | 403, | S. Ct. | 31 | 2004) | alia, J.) | ...ury must | ...d facts | ...fficient | increase | ...nence | criminal | ...efendant) | ...versing | Wash. | ...p. 851, | ...-871, 47 | 3d 149, | ... (2009)), | See

This appeal, is NOT to recite the lyrics to "Puff The Magic Dragon" or to live in a "Land of Parmelee," but simply to note that the irregularities in the County Jury Instructions No. 7-10, prevented Petitioner from receiving a fair trial in the case at bar;

COMMENT
Title of crime. For ease of reference, the [WPIC] committee has referred to this crime as "felony harassment." The word "felony" should not be included unless the jury is also being instructed on the gross misdemeanor form of the crime. WPIC 36.07. Juries are routinely instructed that they should not consider potential punishment during their deliberations. See e.g. WPIC 4.02, (Conclusion of Trial-- Introductory Instruction...

Washington Practice Series, Volume 11, Washington Pattern Jury Instructions--Criminal Part VIa Crimes Against Personal Security—WPIC Chapter 36—Harassment And Domestic Violence. WPIC 36.07.02 Harassment-Felony-Threat to Kill-Elements. However, these parameters were all ignored in Jury Instruction No. 9, as prepared

by The Court:

No. 9

To convict the defendant of the crime of felony harassment as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about November 18, 2012, the defendant knowingly threatened to kill Judge Julie Spector immediately or in the future;
(2) That the words or conduct of the defendant placed Judge Julie Spector in reasonable fear that the threat to kill would be carried out...

Court's Jury Instruction No. 9, May 13th, 2013. And in Instruction No. 7:

No. 7

To convict the defendant of the crime of intimidating a Judge as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:
(1) That on or about November 18, 2012, the

defendant directed a threat to a Judge because of a ruling or decision of the Judge in an official proceeding...

Court's Jury Instruction No. 7. Neither one of these nor any of the Court's other instructions (see e.g., Jury Instruction No. 10), clearly distinguished between the cited "threat to kill" (State's Exhibit No. 1) attributed to this Defendant and a lesser "threat", "to cause bodily injury in the future" (Jury Instruction No. 10), nor did any one of these Instructions, identify who the undefined "Judge" was, in Instruction No. 7, nor the identity of "another person" in Instructions No. 8, No. 10. Cf. WPIC 36.07.02, 03; State v. Mills, 154 Wn.2d 1, 7, 8-15, 109 P.3d 415 (2005) (Ireland, J. Pro Tem) ("reasonable fear" of "threat to kill" distinguished from "fear" of some lesser "threat"). Here, despite the seemingly almost mathematical precision of the State's and the Court's "Intimidating A Judge" (No. 7) and "Felony Harassment" (No. 9) Instructions, actual distributed to the jurors at trial, the Court NOWHERE identified the "Judge" in Instruction No. 7, but simply used the generic term, "directed a threat to a Judge," (Instruction No. 7 (1)), and, similarly, did not distinguish whether the charge in Instruction No. 9, was dependent upon

(future emergency "detention" authority of U.S. President). In sum, citizens are not "better off" living in ignorance of potential threats—"true" or otherwise—and cases such as Kilburn and Ballew must be reversed!

ARGUMENT (as if the above were not enough):

I. JURY INSTRUCTION No. 7 IS AN EXAMPLE OF "GOVERNMENT FAILURE"—"A THREAT TO A JUDGE" IS NOT SPECIFIC ENOUGH FOR A PROPER DESCRIPTION OF THE CRIME CHARGED.

As noted before, Jury Instruction No. 7, which purports to describe the "Intimidating A Judge" crime charged, under RCW 9A.72.160 (1)-(3), does NOT even specify the name of the alleged "Judge." Even the Court's Jury Instructions No. 8-12, used in the February 2006 verdict Judge Spector presided over (King Co. No. 04-1-14102-4 SEA), were more specific than No. 7 in the case at bar. Nor is the identity of the alleged "victim" in Count I, Judge Julie A. Spector, specified

specified anywhere else in the Court's Jury Instructions. At a minimum, this charge (Count 1) must be reversed. State v. Eplett, 167 Wash. App. 660, 663-667, 274 P.3d 401 (Wash. App. (Div. 2 (2012))) (Johanson, J.) (ineffectiveness of trial counsel based on defective instructions). Since Petitioner clearly objected to the Court's and the State's proposed instructions (see 10 VRP at 50-75, May 13th, 2013), the "invited error" doctrine does not apply here!

II. RCW 9A.72.160(2)(b) / RCW 9A.46.020(2)(b)(iii)-(iv).

Here, the error is the failure by the trial court to follow the re-indexation of the Revised Code of Washington since the 1985 enactment of both statutes. Laws of 1985, ch. 327, § 1, eff. May 1st, 1985. As noted supra, RCW 9A.04.110(25) was replaced and re-indexed sequentially, starting in 2007, c 79, § 3, and extended in 2011, c 166, § 1, RCW 9A.72.160 was NEVER re-written by the Legislature. See State v. Albright, 144 Wn. App. 560, 568, 570, 183 P.3d 1094 (2008) (re-indexation of RCW 9A.44.130(11)(a)). Since it is possible to envision that the legislature wished to limit the application of RCW 9A.72.160, to "threats" [illegible]
[illegible] RCW 9A.72.160 [illegible]

enactment falls within the first two cases enumerated in State v. Taylor, 97 Wn.2d 724, 728, 649 P.2d 633 (1982) (quoting Jenkins v. Bellingham Mun. Court, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981)).

In the second case (Count II), the Court's Jury Instruction No. 9, did not clearly distinguish between "threats" directed against "Judge Julie A. Spector" in the capacity of a "sitting King County Superior Court judge" (State's Trial Brief at 8-10, Feb. 11, 2013), and "threats" against "Julie A. Spector" as a private citizen. In effect, by labelling the alleged "victim" in Count II, as "Judge Julie A. Spector," Jury Instruction No. 9, obscured the distinction between the State's "Intimidating A Judge" charge ((Count I), filed under RCW 9A.72.160 (1)-(3) (however defined) and the corollary "Felony Harassment" charge (Count II), charged under RCW 9A.46.020 (1)(b)(2)(b)(i)(iv). In particular, the Jury Instruction No. 7, did not clearly distinguish whether or not the jury, in No. 12-1-06088-2 SEA, had to find Appellant "guilty" of making a "threat" against a "Law Enforcement Participant" (RCW 9A.46.020. (1)(b)(2)(iii)-(iv), or not. Both charges, allowed the

"threats ... to cause bodily injury in the future against the person threatened or any other person...," citing to the statutory definition of "threat", in RCW 9A.72.160(2)(b), the same section which was "re-indexed" by the Legislature starting in 2005. However, following the "3-pronged "test" cited in Albright, supra, 144 Wash.App 566 at 568-573 it is possible to envision that the Legislature sought to limit the scope of the statute, to "threats ... immediately to use force against anyone [who is] present at the time ..." as delineated under RCW 9A.72.160(2)(a). In terms of the case at bar, there was NO ONE "present at the time" of Petitioner's alleged 4:54 a.m. "911" call, received by SPD from the pay phone at 4245 University Way, NE. 10 VRP 1-194, May 9th, 2013, Testimony of Wa Friesen. Hence, if the "Intimidating" statute is properly limited to "threats" as defined in RCW 9A.72.160(2)(a) there is not sufficient evidence, that Petitioner, in any way, made a "true threat", against "Judge Julie A. Spector," since neither

the Judge, nor anyone else, was "present" at the time this alleged 4:54 a.m. "911" [illegible] (RCW 9A.72 [illegible]

~~Here~~ However, even accepting the State's and Judge Bender's definition of a "true threat" as a "serious [expression of intention] to carry out the threat...." (Court's Jury Instruction No. 10), since there was NO ONE "present at the time" of Petitioner's cited "November 18, 2012 "911" pay phone "threats" received by SPD (and not by Judge Spector), at least Count I of the Information must be dismissed. State v. Ashley, 11 Wash. App 423, 426, 523 P.2d 949 (1974) (RCW 9.61.230). Since there was literally NO ONE "present" at the time these "threats" were "made" by Petitioner, this charge must be dismissed. State v. Kilburn, 151 Wn.2d 36, 41, 45 (2004) ("threats" written in a private "diary" not "true threats" under RCW 9A.46.020(2)(b)). Similarly, since the State's and the Court's Jury Instruction No. 9, did NOT distinguish whether or not the definition of "Felony Harassment" as encompassing the "victim" in the case at bar (Count II), was functionally dependent upon the status of "Judge Julie Spector" as a "sitting King County Superior Court Judge" (State's Trial Brief at 8-10, No. 12-1-00088-2 SEA, Feb. 11, 2013), this charge is essentially redundant to the charges in Count I, and must be

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"guilty" of the lesser charge of "Felony Harassment," then he cannot be "guilty" of the greater charge of "Intimidating A Judge," either. 9 VRP 100-155, May 8th, 2013, Opening Statement of Defendant [Petitioner].

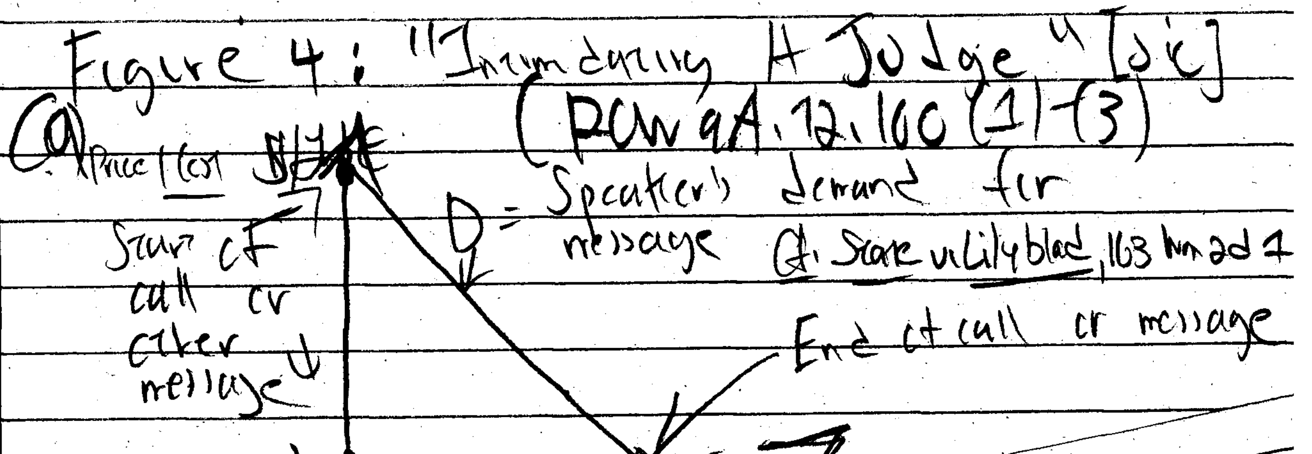
III. IS THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, "TOO [SIC] INTIMIDATING" FOR WASHINGTON'S TRIAL AND APPELLATE COURTS? (USCS, Constitution Amendments I and XIV; Article I, §§ 3, 5, 12; RCW 9A.72.160 (1)-(3).

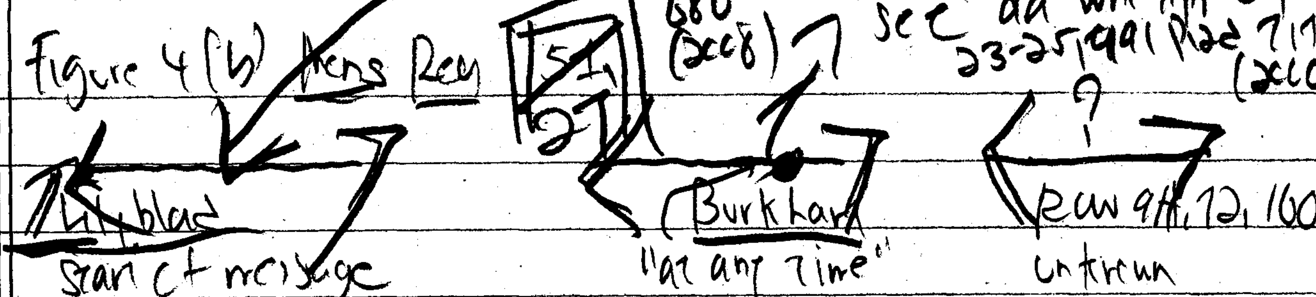
A. Vagueness.

As noted above, Defendant [Petit.] was "convicted" under a section of the State's Revised Code [RCW 9A.04.110 (25)] which was re-indexed or repealed in 2005. He was also "convicted" for "threats" against "Judge Julie A. Spector" - without clearly differentiating whether this charge (Count II), was functionally dependent upon her status as "Judge Julie Spector." RCW 9A.46.020 (2)(b)(~~i-iv~~). Furthermore, RCW 9A.72.160(1), does not in any way determine whether or not the "threat" directed against a "ruling or decision" of the judge, MUST occur within the three-year statute of limitations, set by the Legislature for most ... (RCW 9A.04.080(...)

whether the ruling can be arbitrarily remote in time from the cited "threat." It is also not clear, whether or not a defendant charged under the statute, can be convicted for "threats" as defined under [RCW 9A.04.110 (28)], supposedly "directed" against ~~ag~~ the "internal condition" of the judge, "threats" to "start strikes, boycotts, etc.", "threats" against "personal relationships" of the "victim," "suicide threats" etc.—all encompassed with the aegis of the "re-indexed" RCW 9A.04.110 (28) RCW 9A.72.160 (2)(b). Furthermore, the statute in no way clarifies the requisite mens rea to be convicted under the statute—whether the speaker or other author of the "threat," must "direct" the "threat" against a "ruling or decision" of the judge at the start of the alleged communication—or at any time before or after the alleged "threat" is "made or received":

Figure 4: "Intimidating A Judge" [sic]
(RCW 9A.72.160 (1)-(3))





Furthermore, the charges in the case at bar, in no way specified exactly which "ruling or decision" attributed to Judge Spencer, Pet. was tried and convicted for allegedly "directing his cited "threat" against. Since the statute is not limited to "threats" directed against a pending "ruling or decision" of a judge or other decision-maker, and DPA Roger Davidheiser, refused in any way to clarify the application of this part of the law (II VRP at 1-55, May 13th, 2013), this law must be ranked "vague as applied" in the case at bar. Judge Spencer (as well as other Judges at the appellate and trial levels), made thousands of "rulings or decisions" during the almost ten-year-long course of No. 12-1-00088-2 SEA, from Nov. 15, 2004 to Feb. 14, 2013. Holmes v. Satterberg, 508 Fed. Appx. 660, 661 (Feb. 14, 2013) (No. 11-36069) (Ninth Cir. (WA) (2013)) ("custody" not found under 28 U.S.C. § 2254(a)). Since the State refused in any way to clarify or narrow the scope of the "Anti-Intimidating" statute, RCW 9A.

Judge Spencer — or even to specify exactly which "judge" these "threats" were "directed" at (Instruction No. 7), these charges must be dismissed as "void-for-vagueness!"

... However, in the instant case, there is no way to establish which crimes the jury relied on, much less determine that there is substantial evidence to support them. The jury was given a choice, not between two alternatives as in [State v. Franco, 96 Wn.2d 816, 823, 639 P.2d 1320], but of the entire catalog of criminal offenses... The instruction was, therefore, constitutionally defective...

State v. Bonds, 98 Wn.2d 1, 16, 653 P.2d 1024 (1986), at 18. See also State v. Hawthorne, 48 Wash. App. 23, 28, 737 P.2d 717 (1987) (William A. Jaquette, Prosecuting Atty.) (vagueness of charge); State v. Savage, 94 Wn 2d 569, 618 P.2d 82 (1980). The same arguments hitherto directed by Petitioner against Court's Jury Instructions No. 7-10, applies even more to the vagueness of the "Intimidating" charge itself, not premised on any specific "ruling or decision" ... by Judge Spencer during the

course of Petitioner's trial Jan 30, 2006 –
Feb. 2, 2006 in No. 04-1-14102-4 JEA.
See Clerk's Papers, No. 88-101, No. 04-1-
14102-4 JEA. Similar to the control of a
centrally planned economy, the 2006 trial
involving Judge Spencer, involved many thousand
of potential "rulings or decisions" (as well
as other cases presided over by Judge Spencer
since 1999). Hayek, Collectivist Economic Planning
(1935 ed.) (impossibility of successful economic
calculation under "socialism" or other
central economic "planning"); Rothbard,
Man, Economy And State, Ch. 10,
"Monopoly" (1962 ed.) (same). Exactly
WHICH "ruling or decision," were Appellant's
~~purported~~ "threats" supposedly "directed" against?
Cf. National Federation of Ind. Businesses
v. Sebelius, 132 S.Ct. 2566, 2589 (June 28, 2012
(Scalia, J., dissenting) (inapplicability of Commerce
Clause to justify health "insurance" mandate).
Nor is Petitioner's March 10, 2006 sentencing, the
revocation of his firearms rights by Judge Spencer
(RCW 9.41.040(2)(a)(i)), the DNA "testing"
ordered in the 2006 case (RCW 43.43.843 –
for which Petitioner was assessed a $100.00 mandatory
[illegible]

Maryland v. King, 133 S.Ct. 1958, 1981, 1989 (June 3, 2013) (Scalia, J., dissenting) (DNA "testing" of arrestees upheld), the revocation of Petitioner's voting rights, the decision to admit "prior crimes" evidence (ER 404(b)) consisting of former UW Provost Steven Glenn Olswang's unsupported allegations he saw Petitioner "standing in the driveway" [sic] in front of 1504 East Interlaken, on June 7, 1998 (see State v. Holmes, supra, 141 Wash. App. 1040, 2007 WL 4157303 at *1-*3 (Div. 1 (Nov. 26, 2007)) (Ellington, J.) (ER 404(b))) for WHAT exact "ruling or decision", attributed by the State to Judge Julie A. Spector? The most critical "ruling or decision" adverse to this Petitioner, in the trial of No. 12-1-00088-2 SEA occurred on Monday, January 23, 2006 (not in Super Bowl XL!), before the Honorable Judge Teresa B. Doyle, who upheld the facial validity of the statute RCW 9.61.230 (1)(c)(2)(b), as applied to Defendant. See RP, No. 12-1-00088-2 SEA, Jan. 23, 2006. (Judge Doyle was the defense attorney in State v. Dyson, 74 Wash. App. 237, 243-250, 872 P.2d 1115 (1994), upholding RCW 9.61.230 (all parts).) Yet Petitioner is only being charged ... "harassment". Judge Spector based on a

"ruling or decision" attributed to that Judge. See 11 VRP 55714, May 13th, 2013 (summation of Petitioner). Nowhere in the Court's Jury Instructions, is a specific "ruling or decision" (or even the name! "Judge Spector"!), enumerated in Instr. 7-8 (May 13th, 2013). Here, this charge (Count I), must be dismissed. State v. Farr-Lenzini [?], 93 Wash. App. 453, 461, 463, 970 P.2d 313 (1999) (specificity of "felony eluding" charge).

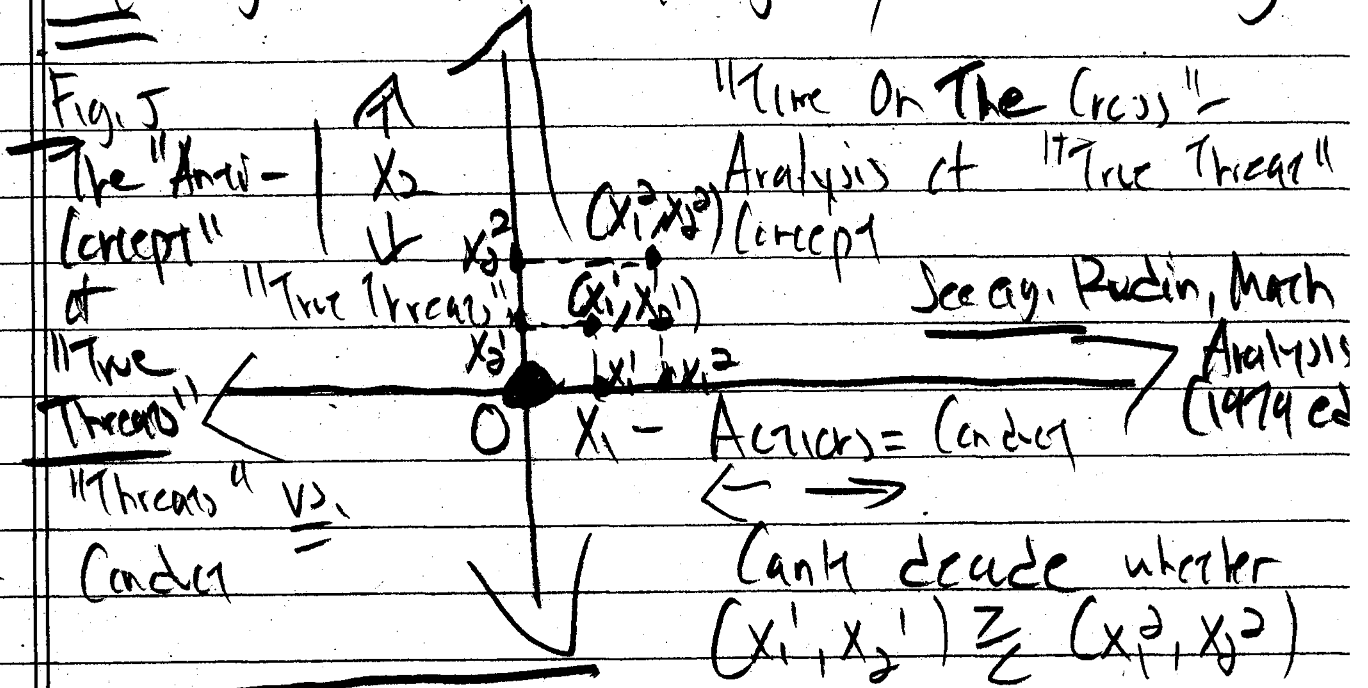
B. Overbreadth.

It suffices to say, that the First Amendment to the Federal Constitution, is "too intimidating [sic]" for Washington State's judiciary. Cf. FCC v. Fox Television Stations, supra, 132 S. Ct. 2321 (Ginsburg, J., concurring), See also Apollo Media Corp. v. Reno, 19 F.Supp.2d 1081, 1089-90 (three-judge panel) (1998) (47 USCA § 223(a) [CDA of 1996] stricken on overbreadth grounds). The statute at bar, RCW 9A.72.160(1)(3) [?] unlike the companion statute RCW 9A.46.020(1)(b)(3)(b) applied in Count II against Petitioner, is not in any way limited to "threats" against Judges, inducing a "reasonable fear" that the cited "threat"

parameters applied in RCW 9A.46.020(1)(b)(2)(b)(i)-(iv), to delineate a "true threat". See e.g. State v. Allen, 176 Wn.2d 611 at 618-620 (note 11) (C.W. Johnson, J.) (def. of "true threat" under Washington State law).
Even if one accepts (as PETITIONER DOES NOT!), that the utterance of so-cal "true threats" is a curse upon mankind (similar to e.g. alcohol before Amd. 18, USCA [Volstead Act] was enacted in 1918) which government can and SHOULD legally prohibit, RCW 9A.72.160(1)(3), contains NONE of the constitutional limitations upon the "true threat" concept contained in e.g. RCW 9A.46.020. See State v. J.M., supra, at 479-80 (2001) (Madsen, J.). Instead, the law punishes someone, such as Petitioner, solely for their alleged future "dangerousness" to judges. This lies beyond the proper functions of a constitutionally limited government. See e.g. United States v. Stevens, 559 U.S. 460, 130 S.Ct. 1577, 1587-92, 176 L.Ed.2d 435 (2010) (J. Roberts, C.J.) ("protected" status under First Amendment, of "animal cruelty" videos [videos depicting illegal murder of ani
To reiterate! punishing someone, such as [illegible] for their alleged

+ 5~~1~~. 33.

"dangerousness" to Judges (or to anyone else), **clearly** exceeds the limits of a valid, constitutionally limited government. See e.g. Ayn Rand, "The Nature of Government" in Capitalism: The Unknown Ideal (1967 ed.) The charges levied against this Defendant (See Instr. No. 7), did **NOT** even specify WHICH "Judge" he was charged with allegedly "threatening."



See Court's Jury Instr. No. 7. Since one of the purported "justifications" for RCW 9A.72.160(1)-(3), is the future "dangerousness" of the defendant (See State v. J.M., at 479-480), and of all persons charged and convicted under the statute, the scope of the statute clearly exceeds the maximal scope of a proper government, in the

v. City of St. Paul, 505 U.S. 377, 388, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992)) ("facial underinclusiveness" of "hate crimes" ordinance) (Scalia, J.). (Furthermore, if everyone obeyed the law [RCW 9A.72.160(1)(b)] in question, then this justification [future "dangerousness"] would be fatally undermined!) Since RCW 9A.72.160, punishes every citizen, based simply on the supposed likelihood, $p_1 > 0$, in $E(X) = (p_1 \cdot x_1) + (p_2 \cdot x_2)$, of each individual to commit a future violent crime, x_1, RCW 9A.72.160 is facially overbroad. U.S. v. Alvarez, 132 S. Ct. 2537, 2540, 183 L. Ed. 2d 574 (2012) (Kennedy, J.) ("Stolen [sic] Valor Act" of 2008 invalidated). Furthermore, if society wanted to distinguish exactly who MIGHT commit a future violent crime, it would be far better to allow the un-regulated utterance of "true threats" -- since the existence of the law might well exert a "chilling effect" on those who might otherwise signal their intention to commit a future violent act.

Figure 5 "Screening" or "Signalling" of "True Threats" - An Analysis

(See A. M. Spence, Theory of

(1973 edition).)

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Figure 6

Group I — "Law-Abiding" Citizens

Group II — "Terrorists," "Criminals," or Other "Threat-Makers"

Price/Wage Disutility (Cost)

S_I — Supply for Group I

S_{II} — Supply Curves of Group II

w_1

w_2

X_2

↓ Returns to activity!

Economics of "Threats":

q_1 q_2

Quantity of Signalling →

X_1 — Quantity of "Threats" or Other "Signalling"

→ See Spence, Screening, 1974 ed.

Suppressing the "threats," in effect forcibly suppresses the "signals" society needs in order to determine who might commit a future "crime" of violence. See A. Michael Spence, Signalling: A Theory of Labor Market Screening (1974 ed.) and e.g. Layard and Walters, Microeconomic Theory (1978 ed.) (theory of higher educational labor market "signalling" or "screening"). Since "criminals" have a lower "cost" curve, S_{II}, to make convincing "threats" than those in category I ("S_I"), allowing unregulated "true threats" can serve an important social function in terms of sorting who is likely to commit a future violent act. Gary S. Becker, Economic Theory (1968) (analysis of crimes and punishments); Mc Closky v. Kemp, 481 U.S. 279, 287-20[illegible]

(statistical evidence in capital case). Finally, in the cases at bar, Petitioner's alleged "threats" were deemed, by the US Secret Service, NOT to be a "true threat" as regards the President of the United States or other Federally protected officials, 18 USCS §§ 871-879; United States v. Richards, supra, 271 Fed. Appx. 174, 176-178 (Third Circuit (PA) (2008) (Hillary Rodham Clinton). See Vols. 9, 10, 11 of VRP, passim (opening and closing statements of Petitioner re "threats" to Pres. Obama). Cf. State v. Holmes, supra, 2007 Westlaw at 4157303, *1-*3. Following this criteria, if Petitioner is NOT a "true threat" to e.g. President Obama, he is NOT a "threat" to Judge Spencer, or to any other, lesser, public officials, as well. State v. Locke [sic!], 175 Wn. App 779, 307 P. 3d 771, 784-786 (Governor Christine Gregoire).

2. RCW 9A.46.020(1)(b)(2)(i)-(iv).

In the case at bar, Petitioner was criminally charged and convicted, for an alleged Nov. 18, 2012, 4:54 a.m., "911" telephone "threat" which was NEVER [illegible]

to Judge Julie A. Spector (or any other public officials) directly, 11 VRP at 55-114.

A. Vagueness.

RCW 9A.46.020(1)(b)(2)(b)(i)-(iv), is unconstitutionally vague, "as applied" in the case at bar, since, inter alia, it does NOT in any way specify exactly who "the person threatened," as well as "the person placed in reasonable fear..." must be. In a case such as the one at bar, where the alleged "threat" is NOT communicated directly by the speaker to the alleged "victim," (10 VRP at 1-50, May 9th, 2013), who must be placed in the "reasonable fear" that any alleged "threat... will be carried out"? Judge Spector? Seattle SPD Police Detective Wesley Friesen? The "911" dispatchers (not allowed by Judge Bowden to be cross-examined at trial!), who responded to the "911" call? The other three alleged targets of the "threat," on Nov. 18, 2012 (Judge Douglas J. Smith; King Co. Atty. Dan Satterberg; Shoreline City Crim. Prosecutor Sarah M. Roberts)? The target of the Nov. 20, 2012 call? (Pres. Barack Obama? U.S. Secret Service Agent Grimsley [illegible] contacted

Were little no hierarchy of values, in the ... using ... threat" ... cases ... mostly ... involving juveniles under the age ... 16) in ... WA ... literature. ... we ... is a ... plasma of ... initials ... with no analysis ... varying

of an alleged "true threat" against Judge Julie A. Spector, but in effect, a nolle prosequi or an "acquittal" of a parallel "true threat" against the Chief Executive of the Land (not a the coach of the Seahawks!!) R.A.V. v. City of St. Paul, 505 U.S. 377 at 388 (1992), Nor were any one of the other three or four alleged "victims" of the Nov. 18, 2012 "911" call placed in "fear" by Petitioner's attributed "threats!" These inconsistent results, clearly show that RCW 9A.46.020, is too vague "as applied" against this Defendant. Cf. State v. Smith, Wn. Ct. App., 111 Wn.2d 1 at 10-15, 759 P.2d 372 (1988) (Durham, C.J.) (rejecting vagueness challenge to RCW 9A.46.020 challenging concept of "lawful authority" in statute); cf. Smith idem at 15-23 (Pearson, C.J., Utter, J., dissenting).

B. Overbreadth.

RCW 9A.46.020, is also too broad as applied against this Defendant. In particular, the phrase "... " contained in the

statute, CANNOT be applied as written

in a case such as the one at bar, where the alleged "threat" was NEVER communicated by the speaker, directly to the alleged "victim(s)." State v. Allen, 176 Wn 2d 611, 619-620 (2013) (face-to-face "threats"). "How can one knowingly threaten, if one does not know that what one says is [frightening] to another [person]." Allen, loc. cit., at note 11 (quoting State v. Schaler, 236 P.3d 858, 863-867, n 7 [and 169 Wn 2d 274, 286] (2010)). In the case at bar, Petitioner had no way of estimating or gauging the reaction of Judge Spector (or other alleged recipients of the "threat") to his "words or conduct" — since the participants were separated by the medium of the telephone. Cf. RCW 9A.72.160 (2)(a), "anyone present at the time"; see also City of Seattle v. Huff, 111 Wn.2d 923, 925-927 (1989) (Dolliver, J.) ("medium of telephone" inherently separates face-to-face "threats"). "How can one knowingly threaten," someone whose reaction was NOT visible to the Petitioner, because of the nature of a "911" call. In sum, State v. J.M., supra at 480 (2001), and other cases, which hold

[margin notes, partially cut off:] ...TE! This ...se, ...as ...at ...ilable Pet. ...the ...e of ... ...62, 2006 ...rial ...., 04-1 ...02-4 SEA ...eer ...Wn ...4, 230 (c)(2)(b) ...d, here, ...tense ...as NOT ...ailable ..., the ..., of ...use, ...either was ...llen!!

acqu. ct RCW 9A.46.020 (1)(b)(2)(b)(i)-(iv)"), NEED NOT be communicated by the speaker to the alleged "victim," are not applicable, since Justice Deborah M. Stephens' decision, on July 29, 2010, in Schaler holding that the speaker cannot "knowingly threaten" the alleged "victim" of "Felony Harassment" under RCW 9A.46.020 "without knowing that what one says is [frightening]..." to the listener or other alleged "victim." Fr sum, J.M. (basing a adult's purported "First Amendment 'rights'" on those delineated for juveniles) and other similar cases, must be repudiated by this Court. FCC v. Fox Television, supra, at 2321 (2012) (Ginsburg, J.) (FCC regulations Holmes v. City of Shoreline, WA, Petition for Certiorari, No. 11-11054 (Oct. 1, 2012) (Shoreline Municipal Code SMC 9.10.430 challenged.

IV. PETITIONER DID NOT HAVE THE STATUTORY "INTENT" TO DIRECT

a 69 ... n.2d ... 4, 286, ... 0 P.3d ... 8, 864 ... uly 29, ... 2010). ... tephens, J.) ... aylor ct ... e ... reats" ... nder ... CW 9A. ... .020(1)(b) ... (b)(ii)). ... also ... ng ... inty ... ALJ ... ppeal No. ... 1-04212 ... City of ... nle v. ... ing, ... arch ... , 1987

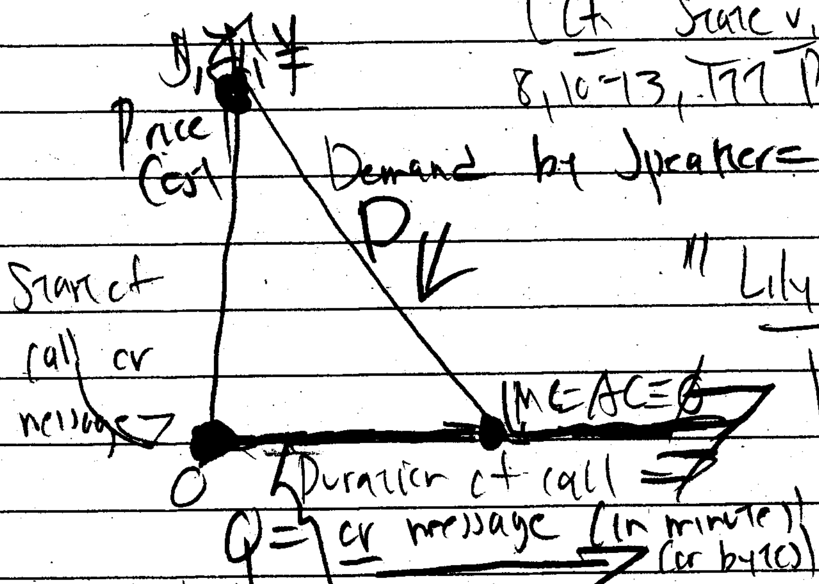
A THREAT AGAINST A "RULING OR DECISION", "OF A JUDGE [SIC]," AT THE START OF THE CITED 4134 Nov. 18, 2012, "911" CALL

The "911" call cited by the State (9 VRP 1-155, 10 VRP 1-199), started with references to ex. King County Attorney Daniel T. Satterberg and Seattle (King County) Municipal "District" Court Judge Douglas J. Smith — and only referred to "Judge Julie [A.] Spector" during a five second interval of the call, (00:00:16 - 00:00:21, Nov. 18, 2012). Clearly, Petitioner did not initiate this "911" call with the intent to "direct" any "threat ... against a ruling or decision" made by Judge Spector. State v. Lilyblad, loc. cit., 163 Wn. 2d 1, 8-13, 177 P.3d 686 (Feb. 7, 2008) (Owens, J.) (statutory "intent" under RCW 9.61.230). The Supreme Court should accept review of this case, in order to determine exactly which mens rea is requisite in ... the offense of

42.

"Intimidating A Judge," under the aegis of RCW 9A.72.160(1)+(3).

Figure 1 "The Lilyblad" Issue (reprinted from Reply Brief of Pet., No. 63060-1-I, August 6, 2009), (Cf. State v. Lilyblad, 163 Wn.2d 1, 8, 10-13, 177 P.3d 686 (2008) (Overst...



"Lilyblad Revisited" (Cf. City of Redmond v. Burkhart, 99 Wn. App. 21, 25-27, 991 P.2d 717 (2000))

This issue applies equally to the set of statutes prohibiting e.g. "Intimidating A Judge" [resp. Juror, Witness, Public Servant, etc.]. Cf. State v. Meneses, 169 Wn.2d 586, 595, 238 P.3d 495 (2010) (Stephens, J.) ("Intimidating A Witness" does not merge with "Felony Telephone Harassment"). Must the speaker start his call or message ("direct[s] a threat"), with the statutory "intent to intimidate" the listener or other recipient of the message? Meneses, idem 169 Wn.2d 586 at 587-9 ("intent to harass"); WPIC 36.71, Telephone Harassment. Clearly, one cannot be "guilty" of the "crime" of "Intimidating A Judge," unless one has the [illegible] RCW 9A.[illegible]

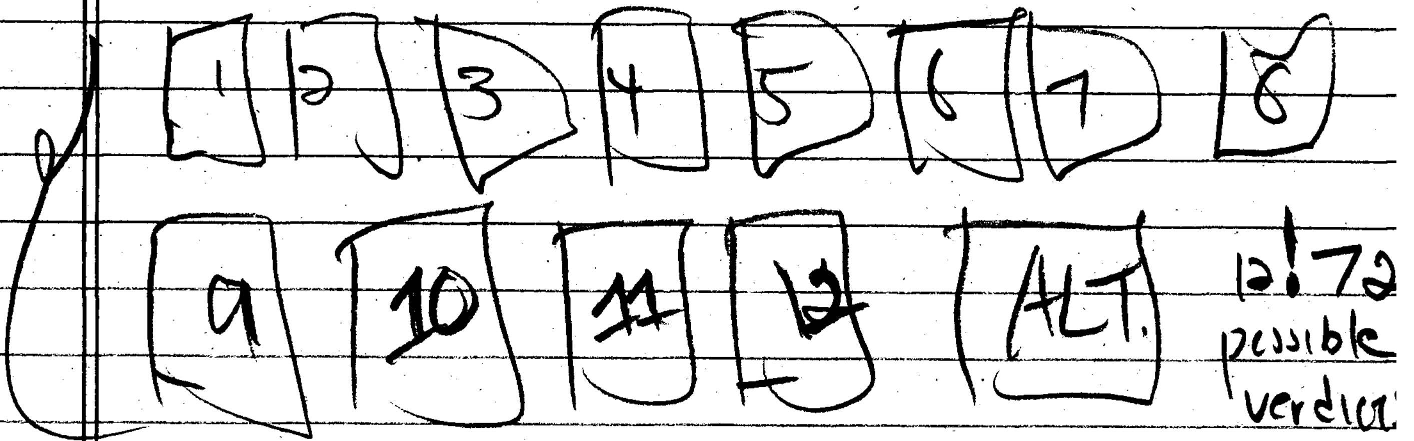
State v. Ballew, 167 Wash. App 359, 363-366, 272 P.3d 925 (2012) ("intent to intimidate" distinguished from "intent to alarm" under RCW 9.61.160(1)(a)-(b)); Virginia v. Black, 538 U.S. 343, 358, 123 S.Ct. ~~1536~~ 155 L.Ed.2d 535 (2003) (O'Connor, J.) (Virginia "Anti-'Cross Burning' To Intimidate" law upheld as prohibition on conduct) In particular, one cannot be "convicted," as in the case at bar, of "Intimidating A Judge," without some assessment of the mens rea or "intent to intimidate" on the part of the Defendant. State v. Leach, 113 Wn.2d 679, 681, 782 P.2d 552 (1989) (sufficiency of jury instructions on mens rea).

V. PETITIONER WAS DEPRIVED OF HIS SIXTH AMENDMENT RIGHTS, TO A UNANIMOUS (OR AT LEAST PLURALITY), VERDICT BY THE LACK OF SPECIFICITY OF THE <u>TWO</u> CHARGES AGAINST HIM.

In the cases at bar, Petitioner could have been convicted of the charge of "Intimidating A Judge," based upon any one of thousands of possible "rulings or decisions" allegedly made by Judge Spector (or by "a Judge," Instr. No 7) during the course of the Jan 30 - Feb 2, 2000 trial Judge Spector presided over. 10 VRP
[illegible]

"alternative means" to commit the two crimes alleged, were supported by "substantial evidence." State v. Petrich, 101 Wn.2d 566, 569, 683 P.2d 173 (1984) ("alternative means" doctrine explicated); State v. Kitchen, 110 Wn.2d 403, 409, 756 P.2d 105, 108 (1988) ("substantial evidence required to support unanimous jury verdict"). Here, each one of the 12 jurors, could have selected a different "alternative means" to commit each one of the two counts alleged:

Figure 8 "Alternative Means" Diagrammed:



In each one of the two counts alleged, Juror 1 could have selected ONE judicial "ruling or decision," Juror 2 a different "alternative means", etc. Without more specificity in both of the two charges, this problem is insoluble for the State. In the case at bar, the

The State never specified exactly which "ruling or decision" (or even which "Judge") was the target of Petitioner's alleged "threats." Nor did the State, specify exactly WHICH Nov. 18, 2012 - Dec. 5, 2012, "call or message," was the focus of either one of the two charges. State v. Holmes, 141 Wn. App 1040, 2007 WL 415730 at *1-5 (Ellington, J.) ("continuing course of conduct" theory under RCW 9.61.230). State v. Zillyette, supra, 307 P.3d 712 (August 1, 2013) (State "homicide by controlled substance" conviction reversed because of lack of specificity). Was Petitioner "convicted" on these two counts, because of the Nov. 18, 2012 "911" call, the Dec. 1, 2012 "e-mails," the June 12, 2011 calls to Judge Spencer's downtown courtroom, or his general demeanor going back to at least Jan. 26, 2006? The charges are NOT specific enough to answer!

VI. CONFRONTATION CLAUSE (Amd. VI, USCA

1. November 18, 2012 "911" Call.

over this issue, but the narrative of the "911" calls introduced by the State (Exhibits 172) was clearly "testimonial," and, at a MINIMUM, the "911" SPD Dispatchers, should have appeared for cross-examination at trial. Crawford v. Washington, 541 U.S. 36, 44, 68, 124 S.Ct. 135, 158 L.Ed.2d 177 (2004) (Scalia, J.) (Confrontation Clause); Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266, 2273-7, 165 L.Ed.2d 224 (2006) (Thomas, J.) (same). However, this request was explicitly DENIED by Judge Bowden. See X VRP at 30-65, May 9th, 2013. The "911" tapes were not properly introduced nor authenticated (ER 803(a)(3)), nor should Judge Spector have been allowed to testify concerning the alleged mental "illness" of Petitioner (ER 701-2).

2. The November 13, 2004 SPD Tapes

Similar considerations apply to the Nov. 13, 2004 calls recorded by ex-UW President William P. Gerberding and former Vice-Provost Steven G. Olswang. See Clerk's Papers, No. 04-1-14102-4 SEA (January 2, 2006). Again, the two UW Administrators, as well as SPD (Retired) Detective Daniel R. [illegible], should have appeared to testify

to the authenticity (ER 1001) of these tapes, allegedly recorded from the home answering machines of the two UW officials. State v. Holmes, 141 Wn. App 1040, 2007 WL at *7-8 (Nov. 26, 2007) (Ellington, J.).

VII. DOUBLE JEOPARDY.

Clearly, both charged offenses were "the same in fact and law" (Blockburger v. U.S., 284 U.S. 299, 304, 52 S. Ct. 180, 76 L.Ed. 306 (1932) ("continuing course of conduct" under Harrison "Anti-Narcotic Act" of 1912); State v. Meneses, 169 Wn.2d 586, 595, 238 P.3d 495 (2010), under the famous Federal Blockburger test for "double jeopardy—where this prosecution was based on one Nov. 18, 2012 "911" call, attributed to the Petitioner. This is why the trial judge, correctly ruled that both offenses, comprised the "same" criminal conduct, 11 VRP at 100-114, May 13th, 2013. The State did NOT object to this "ruling or decision"! One of the two charged Counts, should be dismissed.

VIII. OTHER ISSUES.

See e.g. State v. S[illegible]ter, 80 Wn.2d 47, 53, 491 P.2d 1043 (1971) (CrR 5.2(b)); In re Detention of Lewis, 134 Wash. App. 896, 143 P.3d 833 (2006) (pre-trial "poll" of potential jurors); Stoseth v. Spellman, 654 F.2d 1349, 1354 (Ninth Circuit (WA) (1981) (transfer to Clear-water Corr. Ctr.) with re Law Library); Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed. 2d

600 (1966) ("Dr 'Sam' Sheppard" murder case). RCW 9.94A.411(2), clearly does **NOT** enumerate either **ONE** of the two offenses Petitioner was "convicted" of, RCW 9A.72.160(1)-(3) or **RCW** 9A.46.020(1)(b)(2)(b)(i)-(iv), as a "Crime Against Persons," allowing "community custody," in terms of RCW 9.94A.715. Personal Restraint of Leach, 161 Wn.2d 180, 186, 187-189, 163 P.3d 782 (2007) (Sanders, J.) ("Crimes Against Persons" list exhaustive, not merely "illustrative"). This part of the Judgment and Sentence must be rescinded by the appellate court. The King County Jail staff (**KCCF**), also wrongly tried to forcibly prevent Petitioner from filing a timely Notice of Appeal, on May 13th, 2013–May 17th, 2013, until he was finally transferred to WA DOC. See Riggins v. Nevada, 504 U.S. 127, 132, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992). Finally, Petitioner's "Offender Score," was artificially raised, from "0" to "4" before the inclusion of the two "Current Offenses" (following the "same criminal conduct" test, see 11 **VRP** at 100-114 (May 13th, 2013)), by the inclusion at sentencing, of a Shoreline non-felony Ordinance Violation (SMC 9.10.430) which prevented Petitioner's four prior "Offenses" from "washing-out." This Shoreline City Ordinance, criminalizing

"gay" males, and lesbians, presumes the "right" to enslave the rest of American society — this time, the millions of "blue collar" and other non-elite men who are imprisoned under these state-level "anti-harassment," "anti-stalking," and "no-contact order" laws. Cf. U.S.A. Today, at A1-A6, November 15, 2013, "Charges Withdrawn In Florida 'Teen Stalking' Case." The plain truth is, that society cannot base its decision-making, on the rare cases when a verbal "threat" actually is "carried out" by the speaker (cf. Wisconsin v. Mitchell, 508 U.S. 476, 484, 124 L.Ed.2d 436, 113 S.Ct. 2194 (1993) (Rehnquist, C.J.) (alleged racial assault based on award-winning film "Mississippi Burning")) — and still remain a FREE society — any more than this society could survive or maintain any constitutional rights to freedom of expression, if everyone acted on the assumption that there WAS, in fact, a "fire in [every] 'crowded' theatre" (or in every "cluttered" University District apartment unit, see Don Kennedy Properties, LLC v. Holmes [Petitioner], Court of Appeals No. 69815-0-I, pending), and that we should criminally ban films, such as "Mississippi Burning," in the name of laws against "incitement," or allegedly

...TF! Or e ...eged ...edia ...ocates ...r such ...oups, ...ch as e.g. ...llary ...dham ...intone ...t. ...J. ...chard, ...ra, ...ll ...d. ...ppx. ...14, ...16-8 ...hird ...cuit ...PA) ...008) ... U.S.C. ...1879)

"hateful" racial epithets. State v. Talley, 122 Wn.2d. 192, 208, 858 P.2d 217 (1993) (Madsen, J.) (citing RCW 9A.~~72~~.160 explicitly) ("malicious [sic] "harassment"'). (The Talley Court did not define

"non-'malicious'" "harassment" [sic]!). "You can shout 'fire' on a '911' line!" II VRP (5/13) at 82-96 (Summation of Petitioner). Either Petitioner's cited Nov. 18, 2012 "threats," spoken via "911" were "true threats," in

which case he is "guilty," only of reporting a pre-existing "crime" -- or else, these spoken "words or conduct" attributed to this Petitioner, were "protected" speech. There is a "fire" in a "crowded" country-"Anti-"Harassment"" laws.

[signature] Pro Se
January 28, 2014
366312.

[signature] Pro Se
366312

CERTIFICATE OF SERVICE. [signature] 366312

I, Joel Christopher Holmes, Pro Se, hereby do certify and declare that I served: Ms. Amy Meckling, Felony Appellate Unit, King County Prosecuting Attorney's Office (KCPAO), W-554, Fifth Floor, King County Courthouse, 516 Third Avenue, Seattle, Washington, 98104, with ONE copy of the enclosed Statement of Additional Grounds (Pro Se Brief) of Appellant, via U.S. Mail MAIL, on Thursday, the 30th of Jan. 2014. [signature]

(Left margin fragments:) ...TE! / ...Cf. / ...g. / ...W / ...9.100 / ...)(a), / ...A / ...son / ...to / ...treses / ... / ...paration / ...r / ...e / ...ission / ...[a / ...lem] / ...erse / shall / ...ncity / law / ...force- / ...ment" / ...n 9.69. / ...(a), (c). / ...ee v. / ...lson, / ...Wn.2d 58, / ...202 P.3d

No. 70398-6-I
~~Motion for Over-~~
Length Brief
RAP 10.10

No. 70398-6-I | King Co. No. 12-1-06088-2 SEA
IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON - DIVISION I
AT SEATTLE

State of Washington, Plaintiff/Resp
vs
Joel C. Holmes, Defendant/Appellant

RAP 10.10

MOTION TO FILE OVERLENGTH BRIEF.

Comes Now The Petitioner And States:

Mr. Joel Christopher Holmes, the named Appellant in the above entitled action, hereby moves this Court, to allow him to file an "over-length" Statement of Additional Grounds (RAP 10.10 (a)-(f)). This Motion is based on the following arguments: (1) The failure of appellant's appointed counsel, to address the validity of either one of the two statutes Petitioner was convicted of violating (RCW 9A.72.100; RCW 9A.46.020). Evitts v. Lucey, 469 U.S. 387, 405, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (effectiveness of appellate counsel); Halbert v. Michigan, 545 U.S. 605, 611, 619-20, 125 S.Ct.

2582, 2587, 2592-93, 162 L.Ed.2d 552 (2005) (Ginsburg, J.) (right to counsel on state-level discretionary review). (2) The public importance of the (court) and the State's allegations, that Petitioner "threatened," The Honorable Judge Julie A. Spector, and the status of appellate court as a "limited 'public forum'," to debate the validity of the statutes Petitioner was "convicted" of violating. City of Seattle v. Huff, 111 Wn.2d 923, 925-927, 767 P.2d 572 (1989) (Dolliver, J.) ("public 'forum'" status of telephone). See also e.g. United States v. Dellinger, 472 F.2d 340, 380 (Seventh Circuit (IL) (1972)) (Federal court as "forum" for political debate), cert. denied, 410 U.S.

910, 35 L.Ed.2d 706, 93 S.Ct. 1443 (1973). (3) The failure of the trial Court below, to answer Petitioner's questions, about whether or not the State would enforce WA DOC "community custody" on Petitioner in the cases at bar (77 VRP at 100-114 (May 13th, 2013)). Post-Sentence Petition of Leach, 161 Wn.2d 180, 186-7, 163 P.3d 782 (2007) (Sanders, J.) (RCW 9.94A.411 (2)). (4) The validity of RCW 9A.72.160 (2)(b) and RCW 9A.46.020 (2)(b) (iii)-(iv), as applied in this case. State v. Albright, 144 Wn. App 566, 570, 183 P.3d 1094 (2008) (Quinn-Brintnall, J.) (RCW 9A.44.130).

Jan. 28, 2014 [signature] 310312 [signature]

CERTIFICATE OF SERVICE.

I, Joel Christopher Holmes, Pro Se, hereby certify and declare that I served Ms Amy Meckling, State of Washington, King County Prosecuting Attorney's Office (KCPAO), W-554, Fifth Floor, King County Courthouse, 516 Third Avenue, Seattle, Washington, 98104, with one copy of [Petitioner's] Motion To File Over-Length Brief, VIA First-Class Mail, this day the 28th day of January, 2017.

Joel CH Pro Se
366312

Joel CH Pro Se
366312

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STATE OF WASHINGTON

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70398-6-I

No. 70398-6-I / King County No. 12-1-06088-2 SEA

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

The State of Washington, Plaintiff/Respondent

v.

Joel Christopher Holmes,
WA DOC 360312
"Nova" Unit, Cell No. B-28 Upper
Airway Heights Correctional Center
(AHCC)
PO Box 2049
Airway Heights, WA
99001-2049, Defendant / Appellant / Petitioner

MOTION FOR CHANGE OF APPELLATE VENUE (Cf. CrR 5.2(b1)).

Joel C.H. 360312 360312

PRESENTED BY: Joel Christopher Holmes, WA DOC 360312, "Nova" Unit, Cell No. B-28 Upper, Airway Heights Correctional Center, (AHCC), PO Box 2049, Airway Heights, WA, 99001-2049, January 31st 2014.

11

IDENTITY OF PETITIONER

Mr. Joel Christopher Holmes, hereby appears to demand that a new appellate court hear his direct appeal (No. 70398-6-I) of the King County Superior Court case No. 12-1-06088-2 SEA - either another Division of the Washington State Court of Appeals, or an intermediate state-level appellate court in another state, such as California.

PROCEEDINGS BELOW

Petitioner was "convicted" of one count of "Intimidating A Judge" (RCW 9A.72.160 (1)-(3)) (Count I), and one count of "Felony Harassment" (RCW 9A.46.020(1)(b)(2)(b)(i)-(iii)) (Count II), in King County Superior Court, on Monday, May 13th, 2013. After being prevented from filing a timely Notice of Appeal by KCCF staff, on the afternoon of May 13, 2013 - who forcibly transported Petitioner to the 7th floor "Mental Health" lockup at the downtown jail, and deprived Petitioner of access to legal materials, counsel, and courts - Petitioner ultimately **DID** file a timely Notice of Appeal (RAP 5.1-5.5), on June 4, 2013, after being transported to Washington State Department of Corrections custody, on May 17th, 2013.

Petitioner had already filed at least

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two state-level actions, designed to secure his freedom from the "restraint" imposed by the State of Washington, King County Prosecuting Attorney's Office (KCPAO), in No. 12-1-00088-2 SEA: Washington Supreme Court No. 88247-9, a Personal Restraint Petition filed on December 27, 2012, and Washington Court of Appeals No. 69953-9-I, a Motion for Discretionary Review of the trial court's January 17, 2013 Ruling, denying a change-of-venue (Cr R 5.2(b)). See Ruling, Judge James Rogers, No. 12-1-00088-2 SEA, January 17, 2013.

On June 12, 2013, Court of Appeals Commissioner Mary Neel, issued a Ruling, dismissing Petitioner's previous Personal Restraint Petition No. 69953-9-I, without properly "serving" Petitioner with a copy of this Ruling. RAP 18.5(a), Service and Mailing of Papers. Petitioner was also never served by this Court, with a Notice of Right to File A Statement of Additional Grounds (RAP 10.10 (a)-(f)), after the Opening Brief of Appellant was submitted to the Court by Petitioner's court-appointed counsel, Sarah McNeel Hrobsky, Washington Appellate Project, 1511 3rd Avenue, Suite 701, Seattle, WA, 98101, on December 11, 2013. This Motion for change of appellate venue (court) timely follows.

ISSUES FOR REVIEW:

I. CAN PETITIONER HAVE A FAIR AND IMPARTIAL APPEAL (Amendments VI, XIV, USCS) HEARD BY THIS COURT?

II. SHOULD ANOTHER STATE-LEVEL APPELLATE COURT - IN THIS STATE OR IN ANOTHER STATE - HEAR PETITIONER'S PENDING APPEAL?

STATEMENT OF CASE

Petitioner plainly cannot receive a fair hearing of this appeal (No. 70398-6-I), based on the record of lost or misplaced documents, failure to send Petitioner a copy of the trial transcript, etc. The interests of justice require appointment of another state-level intermediate appellate court - from this State or ANOTHER State.

ARGUMENT:

I. PETITIONER CANNOT RECEIVE A FAIR APPEAL FROM THIS APPELLATE COURT (DIVISION ONE).

Petitioner is charged, inter alia, with "threatening" a King County Superior Court Judge, Judge Julie A. Spector. Many of the

most, of the appellate judges in Division I, consist of personal friends or acquaintances of the alleged "victim." In addition, every registered King County voter, including judges, has voted at least once for Judge Julie A. Spector. Under these circumstances, as with the May 6th-May 13th, 2013 trial in No. 12-1-00088-2 SEA, it would be almost impossible for Petitioner to obtain a fair hearing of this appeal. Microsoft Corp. v. U.S.,

530 U.S. 1301, 1303, 147 L.Ed.2d 1048, 121 S.Ct. 25, 26-27 (2000) (statement of Rehnquist, C.J.) (declining recusal), case below at 97 F.Supp 2d 59 (D.D.C. (DC) (1999)). Nor has the Court's record of failing to mail or to otherwise "serve" this appellant, with documents in a timely manner, enhanced anyone's confidence in the fairness of this appeal. RAP 10.10 (a)-(f); Griffin v. Illinois, 351 U.S. 12, 15, 76 S.Ct. 585, 100

L.Ed. 891 (1956) (right to trial transcript—i.e. access to courts).

II. CHANGE OF APPELLATE VENUE.

This case needs to be transferred to a different appellate venue—

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preferably another Division of this Court, an intermediate-level appellate court or another state with an appellate structure similar to this state (e.g. California) (following Washington State law) or a Federal Circuit Court. Sheppard v. Maxwell, 384 U.S.

333, 352, 86 S.Ct. 1507, 16 L.Ed. 2d 600 (1966) (Dr. "Sam" Sheppard case); Estes v. Texas, 381 U.S. 532, 542-4, 85 S.Ct. 1628, 1632, 14 L.Ed 2d 543 (1965) ("pre-trial" publicity). This appeal must be heard by a different appellate court. Just weeks before the Statement of Additional Grounds was supposed to be written by this Petitioner, Appellant was mysteriously transferred 250+ miles eastward to a state prison with inferior Law Library and other facilities, from Stafford Creek. These actions by WA DOC, support an inference of an intent to disrupt Petitioner's appeals. State v. Monday, 171 Wn.2d 667, 676-679, 257 P.3d 551 (2011) (fairness of prosecuting authority).

RELIEF REQUESTED.

Petitioner requests that a different appellate court (possibly in another state!), hear this appeal. [illegible]

CERTIFICATE OF SERVICE.

I, Joel C. Holmes, certify that I served Ms. Anne Marie Summers, Appellate Unit, KCPAO, W-554, King County Courthouse, 516 3rd Avenue, Seattle, WA, 98104, (206) -296-9150, with one copy of the enclosed Motion For Change of (Appellate) Venue, VIA 1st Class Mail, this day the third of Jan, 2014.

Joel C. Holmes Pro Se

Joel C. Holmes Pro Se
Jan 3, 2014. 366312