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STATE OF WASHINGTON SUPREME COURT

MICHAEL AMES,

Appellant,

v.

PIERCE COUNTY, BY AND THROUGH, PIERCE COUNTY
PROSECUTING ATTORNEY MARK LINDQUIST,

Respondents.

REVISED
REPLY BRIEF OF APPELLANT/CROSS-RESPONDENT
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 ORIGINAL

TABLE OF CONTENTS

I. SUMMARY OF REPLY AND RESPONSE 1

II. ASSIGNMENTS OF ERROR AND ISSUES ON CROSS APPEAL . 2

 A. Does a prosecutor’s office have anti-SLAPP rights to punish a detective who seeks a judicial determination of his rights to restrain the DPA’s questionable conduct, including intimidation and retaliation using its newly developed “PIE” policy as a guise when it conflicts with contractual and civil service protections for law enforcement?..... 2

 B. Are the grounds to deny CR 11 sanctions mutually exclusive requiring a party to choose one criteria or does CR 11 provide a continuum of rationale that may be considered collectively?..... 2

 C. Did the trial court properly deny CR 11 sanctions where sanctions chill advocacy and deny access to the courts as articulated by the legal scholars and multiple attorneys who filed declarations in opposition to sanctions?..... 2

III. RESPONSE/REPLY FACTS 3

 A. *George Never An Opportunity To Clear Det. Ames’ Good Name*.. 3

 B. Other Problems With Prosecutor’s PIE..... 5

 1. Richmond Not Credible - Ames Exculpatory E- Mails Never Properly Disclosed from *Dalsing*..... 7

 2. Prosecutor’s Office Creating More Alleged “PIE” To Defend In This Case - Kooiman and Lewis Declarations..... 9

 3. Coopersmith’s “Slender Reed” Comment Not A Factual Verity, But A Comment on His Legal Conclusion - Lindquist Was Involved In Search of Ames’ Computer and Other Abuses of His Power..... 10

 C. Det. Ames Raised Issue About 12(b)(6) Relief Being Improper ... 11

IV. LEGAL ARGUMENT.....	11
A. Declaratory Judgment and Writ Restore Balance of Power.....	11
B. Prosecutor’s Office’s Argument Lacks Integrity	13
C. No Duty to Disseminate False Testimony.....	15
D. Dissemination of An Unfounded Whistleblower Investigation Report Against the Prosecutor’s Office As “Brady” Material Is An Abuse of Power.....	18
E. Elements to A Writ of Prohibition - No Other Available Remedy 24	
1. Immunity Challenges to Alternative Remedies Suggested by Prosecutor’s Office	24
2. Role of DPA As Advocate Versus Investigator Implicates Viability of Any Civil Rights Case.....	25
F. Public Interests At Stake That Warrant Judicial Intervention.....	27
1. Standing Under 1st Amendment	28
2. Det. Ames’ Right To Seek Redress.....	28
G. Special Motion to Strike Not Available to The Prosecutor’s Office.....	30
1. Clear And Convincing Evidence Present.....	31
2. No Public Participation by Prosecutor’s Office	34
3. WASH. CONST. ART. II, § 37 - RCW 4.24.525 Not An Act Complete In Itself	36
H. “George” Case An Action “Aimed At Public Protection.”.....	40
I. RAP 2.2 Does Not Reference Anti-SLAPP Orders	40

J.	CR 11 Exceptions Are Not Mutually Exclusive	41
K.	CR 12(b)(6) Motions Require Consideration of Hypothetical Facts, Not Declaratory Evidence of These Facts Under CR 56	44
L.	Proper Remedy to Naming the State Is to Amend, Not Dismiss ...	44
M.	Trial Court Properly Considered Declarations	45
N.	No Basis For Any Award of Fees On Appeal	46
V.	MOTION TO STRIKE.....	47
VI.	CONCLUSION	47

Table of Authorities

Cases

<i>Akrie v. Grant</i> , 178 Wn. App. 506, 513 n. 8, 315 P.3d 567 (2013).....	28
<i>Allard v. First Interstate Bank of Washington</i> , 112 Wn.2d 145, 768 P.2d 998 (1989).....	41
<i>Broam v. Bogan</i> , 320 F.3d 1023 (9th Cir. 2003)	26
<i>City of Seattle v. Egan</i> , 179 Wn. App. 333, 317 P.3d 568 (2014).....	38
<i>Codd v. Velger</i> , <i>supra</i> , 429 U.S. at 627-28, 97 S.Ct. 882	16
<i>Cotton v. Jackson</i> , 216 F.3d 1328, 1332-33 (11th Cir. 2000).....	26
<i>Davis v. Cox</i> , 180 Wn. App. 514, 325 P.3d 255, 2014	33
<i>Dreiling v. Jain</i> , 151 Wn.2d 900, 93 P.3d 861 (2004).....	28
<i>Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.</i> , 365 U.S. 127 (1961).....	29
<i>Ellis v. City of Seattle</i> , 142 Wn.2d 450, 13 P.3d 1065 (2000).....	22
<i>Empress LLC v. City & County of San Francisco</i> , 419 F.3d 1052, 1056 (9th Cir. 2005).....	30
<i>Folsom v. Burger King</i> , 135 Wn.2d 658, 958 P.2d 301 (1998).....	45
<i>Garcetti v. Ceballos</i> , 547 U.S. 410, 126 S.Ct. 1951, 1960, 164 L.Ed.2d 689 (2006).....	35
<i>Golden Eagle Distrib. Corp. v. Burroughs Corp.</i> , 801 F.2d 1531, 1540 (9th Cir. 1986).....	43
<i>Haberman v. WPPSS</i> , 109 Wn.2d 107, 744 P.2d 1032 (1987).....	44
<i>Harper v. Blumenthal</i> , 478 F. Supp. 176, 189 (D.D.C. 1979).....	16

<i>Henne v. City of Yakima</i> , 177 Wn. App. 583, 313 P.3d 1188 (2013).....	34
<i>In re King County Hearing Examiner</i> , 135 Wn. App. 312, 144 P.3d 345 (2006).....	24
<i>Johnson v. Jones</i> , 91 Wn. App. 127, 955 P.2d 826 (1998).....	45
<i>Joiner v. Gless</i> , 288 Ga. 208, 209-10, 702 S.E. 2nd 194, 196 (2010)	26
<i>Kalina v. Fletcher</i> , 522 U.S. 118, 118 S. Ct. 502 (1997).....	25
<i>King v. Olympic Pipeline Co.</i> , 104 Wn. App. 338, 16 P.3d 45 (2000).....	32
<i>Liston v. County of Riverside</i> , 120 F.3d 965, (9th Cir. 1997).....	14
<i>Manistee Town Ctr. v. City of Glendale</i> , 227 F.3d 1090, 1092 (9th Cir. 2000)	29
<i>Pham v. Seattle City Light</i> , 159 Wn.2d 538, 540, 151 P.3d 976 (2007)...	41
<i>Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.</i> , 508 U.S. 49, 60, 113 S.Ct. 1920 (1983).....	30
<i>Putman v. Wenatchee Valley Med. Ctr., P.S.</i> , 166 Wn.2d 974, 980, 216 P.3d 374, 377 (2009).....	32
<i>Rogers v. Home Shopping Network, Inc.</i> , 73 F.Supp. 2d 1140 (9th Cir. 1999)	27
<i>Rygg v. Hulbert</i> , 2013 WL 3782169	41
<i>Segaline v. State Dept. of L & I</i> , 169 Wn.2d 467, 238 P. 3d 1107 (2010)	35
<i>Spratt v. Toft</i> , 180 Wn. App. 620, 324 P.3d 707 (2014).....	33
<i>State v. Reed</i> , 102 Wn.2d 140, 702, 684 P.2d 699 (1984)	23
<i>State v. Singh</i> , 167 Wn. App. 971, 275 P.3d 1156 (2012)	27
<i>State v. Thorne</i> , 129 Wn.2d 736, 921 P.2d 514 (1996).....	36

<i>Twelker v. Shannon & Wilson, Inc.</i> , 88 Wn.2d 473, 475, 564 P.2d 1131 (1977).....	25
<i>Tyner v. State</i> , 137 Wn. App. 545, 557, 154 P.3d 920, 926 (2007).....	35
<i>United Mine Workers v. Pennington</i> , 381 U.S. 657 (1965).....	29
<i>Volcan Group, Inc. v. T-Mobile USA, Inc.</i> , 940 F. Supp. 2d 1327 (2012)	13
<i>Walker v. Munro</i> , 124 Wn.2d 402, 879 P.2d 920 (1994).....	27, 28
<i>Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).....	45
<i>White v. Lee</i> , 227 F.3d 1214, 1232 (9th Cir. 2000).....	29

Statutes

PCC 3.14.020	18
PCC 3.14.030(A)	18
RCW 42.41.010	18
RCW 42.41.020	22, 23
RCW 42.41.045	18
RCW 9.94A.030.....	36
RCW 9.94A.120.....	36
RCW 9A.20.....	37

Rules

CR 12(b)(6).....	1, 11, 44
CR 15(a).....	45

CR 26	32
CR 56(f)	33
RAP 10.3(a)(6) and (c)	47
RAP 10.4(b)	47
RAP 2.3	41
RPC 3.3	15
RPC 8.4	15
 <u>Constitutional Provisions</u>	
WASH. CONST. ART. I, § 10	32
WASH. CONST. ART. II, § 37	36

APPENDICES

Appendix B: Judge Andrus Order on Discovery Sanctions for Det. Ames, Dalsing v. Pierce County, King County No. 12-2-08659-1.....	8
Appendix C: Prosecutor's "PIE" Letter to Det. Ames.....	4, 6
Appendix D: Declarations of Det. Ames Listed in "PIE" Letter.....	6
Appendix E: Det. Ames' Exculpatory E-mail.....	6, 12
Appendix F: DPA Richmond Declarations – Identified as "PIE"	6, 8
Appendix G: DPA Kooiman Declaration – Identified as "PIE"	6, 9
Appendix H: DPA Lewis Declaration – Identified as "PIE"	6, 9
Appendix I: Coopersmith Investigation Report.....	6
Appendix J: Det. Ames' Declaration Opposing Fees w/Attachments.....	20, 22
Appendix K: Det. Ames' Complaint/Whistleblower Report Excerpted Documentation Regarding Computer Search.....	7
Appendix L: Lindquist's Press Release in Kinney.....	7
Appendix N: Professor Boerner Declaration.....	2
Appendix O: Professor Strait Declaration.....	15

I. SUMMARY OF REPLY AND RESPONSE

Det. Ames requests this Court reverse the trial court's 12(b)(6) order dismissing his case. He seeks a name clearing hearing via declaratory action to prove prosecutor accusations of dishonesty unfounded. He requests a writ to prohibit the ongoing dissemination of provably false statements and other questionable materials as "PIE." He requests a writ to stop the prosecutor's office from using its "PIE" policy to intimidate and harass whistleblowers who question the conduct of the prosecutor and his office.

Det. Ames should not be punished with fees or a penalty for seeking relief here where the Prosecutor's Office offers no remedy for making false statements and interfering with Det. Ames due process rights. The Anti-SLAPP statute, RCW 4.24.525, is not constitutional because the Legislature failed to amend existing statutory remedies when enacting it. Even assuming the .525 statute is constitutional, Anti-SLAPP remedies favor Det. Ames who has been engaged in protected speech, rather than the prosecutor's office, which has not. The First Amendment has no application to the prosecutor's office when allegedly fulfilling its "Brady" duties to disclose "PIE."

Det. Ames and his attorney met established standards under CR 11 for seeking judicial relief as affirmed by two learned scholars and nearly forty advocates genuinely concerned about justice in Pierce County.

II. ASSIGNMENTS OF ERROR AND ISSUES ON CROSS APPEAL

Det. Ames objects to the statements of error and issues of the prosecutor's office. He relies on his assignments of error and issue statements and provides the following issue statements on cross-appeal:

- A. Does a prosecutor's office have anti-SLAPP rights to punish a detective who seeks a judicial determination of his rights to restrain the DPA's questionable conduct, including intimidation and retaliation using its newly developed "PIE" policy as a guise when it conflicts with contractual and civil service protections for law enforcement?**
- B. Are the grounds to deny CR 11 sanctions mutually exclusive requiring a party to choose one criteria or does CR 11 provide a continuum of rationale that may be considered collectively?**
- C. Did the trial court properly deny CR 11 sanctions where sanctions chill advocacy and deny access to the courts as articulated by the legal scholars and multiple attorneys who filed declarations in opposition to sanctions?**

III. RESPONSE/REPLY FACTS

A. *George* Never An Opportunity To Clear Det. Ames' Good Name

The Prosecutor's Office attempts to justify dismissal of this case pointing to *State v. George*.¹ Resp. Br. 1 and 54. Det. Ames did not "agree" to the disclosure of the Coopersmith Report as "PIE" in *George*. CP 233 - 235, 239 240. Det. Ames asked Judge Chushcoff not to characterize the Coopersmith Report as "PIE" and Judge Chushcoff did not characterize the Coopersmith Report as "PIE." CP 240. Judge Chushcoff did not decide, nor was he asked to decide whether Det. Ames' rights were violated by the prosecutor's efforts to disclose the Coopersmith Report as PIE. Judge Chushcoff did acknowledge the importance of Det. Ames' issues that were not before him.² The motion in

¹ The criminal case of *State v. George* was pending at the same time the prosecutor's office was asking Division I for discretionary review of the discovery order against it in *Dalsing*. CP 232, *Dalsing/Ames v. Pierce County*, COA Div I Case No. 70851-I. *Dalsing v. Pierce County*, 70850-3-I, and 70455-9-I and Supreme Court No. 90173-2. Around the time the office was filing its *Dalsing* briefing, the prosecutor's office moved to file the "Coopersmith Report" under seal for in camera review, presumably to obtain an order recognizing it as "PIE" to cite to Division I as evidence discrediting Ames. The report is a public record that should never be filed under seal. CP 230, *See, Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). DPA Penner told Chushcoff the office obtained the Coopersmith Report through public disclosure, which it received on May 24th, 2013. CP 237, 635. It waited months until it was briefing *Dalsing* on appeal to make any effort to disclose it as PIE in *George*. *George* Motion heard October 1st, 2013. CP 218. Det. Ames testified in the *Young* case in September and was not a "Brady" officer at that time. CP 92. The DPAs declarations from *Dalsing* were never before Judge Chushcoff.

² "I appreciate your concerns here. Those are quite genuine, and I don't mean to minimize that." CP 240.

the *George* criminal matter was not a name clearing hearing. In fact, there was no hearing of any kind where the prosecutor's office notified Det. Ames to attend, or where the prosecutor's office recognized he had standing to do anything. Just the opposite, the prosecutor's office did not notify him of the hearing. And, when he appeared, the DPA objected on standing grounds.³ Det. Ames had no opportunity to brief Judge Chushcoff on the issues. Det. Ames merely succeeded in preventing Judge Chushcoff from labeling the "Coopersmith Report" as "PIE." CP 241-242. The Coopersmith Report is a public record, but it is not "PIE".

Det. Ames objects to the prosecutor's office disseminating the Report as PIE and the manner in which it is disseminating the Report as PIE.⁴ He objects to the prosecutor's office deciding the report contains PIE and introducing it to criminal defendants and their attorneys with a cover letter that highlights limited portions of attorney Coopersmith's conclusory opinions, and omits all of the factual evidence, including recorded statements that support what Det. Ames reported. Det. Ames

³ "The question of actual impeachment would be properly litigated. I would submit that that should probably be properly litigated under the criminal cause number by the parties to the cause." CP 236.

⁴ See, CP 141-142 App. C Prosecutor's "PIE" Letter dated September 18th, 2013; "In addition, we are in possession of a report of investigation of allegations by you against numerous employees of the Pierce County Sheriff's Department and the Pierce County Prosecutor's Office, wherein it was found that there was "no evidence" to support your allegations of misconduct, and your allegations has "no merit."

was not dishonest. Det. Ames should have the opportunity to develop a record of these facts through discovery and before a fact finder in a declaratory action and petition for a writ where the trial court could fashion an appropriate order to stop the retaliatory dissemination of this whistleblower investigation report that is not evidence nor potential evidence of dishonesty by Det. Ames.

B. Other Problems With Prosecutor's PIE

The alleged "PIE" at issue in this case is unique from impeachment evidence typically discussed in cases like "Brady" and its progeny. There are no "Brady" cases involving an unfounded whistleblower investigation report. Particularly, a whistleblower investigation report into the conduct of the elected Prosecutor. In addition, there are no "Brady" cases involving deputy prosecuting attorneys ("DPAs") labeling a detective "dishonest" using their own self serving statements. Most "Brady" cases concern Internal Affairs proceedings or findings. Here, none of the prosecutor's "PIE" comes from any Internal Affairs proceedings.

The irony of this case is troubling. The "PIE" the prosecutor's office insists it has a duty to disclose are generated by the office reacting adversely to Det. Ames meeting his obligations as a law enforcement

officer.⁵ He fully disclosed exculpatory evidence in *Dalsing* over their objections. CP 192 - 197. He reported other prosecutor abuse of power, which the County concedes when it treated Det. Ames request for an outside criminal investigation as a whistleblower complaint. CP 451, App. I. Presumably, the prosecutor's office advising the Sheriff's Department and Human Resources made this decision to keep any investigation under the County's control.

Det. Ames' request for declaratory relief is specific to statements that can he can prove false. DPA Richmond falsely stated he did not receive the exculpatory emails: "Mr. Ames falsely states he turned over to me County e-mails that would "clear his name and his department." CP 577, CP 188-119, Apps. E & F. Det. Ames did turn the e-mails over to Richmond. CP 118, 1588.⁶

Det. Ames was truthful when expressing his whistleblower concerns to investigating attorney Coopersmith. Lindquist did speak to

⁵ See, CP 141-142 App. C Prosecutor's "PIE" Letter dated September 18th, 2013. App. D are the four Ames' Decs. the prosecutor labels "PIE." App. E. is the exculpatory e-mail. App. F are the Richmond Decs., App. G is the Kooiman Dec., App. H is the Lewis Dec., and App. I is the Coopersmith Report. These Appendixes comprise the "PIE" at issue in this case.

⁶ The prosecutor's office added to its erroneous "PIE" the Lewis and Kooiman declarations filed in this case after dismissal that also relate to *Dalsing* that should not be "PIE" because the declarations simply call him a liar without any factual justification. They refer to a situation where their decision to prosecute resulted in a woman sitting in jail on charges they know they cannot prove. Lynn Dalsing was not in the photograph that was the basis for the charging decision, and Det. Ames made that very clear to them in writing. Det. Ames was not the one with any motive to lie.

Chief Adamson about searching Det. Ames' email under the false pretenses of wrongdoing by Ames. App. K, CP 362, 1136. Lindquist did issue a press release criticizing Ames when Ames was acting in good faith taking into evidence video depicting an assault on a child in a classroom with the teacher involved. App. L, CP 369 - 371. Det. Ames does not seek a generalized proclamation that he is "truthful" in all proceedings "for all times." Resp. Br. 28. The prosecutor's office does not fairly characterize his petition when framing his request so absurdly. Resp. Br. 10. Det. Ames seeks a declaration that the Prosecutor has selected and created false "PIE" to discredit Det. Ames in violation of his due process rights.

1. Richmond Not Credible - Ames Exculpatory E-Mails Never Properly Disclosed from *Dalsing*

When Det. Ames filed this case, DPA Richmond had not yet admitted he received the exculpatory e-mails from Ames to produce in discovery in *Dalsing*. Richmond avers he did not get Ames' e-mail communications, but the *Dalsing* court sanctioned his office nonetheless for violating the rules of civil procedure for withholding the e-mails. CP 192 - 197. The *Dalsing* court did not enter specific findings of dishonesty by Richmond when issuing the order. The material issue was not whether Richmond characterized the e-mails as "exculpatory", which they are.

The material issue was whether Richmond had them to disclose. He did, but he was not honest about this fact when opposing sanctions. App. F, CP 576 - 582.

The prosecutor's use of the Richmond declaration as PIE precipitated the need to prove the dishonesty of Richmond's declaration. In this action, Det. Ames expected an opportunity for discovery and cross examination of DPA Richmond to prove Richmond's declaratory statement false. Ames succeeded in outing Richmond's dishonesty in these proceedings, albeit without discovery. After Judge Hull granted summary dismissal Richmond filed a new declaration conceding Ames was correct.

Richmond's new declaration attempts to explain himself, which the office finally filed on the motion to set an award of attorney's fees. App. F, CP 1587 - 1589. His explanatory declaration does not make his statement any less deceptive.⁷ In Response, the prosecutor's office refuses to concede the deceptive character of the Richmond declaration.⁸ Yet, that

⁷ His new declaration adds new and different dates that do not comport with his first declaration. Compare 1587 - 1589, See both at App. F.

⁸ Richmond insists he never told Ames he would disclose the e-mails or that they were exculpatory. The e-mails are exculpatory and they should have been disclosed. Whether Richmond had them to disclose in discovery was the relevant inquiry before Judge Andrus when she issued her order sanctioning the office. App. B. Richmond disputing what Ames heard him say does not impugn the credibility of Ames. Richmond's claim he did not get the e-mails on a date specific, omitting the fact he actual received them to produce earlier in discovery is deceptive and dishonest.

is what is driving this dispute. The Richmond declaration is not "PIE" because Ames was telling the truth. His credibility may not be impugned with evidence that he was truthful.

2. Prosecutor's Office Creating More Alleged "PIE" To Defend In This Case - Kooiman and Lewis Declarations.

In addition to offering a new Richmond declaration, the prosecutor's office filed more declarations from prosecutors after the case was dismissed. Apps. G & H, CP 1617 - 1621, CP 1594 - 1597. DPAs Kooiman and Lewis generally opine, without stating any facts, that Det. Ames made false statements about them. *Id.* They disagree about what they said to him when they asked him to re-examine the computers in *Dalsing* after they knew she was wrongfully incarcerated on charges they could not prove. Det. Ames refused to conduct a second search of computers from Dalsing's home without probable cause. They do not point to any fact he stated incorrectly. The self serving opinions of DPAs are not "PIE." Their declarations are retaliatory statements intended to impugn the character of Det. Ames in an attempt to undermine prosecutor's office liability in *Dalsing* and here.

3. Coopersmith's "Slender Reed" Comment Not A Factual Verity, But A Comment on His Legal Conclusion - Lindquist Was Involved In Search of Ames' Computer and Other Abuses of His Power

Much of the prosecutors' PIE, like the Coopersmith report, does not contain any facts regarding dishonesty by Det. Ames. The Coopersmith report affirms the facts revealed by Ames. The prosecutors alleged "PIE" from the Coopersmith report amounts to an expression of an opinion on a legal question the prosecutor's office wants decided in its favor. Coopersmith's "slender reed" reference says nothing about Det. Ames' honest report of conduct he believes to be wrong. Det. Ames' whistleblower complaint involves the prosecutor's office and its top official. The prosecutors here are not unbiased. They have questionable motives that color their characterization of the involved documents. The office is operating outside its jurisdictional authority under "Brady" because it is creating the information and characterizing it as something it is not for its own advantage. Det. Ames wants the opportunity to clear his name to mitigate against the prosecutors efforts to destroy his career as a state witness.⁹

⁹ The Prosecutor's Office has continued to call Det. Ames to testify in matters since this case was dismissed. The Office continues to disseminate these materials at issue here, which has consumed unnecessary court time taking testimony from Det. Ames to inform the trial court on the prosecutor's supposed "PIE.", *State v. George Minute Entries*

C. Det. Ames Raised Issue About 12(b)(6) Relief Being Improper

In Response, the prosecutor's office claims Det. Ames makes a new argument on appeal regarding the impropriety of a 12(b)(6) motion. Resp. Brief at 22. Det. Ames raised from the outset the impropriety of dismissing on the pleadings. CP 676 ("The Court should set a show cause hearing date for fact finding with an appropriate briefing schedule."), CP 681 - 682 ("The Prosecutor is not entitled to dismissal on the complaint of Det. Ames' writ of prohibition because the elements of a writ of prohibition raise a factual question that may not be determined as a matter of law."). Thus, his briefing here does not raise any new arguments.

IV. LEGAL ARGUMENT

A. Declaratory Judgment and Writ Restore Balance of Power

The prosecutor's office argues for 100% absolute discretion to select and disseminate "PIE." The prosecutor's argument is logically inconsistent. An obligatory duty like that developed in "Brady" and its progeny disfavor prosecutorial discretion. Instead, prosecutors must reliably disclose information that legitimately questions the truthfulness of a state witness. Prosecutors are not empowered to selectively disseminate as "PIE" false and self-serving statements or reports. Here the issue presented is whether the prosecutor's office possesses genuine "PIE" that DPAs are duty bound to disseminate.

Facts that will be established will show the prosecutor is selectively using the "PIE" label with Ames. The prosecutor labels Det. Ames a "Brady" officer, but not Det. Heischman. It is Det. Heischman's report that incorrectly identifies Dalsing in the subject photograph. CP 539, 562 – 569. Det. Ames clearly documented it was not Dalsing in the photograph in his e-mail. App. E (e-mail), CP 119. Det. Heishman never questioned the DPAs lack of probable cause. Det. Ames did. The prosecutor knows the photograph is not Dalsing, yet Heishman who made the false identification is not a "Brady" officer.

There are other examples that show the prosecutor is using the "Brady" label discriminately choosing officers like Ames to silence. The timing, content, and selection of the prosecutor's "PIE" reveal retaliatory motives, which violate public policy and civil service and contract protections. Det. Ames should have the opportunity to prove the retaliatory use of the "Brady" label against him since he has never had any due process even though he has protected property and liberty interests in his job. In a recent shaken baby case, the state offered the testimony of a detective terminated for dishonesty. The office apparently knew the officer was terminated for making a false statement in a police report. The office did not disseminate any "PIE" to the defense before calling the witness to testify. This officer had the benefit of internal affairs ("IA")

proceedings to challenge the accusations of dishonesty against him. Det. Ames has never had any due process even though he has protected property and liberty interests in his job. The timing, content, and selection of the prosecutor's "PIE" reveal retaliatory motives, which violate public policy and civil service and contract protections.

B. Prosecutor's Office's Argument Lacks Integrity

The most troubling position of the prosecutor's office concerns its unsettling claim that DPAs have a constitutional duty to disseminate knowingly false testimony under "Brady" and its progeny. The Responsive brief attempts to disguise this point using a disingenuous explanation about what Richmond says in his *Dalsing* declaration and misconstruing what was material to the discovery sanctions motion before the *Dalsing* court when Richmond filed it.

The office refuses to concede Richmond's declaration is false. Deliberately deceptive practices undermine the integrity of judicial proceedings. *Volcan Group, Inc. v. T-Mobile USA, Inc.*, 940 F. Supp. 2d 1327 (2012). "There is no point to a lawsuit, if it merely applies law to lies. True facts must be the foundation for any just result." *Id.* at 1333. Jim Richmond affirmatively stated he did not get the e-mails in his first declaration. In the second he admitted he did. Now he explains his

statement as not dishonest and that he was merely stating initially that “he did not receive the email at a particular meeting.”

Omitting material facts equates to making a false statement. *Liston v. County of Riverside*, 120 F.3d 965, (9th Cir. 1997). “By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw.” *Id.* at 973. A declarant may not intentionally or recklessly omit facts required to prevent a technically true statement from being misleading. *Id.* Deception by omission is still dishonest.

The proof of Richmond’s deception is evident in Judge Hull’s order.¹⁰ Richmond effectively represented Ames did not give him the e-mails that he now concedes Ames did give him. Whether or not he received the e-mails was indeed a material issue on the sanction’s motion. Deliberately withholding this fact from the *Dalsing* court when opposing sanctions for failing to produce the requested discovery is deceptive and dishonest. It is even worse to then further disseminate the declaration as “Brady” material to discredit an officer who properly met his “Brady” obligations by asking the Court to decide whether his exculpatory e-mails should be disclosed. Labeling Det. Ames as a “Brady” officer is

¹⁰ “Ames made a motion for attorney’s fees and in his supporting declaration alleged that he provided the emails to Richmond and was told the emails would be disclosed. Richmond disputes this in his own declaration, claiming he never received the emails and never told Ames the emails would be disclosed.” CP 740.

particularly egregious where Superior Court ordered Det. Ames to disclose the emails, and sanctioned the prosecutor's office for failing to do so on its own. Division I affirmed the discovery order, and affirmation of the sanction order is awaiting this Court's final determination on whether it will grant discretionary review of the discovery order.

C. No Duty to Disseminate False Testimony

Prosecutors have a duty NOT to perpetuate Richmond's false statement by disseminating it as "Brady" material. A prosecutor who disseminates a knowingly false statement in a criminal proceeding violates ethics standards, and the prosecutor's special obligation to ensure the integrity of the criminal justice system. RPC 3.3 and RPC 8.4, CP 1348. Strait Dec. at App. O. The courts emphasize the importance in remaining impartial; false and misleading information may not be disseminated without correction.¹¹

¹¹ "The Supreme Court has long emphasized "the special role played by the American prosecutor in the search for truth in criminal trials." (*citations omitted*) As we observed ...(*citations omitted*) ... The prosecuting attorney represents a sovereign whose obligation is to govern impartially and whose interest in a particular case is not necessarily to win, but to do justice.... It is the sworn duty of the prosecutor to assure that the defendant has a fair and impartial trial. One of the bedrock principles of our democracy, "implicit in any concept of ordered liberty," is that the State may not use false evidence to obtain a criminal conviction. Deliberate deception of a judge and jury is "inconsistent with the rudimentary demands of justice." Thus, "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." "Indeed, if it is established that the government knowingly permitted the introduction of false testimony reversal is 'virtually automatic.'" In addition, the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears. (*Internal*

Here we have prosecutors whose actions are not impartial. Judicial intervention is required because the DPAs continue to disregard the truth and perpetuate their own false and self-serving statements. A declaratory action is not a novel theory for sorting out the truth:

“Since reinstatement and damages have been excluded from present consideration, the remaining possibility for relief would be an injunction or mandamus order (perhaps coupled with a declaratory judgment) requiring defendants to hold a remedial hearing to allow plaintiff an opportunity to clear his name. See *Codd v. Velger*, supra, 429 U.S. at 627-28, 97 S.Ct. 882 (remedial hearing appropriate in some cases).” *Harper v. Blumenthal*, 478 F. Supp. 176, 189 (D.D.C. 1979)

The DPAs argue against this remedy claiming criminal defendants have a superior due process right to law enforcement, even where the information about the officer is knowingly false. There is not one case nor treatise cited in the Response that holds a criminal defendant has a right to false testimony. There is not one case nor treatise in the Response that holds a prosecutor has an obligation to disseminate information the prosecutor knows is false. There is no need to add individual criminal defendants, particularly hypothetical ones. They have no rights to false information and no standing to litigate the truthfulness of an officer called into question via declarations from prosecuting attorneys.

citations omitted) *Hoover v. Carey*, 508 F.Supp.2d 775, 805 (N.D. Cal. 2007) rev'd and remanded sub nom. *Hoover v. Newland*, 307 Fed.Appx. 56 (9th Cir. 2009). *Hayes v. Brown*, 399 F.3d 972, 978 (9th Cir. 2005).

The prosecutor's office claims it is acting under model policy, yet again by omission it fails to point out a substantive distinction between model policies and its PIE policy. Washington Association of Prosecuting Attorney's (WAPA's) model policy contemplates an investigatory process, specifically internal affairs protocols with established due process protections. The Washington Association of Sheriffs & Police Chiefs' Model Policy (WASPC) on "Brady" evidence explains that "Allegations that are not substantiated, are not credible, without merit, false or have been determined to be unfounded are **not** *Brady* information." CP 110, 490. *Emphasis added*. This Court has consistent with the WASPIC policy found protected privacy interests in unfounded accusations, precluding dissemination of materials containing questionable statements that impugn the character of public servants. *Bellevue John Does 1-11*, 164 Wn.2d 199, 189 P.3d 139 (2008). Thus, the prosecutor's office is making an argument to expand its powers beyond what is appropriate in a fair and just system. Dismissal on the pleadings was improper.

D. Dissemination of An Unfounded Whistleblower Investigation Report Against the Prosecutor's Office As "Brady" Material Is An Abuse of Power

The Legislature expressly encourages local government employees to disclose improper governmental actions of local government officials and employees. RCW 42.41.010. Pierce County makes this same pronouncement to its employees, without excluding its law enforcement officers. PCC 3.14.020. Law enforcement officers are protected whistleblowers.

The code uses very strong terminology favoring the employee: "Every County officer or employee shall have the **right** to report..." PCC 3.14.030(A). The statute and code do not shield the prosecutor's office from reports of governmental misconduct. The prosecutor and his DPAs are not immune.

Whistleblowers may not be intimidated by County officials like the elected prosecutor and his DPAs. State statute emphasizes the impropriety of using official power to silence whistleblowers:

"A local government official or employee may not use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this chapter." RCW 42.41.045.

The prosecutor's argument that the prosecutor's office is not Det. Ames' employer is irrelevant to the abuse of power issues presented here, under this statute. All government officials are restrained from intimidating or threatening a local government employee reporting improper governmental action in any local government office, regardless of the division. Labeling a detective with "Brady" is indeed intimidating. Law enforcement officers have as a paramount commodity their integrity. Their reputation for truthfulness matters, and it is what mattered to Det. Ames when he disclosed his e-mails in *Dalsing* over the objections of the prosecutor's office.

The prosecutor's office explains the "Coopersmith Report" must be disseminated because it is evidence of Det. Ames' "poor judgment. The prosecutor's office identifies Coopersmith's "slender reed" comment as the "Brady" evidence. The "slender reed" comment is not a legal standard and it is not a finding of bad faith. Coopersmith does not conclude that Det. Ames filed his report for an improper purpose or that Ames did not have an objectively reasonable basis for preparing his report to the Undersheriff. Coopersmith actually affirmatively finds as do other witnesses that Det. Ames was acting in good faith, and not engaged in wrongdoing. CP 652, 655.

Importantly, the prosecutor's office does not consider Det. Ames' report to the Undersheriff and corresponding documentation "Brady" material. The prosecutor's office does not consider the recorded investigatory statements "Brady" material, most significantly the ones that prove Lindquist's involvement. CP 1103, App. J (Ames' Declaration with attached statements) and CP 141, App. C (The "Brady" letter). The material this prosecutor's office wants to make sure every defense counsel and defendant in Pierce County receives is the conclusory report of another attorney hired by the County to protect the County's interests. Within that, the select piece of information identified is an investigator's cryptic characterization that the conduct complained about is not legally corruption when nonetheless the detective believes it to be corrupt. The Coopersmith Report simply is not potential impeachment evidence.

An investigator's judgment is not the standard against which Det. Ames' credibility may be called into question in criminal matters. Many citizens would agree that Det. Ames exercised good judgment when he requested an independent investigation and prosecutor review of the Kinney child abuse case. Many law enforcement officers would agree that Det. Ames exercised good judgment when he complained about the elected prosecutor's involvement in a search of the detective's computer. Many criminal defendants and defense counsel would say, and in fact

defense counsel did say by way of declarations in this case, that Det. Ames exercised good judgment when he complained about the prosecutor's office failing to provide to criminal and civil counsel e-mails revealing the innocence of a woman wrongfully accused. If the prosecutor's office has the power under "Brady" to disseminate an unfounded whistleblower complaint, the Prosecutor and his DPA's have effectively immunized themselves absolutely and preempted law enforcement from ever blowing the whistle on prosecutor misconduct. And, from disclosure of true "Brady" material without the prosecutor's consent or over the DPAs objections even where the DPAs have an obvious conflict.

The prosecutor's office argues it will "vigorously" seek to uphold Det. Ames' testimony in criminal prosecutions, without explaining how it can possibly accomplish restoring Ames' reputation for good judgment, which is the select portion of the entire Coopersmith Report the office identifies as the "PIE". Resp. Brief 27. Does the prosecutor's office intend to ask the *George* court to review the pages of accolades from prosecutors contained in Ames' personnel file that commend him for his outstanding investigative work? Does the prosecutor's office intend to call DPA Richmond to the stand to explain his deception? Does the prosecutor's office intend to call DPAs Kooiman and Lewis to the stand to

explain what they actually said to Det. Ames while Lynn Dalsing was sitting in jail on charges they could not prove? Does the prosecutor's office intend to put Lindquist on the stand to explain why he and Chief Adamson decided to search Ames' e-mail? Does the prosecutor's office intend to have Lindquist explain why he issued a press release criticizing Ames for collecting forensic evidence in a child assault case involving a school teacher? Of course not, nor should a criminal court be put in such a position.

The criminal courts should never be asked to evaluate Det. Ames' judgment based upon an unfounded whistleblower complaint. An unfounded whistleblower complaint does not change the protected status of the employee. An employee has no obligation to prove an unlawful employment practice to be protected from retaliation. *Ellis v. City of Seattle*, 142 Wn.2d 450, 13 P.3d 1065 (2000). Retaliation means any adverse change in the employee's employment status. RCW 42.41.020.

Retaliation includes a refusal to assign meaningful work. *Id.* After his report, Det. Ames learned others were getting assigned cases he traditionally handled. App. J, CP 1112. After his report, he has been denied the support of the prosecutor's office in defense interviews. CP 1289 - 1295. After his report, he felt ostracized and that he was working in an untenably hostile workplace. App. J, CP 1112 -1113.

Retaliation also means “hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.” RCW 42.41.020. The prosecutor’s office selected materials and summarized them in a cover letter that concludes the materials call into question Det. Ames’ credibility. They do not have any such letter for Det. Heischman whose credibility is at issue in *Dalsing*. Most currently, they never sent one on Det. McNaughten in the *Yerger* case, when that Det. was actually terminating for false statement in a police report. The decision to disseminate their select materials came after the office became exposed in *Dalsing*, rather than when the materials were created. The timing, the selective choices of materials, and the manner in which the materials are packaged show bias and retaliatory motive. It is doubtful the office would object to court intervention on a “PIE” determination if the subject matter did not involve the prosecutor’s office.

A prosecutor may not comment on the truthfulness of a witness, in particular a prosecutor must refrain from calling a witness a “liar”. *State v. Reed*, 102 Wn.2d 140, 702, 684 P.2d 699 (1984)(“The Code of Professional Responsibility, DR 7-106(C)(4), states unequivocally that an attorney shall not [a]ssert his personal opinion as to the justness of a cause, as to the credibility of a witness,...”). The “Brady” label carries the

harmful meaning that Det. Ames is potentially a dishonest cop, and his testimony may not be reliable. His value as a state witness depreciates substantially. The vehemence of the prosecutor's office in targeting Det. Ames reveals the retaliatory animus of the office that violates public policy. The office should not be permitted to label Det. Ames a "Brady" officer for retaliatory reasons, using an unfounded whistleblower investigation report.

E. Elements to A Writ of Prohibition - No Other Available Remedy

The prosecutor's office accuses Det. Ames of frivolity for pointing out the lack of any alternative remedies. Resp. Brief 22. The availability of alternative remedies is an element to a writ of prohibition. *In re King County Hearing Examiner*, 135 Wn. App. 312, 144 P.3d 345 (2006). Thus, the prosecutor's office could defeat a petition for a writ by providing an alternative remedy, yet it has chosen not to provide any alternative remedy. And, it has not conceded to any viable alternative remedy. Thus, an extraordinary writ is needed.

1. Immunity Challenges to Alternative Remedies Suggested by Prosecutor's Office

Without conceding to liability, the prosecutor's office mentions alternative remedies such as a civil rights claim or a defamation claim. Judge Hull correctly concluded the prosecutor's office cannot not

legitimately argue the viability of alternative remedies, mentioning specifically a union grievance, defamation, and retaliation.¹²

2. Role of DPA As Advocate Versus Investigator Implicates Viability of Any Civil Rights Case

Although Judge Hull did not specifically mention it, a civil rights claim similarly presents various challenges. Dishonest DPAs may be sued for civil rights violations depending upon the role of the DPA making the false statement. *Kalina v. Fletcher*, 522 U.S. 118, 118 S. Ct. 502 (1997). DPAs may not swear to investigatory facts in a probable cause statement and claim absolute immunity when the facts are false. *Id.* This liability exposure has never been extended to a false declaration filed by a DPA opposing a discovery sanctions motion in a civil action. The absolute testimonial privilege complicates the liability analysis. *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 475, 564 P.2d 1131 (1977). The Richmond, Kooiman, and Lewis declarations may be considered privileged because they were filed in court in civil actions.¹³

¹² While Pierce County stated that he potentially had a remedy pursuant to union contract or could have filed a defamation or retaliation suit, there are issues which prevented Ames from filing such actions. There had been no adverse employment action taken, so a retaliation suit would not have survived. A defamation action would have been difficult to maintain as well, as absolute privilege could be asserted to defeat the action because the statements were made during the course of a judicial proceeding. Additionally, one must prove damages." Citations omitted. CP 2068.

¹³ Indeed, in Response the argument is that Richmond was merely lawyering or advocating for Pierce County.

The prosecutor's further dissemination of the false Richmond declaration as "Brady" material to criminal defense counsel implicates the civil rights case the prosecutors cited on summary dismissal; this case suggests a civil rights case may not be viable. CP 21. *Broam v. Bogan*, 320 F.3d 1023 (9th Cir. 2003). The *Broam* case involved a criminal defendant suing a prosecutor for civil rights violations. The court found that a prosecutor's decision not to preserve or turn over exculpatory material before trial, during trial, or after conviction violates due process, but is nonetheless an exercise of the prosecutorial function entitling a prosecutor to absolute immunity. *Id.* at 1030. The prosecutor's office does not distinguish the civil rights cases cited by Det. Ames that hold an extraordinary writ is actually a mandatory precursor to pursuit of a civil rights claim. *See* Ames' opening brief at 15, citing to *Cotton v. Jackson*, 216 F.3d 1328, 1332-33 (11th Cir. 2000), and *Joiner v. Gless*, 288 Ga. 208, 209-10, 702 S.E. 2nd 194, 196 (2010). A writ is a proper remedy for ensuring due process.

Without a remedy, Det. Ames suffers a destroyed reputation with no means to restore it. Every criminal court asked to review the questionable materials will be subjected to the same deception and mistaken assumptions that are damaging to Det. Ames' good name and reputation for honesty. This result damages public confidence, and

generates distrust with the criminal justice system. The behavior of the prosecutor's office creates a fracture between the prosecutor's office and the sheriff's departments when a just system requires them to work cooperatively together.

F. Public Interests At Stake That Warrant Judicial Intervention

Importantly, Det. Ames has never sought a damages remedy. He filed to prevent harm to his reputation and to preclude injuries that would necessitate a damages case. He expected an opportunity to be heard to restore his confidence in the way the system works. A declaratory judgment action brings early resolution to conflicting positions, avoiding escalating damages or harm.¹⁴ The remedy is so essential to meaningful civil discourse that the "justiciability" factor need not be present on issues of public interest. *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994).

Matters of "great public importance" include the investigation and revelation of hidden criminal or unethical conduct. *Rogers v. Home Shopping Network, Inc.*, 73 F.Supp. 2d 1140 (9th Cir. 1999). The dissemination of false information may be criminal and is certainly unethical. *State v. Singh*, 167 Wn. App. 971, 275 P.3d 1156 (2012).

¹⁴ Doug Rendleman has described one category of the plaintiffs seeking declaratory judgments as "people embroiled in an actual controversy that has not developed to the stage at which someone could seek damages or an injunction." Bray, Samuel L., *The Myth of the Mild Declaratory Judgment*, *Duke Law Review* Vol. 63:1091(2014) at 1134.

The prosecutor's office essentially concedes the presence of a public interest dispute when it argues any remedy for Det. Ames violates the rights of criminal defendants to the questionable materials at issue. Resp. Brief 25-26. *Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861 (2004) ("The public's right of access may be limited to protect other significant and fundamental rights, such as a defendant's right to a fair trial."). Thus, this case should be heard on its merits.

1. Standing Under 1st Amendment

Washington case law acknowledges the 1st Amendment implications to a claimant denied access to the courts. *Akrie v. Grant*, 178 Wn. App. 506, 513 n. 8, 315 P.3d 567 (2013). First Amendment implications create standing. A "chilling effect" on speech and redress, implicating the First Amendment, confers standing to move forward. *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994).

Det. Ames' free speech interests and rights to seek redress are clearly implicated. He was exercising them when he appeared independently in *Dalsing*, and when he subsequently filed this case. He was exercising them when he reported his concerns about governmental misconduct to the Undersheriff.

2. Det. Ames' Right To Seek Redress

Det. Ames did not fail to raise the Noerr Pennington doctrine below, nor has he misled the court as to the implications of the doctrine. CP 797, Resp. Br. at 37. The doctrine continues to thrive in the common law to ensure access to justice to those who have been wronged.

Under *Noerr-Pennington*, “[t]hose who petition government for redress are generally immune from...liability.” *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1092 (9th Cir. 2000)(protecting § 1983 claims “based on the petitioning of public authorities.”). “The doctrine immunizes petitions directed at any branch of government, including the executive, legislative, judicial and administrative agencies.” *Id.* “The *Noerr-Pennington* doctrine ensures that those who petition the government for redress of grievances remain. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). The *Noerr-Pennington* doctrine ensures that those who petition the government for redress through petitioning the courts remain immune from liability. *White v. Lee*, 227 F.3d 1214, 1232 (9th Cir. 2000). “With respect to petitions brought in the courts, the Supreme Court has held that a lawsuit is unprotected only if it is a “sham” — i.e., “objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits.” *Id.* at 1232 (citing *Professional Real Estate Investors, Inc. v. Columbia Pictures*

Indus., Inc., 508 U.S. 49, 60, 113 S.Ct. 1920 (1983). See also *Empress LLC v. City & County of San Francisco*, 419 F.3d 1052, 1056 (9th Cir. 2005).

The free speech and right to seek redress issues presented by this case warrant judicial review. The court erroneously dismissed this case because it failed to recognize this case presents questions of public importance to the participants in the system and not just the criminal defendants where Det. Ames may be called to testify. It presents systemic concerns about disincentives to law enforcement being forthright, and empowering prosecutors to pursue prosecutions where the evidence does not support it.

G. Special Motion to Strike Not Available to The Prosecutor's Office

Punishing Det. Ames and his attorney violates free speech and has a chilling effect on law enforcement and advocacy. The prosecutor's office argues against law enforcement officers, particularly those who question the office, having right or remedy to seek any redress. To deter law enforcement officers and their representatives, the office insists this Court penalize Det. Ames and his attorney for coming to court to ask for relief. The prosecutor's office has expended more in pursuit of sanctions than it has dismissing the underlying petition. This Court should continue

to deny its efforts to silence Det. Ames and his attorney. The trial court did not err when it denied the anti-SLAPP motion of the prosecutor's office and the trial court did not err when it denied CR 11 sanctions.

1. Clear And Convincing Evidence Present

The anti-SLAPP statute does not immunize the prosecutor's office in this case. An anti-SLAPP motion is properly denied where there is clear and convincing evidence [of] a probability of prevailing on the claim. RCW 4.24.525. Det. Ames petitioned for declaratory relief to establish DPA Richmond falsely accused him of dishonesty. Specifically, that DPA Richmond wrongly denied receiving exculpatory e-mails from Ames. DPA Richmond has now admitted he did receive the e-mails. Strategically, the prosecutor's office withheld this material evidence from the trial court until after the case was dismissed. Now that the evidence is in the record, Det. Ames has stronger proof, indeed he has proof beyond a reasonable doubt that he can prevail in clearing his name with respect to the Richmond declaration.

The absence of an opportunity to conduct discovery before having to offer clear and convincing evidence forms the basis of various constitutional challenges to the validity of RCW 4.24.525. This Court has historically voided statutory enactments that invade the rule making province of the judiciary. *Putman v. Wenatchee Valley Med. Ctr.*, P.S.,

166 Wn.2d 974, 980, 216 P.3d 374, 377 (2009). In *Putman*, the Court addressed the constitutionality of a procedural mandate to file a “certificate of merit” showing a “reasonable probability that the defendant’s conduct did not follow the accepted standard of care.” *Id.* at 983. The Court held that the certificate of merit conflicted with Rule 22 by requiring “additional verification of the pleadings” and conflicted with Rule 8 by requiring more than a “short and plain statement of the claim” with the opportunity for discovery “to uncover the evidence necessary to pursue their claims.” *Id.* “The certificate of merit requirement essentially requires plaintiffs to submit evidence supporting their claims before they even have a chance to conduct discovery and obtain such evidence.” *Id.*

The late filed Richmond declaration evidences the very prejudice described in *Putnam* in the context of RCW 4.24.525. At the very outset, a defendant can stay discovery and demand the plaintiff come forward with “clear and convincing evidence [of] a probability of prevailing on the claim.” This burden within the first sixty days of filing the case interferes with a litigant’s constitutionally protected interests in civil discovery to ascertain the truth. WASH. CONST. ART. I, § 10, *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 16 P.3d 45 (2000). It preempts a litigant’s rights under CR 26 to engage in meaningful discovery.

In recent Division I decisions, the appellate court found the anti-SLAPP provisions constitutional on its face as not conflicting with the discovery rules. *Spratt v. Toft*, 180 Wn. App. 620, 324 P.3d 707 (2014), and *Davis v. Cox*, 180 Wn. App. 514, 325 P.3d 255, 2014. The cases cite to the good cause standard for a motion for discovery in the rules and compare it to the CR 56(f) standard. The problem with this comparison involves the standard of proof. On summary judgment, a CR 56(f) motion does not require proof of clear and convincing evidence of a probability of prevailing. The preponderance standard applies to the identification of evidence needed to oppose the motion. Here this heightened standard is problematic because of the difficulty of identifying with specificity the requisite proof. How does a plaintiff offer proof that a declarant has been dishonest before discovering the communications that would reveal the dishonesty and the opportunity to cross-examine the declarant under oath. Det. Ames urged the court to set the matter over for a show cause hearing for this purpose. The court denied Det. Ames any such relief. The application of anti-SLAPP to this case would be an unconstitutional violation of Det. Ames' rights to discovery as proven by Richmond's belated declaration.

Det. Ames should have the opportunity for meaningful discovery with respect to all of the materials the prosecutor's office selects to

discredit him. There is no basis for denying relief to Det. Ames, and correspondingly no reason to punish him with Anti-SLAPP penalties. The trial court properly rejected any such remedy to the prosecutor's office.

2. No Public Participation by Prosecutor's Office

The trial court correctly concluded the prosecutor's office has no protected free speech rights implicated because the DPAs were fulfilling their established duties when disseminating the materials they designate "PIE." The prosecutor's office filed their anti-SLAPP motion immediately post the decision in *Henne* that extended anti-SLAPP protections to government. This Court granted review of *Henne* in March 2014, and a decision is presently pending. *Henne v. City of Yakima*, 177 Wn. App. 583, 313 P.3d 1188 (2013).

Det. Ames refers to the arguments set forth in the Brief of Amicus Curiae of the Washington State Association for Justice Foundation to the *Henne* case. Therein, the Association urges the Court to distinguish local government from the "persons" whose first amendments rights may be protected under the statute. When individual employees are not named, a county may not invoke nor advocate for the first amendment protections of individual employees. Here, Det. Ames named Pierce County, not the prosecutor nor any deputy prosecutors individually. And, Det. Ames complains primarily about the dissemination of "Brady" materials to

criminal defendants and their attorneys, not any agency.¹⁵ First amendment interests are not implicated. The statute should not be used by the County.

Additionally, under *Segaline v. State Dept. of L & I*, 169 Wn.2d 467, 238 P. 3d 1107 (2010) local government has no right to anti-SLAPP protections. Det. Ames refers to and relies upon the Brief of Amici Curiae Washington Employment Lawyers Association and American Civil Liberties Union of Washington filed in the *Henne* case where the disjunct between case law interpreting .510 anti-SLAPP protections and .525 anti-SLAPP protections are addressed. Government was never intended to be protected from SLAPP suits because government does not have free speech rights to invoke. *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 1960, 164 L.Ed.2d 689 (2006). Speech that occurs during the discharge of an employee's duties likely does not touch on matters of public concern. *Tyner v. State*, 137 Wn. App. 545, 557, 154 P.3d 920, 926 (2007). Likewise, speech that offers the speaker's personal opinions or beliefs does not implicate matters of public concern, especially when it occurs in the work setting. *Id.* The absurd results of government having

¹⁵ Det. Ames does object to the introduction of the supposed "Brady" materials into court; however, here the prosecutor's office maintains it would "vigorously" defend against any such introduction thus averting any free expression because the court would not be receiving these materials from the prosecutor's office.

anti-SLAPP protections are most apparent here where the prosecutor's office intends to SLAPP Det. Ames when he was fulfilling the "Brady" duties the DPA's failed to adhere to in *Dalsing*. Anti-SLAPP immunities were designed to protect people like Det. Ames who is exercising his First Amendment rights, not the County. The trial court's anti-SLAPP order should be upheld because the trial court aptly recognized the prosecutor's office was not engaged in any public participation when disseminating its supposed "Brady" materials.

3. WASH. CONST. ART. II, § 37 - RCW 4.24.525 Not An Act Complete In Itself

The prosecutor's office relies exclusively upon an abrogated case to argue the constitutionality of RCW 4.24.525. Resp. Br. 46, citing to *State v. Thorne*, 129 Wn.2d 736, 921 P.2d 514 (1996). The case does not apply to the legislative enactments at issue here because there are substantive distinctions between the title of the act and its content and the title of the act and its content at issue in *Thorne*. In *Thorne*, the legislation at issue was actually an initiative entitled "Persistent Offender Accountability Act", commonly known as the "three strikes you're out" law. Initiative 593 set out the entire text of the criminal sentencing statute that was amended, RCW 9.94A.120 and RCW 9.94A.030. The defendant argued other statutes that may in certain cases be affected, including

statutes setting forth the maximum sentences for individual crimes also should have been set forth in full, specifically RCW 9A.20. The Court explained that when an act is complete in itself, and does not require reference to other statutes to understand its purpose and meaning, then such act is not within the contemplation of Article II, Section 37.

The two part test for determining whether an Act is complete asks the following: Is the new enactment such a complete act that the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment and would a straightforward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment? The Court said the first test was met because the penalties imposed can be determined without referring to any other statute. There was no question that the scope of the act intended to affect all sentencing of all persistent offenders, notwithstanding the maximum sentence under any other law. The second test was met because the purpose of the Act in terms of its scope was not deceptive. Its purpose was set forth clearly in the title of the act and in the preemptive language of the amendments.

The two part test is not similarly met here. Senate Bill 6395 is "AN ACT Relating to lawsuits aimed at chilling the valid exercise of the the constitutional rights of speech and petition." This title suggests the

Act does not apply to cases where a person intends to ascertain his or her rights, or intends to stop government from exceeding its authority.

The title provides no notice about changing standards of proof in a declaratory action. Nor adding fee shifting provisions to existing statutory remedies and statutory penalties of \$10,000.00 even in cases where a party is seeking clarity on ambiguous constitutional interests or contractual obligations. Existing statutory remedies not identified in the Act are substantially altered and become essentially unavailable to litigants who cannot risk the fee shifting and penalty provisions not found in the Uniform Declaratory Judgments Act or the Act regarding Extraordinary Writs. In a recently decided Division I opinion, the court decided anti-SLAPP relief was not proper. The case involved a petition for declaratory relief, a remedy expressly contemplated under the Public Records Act. This fact together with the nature of the alleged public participation, making a public records request, provided grounds for denying an anti-SLAPP remedy to the individual requestor. *City of Seattle v. Egan*, 179 Wn. App. 333, 317 P.3d 568 (2014). Declaratory relief without risk of penalty is essential to resolving civil disputes where objective judicial interpretation is required.

Section One of the Act contains a Legislative Intent section that describes a concern about lawsuits “brought primarily to chill the valid

exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” The title seems intended to focus on defamation cases, and in fact adopts a defamation standard of proof. The intent section of the Act makes specific reference to “citizens” participating in matters of public concern, and the rights of “persons” to file lawsuits, not government. Government has its own distinct definition from “person”. The statute references the attorney general’s office or any government body coming to the aid of a moving party to support the moving party. Thus, the Act was intended to protect individual persons, not government.

The Act does not contain any of the pre-emptive language found in the three strikes initiative. Just the opposite, instead the Act indicates the enactment does not “limit or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.” It expressly directs liberal construction to “effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.” Seeking declaratory relief and a determination of rights is not commonly recognized as an abusive use of the courts. Similarly, petitioning for a writ to constrain the extra-jurisdictional abuse of governmental power is not commonly recognized as an abusive use of the courts. The statute should be considered unconstitutional as applied to

declaratory judgment cases and petitions for an extraordinary writ involving government.

H. “George” Case An Action “Aimed At Public Protection.”

The prosecutor’s office argues prosecuting attorneys have anti-SLAPP protection for communicating “Brady” material to the court in *George* when subsection (3) of .525 expressly exempts from the statute “an action” brought by a prosecuting attorney, acting as a public prosecutor, to enforce laws aimed at public protection. “Brady” disclosed in “George” would necessarily involve “an action” brought by a prosecuting attorney to enforce laws aimed at public protection. The statute uses distinct terms to separate out the SLAPP proceeding, which is referred to as a “claim” or in this case, Det. Ames’ petition, from the public participation, which is referred to as “an action” involving public participation, or in this case the prosecutors’ “Brady” disclosures in *George* and any other criminal matters brought for purposes of public safety. Compare, 1(a) to (4)(a) and (3). This case is simply not covered by the anti-SLAPP statute. The trial court’s order should be affirmed.

I. RAP 2.2 Does Not Reference Anti-SLAPP Orders

The prosecutor’s office did not timely appeal the trial court’s denial of its special motion to strike. RAP 2.2 identifies those matters an appellate court may review as a matter of right. Special motions to strike

are not mentioned. If an order is not appealable as a matter of right, then the order may be afforded expedited review as a discretionary matter. RAP 2.3. Discretionary matters must be appealed within thirty days from the day the trial court acted, rather than from the date the order is entered with the clerk's office. The prosecutor's office did not appeal within thirty days of Judge Hull's ruling. Thus, its appeal of the Anti-SLAPP order is untimely and should be rejected.

J. CR 11 Exceptions Are Not Mutually Exclusive

A trial court's decision to deny sanctions will be supported on appeal when the trial court has not abused its discretion. *Allard v. First Interstate Bank of Washington*, 112 Wn.2d 145, 768 P.2d 998 (1989). The trial court is given broad discretion to rule on attorney's fees and costs, which will not be reversed where the trial court has not "manifestly abused its discretion." *Pham v. Seattle City Light*, 159 Wn.2d 538, 540, 151 P.3d 976 (2007). Trial judges are in the best position to determine any award, and the appellate courts give trial judges broad discretion when deciding sanctions. *Id.* Rule 11 is an extraordinary remedy to be exercised with extreme caution. *Rygg v. Hulbert*, 2013 WL 3782169. A frivolous case cannot be supported by any rational argument based in fact or law. *Id.* at 3. The prosecutor's office fails to identify any findings to show frivolity by Det. Ames or his attorney. Instead, the Response

exceeds standard page limits distinguishing the various case law and authority Det. Ames relied upon before filing suit. The fact there is authority to distinguish shows sanctions are not appropriate. The prosecutor's office affords no deference to the many attorneys and legal scholars shocked at the preliminary ruling of the trial court on sanctions. The prosecutor's office fails to offer any evidence to contest the chilling effect of a sanctions order in this case.

The prosecutor's office claims counsel failed to choose the right grounds under CR 11 to oppose fees. The trial court correctly adopted the rationale from federal case law that explains a trial attorney need not choose the grounds upon which to oppose a sanction request under CR 11. The trial court correctly articulates the holding, while the prosecutor's office attempts to morph the case into the exact opposite of what the case actually holds. *See*, Resp. Br. at 56. The prosecutor's office argues the case holds a lawyer has to choose when the decision of the court is expressly the opposite. "Argument Identification" is expressly rejected:

"The text of the Rule, however, does not require that counsel differentiate between a position which is supported by existing law and one that would extend it." *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1539 (9th Cir. 1986)

The federal court explains the perils of imposing an “argument identification” standard. Such a demand has deleterious effects on advocacy.

“It is not always easy to decide whether an argument is based on established law or is an argument for the extension of existing law. Whether the case being litigated is or is not materially the same as earlier precedent is frequently the very issue which prompted the litigation in the first place. Such questions can be close.”

Golden Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1540 (9th Cir. 1986)

The trial court’s hesitancy to suggest weakness in its opinion likely explains its initial ruling on fees.¹⁶

Importantly since 2005, the availability of sanctions diminished substantially because the Rule was amended adding as an exception any case where new law is established. There are no cases post 2005 to

¹⁶ “In even a close case, we think it extremely unlikely that a judge, who has already decided that the law is not as a lawyer argued it, will also decide that the loser’s position was warranted by existing law. Attorneys who adopt an aggressive posture risk more than the loss of the motion if the district court decides that their argument is for an extension of the law which it declines to make. What is at stake is often not merely the monetary sanction but the lawyer’s reputation. The “argument identification” requirement adopted by the district court therefore tends to create a conflict between the lawyer’s duty zealously to represent his client, Model Code of Professional Responsibility Canon 7, and the lawyer’s own interest in avoiding rebuke. The concern on the part of the bar that this type of requirement will chill advocacy is understandable. As the appellant points out in its appellate brief, courts “should not be empowered to sanction for the level of assurance used by the brief-writer.”

Golden Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1540 (9th Cir. 1986)

support sanctions against Ames. This case will necessarily establish new law, which Det. Ames pointed out to the trial court. The trial court did not articulate any findings that could be relied upon to support any sanctions because there is no evidence of wrongdoing by Ames or his attorney.

K. 12(b)(6) Motions Require Consideration of Hypothetical Facts, Not Declaratory Evidence of These Facts Under CR 56

The prosecutor's office argues the responding party has a duty to convert a motion on the pleadings to a motion for summary judgment when arguing disputed facts warrant a denial of the motion. CP 22. On a 12(b)(6) motion the court may not consider factual declarations; the court may consider hypothetical facts without actual testimony. *Haberman v. WPPSS*, 109 Wn.2d 107, 744 P.2d 1032 (1987). Thus, there is no obligation to attempt to actually prove the hypothetical facts. The presentation of extraneous evidence is really immaterial on a 12(b)(6) motion. Courts are cautioned to avoid dismissal on the pleadings, particularly in a case like this where the law involved is in the process of developing. *Id.* at 120.

L. Proper Remedy to Naming the State Is to Amend, Not Dismiss

The procedural arguments about joining the state should be rejected. The proper remedy for failure to name a party at that early stage

would not be dismissal, but rather leave to amend.¹⁷ CR 15(a) (“leave shall be freely given when justice so requires.”)¹⁸ The case should be reinstated.

M. Trial Court Properly Considered Declarations

The prosecutor’s office challenges the trial court’s consideration of various declarations offered to defeat the imposition of sanctions. An appellate court reviews decisions on sanctions for an abuse of discretion. *Johnson v. Jones*, 91 Wn. App. 127, 955 P.2d 826 (1998). A motion to strike declarations offered on a sanctions ruling is not subject to de novo review as it would be were the court considering a motion to strike on a summary judgment motion. See *Folsom v. Burger King*, 135 Wn.2d 658, 958 P.2d 301 (1998). The trial court properly exercised its discretion when it denied the prosecutor’s office’s various motions to strike declarations. Sanction rules are “designed to confer wide latitude and discretion upon the trial judge” *Washington State Physicians Ins. Exchange & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). Deference to the trial court acknowledges the “judicial actor who is better positioned than another to decide the issue in question.” *Id.*

¹⁷ Det. Ames requested leave to amend in the event the court accepted the premise that the state should be separately named as a proper party. RP 38 -39, 12/16/13.

¹⁸ See also dissent, *Wilson v. Horsley*, 137 Wn.2d 500, 974 P.2d 316 (1999) (“Since the American Civil War we have stated failure to grant leave to amend where the interests of justice would be promoted is an abuse of discretion.”)

The prosecutor's office criticizes the timeliness of the declarations; however, the trial court gave ample opportunity for the defense to obtain whatever responsive materials it felt it needed. The prosecutor's office did not offer even one declaration from any prosecutor or legal scholar to testify that DPAs have a constitutional mandate to disseminate false or unfounded information under "Brady" or its progeny. The timeliness of the declarations can be explained primarily based upon the outrage and resounding "chilling effect" of the trial court's initial order. The threat of sanctions was not sufficiently compelling to get the declarants to act. When the legal and law enforcement communities saw the initial order, their response was overwhelming.¹⁹ The evidence of a chilling effect is undisputed and a relevant basis to properly deny sanctions.

N. No Basis For Any Award of Fees On Appeal

The trial court properly denied relief to the prosecutor's office on its special motion to strike, and it properly denied the motion for sanctions. Neither decision should be reversed. The grounds for supporting the decisions are articulated above and in the opening brief.

¹⁹ The prosecutor's office correctly notes two declarants withdrew their statements. The suspicion as to the first concerns the declarant's desire for judicial appointment with Lindquist's support rather than denouncement. The second was Brett Purtzer who appeared on behalf of counsel and withdrew his declaration when the defense objected to his dual role as witness and attorney. Concerns about the shunning of declarants by the prosecutor's office was covered in the media story on this case. CP 2020, Page 19 of TNT article attached.

This Court should deny any fee and cost request by the prosecutor's office on appeal for the same reasons. There is no basis for any award of fees on appeal because Det. Ames and his attorney have appropriately sought redress from this Court.

V. MOTION TO STRIKE

Det. Ames moves to strike in its entirety Appendix A to the Response of the Prosecutor's Office. The table contains argumentative opinion statements that have no value other than to prejudice the petitioner Det. Ames and his attorney. To the extent the table has any argument of substance, substantive arguments are to be contained in the brief. RAP 10.3(a)(6) and (c).²⁰ The appendix adds argument outside the page limitations when the Prosecutor's Office has already exceeded the limits by twenty pages. RAP 10.4(b). The Appendix should be stricken.

VI. CONCLUSION

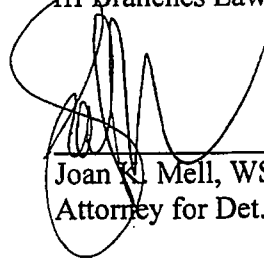
This Court should reverse the trial court's dismissal because relief is essential to restoring balance to the criminal justice system in Pierce County where the prosecutor's office is using false and questionable "PIE"

²⁰ In more than one instance the assertions do not fairly characterize Det. Ames' Opening Brief. There is a column entitled "Actual Facts" where there are no actual facts cited: See reference to "deficient work" and repeated entries of "Baseless accusation. No finding in record." The opinions do not fairly characterize the record. Another instance is the reference to Richmond not receiving the Ames exculpatory e-mail. Also, there are assertions that are inconsistent with the record in *Dalsing* or have never been established, but are asserted as verities without actual citations to any record in this matter. See assertions regarding "Ability Systems."

to silence a state witness who is a whistleblower against the prosecutor. This Court should affirm the trial court's denial of the office's Anti-SLAPP special motion to strike. The trial court's order denying sanctions on reconsideration and to strike should be affirmed. Costs and attorney's fees on appeal should be awarded to Det. Ames.

RESPECTFULLY SUBMITTED this 5th day of December, 2014.

HI Branches Law, PLLC



Joan K. Mell, WSBA #21319
Attorney for Det. Mike Ames

CERTIFICATE OF SERVICE

I, Thea Wescott, certify as follows:

I am over the age of eighteen, a resident of Pierce County, and not a party to the above action. On December 5, 2014, I caused to be served true and correct copies of the above document and this Certificate of Service by e-mail as follows:

Mike Patterson
Jason Harrington
2112 Third Avenue, Suite 500
Seattle, WA 98121
map@pattersonbuchanan.com
jah@pattersonbuchanan.com
sah@pattersonbuchanan.com
cdl@pattersonbuchanan.com

Philip Talmadge
Talmadge/Fitzpatrick
18010 Southcenter Pkwy
Tukwila, WA 98188
phil@tal-fitzlaw.com

I certify under penalty of perjury under the laws of the State of Washington that the above information is true and correct.

Dated this 5th day of December 2014, at Fircrest, WA.



Thea Wescott, Paralegal

PER THE DEPUTY CLERK'S 11-21-14

RULING—APPENDICES A, M, P, Q and R

ARE NOT INCLUDED IN THIS REVISED

BRIEF

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Dec 08, 2014, 8:39 am
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

Appendix B: Judge Andrus Order from Dalsing
Awarding Discovery Sanctions to Ames

FILED

13 JUL 22 PM 2:46

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 12-2-08659-1 KNT
Judge Beth Andrus
Department 35

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

LYNN DALSIK, <p style="text-align: right;">Plaintiff,</p> vs. PIERCE COUNTY, A MUNICIPAL CORPORATION, <p style="text-align: right;">Defendant.</p>	NO. 12-2-08659-1 KNT ORDER GRANTING MICHAEL AMES' MOTION FOR AWARD OF ATTORNEY FEES AND COSTS
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I. PROCEDURAL HISTORY OF MOTION

This case arises out of the arrest and prosecution of Plaintiff Lynn Dalsik for child molestation in Pierce County Superior Court. After Pierce County dismissed the charge against Ms. Dalsik, she sued the county for wrongful arrest and malicious prosecution.

The motion before the Court was filed by Pierce County Sheriff's Deputy Michael Ames, a non-party witness. Det. Ames seeks an award of attorney fees and costs against Defendant Pierce County under CR 26 and 37.

II. ISSUES

Det. Ames contends that under CR 26 and 37, the Court should order Pierce County to reimburse him for the \$4,749.99 in legal fees he incurred to litigate Pierce County's work product privilege. Pierce County argues that neither civil rule authorizes an award of attorney
ORDER ON MICHAEL AMES' MOTION
FOR ATTORNEY FEES - 1

SUB 219

Ames - 000070

fees to Det. Ames. Alternatively, it contends that its assertion of the work product privilege was substantially justified and that an award of attorney fees would be unjust because the legal issues were being adequately addressed by Plaintiff; making Det. Ames's involvement in the discovery dispute unnecessary. Finally, Pierce County argues that Det. Ames's documentation of legal fees incurred is insufficient for the Court to make any fee award.

The Court must address the following issues:

1. Does CR 26 or CR 37 authorize an award of attorney fees and costs to Det. Ames?
2. If the Court has the authority to award attorney fees, was Pierce County's discovery conduct substantially justified?
3. Are there any other reasons why an award of attorney fees would be unjust?
4. Is the documentation supporting the request for fees sufficient and are the requested fees reasonable?

III. FINDINGS OF FACT RELEVANT TO DISCOVERY MOTION

In August 2012, Plaintiff Lynn Dalsing served Pierce County with document production requests. RFP No. 5 asked Pierce County to produce all "email communications, within the Pierce County Sheriff's Department, to and from the Pierce County Prosecutor's Office, and to and from the Department of Social & Health Services." Pierce County responded on August 13, 16, and 22, 2012, and October 31, 2012 without identifying or producing any emails between Det. Ames and Det. Heishman or any prosecutor in the Pierce County Prosecuting Attorney's Office. Nor did Pierce County notify Ms. Dalsing that it was withholding any emails on the basis of a work product privilege. Det. Ames had given copies of responsive emails in his possession to counsel for Pierce County on October 18, 2012.

Ms. Dalsing's attorney deposed Detective Ames on February 14, 2013. Det. Ames testified that he had emailed Det. Heishman and the prosecutors working on Ms. Dalsing's criminal case and thought that Pierce County had produced these documents to Plaintiff's counsel. He wanted the emails produced because he believed that they would exonerate him from any accusation of

ORDER ON MICHAEL AMES' MOTION
FOR ATTORNEY FEES - 2

Ames - 000071

wrongdoing in this malicious prosecution case. During the deposition, counsel for Pierce County instructed Det. Ames not to answer any questions about conversations he had with prosecuting attorneys during the pendency of the criminal case.

The parties conducted a discovery conference in late February 2013 and were unable to resolve their differences. Plaintiff Dalsing filed her motion to compel the production of Det. Ames's emails on March 7, 2013.

On March 12, 2013, Det. Ames filed a motion seeking permission to file the withheld emails under seal for an *in camera* review—specifically requesting direction from the Court on whether he could answer questions he had been instructed not to answer. Det. Ames submitted a declaration in which he listed the emails in his possession and sought permission to disclose the emails so that he could “respond truthfully to deposition questions and produce the documents [he has] that support [his] testimony.”

Only after these motions were filed did Pierce County produce a privilege log on March 13, 2013. At the same time, it produced copies of Det. Ames' communications with Det. Heishman but refused to produce his communications to/from prosecutors or CPS.

The Court held a hearing on Plaintiff Dalsing's motion to compel and motions for *in camera* reviews filed by Det. Ames, Pierce County and DSHS. Det. Ames was present and represented by separate counsel, Joan Mell. During the hearing, Det. Ames opposed Pierce County's contention that Det. Ames's emails with prosecutors were work product.

On April 22, 2013, the Court issued an order in which it concluded that “[a]ll of the documents submitted to the Court by Detective Michael Ames are discoverable.” The Court agreed that the emails contained information relevant to mental impressions that are directly at issue in this case. The Court also ruled that Plaintiff Dalsing would be permitted to question Det. Ames about the email communications he had with prosecutors.

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ORDER ON MICHAEL AMES' MOTION
FOR ATTORNEY FEES - 3

Ames - 000072

IV. PRINCIPLES OF LAW

CR 26(e) provides:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense

The rule lists eight types of protective orders but they are only examples and do not restrict the Court's authority to fashion other relief as it deems appropriate. Teglund, 14 Wash. Practice, Civil Procedure §21:13 (2d ed. 2012). In Eugster v. City of Spokane, 121 Wn. App. 799, 91 P.3d 117 (2004), review denied, 153 Wn.2d 1012 (2005), Division III of the court of appeals held that trial courts have the authority under CR 26(e) to award attorney fees to a nonparty who has prevailed on a motion for protective order through the application of CR 37(n)(4).

CR 37(n)(4) provides that the court "shall" require the party whose conduct necessitated the motion to pay the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

V. ANALYSIS

1. Does CR 26 or CR 37 authorize an award of attorney fees and costs to Det. Ames?

This Court has the authority under Eugster to award attorney fees and costs to Det. Ames. Although Det. Ames is a non-party, CR 26(e) expressly permits non-parties to seek relief from a court for discovery disputes. Pierce County argues that CR 26(e) only applies to motions to prevent discovery via a protective order. Det. Ames's motion did not seek a protective order; it sought *in camera* review of emails he wanted to produce to Plaintiff Dalsing. The Court rejects this argument. Det. Ames sought relief only after he was improperly instructed by Pierce County's counsel not to answer reasonable deposition questions and not to produce legally discoverable documents. Only after he and Plaintiff Dalsing sought a court order did Pierce County produce copies of his emails to Det. Hefshuman and a privilege log. The County then

ORDER ON MICHAEL AMES' MOTION
FOR ATTORNEY FEES - 4

Ames - 000073

filed a motion for a protective order, which Det. Ames resisted. Given the unique circumstances of this case, the Court has the authority under the civil rules to award attorney fees to Det. Ames.

2. If the Court has the discretion to award attorney fees under the civil rules, was Pierce County's discovery conduct substantially justified?

Pierce County's assertion of the work product privilege during Det. Ames's deposition and instructing him not to answer questions was not substantially justified. First, Det. Ames was given the impression months before his deposition that his emails would be produced. He provided copies to Pierce County's attorney in October 2012. Pierce County provided no privilege log to Plaintiff Dalsing until a month after Det. Ames's deposition and only after Det. Ames filed his motion seeking court review of the emails in question. Det. Ames had reasonable concerns that his professional reputation could be impaired by the non-disclosure of his emails and he had a right to seek relief from this Court. Pierce County did not seek a protective order until after Plaintiff Dalsing filed her motion to compel and after Det. Ames made it clear he intended to challenge the asserted work product privilege.

3. Are there any other reasons why an award of attorney fees would be unjust?

Pierce County argues that Det. Ames had no need to inject himself into the discovery dispute because Plaintiff Dalsing was contesting the work product privilege. But Det. Ames was in possession of information and evidence that the Court found important in rendering a decision on the discovery motions—information that Plaintiff Dalsing does not know and has no ability to present to the Court. Given Det. Ames's role in the underlying investigation and Pierce County's stance during discovery, the Court sees no injustice in awarding him the legal fees he incurred to litigate the work product privilege issue.

4. Is the documentation supporting the request for fees sufficient and are the requested fees reasonable?

Det. Ames has submitted a declaration identifying the attorney fees and costs he incurred in preparing discovery pleadings. This documentation is sufficient for the Court to determine the

ORDER ON MICHAEL AMES' MOTION
FOR ATTORNEY FEES - 5

Ames - 000074

amount of time spent, the tasks performed and the hourly rate Det. Ames's attorney charged for the tasks performed. The documentation is adequate.

The requested fees are reasonable. The hourly rate of \$325 is consistent with the market rates in this legal community for an attorney of Ms. Mell's experience. The time incurred for addressing the work product privilege issues was reasonable and necessary.

VI. CONCLUSIONS OF LAW

1. CR 26 and CR 37 authorize an award of attorney fees and costs to Det. Ames.
2. Pierce County's discovery conduct was not substantially justified.
3. There are no other reasons why an award of attorney fees to Det. Ames would be unjust.
4. Det. Ames's documentation supporting the request for fees sufficient and the requested fees are reasonable.

ORDER

Det. Ames's motion for an award of attorney fees and costs is GRANTED. Pierce County shall reimburse Det. Ames in the amount of \$4,749.99.

Dated 22ND day of July, 2013.

sl (E-FILED)

JUDGE BETH ANDRUS
King County Superior Court

ORDER ON MICHAEL AMES' MOTION
FOR ATTORNEY FEES - 6

Ames - 000076

Appendix C: "PIE"/"Brady" Letter to Ames



Pierce County

Office of the Prosecuting Attorney

REPLY TO:
CRIMINAL FELONY DIVISION
930 Tacoma Avenue South, Room 846
Tacoma, Washington 98402-2171
Criminal Felony Records: 798-6513
Victim-Witness Assistance: 798-7400
FAX: (253) 798-6638

MARK LINDQUIST
Prosecuting Attorney

Main Office: (253) 798-7400
(WA Only) 1-800-992-2460

September 18, 2013

Det. Michael Ames
Pierce County Sheriff's Department
930 Tacoma Ave South, First Floor
Tacoma, WA 98402

Re: Potential Impeachment Evidence

Dear Det. Ames:

In representing the State of Washington, the Prosecuting Attorney functions as a minister of justice. To administer justice, the Prosecuting Attorney has responsibilities for the integrity of the criminal justice system and responsibilities that run directly to a charged defendant. One specific responsibility is an affirmative duty to disclose potential impeachment evidence to a charged defendant. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1983); *Kyles v. Whitely*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *Giglio v. United States*, 405 U.S. 92 S. Ct. 763; 31 L. Ed. 2d 104 (1972). "Potential impeachment evidence" includes not only exculpatory evidence but also any evidence that could be used to impeach the credibility of a witness called by the State. We have recently finalized a policy for disclosure of potential impeachment evidence, based on a model policy adopted June 19, 2013, by the Washington Association of Prosecuting Attorneys.

This letter is to notify you that potential impeachment evidence exists regarding you. We intend to disclose such evidence to defense attorneys, either directly or after *in camera* review by a judge, on cases where you are expected to be called as a witness by the State. Although we are required to disclose this information, such disclosure does not necessarily mean the information will be determined to be admissible in the criminal proceedings.

Specifically, we are in possession of declarations dated May 14, 2013, June 13, 2013, July 2, 2013, and July 19, 2013, signed by you and filed in the matter of *Dalsing v. Pierce County*, King County Superior Court Cause no. 12-2-08659-1 KNT, which contain assertions which are disputed in signed declarations filed by the civil DPAs assigned to that case. In addition, we are in possession of a report of investigation of allegations by you against numerous



Ames - 000021


Det. Michael Ames
September 18, 2013
Page 2

employees of the Pierce County Sheriff's Department and the Pierce County Prosecutor's Office, wherein it was found that there was "no evidence" to support your allegations of misconduct, and your allegations had "no merit." At this time, it is our intent to release the declarations directly to defense counsel and to seek an *in camera* review of the report of investigation.

The next scheduled trial wherein you might be called by the State to testify is *State v. George*, OS-1-00143-9. Trial is scheduled to begin October 3, 2013.

If you would like to provide our office with additional information which you believe is relevant before disclosure, please do so by 4:30 p.m. on September 23, 2013, in writing, and delivered to my attention at the Prosecutor's Office, room 946 of the County-City Building. Please be aware that such materials may also be disclosed to defense attorneys.

Sincerely,


Stephen M. Penner
Assistant Chief Criminal Deputy
(253) 798-7314
FAX: (253) 798-6636
spenner@co.pierce.wa.us

cc: Hon. Paul Pastor, Pierce County Sheriff

Ames - 000022

Appendix D: Ames' Declarations Prosecutor's
Alleged "PIE"

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

LYNN DALSING,
Plaintiff,
v.
PIERCE COUNTY, A MUNICIPAL
CORPORATION,
Defendant,

NO. 12-2-08639-1 KNT
DET. MIKE AMES' DECLARATION IN
SUPPORT OF HIS MOTION TO COMPEL
PAYMENT OF HIS DEFENSE COSTS

I, Detective Mike Ames, state and declare the following under oath pursuant to penalty of perjury under the laws of the State of Washington:

1.1 I am the detective Lynn Dalsing referenced in her claim form and complaint against Pierce County. I am over the age of eighteen, and I am competent to testify in this case. I make this declaration based upon my personal knowledge.

1.2 I offer my declaration in support of my motion to compel Pierce County to pay my attorney's fees and costs incurred since the date of my deposition forward wherein the prosecuting attorneys assigned to represent me instructed me not to answer questions that clear my name and my office from the allegations of wrongdoing made by Lynn Dalsing.

Declaration of Det. Mike Ames in Support of His Motion to Compel Payment of his Defense Costs

TH BRANCHES LAW, PLLC
Joan K. Mell
1033 Regents Blvd. Ste. 101
Pierrest, WA 98466
Joan@thbrancheslaw.com
253-566-2510 ph
281-664-4043 fx

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Ames - 000389

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2
3 1.3. When I was deposed, I learned Deputy Richmond and Deputy Koolman had never
4 produced my e-mail communications. The first e-mail documents my belief that there was no
5 probable cause to charge Lynn Dalsing with child pornography from the photographs I examined
6 on the computers taken from her home. The second e-mail confirms Deputy Koolman
7 considered my first e-mail "Brady" material and that she was obligated to disclose it to defense
8 counsel Gary Clower.
9

10
11 1.4. The Prosecutor's Office decision to withhold from disclosure my e-mail communications
12 that support my testimony is not in my best interest. Instructing me to remain silent about my
13 contact with the deputy prosecutors in the ordinal matter is also contrary to my interests. I want
14 to show Lynn Dalsing I did not misidentify her. I did not do the things she claims I did in her
15 claim form or in her complaint. I want the opportunity to tell the truth about these matters.
16

17 1.5 In order to protect my interests and that of my department, I sought independent legal
18 advice. I think the Pierce County deputies are protecting their staff at the expense of the
19 Sheriff's department, and me personally. My reputation as a trusted law enforcement officer is
20 at issue in this case. I need representation to protect my position, which is distinct from the
21 prosecuting attorneys.
22

23 1.6 Attached as Ex. A are true and correct copies of my deposition testimony showing where
24 I learned the e-mails were not disclosed, and where I was instructed not to answer questions
25 about my communications with the deputies from the prosecutor's office.
26

27 1.7 I have retained III Branches Law, PLLC and the services of Joan K. Mell to provide me
28 independent representation from Pierce County because I believe the Pierce County Prosecuting
29 Attorney's Office has an unresolvable conflict. Ms. Mell charges an
30

31 Declaration of Det. Mike Ames in Support of His
32 Motion to Compel Payment of His Defense Costs 2
33
34

III BRANCHES LAW, PLLC
Joan K. Mell
1033 Regents Blvd, Ste. 101
Puyallup, WA 98406
Joan@3brancheslaw.com
253-566-2510 ph
281-664-4643 fx

SM

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Ames - 000390

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2
3 hourly rate of \$325.00 per hour. She has represented my interests well previously and she has
4 confirmed to do so in this matter. To date, I am obligated to pay her attorney's fees and costs. I
5 expect to require her services in the future in further defense of the case. My hope is that Lynn
6 Dalsing amend her complaint, striking her allegations against me. I hope to be merely a witness,
7 rather than one of the agents responsible for her damages.
8

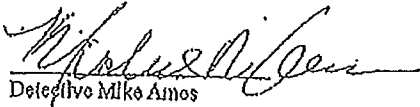
9
10 1.8 Pierce County has not provided me independent counsel. Pierce County has not agreed
11 to cover the fees and costs I am incurring with Ms. Moll.
12

13 1.9 I heard Mr. Richmond tell the court that Pierce County hired an attorney to represent me,
14 but no one has contacted me or provided me any information about independent counsel. At this
15 time, I wish to proceed with Ms. Moll representing my interests. I believe Pierce County is
16 obligated to pay the fees and the costs of representing my interests under the code given the
17 conflict of interest with the prosecutor's office. I have at all times acted in the best interests of
18 Pierce County and within the course and scope of my duties and responsibilities.
19

20 1.10 Ms. Moll's rates are reasonable and she provides professional and well informed
21 advocacy to protect my career.
22

23 The above information is true and correct to the best of my ability.
24

25 DATED this 14th day of May, 2013 at Plover, WA.
26

27 
28 Detective Mike Amos
29

30
31
32
33 Declaration of Det. Mike Amos in Support of His
34 Mollon to Compel Payment of His Defense Costs 3

III BRANCHES LAW, PLLC
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281-664-4643 fx

BY

00002282

Ames - 000391

Judge Beth Andrus Department 35
MOTION DATE: 6-14-2013 1:30 p.m.

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

LYNN DALSTIG,
Plaintiff,
v.
PIERCE COUNTY, A MUNICIPAL
CORPORATION,
Defendant.

NO. 12-2-08659-1 KNT

REPLY DECLARATION OF DET. MIKE
AMES IN SUPPORT OF HIS MOTION TO
COMPEL PAYMENT OF HIS DEFENSE
COSTS

I, Detective Mike Ames, state and declare the following under oath pursuant to penalty of perjury under the laws of the State of Washington:

1.1 I am the detective Lynn Dalstig references in her claim form and complaint against Pierce County. I am over the age of eighteen, and I am competent to testify in this case. I make this declaration based upon my personal knowledge.

1.2 I offer this declaration in reply to Pierce County's response to my motion to compel Pierce County to pay my attorney's fees and costs incurred since the date of my deposition forward wherein the prosecuting attorneys assigned to represent me instructed me not to answer questions that clear my name and my office from the allegations of wrongdoing made by Lynn Dalstig.

Repy Declaration of Det. Mike Ames in Support of His
Motion to Compel Payment of His Defense Costs

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3 1.3 I would like to emphasize the fact that I was "told" not to answer.
4

5 1.4 During the deposition was the first time I learned the exculpatory information was never
6 disclosed. I do have concerns regarding the ongoing conflict with the prosecutor's office in this
7 case, however after telling me not to answer multiple times the deposition was stopped. Mr.
8 Ruyf immediately left saying he had a meeting and Mr. Richmond remained seated and said he
9 needed to remain and work on some things, so I was left with no explanation as to what had just
10 transpired and what if any repercussions could apply to me for not answering. I did not think the
11 deposition was done. Furthermore, I have not yet been deposed or provided the appropriate
12 opportunity to explain the prosecutor's notions with me in the investigation. These facts together
13 with the failure to timely disclose information as promised makes me confident I need
14 independent representation. While Mr. Richmond has told the court he knows I am telling the
15 truth, I know my testimony raises concerns about the conduct of the prosecutors, which indicates
16 to me there is a conflict between my department and the prosecutor's office.
17

18 1.5 Mr. Richmond told me that the email I turned over to him from Lon Koolman in October
19 2012 was "exculpatory" regarding my involvement in this case. He also told me that it would
20 clear me of any wrong doing in the case and he would see to it that it was turned over as part of
21 discovery. I was attempting to disclose the fact that an instruction was given to me by the
22 prosecutor's office in a meeting with the prosecutors in June of 2011 when Mr. Richmond
23 stopped me from answering.
24

25 1.6 I have always understood that e-mails between detectives and prosecutors regarding
26 criminal investigations are discoverable. Mr. Richmond never informed me of any discussions or
27 information regarding a discovery conference between the parties prior to

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33 Reply Declaration of Det. Mike Amos in Support of His
34 Motion to Compel Payment of his Defense Costs 2

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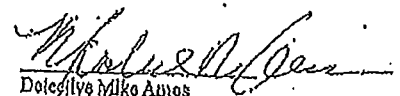
my deposition.

1.7 Mr. Richmond refused to tell my attorney who the special prosecutor was and we were not informed of his identity until after we filed our motion for attorney's fees.

1.8 I expressed my concerns to Dan Hamilton and Donna Motsumoto of the Pierce County Prosecutors Office when they represented me in this case prior to Mr. Richmond's representation. Mr. Richmond advised me he was aware of those concerns when I asked him about them at our first meeting.

The above information is true and correct to the best of my ability.

DATED this 13th day of June, 2013 at Pierce, WA.


Det. Milko Ames

Reply Declaration of Det. Milko Ames in Support of His Motion to Compel Payment of His Defense Costs 3

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FILED
13 JUL 02 PM 4:08
Judge Beth Andrus Department 35
KING COUNTY
MOTION FOR ATTORNEY'S FEES
SUPERIOR COURT CLERK
WITHOUT ORAL ARGUMENT
CASE NUMBER: 12-2-08659-1 KNT

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

LYNN DALRING,

Plaintiff,

v.

PIERCE COUNTY, A MUNICIPAL
CORPORATION,

Defendant.

NO. 12-2-08659-1 KNT

DET. MIKE AMES' DECLARATION IN
SUPPORT OF HIS MOTION FOR
ATTORNEY'S FEES AND COSTS UNDER
CR 26 AND 37

I, Detective Mike Ames, state and declare the following under oath pursuant to penalty of perjury under the laws of the State of Washington:

- 1.1 I am the detective Lynn Dalring referenced in her claim form and complaint against Pierce County. I am over the age of eighteen; and I am competent to testify in this case. I make this declaration based upon my personal knowledge.
- 1.2 I offer my declaration in support of my motion for attorney's fees and costs incurred on my discovery motion for an order permitting me to file my emails under seal and to decide whether I could answer deposition questions.
- 1.3 I have incurred the follow fees and costs in this matter:

Declaration of Det. Mike Ames in Support
of His Motion for Attorney's Fees and Costs

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Ames - 000400

Date	Description	Hours Billed	Rate	Amount
Dec 8, 2012	Conference with Client	0.4	\$325.00	\$130.00
Feb 21, 2013	Phone call with Richmond	0.2	\$325.00	\$65.00
Feb 22, 2013	Phone call with Richmond and Ruyf	0.4	\$325.00	\$130.00
Feb 23, 2013	Discussions with client regarding case	1.5	\$325.00	\$487.50
Feb 25, 2013	Review documents	1	\$325.00	\$325.00
Mar 4, 2013	Motion	3	\$325.00	\$975.00
Mar 11, 2013	Prep declaration with attachments	1.5	\$325.00	\$487.50
Mar 12, 2013	Work on motion for file documents under seal; filed and served	2	\$125.00	\$250.00
Mar 25, 2013	Finalized Mell declaration regarding motion to seal	0.5	\$125.00	\$62.50
Mar 25, 2013	Bench copy cost - Mell reply declaration on motion to seal	x	x	\$22.49
Apr 3, 2013	Phone call with Court regarding records under seal	0.1	\$325.00	\$32.50
Apr 5, 2013	Travel to and from Seattle	2.7	\$325.00	\$877.50
Apr 5, 2013	Court appearance; motion to seal	1	\$325.00	\$325.00
Apr 22, 2013	Decision of Court; phone call with client	0.5	\$325.00	\$162.50

Declaration of Del. Mike Ames in Support of His Motion for Attorney's Fees and Costs

2

AM

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Ames - 000401

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Date	(6)	Doll's Billed	Rate	Amount
Apr 23, 2013	E-mail to the Court regarding filing of e-mails	0.3	\$325.00	\$97.50
Apr 24, 2013	Added E-mails to declaration; filed and served	1	\$125.00	\$125.00
Total	X	X	X	\$4,654.99

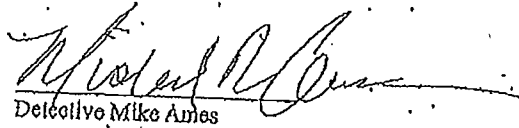
1.4 Attached hereto as Exhibit A is a true and correct copy of written instructions I was provided before my deposition.

1.5 Attached hereto as Exhibit B is a true and correct excerpted copy of my deposition depicting questions I was instructed not to answer by Mr. Richmond.

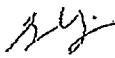
1.6 Because representations of the prosecutor's office before my deposition, I believed that the e-mails regarding the Lynn Dalsing matter had been disclosed in this matter as well as the preceding criminal investigation, and I would be able to testify truthfully. At my deposition, I learned this was not the case. Attached hereto as Ex. C is a true and correct copy of my May 14, 2013 and June 13, 2013, declarations filed in this matter.

The above information is true and correct to the best of my ability.

DATED this 2nd day of July, 2013 at Pirores, WA.


Detective Mike Ames

Declaration of Det. Mike Ames in Support of His Motion for Attorney's Fees and Costs



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Ames - 000402

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FILED
13 JUL 19 AM 11:11
Judge Beth Andrus Department 35
KING COUNTY
MOTION DATE: 7/22/2013
SUPERIOR COURT CLERK
WITHOUT ORAL ARGUMENT
CASE NUMBER: 12-2-08659-1 KNT

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

LYNN DALRING,
Plaintiff,
v.
PIERCE COUNTY, A MUNICIPAL
CORPORATION,
Defendant.

NO. 12-2-08659-1 KNT

SECOND DECLARATION OF MIKE
AMES IN SUPPORT OF HIS MOTION
FOR ATTORNEY'S FEES AND COSTS
UNDER CR 26 AND 37

I, Detective Mike Amos, state and declare the following under oath pursuant to penalty of perjury under the laws of the State of Washington;

1.1 I am the detective Lynn Dalring referenced in her claim form and complaint against Pierce County. I am over the age of eighteen, and I am competent to testify in this case. I make this declaration based upon my personal knowledge.

1.2 I offer this declaration in support of my motion for attorney's fees and costs incurred on my discovery motion for an order permitting me to file my emails under seal and to decide whether I could answer deposition questions.

1.3 Between the times I was first contacted by the Pierce County Prosecutors Office regarding this case and my deposition on Feb. 14, 2013, not once was I

Second Declaration of Det. Mike Amos in
Support of His Motion for Attorney's Fees and Costs

BA

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Informed of any work product privilege regarding any emails in this case. It was not until I was told not to answer questions in my deposition that I realized exculpatory email evidence had not been disclosed in the both the criminal and civil phases of the discovery process. I knew it was my duty as a Pierce County Deputy Sheriff to bring to the Court's attention that information. I sought out the legal advice of a well respected civil attorney, Joan Mell to assist me in this process. I produced to the Court copies of all the emails in my possession under seal. I have always maintained a proper chain of custody of the email copies in my possession and I have not improperly disseminated them without proper leave of the court.

1.4 I have always been truthful and honest about my interactions with the prosecutor's office in this case. I will continue to be truthful and honest about those interactions as these proceedings move forward.

1.5 I did attend the meeting on October 16, 2012 with Mr. Richmond, Jason Ruyf and Chaudra Zimmerman. It was after that meeting that I contacted Mr. Richmond and discussed the emails because they had not come up in that meeting. I expressed to Mr. Richmond the importance of the email from Lori Koolman, and he asked me to email him a copy of it. I emailed him the copy, and he called me after receiving it. Mr. Richmond did advise me it was exculpatory and needed to be disclosed during discovery. He did make the statements as stated in my declaration. I would not expect Mr. Ruyf or Ms. Zimmerman to have direct knowledge of those conversations as they took place over the phone solely between Mr. Richmond and me. I would also like to emphasize the fact that at our first meeting, Mr. Richmond advised me he was fully aware of all information regarding the Dasing case, and since I was informed by Lori Koolman in June 2011 that my email to her would be disclosed to the

Second Declaration of Det. Mike Ames in Support of His Motion for Attorney's Fees and Costs

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4 defense in the criminal matter, I fully expected Mr. Richmond to be aware of the existence of that
5 email. As a Detective with the Pierce County Sheriff's Department I have to trust that when a
6 prosecuting attorney in both a criminal and civil matter advises me directly that the information I
7 provide to them has to be disclosed to opposing parties then that disclosure must take place. It
8 did not occur in this matter in regards to my emails.

9
10 1.6 Mr. Richmond states "The parties to this civil lawsuit exchanged numerous
11 communications about plaintiff discovery requests and Pierce County's objections and responses.
12 As a non-party witness, Mr. Ames was not part of those communications." This is untrue, as
13 there were numerous communications between the prosecutor's office and the plaintiff's counsel
14 regarding discovery requests in relations to the computer forensic examination and requests
15 being made by plaintiff's counsel and forensic expert. I was directly involved in several of those
16 communications and provided direct input into those conversations.

17
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19 1.7 On February 7, 2013, Mr. Richmond and Mr. Ruyf did contact me in the Tacoma / Pierce
20 County Computer Lab to discuss my upcoming deposition. We also discussed at that meeting
21 the fact that I had been deposed before as a police officer and understood the process of
22 answering truthfully and honestly to ALL questions asked of me. Mr. Richmond was very
23 adamant about me understanding that if he tells me not to answer a question, then I was not to
24 answer. However, he would not elaborate as to why that request was so important for me to
25 understand.

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28 1.8 When Mr. Richmond told me multiple times not to answer in my deposition his advice
29 was given very directly and assertively to me. Mr. Richmond was very clear prior to my
30 deposition and during it regarding that instruction. There was nothing

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33 Second Declaration of Det. Mike Ames in
34 Support of His Motion for Attorney's Fees and Costs 3

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erroneous about the way Mr. Richmond was instructing me not to answer; It was very purposeful. I also was unaware of any work product privilege that the county was going to be invoking. It was never discussed with me prior to my deposition. I always believed the prosecutor's office had disclosed the exculpatory emails I provided both in the civil and criminal cases. I was shocked at my deposition to find out they had not.

1.10 My statements that Mr. Richmond agreed a certain email was "exculpatory" and would be "turned over" is true. Mr. Richmond stopped me from answering when the deposition started to center around those emails to Lori Koolman and my meeting with her and Tim Lewis in June 2011.

1.11 It was after my deposition that I realized the Pierce County Prosecutor's Office was willing to protect their own deputies' actions at my expense and the expense of the Pierce County Sheriff's Department. I am shocked as a 26 year law enforcement veteran that a prosecutor's office would purposely withhold discovery.

1.12 The Pierce County Prosecutor's Office has made several false allegations and assertions regarding my actions in this case. I would like the Court to know that I have always acted professionally, honestly, and truthfully in the criminal and civil aspects of the Dalsing matter. For the Prosecutor's Office to allege I have somehow acted improperly with the Plaintiff in this case is simply absurd and untrue. The Prosecutor's Office is asking the Court if tax payer money should be expended to pay the fees I am requesting here. I believe in an open and transparent government that the citizens of Pierce County should be aware not only of the fees I am asking for, but also informed of the thousands of dollars in taxpayer funds that have been expended to prevent me from completing my deposition and answering truthfully in

Second Declaration of Dot, Mike Ames, in Support of His Motion for Attorney's Fees and Costs

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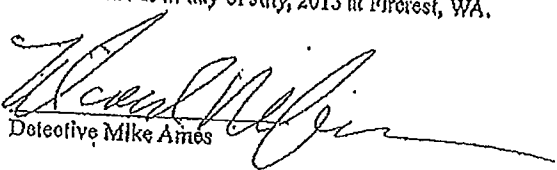
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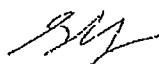
5 1.13 The public website for the Pierce County Prosecutor's Office has a section titled "Core
6 Values" with a subsection titled "Accountability" which states in part: "We believe in open
7 government and accept responsibility for the decisions we make." Another subsection titled
8 "Integrity" states: "We hold ourselves to the highest ethical standards in carrying out our
9 responsibilities."
10

11 1.14 Pierce County Prosecutor's Office willful withholding of exculpatory discoverable
12 evidence in both a criminal and civil case and the instruction to repeatedly not answer questions
13 in a deposition by a detective involved in the investigation, completely violates their publicly
14 stated Core Values of Accountability and Integrity. As a result I respectfully ask the Court to
15 award sanctions in the form of attorney fees and costs in this matter.
16
17

18 The above information is true and correct to the best of my ability.

19 DATED this 19th day of July, 2013 at Pirorest, WA.
20

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22 Detective Mike Ames
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33 Second Declaration of Det. Mike Ames in
34 Support of His Motion for Attorney's Fees and Costs 5


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Appendix E: Ames' Exculpatory E-Mail

From: Mike Ames
Sent: Thursday, October 18, 2012 11:38 AM
To: James Richmond
Subject: FW: Dalsing case #10-2510339

Michael Ames CFCE, CFE
Computer Crimes Unit
Pierce County Sheriff's Dept.
mames1@co.pierce.wa.us
253-377-8438

From: Lori Koolman
Sent: Friday, June 10, 2011 1:17 PM
To: Mike Ames; Debbie Helshman
Cc: Timothy Lewis
Subject: RE: Dalsing case #10-2510339

We're available at 9:00 on Monday. Meet you at your department. Thanks.

From: Mike Ames
Sent: Friday, June 10, 2011 12:43 PM
To: Lori Koolman; Debbie Helshman
Cc: Timothy Lewis
Subject: RE: Dalsing case #10-2510339

I am available Monday at 9 or 1:30 in the afternoon. Tuesday morning til noon. If any of those times work,

Mike

From: Lori Koolman
Sent: Thursday, June 09, 2011 4:19 PM
To: Debbie Helshman; Mike Ames
Cc: Timothy Lewis
Subject: RE: Dalsing case #10-2510339

CP118

We will have to meet, all of us, early next week and go through the evidence. I think you're missing the boat to some degree Mike, as he did not plead to any of the child porn, he pled to raping four kids. I do have to provide your e-mail to defense. I do want to discuss some of your assertions.

Lori

From: Debbie Heishman
Sent: Thursday, June 09, 2011 2:58 PM
To: Lori Koolman
Subject: FW: Dalsing case #10-2510339

This is from Mike ... duh
Debbie

From: Mike Ames
Sent: Thursday, June 09, 2011 12:27 PM
To: Debbie Heishman
Subject: RE: Dalsing case #10-2510339

No, it appeared that he was the computer person. There is no way you can get by the defense that she will use which will be it was him and especially now that he is pleading to it. I could easily link him to the child porn but not her. No way do I want to go back into that case to look for something that I cannot prove. Definately no link to her and the child porn other than that one picture but we can't see her so no way to prove that either. I did look hard at the porn that was downloaded from the internet and nothing leads back to her. I did look at that angle too especially after I found that one picture.

Good Job on the case though and am very glad these monsters are going away!

Mike

From: Debbie Heishman
Sent: Thursday, June 09, 2011 11:07 AM
To: Mike Ames
Subject: Dalsing case #10-2510339

Mike,

Howdy you fabulous computer guy... Both the bad men in this case have pled guilty - one will go away for life??!!

The female is not being so smart. Pros. are wondering if you were able to tell if Lynn Dalsing had any type of account or files on the computers so we can charge her with the possession also?

Thanks

Granny

Detective D. Heishman #205
Pierce County Sheriff
Special Assault Unit
930 Tacoma Ave So
Tacoma, WA 98402
253.798-7713

CP119

Appendix F: Richmond Declarations for "PIE"

FILED

13 JUL 17 AM 11:56

KING COUNTY
SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 12-2-08659-1 KNT
Judge Beth Andrus
Department 35

Motion Date: July 22, 2013
Without Oral Argument

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

LYNN DALRING,

NO. 12-2-08659-1 KNT

Plaintiff,

vs.

PIERCE COUNTY, A MUNICIPAL
CORPORATION,

Defendant.

DECLARATION OF JAMES P.
RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND
COSTS

I, James P. Richmond, declare that I am over the age of 18, have personal knowledge of the matters set forth below, and I am competent to testify to the matters stated herein.

1. This declaration supports the County's opposition to Mr. Ames' request for attorney fees. Mr. Ames and his attorney, Joan Moll, filed declarations and briefs to support plaintiff Lynn Dalsing's motion to compel production of work product. Mr. Ames copied County e-mails that were sent and/or received through his County e-mail account and then sent those County e-mails to his home e-mail address. Mr. Ames copied the County e-mails and delivered the County e-mails to his private attorney, Moll. Those are among the same e-mails that the County produced to the plaintiff or withheld and listed in a protection log.

DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 1
Daling Decl /PR Ames Mot Fees Costs
Case: No 12-2-08659-1 KNT

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
Main Office: (253) 798-6732
Fax: (253) 798-6713

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Ames - 000420

1 2. Mr. Ames' reply declaration in support of his motion to compel payment of his
2 attorney's fees and costs contains false assertions made under oath about Mr. Ames'
3 interactions with the Prosecutor's office.

4 3. Mr. Ames attended a meeting on October 16, 2012, at the Civil Prosecutor's
5 Office with Deputy Prosecuting Attorneys Jason Ruyf, myself, and paralegal Chandra
6 Zimmerman. Mr. Ames falsely states he turned over to me County e-mails that would "clear
7 his name and his department." Mr. Ames did not deliver or discuss e-mails at that meeting,
8 even though he did later provide me other related records. At no time during that meeting did
9 we discuss that there were supposedly "exculpatory" e-mails or that Mr. Ames was aware of
10 information that would be considered exculpatory. I did not say that a Lori Koolman e-mail
11 would "clear him of any wrong doing in the case" or that I would see to it that "It was turned
12 over as part of discovery" Compare Ames Declaration, Paragraph 1.5:20-24, June 13, 2013.

13 4. The parties to this civil lawsuit exchanged numerous communications about
14 plaintiffs discovery requests and Pierce County's objections and responses. As a non-party
15 witness, Mr. Ames was not part of those communications. For example plaintiffs Request for
16 Production (RFP 5) asked for "... the entire Pierce County Sheriff's Department files ..."
17 and went on to request specific information, including emails, about the investigation of
18 Michael Dalsing, Lynn Dalsing, and William Maes in their criminal case. That request was
19 objected to by Pierce County and led the County and the plaintiff to meet and confer several
20 times about discovery.
21

22 5. In a September 28, 2012, letter to Pierce County, plaintiff's attorney, Fred
23 Diamondstone, summarized the chronology of discovery requests and listed "Discovery
24 Requests at Issue." That letter is attached as Exhibit A. E-mails were conspicuously not on
25

DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 2.
Dalsing Decl JPR Ames Mot Fees.docx
Case No 12-2-08659-1 KNT

Pierce County Prosecuting Attorney/Civil Division
953 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
Main Office: (253) 798-6732
Fax: (253) 798-6713

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Ames - 000421

1 Diamondstone's discovery requests "at issue." Mr. Diamondstone asked for the following
2 documents: "Employment Applications, Probation Reviews, Training Materials, Evaluations,
3 Commendations, and Disciplinary Records.

4 6. In preparation for Michael Ames' deposition, Deputy Prosecutor Jason Ruyf
5 and I also met with Mr. Ames at the computer lab on February 7, 2013. We discussed the fact
6 that he was a witness and not a party. We reviewed Mr. Ames' incident reports that detailed
7 what Mr. Ames discovered as part of his computer forensic investigation. We reviewed a set
8 of deposition guidelines I provided. Those guidelines stated: "If Advised Not To Answer by
9 Your Counsel, Do Not Answer Even If You Believe the Answer Would Be Helpful. If you
10 feel the advice was erroneous, request a break to confer with counsel." See Ames July 2
11 Declaration, Ex. A. The deposition preparation did not include a discussion or review of
12 County e-mails.
13

14 7. At his deposition Mr. Ames did not request a break to meet and confer about
15 erroneous advice. Mr. Ames did not express any concern that he was not being allowed to
16 "clear his name" nor did he express any concerns about the County's work product objections.
17

18 8. Mr. Ames was allowed to answer questions during his deposition for more
19 than six hours, as reflected in 150 pages of questions and answers about Mr. Ames' "limited
20 role in this investigation." Ames Dep at 149:3-13, attached hereto as Exhibit B.

21 9. At Mr. Ames' deposition numerous questions were asked about that "particular
22 photograph." Mr. Ames testified that the "particular photograph" was not Ms. Dalsing. Ames
23 Dep. at 79:18-25; 80:1-16. The "particular photograph" was alleged in the Dalsing complaint
24 to have been mistakenly identified as Ms. Dalsing. In his answer, Pierce County admitted the
25 photograph was not Ms. Dalsing.

DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 3
Dalsing Decl JPR Ames Mot Fees.docx
Cause No 12-2-08659-1 KNT

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Ames - 000422

1 10. Mr. Ames' statement that the Prosecutors agreed a certain e-mail was
2 "exculpatory" and would be "turned over" is not only untrue but affirmatively disproven by
3 the deposition record. At Mr. Ames' deposition, when asked what documents Mr. Ames
4 reviewed to prepare for his deposition, the following colloquy took place:

5 Q (By Mr. Diamondstone) In preparing for today's deposition, did you
6 review any documents?

7 A Just my case reports. Then the review of material I had to compile for
8 you, for your expert, that's pretty much it.

9 Q You mentioned at some point this morning some emails that you had
10 received from Debbie Holsiman about her getting a warrant and
11 wanting you to process some computers. Did you receive any other
12 emails in this case beside that?

13 A From?

14 Q From anyone other --

15 A Other than -- from Debbie, I did.

16 Q From Debbie, you did?

17 A Yeah.

18 Q Where are the emails that you and Debbie may have exchanged or at
19 least that you received from Debbie?

20 A They should be in your discovery. I mean the County archives
21 everything. So if you did a discovery for the emails, all of them should
22 be there.

23 Q I'm not sure exactly what we asked for. But I haven't seen any of the
24 emails. So...

25 A There was maybe only one or just a couple. I know we talked by
phone. But I know there was at least one or two.

Q Without getting into the content of any email, did you have any email
communications with the prosecutor's office?

A Yes.

DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 4
Dahling Decl JPR Ames Mot Fees.docx
Cause No 12-2-03659-1 KNT

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
Main Office: (253) 798-6732
Fax: (253) 798-6713

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Ames - 000423

1 Q And again without getting into the content of those emails, do you
2 know the approximate date frame on the emails?

3 A The only communication I had with them was in -- would have been in
4 June 2011 to the best of my recollection.

5 Ames Dep at 145:18-25 and 146:1-21 (emphasis added). Further evidence that emails were
6 not reviewed or discussed is the fact Mr. Ames stated he limited his review to his case reports
7 and the mirror images of the computer hard drives provided to plaintiff's computer expert.

8 11. During Ames' deposition, the parties agreed there were work product
9 objections by Pierce County that Judge Andrus needed to "sort out." Therefore Mr. Ames'
10 deposition was continued for the limited purpose of answering potential questions about the
11 County's work product objections. Mr. Ames was told by Mr. Diamondstone he had nothing
12 further that day but expected that, "further inquiry from us will probably be limited to those
13 subjects...."

14 MR. DIAMONDSTONE: Let me check with Mr. Woodley.

15 THE WITNESS: Okay.

16 MR. DIAMONDSTONE: Mr. Ames, I have nothing else today. And I
17 say "today" because, as you know, we've some issues that we need a
18 judge to sort out on some questions that we weren't permitted to get
19 into with you. And we will likely also have questions for you
20 concerning Exhibit No. 67. I have seen Exhibit No. 67 that was in
21 evidence. And I need to see how the real No. 67 looks as opposed to a
22 photocopy that we have that's marked as Exhibit 9 in this case. But I
23 expect that further inquiry from us will probably be limited to those
24 subjects.

25 Ames Dep at 149:10-25 through 150:1; Mr. Ames was present during this conversation.

12. At no time following the deposition did Mr. Ames ask me any questions about
"what had just transpired and what if any repercussions could apply to [him] for not
answering." See Ames' July 2, 2013, Dec., 1.4.

DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 3
Disting Decl JPR Ames Mot Fees.docx
Cause No 12-2-08659-1 KNT

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
Main Office: (253) 798-6132
Fax: (253) 798-6713

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Ames - 000424

1 13. After Mr. Ames' deposition, February 14, 2013, Mr. Diamondstone first
2 requested the County e-mails. On February 22, 2013, a 26(f) discovery conference between
3 the named parties was held on the production of County e-mails. The County agreed to
4 produce e-mails between investigators but objected to produce e-mails to or from prosecutors
5 based on work product and produced a protection log listing work product documents.
6 Mr. Ames independently filed under seal the very same e-mails that the County provided to
7 plaintiff or objected to.

8
9 14. The attached list of objected to work product questions demonstrates that the
10 County has been consistent in asserting work product. See Ex. B, Ames Dep., p. 3. It further
11 confirms Mr. Ames did not express any concerns that the advice not to answer questions was
12 erroneous or that he thought the County's assertion of work product was erroneous.
13 Mr. Ames never asked for a break to confer. Neither during the deposition nor at its
14 conclusion did Mr. Ames express any concerns that he was being prevented from "clearing
15 his name" and the name of his department or from "testifying truthfully."

16 15. The first time the County was aware that Mr. Ames was concerned that
17 erroneous advice may have been given at his deposition was when his attorney, Ms. Mell,
18 contacted the Prosecutor's Office on February 21, 2013, and announced she was entering an
19 appearance for Mr. Ames. Mr. Ruyf and I asked, but Ms. Mell declined to explain, what
20 Mr. Ames' concerns were. Ms. Mell instead alleged that her conversations with Mr. Ames
21 were protected by attorney/client privilege and she would not share with the County Ames'
22 concerns or the basis for a claimed privilege.

23
24 16. Without explanation it appears Mr. Ames actually sought Ms. Mell's
25 independent representation two months before his deposition for unknown reasons even

DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 6
Dating Dec 1/PR Ames Mot Fees.docx
Case No 12-2-08659-1 KNT

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2100
Main Office: (253) 798-6732
Fax: (253) 798-6713

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Ames - 000425

1 though he states he sought independent advice after his deposition. See Sub. #190:7/2/13
2 Ames Dec. at 2. Mr. Ames seeks to be paid for a December 8, 2012, consultation with Ms.
3 Mell as part of his motion three months later to seal records.

4 17. Before Mr. Ames filed his Motion to Seal on March 12, 2013, Ms. Mell did
5 not "meet and confer" with the Prosecutors Office. Similarly, a CR 26(i) conference did not
6 take place before the instant motion for attorney fees to be paid on behalf of a non-party
7 witness despite the fact that I previously pointed out to Ms. Mell after Ames' motion to seal
8 was filed that CR 37(a) expressly states that the motion will only be considered if the moving
9 party makes "a showing of compliance with rule 26(i)."

10 19. Attached as Exhibit B are true and correct copies of the cover page and pages
11 3-4, 77-80, 96-98, 130-132, and 145-151 of the Deposition Upon Oral Examination of
12 Detective Mike Ames taken February 14, 2013.

13 I declare under penalty of perjury of the laws of the State of Washington the foregoing
14 to be true and correct.

15 EXECUTED this 17th day of July, 2013, at Tacoma, Pierce County, Washington.

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17
18 /JAMES P. RICHMOND
19 JAMES P. RICHMOND

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DECLARATION OF JAMES P. RICHMOND IN OPPOSITION TO AMES'
MOTION FOR ATTORNEY FEES AND COSTS - 7
Dating Decl JPR Ames Mot Fees.docx
Cause No 12-2-08659-1 KAT

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2100
Main Office: (253) 798-6732
Fax: (253) 798-6713

00002317

Ames - 000426

May 12 2014 11:54 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13551-1

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

MICHAEL AMES,

Petitioner,

vs.

PIERCE COUNTY,

Respondent.

NO. 13-2-13551-1

DECLARATION OF JAMES P.
RICHMOND

I, James P. Richmond, declare that I am over the age of 18, have personal knowledge of the matters set forth below, and I am competent to testify to the matters stated herein.

1. I am a Deputy Prosecuting Attorney assigned to the Civil Division of the Pierce County Prosecutor's Office. I represent Pierce County in the matter of *Lynn Dalsing v. Pierce County*, King County Superior Court Case No. 12-2-08659-1. I have been an attorney for 32 years.

2. In preparation for the civil case, I met with Michael Ames on October 12, 2012, and discussed the police reports and Ames' computer forensic investigation. There was no discussion at that meeting about the June 9, 2011, email exchange involving Ames, Det. Heishman, and Deputy Prosecutors Lori Kooiman and Tim Lewis in the criminal case. Ames forwarded the June 9, 2011 email exchange to me on October 18, 2012, nearly a week after our meeting. There was no cover memo or other explanation for forwarding this material. I

CP1587

1 reviewed it, considered it to be attorney work product, and retained it with other materials
2 pertaining to the litigation. Contrary to petitioner's repeated claims in the current case, I have
3 never denied receiving the June 9, 2011, email. Instead, I stated that it was not given to me at
4 the October 12, 2012 meeting.

5 3. Rather than raising his concerns with me or others in my office about work product
6 objections made at Ames' February 14, 2013, deposition, Ames consulted with attorney Joan
7 Mell, who telephoned me on February 21, 2013, and announced that she was representing
8 Ames and that there was an "unresolved conflict." When asked to explain the unresolved
9 conflict she stated that attorney-client privilege prevented her from discussing the details that
10 gave rise to her claim that there was an unresolved conflict. Ms. Mell cut the call short
11 claiming she had a client appointment, leaving me without an explanation.
12

13 4. Then, in an effort to have Pierce County pay attorney fees he owed Mell, Ames
14 filed in the *Dalsing* civil case a 7/13/13 declaration which falsely included the following at
15 paragraph 1.5:

16 Mr Richmond told me that the email I turned over to him from Lori Kooiman
17 in October 2012 was "exculpatory" regarding my involvement in this case. He
18 also told me that it would clear me of any wrong doing in the case and he
19 would see to it that it was turned over as part of discovery.

19 I was astonished to read this as I had never told Ames any such thing.

20 5. On July 17, 2013, I filed a responsive declaration stating at paragraph 2, "Mr.
21 Ames' reply declaration in support of his motion to compel payment of his attorney's fees and
22 costs contains false assertions made under oath about Mr. Ames' interactions with the
23 Prosecutor's office." This declaration was to become one of the documents which the
24 criminal division of the office later determined was potential impeachment evidence
25 concerning Ames, because it constituted a deputy prosecutor directly challenging the officer's

CP 15088

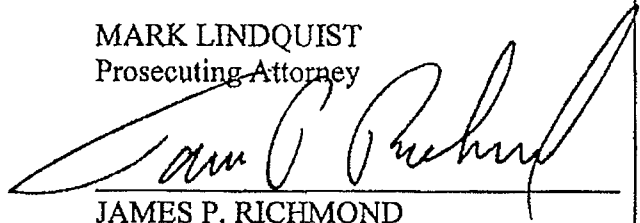
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credibility. I discussed Ames' falsehoods in detail in later paragraphs of that declaration.
Ames' claim that we discussed the referenced email exchange and that I told him it was
"exculpatory" as to him is absolutely untrue.

I declare under penalty of perjury of the laws of the State of Washington the foregoing
to be true and correct.

EXECUTED this 12th day of May, 2014, at Tacoma, Pierce County, Washington.

MARK LINDQUIST
Prosecuting Attorney



JAMES P. RICHMOND
State Bar Number 15865
Pierce County Prosecutor / Civil
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Ph: 253-798-4265 / Fax: 253-798-6713

CP1589

Appendix G: Kooiman Declaration for "PIE"

May 12 2014 11:54 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13551-1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

MICHAEL AMES,

Petitioner,

vs.

PIERCE COUNTY,

Respondent.

NO. 13-2-13551-1

DECLARATION OF DEPUTY
PROSECUTOR LORI KOOIMAN

I, Lori Kooiman, declare that I am over the age of 18, have personal knowledge of the matters set forth below, and I am competent to testify to the matters stated herein.

1. I am a Deputy Prosecuting Attorney assigned to the Criminal Division of the Pierce County Prosecutor's Office. I have been a Deputy Prosecutor with the Pierce County Prosecutor's Office for approximately fourteen years. I have tried numerous criminal cases, including sexual assault, murder, robbery, and many other crimes.

2. I, along with Deputy Prosecutor Timothy Lewis, represented the State of Washington in the matter *State of Washington vs. Lynn Dale Dalsing*, Pierce County Superior Court Case No. 10-1-05184-0.

3. In December of 2010, Lynn Dalsing was originally charged with child molestation in the first degree and sexual exploitation of a minor. Based upon the police

DECLARATION OF DEPUTY PROSECUTOR
LORI KOOIMAN - 1
Case No. 13-2-13551-1

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160

CP1617

1 reports provided to me, as well as verbal representations by Pierce County Sheriff's
2 Department personnel, I drafted and signed the declaration for determination of probable
3 cause.

4 4. Gary Clower was the criminal defense attorney who represented Lynn Dalsing
5 in the criminal case. He fails to acknowledge this in his April 23, 2014 declaration.

6 5. Some of the stock declarations filed in support of the petitioner's motion for
7 reconsideration of the order on attorney fees include the statement, "I understand this case
8 was set in motion when the Prosecutor's Office withheld dispositive exculpatory evidence in a
9 criminal case from the defense." This "understanding" is completely wrong.

10 6. The declarations fail to specify any "dispositive exculpatory evidence."

11 7. The declarations fail to specify a criminal case, but appear to be referring to
12 *State v. Lynn Dalsing*.

13 8. There was no "dispositive exculpatory evidence" in *State v. Lynn Dalsing*.

14 9. Lynn Dalsing is currently charged with two counts of rape of a child in the first
15 degree (as an accomplice), three counts of child molestation in the first degree (as an
16 accomplice) and three counts of sexual exploitation of a minor. Attached as Exhibit A is a true
17 and accurate copy of the amended and re-filed information and supplemental declaration for
18 determination of probable cause in the same case.

19 10. All evidence I was aware of, inculpatory and exculpatory, was disclosed to
20 Lynn Dalsing's criminal defense attorney Clower.

21 11. On or about June 1, 2011, Clower contacted me and told me he believed that
22 the adult woman posing with a child in a pornographic photograph was not his client, and that
23 he was informed that the photograph was part of a known series of child pornography. By this
24
25

1 date, Clower possessed a copy of the photograph. A police report I reviewed for charging
2 identified the woman in the photograph as Lynn Dalsing.

3 12. On June 9, 2011, I received an email where Ames mentioned the difficulty of
4 identifying Lynn Dalsing in the pornographic photograph because the face in the photo was
5 not visible. This was apparent from the photograph itself, which Clower already possessed.
6 In this email Ames also stated he had failed to connect Lynn Dalsing to the seized home
7 computers containing child pornography.

8 13. When I learned that Ames failed to connect Lynn Dalsing to the computers that
9 contained child pornography, I provided that information to Gary Clower. I told him this over
10 the telephone and in person.

11 14. Lynn Dalsing was never charged with possession of child pornography.

12 15. After Ames failed to do follow up on the photograph in question, I contacted
13 the Tacoma Police Department and asked them to send the photograph to the National Center
14 for Missing and Exploited Children to determine whether it was from a known series of child
15 pornography.

16 16. On July 13, 2011, I received notice that the photograph was from a known
17 series of child pornography and therefore did not depict Lynn Dalsing.

18 17. On July 13, 2011, Deputy Prosecutor Lewis filed a motion to dismiss without
19 prejudice in the Lynn Dalsing criminal case, *pending further investigation by law*
20 *enforcement*. Attached as Exhibit B is a true and accurate copy of the July 13, 2011 motion
21 and order for dismissal without prejudice in *State of Washington vs. Lynn Dale Dalsing*,
22 Pierce County Superior Court Cause Number 10-1-05184-0.
23

24 18. Subsequent to the dismissal, further evidence was developed in the Lynn
25

1 Dalsing case, including a report by an expert that connects Lynn Dalsing to seized computers
2 from the Dalsing home.

3 19. The expert's investigation of Lynn Dalsing's computer completely undermines
4 Ames' prior claim that the seized home computers could not be connected to Lynn Dalsing.

5 20. Other additional evidence includes a report from a counseling session where
6 Lynn Dalsing's daughter discloses that her mom walked in on her dad [Michael Dalsing]
7 taking pornographic photographs of her. Dalsing's daughter said she knew her mom knew
8 what her dad was doing to her and "she felt sad and betrayed."

9 21. Michael Dalsing was a convicted sex offender and Lynn Dalsing knew this
10 when she allowed him unsupervised access to her daughter.

11 22. On July 29, 2011, Michael Dalsing pleaded guilty to three counts of rape of a
12 child in the first degree, child molestation in the first degree, and child molestation in the third
13 degree naming multiple victims.

14 23. On March 28, 2014, Lynn Dalsing was charged with two counts of rape of a
15 child in the first degree (as an accomplice), three counts of child molestation in the first
16 degree (as an accomplice), and three counts of sexual exploitation of a minor.

17 24. On April 10, 2014, the court found probable cause for the charges. Attached as
18 Exhibit C is a true and accurate copy of the court's finding of probable cause in the same case.

19 25. On May 7, 2014, I reviewed a transcript of an interview between Mike Ames
20 and Jeffrey Coopersmith that was recorded on April 1, 2013. During the course of the
21 interview, Mike Ames talks about a meeting he had with me and Deputy Prosecutor Timothy
22 Lewis on June 13, 2011, regarding the *Dalsing* case. During the course of the interview, Ames
23 made many false statements about his interactions with Tim Lewis and me.
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I declare under penalty of perjury of the laws of the State of Washington the foregoing
to be true and correct.

EXECUTED this 12th day of May, 2014, at Tacoma, Pierce County, Washington.

MARK LINDQUIST
Prosecuting Attorney



LORI KOOIMAN
State Bar Number 30370
Pierce County Prosecutor / Civil
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160

CP1621

Appendix H: Lewis Declaration for "PIE"

May 12 2014 11:54 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13551-1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

MICHAEL AMES,

Petitioner,

vs.

PIERCE COUNTY,

Respondent.

NO. 13-2-13551-1

DECLARATION OF DEPUTY
PROSECUTOR TIMOTHY LEWIS

I, Timothy Lewis, declare that I am over the age of 18, have personal knowledge of the matters set forth below, and I am competent to testify to the matters stated herein.

1. I am a Deputy Prosecuting Attorney assigned to the Criminal Division of the Pierce County Prosecutor's Office. I currently head the Misdemeanor Unit of the Prosecutor's Office, supervising 34 employees. I have prosecuted many types of crimes, including murder, sexual assault, burglary, and many others. I have been a Deputy Prosecutor with the Pierce County Prosecutor's Office for approximately eleven years.

2. I, along with Deputy Prosecutor Lori Kooiman, represented the State of Washington in the matter *State of Washington vs. Lynn Dalsing*, Pierce County Superior Court Case No. 10-1-05184-0.

3. In December of 2010, Lynn Dalsing was originally charged with child

DECLARATION OF DEPUTY PROSECUTOR
TIMOTHY LEWIS - 1

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160

CP 1594

1 molestation in the first degree and sexual exploitation of a minor.

2 4. Gary Clower was the criminal defense attorney who represented Lynn Dalsing
3 in the criminal case. He fails to acknowledge this in his April 23, 2014 declaration.

4 5. Some of the stock declarations filed in support of the petitioner's motion for
5 reconsideration of the order on attorney fees include the statement, "I understand this case
6 was set in motion when the Prosecutor's Office withheld dispositive exculpatory evidence in a
7 criminal case from the defense." This "understanding" is completely wrong.

8 6. The declarations fail to specify any "dispositive exculpatory evidence."

9 7. The declarations fail to specify a criminal case, but appear to be referring to
10 *State v. Lynn Dalsing*.

11 8. There was no "dispositive exculpatory evidence" in *State v. Lynn Dalsing*.

12 9. Lynn Dalsing is currently charged with two counts of Rape of a Child in the
13 First Degree (as an accomplice), three counts of Child Molestation in the First Degree (as an
14 accomplice) and three counts of Sexual Exploitation of a Minor. Attached as Exhibit A is a
15 true and accurate copy of the amended and re-filed information and supplemental declaration
16 for determination of probable cause in the same case.

17 10. All evidence I was aware of, inculpatory and exculpatory, was disclosed to
18 Lynn Dalsing's criminal defense attorney Clower.

19 11. On or about June 1, 2011, Clower contacted me twice and told me that he did
20 not think that the adult woman posing with a child in a pornographic photograph was his
21 client, and later stated that Michael Dalsing told him that the photograph was part of a
22 preexisting series of child pornography. By this date, Clower possessed a copy of the
23 photograph. A police report identified the woman in the photograph as Lynn Dalsing.
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DECLARATION OF DEPUTY PROSECUTOR
TIMOTHY LEWIS - 2

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160

CP1595

1 12. On June 9, 2011, I was copied on an email where Ames mentioned the
2 difficulty of identifying Lynn Dalsing in the pornographic photograph because the face in the
3 photo was not visible. In this email Ames also stated he had failed to connect Lynn Dalsing
4 to the seized home computers containing child pornography.

5 13. Lynn Dalsing was not charged with child pornography.

6 14. On July 13, 2011, I filed a motion to dismiss without prejudice in the Lynn
7 Dalsing criminal case, *pending further investigation by law enforcement*. Attached as Exhibit
8 B is a true and accurate copy of the July 13, 2011 motion and order for dismissal without
9 prejudice in *State of Washington vs. Lynn Dale Dalsing*, Pierce County Superior Court Cause
10 Number 10-1-05184-0.

11 15. Subsequent to the dismissal, further evidence was developed in the Lynn
12 Dalsing case, including a report by an expert that connects Lynn Dalsing to seized computers
13 from the Dalsing home.

14 16. The expert's investigation of Lynn Dalsing's computer completely undermines
15 Ames' prior claim that the seized home computers could not be connected to Lynn Dalsing.

16 17. Other additional evidence includes a report from a counseling session where
17 Lynn Dalsing's daughter discloses that her mom walked in on her dad [Michael Dalsing]
18 taking pornographic photographs of her. Dalsing's daughter said she knew her mom knew
19 what her dad was doing to her and "she felt sad and betrayed."
20

21 18. Michael Dalsing was a convicted sex offender and Lynn Dalsing knew this
22 when she allowed him unsupervised access to her daughter.

23 19. On July 29, 2011, Michael Dalsing pleaded guilty to three counts of rape of a
24 child in the first degree, child molestation in the first degree, and child molestation in the third
25

DECLARATION OF DEPUTY PROSECUTOR
TIMOTHY LEWIS - 3

Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160

CP1596

1 degree.

2 20. On March 28, 2014, Lynn Dalsing was charged with two counts of rape of a
3 child in the first degree (as an accomplice), three counts of child molestation in the first
4 degree (as an accomplice), and three counts of sexual exploitation of a minor.


5 21. On April 10, 2014, the court found probable cause for the charges. Attached as
6 Exhibit C is a true and accurate copy of the court's finding of probable cause in the same case.

7 22. On May 9, 2014, I reviewed a transcript of an interview between Mike Ames
8 and Jeffrey Coopersmith that was recorded on April 1, 2013. During the course of the
9 interview, Mike Ames talks about a meeting he had with me and Deputy Prosecutor Lori
10 Kooiman on June 13, 2011, regarding the *Dalsing* case. During the course of the interview,
11 Ames made many false statements about his interactions with Lori Kooiman and me.
12

13 I declare under penalty of perjury of the laws of the State of Washington the foregoing
14 to be true and correct.

15 EXECUTED this 12th day of May, 2014, at Tacoma, Pierce County, Washington.

16 MARK LINDQUIST
17 Prosecuting Attorney

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DECLARATION OF DEPUTY PROSECUTOR
TIMOTHY LEWIS - 4

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Appendix I: Coopersmith Report



Davis Wright
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CONFIDENTIAL

REPORT OF INVESTIGATION OF ALLEGATIONS
BY PIERCE COUNTY SHERIFF'S DEPARTMENT
DETECTIVE MICHAEL AMES CONCERNING
THE KOPACHUCK MIDDLE SCHOOL MATTER

Prepared at the Request of the
Pierce County Department of Human Resources,
Joe Carrillo, Interim Director

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1 of 37
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INTRODUCTION

On December 7, 2012, representatives of the Pierce County Deputy Sheriff's Independent Guild, Local No. 1889, met with Undersheriff ("U/S") Eileen Bisson of the Pierce County Sheriff's Department ("PCSD") to tell her that Detective Michael Ames wished to file a complaint against the PCSD and the Pierce County Prosecuting Attorney's Office ("PAO"). The complaint related to a PCSD investigation, and a PAO decision not to file criminal charges, in connection with a February 2, 2012 classroom incident involving a teacher at the Kopachuck Middle School in the unincorporated Pierce County section of Gig Harbor. The incident, which was captured on video by students in the classroom, involved conduct by students and a teacher named John Rosi directed at a 13-year old middle school student with the initials "CK." At the December 7 meeting, the Guild representatives informed U/S Bisson that Det. Ames was also requesting an independent review or investigation of the Kopachuck Middle School incident by an outside law enforcement agency and prosecuting attorney's office. U/S Bisson requested that Det. Ames submit a written, signed complaint.

On December 20, 2012, Det. Ames submitted his written, signed complaint as an attachment to an email addressed to U/S Bisson. Det. Ames' complaint was dated December 12, 2012, but was submitted by him on December 20, 2012. Det. Ames' complaint stated that he:

1. was "requesting a criminal investigation by an outside State or Federal Law Enforcement Agency into the handling of the Kopachuck Middle School Case, Pierce County case number 12-2120313";
2. "believe[d] officers at the executive command level of the [PCSD] along with executive level officers in the [PAO] conspired to discredit the legitimacy of the criminal complaint filed by CK's parents against Kopachuck Middle School teacher John Rosi";
3. "believe[d] [that the PCSD and PAO,] in an attempt to assist [Redacted] in defending [Redacted] personal friend and the suspect in this case John Rosi, created a false accusation of official misconduct against [Det. Ames] and [CK's parents'] attorney Joan Mell" by issuing a press release and conducting a search of Det. Ames' official, Pierce County emails for evidence of "possible misconduct" by Det. Ames; and
4. believed that the PCSD and PAO executive level officers searched his emails and issued the press release "in retaliation for [Det. Ames'] filing of a whistleblower complaint against the [PCSD]" in early 2012 concerning overtime compensation.

Det. Ames' complaint further alleged that the following PCSD and PAO employees were knowing participants in "the conspiracy and acts of harassment and retaliation": Pierce County [Redacted Code 1] [Redacted] Pierce County [Redacted Code 1]

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2 of 37
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U/S Blsson completed her review of Det. Ames' complaint and submitted a memorandum to Sheriff Pastor summarizing it on January 16, 2013. On February 20, 2013, Det. Ames sent an email to Sheriff Pastor and U/S Blsson asking about the status and timeframe for a decision. In that email, Det. Ames added a claim that "[t]he internal investigation which was initiated, conducted, and concluded, all without due process and notification to me and the PCSD Guild, clearly in my opinion was a direct violation of the Pierce County IT Data Investigation Policy 1.17.03 . . ." Sheriff Pastor responded by email on February 25, 2013, stating that he had forwarded the complaint to Interim Pierce County Human Resources Director Joe Carrillo because Det. Ames had made allegations against [Redacted] as well as others on the PCSD command staff.

Effective April 1, 2013, the Pierce County Human Resources Department ("HR") retained Davls Wright Tremaine LLP ("DWT") to conduct an independent investigation of Det. Ames' complaint. HR gave DWT no guidance or instructions as to what the outcome of the investigation should be, and participated only by making witnesses available, providing the use of an HR conference room for witness interviews, and providing documents as requested. DWT proceeded to conduct the investigation, as described below. The PCSD internal affairs department ("IA") attended and participated in the interviews to avoid duplication of effort in the event that there is ever a need for an IA investigation. IA had no input in connection with the scope or nature of the investigation or the questions posed to witnesses at the interviews, or with the preparation of this report or its findings and conclusions. No official IA investigation was opened, as far as DWT is aware.

II. INVESTIGATIVE PROCEDURE

The investigation conducted by DWT consisted of reviewing documents and interviewing witnesses, conducting legal research, and preparing this report. All facts obtained from reviewing documents and interviewing witnesses, and all claims made by Det. Ames, were considered in reaching the findings and conclusions, even if not specifically mentioned in this report.

A. Documents Reviewed

DWT reviewed the following categories of documents in connection with its investigation:

1. a 420-page set of documents consisting, among other things, of Det. Ames' written complaint and attachments, documents relating to the overtime compensation matter, internal PCSD emails relevant to the matter, and Pierce County policies and procedures;
2. documents provided to DWT by Det. Ames and his counsel, Joan Mell; as well as documents provided by other witnesses;

3. documents provided by the PAO, including the entire PAO file concerning the Kopachuck Middle School incident;
4. video taken by students present on February 2, 2012 in Mr. Rost's classroom at the Kopachuck Middle School;
5. video of an August 9, 2012 interview of CK conducted by a forensic child interviewer; and
6. news reports concerning the Kopachuck Middle School matter.

B. Witness Interviews

DWT's investigation also consisted of conducting interviews with 17 witnesses. All witness interviews were conducted in person, except for two follow up interview by telephone with [Redacted Code 1] and U/S Bisson. Most of the interviews were conducted in a conference room that HR made available at its office in Tacoma. The interviews of PAO personnel were conducted at the PAO. The one witness from the Tacoma Police Department ("TPD") was interviewed in the office of PCSD I/A. All witnesses consented to taping of their interviews, except for [Redacted Code 1] and Ms. Rebecca Stover of the PAO. The tapes were only roughly transcribed, so portions used in this report may not be precise. The witnesses interviewed, in alphabetical order, were:

<u>Name</u>	<u>Interview Date(s)</u>
[Redacted Code 1]	04/01/2013
Det. Michael Ames	04/01/2013, 04/09/2013
[Redacted Code 1]	04/10/2013
U/S Eileen Bisson	04/01/2013, 04/29/2013
Det.-Sgt. Teresa Berg	04/02/2013
[Redacted Code 1]	04/02/2013, 04/09/2013
Det. Heath Holden (TPD)	04/11/2013
Det.-Sgt. Todd Karr	04/16/2013
[Redacted Code 1]	04/10/2013, 04/17/2013
[Redacted Code 1]	04/02/2013
[Redacted Code 1]	04/11/2013
Det.-Sgt. Michael Portmann	04/16/2013
Sgt. Scott Provost	04/09/2013
DPA Phil Sorenson	04/10/2013
Ms. Rebecca Stover	04/16/2013
[Redacted Code 1]	04/02/2013
Lt. Russ Wilder	04/09/2013

III. FACTUAL BACKGROUND

A. The Overtime Matter and Its Resolution

On January 5, 2012, Det. Ames, represented by Ms. Moll, submitted a Claim for Damages, and a Complaint of Improper Governmental Action pursuant to Pierce County Code Chapter 3.14 (Whistleblower Protection).¹ The essence of Det. Ames' complaint was that he had not been properly compensated for "nearly 200 hours" of overtime. Det. Ames alleged that in June 2011, PCSD Captain Brent Bomkamp refused to authorize further overtime for him to complete training necessary to obtain certification as a Certified Forensic Computer Examiner, while also completing his regular duty assignments in the computer forensics lab. Det. Ames alleged that from approximately June through December of 2012, his immediate supervisor, Detective Sergeant Michael Portman, together with Capt. Bomkamp, set up an illegal and unauthorized system whereby Det. Ames and other PCSD employees under Det.-Sgt. Portman's supervision would receive compensatory time off in lieu of overtime pay. During the second half of 2012, Det. Ames did not submit overtime compensation slips but instead kept a log detailing his overtime hours, which he submitted with his claim in January 2012.

The PCSD investigated Det. Ames' allegations concerning overtime compensation. The investigation found that Det.-Sgt. Portman had in fact set up an unauthorized compensatory time system, but that he did so out of a desire to get PCSD work done rather than for any malicious or criminal reasons. The investigation found that Capt. Bomkamp did not have knowledge of the unauthorized system. On February 10, 2012, as a result of the investigation, Pierce County and Det. Ames entered into a Release, Hold Harmless and Settlement Agreement that included a provision granting full overtime compensation in the amount of \$12,864 for 200 hours of overtime work claimed by Det. Ames. Other PCSD employees also received overtime compensation. Det.-Sgt. Portman received discipline in the form of a verbal warning.

B. The Kopachuck Middle School Incident and Investigation

On February 2, 2012, an incident occurred in the classroom of teacher John Rosi at the Kopachuck Middle School. The incident occurred during an approximately half hour portion of the students' day known as "Kopatime." During the Kopatime session on February 2, various students, and to some extent Mr. Rosi, picked up and carried CK in various positions, put him under chairs, wrote on his feet, and engaged in other physical activities or handling of CK. Mr. Rosi either stood by or participated, although at times he told students to stop certain

¹ The overtime compensation matter raised by Det. Ames may not actually have been a matter covered by Chapter 3.14 of the Pierce County Code. Section 3.14.010(A)(4) of that chapter defines "improper governmental action" but excludes from the definition, among other things, "violations of the Pierce County Code Title 3" and "alleged violations of agreements with labor organizations under collective bargaining." Det. Ames' complaint about overtime compensation was governed, at least primarily and perhaps exclusively, by Section 3.52.050 of the Pierce County Code (part of Title 3), and by Article 5 of the collective bargaining agreement between Pierce County and the Pierce County Deputy Sheriffs' Independent Guild, Local No. 1889. Det. Ames did cite other state statutes and Pierce County Code sections in his overtime complaint, the applicability of which need not be resolved for purposes of this report.

activities. Several students captured these events on cell phone video. The Peninsula School District conducted an investigation, and Mr. Rosi received a 10-day suspension.

The April 26, 2012 letter of suspension from the school district superintendent to Mr. Rosi stated:

This letter will serve as a reprimand imposing a ten-day suspension without pay for your behavior on February 2, 2012.

On February 2, 2012, as a result of your lack of planning, you allowed students to engage in unstructured activities which included severe horseplay by members of the class and during which time you engaged in no educational instruction for an entire class period. You further participated in, as well as allowed students to engage in, potentially dangerous roughhousing behavior for which there was no educational value and there was a serious potential for the injury of one or more students. The conduct in question was inappropriate for a professional educator and not reasonably calculated to serve any legitimate professional or educational purpose.

Additionally, you are directed to engage in appropriate classroom instruction and classroom management techniques in the future. You are directed to follow the appropriate classroom curriculum and to follow established learning targets and a lesson plan during each instructional day. Finally, you are directed to refrain from participating in, or encouraging students to participate in, roughhousing in the school environment.

Neither CK's parents or the school district reported the incident to law enforcement. However, on July 26, 2012, nearly six months after the incident, Ms. Mell, acting as counsel for CK's parents, contacted PCSD Detective-Sergeant Teresa Berg and left a voicemail message in which Ms. Mell "advised of a case involving a video of a thirteen year old student being bullied by a teacher." Det.-Sgt. Berg was at that time the supervisor of PCSD's Special Assault Unit. Det.-Sgt. Berg returned Ms. Mell's call and left a voicemail message the same day. Ms. Mell and Det.-Sgt. Berg had two further voicemail exchanges on July 27, 2012, but were not able to connect.

On July 30, 2012, Ms. Mell contacted Det. Ames, her former client from the overtime compensation matter, about the Kopyachuk Middle School incident. Det. Ames, who was assigned to the computer lab rather than PCSD's Special Assault Unit, travelled to Ms. Mell's office the same day to discuss the matter with her. Ms. Mell told Det. Ames that she believed that the February 2 classroom incident constituted abuse and needed to be reported to law enforcement.² Ms. Mell provided Det. Ames with a thumb drive containing video of the

² Under RCW 26.44.030, child abuse or neglect must be reported to authorities by certain persons, including professional school personnel. Under RCW 26.44.020(1), "[a]buse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. Under RCW 26.44.020(14), "[n]egligent treatment or

February 2 incident that had been downloaded from the cell phones of students who had been present in the classroom. Det. Ames took possession of this thumb drive as well as additional documents provided by Ms. Mell, including documents obtained pursuant to a Public Records Act request relating to the investigation conducted by the school district. The same day, July 30, 2012, Det. Ames interviewed CK's parents on a conference call with Ms. Mell present on the phone. CK's parents advised Det. Ames that they would cooperate fully with any criminal investigation and would make their son, CK, available for interviews with law enforcement. Det. Ames prepared a report of his investigation and entered the report into the PCSD system on July 30, 2012. The report was approved by Det.-Sgt. Berg on July 31, 2012.

Later on July 30, 2012, Det.-Sgt. Berg finally connected with Ms. Mell by phone. Ms. Mell told Det.-Sgt. Berg that Det. Ames had taken a report earlier that day. Det.-Sgt. Berg discussed the investigative and child interview process with Ms. Mell, and arranged to obtain the video evidence and documents from Det. Ames. Det.-Sgt. Berg received these evidentiary materials on July 31, 2012. Det.-Sgt. Berg proceeded to investigate the matter by, among other things, obtaining documents and information from Ms. Mell; obtaining documents and information from the school district; interviewing CK's parents with Ms. Mell present; and having a specialized forensic child interviewer (Cornelia Thomas) interview CK while Det.-Sgt. Berg and Ms. Mell observed.³ Det.-Sgt. Berg also obtained, on September 14, 2012, a list of the students in teacher John Rosi's class. In connection with obtaining that list, a school district official told Det.-Sgt. Berg that six to eight of the students had been contacted by Mr. Rosi's defense counsel, that all students and parents had been invited to a meeting about the matter on September 13, 2012 but only three attended, and that the parents who attended expressed concern that their children would be named in the media. The school district official also told Det.-Sgt. Berg that the district had contacted legal counsel about whether the February 2 incident was a mandatory reporting matter, and that "current counsel will have the documentation."⁴

In late September or early October, 2012, Det.-Sgt. Berg sent her investigation file to the PAO. She did not interview the students in the class other than CK (through a forensic child interviewer), although she did review the school district's investigation notes of interviews with some of the students. Det.-Sgt. Berg later explained, in an October 19, 2012 email written in

maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 26A.42.100."

³ In a letter to PCSD ~~Redaction Code 1~~ dated November 9, 2012, Ms. Mell stated that "Detective Berg [did] not interview the witnesses and she [did] not interview the parents." According to Det.-Sgt. Berg's report dated September 28, 2012, which Ms. Mell received pursuant to a PRA request in October 2012, Det.-Sgt. Berg interviewed CK's parents with Ms. Mell present on August 9, 2012. Det.-Sgt. Berg confirmed that this interview occurred during the DWT interview of her.

⁴ It does not appear that any such documentation was received. There is disagreement among the witnesses as to whether the February 2 was a mandatory reporting matter. Det. Ames believes that it should have been reported pursuant to the state statute. ~~Redaction Code 1~~ does not believe it was a mandatory reporting matter. Det.-Sgt. Berg believes that the school district should have reported the incident to law enforcement so that law enforcement rather than the school district could have made a judgment as to whether the incident violated state criminal law. The question would be whether the February 2 incident resulted in "injury" to CK that caused "harm" to his "health, welfare, or safety."

Report of Investigation

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7 of 27
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connection with Ms. Mell's PRA request, that she sent the file "to the Prosecutor's Office without having interviewed the other kids in the class, which will be a mess and involve search warrants. I want to know a charge is supported prior to continuing as I think the case has problems." Det.-Sgt. Berg explained in her DWT interview that the "problems" chiefly consisted of CK's statements during his interview with Ms. Thomas, which in Det.-Sgt. Berg's view did not support a theory that the February 2 incident constituted a criminal offense. Det.-Sgt. Berg also explained that conducting interviews of the other students would have involved considerable time and disruption, and that she wanted some guidance from the PAO before proceeding. PCSD and PAO witnesses (other than Det. Ames) did not believe that Det.-Sgt. Berg's decision to seek guidance before proceeding with further investigation was unreasonable or unusual. Det.-Sgt. Berg did note in her October 19, 2012 email, written while she was waiting for the PAO guidance, that "there is always the possibility of follow-up."

At the PAO, [Redaction Code 1] the [Redaction Code 1] reviewed Det.-Sgt. Berg's file and met with her, consulted with Ms. Thomas about her interview of CK, and reviewed videos of the classroom incident and the video interview of CK, among other things. In a four-page memorandum dated November 6, 2012, [Redaction Code 1] wrote that [Redaction Code 1] found no basis for criminal charges against Mr. Rost or anyone else. [Redaction Code 1] stated that [Redaction Code 1] drafted [Redaction Code 1] November 6, 2012 memorandum to advise [Redaction Code 1] of the reasons for the declination so that [Redaction Code 1] would be prepared to field any questions from the local or national media, which had shown interest in the case. [Redaction Code 1] stated that [Redaction Code 1] made the decision to decline prosecution on [Redaction Code 1] own. [Redaction Code 1] provided the following reasons, among others, for [Redaction Code 1] decision:

1. CK initially told his mother, when she saw text messages on his phone referring to the classroom incident on February 2, that "they were just playing around";
2. CK's parents told school officials on February 16, 2012, that prior to the February 2 incident CK had told them he hated school and did not want to live anymore, and that they made arrangements for CK to see a psychologist as a result;
3. CK's father told school officials that, after viewing the videos of the incident, CK appeared to be laughing. CK's mother commented that CK's facial expressions "did not look OK." CK's father further stated that from CK's perspective the entire incident "was all fun play," that he had no animosity after viewing the videos of the incident, that he did not see malicious intent on the part of the teacher, and that the incident was "bad timing" for the teacher because CK "was in crisis mode leading up to the incident";
4. CK's psychiatrist was aware of the classroom incident and had reviewed the videos of it but did not report the matter to CPS as abuse until July 31, 2012, after CK's parents consulted with Ms. Mell;

Report of Investigation

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5. [Redacted Code] reviewed the videos provided by Det.-Sgt. Berg and observed that CK and the teacher appeared to laughing and having fun;
6. [Redacted Code] contacted the forensic child interviewer on October 11, 2012, who told [Redacted Code] that CK did not disclose abuse or any other crime, and that she told CK's parents and civil attorney immediately after the interview that there had been no such disclosure from CK;
7. The PCSD investigation was initiated by a civil attorney (Ms. Mell) about five months after the classroom incident;
8. Ms. Mell contacted Det. Ames, with whom she had an attorney-client relationship; and
9. Factors 7 and 8 would complicate a prosecution of Mr. Rosi because defense attorneys could assert that Ms. Mell worked to initiate the criminal investigation to aid CK's parents' pursuit of a civil lawsuit, and that the PCSD criminal investigation commenced only because Det. Ames had done a favor for Ms. Mell;

On November 6, 2012, the PAO issued a press release announcing its decision not to prosecute Mr. Rosi or anyone else. The press release was detailed, and was so similar to [Redacted Code] memorandum of November 6 that it is clear that one was derived from the other. For example, the November 6 memorandum contained the following passage:

Defense attorneys often assert that a victim's motive for reporting a crime is to facilitate a civil lawsuit. Here, the investigation was initiated by a civil attorney, retained by CK's parents. To complicate matters, the civil attorney reported the matter to a Pierce County Sheriff's Department (PCSD) detective assigned to investigate computer crimes, who was also this attorney's client on an unrelated civil matter.

The November 6 press release contained the following, similar passage:

Defense attorneys often assert that a victim's motive for reporting a crime is to facilitate a civil lawsuit. Here, the investigation was initiated by a civil attorney who was retained by CK's parents. To

[Redacted Code] memorandum states that "[t]he civil attorney is Ames' attorney on an unrelated civil matter." Det. Ames stated during his DWT interview that, although Ms. Mell represented him in connection with the overtime compensation matter that concluded in February 2012, she was not representing him on any matter on July 30, 2012, when he took the report about the middle school incident. Ms. Mell, who was present during Det. Ames' DWT interviews and represents him in connection with Det. Ames' current complaint, confirmed that she did not represent him on July 30. [Redacted Code] stated during [Redacted Code] DWT interview that in connection with prearrest [Redacted Code] November 6, 2012 memorandum, [Redacted Code] confirmed with a PAO civil attorney that Ms. Mell represented Det. Ames. [Redacted Code] did not place weight on whether the attorney-client relationship was past or present in concluding that the relationship would be problematic for a prosecution because it would become "fodder for the defense."

complicate matters, the civil attorney reported the matter to a PCSD detective who had been represented by that same civil attorney on an unrelated matter.

C. PCSD Actions Regarding Detective Ames

On August 29, 2012, several media outlets reported the February 2 incident at the Kopachuck Middle School.⁶ As a result of media inquiries that day, the incident came to the attention of PCSD [Redaction Code 1] who served as the PCSD's [Redaction Code 1]. At 11:29 am on August 29, 2012, [Redaction Code 1] sent an email to [Redaction Code 1] and Undersheriff Bileen Bisson with the comment: "Didn't mell represent ames in a matter against the county. Is there a conflict, issued here, I'm sure she will file a law suit." [Redaction Code 1] stated during [Redaction Code 1] DWT interview that after getting a call from a newspaper reporter, [Redaction Code 1] looked up the matter in the PCSD system and came upon Det. Ames' July 30, 2012 report. At 11:35 am on August 29, 2012, [Redaction Code 1] followed up with an email to [Redaction Code 1] stating: "This is going to jump-big. Also fyi the teacher in this I know went to high school with him." [Redaction Code 1] responded with an email at 1:34 pm on August 29, 2012. So as I understand it no one called us on this until recently and till some time after this happened. Right? People are not upset with us but want to know what we do on it. Right? [Redaction Code 1] [Redaction Code 1] also informed [Redaction Code 1] on August 29 about the Kopachuck matter. According to both [Redaction Code 1] and [Redaction Code 1] [Redaction Code 1] was not aware of the Kopachuck matter until August 29.⁷

[Redaction Code 1] stated during [Redaction Code 1] DWT interview that, although [Redaction Code 1] did go to high school with Mr. Rosi many years ago, the two were not friends in high school. [Redaction Code 1] had seen Mr. Rosi only in passing or at events such as reunions, and had no social or professional relationship with Mr. Rosi. [Redaction Code 1] explained that [Redaction Code 1] old [Redaction Code 1] that [Redaction Code 1] had gone to high school with Mr. Rosi just to make sure this was disclosed from the beginning. [Redaction Code 1] also explained that [Redaction Code 1] mentioned the issue of a potential conflict involving Det. Ames because [Redaction Code 1] believed that Ms. Mell and Det. Ames had at least a previous attorney-client relationship, that Ms. Mell had brought the middle school matter forward in the press, and [Redaction Code 1] found it unusual that Det. Ames had started a PCSD investigation outside his duty assignment by taking a report from an attorney who had represented him. [Redaction Code 1] also believes that Det. Ames or someone at PCSD should have alerted [Redaction Code 1] to the Kopachuck matter before [Redaction Code 1] learned of it from a media inquiry on August 29.

On August 29, U/S Bisson commented by email in response to [Redaction Code 1] email about this alleged conflict: "I'm not seeing the conflict if this is a county case. Mike [Ames] won't be the investigator, he just obtains the materials off the electronic items and it would be assigned to a detective. I've included [Redaction Code 1] in the loop." U/S Bisson confirmed in her DWT interview that she did not see a conflict. [Redaction Code 1] stated during his DWT interview that [Redaction Code 1] believed Det. Ames created at least the appearance of conflict. [Redaction Code 1] stated during [Redaction Code 1] DWT interview that [Redaction Code 1] recalled hearing and was under the impression that [Redaction Code 1].

⁶ See, e.g., <http://www.thenewstribune.com/2012/08/28/2271605/child-was-bullied-by-students.html>.

⁷ Det. Sgt. Berg recalled telling [Redaction Code 1] about the Kopachuck matter sometime after July 30 and perhaps close in time to July 31, 2012, but she could not recall the specific day.

believed there was such a conflict or at least some issue with Det. Ames taking the report. PCSD [Redaction Code] and PCSD [Redaction Code] also believed that Det. Ames should not have handled the matter by taking a report from his former personal attorney. [Redaction Code] stated during [Redaction Code] DWT interview that [Redaction Code] believes that Det. Ames wrote an excellent report in the Kopachuck matter but also believes that Det. Ames should not have done so because Ms. Mell had been his personal lawyer. [Redaction Code] also recalled that [Redaction Code] had a conversation with U/S Bisson after her August 29 email in which [Redaction Code] explained the circumstances of the attorney-client relationship and she agreed that although Det. Ames had written a good report, the PCSD did not want to have detectives taking reports from attorneys who represented them. U/S Bisson did not recall this conversation with [Redaction Code].

[Redaction Code] also recalled that [Redaction Code] had expressed concern over a potential improper release of information by Det. Ames to Ms. Mell. [Redaction Code] recalled that [Redaction Code] with whom [Redaction Code] has a social relationship, raised a concern about Det. Ames' taking a report about the middle school matter from his former attorney.

In any event, a number of the PCSD and PAO witnesses expressed concerns about the way that the Kopachuck investigation was initiated by Det. Ames. The concerns can be summarized as follows: (1) Ms. Mell had been contacting the media, the PCSD, and the PAO about the Kopachuck matter in which she represented CK's family in an effort to generate interest in the matter and spark a criminal investigation and prosecution; (2) the initiation of a PCSD investigation and/or PAO prosecution would be potentially beneficial in civil litigation brought by Ms. Mell against the school district or others; and (3) Det. Ames' initiation of a PCSD investigation by taking a report from his former personal attorney (Ms. Mell) and interviewing Ms. Mell's clients (CK's parents) might create the appearance that a PCSD investigation was initiated as a favor to Ms. Mell.

On September 25, 2012, as result of these concerns, [Redaction Code] wrote the following email to [Redaction Code] with a copy to [Redaction Code].

I recall after reviewing the emails relating to the Kopachuck case that because of the Undersheriff's comment below (referring to U/S Bisson's August 29 email) I didn't pursue the issue with Mike [Ames] writing the report.

I agree that it smells because of Mike's Attorney/Client relationship with Joan Mell. Let's discuss the path forward tomorrow.

The matter did not wait until the next day. At 10:45 pm on September 25, 2012, [Redaction Code] sent an email to Linda Gerull, the Pierce County Information Technology Director, requesting a search of Det. Ames' PCSD email account for the specific time period July 23, 2012 through September 24, 2012 "[r]elated to possible misconduct by Sheriff's employee Mike Ames." [Redaction Code] sent a copy of this email to [Redaction Code] who approved the email search request. [Redaction Code] email requested that the email search cover the following specific items: (1) email correspondence with Ms. Mell; (2) emails referencing the names of

Report of Investigation

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John Rosi, CK, CK's parents, or Kopachuck; and (3) the PCSD case number assigned to the Kopachuck investigation and certain iterations of that case number. [Redaction Code 1] email noted that [Redaction Code 1] request was made with the approval of [Redaction Code 1]. [Redaction Code 1] did not use any official Pierce County email search form to make the request. [Redaction Code 1] followed up with Ms. Gerull by email on the afternoon of October 1 asking about the status of the email search request. Ms. Gerull then sent an email the same afternoon to Betsy Sawyer, then the Pierce County Human Resources Director, requesting approval for the email search. Ms. Sawyer approved the request the same afternoon.

The email search was then conducted, by Pierce County IT Systems Engineer Supervisor Tom Jones, who reported by email to [Redaction Code 1] on October 2, 2012 that "IT didn't find any email between Ames and Joan Mell." [Redaction Code 1] immediately forwarded the email to [Redaction Code 1] who in turn forwarded it to [Redaction Code 1] with the note "Just fyi. Please don't forward this." [Redaction Code 1] stated during [Redaction Code 1] DWT interview that [Redaction Code 1] wrote this note to inform [Redaction Code 1] about the email search and asked that the email not be forwarded to make sure the matter stayed confidential. [Redaction Code 1] also stated that [Redaction Code 1] did not write "don't forward this" out of any concern that there was something wrong with conducting the email search or sharing the lack of results with [Redaction Code 1] but rather because [Redaction Code 1] prior conversation with [Redaction Code 1] had been one-on-one and [Redaction Code 1] thought it should stay that way. [Redaction Code 1] stated during [Redaction Code 1] DWT interview that [Redaction Code 1] had no input into the decision to search Det. Ames' county email account and did not direct it. [Redaction Code 1] also commented that if there had been any emails between Det. Ames and Ms. Mell, such emails might have to be turned over to the defense in connection with any prosecution.

Det. Ames claims that, during an October 11, 2012 visit to the computer lab at the Tacoma Police Department where Det. Ames worked, Lt. Russ Wilder told Det. Ames that he had done him a favor by refusing a direction by senior PCSD officers to open an official misconduct investigation against Det. Ames. According to Det. Ames, Lt. Wilder said that the senior officers believed that Det. Ames had conspired with Ms. Mell to file a case against Mr. Rosi to assist a civil lawsuit that Ms. Mell would file against the school district. Det. Ames further alleged that Lt. Wilder told him that the senior officers were upset by the fact that Det. Ames had retained Ms. Mell in the overtime compensation claim earlier in 2012, and that Lt. Wilder told him to watch his back because the senior officers "have it in" for him. Det. Ames claimed that Lt. Wilder told him that the senior officers' purpose was to discredit him and Ms. Mell which would in turn discredit the filing of a case in the middle school matter. Det. Ames stated that Lt. Wilder declined to provide the names of the senior officers because he had "stopped [an official misconduct investigation of Det. Ames] from happening." During his DWT interview, Det. Ames stated that after this alleged conversation with Lt. Wilder he immediately told his partner in the computer lab, Tacoma Police Department Detective Heath Holden, what Lt. Wilder had said. Det. Holden stated during his DWT interview that he had no reason to doubt Det. Ames but did not recall any such conversation with Det. Ames.

* The Pierce County Information Technology department ("IT") has a form called "E-mail Records Search Request" for other Pierce County departments to use in requesting searches of email records. Use of the form is not a requirement under IT's January 17, 2003 Data Investigation Policy.

Report of Investigation

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12 of 37

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Ames - 000490

Lt. Wilder reported during his DWT interview that he did in fact have a brief conversation with Det. Ames at the conclusion of his visit to the computer lab on October 11, 2012. Lt. Wilder said that prior to his visit he had a conversation with [Redacted Code 7] about Det. Ames' conduct in taking a report in the middle school matter from an attorney who had represented him. According to Lt. Wilder, [Redacted Code 7] had already decided that no official misconduct investigation of Det. Ames would be necessary, and that instead [Redacted Code 7] wanted Lt. Wilder to have a more casual conversation with Det. Ames about PCSD concerns about taking a report from a personal attorney. Lt. Wilder recalled telling Det. Ames something to the effect that "eyes were on" Det. Ames because PCSD officials believed that Det. Ames should not have taken the report from Ms. Mell. Lt. Wilder said that there was no conversation with [Redacted Code 7] about discrediting Det. Ames or Ms. Mell and he never told Det. Ames that. Lt. Wilder said that he had tried to approach Det. Ames in a friendly matter to convey that PCSD did not believe that Det. Ames should have taken the report, but that Det. Ames was incorrect that [Redacted Code 7] or other senior officers wanted to open an official misconduct investigation, let alone for the purpose of discrediting or retaliating against Det. Ames. No official misconduct investigation against Det. Ames was ever conducted. Det. Ames received no official discipline.

D. PAO Actions Regarding Detective Ames

As noted above, on November 6, 2012 the PAO declined prosecution in connection with the Kopachuck Middle School matter. As also noted above, the press release issued by the PAO announcing its decision contained a paragraph stating:

Defense attorneys often assert that a victim's motive for reporting a crime is to facilitate a civil lawsuit. Here, the investigation was initiated by a civil attorney who was retained by CK's parents. To complicate matters, the civil attorney reported the matter to a PCSD detective who had been represented by that same civil attorney on an unrelated matter.

Det. Ames alleges that the insertion of this language into the press release constituted retaliation and harassment against him, and was part of the conspiracy to discredit him for the purpose of justifying an improper decision not to prosecute Mr. Rosi.

As also noted above, the press release language quoted above is identical in all material respects to the internal PAO memorandum written by [Redacted Code 7]. [Redacted Code 7] stated during [Redacted Code 7] DWT interview that [Redacted Code 7] drafted this memorandum on [Redacted Code 7] own, including the language quoted above. [Redacted Code 7] stated that [Redacted Code 7] made the decision on [Redacted Code 7] own to decline prosecution in the Kopachuck matter. [Redacted Code 7] stated that [Redacted Code 7] has tried many cases and in [Redacted Code 7] experience the fact that a civil attorney with a financial incentive reported the matter over five months after the incident to a PCSD detective she had represented would be problematic at a trial. [Redacted Code 7] also stated that in [Redacted Code 7] view Det. Ames seemed to be just trying to do his job when he got a call from Ms. Mell about a possible crime, and that it is Ms. Mell's handling of the matter, not Det. Ames' conduct, that made the case problematic from a prosecutorial standpoint. [Redacted Code 7] wrote the memorandum because the Kopachuck Middle School matter had

attracted media attention and as a result [REDACTED] needed to be knowledgeable about the matter to be prepared for any media inquiries. [REDACTED] stated that [REDACTED] goal was not to make Det. Ames look bad.

[REDACTED] recalled having some input into the November 6, 2012 PAO press release, but only with respect to editing or possibly writing the quotes attributed to [REDACTED] in the memorandum. [REDACTED] also recalls approving the press release as a whole. [REDACTED] confirmed with [REDACTED] that the press release was completely accurate before approving it. The PAO press release was issued by Rebecca Stover, who at the time was the PAO press contact. Ms. Stover does not recall drafting the press release, and did not recall who drafted it, but acknowledged that it was very similar to the PAO memorandum from [REDACTED] and that she may have adapted it from that memorandum. [REDACTED] stated that [REDACTED] did not provide input on [REDACTED] November 6 memorandum. All PCSD witnesses denied having any input into the November 6 PAO memorandum, and DWT has found no evidence of any such input.

IV. LEGAL FRAMEWORK

Det. Ames' complaint of December 20, 2012 does not cite to a state statute, the Pierce County Code, or other authority as a basis for the complaint. Nevertheless, it is useful to analyze Det. Ames' complaint under a legal framework, as discussed below.

Chapter 3.14 of the Pierce County Code is entitled "Whistleblower Protection" and contains provisions to that effect. However, to the extent that Det. Ames' complaint is claiming that he was the victim of retaliation based on his having made a prior claim for overtime compensation, Chapter 3.14 does not apply. Section 3.14.010(B) defines "retaliatory action" as certain personnel actions "taken on account of, or with motivation from the employee's action protected under Section 3.14.030." Under section 3.14.030(D), employee action protected under Section 3.14.030 is action taken in connection with reporting "improper governmental action." "Improper governmental action" is defined by Section 3.14.010 (A) as including a wide range of governmental actions that violate federal, state, or county ordinances, or are otherwise improper. However, Det. Ames' prior complaint about overtime compensation is specifically excluded from the definition of "improper governmental action" because the definition excludes all forms of personnel action, including "violations of the Pierce County Code Title 3" and "alleged violations of agreements with labor organizations under collective bargaining agreements." Although Det. Ames cited a plethora of statutes and code sections in his overtime compensation claim, the claim actually alleged a violation of Section 3.52.050 of the Pierce County Code and Article 5 of the collective bargaining agreement between Pierce County and Pierce County Deputy Sheriffs' Independent Guild, Local No. 1889. Accordingly, Chapter 3.14 does not seem to apply.⁹

⁹ Moreover, Section 3.14.040(B) requires a written complaint within 30 days of the alleged retaliatory action. It appears that Det. Ames became aware of the alleged retaliatory actions by November 8, 2012, even assuming for purposes of discussion that the 30 day timeline is triggered on the date of awareness of the alleged retaliatory action.

Another potential statutory basis for Det. Ames' complaint might be Chapter 42.41 of the Revised Code of Washington, which contains provisions very similar to Chapter 3.14 of the Pierce County Code. However, RCW 42.41.020, like Chapter 3.14, excludes all forms of personnel actions from the definition of "improper governmental action," and also contains the same 30-day timeline for submitting a written complaint. Further, RCW Chapter 42.41 does not apply at all in the case of "[a]ny local government that has adopted or adopts a program for reporting alleged improper governmental actions and adjudicating retaliation resulting from such reporting . . . if the program meets the intent of this chapter." It seems that Pierce County Code Chapter 3.14 is such a program, rendering Chapter 42.41 inapplicable.

This leaves Chapter 49.46 of the Revised Code of Washington, the Minimum Wage Act, as a potential statutory basis for Det. Ames' complaint. RCW 49.46.100 provides that "[a]ny employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to her or her employer . . . that he or she has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter . . . shall be deemed in violation of this chapter and shall, upon conviction therefore, be guilty of a gross misdemeanor." Although this statute is framed as a misdemeanor statute, courts have recognized that an aggrieved employee may have a claim based on it. See, e.g., *Pederson v. Snohomish County Center for Battered Women*, 2008 WL 1934846, at *5, 144 Wash. App. 1025 (2008).

Although Det. Ames did cite RCW 49.46.130 in his overtime claim, it is not clear whether it was really about violations of Chapter 49.46 as opposed to a complaint about violations of Chapter 3 of the Pierce County Code and the collective bargaining agreement. See, e.g., *Williams v. City of Tacoma*, 105 Wash. App. 1050 (2001) (City of Tacoma "must pay its police officers overtime compensation according to the terms of the collective bargaining agreement" but "[a] public agency can only violate the MWA's overtime provisions if it fails to pay its police officers according to the rate specified in RCW 49.46.130(5).") It is also not necessarily settled that Chapter 49.46 applies to an employee in the position of Det. Ames. See *Chelan County Deputy Sheriffs' Association v. County of Chelan*, 109 Wash.2d 282, 290 n.2 (1987) (leaving open the question of whether deputy sheriffs were subject to the Minimum Wage Act's exclusion of coverage for county employees who hold "appointive office.>").

Regardless of whether there is a statutory basis for Det. Ames' complaint, this investigative report analyzes the complaint on the merits below because Det. Ames is a long-serving employee of the PCSD who has made allegations of serious misconduct, including conspiracy, and improper retaliation and harassment, against senior officials at the PCSD and the PAO. This warrants an examination of the merits even if it turns out that Det. Ames is not entitled to any relief. Such an examination is also warranted because Det. Ames' complaint might have some other basis in law, based on public policy concerns articulated by the Washington state courts, or otherwise. Under the Minimum Wage Act's anti-retaliation provision, Pierce County Code Chapter 3.14, or any other provision of law prohibiting retaliation, Det. Ames would be required to show the following basic elements:

rather than the date on which alleged retaliatory action occurred. Thus, Det. Ames' December 20 written complaint would not be timely under Chapter 3.14 even if that chapter applies here.

Report of Investigation

14

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15 of 37

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Ames - 000493

1. that he engaged in protected activity;
2. that the PCSD took adverse employment action against him; and
3. that retaliation was a substantial factor behind the adverse employment action.

See, e.g., *Pederson*, 2008 WL 1934846, at *5, 144 Wash. App. 1025.

Assuming without deciding that Det. Ames' complaint about overtime compensation was protected activity under a statute, ordinance, or other provision of law, the remaining two elements would still have to be satisfied. "Adverse employment action" is defined in the context of the Washington Law Against Discrimination as "an actual adverse employment action, such as demotion, or adverse transfer, or a hostile work environment that amounts to an adverse employment action." *Kirby v. City of Tacoma*, 124 Wash. App. 454, 455 (2004). "An actionable adverse employment action must involve a change in employment conditions that is more than an 'inconvenience, or alteration of job responsibilities, . . . such as reducing an employee's workload and pay.'" *Id.* In the *Pederson* case cited above, which involved, among other things, a retaliation claim under Chapter 49.46, the court quoted with approval from *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), for the proposition that "in order to constitute an adverse employment action, an employer's conduct in response to a plaintiff's protected activity 'must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge' of unlawful conduct by the employer." The court added that "this objective standard is one of 'material adversity' and the reactions must be those of a 'reasonable employee,'" and that "[p]etty slights, minor annoyances, and simple lack of manners will not create such deterrence."¹⁰

In *Kirby v. City of Tacoma*, a Tacoma police officer named Joseph Kirby brought a discrimination claim based in part on the fact that he "was the subject of numerous Internal Affairs (IA) investigations, some of which lasted for months and some up to two years." 124 Wash. App. at 460-61. Officer Kirby "had a contentious relationship with the TPD command structure," and there was testimony at trial that "it seems whenever Joe Kirby has any kind of disagreement with a superior, the matter gets referred to IA, and this has happened to other people as well." 124 Wash. App. at 461. On these facts, the court concluded that those "events . . . were disciplinary or investigatory in nature, and therefore do not constitute adverse employment actions . . . At most, these events were inconveniences that did not have a tangible impact on Kirby's workload or pay."

¹⁰ Pierce County Code § 3.14.030(D) defines "retaliatory action" as:

any unwarranted adverse change in a County employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action taken on account of, or with motivation from the employee's action protected under Section 3.14.030.

Further, even if the actions that Det. Ames complains of were "adverse employment actions," he would not have a retaliation claim unless there was also a causal connection between his overtime compensation complaint (or other alleged protected activity) and those actions. Bearing on this question is the presence or absence of credible non-retaliatory reasons for the actions of which Det. Ames complains.

These issues are discussed below. In addition, this report will also address Det. Ames' claims other than retaliation -- namely, that the Kopachuck Middle School matter and the PCSD and PAO actions constituted original conduct that should be investigated by an outside law enforcement agency such as the Washington State Patrol or the Attorney General's office.

V. FINDINGS AND CONCLUSIONS

A. Det. Ames' Retaliation Claim

Det. Ames alleges that PCSD and PAO executive level officers searched his emails and issued a press release "in retaliation for [Det. Ames'] filing of a whistleblower complaint against the" PCSD in early 2012 concerning overtime compensation. As noted above, for purposes of this report it will be assumed, without deciding, that Det. Ames' complaint in early 2012 concerning overtime compensation constituted protected activity for which retaliation would be unlawful. With this assumption, the remaining questions are whether the PCSD took adverse employment action against him, and whether retaliation was a substantial factor behind any such adverse employment action.

1. Adverse Employment Action

Det. Ames contends that two events constituted adverse employment action against him. The first was the decision by PCSD management personnel to conduct a search of his PCSD email account for certain emails relating to the Kopachuck Middle School matter and any contact with Ms. Moll during a defined time frame, based on "possible misconduct" by him. The second event was the decision of the PAO to insert the following language in its November 6, 2012 press release concerning the middle school matter:

Defense attorneys often assert that a victim's motive for reporting a crime is to facilitate a civil lawsuit. Here, the investigation was initiated by a civil attorney who was retaliated by CK's parents. To complicate matters, the civil attorney reported the matter to a PCSD detective who had been represented by that same civil attorney on an unrelated matter.

Neither of these events constituted adverse employment action.

a. The Search of Det. Ames' PCSD Email Account

The PCSD decision to search Det. Ames' PCSD email account did not constitute adverse employment action. Under the broadest available definition of adverse employment action -- the

definition in Pierce County Code § 3.14.030(D) -- the term means "any unwarranted adverse change in a County employee's employment status, or the terms and conditions of employment, including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action . . ." The search of Det. Ames' PCSD email account did not change his employment status or terms in any way. It did not change Det. Ames' duties or access to staffing in any way. No disciplinary or other personnel action was taken against Det. Ames. The reason given for the search -- possible misconduct by Det. Ames -- cannot be construed as disciplinary action, or even as an official investigation.¹¹

In fact, rather than being subjected to any adverse personnel action or official discipline, it appears that during the relevant time the PCSD actually afforded Det. Ames a benefit not generally available to other PCSD detectives. In early 2012, Det. Ames asked to be exempted from "swing shift" duties that most PCSD detectives had to do, because he said that it interfered with his duties at the computer lab.¹² At the time, Det. Ames was supervised by Todd Karr, then a PCSD lieutenant but currently a detective-sergeant, who agreed to exempt Det. Ames from swing shift. Det.-Sgt. Karr was not aware of Det. Ames' overtime compensation claim at the time, and did not change Det. Ames' exemption status after learning of that claim. In the fall of 2012, Lt. Wilder took over supervision of Det. Ames (above Det. Ames' immediate supervisor, Det.-Sgt. Portman). At that time, in early October 2012, during the same time period as Det. Ames claims he was subjected to adverse personnel action, Lt. Wilder and Capt. Bomkamp agreed to continue to allow Det. Ames to be exempt from swing shift duty.¹³

Obviously, Det. Ames was not pleased when he learned that his superiors had commenced a search of his emails on the basis of "possible misconduct."¹⁴ No employee would be pleased about this. However, Policy No. 212.2 in the Pierce County Sheriff's Department Policy Manual provides, among other things, that:

All e-mail messages, including any attachments, that are transmitted over department networks are considered department records and therefore are the property of the department. The

¹¹ As noted above, the *Kirby* case is instructive with regard to whether Det. Ames suffered adverse employment action. The City of Tacoma police officer involved in that case had a contentious relationship with the police department command structure and was repeatedly referred for internal affairs investigations. The court, however, found no adverse employment action under these circumstances. 124 Wash.App. at 465;

¹² Most PCSD detectives rotate through swing shift duty, which is evening duty requiring them to respond to crime scenes and other incidents, and then in many instances to continue to work on the matter afterward.

¹³ The point here is not to quarrel with whether Det. Ames' duties are such that he is deserving of being exempted from working swing shifts. DWT assumes for purposes of this report that he is. Nevertheless, it is a fact inconsistent with a design by Det. Ames' superiors to retaliate against him.

¹⁴ Although Det. Ames and his attorney, Ms. Moll, refused to answer the question, it appears that Det. Ames learned of the email search only as the result of a PRA request that Ms. Moll made on behalf of CK's family in October 2012. Ironically, but for Det. Ames' attorney's PRA request, it is doubtful that Det. Ames would have ever learned of the email search, since that search yielded no results and found nothing improper, and knowledge of it was limited to a small management group.

Department reserves the right to access, audit or disclose, for any lawful reason; any message, including any attachment, that is transmitted over its email system or that is stored on any department system.

Other sections of the policy manual are to the same effect, including Sections 342.1.1, 342.3, 702.1.1, and 702.4. There was a lawful reason here, as discussed below in the Retaliatory Motive section — namely, to look into whether the initiation of the PCSD investigation of the middle school case was improper in any way.

On February 20, 2013, Det. Ames added an allegation that “[t]he internal investigation which was initiated, conducted, and concluded, all without due process and notification to me and the PCSD Guild, clearly in my opinion was a direct violation of the Pierce County IT Data Investigation Policy 1.17.03 . . .” There was no material violation of the Data Investigation Policy. The Data Investigation Policy provides that email and other records “will not be released to anyone without prior written approval from the Information Technology Department Director or the designated acting IT Director.” Requests for email searches are required to follow a procedure consisting of the following requirements: (1) a written request, email preferred, from the director/head of the custodial department or his or her designee, the Human Resources Director, or the prosecuting attorney handling a legal matter specifying the requestor’s name, phone number, and department, the information being requested, who will view the information, who is authorized to conduct the search/investigation, and the purpose of the request; (2) approval by the IT Director; (3) notification to the HR Director in the case of an email search relating to an internal investigation for potential employee disciplinary action; and (4) access to emails must be confined to the specific purpose and scope authorized. As noted above, the IT Department promulgated an “E-Mail Records Search Request” form, but the Data Investigation Policy does not require use of the form.

In the case of the search of Det. Ames’ PCSD email account, there was a written request (by email) from [Redaction Code 1] authorized by [Redaction Code 1]. It would be hard to argue that the PCSD [Redaction Code 1] was not [Redaction Code 1] designee for this purpose. The IT Director, Linda Gerull, also authorized the search. The request specified the requestor’s name and department [Redaction Code 1] of the PCSD, the information being requested (emails with Joan Meil or relating to the Kopachuck investigation) and the purpose of the request (possible misconduct by Det. Ames). The email request did not specify who would view the information, but there is no evidence that anyone other than very senior PCSD officers

15 [Redaction Code 1] stated that [Redaction Code 1] did not direct or authorize the email search. [Redaction Code 1] recalled having a conversation with [Redaction Code 1] in which [Redaction Code 1] expressed a concern about improper release of information. [Redaction Code 1] did not say that [Redaction Code 1] directed that PCSD should search Det. Ames’ emails. However, it is possible that an email search came up or was implied in the conversation between [Redaction Code 1] and [Redaction Code 1] or that [Redaction Code 1] decided to authorize the search based on [Redaction Code 1] as well as [Redaction Code 1]’s own concerns. It also appears likely that [Redaction Code 1] heard about the concern underlying the email search from [Redaction Code 1] friend [Redaction Code 1] and as a follow-up the results of the email search were forwarded to [Redaction Code 1]. Nothing about this appears to be illegitimate, and certainly cannot be interpreted as a conspiracy to discredit Det. Ames.

(captain's rank and above), [Redaction Code 1] and necessary IT personnel viewed the information, which in any event consisted only of a lack of results. The HR Director, Betsy Savvyers, was notified of the request and approved it. The email search was for very specific information during a narrow time frame (July 23, 2012 to September 24, 2012). Det. Ames' allegations that the Data Investigation Policy was violated, even assuming that policy provides him with any rights, is not well founded.

b. The PAO Press Release

Turning to the PAO press release, the DWT investigation uncovered no evidence that the PCSD had any input or involvement in drafting the press release issued by the PAO. But even assuming that action taken by the PAO would be considered action by Det. Ames' employer against him, the press release language does not constitute adverse employment action against Det. Ames. [Redaction Code 1] believed that it was necessary to explain the reasons for the PAO declination of prosecution in a detailed memorandum, and the reasons included the facts that a civil attorney for CK's parents had reported the classroom incident over five months later and that a PCSD detective who had retained that civil attorney as his personal attorney initiated the PCSD investigation. The press release was based directly on [Redaction Code 1] detailed memorandum, which was drafted without input from the PCSD or even from [Redaction Code 1]. The press release was not disciplinary action of any sort against Det. Ames. Hurt feelings do not constitute adverse employment action. *Craig v. M&O Agencies, Inc.*, 496 F.3d 1047, 1059 (9th Cir. 2007); *See also, e.g., Nunez v. City of Los Angeles*, 147 F.3d 867, 875 (holding that a supervisor's "scolding ... and threatening to transfer or to dismiss" are not adverse employment actions and explaining that "[i]n]jere, threats and harsh words are insufficient"); *Kerns v. Capital Graphics, Inc.*, 178 F.3d 1011, 1017 (8th Cir. 1999) (holding that a supervisor's criticism and threat that the complainant would be "fired for any subsequent exercise of poor judgment" was not enough for an adverse employment action); *Sweeney v. West*, 149 F.3d 550, 556 (7th Cir. 1998) (holding that an employee had not suffered an adverse employment action when "she was unfairly reprimanded for conduct she either did not engage in or should not have been responsible for"); *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1301 (3rd Cir. 1997) (holding that "unsubstantiated oral reprimands" and "unnecessary derogatory comments" following a sexual harassment complaint did not "rise to the level of the 'adverse employment action' required for a retaliation claim"); *Harrington v. Harris*, 118 F.3d 359, 366 (5th Cir. 1997) (holding that "an employer's criticism of an employee, without more," is not an adverse employment action).

The PAO press release did not mention Det. Ames by name, and appears to have had no impact on the status, terms, or conditions of Det. Ames' employment with the PCSD. Det. Ames may not have been pleased with the press release, and indeed the PAO could have drafted a more minimal press release without the comment referring to Det. Ames' actions, but that does not turn the press release into adverse employment action.

2. Retaliatory Motive

Even assuming that the PCSD and PAO actions of which Det. Ames complains were "adverse employment actions," the DWT investigation has uncovered no retaliatory motive in

connection with those actions. Rather, there were credible, non-retaliatory reasons for the actions in question.

On August 29, 2012, [Redaction Code 1] learned of the Kopachuck Middle School matter from the media and notified [Redaction Code 1] that it was becoming a big story in the press. That same day, [Redaction Code 1] sent an email to [Redaction Code 1] and U/S Bisson asking whether Ms. Mell represented Det. Ames in a prior matter against Pierce County, and whether this constituted a conflict in light of the likelihood that Ms. Mell would pursue a civil lawsuit in connection with the Kopachuck matter. Ms. Mell was very familiar to the PCSD and the PAO because of her representation of offenders in matters adverse to these agencies, and appears to have a somewhat contentious relationship with the County. Also on August 29, [Redaction Code 1] noted in an email to [Redaction Code 1] that [Redaction Code 1] had attended high school with Mr. Rosl.

Although U/S Bisson opined that she did not see any conflict, [Redaction Code 1] and others did see an issue with Det. Ames' actions in taking a report from Ms. Mell on July 30. It was clear to everyone that Ms. Mell had a financial interest on behalf of herself and CK's parents to trigger a PCSD investigation of the Kopachuck matter. A criminal investigation or a criminal prosecution of Mr. Rosl would likely have enhanced her ability to successfully sue the school district and Mr. Rosl, because the presence of a parallel criminal proceeding or investigation would have made it much harder for Mr. Rosl to mount a defense in the civil case because of Fifth Amendment and other concerns. Defendants in criminal cases routinely decline to testify in parallel civil cases to protect their rights and positions in the criminal case, but defendants who assert Fifth Amendment rights in civil cases can compromise the ability to defend the civil case. Obviously, a successful prosecution of Mr. Rosl would have essentially assured Ms. Mell of success in a civil case, or at least would have put immense pressure on the school district to settle. All civil plaintiffs' lawyers know that triggering a criminal investigation or prosecution of the same conduct that is the subject of a civil lawsuit can greatly improve the likelihood of success.

Det. Ames' involvement did in fact complicate things further. Based on the DWT interviews of Det. Ames and other witnesses, there is no evidence that Det. Ames acted in anything other than good faith in taking the report from Ms. Mell. Clearly, Det. Ames trusts Ms. Mell, having retained her as his personal counsel in at least three recent matters - the overtime compensation matter, the instant investigation matter, and a matter involving a lawsuit against Pierce County by Lynn Dalsing in which Det. Ames is a witness. Thus, when Ms. Mell contacted Det. Ames about a possible case of child abuse, Det. Ames acted on that information by obtaining evidence from Ms. Mell, interviewing CK's parents, and writing a report. However, it appears, based on Ms. Mell's actions in contacting multiple PCSD deputies and PAO prosecutors, and contacting the media to step up public pressure, that her goal, at least in part, was to trigger a criminal investigation and possible prosecution. It also appears that Ms. Mell was just trying to do her job, which was to represent CK's parents to the best of her ability, but the fact that it was Det. Ames who initiated the criminal investigation, in the view of [Redaction Code 1] and others in the PCSD command structure, colored the matter with the taint of an investigation possibly triggered as a special favor to an attorney who was close to Det. Ames, regardless of whether Det. Ames realized it. This is a legitimate concern.

[Redacted Code] was of the same view when [Redacted] looked at the matter. During his DWT interview, [Redacted] explained it as follows:

Coopersmith: . . . So, you mentioned that before that this case came forward it appears when Ms. Mell was retained by the family and then she came forward. She apparently made some calls to the prosecutor's office, the sheriff's department and so forth; First of all, is there anything inappropriate about that as far as you're concerned?

[Redacted Code] No.

Coopersmith: She's doing her job right?

Ausserer: She's doing her job. The only reason I think it is significant in this, for my purposes, is that then becomes subject to scrutiny. Should we file charges?

Coopersmith: What would be the scrutiny?

[Redacted Code] The motivation - the scrutiny would be a civil attorney has an issue that investigation that all these other people, including the alleged victim, [CK], his parents, the psychologist, the school district, didn't think to be a crime. Nobody reported it. [CK's] parents didn't call the authorities. [CK] didn't call. Nobody contacted the authorities. The only time it gets reported is once a civil attorney has been retained and then a criminal investigation is underway. And so, obviously, at trial Mr. Herschmann is going to have a field day with, look [CK's mother], you had all the information that the state has at this point. You never contacted authorities, did you? You didn't take any steps to report this, did you? Your husband took no steps. You had a psychologist who is a mandatory reporter. They didn't disclose this. They took no steps to report this incident. The only time that this comes to light is after you hire an attorney who is going to file a civil suit on your behalf and then an investigation is initiated at her request. She contacts law enforcement. She contacts Mike Ames, who was her client. She initiates it and then contacts the prosecutor's office and says look, you need to view this with an eye towards failing to report. Not, there is an assault that happened to this child. She contacts me directly and says after learning that Teresa Berg had apparently had intended to bring it to me, [Redacted Code] you need to view this with an eye towards failing to report.

Coopersmith: Why do you think that Ms. Mell's take on it at that point or suggesting to you that it be prosecuted as a failure to report rather than an assault?

[REDACTED] Because it was clear to me that her intent was to, as a civil attorney, sue the individuals who were responsible or who damages can be ascertained against. The only, I guess, susceptible entity to a civil claim would be the school district. Right? So if I were to file a charge for failing to report against the school district it would enhance her ability to receive civil damages against the district for failing to report.

Coopersmith: Okay. So the possible financial motive of both the family and perhaps Ms. Mell that you are referring to, is what you're saying is that could be a problem at trial when the defense attorney gets ahold of those facts?

[REDACTED] Oh it is a problem and there is no doubt about it.

Coopersmith: Okay.

[REDACTED] And they are going to get ahold of those facts because everything that we get as part of discovery is going to be provided to them so they are going to get the school district notes as part of discovery. Teresa Berg presented those in the packet of information she provided to me. And so anything that I considered in charging this is going to be disclosable to Brian Herschmann.

Coopersmith: Okay. What about the fact that, and you mentioned this just a minute ago, Det. Ames had a previous attorney-client relationship with Ms. Mell. My understanding is it wasn't an existing attorney-client relationship at the time of the report that went to Ames in late July of 2012 but nevertheless there was a preexisting or prior attorney-client relationship. Was that at all an issue for you and your office in terms of bringing charges or not?

[REDACTED] Um, well let me say this, I didn't know the status of whether or not they had a continuing legal relationship. What I knew was that she represented him on an unrelated matter. That she was his attorney in that civil suit against the county. In fact, that was confirmed through our civil division when I started going through the discovery on this I had that question. Did she represent Mike Ames?

Coopersmith: Why did you want to ask that question?

[Redacted] Because it seemed odd to me that the civil attorney took steps to contact the Pierce County Sheriff's Department, specifically Teresa Berg, who is - would be the assignor - I don't even know if that's the correct word. She assigns these cases to detectives within that division. My understanding of the placement of Mike Ames at that time was that he was no longer in that unit. Mike Ames was dealing with computer forensics which had nothing to do with this investigation. So if Ms. Mell were - what I would expect to be appropriate in that case was if I contacted Teresa Berg and did not get the appropriate response, I would go to her supervisor or some other detective in that unit. To contact Mike Ames who was not in that unit, to facilitate an investigation from a civil attorney about a criminal matter, creates issues for us about the credibility of the investigation should we over charge the case because that's going to come before the jury and we have to explain look-I know this looks bad but try to overlook the fact that this was initiated as part of what appears to be a civil claim against the school district and that they circumvented what would be the usual avenues through which to get a case investigated.¹⁶

Based on these facts, there is no evidence that any employee of the PCSD or PAO acted with a retaliatory motive against Det. Ames based on his previous overtime compensation claim or anything else. PCSD and PAO personnel were simply of the view that Ms. Mell's actions in getting Det. Ames to take the initial report in connection with the Kopachuk Middle School matter made it at least appear that the investigation was initiated as a special favor from Det. Ames to Ms. Mell. This is a credible, non-retaliatory reason.

To be sure, some members of the PCSD, including [Redacted Code 1] were not entirely pleased with the way that Det. Ames handled the previous overtime claim. Det. Ames stated during his interview that when in July 2012 Det.-Sgt. Portman improperly set up a "comp time" system in lieu of properly paying overtime compensation, Det. Ames decided to keep his own log of overtime hours with the intent that he would eventually make a claim, which he did about six months later, after he obtained his forensic certification. On this point, [Redacted Code 1] stated as follows:

Coopersmith: Okay. Did you harbor, as a result of that affair, you were alleged to have done something wrong, you were not disciplined yourself. There was no finding that you did anything wrong connected to the overtime. Am I correct about that?

¹⁶ Moreover, there is no evidence that [Redacted] had any ill will towards Det. Ames. In fact, during [Redacted] interview [Redacted] stated that [Redacted] believed that Det. Ames was just doing his job in good faith and that [Redacted] was not trying to make Det. Ames look bad.

Redaction Code 1 No. There was no finding against me. I was disappointed in myself that I hadn't, I guess, set the parameters more clearly. I was disappointed in Mike. I felt like he, Mike Ames, I felt like we were friends and I feel like I have a very open door policy. If he was feeling like he was wronged I would have expected that he would have come to me and said hey, I'm being forced to do something that I shouldn't be. I was disappointed in him. I was disappointed in me.

Coopersmith: Okay. Why were you disappointed in Detective Ames exactly? In terms of bringing it forward at all or in terms of the way he brought it forward or either or something else?

Redaction Code 1 I guess my disappointment stems from this is something that he wanted to do and I agreed that it was a good idea but he went all the way through it, he went along with the solution that Det.-Sgt. Portman came up with, all the way through completion of the task that he wanted to accomplish and then he cries foul.

Coopersmith: I see. So you would have preferred that after the email exchange¹⁷ that he had come forward and said, okay we need to work this out. How am I going to get this certification done and not just gone along with the system and completed the training without bringing that matter up and resolving it somehow. Is that what you are saying?

Redaction Code 1 Yes. I think we could have come to a solution and I take some of the responsibility for having it fall off my radar. There is always a lot going on. There are 10 or 12 different things that are seeking my attention at any given time it seems like and if something is not banging on my door or I haven't made a note to myself to follow up on it, it slipped through the cracks.

Nevertheless, there is no evidence that **Redaction Code 1** or others took any action against Det. Ames, including the search of his PCSD email account, based on a retaliatory motive. There is no evidence that the email search was motivated by anything other than a concern about Ms. Mell's actions with respect to contacting Det. Ames to initiate an investigation on the Kopachuck matter. This was a legitimate, non-retaliatory concern, not frivolous as Det. Ames claims. The fact that some members of the PCSD command staff were less than pleased about the way Det. Ames handled the overtime compensation matter does not elevate to retaliation everything they later do in response to new events.

¹⁷ **Redaction Code 1** was referring to an email exchange from July 1, 2011, in which Det. Ames explained the need for overtime and **Redaction Code 1** replied that **Redaction Code 1** would meet with Det. Ames' lieutenant about setting priorities and distribution of work.

There is also no evidence that the PAO had any retaliatory motive in connection with the press release issued on November 6, 2012. There is no evidence that PCSD personnel had any input or involvement in drafting or issuing the press release. On the contrary, the evidence is that the PAO decided to explain its reasons for declining prosecution in the Kopachuck matter in some detail, because of the high level of media interest in the case. [Redacted] explained this as follows:

[Redacted] ... On most cases we don't prepare lengthy memorandums for outlining our decisions. In this case I did given the contact I received from several attorneys who were somewhat related to the matter. I think Ms. Mell represents [CK] or the parent or something. Herschman represents Mr. Rossi. Our civil department had contacted me to get the status of it, the Sheriff's Department, Teresa Berg contacted me on multiple occasions saying Joan Mell's contacted me asking the status of it. Give me an update so I can tell her when you are going to make a decision, that sort of thing. I was getting information from all over the place. Drew Michelson from I think one of the news stations calling me repeatedly and so in this instance I thought the best course was to prepare as detailed a memo as possible. When I made the decision then that was provided for purposes of the press release. So that might be why this is longer than we would ordinarily see. I don't know. You'd have to talk to Becky.

Coopersmith: Okay. Understood. Was there any motivation or purpose in that paragraph at the end of the press release that talked about the motivation, you know, that the financial motivation might be or the fact that the detective took the report who had been represented by the same civil attorney. Was there any motivation or purpose to make Det. Ames look bad in some way or?

[Redacted] I don't think it - I can say no. I've never intended to make Det. Ames look bad at all. In fact if I was Det. Ames I probably would have done the same thing. I mean he's getting a call, he's a detective with the Pierce County Sheriff's Department and he's getting a call from somebody he knows, whether or not they still have an attorney-client relationship I don't know, saying hey, I've contacted Teresa Berg. I haven't - nobody followed up on this. Can you come collect this evidence and get it to the people who it needs to go to. From his perspective I don't find any fault in that behavior.

Coopersmith: Okay.

[REDACTED] I don't know what their procedures are. Maybe he should have contacted another detective in the special assault unit and say, hey, I got a call from Joan Mell.

Coopersmith: And just let me ask you a question about that, and we're almost done, and you don't find any fault with Det. Ames which is fine. I think earlier you said though that you thought the fact that he had taken the report from Joan Mell and they had been in an attorney-client relationship was another potential problem. In fact, I think in your memo you wrote that that was another potential problem with the case so, why do you say that - how do you say that and at the same time say that you don't find any fault with Det. Ames?

[REDACTED] Well, he's a detective. I think he's going to act upon, he's a law enforcement officer who is going to - once requested to initiate investigation I think he's going to initiate investigation, whether it's him himself doing it or somebody else. The problem is with Joan Mell, is from the other end. Not from the officer's perspective.

Coopersmith: In other words, are you saying that Det. Ames could have acted completely in good faith but inadvertently created a problem?

[REDACTED] Right, Right.

Based on the foregoing, there is no evidence that Det. Ames was the victim of any retaliation based on his overtime compensation claim or otherwise.

B. Detective Ames' Claims Regarding the PCSD Investigation and the PAO. Declination in the Kopachuck Middle School Matter

Det. Ames also alleges corruption in connection with the investigation of the Kopachuck Middle School matter by the PCSD, and the declination of prosecution by the PAO. Specifically, Det. Ames claims that:

1. [the PCSD and PAO,] in an attempt to assist [REDACTED] in defending [REDACTED] personal friend and the suspect in this case John Rosi, created a false accusation of official misconduct against [Det. Ames] and [CK's parents'] attorney Joan Mell" by issuing a press release and conducting a search of Det. Ames' official Pierce County emails for evidence of "possible misconduct" by Det. Ames; and
2. "believe[d] officers at the executive command level of the [PCSD] along with executive level officers in the [PAO] conspired to discredit the

legitimacy of the original complaint filed by CK's parents against Kopachuck Middle School teacher John Rosi."

There is no merit to these allegations.

As an initial matter, there is no evidence that [Redacted Code] has a personal friendship with Mr. Rosi or had any other motivation for trying to help Mr. Rosi. In fact, Det. Ames admitted during his DWT interview that he has no evidence of a personal friendship between [Redacted Code] and Mr. Rosi. Det. Ames stated that he made the allegation only because he found it odd that [Redacted Code] took the step of mentioning to [Redacted Code] that [Redacted Code] went to high school with Mr. Rosi, although Det. Ames also conceded that [Redacted Code] could have just been mentioning it to [Redacted Code] in passing. This is a very slender reed with which to make an allegation of corruption, and in fact is not a reed at all.

When asked about any relationship [Redacted Code] had with Mr. Rosi, [Redacted Code] stated as follows:

Coopersmith: Now, if you read the email right below that on page 124, there's an email from you to [Redacted Code] It's just about 6 minutes or so after the first one.

[Redacted Code] Mmm-hmm.

Coopersmith: And you wrote, "This is going to jump big".

[Redacted Code] Which it, which it did!

Coopersmith: Yeah.

[Redacted Code] Yeah.

Coopersmith: Also, FYI, the teacher in this, I know went to high school with him.

[Redacted Code] Okay. After I read the report.

Coopersmith: Okay. So then you saw there was a teacher name John Rosi?

[Redacted Code] Yeah.

Coopersmith: And did you go to high school with him?

[Redacted Code] Yes.

Coopersmith: Okay. Now, did you have any relationship with John Rosi, other than having been a high school classmate of his? Have you seen -

Redaction Code 1 No. I've seen him in passing 3 or 4-times in 30 years.

Coopersmith: Do you socialize with him?

Redaction Code 1 No. Never have.

Coopersmith: What's the "in passing" - how did you - what context did you see him?

Redaction Code 1 Class reunion.

Coopersmith: Okay.

Redaction Code 1 In a, in a gym or an event, or in a grocery store, maybe.

Coopersmith: Were you friends in high school?

Redaction Code 1 No. I mean, we had 680 people, I knew who he was.

Coopersmith: Yeah.

Redaction Code 1 You know, he was, I think an athlete - I wasn't.

Coopersmith: Okay.

Redaction Code 1 Yeah, I, I couldn't tell you where he lived, grew up, or anything.

Coopersmith: What made you decide to tell the Sheriff that you went to high school with John Rosi?

Redaction Code 1 Because I didn't want - I was getting disolosed that I went to high school with John Rosi, and if I'm going to be talking about this case, I wanted everybody to know that I knew who this guy was, that we weren't friends, but, you know, that could come up right at the beginning.

Coopersmith: Okay.

Redaction Code 1 Yeah.

Coopersmith: Did you see that as any kind of conflict issue for yourself or anything like that?

Redaction Code 1 To?

Coopersmith: The fact that you went to high school with the guy?

Redaction Code 1 No.

Moreover, even if [Redaction Code 1] passing acquaintance with Mr. Rosi was somehow an issue, there is no evidence that anyone else at the PCSD or the PAO would have let that interfere with the performance of their duties in connection with the Kopachuck matter. In other words, for Det. Ames' allegation to be true, not only would [Redaction Code 1] have had to be motivated to assist an old high school classmate to avoid criminal charges, but other PCSD employees, including Det.-Sgt. Berg, and PAO prosecutors, including [Redaction Code 1] would have had to be motivated to help [Redaction Code 1] help that classmate in this way. This is farfetched and unsupported by any evidence. Accordingly, the claim that the PCSD or the PAO took or declined to take action based on [Redaction Code 1] supposed relationship with Mr. Rosi is totally lacking in merit.

The second part of Det. Ames' allegation is that senior officials at the PCSD and the PAO "conspired to discredit the legitimacy of the criminal complaint filed by CK's parents against Kopachuck Middle School teacher John Rosi." Det. Ames alleges that the search of his emails and the PAO press release were designed to do this discrediting. This allegation also lacks any merit.

The key witnesses in connection with this part of Det. Ames' claim are Det.-Sgt. Berg, the principal investigator on the Kopachuck matter, and [Redaction Code 1] the [Redaction Code 1] at the Pierce County Prosecutor's Office. Both Det.-Sgt. Berg and [Redaction Code 1] carefully reviewed the Kopachuck incident and were of the view that a criminal case was not warranted.

At the time that the Kopachuck incident came to the attention of the PCSD, Det.-Sgt. Berg was the head of the PCSD's Special Assault Unit. According to [Redaction Code 1] she is "one of the best experts in child abuse and child assault in the United States." [Redaction Code 1] described Det.-Sgt. Berg as "our best and brightest on child abuse investigation" and as not someone who would let anything or anyone stand in her way when investigating such cases. All witnesses, including Det. Ames, spoke highly of Det.-Sgt. Berg and described her as someone who is extremely dedicated to cases involving violence against children and not someone likely to be improperly influenced in such a case. Det. Ames stated as follows during his DWT interview:

Coopersmith: Okay. And you've known Teresa Berg for a while, is that right?

Ames: Yes.

Coopersmith: And do you know her to be anything other than a dedicated law enforcement officer? Detective? Who works on these cases?

Ames: I like Teresa. We've had a long relationship. She is a very competent investigator.

Coopersmith: ' So I just want to make sure you're not making an allegation that she either failed to do her job or was told not to do her job or anything like that.

Ames: No: Not at all. Nor would I ever second guess her. I respect her. What I'm referring to there is based on my training in conducting child abuse investigations, I've worked for Teresa in her unit. And I -- in a case like that, I'm referencing my experience. I never could have took a case like that would have been considered a high profile because it occurs in school, and it's caught on video tape, no way could I submit that case to a prosecutor for review without ever having interviewed anybody.

After trading voicemails on July 26 and 27, 2012, Det.-Sgt. Berg spoke with Ms. Mell on July 30, just after Det. Ames took his report and obtained video and other evidence from Ms. Mell. Det.-Sgt. Berg reviewed Det. Ames' report and the video evidence on July 31, and contacted the Children's Advocacy Center to request a child interview the same day. Thereafter, from July 31 to September 24, 2012, Det.-Sgt. Berg took the following investigative steps, among others:

1. On August 9, 2012, Det.-Sgt. Berg met with and interviewed CK's parents with Ms. Mell present.
2. Also on August 9, Det.-Sgt. Berg, Ms. Mell, and CK's parents observed while Forensic Child Interviewer Cornella Thomas interviewed CK on video. This interview of CK took about one hour. Ms. Thomas provided a disclosure summary and a video of the interview.
3. On September 12, 2012, Det.-Sgt. Berg obtained from the Peninsula School District a thumb drive containing video clips from the classroom incident and unredacted documents from the school district's investigation. Det.-Sgt. Berg reviewed these documents, which included the district's interviews of Mr. Rosi and students, a statement from Mr. Rosi, and other materials.
4. On September 14, 2012, Det.-Sgt. Berg obtained the list of students in Mr. Rosi's "Kopafine" class.

Det.-Sgt. Berg did not conduct her own interviews of the students in the classroom. She explained that doing so would have involved considerable time and disruption, involving obtaining parental consent or search warrants. As noted, she did review the school district's notes of its interviews of some of the students, as well as the video from the classroom incident.¹⁸

¹⁸ Det.-Sgt. Berg also asked school district officials about the issue of mandatory reporting of child abuse. The school district told her that it had received legal advice on the subject, and that its counsel would have documentation. No such documentation was provided. Det.-Sgt. Berg expressed the opinion during her DWT

After conducting this investigation, Det.-Sgt. Berg decided to seek guidance from the PAO before taking additional investigative steps, because she saw problems with the case. Det.-Sgt. Berg explained these problems as follows:

Coopersmith: What were the problems that you saw with the case?

Berg: After the child interview I knew the case was in trouble because the victim did not say he was assaulted.

Coopersmith: What did he say?

Berg: It was all in fun and there was no intent of harm. He himself had initiated the games, the wrestling and all the stuff and it looks bad on video but when you really look at it in conjunction with his energy I think you get a better sense of it was horseplay. Poor classroom management obviously but is it an assault? If the kid, and he's 14 so we're not talking about like a five year old being able to make a decision like that, but a 14 year old can decide whether they've been assaulted or not. They have some say in it. And he didn't say that.

Coopersmith: And I guess until they - either way - that video, that testimony is what carries weight with a jury potentially, right?

Berg: Hugo. If he doesn't think he was assaulted.

Coopersmith: Right.

Berg: Then we don't have a case.

Coopersmith: Okay. Did Attorney Mell know about that part of it?

Berg: She watched the interview.

Coopersmith: She watched it. Okay. Was there any other problems with the case, as far as you were concerned beyond the fact that [CK] said he wasn't assaulted?

Interview that the school district should have reported the February 2 classroom incident to law enforcement, not because she believed that the incident was a case of child abuse but rather because she believes that the school district should not be making its own judgment call about what does or does not constitute abuse. As noted in text below, [redacted] did not believe that the February 2 incident was a mandatory reporting matter for the school district. Based on DWT's review of the video of the February 2 incident, and the other evidence in the file, it is not clear that the incident fell within the definition of "abuse or neglect" in RCW 26.44.020(1). Because criminal cases, including misdemeanor violations of RCW 26.44.030, must be proven beyond a reasonable doubt, most prosecutors would not launch a prosecution of conduct that does not clearly fall within the key statutory definition.

Report of Investigation

31

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32 of 70002401

Ames - 000510

Berg: A lot of times cases have huge problems when there is a long delay in reporting. This case happened in February of 2012 but does not come to law enforcement's attention until July 30. The question the jury's going to have, and of course the prosecutor has is why the delay? If you think your child's assaulted why didn't you pick up the phone and call? Now you can say well the school didn't call. Yes and that's true too.

Coopersmith: And why exactly is that a problem if there is a delay?

Berg: Because it always is in these cases because it leaves doubt that there was a crime. Did you think you were a victim. Was this done in fun or this an assault and there are certain elements you have to show for an assault and one is intent to harm and stuff and in this case is it horseplay. Is it this and the parents weren't sure because there was no report to law enforcement. Even in their statements they're not sure initially.

Coopersmith: But when they did report it though even if it was in July. To the attorney but nevertheless they were reporting it. Can that suffice they made a decision in July to report it?

Berg: Well, no. Then the next problems that come from a delayed report is trying to recreate what happened. Witnesses are harder to find, memories are poor, documentation becomes more difficult. Difficult to do an investigation months, months later.

Coopersmith: Okay. And in this case was that of less importance since there was a video? What would the witnesses add?

Berg: Well certainly we needed testimony that this video depicts this and the context of it and you would need that. But it would also be did the child, in this case, have any injuries? There was no documentation of that. There were no injuries.

Coopersmith: The witnesses might have to talk about that issue.

Berg: And so there is all these elements that you would have to meet and it's much more difficult months later.

Coopersmith: Okay. How about motive. Did you have any concern - I'm not suggesting you should have. I'm just asking. Did you have any concern that there was some other motive to the parents coming forward five months later beyond this reporting coming to the criminal justice system?

Berg: Well, it's unusual for parents' private counsel to bring a case forward. Usually we get a call from the parents. Or somebody else who witnessed the act. So it's really unusual to get a case that way. And so yeah, I thought why this long and why through private counsel.

Coopersmith: So there is nothing wrong with private counsel.

Berg: It's not wrong certainly but it is more unusual. Usually we get a phone call the day of the act. My child was assaulted. Some kind of earlier outcry.

Coopersmith: Okay, alright. So in addition to what the alleged victim [CK] said, would this late reporting, there were also factors for you and when you say the case had problems, that was part of it?

Berg: Yes. But the biggest problem was he didn't say it was an assault. I don't know how we can overcome that.

Coopersmith: And in your experience with children who are assaulted and cases are brought do they in all cases always say yes, I was assaulted and make that statement?

Berg: Um, although they may not use the words I was assaulted. They would say things like this happened to me and it hurt. I have this injury. He wasn't saying that.

[redacted] had a similar view of the case. [redacted] received the PCSD case file from Det.-Sgt. Berg in late September or early October, 2012. A PAO case screening sheet shows the referral date as October 3, 2012. That screening sheet shows that the charges under consideration were Assault in the Fourth Degree and Failure to Comply with Mandatory Reporting Law. [redacted] understood that the PCSD was looking for guidance from the PAO before conducting any further investigation. After reviewing the PCSD case file, [redacted] met with Det.-Sgt. Berg to discuss the investigation. She conveyed her concerns about the evidence at that time. [redacted] also reviewed the video of Ms. Thomas' forensic interview of CK in its entirety along with the Disclosure Summary prepared by Ms. Thomas, and spoke with Ms. Thomas. The primary reason that [redacted] spoke with Ms. Thomas was to clarify a statement in the Disclosure Summary. The Disclosure Summary stated that "[CK] was teary during the interview and claimed it was all in fun. Yet when I asked him if he would want the kids to do this to someone else he said no." When [redacted] spoke with Ms. Thomas, she clarified that it was her impression that CK was teary "because he was here having to tell the story about his friends and he was upset about that."

Report of Investigation

33

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34 of 37 00002403

Ames - 000512

[Redacted] also reviewed the documents from the Peninsula School District investigation. These documents included the following February 16, 2012 notes from CK's parents' viewing of the classroom video:

Dad said - A couple days prior to the incident [CK] was having issues & they aren't sure if this compounded it or it was an issue going on prior to the incident. But kids are still talking about it because their son in high school was asked about it at GHHS.

We then watched the videos, mom cries through some of them.

Afterwards dad says he wants to be objective & wanted to know what was Rosi's reaction. Dad said it was hard, he could see how it can get out of control, kids start the horseplay, [CK] appears to be laughing. Mom said his facial expressions did not look okay.

Rachel asked if they had met with Rosi before, they said no nothing except conferences.

Dad said that [CK]'s perspective was it was all fun play. But his behavior & some things they see in texts don't seem to indicate that. Dad had huge hopes of bringing him back but feels disconnected now after watching the videos.

Dad said he didn't have any animosity when he watched the videos. Mom disagreed; she said the teacher was encouraging it & putting his foot on his face & pretending to fart.

Dad said he didn't think Rosi had malicious intent but was obtuse that he was fostering the behavior. It would be nice to have kids realize their roll [sic] in the group bullying. [CK] wasn't equipped to handle this situation.

Mom said they are going to the psychologist & would like to have her watch the videos today if possible. It could help with [CK]'s depression with the situation with Rosi & his popularity. And the psychologist can help decide if Rachel can talk with [CK] too.

Dad says managing kids is tough & maybe this was just bad timing for Rosi as [CK] is in crisis mode.

[Redacted] pointed to the statements from CK's father closer in time to the incident (before Ms. Moll contacted law enforcement) as particularly problematic for a prosecution.

As noted above, [Redacted] like Det.-Sgt. Borg, viewed the fact that the incident was not reported to law enforcement until over five months after the incident, and by a civil attorney

for CK's parents, as problematic for a prosecution. [redacted] also viewed the fact that the PCSD investigation might be seen as having been initiated by Det. Ames as a favor to Ms. Mell as problematic. [redacted] stated that [redacted] made the decision to decline prosecution, and prepared a detailed memorandum so that [redacted] would be prepared to field any questions about the decision. [redacted] stated that [redacted] had no input into the declination decision (although obviously [redacted] could have overruled it as the [redacted]), and had no input in connection with preparation of the memorandum. [redacted] also stated during [redacted] DWT interview that [redacted] did not view the Kopaohuk incident as a mandatory child abuse reporting matter for the same reasons that [redacted] did not believe it to be a viable prosecution case.

The investigation of the Kopaohuk matter was handled by experienced professionals. Det. Ames expertly recovered the video evidence and wrote a thorough report. Det.-Sgt. Berg, the PCSD's expert on child abuse issues, further investigated the matter, but soon came to the conclusion that the case had problems. [redacted] thoroughly reviewed the file, including the video evidence, and personally spoke with Det.-Sgt. Berg and the Ms. Thomas. [redacted] wrote a detailed memorandum explaining valid reasons for [redacted] declination decision. Det. Ames and Ms. Mell may not agree with the PAO's decision, but that does not make the decision corrupt or suspect. Even if reasonable minds could differ on the proper resolution of the matter, the decision was the PAO's to make. There is no merit to Det. Ames' call for an outside law enforcement investigation, because the record does not support the notion that there was any improper governmental action.¹⁹

Moreover, if a potential prosecution of Mr. Rosi was problematic before Det. Ames brought his current complaint forward, it is even more problematic now. It appears that Ms. Mell continues to represent CK's parents while also representing Det. Ames in connection with his complaint and the DWT investigation. Det. Ames' call for an outside law enforcement investigation and prosecution of Mr. Rosi, if accepted, could be beneficial to Ms. Mell's other clients, CK's parents, to the extent they are still interested in pursuing legal action against the school district and Mr. Rosi. Any prosecutor would have to take this into account in making a decision at this point, and in defending Mr. Rosi in any future prosecution any competent criminal defense lawyer would highlight this additional issue involving Ms. Mell.

Finally, during his DWT interview, Det. Ames claimed that the PAO or the PCSD may have engaged in improper conduct in connection with its handling of a criminal case against a defendant named Lynn Dalsing, and in particular its handling of certain photographic evidence analyzed by Det. Ames as part of his forensic computer work. Ms. Dalsing, who spent time in

¹⁹ "Improper governmental action" means any action or proposed action by a County officer or employee that is undertaken in the office or which is related to an employee's performance of his or her official duties, and

1. Violates any state or federal law or County ordinance; or
2. Constitutes an abuse of authority; or
3. Creates a substantial and specific danger to the public health or safety; or
4. Results in a gross waste of public funds.

There is no evidence that any of this occurred with respect to the PCSD and PAO handling of the middle school incident.

Report of Investigation

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pd dvanscoy05242013 redacted.pdf

redacted

[Signature]

36 of 37

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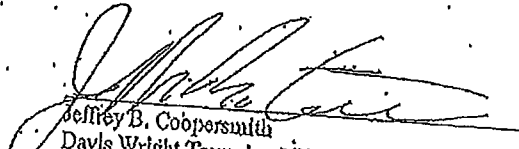
Ames - 000514

Pierce County custody before being released, is currently suing the county for false arrest and malicious prosecution, and a central issue appears to be the photographic evidence. Det. Ames is a witness in this civil case, and is represented by Ms. Mell in connection with the matter. In March 2013, both Det. Ames and Ms. Mell filed declarations in the Lynn Dalsing case in connection with whether Det. Ames may testify at his deposition to certain matters that the county may be claiming as privileged. Detective Ames did not reference the Lynn Dalsing matter in his written complaint or at any other time before his DWT interview, but has now suggested that it may be relevant to his alleged mistreatment by the PCSD and the PAO. Detective Ames' comments or allegations regarding the Lynn Dalsing matter are beyond the scope of this report. They will not be investigated by DWT unless and until DWT is retained to do so.

VI. CONCLUSION

For the foregoing reasons, there is no merit to Det. Ames' current allegations. Det. Ames was not the victim of retaliation based on his prior overtime compensation claim or otherwise. Likewise, there is no evidence that the PCSD's or the PAO's handling of the Kopachuck Middle School matter was in any way corrupt, or that Det.-Sgt. Berg's handling of the investigation or the PAO's decision to decline prosecution were motivated by anything other than an honest view of the evidence.

Dated this 22nd day of May, 2013.



Jeffrey B. Coopersmith
Davis Wright Tremaine LLP
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Seattle, Washington 98101-3045
Telephone: 206-757-8020
Facsimile: 206-757-7020
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Appendix J: Ames Declaration With Statements
from Coopersmith Investigation

March 13 2014 1:15 PM

Before Visiting Judge
K. J. ...

The Honorable COUNTY CLERK

NO: 13-2-13551-1
Hearing Date: March 19th, 2014, 9:00 a.m.

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

MICHAEL AMES,
Plaintiff,
v.
PIERCE COUNTY, By and Through, PIERCE COUNTY PROSECUTING ATTORNEY MARK LINDQUIST,
Defendant.

NO.: 13-2-13551-1

DECLARATION OF DET. MIKE AMES IN
OPPOSITION TO DEFENDANT PIERCE
COUNTY PROSECUTING ATTORNEY
MARK LINDQUIST'S MOTION FOR
ATTORNEY'S FEES AND EXPENSES

I, Det. Mike Ames, make this declaration under oath subject to penalty of perjury pursuant to the laws of the State of Washington:

I am a detective with the Pierce County Sheriff's Department and the Plaintiff in this action. I am over the age of eighteen and am competent to testify in this matter. My declaration is based upon my personal knowledge, experience, and training. I submit this declaration in opposition to Pierce County Prosecuting Attorney Mark Lindquist's Motion for Attorney Fees and Expenses. This

Declaration of Det. Mike Ames Opposing
Defendant's Motion for Attorney's Fees and Costs

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CP1103

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3 case was not brought forward frivolously and any substantial expenses incurred to the taxpayers of
4 Pierce County are the responsibility of the prosecutor.

5
6 I. Dalsing Declaration

7 1.1 I did the right thing under "Brady" and came forward with exculpatory evidence that the
8 prosecutor's office purposely withheld from discovery in the Dalsing criminal and civil cases. The
9 Pierce County Prosecuting Attorney's Office had other options available to them in determining the
10 truthfulness of any declarations I submitted in the Dalsing criminal case, which would have cost the
11 taxpayers of Pierce County nothing more than the normal cost of doing business related to internal
12 affairs investigations. The Pierce County Prosecuting Attorney's Office knows that the Pierce
13 County Sheriff's Department has an internal affairs division within its agency that handles
14 investigations into the honesty, truthfulness, and credibility of its officers. The Prosecutor's Office
15 knew Judge Andrus had sanctioned it in the Dalsing civil case in King County for not disclosing the
16 same exculpatory evidence. Attorney fees were awarded to me as a result. When the Prosecutor's
17 office was subject to sanctions, the Pierce County Prosecuting Attorney's Office decided to create its
18 own PIE against the honest detective who came forward with the exculpatory evidence under
19 "Brady" which I had a legal obligation to produce.

20
21 1.2 I have been a law enforcement officer for over 25 years and am very familiar with the
22 requirements of *Brady v. Maryland* as they relate to my duties as a law enforcement officer. My first
23 training regarding "*Brady*" was while I was attending the Washington State Criminal Justice
24 Training Academy in 1988. I still to this day remember the instructor clearly telling us as young
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3 recruits that under "*Brady*" not only are we supposed to bring forward evidence that can implicate a
4 suspect in a criminal matter, but that we are also mandated to bring forward any exculpatory
5 evidence that could show a suspect was not involved in the criminal activity in question. The
6 aspects of potential criminal and personal civil liability as a result of violating "*Brady*" was stressed
7 during that same training and has stuck with me my entire career. At no time in my career would I
8 ever have imagined that my credibility as an officer would be forever tarnished with the label of
9 "*PIE/Brady Officer*" as a result of doing the right thing under "*Brady*." "*Brady*" serves a valuable
10 purpose in law enforcement and criminal prosecutions, as well as does internal affairs investigations
11 in determining what potential impeachment evidence is under "*Brady*". Every case I have been able
12 to find relating to labeling an officer a "*Brady Officer*" describes an officer who went through a due
13 process internal affairs investigation prior to the label and the results of those investigations are what
14 led the department to turn over the information to a prosecutor's office. Nowhere in the history of
15 "*Brady*" has a prosecutor created false potential impeachment evidence and then used that same PIE
16 to discredit the state's own witness in a case. Nowhere in the history of "*Brady*" has a prosecutor
17 labeled an officer a "*Brady Officer*" for bringing forward exculpatory information under "*Brady*."

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23 1.3 I have previously produced for the record with this court documents and emails showing I
24 responded to the first "*Brady*"/PIE letter I received from the Prosecutors Office, with questions and
25 concerns I had regarding that letter. The prosecutor received my response to that letter several days
26 before a deputy appeared before Judge Chushcoff on October 1, 2013. The Prosecutors Office then
27 and to this day, still refuses to answer my emails with my concerns regarding these "*Brady*" issues
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32 Declaration of Det. Mike Ames Opposing
33 Defendant's Motion for Attorney's Fees and Costs

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@P1105

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3 and still refuses to provide me with any of the documents they are releasing to the defense as PIE
4 against me. Had they agreed to allow me an independent unbiased investigation into their
5 complaints against me, I would not have had to expend the cost to have my counsel appear at the
6 October 1, hearing. The Prosecutor's office was not interested in any of my objective factual
7 defenses. My impression was the prosecutor's office was focused instead on a Dalsing hearing
8 coming up on October 2, 2013, and was intent on discrediting me before that hearing. The
9 prosecutor tried to get an in camera hearing and determination in Judge Chuschoff's court that the
10 Coopersmith report amounted to impeachment evidence, that they could then cite to impugn my
11 credibility in the Dalsing civil case the next day. The transcript of the entire record of that hearing
12 speaks for itself. The reason we filed the case here the next day after that hearing had nothing to do
13 with any disregard of the law. Quite to the contrary, the Prosecutors Office through their actions
14 were making it very clear that they would not allow me an unbiased independent investigation to
15 clear my name. I had no way to rectify the situation, as they created and controlled the whole
16 situation. I had no other alternative, but to seek guidance from this court. Even Pierce County's
17 legal counsel at both the anti-SLAPP and motion to dismiss hearings stated that the only recourse I
18 had available was the courts. Mr. Leitch spoke about me bringing a tort defamation claim against
19 the county as recourse, but argued I have no damage claim to support such a theory and
20 Mr. Patterson spoke about me having to bring a recall petition against the prosecutor as my only
21 recourse, this also would require me petitioning the court in Pierce County. A recall petition does
22 not address my concern that I have been wrongfully accused of dishonesty.
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3 1.4 Jim Richmond is lying when he states that I did not provide him by email the exculpatory
4 emails I provided in the Dalsing criminal and civil case. Jim Richmond is lying when he states he
5 never spoke to me about those emails after he received them from me. I have attached to this
6 declaration screenshots of my work laptop computer that show the email I sent to Jim Richmond was
7 still in my email archive on 2/16/14. The screenshots show the email to Richmond and the sent and
8 received logical properties metadata. Attached hereto as Exhibit 1 is a true and correct copy of
9 screenshots of the e-mail communication between me and Mr. Richmond. The other forensic
10 examiner in my office Detective Heath Holden witnessed me do the screenshots and signed a
11 document certifying that he also viewed the email that was sent to Richmond in my Microsoft
12 Outlook Account. I told the truth regarding these emails that I sent to Jim Richmond on October 18,
13 2012.
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18 II. Coopersmith Report

19 2.1 The prosecutor states in his motion for fees, "Ames and his counsel have no objective
20 evidence of their defamatory claims. In fact, the findings in the Coopersmith Report directly refute
21 their accusations." The Coopersmith report does not refute my accusations, the Coopersmith report
22 offers the opinion that the conduct I complained about was done for reasons other than the retaliatory
23 reasons I suspect. The witness statements finally being released many months after the investigation
24 do provide objective evidence to support my claims. As the complainant, I was easily able to
25 determine based on the questions and answers given by witnesses who the individuals were giving
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3 the statements and have identified them here. (Any misspellings and grammatical errors are as they
4 appear in the statement transcripts)
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6 2.2 Regarding my complaint in the Kopachuck middle school case where I was improperly
7 accused of misconduct by taking a mandatory child abuse complaint, witness statements show I
8 followed all department policy and procedures and state law in taking that report.
9

10 2.3 Det. Sgt. Teresa Berg, Supervisor of the Sexual Assault Unit at that time, stated she did not
11 have any problems with me taking the report in the Kopachuck case. She also stressed to Mr.
12 Coopersmith that it was a Mandatory Child Abuse reportable incident. Attached here to, as Exhibit
13 2 is a true and correct copy of an excerpt of Mr. Coopersmith's interview of Det. Sgt. Teresa Berg.
14 (Page 61 of 117 Berg Interview 4th Installment)
15

16 2.4 The court is already aware from previously filed documents that Undersheriff Bisson, Lt.
17 Wilder and my direct supervisor Det. Sgt. Mike Portmann also had no problem with me taking the
18 report in the Kopachuck case. Attached here are the statements made by Sheriff Paul Pastor in his
19 interview with Mr. Coopersmith regarding the topic of me taking the mandatory child abuse report,
20 where Sheriff Pastor's statement indicates I did nothing wrong with taking this report. Attached
21 hereto as Exhibit 3 is a true and correct copy of an excerpt of Mr. Coopersmith's interview of Sheriff
22 Pastors (Pastor Statement page 84 of 117 5th installment).
23
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25 2.5 Pierce County Prosecuting Attorney Jared Ausserer the supervisor of the Special Assault Unit
26 also indicates in his interview with Mr. Coopersmith, regarding my taking the report in the
27 Kopachuck case that there actually was no problem with me taking the report. His statements also
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33 Declaration of Det. Mike Ames Opposing
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3 indicate he would have probably acted the same way if he was in my position. Attached hereto as
4 Exhibit 4 is a true and correct copy of excerpt of Mr. Coopersmith's interview of Mr. Ausserer.

5
6 (Ausserer statement pages 24-25 4th installment)

7 2.6 I've always felt since the first time I viewed the videos in the Kopachuck middle school case
8 that there was, based on my training and experience, probable cause to charge the teacher in that case
9 with a crime. It appears that DPA Ausserer's own case record memo seems to agree with me, as
10 shown in part of the interview exchange with Mr. Coopersmith. Attached hereto as Exhibit 5 is a
11 true and correct copy of excerpt of Mr. Coopersmith's interview of Mr. Ausserer.

12
13 (Ausserer statement page 22 of 117 4th installment)

14 2.7 Mr. Coopersmith then questions DPA Ausserer regarding who provided the information to
15 him that I was in a current attorney/client relationship with Joan Mell when I took the report.
16 Shockingly the individual who provided him with the false information regarding a current attorney /
17 client relationship between me and Joan Mell, was the Sheriff's Legal Advisor, DPA Mike
18 Sommerfeld, who also serves as a Civil DPA for Pierce County Prosecutor Mark Lindquist. Attached
19 hereto as Exhibit 5 is a true and correct copy of excerpt of Mr. Coopersmith's interview of
20 Mr. Ausserer. (Ausserer statement 22-23 of 117 4th installment)

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24 2.8 Again the prosecutor's office is acting in conflict with the interests of the client. A deputy
25 prosecutor who is the legal advisor to the Sheriff should be advocating for the department and should
26 not be taking direction from Prosecutor Lindquist when the conflict arises from the prosecutor's
27 office. The information contained in these statements show how dangerous that type of relationship
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33 Declaration of Det. Mike Ames Opposing
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3 is to a Pierce County Sheriff's Department employee's career. My complaint involved allegations
4 that Pierce County Prosecuting Attorney Mark Lindquist overstepped his jurisdiction by directly
5 involving himself in precipitating an internal affairs investigation within the Sheriff's Department
6 that did not follow standard protocol, by alleging criminal misconduct against me without notice to
7 me, which resulted in a secret search of my email. After reading the statements and notes from the
8 Coopersmith investigation, I believe the prosecutor and his deputies defame me by making a false
9 accusation of criminal misconduct on my part (unauthorized disclosure of investigation information)
10 in an attempt to gain access to my email.
11
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14 2.9 Pierce County Sheriff's Department Chief of Operations Rick Adamson gave this account in
15 his interview with Mr. Coopersmith regarding the search of my email and the reasons why it needed
16 to be done. It is very apparent in Chief Adamson's statement that my email was searched as a result
17 of the allegations Mark Lindquist was making to him about me. Attached hereto as Exhibit 6 is a
18 true and correct copy of excerpts from Mr. Coopersmith's interview of Chief Adamson.
19
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21 (Adamson statement 98-99 of 117 4th installment)

22 (Adamson statement 100-102 of 117 4th installment)

23 (Adamson statement 103-104 of 117 4th installment)

24 (Adamson statement 116 of 117 4th installment)

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26 2.10 Chief Adamson's statement and emails indicate that he engaged in a one-on-one conversation
27 with Pierce County Prosecutor Mark Lindquist prior to the search of my email and immediately
28 reported back after the search, with the results. Chief Adamson's statement indicates it was done
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3 because the Prosecutor's Office was alleging the unlawful release of information regarding an
4 ongoing criminal investigation. Chief Adamson also states that had they not had the alert to the
5 release of information from the prosecutor's office, my emails would not have been searched. The
6 release of this type of information is prohibited under RCW 42.56.240(1), thus would have been a
7 criminal act for me to have released any information. All complaints or allegations of criminal
8 misconduct against any law enforcement officer with the Pierce County Sheriff's Department must
9 be investigated through the formal Internal Affairs process within the Sheriff's Department. The
10 allegation is a criminal allegation and would require probable cause to conduct a search of my email.
11 Chief Adamson states that he had no probable cause to search my email. Chief Adamson is required
12 by department policy and procedures to immediately generate an official complaint with Internal
13 Affairs once he received those allegations from the prosecutor's office, which he did not do. And, I
14 was never notified of the accusations or investigation.
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19 2.11 Pierce County Prosecutor Mark Lindquist refused to give a taped statement during his
20 interview with Mr. Coopersmith, but there are handwritten notes regarding the interview. Exhibit 7
21 (Coopersmith notes). Those notes appear to indicate that Prosecutor Lindquist had no idea why
22 Chief Adamson sent the results of the email search to him. Someone's not being truthful regarding
23 the search of my email, and I know Chief Adamson was given his Garrity Rights and was under oath
24 when he gave his taped statement.
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27 2.12 I have highlighted some of the statements that show I was truthful when I complained to my
28 Guild and my Guild brought to the attention of the Undersheriff my concerns that the Kinney matter
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CP1111

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3 was not properly investigated and that I was improperly investigated. I am still waiting patiently
4 now for 10 months to receive all of the documentation related to the Coopersmith investigation. I
5 am confident that there are other materials that would support the fact that I was properly reporting
6 matters of public concern.
7

8
9 2.13 In the five months since I have been labeled a "Brady Officer" under the Pierce County
10 Prosecuting Attorney's PIE Policy, my working conditions have changed. In the seven years I have
11 been assigned to the Tacoma / Pierce County Data Recovery Lab as a Computer Crimes Detective, I
12 have averaged a caseload backlog of 4-6 months. That backlog has now reduced to zero as a result
13 of my "Brady Label." I previously was assigned an average of 1-3 new cases per month annually.
14 Between November 1, 2013, and today, I was assigned only two new cases during a four month
15 period. I have learned that the prosecutor's office is advising the Sheriff's Department not to send
16 computer cases to me because of my "PIE" issues. The officers who have been given this instruction
17 fear coming forward with this information because they similarly fear the prosecutor labeling them a
18 "Brady" officer. I have recently been tasked with training a detective to do computer forensic
19 examinations; it is clear that I am now starting the process of training my replacement. The working
20 conditions for me have become intolerably hostile as a result being labeled a "PIE/Brady" officer. A
21 proud 25 plus-year career in law enforcement I once loved, I now fear. I no longer feel safe
22 employed as a Detective with the Pierce County Sheriff's Department and have given notice to the
23 Sheriff that I am no longer able to perform my duties. My last day with the department is March
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33 Declaration of Det. Mike Ames Opposing
Defendant's Motion for Attorney's Fees and Costs

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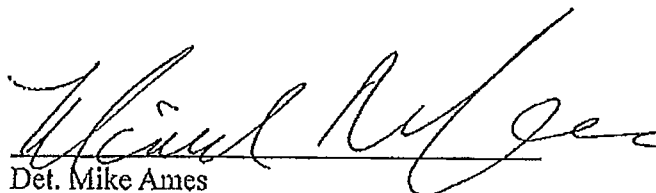
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3 21st. I expect the state will continue to require my services to testify in those cases where I prepared
4 the forensic report.
5

6 2.14 I came to the court because I had nowhere else to turn to try and save my reputation as an
7 honest police officer who did the right thing under "Brady." I understand the difficulty the court
8 appeared to struggle with regarding the specifics of my claim and appreciate the court's time in
9 reviewing all the documents I submitted, as I know they were extensive. I respectfully request the
10 court deny the prosecutor's motion for attorney fees and costs. A police officer who comes forward
11 with exculpatory evidence in a criminal investigation under "Brady" is not a frivolous thing, nor is a
12 police officer coming forward with information regarding his belief that prosecutorial misconduct
13 has occurred. Defaming the good name and credibility of a county computer forensic examiner
14 harms more than just me, it harms the system and the integrity of law enforcement generally and the
15 effective prosecution and conviction of criminal defendants in Pierce County.
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19 The above is true and correct to the best of my ability.
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23 Det. Mike Ames

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33 Declaration of Det. Mike Ames Opposing
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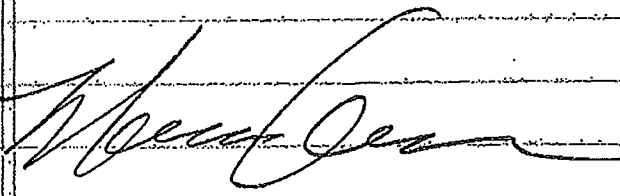
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CP1113

Exhibit 1

CP1114

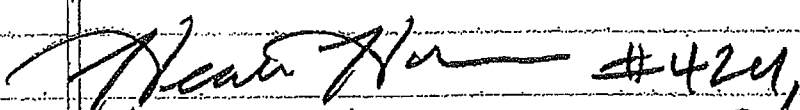
2/6/14

I DET. MIKE AMES VERIFIED WITH MY
OTHER FORENSIC EXAMINER DET. HEATH
HOLDEN THAT THE EMAIL I SENT TO
DPA JIM RICHMOND ON OCT 18, 2012
CONTAINING THE EXCULPATORY DALSINO
EMAILS, WAS STILL IN MY WORK
LAPTOP OUTLOOK ACCOUNT. DET.
HOLDEN WITNESSED ME TAKE 3
SCREENCAPTURE IMAGES OF THE
EMAIL AND THE PROPERTIES METADATA
AS IT APPEARED IN MY OUTLOOK
EMAIL.



MICHAEL AMES

~~HEA~~



HEATH HOLDEN

2/6/14

Message Developer

Reply Reply to All Forward Delete Move to Folder Create Folder Rule Other Actions Block Sender Safe Lists Categorize Mark as Unread Find Related Select

Respond Link Email Options Print

You forwarded this message on 02/27/2013 09:11.

From: Mike Ames

To: James Richmond

Subject: FW: Dalsing case #10-2510339

Sent Thu 10/18/2012 11:56

Michael Ames CPOE, CPE
 Computer Crimes Unit
 Pierce County Sheriff's Dept.
mames1@co.pierce.wa.us
 253-377-8438

From: Mike Ames

Sent Friday, July 20, 2012 10:23 AM

To: Mike Ames

Subject: FW: Dalsing case #10-2510339

Michael Ames CPOE, CPE
 Computer Crimes Unit
 Pierce County Sheriff's Dept.
mames1@co.pierce.wa.us
 253-377-8438

From: Lori Kooiman

Sent Friday, June 10, 2011 1:17 PM

To: Mike Ames; Debbie Heishman

CC: Timothy Lewis

Subject: RE: Dalsing case #10-2510339

Message : Developer

Reply Forward
 Delete
 Move to Folder
 Create Folder
 Other
 Block Sender
 Add to Safe List
 Category
 Mark as Unread
 Related
 Find

Respond
 Actions
 Junk Email
 Options
 Find

Forwarded this message on 02/27/2013 09:11.

From: Mike Ames
 James Richmond

FW: Dalsing case #10-2510339

Michael Ames CFCE CFE
 Mounter Crimes Unit
 Rice County Sheriff's Dept
 Ames1@co.dalera.wa.us
 3-377-8438

From: Mike Ames
 Date: Friday, July 20, 2012 10:23 AM
 To: Mike Ames
 Subject: FW: Dalsing case #10-2510339

Michael Ames CFCE CFE
 Mounter Crimes Unit
 Rice County Sheriff's Dept
 Ames1@co.dalera.wa.us
 3-377-8438

From: Lori Koolman
 Date: Friday, June 10, 2011 1:17 PM
 To: Mike Ames; Debbie Hershman
 Timothy Lewis
 Subject: RE: Dalsing case #10-2510339

I'm available at 9:00 on Monday. Meet you at your department. Thanks.

FW: Dalsing case #10-2510339 Properties

General

Fw: Dalsing case #10-2510339

Type: Message (HTML)

Location: Deleted Items

Size: 19 KB

Sent: 10/18/2012 11:28

Received: 10/18/2012 11:46

Modified: 02/27/2013 09:12

Options for this item: Sensitivity:

Read receipt requested: No

Delivery receipt requested: No

OK Cancel App

Sent: Thu 10/18/2012

CP1117



From: MIKE Ames
Sent: Thursday, October 18, 2012 11:38
To: James Richmond
Subject: FW: Dalsing case #10-2510339

Michael Ames CFCE,CFE
Computer Crimes Unit
Pierce County Sheriff's Dept.
mames1@co.pierce.wa.us
253-377-8438

From: Mike Ames
Sent: Friday, July 20, 2012 10:23 AM
To: Mike Ames
Subject: FW: Dalsing case #10-2510339

Michael Ames CFCE,CFE
Computer Crimes Unit
Pierce County Sheriff's Dept.
mames1@co.pierce.wa.us
253-377-8438

From: Lori Koolman
Sent: Friday, June 10, 2011 1:17 PM
To: Mike Ames; Debbie Helshman
Cc: Timothy Lewis
Subject: RE: Dalsing case #10-2510339

We're available at 9:00 on Monday. Meet you at your department. Thanks.

From: Mike Ames
Sent: Friday, June 10, 2011 12:43 PM
To: Lori Koolman; Debbie Helshman
Cc: Timothy Lewis
Subject: RE: Dalsing case #10-2510339

I am available Monday at 9 or 1:30 in the afternoon. Tuesday morning til noon. If any of those times work.

Mike

From: Lori Koolman
Sent: Thursday, June 09, 2011 4:19 PM
To: Debbie Helshman; Mike Ames
Cc: Timothy Lewis
Subject: RE: Dalsing case #10-2510339

We will have to meet, all of us, early next week and go through the evidence. I think you're missing the boat to some degree Mike, as he did not plead to any of the child sexual abuse charges.

CP1118

Lori

From: Debbie Heishman
Sent: Thursday, June 09, 2011 2:58 PM
To: Lori Kooiman
Subject: FW: Dalsing case #10-2510339

This is from Mike ,,duh
Debbie

From: Mike Ames
Sent: Thursday, June 09, 2011 12:27 PM
To: Debbie Heishman
Subject: RE: Dalsing case #10-2510339

No, it appeared that he was the computer person. There is no way you can get by the defense that she will use which will be it was him and especially now that he is pleading to it. I could easily link him to the child porn but not her. No way do I want to go back into that case to look for something that I cannot prove. Definitely no link to her and the child porn other than that one picture but we can't see her so no way to prove that either. I did look hard at the porn that was downloaded from the Internet and nothing leads back to her. I did look at that angle too especially after I found that one picture.

Good Job on the case though and am very glad these monsters are going away!

Mike

From: Debbie Heishman
Sent: Thursday, June 09, 2011 11:07 AM
To: Mike Ames
Subject: Dalsing case #10-2510339

Mike,

Howdy you fabulous computer guy... Both the bad men in this case have pled guilty - one will go away for life??!!

The female is not being so smart. Pros. are wondering if you were able to tell if Lynn Dalsing had any type of account or files on the computers so we can charge her with the possession also?

Thanks
Rammy

Detective D. Heishman #205
Pierce County Sheriff
Special Assault Unit
30 Tacoma Ave So
Tacoma, WA 98402
53 798-7713

CP1119

Exhibit 2

CP1120

Berg: Yes. Quite lengthy. He talked to both parents.

Coopersmith: And does it appear to you to be a well written report? That he did a good job?

Berg: Yes.

Coopersmith: Okay. Did you have any problem with the fact that Detective Ames went out and did this interview? Was that an issue for you at all?

Berg: No. Detective Ames use to work SAU cases. He knows what he was doing. He's a good detective.

Coopersmith: In other words, I just wondered if there was any sense on your part that oh, but I should have been doing this interview, this should have been my case. Is there any sense of that at all? Did you care about that?

Berg: No. I don't care about that. I needed all the help I could get. And he's a good detective and I thanked him for it actually.

Coopersmith: Did you see any problem, and I don't know whether you knew this but, and I'm not suggesting there was a problem or wasn't a problem. I'm just asking. If Joan Mell had represented Mike Ames in some prior personnel matter involving an overtime issue previously, did you see any problem or concern that Mike Ames was getting a report from Joan Mell and then going out and getting evidence from her and then going out and interviewing the parents which were Joan Mell's clients. Did that ring any alarm bells in your mind?

Berg: No, not necessarily. One, I didn't know about that. Certainly at the time I had no idea. I think it was just a conference call too so I don't know that he went out and saw the parents. I think his role was pretty short. She called him. Once she called him, understand he is a mandated reporter, so if she called him I would expect him, and in fact he needed to write a report. If somebody comes to a law enforcement officer and has allegations or suspicions of child abuse that officer is required, mandated by statute, to write a report.

Coopersmith: So he had to write a report?

Berg: He has to write a report.

Coopersmith: Is there any, if you had done the report initially, the dot 1. Is there any protocol or procedure or practice that you are aware of where in this type of matter you would have elevated the matter up the chain of command, given the public information office, you know, the heads up that it was a potentially higher profile matter? Anything like that you would have done had you taken the initial report?

Berg: Well, once - well if I had taken it, yes. And in fact I did.

Coopersmith: What did you do?

BERG

CPII21

Exhibit 3

CP1122

submit that that may be because my contact with, relationship with, interest in Willie Williams was about as deep as [redacted] s interest in a relationship with this guy he went to high school with. And anybody who would imagine that somehow I should be interviewed over a murder case for a guy I went to high school with, a much more serious crime than this, is absurd.

Coopersmith: Okay.

Miscarek: I have one other follow-up question. You described earlier about being contacted, given as an example, your neighbor an exigent life and death type of situation how you would intervene versus

[redacted]
Relaxation
Code 1

I finally got to an actual thing. I was approached about dog poisoning. I said no I can't do this. Even though I love my dog. They love their dog.

Miscarek: So in the case of Det. Ames taking the report from Joan Mell, are you aware of any exigent circumstance involve that, is there any reason that you are aware of where that reporting couldn't have been put off by just a couple hours or even a day while Det. Ames got another investigator involved?

[redacted]
Relaxation
Code 1

I am not aware of that. At the same time, I don't think there is a big fault or issue with Mike taking it. Now Mike might not be as sensitive to an appearance as you or Mike could have been in, pardon me for saying this, there are things I don't think about and I should think about. We all have a "I could have had a V8 moment", right? Where they slap their forehead and say, geez, I didn't even think about that. It is absolutely entirely possible for me that Mike's focus was not on gee, I wonder if this is an appearance issue but his focus was on hey, this kid has been harassed, this kid has been bullied. There's been kids who commit suicide behind harassment and bullying so pardon me for attributing good motivation to complainant, in this case. I could easily picture Mike saying yeah, I think this needs to be taken down and also there apparently is digital video and I'm the digital video guy for the department so is there anything on its face that is egregious about this? Absolutely not. In fact I can describe a scenario where quite the opposite.

Coopersmith: So is it fair to say that Mike Ames could have been acting in complete good faith in taking the report, doing what he thought was right, doing his job as he saw it and that only later do other people like see an appearance of conflict issue? Is that a fair statement?

[redacted]
Relaxation
Code 1

That's a fair statement. And they don't see it because they are after Mike Ames, they see it because maybe the appearance issue is there. And I would maintain, yes, there is at least an appearance issue there. Let's check into it. Now, had we determined there wasn't an appearance issue, had we determined that Mike, I could make an easy argument that Mike acted with very good faith in this, not trying to do anything wrong. Maybe he missed an appearance issue but that's not the end of the world. That's not a biggie. We all miss stuff I think on occasion.

PASTOR

CP1123

Exhibit 4

CP1124

and it's your discretion and it's perhaps less usual to have like something as detailed. I'm just wondering if you know anything about why this language was inserted about the financial motive the attorney might have or the family might have and the issue with Det. Ames?

[REDACTED]

You know, the only - well, I think you're correct that most press releases are much shorter than this. Maybe not much shorter, depending on the case. Some of my cases, a lot of the homicides, the gang cases, some of more public sex cases, the press releases are longer and that's one of our PR person, they make that decision. I don't really have much input. The only thing that I can think on this case is for Becky, I provided her with my memo which contained a lot of information.

Coopersmith: So it could be that the memo is not something that Becky would usually have had access to and in this case she did and . . .

[REDACTED]

Yes. I would say they never have access to that, well, I shouldn't say never. On most cases we don't prepare lengthy memorandums for outlining our decisions. In this case I did given the contact I received from several attorneys who were somewhat related to the matter. I think Ms. Moll represents [REDACTED] or the parent or something. Herschmann represents Mr. Rossi. Our civil department had contacted me to get the status of it, the Sheriff's Department, Teresa Berg contacted me on multiple occasions saying John Mell's contacted me asking the status of it. Give me an update so I can tell her when you are going to make a decision, that sort of thing. I was getting information from all over the place. A couple of Drew Michelson from I think it from one of the news stations calling me repeatedly and so in this instance I thought the best course was to prepare as detailed a memo as possible. When I made the decision then that was provided for purposes of the press release. So that might be why this is longer than we would ordinarily see. I don't know. You'd have to talk to Becky.

Coopersmith: Okay. Is she still around?

[REDACTED]

Yes. She's a victim advocate now. She just moved from HR back to her original position of victim advocate.

Coopersmith: Okay. Understood. Was there any motivation or purpose in that paragraph at the end of the press release that talked about the motivation, you know, that the financial motivation might be or the fact that the detective took the report who had been represented by the same civil attorney. Was there any motivation or purpose to make Det. Ames look bad in some way or?

[REDACTED]

I don't think it - I can say no. I've never intended to make Det. Ames look bad at all. In fact if I was Det. Ames I probably would have done the same thing. I mean he's getting a call, he's a detective with the Pierce County Sheriff's Department and he's getting a call from somebody he knows, whether or not they still have an attorney-client relationship I don't know, saying hey, I've contacted

DWT 21747556v1 0020120-000003

A A A
CP1125

Teresa Berg. I haven't - nobody followed up on this. Can you come collect this evidence and get it to the people who it needs to go to. From his perspective I don't find any fault in that behavior.

Coopersmith: Okay.

[redacted]

I don't know what their procedures are. Maybe he should have contacted another detective in the special assault unit and say, hey, I got a call from Joan Mell. Can you go collect this information from her so it stays within that unit and doesn't look . . .

Coopersmith: And just let me ask you a question about that, and we're almost done, and you don't find any fault with Det. Ames which is fine. I think earlier you said though that you thought the fact that he had taken the report from Joan Mell and they had been in an attorney-client relationship was another potential problem. In fact, I think in your memo you wrote that that was another potential problem with the case so why do you say that - how do you say that and at the same time say that you don't find any fault with Det. Ames?

[redacted]

Well, he's a detective. I think he's going to act upon, he's a law enforcement officer who is going to - once requested to initiate investigation I think he's going to initiate investigation, whether it's him himself doing it or somebody else. The problem is with Joan Mell, is from the other end. Not from the officer's perspective.

Coopersmith: In other words, are you saying that Det. Ames could have acted completely in good faith but inadvertently created a problem?

[redacted]

Right. Right.

Coopersmith: Okay.

[redacted]

And in, you know, I don't know what their procedures are at the Sheriff's Department and I'm not second guessing Det. Ames but it would seem if I were him I would, you know, if somebody contacted me and said hey, here's some gang, I use to be in the gang unit. Use to be in the special assault unit. If somebody contacts me and says hey, I've got this information about a gang investigation, I wouldn't go take that myself or process it myself. I would contact Grog Greer in the gang department and say, hey, here's what I got. Do you want to follow up with it. Here's the contact information. That would seem prudent because then it's kept in the right avenues to get to where cases usually are.

Coopersmith: Okay.

[redacted]

As opposed to creating some, you know, some question about . . .

DIV 21747556v1 0020120 000003

Exhibit 5

CPI127

Coopersmith: Can I see that one more time?

[REDACTED]: Yes. And I think the only other person that I discussed that with would have been Don Farina. I can't remember because I do so many of these cases.

Coopersmith: Okay. Let me ask you about one particular paragraph.

[REDACTED]: Sure.

Coopersmith: On page 4 of your memorandum, it stated November 6, 2012,

[REDACTED]: That would have been when I made the decision.

Coopersmith: There is a paragraph there that reads as follows: "Defense attorneys often assert that a victim's motive in reporting a crime is to facilitate a civil lawsuit. Here the investigation was initiated by a civil attorney obtained by [REDACTED] parents. To complicate matters, the civil attorney reported the matter to a Pierce County Sheriff's Department detective assigned to investigate computer crimes who is also this attorney's client on an unrelated civil matter. There was probable cause here. These civil aspects have complicated the prosecution of the case." That's what you wrote, right?

[REDACTED]: I wrote that.

Coopersmith: Okay. Was that your own thoughts you put down or did someone else tell you to say that?

[REDACTED]: No. Absolutely that's what I'm - before I took this position all I did was try cases. All I did was try Class A sex offenses and all I did was try gang cases. And so when I'm reviewing a case I review it not only with an eye towards do I have probable cause to charge a case, I also have to evaluate the probability of obtaining a conviction. Well, that is obviously fodder for defense on the viability of my case and so I have to consider that.

Coopersmith: Okay. So in the sentence you used it says "the Pierce County detective assigned to investigate the new crimes "who was also this attorney's client on an unrelated civil matter" and the press release says very similar language. "The civil attorney reported the matter to a PCSD detective who had been represented - past tense, by the same civil attorney. So do you know anything about how the language got changed from "who was also this attorney's client" to "who had been." Someone must have realized that

[REDACTED]: I don't know that it different because I think I said was.

Coopersmith: Well it may not be different. And the only reason I'm asking you is I'm wondering if there was some correction to, oh yes, it was a prior relationship.

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DISSERER

C.P.1128

[REDACTED]

I don't know how they got to this language. I know they had access to Becky, I provided this memo to her when she wrote it and I assume because I said who was also which would have been past tense, she said had been which is also past tense. All I know about that relationship is I contacted our civil department who represented one of the parties, I'm not even sure who the suits were against, to find out if there was in fact a relationship between Joan Mell and Mike Ames because if there isn't then I don't have an issue with her contacting Ames other than he is not in the unit that should have been contacted.

Coopersmith: Okay.

[REDACTED]

Which then creates less of an issue. It calls into question the same motivation for the civil aspect but it doesn't really, still, cause the level of scrutiny it does when you contact somebody who was your client.

Coopersmith: When you called the civil attorney, the prosecuting attorney civil division attorney, who knew something about Joan Mell's representation of Mike Ames, did you learn anything about how Mike Ames filed his overtime lawsuit against the Sheriff's Department?

[REDACTED]

No. The extent of my conversation, I believe I called Mike Summerfeld who was one of three or four civil attorneys -- I don't even know how many civil attorneys are over there -- I think he, oh, I know why I contacted him. Because he represents the Sheriff's Department who there had been a public disclosure request for the case file and so he was contacting me to figure out if I'd made a decision because if I'd made a decision then they have to turn it over, I believe. I don't know how that works. So he's the one who contacted me so then I contacted him and said hey, I need to know whether or not this is accurate that Joan Mell represented Mike Ames and so he said I can check and he ran something and he said well, I'm looking at a notice of appearance or something in some civil claim that says Joan Mell represents Mike Ames.

Coopersmith: Okay. Is that all you learned about it?

[REDACTED]

Yes. That's the extent of my conversation.

Coopersmith: Okay. Do you remember who that was?

[REDACTED]

That was Mike Summerfeld.

Coopersmith: Mike Summerfeld. Okay. So in your experience, you know you've been here a long time, is it unusual to issue a press release that's somewhat lengthy and also states as a reason for declining the case, as a prosecution case, that there was a defense attorney involved who might have a financial incentive and that there was a detective involved who had had some kind of relationship, an attorney-client relationship with the attorney. Is that unusual to put all of that in a press release? The reason I'm asking is that I've seen myself lots of press releases where it just says we decline prosecution or we don't think a crime was committed, whatever

DWT 21747556v1 0020420-000008

Exhibit 6

CP1130

Coopersmith: To see if he leaked information to the lawyer or anyone else.

[Redaction Code]: Basically.

Coopersmith: Okay.

[Redaction Code]: I think that's a better way to put it.

Coopersmith: Okay. Was there any other like official misconduct, complaint or anything filed against Detective Ames, something on an IPR for example or anything like that?

[Redaction Code]: No, pretty much, once, you know, we wanted to find out very quickly if he had or had not done anything wrong. And if he had not done anything wrong we wanted to get that information out to say, hey, we have looked into it, he hasn't done anything wrong, everything he has done is professionally appropriate. Internally, he could have handled it better internally as far as getting permission and briefing a supervisor prior to doing what he did. But ultimately the outcome was everything he did was appropriate. He did a very good investigation, there was no IPR. So had he done something wrong then we would have issued an IPR. In this case he had not done anything wrong, maybe an error in judgment. But the bottom line is he didn't violate policy, he didn't violate law and we're able to clear him of any allegations that were potentially coming down the pike.

Coopersmith: Okay. I think that his claim that this action of reviewing his computers is part of a retaliation against him for the overtime lawsuit and so forth. And I'm just wondering, you know, I'll just ask you directly. Was the decision to look at his computer any sort of payback or retaliation for the fact that he'd brought the overtime and in some people's judgment had, you know, unnecessarily involved an attorney in the matter or anything like that?

[Redaction Code]: No. His actions and the attorney's actions were just highly unusual and we were trying to get to the bottom of it.

Coopersmith: Actually the middle school incident?

[Redaction Code]: Yes.

Coopersmith: Well, you say his actions and the attorney's actions, I understand that you thought that Joan Mell was making a lot of calls and acting in an unusual way, but what was Detective Ames doing that was unusual?

[Redaction Code]: The fact that he responded to her request to do the things that he did without notifying the supervisors.

Coopersmith: Okay. And is it also true that the fact that he had at least at one time been represented, and since she was causing such a stir, it was the desire to see if there was some connection that he was inappropriately giving her information or something like that?

[Redaction Code]: No, he had a relationship with her _____ a professional relationship. And there was a concern that he was showing preferential treatment. And there was the potential

Ames

CP1131

that we couldn't prove or disprove it at this point without checking his email to determine if—allegations were starting to bubble that he had done something wrong. So we had the means to legally check and either prove or disprove those allegations. In this case we proved that any potential allegation of wrongdoing on his part was unfounded.

Coopersmith: Okay. And those allegations that were bubbling were they coming from **Redaction Code 1** for example?

Redaction Code 1: You know I don't recall. I think it may have been some people in the prosecutor's office staff may have been expressing some concern.

Coopersmith: And who were they?

Redaction Code 1: I don't know.

Coopersmith: Did they express their concerns to you?

Redaction Code 1: I think at one point I may have had a conversation with **Redaction Code 1**

Coopersmith: Okay. And what did **Redaction Code 1** say?

Redaction Code 1: That **Redaction Code 1** was just concerned.

Coopersmith: About what exactly?

Redaction Code 1: Potential improper release of information.

Coopersmith: So he was concerned that he knew of a relationship, he knew Joan Mell was in a relationship with Detective Ames and he was concerned that there might have been some improper information provided?

Redaction Code 1: In general. And that conversation probably lasted two or three minutes on the phone.

Coopersmith: Okay. Anything else you can recall from that conversation? Anyone else at the prosecutor other than the **Redaction Code 1**?

Redaction Code 1: That I talked to?

Coopersmith: Yeah, that expressed any concerns about Detective Ames or Joan Mell?

Redaction Code 1: Not directly to me. So if there were I don't have any personal knowledge.

Coopersmith: Okay. How about **Redaction Code 1**?

Redaction Code 1: I never talked to **Redaction Code 1** about this.

Coopersmith: Okay. Were you aware that **Redaction Code 1** had **Redaction Code 1** with the teacher involved in the incident, John _____.

[Redaction Code] No.

Coopersmith: Would that matter to you?

[Redaction Code] No.

Coopersmith: Okay. Now, there's the next page, there's a—we were on page 128, there was a request to interview—

[Redaction Code] And part of the reason that wouldn't concern me is [Redaction Code] is the [Redaction Code] and [Redaction Code] doesn't get involved in investigations.

Coopersmith: Okay.

[Redaction Code] So.

Coopersmith: Okay. So when the request was made, I have this form, which is, I'm going to show you. It's an accounting document. It's called an email record search procedure. And there's a form associated with it called an email record search request. Looks like this. Email record search request and it has a place for the date, the department, the reference number, the _____ requestor, the search range, search phrases, you know, and so forth. And were you familiar with this form and was it used in connection with your request to look at Detective Ames computer?

[Redaction Code] I don't know.

Coopersmith: Okay.

[Redaction Code] I've never seen it.

Coopersmith: You've never seen this form. Have you ever had occasion as a supervisor or [Redaction Code] to look at an employee's emails before?

[Redaction Code] Usually we send a request by email just like this the only times that I've ever done it that I recall. We send a request to the person that does these things and then they may fill that out subsequent to that. But this is typically what I see.

Coopersmith: Okay. So you've never seen that form that I just showed you? The actual, official search request form being used?

[Redaction Code] No.

Coopersmith: Are you also familiar with the policy, Sheriff's Department policy about searches of emails?

[Redaction Code] Generally.

Coopersmith: And what it says is that it can be a search of emails if there's a lawful reason to do it. That's what the policy says.

[Redaction Code] Mm-hm.

Coopersmith: Okay. Did you believe that there was a lawful reason?

[Redaction Code] Yes.

Coopersmith: And I know you've said this before, but what is the lawful reason?

[Redaction Code] That there was suspicion that information may have been improperly released.

Coopersmith: Okay. And was that suspicion, like, let's just use probable cause as an example. Was there probable cause of that?

[Redaction Code] Not probable cause.

Coopersmith: Probably short of probable cause.

[Redaction Code] Right.

Coopersmith: Okay. Reasonable suspicion?

[Redaction Code] Close. This is a civil matter at this point.

Coopersmith: Sure.

[Redaction Code] We're dealing with the civil issue, not a criminal issue.

Coopersmith: Definitely right, I'm using these as a reference point. I'm not suggesting that these standards really apply.

[Redaction Code] I'd say there was a suspicion.

Coopersmith: If you had to articulate the suspicion or reasonable suspicion how would you articulate that?

[Redaction Code] Just that we were having concern raised to us and there was some unusual behaviors and some actions that had been done that just did not seem right, did not seem ethical, professional, if they were true.

Coopersmith: _____ for what?

[Redaction Code] That Mike Ames may have released information to a private defense attorney.

Coopersmith: And the basis for even suspecting that would have been his prior relationship as an attorney/client relationship.

(Redaction Code 1) And how he initiated his investigation and how he had not informed the supervisors that he was doing so.

Coopersmith: Okay. All right. And the reason to inform the supervisor would be because of the high profile nature of the case and the —

(Redaction Code 1) Right, and then the supervisor may look at it and say, you know—if the supervisor knew he had a relationship with Jonn Mell he might have said, why don't you step back and we're going to have somebody else with your skills or if we have to go to another agency to do this type of service that you, that he eventually did. So that we just avoid any innuendo of impropriety.

Coopersmith: Okay. Are you aware of any sort of bias or hostility within the Sheriff's Department against like taking a case that Jonn Mell referred. Like was there any sense of, you know, we're going to, we're not going to do anything to help this person. Anything like that at all?

(Redaction Code 1) No. In this case, she had every right to do any investigation.

Coopersmith: Right.

(Redaction Code 1) And we'd have been derelict in not investigating this case.

Coopersmith: Okay.

(Redaction Code 1) No, we have a legal obligation here.

Coopersmith: I mean was there any reason why the Sheriff's Department would be inclined not to prosecute this teacher who was involved in this incident?

(Redaction Code 1) No.

Coopersmith: Okay.

(Redaction Code 1) There's lots of attorneys that have a bad reputation with the Sheriff's Department and we investigate their complaints all the time.

Coopersmith: Is it fair to say that if it was believed it was warranted it would have been even more of an investigation and do you know if any reason why the case would have

(Redaction Code 1) As far as I know this was very well investigated.

Coopersmith: Okay. Detective Burr?

(Redaction Code 1) I believe there were several people involved.

Coopersmith: I mean, well, Detective Ames, I think you said his report was a fine report. And then Detective Burr as well.

[Redacted Code]: And Detective Burr is recognized as one of the best experts in child abuse and child assault in the United States.

Coopersmith: Okay. So the search of Detective Ames computer was authorized and, I think, Betsy Sawyer also authorized it, do you recall that?

[Redacted Code]: I'm not aware of that.

Coopersmith: Okay. I'll just show you page 130 might refresh your recollection.

[Redacted Code]: I don't know why Betsy Sawyer would be involved.

Coopersmith: She's the like HR director isn't she?

[Redacted Code]: Yeah, I don't know why she would be involved.

Coopersmith: And then do you recall that the report back being that there was no information found?

[Redacted Code]: Yeah, basically we were able to clear Mike Ames of any allegations or any future allegations that he had acted inappropriately.

Coopersmith: Okay. And then there's an email from you to [Redacted Code] that's on page 131, do you see that?

[Redacted Code]: Mm-hm.

Coopersmith: And it says, just, fyi, please don't forward this. And then it's attaching or forwarding the email from [Redacted Code] to you that says, I actually didn't find an email between Ames and Joan Mell.

[Redacted Code]: Yeah, basically I was just letting [Redacted Code] that based on our previous conversation, we checked, we looked, and there's nothing there.

Coopersmith: Okay. Why did you say please don't forward this.

[Redacted Code]: I just thought it was appropriate that it not be spread that, you know, it was confidential.

Coopersmith: Like who would [Redacted Code] possibly forward this to that you didn't want [Redacted Code] to do.

[Redacted Code]: I didn't want [Redacted Code] to forward it to anybody. It was for [Redacted Code] information.

Coopersmith: Okay. You know, sometimes, I mean, the reason I'm asking the question is when people _____ say don't forward, burn after reading, it suggests like that you're not comfortable with what had happened or something.

[Redaction Code 1]: [Redaction Code 1] and I had had a one-on-one conversation. There wasn't—nobody else was present in our conversation. It wasn't a conference call. It was a conversation that [Redaction Code 1] and I had one-on-one. So I felt my response to [Redaction Code 1] should stay between myself and [Redaction Code 1].

Coopersmith: And that's as far as that, is all that meant.

[Redaction Code 1]: If [Redaction Code 1] were to verbalize that to other people that was up to [Redaction Code 1].

Coopersmith: Okay. So that's all you meant by that.

[Redaction Code 1]: That's all I meant.

Coopersmith: Okay.

[Redaction Code 1]: And after that I think I was _____.

Coopersmith: Then you were done with this.

[Redaction Code 1]: Yeah.

Coopersmith: Okay. Later there was a press release issued by the prosecutor's office. Are you familiar with that? Let me show you the copy.

[Redaction Code 1]: I think I saw it for the first time today. If we're talking about the same thing.

Coopersmith: It's November 6, 2012, and I'll leave _____ show you this.

[Redaction Code 1]: The only one I've seen is, let's see. [Unintelligible] And then the only _____ I saw _____ this one today.

Coopersmith: Yeah, okay.

[Redaction Code 1]: Anything else _____.

Coopersmith: This is what I'm familiar with too.

[Redaction Code 1]: What I read _____.

Coopersmith: Right, you've given me the August 29, 2012 Sheriff's Department press release about the investigation and then you've given me the November 6, 2012 press release by the prosecutor's office that there was not going to be any charges. Right? And in this one, _____ draft.

[Redaction Code 1]: Okay, so the first time I've seen that was today.

Coopersmith: Okay. So you just looked this up on the Internet, is that right?

[Redaction Code 1]: No, [Redaction Code 1] gave me a copy of it.

[Redaction Code]: Yes, and it's just all about following the County's communication policy and the Sheriff's policy. You have no expectation of privacy.

Coopersmith: Is there any barrier at all to looking at an employee's e-mail? Like, for example, if you have an improper motive or something?

[Redaction Code]: Sheriff's Department doesn't, no. My understanding is that HR with other departments may do routine snap-it of people's e-mails. We typically don't unless there's some reason to.

Coopersmith: Right.

[Redaction Code]: The only time we typically get involved is HR has found some links to other people that regard people and now that gives a reason to, but we just don't have the time and manpower.

Coopersmith: But in the case of Detective Ames and the e-mail review conducted in September 2012, you believe that there was a valid reason to do that.

[Redaction Code]: It was isolated to this specific event.

Coopersmith: Okay, involving the middle school incident and the attorney and all that?

[Redaction Code]: Yes, and we had an alert to this event. In this instance we would not have been checking.

Coopersmith: Okay.

Scott: Just a final thing, do you recognize that this is an ongoing investigation and we don't know at this time what further involvement internal affairs or the administration will have, but anything that went on today you need to keep that confidential. Is there anything you want to add as a statement?

Coopersmith: Anything that you think is important and I didn't ask you or Scott didn't ask you?

[Redaction Code]: I had asked you earlier, I'd like to know what as far as your reaction, what Mike Ames is accusing me of.

Coopersmith: Sure. The allegation is that not just you, but you and others retaliated against him because he brought the overtime lawsuit and the retaliation took the form of initiating a baseless misconduct investigation that was at least involving review of his e-mails and issuing a press release - the prosecutor's office issuing a press release that basically tainted him and tarred him as having done something improper and maybe other things that he's not aware of. That's basically the allegation.

[Redaction Code]: Okay.

From: Rick Adamson
To: Mark Undquist
Subject: FW: Email search request
Date: Tuesday, October 02, 2012 9:33:00 AM
Importance: High

Just fyi. Please don't forward this.

Rick

From: Brent Bomkamp
Sent: Tuesday, October 02, 2012 09:29
To: Rick Adamson
Subject: FW: Email search request
Importance: High

IT didn't find any email between Ames and Joan Mell.

From: Tom Jones
Sent: Tuesday, October 02, 2012 08:35
To: Brent Bomkamp
Cc: ITInvestigations
Subject: FW: Email search request
Importance: High

Searches using the criteria below produced no results.

Tom Jones
IT Systems Engineer, Supervisor
IT Governance and Service Delivery - User Systems
Pierce County Information Technology

From: Linda Gerull
Sent: Monday, October 01, 2012 4:38 PM
To: ITInvestigations
Cc: Brent Bomkamp; Rick Adamson
Subject: FW: Email search request
Importance: High

Approved. Please assist Brent.

From: Betsy Sawyers
Sent: Monday, October 01, 2012 4:37 PM
To: Linda Gerull
Subject: RE: Email search request

Approved

From: Linda Gerull
Sent: Monday, October 01, 2012 3:43 PM
To: Betsy Sawyers

CP1139

Subject: FW: Email search request
Importance: High

Approve?

From: Brent Bomkamp
Sent: Monday, October 01, 2012 3:04 PM
To: Linda Gerull
Cc: Rick Adamson
Subject: FW: Email search request

Linda,

I haven't heard back regarding this request. Does it require further authorization?

Thanks, Brent

Capt. Brent Bomkamp / Criminal Investigations Division / Pierce County Sheriff's Dept. /
bbomkam@co.pierce.wa.us / 253.798.3637

From: Brent Bomkamp
Sent: Tuesday, September 25, 2012 22:45
To: Linda Gerull
Cc: Rick Adamson
Subject: Email search request

Linda,

Related to possible misconduct by Sheriff's employee Mike Ames, please conduct a search of his email account (mames1@co.pierce.wa.us) for the time period of 7/23/12 through 9/24/12 for:

- 1) Email correspondence with Joan Mell
- 2) Any email with the responsive words:

John Rosl
Cameron Kinney
Karla Kinney
Randy Kinney
Kopachuck

- 3) Case number "122120312" or iterations 12 212 0312, 12-212-0313

This request is made with the approval of PCSD Chief of Operations Rick Adamson.

CP1140

Thanks, Brent

Captain Brent Bomkamp
Pierce County Sheriff's Department
Criminal Investigations Division Commander
930 Tacoma Avenue South
Tacoma, WA 98402
253.798.3637

CP1141

CP1142

①

Redaction Code 1

4/10/13

- intercom

does not agree to tapping

OT lawsuit brought to [Redaction Code 1] attention
He of wife overseeing civil division
was it a nuisance value case? No. The
employees were owed P.T. needed
to start all over to see whether
or not they had an ally.

- [Redaction Code 1] harbored no animosity toward Anwar
- [Redaction Code 1] thought it was clear OT was
Owed.

- [Redaction Code 1] has voiced opinion that JM has
filed similar lawsuits, but she is
not the only one. Her matters have
been relatively small.

- [Redaction Code 1] does not know her particularly
well.

- middle school case came to [Redaction Code 1]
attention. - [Redaction Code 1] thinks [Redaction Code 1] kind
about it for [Redaction Code 1] - Phil. Solera

- [Redaction Code 1] [Redaction Code 1] are social friends
and they work together on media issues

LINDQUIST INT.
NOTES

2

- [Redaction Code 1] - went to ICS, no impact on other

- [Redaction Code 1] never mentioned Rossi to

- [Redaction Code 1] called the "Aves" in "Plut" issue at some point

- [Redaction Code 1] wanted the transfer of 700 boxes the case forwarded not Aves taking the report were problems

- [Redaction Code 1] suggested that Peterson didn't see the content - each email in wrapper just with "company" case to be referred to different agencies

- ~~Content~~
- email received in 125-132

- [Redaction Code 1] had no report in the email
Searches - p. 128 - did not want it

part 31 - [Redaction Code 1] for FBI - [Redaction Code 1] diff. info
[Redaction Code 1] previously received CBS Computer search - transfer to avoid dissemination of information

CP1144

3

[Redaction Code 1] not involved in
discussing on Encl. 25-
ca. p. 127-128.

[Redaction Code 1] was aware of the
issue by Aves in Med. (not
recall. [Redaction Code 1] may know. [Redaction Code 1]
may have mentioned it.

[Redaction Code 1] may have mentioned the
Aves issue. [Redaction Code 1] August 29th
out 2 (p. 129 n. p. 131)

[Redaction Code 1] transfer before either covered
complaint Aves taking report
or DM bringing it forward.

DM copresenting Jerry Horace - [Redaction Code 1]
He had been removed for competence issues
This is background - start of DM's work
of civil division - DM thinks [Redaction Code 1] civil division had
[Redaction Code 1] but have something to do up it

[Redaction Code 1] case - Com. Secretary got letter
threat in 2010. PCSO filed May (Com. Dept)
They id'd a suspect - in PCSO - May
asked to restrict [Redaction Code 1] in office.

(4)

Dean Mell sent over restriction issue
for Act [Redacted]

could also find Dean Mell as
mediator. \$30-40k + mediator fees.
matter is over - but DM. then
filed his complaint against chief of
staff, chief com. dep. peti. - Al.
admission case
his complaint of admission case
dismissed - handled by Act?
possible lawsuit - issue
about personal phone records being
public records.

his complaint - had to do with
complaint - disclosure of chief
com. dep.

[Redacted]

[Redacted]

didn't d/k why they did search -
thinks that probably those get
searched over to define meaning - i.e.
correspondence between Anes and Mell.

5

[Redaction Code 1] had no desire to sit
down with or Mike Amos.

Redaction Code 1 decision not to
present it was [Redaction Code 1] decision
[Redaction Code 1] had. [Redaction Code 1] knew
position is that DPP will tell
me if [Redaction Code 1] might call
[Redaction Code 1] - or if [Redaction Code 1] on something

no input from [Redaction Code 1] no decision
within [Redaction Code 1]

press release - [Redaction Code 1] base input? [Redaction Code 1]
[Redaction Code 1] [Redaction Code 1] quite "substantive"
[Redaction Code 1] have other input - [Redaction Code 1] does not result

[Redaction Code 1] had no input into [Redaction Code 1] [Redaction Code 1]

[Redaction Code 1] approval while [Redaction Code 1] [Redaction Code 1]
know there will be questions - so
[Redaction Code 1] [Redaction Code 1] if it was [Redaction Code 1] accurate
[Redaction Code 1] [Redaction Code 1] believes it is.

No motive to retaliate - just complete
analysis - [Redaction Code 1] wants to be transparent
make sure community understands

ADP

6

Becky Stone - write pt based on
[Redaction Code] [Redaction Code] write
meis fi make sure there
was clear receipt.

AD 1110

①

Redacted Code

Knows nothing about
Miguel's location in Area Agency
Dad's name

AD 11/11

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Dec 08, 2014, 8:38 am
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

Appendix K: Ames' Complaint E-mails Re Computer
Search

From: Brent Bomkamp
Sent: Tuesday, September 25, 2012 22:45
To: Linda Gereb
Cc: Rick Adamson
Subject: Email search request

Linda,

Related to possible misconduct by Sheriff's employee Mike Ames, please conduct a search of his email account (miamus1@co.pierce.wa.us) for the time period of 7/23/12 through 9/24/12 for:

- 1) Email correspondence with Jean Melf
- 2) Any email with the responsive words.

John Ross
Cameron Kinney
Kath Kinney
Nandy Kinney
Kopachuck

- 3) Case number "122120312" or iterations 12 212 0312, 12-212-0313

This request is made with the approval of PCSD Chief of Operations Rick Adamson.

I had never been informed of any formal complaint or inquiry against me regarding this investigation. Who is the complainant? I feel this search was conducted illegally behind my back with no supporting evidence of the claim Captain Bomkamp and Chief Adamson are making. This investigation proceeded without any due process.

September 26, 2102 Chief Masko and Captain Bomkamp meet regarding this investigation, what was the information exchanged at that meeting?

From: Bob Ross
To: Brent Bomkamp
Subject: RE: Just needs up, US is getting a lot of attention
Date: Wednesday, September 26, 2012 11:59:00 AM

Brent
I am in my office now and until 1315 hrs when I have to go to a labor meeting
Rob

October 1, 2012 at 3:03PM Captain Bomkamp emails Linda Gerull for an update on the request. Chief Adamson is kept in the loop.

From: Brent Bomkamp
Sent: Monday, October 01, 2012 3:04 PM
To: Linda Gerull
Cc: Rick Adamson
Subject: FW: Email search request

Linda,

I haven't heard back regarding this request. Does it require further authorization?

Thanks, Brent

Capt. Brent Bomkamp / Criminal Investigations Division / Pierce County Sheriff's Dept. /
bbomkamp@co.pierce.wa.us / 253.790.3637

October 1, 2012 at 3:43PM Linda Gerull emails the head of Human Resources for the County Betsy Sawyers with Bomkamp and Adamson's request which has now received "High" priority status. Why is that?

From: Linda Gerull
Sent: Monday, October 01, 2012 3:43 PM
To: Betsy Sawyers
Subject: FW: Email search request
Importance: High

Approve?

October 1, 2012 at 4:37 HR Director Betsy Sawyers gives her approval.

From: Betsy Sawyers
Sent: Monday, October 01, 2012 4:37 PM
To: Linda Gerull
Subject: RE: Email search request

Approved

October 1, 2012 at 4:38 Linda Gerull advises IT Investigations of the "High Importance" of this request and Chief Adamson and Bomkamp are included in the loop.

From: Linda Gerull
Sent: Monday, October 01, 2012 4:38 PM
To: IT Investigations
Cc: Brent Bomkamp; Rick Adamson
Subject: FW: Email search request
Importance: High

Approved. Please assist Brent

October 2, 2012 at 08:35 IT Systems Engineer Supervisor Tom Jones emails Captain Bomkamp with the results of the "High Importance" search request, which states; "Searches using the criteria below produced "NO RESULTS!"

From: Tom Jones
Sent: Tuesday, October 02, 2012 08:35
To: Brent Bomkamp
Cc: IT Investigations
Subject: FW: Email search request
Importance: High

Searches using the criteria below produced no results.

Tom Jones
IT Systems Engineer, Supervisor
IT Governance and Service Delivery - User Systems
Pierce County Information Technology

After receiving this information Captain Bomkamp notifies Chief Adamson of the results.

From: Rick Adams
To: Rick Adams
Subject: RE: Email search request
Date: Tuesday, October 02, 2012 9:31:03 AM

Thanks

From: Brent Bomkamp
Sent: Tuesday, October 02, 2012 09:29
To: Rick Adams
Subject: FW: Email search request
Importance: High

It didn't find any email between Ames and Joan Mell.

Chief Adamson then forwards the email to "Mark Lindquist?" Why is Mark Lindquist in the loop on this if not for the reason that he is somehow conspiring with these officers. Why does Chief Adamson tell Lindquist to "Please, don't forward this". I believe this shows knowledge and intent on the part of these individuals that the conduct they were involved in was unethical and in my opinion criminal.

From: Rick Adams
To: Mark Lindquist
Subject: FW: Email search request
Date: Tuesday, October 02, 2012 9:33:03 AM
Importance: High

Just FYI. Please don't forward this.

Rick

From: Brent Bomkamp
Sent: Tuesday, October 02, 2012 09:29
To: Rick Adams
Subject: FW: Email search request
Importance: High

It didn't find any email between Ames and Joan Mell.

It is apparent based on the level of authority that this request went through i.e.; the head of Internet Technology and the head of Human Resources that some form of probable cause needed to exist to conduct this search. What was it? I believe the search was unlawful from the start and based on fraudulent information and the search results appear to confirm that.

The focus of the conspiracy now seems to turn to the "Status of the Investigation" as depicted in the following series of emails. These emails appear to show a concerted effort on Captain Bomkamp's part in stalling the release of information related to the investigation.

From: Bret Adamson
To: Joy Showalter
Cc: Rick Adamson
Subject: RE: Call from Joan Mell
Date: Friday, October 05, 2012 11:43:03 AM

I'll handle this

From: Joy Showalter
Sent: Friday, October 05, 2012 14:05
To: Brent Bomkamp
Cc: Rick Adamson
Subject: Call from Joan Mell

Joan Mell left me a voice message wanting to discuss the investigation of John Rost - the school bullying case at Kopachuck. Her phone number is 566-7510.

From: Brent Bomkamp
Sent: Friday, October 05, 2012 11:44 PM
To: Rusty Wilder; Teresa Borg
Subject: FW: Call from Joan Mell

What is the status of the Kopachuck investigation?

From: Joy Showalter

Appendix L: Lindquist's Press Release in Kinney

From: Rebecca Stover [<mailto:rstover@co.pierce.wa.us>]
Sent: Tuesday, November 06, 2012 3:41 PM
To: Rebecca Stover
Cc: Kelly Kelstrup
Subject: NO CHARGES IN KOPACHUCK MIDDLE SCHOOL CASE

News Release

www.piercecountywa.org
www.twitter.com/pierceco

FOR IMMEDIATE RELEASE
November 6, 2012

NO CHARGES IN KOPACHUCK MIDDLE SCHOOL CASE

TACOMA, WA – Today Pierce County Prosecutor Mark Lindquist announced that no charges will be filed in an incident that occurred in a Kopachuck Middle School classroom earlier this year.

Several students in the class recorded cell phone video of one of their classmates, 13-year-old CK, engaging in what has been characterized as "horseplay" with other students and the teacher. School officials learned of the incident that day, viewed the videos, and launched an internal investigation, which resulted in the teacher being suspended and transferred to another school.

"In the Prosecutor's Office, we seek justice," said Prosecutor Mark Lindquist. "Sometimes justice requires vigorous prosecution of a case. Sometimes justice requires that we decline to prosecute. While this is unacceptable conduct in a classroom, it's not criminal conduct under the law."

The incident occurred on February 2, during a class intended for reading and math preparation. Later in the day, CK received text messages from students about the incident. CK's mother asked him about the messages. CK told his mother that they "were just playing around." His mother made an appointment to meet with school officials.

During the meeting on February 16, CK's mother and father viewed the videos of the incident. Afterwards CK's father told school officials that CK appeared to be laughing during the incident and it "was all fun play" from CK's perspective. He also said that he did not see malicious intent on the part of the teacher.

More than five months later on July 25, CK's parents retained a civil attorney, who in turn contacted a Pierce County Sheriff's Department (PCSD) detective. The detective and the civil attorney exchanged voicemail messages over the next few days. When they ultimately spoke on July 30, the civil attorney told the detective that she had already made a report of the alleged crime to another PCSD detective, who was her client on an unrelated civil matter.

On August 9, CK was interviewed by a forensic interviewer. CK told the interviewer that the entire incident was all in fun. The forensic interviewer advised CK's parents and their civil attorney that there was no disclosure of a crime.

In late September, the PCSD forwarded its investigation to the Pierce County Prosecutor's Office. Deputy Prosecutor Jared Ausserer, team chief of the Special Assault Unit, reviewed the case and determined that there is no basis to charge anyone with a crime. As of late October, CK still had not made a disclosure of a crime.

The actions of CK and his parents indicate that they did not believe a crime was committed as they did not report the matter to law

enforcement. Only after consulting with a civil attorney, more than five months after the incident, was the matter reported to law enforcement.

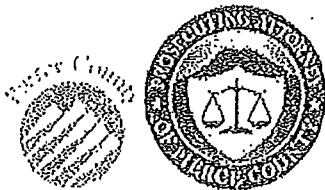
Defense attorneys often assert that a victim's motive for reporting a crime is to facilitate a civil lawsuit. Here, the investigation was initiated by a civil attorney who was retained by CK's parents. To complicate matters, the civil attorney reported the matter to a PCSD detective who had been represented by that same civil attorney on an unrelated matter.

In conclusion, the Prosecutor's Office has determined that no criminal charges will be filed in this incident.

MEDIA CONTACTS:

Rebecca Stover, Pierce County Prosecuting Attorney's Office
253-798-4910
rstover@co.pierce.wa.us

Kelly Kelstrup, Pierce County Prosecuting Attorney's Office
253-798-7792
kkelstr@co.pierce.wa.us



Appendix N: Boerner Declaration

July 02 2014 2:42 PM

Visiting Judge Hon. Kevin Huddleston
COUNTY CLERK
NO: 13-2-13551-1

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IN THE SUPERIOR COURT
FOR THE COUNTY OF PIERCE

MICHAEL AMES,
Plaintiff,
vs.
PIERCE COUNTY,
Defendant.

NO.: 13-2-13551-1
DECLARATION
OF DAVID BOERNER

I, David Boerner, being subject to the laws of perjury of the State of Washington, declare as follows:

1. I was admitted to the Washington State Bar in 1963. Since 1981, I have been a member of the faculty of the Seattle University School of Law, and its predecessor the University of Puget Sound School of Law where I teach Professional Responsibility among other courses. A copy of my resume is attached.

2. From 1981 through 1988, from 1993 to 1996, and from 2000 to 2004, I have served as a member of the Rules of Professional Conduct Committee of the Washington State Bar Association and from 1982 through 1988, I was Chair of that committee. The Rules of Professional Conduct Committee provides advice to Washington lawyers on their professional responsibilities. I have made presentations and conducted seminars on the professional responsibilities of lawyers at numerous continuing legal education seminars presented by the Washington State Bar Association and by other legal organizations and law firms. I have provided advice to many lawyers and law firms concerning the professional responsibilities of lawyers and

CP 2056

1 have testified as an expert witness on issues of the professional obligations of lawyers
2 in the Superior Courts of Clark, Grays Harbor, King, Pierce, Skagit and Snohomish
3 counties and in the United States District Courts for the Western and Eastern Districts of
4 Washington. From 1998 to 2003 I served as a member of the Character and Fitness
5 Committee of the Washington State Bar Association and I served as chair of that
6 committee during the 2000 - 2001 year. I served as a member of the Special
7 Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003) from
8 2003 to 2006.

9 3. For many years I have consulted with and provided training for
10 Washington's prosecuting attorneys in their professional obligations concerning
11 disclosure of exculpatory evidence to defendants in criminal cases. I have been
12 retained as an expert witness on this issue on a number of occasions. My advice has
13 always been that a prosecutor's obligation under both the constitution, as articulated in
14 the "Brady" decision and its progeny, as well as RPC 3.8 and CrR 4.7, is to disclose
15 information which is potentially exculpatory. I have advised that a prosecutor's
16 obligation is not to determine whether potentially exculpatory evidence is believed by
17 the prosecutor, but to disclose all information which may be exculpatory. I have
18 summarized my opinions colloquially as "when in doubt turn it over" and "the longer you
19 have to think about whether the information is potentially exculpatory the clearer the
20 answer is."


21 4. That said, there remains a category of cases where a prosecutor's
22 aggressive disclosure policy may leave individuals who are the subject of the
23 disclosures without any remedy to protect their rights. Information which may reflect
24 adversely on a witnesses' credibility is clearly, in my opinion, potentially exculpatory
25 evidence. When the witness is a police officer the issue will present itself many times,
with the risk of multiple inconsistent resolutions of the issues of the admissibility of such
potentially exculpatory information. This situation is particularly acute where there is an
allegation that the potentially exculpatory information is false or the disclosure is
motivated not by the desire to comply with a prosecutor's constitutional obligations but
by personal animus or a desire to retaliate against the officer. In these situations, there
is a significant gap in the potential remedies available to the officer. Allowing these

CP2057

1 issues to be resolved time after time in individual criminal cases can result in potentially
2 severe impacts on the employment status of an officer.

3 5. Lawyers representing police officers who find themselves in this situation
4 have searched for a means to obtain judicial resolution of the underlying issues. These
5 issues are of major public importance and a method for their resolution is, in my opinion,
6 clearly necessary. I am not an expert in the law of declaratory judgments or the writ of
7 prohibition but, in my opinion, a lawyer who seeks to extend those remedies to a
8 situation such as is presented here is acting within the traditions of our profession. To
9 subject a lawyer to sanctions who has unsuccessfully advocated that these remedies be
10 extended to the important issues presented here is, in my opinion, contrary to the
11 principles which underlie our profession and which counsel a lawyer to fearlessly
12 advocate on behalf of their client.

13 Dated this 30th day of June, 2014.

14 
15 _____
16 David Boerner
17 WSBA #407
18
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CP2058

Appendix O: Strait Declaration

April 17 2014 4:14 PM

Visiting Judge Hon. Kevin Hull
KEVIN HULL
COUNTY CLERK
NO: 13-2-13551-1

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

MICHAEL AMES,

Plaintiff,

vs.

PIERCE COUNTY,

Defendant.

No. 13-2-03162-1

DECLARATION OF JOHN A. STRAIT
IN SUPPORT OF DET. AMES'
REQUEST FOR RECONSIDERATION

I, JOHN A. STRAIT, certify and declare as follows:

I. CREDENTIALS

1. I have been retained by Joan K. Mell of the law firm Three Branches, PLLC. I have been asked to opine about whether Ms. Mell's preparation and prosecution of the complaint in this case meets the standards of the Washington Rule of Professional Conduct 3.1 Civil Rule 11, and RCW 4.84.185. Attached to this Declaration as Exhibit A is a partial Curriculum Vitae that reflects some of my experience in the field of legal ethics and legal malpractice.

2. I am an Associate Professor of Law at the Seattle University School of Law with teaching responsibilities in the fields of legal ethics, legal malpractice, criminal law and criminal procedure. I have been so employed since 1976. I have been in the private practice of

CP1347

1 law in the states of California and Oregon since 1970 and in the state of Washington since
2 1972. I am currently on inactive status in California and Oregon. My private practice currently
3 includes representation of attorneys in both disciplinary and professional standards for lawyers
4 issues. My practice also includes consulting, counseling, and representing attorneys on the
5 issues of frivolous litigation, CR 11 and RPC 3.1. I have represented attorneys both in
6 defending and prosecuting such claims. I am contacted approximately three times a month to
7 provide services as a retained consultant and/or attorney since the late 1970s on such matters. I
8 also provide *pro bono* advice to attorneys and judges throughout the Northwest and have done
9 so since the late 1970s. I currently average five or more such consultations per day. My
10 consulting practice includes giving advice on sanctionable conduct, frivolous litigation, and
11 compliance with RPC 3.1.

12 3. In addition to teaching criminal law and criminal procedure, including Sixth
13 Amendment rights of confrontation, impeachment and duties of prosecutors to disclose
14 potential exculpatory information under *Brady* since 1976, I have appeared as an expert witness
15 in numerous Sixth Amendment cases, including *In re ANJ*, 168 Wn.2d. 91 (2010), *In re Brett*
16 142 Wn.2d. 868 (2001), and most recently in *Wilbur v. Cities of Mt. Vernon and Burlington*
17 U.S. DIST. CT. for the WESTERN DIST. of WA C-11-1100 RSL, Opinion Dec. 4,2013. I
18 have also appeared as an expert witness on prosecutorial obligations to disclose exculpatory
19 evidence to include impeachment of police witnesses (so-called *Brady* cop issues). I have
20 served as member and former chair of the Washington State Bar Association criminal law
21 section since 1974 and have served on numerous criminal law-related task forces. I regularly
22 advise prosecutors and defense counsel throughout the State of Washington on their
23 responsibilities with regards to RPC 3.8 and their duties to refrain from offering perjured

1 testimony under RPC 3.3 and 8.4. I have been appointed to task forces on reviewing post-
2 conviction and appellate reviews by the Washington Supreme Court, including appointment on
3 the original drafting committee for the Washington Appellate Practice Handbook. I have
4 consulted with several county prosecuting attorneys' offices and the United States Attorney's
5 Office for the Western District of Washington regarding *Brady* cop disclosures.

6 4. I have lectured throughout the United States on the subjects of legal ethics and
7 discipline for attorneys. To date, I have lectured in some 15 states. I have participated in CLE
8 presentations on the law of ethics and professional standards for lawyers. I have been a lecturer
9 for numerous of these Bar presentations on the subjects of frivolous litigation and the duties of
10 lawyers to comply with RPC 3.1 under the Washington Rules of Professional Conduct, their
11 American Bar Association Model Rules equivalent, and on the minimum standard of care for
12 attorneys and law firms in the state of Washington with regard to compliance with CR 11. A
13 partial list of my CLE presentations is attached as *Exhibit B* to this declaration. I now average
14 at least two CLE presentations per month. I have done more than 300 CLE presentations since
15 the late 1970s.

16 5. I have testified in court as an expert witness or appeared by declaration or
17 affidavit and have been qualified as an expert witness in the fields of legal ethics and
18 malpractice in 16 different counties in the State of Washington, including Pierce County, and in
19 the federal district courts located in Washington, Oregon, Wyoming, California, Alaska,
20 Hawaii, New Mexico, and others. I have testified on the duties owed by attorneys to comply
21 with CR 11 and RPC 3.1 in most of these jurisdictions. I have appeared by declaration or
22 testimony on more than 20 sanctions motions with regard to CR 11 and RPC 3.1 sanctions.
23

1 6. I have published articles and performed professional research and writings in
2 these fields as reflected in part in the attached curriculum vitae. Most recently I served as co-
3 author of the *Washington Legal Ethics Deskbook* published by the Washington State Bar
4 Association in 2003. I have also served on the Rules of Professional Conduct Committee for
5 the Washington State Bar Association for most of the last 25 years until it was recently
6 sunsetted in 2012. I directed a clinical program in legal discipline through the Seattle
7 University School of Law from 1991 through 2006. In this clinical program, law students
8 investigated Bar complaints under my direction and made recommendations to the Washington
9 State Bar Office of Legal Discipline on probable cause. The program was awarded the 1995
10 Gambrell Award by the American Bar Association for service to the profession. I also serve as
11 Adjunct Investigative Counsel to the Washington State Bar Association. As Adjunct
12 Investigative Counsel (Special District Counsel previously) I have investigated Bar grievances
13 involving ethical responsibilities of attorneys with regard to RPC 3.1. I have been involved in
14 more than 15 investigations involving RPC 3.1 since 1994.

15 **II. MATERIALS REVIEWED IN ORDER TO RENDER MY OPINIONS**

- 16 1. I have reviewed the following materials:
- 17 a. Petition for Writ of Prohibition and Declaratory Relief;
- 18 b. Respondent's CR 12(b) Motion to Dismiss Petition;
- 19 c. Declaration of Michael A. Patterson in Support of Respondent's CR 12(b)(6)
20 Motion to Dismiss Petition;
- 21 d. Det. Ames' Response to Pierce County Prosecutor's CR 12(b)(6) Motion to
22 Dismiss;
- 23 e. Respondent Pierce County's Reply Brief in Support of its CR 12(b)(6)
 Motion to Dismiss;

- 1 f. Order and Opinion on Defendant's Motion to Dismiss;
- 2 g. Respondent Pierce County's Special Motion to Strike the Petition (RCW
- 3 4.24.525);
- 4 h. Det. Ames Response to Defendant Pierce County's Special Motion to Strike
- 5 the Petition (RCW 4.24.525);
- 6 i. Memorandum Opinion;
- 7 j. Pierce County's Motion for Attorney Fees and Expenses;
- 8 k. Det. Ames' Response to Defendant Pierce County Prosecuting Attorney
- 9 Mark Lindquist's Motion for Attorney's Fees and Expenses;
- 10 l. Declaration of Det. Mike Ames in Opposition to Defendant Pierce County
- 11 Prosecuting Attorney Mark Lindquist's Motion for Attorney's Fees and
- 12 Expenses;
- 13 m. Pierce County's Reply in Support of its Motion for Attorney Fees and
- 14 Expenses; and
- 15 n. Opinion and Order on Attorney's Fees and Expenses.

16 2. I also rely on my experience, education, and training as a professor teaching the
17 law of legal ethics and legal malpractice since 1976; as a lawyer who represents lawyers and
18 judges in professional disciplinary proceedings; as a lawyer who has appeared as adjunct
19 investigative counsel for the Washington State Bar Association investigating legal ethics,
20 complaints against lawyers, and who has assisted the Washington State Judicial Conduct
21 Commission in complaints against Washington judges. I also rely on my experience generally
22 in counseling lawyers on their duties to comply with RPC 3.1, 3.3, 3.8 and 8.4, as well as CR
23 11 and *Brady v. Maryland*. The opinions I set forth, *infra*, are all based upon the Washington
Rules of Professional Conduct and my experience set forth.

III. FACTUAL BACKGROUND

1. I had several conversations with Ms. Mell about Detective Ames' situation prior

CP 7351

1 to her filing her complaint. I discussed with her the various ways in which she might raise
2 those issues on behalf of Detective Ames in order to have a resolution of the false allegation
3 that is the basis of his *Brady* cop declaration by the Pierce County Prosecutor's office. Both
4 before she prepared the draft complaint and after my advice on the theories of her complaint, I
5 advised her that I thought that her complaint was a viable complaint and satisfied RPC 3.1 and
6 CR 11/RCW 4.84.185. I also informed her of a similar case that I knew had been attempted,
7 but with significantly different facts which made it much more difficult to obtain relief, and put
8 her in touch with the attorneys who had worked on that case in Grant County.

9 2. Ms. Mell has informed me that her independent research found a settled case in
10 Snohomish County in which substantial damages were awarded arising from a false declaration
11 of a *Brady* cop and his termination from employment. She also informed me that one of the
12 research faculty members of my law school had located two law review articles discussing the
13 issues of false *Brady*-cop declarations as part of her research background to the filing of the
14 complaint. Based in part on my advice to her, as well as her independent research and the lack
15 of any controlling adverse authority, Ms. Mell proceeded with the current case.

16 3. Because the context of the current order is the trial court's granting of a motion
17 to dismiss for failure to state a claim, the factual allegations set forth in the pleadings must be
18 taken as true. Without going into unnecessary detail, the allegations stated most simply are that
19 Detective Ames was falsely accused of making a false statement in order to damage his
20 credibility because of possession of information adverse to the prosecutor's office in Pierce
21 County. Following the creation of the false allegation of a false statement by Detective Ames,
22 the office then declared Detective Ames a *Brady* cop and began disseminating the false
23 information to criminal defense lawyers in cases in which Detective Ames would appear as a

1 witness or as an investigator leading to testimony to be offered in a criminal case

2 4. Being declared a *Brady* cop has substantial effect upon Detective Ames, not
3 only as to reputation, but as to his ability to function as a police detective. It potentially
4 compromises cases in which he would be called to testify (virtually any case he worked on) and
5 therefore directly impunes not only his integrity, but also limits his employability, utility and
6 his ability to perform his job. I assume for the purposes of my opinion with regard to RPC 3.1
7 and CR 11 that these factual allegations are correct.

8
9 **IV. OPINIONS AND ANALYSIS**

10 A. Where there is an injury, American jurisprudence assumes that there is a
mechanism through the legal system to correct that injury.

11 1. A fundamental aspect of American litigation, unlike other systems, is respect for
12 individual liberty, property and substantive rights. Either in common law or statutorily, it is
13 contrary to that fundamental premise of any state's legal system that a wrong cannot be
14 prevented or redressed if that wrong can be characterized as an injury to life, liberty or
15 property. If a police officer has been falsely accused of making false statements, thereby
16 impugning the officer's reputation for honesty, truth and veracity, there should be a viable
17 claim for relief of that wrong. That is the premise that is taught in law school and the premise
18 behind my advice to Ms. Mell that her theories of a cause of action were permissible within
19 RPC 3.1 and CR 11.

20 2. While most of my work in the criminal justice system in the State of
21 Washington in various capacities has been to assist lawyers regardless of their practice as
22 prosecutors or defense counsel in meeting their ethical and legal responsibilities while
23 performing their professional roles, I have spent substantial portions of my career addressing

1 Sixth Amendment effective assistance of counsel and addressing *Brady* issues for both
2 prosecutors and defense lawyers as an advisor. I have become acutely aware as a result of that
3 work that falsely declaring a police officer to be a *Brady* cop causes an injustice that is
4 dangerous to the integrity of our criminal legal system, as much as is a failure to disclose valid
5 impeachment material and hiding such impeachment material from the courts in criminal cases.

6 3. It is particularly critical where there may be a motive for falsely declaring an
7 officer to be a *Brady* cop that there be a remedy to resolve the underlying facts and truthfulness
8 of the allegation. I am aware of at least two different jurisdictions in Washington in which a
9 police officer who potentially possessed damaging information about the elected prosecuting
10 attorney was declared a *Brady* cop in order to damage the credibility of that officer in
11 subsequent proceedings that might be brought against the elected prosecutor. Obviously, such
12 corrupt motivations in creating a *Brady* cop declaration cannot be allowed to be unreviewed.

13 4. Whether true or not, such allegations need to be resolved, and the only way they
14 can be resolved is by a litigation on the merits of the allegations. That cannot be done in a
15 criminal prosecution where the officer will be impeached because it turns the criminal trial into
16 a collateral litigation focusing on the merits of the officer's alleged falsehoods, an unrelated
17 matter to the criminal trial. Nor can it be done during a criminal prosecution in a pretrial
18 hearing where the court becomes the trier of fact of collateral impeaching *Brady* cop facts.
19 That would most likely not be permissible in the criminal case in which the officer will be
20 called to testify, and in any event is an inefficient vehicle since the criminal defense lawyer is
21 not in a position to develop the underlying facts to establish truth or falsity of the underlying
22 *Brady* cop declaration premises and has no motivation to do so. The appropriate vehicle would
23 have to be an independent litigation brought by the officer to require a factual adjudication of

CP1354

1 the truth or falsity of the underlying allegations leading to the *Brady* cop declaration such as the
2 one filed by Ms. Mell.

3 5. Because the issues raised by a *Brady* cop declaration are relatively recent in
4 American jurisprudence since many jurisdictions had not resolved whether impeaching
5 information which could attack the credibility of a police witness was information which had to
6 be disclosed under *Brady v. Maryland* until recently and the issue is still being litigated in some
7 jurisdictions. The issue of how to remedy a false accusation leading to a *Brady* cop declaration
8 is a new litigation problem which American courts have not faced in the past. Any remedy by
9 definition will have to be one without prior precedent or with minimal prior precedent.
10 Absence of precedent is not a basis for violation of RPC 3.1 or CR 11.

11 **B. CR 11/RCW 4.84.185 and RPC 3.1 were never intended to prevent the**
12 **development of new causes of action or the application of existing causes of action in**
13 **creative ways which are not contrary to established authority.**

14 1. The legislative history of CR 11/RCW 4.84.185 and the annotated comments to
15 RPC 3.1 show a primary concern of the drafters of each to avoid penalizing new and creative
16 application of theories of liability and/or defenses. The definitions in each require reasonable
17 investigation to ascertain factual support for a claim (not relevant to the current sanctions
18 motion since there is no factual rejection by the court's prior granting of the motion to dismiss
19 that reaches the merits of the factual allegations after allegations and finds them lacking any
20 support) and that a lawyer who is asserting a legal theory that is contrary to existing controlling
21 authority must cite that controlling authority and then argue for why it should be distinguished
22 or reversed (please compare RPC 3.3(a) to RPC 3.1). The requirement for distinguishing
23 controlling authority is not met under RPC 3.1 or CR 11 here because there is little or no prior
litigation that is reported in which such a claim is found to be without legal support and no

1 controlling authority in Washington exists.

2 2. Because: (1) Ms. Mell sought independent legal advice from several sources as a
3 way to assert Detective Ames' claims; (2) the factual allegations made are assumed for the
4 purposes of this sanctions motion to be true; and (3) there is no case law which expressly says
5 that such a claim cannot be brought as a declaratory judgment action in combination with a writ
6 of prohibition, the prerequisites for either CR 11/ RCW 4.84.185 or RPC 3.1 sanctions are not
7 present. The criteria are simply not present. Ms. Mell did engage in a reasonable inquiry into
8 the law and the facts. The court's opinion provides the court's reasoning why the elements of
9 her causes of action are not met, but there is no citation to any dispositive authority that Ms.
10 Mell could have been expected to find. A losing argument is not a sanctionable argument
11 under RPC 3.1 or CR 11.

12 C. Assuming the allegations that led to Detective Ames being a *Brady* cop are
13 false, there is no *Brady* obligation to produce such information in a subsequent criminal
14 case where the officer testifies and production of such information by the prosecution
would be unethical under RPC 3.3(a)(1) and 3.4(b) and 8.4(c) and (d).

15 1. The court's sanctions order appears to rely on the assumption that in a separate
16 litigation to establish the truth or falsity of a *Brady* cop allegation, the court would in some way
17 be "commenting on the evidence" in a subsequent criminal prosecution. This, in turn, seems to
18 be premised on a belief that even if false, the allegation, once made, would need to be disclosed
19 under *Brady* to a subsequent criminal defendant. Those assumptions appear to be without
20 support. Assuming the facts as alleged by the complaint drafted by Detective Ames and Ms.
21 Mell are true, the prosecutor's office cannot disseminate what is knowingly false to the defense,
22 nor can the defense use it. If there is a separate litigation that determines the falsity of the
23 *Brady* cop allegations, and a court sitting in that litigation, as in any other litigation, makes
findings of fact and conclusions of law after a full litigation on the merits of the claim of

C.P.1356

1 falsity, that is not a "comment on the evidence" in any subsequent proceeding. It is simply the
2 normal litigation result of a judgment and order following resolution of contested facts. It is
3 certainly not the judge expressing the judge's personal opinion as the judge sitting in a
4 subsequent criminal proceeding and advising a jury how the jury should consider the evidence
5 before it.

6 2. The "comment on the evidence" "constitutional restriction" was designed
7 historically to restrict the English judge's practice of summing up the evidence after closing
8 argument by advising the English jury of the English judge's personal opinion of whether
9 witnesses should be believed or not, thereby putting a heavy judicial thumb on the role of the
10 petite jury in a criminal case determining weight and credibility of witnesses. The "comment
11 on the evidence" restriction was designed to make sure that credibility questions would be
12 determined from admissible evidence by the jury without the trial judge expressing the judge's
13 opinion of credibility. Previously adjudicating evidence to be false is neither a "comment on
14 the evidence" in a subsequent case in which it couldn't be offered in the first place, nor is it
15 exploiting the position of that trial judge at the expense of a jury evaluating properly admitted
16 evidence in a subsequent case. It simply isn't a comment on the evidence when the judge
17 determines the truth or falsity of information presented to the court in an appropriate litigation.

18 3. The second necessary assumption to the sanctions order is that even if the
19 information was adjudicated to be false in a separate proceeding, the prosecutor would still
20 have an affirmative action under *Brady v. Maryland* to disseminate the now-demonstrated to be
21 false information to subsequent criminal defendants and their counsel. Not only is there no
22 right or obligation to disseminate knowingly false information (having had that determination
23 made in a previous litigation), there would be a mandatory duty for the prosecutor not to do so.

CP1357

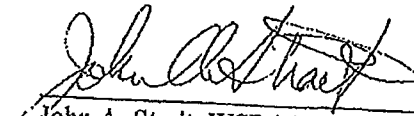
1 The prosecutor's duty to not withhold exculpatory evidence under *Brady* or to fail to produce
2 material evidence which could be related to guilt or innocence is not invoked when the
3 information is proven to be false. RPC 3.3(a) would bar the prosecutor from offering the
4 evidence in the state's case in chief (for example, to minimize the effects on cross-examination
5 of such information because the prosecution already knows that it's false information).
6 Similarly, no defense counsel would be entitled to use the information to impeach the officer on
7 cross-examination because that, in turn, would involve offering the now-proven false
8 information for consideration by the trier in fact in violation of RPC 3.3(a). In addition,
9 producing false information in discovery is forbidden under RPC 3.4(b) and those requirements
10 are mandatory. Lastly, production of false information, whether at trial or in discovery, would
11 violate RPC 8.4(c) and (d).

12 V. CONCLUSION

13 Because Ms. Mell did independent research, obtained independent opinions, is engaged
14 in a case without prior precedent that would require reversal or modification, and because a
15 *Brady* cop is entitled to some forum in which to resolve the truth or falsity of the allegations
16 which lead to such a declaration, sanctions are inappropriate under either RPC 3.1 CR 11, and
17 RCW 4.84.185.

18 I declare under the penalty of perjury that the above information is true and correct to
19 the best of my knowledge.

20 Respectfully submitted at Seattle, Washington, on this 16th day of April, 2014.

21
22 
23 John A. Strait, WSBA No. 4776

DECLARATION OF JOHN A. STRAIT IN SUPPORT
OF DET. AMES' REQUEST FOR
RECONSIDERATION - Page 12

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CP1260